

## Approximation of Laws in the EU-Med Context: A Realist Perspective

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### A. Introduction

The European Union has in recent years offered neighbouring countries in the Mediterranean enhanced trade and political relations. In return, it expects them, *inter alia*, to align their legislation, regulatory practices and standards, to an extent yet to be determined, with its *acquis communautaire*. Such expectation should be seen as part of the EU's overall strategy of socio-economic external Europeanization.<sup>1</sup>

Recent scholarship in this field examines such EU activity mainly through the prism of Liberal and Constructivist theories of International Relations (IR). The Liberal school of thought focuses on the normative, value-based aspects of such EU activity. EU external legislative pressures project the EU's own values beyond its borders, favouring democracy as a political system and free market as an economic system. According to Liberalism, such a legislative move can, indirectly and in the long-run, assist the establishment of democratic regimes in the neighbouring countries, and this, in turn, should contribute, to pacific relations between these countries. Constructivist literature views the exportation by the EU of its *acquis* as an endogenous, identity-forming process that may lead to transnational convergence of collective values and interests of the neighbouring countries along the identities and interests of the EU, while formulating and reinforcing the EU's own identity and legitimacy.<sup>2</sup>

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<sup>1</sup> See A. Magen, *The Shadow of Enlargement: Can European Neighbourhood Policy Achieve Compliance?*, 12 Columbia Journal of European Journal 495 (2006).

<sup>2</sup> See, for example, I. Manners, *Normative Power Europe: A Contradiction in Terms?*, 40/2 JCMS 235 (2002); L. Gardner-Feldman, *Reconciliation and Legitimacy: Foreign Relations and*

The purpose of this article is to contribute to existing literature, by focusing on a different perspective of such EU agenda, namely the more rational, self-interest, security-based and hegemony-motivated EU activity. Such examination of EU-Mediterranean legislative approximation is to be conducted from the perspective of the EU and through the prism of the IR theory of Realism, with the focus on EU-Israeli relations. Further research is needed to examine the compatibility and commensurability of the normative, sociological and self-interest perspectives of the exportation of the EU *acquis* to the other EU neighbouring countries.<sup>3</sup>

## B. Approximation of Laws

Approximation or harmonisation of laws may be defined as the process of making different domestic laws, regulations, principles and government policies the same or substantially similar.<sup>4</sup> In the course of this process, which can take place unilaterally, bilaterally or multilaterally, features of different legal systems are reconciled.<sup>5</sup>

The EU is a fine example of regional integration under which extensive harmonisation of laws has continually been performed. In the EU this process has gone beyond merely reducing legislative differences and adopting common legislative instruments, to enter the realm of harmonizing the Member States' policies and regulatory schemes. Harmonisation of laws within the EU may thus be seen as a co-operative process of creating a quasi-Federal European legal system, which contributes, in turn, to the positive integration of the Internal Market, and consequently to socio-political integration.<sup>6</sup>

The meaning of approximation of laws is, however, rather different in the Euro-Med context. As demonstrated in the following Section, this process is not perceived by the EU as a co-operative process aimed at dismantling national, commercial borders, but as a paternalistic process in which the EU expects its

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*Enlargement of the European Union*, in T. Banchoff & M. Smith (Eds.) *Legitimacy and the European Union: The Contested Polity* (1999); E. Adler & B. Crawford, *Normative Power: The European Practice of Region Building and the Case of the Euro-Mediterranean Partnership* (2004); P. Van Ham, *European Integration and the Post-modern Condition: Governance, Democracy, Identity* (2001); R. Whitman, *From Civilian Power to Superpower? The International Identity of the European Union* (1998); R. Youngs, *Normative Dynamics and Strategic Interests in the EU's External Identity*, 42/2 *JCMS* 415 (2004).

<sup>3</sup> It may be argued that the Realist perspective, which is focused on security-enhancement, is even more relevant to countries such as Algeria, Tunis and Morocco, given their geographic proximity, and the potential, negative spillovers from them in terms of political instability, terror, and illegal immigration. For such examination of the EU in the field of human rights, see Youngs, *supra* note 2.

<sup>4</sup> G. Mayeda, *Developing Disharmony? The SPS and TBT Agreements and the Impact of Harmonization on Developing Countries*, 7/4 *Journal of International Economic Law* 737 (2004). See also D. Leebron, *Claims for Harmonization: A Theoretical Framework*, 27 *Canadian Business Law Journal* 63 (1996).

<sup>5</sup> M. Boodman, *The Myth of Harmonization of Laws*, 39 *American Journal of Comparative Law* 699, at 703 (1991).

<sup>6</sup> D. M. Walker, *The Oxford Companion to Law* 72 (1980).

Mediterranean neighbours to bring their legislation closer to that of the EU, an expectation that is part of a broader strategy of “external Europeanization”.

## C. Approximation of Laws in the Euro-Mediterranean Context

### I. The Evolution of Euro-Mediterranean Relations

EU-Med regional relations are governed by the European Mediterranean Policy, better known as the Barcelona Process.<sup>7</sup> The latter was designed to regulate and advance economic, political and social relations between the EC and its Member States, on the one hand, and the twelve non-EC Mediterranean countries of that time,<sup>8</sup> on the other hand.<sup>9</sup>

These EU-Med regional relations are supported by bilateral relations between the EU and its neighbours in the Middle East and North Africa. (*the Euro-Med Association Agreements*). Under the Euro-Med Association Agreements, the EU and each respective Mediterranean country granted one another preferential economic, commercial and technological status. The core of each Euro-Med Association Agreement is a free trade area for industrial goods. A legal framework for liberalisation of trade in goods, services and movement of capital is also provided for.

It is under this aegis that EU-Israeli relations are conducted: in 1995 an Association Agreement was concluded between the EC and its Member States, on the one hand, and the State of Israel, on the other hand (*The Association Agreement*).<sup>10</sup>

<sup>7</sup> See EC Barcelona Declaration, adopted at the Euro-Mediterranean Conference, 27-28 November 1995, Barcelona, 28 November 1995, final version. For analysis, see F. Hakura, *The Euro-Mediterranean Policy: The Implications of the Barcelona Declaration*, 34 CMLR 337 (1995); M. Heller, *Reassessing Barcelona*, in F. Tanner et al. (Eds.), *The European Union as a Security Actor in the Mediterranean* 77 (2001); A. Tovias, *Israel and the Barcelona Process: The First Five Years*, in K. Boehnke (Ed.), *Israel and Europe: A Complex Relationship* (2003); R. Gillespie, *Reshaping the Agenda? The Internal Politics of the Barcelona Process in the Aftermath of September 11*, 8/2-3 *Mediterranean Politics* 21 (2003).

<sup>8</sup> Since then Cyprus and Malta joined the Union as Member States and Turkey commenced accession negotiations.

<sup>9</sup> See EU Barcelona Declaration (1995), *supra* note 7. The Preamble to the Barcelona Declaration states that the parties are

convinced that the general objective of turning the Mediterranean basin into an area of dialogue, exchange and co-operation guaranteeing peace, stability and prosperity requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development.

The parties indeed undertook “to develop the rule of law and democracy ... to respect human rights and fundamental freedoms.”

