



**THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE**

**HUMAN RIGHTS AND DEMOCRACY IN EU FOREIGN POLICY:  
THE CASES OF UKRAINE AND EGYPT**

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A thesis submitted to the Department of International Relations of the  
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## ABSTRACT

This thesis empirically analyses the role that human rights and democracy have played in European Union foreign policy towards Ukraine and Egypt since the end of the Cold War. It departs from the dominant approach in international relations theory that conceptualises the pursuit of such aims as an illustration of the EU's *sui generis* actorness, to trace empirically the sources of the rhetorical inclusion of human rights and democracy in foreign policy and their implementation.

The thesis argues that the 'logic of diversity' provides the most powerful means to understand the 'push' factors that led to the integration of human rights and democracy in EU foreign policy and the 'brakes' in their implementation. Whereas scholars have suggested numerous ways in which such 'normative' positions are overridden by other strategic concerns, my research findings conclude that the EU increased its 'normative' coordination in parallel to pursuing further engagement with third countries on key interests, making the dilemma between 'principles and interests' more acute. Notwithstanding the finding that EU action has been, mostly but not exclusively, limited to declaratory positions, the single most important factor jeopardising a stronger policy can be located in the intergovernmental politics within the Union.

Human rights and democracy have thus been pushed up the EU agenda thanks to the 'policy entrepreneurship' of some member states, at times succeeding in persuading other more reluctant EU actors. Their 'institutionalisation' has also helped raise the costs of non action. The motivations can range from instrumentalist rationality to cognitive views about the legitimacy of such principles. However, these are trumped not just by conflicting 'interests', but also by different cognitive understandings of the opportunity to pursue human rights and democracy. Action is thus the result of bargaining between different 'constituencies' within the EU on the basis of both rationalist arguments as well as ideational views.

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My family supported me throughout this enterprise, and in particular I would like to thank Lorenzo, my mother, father, step-mother, my sister, and my mother-in-law, who would have preferred my spending more time with them rather than in front of a computer. For reasons of brevity, I will not thank the many friends that have listened to my doubts and complaints over theoretical explanations and research questions except for Anna Maresso, who has helped at crucial moments.

But above all, my heart-felt and deepest gratitude goes to my son Sebastian, who had to put up with a busy and, at times, absent-minded mother. While I would not recommend this thesis for bed-time reading (even when he learns to read), I do hope he will understand the importance of carrying through personal projects such as this.

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## LIST OF ACRONYMS

AA	Association Agreement
ACP	Afro-Caribbean and Pacific
CEC	Central Electoral Committee (of Ukraine)
CFSP	Common Foreign and Security Policy
CHR	UN Commission on Human Rights
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CoE	Council of Europe
COHOM	Council (of the EU) Working Party on Human Rights
CS	Common Strategy
CSCE	Conference on Security and Cooperation in Europe
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EIDHR	European Initiative for Democracy and Human Rights
EMP	Euro-Mediterranean Partnership
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Policy Instrument
EOHR	Egyptian Organisation for Human Rights
EP	European Parliament
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
ESS	European Security Strategy
EU	European Union
FTA	Free Trade Area
GAERC	General Affairs and External Relations Council (of the EU)
GATT	General Agreement on Tariffs and Trade
ICCPR	International Covenant on Civil and Political Rights
JHA	Justice and Home Affairs
MEDA	Mesures d'accompagnement financier et technique à la réforme de structures économiques et sociales dans le cadre du partenariat euro-méditerranéen
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organisation
NGO	Non governmental organisation
NIS	Newly Independent States
NPD	National Democratic Party (in Egypt)
ODIHR	Office for Democratic Institutions and Human Rights (of the OSCE)
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCA	Partnership and Cooperation Agreement
PfP	Partnership for Peace (NATO)
PSC	Political and Security Committee (of the EU)
QMV	Qualified Majority Voting
SSIS	State Security Investigation Services (of Egypt)

TACIS	Technical Assistance to the Commonwealth of Independent States
TEU	Treaty on the European Union
UN	United Nations
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
UNDP	United Nations Development Programme
WTO	World Trade Organisation

## CHAPTER 1

### INTRODUCTION

#### 1. *Paradoxes of EU policies for human rights and democracy*

The European Union (EU) has spent much rhetoric to portray itself as a global promoter of human rights and democracy abroad. It has included these aims in its Treaty-based objectives in the Common Foreign and Security Policy (CFSP), incorporated them in all its regional and country-directed external policies, and developed multilateral positions in international organisations. The EU has also devoted increasingly substantial funds to foster a culture of human rights and democracy in third countries, developed global policies and campaigns, pioneered ‘distinctive’ ways of institutionalising human rights and democracy in its external relations through contractual agreements that place these principles in a legalised context, and has sought to ensure that human rights and democracy are integrated into its security policies, such as the Conflict Prevention strategy or the European Security Strategy (ESS).

The ways in which the EU has committed itself to human rights and democracy has raised expectations of a ‘different’ kind of behaviour as an international actor, conceptualised in ‘civilian’ or ‘normative’ power models, or as an actor committed to an ‘ethical foreign policy’. Theoretical elaborations drawing from the EU’s claims have emphasised that the sources of such ‘normative’ aims lie in the specific and *sui generis* nature of the EU as an actor.<sup>1</sup> Conversely, empirical research has underlined that the EU’s actual performance is far below its rhetoric, making it an object of criticism when failing to live up to such commitments. The EU is accused of using ‘normative’ values to dress up its ideology,<sup>2</sup> of inconsistent behaviour with respect to the principles it

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<sup>1</sup> To quote a few references, Mario Telò (2006), *Europe: a Civilian Power? European Union, Global Governance, World Order*, Basingstoke: Palgrave; Ian Manners (2002), ‘Normative Power Europe: A Contradiction in Terms?’ *Journal of Common Market Studies*, Vol. 40, No. 2, pp. 235-58; Hazel Smith (2002), *European Union foreign policy: what it is and what it does*, London: Pluto. The literature on the topic will be reviewed in section 2 of this chapter and in chapter 3.

<sup>2</sup> David Chandler (2002), *From Kosovo to Kabul*, London: Pluto Press.

claims to promote because of other security<sup>3</sup> or economic priorities<sup>4</sup> that override human rights and democracy concerns.

What is argued here is that theoretical approaches have been insufficiently developed through empirical research, while empirical approaches have tended, with few exceptions, to focus on narrower policies (such as democratisation strategies), without reaching generalisations about EU foreign policy as a whole, and without questioning the nature of the EU as an international actor. Therefore, it is contended that, alongside the need for more empirically based research examining EU foreign policy on a case by case basis, this gap between rhetoric and performance requires further investigation and explanations.

To an extent, it should be expected of an international actor to develop a public discourse that it does not necessarily fulfil in practice. It is also to be expected that a collective actor with diverse and extensive global commitments, interests and diplomatic relations will not simply pursue an idealist-based foreign policy.

Yet a paradoxical element remains: why cultivate the image of the 'good-doer', raising internal and external expectations for performance, when the actual policies are an easy target for accusations of double standards, inconsistencies, or instrumentalism? Ukraine and Egypt are two examples in which the high rhetoric has not been matched by EU action in responding to human rights and democracy shortcomings. The EU's image has been tarnished as a consequence. As will be amply illustrated, the European press has been consistently critical of EU performance in Ukraine, and its role has been negatively compared to that of the US: according to Timothy Garton Ash, 'shamingly, Americans probably have done more to support the democratic opposition in Ukraine, and to shine a spotlight on electoral malpractices, than west Europeans have'.<sup>5</sup> In Egypt, the EU has

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<sup>3</sup> Gorm Rye Olsen (2000), 'Promotion of Democracy as a Foreign Policy Instrument of "Europe": Limits to International Idealism', *Democratization*, Vol. 7, No. 2, pp. 142-167; Karen E. Smith (2001), 'The EU, human rights and relations with third countries: "foreign policy" with an ethical dimension?' in Margot Light and Karen E. Smith (eds.), *Ethics and Foreign Policy*, Cambridge: Cambridge University Press, pp. 185-203, and Karen E. Smith (2003), *European Union Foreign Policy in a Changing World*, Cambridge: Polity.

<sup>4</sup> Angela Ward (1998), 'Frameworks for Cooperation between the European Union and Third States: a Viable Matrix for Uniform Human Rights Standards?', *European Foreign Affairs Review*, Vol. 3, No. 3, pp. 505-536.

<sup>5</sup> Timothy Garton Ash, 'Freedom's front line', *The Guardian*, 25 November 2004.

let down the high expectations of 'normative' behaviour regarding human rights abuses on part of the NGO community struggling to survive regime clampdowns.<sup>6</sup>

The main reasons for these failures have been attributed, in the academic literature, to the EU's support of the governments in Kiev and Cairo. Former Ukrainian President Leonid Kuchma was considered the best hope to pursue market reform and as the most appropriate interlocutor to ensure that the country would be able to continue maintaining reasonable relations with Moscow and with the West without entering its sphere of interest.<sup>7</sup> In Egypt, government cooperation in counter-terrorism and, to a lesser extent, in migration control have been highlighted as key issues that since September 11 have trumped the EU's normative agenda regarding democracy and human rights in the Mediterranean.<sup>8</sup>

Yet in-depth research into the two cases reveals that the reasons for which the EU's performance on human rights and democracy has been below expectations run deeper than the strategic considerations mentioned above. In many respects, the principles of human rights and democracy have acquired a certain 'taken-for-grantedness' in the post Cold War Western world. No democracy would admit to *not* subscribing to them. Yet beneath the surface of this acquired consensus, research will show quite different views on why and how the EU should include these in its foreign policy. The differences do not just regard the ways in which these principles should be promoted and how the EU reconciles its multiple interests and foreign policy objectives, but also whether human rights and democracy should be actively promoted in the first place.

This would open up more philosophical questions that revolve around the debate between cosmopolitanism and communitarianism, addressed not just by theoreticians but also by practitioners. Questions regard the definition of rights, their (Western) origin

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<sup>6</sup> Soha Bayoumi (2007), 'Egyptian Views of the EU: Pragmatic, Paternalistic and Partnership Concerns', *European Foreign Affairs Review*, Vol. 12, No. 4, pp. 331–347.

<sup>7</sup> See in particular, Ted Piccone and Richard Youngs (2006), *Strategies for Democratic Change: Assessing the Global Response*, Madrid: FRIDE and Democracy Coalition Project, chapter on Ukraine, pp. 97–121.

<sup>8</sup> Annette Jünemann (2003b) (ed.), *Euro-Mediterranean Relations after September 11. International, Regional, Domestic Dynamics*, London: Frank Cass; Richard Youngs (2006a), *Europe and the Middle East in the Shadow of September 11*, Boulder, CO.: Lynne Rienner Publishers; George Joffé (2008), 'The European Union, Democracy and Counter-Terrorism in the Maghreb', *Journal of Common Market Studies*, Vol. 46. No. 1, pp. 147–171.

and development, and whether they can be considered universal ‘givens’ or culturally determined perceptions. Can human rights and democracy be ‘exported’ in the name of a liberal notion of ‘expanding the democratic community’,<sup>9</sup> or do they reflect ‘euro-centric imperialism’?<sup>10</sup> Is it legitimate to interfere in the internal affairs of other states? From a more pragmatic point of view, promoting human rights and democracy worldwide may be counterproductive with respect to its initial aims (for instance it might lead to retaliatory measures) or may even be harmful to the notion itself.<sup>11</sup>

The debate within the institutions and between the member states thus reveals that behind a consensus that it should be the EU, alongside individual member states, to take on the human rights and democracy agenda, when responses are actually demanded by ‘policy entrepreneurial constituencies’ within the EU, the member states do not share a common understanding of whether and how the EU should respond. Competing strategic priorities also reveal cognitive differences on what are assumed to be common ‘principled ideas’.<sup>12</sup> The end result is that EU policy on human rights and democracy has tended to be limited to ‘integrating’ (or ‘mainstreaming’ in EU jargon) the principles into the statements, documents, some aid programmes and projects, and to declaratory diplomatic positions. The rhetoric and ‘institutionalisation’ of human rights and democracy makes it hard not to respond, but a ‘logic of diversity’ between the member states ensures that diplomacy reflects the lowest common denominator. Indeed, the logic of diversity is considered here as the main source of the problems that the EU encounters in pursuing its declared aims.

While it is undeniable that competing strategic considerations often trump the EU’s stated ‘normative’ objectives, these alone cannot be imputed as the key source of the gap between rhetoric and performance. While EU ‘normative’ rhetoric was at its peak in the 1990s, the two case studies show that it was in the 2000s that the EU produced greater political output and diplomatic activity with regard to human rights and

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<sup>9</sup> David P. Forsythe and Barbara Ann J. Rieffer (2000), ‘US foreign policy and Enlarging the Democratic Community’, *Human Rights Quarterly*, Vol. 22, No. 4, pp. 988-1010.

<sup>10</sup> Helene Sjurgen (2006), ‘What kind of power?’, *Journal of European Public Policy*, Vol. 13, No. 2, 169-181.

<sup>11</sup> Chris Brown (1999), ‘Universal human rights: a critique’, in Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, pp. 103-127.

<sup>12</sup> Judith Goldstein and Robert O. Keohane (1993a), ‘Ideas and Foreign Policy. An Analytical Framework’, in Judith Goldstein and Robert O. Keohane (eds.) *Ideas and Foreign Policy. Beliefs, Institutions and Political Change*, Ithaca and London: Cornell University Press, pp. 3-30.



democracy in Ukraine and Egypt, even if by and large limited to declaratory positions. This coincided with the two countries acquiring greater strategic importance in the EU's foreign policy agenda, in the context of Eastern enlargement of the EU, and in the wake of September 11 and the fight against terrorism. In other words, the increase of strategic priorities competing with normative aims – what is often referred to as the 'values vs interests' dilemma - alone cannot explain the inconsistencies and paradoxes of EU foreign policy and human rights and democracy.

## 2. *The research agenda*

The overall question the thesis is trying to address is *does the EU include human rights and democracy objectives in its foreign policy? If so, why? And if not, why?* Given that the starting point of research is to explore all possible avenues that might point to relevant explanations, it is also necessary to question whether the rhetoric has any substance.

As will be argued in chapter 2, the main distinction in explanatory frameworks is between rationalist justifications and constructivist or cognitive approaches. Instrumental justifications derived from rationalism would see the inclusion of human rights and democracy as a means to achieve a set of objectives. These can range from viewing human rights as a Machiavellian mask to disguise other hegemonic priorities, such as imposing Western values on the developing world, or as rhetoric for domestic consumption in an era of globalised norms. In other words, these interpretations<sup>13</sup> question the degree to which the EU is genuine about its stated aims, claiming that human rights and democracy concerns do not really exist, or that they are trumped by other stronger priorities in the security or economic fields.

But human rights and democracy can also serve other external objectives, for instance as a means to promote stability and security in the EU's neighbourhood. This would not only fit with many of the strategic arguments used by EU actors to justify their position in world politics, but also with explanations about EU enlargement, especially towards Eastern Europe. Still within a rationalist perspective, internal objectives could also serve

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<sup>13</sup> See chapters 2 and 3 for the appropriate referencing to the secondary literature available on the topic and for theoretical literature from which the hypotheses are derived.

the purpose of building the EU's human rights and democracy agenda, in order to promote some shared norms guiding foreign policy, as a means to strengthen the EU's identity, or to manage relations between EU member states and institutions.

Institutionalist approaches focus on the role of EU institutions in shaping state preferences. The EU's rhetorical commitment would generate, through institutionalisation, further commitments to respond to human rights and democracy problems through EU foreign policy. Policy networks and 'ideational changes' therein can act as a constituency influencing the human rights and democracy agenda.

Constructivist or cognitive approaches, conversely, would place the sources of human rights and democracy in EU foreign policy in the peculiar origins and history of the Union, making them two of the norms that characterise the EU's internal identity. It would logically follow that the EU's external projection reflects the features of the Union. Even if human rights and democracy are not consistently activated in practice, they would still constitute an inescapable and constitutive characteristic of the EU's historical and institutional set up.

But how to ascertain the relevance and applicability of these various hypotheses? I have developed a sub-set of questions regarding EU foreign policy making to guide empirical research on a case by case basis. The aim is to uncover the reasons that drove EU action on human rights and democracy problems in Ukraine and Egypt by exploring the processes that led to such responses.

On the basis of an approach drawn from foreign policy analysis applied to the EU, hypotheses are developed in order to identify *which EU actors stimulate the development of a foreign policy with normative aims and, conversely, which actors inhibit it?* Here, the search will be for the 'constituencies' that supported EU responses or not. With regard to the EU, the decision making processes and the relationship between supranational and intergovernmental dynamics also need to be explored: *what dynamics lead to addressing human rights and democracy concerns in third countries?* This too will help us understand the relative weight of member states and Community institutions in shaping policy and promoting certain kinds of responses, also pointing to

the degree to which the principles have actually been institutionalised in EU foreign policy making.

*What are the EU's priorities?* Using a classic distinction between security or political aims, the search for economic advantages, and ideational motivations, the process of including human rights and democracy, the factors and actors determining such inclusion or creating obstacles to it, and the external environment in which the EU operates all need to be taken into account in order to gauge the relative weight of diverse interests and norms at play.

### **3. *Human rights and democracy in Ukraine and Egypt: challenges to EU foreign policy***

Geographical proximity alone makes Ukraine and Egypt important countries to the EU. They are both considered of strategic relevance from the points of view of regional cooperation and stability, security and, though less so, in trade terms. Ukraine, as a new neighbour of the EU, the role it plays in relations between the EU and Russia, as a transit country for Europe's energy sources, and as a key actor in regional stability, has seen its importance increase over time since its independence in 1991, especially in the context of EU enlargement to Central Europe in the 2000s. Egypt has been of an unquestionable importance to the EU member states with regard to the role it plays the Middle East, in relations with the Arab and Islamic worlds, and as a lynchpin for relations with African countries, but also as a trade partner.

Indeed, both countries have been the object of EU foreign policy in a number of ways. They are party to broad contractual agreements that entail political, economic, financial and security cooperation: a Partnership and Cooperation Agreement (PCA) with Ukraine and an Association Agreement (AA) with Egypt. Both countries participate in the EU's more recent European Neighbourhood Policy (ENP), and Egypt has been a member of the Euro-Mediterranean Partnership (EMP) since its beginning in 1995. And they are both important aid recipients of the EU as well of as other actors, especially the US, for which they have been respectively third and second largest aid recipient after Israel. Thus, EU relations with them cut across both the European Community (EC) and the Common Foreign and Security Policy pillars, as well as aspects of Justice and Home Affairs (JHA).

Finally, both countries present or have presented significant problems in the fields of human rights and democracy which have put pressure on the EU to respond, while at the same time challenging important strategic priorities in the EU regarding cooperation with Moscow and Cairo, stability in Eastern Europe and the Middle East, and the fight against terrorism.

Ukraine, a country that had been demanding stronger relations with the EU and a prospect of accession, experienced the deterioration of its fragile democratic institutions and practices especially towards the end of the 1990s and in the 2000s, just as EU concern towards the country started to increase in the context of enlargement to Central Europe. Demands from Ukrainian domestic forces, from other actors such as the Council of Europe (CoE), the Organisation for Security and Cooperation in Europe (OSCE), as well as from some actors within the EU for a stronger action on human rights and democracy increasingly competed with the need to cooperate with Russia, while it was seeking to strengthen its ties with its former Soviet empire.

Egypt's stable authoritarian regime, also based on the extraordinary powers of repression granted by the virtually permanent emergency law, has been justified by the needs of the fight against terrorism and by Cairo's important role in regional and international politics. But Washington's neo-conservative 'regime change' rhetoric under the George W. Bush administration and dissatisfaction within the EU with the framework of relations with Cairo also put pressure to respond on the many human rights and democracy deficits that exist within Egypt.

EU positions with regard to human rights and democracy in Ukraine will be examined between 1991, when the country was recognised as an independent state, and the close of 2004, when the Orange Revolution ended the decade of Kuchma's presidency, which had increasingly turned towards authoritarian practices. Ukraine's democratic deficit between 1991 and 2004 rests on many factors that go beyond the scope of this thesis. Complex historical legacies left independent Ukraine with a very weak terrain for building a democratic independent state. Until the new Parliament (*Verkhova Rada*) was elected in 1994, the political elite showed more interest in plundering the liberalising

economy than in defining the distribution of powers and approving a new Constitution.<sup>14</sup> The difficult evolution of relations with Russia over the spoils of the Soviet Union and the redefinition of regional security also ensured that Ukraine's first president Leonid Kravchuk (1991-1994) concentrated more on building a sovereign state and the country's position in the international system than on democracy.<sup>15</sup>

The fragility of political parties left the political centre a conquest ground by a variety of powerful groups, made up of 'businessmen', largely formed by people who had made money illegally, known as the 'oligarchs'. Their major objective was to secure immunity from prosecution for their criminal activities,<sup>16</sup> and thanks to their regional strongholds they occupied a prominent role in the *Rada*. The rise of the oligarchs was to become a structural feature blocking democratic transition in Ukraine. To a large extent the power of President Leonid Kuchma (1994-2004) was based on his ability to regulate, through *dividi et impera* tactics, oligarchic groups that depended on personal ties with the executive for their wealth and influence.<sup>17</sup>

The weakness of Parliament left Kuchma with ample space to push through a Constitution (by threatening to resort to a referendum) in June 1996, as the last of the post-Soviet states, which gave the President strong powers. The presidential-parliamentary system was clearly tilted towards presidentialism, and Kuchma tried to augment his powers through referenda (a tactic in which Belarusian president-dictator Aleksandr Lukashenko excelled). Though not as extensive as Kuchma had hoped, these powers often made relations between the executive and the legislative conflictual,<sup>18</sup> and included: competence over foreign policy; the appointment of the prime minister and his or her unilateral dismissal together with the cabinet; the veto of parliamentary bills (that can be overruled by two thirds of the *Rada*); and the power of appointment in many

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<sup>14</sup> Kataryna Wolczuk (2001), 'Ukraine: Tormented Constitution-Making', in Jan Zielonka (ed.) *Democratic Consolidation in Eastern Europe. Institutional Engineering*, Vol. 1, Oxford: Oxford University Press, pp. 243-268.

<sup>15</sup> Ilya Prizel (1997), 'Ukraine between proto-democracy and "soft" authoritarianism', in Karen Dawisha and Bruce Parrott (eds.), *Democratic Changes and Authoritarian Reactions in Russia, Ukraine, Belarus, and Moldova*, Cambridge: Cambridge University Press: pp. 330-365.

<sup>16</sup> Rosaria Puglisi (2003), 'The Rise of the Ukrainian Oligarchs', *Democratization*, Vol. 10, No. 3, Autumn, pp. 99-123.

<sup>17</sup> Freedom House (2003), *Nations in Transit*, chapter on Ukraine.

<sup>18</sup> Oleh Protsyk (2003), 'Domestic political institutions in Ukraine and Russia and their responses to EU enlargement', *Communist and Post-Communist Studies*, Vol. 36, No. 4, pp. 427-442, Charles R. Wise and Trevor L. Brown (1998), 'The Consolidation of Democracy in Ukraine', *Democratization*, Vol. 5, No. 1, pp. 116-137.

other key positions, such as the prosecutor general, the head of the security service and the secretary of the National Security Council. Kuchma's powers were increasingly based on corrupt practices determined by the rising oligarchy that dominated business and political life through a web of clan and ally-based groups that controlled regional power bases and had spread their tentacles towards the capital in a bid to maintain impunity and determine political choices. The penetration of oligarchs in public life distorted significantly the foundations of democratic institutions. If the judiciary remained formally independent from political power throughout the period examined here, the erosion of the separation of executive, legislative and judicial powers had the potential to undermine its independence.

In this context, the human rights and democracy situation in Ukraine deteriorated over the years rather than improve as it built its post-communist state institutions. In the early 1990s Ukraine was of far less concern to international human rights watchdogs compared to other former Soviet Republics, such as Russia, Armenia, Azerbaijan, not to speak of the conflicts that emerged on the borders of the break-away republics. It was towards the end of the 1990s that the most significant human rights and democracy violations started to take place in Ukraine. On the bases of independent international reports,<sup>19</sup> the major problems incurred in Ukraine over democracy and human rights regard the role of the President and his abuses of the system to increase his powers, the conduct of elections, media freedom, and the prison system.

This thesis focuses on two issues: press freedom and elections. These cases are considered the most relevant for the purposes of this thesis because of their recurrence over time, their magnitude, and their impact on political life in Ukraine and on its relations with the EU – all of which will be illustrated in the course of chapters 5 and 6.

The Egyptian case study will be examined for the period 1995-2007, covering the birth of the Euro-Mediterranean Partnership until the agreement on the European

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<sup>19</sup> The identification of the main human rights and democracy problems experienced in Ukraine is based on external reports by international watchdog organisations. See Human Rights Watch, *World Report*, chapters on Ukraine in the editions between 1991 and 2007; Freedom House, *Freedom in the World*, chapters on Ukraine in the editions from 1991 to 2007; Freedom House, *Nations In Transit*, chapters on Ukraine in the editions from 1997 to 2007; Amnesty International, *State of the world's human rights*, sections on Ukraine in the editions from 1991 to 2007; US State Department, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, chapters on Ukraine in the editions between 1993 and 2007. The same sources have been used for the Egyptian case study.

Neighbourhood Policy Action Plan. In general terms, Egypt shares with the other Arab states a number of key problems that lie behind their human rights and democracy deficits. These include the lack of three essentials: freedom, knowledge and the empowerment of women. The absence of free and fair elections, constraints on the media and society, a patriarchal social environment, organised civil society strangled by legal and administrative constraints are all common throughout the Arab world, compounded in Egypt by the suspension of basic fundamental rights under the emergency law.<sup>20</sup> After a period of repression following Sadat's assassination in 1981, President Hosni Mubarak continued Sadat's process of political 'opening' (*intifah*) towards a degree of political pluralism through elections and economic liberalisation carefully controlled by the regime and the main party in power, the National Democratic Party (NDP), on the basis of the 1971 Constitution.<sup>21</sup> Executive and legislative powers are heavily concentrated in the hands of the President, who can present legislation, shuffle the government (accountable to the President), and dissolve the People's Assembly. The Consultative Assembly (*Majlis al-Shura*), is firmly in the hands of the regime.<sup>22</sup>

Conversely, since the mid 1980s the judiciary has enjoyed a degree of independence that has had an important impact on political life. The Supreme Constitutional Court, the 'boldest judicial actor', has repeatedly criticised, for instance, the conduct of elections.<sup>23</sup> The majority of legal opposition parties owe their status to court decisions. This has given the Egyptian regime a veil of legitimacy that has led some analysts to view the country as one in transition, blocked in the 1990s, in the aftermath of September 11, and from 2006 onwards by the government's fight against the Islamist opposition - which has implied a severe curtailment of political and civil rights - and justified internally and internationally by the fight against terrorism.<sup>24</sup> But these oscillations between processes

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<sup>20</sup> United Nations Development Programme (2002), *Arab Human Development Report*, New York.

<sup>21</sup> Daniela Pioppi (2004), 'L'Egitto dell'*intifah*: quale liberalizzazione?' in Federica Bicchi, Laura Guazzone and Daniela Pioppi (eds.), *La Questione della Democrazia nel Mondo Arabo. Stati società e conflitti*, Monza: Polimetrica, pp. 271-289.

<sup>22</sup> Eberhard Kienle (2001), *A Grand Delusion. Democracy and Economic Reform in Egypt*, London and New York: I.B. Tauris, chapter 2.

<sup>23</sup> Nathan J. Brown (1997), *The Rule of Law in the Arab World. Courts in Egypt and the Gulf*, Cambridge: Cambridge University Press, chapter 4, quote on p. 102.

<sup>24</sup> The perception of Egypt as a country in transition blocked by the risk of fundamentalism and of terrorism is clearly reflected in the EU's analysis of the country in the early 2000s. See Euro-Med Partnership (2002), *Egypt Country Strategy Paper 2002-2006 & National Indicative Programme 2002-2004*, available at [http://ec.europa.eu/external\\_relations/egypt/csp/02\\_06\\_en.pdf](http://ec.europa.eu/external_relations/egypt/csp/02_06_en.pdf).

of opening the political arena and the crackdown on the opposition were also caused by domestic dynamics relating to the maintenance of power.<sup>25</sup> Indeed, there are a number of factors that suggest that the *intifah* was more about transforming the regime in order to preserve power rather than a transition towards a form of democracy: a 'modernisation of authoritarianism'.<sup>26</sup>

The major source of substantive infringements on human rights and on the partially democratic provisions offered by the Constitution stems from the persistence of the emergency law. Only Syria, Sudan and Egypt have used this type of law to suspend parts of their constitutional provisions. In Egypt it has been in place since 1967 (continuously since the assassination of President Anwar Sadat in 1981 by the radical Islamist group *Jihad*) and is renewed every three years. Under the justification of the fight against terrorism, the emergency law has given the government's security forces ample room for manoeuvre in investigations, detention, arrest without charge and imprisonment of suspected opponents of the regime, as well as their families and acquaintances. The powers of security bodies were strengthened by the anti-terrorist law of 1992, which criminalised even suspected association with the Muslim Brotherhood. Indeed, the UN Commission on Human Rights has called for its review.<sup>27</sup>

Justification for the state of emergency is linked to terrorism. Islamic terrorism has constituted the most serious threat to the domestic stability of a country whose post-colonial history has otherwise seen a low level of conflict compared to the region. Terrorist groups acting in the name of Islam were an important feature of Egyptian politics during the 1990s. *Al-Jama'a al-Islamiyya* (Islamic Group) and *Jihad* were the two main groups that conducted a 'war of attrition' against the government between 1990 and 1997, causing 1,300 casualties and culminating in the Luxor attack of November 1997.<sup>28</sup> The crackdown on security by the government and the failure of these groups to gather popular support led to the defeat of *al-Jama'a* and the apparent

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<sup>25</sup> Eberhard Kienle (1998b), 'More than a Response to Islamism: the Political Deliberalisation of Egypt in the 1990s', *Middle East Journal*, Vol. 52, No. 2, pp. 219-235; Jason Brownlee (2002), 'The Decline of Pluralism in Mubarak's Egypt', *Journal of Democracy*, Vol. 13, No. 4, pp. 6-14. For a critique of 'transitology', see Kienle (2001), chapter 8.

<sup>26</sup> Pioppi (2004), quotation on p. 289.

<sup>27</sup> Amnesty International (2007), *Egypt – Systematic abuses in the name of security*, London: Amnesty International, AI Index: MDE 12/001/2007.

<sup>28</sup> Fawaz A. Gerges (2000), 'The End of the Islamist Insurgency in Egypt? Cost and Prospects', *Middle East Journal*, Vol. 54, No. 4: pp. 592-612, quote on p. 592.



dispersal of *Jihad*. Some of its leaders, however, re-emerged with the terrorist attack against the United States in September 2001.<sup>29</sup>

Mubarak's strategy to deal with the outbreak of terrorism had implications for the human rights and democracy standards in Egyptian political and social life: first of all he resorted to Islamist discourse in an attempt to undermine moderate and non moderate Islamic movements; secondly, the crackdown was not limited to terrorist groups but extended to the Muslim Brotherhood, many of whose leading figures have been arrested and tried in special military courts, professional syndicates controlled by the Brotherhood have been closed down, and the activities of human rights and non-governmental organisations restricted.

Under the emergency law, arbitrary detention and torture are extremely common means for fighting any dissent. In the 1990s death penalties and executions for political reasons reached an unprecedented number in Egypt's independent history, with the side effect of weakening the judiciary.<sup>30</sup> Exact figures on sentences and executions are not available, but research indicates that 530 executions took place between 1991 and 2000, 28 in 2001, 49 in 2002, and 36 in 2003.<sup>31</sup>

But even without the emergency law, the strict limitations on the formation of political parties have weakened the liberal opposition and prevented the largest and oldest political group, the Muslim Brotherhood, from standing in elections and forming a party. Indeed, the right to a free and fair vote has been a farcical affair. Until the presidential and parliamentary elections of 2005, Mubarak and the NDP ran virtually unopposed, thanks to the weakness of the opposition, the illegality of the Muslim Brotherhood, the legal harassment of its members, and widespread electoral fraud.<sup>32</sup> Freedom of assembly, although at times tolerated, was illegal and for much of the 1990s strikes were banned and rules were used to take on politically active trade unions. Freedom of expression and of the media is curbed by restrictive laws against defamation

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<sup>29</sup> Diane Singerman (2002), 'The Politics of Emergency Rule in Egypt', *Current History*, pp. 29-35.

Mohammad Atta was one of the attackers on September 11; while two top leaders of the Egyptian *Jihad*, Ayman al-Zawahiri and Mohammed Atef joined forces with Bin Laden and established the International Islamic Front for the Jihad against Jews and Crusaders.

<sup>30</sup> Kienle (2001).

<sup>31</sup> International Federation for Human Rights (2005), *The Death Penalty in Egypt*, Report of International Fact Finding Mission, No. 415/2005, April.

<sup>32</sup> Dalacoura (2003).

or in cases in which a published piece of information might threaten public order or damage the national economy and national interest. The Constitution forbids censorship except in special circumstances, such as under a state of emergency, which is de facto permanent. In addition, public ownership of the many press outlets limits press freedom, though it is more pluralist than in many other Arab countries. During 2007 several episodes suggested that press freedom was being further curtailed by the regime.

