



Law Department

The European Neighbourhood Policy: A Framework for Modernisation?

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***Can the EU Promote Democracy and Human Rights Through
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1. Introduction

The European Neighbourhood Policy (ENP) in theory represents an important step forward in placing democracy and human rights at the forefront of the EU's foreign policy priorities. This is clear when comparing and contrasting the ENP's aims to previous initiatives, including the partnership and cooperation agreements (PCA) with the eastern neighbours and the Euro-Mediterranean Partnership (EMP) and association agreements with the southern neighbours. A greater specification of human rights and democratic standards together with the institutionalization and operationalization of joint ownership entrust the ENP with greater potential to promote democracy and human rights within its neighbours. Yet delving deeper into the Policy's aims, mechanisms and procedures suggests not only that its democracy and human rights ambitions are not fully met, but also that these ambitions arguably cannot be met by a policy of its kind. It is thus suggested that the Union may be best advised to set its democracy and democratization rhetoric aside, while paying greater substantive attention to another of its milieu goals: the promotion of the rule of law.

2. Promoting Democracy and Human Rights through the ENP: The Potential

From the outset, the ENP placed a visibly higher emphasis on democracy and human rights compared to its predecessor policies both to the east and to the south. This was due to two principal factors related to the south and the east respectively. Vis-à-vis the south, the approaching tenth anniversary of the 1995 Barcelona Declaration – which was aimed at supporting peace, democracy, human rights, dialogue, cooperation and development – made EU actors appreciate that the logic underpinning the EMP was proving faulty. The expectation that higher growth rates and economic development would automatically and endogenously spark political

reform and democratization was manifestly not being met as pointed out by the successive UNDP Arab Human Development Reports (UNDP 2002, 2003, 2005 and 2006). In countries such as Tunisia, economic modernization was taking place, yet so was a strengthening of authoritarian rule. In countries such as Egypt, Morocco or Jordan, stagnant economic development coexisted alongside with a restructuring of authoritarianism and persisting violations of human rights and fundamental freedoms (Cavatorta and Volpi 2006; Pioppi and Guazzone 2004). Adding to this, the ENP was borne out of a geopolitical context in which mounting security threats triggered by the 11 September 2001 attacks in New York and Washington and then followed by the subsequent attacks in Madrid in 2004 and London in 2005 induced policy-making quarters in Europe to delve deeper into the interconnectedness between acute security threats and the wider political, economic and social contexts from which these derive (Joffe 2007). Hence, at the level of policy debate as well as in official documents and declarations, growing attention has been paid to the links between deficient democracies, human rights violations, escalating conflicts, international law violations, ill-governance and unequal development on the one hand, and security threats such as terrorism, weapons proliferation, organized crime and illegal migration on the other. The attempt to uncover the 'root causes' of security threats was made explicit in the EU's 2003 Security Strategy, as well as in the documents founding the basis of the ENP in 2002-4 (European Council 2003, Commission 2003 and 2004a).

With respect to the eastern neighbourhood, EU actors and in particular member states such as Germany, Sweden, the United Kingdom as well as the Commission felt the growing urge to capitalize on the success of the enlargement in inducing the democratic transformation of Central and Eastern Europe (Comelli, Greco and Tocci 2007). Enlargement has often been cited as one of the EU's most salient foreign policy success (Smith 1998, Shimmelfennig and Sedelmeier 2005). This is because of its effectiveness in inducing the democratization and modernization of formerly communist countries in the political, institutional, economic and social spheres (Sedelmeier 2006). In this context, several EU actors undertook the challenge to resolve a fundamental conundrum besieging European foreign policy, i.e., the fact that the EU could not enlarge indefinitely, yet at the same time it wished to apply, *mutatis mutandis*, the lessons of enlargement to its neighbourhood (Wallace 2003, Smith 2005). In particular it wished to make use of the logics of conditionality and social learning successfully applied to the CEECs to encourage

democracy, human rights and economic reform and development in its neighbours further afield. (Kelley 2006).

Indeed, the ENP's policy outputs have placed greater and more explicit emphasis on democracy and human rights compared to previous initiatives towards the neighbouring south and east. In the context of the EMP, the Barcelona Declaration solemnly declared the parties' commitment to international law, the UN Charter, the Universal Declaration of Human Rights (UNDHR), democracy and the rule of law. In addition, article 2 of the Euro-Med association agreements defined democratic principles and human rights established under the UDHR as 'essential elements' of the agreements, which could justify their suspension if the violation of these essential elements constituted a material breach (article 79). Likewise, article 2 of the PCAs defined democracy, international law, human rights and market economy as essential elements, also allowing for the possibility of suspension in the event of a violation of these essential elements. Yet the Union has never made use of these articles to exert conditionality on the democracy and human rights fronts in its southern and eastern neighbours.