<sup>10</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one part, and the State of Israel, on the other part, OJ L 147, 21 June

Under the latter, each party granted the other preferential commercial, technological and research status. The core of the Association Agreement is the reinforcement of the free trade area for industrial goods, already created under the aegis of the EEC-Israel 1975 Free Trade Agreement.<sup>11</sup> Industrial goods can thus be exported from the EU to the State of Israel and *vice versa*, exempt from custom duties and, in principle, free from quantitative restrictions. A legal framework for the liberalisation of trade in agricultural goods,<sup>12</sup> the provision of services,<sup>13</sup> and movement of capital<sup>14</sup> is also provided. The EU is in fact Israel's chief trading partner.<sup>15</sup>

The EU has in recent years expressed its interest in enhancing its bilateral and regional relations with its neighbouring countries in the Mediterranean (as well as with those in Europe),<sup>16</sup> integrating their economies, to an extent yet to be determined, with the enlarged EU. The European Neighbourhood Policy (ENP) is designed to serve as the principal instrument for that purpose.

Under the aegis of the ENP, Action Plans, based on the Strategy Report<sup>17</sup> and the relevant Country Report,<sup>18</sup> provide a specific framework for reciprocal social, political and economic commitments between the EU and each relevant neighbouring state, covering political dialogue, economic and social development policy, trade, and justice and home affairs.

## II. Approximation of Laws in the EU-Med Context

Each and every Euro-Med Association Agreement provides a general legal basis for the approximation of laws between the two respective parties. The EU-Israel Association Agreement, for example, includes a provision that stipulates that "The Parties shall use their best endeavours to approximate their respective legislations in order to facilitate the implementation of this Agreement."<sup>19</sup> The general call for approximation of laws provided for under Euro-Med Association

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2000, at 0003-0171 (1995). For analysis, *see especially*, E. Inbar, *Improving Israel-EU Relations: the European Economic Area as a Possible Model*, 5/1 Israel Affairs 109 (1999); T. Sadeh, *The European Union and Israel: The Customs Union Alternative*, 5/1 Israel Affairs 87 (1999); M. Hirsch, *The 1995 Trade Agreement between the European Communities and Israel: Three Unsolved Issues*, 1/1 EFAR 87 (1996).

<sup>11</sup> See Article 6 of the EU-Israel Association Agreement, *id.*

<sup>12</sup> Articles 10-15 of the EU-Israel Association Agreement, *id.*

<sup>13</sup> Articles 29-30 of the EU-Israel Association Agreement, *id.*

<sup>14</sup> Articles 31-34 of the EU-Israel Association Agreement, *id.*

<sup>15</sup> For official Israeli statistics, *see* <http://www.tamas.gov.il/NR/exeres/E02266E1-6B13-4288-8C1D-760C25FAE226.htm> (last visited 6 June 2007).

<sup>16</sup> For analysis, *see* G. Harpaz, *The Europe Neighborhood Policy and its Impact on the Israeli-European Union-United States Triangle*, 6/2 San Diego International Law Journal 295 (2005).

<sup>17</sup> The Strategy Paper outlines the vision of the ENP and its main components.

<sup>18</sup> Country Reports assess the relevant bilateral relations, analyze the political, economic, social and institutional landscape of the neighbour concerned, and describe the prevailing state of affairs in areas of particular interest to the ENP. (The EC Commission has already presented a strategy Paper and Country Reports.)

<sup>19</sup> See Article 55 of the EU-Israel Association Agreement, *supra* note 10.

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Agreements is supported by more specific provisions scattered throughout these Agreements. These provisions call for approximation of laws in specific sectors, such as intellectual property,<sup>20</sup> agriculture,<sup>21</sup> standards,<sup>22</sup> financial services,<sup>23</sup> and the combat of drugs-trafficking<sup>24</sup> and money laundering.<sup>25</sup> Similar legal arrangements for approximation of laws can also be found in the EU-Algerian<sup>26</sup> and EU-Tunisian Association Agreements.<sup>27</sup>

The call for approximation of laws was couched in neutral terms in the various Euro-Med Association Agreements. Nonetheless, given the clear economic asymmetry between the EU and the neighbouring countries, and in light of the heterogeneity of these countries, it is crystal clear that the EU did not perceive approximation of laws as a co-operative process among equal states, as it had been perceived in the context of the Internal Market. Some have argued that this legislative call should instead be seen as a paternalistic process under which the Mediterranean neighbours are required to bring their legislation closer to that of the EU:<sup>28</sup> “External Europeanization is ... qualitatively different from intra-EU processes in that, unlike Member States who participate in the creation of the rules they are expected to comply with, the extraterritorialization of EU rules involves one-sided alignment by third countries that are excluded from the EU rule-making institutions.”<sup>29</sup>

The legislative pressure exerted by the EU has not gone unnoticed by the non-EU Mediterranean countries. Let us take the example of Israel. Since the conclusion of the EU-Israel Association Agreement in 1995, Israel has moved in the direction of EU legislation in certain areas, including standards,<sup>30</sup> competition law,<sup>31</sup> environmental law,<sup>32</sup> animal protection,<sup>33</sup> and money laundering legislation.<sup>34</sup>

The ENP intensifies the EU’s legislative pressures:

<sup>20</sup> See, for example, Article 39 of the EU-Israel Association Agreement, *supra* note 10.

<sup>21</sup> See, for example, Article 46 of the EU-Israel Association Agreement, *supra* note 10.

<sup>22</sup> See, for example, Article 47 of the EU-Israel Association Agreement, *supra* note 10.

<sup>23</sup> See, for example, Article 48 of the EU-Israel Association Agreement, *supra* note 10.

<sup>24</sup> See, for example, Article 56 of the EU-Israel Association Agreement, *supra* note 10.

<sup>25</sup> See, for example, Article 56 of the EU-Israel Association Agreement, *supra* note 10.

<sup>26</sup> See, for example, Articles 56 and 57 of the EC-Algerian Association Agreement, see [http://ec.europa.eu/external\\_relations/algeria/docs/assoc\\_art.pdf](http://ec.europa.eu/external_relations/algeria/docs/assoc_art.pdf) (last visited 12 July 2007).

<sup>27</sup> See, for example, Articles 51-53 of the EC-Tunisian Association Agreement, [http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc\\_127986.pdf](http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127986.pdf) (last visited 12 July 2007).

<sup>28</sup> See D. Geradin & N. Petit, *Competition Policy and the Euro-Mediterranean Partnership*, 8/2 EFAR 153 (2003). The area of competition law is a case in point, see *id.*, at 167.

<sup>29</sup> See Magen, *supra* note 1, at 498.

<sup>30</sup> E. Hadar, *The European Union and its Activities in Product Certification, Standardization and Accreditation* (2002) [Hebrew].

<sup>31</sup> See M. Gal, *Size Does Matter: The Effects of Market Size on Optimal Competition Policy*, 74 University of Southern California Law Review 1437, at 1477 (2001).

<sup>32</sup> See O. Perez, *The WTO and the Environment: Lessons for the State of Israel* (2005), appears in [http://www.biu.ac.il/law/unger/working\\_papers/3-02.doc](http://www.biu.ac.il/law/unger/working_papers/3-02.doc) (last visited 6 June 2007).

<sup>33</sup> G. Harpaz & R. Frid, *Case Note – The Israeli Supreme Court Judgment on Force-Feeding of Geese*, 10/2 International Trade Law and Regulation N-2-3 (2004).

<sup>34</sup> See Explanatory Notes of the 2000 money laundering legislation, Number 2809, 1999, 420,

[I]n return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the *acquis*, the EU's neighbours should benefit from the prospect of closer economic integration with the EU.