With regard to civil society, Egypt had a long tradition of associations until the 1952 free officer coup, after which Nasser abolished free associationism. In 1964 the government established a restrictive law governing civil society associations. In the mid-2000s, despite extensive restrictions the country could count numerous NGOs, including ones dealing with human rights (restrictions, however, that hardly apply to the Islamist organisations carrying out social work through funding raised in mosques).<sup>33</sup> Nonetheless, NGOs have been repeatedly the object of government campaigns to curb them and their activities. In the late 1990s, the regime launched a campaign of denigration and harassment against human rights defenders in Egypt. In 1999 a new law restricted NGOs, by tightening rules on legal registration with the authorities, making external funding subject to government approval, severely curbing the type of activities they could carry out and instituting harsh criminal punishment for violations of the new law.<sup>34</sup> This made NGOs dependent on foreign donors legally vulnerable. The legal case brought against the Ibn Khaldun Centre in 2001, which notoriously led to the imprisonment of Saad Eddin Ibrahim (a dual Egyptian-US citizen) and his colleagues, was an example of how external funding could be used to curb NGO activities.<sup>35</sup> It has also led to splits within the NGO community, making it highly fragmented.<sup>36</sup> Since September 11 the government has further sought to control the activities of the NGOs while at the same time realising their importance due to international donors'

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<sup>33</sup> Vickie Langhor (2004), 'Too Much Civil Society, Too Little Politics. Egypt and Liberalizing Arab Regimes', *Comparative Politics*, Vol. 36, No. 2, pp. 181-204.

<sup>34</sup> Abdullahi A. An-Na'im (2001), 'Human Rights in the Arab World: A Regional Perspective', *Human Rights Quarterly*, Vol. 23, No. 3, pp. 701-732; Human Rights Watch (1999), *World Report 1999*, section on Egypt, [www.hrw.org/worldreport99/mideast/egypt.html](http://www.hrw.org/worldreport99/mideast/egypt.html).

<sup>35</sup> Angela Grünert (2004), 'Loss of Guiding Values and Support: September 11 and the Isolation of Human Rights Organizations in Egypt', in Jünemann (2003b), pp. 133-152.

<sup>36</sup> Grünert (2004); Langhor (2004); James Drummond, 'Activists despair of struggle', *Financial Times*, 10 May 2000; interviews, European Commission Delegation, Cairo: 28 May 2007 (1) and (2).

requirement for the involvement of non-state actors to carry out projects in Egypt.<sup>37</sup> Recent events suggested a further campaign to curtail NGO activity.<sup>38</sup>

The Egyptian state has thus been defined as an 'authoritarian' regime, characterised by a strong centralisation of power through which the regime tries to exercise a monopoly over political activity and limited pluralism,<sup>39</sup> or as a 'hegemonic regime'.<sup>40</sup> Furthermore, in contrast with common transition paradigms upon which the Barcelona Process and EU policy towards Egypt were based,<sup>41</sup> in Egypt periods of economic reform and liberalisation were not accompanied by political liberalisation.<sup>42</sup>

Torture and elections are the two themes that have been selected in order to focus the research here. Torture was widely considered the single largest human rights violation in Egypt, and electoral processes have been a risible affair, with only the very partial exception of the 2005 electoral rounds. Thus, as in the case of Ukraine, the two cases selected are thematic, where violations were repeated over time, rather than circumscribed episodes. Both case studies also allow for some evaluation of the ways in which EU policy evolved over time, in order to ascertain the degree to which human rights and democracy considerations in EU relations with Ukraine and Egypt, and to explain the role that they played in EU foreign policy.

#### 4. *The EU's definition of human rights and democracy*

EU external policies treat human rights and democracy within the same 'package', as the analysis of their emergence and development in foreign policy conducted in chapter 3 will show. It will also reconstruct how the EU progressively started to refer to these

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<sup>37</sup> Grünert (2004).

<sup>38</sup> Cairo Institute for Human Rights Studies (2008), *Limitations Imposed on the Right of Association in the Arab Region: Human Rights Defenders and Civil Society Organizations under Attack*, written statement submitted to the UN Human Rights Council Seventh Session, 25 March.

<sup>39</sup> Kienle (2001), Introduction.

<sup>40</sup> Larry Diamond (2002), 'Thinking about Hybrid Regimes', *Journal of Democracy*, Vol. 13, No. 2, pp. 21-35.

<sup>41</sup> See, for instance, Euro-Med Partnership (2002) *Egypt Country Strategy Paper 2002-2006 & National Indicative Programme 2002-2004*, available at [http://ec.europa.eu/external\\_relations/egypt/csp/02\\_06\\_en.pdf](http://ec.europa.eu/external_relations/egypt/csp/02_06_en.pdf).

<sup>42</sup> Kienle (2001), Pioppi (2004). On democratisation theories and their application in the Arab world, see Laura Guazzone and Daniela Pioppi (2004), 'Introduzione alla questione della democrazia nel mondo arabo', in Bicchi, Guazzone and Pioppi (eds.), pp. 19-41.

international norms in shaping its foreign policy. In 1991, a substantive articulation of how the EU views human rights and their relation to democracy was clarified:

The European Council recalls the indivisible character of human rights. The promotion of economic, social and cultural rights, as of civil and political rights, and of respect for religious freedom and freedom of worship, is of fundamental importance for the full realization of human dignity and of the legitimate aspirations of every individual. Democracy, pluralism, respect for human rights, institutions working within a constitutional framework, and responsible governments appointed following periodic fair elections, as well as the recognition of the legitimate importance of the individual in a society, are essential prerequisites of sustained social and economic development.<sup>43</sup>

However, their legitimacy, with respect both to the incorporation of such policies in the EU's internal institutional and legal set up, and to their universality embedded in international law and norms, rests on different sources. The EU places the sources of legitimacy for pursuing human rights in international and regional treaties and agreements, explicitly referred to in all EC/EU declarations. Many of the rights that come under contention when used in foreign policy have actually found international normative consensus in the Universal Declaration and in the various covenants ratified from 1948 onwards,<sup>44</sup> to which Ukraine and Egypt subscribed as well. Indeed, as chapter 3 will show, many of these principles are made explicit in the agreements between the EU and these two countries and in the Euro-Mediterranean Partnership (EMP) to which Egypt is party, and constitute the conditions that form the basis of the contractual agreements between the EU and third countries.

In the European context, reference to some key CSCE documents such as the Helsinki Final Act (1975) and the Charter of Paris for a New Europe (1990), give such principles a more political dressing tied to regional security, by including concepts such as the 'human dimension' of the Conference on Security and Cooperation in Europe (CSCE) process.<sup>45</sup> The latter set of conventions represented the conceptualisation of link between individual human rights on the one hand, and security on the other, as strong in the new post Cold War Europe as the link between human rights and development had

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<sup>43</sup> European Council (1991), *Declaration on Human Rights*, Luxemburg: 28-29 June.

<sup>44</sup> Jack Donnelly (1999), 'The Social Construction of International Human Rights', in Dunne and Wheeler (eds.), pp. 71-102.

<sup>45</sup> Conference on Security and Cooperation in Europe (1990), 'Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE', available at [www.osce.org/docs/english/1990-1999/hd/cope90e.pdf](http://www.osce.org/docs/english/1990-1999/hd/cope90e.pdf).

become in the 1980s in relations with the developing world. As the 1991 Declaration reads, ‘tensions and conflicts arising from flagrant and systematic violations of human rights and fundamental freedoms in one country or in a specific region are often a threat to international peace and security’, providing a powerful rationale – as will be argued – for an actual insistence on these principles, especially as far as post Cold War Europe was concerned.

In this context in particular, the EU also insisted on the protection of minority rights, for instance by requiring the ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities as a condition for accession to the EU, Convention which not all the member states have ratified.

Indeed, the internal dimension of building a human rights regime has developed somewhat more slowly. In 1991 Article 6.2 of the Treaty on the European Union makes the European Convention for the Protection of Human Rights and Fundamental Freedoms part of the *acquis*. But it was only in 1997 that the enforcement dimension was added with Article 7 introduced by the Amsterdam Treaty that contemplates a set of negative measures, up to the suspension of membership, in the case of violation of the principles outlined in Article 6. In 2000 the Charter of Fundamental Rights of the European Union, formally codified the rights enjoyed by the citizens of the EU member states, but will become legally binding only as a Protocol to the Lisbon Treaty (with opt-outs to sections of the Charter for Great Britain and Poland), which was supposed to enter into force in 2009. Only with the ratification of the Lisbon Treaty will the EU acquire the legal personality necessary to accede to those international conventions whose principles it refers to in its foreign policy.

Conversely to human rights principles, while the EU claims a ‘moral’ legitimacy to pursue democratisation abroad due to its member states all sharing democratic principles,<sup>46</sup> ‘democracy’ does not enjoy an international normative definition. In its external relations, the EU has not developed a one size for all conception of democracy, though it has spelt out its basic tenets, especially in the context of enlargement and of regional strategies. The ‘Copenhagen criteria’ for accession entail the ‘stability of

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<sup>46</sup> European Commission (2001e), *The European Union’s Role in Promoting Human Rights and Democratisation in Third Countries*, COM(2001) 252 final, Brussels: 8 May.

institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.<sup>47</sup> In Southeastern Europe, democratic principles (rather than democracy) included 'representative government, accountable executive; government and public authorities to act in a manner consistent with the constitution and the law; separation of power (government, administration and law); free and fair elections at reasonable intervals by secret ballot'.<sup>48</sup> Finally, in 1998, with respect to relations with the developing world, the EU defined democratic principles in terms of legitimacy (based on free elections through universal suffrage and the secret ballot), legality (in terms of rules for all citizens) and their effective application (through respect for fundamental freedoms, separation of executive, legislative and judicial powers, political and institutional pluralism, participation in decision-making, and transparency of the institutions).<sup>49</sup>

The EU's legitimacy in pursuing human rights and democracy in foreign policy is therefore partial. On the one hand, the EU seeks to legitimise the appropriateness of pursuing human rights in foreign policy in international law and norms, to which most EU member states have subscribed, but not the EU as such. On the other, it justifies its promotion of democracy by referring to its internal composition formed by democratic states. With regard to both principles, it nonetheless has sought for definitions to guide its action and responses to their violations in third countries, though it has been slower and less precise in finding consensus over the definitions of its own internal standards.

## 5. *Outline of the thesis*

The first task necessary to develop some potential explanations regarding the reasons behind the EU's incorporation of human rights and democracy in its foreign policy is to identify a set of appropriate hypotheses. Chapter 2 is dedicated to this task. It draws upon international relations theoretical literature to identify five main hypotheses that derive from realist interpretations, institutionalism and constructivism. The first hypothesis considers the EU's claim just a claim: human rights and democracy are not

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<sup>47</sup> European Council (1993), *Council Conclusions*, Copenhagen: 21-22 June.

<sup>48</sup> European Council (1997), *Council Conclusions*, Annex to Annex III: Application of Conditionality with a view to developing a Coherent EU-Strategy for the Relations with the Countries of the Region', Luxemburg: 29-30 April

<sup>49</sup> K. Smith (2003), pp. 132-133.

amongst the EU's foreign policy priorities but constitute an excuse or justification for the pursuit of other priorities that can range from establishing a hegemonic power over third countries, to seeking legitimacy vis-à-vis domestic electorates. Alternatively, human rights and democracy concerns are *not* activated precisely because they are secondary to EU foreign policy priorities. The second sees the pursuit of human rights and democracy as a means to increase security and stability for the EU. The third hypothesis too is instrumentalist, but is related to internal, rather than external, aims of building EU foreign policy capacity or identity. The fourth hypothesis focuses more strongly on the role of EU institutions, mitigating and shaping state preferences. The EU's commitment would generate, through institutionalisation, a 'habit of cooperation' or a 'logic of appropriateness' to respond to human rights and democracy problems. The fifth sees human rights and democracy as part of the EU's identity, whereby the EU's nature itself would be the source of foreign policy output rooted in the principles that characterise it.

The second part of chapter 2 will address the theoretical framework necessary to guide the more empirical questions about the actors, factors and processes behind the EU's responses to human rights and democracy problems in Ukraine and Egypt. It develops hypotheses about the relative weight of intergovernmental and institutional approaches to understand agency and decision making processes in the EU, about internal and external stimuli that push EU action, as well as introducing some concepts that allow for an understanding of 'meso-level' policy shaping processes. It seeks to identify 'constituencies' that support EU action by using the concept of 'policy entrepreneurs' applied to member states as well as to the more common attribution to the Commission and the European Parliament. In doing so, I will support the need for flexible approaches to understanding EU foreign policy making, rather than single theoretical explanations.

Chapter 3 provides the historical framework of the thesis. It reconstructs the most important steps undertaken by the EU in the development of human rights and democracy policies, focusing on the post-Cold War period, and explaining the main developments in this field with regard to policies towards Ukraine and Egypt. It will then relate the research conducted for this thesis to existing literature in the field, whilst identifying the areas that require greater empirical knowledge and more adequate theoretical explanations. Throughout the chapter the core questions of the thesis are

addressed in historical fashion: who were the most important actors within the EU determining these policy choices; what were the main reasons for doing so; were the stimuli for introducing such developments internally or externally induced; what range of tools were used; what European foreign policy priorities can be evinced? It does so by relating the history to the theory examined in Chapter 2 whilst preparing the ground for the analysis of the policy frameworks relevant to understand the case studies.

The following six chapters are dedicated to the two case studies: Ukraine and Egypt. The main hypotheses and research questions generated in chapter 2 will thus be tested on these two case studies. Chapters 4 and 7 will respectively review EU foreign policy towards Ukraine and Egypt in general terms, with the aim of ascertaining the processes, dynamics, actors and motivations guiding the EU and its member states. Chapters 5 and 6 will address the two case studies in Ukraine regarding press freedom and elections; while chapter 8 and 9 will delve into EU policy on torture and on elections in Egypt.

The final chapter will draw conclusions. It will concentrate first on identifying some conclusions from the specific case studies: to what extent can it be claimed that human rights and democracy were included in foreign policy actions towards the two countries? What priorities emerged? The aim would be to identify sets of dynamics regarding actors, motivations, and priorities that characterise the EU foreign policy making process in action. The second part will aim to make some broader generalisations about EU foreign policy and the role of human rights and democracy, and relate these to the broader theoretical literature on the subject. Is the normative power model sustainable empirically? If not, what implications can be derived from empirical research that help understand the interplay between strategic foreign policy objectives and more 'normative' or immaterial principles?

## **6. Conclusions**

This research started off with the aim of providing empirical substantiation to constructivist-based views of the EU as a 'different' actor in the international arena. These conceptualisations appeared the most appropriate to fit the EU's claim to pursue human rights and democracy in its foreign policy. Yet the empirical conclusions reached are by and large in contrast with these conceptualisations. In fact, the classical realism



against which constructivist approaches departed provides more insights in understanding EU behaviour than EU-actor based interpretations. What is argued here is that ultimately both EU foreign policy and the role of human rights and democracy is still characterised by the lack of a common vision shared by the member states. The degree of institutionalisation of human rights and democracy in the EU's external relations is such that not responding to their violation could have costs in terms of credibility and expectations. It also means that the policy entrepreneurs have reasonably powerful arguments (rhetorically subscribed to by the EU institutions) to persuade or shame more reluctant members to act. Yet the competing visions of human rights and democracy and the 'logic of diversity' in EU foreign policy significantly undermine actor-centric definitions.

Notwithstanding the idealist validity of constructivist approaches, it is hard to distinguish their analytical and prescriptive dimensions. The 'constitutive' features are factors that would construct the EU as a 'force for good'. Analytically, it might be useful to explore whether other features compete, cognitively as well as materially, with those that would make the EU an actor that pursues 'normative' aims, which in turn would require an exploration of whether these competing features are materially or ideationally constructed.

Secondly, theoretical approaches to understanding EU foreign policy need to be problematised. In particular, explaining the EU's international behaviour cannot be reconduced to single theoretical interpretations. An examination of the processes behind EU foreign policy choices reveals that different dynamics determine EU action, governed by a complex interplay between opportunities to exercise leverage, diverse concerns of the member states, inter-institutional dynamics, internal aims of maintaining unity in a context of a logic of diversity, and external objectives that can vary between expressing disapproval at the human rights and democracy abuses of a foreign government to more mundane concerns over access to energy, for example.

Single interpretative frameworks are not sufficient to capture these complex dynamics. There is a risk of ‘dispersed eclecticism’,<sup>50</sup> or pre-theoretical<sup>51</sup> conclusions which in the past has led to insufficient theorisation about EU foreign policy. Yet it might be worth running this risk if it is necessary to understand the actual dynamics behind the Union’s political choices. Here, the use of broader theories of international relations can help understand ‘macro’ processes of EU foreign policy making.

Thirdly, EU foreign policy requires more empirical research on a case by case basis in order to understand patterns that can back theoretical generalisations. It was surprising to discover that two important partners of the EU, Ukraine and Egypt, have scarcely been covered by empirical research on EU policy towards them. While Ukraine has received some attention, largely through studies on the European Neighbourhood Policy, Egypt is barely included in the literature on EU external relations.<sup>52</sup> One of the aims of this thesis is to contribute to fill these empirical gaps. Single research agendas should also further explore the role of member states in reconciling national interests with European integration in the foreign policy domain.

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<sup>50</sup> Alfred E. Pijpers, (1991), ‘European Political Cooperation and the Realist Paradigm’, in Martin Holland (ed.), *The Future of Political Cooperation. Essays on Theory and Practice*, Basingstoke and London, pp. 8-35, quote on p. 14.

<sup>51</sup> Roy H. Ginsberg (1989), *Foreign Policy Actions of the European Community: The Politics of Scale*, Boulder, CO: Lynne Rienner.

<sup>52</sup> EU relations with two countries have been analysed in Phebe Marr, (1999) (ed.), *Egypt at the crossroads : domestic stability and regional role*, Washington, DC : National Defense University Press, and Ann Lewis (2002) (ed.), *The EU and Ukraine*, London : Kogan Page. A few studies of the Orange Revolution in Ukraine have been published, including Adrian Karatnychky (2005), ‘Ukraine’s Orange Revolution’, *Foreign Affairs*, Vol. 84, No. 2, pp. 35-52; Anders Aslund and Michael McFaul (2006) (eds.), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough*, Washington, DC: Carnegie Endowment for International Peace; Michael McFaul (2007), ‘Ukraine Imports Democracy. External Influences on the Orange Revolution’, *International Security*, Vol. 32, No. 2, pp. 45–83; Piccone and Youngs (2006); Oleksandr Sushko and Olena Prystayko (2006), ‘Western Influence’, in Aslund and McFaul (eds.), pp. 125-144. More specific studies on Egypt-EU are limited to Mohammed El-Sayed Selim, (1997), ‘Egypt and the Euro-Mediterranean Partnership: Strategic Choice or Adaptive Mechanism?’, in Richard Gillespie, (ed.) (1997b), *The Euro-Mediterranean Partnership. Political and Economic Perspectives*, London: Frank Cass, pp. 64-90, whereas the Euro-Mediterranean Partnership has received considerable attention on part of the academic community, including human rights and democracy issues addressed (in a regional context) in Katerina Dalacoura (2003), *Engagement or coercion? Weighing Western human rights policies towards Turkey, Iran and Egypt*, London: The Royal Institute of International Affairs; Laura Feliu (2001), ‘Human Rights and the Barcelona Process’, in Fulvio Attinà and Stelios Stavridis (eds.), *The Barcelona Process and Euro-Mediterranean Issues from Stuttgart to Marseilles*, Milan: Giuffrè, pp. 67-92; Richard Gillespie and Richard Youngs (2002), ‘Themes in European Democracy Promotion’, *European Union and Democracy Promotion: The Case of North Africa. Special Issue of Democratization*, Vol. 9, No. 1, pp. 1-16; Jünemann (2003b); Youngs (2006a); Joffé (2008).

Contrary to initial expectations when embarking on this research, the conclusions reached through empirical analysis contend that human rights and democracy in EU foreign policy are more strongly rooted in rhetoric than in reality. The examination of foreign policy processes towards Ukraine and Egypt will show that the logic of diversity is still dominant in EU foreign policy. This is not merely because the outcome of rational calculations on the costs and benefits of pursuing normative positions is usually against human rights and democracy concerns. These diverse views mean that it is not simply that human rights and democracy are considered secondary to other concerns and priorities, which may differ between the member states. It was an expected outcome that competing foreign policy priorities would not go to the benefit of the latter. But underlying these outcomes are competing cognitive and normative views of what EU foreign policy *should* be about, as well as of the role that human rights and democracy *should* play in relations with third countries.

This explains the degree of 'ad hocery' in responding to human rights and democracy violations in third countries and, when common positions are reached, the reasons for them developing overwhelmingly as declaratory positions that are not followed up by action. Despite nearly two decades of Common Foreign and Security Policy and the previous two decades of European Political Cooperation (EPC), there still is great divergence between EU member states on the priorities to be addressed, and human rights and democracy are not high up on the agenda.

The end result in terms of output is that the EU's inclusion of human rights and democracy is, by and large, declaratory, a minimum common denominator reached as a result of compromise between the EU member states. There are exceptions: cases in which the EU does not even resort to declaratory positions, as well one case in which human rights and democracy became incorporated into a security logic, triggering EU action. The 'brakes' to the development of human rights and democracy concerns are, behind the logic of diversity, the prioritisation of other concerns - the most notable priority that emerges from the case studies is the understanding that maintaining cooperative relations with third partners is of paramount importance.

Yet human rights and democracy are high up in the rhetoric. Why have all the EU institutions placed such rhetorical importance, especially in the 1990s, on defining its

foreign policy on characteristics that are not translated into actual performance? The rhetoric unmatched by substance can have detrimental effects on the development of the EU's international reach, both in terms of internal domestic support and in terms of external capabilities. Secondly, the rhetoric can and has been taken seriously by partner governments, jeopardising the reasons for not pursuing action beyond declaratory positions. This has meant that the rhetoric, even if not followed by any action that might harm the third country, has driven wedges into the EU's priority of seeking cooperation with foreign governments.

Policy entrepreneurs have been identified as raising the stakes for the EU to respond to human rights and democracy problems in third countries. In contrast to widespread expectations on the part of the academic community, the Commission does not emerge as a significant policy entrepreneur; rather some member states, often echoed or stimulated by the European Parliament, have pushed the human rights and democracy agenda within the EU. The debates between the member states that this research has uncovered are a further confirmation that within the EU there are quite diverse views about the role that human rights and democracy should play. Bilateral relations remain important especially with regard to those concerns that are most rooted in material interests in the capitals of the member states. And the 'red lines' put in place by the member states more often than not trump the development of normative positions.

## CHAPTER 2

### HUMAN RIGHTS AND DEMOCRACY IN EU FOREIGN POLICY: THE SEARCH FOR AN ANALYTICAL FRAMEWORK

#### 1. *Introduction*

It was only in the second half of the 1980s, and more significantly since the beginning of the 1990s, with the end of the Cold War, that the EC/EU started to make human rights and democracy a part of its rhetoric and include them in its foreign relations objectives.<sup>53</sup> The main turning points and the development of these policies will be examined in detail in Chapter 3. Suffice it to say at this point all the external policies of the European Union include the aims of promoting human rights and democracy, and that their pursuit has been enshrined in the Maastricht Treaty on the European Union in its Common Foreign and Security provisions and later confirmed in the Lisbon Treaty. Human rights and democracy are thus included in the EU's political, economic, cultural and security relations with a large part of the world.

The core puzzle of this thesis regards the gap between the rhetoric and commitment the EU has made in developing a self-portrait as a global promoter of human rights and democracy, and its actual performance in pursuing these aims through foreign policy.

The main question guiding this thesis therefore is: *does the EU include human rights and democracy in its foreign policy? If so, why? And if not, why?* A set of hypotheses will be developed in this chapter, drawing largely from international relations theory, regarding the motivations that lead actors to pursue such foreign policy aims.

Applying these hypotheses to empirical research regarding the EU requires a further set of sub-questions necessary to guide analysis: *what actors and factors stimulate the inclusion of human rights and democracy in foreign policy and, conversely, what actors and factors inhibit it?* And, secondly, *what foreign policy processes drive EU responses to human rights and democracy problems in Ukraine and Egypt?* These will be the core questions guiding the empirical research carried out in chapters 4 to 9; yet these

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<sup>53</sup> K. Smith (2001); and K. Smith (2003), chapters 5 and 6.

questions too need to be set in a theoretical framework that can capture the complexities of EU foreign policy making.

While section 2 of this chapter will focus mainly on the core question of the thesis, section 3 will delve into the development of an analytical framework that will enable the use of a methodological approach capable of reaching some broader conclusions about EU foreign policy processes, addressing the two empirical questions about the processes and dynamics that govern the EU's responses to human rights and democracy issues arising in its foreign policy. In other words, the reasons behind EU positions need to be accompanied by an understanding of those factors that are driving or hindering EU action.

Three broad schools of international relations will be drawn upon: realism, rationalist ideational approaches, and constructivism or cognitive approaches.<sup>54</sup> With regard to understanding EU foreign policy processes, intergovernmentalism, institutionalism and identity-based interpretations will be considered. Despite the wide varieties within these schools, these will be simplified for the sake of clarity. Steve Smith warns against a 'pick and mix' attitude,<sup>55</sup> yet all single interpretations show strengths and weakness when applied to the study of human rights and democracy considerations in foreign policy, especially by a hybrid actor as the EU.

## **2. *Instrumentalist, rationalist and cognitive approaches to understanding human rights and democracy in EU foreign policy***

I have placed explanations for why the EU would pursue human rights and democracy on a spectrum that ranges from instrumentalist to cognitive interpretations. Instrumentalist interpretations would exclude the possibility of human rights and

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<sup>54</sup> For a good definition of realist, liberal institutional and constructivist categories, see Sonia Lucarelli (2000), *Europe and the Breakup of Yugoslavia*, The Hague: Kluwer Law International, chapter 6. Tonra prefers the use of the term 'cognitive' to 'constructivist'. Ben Tonra (2003), 'Constructing the Common Foreign and Security Policy: The Utility of a Cognitive Approach', *Journal of Common Market Studies*, Vol. 41, No 4, pp. 731–56. Here, constructivism will be used when explicitly referring to the body of theory, while I will use the term 'cognitive' when exploring motivations for developing the EU's normative agenda related to ideational factors. This is because the concept can be useful even without being set in the paradigms developed by theoreticians.

<sup>55</sup> Steve Smith (1995), 'The Self-Images of a Discipline: A Geneology of International Relations Theory', in Ken Booth and Steve Smith (eds.), *International Relations Theory Today*, University Park, Pennsylvania: Pennsylvania State University Press, pp. 1-37.

democracy as playing any particular role in EU foreign policy, attributing them a role that is tied to rhetoric and ideology, possibly used as a Trojan horse for the pursuit of other objectives rooted in material gains, such as political hegemony, international stability, economic advantages, or to keep domestic public opinion and electorates happy. Alternatively, these other interests are considered more important and trump possible human rights and democracy concerns. The other end of the spectrum would consider human rights and democracy as part of a set of ideas that increasingly guide EU action, either because some actors have persuaded others of the appropriateness of a certain response to global human rights and democracy problems, or because they are a constitutive part of the identity of the EU.

These hypotheses will be developed further. First it is necessary to unpack some assumptions behind this spectrum. To a large extent, this dichotomy, which is implied in much of the literature,<sup>56</sup> is false. Much of the literature on the subject appears to assume an inherent dichotomy between principles and interests, between idealism and pragmatism, an assumption that implies that principles reflect an ethical behaviour of the actor in question whereas interests are inherently 'selfish'. In turn, these assumptions seem to be behind the rationalist-constructivist divide in much international relations literature.

Chris Brown has demonstrated the false theoretical premises of this dichotomy arguing that most foreign policies have a moral content: the challenge of policy making is the competition between a set of wider duties towards international society and towards the interest of one's citizens.<sup>57</sup> Jørgensen too affirms that 'principles are completely agnostic along the dichotomies of benign/malign'.<sup>58</sup>

The task is not so much to uncover the degree to which the EU is 'genuine' about the principles it preaches; this would hide prescriptive views on how the EU *should* behave in the international arena. Rather, it is to explore the interaction between human rights

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<sup>56</sup> For a review of this assumption, see Richard Youngs (2004), 'Normative Dynamics and Strategic Interests in the EU's External Identity', *Journal of Common Market Studies*, Vol. 42, No. 2, pp. 415-435.

<sup>57</sup> Chris Brown (2001), 'Ethics, interests and foreign policy', in Light and K. Smith (eds.), pp. 15-32.

<sup>58</sup> Knud Erik Jørgensen (2006), 'Theoretical Perspectives on the Role of Values, Images and Principles in Foreign Policy', in Sonia Lucarelli and Ian Manners (eds.), *Values and Principles in EU Global Action*, London: Routledge, pp. p. 42-58.

and democracy and other foreign policy aims, together with the dynamics and processes between actors and within the EU institutions.

Nonetheless, the instrumentalist and cognitive spectrum is *methodologically* useful to understand the motivations guiding EU action. Testing the hypotheses empirically allows us to ascertain the degree to which human rights and democracy are present in foreign policy or whether they compete with other concerns, be these rooted in realist interests or in competing cognitive ideas.

The first hypothesis is that the aims of *human rights and democracy in foreign policy do not exist*, because they are secondary to other priorities. Alternatively, they merely hide interests and concerns instrumental to the achievement of other material objectives. As E.H. Carr famously warned, morality is ‘a disguise for selfish vested interests’.<sup>59</sup> The distortion of human rights and democracy principles during the Cold War<sup>60</sup> as a ‘camouflage’ of anti-communism was an example. If we rest our research on some of the fundamental tenets of realism, in both its classical and ‘neo’ versions,<sup>61</sup> human rights as principles and objectives of foreign policy, can appear only sporadically, probably as a function of the power of hegemonic states, and would explain EU rhetoric in instrumental terms, to conceal other objectives, be they a means to ensure the states’ security or a way to expand their political hegemony and relative power.

Justifications based on human rights and democracy would thus be a form of rhetoric invented by powerful states, or could be used to justify military intervention or peace

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<sup>59</sup> Edward H. Carr (1981), *The Twenty Years Crisis, 1919-1939: an introduction to the study of international relations*, (reprint of the 2nd edition of 1946, first edition 1939), reissued in 2001 with an introduction by Micheal Cox, London: Palgrave), p. 80. It must be clarified that, in contrast with later neorealist interpretations, E. H. Carr did not view the ‘realist’ world as devoid of morality or of principles, although the latter were seen as far less influential than power.

<sup>60</sup> Margot Light (2001), ‘Exporting Democracy’, in Margot Light and Karen E. Smith (eds.), *Ethics and Foreign Policy*, Cambridge: Cambridge University Press, pp. 75-92.

<sup>61</sup> Classical realism should be distinguished from neorealism. The latter, influenced by scientific method, has developed abstract state-centric models of power politics which, in its most extreme forms, excludes the possibility of norms or ideas playing a role. See John J. Mearsheimer (1994), ‘The False Promise of International Institutions’, *International Security*, Vol. XIX, No. 3, pp. 459-89. This approach is contested by classical realists themselves: ‘This theorizing is abstract in the extreme and totally unhistoric. It endeavours to reduce international relations to a system of abstract propositions with a predictive function’, Hans Morgenthau quoted in Richard K. Ashley (1984), ‘The Poverty of Neorealism’, *International Organization*, Vol. 38, No. 2, pp. 225-86, quote on p. 279. For a critique of the ‘neorealist orrery’, see Ashley (1984).



enforcement.<sup>62</sup> Chandler argues that the ‘success of normative values’ in the post Cold War era is due to a population that is more aware about global human rights which puts pressure on ‘enlightened Western governments’ to respond.<sup>63</sup> Human rights claims in foreign policy would thus be aimed more at internal electorates than for any external ‘normative’ concern for the universality of the principles. But with regard to the EU, the internal dimension is not limited to the ‘two-level’ consideration between domestic positions and a state’s foreign policy. Relations between states within the EU need to be taken into account too. Here, inter-relational aims<sup>64</sup> could play a part in developing human rights and democracy positions. I shall expand and explain further this hypothesis in the section regarding foreign policy processes.

On the other hand, few deny the existence of ‘normative’ concerns in foreign policy, and classical realism in particular can have something to say. According to Morgenthau, among the classical realists who did examine the role of ethics (if we understand human rights and democracy as ‘ethical’ objectives) in foreign policy,

morality, mores and law intervene in order to protect society against disruption and the individual against enslavement and extinction. When a society or certain of its members are unable to protect themselves with their own strength against the power drives of others [...] normative systems try to supplement power politics with their own rule of conduct.<sup>65</sup>

Otherwise, with the state as sovereign, citizens’ protection remains a state duty, whereas external human rights are ‘not the prime business of the state’.<sup>66</sup> This would imply that norms can play a role in terms of filling a power vacuum, or that they can help justify international action when the instruments of power cannot be used. Pushing this argument further, one could hypothesise that the EU has developed rhetorical justifications of its action based on normative content precisely because of its inability to wield power behind its foreign policy.

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<sup>62</sup> Ken Booth (1993), ‘Human wrongs and international relations’, *International Affairs*, Vol. 71, No. 1, pp. 103-126. On the hegemony of the powerful states manipulating human rights principles, see also Chandler (2002).

<sup>63</sup> Chandler (2002), especially chapter 3. Quote on p. 58.

<sup>64</sup> Keukeleire, Stephan and Jennifer MacNaughton (2008), *The Foreign Policy of the European Union*, Basingstoke: Palgrave MacMillan, chapter 1, p. 13.