By contrast, the ENP's documents and the ensuing Action Plans agreed with five eastern and seven southern neighbours as of March 2007 highlighted the country-specific democracy and human rights reform priorities there. This has been truer for some neighbours than for others. In neighbours such as Ukraine, Georgia, Moldova and the Palestinian Authority, the Action Plans specified detailed reform priorities in the areas of institutions and governance, elections and electoral laws, human rights and fundamental freedoms, and the development of civil society. In the case of the Action Plan with the Palestinian Authority, one of the primary declared purposes of the ENP was precisely that of promoting political and economic reform (Commission 2004b, 1). Following the agreement on the Action Plans, the Union also established specific human rights sub-committees to benchmark and monitor progress in democracy and human rights in several of its neighbours. In other words, the ENP seemed to indicate a qualitatively different degree of EU attention to democracy and human rights. It mentioned explicitly reforms in the constitutional, electoral, judicial, governance and civil society domains where the EU and the neighbours should seek to further reform. It also established the necessary institutional mechanisms to monitor and benchmark progress in these domains.

In addition, particularly since 2004 the ENP has placed much emphasis on the idea of 'joint ownership'. The notion of joint ownership and partnership has been part of the EU lexicon for many years. As the names suggest, it was a strong rhetorical

component of both the multilateral Euro-Mediterranean *Partnership* to the south and the bilateral *Partnership* and Cooperation Agreements with the east. Yet more so than in these previous initiatives, the ENP embedded the notion of partnership both in the rhetoric and in policy practice. At the declaratory level, the ENP explicitly considered development and reform as the ‘sovereign responsibility’ of the neighbours (Commission 2006, 4), believing the EU should not ‘impose’ but should ‘support the region’s own reforms’ (Ferrero Waldner, 2007, 4). At the level of policy procedure, the notion of partnership was entrenched in the process culminating in the publication of the Action Plans. The Action Plans were in fact the product of negotiations between the Commission and the neighbouring countries, where both parties selected and agreed upon the democracy and human rights priorities (amongst other areas) requiring change, reform and support. This stood in contrast to the Commission’s Progress Reports and the Accession Partnerships in the context of enlargement. Although the ENP Action Plans and Country Reports were visibly modelled on the Accession Partnerships and the Progress Reports (Tulmerts 2006), in the case of enlargement, the EU alone monitors, benchmarks, judges and recommends reforms within the candidate countries.

The idea of partnership could in principle be a value-added to the EU’s democracy and human rights strategies. This is in view of the oft-repeated argument that political change must be home-grown and cannot be imposed from the outside. More specifically, the colonial legacy of several member states in the southern Mediterranean has discredited the Union’s legitimacy in ‘imposing’ reforms from outside. Doing so would be perceived especially in the south as a revival of the European ‘*mission civilisatrice*’, which proclaimed the virtues of free trade, Christianity and science that would bring peace, order, and civilization to the rest of the world. Avoiding these historical normative traps, the ENP Action Plans carefully selected those reform priorities identified by the neighbours themselves. Hence, Jordan’s Action Plan mentioned the reforms in governance, the judiciary and the public sector pinpointed by the regime; Moldova’s Action Plan espoused Chisinau’s ‘National Human Rights Action Plan’; and Morocco’s Action Plan approved the reforms in the fields of decentralization, modernization of the prison system, and family law set forth by the Monarchy. Beyond agreement with ruling officials, the ENP also sought the involvement of civil society and the private sector. In the case of Georgia for example, many NGOs took an active interest in the ENP, feeding their input and suggestions regarding the democracy, human rights and conflict

resolution priorities in official negotiations over the Action Plan.¹ The civil society focus of the ENP was strengthened further in the Commission's 2006 Communication, which aimed at enhancing people-to-people contacts especially in the fields of education, research and culture (Commission 2006). The ENP would thus spur and support the political reforms which resonated within the official circles, the private sectors and the civil societies of the neighbouring countries themselves.

3. ENP, Democracy and Human Rights: The Limits

These arguments praising the ENP's potential, in one form or other, have been part of the ENP's official discourse (Commission 2003, 2004a, 2006). In relation to these arguments, there has also been a burgeoning academic and policy literature on the ENP (Emerson 2002 and 2004; Tocci 2004; Dannreuther 2004; Smith 2005; Emerson Noutcheva and Popescu 2007). Much of this literature has criticized the evolution of the Policy, while praising its potential. Yet a closer look at the Policy suggests not only that the ENP's democracy and human rights rhetorical aspirations are well above its potential, but also that the ENP *cannot* engender meaningful change in these areas.

