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DEPARTMENT OF EU INTERNATIONAL
RELATIONS AND DIPLOMACY STUDIES

EU Diplomacy Paper

06 / 2011



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Department of EU International Relations
and Diplomacy Studies

EU Diplomacy Papers

6/2011

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Abstract

This paper analyzes the position of political conditionality in the European Neighborhood Policy (ENP) and its possible reform following the deep changes brought about by the so-called 'Arab Spring' in 2011. It is argued that conditionality has suffered from a limited operationalization of the values it was supposed to be based on, due to a lack of common political will of EU member states. Moreover, the European Union (EU) eroded its position in negotiations with North African regimes by designing a self-centered cooperation, neither offering much nor genuinely engaging Arab societies out of fear of Islamism. Beyond current weaknesses and political blockades, the ENP's structural logic also played against effective conditionality. Its methodology based on socialization made value-transmission impossible in an authoritarian environment and entrapped the EU in its relations with North African regimes. Strong conditionality is thus incompatible with the ENP when the latter engages autocratic regimes. The EU cannot pressure dictators and only a 'soft' conditionality used as a guide for the EU more than a sanction tool seems realistic in such a context.

Introduction

A wrong way to promote democracy is to promote façade democracies, where what is behind the façade [...] is ignored and only the strictly formal aspects are considered. In this case, in fact, the impact is inevitably one that delegitimizes this sort of regime as an unacceptable western product that does not solve the actual problems of the people.¹

Launched in 2004, the European Neighborhood Policy (ENP) has been designed with an eye to the Eastern rather than the Southern borders of the European Union (EU). However, since the start of 2011, it has faced its first substantial political examination in North Africa. Uprisings challenged regimes that were said to be stable as well as bulwarks against Islamism, without actually leading so far to any Islamic takeover. This simple fact has broken numerous preconceptions in Europe. It has also highlighted the failure of the European Union's instruments to foster political change as well as certain collusions between European decision-makers and the countries' ruling elites.

Given this record, the EU is expected to critically assess its relations with autocratic regimes and the functioning of its instruments in such political environments. It has no choice but to seize this opportunity to reform its instruments - not only to adapt them to the new situation and support the transition, but also to make its cooperation instruments more adaptable to complicated environments and, ultimately, improve its consistency between what it says and what it does. More than the ENP policy-making structure as such, the reality of European cooperation and the relevance of EU foreign policy are at stake.

Democracy is said to be exportable through various methods.² Given its nature, the EU has favored one in particular: political conditionality, meaning the provision of assistance in exchange for democratization and respect of human rights. Although often seen as post-colonial interference, political conditionality may also be a neutral process of cooperation, logically linking different dimensions, for instance through benchmarking.

In theory, conditionality instruments in the ENP should have enabled the EU to pressure autocratic regimes. However, the EU appeared weak in the face of political

¹ A. Magen and L. Morlino, "Scope, depth and limits of external influence", in A. Magen and L. Morlino (eds.), *International Actors, Democratization and the Rule of Law*, London, Routledge, 2008, p. 257.

² A. Magen and M. Leonardo, "Hybrid Regimes", in A. Magen and L. Morlino (eds.), *International Actors, Democratization and the Rule of Law*, London, Routledge, 2008, *op.cit.*, p. 16.

change in North Africa. ENP conditionality has thus to be put into question and its shortcomings appear to intuitively call for a harder conditionality that could deal with both the transitional authorities and remaining autocratic ones. This paper addresses the structure of the instruments developed behind the idea of conditionality in the ENP and analyzes the extent to which and how these instruments can be improved. The way sanctions are designed and the way principles and values are connected to the programming process will give conditionality different forms: limited if there is no connection; 'soft' if there is a general conditional framework giving guidelines but also flexibility; or 'hard' if sanctions are made systematic.

I argue that a proper operationalization of values has not been achieved and that the ENP's value-oriented objectives have not been supported by the programming process. Thus, the question is whether a harder conditionality is compatible with the ENP in the new environment and may be integrated into a review of the ENP. My answer is that harder conditionality is rather contradictory to the ENP rationale and EU political capabilities. Instead, a soft conditionality, based on a minimum benchmark that could eventually be enriched on a case-by-case basis, would offer a more realistic improvement of the ENP. Such a framework would protect the EU from engaging too much with unwilling governments and could serve as a solid starting point with committed governments.

The paper first offers an analysis of the relations between the EU's political demands and the ENP cooperation process. Based on this analysis, it addresses the political and structural issues that make hard conditionality incompatible with the ENP in an autocratic environment. Finally, it propose the development of a soft conditionality framework in a reformed ENP.

The design of ENP conditionality: weak institutionalization of 'shared values'

Normative and legal basis of ENP conditionality

In official communications, the ENP is said to be based on 'shared values'.³ This idea supports a general 'narrative' portraying the ENP as a policy of "commonly held aspirations, values and enlightened self-interest".⁴ The values are actually those shaping EU identity, but the policy presupposes their universality. Their implementa-

³ See European Commission's Communications between 2004 and 2010 in the bibliography.

⁴ E. Barbé and E. Johansson-Nogués, "The EU as a modest 'force for good'", *International Affairs*, vol. 84, no. 1, 2008, p. 89.

tion is thus implicitly considered to be dependent upon capability rather than ideology,⁵ legitimizing cooperation to create better conditions. In this regard, the ENP was expected to improve value promotion through the better design of condition-ality in the ENP Action Plans (APs)⁶ and the use of socialization instruments imported from the enlargement methodology to create a feeling of joint ownership of values.

This general political rationale is supported by the European Neighborhood and Partnership Instrument (ENPI). However, the legal basis for bilateral relations with North African countries are still the Association Agreements (AAs),⁷ which have been signed between 1997 and 2004 – prior to the ENP. Thus, the ENP concept of ‘shared values’ does not have, as such, a bilateral legal basis. Conditionality legally relies on the AAs’ non-execution clauses (Article 2) and not on the APs.⁸ These ‘human rights clauses’ formalize the link between EU assistance delivery and partner countries’ compliance. Any human rights violation can in principle be considered as a breach of the whole agreement’s spirit, allowing parties to suspend its application.⁹

Human rights clauses involve a sanction or the threat of one, which makes them very rigid instruments of negative conditionality. The Commission needs to obtain a qualified-majority vote from the Council to suspend assistance and a unanimous vote to suspend the agreement.¹⁰ This implies an important degree of consensus among the member states. They thus keep a strong hold on decisions over sanctions but do not use them because they are very “blunt” political tools.¹¹ The suspension is therefore more a symbolic tool of ‘nuclear dissuasion’ than one of smart pressure. Unsurprisingly, it has never been used in the Southern Mediterranean.¹²

⁵ N. Tocci, “Can the EU promote Democracy and Human Rights through the ENP?”, in M. Cremona and G. Meloni (eds.), *The ENP: a framework for modernization*, EUI Working Papers, no. 21, Florence, European University Institute, 2007, p. 26.