<sup>65</sup> Hans J. Morgenthau (1985), *Politics among Nations. The Struggle for Power and Peace*, New York: Alfred A Knopf, (6th edition), p. 244.

<sup>66</sup> Morgenthau (1985), p. 277.

Carr's dictum should warn us to look for the real motives behind a moral political assertion. As Morgenthau put it, 'it is pertinent to ask whether [ethics] are mere ideologies concealing the true motives of action or whether they express a genuine concern for the compliance of international policies with ethical standards'.<sup>67</sup> Morgenthau's question can be taken a step further: as Chris Brown underlined, there is no reason to see 'interest' as intrinsically a-moral or immoral.<sup>68</sup> Indeed, one can hypothesise a convergence between so-called moral concerns, under which category human rights outside one's state would fall, and interests. Brown supports his argument by referring to the 1997 British Foreign Office mission statement of the Labour government on bringing an ethical dimension to foreign policy, which 'assumes that ethical principles are wholly consistent with the national interest'.<sup>69</sup> As Donnelly puts it, 'moral interests are not crazier an idea than economic and security interests'.<sup>70</sup>

Thus, a further hypothesis sees *human rights and democracy as merged with security interests*. The case of EU enlargement to Central Europe has been considered a prime example in which promoting stability and security on the continent was backed by supporting political reforms that ensured transition to democracy and respect of human rights, reflecting 'liberal' ideas about the link between peace and democracy.<sup>71</sup> This linkage has enjoyed much success in explaining EU integration and its expansion, based on Karl Deutsch's transactionalist 'security communities' whereby the creation of mechanisms and institutions of mutual interdependence between states reduces the costs of security protection.<sup>72</sup> Translating this hypothesis to the foreign policy domain, human rights and democracy can be explained as a means to promote stability and security in

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<sup>67</sup> Morgenthau (1985), p. 248.

<sup>68</sup> Brown (2001).

<sup>69</sup> Brown (2001), p. 17.

<sup>70</sup> Jack Donnelly (2000), 'An Overview', in David P. Forsythe (ed.), *Human Rights and Comparative Foreign Policy*, Tokyo, New York, Paris: United Nations University Press, pp. 310-34, quote on p. 327.

<sup>71</sup> Karen E. Smith (1999), *The Making of EU Foreign Policy. The Case of Eastern Europe*, London, MacMillan Press, especially chapter 7.

<sup>72</sup> Karl Deutsch (et al.) (1957), *Political Community and the North Atlantic Area*, Princeton, N.J.: Princeton University Press. For more recent uses of this approach, see John Duffield (1994), 'Explaining the Long Peace in Europe: The Contributions of Regional Security Regimes', *Review of International Studies*, Vol. 20, No. 3, pp. 369-88; Sonia Lucarelli (2002), *Peace and Democracy: The Rediscovered Link. The EU, NATO and the European System of Liberal-Democratic Security Communities*, Final Report, NATO Euro-Atlantic Partnership Council Individual Research Fellowships 2000-2002 Programme.

third countries,<sup>73</sup> of exporting the ‘democratic community’,<sup>74</sup> or as a way to ensure a credibility of commitments on part of foreign states.<sup>75</sup>

The focus of the hypotheses developed so far has been on the reasons for which the EU member states may include human rights and democracy in its foreign policy, stemming largely from state based approaches of realist or liberal matrix. However, among the bodies of international relations literature that has examined the role of ‘norms’ in international affairs, those emphasising the role of institutions have provided a number of hypotheses that can be applied to the core question addressed here.

Studies in political and social institutions – for the sake of simplicity labelled here institutionalism – have focused on the way institutions and their rules, practices, and norms shape behaviour. These have shed light on the role of institutions and the ways they influence the preferences of the EU member states.<sup>76</sup> Institutions could play a role in expanding knowledge and in shaping collective norms, in generating the EU commitment to including human rights and democracy in its foreign policy. Indeed, this approach has informed research into the opposite dynamic to state-centred approaches that see the member states as moulding EU institutions: the impact of institutions on states preferences and policies.<sup>77</sup>

Studies on the impact of ideas on policy choices argue that change in ‘principled ideas’ can bring about pressure for policy change, in favour of human rights protection, for example. According to Keohane and Goldstein, ‘normative ideas [...] specify criteria for distinguishing right from wrong and just from unjust’, and mediate between ‘world views’ (which are ‘embedded in the symbolism of a culture and deeply affect modes of

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<sup>73</sup> K. Smith (2001).

<sup>74</sup> Forsythe and Rieffer (2000).

<sup>75</sup> Andrew Moravcsik (1999), *The Choice for Europe*, London: UCL Press. This explanation is an adaptation of Moravcsik’s analysis which focuses on the reasons behind EU integration, rather than on foreign policy. His separate analysis explains why European states chose to submit to binding human rights obligations as way to enhance the credibility of the states and to ensure the commitment of future governments. Andrew Moravcsik (2000), ‘The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe’, *International Organization*, Vol. 54, No. 2, pp. 217-52.

<sup>76</sup> Helen Wallace (2000), ‘Analysing and Explaining Policies’, in Helen Wallace and William Wallace (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press, pp. 65-81.

<sup>77</sup> See, for instance, Andrew P. Cortell and James W. Davis Jr. (1996), ‘How Do International Institutions Matter? The Domestic Impact of International Rules and Norms’, *International Studies Quarterly*, Vol. 40, No. 4, pp. 451-78.

thought and discourse')<sup>78</sup> and policy applications. The process of transformation from idea to policy outcome could follow three 'causal pathways': 'ideas as roadmaps', where they serve the purpose of guiding behaviour, especially under circumstances of uncertainty where decision-makers may not have had an available blue-print; 'coordination', where they act as a 'glue' for policy-makers; and 'institutionalisation', which allow for changes in rules, norms and procedures.

The importance of the process of institutionalisation represents the final stage in the 'norm cycle', where ideas become embedded in institutions and acquire a taken-for-granted status.<sup>79</sup> According to Donnelly, it was the institutionalisation of human rights as a component of US foreign policy during the Carter administration, together with a degree of consolidation of the principles in other constituencies, such as among the Democrats and in public opinion, that prevented the Reagan administration from downgrading human rights as an element of US foreign policy altogether.<sup>80</sup>

Sikkink explicitly applied this approach to the study of the post Second World War history of human rights policies in the US and in Western Europe, excluding realism and constructivism as relevant explanations for these changes. Her argument constitutes an hypothesis that is worth testing, 'policy makers adopted new policies *because their ideas had changed*', which led them to attempted to articulate a new definition of long-term US national interests that was concerned with respect for human rights, and used such respect as 'the fundamental yard-stick with which to measure the value of an ally or the potential stability of a regime'.<sup>81</sup> Furthermore, the stimuli for the development of a US human rights foreign policy did not come from the domestic level: in the US human rights concerns emerged within the decision-making structures, especially in the

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<sup>78</sup> Goldstein and Keohane (1993), quotes respectively on p. 9 and p. 8.

<sup>79</sup> Martha Finnemore and Kathryn Sikkink (1998), 'International Norm Dynamics and Political Change', *International Organization. Special issue: Exploration and Contestation in the Study of World Politics*, Vol. 52, No. 2, pp. 887-917.

<sup>80</sup> Jack Donnelly (1994), 'Post-Cold War Reflections on the Study of International Human Rights', *Ethics and International Affairs*, Vol. 8 (published annually), pp. 97-117. On the 'socialisation' of international norms and their incorporation into domestic practices, see also Thomas Risse and Kathryn Sikkink (1999), 'The socialization of international human rights norms into domestic practices: introduction' in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The power of human rights: international norms and domestic change*, Cambridge : Cambridge University Press, pp. 1-38.

<sup>81</sup> Kathryn Sikkink (1993), 'The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe', in Goldstein and Keohane (1993b), pp. 139-70, quote on p. 160, emphasis added.

State Department. Only once the principles had gained ground, did Congressmen use human rights and democracy arguments in their rhetoric to rally public support.

One aspect of this approach that is worth underlining is the ‘institutionalisation’ of ideas which can lead to changes in rules and norms and their endurance even when the ideas have waned.<sup>82</sup> And in the dynamics of this process of institutionalisation, policy-makers or ‘policy entrepreneurs’ play an important role: ‘agreement among a critical mass of actors on some emergent norm can create a tipping point after which agreement becomes widespread in many empirical cases’.<sup>83</sup> In short, this hypothesis attributes the main reason for including human rights and democracy in EU foreign policy to the *communities involved in EU policy-making* (which I will discuss in the following section regarding EU foreign policy processes), which *undergo an ‘ideational shift’ and thus act as policy entrepreneurs pushing for the inclusion of human rights and democracy concerns in the EU’s external relations.*

The final hypothesis sees the principles of *human rights and democracy as constitutive features of the EU’s distinctive set up* due to its own particular history of integration.<sup>84</sup> The EU would include human rights and democracy in its foreign policy both because they are among the key norms that have defined its own development and because in doing so it seeks to change the international environment in which it operates.

This hypothesis is derived largely from ‘constructivist’ approaches that build especially on Anthony Giddens’s work on structuration theory, according to which structures and agents reconstruct each other in a dynamic two-way process of iteration.<sup>85</sup> This means that the relationship between institutions and actors is a continuous process of interaction, through which norms, identity and relative interests are formed, adapted, modified and changed. Viewed through this lens, concepts of the international system, the state, norms, international actors, interests are not givens, as rationalist accounts would have it, but social constructs: ‘international actors [...] inherently are socially

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<sup>82</sup> Goldstein and Keohane (1993a).

<sup>83</sup> Finnemore and Sikkink (1998), pp. 892-893.

<sup>84</sup> Manners (2002); and Ian Manners (2006), ‘The Constitutive nature of values, images and principles in the European Union’, in Lucarelli and Manners (eds), pp. 19-41.

<sup>85</sup> Anthony Giddens (1984), *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge: Polity Press, chapter 1.

constructed' and 'prevailing norms [...] partly define their interest'.<sup>86</sup> It postulated that international politics is a social phenomenon created by ideas, values and norms shared by a set of actors. This approach also challenges the rationality of actors assumed in all rationalist theories, whereby policy choices are expected to return specific benefits.

Constructivism's central features can be summarised as follows: the building blocks of international relations are ideational as well as material; the ideational factors have both normative and instrumental dimensions; they express intentionality both of the individual and collectively; and the meaning of ideational factors is deeply embedded in history and thus vary according to time and place;<sup>87</sup> identity, as a construct, also defines and guides action.

The significant differences of constructivism compared to rationalist interpretations are: a de-emphasis on the influence of domestic politics, constraints or stimuli in seeking the origins of change at the international level, and instead an emphasis on ideas as constitutive rather than as 'theoretical fillers'<sup>88</sup> that come to the aid of rationalist explanations. As Klotz puts it, 'norms are constitutive components of both the international system and state's interests'. They are not merely an 'ethical alternative to or constraint on self-interest', but they 'play an explanatory role'.<sup>89</sup> Thus, the constructivist framework manages to conflate explanatory and constitutive elements in one approach. The EU's claim to include human rights and democracy in its foreign policy would constitute an identity-building exercise as much as the EU's specific identity leads it to include these aims in foreign policy.

Conceptualisations of the EU in terms of its international identity,<sup>90</sup> or as a 'normative power',<sup>91</sup> single out its uniqueness, which derives from its 'historical context, hybrid

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<sup>86</sup> Audie Klotz (1995), 'Norms reconstituting interests: global racial equality and U.S. sanctions against South Africa', *International Organization*, Vol. 49, No. 3, pp. 451-478, quote on p. 460.

<sup>87</sup> Alexander Wendt (1992), 'Anarchy is what States Make of it: The Social Construction of Power Politics', *International Organization*, Vol. 46, No. 2, pp. 391-425; Alexander Wendt (1994), 'Collective Identity Formation and the International State', *The American Political Science Review*, Vol. 88, No. 2., pp. 384-396; John Gerard Ruggie (1998), 'What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge', *International Organization. Special issue: Exploration and Contestation in the Study of World Politics*, Vol. 52, No. 4, pp. 855-85.

<sup>88</sup> Ruggie (1998) uses a term coined by Mark Blyth, p. 868.

<sup>89</sup> Klotz (1995), p. 460.

<sup>90</sup> Ian Manners and Richard Whitman (1998), 'Towards Identifying the International Identity of the European Union: A Framework for Analysis of the EU's Network of Relations', *Journal of European*

polity, and political-legal constitution', and which predisposes the EU to act normatively on the global scene by diffusing its principles through ideational interaction.<sup>92</sup> The sources of EU foreign policy (drivers, actors, motivations) and the distinctiveness of its output are thus inextricably tied by structuration processes: 'the way in which the EU is constitutionally constructed is shaped by the way in which the EU's international role is constructed which is, in turn, shaped by the way in which the EU is constitutionally constructed, ad infinitum'.<sup>93</sup> It is the constitutive nature of the EU that determines its foreign policy outputs in terms of normative content: human rights and democracy represent one of the most important constitutive elements in defining the EU as a normative power.<sup>94</sup> Identity-based hypotheses would expect human rights and democracy to feature high in EU foreign policy, even if not necessarily emerging as the prime concern.

The core difference in understanding the role that human rights and democracy can play in EU foreign policy between cognitive and rationalist approaches is therefore whether human rights and democracy are a feature of identity, and are thus activated on a taken for granted basis, or whether they are used because they serve a purpose. Such instrumentality is here *not* considered value-laden (in the sense of serving inherently 'good' or 'selfish' purposes). The instrumental use can vary from seeking to consolidate hegemonic power over other parts of the world or to achieve market access in third countries, from conflict prevention to responding to domestic demands, from managing inter-institutional dynamics within the EU or inter-relational aims of bargaining between partners.

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*Integration*, Vol. 21, No. 2, pp. 231-49; Richard Whitman (1998), *From Civilian Power to Superpower? The International Identity of the European Union*, Basingstoke: MacMillan.

<sup>91</sup> Manners (2002).

<sup>92</sup> Manners (2002), p. 240.

<sup>93</sup> Ian Manners and Richard G. Whitman (2003), 'The "difference engine": constructing and representing the international identity of the European Union', *Journal of European Public Policy*, Vol.10, No. 3, pp. 380-404.

<sup>94</sup> Manners (2006).

### 3. *EU foreign policy making and human rights and democracy*

Before examining how the validity of these hypotheses can be explored through empirical research, it is necessary to develop a framework explaining the scope of research and addressing the empirical questions regarding EU foreign policy making processes: what actors push for EU action on human rights and democracy? What factors trigger and influence an EU response? And conversely what actors and factors hinder the development of human rights and democracy positions?

First it is necessary to define and delimit the scope for investigation. As will be amply illustrated in chapter 3, the EU's promotion of human rights and democracy involves the use of a broad range of civilian actions, positions, policies, and includes aid, trade, traditional diplomatic tools, as well as developing positions in multilateral organisations; and the spectrum of instruments can lead up to the use of military or civil-military tools often justified through humanitarian interventionism, and thus is subject to diverse decision-making processes. With the extraordinary growth of the EU's foreign relations in the 1990s, the CFSP domain of intergovernmental relations is simply too limited an approach to understand the role of human rights and democracy in EU foreign policy.<sup>95</sup>

Through foreign policy analysis, broad frameworks have been developed that can provide a good starting point. Christopher Hill has developed an approach based on multilevel diplomacy which can take into account the interplay between national foreign policies, domestic influences, and a degree of common norms and interests that have been consolidated at the European level. He defines EU external activities as a 'system of external relations',<sup>96</sup> which has multiple interests, objectives, policy making centres and decision making structures. It allows for the inclusion of the role of the member states, central not only to the EU's CFSP but also in the definition of general foreign policy objectives, the activities that fall under the category of EC 'external relations', and the external dimension of all three pillars.

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<sup>95</sup> Keukeleire and MacNoughton (2008), chapter 12.

<sup>96</sup> Christopher Hill (1993), 'The Capabilities-Expectations Gap, or Conceptualizing Europe's International Role', *Journal of Common Market Studies*, Vol. 31, No. 3, pp. 305-328.



Ginsberg has further developed this approach to conceptualise a 'European Foreign Policy' that includes the international and European contexts in which the EU operates, the variety of inputs into policy-making, from states to values, the hybrid institutional and decision-making structures of the three pillars, and the outputs in terms of foreign policy production.<sup>97</sup> As White argues,

it is assumed that the elements of this framework - actors, processes, issues, instruments, context and outputs - are interrelated and constitute a foreign policy system in action. Thus, the nature of the policy process is affected by the identity of the actors involved, the issues being dealt with, the policy instruments available and, not least, the context within which policy is made. These interrelationships in turn generate the outputs from the system.<sup>98</sup>

Enlargement policies, and the external impact of internal policies can also be included among the outputs of this broader approach.<sup>99</sup> In other words, the most appropriate framework to understand EU foreign policy is complex and comprehensive and does not lend itself to a single theoretical interpretation. However, for the purposes of this thesis, the analysis will be focused on the decision-making process at EU level including the inputs of the member states, but will exclude national foreign policies as well as the opposite dynamic regarding the impact of EU policy on changing and shaping national preferences. Thus it will be more appropriate to speak of EU foreign policy rather than European foreign policy.

Addressing the question of agency in EU foreign policy, the key dichotomy has been between intergovernmentalists and institutionalists.<sup>100</sup> Intergovernmentalists, be they of realist or liberal matrix, focus on the role of states, concentrating their research on the

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<sup>97</sup> Roy H Ginsberg (1999), 'Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability-Expectations Gap', *Journal of Common Market Studies*, Vol. 37, No. 3, pp. 429-54; Roy H. Ginsberg, (2001), *The European Union in international politics: baptism by fire*, Lanham, MD: Rowman & Littlefield Publishers.

<sup>98</sup> Brian White (2001), *Understanding European Foreign Policy*, Houndsmill, Basingstoke: Palgrave, p. 40.

<sup>99</sup> Stephan Keukeleire (2002), 'Reconceptualizing (European) Foreign Policy: Structural Foreign Policy', paper presented at the 1<sup>st</sup> Pan-European Conference on European Union Politics, Bordeaux: 26-28 September, available at [www.wmin.ac.uk/csd/rw/TMP1005915395.htm](http://www.wmin.ac.uk/csd/rw/TMP1005915395.htm).

<sup>100</sup> Ben Soetendorp (1994), 'The Evolution of the EC/EU as a Single Foreign Policy Actor', in Walter Carlsnaes and Steve Smith (eds.), *European Foreign Policy. The EC and Changing Perspectives in Europe*, London: Sage, pp. 103-119; and Thomas Risse-Kappen (1996), 'Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union', *Journal of Common Market Studies*, Vol. 34, No. 1, pp. 53-80; Philip H. Gordon (1997-8), 'Europe's Uncommon Foreign Policy', *International Security*, Vol. 22, No. 3, pp. 74-100.

developments leading from European Political Cooperation to the Maastricht Treaty creating the Common Foreign and Security Policy and later Treaty-based modifications, and/or on the role of national foreign policies in interaction with the other member states and with the EU level.<sup>101</sup> The evolution of EU foreign policy is based on cost-benefit analyses of the member states,<sup>102</sup> where the big countries set the rules of the game and the smaller member states have to adapt or play on the margins.<sup>103</sup> The incentives for cooperation would be represented by the enhancement of the member state's power or influence ('politics of scale'<sup>104</sup>) but cooperation would be severely limited by the 'logic of diversity'.<sup>105</sup>

This approach does capture the key decision-making processes governing CFSP, especially with regard to the 'history-making'<sup>106</sup> decisions, such as including human rights and democracy in the aims of CFSP or those determining in which areas the EU should focus its foreign policy attention. Through these lens, rationality is often seen as instrumentalist.<sup>107</sup> *The role human rights and democracy might play in EU foreign policy would therefore depend on consensus building between the member states, each pushing for its own maximization of rationally-based interests or concerns.*

As we shall see in Chapter 3, the inclusion of human rights and democracy in the EU's declared foreign policy aims has entailed a degree of institutionalisation and coordination between diverse EU actors, involving increasingly complex decision-making processes, suggesting that the purely intergovernmental framework is insufficient to understand the policy making dynamics<sup>108</sup> behind EU actions on human rights and democracy. Institutionalist approaches have focused on actors others than the EU member states and their national policy-makers as initiators of EU commitments.

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<sup>101</sup> See, for instance, the edited volume by Christopher Hill (1996), *The Actors in Europe's Foreign Policy*, London: Routledge, with chapters on the member states.

<sup>102</sup> Pijpers (1991).

<sup>103</sup> Ben Soetendorp (1999), *Foreign Policy in the European Union*, London and New York: Longman, especially chapter 9.

<sup>104</sup> Ginsberg (1989).

<sup>105</sup> Stanley Hoffman (2000), 'Towards a Common Foreign and Security Policy?', *Journal of Common Market Studies*, Vol. 38, No. 2, pp. 189-198; Gordon (1997-8).

<sup>106</sup> John Peterson (1995), 'Decision-making in the European Union: towards a framework for analysis', *Journal of European Public Policy*, Vol. 2, No. 1: pp. 69-93.

<sup>107</sup> Tonra (2003).

<sup>108</sup> Tonra (2003).

Concepts borrowed from institutionalism can provide insights into the meso-level of EU decision-making rather than at the macro-level where the 'history-making' decisions are taken,<sup>109</sup> analysing decision-making processes, the role of institutions, the extent to which the latter have constructed their own agenda and the ways in which states have adapted their behaviour as a consequence of EU membership. Studies on the dynamics of 'socialisation' and the creation of policy networks and groups, increasingly speaking a common language, see these as constituting the main rationales for EU action. The socialisation of participants in the foreign policy making process with its 'enranchise' effects, the upgrading of common interests, the 'spillover' process, can act to expand the scope or increase the level of the commitment of policy makers,<sup>110</sup> providing insights into role that EU institutions might have played in shaping choices regarding human rights and democracy.<sup>111</sup> Analyses in the field of 'epistemic communities' challenged some of the rationalist assumptions behind state-based approaches, contradicting 'three common explanations for the development of convergent state policies: foreign pressure (coercion), public opinion, and the rational anticipation of future benefits by a unitary government'.<sup>112</sup>

The empowerment of these groups would have enabled them to shape the policies of EU institutions. In other words, this hypothesis would attribute the *EU's inclusion of human rights and democracy in foreign policy to the supranational networks of policy makers*. Policy entrepreneurs would be the 'catalysts' for change, capable of rallying support towards their objectives. In EU literature, these have implicitly tended to be identified with the Commission, as a 'true believer', against the member states.<sup>113</sup>

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<sup>109</sup> Peterson (1995); John Peterson and Elizabeth Bomberg (1999), *Decision-making in the European Union*, New York, St. Martin's Press; Jeremy Richardson (2001a), 'Policy-making in the EU. Interests, ideas and garbage cans of primeval soup', in Jeremy Richardson (ed.) (2001b), *European Union. Power and policy-making*, London and New York: Routledge, pp. 23-26.

<sup>110</sup> Philippe C. Schmitter (1969), 'Three Neo-Functional Hypotheses About International Integration' *International Organization*, Vol. 23, No. 1, pp. 161-66.

<sup>111</sup> Jakob C. Øhrgaard (2004), 'International relations or European integration: is the CFSP *sui generis*?', in Ben Tonra and Thomas Christiansen (eds.), *Rethinking European Union foreign policy*, Manchester and New York: Manchester University Press, pp. 26-44.

<sup>112</sup> Peter M. Haas (1989), 'Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control', *International Organization*, Vol. 43, No. 3, pp. 377-403, quote on p. 401.

<sup>113</sup> For this critique, and for definition of 'policy entrepreneur', see Federica Bicchieri (2007), *European Foreign Policy Making Toward the Mediterranean*, New York and Basingstoke: Palgrave MacMillan, especially pp. 28-34.

I will broaden the definition of ‘policy entrepreneurs’ to include the member states positions.<sup>114</sup> Research will seek to identify the ‘constituencies’ of member states and policy networks within the EU that contributed to pushing for EU action on human rights and democracy. Expanding the range of ‘policy entrepreneurs’, however, also expands the range of hypotheses explaining EU responses. In other words, *policy entrepreneurs might converge around developing human rights and democracy positions for different reasons that may cross the rationalist and cognitive divide*. The question regarding EU processes, therefore, would regard the degree to which these actors and institutions relate with each other in shaping EU foreign policy decisions.

Policy entrepreneurs may manage to shape the foreign policy agenda also because of these more complex inter-institutional bargaining and negotiating methods that can help actors discover areas in which ‘common European interests’<sup>115</sup> are developed, alongside, rather than in opposition to, individual state interests.<sup>116</sup> Common interest between cooperating states,<sup>117</sup> a ‘habit of cooperation’,<sup>118</sup> or the need to manage relations between member states (inter-relational objectives)<sup>119</sup> can provide a rationale for the maintenance of a foreign policy that includes human rights and democracy objectives. *Human rights and democracy could be rhetorically subscribed to as a result of bargaining between EU actors with the aim of managing relations between them.*

The meso-level of analysis can shed light on the processes that develop concrete policy proposals once the guidelines have been set and formalized at the intergovernmental level. Policy network models can help understand the transnational and transgovernmental dynamics that can influence the policy process.<sup>120</sup> At this ‘meso-level’ of analysis, a ‘logic of appropriateness’ can guide policy-makers to act on the

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<sup>114</sup> Bicchi (2007), pp. 28-35.

<sup>115</sup> Simon Bulmer (1991), ‘Analysing European Political Cooperation: The Case for Two-tier analysis’, in Holland (1991), pp. 70-91.

<sup>116</sup> Other factors, such as domestic political culture, can also be considered as a variant in determining member states’ willingness to cooperate. See Mathias Koenig-Archibugi (2004), ‘Explaining Government Preferences for Institutional Change in EU Foreign and Security Policy’, *International Organization*, Vol. 58, No. 1, pp. 137-174. However, the domestic level is not included in this analysis.

<sup>117</sup> Steven D. Krasner (1982), ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables,’ *International Organization*, Vol. 36, No. 2, pp. 185-205.

<sup>118</sup> Wallace (2000).

<sup>119</sup> Keukeleire and MacNaughton (2008), chapter 1.

<sup>120</sup> Risse-Kappen (1996).

basis of expected norms and rules,<sup>121</sup> for instance ‘institutionalised’ human rights and democracy.

The third international relations approach that can provide some explanation to our core questions is constructivism. It can lend itself to be used together with, rather than in opposition to, other analytical frameworks, proving to be flexible enough an approach for research that borrows from different disciplines.<sup>122</sup> Constructivism has been used to understand norm and policy evolution at the EU level, by identifying changes in ideas, principles and norms and evaluating their impact on policies. Using constructivist views of identity as well as on two-level games and internal and external bargaining, norms have been considered as ‘major determinants’ of EU positions.<sup>123</sup>

The key constructivist challenge to rational and instrumental explanations is that an instrumental use of norms can work only if the norms have acquired a ‘certain degree of taken-for-grantedness within the relevant group or institutions’,<sup>124</sup> although one should be aware of any pre-determinism (meaning that a certain identity or a shared belief do not necessarily lead to policy action). In other words, once the commitment has been made and policy positions become ‘institutionalised’, argumentative dynamics will persuade reluctant EU members follow suit or can ‘trap’ them into a position as a result of ‘shaming’ among peers.<sup>125</sup> Through this approach, human rights and democracy would be included among those ‘taken for granted’ norms that guide EU foreign policy

Many factors influencing EU responses regarding human rights and democracy have already been discussed and do not require further explanations. I will try summarise them by grouping them in two categories: external influences and triggers that lead the EU to respond, or an internal rationale that produces foreign policy outputs.

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<sup>121</sup> James G. March and Johan P. Olsen (1998), ‘The Institutional Dynamics of International Political Orders’, *International Organization*, Vol. 52, No. 4, pp. 943-969.

<sup>122</sup> See, for instance, Caroline Fehel (2004), ‘Explaining the International Criminal Court: A ‘Practice Test’ for Rationalist and Constructivist Approaches’, *European Journal of International Relations*, Vol. 10, No. 3, pp. 357-394.

<sup>123</sup> Ole Elgström (2000), ‘Lomé and Post-Lomé: Asymmetric Negotiations and the Impact of Norms’, *European Foreign Affairs Review*, Vol. 5, No. 2, pp. 175-95.

<sup>124</sup> Michael Merlinger, Cas Mudde, and Ulrich Sedelmeier (2001), ‘The Right and the Righteous? European Norms, Domestic Politics and the Sactions against Austria’, *Journal of Common Market Studies*, Vol. 39, No. 1, pp. 59-77, quote on p. 59.

<sup>125</sup> Frank Schimmelfennig (2001), ‘The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union’, *International Organization*, Vol. 55, No. 1, Winter, pp. 47-80.

The ‘politics of scale’, means that collective action provides greater benefits, with lower costs and risks, than when acting individually.<sup>126</sup> This can provide one rationale for the member states acting together in world affairs. In a similar vein, attempting to bridge the ‘capabilities-expectations gap’<sup>127</sup> has been one of the stimuli for CFSP development.<sup>128</sup> ‘Externalisation’, entailing the consequences of internal EU policies on countries outside the Union, can put pressure on the EU to develop compensating external policies.<sup>129</sup> External demands are not just limited to the consequences of the internal market but can also relate to demands from third countries for EU action.<sup>130</sup> The ‘habit of cooperation’ has led to a ‘co-ordination reflex’ whereby policy-makers ask themselves what the position of their partners will be on a specific issue before defining a national position.<sup>131</sup>

Others prioritise instead internal dynamics in stimulating the ‘burst’ of external relations activities of the EU in the 1990s, which took place at the end of the initial legislative phase of the internal market as well as the completion of the GATT/WTO negotiations, arguing that ‘the external relations of any international organization are bound to take their impetus from its (internal) priorities and activities’.<sup>132</sup> One should allow not only for the member states to resort to the EU for the benefits of ‘the politics of scale’ to pursue national priorities, but also for cases in which ‘the EU initiates policy based not on external stimuli but on its own internal dynamic, interests, and instincts, a European-interest of “self-styled” logic is at work’.<sup>133</sup> This logic may initiate foreign policy action with the aim of achieving internal, rather than external objectives, for instance to strengthen, weaken or influence European integration, to emphasise the specificity of

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<sup>126</sup> Ginsberg (1999).

<sup>127</sup> Hill (1993).

<sup>128</sup> Ginsberg (1999), p. 438.

<sup>129</sup> Ernst Haas and Edward Thomas Rowe (1973), ‘Regional Organizations in the United Nations: Is There Externalization?’, *International Studies Quarterly*, Vol. 17, No. 1, pp. 3-54.

<sup>130</sup> K. Smith (2003).

<sup>131</sup> Tonra (2003).

<sup>132</sup> Marise Cremona (1998), ‘The European Union as an International Actor: The Issues of Flexibility and Linkage’, *European Foreign Affairs Review*, Vol. 3, No. 3, pp. 67-94.

<sup>133</sup> Ginsberg (1999), p. 439. For an application of these concepts, see Karen E. Smith (1998a), ‘The Instruments of European Union Foreign Policy’, in Jan Zielonka (ed.), *Paradoxes of European Foreign Policy*, The Hague, London, Boston: Kluwer Law International, 1998, pp. 67-85.

the EU approach (as opposed, for instance, to that of the US), or to manage relations between the member states (inter-relational objectives).<sup>134</sup>

External and internal dynamics could well complement each other rather than represent competing stimuli to European Union foreign policy. Focusing on the ‘logic of diversity’ and expanding the concept of policy entrepreneurship to the member states, rather than limited to the EU’s supranational institutions, will enable us, on a case by case basis, to identify the actors pushing for the development of the EU’s human rights and democracy agenda, as well as those pulling the brakes to it. As we have seen the motivations of individual actors can vary along an instrumental or ideational spectrum. Precisely the ‘logic of diversity’ could allow us to discern potential competition between these motivations, identifying a bridge between rationalist and cognitive approaches. The dynamics of interaction between these stimuli will allow us to identify the dominant processes. Externalisation, the ‘politics of scale’ and the ‘self-styled logic’, with the latter’s incorporation of concepts such as ‘European interests’ and ‘instincts’ also opens the door to apply ideational and constructivist interpretations. Dynamics related to policy networks, institutionalisation, persuasion and argumentative rationality may also shed light on the processes behind EU responses to human rights and democracy problems in Ukraine and Egypt.

#### 4. *Methodology*

The previous sections have constructed five main hypotheses addressing whether and why the EU includes or claims to include human rights and democracy in its foreign policy.

The first considers the EU’s claim just a claim: human rights and democracy are not amongst the EU’s foreign policy priorities. Rather, they are used instrumentally to justify or to mask the pursuit of other objectives, which can range from establishing hegemonic power over third countries, to seeking legitimacy vis-à-vis domestic electorates. Alternatively, human rights and democracy concerns are *not* activated precisely because they do not correspond to or because they compete with EU foreign

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<sup>134</sup> Keukeleire and MacNaughton (2008), chapter 1.

policy priorities. This extreme instrumentalist view is sceptical of the genuineness of the Union's rhetoric on promoting human rights and democracy.

The second sees the EU's claim as immersed in liberal views about peace and democracy, whereby the pursuit of human rights and democracy in foreign policy serves the purpose of increasing security and stability for the EU and its surrounding environment. In this case, what is often portrayed as a dichotomy between 'values and interests' would be merged into mutually reinforcing aims. This hypothesis is still instrumentalist, in the sense that it is tied to the achievement of certain external foreign policy aims.