A notion that underlies the ENP's emphasis on partnership is the idea of shared values. This is the assumption that the EU and its neighbours in principle share the same commitment to the values of democracy, human rights, the rule of law and international law. The implication of this premise is that the serious deficiencies in the neighbourhood in the areas of democracy and human rights are primarily rooted in problems of capability and implementation, rather than of intent and ideology. The Union does acknowledge that implementation of these shared values in the neighbourhood is all but secured. Indeed one of the principal aims of the Policy is precisely that of supporting the commitment in practice to the common values of democracy, human rights, the rule of law and good governance. This commitment in practice is to be strengthened primarily through political support, economic aid and technical assistance, including the new governance facility within the European Neighbourhood and Partnership Instrument (ENPI), setting aside funds destined to those countries that demonstrate commitment in furthering political reforms.

When delving deeper into the reasons why the implementation of these shared values is rarely met, the Commission has introduced an implicit distinction between

¹ Interview with Open Society Institute representative, Tbilisi, April 2006.

‘willing’ and ‘hesitant’ neighbours. It has argued that it would help those neighbours who are ‘willing’ to reform to do so faster, better and at a lower cost to their citizens; while at the same time providing greater incentives for those countries that are still ‘hesitant’ to engage in deep and comprehensive political reform (Commission 2006, 1-2). The Commission has thus categorized its neighbours in a manner that cuts across the typical eastern versus southern divide, basing itself on the difference between willing and hesitant countries when it comes to the substantive commitment to shared political values. In the former category, the neighbours are ‘willing’ to see a strong EU involvement in supporting their internal political transformation towards democracy and the greater respect for human rights and the rule of law. In the latter category, the neighbours are ‘hesitant’ to allow the EU to spur democratic and human rights reforms by interfering in their sovereign competencies. However, in both cases the Union has not questioned the neighbours’ general commitment to these values in principle. Yet as argued below, while the absence of this questioning does not hinder in principle the ENP’s potential vis-à-vis the willing neighbours, it lies at the heart of why the ENP is likely to fail in promoting democracy and human rights in hesitant partners.

4. The Contradictions in the ENP’s Democracy and Human Rights Promotion within ‘Willing Neighbours’

The willing neighbours include countries such as Georgia, Lebanon, Moldova, Palestine and Ukraine. These are all countries which have openly and officially called for a deeper and more structured EU involvement in the fields of governance and political reform. In these cases, the ENP’s democracy and human rights aspirations could be met in principle. Yet the operationalization of the Policy towards these countries demonstrates how this potential has been watered down considerably. This has been for three main reasons, two of which relate to the insufficient incentives or ‘carrots’ offered by the ENP, and the third relates to the nature and scale of the democracy and human rights problems faced by these countries.

With the exception of Palestine and Lebanon, the willing countries (Georgia, Moldova and Ukraine) are also those with a declared aspiration to join the Union. Yet the political message sent by the ENP is precisely that of exclusion, explaining the lukewarm support the ENP received in these willing neighbours and the EU’s ensuing difficulty in promoting political reform there (Smith 2005). In its early days, the architects of the ENP appreciated the importance of fudging the question of EU

inclusion versus exclusion. In 2002, former Commission President Prodi stated that the neighbourhood policy would not start with the promise of membership but would not exclude eventual membership either (Prodi 2002). Yet over the course of 2003-6, in view of the EU's internal crisis over the failed Constitutional Treaty and the rampant 'enlargement fatigue' within several 'old' member states, EU actors became increasingly explicit in ruling out any accession prospects for the neighbours. The ENP was in fact presented precisely as a substitute for membership (Emerson 2004). This generated major disincentives in countries such as Moldova and Ukraine. No matter how valuable the ENP instruments and incentives were, to the extent that they were offered and perceived as second-class substitutes to full membership, they were not appreciated by these neighbours. This generated strong feelings of alienation from the EU and from its appropriated 'political values', dramatically reducing the EU's prospects to encourage democracy and human rights through the second-class ENP.