The various Action Plans,<sup>35</sup> signed under the aegis of the ENP with the State of Israel and other countries,<sup>36</sup> increase the pressures upon them to approximate their laws with those of the EU.

It must be stressed that while the Association Agreements merely refer, in suggestive language, to approximation of legislation, the ENP goes further than that, by calling upon the neighbouring countries to approximate regulatory policies and standards as well.

The EU-Israeli Action Plan,<sup>37</sup> for example, states that the “convergence of economic legislation” and “legislative and regulatory approximation” by the State of Israel<sup>38</sup> is linked to further economic and political integration. The same legislative agenda is embedded in other Action Plans signed under the ENP. The EU-Jordan Action Plan, for example, provides that “The implementation of the Action Plan will significantly advance the approximation of Jordanian legislation, norms and standards to those of the EU.”<sup>39</sup> Similar provisions are to be found in the EU-Morocco Action Plan,<sup>40</sup> EU-Lebanon Action Plan,<sup>41</sup> and EU-Palestinian Authority Action Plan.<sup>42</sup>

at 422. For analysis, see L. Herman, *World Money Laundering and Israel*, 117 *The Israeli Tax Quarterly* 7 (2002) [Hebrew].

<sup>35</sup> Action Plans, based on the Strategy Report and the relevant Country Report, provided a specific outline of reciprocal social, political and economic commitments between the EU and each relevant neighbouring state, covering political dialogue, economic and social development policy, trade, and justice and home affairs.

<sup>36</sup> For the text of the Actions Plans, see [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (last visited on 6 June 2007). See, for example, Section I (Introduction) of the EU-Israel Action Plan (2005) [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (last visited 6 June 2007).

<sup>37</sup> The Action Plan with Israel was endorsed by the Commission, by the Government of Israel and by the EC-Israel Association Council. The EU-Israel Action Plan, which involves “a significant measure of economic integration and a deepening of political co-operation”, is aimed at the fulfilment of the [1994] Essen Declaration in which the EU announced its willingness to establish special relations with Israel. More specifically, the EU-Israeli Action Plan provides for enhanced political dialogue and co-operation, increased economic integration, enhanced co-operation in justice and home affairs, greater integration of Israel to EU programmes and schemes, and improved people-to-people interactions.

<sup>38</sup> European Neighbourhood Policy, Strategy Paper (2004), COM(2004)373 final (12.5.2004), at 9, 14-15, 16 and 23.

<sup>39</sup> Section I of the EU-Jordan Action Plan, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (2004) (last visited 6 June 2007).

<sup>40</sup> Section I of the Action Plan, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (2004) (last visited 6 June 2007).

<sup>41</sup> Pages 1-3, 10 of the Action Plan, [http://ec.europa.eu/world/enp/pdf/lebanon\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/lebanon_enp_ap_final_en.pdf) (2004) (last visited 6 June 2007).

<sup>42</sup> Pages 1 the Action Plan, [http://ec.europa.eu/world/enp/pdf/action\\_plans/pa\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf) (2004) (last visited 6 June 2007).

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Recent EU official statements,<sup>43</sup> working papers and reports,<sup>44</sup> issued under the ENP, all recognize, albeit in vaguer terms,<sup>45</sup> the link between the offer of enhanced trade and investment relations and legislative and regulatory convergence with the EU:

Deeper Economic Integration with our ENP partners will be central to the success and credibility of the policy. From the outset, a key premise of the ENP was that economic integration should go beyond free trade in goods and services to also include “behind the border” issues: addressing non-tariff barriers and progressively achieving comprehensive convergence in trade and regulatory areas (such as technical norms and standards, sanitary and phytosanitary rules, competition policy, enterprise competitiveness, innovation and industrial policy, research cooperation, intellectual property rights, trade facilitation customs measures and administrative capacity in the area of rules of origin, good governance in the tax area, company law, public procurement and financial services). The objective would ultimately be that our partners share a common regulatory basis and similar degree of market access.<sup>46</sup>

Recent scholarship focuses on the more normative, value-based and identity-forming aspects of such external Europeanization. The purpose of this article is to contribute to existing literature, by examining the *raison d'être* of such EU legislative pressures, focusing on their more rational, self-interest, security-based and hegemony-motivated perspectives. Such analysis is conducted from the

<sup>43</sup> See, for example, D. Hübner, *The Essential Role of the Community Conditionality in the Triumph of Democracy and Market Economy, Conference on European Strategies for Promoting Democracy in Postcommunist Countries*, Vienna, 21 January 2006, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/27&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited 6 June 2007).

<sup>44</sup> Commission of the European Communities Staff Working Document accompanying the Communication from the Commission to the Council and to the European Parliament on Strengthening the European Neighbourhood Policy, Overall Assessment, Brussels 4 December 2006 SEC(2006) 1504/2, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), at 5; Commission of the European Communities Staff Working Document accompanying the Communication from the Commission to the Council and to the European Parliament on Strengthening the European Neighbourhood Policy, Sectoral Progress Report, Brussels 4 December 2006 SEC(2006) 1512/2, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), at 2-4; Commission of the European Communities Staff Working Document accompanying the Communication from the Commission to the Council and to the European Parliament on Strengthening the European Neighbourhood Policy, ENP Progress Report, Ukraine, Brussels 4 December 2006 SEC(2006) 1505/2, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), at 10-14; Commission of the European Communities Staff Working Document accompanying the Communication from the Commission to the Council and to the European Parliament on Strengthening the European Neighbourhood Policy, ENP Progress Report, Israel, Brussels, 29 November 2006 SEC(2006) 1507/2, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), at 3, all visited on 6 June, 2007.

<sup>45</sup> See Magen, *supra* note 1, at 526-528 who analyzes the gradual softening of EU linkage between approximation of laws and economic integration under the ENP.

<sup>46</sup> Commission of the European Communities Communication from the Commission to the Council and to the European Parliament on Strengthening the European Neighbourhood Policy, Brussels, 4 December 2006, COM(2006) 726 final, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), at 4-5 (last visited 6 June 2007).

perspective of the EU and through the prism of the IR theory of Realism, with the focus on EU-Israeli relations.

## D. Approximation of Laws – a Realist Perspective

### I. Realism

Realism, which has its genesis in classical thought such as that of Thucydides, Hobbes and Machiavelli, constitutes a leading, if not the leading strand of theory in the study of IR, alongside Liberalism and Constructivism.<sup>47</sup>

Realism regards the nation-state as the primary actor in the international arena: States are rational and egoistic, acting on the principle of self-help, being preoccupied with power and security, being prone towards conflict, and operating in an anarchic international system which lacks a central, overarching authority to regulate their relations *inter se*. The main focus of Realism is therefore material power held by the state, and the principle which shapes states' behaviour is anarchy. Civil society and other players are seen to affect the international scene and to influence prospects for international cooperation to a lesser extent.<sup>48</sup>

Under Classic Realism, a craving for domination is what motivates states to act on the principle of self-help and to fight wars against each other.<sup>49</sup> In accordance with Neo-Realism, the forces of the IR system affect states in the same manner as market forces affect economic performers; the only difference is that economic performers seek to maximize profit, while states aspire to maximize security.<sup>50</sup>

In light of the above description, the question arises: why should nation states, pursuing self-interest, cooperate among themselves? One explanation advanced by Liberals is that when faced with common challenges, threats and tasks, which cannot unilaterally be dealt with in a satisfactory manner, national policy-makers will see international cooperation as an instrument to advance their own values and self-interests.<sup>51</sup>

Realists, however, view cooperation with suspicion, given the fact that it may result in unequal gains for the cooperating states. Such a difference in relative gains is perceived by Realism as an impediment to international cooperation,

<sup>47</sup> On the historical development of IR Realism and the contribution of classical thinkers to IR theory, see K. Mingst, *Essentials of International Relations* (2004).