The third hypothesis too is instrumentalist, but is related to internal rather than external aims: the EU pursues human rights and democracy as a consequence of intergovernmental and/or inter-institutional dynamics with the aim of building or maintaining consensus between member states. A foreign policy based on human rights and democracy can also serve the purpose of strengthening the EU's CFSP or even its international identity or image.

The fourth hypothesis focuses more strongly on the role of EU institutions, mitigating and shaping state preferences. In this case, compared to the previous hypothesis, the agency is reverted to the institutions rather than to the member states. The EU's rhetorical commitment would generate, through institutionalisation, further commitments to respond to human rights and democracy problems through EU foreign policy. Policy entrepreneurs, inspired by the ideas developed through 'socialisation' dynamics, can act as a constituency persuading and shaming more reluctant member states to address human rights and democracy.

The fifth sees human rights and democracy as part of the EU's identity. On the basis of this hypothesis, one would expect the EU to pursue normative positions, even if it is recognised that 'in the real world' this is not always possible.<sup>135</sup> Nonetheless, one would expect human rights and democracy to emerge in the foreign policy calculus.

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<sup>135</sup> H. Smith (2002), p. 271.



How to uncover the validity and relevance of such hypotheses?

A 'comprehensive human rights policy' has been defined as one that contains both a multilateral dimension, such as the ratification of international treaties and the submission of internal human rights practices to international review, and an external policy dimension, which 'exists when explicit human rights legislation or executive policy regulates aspects of foreign policy making so that human rights are incorporated in the foreign policy calculus'.<sup>136</sup> One question that should guide empirical research regards what 'incorporating' the human rights principles into to the foreign policy calculus actually means. In EU jargon, it would translate into 'mainstreaming'. As the Commission has pointed out, 'to be effective, respect for human rights and democracy should be an integral, or "mainstream", consideration in all EU external policies'.<sup>137</sup> Furthermore, this would require 'coherent and consistent policies' to promote human rights and democracy in third countries. This applies both to coherence between those policies and other EU action, especially the Common Foreign and Security Policy. It also relates to the promotion of 'consistent and complementary' action by the EU and its member states, especially in the promotion and mainstreaming of human rights through development and other official assistance.<sup>138</sup>

Consistency has been a constant objective of EU external relations since the Single European Act. The Maastricht Treaty states that

the Union shall [...] ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end.<sup>139</sup>

Though not a legal requirement, as the ECJ does not have jurisdiction over CFSP decisions, consistency should be considered 'legally binding but not enforceable, much as [it is] politically constraining'.<sup>140</sup> Consistency at the EU level thus has a twofold

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<sup>136</sup> Sikkink (1993), quote on p. 143.

<sup>137</sup> European Commission (2001), *The European Union's Role in promoting human rights and democratisation in third countries*, COM(2001) 252 final, Brussels: 8 May.

<sup>138</sup> European Commission (2001), *The European Union's Role in promoting human rights and democratisation in third countries*, COM(2001) 252 final, Brussels: 8 May.

<sup>139</sup> Article 3 TEU.

<sup>140</sup> Antonio Missiroli (2001a), 'European Security Policy: The Challenge of Coherence', *European Foreign Affairs Review*, Vol. 6, No. 2, pp. 177-196, quote on p. 182. See also Horst-Gunter Krenzler and

dimension. The first is *horizontal* and regards coordination across pillars and policy fields; the second is *vertical* and regards coordination between the EC, the EU and the member states. Thus we can speak of internal consistency, as far as it regards the EU policy making process, and external consistency, regarding the ways in which the EU treats its partners in practice.

Much empirical research has been based on understanding the degree to which the EU was consistent with respect to the norms it claimed to advocate (see chapter 3, section 5). This will constitute a first level of analysis. However, this thesis aims to go beyond the identification of EU inconsistencies and explain the reasons behind them.

The first methodological question regards how to discern between competing motivations and processes driving EU foreign policy, and the role human rights and democracy may play therein. Classical realism, by seeking to deconstruct claims over the influence of democracy, law, institutions, integration, and by explaining them through concepts of balance of power, manipulation, or distribution of resources,<sup>141</sup> can help the student discriminate between norms and ideology, power and influence, interest and idea, instrumental and ideational (or normative) positions, and more specifically can serve to understand when and why human rights and democracy foreign policy objectives are trumped by other conflicting (to perceived as conflicting) objectives.

These competing or conflicting aims of foreign policy will be addressed especially in chapters 4 and 7 where the EU's objectives of its relations with Egypt and Ukraine will be examined. These will be grouped in aims relating to stability and security, to achieving economic advantages, or tied to ideational concerns. This approach will enable an understanding of the limits of the EU's claim about human rights and democracy. As chapter 1 illustrated, these two countries were chosen because they are both part of the EU's so-called 'neighbourhood' which, according to EU policy documents constitutes one of the most important areas for EU foreign policy action, where strong interests of the member states lie, but also where the EU claims to promote

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Henning C. Schneider (1997), 'The Question of Consistency', in Elfriede Regelsberger, Philippe de Schouteete and Wolfgang Wessels (eds.) *Foreign Policy of the European Union: from EPC to CFSP and Beyond*, Boulder, CO.: Lynne Rienner, pp. 133-151; Nuttall (2000), chapter 7.

<sup>141</sup> Jeffrey Legro and Andrew Moravcsik (1999), 'Is Anybody Still a Realist?', *International Security*. Vol. 24, No. 2, pp. 5-55.

human rights and democracy most vigorously. This will enable us to ascertain the importance of the various foreign policy aims at play.

Ideational interpretations also generate important sets of questions. The approaches explained in the previous section place much importance on the policy-making community and on the Commission in pushing for ideational concerns. But how can ideational shifts within policy-making communities be found? And are they sufficient to produce policy change? Both institutional and ideational approaches would understand such commitment to cooperate to promote certain principles as incremental and increasingly inevitable, in the light of the 'habit of cooperation' or the 'power of ideas'. They do not therefore provide insights into cases in which policy choices are in contradiction with norms and cooperation, when EU foreign policy performance stands at odds with its rhetoric, or when a certain path is abandoned – a policy shift that has been defined as 'recidivism'.<sup>142</sup>

Constructivist approaches focus on the development of norms and principles as the main trigger for policy change, but this development also becomes a constitutive part of the framework and a defining element of its 'identity'. However, owing its conceptual core to structuration theory, it provides no methodological indication to ascertain the relative role to give to ideational factors vis-à-vis the various material factors highlighted by rationalist explanations. Constructivists themselves claim that beliefs or identities may or may not be 'activated' in policy, but that this does not impinge on the strength of that belief or identity. So what relative role to give to beliefs and identity? What hierarchy of influencing factors can be established? And how can a research agenda be constructed?

The methodology used in this thesis is based on EU foreign policy analysis applied to Ukraine and Egypt. First of all, the exercise will be to explain EU foreign policy towards these two countries in general terms, exploring the various priorities of the EU member states and institutions when acting collectively (chapters 4 and 7). Once these priorities have been established, and the processes whereby they were included in the EU agenda, the hypotheses developed will be applied to the specific case studies

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<sup>142</sup> A term borrowed from Jennifer Sterling-Folker (2002), *Theories of International Cooperation and the Primacy of Anarchy: Explaining U.S. International Monetary Policy-Making after Bretton Woods*, Albany: State University of New York Press. See chapter 2 for a critique of liberalism.

regarding human rights and democracy: in Ukraine with regard to freedom of expression and electoral competition, in Egypt with regard to the use of torture and elections.

But the prime problem when investigating human rights and democracy aims in foreign policy regards discerning between rhetoric and substance. How can an 'ideational shift' be traced? How can an identity-based argument be proved?

Primary sources include extensive research into EU documents and into contributions of EU political leaders for the period 1991-2004 with regard to Ukraine, and 1995-2007 with regard to Egypt. These, however, are considered to illustrate what the EU *claims* to do and of how it justifies its policies. This (rather basic) argument is not without consequence: the expansion of theoretical conceptualisations of the EU has often been carried out at the expense of empirical research that goes beyond an analysis of EU documentation. Yet the distinction between discourse and political practice is crucial to understand the relative weight of foreign policy priorities.

Policy analysis can ascertain the relative importance of human rights and democracy in foreign policy also by analysing the attention that these received in official policy, the financial commitments to them through aid, the attention given to them through diplomatic visits and the formal and informal messages delivered. EU policies have also been dissected through the use of press chronicles. A broad variety of newspapers has been systematically examined: *The Economist*, the *Financial Times* and *Le Monde* have all been used to cover the period 1991-2007; the *European Voice* (for the period 1997-2007); *Radio Free Europe/Radio Liberty* (1999-2004), *Al-Ahram* weekly on-line (1998-2007). These were considered as offering the most comprehensive coverage of EU foreign policy towards Ukraine and Egypt, including reconstructions of member states' positions on key events. Select issues of *International Herald Tribune*, the online *EUobserver*, *Agence Europe*, *La Repubblica*, *Il Corriere della Sera*, *El Pais* and *The Guardian* have also been used, alongside other sources of information all appropriately quoted in footnotes.

The final stage of research was based on qualitative interviews with EU actors that were closely involved in all or aspects of the case studies treated here. The interviews were not conducted with the aim of obtaining background information; they were carried out

once the hypotheses had been developed and the topics extensively researched. The interviews had the aim of testing the various hypotheses developed, asking questions regarding the motivations behind EU responses to specific human rights and democracy problems, the reasons for EU action or lack of action, the actors and processes that triggered the EU's response. Unless specifically stated, all the research conclusions I have reached have been confirmed by more than one official.

Forty four qualitative and anonymous interviews were conducted with key officials working in the country-relevant departments of the Council and the Commission institutions, and at the Representations of Ukraine and Egypt in Brussels. Field work included research trips in the two case study countries, where further interviews were conducted with officials working at the Delegations of the European Commission and at the embassies of some EU member states. The officials met covered a broad range of responsibilities: they included members of the country and regional desks of EU institutions, heads of unit, official responsible for the regional policies, political directors, officials in charge of the human rights and democracy aspects, as well as of aid.

Over 50 hours of interviews seeking targeted information thus provide research with information that has not been addressed in any other account. Furthermore, with the exception of Ukraine's Orange Revolution, all the case studies treated here have barely been covered by secondary literature. Surprisingly, Egypt in particular has not been addressed by students of EU foreign policy, with very few exceptions.<sup>143</sup> In addition, some NGO activists, journalists, officials of the Ministry of Foreign Affairs of Egypt, and independent analysts have also been interviewed. These, however, have not been used to test the hypotheses developed in this thesis, as they would have constituted an opinion rather than first hand experience of the foreign policy making processes that led to EU responses.

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<sup>143</sup> See footnote 52 for the contextualisation of this thesis in existing literature on the two countries.

## 5. *Conclusions*

This chapter has used International Relations as well as the EU theoretical literature to build some hypotheses about why the EU includes human rights and democracy in its foreign policy and about how it does so.<sup>144</sup> In doing so, it has expanded the range of motivations that might guide EU action. Explanations tied to international relations theory regarding why an actor might pursue human rights and democracy are mostly applicable to states; using them for the European Union requires introducing further variables regarding the role of institutions, inter-institutional dynamics, international and supranational decision making processes, alongside the influence of domestic politics and national foreign policies, which are beyond the scope of this study that concentrated on the EU level.

Deconstructing the EU means that single theoretical frameworks are not appropriate to capture the complexities of its foreign policy-making. The search here will be for what I term ‘constituencies’ within the EU that have pushed the normative agenda, the processes that have led to the EU’s political commitment, and those determining its actual performance when put to the test of the world of empirical circumstance in Ukraine and Egypt.

The ‘policy entrepreneurs’ considered here will not be limited to those groups that refer to the supranational institutions. Within the framework of the ‘logic of diversity’, constituencies advocating EU responses can push other EU actors, through persuasion, argumentative rationality or shaming, to adopt specific positions on human rights and democracy. Hence, initial cost-benefit analyses on part of the member states driven by the politics of scale or a habit of cooperation in developing collective EU policies can lead to the institutionalisation of human rights and democracy, in turn raising the expectations (from within the EU as well as from external stimuli) to act.

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<sup>144</sup> It is surprising that this exercise has started to be carried out only recently. For a review of the relationship between International Relations theory and the EU, see Christopher Hill and Michael Smith (eds.) (2005), *International Relations and the European Union*, Oxford: Oxford University Press, especially the chapter by Filippo Andreatta (2005), ‘Theory and the European Union’s International Relations’, pp. 18-38, dedicated to this topic.

In terms of processes, intergovernmental approaches underline the 'logic of diversity' governing EU relations with third countries. Here, different types of bargaining (or not) can lead to common positions, but the role of institutions in shaping policy choices as well as of the policy communities developed within the institutions also needs to be explored. One question will regard the degree to which the institutionalisation of norms at the EU level can generate pressure to address human rights and democracy problems in third countries, or whether the triggers are tied to intergovernmental processes, with the member states responding to specific circumstances.

In other words, can a pattern be identified that would substantiate the EU's claimed profile as an international actor committed to human rights and democracy, albeit marred by inconsistencies and competing interests, or does the EU rhetoric reveal patterns of 'ad hocery' that challenge such portrayal? The final question regards the ultimate aim of the EU's human rights and democracy foreign policy. Does the EU seek to modify the external environment through the promotion of norms, or is such exercise tied to internal negotiations and the search for unity between its members?

## CHAPTER 3

### RHETORIC AND TOOLS:

#### EQUIPPING THE EU WITH HUMAN RIGHTS AND DEMOCRACY POLICIES

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and individual freedoms [...].<sup>145</sup>

#### 1. *Introduction*

Since the early 1990s the EU has claimed to have become a 'unique' global actor in the promotion of human rights and democracy abroad – a claim based on its 'political and moral weight',<sup>146</sup> but also on the specific features that have characterised its own history of integration, as the above quotation from the Lisbon Treaty illustrates. As this chapter will show, this claim is backed by a series of decisions that led to the inclusion of human rights and democracy into the vast array of the EU's external policies, from contractual agreements with third countries to the Common Foreign and Security Policy and the development of aid budgets devoted to promoting human rights and democracy abroad.

The literature on the topic has emphasised the distinctive nature of the EU as an actor pursuing 'normative' aims, using theoretical approaches that, it is argued here, are insufficiently substantiated by empirical research. Alternatively, it has examined the shortcomings of specific human rights and democracy promotion policies, without tying such empirical findings to broader theoretical explanations about European foreign policy.<sup>147</sup> Therefore, it is contended here that, alongside the need for more empirically based research examining EU foreign policy on a case by case basis, this gap has not been sufficiently investigated or explained.

This chapter has a number of aims. First of all, it will reconstruct historically the commitments made by the EU that have fostered expectations about its international role

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<sup>145</sup> Treaty of Lisbon, Chapter 1, Article 10A, point 1.

<sup>146</sup> Both quotations are from European Commission (2001), *The European Union's Role in promoting human rights and democratisation in third countries*, COM (2001) 252 final, Brussels: 8 May.

<sup>147</sup> The only exception being K. Smith (2003).



and identity. In doing so, it will make use of the empirical questions regarding the actors, factors and processes that led to such choices (section 2). Secondly, it will examine the range of tools at the EU's disposal: agreements with third countries, CFSP instruments, and aid. In doing this, it will introduce how human rights and democracy aims are included, on paper, in relations with Ukraine and Egypt (sections 3 and 4). Finally, it will place these findings in the context of the academic literature on the subject (section 5), and seek to find alternative explanations (section 6).

## 2. *The rhetoric: the inclusion of human rights and democracy in EU foreign policy*

The genesis of the incorporation of human rights and democracy in EU foreign policy can be traced back to the late 1970s, it gained momentum especially in the second half of the 1980s with enlargement to the emerging democracies of Southern Europe, and saw its most significant developments with the end of the Cold War, also in the context of enlargement towards Central Europe.

But development and cooperation policy was the foreign policy field in which human rights and democracy made their first appearance. Initially, this was limited to a statement of principle, recognising a place for human rights in international relations, but without guidelines for action in the field of European Political Cooperation.<sup>148</sup> Subsequently, some concrete steps were made in terms of contractual agreements with third countries. The third Lomé agreement between the Community and the ACP (African-Caribbean and Pacific) countries contained a joint declaration making human dignity an objective of development aid.<sup>149</sup> The following fourth Lomé Convention agreed in 1989 introduced the principles of human rights and democracy for the first time in the agreement. Article 5 considered human rights as a basic factor of economic development, conceived cooperation as a means to contribute to their strengthening, and

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<sup>148</sup> For an overview of the EC's approach to human rights and democracy in its external relations prior to the 1990s, see Daniela Napoli (1995), 'The European Union's Foreign Policy and Human Rights', in Nanette A. Neuwahl and Allan Rosas (eds.), *The European Union and Human Rights*, The Hague: Kluwer Law International, pp. 297-311.

<sup>149</sup> Karen E. Smith (1998b), 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?', *European Foreign Affairs Review*, Vol. 3, No. 2, pp. 253-274; Ward (1998).

allocated some funds towards their promotion, though it did not provide a legal basis for the EC to act in cases of violations of the principles.<sup>150</sup>

These developments reflected a gradual consensus that had been emerging at the multilateral level on the appropriateness of tying aid to human rights and democracy or governance principles. From the 1980s onwards there was a growing awareness among international donors that aid was not producing economic development, and conditions were increasingly attached to aid on structural adjustment and on the free market.<sup>151</sup> In 1989, a few weeks before the Berlin Wall came down, an influential World Bank report concluded that the policies of the international financial institutions were not being implemented properly and raised the question of competence and the quality of government, also pointing out the benefits of pluralism and multi-party systems in good government.<sup>152</sup>

External demands played a role too. Democratic transitions in Latin America stimulated the establishment of conditions based on human rights and democracy. When negotiating agreements with the new democracies in Latin America at the very end of the 1980s, respect for democratic principles and human rights was considered a basis of the agreement, paving the way for the Council's decisions in 1991 to include human rights and democracy in relations with all countries. Rather than from the EC, the initiative stemmed from the Latin American countries, whose newly elected governments wanted to ensure that the new trade and cooperation ties with the EC would be discontinued in the case of a reversal of their democratisation process and a return to authoritarianism.<sup>153</sup>

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<sup>150</sup> Napoli (1995); Gordon Crawford (1996), *Promoting Democracy, Human Rights and Good Governance Through Development Aid: A Comparative Study of the Policies of Four Northern Donors*, Leeds: Centre for Democratisation, University of Leeds, 1996; Ward (1998).

<sup>151</sup> Marjorie Lister (1998a), 'Europe's New Development Policy', in Marjorie Lister (ed.), *European Union Development Policy*, Basingstoke and London: MacMillan. pp. 17-38.

<sup>152</sup> Crawford (1996).

<sup>153</sup> Gordon Crawford (1998), 'Human Rights and Democracy in EU Development Co-operation: Towards Fair and Equal Treatment', in Lister (1998b), pp. 131-178; Marcela Szymanski and Michael E. Smith (2005), 'Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement', *Journal of Common Market Studies*, Vol. 43, No. 1, pp. 171-92. This would validate Moravcsik's thesis whereby it is 'weak' states which seek binding international agreements with human rights obligations to commit future governments and to increase their international credibility. Moravcsik (2000).

The second major source of the EC/EU's increasing commitment to the principles of human rights and democracy stemmed from the international context that emerged after the autumn of 1989 and the role of the then Conference on Security and Cooperation in Europe (CSCE). The US took the lead in developing relations with Eastern Europe during the last months of the Cold War, but in May 1989 it granted a positive role to the EC with which the US should develop 'new mechanisms of consultation and co-operation on political and global issues, from strengthening the forces of democracy in the third world, to managing regional tensions, to putting an end to the division of Europe'.<sup>154</sup> The Commission was given the crucial role of coordinating G-24 aid to the emerging European democracies. The US also identified the CSCE as the core institutional framework for post 1989 Europe.

The resort to the CSCE and the Helsinki process developed therein from 1975 onwards satisfied major players, from the US, the EC member states, the Soviet Union and the emerging democracies in Eastern Europe.<sup>155</sup> It provided the institutional anchorage to the Warsaw Pact countries suitable to the end of the bipolar world that the North Atlantic Treaty Organisation (NATO) and the EC at the time could not provide, as well as a normative content that could serve as guidelines to new security issues in Europe. Even the sceptics, such as British Prime Minister Margaret Thatcher, gradually turned to the idea that the CSCE did provide a useful framework because, adopting a clear instrumentalist position, 'it involved the Americans and the Soviet Union in Europe's future, it was a good forum for discussion of border disputes, and the principles of private property and free markets could be built on the human rights content of Helsinki'.<sup>156</sup> Indeed, at the Strasbourg Summit of December 1989 it was agreed that aid and trade would be granted in exchange for political and economic reforms, based on the principles agreed under the CSCE umbrella earlier in the month.<sup>157</sup>

These external stimuli met with developments occurring within the (then) EC, with the member states introducing some strings based on democratic principles in their

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<sup>154</sup> George Bush at Boston University in May 1989, quoted in Charles Grant (1990), 'North Atlantic tryst', *The Economist*, 7 July, p. 6 of the 'Survey on the European Community'.

<sup>155</sup> On the position of the major players on the CSCE, see Robert O. Keohane, Joseph S. Nye, and Stanley Hoffmann (eds.) (1993), *After the Cold War. International Institutions and State Strategies in Europe, 1989-1991*, Cambridge, MA and London: Harvard University Press.

<sup>156</sup> Simon J. Nuttall (2000), *European Foreign Policy*, Oxford: Oxford University Press, p. 55. Nuttall draws evidence from Margaret Thatcher (1993), *The Downing Street Years*, London, pp. 799-800.

<sup>157</sup> 'The European Summit. Just ignore her', *The Economist*, 2 December 1989.

assistance to the developing world, though driven by different motivations. A convergence of a mixture of principle-based national foreign policy traditions with more pragmatic considerations on the efficiency of aid spending, influenced by changing approaches towards aid in the international institutions were behind these developments. In 1990, Britain made an explicit link between aid for democracy, good government and the rule of law on the one hand and economic growth on the other, in a move that was also designed to address concerns about 'wasting' tax payers money on aid.<sup>158</sup> In 1991 Germany introduced criteria to development aid: respect for human rights, participation in the political process, the rule of law, a market-friendly approach to development and low military expenditure.<sup>159</sup> Its development policy seemed more strongly based on ethics, while security, economics and power politics played a weaker role.<sup>160</sup> Similar motivations could be found in the development cooperation and aid policies of Denmark,<sup>161</sup> while the Netherlands had introduced the promotion of human rights as an essential element of its foreign policy already in 1979.<sup>162</sup> By contrast, the aid programmes of the Southern member states have hardly contained these aims.

The Commission, which had guarded the political independence of its aid programmes from the geo-strategic considerations of the other donors during the Cold War,<sup>163</sup> became sensitive to these developments only later, and agreed that it was 'vital that human rights and democratisation figure more prominently in the guidelines for cooperation policy than has hitherto been the case'.<sup>164</sup>

At the EC level, the landmark for a formal commitment to the promotion of the principles of human rights and democracy in its external relations occurred in 1991, with the June European Council Declaration, the November 'Resolution on Human Rights', the agreement reached in Maastricht in December establishing a Common Foreign and Security Policy in the new Treaty on the European Union (TEU), and the guidelines for

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<sup>158</sup> Crawford (1996) and Gorm Rye Olsen (1998), 'Bureaucratic Interests and European Aid to Sub-Saharan Africa', in Lister (1998), pp. 64-96.

<sup>159</sup> Sabine C. Zanger (2000), 'Good Governance and European Aid. The Impact of Political Conditionality', *European Union Politics*, Vol. 1, No. 3, pp. 293-317.

<sup>160</sup> Olsen (1998).

<sup>161</sup> Olsen (1998).

<sup>162</sup> Peter R. Baehr (1996), *The Role of Human Rights in Foreign Policy*, London and Basingstoke, MacMillan.

<sup>163</sup> Crawford (1998).

<sup>164</sup> European Commission (1991), *On Human Rights, Democracy and Development*, Brussels: November, SEC(91) 61 final.

the recognition of the Newly Independent States (NIS). These constituted those 'history-making decisions'<sup>165</sup> made at the intergovernmental level.

The first comprehensive EC document adopted by the heads of government on the promotion of human rights abroad is the Luxemburg European Council Declaration on Human Rights of 28-29 June 1991, whereby

The Community and its member States undertake to pursue their policy of promoting and safeguarding human rights and fundamental freedoms throughout the world. This is the legitimate and permanent duty of the world community and of all States acting individually or collectively. They recall that the different ways of expressing concern about violations of rights, as well as requests designed to secure those rights, cannot be considered as interference in the internal affairs of a State and constitute an important and legitimate part of their dialogue with third countries.

Further substance to the June 1991 Declaration was given in the subsequent November Resolution of the Development Council on human rights, democracy and development, which considered human rights and democracy the tenets of sustainable economic development providing a justification for introducing stricter conditions to development assistance. The Council decided that all future cooperation agreements between the EC and third countries should include a clause human rights and democracy, outlined the positive initiatives to be adopted through political, diplomatic, economic, and aid means. It was the first time that the principle of conditionality was explicitly articulated.<sup>166</sup> What the Resolution failed to clarify were the 'objective and equitable criteria' that would be used to justify resorting to negative measures, which could range from confidential démarches to the suspension of the cooperation agreement altogether.

The final step in terms of making EC commitment officially formalised is represented by the Treaty on the European Union (TEU), agreed in Maastricht in December 1991, which created the Common Foreign and Security Policy. The Treaty explicitly stated as one of the foreign policy objectives of the Union 'to develop and consolidate democracy

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<sup>165</sup> Peterson (1995).

<sup>166</sup> The Community reserved the right to adopt negative measures 'in the event of grave and persistent human rights violations or the serious interruption of democratic processes, the Community and its Member States will consider appropriate responses in the light of the circumstances, guided by objective and equitable criteria', Council on Rights, Democracy and Development (1991), *Resolution of the council and of the member states meeting in the council on human rights, democracy and development*, 28 November.

and the rule of law, and respect for human rights and fundamental freedoms'.<sup>167</sup> In the field of development cooperation, it also clarified that 'Community policy [...] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms'.<sup>168</sup>

In order to understand the motivations that led to the incorporation of human rights and democracy in the CFSP, it is necessary to take a step back to look at the negotiations in preparation of the Intergovernmental Conference convened for 1991. Initially dedicated to the European Monetary Union, events in Eastern Europe and the prospects of German unification led to the Kohl-Mitterrand joint initiative in April 1990 to put 'political union' on the agenda of the IGC:

the collapse of the Soviet empire had reinforced French fears that a stronger Germany might veer towards neutrality and away from its western allies. Whence Mr Mitterrand's concern, shared by Mr Kohl, that Germany be tethered firmly to the West, not least with the help of a common EC foreign and security policy.<sup>169</sup>

If the Franco-German axis ensured that monetary and political union would be strived for together, the fundamental divide between intergovernmentalists and federalists led to little progress on the substance of a new foreign policy. The foreign ministers, informally convened by the Italian Presidency in Asolo in October 1990, came to the conclusion that it was impossible to define an *a priori* list of common foreign policy priorities, but they did set out a generic list of objectives that included the consolidation of democracy, the peaceful settlement of disputes, the development of the least favoured countries, support for the effectiveness of international organisations, especially the United Nations and the CSCE.<sup>170</sup>

The grounds for this policy shift around 1991 had thus been prepared by the developments of the 1980s and the end of the Cold War, which saw contextual and environmental changes, as well as a degree of convergence between the member states

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<sup>167</sup> Title V, Art. J.1 TEU, Title V, Art. 11 in the Treaty of Amsterdam.

<sup>168</sup> Art. 130u, TEU. The TEU also introduced human rights and democracy as internal principles upon which the EU is based (Art. 13) and Art. 6.2 makes the European Convention for the Protection of Human Rights and Fundamental Freedoms part of the *acquis communautaire*.

<sup>169</sup> "The history of the Maastricht summit", *The Economist*, 30 November 1991, pp. 57-59.

<sup>170</sup> Nuttall (2000), p. 124.

(albeit motivated by different reasons) over the opportunity of defining the post Cold War also on the basis of universal rights, international law, and of supporting processes of transition to democracy that were beginning in different parts of the world. The international context of 'normative globalization'<sup>171</sup> gave the EU some ingredients around which start develop a consensus for its nascent foreign policy, based on norms that had been institutionalised at the level of the United Nations.

### 3. *Implementing human rights and democracy in EU foreign policies*

The core tenets of the EC/EU's foreign policy were established in 1991 and have remained relatively unchanged in terms of the substance, even if the 1990s were a decade rich of rhetorical commitments on human rights and democracy on part of EU leaders. Following the developments that culminated in the 1991 decisions, the next question should regard the extent to which the EU has been 'mainstreaming' its declared principles into its foreign policy objectives.<sup>172</sup> In turn, this requires a brief analysis of the main policies and tools developed during the 1990s and 2000s.

The EU has included human rights and democracy objectives in the regional and country-specific policies, as well as developed global thematic strategies to support its normative stance on human rights and democracy.<sup>173</sup> In 1998 it devised the guidelines to pursue the fight against the death penalty which has involved a systematic condemnation through diplomatic tools of all cases capital punishment, including raising the issue with some of its major trade partners such as the US.<sup>174</sup> Since 1994, through the European Initiative for Democracy and Human Rights (EIDHR, discussed below), the EU has funded around 30 projects against the death penalty worldwide, with an overall budget of around € 15 million).<sup>175</sup> In 2000 the practice of sending election observation missions

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<sup>171</sup> K. Smith (2003), p. 19; Lisbeth Aggestam (2008), 'Introduction: ethical power Europe?', *International Affairs*, Vol. 84, No. 1, pp. 1-11, quote on p. 4.

<sup>172</sup> Sikkink (1993).

<sup>173</sup> Since 1998, the EU also draws up annual reports on its human rights policies world wide, though no equivalent exists for democracy promotion. Prior to these annual reports, on a request of the European Parliament (which had been producing annual reports on human rights in the world and on EC/EU action in this field since 1983), the Presidency of the Council would send a memorandum to the Parliament on the EC/EU's activities in this field, following the example set by the Dutch Presidency in the early 1980s.

<sup>174</sup> Council of the EU, General Affairs Council (1998), *Council Declaration on the Death Penalty*, Brussels: 25 May. On the EU campaign against the death penalty, see Manners (2002).

<sup>175</sup> European Commission (2007b), *The European Union: furthering human rights and democracy across the globe*, Luxembourg: Office for Official Publications of the European Communities.

was consolidated. The following year the Council approved guidelines on the fight against torture, accompanied in 2005 by measures to improve coordination between the EU member states' embassies, the EC Delegations in third countries and the EU institutions in Brussels, and the guidelines on initiating specific human rights dialogues with third countries. Other areas in which the EU tried to develop common normative positions were the support to children in armed conflicts, human rights defenders, and the rights of the child.<sup>176</sup>

With regard to Ukraine, the EU included human rights and democracy principles and objectives in the Partnership and Cooperation Agreement, in CFSP tools such as its Common Strategy, as well as in its aid programmes, as discussed below. Alongside bilateral relations, Egypt was also part of the broader policy framework developed with the Euro-Mediterranean Partnership. Of its three chapters, the first is represented by a political and security partnership, based *inter alia* on the principles of human rights and democracy, as enshrined in the UN Charter and in the Universal Declaration of Human Rights.<sup>177</sup> At the same time, however, the Barcelona Declaration endorses the principles of non-interference and of relativism through the recognition of cultural specificities, by including the respect for the sovereignty of each state and the right to develop one's 'own political, socio-cultural, economic and judicial system'.<sup>178</sup> Human rights and

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<sup>176</sup> European Commission (2000a), *Communication on EU Election Assistance and Observation*, COM(2000) 191 final, Brussels, 11 April; Council of the EU (2001f), *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, [www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf), and Council of the EU (2005), *EU Annual Report on Human Rights*; Council of the EU (2001e), *European Union Guidelines on Human Rights Dialogues*, Brussels: 13 December; Council of the EU (2003c), *EU Guidelines on children and armed conflict*, [www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf); Council of the EU (2004g), *Ensuring Protection – European Union Guidelines on human rights defenders*, [www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf) Council of the EU (2007c), *Guidelines for the Promotion and Protection of the Rights of the Child*, [www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf).

<sup>177</sup> The Barcelona Declaration states, in terms of human rights and democracy objectives, that parties shall act on in accordance with UN Charter and Declarations as well as under international law, to 'develop the rule of law and democracy in their political systems', 'respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion [...]', 'give favourable consideration through dialogue between the parties, to exchange information on matters relating to human rights, fundamental freedoms, racism and xenophobia', respect and ensure for diversity and pluralism in their societies, promote tolerance between different groups in society and combat manifestations of intolerance, racism and xenophobia. Euro-Mediterranean Conference (1995), *Barcelona Declaration*, Barcelona: 27-28 November.