⁶ Especially through the development of a political benchmark. R. Del Sarto and T. Schumacher, “From EMP to ENP: What’s at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?”, *European Foreign Affairs Review*, vol. 10, no. 1, 2005, p. 36.

⁷ See Article 217 TFEU and Art. 8(2) TEU.

⁸ G. Bosse, “Values in the EU’s Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?”, *European Political Economy Review*, vol. 7, no. 2, 2007, p. 56.

⁹ J. Kapanadze, *Human rights conditionality in EU’s external affairs*, Saarbrücken, VDM, 2010, p. 14.

¹⁰ A. Billottet, *La clause sur le respect des droits de l’homme*, Paris, Editions Universitaires Européennes, 2008, p. 440.

¹¹ Interview with a member state diplomat, Brussels, 12 April 2011.

¹² E. Baracani, “From the EMP to the ENP: A new European pressure for democratization?”, *Journal of Contemporary European Research*, vol. 1, no. 2, 2005, p. 1.

Given this rigidity, the EU progressively favored positive over negative conditionality.¹³ Depending on the partner's commitment to reforms, the EU prefers increasing or withholding its assistance over withdrawing it. Indeed, waiting to transfer part of an allocation to a partner is supposed to give the latter incentives to comply whereas simply reducing the allocation to a partner is seen as a sanction.¹⁴ The aim is to introduce 'political' programs in the bilateral cooperation or to obtain from partners domestic political reforms in exchange for assistance in other fields. This 'reinforce-ment by reward' method requires more gradual, rapid and flexible implementation mechanisms to propose relevant incentives and to gain leverage by delivering or withholding elements valuable to the country.

Ultimately, conditionality relies first on legal elements, but also very much on structural ones. Its effectiveness depends on the precision of programming documents in terms of what is expected from partners, on the links between these documents and the way they connect and develop economic priorities and political values, and on the identification of clear evaluation criteria.

Conditionality in the bilateral programming process

According to the ENP principles of differentiation and co-ownership, the EU and partner governments must specify the main lines set in AAs in APs. They are drafted and negotiated by the Commission/EEAS¹⁵ on the basis of Country Reports (CRs) and then approved by the Council. The programming cycle is structured around two other documents, a long term one, the Country Strategy Paper (CSP),¹⁶ and a medium term one, the National Indicative Papers (NIPs).¹⁷ The policies implemented are reviewed through annual Progress Reports (PRs).

As illustrated in Figure 1, this process includes unilateral actions of the EU as well as a part negotiated with the local authorities. EU representations in partner countries thus play a decisive role in designing the different documents depending on the leeway they have with the local authorities.

¹³ R. Del Sarto, T. Schumacher and E. Lannon, *Benchmarking Human Rights and Democratic Development within the Euro-Mediterranean Partnership*, Annual Report 2006, Lisbon, EuroMesco, May 2007, p. 26.

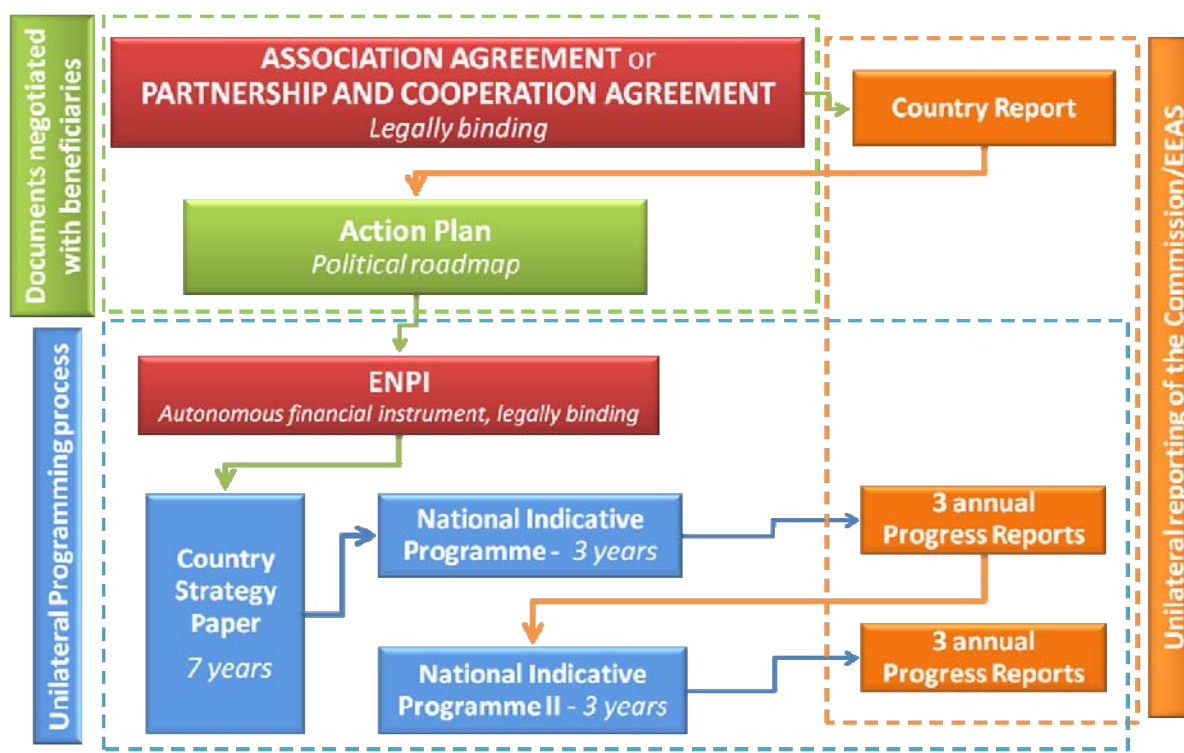
¹⁴ Here is an example of the very thin line between positive and negative conditionality.

¹⁵ Following the creation of the EEAS, the division of tasks between the EEAS and the Commission is still unclear at the time of writing.