The case of Ukraine is an interesting example in this respect. The orange revolution in 2004-5 is often depicted as one of the first successes of the nascent ENP in promoting the political transformation of the neighbourhood towards greater democracy and respect for human rights. Yet delving deeper into the evolution of the regime change in Ukraine and the role played by the EU in it, the ENP acted more as an obstacle than as a promoter of change. When Javier Solana stepped into the crisis in November 2004, the ENP was reportedly not used as an argument and incentive to persuade the parties to rerun for elections in December that year.² Although the ENP Action Plan was agreed with the Kuchma regime earlier in 2004 and was held back in view of the electoral irregularities in the country, this use of negative conditionality was hardly the trigger for the electoral break-through in December. On the contrary, during the run-up to the December elections, Prodi infamously declared that the Ukraine had as much of chance of joining the EU as New Zealand did, weakening the pro-European/pro-Western front led by Victor Yushchenko (Barysch and Grant 2004).

Aware of this major disincentive effect, by late 2006 the Commission both distanced itself from any parallels drawn between enlargement and the ENP, and it reverted back to the 'constructive ambiguity' over the membership question which characterized the early years of the ENP. The Commission (2006, 2) thus stated that while 'distinct from the enlargement process', the ENP would evolve 'without prejudging how their (i.e., the neighbours') relationship with the EU may develop in

² Interview with Council official, January 2005, Brussels.

the future, in accordance with Treaty provisions'. In a non-committal way, the Commission thus left the door open to those European neighbours which could apply for membership under article 49 of the Treaty of the EU.

Turning to willing neighbours that are either not interested in joining the Union (Palestine and Lebanon) or that, while aspiring to membership, view the ENP as a potentially valuable step towards closer EU integration (Georgia), the ENP's stalled potential to promote democracy and human rights is due to the insufficient incentives on offer. In principle, the ENP includes measures which are long-run and structural, and which are distinctively more valuable than those offered under previous EU initiatives. These instruments should be bolstered further if the Commission's 2006 proposals are accepted. These benefits would include enhanced bilateral agreements (allowing for 'deep free trade' between the EU and neighbouring countries); a multilateral free trade 'neighbourhood economic community'; multilateral cooperation on energy and transport; bilateral visa facilitation for categories of travellers; an enhanced EU role in regional cooperation schemes such as the Black Sea Economic Cooperation; an enhanced ENPI with a budget of €11.2bn in 2007-13, and the activation of the European Investment Fund (EIF) with a grant-making budget of €12.4bn (2007-13) in collaboration with the lending facilities of the international financial institutions active in these regions. These enhanced benefits should help realize the ENP's potential to spearhead reforms in the democracy and human rights domains.

Yet the most valuable trade and visa aspects of this 'ENP Plus' are directed primarily at Ukraine and Moldova, rather than at the South Caucasus and the Arab Mediterranean. The 'governance facility' component in the ENPI is meagre, standing at €300m in 2007-13 for the eastern and southern neighbourhoods combined. Finally, when it comes to the Palestinian Authority these wide-ranging benefits in the fields of trade, visa policy, and people-to-people exchanges not contemplated because of the non-state, non-sovereign and conflict-ridden Palestinian context. Moreover, following the election of Hamas in January 2006, the ENP towards Palestine has been essentially frozen, eliminating all prospects for the Policy to spur democratic and human rights reforms in the occupied territories.

Finally and related to this last point, the political and economic problems encountered within the willing neighbours are such that the ENP can at most work at the margins of the monumental transformation endeavours present on the ground. Within the willing neighbours, some countries are marred by conflict and do not exercise full sovereign control over their territory (Lebanon, Moldova, Georgia

and Palestine), others have undergone recent regime changes and revolutions (Georgia and Ukraine), and some are still far off from establishing an independent state, let alone a democratic and human rights abiding one (Palestine). Hence even if the Commission's proposals for an enhanced ENP were adopted, operationalized and implemented across the eastern and southern neighbourhoods, these may well remain below the level of support and engagement necessary for the EU to meaningfully contribute to democratization and the promotion of human rights in its problematic neighbourhood.

5. The Contradictions in the ENP's Democracy and Human Rights Promotion within 'Hesitant Neighbours'

The ENP's low potential to support democracy and human rights within willing neighbours dissipates entirely when turning to the hesitant ones. This far more numerous group of countries includes Algeria, Armenia, Azerbaijan, Belarus, Egypt, Israel, Jordan, Libya, Morocco, Russia, Syria and Tunisia. Here, the Union's unquestioned belief in the theoretical sharing of values, including democracy and human rights, is far more doubtful. Indeed the 'hesitation' of these neighbours may not simply be due to their reluctance to allow the Union to meddle in their internal affairs. Far more seriously, their hesitation may well be due to the strong internal disincentives in these countries to pursue wide-ranging political reforms.