<sup>178</sup> Euro-Mediterranean Conference (1995), *Barcelona Declaration*, Barcelona: 27-28 November; Eberhard Kienle (1998a), 'Destabilization through Partnership? Euro-Mediterranean Relations after the Barcelona Declaration', *Mediterranean Politics*, Vol. 3, No. 2, pp.1-20; Feliu (2001).



democracy are also contained in the EMP's third basket on a social and cultural dialogue between the two shores.<sup>179</sup>

In 2003 the Commission published a Communication suggesting methods to strengthen the human rights and democracy objectives of EU aid, regional and bilateral policies towards the South Mediterranean countries. Heavily influenced by the UNDP Arab Development Report published in 2002,<sup>180</sup> the Commission recognised 'a tension between internal security concerns and the promotion and protection of human rights [that] can result in negative consequences in human rights terms, particularly under the umbrella of the "war on terror" in the wake of September 11 2001'.<sup>181</sup> Rather than address the political limitations to the EU's promotion of human rights and democracy in the region, the Communication provided a number of guidelines to improve such policies which pertained mostly to the fields of information, mainstreaming, and institutional governance of the EMP. In particular, the Commission pointed at the need to ensure that political dialogue at all levels included human rights and democracy systematically, suggested a number of procedural measures for information gathering involving the Commission delegations that would report all the way up the institutional hierarchy to the Council, to produce national and regional action plans, and to improve aid management and objectives.

The 2004 accession round triggered the development of a stronger focus on the new neighbourhood of the enlarged EU. The European Neighbourhood Policy offered a broad framework for cooperation and eventual sectoral integration to all countries East and South of the EU's borders. The innovative policy document was the Action Plan, jointly negotiated with each country, which highlights priority areas for cooperation and sets actions for their achievement.<sup>182</sup> These included a focus on human rights and democracy.

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<sup>179</sup> The Barcelona Declaration states that parties 'attach particular importance to respect for fundamental social rights, including the right to development', 'will encourage actions of support for democratic institutions and for the strengthening of rule of law and civil society' especially carried out by civil society, 'undertake to guarantee protection of all the rights recognised under existing legislation of migrants' and support a campaign against racism, intolerance and xenophobia. Euro-Mediterranean Conference (1995), *Barcelona Declaration*, Barcelona: 27-28 November.

<sup>180</sup> Interview, European Commission, Brussels: 9 April 2003

<sup>181</sup> European Commission (2003f), *Reinvigorating EU actions on Human Rights and Democratisation with Mediterranean Partners. Strategic Guidelines*, COM(2003) 294 final, Brussels: 21 May.

<sup>182</sup> Rosa Balfour and Alessandro Rotta (2005), *Beyond Enlargement. The European Neighbourhood Policy and its Tools*, *The International Spectator*, Vol. XL, No. 1, pp. 7-20.

The priorities in the Action Plan with Ukraine ranged from political reform and respect for human rights and democratic standards, including the democratic conduct of presidential (2004) and parliamentary (2006) elections in accordance with OSCE standards (see Box 1 in the Annexes, p. 257). Political dialogue and reform received a greater emphasis and clarification than the more abstract wording of the Partnership and Cooperation Agreement and the essentially ineffective CFSP Common Strategy (see section 4.2 in this chapter and chapter 4 on EU relations with Ukraine). Albeit resembling a shopping list, each of the overall objectives is accompanied by a description of specific actions to be taken, based on the implementation of international standards' legislation (see Box 1 in the Annexes). The possibility of upgrading relations with the EU and achieving greater integration through the positive conditionality and differentiation that the ENP entailed was supposed to be the main benefit to entice Kiev to accept the Action Plan, while negative conditionality tools were not contemplated in the ENP policy documents.

Similarly to the Action Plan negotiated with Ukraine, Egypt's Action Plan contains a rather long list of priorities that does not add any new areas to the broad fields dealt with through the EMP and the Association Agreement: political dialogue based on shared values, including on the Middle East Peace Process; enhance 'effectiveness of institutions entrusted with strengthening democracy and the rule of law', promote the protection of human rights. These priority areas are also supposed to reflect the government programme as illustrated to the Parliament by the President himself in December 2005.<sup>183</sup> Although the 'actions' are more detailed, in terms of content, than the priority areas, the specific ways in which they are supposed to be implemented remains vague (see Box 2 in the Annexes, p. 259). The Commission recognised that the road towards strengthening human rights and democracy in Egypt was long, but that approving the list of priority areas was a first step.<sup>184</sup>

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<sup>183</sup> See [www.egyptiancabinet.gov.eg/Cabinet\\_Programs/Cabinet\\_Programs\\_All.asp](http://www.egyptiancabinet.gov.eg/Cabinet_Programs/Cabinet_Programs_All.asp). Last accessed on 10 October 2007.

<sup>184</sup> Interviews, European Commission and Council of the EU, Brussels: 14 May 2007 and 15 May 2007 (1) and (2).

#### 4. *The tools to implement human rights and democracy policies*

The EU has a number of tools at its disposal to promote human rights and democracy in third countries that cut across pillars and their decision-making processes. These tools have here been grouped in three broad categories. The first are bilateral agreements between the EC and third countries, they have the objective of institutionalising economic and political relations, and contain the legal provisions to exercise political conditionality.<sup>185</sup> The second group refers to the tools available under CFSP, while the third relates to the assistance programmes the EU has developed to support human rights and democracy worldwide.

##### 4.1 *Agreements with third countries*

Contractual agreements with third countries can be an important vehicle for pressing the other party to respect the agreed standards on democracy and human rights.<sup>186</sup> By 2001 all cooperation agreements covering 120 countries included the 'human rights clause', on the basis of which the EU can 'punish' the third country should those principles be breached.<sup>187</sup> Sectoral agreements were excluded,<sup>188</sup> but the Nice Treaty established that economic, financial and technical cooperation measures with third countries should 'contribute to the general objective of developing and consolidating democracy and the

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<sup>185</sup> First developed in the 1980s, by the 1990s the practice of attaching strings to aid and macro-financial assistance had expanded from economic governance to include political conditions linking aid to human rights and (liberal) democracy demands. The EU can exercise political, diplomatic and economic pressure through a broad range of tools, including positive and negative measures (from asymmetric trade liberalisation, to the threat of suspending technical cooperation agreements; from support to creating transnational networks to applying sanctions). For a discussion of the historical evolution of political conditionality changes, see Georg Sørensen (ed.) (1993), *Political Conditionality*, London: Frank Cass. For an analysis of EU conditionality, see K. Smith (1998a). For the identification of EU tools, see European Commission (1995b), *The External Dimension of the EU's Human Rights Policy: from Rome to Maastricht and Beyond*, Brussels: 22 November, COM(95) 567 final; European Commission (1995a), *On the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries*, COM(95) 216 final, Brussels: 23 May.

<sup>186</sup> For a discussion on the human rights clauses see Eibe Riedel and Martin Will (1999), 'Human Rights Clauses in External Agreements of the EC', in Philip Alston, with Mara Bustelo and James Heenan (ed.), *The EU and Human Rights*, Oxford: Oxford University Press, pp. 723-754; and European Commission (1995a), *On the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries*, COM(95) 216 final, Brussels: 23 May, Annex 1.2.

<sup>187</sup> European Commission (2001e), *The European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, COM(2001) 252 final, Brussels: 11 May.

<sup>188</sup> Martine Fouwles (1997), 'The European Union's Common Foreign and Security Policy and Human Rights', *Netherlands Quarterly of Human Rights*, Vol. 15, No. 3, pp. 291-324.

rule of law, and to the objective of respecting human rights and fundamental freedoms'.<sup>189</sup> Through its contractual relations with third countries, the EU would thus be able to exercise a range of political, diplomatic and economic tools for the promotion of human rights, such as political dialogue, trade and external assistance. The May 1995 Communication listed the negative measures that can be adopted should the principles be breached:

alteration of the contents of cooperation programmes or the channels used; reduction of cultural, scientific and technical cooperation programmes; postponement of a Joint Committee meeting; suspension of high-level bilateral contacts; postponement of new projects, refusal to follow up partner's initiatives; trade embargoes, suspension of arms sales, suspension of military cooperation; suspension of cooperation.<sup>190</sup>

These tools overlap with CFSP tools, discussed below.<sup>191</sup>

Ukraine was the first of the Soviet successor states to sign a Partnership and Cooperation Agreement, wrapped up only once Moscow had softened its opposition,<sup>192</sup> though its negotiation process was slow and it entered into force only on 1 March 1998 due to ratification delays in many member states. The political dimension of the PCA is based on a set of principles: human rights and democracy, the CSCE principles, the Charter of Paris, and inspiration from Art. 11 of the TEU.<sup>193</sup> It also included the 'essential element', or 'human rights' clause (Article 2) that outlined the principles upon which relations between the EU and Ukraine were based and the suspension mechanisms in case of their breach.<sup>194</sup>

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<sup>189</sup> Treaty of Nice, Title XXI, Art. 181a.

<sup>190</sup> European Commission (1995a), *On the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries*, COM(95) 216 final, Brussels: 23 May.

<sup>191</sup> For an analysis of the tools to exercise conditionality, see K. Smith (1998b).

<sup>192</sup> Lionel Barber, 'EU seeks even-handed policy towards Russia and Ukraine', *The Financial Times*, 16 May 1994.

<sup>193</sup> Christopher Hillion (1998). 'Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex-Soviet Union', *European Foreign Affairs Review*, Vol. 3, No. 2, 399-420.

<sup>194</sup> Article 102 reads: 'if either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take the appropriate measures. Before doing so, except in cases of special urgency, it shall supply the Cooperation Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties'. See Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, OJ L 49/3, 19 February 1998.

The Association Agreement with Egypt was amongst the last of those negotiated with the EU's Mediterranean partners to be approved: initialled in January 2001, it was ratified by the Egyptian People's Assembly in April 2003 and entered into force on 1 June 2004 (preceded by an interim agreement in January 2004). As negotiations were painfully protracted, other issues, such as the human rights clause and the readmission of illegal migrants, also became bones of contention.<sup>195</sup> On the human rights clause the initial problem was that Article 2 did not follow the exact wording of Israel's AA. However, the fact that this issue found little resonance in the Egyptian press and the belief that its mechanisms would not be used were sufficient reasons at that time to agree to the inclusion of Article 2.<sup>196</sup>

#### *4.2 Common Foreign and Security Policy*

As we have seen, the human rights and democracy objectives outlined in the TEU were vague and reflected the lowest common denominator reached in bargaining between the member states. The new instruments that could help coordinate the member states on normative positions included: joint actions and common positions. In June 1992, the European Council approved a draft prepared by the foreign ministers on the fields that could be subject to joint actions, which included strengthening democratic principles and institutions, respect for human and minority rights, regional political stability, supporting good government, and contributing to the prevention of conflicts. The geographical areas of priority would be Central and Eastern Europe, the former Soviet Union, the Balkans and the Mediterranean.<sup>197</sup> With the Amsterdam Treaty, negotiated in June 1997 and which entered into force in 1999, the member states gave themselves an additional tool: Common Strategies. All the three approved Common Strategies (towards Russia, Ukraine and the Mediterranean) contain human rights and democracy objectives, as the boxes below illustrate.

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<sup>195</sup> Mark Turner, 'Haggling over agriculture delays Egyptian trade deal', *European Voice*, 25 June 1998; Simon Taylor, 'Negotiations between Egypt and EU move close to bearing fruit', *European Voice*, 18 February 1999.

<sup>196</sup> Interviews, Egyptian Representation to the EU, Brussels: 16 May 2007; Egyptian Ministry of Foreign Affairs, Cairo: 31 May 2007.

<sup>197</sup> Fowles (1997); Nuttall (2000).

### Box 3.1: The Common Strategy towards Ukraine<sup>198</sup>

#### Aims

- to contribute to the emergence of a stable, open and pluralistic democracy in Ukraine, governed by the rule of law and underpinning a stable functioning market economy which will benefit all the people of Ukraine;
- to cooperate with Ukraine in the maintenance of stability and security in Europe [...]
- to increase economic, political and cultural cooperation with Ukraine as well as cooperation in the field of justice and home affairs.

### Box 3.2: The Common Strategy towards the Mediterranean<sup>199</sup>

#### General aims

- contribute to the aims of the Barcelona Declaration
- promote conditions to enable peace in the Middle East, in the region, and good-neighbourly relations
- increase coordination and complementarity between the member states, and EU effectiveness and impact

#### Specific initiatives in the field of human rights and democracy:

- promote strengthening of democratic institutions and the rule of law through political dialogue, support for judicial reform, institution building, freedom of expression, strengthening of independent media, encourage good governance
- support for governmental and non-governmental actors
- urge accession to and implementation of international human rights instruments
- support the abolition of the death penalty.

The final CFSP tool that needs to be mentioned is the European Security Strategy. Developed during 2003, it responded to a Council request to draft a 'concept' for the EU's security priorities resembling the model of the US's National Security Strategy, also with the aim to repair the rifts that the 2003 invasion of Iraq had caused within the EU. The ESS too included human rights and democracy as principles guiding EU action and justified such inclusion with strategic arguments whereby

the best protection for our security is a world of well-governed democratic states. Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order'.<sup>200</sup>

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<sup>198</sup> Council of the EU (1999), *Common Strategy on Ukraine*, (1999/877/CFSP), Brussels: 11 December.

<sup>199</sup> Council of the EU (2000), *Common Strategy on the Mediterranean region*, (2000/458/CFSP), Brussels: 19 June.

<sup>200</sup> Council of the EU (2003b), *A Secure Europe in a Better World – European Security Strategy*, Brussels: 12 December.

The conceptual link between democracy and human rights on the one hand and stability on the other resembles in many ways the linkages that had been made over a decade earlier through the CSCE in the aftermath of the fall of the Berlin Wall. This was to hold true especially in the EU's neighbourhood, identified as one of the strategic priorities of the ESS. Indeed, one follow up was the publication of an EU Strategic Partnership with the Mediterranean and the Middle East which reiterated the importance of human rights and democracy.

### **Box 3.3: EU Strategic Partnership with the Mediterranean and the Middle East<sup>201</sup>**

#### **General aims:**

- Contribute to the Middle East Peace Process
- Political dialogue on human rights and the rule of law
- Non-proliferation, security dialogue and counter-terrorism
- Migration
- Economic reform, social development and cultural dialogue

#### **Specific initiatives in the field of human rights and democracy:**

- Stronger political dialogue
- Develop systematic support for the rule of law and good governance, especially on legal reform and human rights
- Support of electoral processes and judicial reform
- Engage with non violent political organisations and civil society movements
- Implement the recommendations of the 2003 Commission Communication on human rights and democracy

In addition, the EU can use other diplomatic instruments, such as public or confidential démarches, especially to voice concern and condemnation over human rights practices in third countries, usually through the embassies of the rotating presidency of the European Council or the Troika.<sup>202</sup>

The EU has also developed dialogues that focus exclusively on human rights, such as the ones with China and Iran, or on a *ad hoc* basis on human rights issues extending to CFSP related issues, such as the dialogues held with Cuba and Sudan at the level of heads of mission. Political dialogues involve the Presidency or the Troika, as well as senior level human rights officials.<sup>203</sup> However, the political dialogues that include human rights discussions have been harder to carry out than the Council and the

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<sup>201</sup> European Council (2004c), *Final Report on a EU Strategic Partnership with the Mediterranean and the Middle East*, 17-18 June.

<sup>202</sup> Fouwels (1997); and K. Smith (1998a).

<sup>203</sup> Council of the EU (2001e), *European Union Guidelines on Human Rights Dialogues*, Brussels: 13 December.

Commission claim. In the Euro-Mediterranean Partnership multilateral dialogues were introduced only in 2001, at the instigation of the Swedish Presidency, but have been limited to presentations on the human rights practices in each of the countries belonging to the Partnership, north and south of the Mediterranean. At the bilateral level, these were never implemented through the EMP despite the Commission's recommendations.<sup>204</sup> This was the least satisfactory element of first chapter cooperation, as the Commission itself has recognised.<sup>205</sup> Given their insufficient development, and prodded by the European Parliament, the Commission initiated the creation of bilateral sub-committees on human rights issues in the context of the European Neighbourhood Policy (see chapters 8 and 9).

Many of the tools outlined in the two sections above cut across the first and second pillars of the EU as well as infringe on spheres of national foreign policy. This makes the process particularly complicated when resorting to trade embargoes or sanctions. Economic sanctions, for instance, require a CFSP common position which needs to be implemented under the framework of the EC's Common Commercial Policy; joint diplomatic sanctions can only be decided unanimously under the CFSP hat; and mixed agreements, such as the PCA and AA, require both the Council and the member states' assent for their alteration.<sup>206</sup>

Nonetheless, in the 2000s the EU has been refining its negative tools. Measures could include suspension of cooperation with a third country, boycotts of sport or cultural events, trade sanctions (general or specific trade sanctions, arms embargoes), financial sanctions (freezing of funds or economic resources, prohibition of financial transactions, restrictions on export credits or investments), flight bans, restrictions on admission, diplomatic sanctions (expulsion of diplomats, severing of diplomatic ties, suspension of official visits). On the whole, the EU has remained cautious of applying trade sanctions, preferring measures targeted against individuals, such as so-called 'smart sanctions'.

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<sup>204</sup> European Commission (2003f), *Reinvigorating EU actions on Human Rights and Democratisation with Mediterranean partners. Strategic Guidelines*, COM(2003) 294 final, Brussels: 21 May.

<sup>205</sup> European Commission (2003a), 'Commission Services Working Document to prepare the Euro-Mediterranean mid-term meeting of Ministers of Foreign Affairs', Crete, 26-27 May.

<sup>206</sup> K. Smith (1998a).



The use of CFSP for human rights and democracy does suggest that the member states saw the EU as an appropriate level to deal with such issues. In fact, as we shall see with regard both to Ukraine and to Egypt, CFSP was used almost exclusively develop common positions on human rights and democracy rather than on other issues.

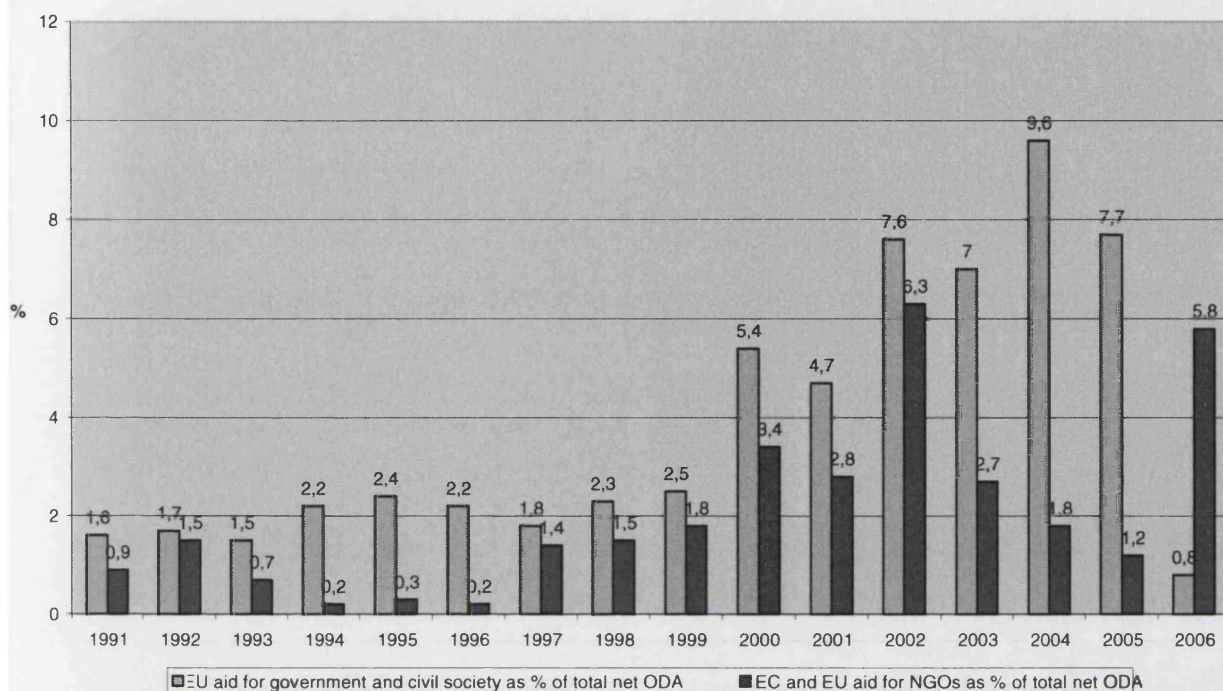
#### *4.3 Aid for human rights and democracy*

The Commission's November 1995 Communication emphasised the 'positive, practical and constructive approach' to human rights and democracy promotion. Aid could entail the support of transition processes towards democracy and elections; promoting and consolidating the rule of law through the independence of the judiciary, strengthening parliaments, support for local and national institutions, support for pluralist society and the development of non-governmental organizations (NGOs), for the independent media, education and training activities, the promotion of good governance and the transparency of government, confidence-building activities to restore peace, civil accountability of the armed forces, support of vulnerable groups, such as victims of torture, migrants and refugees, and the protection of minorities and indigenous people.<sup>207</sup>

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<sup>207</sup> European Commission (1995b), *The External Dimension of the EU's Human Rights Policy: from Rome to Maastricht and Beyond*, COM (95) 567 final, Brussels: 22 November.

**Graph 3.1: EC and EU global aid for government, civil society and NGOs as a percentage of total aid<sup>208</sup>**



As the graph above illustrates, aid for ‘government and civil society’ and for NGOs has indeed increased, reflecting the emergence of these objectives in external assistance, especially since 2000. The EC includes aid for human rights and democracy objectives in all its external assistance programmes: TACIS (Technical Aid for the Commonwealth of Independent States), developed for the states that had emerged from the dissolution of the Soviet Union, MEDA (*Mesures d’accompagnement financier et technique a la réforme de structures économiques et sociales dans le cadre du partenariat euro-méditerranéen*) for the EMP countries, and the European Neighbourhood Policy Instrument (ENPI) are those relevant to Ukraine and Egypt. Human rights and democracy are also addressed through a specific programme created in 1994, following

<sup>208</sup> Source: Organisation for Economic Cooperation and Development, International Development Statistics online database. The data is organised in the categories the Organisation for Economic Cooperation and Development (OECD). Given the difficulties in calculating the overall amounts spent across diverse budget lines and in different regions, this data is considered the most reliable, despite the fact that it is not broken down in the categories of ‘human rights’ and ‘democracy’ assistance. Indeed, ‘aid for government and civil society’ includes some aims that are not directly relevant to human rights and democracy, such as supporting policy planning for economics and development, the financial management of the public sector, supporting legal and judicial development, the administration of government, UN post-conflict and peace-building operations. On the validity of such data, and EU strategies in the 1990s, see Cox and Chapman (1999).

a European Parliament initiative. The 'European Initiative for Democracy and Human Rights' (EIDHR) now spends over € 100 million a year. The main categories to which EIDHR aid is directed are: democratisation and the rule of law, pluralist civil society, confidence-building for the restoration of peace, and target groups, which range from training journalists to rehabilitation for the victims of torture, while the main recipients and channels for aid are non-governmental organisations. The main characteristic of EIDHR is that it finances projects directly through the organisations implementing them, without having to go through the channels of partner governments. These funds should complement the various regional assistance funds.

The Commission has had difficulties in obtaining information from EU member states regarding bilateral funding in the human rights field, undermining the degree of coordination between EC and member state aid activities.<sup>209</sup> Indeed, available comparative reviews of member states' democratisation policies illustrate a significant diversity between national objectives, both in terms of spending and of priorities. For instance, in 2004 17% of Sweden's total aid budget was for 'democratic governance' projects in contrast with only 1% for 'governance' projects in French aid.<sup>210</sup>

### *Ukraine*

In Ukraine, the EC and its member states have been an important donor, even though about a quarter of total assistance went to nuclear safety and the closure of Chernobyl. Technical assistance was channelled through the TACIS programme that covered the entire former Soviet Union (excluding the Baltic states), of which Ukraine received about 20%.

In the 1990s about a third of TACIS funds were directed to multi-country and regional programmes, while the sectoral distribution of funds followed predictable priorities: one third went to economic infrastructure, of which the energy sector and nuclear safety absorbed about 60% (and was augmented by a separate budget supporting the fuel gap

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<sup>209</sup> European Commission (2004e), *The Implementation of the Commission Communication on the EU's Role in Promoting Human Rights and Democratisation in Third Countries*, SEC(2004) 1041, Brussels: 30 July.

<sup>210</sup> Richard Youngs (2006b) (ed.), *Survey of European Democracy Promotion Policies 2000-2006*, Madrid: FRIDE.

in Ukraine), the rest was food aid (mostly provided by the European Agricultural Guidance and Guarantee Fund), social infrastructure and services, and NGO funding (also through the Link Inter-European NGOs Programme – Lien) which reached around 500 NGOs in the whole of Central and Eastern Europe.<sup>211</sup> Up to 1997, EC aid for democracy and human rights was channelled through the TACIS democracy programme. As in the case of most democracy assistance, NGO support was the overwhelming feature of the TACIS democracy programme. The priorities of the programme were the development of NGOs, which received 46% of funding, awareness building (14% of funding), supporting the independent media (10%) and promoting human rights (10%).<sup>212</sup> After 2000 objectives were concentrated in three main categories, as the table below indicates, also revealing the increasing importance attached to border management as EU enlargement approached and the modest contributions towards priorities related to human rights and democracy.

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<sup>211</sup> Aidan Cox and Jenny Chapman (1999), *The European Community External Cooperation Programmes. Policies, Management and Distribution*, London: Overseas Development Institute, chapter 7 on Newly Independent States.

<sup>212</sup> ISA Consult (1997).

**Table 3.1: TACIS priorities in Ukraine, in million €<sup>213</sup>**

	2002	2003	2004-6	Total
<b>1. Support for institutional, legal and administrative reform</b>	<b>33</b>	<b>26</b>	<b>110</b>	<b>169</b>
Legal, judicial and administrative reform	10	11	15	36
Border Management	15	7	60	82
Civil society, training and education	8	8		16
Civil society, media and democracy			10	10
Training and education			15	15
<b>2. Support to the private sector and assistance for economic development</b>	<b>28</b>	<b>12</b>	<b>60</b>	<b>100</b>
Business, trade and investment promotion	8	12		20
Fuel gap	20	0		20
Assistance to enterprise development			25	
Development of financial markets (banking, insurance)			8	8
Local development			15	15
Support to the energy sector reform			12	12
<b>3. Support in addressing the social consequences of transition</b>	<b>6</b>	<b>10</b>	<b>42</b>	<b>58</b>
Social Reform	6	10		16
Support to the health sector reform			18	18
Support to the development of social assistance policy and services targeting vulnerable groups			24	24
<b>Total</b>	<b>67</b>	<b>48</b>	<b>80</b>	

In the 1990s, the rule of law and the training of advocacy groups to increase civil society awareness were included in the general TACIS programme, but its relevance to and impact on human rights and democracy has been highly fragmented and did not meet the demands stemming from Ukrainian civil society.<sup>214</sup> This supports the widespread criticism, including on part of Commission officials themselves, over the ‘ineffectiveness’ of TACIS.<sup>215</sup>

As far as human rights and democracy priorities are concerned, it is difficult to get homogeneous data on aid activities over time and across different countries. Based on the OECD database, less than 10% of total EC assistance was directed at supporting

<sup>213</sup> Source: European Commission (2001f), *Ukraine. Country Strategy Paper 2002-2006. National Indicative Programme 2002-2003*, Brussels: 27 December.

<sup>214</sup> ISA Consult, European Institute, Sussex University, and GJW Europe [ISA] (1997), *Evaluation of the PHARE and TACIS Democracy Programme 1992-1997. Final Report*, Brighton and Hamburg; MWH, ECDPM, ODI Consortium (2003), *Evaluation of the European Commission’s Country Strategy for Ukraine*, Final Report, La Hulpe: June.

<sup>215</sup> Interviews, European Commission, Brussels: 24 April 2006 (2), European Commission Delegation, Kiev: 4 July 2006 (2).

government and civil society, 11% including the member states. Amongst these, Sweden and the Netherlands were the largest supporters of human rights and democracy (approximately 37 and 28% respectively of their total allocations, followed by the UK with 15%). But the largest donor, as the table below shows, was the US.

**Table 3.2: Net Overseas Development Assistance of the EC, EU member states and select donors to Ukraine, 1992-2005, in US thousand \$<sup>216</sup>**

Donor	Total	Government and civil society aid as % of total
EC	612,527	9.3
EU Member states (15)	477,339	11
France	59,584	3.2
Germany	173,372	1.7
Netherlands	21,264	27.7
Sweden	50,843	37.2
UK	140,284	14.
US	1,948,193	32.4

TACIS aid was accompanied by the European Initiative for Democracy and Human Rights a budget programme which ran on a budget of over € 100 million a year directed at financing initiatives without the involvement of partner government, thus offering greater flexibility to operate in hostile countries. Comparative EIDHR cross-sectoral and country figures are not available. It conducts global campaigns focusing on target countries as well as micro projects. As a focus country, Ukraine received € 2.5 m in 2002 (equivalent to 4% of the € 60 million directed at individual countries – the remaining € 40 million were directed at regional programmes). The priorities were:

- Projects against torture and to improve prison conditions, improving access to justice; human rights monitoring, reporting and advocacy; improving the rule of law and enhancing legal protection of human rights
- Cooperation with CoE to provide human rights training for judges, training of Ukrainian police, promotion of rights of minorities and strengthening local democracy;
- Support to civil society, notably through local NGOs
- Media monitoring projects in view of parliamentary elections of 2002.<sup>217</sup>

<sup>216</sup> Own elaborations the basis of data of the OECD, International Development Statistics online, Development Cooperation Directorate (DCD-DAC) database.

<sup>217</sup> European Commission (2001b), Commission Staff Working Document, *European Initiative for Democracy and Human Rights Programming Document, 2002-2004*, Brussels: 20 December; and

For 2004-6 the priorities were the two campaigns to foster ‘a culture of human rights’ and to promote ‘the democratic process’ through macro and micro projects. Between 2001 and 2004 Ukraine received a total of € 1,720,000 through micro projects, overwhelmingly aimed at NGOs and civil society.<sup>218</sup> In 2003-4, there was growing concern in the EU over the freedom of the press and media and its relation with civil society, one of the main problems in Ukraine at that time (see Box 3 on p. 261 in the Annexes). The extent to which this was tailored to suit political objectives will be discussed in the chapters 5 and 6. According to the evaluators of the programme, the European Initiative for Democracy and Human Rights (EIDHR) has proved to be the ‘highest regarded and appropriate instrument to the Ukrainian context’.<sup>219</sup>

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European Commission (2003b), Commission Staff Working Document, *European Initiative for Democracy and Human Rights, Programming Update 2004*, Brussels: 1 December.

<sup>218</sup> European Commission (2004c), *European Initiative for Democracy and Human Rights (EIDHR), Programming for 2005 and 2006*, Brussels: 6 December 2004.

<sup>219</sup> MWH, ECDPM, ODI Consortium (2003), p. 25.

**Table 3.3: EIDHR funding for the Newly Independent States and Ukraine, in €<sup>220</sup>**

	NIS*	Europe*	No. of projects
<b>1998</b>	8 million		9
<b>1999</b>	10 million		14 + microprojects
<b>2000</b>	6.697 million		13 + microprojects
	of which <b>Ukraine:</b>		
	497,808		
	913,423		
<b>2001</b>	8,409,661		11 projects
	of which <b>Ukraine:</b>		
	913,423		Joint Commission-CoE programme to promote democratic stability and prevent conflict
	497,808		Implementation of Territorial Community Rights in local self-government
<b>July 2002- July 2003</b>		4,532,970	8 projects on Prevention of Torture and rehabilitation of torture victims
	of which <b>Ukraine:</b>		
	685,026		Campaigning against torture and cruel treatment
<b>2003: Targeted projects</b>	2,925 million		5
	of which <b>Regional:</b>		
	1,325 million		Joint Commission-CoE Programme
	800,000		Joint Commission-ODIHR
<b>July 2003- June 2004</b>		7,919,518	12
	of which <b>Ukraine:</b>		
	797,947		Project on rights of the Roma minority and their access to justice
	305,797		Project on Restorative social transformation
	334,385		Improving human rights through legal aid provided by NGOs
<b>July 2004- June 2005</b>			1 microproject
<b>July 2005- June 2006</b>		445,562	Improving access to justice for rural population
			1 microproject

<sup>220</sup> Sources: EU Annual Reports on Human Rights, years 1998-99, 2000, 2001, 2002, 2003, 2004, 2005, 2006.

\* Until 2004 EIDHR had a geographical as well as thematic allocation. Thereafter, it had only a thematic allocation and an increase in micro-project funding, managed directly by the Delegations in the recipient countries.



## Egypt

Egypt is one of the largest recipients of EU assistance and has enjoyed the largest proportion of bilateral and EC funding to the ten EMP countries.

**Table 3.4: Net Overseas Development Assistance of the EC, EU member states and select donors to Egypt, 1995-2006, in US thousand \$<sup>221</sup>**

Donor	Total	Human rights and democracy-related aid as % of total
EC	2116.73	0.48
EU Member states (15)	5288.04	0.83
France	2286.24	0.01
Germany	1938.69	0.7
Netherlands	233.97	5.8
Sweden	13.39	11.12
UK	178.04	0.2
US	8783.26	1.87

Between 1995 and 1999 MEDA committed € 3,057 million to the region, of which € 686 million was for Egypt, while for 2000-2006 the Council endowed MEDA with €5.350 million.