¹⁶ Document presenting the general frame of the cooperation: objectives, instruments...

¹⁷ Document presenting the different programmes and their budget.

Figure 1: Bilateral cooperation process in the ENP framework



Source: author's compilation

The study of the different programming documents for Tunisia, Morocco and Egypt reveals that both their substance and the connections between them suffer from many shortcomings with regard to political conditionality.

First, CRs and PRs have been rather 'soft'¹⁸ and not always comprehensive. Second, political objectives are often only mentioned in broad terms such as "freedom of press" or "development of civil society".¹⁹ In some cases, there were no political objectives, for instance in Tunisia, where no political reforms have been set as priorities neither in the NIP 2005-2006, nor in the NIP 2007-2010, nor in the NIP 2011-2013.²⁰ Third, APs have neither a timeframe nor a substantial evaluation mechanism. A short/long term distinction is occasionally made, but without sequencing political changes and reforms in relation to the adoption, implementation and appropriation of political norms implied by the values. No stage of the programming process mentions possible costs and benefits for progress. In this regard, APs are more

¹⁸ Del Sarto, Schumacher and Lannon, *op.cit.*, p. 29.

¹⁹ R. Del Sarto and T. Schumacher, "From Brussels with Love: Leverage, Benchmarking, and the Action Plans in the EU's Democratisation Policy", *Democratization*, vol. 18, no. 4, 2011, pp. 932-955.

²⁰ European Commission, *PIN Tunisia 2005-2006*, Brussels, 2004; European Commission, *PIN Tunisia 2007-2010*, Brussels, 2006; European Commission, *PIN Tunisia 2011-2013*, Brussels, 2010.

“inspirational”²¹ than setting a real agenda. Fourth, NIPs do not provide concrete implementation measures of APs’ political priorities; they just repeat them with similar formulas. Fifth, inconsistencies appear in the linkage between the different periods of cooperation. “Lessons learned” paragraphs are included in the CSPs and NIPs,²² but previous objectives are only briefly mentioned and political ones ignored. There is, for example, no mention in the Egyptian CSP 2007-2013 of the political impact of initiatives pursued under the NIPs 2002-2004 and 2005-2006.

Furthermore, there are no dynamic links between financial assistance and the programming process on which conditionality strategies should be based. Under the ENPI, the global allocation for each country is decided within the framework of the CSPs. The allocation is thus based on a seven-year timeframe, and there is no flexibility once the amount has been decided.²³ Budgets are rigid, which prevents a possible financial threat to be imposed on the partner countries, since funding is not related to their actions during the period.²⁴ The allocation system cannot be coordinated with the programming documents. Since financial assistance cannot be used as a conditionality tool, the only tool remaining is a total suspension of assistance, opened by Article 28 of the ENPI,²⁵ which equals a human rights clause in its rigidity. Consequently, the EU cannot really respond instantly and withhold or reduce the money allocated to the cooperation with partner countries’ abuse or misconduct, as such action would stop the process and prove costly.²⁶

As a whole, the programming process lacks consistent value-translation and operationalization. It suffers from the rigidity and the lack of proper sequencing of its different elements. The different documents do not support a logical and gradual framework, detailing how values are to be promoted and political reform supported.

Limited conceptualization of values

As a matter of fact, significant ‘loopholes’ appear between the EU rhetoric, the Commission’s assessment (CRs and PRs) and the policy choices finally made and implemented. Beyond bureaucratic obstacles, such loopholes stem from the

²¹ Interview with a member state diplomat, Brussels, 12 April 2011.

²² The CSP’s Mid-Term Review is often attached to the second NIP of a programming period.

²³ Interview with a member state diplomat, Brussels, 12 April 2011.

²⁴ C. Grant “A new neighbourhood policy for the EU”, *Centre for European Reform Policy Brief*, London, CER, March 2011.

²⁵ European Commission, *General provisions establishing a European Neighbourhood and Partnership Instrument*, no. 1638/2006, Brussels, 24 October 2006.

²⁶ Interview with a member state diplomat, Brussels, 12 April 2011.

absence of a conceptualization of democratization in the ENP. It is difficult to find a clear and specific definition of the implications of the partners' commitment to 'shared values'. The result is a low "density of norms"²⁷ in the programming process, which consequently keeps democracy promotion rather limited.

Needless to say that the EU does some promotion of rule of law, human rights and democracy. However, instead of translating political priorities into stepwise and comprehensive measures, each document suffers from narrow or non-substantial value-interpretations. Democracy promotion often refers more to good governance rather than to a change of political environments²⁸, while programs with political dimensions are limited in number and scope. Current documents extensively use a democratization jargon (e.g. 'reform' and 'rule of law'),²⁹ but do not support a democratization framework, detailing the meaning of certain concepts in Arab societies. For instance, no reference is made to the different steps of 'rule adoption', 'rule implementation' and 'rule internalization'.³⁰

There are no evaluation criteria to assess human rights' progress and setbacks either. These would, however, be crucial to avoid arbitrary political interpretations resulting from the vagueness of human rights clauses and to protect the substance of human rights said to be universal. In the absence of such criteria, decisions related to conditionality are likely to be made according to political agendas, creating incoherence at all levels.

No implementation mechanism of the AAs' Article 2 can be identified beyond its strictly negative and blunt dimension described in the first part of this paper. Positive conditionality has no supporting structure. Values are progressively diluted throughout the policy-making process. Contrary to EU claims, the value-based legitimacy of the ENP is limited, as values occupy a very narrow space in policy terms.³¹ Values are not operationalized and only a very weak link exists between

²⁷ W. Jacoby and P. Cernoch, "The pivotal EU role in the creation of Czech regional policy", in R. Linden (ed.), *Norms and Nannies*, Lanham, Rowman & Littlefield, 2002, p. 320.

²⁸ R. Youngs, "Idealism at Bay", in R. Youngs (ed.), *The EU and Democracy Promotion*, Baltimore, The John Hopkins' University Press, 2010, p. 12.

²⁹ Del Sarto, Schumacher and Lannon, *op.cit.*, p. 44.

³⁰ For an analysis of these different steps: A. Magen and L. Morlino, "Methods of influence, layers of impacts and cycles of change", in A. Magen and L. Morlino (eds.), *International Actors, Democratization and the Rule of Law*, London, Routledge, 2008, p. 40.