Hence, if this fundamental assumption about shared political values does not hold, then the entire design of the ENP's democracy and human rights dimension towards hesitant countries collapses. If values are not shared, and if political shortcomings are the product of existing incentive structures and not of deficient capabilities, then how can the ENP, which is based on partnerships with existing regimes, affect democracy and human rights in these countries? If democratization and human rights call for a redistribution of powers, the legal and institutional installation and protection of rights and the enhancement of political participation, it is unclear how EU relations with states, whose nature and modus operandi often negate these developments, can meaningfully promote these values. At most, EU (and US) policies can and have inspired formal changes in the political set-up of these countries. Yet these changes, approved and implemented by existing regimes, far from being the first steps towards a genuine process of democratization, have acted as the necessary means to re-legitimize existing structures and practices in the light

of changing regional and international contexts (Guazzone and Pioppi 2004, Schlumberger 2006).

Alongside the questionable commitment to democracy and human rights of the neighbouring regimes, is the extent to which the EU itself prioritises these values. The EU's aims in the neighbourhood can be labelled as milieu and possession goals (Wolfers 1962). Milieu goals aim at transforming the environment by promoting peace, democracy, human rights, the rule of law, international law and sustainable development in the neighbourhood. By contrast, possession goals aim at protecting and advancing narrower EU (and member state) interests in the neighbourhood such as commercial relations, migration and border management or energy security. An ironclad distinction between milieu and possession goals cannot be made. The advancement of allegedly milieu goals may underlie the pursuit of narrower possession objectives. Imposing sanctions or waging war in the name of democracy and human rights can cover aims such as protecting energy security. Engaging in the neighbourhood may be viewed as an attempt to engender hegemonic control. This is in fact a widespread Russian view of the EU's Neighbourhood Policy. Moreover, milieu and possession goals may well be compatible if not mutually reinforcing in the long-term. Indeed the Union's management of migration flows, its fight against organized crime and terrorism and its securing of reliable energy supplies all depend on the rule-bound transformation of its neighbourhood.

Yet milieu and possession goals may instead compete or appear to compete in the short to medium term, in specific contexts and at particular points in time. In the short-run, the destabilization that comes with an effective pursuit of transformationist milieu goals may hinder the pursuit of possession goals. An EU supported democratic revolution in a formerly authoritarian state may well be accompanied by instability and chaos, that may reduce the short-run prospects of controlling the legal flow of migrants or the fight against organized crime. Entrenching human rights in a neighbouring country constrains the free hand of regimes to curb crime and terrorism through human rights abuses such as torture. Encouraging free and fair elections in a neighbouring state may lead to the rise to power of a government whose policy contrasts with the EU's commercial interests or its energy demands. In other words, while in principle and intuitively a democratic and human rights environment in the neighbourhood is also one that serves the Union's more narrowly defined interests, in specific cases and at specific points in time this may not always hold true or be perceived as such by EU actors.

Even more seriously, the means employed to pursue milieu versus possession goals may well contrast, rendering the concomitant pursuit of these two sets of objectives incompatible. This is primarily because possession goals rely upon close cooperation with third states, whose authoritarian nature often represents the primary obstacle to a democratic and rights-based transformation of the neighbouring milieu. Hence irrespective of the complementarity or contrast between milieu and possession goals in and of themselves, while the former rests on the logic and means of conditional engagement in order to induce transformation, the latter relies on the means of cooperation with status quo actors in order to secure EU interests. The tension this gives rise to renders the pursuit of these two sets of goals incompatible. As put by Gillespie and Youngs in relation to the southern Mediterranean: ‘it becomes difficult to develop a democracy promotion strategy that does not conflict with efforts that require consent and collaboration in other areas’ (Gillespie and Youngs 2002, 6). In other words, if cooperation is the necessary route to pursue EU possession goals, yet cooperation should also act as the conditional incentive to induce political transformation in the neighbourhood, then the inherent credibility of EU policies aimed at democracy and human rights dramatically reduces.

What emerges is thus a fundamental contradiction inherent in the EU’s goals on the one hand to ‘promote a ring of well-governed countries to the East of the EU and on the borders of the Mediterranean’, and on the other hand to enjoy ‘close and cooperative relations’ with these countries (European Council 2003). The same contradiction lay at the heart of the EMP, which aimed to create an ‘area of dialogue, exchange and cooperation’, which would also ‘require a strengthening of democracy and human rights’ (Euro-Mediterranean Conference 1995). If close and cooperative relations are instrumental to the fulfillment of the Union’s possession goals, they cannot also act as the means to induce progress in democracy and human rights in the neighbourhood. Unsurprisingly, the EMP manifestly failed at supporting the EU’s milieu goals in the southern neighbourhood.