**Table 3.5: EC and EU net assistance to Egypt (grants and loans), in million \$<sup>222</sup>**

	1995-1999	2000	2001	2002	2003	2004	2005	2006
EC	729.77	72.5	70.97	44.19	58.83	183.83	182.83	228.47
EU member states	3420.02	392.46	386.85	246.97	291.53	387.93	265	85.63
<b>Total</b>	<b>4149.79</b>	<b>464.96</b>	<b>457.82</b>	<b>291.16</b>	<b>350.36</b>	<b>571.76</b>	<b>447.83</b>	<b>314.1</b>
EC + EU funding to EMP countries	11453.73	1534.9	1861.05	1529.84	1951.58	2488.32	2540.15	1634.99
% to Egypt	36%	31%	25 %	19%	18%	23%	18%	19%

<sup>221</sup> Own elaborations the basis of data of the OECD, International Development Statistics online, Development Database on Aid Activities. The category 'human rights and democracy-related aid' is made up of the sum of aid for human rights, legal and judicial development, strengthening civil society, elections, women's equality. The category is much narrower and more specific than the 'government and civil society aid' category used for Ukraine, due to difference reporting systems used in the IDS database. The data thus does not offer any comparative information on EU aid towards the two countries.

<sup>222</sup> Source: Own elaborations on OECD, International Development Statistics online, Development Cooperation Directorate (DCC-DAC) Database.

EC assistance has been channelled through the MEDA Programme, but throughout the 1990s it suffered greatly from mismanagement and under staffing: between 1995 and 2000 only 26% of the promised aid was issued,<sup>223</sup> 31.7% in Egypt.<sup>224</sup> The reform of the aid management structures with the creation of the EuropAid Cooperation office, and by giving more responsibilities to the Commission Delegations (a reform process started in 2002 in Egypt and completed in all the Mediterranean countries by 2004) all contributed to addressing MEDA's shortcomings, and disbursements improved significantly in MEDA II.<sup>225</sup> In 1999 a new regulation also improved the effectiveness, efficiency and relevance of aid with respect to the objectives of the Barcelona Process, though outstanding problems remained: themes such as good governance were insufficiently mainstreamed in the programmes, coordination between Commission and member state aid was seen as 'inconclusive', and resources were inadequate compared to the aims of the Partnership.<sup>226</sup>

The percentage of MEDA aid directed at political reform has been tiny. In the early years of MEDA, less than 1% was earmarked for democracy related programmes. Even funding of non-state actors was poor in the MEDA region compared to other geographical areas, with an average of only 3.9% of MEDA aiming at civil society development compared to 5% in African countries or 25% in Latin America.<sup>227</sup> The sector of intervention most relevant to human rights and democracy of the MEDA programmes – civil society and human rights – received €2 million in 2001 and in 2002, and €25 million in 2003.<sup>228</sup> Even within the MEDA Democracy Programme, between 1996 and 1998 Egypt received only 4% of the share. This, however, was also due to a low number of applications for funds (given that 96% of the regional MEDA

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<sup>223</sup> 'A Euro-Med muck-up', *The Economist*, 16 November 2000.

<sup>224</sup> European Commission (2001a), *Annual Report of the Meda programme 2000*, Brussels, no document number available, available at [http://ec.europa.eu/europeaid/reports/meda\\_2000\\_en.pdf](http://ec.europa.eu/europeaid/reports/meda_2000_en.pdf).

<sup>225</sup> ECORYS-NEI Macro & Sector Policies (2005), *Mid-term evaluation of the MEDA II programme. Final report*, Rotterdam: 18 July.

<sup>226</sup> ECORYS-NEI Macro & Sector Policies (2005).

<sup>227</sup> Participation of non-state Actors in EC Development Policy, <http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002:0598en01.pdf>.

<sup>228</sup> ECORYS-NEI Macro & Sector Policies (2005).

Democracy projects were implemented by NGOs, the amounts devolved also depend on the applications of NGOs).<sup>229</sup>

Funding was instead overwhelmingly aimed at economic and social development.<sup>230</sup> The 2002-2004 National Indicative Plan allocated a total of €351 million to Egypt, of which only 31 million were allocated to non-economic sectors, 11 million for the Tempus programme, and 20 million for civil society and social development; the overall 2002-2006 strategy was overwhelmingly focused on economic development. The importance of human rights and democracy, however, seems to increase with the European Neighbourhood Policy Instrument (ENPI), which set aside 7% of its total ENP budget to promoting human rights and democracy, also through basic projects for voter registration in a country where half the population does not have identity cards.<sup>231</sup> According to one Commission official, Egypt would not have accepted a stronger insistence on human rights and democracy aims within the ENPI.<sup>232</sup>

**Table 3.6: Priorities of EU assistance in Egypt, 2002-2010, in € million**<sup>233</sup>

Promoting the EU-Egypt Association Agreement/ Support to the preparation of the ENP	Support to economic transition process	Supporting sustainable socio-economic development	Support for reforms in human rights and democracy	Competitiveness and productivity of economy	Human and natural resources management
180	199	184	40 <sup>234</sup>	203	178

EIDHR assistance to Egypt has also been not been of major significance. However, as in the case of Ukraine, the geographical distribution and thematic prioritisation of EIDHR funds and do not hide any specific policy or political position on the relative importance

<sup>229</sup> Nadim Karkutli and Dirk Bützler (1999), *Final Report. Evaluation of the MEDA Democracy Programme, 1996 – 1998*, Brussels: April 1999. The largest contributions were for West Bank and Gaza (20%) and Israel (16%).

<sup>230</sup> Youngs (2006a), chapter 4.

<sup>231</sup> Interviews, European Commission, Brussels: 15 May 2007 (3), and European Commission Delegation, Cairo: 28 May 2007 (2).

<sup>232</sup> Interview, European Commission, Brussels: 15 May 2007 (2).

<sup>233</sup> Source: European Commission (2001d), *Egypt. Country Strategy Paper 2002-2006 and National Indicative Programme 2002-2004*, Brussels: no date available, available at [http://ec.europa.eu/external\\_relations/egypt/csp/02\\_06\\_en.pdf](http://ec.europa.eu/external_relations/egypt/csp/02_06_en.pdf); European Commission (2007a), *Egypt. Country Strategy Paper 2007-2013*, Brussels 4 January.

<sup>234</sup> €13 million were earmarked for support for political development, decentralisation and the promotion of good governance while € 17 million for the promotion and protection of human rights; and €10 million for the modernisation of administration of justice.

of human rights in a country. Rather, they reflect the management capacity of the Delegation and the absorption capacity of the NGO environment.<sup>235</sup> Also, EIDHR was conceived as a tool independent of the political objectives of the general aid priorities, and for this reason the European Parliament ensured that it would not be merged into the ENPI, as the Commission had originally envisaged. One implication, however, is that EIDHR funding can lack relevance to the specific human rights and democracy problems in each country or can struggle to be complementary to other assistance.

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<sup>235</sup> Interview, European Commission, Brussels: 16 May 2007.

**Table 3.7: EIDHR funding in the Mediterranean and Egypt, in €<sup>236</sup>**

	Mediterranean	No. of projects	Egypt
1998	10 million (Meda Dem.)	50	No country-specific data
1999	10 million (Meda Dem.)	6	No country-specific data
2000	8,698,500 (Meda Dem.)	13	No country-specific data
2001	€ 9,410,973	Mediterranean Masters in Human Rights and Democratisation: 640,000 Regional Assistance to NGOs, media and local government in Lebanon, Syria, Jordan, Egypt: € 797,260  Promoting independent journalism: a training and capacity building program for journalists in the Southern Mediterranean Region: € 661,617	Regional: International Campaign to Eradicate Female Genital Mutilation: € 925,584  Program for the Amelioration of Prison Conditions: € 800,623
July 2002- July 2003	N/A (Thematic rather than regional grouping of projects)	Mediterranean (Egypt, Jordan, Lebanon, West Bank & Gaza): Promotion of Women's Rights Through Empowerment, Awareness and Legal and Political Reform: € 890,000	Enhancing the Role of Civil Society in Human Rights and Political Reform in the Arab Region: € 800,000
2003: Targeted projects	€ 4,536,568	4, including the Mediterranean Masters in Human Rights and Democratisation: € 713,890	Promoting the Rights of Women & Children through Information: Egypt, Lebanon, Tunisia: 600,000
July 2003- June 2004	€ 4,100,350	6 projects in Support for Democratisation, Good Governance and the Rule of Law	None in Egypt (but funding was later available. See chapter 7)
July 2004- June 2005	€ 5,470,000	6 Mediterranean Master's Degree in Human Rights and Democratisation: € 720,00  Promoting Democracy, Human Rights and the Rule of Law in the Middle East and Southern Mediterranean MEDA Countries: € 1 million	1 micro-project
June 2005- June 2006		Strengthening of civil society capacity to participate in democratic transformation and to implement national strategies for the promotion of human rights in the Arab world: € 735,107.  Developing Synergies between regional and local human rights work, the human rights instruments of the Barcelona Process as well as the wider Arab World: € 1 million  Mediterranean Master's Programme in Human Rights and Democratisation Worldwide: € 1,488,705	1 micro-project

<sup>236</sup> Given the changing planning structure of EIDHR, it is not possible to have homogeneous country-by-country data on EIDHR. Sources: EU Annual Reports on Human Rights, editions between 1998 and 2006.

Egypt was excluded from the group of focus countries in 2004, but the Commission Delegation in Cairo managed to obtain some funding which was used to support an association for the assistance of prisoners, an advocacy group for the empowerment of women, an NGO dealing with the rehabilitation of torture victims and refugees, and in strengthening local capacity to monitor elections.<sup>237</sup>

##### 5. *The gap between rhetoric and implementation*

The commitment in rhetoric, in integrating human rights and democracy in external policies, and in developing a variety of tools to pursue such aims globally and in Ukraine and Egypt over the past two decades suggests that the EU has been trying to build an international profile as a promoter of human rights and democracy. The academic literature, however, has come to divergent conclusions in explaining these developments. Observers have pointed out dynamics internal to the logic of integration that pushed towards the shift in giving such substance to the emerging EU foreign policy. Endogenous explanations focus on the expansion of Community competencies as a consequence of completing the Single Market in 1992 as one of the drivers behind such developments,<sup>238</sup> together with the development of an increasing European ‘identity’.<sup>239</sup>

Actor- or identity-based conceptualisations have appeared to provide appropriate frameworks to place the EU’s claims regarding human rights and democracy. ‘Civilian power models’, initially developed in the 1970s, focused on the EU’s capacity to ‘domesticate’ relations between states, between the members of the community as well as outside its frontiers, by raising the stakes of common responsibilities and breaking down the distinction between ‘home’ and foreign affairs, and a ‘built-in sense of collective action’ which expresses internal ‘values’ of equality, justice and tolerance.<sup>240</sup> These features have been successively re-defined to include the need to accept

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<sup>237</sup> Interview, European Commission Delegation, Cairo: 28 May 2007 (2).

<sup>238</sup> For this argument, see Nanette A. Neuwahl (1995), ‘The Treaty on European Union: A Step Forward in the Protection of Human Rights?’, in Nanette A. Neuwahl and Allan Rosas (eds.), *The European Union and Human Rights*, The Hague: Kluwer Law International, pp. 1-22; and Fowles (1997). At a more general level, see Cremona (1998).

<sup>239</sup> Neuwahl (1995).

<sup>240</sup> François Duchêne (1973), ‘The European Community and the Uncertainties of Interdependence’, in Max Kohnstamm and Wolfgang Hager (eds.), *A Nation Writ Large? Foreign Policy Problems before the European Community*, Basingstoke: MacMillan, pp.1-21, quote on pp. 19-20.

cooperation, a concentration on non-military tools and a willingness to develop supranational structures.<sup>241</sup>

The foreign policy outputs of a civilian power would include long-term goals rather than purely utilitarian short-term and cost-benefit objectives, aiming to ‘modify the basic structural conditions’ of the environment, have an impact on the ‘economic, social, political (democratization) and ideational components of partners’, and would be implemented through peaceful and civilian means, encompassing the set of external relations of the three pillars, moving beyond the narrow CFSP field.<sup>242</sup> Approaches focusing on the EU’s international identity,<sup>243</sup> or as a ‘normative power’,<sup>244</sup> single out the uniqueness of the EU, which derives from its ‘historical context, hybrid polity, and political-legal constitution’, which predisposes the EU to act normatively on the global scene by diffusing its principles through ideational interaction.<sup>245</sup>

One limitation to the normative power model is that it has been substantiated by very little empirical research, and the few attempts have carried out an overview of circumscribed areas of EU activity where there was little controversy between the member states.<sup>246</sup> Normative Power Europe insights fail to provide explanations to the cases in which the EU does not behave normatively, does not interpret them as incompatible with an ‘ethical foreign policy’,<sup>247</sup> or appears to consider the realm of fact as less important than the realm of discourse and communication.<sup>248</sup> In other words, the research agenda promoted by the innovations of Normative Power Europe is self-referential and inward looking rather than aiming to uncover empirically what the EU *does*.

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<sup>241</sup> François Duchêne (1972), ‘Europe’s Role in world Peace, in Richard J. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, London: Fontana, pp. 32-47; Duchêne (1973); Hans Maull (1990), ‘Germany and Japan: The New Civilian Powers’, *Foreign Affairs*, Vol. 69, No. 5, pp. 91-106; Karen E. Smith (2000), ‘The End of Civilian Power EU: A Welcome Demise or a Cause for Concern?’, *The International Spectator*, Vol. 23, No. 2, pp. 11-28; Telò (2006).

<sup>242</sup> Telò (2006), p. 228. On structural foreign policy see also Stephen Keukeleire (2002), who includes enlargement policies and the external impact of internal policies.

<sup>243</sup> Manners and Whitman (1998); Whitman (1998).

<sup>244</sup> Manners (2002).

<sup>245</sup> Manners (2002), p. 240.

<sup>246</sup> Manners (2002) on the abolition of the death penalty; Sibylle Scheipers and Daniela Sicurelli (2007), ‘Normative Power Europe: A Credible Utopia?’, *Journal of Common Market Studies*, Vol. 45, (No. 2), pp. 435–457 on the agreements over the International Criminal Court and the Kyoto Protocol.

<sup>247</sup> H. Smith (2002), p. 270.

<sup>248</sup> Henrik Larsen (2004), ‘Discourse analysis in the study of European foreign policy’ in Tonra and Christiansen (eds.), pp. 62-80.

Indeed, research has pointed out the limits to such conceptualisations. The EU has been notoriously reluctant to criticize human rights failures in the partner countries. In Eastern Europe, only with Belarus did the EU use the negative tool of suspending the entry into force of the PCA in 1997 on human rights grounds. With regard to the South Mediterranean countries, the 'human rights clauses' have never been used, and even through aid the EU has been timid.<sup>249</sup> Here, it is argued that the 'normative' dimension has been increasingly trumped by the 'securitisation' of migration and terrorism,<sup>250</sup> a general critique of human rights promotion that had been raised already in the late 1980s.<sup>251</sup> Globally, the occasions in which the 'human rights' clause was invoked has been limited in number and geographical scope often towards countries of little economic or geostrategic interest to the EU and its member states, thus making the EU's pursuit of a normative position costless.<sup>252</sup> These studies have pointed out the inconsistencies and double standards of the EU's human rights agenda, which would most often be in conflict with or secondary to other foreign policy priorities.<sup>253</sup> How can this gap between rhetoric and implementation be explained?

## **6. *Conclusions: Explaining the emergence of the human rights and democracy agenda***

On the basis of the hypotheses regarding motivations and the framework regarding actors, factors and processes guiding foreign policy developed in chapter 2, I will develop some explanations to understand the rise of human rights and democracy rhetoric and decisions over the past twenty-odd years.

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<sup>249</sup> Federica Bicchì (2004), 'L'Unione Europea e la promozione della democrazia', in Bicchì, Guazzone and Pioppi (eds.), pp. 143-170; Richard Youngs (2005), 'Ten Years of the Barcelona Process: A Model for Supporting Arab Reform?', *FRIDE Working Paper* No. 2; Roberto Aliboni (2005), 'EMP Approaches to Human Rights and Democracy', in Haizam Amirah Fernández and Richard Youngs (eds.), *The Euro-Mediterranean Partnership: Assessing the First Decade*, Madrid: FRIDE and the Real Instituto Elcano de Estudios Internacionales y Estratégicos, pp.47-58.

<sup>250</sup> Joffé (2008).

<sup>251</sup> Raymond J. Vincent (1989), 'Human Rights in Foreign Policy', in Dilys Hill (ed.), *Human Rights and Foreign Policy. Principles and Practices*, Basingstoke and London: MacMillan, pp. 54-99.

<sup>252</sup> K. Smith (2001).

<sup>253</sup> Crawford (1998); K. Smith (1998b); Olsen (2000); K. Smith (2001); Ward (1998); Richard Youngs (2001), *Democracy Promotion: The Case of European Union Strategy*. Brussels, Centre for European Policy Studies, Working Document No. 167, October, K. Smith (2003).



First of all, the processes whereby human rights and democracy made their way up EU rhetoric show that diverse normative agendas were at play. In terms of actors, those that determined the start of the process through ‘history-making’ decisions were the member states, which converged on considering such normative positions a basis for the nascent EU foreign policy. Beneath this convergence, however, member states were driven by different motivations, spanning from instrumentalism (such as Britain in the very early 1990s) to more consolidated normative positions (for instance in the case of Scandinavian countries), illustrating the dynamics of the ‘logic of diversity’. Also, the conceptual link between security and human rights and democracy developed through the CSCE reinforced strategic arguments in favour of promoting democratisation in Eastern Europe, providing a justification for pursuing such principles in which *Realpolitik* aims of security and stability were backed up by normative positions. This continued to be one of the key justifications used by all the EU institutions. In terms of motivations, instrumental, realist, as well as normative positions can be discerned, upon which consensus between member states was built.

The Commission started to incorporate such principles into Community external relations only at a later stage. It was only once the process was initiated that the Commission found itself in a privileged position to develop these principles and draft policy proposals, also thanks to its key role in coordinating aid to the countries East of the fallen Iron Curtain. It contributed to the debate on aid to developing countries only in 1991, prior to the Council’s 1991 November Resolution, but after the World Bank opened the debate and after many member states had introduced those principles in their national development cooperation policies. Thus, in the early 1990s the policy entrepreneurs were to be found in some member states rather than in the Community’s supranational institutions.

Once the process of including normative principles in the guidelines for relations with third countries had begun, the Commission started to play a role in seeking to ‘mainstream’ human rights and democracy considerations in the EU’s external policies, in pursuing the consistency of instruments in line with its Treaty-based responsibility and in the execution of assistance programmes. Successive reforms of the internal structures and practices of the Commission also brought about some consequences on the processes of ‘mainstreaming’ human rights and democracy. The introduction of

Country Strategy Papers in the early 2000s, for instance, drafted by the Commission with input from its Delegations, contributed to the monitoring of the political situation in third countries and to identifying the areas that were supposed to be prioritised through diplomacy and aid.<sup>254</sup>

The European Parliament (EP) too contributed by repeatedly insisting for the standardisation of the ‘human rights’ clause in external agreements, by pursuing its insertion in all external agreements, by scrutinising the use of aid and, since the Treaty of Amsterdam, by approving budgetary proposals, and was the key actor that led to the creation of the EIDHR fund and ensured its continuation after the Commission, in 2004, proposed to merge it into the geographical assistance programmes. As we have seen, its requests to the rotating Presidency for information on EU action on global human rights problems (also to complement those that the EP had been compiling from 1983 onwards) was instrumental to establishing the practice of drafting annual reports on these matters, even if the reports do not always satisfy the demands of the curious observer.

Once human rights and democracy had become institutionalised, the European Parliament also raised the profile of the EC/EU on human rights questions by issuing numerous declarations, and prodding the Council and the Commission to act in response to human rights violations. Despite its limited influence in foreign affairs, the EP played a role in stimulating the other institutions and the member states to take fundamental rights into account and can be considered a ‘norm entrepreneur’<sup>255</sup> in this field. The Commission too contributed to institutionalisation through its role in mainstreaming and standardising the essential element clause.

Internal or identity-led dynamics seem weaker than the processes driven by responding to externally induced changes in the international environment coupled with the search for a compromise between different interests of the member states. This is demonstrated also by the fact that the internal process of integrating human rights and democracy principles into the Treaties proceeded a few steps behind their incorporation into foreign

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<sup>254</sup> Vaughne Miller (2004), ‘The Human Rights Clause in the EU’s External Agreements’, *House of Commons Research Paper*, 04/33, London: 16 April.

<sup>255</sup> Finnemore and Sikkink (1998); K. Smith (1998b), p. 258. See also Napoli (1995).

policy provisions.<sup>256</sup> This also makes the capabilities-expectations gap relevant to understanding the external-internal dynamics stimulating EU foreign policy.

Secondly, the motivations for ‘deepening’ the standards within the EU were also determined by applications to accede to the EC/EU on part of European countries. Indeed, together with the introduction of Article 6, the EU also added article 49 to reiterate that candidate countries must meet the requirements of article 6 to join the Union. Thus, even if one accepts the spillover assumption from the Single Market project to increasing standards within the Community, this cannot be explained as a shift from internal human rights and democracy standards to their application in external policies. In other words, amongst the factors influencing EU member states’ decisions to include human rights and democracy was the interaction with the external environment. External demands for deeper ties with the EC/EU, and especially those for accession played a particularly important role.

The EU ‘identity’ and constructivist argument is also weakened as the source of legitimacy of the human rights and democracy principles to which the EU refers to justify its external policies lies not within the EU, but within the international and regional conventions, declarations and agreements to which the EU member states, alongside many other states, were party.

On the other hand, the consensus reached between the member states on the inclusion of human rights and democracy among the aims of the nascent Common Foreign and Security Policy also reflects an internal logic of seeking to strengthen the EU’s international capabilities and its international image. In other words, even if the sources of human rights and democracy were not to be found in the Community as such (but in the member states, driven by different motivations, and in externalisation dynamics),

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<sup>256</sup> The Treaty on the European Union introduced the European Convention for the Protection of Human Rights and Fundamental Freedoms as part of the *acquis communautaire* in Article 6.2, but it was only in the Treaty of Amsterdam that the principles upon which membership was based were spelt out and that the possibility of suspension mechanisms for the breach of such principles within the EU was envisaged (Art. 7). The Nice Treaty agreed in December 2000 modified the article from ‘the existence of a serious and persistent breach to ‘a clear risk of a serious breach’. But the Charter of Fundamental Rights agreed in Lisbon was annexed to the Treaty as a protocol, and it will be only with the ratification of the Treaty of Lisbon that this will acquire a legally binding status. This will give the European Court of Justice jurisdiction over ensuring compliance with such articles, which it does not over CFSP.

their inclusion in foreign policy could also serve the purpose of building the EU's external identity and act as a glue to strengthen cooperation in foreign policy.

## CHAPTER 4

### EU FOREIGN POLICY TOWARDS UKRAINE

#### 1. *Introduction*

Ukraine's importance to the EU is intertwined with its history of independence. Domestic developments have been influenced by its relations with the outside world and *viceversa*, and its oscillation between East and West has had a direct link with the human rights and democracy situation as much as on its position vis-à-vis the EU. Given the fluidity of Ukraine's recent history and the degree to which its importance to the EU was interlocked with domestic and exogenous developments, this chapter is organized in a historical fashion, and deals with developments within Ukraine as well as EU policy towards the country for the period 1991 to the end of 2004, when the successful outcome of the Orange Revolution improved the country's human rights and democracy standards. The aim is to understand Ukraine's importance to Europe. This is methodologically necessary to understand the priorities of the Union's foreign policy (security, economic or ideational), and thus gauge the relative weight of human rights and democracy.

Section 2 assesses Ukraine's relative international and regional importance in general terms. Sections 3 and 4 focus on the EU, first on the process of institutionalisation of relations with Ukraine during the 1990s, exploring the motivations that led to EU engagement, arguing that the country was peripheral to the post-Cold War map of Europe. It was only the prospect of enlargement to Central Europe, which would make the EU share a border with Ukraine, that led European capitals to attempt to develop a broader range of policies, through increasing cooperation in JHA and CFSP and by developing the European Neighbourhood Policy. The EU's increased engagement coincided with the deterioration of the skeleton of democracy put in place in Ukraine with independence. This period was also marked by great uncertainty over Ukraine's international orientations and by difficulties with the West, putting EU commitment to human rights and democracy to test. The concluding section will illustrate the priorities and processes behind EU foreign policy towards Ukraine, as a preparatory ground for chapters 5 and 6, which will delve into greater depth over human rights and democracy issues.

## 2. *The foreign relations of a state in search of sovereignty*

As its name suggests, *Okraina* – the land in between - is the largest country between the EU and Russia, a cross-roads with the Caucasus, the northern shore of the Black Sea, and a gateway to Central Asia.<sup>257</sup> Its location has ensured one continuous predicament in Ukraine's history: that exogenous factors and external actors have always played an important role in determining its path.<sup>258</sup> After the fall of the Iron Curtain most of Eastern Europe embarked on an arduous 'triple transition' to a pluralist democracy, market economy and fully independent statehood.<sup>259</sup> For Ukraine this 'transition' was all the more complex as it was an integral part of the Soviet Union and had virtually no history of independence. With a historical legacy of 337 years of Russian rule, Ukraine seemed one of the republics 'least likely to assert its independence and undertake democratization'.<sup>260</sup> Two previous attempts at independence (1917-1927 and 1941-45) ended in failure, a mixture of endogenous socio-historical reasons and forced russification made the nationalism of the early 1990s a weak feature of opposition to the Soviet regime compared to other USSR republics and satellite states.<sup>261</sup>

The nationalist movements that emerged during the era of *perestrojka*, such as the *Rukh*, alone were unable to steer the country towards a new course; sovereignty was attained through the Ukrainian Communist leadership which seized the opportunities offered by changing events in Russia. Moscow's loosening grip on the Soviet Union's periphery led the Communist Party of Ukraine (CPU) *nomenklatura*, headed by Leonid Kravchuk, to absorb some of the nationalist arguments. The August 1991 attempted coup that led to the disintegration of the USSR led the CPU leadership to switch to a nationalist discourse, thus ensuring its continuation in power. Following a Soviet style campaign,

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<sup>257</sup> James Sherr (1999), 'After Yugoslavia: Whither Ukraine?', in Kurt R. Spillman, Andreas Wenger and Derek Müller (eds.), *Between Russia and the West: Foreign and Security Policy of Independent Ukraine*, Bern: Peter Lang, pp. 123-144.

<sup>258</sup> Alexander Motyl and Bohdan Krawchenko (1997), 'Ukraine: from empire to statehood', in Ian Bremmer and Ray Taras (eds.), *New States, New Politics: Building the Post-Soviet Nations*, Cambridge: Cambridge University Press, pp. 235-275.

<sup>259</sup> Richard Bideleux and Ian Jeffries (1998), *A History of Eastern Europe. Crisis and Change*. London: Routledge, chapters 21-24, especially chapter 22.

<sup>260</sup> Prizel (1997), quote on p. 331.

<sup>261</sup> Prizel (1997); Motyl and Krawchenko (1997).

over 90% of Ukrainians voted in favour of independence and 60% elected Kravchuk the new president in December 1991.<sup>262</sup>

During this period, Russia and the US were the two most important external actors in determining Ukraine's course. The country remained economically dependent on Russia, especially in energy, having to import much of its fuel without being able to pay for it. This pattern of dependence did not change significantly over time: in 2001 a third of Ukrainian exports still went to Russia, from which it bought around 40% of its imports.<sup>263</sup> Ukraine thus adopted a policy of neutrality hoping that the interest in the country of one would ensure the involvement of the other former Cold War foe. Caught between giants, the strategy was based on the view that internal stability and Western support were the precondition for friendly relations with Russia, and *viceversa*.<sup>264</sup> This geopolitical choice was also the only strategy upon which the divided political elite could agree.<sup>265</sup>

Russia's aim was to ensure that Ukraine stayed out of the Western camp, to establish its influence over the former Soviet space through political and economic integration into the Commonwealth of Independent States (CIS), while Ukraine was adamant about maintaining its newly found sovereignty. Relations with Moscow hit their lowest point during 1993-1994 over the USSR's nuclear arsenal stationed on Ukrainian territory, the question of the Crimean peninsula (a region Brezhnev had given to Ukraine, home to a Russian majority and the military base of Sevastopol), the fate of the Black Sea Fleet, and Ukraine's energy dependence on Russia. Kravchuk tried to use these issues as 'bargaining chips' to ensure international attention and to obtain political and economic advantages from Russia and the West. As a nuclear and security liability, Ukraine soon climbed up the US foreign policy agenda. But it was only after the war in former Yugoslavia had broken out, that first Washington and then gradually the EU and West in

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<sup>262</sup> For the history of Ukrainian's path to independence see Orest Subtelny (2000), *Ukraine. A History*, Toronto: University of Toronto Press; Prizel (1997), especially on the role of Moscow; and Motyl and Krawchenko (1997), with their greater emphasis on nationalist movements and on the popular demonstrations that caused the unrest of 1990-1991.

<sup>263</sup> Stephen White, Ian McAllister, Margot Light and John Lowenhardt (2002), 'A European or Slavic Choice? Foreign Policy and Public Attitudes in Post-Soviet Europe', *Europe-Asia Studies*, Vol. 54, No. 2, Spring, pp. 181-202.

<sup>264</sup> James Sherr (1998), 'Ukrainian Security Policy: The Relationship between Domestic and External Factors', in Taras Kuzio (ed.), *Contemporary Ukraine. Dynamics of Post-Soviet Transformation*, Armonk, New York: M.E. Sharp, pp. 245-277.

<sup>265</sup> Subtelny (2000).

general began to grasp Ukraine's insecurity and the need to tackle its problems more comprehensively rather than as merely a proliferation issue.<sup>266</sup>

Relations with the West thus expanded from denuclearisation to economic assistance, defence and security ties and the development of political ties, while domestic reform, the rule of law and human rights remained the most neglected area of US concern.<sup>267</sup> By the end of the decade Ukraine was the third largest recipient of US aid, after Israel and Egypt, indicating a geopolitical view of the country.

Thanks to US mediation, in January 1994 Ukraine signed the tripartite agreement with Russia and the US whereby Ukraine gave up its nuclear arsenal in exchange for security assurances of its territorial integrity.<sup>268</sup> This and OSCE mediation over Crimea paved the way for the signing of the Non-Proliferation Treaty (NPT), a Partnership for Peace agreement (PfP) with NATO (the first country to do so in 1994), the start of negotiations of a Partnership and Cooperation Agreement with the EU in 1994, and the 1997 Charter on a Distinctive Partnership with NATO. In 1995 Ukraine became a Council of Europe member and participated in UN peacekeeping missions, and signed treaties with its neighbours (on border and minority issues) to stabilise Central Europe. In 1997 relations with Russia were normalised through the important friendship, cooperation and partnership treaty that recognised Ukrainian sovereignty and its borders, and solved Crimea's quest for autonomy and the Black Sea Fleet questions in Ukraine's favour.<sup>269</sup>

Kravchuk's successor, the former Prime Minister Leonid Kuchma elected in Ukraine's first free elections in 1994, continued to pursue this foreign policy that can be summed up as a balancing act between Russia and the West, and by declaring its willingness to accede to the most important Western regional organisations. Ukrainian authorities have (somewhat euphemistically) labelled this balancing act as 'multi-vectored foreign

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<sup>266</sup> Peter van Ham (1994), *Ukraine, Russia and European Security: Implications for Western Policy*, Chaillot Paper No. 13, Paris: Western European Union Institute for Security Studies.

<sup>267</sup> Roman Solchanyk (2001), *Ukraine and Russia. The Post-Soviet Transition*. Lanham, Maryland: Roman and Littlefield; Oleksandr Pavliuk (2002), 'An Unfulfilling Partnership: Ukraine and the West, 1991-2001', *European Security*, Vol. 11, No. 1, Spring, pp. 81-101.

<sup>268</sup> Solchanyk (2001); and Subtelny (2000).

<sup>269</sup> Pavliuk (2002).



policy'.<sup>270</sup> This geographical predicament represented one core dilemma of Ukraine's internal and international development. Although elected on a pro-Russian platform, Kuchma's policies were in these years more geared towards the West.<sup>271</sup>

In parallel to seeking to consolidate relations with the major Western actors (within Europe, Germany was the country's most important interlocutor, providing half of its foreign aid by the mid-1990s), Ukraine's foreign policy also focused on the new Central European democracies, with Poland leading the way as the very first country to recognise Ukraine's independence. To the Central European countries, and to Poland in particular, Ukraine was seen as a buffer state between them and an unpredictable Russia; to Ukraine, Central Europe was seen as a stepping stone towards the West. The final area of Ukraine's attention was the EC/EU, towards which it sought to intensify relations and long-term integration, considered the best way to limit hostilities with Russia.<sup>272</sup>

Ukraine's importance to the EU was therefore overwhelmingly tied to regional security and non proliferation, in a framework where the US and Russia were the two agenda-setters. The country's regional importance became increasingly evident not just as a transit for Russian gas, but also with regard to its relations with the other countries of Central Europe.

### 3. *Developing relations with the EU*

#### 3.1 *The early 1990s*

During the early 1990s, Ukraine was seen in the EU mostly as a security problem addressed largely by the US. Crimea's declaration of autonomy in 1992 (a potential crisis which Kravchuk managed to avert) led to fears of conflict on the lines of warring Yugoslavia. EU policy followed the lead of other actors and focused on non-proliferation and on the closure of the Chernobyl nuclear plant. In June 1991 the EC

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<sup>270</sup> See the various chapters analysing Ukraine foreign policy in Kurt R. Spillman, Andreas Wenger and Derek Müller (1999) (eds.), *Between Russia and the West: Foreign and Security Policy of Independent Ukraine*, Bern: Peter Lang.