³¹ G. Bosse, "Justifying the ENP based on 'shared values'", in L. Delcour and E. Tulmets (eds.), *Pioneer Europe, testing EU foreign policy in the neighborhood*, Baden-Baden, Nomos, 2008, p. 54.

economic and political liberalization. The EU has simply been “crossing its fingers”³² that the former would support the latter but did not relate these two dimensions of its policy to North Africa.

Political and structural limits to conditionality in the ENP

Shortcomings in the programming process have made conditionality non-existent in the ENP but it has faced other problems as well. I argue that even if the conditionality tools had been designed properly, these tools would have been unusable: firstly, because the bargaining position of the EU prevented it from actually pressuring North African regimes; secondly, because the rationale of the ENP in an autocratic environment is, to a certain extent, contradictory to the use of ‘hard’ conditionality.³³

The bargaining position of the EU in North Africa

Political conditionality implies a long-term bargaining process, the success of which depends on the recipient’s dependency on aid as well as on the donor’s dominant position.³⁴ The relative political balances are crucial to define the margins of the use of conditionality. In this regard, the EU did not put itself in a position to negotiate anything related to values with North African authorities. Most of the root causes of this situation have been known for years and have been described by many scholars and analysts. I will emphasize the importance of three elements that have constantly eroded the EU’s bargaining position: EU’s internal limit to build a strong negotiation position; the Eurocentric offer included in the ENP with regard to North Africa; and the biased approach of the EU regarding civil society.

The first element refers to the diverging agendas of the member states in North Africa, combined with weaknesses on the Commission’s side. As such, there has been no lack of political will, but a lack of ‘common’ political will. Perhaps overestimated, a distinction can be made between the perspective of Northern member states, whose distance from North Africa allowed them to be stricter on human rights than, on the one hand, Southern member states, which are more exposed to migration pressure and maintain important bilateral ties, and, on the

³² R. Youngs, *Europe and the Middle East, in the shadow of September 11*, Boulder, Lynne Rienner, 2006, p. 110.

³³ It is also possible to argue that conditionality has been badly designed as a consequence of these two problems.

³⁴ E. Fierro, *The EU’s Approach to Human Rights Conditionality in Practice*, The Hague, Martinus Nijhoff Publishers, 2003, p. 95.

other hand, Eastern member states, which are more interested in building democracy in the East than in the South.³⁵ The political steering necessary to effectively use conditionality was absent at the Council's level because no consensus could be found, and the status quo favored Southern member states' priorities. Moreover, it seems the Commission/EEAS feared undermining diplomatic relations³⁶ and appeared "afraid" of really negotiating with regimes,³⁷ resorting rather to self-censorship.³⁸ The numerous mentions of democracy promotion in unilateral reporting documents appear more as "a Commission-centric [...] mode of policy formulation"³⁹ than value implementation.

The second element that has undermined the EU's bargaining position was its self-centered offer. The EU mainly offers trade facilitation and liberalization tools,⁴⁰ while, although not negligible, the ENP financial assistance has not been tremendous.⁴¹ The EU did not make major concessions, especially when it comes to the two most valuable dimensions for North African countries: agriculture and visas. On the contrary, the EU gave priority to an agenda that made the ENP cooperation more important for the EU than for the partner countries. Assuming that stability was "on the long run better secured by authoritarian regimes than by democracies",⁴² the EU implemented a "traditional power-protection security"⁴³ policy, basically outsourcing part of its counter-terrorist agenda as well as migration management. ENP countries ultimately perceived the ENP as creating many restrictions and obligations.⁴⁴ The biggest 'carrot' of the EU was maybe the political legitimacy it was providing to regimes but this was obviously contradicting the 'shared values' agenda and putting the EU in a situation in which it was taking advantage of the coercive instruments of the regimes. Moreover, by manipulating the level of threat,⁴⁵ and thus creating

³⁵ Interview with a member state official, Brussels, 12 April 2011.

³⁶ Bosse, "Values in the EU's Neighbourhood Policy", *op.cit.*, p. 46.

³⁷ Interview with the Assistant to an MEP, Brussels, 29 March 2011.

³⁸ Interview with a Human Rights NGO representative, Brussels, 29 January 2011.

³⁹ Bosse, "Justifying the ENP", *op.cit.*, p. 47.

⁴⁰ €11.2 billions for the global 2007-2013 ENP envelope plus other preferential loans mechanisms.

⁴¹ S. Gstöhl, "Blurring Economic Boundaries?", in D. Mahncke and S. Gstöhl (eds.), *Europe's Near Abroad: Promises and Prospects of the EU's Neighbourhood Policy*, Brussels, PIE Peter Lang, 2008, p. 141.

⁴² L. Martinez, "Maghreb: Vaincre la peur de la démocratie", *Chaillot Paper*, no. 115, Paris, EUISS, avril 2009, p. 68.

⁴³ B.C. Reis, "Political Change in the Mediterranean", *EuroMesco Paper*, no. 70, Lisbon, Euromesco, June 2008, p. 15.

⁴⁴ Barbé and Johansson-Nogués, *op.cit.* p. 89.

⁴⁵ F. Burgat, "Europe and the Arab World: The dilemma of recognising counterparts", *International Politics*, vol. 46, no. 5, 2009, p. 622.

dependency,⁴⁶ regimes received tools to increase international credibility and to strengthen their internal positions.⁴⁷ Thanks to different arguments about Islamism, terrorism and migration, they justified the absence of significant political progress and ultimately received new equipment for coercion.⁴⁸ The combination of the security and migration agendas destroyed the EU bargaining position by providing these regimes with strategic leverage over the EU and the lack of concessions on visa liberalization and agriculture removed the potential European leverage. Europe thus lost its “capacity to exert credible pressure”,⁴⁹ implying a “subtle denial” of its values and a clear “hierarchy of priorities”.⁵⁰

Finally, although regimes made the EU’s work in this field very difficult, the third element eroding the EU’s negotiation position was its incapacity to engage Arab societies and non-state actors. Security concerns led to constantly consider any organization with a religious identity⁵¹ as having “equivocal relations with terrorism”,⁵² leading to its exclusion from EU policies⁵³ and disqualifying it as a legitimate partner.⁵⁴ The EU assumed real support to democratization would never come from Islamists, possibly from regimes, but most likely from secular organizations. By doing this, the EU transferred the socio-political legitimacy of NGOs in Europe to Arab associations that seemed to be their counterparts. In this regard, the EU looked into Arab societies for actors reflecting its “own image”,⁵⁵ not for those who could have really supported a change in the power distribution of the country. No matter the quality of the work done by these actors, they were irrelevant when it comes to engaging in a “differential empowerment of domestic actors”.⁵⁶ The EU misread Arab societies and, subsequently, failed to develop efficient non-governmental channels. It thus was blocked in an almost exclusive relationship with the regimes which could then instrumentalize this position.