<sup>48</sup> J. M. Grieco, *Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism*, in D. A. Baldwin (Ed.), *Neorealism and Neoliberalism: the Contemporary Debate*, at 118-119 (1993). For a brief account of IR Realism, see C. W. Kegley & R. Wittkopf, *World Politics* (2001); S. Walt, *International Relations: One World, Many Theories*, 110 *Foreign Policy* 29 (1998); M. Hirsch, *The Impact of the Advisory Opinion on Israel's Future Policy: International Relations Perspective*, 1 *Journal of International Law and International Relations* 319 (2004-2005).

<sup>49</sup> H. Morgenthau, *Politics Among Nations: the Struggle for Power and Peace* (1950). For other classic IR Realists, see C. E. Carr, *The Twenty Years' Crisis* (1946); G. Kennan, *American Diplomacy* (1964).

<sup>50</sup> K. N. Waltz, *Theory of International Politics* (1979).

<sup>51</sup> Hirsch, *supra* note 48.



because the nations' main goal in cooperative relationships is not to attain the highest possible individual gain, but to prevent others from achieving advances in their relative capabilities:<sup>52</sup> "States are uncertain about one another's future intentions, thus they pay close attention to how cooperation affects relative capabilities in the future",<sup>53</sup> and "even the prospect of large absolute gains for both parties does not elicit their cooperation so long as each fears how the other will use its increased capabilities."<sup>54</sup>

Moreover, and according to Realism, states are also concerned with non-military outcomes that may stem from such discrepancies in relative gains, such as autonomy and independence. Driven by an interest in survival, states are sensitive to any reduction in their relative capabilities, because such capabilities are seen as the basis for their security and independence.

This concern impedes cooperation. Cooperative arrangements might make states become more dependent on their partners, allowing the advantaged partner to utilize increased influence in order to force other states to accept progressively less favourable terms in their mutual arrangements and to restrict the capacity of the disadvantaged partner for independent choice of action.<sup>55</sup>

Snidal pursues this argument by analyzing the interface between hegemony, cooperation and decline. He argues that cooperation which favours smaller states contributes to hegemonic relative decline, "as the unequal distribution of benefits in favor of smaller states helps them catch up to the hegemonic actor, it also lowers the relative gains weight they place on the hegemonic actor."<sup>56</sup> Such concerns result in increased pressure exerted by the strong actor to alter the prevailing system in order to increase its benefits from cooperation.<sup>57</sup>

Given the above, the question arises, why should Realists support economic and legal cooperation between the EU and its neighbouring countries under the aegis of the European Neighbourhood Policy?

## II. Approximation of Laws and Realism

Rationality and self-interest constitute a motivation under Liberalism too. However, while in Liberalism self interest and rationality lead to cooperation, they tend to lead according to Realism to anarchy and conflict. Nevertheless, Realists argue that cooperation can occur on an *ad hoc* basis, as a second best option, and due to balance of power considerations.

Given the prevailing global balance of power, the EU's objective lack of hard power, and the subjective perception of it, held by its neighbouring countries, as lacking such powers, the EU is forced to rely on economic cooperation, based

<sup>52</sup> Grieco, *supra* note 49, at 127.

<sup>53</sup> Grieco, *supra* note 49, at 128; J. Grieco, R. Powell & D. Snidal, *The Relative Gains Problem for International Cooperation*, 87/3 *The American Political Science Review* 733 (1993).

<sup>54</sup> As was cited in Grieco, Powell & Snidal, *id.*, at 730.

<sup>55</sup> Grieco, Powell & Snidal, *id.*, at 734.

<sup>56</sup> D. Snidal, *Relative Gains and the Pattern of International Cooperation*, in D. A. Baldwin (Ed.), *Neorealism and Neoliberalism: the Contemporary Debate* 198, at 198-199 (1993).

<sup>57</sup> *Id.*

on legal approximation, in order to advance its interests, including in particular security-advancement. Realists may therefore view the EU legislative pressures, and their overarching policy, the ENP, as part of the EU's strategy of reducing uncertainties in the international sphere, gaining regional and global hegemony, increasing its relative gains and providing it with a more secure environment. All of these will be examined below.

### 1. Approximation of Laws and the Reduction of Uncertainties

Uncertainty is a persistent concern in international relations. Approximation of laws can address this concern by reducing legislative and regulatory differences between the EU and its neighbouring countries, thereby forcing the executives of the neighbouring countries to operate in a more predictable manner, along EU norms, practices and standards. The behaviour of the Mediterranean countries will then be more predictable and transparent, thereby reducing uncertainties in the EU-Med relations and rendering the EU, its Member States and companies less concerned about unexpected acts and omissions on the part of their neighbours.

More specifically, in the trade arena such approximation of laws may prove to be beneficial to EU traders, by reducing information costs,<sup>58</sup> allowing them to utilize economies of scales,<sup>59</sup> and rendering the international trading arena fairer,<sup>60</sup> more predictable and less costly, thereby facilitating and intensifying international trade,<sup>61</sup> and attracting more foreign investment.<sup>62</sup>

### 2. Approximation of Laws, Relative Gains and Global Hegemony

The EU exportation of its legal regime may assist it in gaining higher relative gains *vis-à-vis* the neighbouring countries and others, thereby contributing to the EU efforts for global influence and dominance.

Following in particular World War II, the hegemony of major European nation-states in international affairs is in decline, both militarily and economically,

<sup>58</sup> Enabling market entrance even for relatively small sales, *see* Leebron, *supra* note 4, at 88, but compare with Boodman, *supra* note 5, at 715: The absence of harmonisation of laws may not necessarily increase in any significant manner the costs of inter-jurisdictional business.

<sup>59</sup> Leebron, *supra* note 4: If a manufacturer faces significantly different requirements in each jurisdiction for which it manufactures, it will not be able to achieve economies of scales beyond its market share in one jurisdiction.

<sup>60</sup> *Id.*

<sup>61</sup> A. Reich, *Globalization and Law: The Future Impact of International Law on Israel's Commercial Law*, 17 Bar-Ilan Legal Studies 17 (2001) [Hebrew]. *See also* Commission of the European Communities (2005) Tenth Anniversary of the Euro-Mediterranean Partnership: A Work Programme to Meet the Challenges of the Next Five Years, Communication from the Commission to the Council and the European Parliament, 25 April 2005, Section 2.2(c): approximation of technical legislation in the area of standards and conformity assessment bears an important potential in terms of trade creation, investment attraction and integration of economies. The objective is to promote trade by aligning standards and technical requirements, reducing costs related to duplicative testing and certification and thus facilitate market access.

<sup>62</sup> Geradin & Petit, *supra* note 28, at 173.

