

The 'Privileged Union': A New Model for Euro-Arab Relations in the Age of Arabellion

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Introduction

The EU has so far been very slow and cautious in its response to the Arabellion (or the Arab Spring). What is clear is that the Arabellion has made the EU realise that the Union's policies towards the Arab world, namely the European Neighbourhood Policy (the ENP) and the Union for the Mediterranean (the UfM), were not only inefficient, but above all they focused on wrong priorities and to some extent on immoral actors. We can clearly argue that many of the Union's policies towards the Arab world failed to democratise the EU's Southern neighbours and they did not bring palpable results, in terms of the rule of law, civil societies, security and stability. It is now clear to many European leaders and decision makers that since the mid 1960's Europe reached out to the undemocratic Arab regimes, rather than to the peoples of the Arab countries.

Sixteen months into the Arabellion I am of the opinion that today, the EU has a rare opportunity to remodel its relations with its Arab neighbours and to revamp the Southern dimension of the ENP. Now is the time for the EU to build a new relationship with the region, based on the newly-voiced aspirations of the people of the Arab countries. The Arabellion offers the EU a rare window of opportunity to do just that.

This paper will present a new model for future relations between the EU and its immediate Arab neighbours. The paper would argue that, against the background of the growing challenges of the Arab countries, there is a need to re-think about a new model for Euro-Arab relations. The model should enable a significant upgrade of the social/human, political and security relations, as well as those in the economic, research and cultural fields.

The paper would depart from the assumption that the EU must understand that the movement triggered in Arab countries goes deep, and that now is the time to fully implement the ENP principles and ideas and to accelerate the discussions on the development of a new Euro-Arab strategic model of relations. Drawing on the Arabellion and the ENP experiences, this paper would propose the creation of the 'Privileged Union' (PU) model. The paper present and analyse this new model together with common tools needed to confront political, social and security challenges in the Euro-Arab Neighbourhood Space.

I am of the opinion that if the proposed PU is implemented properly, then to a large extent the EU will meet the aspirations of the peoples of the Arab countries, thus making real progress in bringing the two sides of the Mediterranean together. The time has come for the EU to show the Arab peoples that the Union's support is sincere, and it is also very much in the EU's self-interest to do so, for what is ultimately at stake is Europe's internal stability and regional and international actorness.

Both Articles 217 and 8 are intentionally vague and they allow the development of an 'association' or a 'special relationship' that involves reciprocal rights and obligations as well as joint/common actions and special procedures. The articles leave open the actual content of the 'association' or the 'special relationship'.

The PU is legally based on the vagueness of Articles 217 and 8 and on the flexibility that they allow for the development of Euro-Arab relations. A tailor-made partnership, the PU would suit the interests and the needs of both the Arab neighbours and the EU. Since EU membership is restricted only to European states, the PU model would entail less than full EU membership but much more than the current EU-Mediterranean Association Agreements and the Advanced Status instruments.

Since its establishment, the Union searched for models for developing closer relations with non-EU Member States. Referring to this issue, Prof. 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".¹ In like manner, the European Court of Justice (ECJ) implied in its Meryem Demirel Case that the Union (then the Community) may conclude "an agreement creating special, privileged links with a non-member country".²

Certainly, a chief component of the PU is its permanency, and both Articles 217 and 8 allow and imply a long-term relationship. This is further implied by 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." And indeed, in practice all the Association Agreements and 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 PU is the 'common action' or 'joint activities' (Articles 217 and 8). In the Meryem Demirel Case the ECJ affirmed that in the context of the "special, privileged links" with the EU, the non-member country "must, at least to a certain extent, take part in the Community system". 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 Union 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 Union external competences and national competences.

A third component of the PU is its institutional framework. By using the term 'special procedures', Article 217 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. And indeed, the PU would be equipped with its own institutional system.

A Flexible Partnership between the EU and its Arab Neighbours

The PU would extend the internal market and some EU policies to all Arab neighbours. In particular, the PU would be based on the *acquis communautaire* concerning the Four Freedoms. That said, it is expected that for political reasons the 'freedom of movement of persons' would touch a raw nerve in the EU and that EU Member States would therefore prefer not to implement this freedom in the short and

¹ Phinnemore, *Association: Stepping-Stone or Alternative to EU Membership?*, 23.