⁴⁶ Martín Muñoz, *op.cit.*, p. 33.

⁴⁷ Tocci and Cassarino, *op.cit.*, p. 7.

⁴⁸ Youngs, *Europe and the Middle East*, *op.cit.*, p. 129.

⁴⁹ Tocci and Cassarino, *op.cit.*

⁵⁰ J.-P. Cassarino, *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*, Washington, D.C, The Middle East Institute, 2010, p. 30.

⁵¹ Martínez, *op.cit.*, p. 30.

⁵² M. Emerson and R. Young, “Political Islam and the ENP”, in M. Emerson and R. Youngs (eds.), *Political Islam and European Foreign Policy*, Brussels, CEPS, 2007, p. 24.

⁵³ Burgat, *op.cit.*, p. 629.

⁵⁴ Emerson and Young, *op.cit.*, p. 24.

⁵⁵ Burgat, *op.cit.*, p. 632.

⁵⁶ Magen and Morlino “Methods of influence”, *op.cit.*, p. 33.

In sum, these elements considerably weakened the position of the EU. They reduced its capacity to have leverage over its partners, to properly negotiate and to bring sanctions or the threat of these in order to increase the pressure on North African regimes.

The ENP rationale: "regime reform" against "regime change" in autocratic environments

Given the record of ENP conditionality, a reform is more than necessary. However, the sum of structural and political shortcomings also raises the issue of the compatibility of such a tool with the ENP.

Behind the co-ownership principle lies the idea that non-violent political change can only be endogenous. A key element of the ENP is therefore to create the goodwill of partner governments through a "negotiated approach based on socialization"⁵⁷ relying on "deliberative instruments"⁵⁸ (sub-committees, twinning...) supposed to be forums inducing locally-designed policies and spread values into domestic politics.⁵⁹ In theoretical terms, this rationale is an interesting method for genuine cooperation, but the nature of authoritarian regimes prevents any governmental willingness to integrate values that are about changing the distribution of power. There is always a conflict of interest between survival and reform because the latter implies a "dispersal of the political power currently held".⁶⁰ Furthermore, contrary to traditional conditionality (assistance in case of domestic changes), ENP assistance is "conditional upon the level of [...] institutional and political capacity".⁶¹ In other words, the EU adopted a 'policy-level approach' in which the ENP is designed as a 'toolbox'. Partner governments can pick in the toolbox what they need/want/are able to implement, which can cover but does not necessarily include democratization. Regimes can select only parts of the ENP toolbox, such as trade-related tools benefiting cronies close to the regimes rather than launching political reforms.

In autocratic environments, the ENP can therefore support a 'vicious circle' in which change has to start with cooperation, but in which cooperation progressively excludes change. Cooperating means starting by allowing regimes to define the

⁵⁷ Tulmets, *op.cit.*, p. 141.

⁵⁸ Gstöhl, *op.cit.*, p. 139.

⁵⁹ Magen and Morlino, "Hybrid Regimes", *op.cit.* p. 16.

⁶⁰ G. Crawford, *Foreign Aid and political reform*, Basingstoke, Palgrave, 2001, p. 186.

⁶¹ M. Moschella, "An international political economy approach to the neighbourhood policy", in L. Delcour and E. Tulmets (eds.), *Pioneer Europe, testing EU foreign policy in the neighborhood*, Baden-Baden, Nomos, 2008, p. 183.

agenda (co-ownership principle) and selectively picking areas of cooperation without necessarily a democratization dimension. This consequently favors the regimes' interests and strengthens them. The more Europe cooperates with regimes to get leverage, the less it can criticize them without simultaneously pointing to programs previously conducted and financed, as well as the storylines it had previously endorsed and made its own. A progressive entrapment is inevitable and inextricable because it is impossible to know where the concessions have to stop and which level of cooperation is necessary to obtain enough leverage for political pressure.

The ENP has therefore been designed in a spirit of 'regime improvement' through socialization and not 'regime change'. In this regard, there is an initial incompatibility between regime change and the co-ownership principle. Indeed, it is rather contradictory to provide assistance to a political system and at the same time to work for its collapse.⁶² In order to find a compromise between contradictory interests and objectives within the EU, the ENP's objective has thus been reform, not democratization. In the long run, both are supposed to be interlinked, but the ENP gave regimes the chance to avoid key areas. When the partner country is governed by an authoritarian regime, the ENP is no longer capable of fostering any change of the power structures. The Commission/EEAS has ultimately no choice but to act indirectly on political issues or not to act at all, when failing to include democratization in the policy-level approach.

Since the definition of political benchmarks relies on a socialization process, the design of conditionality depends on the regimes' impossible appropriation of 'shared values'. In the North African context, socialization and co-ownership thus paralyzed conditionality. These are very distinct instruments of influence to export norms⁶³ that can be used hand-in-hand. However, using socialization to design conditionality does not work with unwilling partners.

With regard to the ENP, the traditional problems of the EU functioning (inconsistency, lack of cohesion...) have harmed Europe's ability to use conditionality. However, the ENP is in itself contradicting the idea of hard conditionality leading to a change of the regimes' nature. The ENP is a soft instrument unable to support its own commitment to democracy promotion if its partners are not genuinely committed,

⁶² Gstöhl, *op.cit.*, p. 141.

⁶³ Magen and Morlino, "Methods of influence", *op.cit.*, p. 34.

which is very rare given the nature of the regimes bordering the EU. It seems the ENP suffers from the fact that it was heavily influenced by the enlargement method, without taking into consideration the specific features of the Arab political environment. Even if the situation has changed in 2011 in several North African countries, cooperation will not ease overnight. The process launched by the revolutions will be long and painful, with no guarantee of success.

