

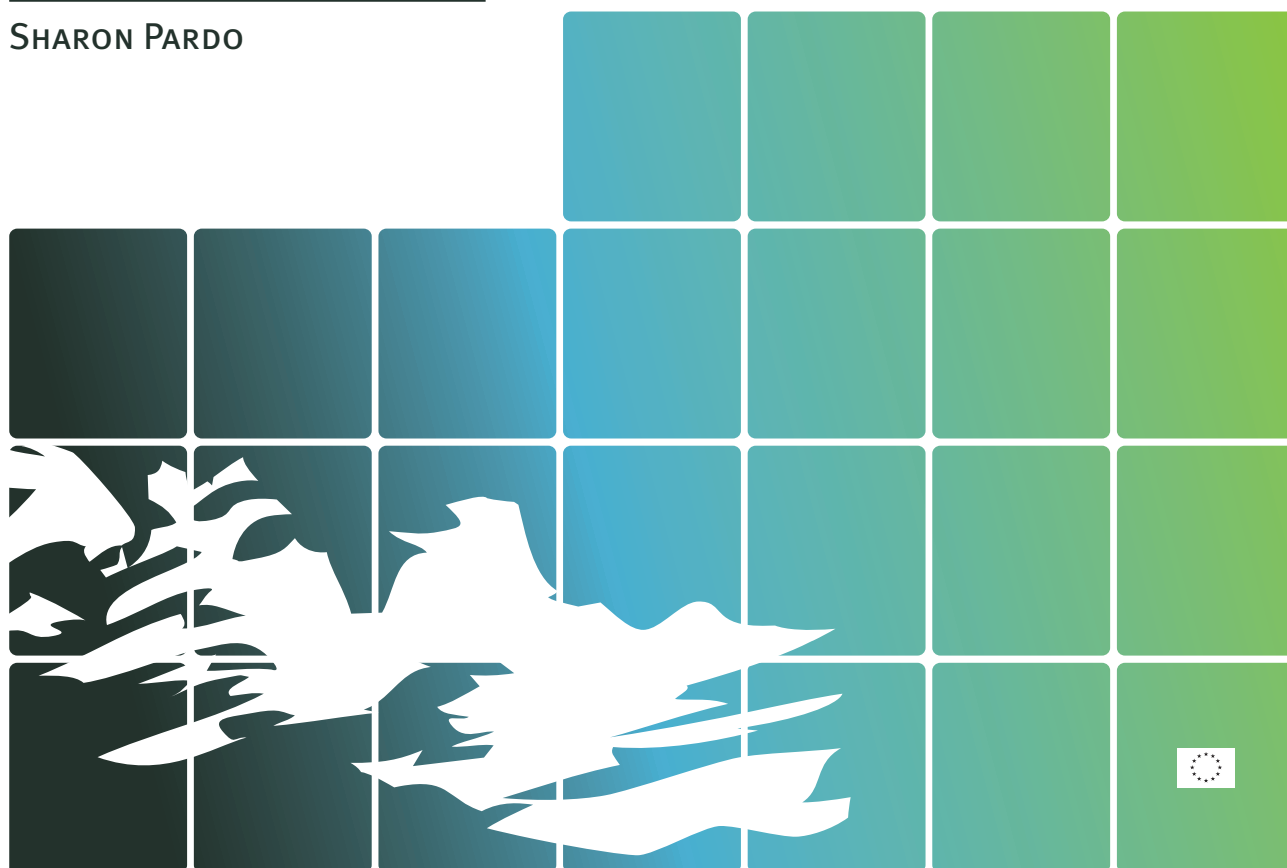


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# Toward an Ever Closer Partnership: A Model for a New Euro-Israeli Partnership

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## Executive Summary

In March 2007 the European Union (EU) and Israel established a 'Reflection Group', 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 June 2008 and expressed the political will to intensify Euro-Israeli relations, while also agreeing to develop these relations gradually within the framework of the European Neighbourhood Policy (ENP). The success of this project, however, requires that Israel and the EU reach an agreement on how they should craft a tailor-made model to guide their relations.

This study aims to address this joint challenge. Starting from a description of the bilateral relations between the EU and Israel, it goes on to outline a new framework for an ever-closer partnership between the Union and Israel under the ENP. The proposed 'Euro-Israeli Partnership' (EIP) presents a new model for aligning Israel with the EU, while remaining below the level of full EU membership. The study also proposes an institutional structure that includes common decision-making and management bodies.

This paper departs from the assumption that, following the Luxembourg statement of June 2008 that marked the "upgrade" to "a new phase" in Euro-Israeli relations, the time has come to implement the Essen Declaration of 1994 in which the European Council stated that "Israel, on account of its high level of economic development, should enjoy special status in its relations with the European Union, on the basis of reciprocity and common interest". The proposed EIP model is founded on the premise that a closer partnership between the EU and Israel would benefit both parties and would contribute towards an improvement in mutual understanding and trust.

Finally, this study argues that the EIP model is a prerequisite to success if the ENP hopes to evolve into anything other than mere expressions of European noblesse oblige. The current proposals aimed at beefing-up the ENP are unlikely to suffice. The EIP could serve as model for all ENP partner countries and potentially act as a springboard from where the consolidation process of the Euro-Mediterranean Neighbourhood Space can begin to take shape.

## General Policy Recommendations to the EU

- Realise the crucial importance of relations with neighbour countries for the future of the EU.
- Recognise and explicate shared long-term interests.
- Better understand neighbours' values, interests and world views.
- Contextualise relations with all neighbour countries, including Mediterranean non-member countries, within other EU legal frameworks, such as the European Economic Area (EEA).
- Strive to cooperate with neighbour countries on global issues, including ecological concerns and the revision of international institutions.
- Identify common strategic interests, stimulating enhanced cooperation in the advancement of neighbours' political and economic objectives.
- Strengthen the shared professional discourse on the long-term future of the Euro-Mediterranean Neighbourhood Space, considering global geo-strategy as a whole.
- Reinforce the institutional foundation and structure of relations between the EU and its neighbours.
- Consider an upgrade of Euro-Mediterranean relations in line with the EIP model. Based on the logic of the ENP, this model aims to remain sufficiently flexible to allow the self-differentiation of individual partners according to their specific political situation, level of socio-economic development, reform agenda and achievements, and level of ambition with regard to the EU.
- If the implementation of the EIP model is eventually ruled out, consider an alternative model that would still align the partner country with the EU below the level of full EU membership.

- The new partnership model must significantly advance relations between the EU and its neighbours, while also providing an active institutional apparatus equipped with common decision-making and management bodies.
- The renewed model for relations should benefit all partners and aim at contributing towards the improvement of mutual understanding and trust.

# I. General Introduction

While the final outcome of European federalism is yet to be determined, the European Union (EU)<sup>1</sup> today functions as a hybrid political polity<sup>2</sup>, wielding a tremendous power of influence in world politics that must be recognised. The EU is fast-becoming a global political actor, and not merely an important economic player. There are some who argue that the EU is already a superpower, playing a crucial role in the present-day international order.<sup>3</sup> José Manuel Barroso, President of the European Commission, went even further in his declaration that the EU is the “first non-imperial empire”.<sup>4</sup>

Within the field of international relations, it is an astonishing fact that, in major areas of its national life, Israel conducts itself more as an island in the Atlantic Ocean than as a Mediterranean country neighbouring the EU. Yet historically, geographically and even religiously, it has been argued that “Israel is from Europe, but not in Europe”<sup>5</sup>, and indeed the Union represents Israel’s economic, cultural and, in many respects, political hinterland. Not only do Israel and the EU share a common heritage, but they also partake in something more profound, which can indeed be traced back to the relations originally nurtured in Israel by the survivors of the Holocaust who emigrated to the country. This relationship is rooted in an even deeper seed that was interestingly exposed by the Czech-born writer Milan Kundera. For Kundera, the Jews that were “exiled from their land of origin and thus lifted above nationalist passions ... have always shown an exceptional feeling for supranational-Europe – a Europe conceived not as a territory but as a culture. If the Jews even after Europe so tragically failed them, nonetheless kept faith with that European cosmopolitanism, Israel, their little homeland finally regained, strikes me as the true heart of Europe – a peculiar heart located outside the body”.<sup>6</sup>

At present, Israel enjoys a unique status within the EU – a status granting it extensive rights in areas as diverse as research and development, or economics. For these various reasons, one of most important public statements about Europe made by Tzipi Livni – in her capacity as Israel’s vice prime minister and foreign minister – emphasised her belief in Israeli-European relations: “I truly believe that the road should ultimately lead us to the significant participation of Israel in the European integration project. And here, the sky is the limit”.<sup>7</sup>

Despite its desire to partake in the European project, Israel is only now beginning to think thoroughly about its relationship with the EU.<sup>8</sup> However, Israel has not yet determined the strategy to pursue in its desired relations with the EU. To this effect, on 5 March 2007 it established ‘Reflection Group’ that was charged with examining areas in which cooperation between Israel and the EU could be enhanced. Based on the preliminary work accomplished in the meetings of this Reflection Group<sup>9</sup>, the EU-Israel Association Council convened in Luxembourg on 16 June 2008, expressing the political will to intensify Euro-Israeli relations and agreeing to gradually develop these relations within the framework of the European Neighbourhood Policy (ENP). The success of this process, however, requires that Israel and the EU both agree on how they want to craft the tailor-made model for their relations.