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making their power portfolios incommensurable with those of the United States. Such a decline can be seen in fact as a driving force behind the whole project of European integration.<sup>63</sup>

The gathering of European countries, such as France and the United Kingdom, under the auspices of the EU, and the EU's 'exportation' of its socio-economic-legal regime should not therefore be seen as eroding their preference for hegemony and power. Instead it can be viewed as an instrument designed to mitigate to a certain extent their decline, rendering them under the collective umbrella of the EU as a countervailing power to the United States.<sup>64</sup>

European countries can no longer shift armadas around the globe as they did it in the past. The days of European, military-backed colonialism are largely gone, and hopefully are not to return. The EU can, on the other hand, attempt to export its legal regime, through the concept of approximation of laws, to its vicinity and beyond, thereby gaining economic influence and resultant political and normative influence. Put differently, European military colonialism is Out, legal, enlightened colonialism is In.

The field of competition policy can serve as an example for such a strategy of dominance through law.<sup>65</sup> The EU expects its neighbouring countries to fuse their competition rules and regulatory practices with those of the EC, thereby gaining a strategic, global trading advantage:

... At the time of growing internationalization of competition rules, it might also be of a strategic importance for the EC to create a constituency of States sharing its vision of competition policy and effectively using rules patterned on EC competition law in their domestic legal orders. ... In this respect, the exportation of EC competition rules through the negotiation of regional trade agreements could help achieve a strategic goal. The creation of a web of countries sharing the same competition law principles as the EC might help the latter gain a stronger negotiation position in the future discussion over competition rules that will take place within the WTO framework ...<sup>66</sup>

By placing the item of approximation of laws in the bilateral/regional framework, the EU may succeed in convincing countries who are unwilling and opposing any discussions on the matter in the WTO (i.e. the 'Singapore Issues') to conclude separate agreements with the EU on the same issues, achieving the above-mentioned strategic goals.

Such expected benefits for the EU in the area of approximation of laws and regulatory policies in the field of competition law are applicable, *mutatis mutandis*, to other areas of law.

<sup>63</sup> For analysis, see A. S. Milward, *European Rescue of the Nation State* (1994).

<sup>64</sup> R. Kagan, *Why the United States and Europe See the World Differently*, 113 *Policy Review* 6, at 6-7 (2002); W. C. Wohlforth, *The Transatlantic Dimension*, in R. Dannreuther (Ed.), *European Union Foreign and Security Policy – Towards a Neighbourhood Strategy* 186, at 192 (2004).

<sup>65</sup> Geradin & Petit, *supra* note 28, at 155-157 and 171.

<sup>66</sup> *Id.*

Dominance over economic performance in the neighbouring countries can thus be achieved to a certain extent not through actual presence or ownership, as it was not in earlier times, but through the export of Europe's legislation to these countries.

Realists may thus view the EU legislative exportation from the perspective of hegemonic cooperation and decline. Cooperative arrangements between unequal partners may cause a reduction in the hegemonic state's gains from cooperation, relative to other states in the anarchic system. This results in increased pressure from the stronger state to change the prevailing system in order to increase the share of gains from cooperation. In this sense, approximation of laws may be viewed as the process by which the EU and its Member States are attempting to alter the prevailing arrangements between themselves and the neighbouring countries, and to increase their share of gains from cooperation, thereby improving their relative position comparative to other states.

In addition, regional cooperation and the imposition of European norms on its partners may assist the EU in its power struggle for global hegemony and for creating spheres of economic influence across the globe, providing the EU with high relative gains *vis-à-vis* its other major trading partners, particularly, the United States.

Let us take, for example, the EU-US-Israeli triangle. In 1985 Israel signed a Free Trade Agreement with the United States.<sup>67</sup> One of the main objectives of that Agreement, from the American viewpoint, was to improve the competitiveness of US exporters to Israel, as compared with EU exporters:

The economic advantage to the United States of a free trade area is the elimination of relatively high tariff barriers on nearly one-half of United States exports to Israel and removal of the EC duty-free competitive advantage in the Israeli market, particularly in industrial products which directly compete with the EC.<sup>68</sup>

Any approximation of Israeli laws to the EU *acquis* may run counter to this American objective. The ENP requires the alignment of Israel's legislation and standards with those of the EU, with resultant improved accessibility to Israeli markets for European exporters. This would render Israel's economy more integrated with that of the EU, at the expense of Israel's economic relations with United States. After all, Israel's trade potential is not unlimited and the trading game under preferential trade agreements is to some extent a zero-sum one.

US officials are complaining that Israel's trade surplus with the United States "subsidizes" Israel's chronic trade deficit with the EU.<sup>69</sup> Those American

<sup>67</sup> For a general comment on the Agreement and on certain aspects of it, see S. Ward, *The U.S.-Israel Free Trade Area: Is it GATT Legal?*, 19 *George Washington Journal of International Law and Economics* 199 (1985); A. S. Galper, *Restructuring Rules of Origin in the U.S.-Israel Free Trade Agreement: Does the EC-Israel Association Agreement Offer an Effective Model?*, 19 *Fordham International Law Journal* 2028 (1996).

<sup>68</sup> H. R. REP. No. 64, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 2 (1985), reprinted in 1985 U.S.C.C.A.N. at 64. See also Galper, *id.*: One of the objectives of the 1985 Free Trade Agreement was to remedy the comparative disadvantage of US exports to Israel as compared to EC exports after implementation of the EC-Israel FTA.

<sup>69</sup> M. Hirsch, E. Inbar & T. Sadeh, *The Future Relations Between Israel and the European*

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concerns are only likely to be exacerbated with the successful implementation of the ENP, as the latter may increase EU's relative gains, at the expense of the United States.

### 3. Approximation of Laws, Trade Interdependence, Erosion of National Sovereignty and Resultant Regional Hegemony

The presence of the EU and the United States in the Middle East is prominent, with both competing for regional hegemony. To advance effective involvement in this region, the EU cannot rely on hard power instruments, as it suffers from what may be termed a hard power deficit.<sup>70</sup> Consequently, it relies on its ever-growing economic leverage, which it attempts to translate into a diplomatic tool.<sup>71</sup>

Such EU involvement in the neighbouring countries has attracted much scholarly attention. Some have described it as a diluted enlargement policy,<sup>72</sup> others as extraterritorial Europeanization,<sup>73</sup> others as external European governance,<sup>74</sup> consisting of selective extension of its legal boundaries (norms, rules and policies), while precluding the opening of its institutional boundaries (through full-fledged membership).<sup>75</sup>

Amichai Magen for his part refers in this Issue to such EU activity as a “top-out” involvement under which EU institutions, rules, policy-making processes, and broader international “actorness” constitute independent invariables that impact the legal, regulatory, and administrative structures and conduct of entities beyond the EU's borders, and advance the diffusion of formal and informal EU rules and practices into the domestic structures, policies and identities of third countries.<sup>76</sup>

The approximation of laws by the Mediterranean countries to the EU *acquis* may thus assist the EU in that battle for regional hegemony over the Middle East:

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Communities – Some Alternatives (1996). See also the words of Ambassador Zalman Shoval, former Israeli Ambassador to Washington and currently the President of Israel-US Chamber of Commerce, who also complained against the discriminatory treatment of American firms in Israel, as compared with European firms. See the Israeli daily business newspaper Globes, 22 February 2004 [Hebrew].

<sup>70</sup> Kagan, *supra* note 65, at 7-8.