Shaping a more realistic conditionality

Without substantive modulation, EU policies are poorly placed to preempt or countervail the sharp tensions that will no doubt arise once new regimes, more in tune with the aspirations and expectations of their citizenry, rise to power, as sooner or later they must.⁶⁴

'Hard' conditionality appears to be antithetical to the ENP, but under certain conditions, it seems possible to maintain 'soft conditionality'. By 'soft conditionality' I refer to a framework clearly relating political demands to other dimensions of EU assistance to its partners, in terms of the guidelines and limits to frame the EU's cooperation rather than in terms of sanctions against regimes. This could efficiently support the whole ENP, not necessarily to pressure governments, – it is often impossible to do so – but to prevent the EU from engaging too much with certain partners. Given the content of the policy debate in Brussels, whose main feature is that conditionality remains in principle one of the favorite tools of the EU,⁶⁵ certain recommendations can be made.

Defining unilaterally a minimum benchmark to be further detailed with partners

First, the EU needs to define a minimum benchmark that includes a conceptualization of the democratization process and takes into consideration the EU's different cooperation options with ENP countries. The principles of differentiation and co-ownership remain and a local benchmark could possibly complement pre-existing options by further specifying criteria based on the outcome of civil society consultations and of negotiations with the authorities. This would ensure that the EU has a minimum conditionality framework even if some governments do not want to negotiate anything political. It would clarify relations between socialization and

⁶⁴ Burgat, *op.cit.*, p. 622.

⁶⁵ Interviews, January-May 2011, Brussels.

conditionality by providing a stronger basis to the latter while keeping the rationale of the former.

To grant different levels of cooperation, the Commission/EEAS must assess the potential effectiveness of its new conditionality framework by looking at: 1) the government's power basis, 2) the government's ability to use external opportunity to strengthen its position, 3) the country's dependency vis-à-vis aid, 4) the importance of member states' bilateral relations, 5) the probability that an EU measure could be supported by others⁶⁶ and 6) the feasibility of political reforms. This new system would be a more realistic compromise taking into consideration the unwillingness of several member states to see an excessively automatic system of conditionality,⁶⁷ as well as the problems related to a too mechanical use of narrow indicators leading to compare or rank countries.⁶⁸

The Commission/EEAS seems to be working on such a system with three levels of partnership: limited, medium, enhanced.⁶⁹ This would imply keeping limited cooperation with unwilling governments, giving room for an upgrade if the political situation improves, while keeping necessary diplomatic channels. Such a logic would acknowledge the limits of value-based conditionality, but also the EU's own limits to foster regime change.⁷⁰ It remains to be seen whether EU institutions can be consistent in admitting their limits and reduce the gap between the EU rhetoric on values and the nature and power of its instruments. It also remains to be seen whether the political criteria (fair electoral process, freedom of assembly, of expression...) will be seriously applied to assess each country's situation and to prevent the EU from granting illegitimate statuses. In this regard, benchmark is the EU's best protection against its entrapment in the ENP socialization rationale.

Sequencing and simplifying the programming process and the allocation system

Since the definition of a benchmark will imply an effort of democratization conceptualization by the EU, this should also enable the EU to sequence the related cooperation steps. The programming process has thus to be adjusted to the new benchmark. This implies a translation of the different levels of cooperation into clear

⁶⁶ Crawford, *op.cit.*, p. 200.

⁶⁷ Interview with a member state diplomat, Brussels, 15 April 2011.

⁶⁸ Del Sarto, Schumacher and Lannon, *op.cit.*, p. 15.

⁶⁹ Interviews, April 2011, Brussels.

⁷⁰ This inability partly lays in the priority given to interest over values but it would be unrealistic to think member states are going to stop promoting their interest because of the 'Arab Spring'.

operational steps to be integrated in the APs. A time frame should also be associated to the APs in order to relate the different steps' political priorities to the time frame of the programming documents, the CSPs and NIPs. The time frame of these documents has to be defined to match the ENPI allocation system.⁷¹ The latter has to be made more flexible to allow for quicker changes in the allocation of financial assistance. This ultimately means that the administrative process related to the allocation system has to be simplified. It seems that the EU institutions are well aware of this need, as it is mentioned in their recent publications.⁷² However, it remains to be seen how they actually deal with the problem.

Another way to give political conditionality a lower profile would be to work on conditionality at project level. Linking progress in certain political fields to the continuation of certain programs would be a way to give quick and concrete leverage to conditionality tools.

Unsurprisingly enough, coordination of all EU institutions has to be improved. Part of the problems of the ENP is that it is a technocratic tool managed by administrators, sometimes lacking diplomatic and political skills, which makes it easy for regimes to play with them.⁷³ The EEAS is supposed to change this situation by improving the diplomatic expertise of the EU, but one should not overestimate its capacities; indeed, the whole process will remain very complicated and will lead to inconsistencies.

Strengthening the incentives

Margins seem limited but increasing the incentives would be advisable. Financially speaking, since the EU budget is generally small, additional leverage will not come from increased funding.⁷⁴ Regarding migration, the political situation in Europe is likely to hamper most of the initiatives from the Commission/EEAS within the mobility partnerships. Furthermore, if the EU continues to insist on readmission agreements, it will have limited leverage, even if it enlarges the range of persons that could benefit from visa liberalization. With regards agriculture, it is also unclear whether opening their market is still in the Maghreb countries' interest. There is a risk that it diverts basic

⁷¹ Interview with a member state official, Brussels, 12 April 2011.

⁷² European Commission-EEAS, *Partnership for Democracy, op.cit.*; European Commission-EEAS, *Joint Communication – A New Response to a Changing Neighbourhood*, COM(2011) 303, Brussels, 25 May 2011.

⁷³ Grant, *op.cit.*

⁷⁴ "Tunisian minister ridicules EU aid effort", *EurActiv.com*, 18 February 2011.

production from domestic markets, destroys local agriculture, fosters unregulated territorial competition, and puts pressure on natural resources.⁷⁵

On the other hand, European countries are likely to ask North African countries to keep doing "what we [European countries] need in terms of migration and security management",⁷⁶ which would again endanger the EU democratization bargaining position. It seems the security focus has to be lowered and the 'migration paranoia'⁷⁷ stopped, as a significant part of the leverage the EU gets from its assistance has been used for the migration agenda. If European countries cannot show minimum solidarity among each other to receive around 30,000 migrants, any EU discourse about shared values would seem pathetic and hypocritical. This would leave any possibility to use conditionality out because the conditional claims have to be perceived as legitimate by the recipient.