<sup>271</sup> Prizel (1997); Taras Kuzio (2003), 'EU and Ukraine: a turning point in 2004?', *Occasional Papers* No. 47, Paris: European Union Institute for Security Studies, November..

<sup>272</sup> 'The new cold war', *The Economist*, 9 September 1993.

established the TACIS assistance programme, and in December, having agreed the guidelines for the recognition of Newly Independent States, which included the principles of human rights and the basic tenets of democracy,<sup>273</sup> its members granted recognition to Ukraine. But as the EC/EU prepared to commit to integrate Central Europe into its structures, Ukraine seemed peripheral to the emerging post-Cold War map of Europe.<sup>274</sup>

The first high level meeting between the EC and Ukraine took place only in the autumn of 1992 between Jacques Delors, then European Commission President, and Kravchuk. During that same year, the first decisions on what type of relations to build with Ukraine were made: in February the Protocol on the Agreement between the European Communities and the New Independent States concerning Technical Assistance was agreed, and in April the Commission gave its opinion to Council to start negotiations on a new cooperation agreement with Ukraine.

The primacy of key security issues was evident. A form of conditionality was exercised in 1993 when the EU tied the PCA to the ratification of the START 1 and Non Proliferation treaties.<sup>275</sup> This did not prevent the EC from signing a sectoral agreement in the textiles field in June of the same year.<sup>276</sup> The same Copenhagen European Council of June 1993 that pressed Ukraine over proliferation promised a prospect of accession to Central European countries. For Ukraine, the possibility of signing a Europe Agreement of the kind used with those countries that asked for EU membership was not envisaged.

Russian pressure on the EU to keep a distance from Ukraine also played a role in shaping EU policy,<sup>277</sup> and divisions between the member states and the lack of a common vision towards the country hampered the development of a collective foreign policy. The aid programme offered to Ukraine, rather than the PHARE programme for

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<sup>273</sup> European Political Cooperation (1991), Statement by an extraordinary EPC Ministerial Meeting concerning the *Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*, Brussels and The Hague: 16 December.

<sup>274</sup> Edward Mortimer argued that 'western Europe has failed conspicuously to respond to the challenge of events in the east', in 'Wake up, Europe', *The Financial Times*, 18 November 1992.

<sup>275</sup> European Council (1993), *Council Conclusions*, Copenhagen: 21-22 June.

<sup>276</sup> Anna Herranz (2003). 'Relaciones UE-Ucraina 1991-2003: Una politica de reacci3n', *Working Papers* No. 52, Barcelona, Universitat Aut3noma de Barcelona.

<sup>277</sup> David Cronin, 'Solana still has work to do over Russian reaction to the "Orange Revolution"', *European Voice*, 9 December 2004.

the potential candidate countries to EU membership, was TACIS, a programme that brought together under the same budgetary umbrella all the Soviet successor states and Mongolia. The post-Cold War map of Europe gradually being drawn in European capitals through enlargement did not include Ukraine as a potential member, even after the Baltic states, as Ukraine formerly part of the Soviet Union, became included among the potential candidates for accession in 1994.

### *3.2 Engaging Ukraine: the Partnership and Cooperation Agreement*

With the break up of the Soviet Union, of all the EC countries, Germany seemed the most concerned with Central Europe and shouldered much of the aid effort towards the CIS.<sup>278</sup> Addressing the Ukrainian fear of being considered secondary to Russia, Chancellor Helmut Kohl in Kiev told journalists that ‘there can be no question of either/or, there can only be relationships with both’.<sup>279</sup> The EU began to wake up to the issues that Ukraine was posing,<sup>280</sup> by reaching a CFSP Common Position outlining the areas of priority in November 1994. These were economic and social stability, regional security, and nuclear disarmament.<sup>281</sup>

At that time, Germany, concerned about the economic crisis in Ukraine and its relations with Russia,<sup>282</sup> advocated a stronger policy towards the whole Eastern Europe. Its position, however, was often blocked by considerations (that did not always regard Ukraine) of other member states.<sup>283</sup> France wanted to ensure that the EU’s Eastern foreign policy focus would be counterbalanced by equal attention to the Mediterranean; Italy was against a balance of payments loan because Ukraine had outstanding debts towards Italian companies; while in the first half of the 1990s Britain, despite US

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<sup>278</sup> Anthony Robinson, ‘Donors to draw up plan for aid to CIS’, *The Financial Times*, 22 May 1992.

<sup>279</sup> Chrystia Freeland, ‘Kohl backs Ukraine in fight for EC markets: Pro-Russian stance denied during visit to Kiev’, *The Financial Times*, 11 June 1993.

<sup>280</sup> According to one analyst, ‘it is amazing how little the European Union has contributed to this process [of stabilisation]. The EU has managed to think about enlargement into central Europe, but no further’, Anders Aslund, ‘Behind the new iron curtain of Europe’, *The Financial Times*, 23 January 1996.

<sup>281</sup> Council of the EU (1994), *Common Position on the objectives and priorities of the European Union towards Ukraine*, (94/779/CFSP), Brussels: 28 November.

<sup>282</sup> While he spelt out support for Russia as a key element of any policy, German foreign minister Klaus Kinkel underlined the need for a coherent policy towards Ukraine that needed to be ‘brought rapidly within our European cooperation system’. The wording reserved instead for the Baltic states was to ‘draw these countries ever closer to the Union’. Quentin Peel, ‘Bonn and Paris plan cooperation’, *The Financial Times*, 25 March 1994.

<sup>283</sup> ‘US-German aid package for Ukraine blocked’, *The Financial Times*, 28 November 1994.

criticism, was cautious towards Ukraine, concerned not only with the amount of aid spent there but also about giving the Commission too strong a role in managing aid.<sup>284</sup> Eventually, Germany's *Ostpolitik* found France's support in return for a greater backing of French policy towards Algeria and North Africa.<sup>285</sup> The debate over aid to Ukraine was also conditioned by the decision to enlarge to Central Europe and the discussions over the preparations for and costs of the pre-accession strategy unveiled in the Essen European Council at the end of 1994. These differences between the member states over aid to the country, the role of the Commission in managing aid, and the strategic importance attached to Ukraine was thus the main reason behind the EU's late start in engaging with Kiev.

Although slightly less generous than the PCA negotiated with Russia, the EU, under pressure from Germany, was trying to send the message that it was not putting Ukraine behind Russia.<sup>286</sup> The PCA institutionalised relations between the two sides. But it had little to deliver: short of offering some kind of European prospect, the Ukrainian leadership considered most EU strategies insufficient.

The political dimension of the PCA has been discussed in chapter 3. In economic terms, as well as providing the framework for trade, it institutionalised the EU's support for the integration of Ukraine into the World Trade Organisation (WTO), though it did not provide a roadmap for such accession. It contained a so-called 'evolutionary' clause through which the parties involved can decide to bring their economic cooperation onto a higher level through the creation of a Free Trade Area. The PCA 'constitutes an example of what could be seen as a mixed external action of the EU, with a cross-pillar

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<sup>284</sup> Britain was in the mind of Clinton's administration when an official stated, after Ukraine's accession to the Non-Proliferation Treaty, that 'we believe that President Kuchma needs a strong vote of confidence from the west, and we are very disappointed with the EU's lack of response', Lionel Barber and Chrystia Freeland, 'UK, France block Ukraine reform aid', *The Financial Times*, 28 November 1994. On the position of the other member states see Lionel Barber, 'EU split over Ukraine loan: UK resistance to Germany's aid call', *The Financial Times*, 8 November 1994.

<sup>285</sup> Quentin Peel and David Buchan, 'Paris, Bonn discuss EU strategy: Plans for two Presidencies', *The Financial Times*, 30 May 1994.

<sup>286</sup> Lionel Barber, 'EU seeks even-handed policy towards Russia and Ukraine', *The Financial Times*, 16 May 1994.

dimension, ensured in particular by the dual nature of the Council of the European Union'.<sup>287</sup>

Notwithstanding the thorny issue of membership, the PCA framework has been criticised as a policy designed by default, as a 'photocopy' of the Russian one,<sup>288</sup> for its heavily technocratic and insufficiently political nature, without a clear prospect of long-term development, heavily focused on trade issues and on Ukraine's legislative harmonisation, and 'reflecting a mixed bag of tools transplanted from other EU policies'.<sup>289</sup> The time gap between its conception and its implementation in 1998 was long: the PCA did not reflect changes that had occurred during the process, such as the start of enlargement negotiations, internal political dynamics and steady economic decline.<sup>290</sup> According to some, this made the PCA a 'piece-meal document, where each partner has picked what has best suited its agenda'.<sup>291</sup>

Despite the institutional meetings and summits, which included the Commission, the Council and its ministers or the Presidency (at the yearly summits), and the High Representative for CFSP, political dialogue remained limited, especially in the field of human rights and democracy (as box 3, p. 261 in the Annexes shows). In the economic sphere, the dialogue between ministers remained focused on Ukraine's onus to speed up reform which, given that it was not forthcoming, ensured that the PCA framework did not evolve much over the years (see box 3 in the Annexes). Furthermore, the PCA did not provide the prospect of EU membership that Ukraine had been asking. According to its ambassador in Brussels, enlargement was distracting the EU from the eastern countries: 'there should be a long-term strategy towards Ukraine, to show us where we are heading. We want to be within the EU's sphere of influence'.<sup>292</sup> Throughout these relations, a fundamental misunderstanding over the meaning of 'European integration'

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<sup>287</sup> Christopher Hillion (2000), 'Institutional aspects of the partnership between the European Union and the Newly Independent States of the former Soviet Union: Case studies of Russia and Ukraine', *Common Market Law Review*, Vol. 37, No. 5 pp. 1211-1235, quote on p. 1219.

<sup>288</sup> In the words of a European Commission official, interview, Brussels, April 2006 (1).

<sup>289</sup> Dov Lynch (2003), 'The new Eastern Dimension of the enlarged EU', in Judy Batt, Dov Lynch, Antonio Missiroli, Martin Ortega and Dimitrios Triataphyllou, *Partners and Neighbours: a CFSP for a wider Europe*, Chaillot Papers No. 65, Paris: EU Institute for Security Studies, pp. 34-59.

<sup>290</sup> Commission officials, later involved in the drafting of the European Neighbourhood Policy, agree with many of the critiques of the PCA described here. Interviews, European Commission, Brussels: 24 April 2006 (1) and 25 April.

<sup>291</sup> MWH ECDPM, ODI Consortium (2003), p. 13.

<sup>292</sup> Mark Turner, 'EU strategy for Kiev hinges on reforms', *European Voice*, 4 June 1998.

persisted: while the Ukrainian side interpreted it as the eventual possibility of accession, the EU focused on the process and avoided membership as a carrot to stimulate reform. These different interpretations had an impact not only on political relations but also on policy implementation.<sup>293</sup>

As a follow up to the CFSP Common Position, in December 1996 the Council approved the first Action Plan towards Ukraine. The aims were broader than the 1994 document: development, democracy, market economy and de-nuclearisation, but it did not provide any specific initiatives.<sup>294</sup> The Action Plan was a response to Kiev's demands for a similar treatment to that towards Russia, which had been dealt with in an earlier Action Plan. The difference, however, was that the Plan was drafted by the Commission rather than the Council,<sup>295</sup> indicating the lesser importance the member states attributed to Ukraine compared to Russia.

In terms of EU priorities, economic penetration and expansion continued to be secondary to security concerns, though EU investments were growing in the 2000s. Trade with the EU accounted for just 20% of Ukraine's total trade.<sup>296</sup> This figure hides an imbalance: the EU became Ukraine's most important trade partner, but Ukraine remained of much lesser importance to the EU as a whole representing less than 1% of its trade,<sup>297</sup> even after the accession of central European countries with stronger economic ties with Ukraine. Once Ukrainian GDP started to grow after 2000,<sup>298</sup> thanks to a set of market reforms introduced by Prime Minister Yushchenko, the country started to become more appetising to EU investments. By 2005 56% of Foreign Direct Investments into Ukraine came from EU-25 member states (37% from EU-15). In 2004 the biggest European investors were the UK (US\$ 896 million), Germany (US\$ 632

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<sup>293</sup> This was recognised by the two sides themselves, see EU-Ukraine Cooperation Committee (2003), 'Joint Report on the Implementation of the Partnership and Cooperation Agreement between the EU and Ukraine' [europa.int.eu/comm./external\\_relations/Ukraine/intro/pcarep2.pdf](http://europa.int.eu/comm./external_relations/Ukraine/intro/pcarep2.pdf).

<sup>294</sup> European Commission (1996), *Action Plan for Ukraine*, COM/96/0593/FINAL, Brussels: 20 November; Herranz (2003).

<sup>295</sup> 'EU to send "frank message" in action for Ukraine', *European Voice*, 24 October 1996.

<sup>296</sup> European Commission (2003), *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM(2003g) 104 final, Brussels: 11 March, chart 5.

<sup>297</sup> European Commission, DG Trade, Ukraine, 5 July 2005, available at [http://trade-info.cec.eu.int/doclib/docs/2005/july/tradedoc\\_113459.pdf](http://trade-info.cec.eu.int/doclib/docs/2005/july/tradedoc_113459.pdf), accessed 14 February 2006.

<sup>298</sup> Between 2000 and 2004 Ukraine had an average growth rate of 7.3% per year, industrial output grew by 16% and exports by 28%. See Anders Aslund (2004), 'Ukraine's Future and US interests', Hearing before the Subcommittee on Europe of the Committee on International Relations, House of Representatives, Washington: US Government, 12 May.

million), the Netherlands (US\$ 548 million) and Austria (US\$ 346 million).<sup>299</sup> This trend was to increase after the end of the Kuchma era with the Orange Revolution.

Ukraine is also a crucial transit country hosting 35,000 km of pipelines to transport natural gas from Russia to Central and Western Europe, and transporting 94% of the natural gas consumed in Europe,<sup>300</sup> but has never become as important as the energy provider. Indeed, EU member states have dealt with these issues directly with Moscow,<sup>301</sup> and in April 2005 Germany and Russia signed an agreement for the construction of the North European Gas Pipeline that will transport gas under the Baltic Sea bypassing Poland, Ukraine and Belarus.<sup>302</sup>

As enlargement approached, security interests were expanded to include illegal migration, illegal trafficking, border management, priorities also reflected in the distribution of aid (see table 3.1, p. 85). Cooperation with Kiev was sought also in peace-keeping operations and over the resolution of the Transnistria conflict in Moldova.

### 3.3 CFSP and the Common Strategy

In June 1998 Kuchma issued a decree on 'Ukraine's Strategy of Integration into the European Union' which stated that the 'national interests of Ukraine require the identification of Ukraine as an influential European country, full-fledged EU member', a nine point plan in which the EU figured in most objectives.<sup>303</sup> In December 1999 the Parliament approved the appointment of the governor of the central bank Viktor Yushchenko as Prime Minister, widely seen as a reformer not affiliated to the oligarchic groups<sup>304</sup> who managed to find a majority in favour of reform, later helped by the fact

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<sup>299</sup> Delegation of the European Commission to Ukraine, Moldova and Belarus, 'Foreign Direct Investments from the European Union to Ukraine', [www.delukr.cec.eu.int/site/pag\\_32099.htm](http://www.delukr.cec.eu.int/site/pag_32099.htm).

<sup>300</sup> Marko Bojczun (2001), 'Russia, Ukraine and European Integration', *EUI Working Paper* HEC No. 2001/4, Florence: European University Institute.

<sup>301</sup> See, for instance, Pavliuk (2002), p. 87; Charles Clover and John Reed, 'Pipeline ploy displeases Poland and Ukraine', *The Financial Times*, 31 October 2000.

<sup>302</sup> Former German Chancellor Gerhard Schroeder is a consultant in the joint Russian-German company that won the construction contract of the new pipeline. See Angelantonio Rosato, 'E usando il gas, Putin riaccende una seconda guerra fredda', *Il Venerdì di Repubblica*, 3 February 2006.

<sup>303</sup> Decree by the President of Ukraine, Strategy of Ukraine's integration into the European Union, Decree 615/98, 11 June 1998.

<sup>304</sup> 'Viktor Yushchenko, Ukraine's faint hope', *The Economist*, 4 May 2000.

that in 2000 Ukraine saw its economy grow for the first time in a decade. Under pressure from the Council of Europe, for example, at the start of 2000 the *Rada* finally abolished the death penalty, in a move that seemed to indicate commitment towards international obligations. In April 2000, on the basis of Kuchma's indications, the Parliament adopted a reform programme that focused on five strategic goals: the development of human resources; the reduction of poverty and economic development; increasing the country's economic competitiveness; protecting human rights, freedoms, personal security and the integrity of the state; integration into EU.<sup>305</sup>

On the EU side, Ukraine was to be dealt with through foreign policy rather than as a potential candidate for accession. In December 1999 the European Council in Helsinki recognised Turkey, but not Ukraine, as a potential candidate, which dealt a blow to the pro-European elites in Kiev.<sup>306</sup> The Foreign Minister of the time, Anatol Zlenko, later pointed out the differential treatment the EU reserved to Ukraine compared to the other countries of Central Europe:

while the countries of Eastern Europe were told “we will admit you to the EU, but only after you have carried out reforms and met certain criteria”, Ukraine was told “first you must carry out reforms and meet certain criteria and only after we will discuss the possibility of membership”.<sup>307</sup>

Instead, at Helsinki the EU produced a Common Strategy for Ukraine. If on the one hand the Common Strategy signalled the greater importance that the EU attributed to Ukraine, it also implied that the country was intended to be dealt with under CFSP rather than a potential candidate. The exclusion of Ukraine from the list of potential candidates had an important domestic impact and was used instrumentally to justify Kiev's unwillingness to carry out reforms, on the grounds that there was no direction towards which head, and its increasing leaning towards Russia.<sup>308</sup>

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<sup>305</sup> MWH, ECDPM, ODI Consortium (2003).

<sup>306</sup> Stephen White, Margot Light, John Löwenhardt (2000), 'A Wider Europe: The View from Moscow and Kyiv', *International Affairs*, Vol. 76, No. 1, pp. 77-88.

<sup>307</sup> Anatol Zlenko (2001), 'Ukraine and the EU: It Takes Two to Tango', in Lewis (ed.), pp. 21-25, quote on p. 22.

<sup>308</sup> Kataryna Wolczuk and Roman Wolczuk, 'The EU's response to Ukraine turmoil', *Radio Free Europe/Radio Liberty Belarus and Ukraine Report*, Vol. 6 No. 47, 23 December 2004.



The Common Strategy (CS) essentially confirmed the institutional framework and the priorities established by the PCA, though it focused more on stability and economic development. It also implicitly recognised the need for greater coherence between the policies of the member states and those of the EC and that political dialogue with Ukraine needed strengthening (see box 3.1, p. 78).

But aside from pinpointing some of the problems of the policies, especially in the political dimension, the CS had little follow up. In subsequent years, the effectiveness and appropriateness of Common Strategies as a whole came under scrutiny by the High Representative for CFSP himself, arguing that while they contributed to rejoining EU overall objectives, they did not provide any added value compared to existing policies, that their broad scope and the composite interests of the member states made them ‘a Christmas tree’ based on the ‘lowest common denominator’, where all possible aspects of relations are treated without any sense of priority. Also, they were considered too static to provide any tools at times of crisis, nor did they prove to be a means to introduce Qualified Majority Voting (QMV) in CFSP matters,<sup>309</sup> which would have helped overcome the problem of unanimity in decision making.

It is significant, however, that the content of CFSP action did revolve around building declaratory positions of normative content (see box 5.2 on the use of CFSP towards Ukraine, p. 147). Many of the topics addressed through CFSP did indeed regard human rights and democracy related issues. This will be discussed at greater length in Chapters 5 and 6.

Ukrainian leaders were increasingly frustrated with the EU’s ambiguity over the country’s accession prospects. In Kuchma’s words, ‘There is just talk, nothing else [...]. Could you explain the strategy of the European Union towards Ukraine? When we ask such a question, we don’t understand the answer’.<sup>310</sup> Repeated criticism from Kiev was answered by confirming the validity of the existing framework and by pointing at Ukraine’s lack of progress in reforms – a dialogue between the deaf.

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<sup>309</sup> Secretary General/High Representative (2000), *Common Strategies Report*, Brussels: 21 December, reprinted in Antonio Missiroli (ed.) (2001b), ‘Coherence for European Security Policy: Debates – Cases – Assessments’, *Occasional Papers*, No. 27, Paris: Western European Union Institute for Security Studies, May, Annex E. These views were also widely shared among officials at the Council of the EU and at the Commission. Interviews, Brussels: 24 April 2006 (1), (3) and (4).

<sup>310</sup> Stefan Wagstyl, ‘Russian PM in warning over EU strategy’, *The Financial Times*, 2 July 1999.

### 3.4 *Conclusions*

EU foreign policy towards Ukraine suffered from a number of internal and external constraints which undermined the development of a strategic view of the country. In the first half of the 1990s the EU's role was secondary to US leadership in addressing security challenges. Thereafter, a collective strategy failed to develop due to an insufficiently strong constituency within the EU to drive it. With the exception of Germany, the other member states did not share a clear view of where Ukraine should stand in relation to the EU nor of what the priorities of foreign policy should be.<sup>311</sup>

The fact that the responsibility for drafting the 1996 Action Plan was left to the Commission did not imply that it was the driving force behind it; rather it reflected the lack of attention on part of the member states.<sup>312</sup> The absence of inputs from the member states also ensured that the PCA was designed on the basis of the Russian one and that the content of the meetings was largely technical, relating to issues such as the closure of Chernobyl and the abolition of trade barriers.

The only priority that emerged was that Ukraine was not deemed part of those countries to which the EU was promising a prospect of accession. Maintaining friendly relations with Russia, especially as the Baltic states submitted their applications for EU membership in the mid 1990s, was a very strong factor slowing down the pace and degree of engagement with Kiev and influencing negotiations for the PCA. As we have seen, some member states, such as Britain, France and Italy, were also concerned with the costs of external assistance towards the whole of Eastern Europe, a confirmation of the 'logic of diversity' in dealing with Ukraine.

If the lack of a collective vision, the role of external actors, the prioritisation given to Central Europe and Russia, and the inadequacy of the foreign policy instruments and capabilities explain the weaknesses of EU foreign policy towards Ukraine, they do not explain the motivations for engaging it in the first half of the 1990s. Germany, which

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<sup>311</sup> Interviews, Council of the EU, Brussels: 24 April 2006 (3), European Commission, Rome: 30 May, embassies of EU member states, Kiev: 5, 6 July (1) and (2), 7 July 2006.

<sup>312</sup> Interviews, European Commission, Brussels: 24 April 2006 (1), and in Rome: 30 May 2006.

pioneered EU policies towards the East, was the policy entrepreneur that put Ukraine on the EU foreign policy agenda, while external demands from Kiev to deserve a similar treatment to Russia also influenced the Commission and Germany.

As we shall see, and as box 3 in the Annexes on PCA priorities shows (p. 261), Ukraine started to acquire a more prominent position in EU foreign policy only towards the very end of the 1990s, largely as a result of approaching EU enlargement.

#### 4. *The EU and Ukraine in the context of enlargement*

##### 4.1 *Uncertainties in Ukraine's transition*

The Yushchenko government's pro-Western reform policy was short lived, starting with the dismissal of the Foreign Minister Borys Tarasyk in October 2000, apparently because of Kuchma's priority of placating Russia.<sup>313</sup> The signs that the process of transition were regressing continued:<sup>314</sup> in 2001 Kuchma's standing in the West was severely damaged by his alleged involvement in the murder of an independent journalist (the Gongadze case, discussed in the next chapter), and by the 2002 parliamentary elections all the pro-Western elements in government had been dismissed.

These internal developments had a significant impact on (and to an extent were also shaped by) Ukraine's relations with the rest of the world. Russia started to strengthen its policy towards Ukraine and the former Soviet space with the election of Vladimir Putin to President in 2000. One of his first foreign trips was to Kiev, followed by numerous ministerial meetings and investments in the country, using energy dependence to reassert Russian influence in Ukraine.<sup>315</sup> Viktor Chernomyrdin (former Russian Prime Minister and former head of *Gazprom*) was appointed in 2001 ambassador to Kiev and Special Presidential Envoy on the development of Russian-Ukrainian trade and economic relations, interpreted as move to strengthen Russia's chances of winning the final phase of privatisation that involved the gas transit network,<sup>316</sup> and to increase its

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<sup>313</sup> 'Plenty of plots, not much reform', *The Economist*, 19 October 2000.

<sup>314</sup> Paul Kubicek (2001), 'The Limits of Electoral Democracy in Ukraine', *Democratization* Vol. 8, No. 2, pp. 117-139. Kubicek argues that the 1994 elections were the only free ones (rather than free and fair).

<sup>315</sup> 'Frost and Friction', *The Economist*, 28 September 2000.

<sup>316</sup> Bojcun (2001).

political influence over Ukraine.<sup>317</sup> The two countries got as close as to sign an agreement in September 2003 also with Belarus and Kazakhstan to create a single economic space, putting relations with the EU under strain.<sup>318</sup>

Ukraine thus increasingly tied its fortunes to Russia. As Kuchma later put it, 'separating Ukraine from Russia is as impossible as separating Russia from Europe'.<sup>319</sup> This approach found resonance in those member states that had the deepest historical ties with Moscow and which were also most dependent on Russian gas.<sup>320</sup> But as Russia started to warm to the West in the wake of September 11, Ukraine too announced the abandonment of its traditional 'multivector foreign policy' in favour of seeking NATO membership and integration in the EU. According to Yevhen Marchuk, secretary of the national security and defence council chaired by Kuchma, 'there is no value in neutrality, a multi-vector foreign policy, and uncertainty about the nature of [Ukraine's] principles'.<sup>321</sup> Among the US's new allies in the fight against terrorism, Ukraine thus opened its airspace to aircraft en route to Afghanistan. During the summer of the same year, however, the same tapes that had implicated Kuchma in the Gongadze murder revealed his alleged involvement in the sale, in 2000, of Kolchuga radars to Iraq, which led the US to suspend \$55 million in aid.<sup>322</sup> A previous US Congressional Research Service report had expressed preoccupation at Ukraine's arms exports that had increased to make it the 10<sup>th</sup> world arms' exporter.<sup>323</sup> Ukraine's later participation in the post war effort in Iraq with 1,800 soldiers only partly mended fences,<sup>324</sup> but did not prevent the US administration from criticising the conduct of the 2004 presidential elections.

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<sup>317</sup> Sophie Lambroschini and Askold Krushelnysky, 'Ukraine: Why Is Moscow Sending Chernomyrdin to Kyiv?', *Radio Free Europe/Radio Liberty*, 11 May 2001.

<sup>318</sup> David Cronin, 'Ukraine push for closer Russia ties under fire', *European Voice*, 11 September 2003.

<sup>319</sup> At a meeting of Central European leaders in May 2003. Quoted in Oleh M. Smolansky (2003), 'Ukraine and Russia: An Evolving Marriage of Inconvenience', *Orbis*, Vol. 48, No. 1 pp. 117-134, quote on p. 132.

<sup>320</sup> Germany, France and Italy imported between 30 and 50% of their energy from Russia.

<sup>321</sup> Oleg Varfolomeyev, 'Ukraine turns to NATO', *Time Europe*, 20 June 2002, [www.time.com/time/europe/eu/daily/0,13716,264234,00.html](http://www.time.com/time/europe/eu/daily/0,13716,264234,00.html), accessed on 14 July 2004.

<sup>322</sup> 'Kuchma weaker, but still boss', *The Economist*, 17 October 2002.

<sup>323</sup> Andrew F. Tully, 'East: Ukraine, Belarus Rank High In Arms Exports', *Radio Free Europe/Radio Liberty*, 23 August 2001.

<sup>324</sup> Carlos Pascual (US ambassador to Ukraine): 'a positive development in US-Ukraine relations', and 'will have a positive impact on Ukraine's entry in the WTO', in 'Ukraine inches Closer to WTO Membership', *Transitions Online*, 18-34 March 2003, [www.ciaonet.org/pbei/tol/tol\\_2003/mar18-24/mar18-24\\_i.html](http://www.ciaonet.org/pbei/tol/tol_2003/mar18-24/mar18-24_i.html). See also Yuriy Zaluzniak, 'Kuchma trades troops for respectability', *The Guardian*, 3 July 2003. Ukraine's participation in the Iraq war was a suggestion of the Polish government. See Christophe Châtelot, 'La Pologne rêve de voir Kiev rejoindre à son tour l'Union européenne', *Le Monde*, 26 December 2004.

EU position towards Ukraine started to change at a time of such fluidity. Germany's leading role in supporting EU engagement with Ukraine, was not to last. By the late 1990s Germany's position shifted towards France's, which seemed to consider Ukraine as ancillary to Russia and expected that it would eventually be subsumed.<sup>325</sup> A joint report of the French and German Ministries of Foreign Affairs recognised that there were significant Ukrainian political forces advocating greater integration with the EU, 'but, nevertheless, the admission of Ukraine would imply the isolation of Russia. It is sufficient to content oneself with close cooperation with Kiev'.<sup>326</sup> Germany, France, and Italy viewed Ukraine through the lens of their ties with Moscow and their growing dependence on Russian gas.<sup>327</sup> After 1995 it was Britain that led the EU in considering the importance of Ukraine as a 'pivot' (the official British term) in European security,<sup>328</sup> joined by some Nordic countries in the 2000s. The UK became, together with Sweden and some of the acceding countries of Central Europe, the main initiator of the ENP.

Within the enlarged EU the country with the most significant interests in Ukraine has been Poland, which tabled proposals for EU-Ukraine relations as early as 1998.<sup>329</sup> Politically, the core of mutual interests between Poland and Ukraine had been throughout the 1990s to counterbalance Belarus's 'integration' into Russia. Both countries shared a common interest because of their minorities living across each other's borders.<sup>330</sup> Despite the regular discussions with Germany about Eastern policy issues, Warsaw did not share Berlin's view whereby Russia was the strategic partner in the East.<sup>331</sup> According to Janusz Onyszkiewicz, Member of the European Parliament (MEP) and former Polish defence minister: 'at least Ukraine does not offer us burning borders

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<sup>325</sup> Bojcun (2001).

<sup>326</sup> Quoted in Berdychowska, Grajewski (2002), p. 11.

<sup>327</sup> This view has been confirmed in interviews, Council of the EU, Brussels: 24 April 2006 (3), European Commission, Rome: 30 May 2006; and embassies of the member states, Kiev: 5 July, 6 July (1), 6 July (2) and 7 July 2006.

<sup>328</sup> Sherr (1998).

<sup>329</sup> Lynch (2003).

<sup>330</sup> Oleksandr Pavliuk (1997), 'Ukrainian-Polish Relations: A Pillar of Regional Stability?', in Monika Wohlfeld (ed.), *The Effects of Enlargement on Bilateral Relations in Central and Eastern Europe*, Chaillot Paper No. 26, Paris: Western European Union Institute for Security Studies, pp. 29-42 ; Roman Wolczuk (2002), 'Ukraine. Poland's Failing Project', in Lewis (ed.), pp. 171-179.

<sup>331</sup> Marcin Zaborowski (2004), 'From America's protégé to constructive European. Polish security policy in the twenty-first century', *Occasional Papers* No. 56, Paris: EU Institute for Security Studies, December.

with Syria, Iran and Iraq'.<sup>332</sup> Once Poland joined the EU, its MEPs were also active in the European Parliament, elected to head working groups on Ukraine and Belarus – a development which proved to be of major significance in issuing the Parliament's resolutions on the Belarusian referendum in October 2004 and on Ukrainian elections in November 2004.

The accession of the new member states thus modified EU views of Ukraine, though the key question of membership posed by Kiev remained unanswered. Whereas Belgium, France, Luxemburg, the Netherlands and, by the 2000s, Germany were opposed to deeper integration with Ukraine in case it was seen as a commitment towards enlargement, Poland pressed hard to keep the door open, and the UK, the Scandinavian countries, the Baltic states all favoured closer ties.<sup>333</sup> After the Orange Revolution, when Kiev renewed demands for an accession prospect, the case against Ukraine was strengthened by the French and Dutch rejection of the Constitutional Treaty and so-called enlargement fatigue.

The prospect of the 2004 enlargement of the EU to ten countries, eight of which are in Central and Eastern Europe,<sup>334</sup> increased the regional importance of the country. In terms of security, the 526 km of Polish-Ukrainian border, now the best part of the EU-Ukrainian border, was a difficult area for the EU that presented plenty of so-called 'micro-security' risks: illegal migrant crossings and illegal trafficking, and trans-border criminal activities.<sup>335</sup> The prospect of sharing a border directly with Ukraine raised the awareness in the EU-15 that the external impact of domestic change in Ukraine would be felt directly in the enlarged EU. Also, some of the accession countries, which were to bring into the EU the heritage of their relations developed with Ukraine during the 1990s, as well as their foreign policy priorities vis-à-vis Russia, were pushing for the EU to develop an 'Eastern dimension'. The main activities of the EU towards Ukraine entailed a few attempts to improve diplomatic relations, the introduction of new fields of

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<sup>332</sup> Quoted in Wieslaw Horabik, 'Torn between Russia and the West, Ukraine must make a crucial choice', *European Voice*, 29 July 2004.

<sup>333</sup> Andrew Beatty, 'Ukraine threatens to reject new EU deal', *EUobserver*, 11 June 2004.