This paper aims to address the joint challenge just presented. The study starts by describing the bilateral relations between the EU and Israel, before then outlining the proposed model for an ever-closer partnership between Israel and the EU under the European Neighbourhood Policy. The ‘Euro-Israeli Partnership’ (EIP) represents a new framework for aligning Israel with the EU below the level of full EU membership. As a novel form of association, the EIP is expected to upgrade Euro-Israeli relations significantly, first and foremost in economic terms, but also in political, as well as research, cultural and social/human fields. This study also proposes an institutional structure that includes common decision-making and management bodies.

This paper departs from the assumption that, following the Luxembourg statement of June 2008 that marked the “upgrade” to “a new phase” in Euro-Israeli relations, the time has come to implement the Essen Declaration of 1994 in which the European Council stated that “Israel, on account of its high level of economic development, should enjoy special status in its relations with the European Union, on the basis of reciprocity and common interest”<sup>10</sup>. The proposed EIP model bases itself on the premise that a closer partnership between the EU and Israel would benefit both sides, contributing towards the improvement of mutual understanding and trust.

Finally, this study argues that the EIP model is a prerequisite to success, if the ENP is ever going to evolve into anything more than mere expressions of European noblesse oblige. The current proposals aimed at beefing-up the ENP are unlikely to suffice. The EIP could serve as model for all ENP partner countries and potentially act as a springboard from where the consolidation process of the Euro-Mediterranean Neighbourhood Space can begin to take shape.

1 \* Some sections of this study draw on an article co-authored with Yehezkel Dror: Dror, Yehezkel and Pardo, Sharon, Approaches and Principles for an Israeli Grand Strategy towards the European Union, European Foreign Affairs Review, Vol. 11, No.1, Spring 2006, pp. 17-44.

According to the Treaty of Lisbon, the ‘European Union’ shall replace and succeed the ‘European Community’ [Article 1-2(b), Treaty of Lisbon]. In line with the Treaty of Lisbon, and for brevity sake, I will generally refer to the EU, despite the current legal distinctions between the European Community (EC) and the EU.

2 Duchêne François, “Europe’s Role in World Peace”, in: Richard Mayne (ed.), Europe Tomorrow: Sixteen Europeans Look Ahead, London: Fontana 1972, p. 45. Duchêne actually used the term ‘hybrid creature’: Manners, Ian, Normative Power Europe: A Contradiction in Terms?, Journal of Common Market Studies, Vol.40, No.2, 2002, pp.235-258, p. 240.

3 McCormick, John, The European Superpower, Basingstoke, Palgrave Macmillan, 2007; Whitman, Richard, From Civilian Power to Superpower? The International Identity of the European Union, London, Palgrave Macmillan, 1998; Ried, Thomas, The United States of Europe, London, Penguin Books, 2004; Rifkin, Jeremy, The European Dream: How Europe’s Vision of the Future is Quietly Eclipsing the American Dream, New York, Jeremy P. Tarcher / Penguin, 2004; Leonard, Mark, Why Europe Will Run the 21st Century, New York, Public Affairs, 2005.

4 For President Barroso, the EU is “a very special construction unique in the history of mankind... Sometimes I like to compare the EU as a creation to the organization of empire. We have the dimension of empire...What we have is the first non-imperial empire” (EUobserver.com, Barroso says EU is an empire, July 11, 2007, euobserver.com/9/24458?rss\_rk=1).

5 Diner, Dan, Europa-Israel, Tel-Aviv, Heinrich Böll Stiftung, 2007.

6 Kundera, Milan, The Art of the Novel, New York, Grove Press, 1986, p. 157.

7 Livni, Tzipi, Israeli European relations. Speech at the KAS and CSEPS international workshop on Israel and the European Union in the enlarged neighbourhood, December 11, 2006, p.4.

8 The absence of Israeli strategic thinking toward the EU has not escaped the Union itself. As Commissioner Benita Ferrero-Waldner has put it, “we [the Europeans] strongly sense that Israel has not yet made up its mind how to work with us” (Ferrero-Waldner, Benita, Bilateral relations between Israel and the European Union. Speech presented at the Hebrew University in Jerusalem, February 27, 2007, p.4). For a discussion on the principles underlying a future Israeli strategy toward the EU, see Dror, Yehezkel and Pardo, Sharon, Approaches and Principles for an Israeli Grand Strategy towards the European Union, European Foreign Affairs Review, Vol. 11, No.1, Spring 2006, pp. 17-44.

9 9 October 2007 and 15 May 2008.

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



Israel and the EU first established diplomatic relations in 1959. The two share a long history, marked by growing interdependence and collaboration. In 1975, Israel and the EC signed their first Co-operation Agreement, and since then, cooperation in trade, as well as the economic, political and cultural fields, has firmly consolidated Israel-EU relations. The EU is Israel's most important trading partner. In 2007, 35 percent of Israeli imports (totalling about EUR 14 billion, not including diamonds) originated from the EU, and 35 percent of Israeli exports (totalling about EUR 11 billion, not including diamonds) were channelled to the European market. The EU ranks 1<sup>st</sup> place in Israel's imports and 2<sup>nd</sup> place in its exports.<sup>11</sup> As regards the EU, Israel is of course a less significant trading partner, yet it is one of the EU's biggest trade partners within the Euro-Mediterranean area. In 2006, for example, Israel ranked 30<sup>th</sup> in the EU's imports and 22<sup>nd</sup> in the EU's exports.<sup>12</sup>

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

Replacing the 1975 EC-Israel Co-operation Agreement, the EIAA – which was envisioned as part of the Euro-Mediterranean Partnership signed in 1995, but only entered into force in 2000 – forms the legal basis for Israel-EU relations. Although the Agreement is of a free trade area nature, it also enables continued dialogue and cooperation between Israel and the EU in a wide range of fields. The Agreement establishes a framework for regular political dialogue and aims at promoting peace, security and regional cooperation. It includes provisions for the strengthening, on the widest possible basis, of economic and socio-cultural collaborative endeavours, including freedom of establishment, liberalisation of services, unrestricted movement of capital, and free market competition. The Agreement reaffirms and reinforces the free trade arrangements already in place as regards manufactured goods and other industrial products. In 2003, the parties signed an additional agreement liberalising reciprocal trade for most agricultural products. A preliminary accord, on the further liberalisation of trade in agricultural and processed agricultural and fishery products, was reached in August 2008 and should be formally approved by both sides by December 2008.

The issue of rules of origin is a central element in the EU-Israel Association Agreement. The fourth protocol of the Agreement controls and stipulates the set of regulations regarding the origin of products. One such rule required the implementation of a mechanism to verify the origin certificates, which serve as a reference when determining whether the product complies with the origin requirements. In accordance with this mechanism, and due to an awakened concern in the mid-1990s regarding violations of the rules of origin, applications have been submitted to the Israeli customs by the customs authorities of some of the EU Member States requesting the verification of the origin certificates on goods exported to the EU by Israel and that originated in the Jewish settlements within the occupied territories, namely, in the West bank, Gaza Strip, East Jerusalem and the Golan Heights. The origin certificates indicated Israel as the country of origin of exported goods. Israel argued that trade with the Jewish settlements in the occupied territories is entitled to the same preferential treatment as that accorded to the 'internationally-recognised' areas of the State of Israel, and therefore that the Association Agreement incidence cannot be restricted as regards these territories. In contrast to Israel, the EU stood firm in its own stance, which held that the occupied territories were not entitled to enjoy the preferential treatment and benefits bestowed on Israeli products.<sup>13</sup>

In 2005, the EU and Israel resolved this dispute. Both parties agreed that the preferential treatment under the Association Agreement will be refused to goods with a proof of origin indicating that the production conferring originating status took place within the Palestinian occupied territories.<sup>14</sup> In effect, Israel accepted to restrict its economic boundaries to its pre-1967 borders for the purposes of trade with the EU.

Like all other Mediterranean Association Agreements, the EU-Israel Agreement is overseen by an annual foreign ministers meeting (known as the 'Association Council') and regular senior official level meetings (known as the 'Association Committee'). In order to strengthen cooperation between these two managing parties, the Association Council established several sub-committees in the following areas: industry, trade and services; internal market; transport, energy and environment; research, innovation, information society, education and culture; agriculture and fisheries; justice and legal matters; customs cooperation and taxation; social and migration affairs; economic and financial matters; and political dialogue and co-operation (see Figure 1).

## II. Bilateral Relations

### The EU-Israel Association Agreement

11 Central Bureau of Statistics, Monthly Israeli-EU Trade Statistics, Jerusalem, Central Bureau of Statistics, 2008.

12 Approximately one percent of total EU trade; see: [http://ec.europa.eu/trade/issues/bilateral/countries/israel/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/israel/index_en.htm), last accessed 12 July 2008.

13 For a further discussion see Zemer, Lior and Pardo, Sharon, The Qualified Zones in Transition: Navigating the Dynamics of the Euro-Israeli Customs Dispute, *European Foreign Affairs Review*, Vol. 8, No.1, Spring 2003, pp. 51-75.