<sup>71</sup> J. S. Nye, *Soft Power – The Means to Success in World Politics* (2004), at 75-83; F. Duchêne, *Europe's Role in the World Peace*, in R. Mayne (Ed.), *Europe Tomorrow: Sixteen European's Look Ahead* (1972); Kagan, *supra* note 65; Manners, *supra* note 2; E. Aoun, *European Foreign Policy and the Arab-Israeli Dispute: Much Ado About Nothing?*, 8/3 EFAR 289, at 299 (2003).

<sup>72</sup> J. Kelley, *New Wine in Old Wineskins: Promoting Political Reforms Through the New European Neighbourhood Policy*, 44/1 JCMS 29, at 41 (2006).

<sup>73</sup> Magen, *supra* note 1.

<sup>74</sup> S. Lavenex, *EU External Governance in 'Wider Europe'*, 11/4 Journal of European Public Policy, 680 (2004).

<sup>75</sup> *Id.*

<sup>76</sup> A. Magen, *Transformative Engagement Through Law: The Acquis as an Instrument of EU External Influence*, 27 May 2007, International Conference, Approximation of Laws by non-EU countries to the EU *acquis*, Hebrew University of Jerusalem, at 364.

... the *acquis communautaire* possesses ... an outward-looking, activist, interventionist, even imperialistic persona, whose animus is the promotion of the Community's interests through the external projection of EU rules, practices and norms to the outside world.<sup>77</sup>

facilitating “deeply political reforms in highly technocratic, de-politicized language.”<sup>78</sup>

Such approximation of laws and the resultant enhanced integration of the markets of Mediterranean neighbouring countries to the Internal Market may increase their dependence on European markets, while such increased dependence may impose further restrictions on their political autonomy, with the ultimate enhancement of the EU regional hegemony.

A link may thus be created between regional cooperation, approximation of laws (broadly defined), the erosion of sovereignty and regional hegemony.

For the purpose of our analysis of the interface between approximation of laws and sovereignty it will suffice to assume that the concept of sovereignty relates to the state's general independence from and legal impermeability in relation to foreign powers, its exclusive jurisdiction and supremacy of governmental powers over its territory and inhabitants, a monopoly over fundamental political decisions, as well as over legislative, executive and judiciary powers, and the right to determine its political, cultural, and socio-economic identities, both current and future.<sup>79</sup>

The pressures exerted by the EU on the non-Mediterranean countries, in general, and on the State of Israel, in particular, to approximate their laws to the EU's *acquis*, policies and regulatory schemes of the EU may not match this classic perception of sovereignty. The non-Mediterranean countries are required to adopt EU norms, while this entails the performance on their part of economic reforms and the opening of their domestic markets to European exporters, thereby limiting their sovereignty.<sup>80</sup>

As demonstrated elsewhere in greater details, the adoption by the Mediterranean countries of European norms, regulatory practices and standards may erode their legislative, bureaucratic, judiciary and political autonomy, with the resultant enhancement of the EU's regional hegemony.<sup>81</sup> In that respect and as Magen asserts in this Issue, the ENP may amount to “highly intrusive demands on national sovereignty through formally de-politicized and legalized language.”<sup>82</sup>

The requirement to adopt EU legal norms, as provided for by the various Association Agreements, and reiterated under the ENP, renders it more difficult

<sup>77</sup> Magen, *id.*, at 373.

<sup>78</sup> Magen, *id.*, at 390.

<sup>79</sup> See H. Steinberger, *Sovereignty*, in R. Bernhardt (Ed.), *Encyclopaedia of Public International Law*, Vol. 4, at 500, 502, 507 & 515; S. D. Krasner, *Abiding Sovereignty*, 22/3 *International Political Science Review* 231, at 232-233 (2001).

<sup>80</sup> Hirsch, Inbar & Sadeh, *supra* note 69, at 94.

<sup>81</sup> G. Harpaz, *EU-Med Regionalism, Economic Interdependence, and the Erosion of Sovereignty*, in Y. Shany & T. Broude (Eds.), *The Shifting Allocation of Authority in International Law: Considering Sovereignty, Supremacy, and Subsidiarity* (forthcoming).

<sup>82</sup> Magen, *supra* note 76, at 390.

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for the neighbouring Mediterranean countries to pursue whatever autonomous legislative agenda they please.<sup>83</sup> Israel, like other ENP partners, is thus induced to adopt EU norms, being prevented from independently formulating her own corpus of legislation. As a result of these European legislative pressures, none of the neighbouring countries can any longer fully determine its own national *curriculum vitae*.<sup>84</sup>

Such consequences are problematic in the EU-Mediterranean context, in general, and in the EU-Israeli context, in particular. Approximation of laws in the Euro-Med context is not a cooperative process, as it is in the context of the Internal Market, but a paternalistic one, serving as one component in a grand European design, namely the reform of the Mediterranean countries' governance, civil societies and economies, and the expansion of the EU political, economic and normative influence, both regionally and globally.<sup>85</sup>

Approximation of laws by the non-EU neighbouring countries may also narrow their scope for executive, bureaucratic manoeuvres, because they can no longer employ trade instruments, standards and regulatory practices that they were accustomed to employ prior to the process of approximation of laws. They are required, instead, to reposition themselves ideologically and practically, from being a provider to a facilitator, thus reducing public expenditure and increasing market efficiency, all the while convincing the local population that their national economies are not enslaved by Western imperialism.<sup>86</sup>

<sup>83</sup> The financial service sector is a fine case in point, see L. Herman, *Two for Tango: European Union Free Trade Areas in Services and Israel*, Working Paper 42/2005, The Helmut Kohl Institute for European Studies, The Hebrew University Jerusalem (2005).

<sup>84</sup> Such consequences are incompatible with the aforesaid concept of Interdependence Sovereignty. According to some, the technological advances of globalisation have reduced the costs of transportation. Since states cannot regulate trans-border movements, sovereignty is being eroded, see Krasner, *supra* note 79, at 231. Adopting the EU *acquis* may result in a more liberalized EU-Med trading environment, facilitating easier movement of goods, services, capital and persons. Consequently, non-EU neighbouring countries can no longer control movement across their borders, as they did prior to their adoption of European norms. Similarly, such pressures are in conflict with the concept of Domestic Sovereignty, as approximation of laws erodes the ability of the non-EU Mediterranean countries to effectively regulate domestic behaviour. Different aspects of domestic sovereignty can involve the recognition of a given authority structure, or the level of control officials can actually exercise. Thus, the loss of Interdependence Sovereignty would also imply some loss of domestic sovereignty, see *id.*, at 231-232. Likewise, the adoption of European norms is not in harmony with the concept of Westphalian Sovereignty, as it adversely affects their monopoly over authoritative decision-making. Such a legislative move is also not in line with the principle of non-intervention in the internal affairs of sovereign states, see *id.*, at 232-233. Finally, aligning one's laws with the *acquis* is not in line with International Legal Sovereignty, as such a course of action is not pursued on an equal footing with the EU, but is imposed on the neighbouring countries, see *id.*, at 233.

<sup>85</sup> For a general survey, see H. A. Fernandez & R. Youngs (Eds.), *The Euro-Mediterranean Partnership: Assessing the First Decade* (2005).

<sup>86</sup> E. C. Murphy, *Navigating the Economic Reform Process in the Arab World: Social Responses, Political Structures and Dilemmas for the European Union* 37, 47 (2002). Yet, one may argue, as the EC Commission does, that approximation does not erode executive's capabilities, but on the contrary empowers bureaucrats, civil servants, civil society and politicians with tools that help them to better govern their less-developed societies.