² Court of Justice of the European Communities, *Case 12/86, Meryem Demirel v. Stadt Schwäbisch Gmünd*, Paragraph 9.

relations, would turn the PU into a mechanism for consultations and negotiations and would limit the EU-centric character of the Euro-Mediterranean/Euro Arab relations.³

The PU Council

Meeting at ministerial level twice a year, the PU Council would be the highest political body of the PU and would consist of members of the EU Council, the EU Commission and the relevant minister of the Arab governments. Based on the current Association Councils, the new PU Council would be responsible for giving the political impetus in the implementation of the PU objectives, and would lay the guidelines for the work of the PU Joint Monitoring Committee. The PU Council would be chaired by a rotating presidency for a set period of time (for example, twelve months) by a member of the European Council and a member of an Arab government. Decisions by the PU Council would be taken by agreement between the Union and the Arab neighbours.

The PU Joint Monitoring Committee

Based on the work of the current Association Committees, the new PU Joint Monitoring Committee would be an independent committee charged with administering the PU and ensuring that the parties fulfil their PU commitments. The Committee would decide on new legislation to be incorporated into the PU. It would meet once a month and would consist of an equal number of high officials from the EU Commission and the Arab governments. As in the case of the PU Council, the Committee would be chaired by the rotating presidency and decisions would be taken by agreement between the Union and its Arab neighbours. To assist in its task, the Committee would be able to establish subcommittees and working groups.

The PU Parliamentary Committee

The PU Parliamentary Committee would be based on the current European Parliament (EP) Delegations for Relations with the Arab neighbours and the Arab neighbours' Delegations for Relations with the EP, and would be composed of an equal number of members of the EP and the Arab parliaments. The Committee would act through dialogue and debate to ensure better understanding between the Union and the Arab neighbours in the areas covered by the PU. The Committee would not have any decision-making powers but would be able to adopt resolutions and submit reports to the PU Council.

The PU Court of Conciliation and Arbitration

In order to settle disputes that may arise between the EU and the Arab neighbours in the framework of the PU, the partners would establish a Court. The PU 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 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, Arab neighbours' courts would be allowed to ask the PU Court for an advisory opinion on the interpretation of the PU. National courts of EU Member States would be allowed to ask for preliminary rulings from the ECJ.

³ The following sections draw on Blanchet, Piipponen and Westman-Clément, *The Agreement on the European Economic Area (EEA). A Guide to the Free Movement of Goods and Competition Rules*.

A decision by the PU Joint Monitoring Committee would be taken within a short period of time (for example, six months) following the referral to it or from the date of entry into force of the relevant EU legislation. All decisions to extend EU legislation also to the PU would be published in a special PU Section of the Official Journal of the European Union. Translation into other relevant Arab/Mediterranean languages would be published in a special PU Series of the Official Gazettes of all the Arab neighbours.

Maintaining Homogeneity

The homogeneity objective is a cornerstone of the PU and all partners would have to maintain uniform interpretation of the relevant provisions of EU legislation. This means that the PU would have its own limited legal system which would be based on EU law. For the sake homogeneity, all the relevant EU legislation would have to be interpreted in conformity with the relevant rulings of the ECJ without prejudice to the independence of all PU institutions, including of course the PU Court of Conciliation and Arbitration. Both the PU Joint Monitoring Committee the PU Court of Conciliation and Arbitration would pay due account to the principles laid down by the relevant rulings of the ECJ. Finally, it is recalled that Arab neighbours' courts would be allowed to ask the PU Court of Conciliation and Arbitration for an advisory opinion on the interpretation of the PU.

For safeguarding the uniformity of implementation and application of the PU rules, the European Commission and the Arab Neighbours' Standing Committees would cooperate, exchange information and consult each other on surveillance policy issues and on individual cases. These 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 PU Joint Monitoring Committee.

Implementing the PU

The EU and the Arab neighbours would have to take all possible measures to ensure the fulfillment of the obligations arising out of the PU. After the long process of negotiating the PU Agreement, all partners would have to adopt the agreement and to set up the new institutions of the PU. It is clear that all the Arab neighbours would have to adapt their domestic legislations as well as take measures necessary to put their legal systems in conformity with their PU obligations. This would require a long transitional period and a heavy load of implementation work, mainly on the Arab side, before the PU Agreement can enter into force. As for the EU itself, it seems that, thanks to Article 216(2) of the TFEU, the Union would not have to amend the *acquis* in order to comply with the PU obligations, as international agreements concluded by means of the procedure set out in Article 217 of TFEU are binding on the institutions of the Union and its Member States. As the ECJ has put it: "The provisions of such agreements and measures adopted by the institutions set up by such agreements become an integral part of the Community legal order when they enter into force".⁴

Conclusions

Designed to meet European and Arab neighbours stated wishes to enhance their relations, this paper presents a new model for an ever-closer partnership between the Union and its Arab neighbours. Called the PU, the proposed model is based on the logic of the ENP and draws on its aim to remain sufficiently flexible to allow

⁴ Court of Justice of the European Communities, *Opinion 1/91 of Dec. 1991*, Ch. I n. 11.