14 Commission of the EC, Notice to Importers, Imports from Israel into the Community, *Official Journal of the European Union*, 2005/C 20/2: 25.1.

## Israel-EU Agreements on Scientific and Technological Cooperation

Israel is the first non-European country to have become fully associated with the EU's Framework Programmes for Research and Technological Development (FP) since 1996.<sup>15</sup> These Framework Programmes are a key part of the EU's strategy to create a European Research Area that effectively competes with other technology centres throughout North America and Asia. Israel actively participates in the EU's FPs and has proved to be a source of innovation in both basic and market-oriented research conducted in Europe. The EU is now Israel's second biggest source of research funding, after the Israel Science Foundation (ISF), and under the EU's Sixth Research Framework Programme (FP6), Israeli research bodies participated in over 600 research projects in consortia with their European counterparts. Israeli researchers participated in all activities under FP6, having had a strongest presence in the field of information society technologies. Israel will contribute approximately EUR 440 million to the EU's Seventh Research Framework Programme (FP7) over the period 2007-2013.<sup>16</sup>

## The Euro-Mediterranean Partnership (the 'Barcelona Process')

Israel is a full partner in the Euro-Mediterranean Partnership (EMP) and participates in all its programmes. Because of the healthy 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. It has, however, been involved in a wide variety of Euro-Mediterranean regional programmes initiated under this same 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 well beyond all other Mediterranean partners. As long as the Middle East peace process was advancing, the Euro-Mediterranean Partnership had a positive impact on EU-Israel relations, but as soon as the process swayed off track, the Partnership began to negatively affect these same 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."<sup>17</sup> Overall, while the Partnership's direct economic impact on Israel has been negligible, in political terms it has enhanced Israel's regional legitimacy.<sup>18</sup>

## The EU-Israel Action Plan

<sup>15</sup> The current active Framework Programme is FP7, for the period 2007-2013. There are different categories of country, subject to varying eligibility for different work programmes:

Member States - The EU-27; Associated Countries – those with science and technology cooperation agreements that involved contributing towards the FP budget; Candidate Countries – those currently recognised as candidates for future accession; Third Countries - the participation of organisations or individuals established in such countries (that are not Member States, candidates or associated countries) should also be justified in terms of their enhanced contribution to the objectives of FP7. Thus, legal entities established in Switzerland, Israel, Norway, Iceland, Liechtenstein, Turkey, Croatia, the Former Yugoslav Republic of Macedonia and Serbia, respectively, are able to receive Community contributions for contracts/grant agreements signed after 1 January 2007. In the case of legal entities established in Albania and Montenegro, these can only receive Community contributions for contracts/grant agreements signed after 1 January 2008.

<sup>16</sup> By 16 June 2008, over 1,300 proposals involving Israeli researchers were received under FP7. Of these, 267 were accepted, requiring an EU contribution of over EUR 51 million; see General Secretariat of the Council, Eighth Meeting of the EU-Israel Association Council: Statement of the European Union, June 16, 2008, 3.

<sup>17</sup> Del Sarto, Raffaella A., *Contested State Identities and Regional Security in the Euro-Mediterranean Area*, Palgrave Macmillan, New York and Basingstoke, 2006, p.111-112.

<sup>18</sup> Dafni, Inon, *Economic cooperation between Israel and the other Mediterranean non-member countries (MNMCS): Vision vs. reality*, Paper presented at the Third Mediterranean Social and Political Research Meeting, Florence, March 2002.

<sup>19</sup> Eran, Oded, *Statement by Oded Eran, Director General of the World Jewish Congress office in Jerusalem, at the joint hearing 'Europe and Israel: Strengthening the partnership' held by the House Foreign Affairs Subcommittees on Europe and the Middle East and South Asia, July 9, 2008.*

Following the launch of the European Neighbourhood Policy, in April 2005, the EU and Israel adopted the EU-Israel Action Plan for a period of three years, which was later extended for a further year and is now due to expire by April 2009. The Action Plan is a political document, tailored to Israel's economic and political situation, which outlines the strategic objectives of cooperation between Israel and the EU. According to the Action Plan, the two parties are to intensify their political and security cooperation, introduce a significant element of economic integration, boost socio-cultural and scientific collaboration, and share responsibility in conflict prevention and resolution. The Action Plan stipulates that EU-Israeli political dialogue should focus on the adoption of measures to combat antisemitism, as well as ones regarding the non-proliferation of weapons of mass destruction. Furthermore, the economic dialogue privileges actions promoting a further liberalisation of investment and trade between Israel and the EU.

For Israel's former ambassador to the EU, Oded Eran, the Action Plan is "rich and comprehensive and led to what can be described as a civilised dialogue".<sup>19</sup> It "reflects a different starting point for the Euro-Israeli relations and it is also indicative of the well-developed bilateral political and economic relations".<sup>20</sup>

The Action Plan paved the way for Israeli participation in a number of EU initiatives, with Israel being among the fore-runners in its exploration of the new opportunities for participation in Community programmes offered to ENP partner countries.<sup>21</sup> As such, Israel is the first ENP partner country to participate in the Competitiveness and Innovation Framework Programme (CIP), through which the EU promotes innovation, entrepreneurship and the growth of small and medium-sized enterprises (SMEs).<sup>22</sup>

The Action Plan has thus provided the necessary platform for developing Euro-Israeli cooperation across various fields.<sup>23</sup>

Following Israel's withdrawal from the Gaza Strip in August 2005, and the November 2005 Israeli-Palestinian Agreement on Movement and Access (AMA) to and from the Gaza Strip, Israel and the Palestinian Authority invited the EU to act as the third-party at the Rafah Crossing Point (RCP) on the Gaza-Egyptian border. In response, the EU decided to launch the EU Border Assistance Mission (EU BAM Rafah), to monitor operations at the Rafah border crossing point. The operational phase of this Mission began on 30 November 2005, with a 12 month mandate. In May 2007, the Mission was extended for a further year and has since been extended again until 24 November 2008.

Following Hamas' takeover of the Gaza Strip in June 2007, EU BAM Head of Mission, Lt. General Pietro Pistolese, declared a temporary suspension of operations at Rafah Crossing Point. The EU monitors have since been inactive, having withdrawn their observers back to Israel. In January 2008, Hamas rejected the return of EU BAM observers to Rafah, stating that the crossing point should be operated only by Palestinian and Egyptian forces. For its part, the EU asserts that since the AMA was accorded with Palestinian President Mahmoud Abbas, and not with Hamas, its observers should return to Rafah and resume the Mission's activities as soon as the political situation in Gaza improves. For the time being, and 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.

EU BAM Rafah was established within 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 working at the Rafah Terminal.<sup>24</sup>

There are those who argue that the Mission was incapable, incompetent and irrelevant, highlighting its failure to end the smuggling of weapons, goods and human beings across the border. It is nonetheless important to emphasise that the Mission marked a significant step forward for Israeli-EU relations, mainly insofar as it established a precedent whereby Israel agreed to give the EU a responsibility in the 'hard security' sphere.

UN Security Council Resolution 1701, of August 2006, ended a 34 day war between Israel and Hizbollah. The Resolution called for a full cessation of hostilities, it strengthened UNIFIL's (United Nations Interim Force in Lebanon)<sup>25</sup> 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. As such, the EU (as a single entity) now plays a central and crucial role 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. For the first time ever, European troops are exerting operational control in the Middle East conflict. 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.

Finally, 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 carried out by this Reflection Group, the EU-Israel Association Council convened in Luxembourg on 16 June 2008, expressing the political will to intensify Euro-Israeli relations, as well as agreeing to gradually develop these relations within the framework of the ENP. To quote the Luxembourg statement of June 2008:

"2. Last year, during the seventh Meeting of the EU-Israel Association Council, Israel proposed to upgrade its relations with the European Union ... The EU, responding positively to Israel's request, expresses its deep satisfaction with the fact that this EU-Israel Association Council will mark a new phase in our relations.

3. Our common goal to upgrade relations stems from our awareness of the traditional links, the cultural and human values, and the economic and security interests that we share. Israel is a key partner of the EU in the Mediterranean. It has contributed to the Euro-Me-

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

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

## The 'Luxembourg Statement' of June 2008

20 Del Sarto, Raffaella A., Schumacher, Tobias, Lannon, Erwan, and Driss, Ahmed, *Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualising Ends, Means and Strategies*, Lisbon, EuroMeSCo Secretariat, 2007, p.43.

21 General Secretariat of the Council, *Eighth Meeting of the EU-Israel Association Council: Statement of the European Union*, June 16, 2008, p.3.

22 The CIP is divided into three operational programmes (or 'pillars') and Israel formally applied to all three: the Entrepreneurship and Innovation Programme (EIP), the Information Communication Technologies Policy Support Programme (ICT PSP), and the Intelligent Energy Europe Programme (IEE). For further information about the Competitiveness and Innovation Framework Programme, visit CIP website at: [http://ec.europa.eu/cip/index\\_en.htm](http://ec.europa.eu/cip/index_en.htm).

diterranean Partnership since its origins in 1995. As a vibrant market economy, with a well developed public administration and a functioning rule of law, Israel also possesses the necessary institutional structures which permit it to work ever more closely and intensively with the European Union.