The anticipated changes in the legal systems of the Mediterranean countries stemming from approximation of laws may also pose great challenges for their judiciaries.<sup>87</sup>

It must be stressed that such erosion of sovereignty of the Mediterranean countries is not exceptional. Limitations placed on a nation's sovereignty by external entities by virtue of economic interdependence are certainly not a new phenomenon in international relations.<sup>88</sup>

Globalisation and regionalisation have only intensified that phenomenon.<sup>89</sup> Evolving global and regional realities, Israel's dependence on European markets, and the EU move towards more assertive treatment of countries that do not abide by international norms, render the resistance to European legislative pressures ill-advised. The possibility that Israel "shall dwell alone and shall not be reckoned among the nations" does not represent a viable option. Israel needs regional economic backing. Israel further understands that the implementation of the European Neighbourhood Policy in general, and approximating her laws to those of the EU in particular, may in fact partially satisfy that need. Regional cooperation carries with it membership fees, and approximating Israel's laws to that of the EU and the resultant erosion of sovereignty is part of that payment.

The Mediterranean countries may be thus induced to treat the concept of sovereignty in a flexible manner. Sovereignty cannot be seen by them as absolute, rigid, and indivisible, but as qualified, flexible, dynamic and divisible.<sup>90</sup> Such a change of perception may not only enhance the EU's regional hegemony, but also provide it with enhanced security, which constitutes the subject matter of the following Section.

#### 4. Enhanced Security

According to the EU, most of the countries in the Middle East are afflicted by structural social, political and economic problems. These include deficits in governance, marginalisation of women, poor implementation of international human rights conventions, insufficient independence of legal and judicial systems, low status of non-governmental organisations, unevenly dispensed education, authoritarianism and poor economic and social performance.<sup>91</sup>

<sup>87</sup> For analysis, see C. Baudenbacher, *The EFTA Court – an Example of the Judicialisation of International Economic Law*, 28 *European Law Review* 880 (2003).

<sup>88</sup> For analysis, see S. D. Krasner, *Sovereignty: Organized Hypocrisy* (1999).

<sup>89</sup> Krasner, *supra* note 79, at 234; R. N. Cooper, *The Economics of Interdependence* (1980).

<sup>90</sup> S. Barkin & B. Cronin, *The State and the Nation: Changing Norms and Rules of Sovereignty in International Relations*, 48/1 *IO* 107, at 109 & 128 (1994). See also the works of D. Sarooshi, *Sovereignty, Economic Autonomy, the United States, and the International Trading System: Representations of a Relationship*, 15/4 *European Journal of International Law* 651, at 654 (2004); D. A. Lake, *The New Sovereignty in International Relations*, 5/3 *International Studies Review* 303 (2003); J. Bartelson, *The Concept of Sovereignty Revisited*, 17/2 *European Journal of International Law* 463, at 466 (2006).

<sup>91</sup> Communication from the Commission to the Council and the European Parliament, *Reinvigorating EU actions on Human Rights and democratisation with Mediterranean partners*, Strategic Guidelines, Brussels 21.05.2003 Com(2003) 294 final, at 4.



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Such structural problems have been linked to threats facing Europe, such as political extremism, terrorism, socio-economic unrest, narcotics trafficking, illegal immigration and the continuation of regional conflicts.<sup>92</sup> After all, as the former French Foreign Minister, H. de Charette has noted, “when violence returns to the Middle East, sooner or later it will show up in Paris.”<sup>93</sup>

The EU wishes to tackle these challenges. Already in 1997 the EU expressed its interest in addressing this state of affairs by advancing security and stability through the advancement of socio-economic, legal and political reforms, the latter serving as “long-term guarantees for peace and stability.”<sup>94</sup>

In recent years the EU has increased its efforts to export its successful internal campaign, relying on that interface between economic liberalisation, cooperation, development, dependence, and enhanced security.<sup>95</sup>

Our continent has been transformed. It was once a cauldron boiling over with conflicts. And today Europe is a powerhouse for peace, generating stability and prosperity beyond its borders. The Union has brought us one of the longest periods of peace in our history. And it has set an example that gives hope to millions around the world. Our success shows we have found a model that works. A model to draw on in managing relations between states in our neighbourhood and even beyond.<sup>96</sup>

The EU would like it to be seen as a “silent disciplining power on the near abroad”,<sup>97</sup> serving as “an arc of stability”.<sup>98</sup>

One of the instruments utilized for that purpose is the European Neighbourhood Policy. The ENP purports to serve as an instrument that would integrate, to an extent yet to be determined, the economies of the neighbouring countries into those of the enlarged Union, in order to contribute to prosperity for the EU neighbours, with resultant positive stability and security spillovers for the EU itself.<sup>99</sup>

<sup>92</sup> N. Tocci, *Does the ENP Respond to the EU's Post Enlargement Challenges?*, XL/1 The International Spectator 21 (2005); F. Tanner, *North Africa: Partnership, Exceptionalism and Neglect*, in R. Dannreuther (Ed.), *European Union Foreign and Security Policy – Towards a Neighbourhood Strategy* 135 (2004).

<sup>93</sup> R. Dannreuther, *The Middle East- Towards a Substantive European Role in the Middle East Peace Process*, in R. Dannreuther (Ed.), *European Union Foreign and Security Policy – Towards a Neighbourhood Strategy* 151, at 152 (2004).

<sup>94</sup> Commission of the European Communities, *Communication of the Commission, Agenda 2000: for a Stronger and Wider Union*, DOC 97/6 (15 July 1997), pt. I.

<sup>95</sup> P. Bilgin, *Whose “Middle East”? Geopolitical Inventions and Practices of Security*, 18/1 *International Relations* 25, at 34 (2004).

<sup>96</sup> Speech by Romano Prodi, former President of the European Commission, on ‘Europe and Peace’ at the University of Ulster (Derry) 1 April 2004: [http://europa-eu-un.org/articles/fi/article\\_3372\\_fi.htm](http://europa-eu-un.org/articles/fi/article_3372_fi.htm).

<sup>97</sup> O. Waever, *Insecurity, Security and Asecurity in the West European Non-War Community*, in E. Adler & M. Barnett (Eds.), *Security Communities* 99 (1998).

<sup>98</sup> R. Prodi, as quoted in Magen, *supra* note 1, at 511.

<sup>99</sup> The EU intends to utilize the European Neighbourhood Policy as an instrument that will promote economic construction, democracy, good governance and the rule of law, as well as civil, political, economic, social and cultural human rights in its neighbouring countries. Brussels, 11 March 2003, Com(2003) 104 final. For analysis, see G. Harpaz, *The Effectiveness of Eu-Rope's “Soft” Power Instruments in its Relations with the State of Israel*, 7 *Cambridge Yearbook on European Legal*

[C]ommitment will also be sought to certain essential aspects of the EU's external action, including in particular, the fight against terrorism and the proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution.<sup>100</sup>

Such a course of action on the part of the EU can be explained in terms of Realism. Realists believe that the relative gains hypothesis applies to the economy as well as security, because economic gains can ultimately be transformed into security gains.<sup>101</sup> In accordance with Realist assumptions, EU Member States are preoccupied with security. The ENP may thus be viewed by Realists as a security-enhancement instrument. The gradual spread of democracy, the rule of law, and prosperity in progressively wider circles from the western European core, as advanced under the auspices of the ENP, is credited with the attainment of stability and security.<sup>102</sup>

Admittedly, Realism does not ascribe much importance to the Law, as compared, for example, with Constructivism, as it is focused on anarchy, power and so forth. Nonetheless, in our context approximation of laws, regulatory practices and standards to those of the *acquis* may be perceived by Realist as one component in the above-mentioned EU strategy. Such a legislative move and the resultant enhanced integration of the Mediterranean markets to the Internal Market may further increase the Mediterranean countries' dependence on European markets, while such increased dependence may impose further restrictions on their political autonomy, with positive spillover effects for the EU in security terms.