Worst still, in the current geopolitical environment and in light of this potential contradiction in the pursuit of milieu and possession goals, the problem for the ENP exacerbates given that, if faced with a choice, EU actors often prioritise possession over milieu goals. This is true both for the east and for the south. In both neighbourhoods, the securitization of possession goals such as energy, migration, borders, terrorism and organized crime in the 21st century have come to trump the pursuit of more diffuse and long-term aims such as democracy and human rights.

In addition, the Union seems to be increasingly dependent upon several of its neighbours, well aware that cooperation with these countries is necessary to fulfil many of its possession objectives. For example, in the energy realm alone, EU dependence on its neighbours is manifestly on the rise, as EU demand is rising, northern European supplies declining, while Gulf supplies are being directed increasingly towards the east. Indeed, EU oil dependence is set to rise from 52% to 85% and gas dependence from 36% to 63% by 2030. This entails not only a growing EU need to establish close and cooperative relations with its neighbours, but also a strengthening relational power of those neighbouring states, which do not always share the EU's values of democracy and human rights. Pursuing milieu goals through the use of conditional engagement would in fact require the EU to extricate itself from relations of dependence with its neighbours, particularly if the domains of dependence are precisely those which are viewed by EU elites and publics as vital to the Union's security interests.

It is within this context of shifting EU priorities that over the course of the ENP's evolution the Union has placed decreasing levels of attention to the logic of political conditionality aimed at democracy and human rights. It has instead paid greater attention to cooperation with its neighbours aimed at jointly tackling problems of migration and border management (e.g., through the focus on readmission agreements), securing reliable energy supplies (e.g., through energy and transport networks), or the fight against organized crime and terrorism (e.g., through intelligence sharing). This shift has been fudged through the discourse of 'shared values' and 'joint ownership'. Indeed while Prodi (2002) initially spoke of specifying 'Copenhagen proximity criteria' to engage in serious political conditionality towards the neighbourhood, by the time the Action Plans were drawn up, most reform priorities and benchmarks in the areas of democracy and human rights were either vaguely mentioned or omitted altogether. In most cases, the Action Plans limit themselves to calling open-endedly for the 'freedom of the press', 'the involvement of political parties' or 'the development of civil society', without defining clearly specific reforms, benchmarks and timelines for implementation (del Sarto 2006). The Action Plans also fail to mention key problems such as widespread torture in Tunisia, the lack of separation of powers in most southern Mediterranean neighbours or the human rights situation of the Palestinian minority in Israel. Furthermore, the vague political priorities which are mentioned in the Action Plans are unconnected to the delivery of the EU benefits on offer, voiding the ENP of its

potential to induce democracy and human rights through the use of political conditionality.

To illustrate the arguments raised above, it may be useful to contrast the ENP with the enlargement policy, which was instead notoriously successful in inducing the political and economic transformation of the candidate countries. Beyond the different local contexts and points of departure of different countries (in economic, political and social terms), the contradiction between milieu and possession goals was far more diluted in the case of enlargement. First, the Copenhagen criteria applied to the candidate countries became a prime source of identification for the EU itself. It is in fact interesting to note that with the (notable) exception of minority rights, the Copenhagen political criteria amount to the very same values pinpointed in the Treaty of the EU (article 6(1)) to define the political identity of the Union itself (de Witte 2002). As such, it became imperative for EU actors that the candidates expected to enter the Union would align themselves to the fledging political identity which the EU had chosen for itself. Second and linked to this, in the case of enlargement, the EU's possession and milieu goals were largely interdependent. This was because the Union – intent in welcoming the CEECs into its fold – could not afford to incorporate undemocratic and illiberal regimes which would acquire a say in the internal evolution of the Union itself. As such, the EU's conditions were far more specific and binding, the incentives were stronger and conditionality was more credible. Third, in the case of enlargement, the EU did not ground its policies on the notions of partnership and shared values. The name of the game was precisely that of aiding the candidates to internalize, adopt and implement the EU's values (and make these their own), as well as its rules and regulations. This allowed the EU to play an effective transformative role through conditionality (Grabbe 2005). As such, the ENP, which is modelled on a precedent whose incentives and objectives are so fundamentally different, is most likely to fail in the pursuit of milieu goals such as the promotion of democracy and human rights.