4. Since its conception in 2003, the European Neighbourhood Policy has contributed to an increase in both the quantity and the quality of relations between the EU and Israel. The European Neighbourhood Policy provides a flexible framework for the further strengthening of relations with all ENP partners, including the Palestinian Authority, on the basis of the principle of differentiation, ensuring equal possibilities for all partners. Further upgrading of relations will take place within this context. The EU considers that the upgrading of relations with Israel serves the purpose of pursuing the common objectives and interests of both parties.

5. The European Union wants to continue to develop its partnership with Israel in the context of the European Neighbourhood Policy and the Euro-Mediterranean Partnership, and in the framework of the broader objective to promote stability, cooperation, and prosperity in the Middle East...

6. The European Union is determined to develop a closer partnership with Israel. The process of developing a closer EU-Israeli partnership needs to be, and to be seen, in the context of the broad range of our common interests and objectives, which notably include the resolution of the Israeli-Palestinian conflict through the implementation of the two-state solution...

7. In response to our common desire to upgrade bilateral relations, the European Union looks forward to gradually strengthen cooperation by different means, both at the political and sectorial levels, in line with our common interest, and to make use of new possibilities to enhance Israeli cooperation in the relevant community programmes."<sup>26</sup>

The upgrade is to be carried out in three main areas:<sup>27</sup>

1. Increased diplomatic cooperation – there will be an institutionalisation of the diplomatic dialogue, by means of regular annual meetings at a senior level. In addition, there will be a greater number of meetings between government ministers, senior officials and parliamentarians from both sides;

2. Israeli participation in European agencies, working groups and programmes – with a view to achieving greater convergence towards the EU *acquis*. This will bring the Israeli society and economy more in line with European norms and standards, hopefully increasing the competitiveness of Israeli companies in the European market. This should also lead to the recognition by European academic institutions of degrees awarded by Israeli universities and colleges.

3. Israel's integration into the European Single Market – A joint working group is to examine the areas in which Israel is capable of integrating the European Single Market. This shall lay the groundwork for the further upgrading of Euro-Israeli relations in the future.

In order to implement this political decision, the EU and Israel will begin negotiations aimed at reviewing the content of the EU-Israel Action Plan. The identification of concrete actions in each area will be carried out jointly in the following months. The existing EMP-ENP institutional mechanism (see Figure 1) provides the expertise needed to formulate the content and scope of a political / legal instrument, which is expected to replace the current EU-Israel Action Plan that expires in April 2009. The upcoming meetings of all joint sub-committees will be tasked with developing the content of the proposed upgrade in each field, which is to be included in an official document that will guide Euro-Israeli relations past April 2009.<sup>28</sup>

The Luxembourg Statement of June 2008 is now awaiting its concrete translation into action, and the success of this process requires that both Israel and the EU agree on how they want to shape the tailor-made model for their relations.

All in all, much has been achieved in the realm of Euro-Israeli relations, including increased economic interaction and scientific cooperation. Israel works quite systematically in building up relations with a variety of EU institutions, agencies and programmes, and the bilateral relations pursued with individual EU Member States also consider Israel-EU issues.

23 Commission of the EC, Commission Staff Working Document. Accompanying the Communication from the Commission to the Council and the European Parliament. Implementation of the European Neighbourhood Policy in 2007. Progress Report Israel, SEC (2008) 394. Brussels, Commission of the EC, 2008.

24 For further information about EU Bam Rafah, visit the Mission's website at: <http://www.eubam-rafah.eu/portal>.

25 The UNIFIL force was first deployed in south Lebanon (by UN Security Council Resolution 425 and 426) in 1978, following an Israeli invasion, with the aim of confirming the withdrawal of Israeli forces from southern Lebanon and to assist the Lebanese Government in restoring its authority in the area.

26 General Secretariat of the Council, Eighth Meeting of the EU-Israel Association Council: Statement of the European Union, June 16, 2008, pp.1-2.

27 Ibid, p.3; Ravid, Barak, EU unanimously upgrades Israel ties, turning aside PA objections, Haaretz, June 17, 2008; Keiron, Herb, Israel wins EU upgrade – over Palestinian, Egyptians objections, The Jerusalem Post, June 17, 2008.

28 General Secretariat of the Council, Eighth Meeting of the EU-Israel Association Council: Statement of the European Union, June 16, 2008, pp.2-3.

Regardless of the critical European view of some major Israeli policies, the EU and all its Member States are unconditionally committed to the existence, survival and prosperity of Israel. There is an overwhelming consensus on this point, and it has never been disputed. In the words of French President Nicolas Sarkozy: “France will always be by Israel’s side when its security, its existence are threatened”.<sup>29</sup> And as German Chancellor Angela Merkel declared in the Israeli parliament: “Especially in this place, I emphasise: every German government and every Chancellor before me was committed to the special responsibility Germany has for Israel’s security. This historic responsibility is part of my country’s fundamental policy. It means that for me, as a German chancellor, Israel’s security is non-negotiable”.<sup>30</sup>

After the 2004 accession of Cyprus to the EU, Israel and the Union are now even closer in geographic terms. The fifth enlargement, along with the upgrade process of Euro-Israeli relations within the framework of the ENP, offers the EU and Israel the opportunity to develop an ever closer relationship, reaching beyond past levels of cooperation towards greater economic integration and deeper political cooperation.

<sup>29</sup> Sarkozy, Nicolas, French-Israeli relations. Speech presented at the Israeli Knesset in Jerusalem, June 23, 2008, p.3.  
<sup>30</sup> Merkel, Angela, Celebrating Israel 60th anniversary. Speech presented at the Israeli Knesset in Jerusalem, March 18, 2008, p.2.



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

The EIP would open up new perspectives for Israel in terms of economic integration and cooperation, and would support Israel's aspiration to further incorporate into European economic and social structures. The EIP promises to deepen the process of approximating Israeli legislation, norms and standards to those of the Union. In other words, the EIP stands as a new model for aligning Israel with the EU below the level of full EU membership. It should be emphasised that the EIP is not a mere stepping-stone to Israeli EU membership. Rather, it is a novel form of association and cooperation that could lead to a significant upgrade in Euro-Israeli relations, first and foremost in economic terms, but also in the political, research, as well as cultural and social/human fields. As such, the EIP provides a viable and practical framework within which Israel can pursue its wish of becoming a significant participant in the European integration project. Furthermore, the EIP model may represent an appealing alternative to EU membership for other ENP partners.

### The Legal Basis of the EIP

The EIP finds its origins in the Barcelona Process, the EU-Israel Association Agreement, the ENP, the EU-Israel Action Plan, and the Luxembourg Statement of June 2008, and should thus be seen as the product of a long-term maturation of Euro-Israeli relations. From the point of view of both the EU and Israel, the EIP would therefore fall within the legal category of an 'association'.

The key article, Article 188 M of the Treaty of Lisbon (Article 310 of the Treaty Establishing the European Community [TEC]; and Article 217 of the Treaty on the Functioning of the European Union [TFEU]), offers the fundamental legal basis of the EIP. Article 188 M 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 (new Article 8 of the Treaty on European Union [TEU]). This article calls for the development of a 'special relationship' with neighbouring countries of the EU, including Israel. Although Article 7a uses different terms to Article 188 M, it has very similar legal consequences. It states that:

"1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations, as well as the possibility of undertaking activities jointly..."

Both Articles 188 M and 7a permit the development of an 'association' or 'special relationship' that involves reciprocal rights and obligations, as well as joint / common actions and special procedures. The articles are intentionally vague as regards the content of each respective 'association' or 'special relationship'.

The EIP is legally founded in the vagueness of Articles 188 M and 7a and on the flexibility that these offer in the development of Euro-Israeli relations. Being a tailor-made partnership, the EIP is designed to suit the interests and the needs of both Israel and the EU. Given that EU membership is restricted only to European states, the EIP model would entail less than full EU membership, but still more than that encompassed by the current EU-Israel Association Agreement.

Since its establishment, the European Economic Community has sought different models for the development of closer relations with non-EU Member States. In reference 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 percent and a trade and cooperation agreement plus 1 percent".<sup>31</sup>

Similarly, in his June 2008 report<sup>32</sup> on the European Commission's 2007 enlargement strategy paper<sup>33</sup>, MEP Elmar Brok, former chairman of the European Parliament's Foreign Affairs Committee, argued that the EU needed to develop "something between the European Neighbourhood Policy and full-fledged membership".<sup>34</sup> On this basis, in July 2008 the European Parliament

<sup>31</sup> Phinnemore, David, *Association: Stepping-Stone or Alternative to EU Membership?*, Sheffield, Sheffield Academic Press, 1999, p.23.

<sup>32</sup> Parliament of the European Union, Report on the Commission's 2007 enlargement Strategy Paper (2007/2271(IN)). A6-0266/2008. Brussels, Committee on Foreign Affairs/Elmar Brok, 2008.

<sup>33</sup> Commission of the EC, Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and main Challenges 2007-2008, COM (2007) 663. Brussels, Commission of the EC, 2008.