Such a legislative move on the part of the EU's ENP partners may require them to perform economic reforms and open domestic markets to European exporters, thereby limiting their sovereignty, in general, and their economic sovereignty, in particular.<sup>103</sup> Consequently, the EU would be better positioned to force the Mediterranean countries to take upon themselves political obligations that will ultimately enhance its own security.

Such an approach may apply to Israel. Although Israel, according to the EU, functions as a well-established parliamentary democracy,<sup>104</sup> two major problems still prevail: the difficulty of reconciling the declared Jewish nature of the State of Israel with the rights of Israel's non-Jewish minorities, and violations of human

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Studies 159 (2005); G. Harpaz, *A Proposed Model for Enhanced EU-Israeli Relations: Prevailing Legal Arrangements and Prospective Juridical Challenges*, 40/6 *Journal of World Trade* 1115 (2006); Kelley, *supra* note 73; R. Del Sarto, R. Schumacher & T. Schumacher, *From EMP to ENP: What's at Stake with the European Neighbourhood Policy Towards the Southern Mediterranean?*, 10/1 *EFAR* 17 (2005); R. Balfour & A. Rotta, *Beyond Enlargement. The European Neighbourhood Policy and its Tools*, XL/1 *The International Spectator* 7 (2005); E. Emerson, *The Wider Europe Matrix* (2004).

<sup>100</sup> EU-Jordan Action Plan, *supra* note 39, at 13.

<sup>101</sup> Snidal, *supra* note 56, at 173.

<sup>102</sup> For further elaboration of the motivating factors affecting the need to define a new foreign policy in the post-enlargement era *see* Magen, *supra* note 1, at 509-513.

<sup>103</sup> Hirsch, Inbar & Sadeh, *supra* note 69, at 94. *See* Steinberger, *supra* note 79.

<sup>104</sup> EU-Israel Action Plan (2005), [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (last visited 6 June 2007).

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rights in the Occupied Territories.<sup>105</sup> In the opinion of the EU, these problems hamper the resolution of the Middle East conflict, with resultant destabilizing effects in security terms.

The EU may thus use the European Neighbourhood Policy and the economic promise embedded in it as an instrument to exert some pressure on Israel on those two fronts, with the hope that Israeli reforms may contribute to more pacific relations in the Middle East, with resultant security benefits for the EU and for the Middle East states and peoples.<sup>106</sup>

It is nowadays indeed very difficult for a small country, like Israel, to thrive in economic terms, without joining a regional economic block. Israel is gradually coming to terms with this state of affairs, appreciating the importance of the EU as a soft power and as a global and regional economic player.

Israel recognizes that in the post Cold War situation that has evolved, the EU's ever-increasing size, its economic and political weight and importance, and as well as the potential economic benefits of the ENP, when combined, would require her to pay greater attention to criticism, voiced by Brussels and in some of Europe's national capitals, of some of Israel's more controversial political and security policies.

A case in point for the link between enhanced integration, increased interdependence and the erosion of political independence is the resolution of the EU-Israeli conflict over the legal treatment of products exported to the EU from the Territories, which have been under Israel's control following the Six Days War (1967).<sup>107</sup> Israel's willingness to adopt an EU-sponsored solution relating to the legal treatment of goods exported from the Territories manifests her growing recognition of the aforesaid dynamic regional reality and her willingness to accept that the gradual increase of powers by the EU, and Israel's resultant growing economic dependence on the EU, would require Israel to be more attuned to the political demands of Brussels.<sup>108</sup>

This gradual change of Israeli perceptions is also reflected in the EU-Israel Action Plan, signed under the aegis of the ENP. Under the Action Plan, Israel undertook far-reaching political commitments *vis-à-vis* the EU. She undertook, for example, to work "together with the EU ... with the aim of reaching a comprehensive settlement of the Israeli/Palestinian conflict and a permanent two-

<sup>105</sup> *Id.*

<sup>106</sup> As Magen argues, the European Neighbourhood Policy can embody a bold offer of a qualitatively enhanced economic, political and strategic relationship, in the context of a withdrawal from the Gaza Strip and the eventual peace deal with the Palestinians, see A. Magen, *Building Democratic Peace in the Eastern Mediterranean: An Inevitably Ambitious Agenda*, Working Paper Number 9, Stanford Institute for International Studies 129.(2004).

<sup>107</sup> G. Harpaz, *The Dispute over the Treatment of Products Exported to the European Union from the Golan Heights, East Jerusalem, the West Bank and the Gaza Strip – The Limits of Power and the Limits of the Law*, 38/6 *JWT* 1049 (2004); C. Hauswald, *Problems Under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip Under the EC-Israel Association Agreement*, 14/3 *European Journal of International Law* 591 (2003); M. Hirsch, *Rules of Origin as Foreign Policy Instruments?*, 26 *Fordham International Law Journal* 572 (2003).

<sup>108</sup> Harpaz, *id.*

state solution with Israel and the Palestinian state living side by side in peace and security ...”, and to minimize “the impact of security and counter-terrorism measures on the civilian population.”<sup>109</sup>

Such a change of perceptions is also evident in Israel’s willingness to allow EU involvement in the monitoring of the Palestinian-Egyptian cross point at Rafah and in her positive response to the decisions to send soldiers from various Member States to South Lebanon.

Thus, indirectly, and in the long-run, approximation of laws, broadly defined, may erode Israel’s political autonomy, with positive spillovers for the EU in security terms.

## E. Summary and Conclusions

The European Union has in recent years offered neighbouring countries in the Mediterranean enhanced trade and political relations. In return, it expects them, *inter alia*, to align their legislation, regulatory practices and standards to an extent yet to be determined, with its *acquis communautaire*. Recent scholarship in this field focuses on the more normative, value-based aspects of such external Europeanization. The purpose of this article is to contribute to existing literature, by examining the *raison d’être* of such EU legislative pressures, focusing on their more rational, self-interest, security-based and hegemony-motivated perspectives. Such examination of EU-Mediterranean legislative approximation was performed from the perspective of the EU, focused on the EU-Israeli relations, and through the prism of the IR theory of Realism. The findings of the paper are that these EU legislative pressures, and their overarching policy, the European Neighbourhood Policy, may be explained as part of the EU’s strategy of reducing international uncertainties, gaining regional and global hegemony, increasing its relative gains from cooperation, and providing for it a more secured regional environment. Further research will be called for to examine the compatibility and commensurability of the value-based perspectives of the exportation of the EU *acquis* to the neighbouring countries, with the more self-interest, security-based and hegemony-motivated perspectives of such EU activity.<sup>110</sup>

<sup>109</sup> Article 2.1 of the EU-Israel Action Plan, [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm) (last visited 6 June 2007).

<sup>110</sup> For such examination of the EU in the field of human rights, see Youngs, *supra* note 2.