Financial margins are limited but structural ones could be used. The EU offer could be improved by adjustments in the existing areas of cooperation. The EU could use the current political transitions and the situation of some of the AAs⁷⁸ to present their update as new (and better) AAs that include up-to-date technical adjustments and eventually some marginal increases of the offer in the aforementioned fields. This would be politically important, both for the EU and the new governments. The 'advanced status', such as the one granted to Morocco, could be used as a roadmap towards the signature of the updated and upgraded AAs.⁷⁹

This upgrade would need a tailor-made process to make the transition from the old to the new set up. It could provide the opportunity to introduce the new benchmark system and its different levels of cooperation, the medium level being formalized by the enhanced status and the top level by the new AAs, possibly complemented by deep and comprehensive free trade agreements.

⁷⁵ M. Elloumi, "Social and environmental risks for Tunisia from the liberalisation of trade in agricultural products", *The CIHEAM Watch Letter*, no. 15, Paris, CIHEAM, October 2010, p. 8.

⁷⁶ Interview with a member state diplomat, Brussels, 15 April 2011.

⁷⁷ Illustrated by various European reactions, for instance: "Barroso to Tunisia: More money if you take your migrants back", *EU Observer*, 13 April 2011.

⁷⁸ The Tunisian Agreement entered into force in 1998 and many of its provisions are now outdated.

⁷⁹ Phone interview with Prof. E. Lannon, 29 April 2011.

Extending civil society and including Islam

The Commission/EEAS declared that the reformed ENP would extend the support to Arab 'civil society', especially through a Civil Society Neighborhood Facility (CSNF).⁸⁰ This is a necessary change, but this should not apply to civil society as conceived until 2011. The EU has to tremendously broaden its scope. The Islamic dimension of Arab civil societies should be integrated to make sure the entire societal and political scope is covered.

The key point is not to engage Islamist actors as such, but to integrate them as any other national protagonist in general EU cooperation frameworks.⁸¹ Having a clear and proactive demarche would strengthen the EU's commitment to building a legitimate political system. This change would be a signal sent to show that EU democracy promotion is consistent and takes into consideration local environment. It would also be a way to support the more moderate factions within these organizations. As such, Islamic actors are "a political challenge, not a security threat".⁸²

The EU has to make sure secular and Islamic organizations have in practice the same access to EU mechanism of dialogue and eventually funding. Practical issues regarding the grant procedures of calls for proposals have to be addressed through the CSNF.

Since Islamic organizations can be very reluctant to Western intervention, it is important to pay particular attention to include them in EU cooperation. On several points, such as the fight against poverty, Islamist and EU programs have similar objectives and Islamic charities can provide useful networks to EU policies. Moreover, the perceived opposition between Islam and Western-promoted values is more about symbols and identity than values.⁸³ In this regard, the vague label of 'Islamists' should be avoided since it is not sufficient to grasp the political determinants of their actions. What matters for the EU are Islamists' motivations and the way the use of the Islamic reference has "shaped their affinity with 'modernization and political liberalization'".⁸⁴ A key criterion seems to be non-violence, in actions and discourses.

⁸⁰ European Commission-EEAS, *Partnership for Democracy*, *op.cit.*, p. 5.

⁸¹ N. Brown, "The Muslim Brotherhood", *Congressional Testimony*, Washington, DC, Carnegie Endowment for International Peace, 13 April 2011, p. 14.

⁸² *Ibid.*

⁸³ Burgat, *op.cit.*, p. 618.

⁸⁴ *Ibid.*

The question of relations with Islamic actors goes beyond ENP conditionality but is closely related to it. Engaging all groups is the best way to show the EU support is attached to principles rather than to specific groups. Leverage would also be gained on the still existing regimes because engaging opposition force as well as others would mean interfering in the regimes' survival agenda. Soft conditionality needs a favorable environment because "formal institutions and processes cannot bring about change that is not supported by the distribution of power".⁸⁵ Without engaging in regime change, the EU must adopt wider approaches that prevent any group or faction from monopolizing European tools of cooperation.

Conclusion

This paper has addressed the form which the concept of political conditionality takes in the ENP and why the EU had been unable to properly apply this concept to pressure autocratic regimes in North Africa. A mix of structural and political factors have made ENP conditionality in North Africa impossible to use. Diverging agendas between member states added to a self-interested offer attached to a narcissist engagement with countries have led the EU to design a deeply Euro-centric and unsound cooperation with North Africa. The lack of political consensus among member states could only produce a lowest common denominator mandate for the Commission, which subsequently designed instruments producing 'apolitical' policies. All of these do not correspond to the promotion of values and political changes Europeans are said to believe in.

The EU's claim to use conditionality in its cooperation gave the impression that it was in a dominant position. However, it has actually put itself in a situation of dependence upon authoritarian regimes, especially by closing other links with these countries and societies. Ultimately, this has led the EU to increase the regimes' resistance to political pressure and even legitimized their "reluctance"⁸⁶ to reform. The 'shared values' logic has thus proved to be out of touch with the balance of power and the survival rationale within authoritarian regimes. As such, the EU has failed "to respond to regimes' 'smarter forms of authoritarianism' with a concomitantly smarter democracy promotion".⁸⁷

⁸⁵ M. Ottaway, "The Rise and Fall of Political Reform in the Arab World", *Briefing*, Beirut, Carnegie Middle East Center, December 2010.

⁸⁶ Crawford, *op.cit.*, p. 186.

⁸⁷ Youngs, "Idealism at Bay", *op.cit.*, p. 6.

At the end of this analysis, the assessment of the EU's presence in North Africa might appear relatively harsh. However, EU action should be criticized only in two regards. First, the EU has excessively defined its objectives in North Africa as being democracy and human rights promotion while it had neither the tools nor the will for it. Human rights rhetoric disconnected from concrete policy instruments and co-ownership disconnected from the political environment in which it is to be applied, can only do more harm than good to the self-proclaimed EU role of being a "force for good".⁸⁸ By setting overly ambitious goals, member states and the Commission have created the conditions for the EU's failure.

Second, it seems the programming process has not been adapted to the fact that it had to function in authoritarian political environments. This weakness can have various conventional explanations, such as the fact that member states were not favoring a process that might have changed the status quo. However, it seems important to highlight an additional explanation, less obvious: ENP conditionality has been designed based on what the EU wanted to do and how it wanted to see itself, mainly promoting democracy and human rights on the basis of the European experience of enlargement. However, this method has proven to be inefficient, and one lesson the EU could learn from the so-called 'Arab Spring' is that it should be more careful about who its partners are. Without denying commonalities and universal values, the EU has to understand the true differences of its partners and the structure of their countries if it wants to have any constructive influence. These differences have to be analyzed not from the perspective of the European experience, but from the local perspective, in order to address them with relevant tools. European history and experience should help the EU be sensitive to differences and not only export a uniform governance model. The development of such an understanding of the 'others' is among the huge challenges the EEAS has to address.