<sup>34</sup> EurActiv.com, 'Close relations' more fashionable than enlargement, July 10, 2008.

adopted a resolution in which it takes the view that “the conceptual, political and legal gap existing between the EU’s Enlargement Strategy and its Neighbourhood Policy needs to be filled” in order to adequately respond to the expectations of the Union’s neighbours. The resolution further provides that as regards those neighbours that at present do not enjoy membership prospects, but that nonetheless fulfil certain democratic and economic conditions:

“the EU should establish an area based on common policies covering, in particular, the rule of law, democracy and human rights, foreign and security policy cooperation, economic and financial issues, trade, energy, transport, environmental issues, justice, security, migration, visa-free movement and education; [the European Parliament] ... is also convinced that the common policies referred to above should be shaped jointly with the participating countries on the basis of specific decision-making mechanisms, and should be underpinned by adequate financial assistance.... [the European Parliament] recalls that, 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.”<sup>35</sup>

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, the ECJ observed that the Community may conclude “an agreement creating special, privileged links with a non-member country”.<sup>36</sup> While the ECJ refrained from elaborating on the substance of such ‘privileged links’ with the non-member country, the Court’s statement suggests that relations should be based on more than a mere regular trade agreement.

Certainly, a chief component of the EIP is its permanency, and both Articles 188 M and 7a allow and entail a long-term relationship. This is further implied by Article 188 L(2) of the Treaty of Lisbon (Article 300(7) of the TEC; Article 216 of the TFEU), which stipulates that all international agreements concluded between the EU and one or more third countries or international organisations “are binding upon the institutions of the Union and on its Member States.” Indeed, in practice, all the Association Agreements, as well as the Partnership and Cooperation Agreements, between the Union and non-EU Member States were concluded for unlimited or for renewable periods.

Another major component of the EIP is the ‘common action’ or ‘joint activities’ (Articles 188 M and 7a). In the *Meryem Demirel* Case, the ECJ affirmed that in the context of these “special, privileged links” with the EU, the non-member country “must, at least to a certain extent, take part in the Community system”.<sup>37</sup> It follows then, that any ‘common action’ or ‘joint activities’ should run in line with the Union’s objectives. These actions may potentially 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 both Community external competences and national competences.<sup>38</sup>

A third component of the EIP is its institutional framework. The use of the term ‘special procedures’ in Article 188 M implies the creation of an institutional apparatus to implement the agreement. It also follows that the ‘special procedure’ should be an extraordinary one.<sup>39</sup> And indeed, the EIP would be equipped with its own institutional system.

The EIP would extend the internal market and develop some of the existing EU policies geared towards Israel. More specifically, the Partnership would be based on the *acquis communautaire* concerning the Four Freedoms. Nevertheless, it is expected that for political reasons the ‘freedom of movement of persons’ will touch a raw nerve in Israel and that Israel would therefore prefer not to implement this particular freedom in the short-term. As such, the EIP should stipulate the extension to the Partnership of this freedom, subject to a favorable change in the region’s political situation.

The EIP’s institutional framework would monitor and manage the Partnership and would be based on two main pillars: EU institutions and the light institutional structure of the EMP/ENP (see Figure 2).

## A Flexible Partnership between the EU and Israel

<sup>35</sup> Parliament of the European Union, European Parliament Resolution of 10 July on the Commission’s 2007 Enlargement Strategy Paper (2007/2271(INI)). Strasbourg, Parliament of the European Union, 2008, Paragraphs 18-20.

<sup>36</sup> Court of Justice of the European Communities, Case 12/86, *Meryem Demirel v. Stadt Schwäbisch Gmünd*, ECR 1987: 3719-55, Paragraph 9.

<sup>37</sup> *Ibid.*

<sup>38</sup> Phinnemore, David, *Association: Stepping-Stone or Alternative to EU Membership?*, Sheffield, Sheffield Academic Press, 1999.

<sup>39</sup> *Ibid.*

## Objectives 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”.<sup>40</sup> The EIP would promote the continuous strengthening of economic trade and political relations between the two parties, with a view to creating a ‘homogenous partnership economic area’. The objective of homogeneity is a cornerstone of the EIP and would guarantee that Israel closely follows the *acquis* and its associated monitoring system.

## Means to Achieve the Objectives of the EIP

The fundamental means through which the Partnership’s objectives could be achieved are the Four Freedoms, rules of competition, and Euro-Israeli cooperation in several key areas. An extension of the Community’s common market rules to Israel would help in attaining the economic goal of the Partnership. The creation of a ‘homogenous partnership economic area’ could be made possible through the application of common rules and the updating of new Community rules.

The EIP therefore has the potential to be a very dynamic partnership, seeing as it would closely follow major EU developments and integrate relevant Community legislation on a periodic basis. In other words, Israel would be faced with the cardinal challenge of incorporating the relevant parts of the *acquis* included in the Partnership.

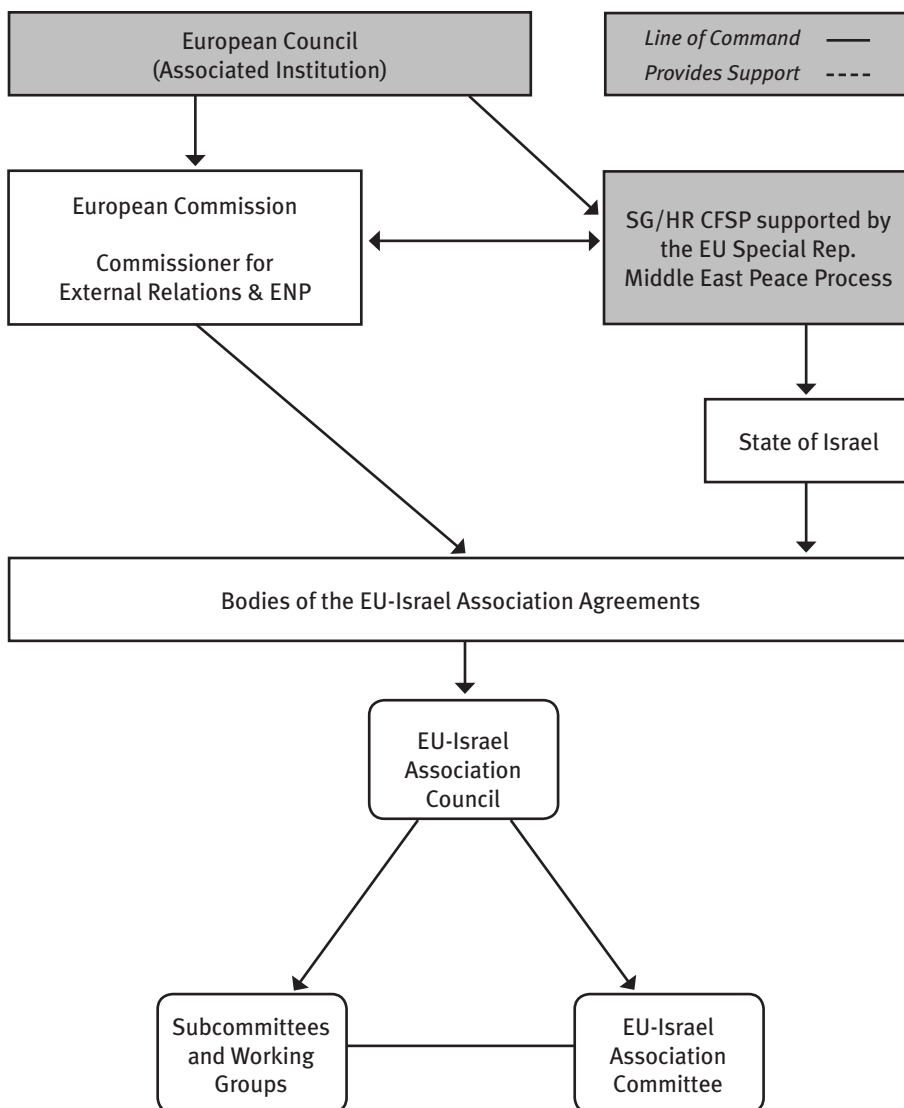
<sup>40</sup> Commission of the EC, European Neighbourhood and Partnership Instrument. Ukraine: Country Strategy Paper 2007-2013. Brussels, Commission of the EC, 2007, p.2.