The ENP's preference for the pursuit of possession goals through cooperation has induced EU actors to refocus their attention to democracy and human rights by exploring a second channel of EU influence: the logic of social learning (Checkel 2001). The logic of learning (as opposed to that of conditionality) hinges on close, cooperative and comprehensive contacts between EU actors and key stakeholders in neighbouring countries. These contacts engender an uncoerced process of change within the neighbours through exposure to different norms and codes of action. If successful, change inspired by social learning is far deeper and long-lasting, in so far

as it rests on a genuine transformation of values, interests and identities, rather than on a time-contingent recalculation of the costs and benefits underpinning policy choices when faced with external incentives. Hence, the Commission's proposals to align neighbouring countries to CFSP declarations, to allow the neighbours' participation in ESDP operations, to explore means to associate the neighbours to several EU agencies and institutions, to strengthen inter-parliamentary cooperation, to deepen EU diplomatic presence in the neighbourhood, and to develop educational, youth, cultural and civil society exchanges. Yet notwithstanding these efforts at deepening the neighbours' exposure to the EU's normative framework, the degree of contact these initiatives will give rise to is likely to remain far below what would be necessary to induce democracy and human rights through social learning (Tocci 2007).

6. A Way Forward: The Rule of Law

If the Union is committed to fostering political change beyond its current and future borders, a way forward could be to redirect its normative ambitions. This does not entail reversing to quick-fix solutions, such as the promotion and support of anti-systemic opposition political elites within neighbouring countries, which the EU views as more compatible with its ideology and values. Real change must necessarily come bottom-up and from within. All the EU can do, and it would indeed be a momentous contribution if constant and consistent effort was exerted in this direction, would be to create a conducive rule-bound context for political change beyond its borders. This would entail refocusing on the promotion of the rule of law.

Focussing on the rule of law would require the entrenchment of Community and international law in the bilateral relations the EU establishes with its neighbours. The EU is already well placed to do this given that, as opposed to state actors, most of its foreign policies are articulated and carried out through contractual relations with third states. Contractual relations, of which the European Neighbourhood Agreements (or the Enhanced Agreements) may become the deepest and most comprehensive expression, are well versed to allow the EU to mainstream and refocus its attention on the rule of law. This is because these contractual ties cut across pillars, delving into a wide variety of policy areas and affecting a wide range of institutions, laws and administrative structures and procedures within neighbouring countries.

In the context of contractual relations, the rule of law would thus act both as the means through which the Union pursues its external relations, and the milieu goal that it could reasonably promote through rule-bound cooperation. Avoiding the tension between the pursuit of milieu versus possession goals in fact, the channel of influence through which the Union could promote the rule of law would be neither conditionality nor social learning. A third mechanism through which EU contractual relations could influence the rule of law is the passive enforcement of EU rules (or ‘rule application’) (Olsen 2002). Passive enforcement entails pursuing cooperation only when the rules governing a contractual agreement are respected by all parties. Rather than altering incentives by changing the recipient’s cost-benefit calculus through conditionality, passive enforcement hinges on a system of rule-bound cooperation. Within this framework, contractual obligations constitute the necessary rules which make mutually beneficial cooperation possible. In other words, the rule of law would be both the objective and the means through which this objective is pursued. For passive enforcement to work there must be a clear set of legally defined and definable rules embedded in EU contracts. Moreover, these rules must be viewed by the third party as a necessary price that comes with EU engagement. When this occurs, a far more subtle process of change is activated compared to that of conditionality. The cost initially attributed by the third party to the respect of the rule may reduce or disappear through the experience of respecting the rule (i.e., experimental learning).

Particularly in view of the EU’s reluctance to engage in political conditionality towards the neighbourhood and the difficulty to induce change through social learning beyond the sphere of enlargement, passive enforcement can engender the rule of law within and between neighbouring countries. While not amounting to democracy and the respect for human rights per se, the establishment, respect and consolidation of the rule of law would act as the necessary baseline and prerequisite for home grown democracy to emerge and flourish from inside within the Union’s trouble-ridden neighbourhood.