The study of ENP conditionality shows the difficulties faced by the EU in its attempt to transpose its political identity into efficient institutional and technical cooperation processes. The EU's "top-down mode of engagement"⁸⁹ as well as its "legalistic, technocratic approach to reform-promotion"⁹⁰ can create own blockades.

The ENP remains an interesting policy because it acknowledges the limits of external actors to foster domestic change. However, power politics remains necessary in

⁸⁸ As such, the relevance of this posture could also be challenged.

⁸⁹ Magen and Morlino, "Hybrid Regimes", *op.cit.*, p. 16.

⁹⁰ *Ibid.*

complicated environments, which are exactly those areas where political conditionality is used. Moreover, although the ENP approach initially acknowledges its limits in promoting domestic change, the dominant human rights discourses tend to blur this dimension of the policy.

If its record, its interests and/or its structure prevent the EU from introducing a better-structured conditionality in its cooperation, its political scope of action will be limited. The EU cannot pressure dictators with 'hard' conditionality. However, this will not reduce the necessity of a benchmark. In all circumstances, clear steps and criteria used to frame the cooperation and its socialization instruments would help to prevent the co-ownership principle giving way to unacceptable collusions, while respecting the need for the EU to have contact with its neighborhood at different levels. In other words, the 'soft' conditionality proposed in this paper would not only constitute a political tool to promote democratization processes if the political will is present on both sides, but also a programming tool to protect the EU from its own duplicity.⁹¹

Reforming ENP conditionality is highly challenging. All in all, local and practical circumstances are the most decisive. Indeed, a renewed European thinking about the use of conditionality will be challenged by the significant economic needs of North Africa. The EU should propose effective economic solutions to the new authorities before expressing demands or opinions regarding democratization. These two dimensions have to go hand in hand if the EU wants to regain the legitimacy it seems to have lost. The EU has to avoid a situation in which an increased consistency in its value promotion results in a tougher EU stance on governments that enjoy the legitimacy of a popular uprising rather than on the authoritarian regimes. The transitional period has in this regard to be addressed very carefully.

Another challenge is internal. There is a high risk of seeing announcements, such as the Joint Communication of March 2011⁹² and the one of May 2011,⁹³ lacking of concrete shifts in the EU method. The two documents, as well as the Joint Working Paper of May 2011,⁹⁴ develop an interesting *mea culpa* from the Commission/EEAS;

⁹¹ Because of its structure, the EU is indeed capable of sincerely advocating for human rights while directly or indirectly providing tools of power to regimes.

⁹² European Commission-EEAS, *Joint Communication - Partnership for Democracy, op.cit.*

⁹³ European Commission-EEAS, *Joint Communication - A New Response to a Changing Neighbourhood, op.cit.*

⁹⁴ European Commission-EEAS, *Joint Staff Working Paper - A Medium Term Programme for a renewed ENP (2011-2014)*, COM(2011)303, Brussels, 25 May 2011.

similarly, the May 2011 Communication mentions a number of problems that have been pointed out in this paper. However, the different steps proposed in the Joint Working Paper do not propose much more than adjustments of existing mechanisms. The different real improvements⁹⁵ are, to a certain extent, disappointing because they have maintained a certain vagueness in the wording (e.g. the concept of 'civil society'), implying that the implementation can reproduce the mistakes made in the past. For instance, the need for a benchmark is emphasized in the different documents, but the Commission has since 1995 attempted to develop political criteria,⁹⁶ without any implementation. "The EU forgot its criteria almost as soon as they were published."⁹⁷

One should also pay attention to the emphasis put on the 'novelty' of the approach. The different documents the EU published in the aftermath of the 'Arab Spring' emphasized how new and better the renewed ENP would be.⁹⁸ This raises a number of questions regarding the institutions' intentions. Although the 'more for more' discourse⁹⁹ and the new name of the Southern dimension of the ENP ("Partnership for Democracy and Shared Prosperity")¹⁰⁰ are catchy, it is certainly not a new approach. It is just a new branding of the concept of positive conditionality, which was included in the ENP since 2004, but which failed to be correctly implemented. Renaming it may be a way to show the lessons learned and the willingness to take serious actions to produce assessment tools about whether 'more' has to be given to EU partners. However, it could also be a rhetorical trick to hide the still existing divergences among member states.

As a matter of fact, positive conditionality remains one of the main principles of the ENP and, through their most recent publications, the Commission/EEAS made clear that they wanted to correct what went wrong and not change the rationale of the instrument. There will be no policy 'change' but only policy 'adjustments', and the question is whether the EU will be able to reform its cooperation mechanism as to bring it in line with its values. The real challenge is hence not located at the level of the ENP rationale, but at the Council's level. If changes occur there, the challenge

⁹⁵ Clear mention of the need of a benchmark, more comprehensive involvement of civil society organization, better design of Action Plans, etc.

⁹⁶ Interview with a Commission official, Brussels, 11 April 2011.

⁹⁷ N. Popescu, "More for More in the Neighborhood", *EU Observer*, 22 March 2011.

⁹⁸ European Commission-EEAS, *Joint Staff Working Paper - A Medium Term Programme for a renewed European Neighbourhood Policy (2011-2014)*, COM(2011)303, Brussels, 25 May 2011.

⁹⁹ European Commission-EEAS, *Joint Communication - Partnership for Democracy*, *op.cit.* p. 4.

¹⁰⁰ European Commission-EEAS, *Joint Staff Working*, *op.cit.*, p. 2.

will also lie at the programming level, where the Commission/EEAS will have to design quicker and more effective tools whilst respecting the member states' will to keep control on what the EU does abroad. It is reasonable to think that the 'shock therapy' of the Arab uprising will pave the way for European arrangements going in the right direction. However, one should remain wary of yet another 'capability-expectations gap'.

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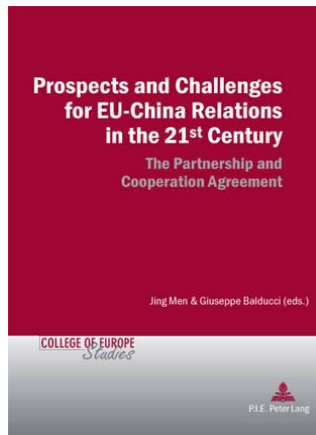
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