## IV. The Institutional Framework of the EIP

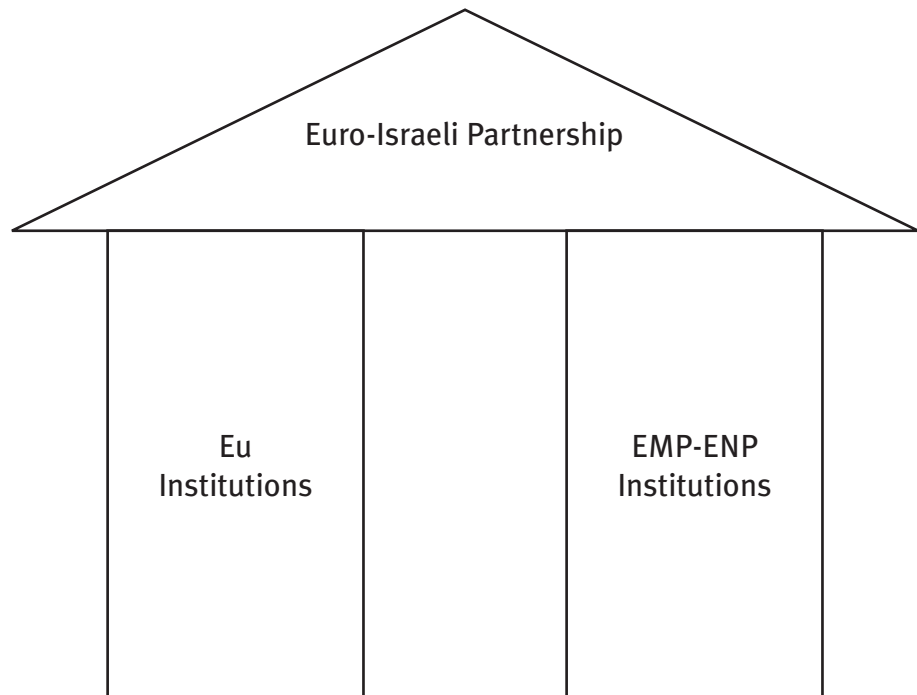
Euro-Israeli relations do not currently reflect the desire for an increasingly closer partnership. The Euro-Israeli relationship must thus achieve higher levels of integration under the EIP, by strengthening the notion of partnership. Moreover, in view of the ‘special procedures’ under Article 188 M of the Treaty of Lisbon, and given the dynamism and wide scope of the EIP, it would prove unwise to solely rely on the loose EMP-ENP institutional framework that currently structures EU-Israeli relations – namely, the Association Council, the Association Committee and its sub-committees and working groups (see Figure 1). To assure its full implementation and its future development, the EIP would have to reinforce the present loose institutional framework and eventually establish a new institutional system.

**Figure 1: The current institutional framework of EU-Israeli relations (EMP-ENP framework)**



In order to become a proactive partnership, engaging the EU and Israel in an equitable manner, the institutional framework of the EIP should be based on two pillars: EU institutions and the light institutional framework of the EMP-ENP (see Figure 2).

**Figure 2: The two pillars of the EIP**



Some new common institutions are however needed, especially for joint decision-making and for the settlement of legal disputes. It is hoped that the EIP's institutional framework will reflect the Partnership's principle of cooperation, establishing the EIP as a mechanism for consultations and negotiations, and limiting the EU-centric character of existing EU-Israel economic and trade relations (see Figure 3).<sup>41</sup>

## The EIP Council

Meeting twice a year at the ministerial level, the EIP Council would stand as the highest political body of the Partnership and would consist of EU Council members, the EU Commission and the relevant representative of the Israeli government. Based on the current Association Council, the new EIP Council would provide the political impetus necessary for the implementation of the EIP objectives, and would establish the working guidelines of the EIP Joint Monitoring Committee. For administrative and organisational purposes, the EIP Council would be jointly-led for a set period of time (for example, twelve months) by a rotating chairmanship, a member of the European Council, and also a member of the Israeli government. EIP Council decisions would be taken in agreement with the Union and Israel.

Under this new model of Euro-Israeli relations, with its freshly-established mechanism and powers, the EIP Council would fully reflect the equal, negotiating, decision-making and decision-shaping character of the Partnership.

## The EIP Joint Monitoring Committee

Based on the work of the current Association Committee, the new independently-run EIP Joint Monitoring Committee would be charged with administering the day-to-day business of the Partnership, as well as ensuring that the participating parties fulfil their EIP commitments.

The Committee would decide what new legislation to incorporate into the Partnership. Meeting once a month, it would consist of an equal number of high officials and senior diplomats from the European Council, the EU Commission, and the Israeli government (for example, 5 + 5). The Committee would also be able to convene informal gatherings in response to urgent situations. As with the EIP Council, the Committee would be managed by a rotating chairmanship and decisions would be taken by agreement between the Union and Israel. To assist it in its task, the Committee would be entitled to establish sub-committees and special working groups.

The EIP Joint Monitoring Committee would act as an extension of the Council Presidency, providing the support required in all Council activities. The Committee would also assist the Presidency in preparing all the EIP Council meetings. In addition, the Committee would ensure that all EIP institutions act in conformity with EIP guidelines and would report directly to the EIP Council. Finally, the Committee would be responsible for drafting the annual report on the activities of the EIP.

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 (for example, 10 + 10). The Committee would act through a process of dialogue and open debate, in a bid to ensure better understanding between the Union and Israel in the areas covered by the Partnership. The Committee would have the right to express its views on all matters relating to the EIP and would specifically monitor the 'homogenous partnership economic area'. Although the Committee would hold no decision-making powers, it would be entitled to adopt resolutions and submit reports and recommendations to the EIP Council, with a view to achieving the objectives of the EIP.

The EIP Parliamentary Committee is an authentic institution with a consultative capacity. Its creation should assist Euro-Israeli parliamentarians in responding to the social, legal, and economic challenges that the EIP is expected to face. The Committee will be tasked with further exploring those subjects previously addressed during the meetings of the EIP Council, promoting partnership-building measures, and contributing towards the general development of the EIP institutions.

Institutional solutions to political partnership and integration must be conceived within a legal framework. To a large degree, political partnership and integration really means legal partnership and integration. Not only is political partnership and integration brought to life by means of a corresponding integration of laws, but the latter is also an expression of the particular form of political partnership and integration being pursued. More importantly, the extent of political integration achieved can be determined through an evaluation of the level of legal integration in evidence.

Once the function of the law in political partnership and integration is understood, the role potentially played by the judiciary, in cementing political partnership and integration, can hardly be questioned. Political partnership and integration could undoubtedly occur without courts, just as law could exist without them. However, for the very same reason why courts are vital to administering justice, courts are also important in the process of political partnership and integration. Just as courts assure the effective administration of law, they also control and guarantee the observance of those political decisions that underlie the political partnership and integration in question.

The deepening of Euro-Israeli relations will depend on a close legislative cooperation and exchange of views. For one thing, the EIP is liable to increase the instances in which arbitration will be required to settle disputes within the framework of the EIP. Moreover, seeing as the EIP would have its own limited legal system, based on Community law, the institutionalisation of judicial facilitation must take the form of a partnership court. The EIP Court would act by means of conciliation and, where appropriate, arbitration. Its rulings would be binding. To cut down expenses, the Court would not be a permanent tribunal, but rather a roster of conciliators and arbitrators from both sides. Accordingly, the Court would stand as an ad hoc Conciliation Commission or an ad hoc Arbitral Tribunal, convening only when a dispute is submitted for deliberation. In addition, Israeli courts would be allowed to request an advisory opinion on the interpretation of the Partnership from the EIP Court. The national courts of EU Member States would also be permitted to call upon the ECJ for preliminary rulings.

## The EIP Parliamentary Committee

## The EIP Court of Conciliation and Arbitration

The conciliators and arbitrators mentioned must be persons whose independence is beyond doubt and who possess the qualifications necessary for an appointment to the highest judicial offices in their respective countries, or who are jurisconsults of recognised competence. The competency and integrity of the selected conciliators and arbitrators is crucial for several reasons. Obviously, such qualities will have a positive effect on the soundness of the EIP Court's rulings and will also breed greater respect for the institution in Israel, all the EU Member States, as well within other EU institutions. The Court's conciliators and arbitrators would not receive instructions from their home countries, nor would they allow themselves to be influenced by political, or any other considerations that might prejudice their judicial neutrality. There would be no dissenting opinions since the decision of the EIP Court would always be presented as a single ruling. Deliberations would be secret, so their details would not be known to anyone apart from those conciliators and arbitrators who voted. As such, any national bias would also remain undisclosed.

The EIP would establish an obligatory conciliation procedure that would then feed into a non-binding concluding report. If the partners fail to approve the conclusions presented within thirty days, the report would be forwarded to the Arbitral Tribunal, whose ruling would be binding.