References

- Barysch, Katinka and Grant, Charles (2004) 'Ukraine should not be part of a "great game"', *Open Democracy*, 7 December 2004.
- Cavatorta, Francesco and Volpi, Frederic (2006) 'Forgetting Democratization? Recasting power and authority in a plural Muslim world', *Democratization*, Vol. 13, No. 3, pp. 363-372.
- Checkel, Jeffrey (2001) 'Why Comply? Social Learning and European Identity Change', *International Organization*, Vol.55, No.3, pp.553-558.
- Comelli, Michele, Greco, Ettore and Tocci, Nathalie (2007) 'From Boundary to Borderland: Transforming the Meaning of Borders in Europe Through the European Neighbourhood Policy', *European Foreign Affairs Review*, forthcoming.
- Commission of the European Communities (2003) *Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Communication from the Commission, COM(2003) 104 final, Brussels, 11 March, http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0104en01.pdf
- Commission of the European Communities (2004a) *European Neighbourhood Policy. Strategy Paper*, Communication from the Commission, COM(2004) 373 final, Brussels, 12 May. http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0373en01.pdf
- Commission of the European Communities (2004b) *EU-PA Action Plan*, 9 December, http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf
- Commission of the European Communities (2006) *Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy*, COM(2006)726 final, Brussels, 4 December 2006, http://ec.europa.eu/world/enp/pdf/com06_726_en.pdf
- Dannreuther, Roland (2006) 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', *European Foreign Affairs Review*, Vol. 11, No.2, pp. 183-202.
- Del Sarto, Raffaella (2006) presentation at the ENP conference, EUI, Florence December 2006
- De Witte, Bruno (2002) 'Politics Versus Law in the EU's Approach to Ethnic Minorities', in Jan Zielonka (ed.) *Europe Unbound*, London, Routledge, pp.137-60.
- Emerson, Michael (2002) 'The Wider Europe as the European Union's friendly Monroe Doctrine', Policy Brief, No. 27, CEPS, Brussels.
- Emerson, Michael (2004) 'European Neighbourhood Policy: Strategy or Placebo?', Working Document, November 2004, CEPS, Brussels.
- Emerson, Michael, Noutcheva, Gergana and Popescu, Nicu (2007) 'ENP after two years: time indeed for an ENP Plus', *Policy Brief*, CEPS, Brussels.

- European Council (2003) *A secure Europe in a better world. European Security Strategy*, Brussels, 12 December, <http://ue.eu.int/pressdata/EN/reports/78367.pdf>
- Euro-Mediterranean Conference (1995) 'Barcelona Declaration', 27-28 November, http://ec.europa.eu/comm/external_relations/euromed/bd.htm
- Ferrero-Waldner, Benita (2007) 'Madrid: Fifteen Years Later' conference Madrid, 11 January, SPEECH/07/7. http://ec.europa.eu/world/enp/speeches_en.htm
- Grabbe, Heather (2005) *The EU's Transformative Power: Europeanization Through Conditionality In Central And Eastern Europe*, Palgrave, New York
- Guazzone, Laura and Pioppi, Daniela (2004) 'Democratisation in the Arab World Revisited', *The International Spectator*, Vol.39, No.4, pp.89-100
- Joffe, George (2007) 'Political Spillover from North Africa into Migrant Communities in Europe', *The International Spectator*, Vol.42, No.2, forthcoming
- Kelley, Judith (2006) 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy', *Journal of Common Market Studies*, Vol. 44, No. 1, pp. 29-55.
- Olsen, Johan, (2002) 'The Many Faces of Europeanization?', *Journal of Common Market Studies*, Vol.40, No.5, pp.921-52.
- Prodi, Romano (2002) *A Wider Europe - A Proximity Policy as the key to stability*, Speech given at the Sixth ECSA World Conference on peace, stability and security, Brussels, 5 December. http://ec.europa.eu/comm/external_relations/news/prodi/sp02_619.htm
- Sedelmeier, Ulrich and Schimmelfennig, Frank (eds.) (2005) *The Europeanization of Central and Eastern Europe*, Cornell University Press, Ithaca.
- Sedelmeier, Ulrich (2006) 'The EU's role as a promotor of human rights and democracy: enlargement policy practice and role formation', in O. Elgstrom and M. Smith (eds.) *The European Union's role in international politics: concepts and analysis*, Routledge, London, pp. 118-135.
- Smith, Karen (2005) 'The Outsiders: the European Neighbourhood Policy', *International Affairs*, Vol. 81, No.4, pp. 757-773
- Tocci, Nathalie (2005) 'Does the ENP Respond to the EU's Post-Enlargement Challenges?', *The International Spectator*, Vol. 40. No.1, pp. 21-32.
- Tocci, Nathalie (2007) *The EU and Conflict Resolution: Promoting Peace in the Backyard*, Routledge, London.
- Tulmets, Elsa (2006) in P. Kratochvil (ed.) *The European Union and its Neighbourhood: Policies, Problems and Priorities*, Institute of International Relations, Prague.
- Wallace, William (2003) 'Looking after the Neighbourhood: Responsibilities for EU-25', *Policy Papers* No. 4, Paris, Notre Europe, <http://www.notre-europe.asso.fr/IMG/pdf/Policypaper4.pdf>

Wolfer, Arnold (1962) *Discord and Collaboration: Essays on international politics*, Baltimore, John Hopkins University Press.

Youngs, Richard and Gillespie, Richard (2002) (eds.) *The European Union and Democracy Promotion: The Case of North Africa*. London. Frank Cass.