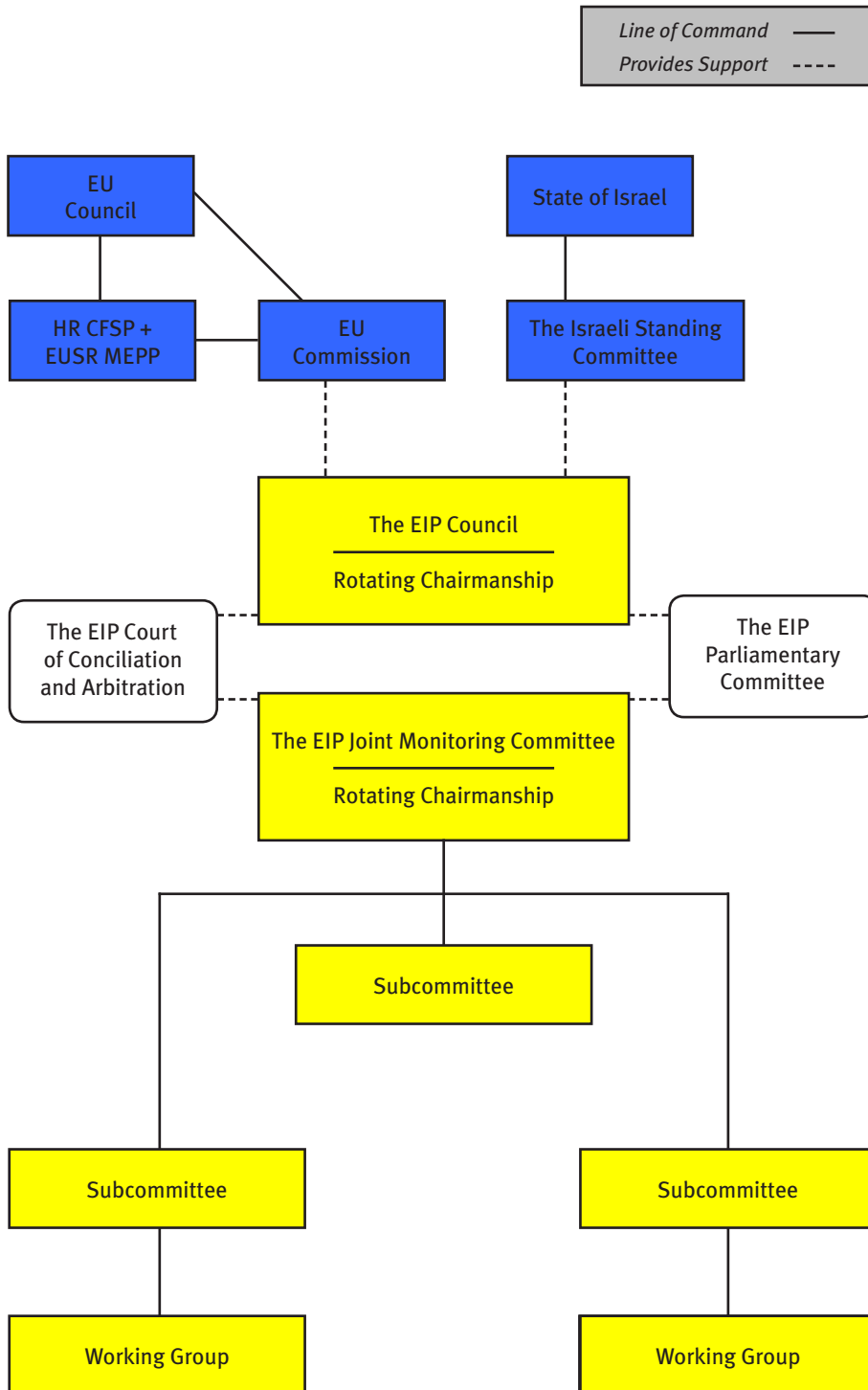
Finally, if a dispute in question concerns the interpretation of Community legislation relevant to the EIP, it would be possible to ask the ECJ to rule on the interpretation of the relevant legislation. The ECJ ruling would be binding.

## The Israeli Standing Committee

For the management of internal procedures, Israel would establish a Standing Committee responsible for decision-making measures, the 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 at the EIP level.

The Israeli Standing Committee would consist of representatives of all Israeli ministries, including representatives of any relevant institution and agency. The Standing Committee would regularly meet (possibly as often as on a weekly basis) at the high officials level. In addition, the Committee would also meet at a ministerial level when necessary. The Committee might set up sub-committees and working groups to provide assistance in its many tasks. The decisions and recommendations of the Standing Committee would be reached by a majority vote, and in select cases would also require the approval of the Israeli government.

Figure 3: The proposed institutional structure of the EIP



## V. Decision-Shaping and Decision- Making Processes

### Decision-Shaping

Given that the EIP is based on the Union's legislation, the Union would continue to legislate according to its own internal procedures. Any new Community legislation relevant to the EIP would only be incorporated into the Partnership upon the joint decision of both the Union and Israel. Israel would be able to participate in 'decision-shaping' in cases where the EU judges that the Community legislation is applicable to the EIP. Yet Israel would only be involved in the preparatory stages of the Union legislative process.

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

### Decision-Making

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

A decision would be taken by the EIP Joint Monitoring Committee within a short period of time (for example, six months) following a referral to the Committee, or from the date of entry into force of the Community legislation in question.

All decisions to extend Community legislation to the EIP would be published in a special EIP Section of the Official Journal of the European Union. Translation into Hebrew would be published in a special EIP Series of the Official Gazette of the State of Israel – '*Reshumot*'.<sup>42</sup>

<sup>42</sup> For the website of the Official Gazette of the State of Israel ('Reshumot') see: <http://www.justice.gov.il/MOJHeb/Reshumot>, last accessed July 13, 2008.

The homogeneity objective is a cornerstone of the EIP, and as such, both partners would have to maintain a uniform interpretation of the relevant provisions of the Community legislation. This means that the Partnership would have its own limited legal system, which would base itself on Community law. For the sake of homogeneity, all significant Community legislation would have to be interpreted in conformity with the relevant rulings of the ECJ, without compromising the independence of all EIP institutions, including of course the EIP Court of Conciliation and Arbitration. Both the EIP Joint Monitoring Committee and the EIP Court of Conciliation and Arbitration would pay due account to the principles established by the relevant rulings of the ECJ. Finally, it is recalled that Israeli courts would be allowed to request from the EIP Court of Conciliation and Arbitration an advisory opinion on the interpretation of the Partnership.

To safeguard uniformity in the 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, as well as individual cases. Both bodies would also be responsible for handling complaints from individuals. In cases of disagreement over a complaint, each institution can refer the matter to the EIP Joint Monitoring Committee.

## VI. Maintaining Homogeneity

## VII. Implementing the Partnership

The EU and Israel would have to take all possible measures to ensure the fulfillment of the obligations arising from the EIP. After the long negotiation process towards the EIP Agreement, both partners would have to adopt this accord and set up the new institutions of the Partnership. It is clear that Israel would have to adapt its domestic legislation in order to introduce the measures required to bring the Israeli legal system in conformity with its EIP obligations. This would imply 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, seeing as international agreements concluded by means of the procedure set out in Article 188 M of the Treaty of Lisbon are binding for the institutions of the Community and its Member States. As the ECJ described 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”.<sup>43</sup>



While the EIP model has not yet been approved as such by the leaderships of either Israel or the EU, there is ample evidence from both sides supporting the underlying logic.

In September 2007, the EU Commission organised an international conference on the ENP, entitled “Taking the Neighbourhood Policy Forward”. In his opening address, President José Manuel Barroso, President of the European Commission declared that:

“The ENP is not, and never has been, a one-size-fits-all policy. There are as many variations of the ENP as there are partners. We cannot and do not wish to ignore the differences between our partners...With each of our ENP partners we craft a specific and unique relationship...As the policy develops, this differentiation will become more pronounced. When we launched the policy, we had to make it clear that the offer on the table was the same for everyone, with no discrimination. But as we get further and further away from the starting line, I expect we will see a more and more varied landscape, with as many different types of relationship developing as we have partners, but always within the common framework of the ENP.”<sup>44</sup>

The same approach was also expressed in the December 2007 Communication from the Commission on “A Strong European Neighbourhood Policy”. The Communication provides that:

“The ENP includes very different countries in a single policy. The EU offer of deeper relations is the same for all partners. However, 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. The enhanced agreement currently being negotiated with Ukraine, the ongoing discussions with Morocco on an “advanced status”, and with Israel on an upgrading of relations, demonstrate this differentiation. The further the policy evolves, the more pronounced this differentiation will become.”<sup>45</sup>

Further support for the logic behind the EIP can be evinced from official statements that specifically address Euro-Israeli relations. Thus, for instance, in May 2007, two months after the establishment of the Euro-Israeli Reflection Group, Yossi Gal, the senior deputy director general of political affairs in the Israeli foreign ministry, publicly declared that “the new model of Euro-Israeli relations should not follow a model that already exists”<sup>46</sup> – in response to which the Commission’s Ambassador to Israel, Ramiro Cibrian-Uzal, immediately affirmed that “there should not be any reason why Israel should not have its own unique model for relations with the EU.”<sup>47</sup>

Israeli public opinion would like to see Euro-Israeli relations reach beyond the proposed EIP model, with a solid majority expressing their support for Israel becoming an EU member. In a February 2007 survey, conducted by the Konrad-Adenauer-Stiftung together with the author of this study, 75 percent of those polled either “strongly supported”, “somewhat supported” or “tended to support” the idea of Israel joining the EU.<sup>48</sup>

Given that the EIP model takes into account EU *and* Israeli wishes, it is expected to enjoy backing from the leaderships of both partners.

## VIII. European and Israeli Support for the EIP Model

44 Barroso, José, Shared challenges, shared futures: taking the neighbourhood policy forward, September 3, 2007, p. 2.

45 Commission of the EC, Communication from the Commission: A strong European Neighbourhood Policy, COM (2007) 774 final. Brussels, Commission of the EC, 2007, p. 3.

46 Gal, Yossi, Israeli-EU relations. Speech at the 2nd Annual KAS-BGU Round in Jerusalem, May 1, 2007, p. 2.

47 Cibrian-Uzal, Ramiro, Israeli-EU relations. Speech at the 2nd Annual KAS-BGU Round in Jerusalem, May 1, 2007, p. 3.

48 Konrad-Adenauer-Stiftung and Pardo, Sharon, Measuring the Attitudes of Israelis towards the European Union and its Member States, Jerusalem, Konrad-Adenauer-Stiftung, 2007, p.20.

## IX. Conclusions and General Policy Recommendations

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", thirteen years after the Barcelona conference and four years after the launch of the European Neighbourhood Policy, this study holds that if a genuine neighbourhood space is to be established, there is a need to further strengthen the institutional foundation and structure of EU-neighbour relations in general, and the Euro-Israeli relationship in particular. In order to be effective, the European Neighbourhood Policy should not be left to politicians and diplomats alone, ending up reduced to a mere tattered flag to be waved during the meetings of the Association Councils and Association Committees. There is a real risk that without a solid institutional expression, the ENP will disintegrate into relatively meaningless political exercises, rather than growing into a true Neighbourhood Policy. Eventually, it would die – just like its predecessors.

The character of the relations between the EU and its ENP partners must be altered if the ENP is to attain its objectives. The EU-centric nature of these relations and the current institutional structure of these same relationships, do not promise an ever-closer partnership between the EU and its neighbours under the European Neighbourhood Policy. Relations between the EU and its neighbour states should be urgently reshaped and institutionally restructured in a bid to more effectively identify and cultivate common interests and potential synergies.

As regards Israel, this study departs from the assumption that following the June 2008 decision of the EU-Israel Association Council to "mark a new phase" in Euro-Israeli relations<sup>49</sup>, the time has now come to implement the 1994 Essen Declaration, in which the European Council declared that Israel "should enjoy a 'special status' in its relations with the EU".<sup>50</sup>

Designed to meet both Europe and Israel's wishes in what concerns the enhancement of their relations, this study outlines a new model for an ever-closer partnership between the Union and Israel. Called the Euro-Israeli Partnership (EIP), the proposed model is based on the logic behind the ENP, drawing on this policy's goal to remain sufficiently flexible to allow the self-differentiation of individual partners according to their political situation, level of ambition with regard to the EU, reform agenda and achievements, and level of socio-economic development.<sup>51</sup>

The proposed model would align Israel with the EU below the level of full EU membership. The Partnership is expected to significantly upgrade Euro-Israeli relations, providing an active institutional apparatus with common decision-making and management bodies. This Partnership aims to contribute towards the improvement of mutual understanding and trust, and is likely to benefit both partners.

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

If the EU and all its Member States are truly committed to the existence, survival and prosperity of Israel, if the Middle East is indeed vital to the EU, and if Israel genuinely wishes, as Foreign Minister Livni has stated, to "participate in the European integration process"<sup>52</sup>, then a strengthening of Euro-Israeli relations, along the lines here outlined, should be seriously considered.

The proposed model is also a prerequisite to success if the ENP is ever going to evolve into anything more than expressions of European noblesse oblige. The current recommendations to enhance the ENP are unlikely to suffice. The unique partnership proposed in this study could serve as a model and springboard from which the consolidation process of the "ring of friends surrounding the Union"<sup>53</sup> may begin to take shape.

<sup>49</sup> General Secretariat of the Council, Eighth Meeting of the EU-Israel Association Council: Statement of the European Union, June 16, 2008, p.1.

<sup>50</sup> Council of the European Union, European Council Meeting on 9 and 10 December 1994 in Essen. Presidency Conclusions, p.10.

<sup>51</sup> Commission of the EC, Communication from the Commission: A strong European Neighbourhood Policy, COM (2007) 774 final. Brussels, Commission of the EC, 2007.

<sup>52</sup> Livni, Tzipi, Israeli European relations. Speech at the KAS and CSEPS international workshop on Israel and the European Union in the enlarged neighbourhood, December 11, 2006, p.4.

<sup>53</sup> Prodi, Romano, A wider Europe - a proximity policy as the key to stability. Speech presented at the sixth ECSA-world conference in Brussels, December 5, 2002, p.3.

## General Policy Recommendations to the EU

- Realise the crucial importance of relations with neighbour countries for the future of the EU.
- Recognise and explicate shared long-term interests.
- Better understand neighbours' values, interests and world views.
- Put relations with neighbour countries, including all Mediterranean non-member countries, into the context of other EU legal frameworks, such as the European Economic Area (EEA).
- Strive to cooperate with neighbour countries on global issues, including ecological concerns and the revision of international institutions.
- Map shared strategic interests and offer greater cooperation in advancing neighbours' political and economic objectives.
- Strengthen shared professional discourse on the long-range future of the Euro-Mediterranean Neighbourhood Space and on global geo-strategy as a whole.
- Reinforce the institutional foundation and structure of relations between the EU and its neighbours.
- Consider a general upgrade of Euro-Mediterranean relations in line with the EIP model. This model is based on the logic of the ENP and draws on its aim of remaining sufficiently flexible to allow the self-differentiation of individual partners according to their distinct political situation, level of ambition with regard to the EU, reform agenda and achievements, and level of socio-economic development.
- If implementation of the EIP model is ruled out, consider an alternative model that would still align the partner country with the EU below the level of full EU membership.
- The new partnership model of relations should significantly upgrade relations between the EU and its neighbours, while also providing an active institutional apparatus with common decision-making and management bodies.
- The new partnership model of relations should benefit all partners and should aim to contribute towards the improvement of mutual understanding and trust.

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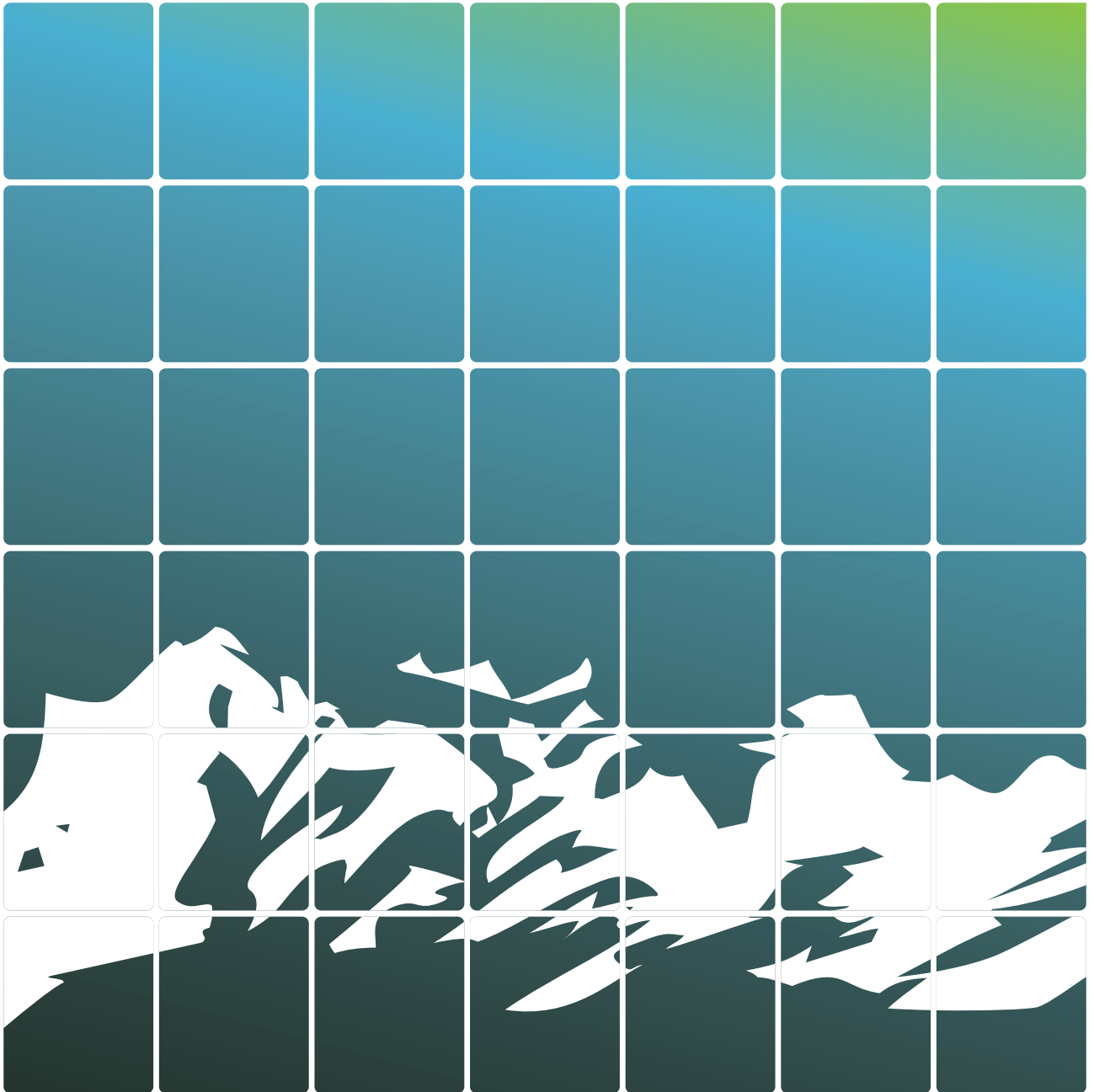
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