<sup>334</sup> These are Poland, Lithuania, Latvia and Estonia, Hungary, the Czech and Slovak Republics, and Slovenia. Malta and Cyprus are the other two countries of the 2004 enlargement round.

<sup>335</sup> Heather Grabbe (2000), 'The sharp edges of Europe: extending Schengen eastwards', *International Affairs*, Vol. 76, No. 3, pp. 519-536.

cooperation, especially in the second and third pillars, and the development of a new policy towards the neighbourhood of the enlarged EU.

But political dialogue followed roughly the same terms: little substance so long as change was not forthcoming from Ukraine (see box 3 in Annexes, p. 261). The 2003 Yalta EU-Ukraine summit mentioned for the first time the possibility of membership of the European Economic Area, but the only concrete results were increased cooperation in energy, transport and scientific fields. The EU did not commit to increase technical assistance, running at an average of €100 m during the previous 10 years, nor did it offer any compensation for enlargement (according to Kiev, the country was due to lose €1 bn in trade).<sup>336</sup> The EU emphasised instead that the Presidential elections were an ‘excellent opportunity to demonstrate that remaining shortcomings in the areas of media freedom and conduct of elections are being effectively addressed in a positive and tangible manner’.<sup>337</sup>

At the same time, the EU was concerned with the ways in which enlargement would change its relations with Ukraine and the likelihood that migratory pressure on the new border would increase, given that Ukraine had become a route for illegal migration.<sup>338</sup> In view of these challenges, the EU sought Kiev’s cooperation in managing ‘soft security’ issues, a rare field in which both sides have willingly gone beyond the PCA remit, by launching an Action Plan in Justice and Home Affairs in December 2001. The areas of cooperation included migration and asylum, border management and visa policies, organised crime including terrorism, and strengthening the judiciary, rule of law and good governance.<sup>339</sup> The innovation contained in the methodology of the Action Plan was the fact that the priorities were negotiated jointly with Kiev: at the first meeting held in November 2002, a limited number of areas were identified as the first step of joint activity (readmission and migration, border management, money laundering, trafficking in human beings and drugs, corruption and child exploitation).<sup>340</sup> CFSP and ESDP too have been areas in which Ukraine has shown interest by aligning itself to many EU declarations and positions and by participating in peacekeeping missions in

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<sup>336</sup> Dick Leonard, ‘Ukraine still years away from joining EU’, *European Voice*, 13 November 2003.

<sup>337</sup> EU-Ukraine Summit, Yalta, 7 October 2003, Press Release IP703/1343, Brussels: 6 October 2003.

<sup>338</sup> Pavliuk (2002), footnote 27.

<sup>339</sup> European Council (2001b), *EU Action Plan on Justice and Home Affairs in Ukraine (2003/ c 77/01)* Brussels: 10 December.

<sup>340</sup> Lynch (2003).

the Western Balkans and the EU Police Mission in Bosnia-Herzegovina. Therefore, if political dialogue during these years rarely went beyond empty rhetoric, the EU did show an interest in Kiev's cooperation in select security fields and in JHA.

#### 4.2 *The European Neighbourhood Policy*

The European Neighbourhood Policy represented an attempt to end the EU's 'soul searching'<sup>341</sup> policy towards Ukraine. The UK and Sweden, backed by some future member states, were the main instigators of the need to develop a policy aimed at those countries left out of the enlargement process. The first Communication from the Commission offered 'the prospect of a stake in the EU's internal market and further integration and liberalisation to promote the free movement of – persons, goods, services and capital',<sup>342</sup> as the carrot in exchange for cooperation in the building of stability around the EU's borders. The aims ran parallel to those outlined in the European Security Strategy, drafted during the same year: to create a 'ring of friends' that would share greater prosperity, stability and security.<sup>343</sup>

Initially, the ENP was conceived mostly for Ukraine and the Eastern neighbourhood, as a means to enhance relations that were stagnating under the Partnership and Cooperation Agreements negotiated in the mid 1990s. The inclusion of North Africa and the Middle East under pressure from the EU Mediterranean states, and of the Southern Caucasus in 2004, satisfied those member states that wanted to clarify to aspiring members in Eastern Europe that the ENP was not an antechamber to an accession process.<sup>344</sup> These developments were not welcome in Ukraine. The terminology itself was contested: Ukraine does not see itself as a 'neighbour' but as a 'European' country. Indeed, the response in Kiev was not positive: a foreign ministry spokesperson criticised the proposals as they did not meet Ukraine's aspirations and put the country in the same league as those without an accession prospect (North Africa and the Middle East) and on

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<sup>341</sup> In the words of one Council of the EU official, Brussels, 24 April 2006 (3).

<sup>342</sup> European Commission (2003), *Wider Europe-Neighbourhood: A new Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, Brussels: 11 March.

<sup>343</sup> Council of the EU (2003g), *A Secure Europe in a Better World – the European Security Strategy*, Brussels: 12 December.

<sup>344</sup> Interviews, Council of the EU, Brussels: 24 April 2006 (3), 14 May 2007, European Commission, Brussels: 24 April 2006 (1), 15 May 2007 (2).



a par with Belarus and Moldova,<sup>345</sup> and did not make any distinction between aspiring countries to EU membership and those that are not, implying that none of them were eligible. In the evolution of the ENP from the first 2003 proposal to the 2004 Strategy Paper,<sup>346</sup> to the outcome of the budgetary negotiations for the 2007-2013 financial framework, the most generous and ambitious aspects of the policy were substantially scaled down, signalling a more haphazard commitment to the policy.

Divisions between the member states over the areas to prioritise (along the traditional East versus South division) have historically led to compromises on a middle ground between the two. In 2004 the Council extended the list of priorities with a stronger focus on security issues (contrasting illegal migration, illegal trafficking, and cooperating on security threats), reduced the incentives of economic integration into the EU internal market.<sup>347</sup>

Negotiations with Kiev on the Action Plan continued throughout 2004, as the presidential campaign heated up. Supposed to identify more specific priorities than the PCA, the 3-year Action Plan covered a broad ground (see box 1 in the Annexes, p. 257, for the political priorities). However, the carrots did not have their desired effect upon Kiev, the first country to start ENP negotiations in January 2004. In May, Commission President Romano Prodi hinted at the possibility of granting market status to Ukraine, a first step towards the WTO, but that the elections would be a fundamental threshold in determining the future development of relations.<sup>348</sup> By June the contents of the Action Plan met the disapproval of Ukrainian officials. At the July 2004 EU-Ukraine summit in The Hague, the Action Plan was slammed by Kiev on the grounds that it did not add anything new to the text of the PCA.<sup>349</sup> According to Kuchma, 'fixing Ukraine's status as an EU neighbour will freeze relations, rather than promote their development'.<sup>350</sup> At

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<sup>345</sup> Valentinas Mite, 'Ukraine: EU Proposals For Future Relations Spark Disappointment', *Radio Free Europe/Radio Liberty*, 14 March 2003. Interviews, Ukrainian Representation to the EU, Brussels: 25 April 2006.

<sup>346</sup> European Commission (2004d), *European Neighbourhood Policy Strategy Paper*, COM(2004) 373 final, Brussels: 12 May.

<sup>347</sup> Council of the EU, General Affairs and External Relations (2004b), *Conclusions*, Luxemburg: 14 June. For a comparison of the aims of the ENP proposed by the Commission and then approved by the Council, see Balfour and Rotta (2005).

<sup>348</sup> Andrew Beatty, 'Market status to come soon for Ukraine', *EUobserver*, 19 May 2004.

<sup>349</sup> Andrew Beatty, 'Ukraine threatens to reject new EU deal', *EUobserver*, 11 June 2004.

<sup>350</sup> 'European neighbourhood policy fails to meet Ukraine's interests, Kuchma says', *Interfax-Ukraine*, 8 July 2004.

the same summit, the EU did not give Ukraine market economy status. The EU's position, repeated to the Ukrainian government publicly and informally, was that the upcoming elections would represent the crucial test for the further development of relations.<sup>351</sup> Eventually, the EU published the Action Plan in December 2004 in the midst of the Orange Revolution, but it was approved without modifications only once the new government was in place in February 2005.

### 4.3 Conclusions

After 2001-2 EU policy towards Ukraine entered a phase of even deeper uncertainty. With enlargement approaching, the interests of the member states in a stable and predictable Ukraine increased, especially in the security and JHA fields, where cooperation was expanded. However, diplomatic relations were strained by the deterioration of human rights and democracy standards in Ukraine, as the next chapter will show, amplified by Kuchma's continuous oscillation between East and West. But the main cause of uncertainty was the 'logic of diversity' governing EU foreign policy. The sensitivity that some key member states manifested towards Russia were only confirmed by Putin's renewed policy of influencing the former USSR. The brakes pulled by Germany, France and Italy can be found in the compromises that led to the ENP and in the entire management of the human rights and democracy issues discussed in the next chapters. Conversely, other member states, such as Sweden and Britain pushed towards a greater engagement with Ukraine. Throughout this period, EU policy oscillated between being increasingly 'tiresome' of Ukraine's derailment, in the words of one national embassy official, and the inability to find a consensus over what course of action to take, overwhelmingly because of the role Russia played with some member states.<sup>352</sup>

The Commission began to acquire a greater role especially through the ENP, but remained a secondary actor with regard to policy towards Ukraine, and its ability to influence the member states was limited. While sensitive to the 'policy spillover' of

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<sup>351</sup> Ahto Lobjakas, 'Ukraine: Holding Out For A Better Deal, Kyiv To Shun EU's Neighborhood Offer', *Radio Free Europe/Radio Liberty*, 8 July 2004.

<sup>352</sup> Interview, embassy of one EU member state, Kiev: 6 July 2006 (2).

enlargement into EU-Ukraine relations, the Commission was also aware of the 'red line' of the large member states posed by relations with Moscow.<sup>353</sup>

##### 5. *Conclusions: explaining EU policy towards Ukraine*

Intergovernmentalism and the logic of diversity has been the dominant theme in EU relations with Ukraine: EU member states have been overall the main actors, but that the diversity of views between the capitals led to selective engagement over time. The other European institutions have played a secondary role in influencing policy towards Ukraine. Although the European Parliament did on occasion 'lobby' for Ukraine's cause, its positions have not been reflected in EU policy, while the Commission has mostly followed the inputs from the member states. Officials in the Commission recognised that the member states were in the driving seat.<sup>354</sup> Apart from the drafting of the European Neighbourhood Policy, in which the Commission played an important role, it never proposed any initiative to deepen or upgrade relations with Ukraine. Its reports on the PCA suggested that the existing framework was appropriate. In 2002-2003, when Ukraine's fate was marred by uncertainties, the Commission suggested a line of continuity with the existing set-up.

The understanding of the problems of European foreign policy through the institutionalist framework that sees mechanisms and processes at the level of institutions as the main source of foreign policy (and the main cause of its limits) thus does not seem to apply to the Ukrainian case. Furthermore, when there was consensus within the EU on the type of cooperation and policy areas that needed strengthening or developing, such as in Justice and Home Affairs cooperation, the decision-making process did produce its results. The limits to EU foreign policy towards Ukraine thus need to be found in the member states rather than in the institutions.

With regard to external influences, the US has been one of the most important external actors in determining Ukraine's fortunes; it has not acted as a constraint for the EU (in the sense that its policy was competing with the EU), but throughout the 1990s it

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<sup>353</sup> Interviews, European Commission, Brussels: 24 April (1), 25 April 2006, and Rome, 30 May 2006.

<sup>354</sup> Interviews, European Commission, Brussels: 24 April 2006 (1), Rome, 30 May 2006, and interviews, Council of the EU, Brussels: 24 April 2006 (1) and (2).

prioritised security and geopolitics over domestic politics and reform.<sup>355</sup> Later, the Bush administration, following its 'regime change' policy, significantly raised the stakes with regard to human rights and democracy, acting as a stimulus to EU action.

If the motivations behind engagement were largely security based, so were the constraints: the fate of Ukraine was sacrificed to much broader balance of power considerations between the EU and Russia: 'most European governments would very happily leave Ukraine in Russia's orbit, rather than worry about the problems of a large, backward and fissiparous country'.<sup>356</sup> EU caution towards Russia has been the key external constraint determining a weak engagement with Ukraine.

The window of opportunity offered in the second half of the 1990s, when Russian policy towards its 'near abroad' was at its weakest,<sup>357</sup> and when Ukraine itself had swung more towards the West, was not seized. France, Germany (in the late 1990s) and Italy were consistently identified as the countries with the friendliest relations with Russia. As Kuchma himself put it, 'Ukraine will always been looked at in the light of its relations with Russia whether we like it or not'.<sup>358</sup> Interviews with a variety of officials in European embassies in Kiev and in the EU Council suggested that there were shades of difference in the ways EU member states saw Ukraine under the light of Moscow, to which they were tied by history, personal relations between leaders, and gas. Some key states (Germany, France and Italy) saw their dependence on Russian energy supplies as the *sine qua non*: strategies towards Ukraine were not to interfere in any way with Russia's sensitivities. Secondly, unlike the position developed towards the Baltic states (they too part of the Soviet Union until 1991), many Western European capitals still saw Ukraine as within Russia's orbit.

Ukraine was thus a complicating factor in relations with Russia. Those which did perceive Ukraine as a country which merited some kind of a policy, ranged from considering it a country with which establish a 'strategic partnership' based on

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<sup>355</sup> Taras Kuzio, Jennifer D.P. Moroney, and Mikhail Molchanov (2002), *Ukrainian foreign and security policy : theoretical and comparative perspectives*, Westport, Conn.: Praeger

<sup>356</sup> Katynka Barysh and Charles Grant, 'Ukraine should not be part of a "great game"', *Open Democracy*, 7 December 2004, downloaded from [www.cer.org.uk/articles](http://www.cer.org.uk/articles).

<sup>357</sup> Tor Bukkvoll, (2001), 'Off the Cuff Politics - Explaining Russia's Lack of a Ukraine Strategy', *Europe-Asia Studies*, Vol. 53, No. 8, pp. p1141-1157.

<sup>358</sup> 'Ukraine President on joining EU', *The Russia Journal*, 1 October 2003, [www.russiajournal.com/news/cnews-article.shtml?nd=40646](http://www.russiajournal.com/news/cnews-article.shtml?nd=40646).

cooperation, to constituting a 'buffer zone' between Europe and Russia. 'Outright indifference' too characterized those countries geographically further away from Ukraine.<sup>359</sup> These different views ensured that the demands coming from Kiev were not met – and such ambiguity did not help the EU's credibility there.

This points to intergovernmentalism and traditional realism as the main interpretative frameworks for understanding EU foreign policy towards Ukraine. It also points to an instrumental use of the human rights and democracy rhetoric to counter Kiev's demands for accession. These explanations, however, need to be tested further. To what extent and how did security concerns and cooperation with Russia compete with human and democracy aims?

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<sup>359</sup> For a summary of these views - confirmed in the interviews carried out by the author - see Hryhorii Nemyria (2005), 'The Orange Revolution: Explaining the Unexpected', in Michael Emerson (ed.), *Democratisation in the European Neighbourhood*, Brussels: Centre for European Policy Studies, pp. 53-62.

## CHAPTER 5

### IMPLEMENTING HUMAN RIGHTS AND DEMOCRACY: PRESS FREEDOM IN UKRAINE

#### 1. *Introduction*

The assassination of Georgy Gongadze in 2000 was by no means an isolated episode of physical elimination of a investigative journalist uncovering uncomfortable evidence in Ukraine, where around forty journalists experienced violent deaths during its first decade of independence. Nor was it a unique case in Eastern Europe. A few months earlier, for example, a very similar story caught the attention of international observers following the disappearance of the independent Russian journalist Andrei Babitsky.<sup>360</sup>

However, the Gongadze case, with its spy-story developments, its role in stimulating an eventually unsuccessful anti-Kuchma movement, and the ensuing strengthening of the President's powers made it an emblematic illustration of the deterioration of Ukraine's already fragile situation with regard to the respect of basic human rights and of democratic principles. Indeed, former US ambassadors to Ukraine considered the case as 'a litmus test of the rule of law.'<sup>361</sup>

On the domestic front, the Gongadze case triggered a protest movement against the President that coalesced in the 'Ukraine without Kuchma' movement. Although the protests never gathered more than 10,000 people at one time, they were the largest since independence and lasted throughout the winter and spring of 2001. By March, the police were clearing the protest tents laid out in Kiev and dealing with demonstrators with fairly brutal means. Many protestors were arrested and convicted with 'disproportionate penalties'. In 2003 many were still in prison, and could be considered as 'political prisoners'.<sup>362</sup>

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<sup>360</sup> See John Thornhill, 'Putin strengthens his levers of power', *Financial Times*, 25 May 2000.

<sup>361</sup> Carlos Pascual and Steven Pifer (2002). 'Ukraine's Bid for a Decisive Place in History', *The Washington Quarterly*, Vol. 25, No. 1, pp. 175-192, quote on p. 186. The authors were respectively Special Assistant to the President and Senior Director for Russia, Ukraine and Eurasia at the National Security Council and US ambassador to Ukraine, both between 1998 and 2000.

<sup>362</sup> Council of Europe (2003), *Resolution 1346 Honouring of obligations and commitments by Ukraine*, text adopted by the Parliamentary Assembly on 29 September 2003.

At the same time, Kuchma started to dismiss those uncomfortable and reform-oriented elements in his government. After the dismissal of the pro-Western Foreign Minister Borys Tarasiuk, in October 2000, the Energy Minister Yulia Tymoshenko was arrested in February 2001 on the accusation of corruption. In March, responsibility for the lack of progress in investigating the Gongadze murder was attributed to the Interior Minister, to the chief of the state security agency, and to top officials of the police authorities, all dismissed. The final and most important change, probably manoeuvred from above, was the fall of the Prime Minister Viktor Yushchenko, an economic reformer with much popular support despite the fact that he repeatedly condemned the protest movement, who was replaced by one of Kuchma's former aids.

Furthermore, the murder investigation fell at a particular international conjuncture for Ukraine. Russia, under newly elected President Vladimir Putin, was a developing policy of re-asserting its influence in the former Soviet space. Putin used the crisis to deepen ties with Ukraine, and in February 2001 a meeting between the two Presidents resulted in agreements to cooperate in the fields of defence, space and energy.<sup>363</sup> The West too tried to entice Ukraine into its fold: in July 2001 NATO Secretary General Lord George Robinson visited Kiev and pledged to support Ukraine in getting closer to Europe providing it respected democratic norms and made political, economic and defence reforms;<sup>364</sup> US National Security Adviser Condoleezza Rice followed, emphasising that the US did not see Ukraine as a 'bridge between Russia and Europe', but needed to build greater confidence in the country that could be achieved through economic and political reforms;<sup>365</sup> Solana then delivered a more encouraging message coated in friendlier terms, but the emphasis on the need for reform was pretty similar.<sup>366</sup> In other words, the importance of the Gongadze case needs to be understood within the broader context of Ukraine's collocation between East and West.

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<sup>363</sup> Amelia Gentleman, 'Putin dogdes Ukraine scandal', *The Guardian*, 12 February 2001; Charles Clover and Robert Cottrell, 'A wasted country', *Financial Times*, 16 February 2001.

<sup>364</sup> 'NATO: Ukraine Must Respect "Democratic Norms" To Receive Aid', *Radio Free Europe/Radio Liberty*, 4 July 2001.

<sup>365</sup> Tony Wesolowsky, 'Ukraine: Rice Delivers Stern Message During Kyiv Stopover', *Radio Free Europe/Radio Liberty*, 25 July 2001.

<sup>366</sup> Kathleen Knox, 'Ukraine: Kyiv Gains From Playing East Against West', *Radio Free Europe/Radio Liberty*, 1 August 2001.

For these reasons, the Gongadze case will be used as a starting point to explain the particular ways in which the media was unfree in Ukraine and to evaluate EU action on the specific case as well as on media freedom in general.

## 2. *The case of Georgy Gongadze and the deterioration of press freedom*

On 16 September 2000 the outspoken journalist Georgy Gongadze, founder of the independent internet newspaper *Ukryinska Pravda*, who had been carrying out investigations into government corruption, did not return home. A decapitated and mutilated body was found in a wood outside Kiev on 3 November, later identified with near certainty as Gongadze's. During the same month, what became known as the Kuchma-gate scandal erupted, which made Watergate 'look pretty harmless',<sup>367</sup> when the release of some tapes, later proved to be authentic if perhaps doctored, implicated the President, among other things, in the murder of Gongadze.<sup>368</sup> After denying paternity of the voice ordering the journalist's assassination, Kuchma accused a variety of possible culprits of doctoring the tapes to oust him from office, from secret external actors,<sup>369</sup> to 'the same people who have blocked Ukraine's transformation to a free market economy'.<sup>370</sup>

Notwithstanding the intricate developments in the investigations over Gongadze's murder,<sup>371</sup> the case exemplified the deterioration of the rights of freedom of expression that had become increasingly evident since the second half of the 1990s, so much so that in 1999 the Committee to Protect Journalists, based in New York, included Kuchma on

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<sup>367</sup> Jonathan Steele, 'Kuchmagate. Ukraine's President is accused of ordering murder and intimidation, yet the west is not keen to comment', *The Guardian*, 27 February 2001.

<sup>368</sup> The tapes were allegedly made by a presidential bodyguard Mykola Melnychenko who put a tape recorder under the sofa in Kuchma's office, and later handed over to the leader of the Socialist party Oleksander Moroz. The bodyguard eventually found asylum in the United States. Those same tapes later accused Kuchma of authorising the sale of Kolchuga radars to Iraq.

<sup>369</sup> The *Financial Times* quoted his statement: 'I consider that if this crisis were supported, especially from the outside, it could lead only to one thing: the collapse of Ukraine', in Charles Clover and Robert Cottrell, 'A wasted country', *Financial Times*, 16 February 2001. Resorting to the spectre of the country's collapse was a strategy repeatedly used by the Ukrainian leadership throughout its history of independence to ensure international attention but at the same time to keep it away from meddling in domestic politics. Indeed, it was resorted to during the Orange Revolution.

<sup>370</sup> Leonid Kuchma, 'Those responsible for journalist's death should be brought to justice', Letters to the editor, *Financial Times*, 27 February 2001.

<sup>371</sup> Schemes and scandals in Ukraine', *The Economist*, 18 January 2001. For a comprehensive coverage of the Gongadze case, see also the many articles published on the websites of *Radio Free Europe/Radio Liberty*, [www.rfe-rl.org](http://www.rfe-rl.org) and of Gongadze's internet newspaper, *Ukryinska Pravda* <http://www2.pravda.com.ua/en>.



its list of the ten worst enemies of the press.<sup>372</sup> On paper, the press and media were free, as censorship was declared illegal, but a variety of forms of pressure existed and denunciations by journalists of violence and intimidation were increasingly reported from the mid-1990s onwards, up to the assassination of journalists for alleged political reasons. Control over the press increased during the period under examination and in 2003 Freedom House downgraded the country's media from 'partly free' to 'not free'.

Despite the fact that only around one third of the print media was state controlled, the private sector never managed to build its autonomy from power as most of its ownership was by oligarchs with strong business and political interests often close to the President. The media were subject directly to presidential pressure, but censorship was exercised also through other less direct means, given that the printing houses and distribution networks were state-owned.<sup>373</sup>

These precarious conditions of press freedom deteriorated when the crackdown on the press increased during the presidential election campaign in 1999, and continued thereafter with the closure of opposition newspapers and the censorship of television broadcasts.<sup>374</sup> According to the Institute of Mass Information, in 2001 Ukraine experienced 73 known major violations of press freedom, including 5 murders of journalists and 26 felony offences.<sup>375</sup> Other forms of harassment included the resort to criminal libel, to the extent that, according to one journalist, 'the absurd amount the government is demanding in compensation now totals three times the national budget'.<sup>376</sup> Even the Ukrainian representative in Brussels Roman Shpek admitted that 'although most of our media is not state-owned, it is not actually independent' and that 'there is a great dependence between journalists and the shareholders of newspapers'.<sup>377</sup>

The international criticism and internal opposition caused by the Gongadze affair (discussed in the following section) did not trigger any improvement on the situation of media freedom in Ukraine. In July 2001 another journalist was allegedly killed. Once

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<sup>372</sup> Freedom House (2000), *Nations in Transit*, chapter on Ukraine

<sup>373</sup> Prizel (1997).

<sup>374</sup> Freedom House (2001), *Nations in Transit*, chapter on Ukraine.

<sup>375</sup> Mentioned in Freedom House (2002), *Nations in Transit*, chapter on Ukraine.

<sup>376</sup> Jonathan Steele, 'Kuchmagate. Ukraine's President is accused of ordering murder and intimidation, yet the west is not keen to comment', *The Guardian*, 27 February 2001.

<sup>377</sup> David Cronin, 'Envoy admits Ukraine faces image problem after death of journalist', *European Voice*, 25 October 2001.

street opposition was crushed and the composition of the government changed, the new Interior Minister Yuri Smirnov announced the resolution of Gongadze's murder as not politically motivated but carried out by a gang of common criminals who were later killed themselves.

Recognising that some changes had been introduced, notably the removal from the criminal code of the offence of criminal libel, a Council of Europe report concluded that media freedom had nonetheless 'deteriorated' since 2000. Change in media ownership put many outlets under the direct control of 'people loyal to the authorities', the presidential administration interfered with public and private television stations over the content of their news services, especially after the 2002 parliamentary elections, and there were shady disputes over licenses, a very high incidence of violence against journalists, intimidation on part of the tax, regulatory and police authorities. According to the report,

a theme common to a number of those developments is an apparent desire on the part of the executive authorities to change what has been a defensive strategy of reacting to media coverage into an offensive one of guiding or even controlling it.<sup>378</sup>

After media tycoon Viktor Medvedchuk was named head of the President's administration the media coverage of opposition activities deteriorated further.<sup>379</sup> In September 2002 the head of the parliamentary Committee for the Freedom of Speech and Information disclosed the so-called *temnikis*, or lists of topics, sent to the mass media (especially the TV channels) by the President's administration instructing them precisely on how to cover or ignore current events (including events that had not yet taken place!), mostly those regarding domestic politics and relations with the West and

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<sup>378</sup> Council of Europe (2002), *Compliance with member States' commitments*, Committee of Ministers Declaration of 10 November 1994, Freedom of Expression and Information, Experts' report on the situation in Ukraine, CM/Monitor (2002)24 (confidential): 19 December, declassified on 27 February 2003. The Council of Europe's analysis of the deterioration of press freedom is confirmed by Amnesty International (2003), *State of the world's human rights*, Section on Ukraine, AI Index POL 10/003/2003, and by the Human Rights Watch (2003), *World Report*, Section on Ukraine.

<sup>379</sup> Freedom House (2003), *Nations in Transit*, Chapter on Ukraine; 'Kuchma weaker, but still boss', *The Economist*, 17 October 2002.

Russia. Failure to comply could lead to various forms of harassment, such as tax audits, cancelled licenses and libel suits.<sup>380</sup>

The Independent Media Union leader, Andriy Shchevchenko: 'Maybe we don't have censorship *de jure*, but it certainly exists *de facto*'.<sup>381</sup> Had it not been for the founding in 2003 of Channel 5 by Yushchenko ally Petro Poroshenko, Ukraine's entire television network would have been in the hands of Medvedchuk. Channel 5, however, only reached about 30% of the country and was obscured in the East.<sup>382</sup> Some independent media outlets that did not exercise self-censorship did continue their activities, especially internet-based outlets including *Ukryinska Pravda*, the newspaper Gongadze used to work for, and some radio stations.

### 3. *EU policy on press freedom*

Prior to the explosion of the Gongadze case, press freedom in Ukraine did not emerge as an issue for EU attention, despite the clear signals of its deteriorating situation at the end of the 1990s reported by international NGOs and the Council of Europe. Aid projects of the 1990s were not geared towards supporting the independent media or the training of journalists (pretty standard aims of democracy aid in transition countries) until 2003. It was only in the period between 2004 and 2006 that TACIS earmarked € 10 million for 'civil society, media and democracy' (see table 3.1 on TACIS priorities on p. 85). CFSP declarations and positions did not address the situation of the media during the 1990s (see box 5.2 on the use of CFSP towards Ukraine on p. 147).

Conversely, in 2001 the reaction of external actors was widespread and used unprecedented terms of condemnation of the problems the case raised. As *The Economist* put it,

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<sup>380</sup> Freedom House (2003), *Nations in Transit*, Chapter on Ukraine. Domestic politics were the field in which presidential pressure was strongest, but this applied also to any international relations that might affect the image of the President. The opposition virtually got no media coverage of its activities. In many cases, the *tenmiki* were so detailed that journalists added nothing to the text. Interview with Ukrainian journalists, Kiev, 4 July 2006 (1) and (2).

<sup>381</sup> Maryann Bird, 'No News Is Bad News', *Time Europe*, 23 December 2002.

<sup>382</sup> Yuriy Shafarenko, 'Ukraine: Media Circus', *Transitions Online*, 29 April-5 May 2003, [www.ciaonet.org/pbei/tol/tol\\_2003/apr29-may5/apr29-may5\\_e.html](http://www.ciaonet.org/pbei/tol/tol_2003/apr29-may5/apr29-may5_e.html).

the President [Kuchma] is [...] facing unaccustomed criticism from western politicians who used to back him (holding their noses) as a bulwark against Russian hegemony in the former Soviet Union. Both the State Department and the European Union have criticized official bungling in the investigation of Gongadze's disappearance. An EU foreign-policy team [...] visited Kiev this week with a mixed message: criticism of Mr Kuchma and his friends but continued support for Ukrainian reform and integration with the rest of Europe.<sup>383</sup>

But the international response was in all cases ambiguous: all the major actors seemed uncertain over how to tread the thin line between condemning and exercising negative conditionality on the one hand, and trying to make some extra efforts towards engaging the country on the other. Even the most outspoken regional organisations seemed to be caught in the dilemma regarding the most appropriate action to take with regard to Ukraine. The Council of Europe repeatedly urged Ukrainian authorities to investigate the disappearance and to take all possible measures to curb violence against journalists.<sup>384</sup> But beyond these messages, it did not find a common view on how to address the multiple issues that the Gongadze case raised. While its human rights monitoring committee proposed threatening the suspension of Ukraine's membership (which would have constituted the CoE's first expulsion in its 51 years' history), its Secretary General and the Assembly's President warned against the measure arguing that the Council could better exercise its influence by keeping Ukraine in its organization.<sup>385</sup> The Organisation for Security and Cooperation in Europe offered a fairly muted response: at the Permanent Council the Representative on Freedom of the Media recommended that the Ukrainian authorities take new efforts to investigate the case,<sup>386</sup> and later the Office for Democratic Institutions and Human Rights (ODHIR) Director stated that it was 'unacceptable that after so many months we still don't know anything about who was behind the murder of Mr Gongadze'.<sup>387</sup>

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<sup>383</sup> 'Falling apart', *The Economist*, 15 February 2001.

<sup>384</sup> See Council of Europe (2001a), *Resolution 1239, Freedom of expression and the functioning of parliamentary democracy in Ukraine*, text adopted by the Parliamentary Assembly on 25 January 2001, and Council of Europe (2001b), *Resolution 1244, Honouring of obligations and commitments by Ukraine*, text adopted by the Parliamentary Assembly on 26 April.

<sup>385</sup> See Ian Traynor, 'Ukrainian MPs prepare to sack prime minister', *The Guardian*, 24 April 2001; 'Ukraine: No-Confidence Vote In Government Due Today', *Radio Free Europe/Radio Liberty*, 26 April 2001.

<sup>386</sup> Organisation for Security and Cooperation in Europe (2001), Representative of Freedom of the Media, 'Statement to the Permanent Council', 8 February.

<sup>387</sup> See Organisation for Security and Cooperation in Europe (2001), Office for Democratic Institutions and Human Rights, 'Press release', 21 September.

The EU followed a dual track policy based on a formal and informal diplomatic condemnation of the events, urging Ukrainian authorities to respect democratic and human rights principles, while making some steps towards reinforcing cooperation in general with Kiev. What the EU avoided was to threaten the possibility of using any negative measures, in contrast with the position of the Bush Administration, which raised the possibility of downgrading Ukraine's position as an aid beneficiary, after the police tore down protest tents in Kiev in March 2001.<sup>388</sup> The message was reiterated by the US Secretary of State Colin Powell, after a meeting with EU top officials, emphasizing Ukraine's need to demonstrate that it was 'worthy' of the kind of investment that will help it achieve reforms.<sup>389</sup> In her July visit to Kiev, US National Security Adviser Condoleezza Rice was further explicit stating that bilateral ties would depend on political reform, fair elections (referring to the parliamentary elections due in 2002) and transparent investigations into the recent killings of journalists.<sup>390</sup>

EU diplomacy resorted to a number of formal and informal ways of communicating its disapproval over the Gongadze case and its consequences. In January 2001 the President of the Commission Romano Prodi spoke at length with Kuchma regarding the disappearance of Gongadze.<sup>391</sup> In February the Swedish Presidency of the EU stated that it 'is not convinced that this [Gongadze] case has been investigated with sufficient transparency and thoroughness' and expressed concern over media freedom, where much of the press and television had ignored or treated superficially the Gongadze case.<sup>392</sup> Solana's spokesperson said that the EU 'will be pressing for a transparent

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<sup>388</sup> In the words of US State Department spokesperson Richard Boucher: 'there is no change in our aid programme at this point. But I think the message that we delivered makes quite clear that our ability to help them in the future depends on their willingness to abide by the constitution, abide by their commitments to the rule of law'. Stephen Fidler, 'More US aid for Ukraine depends on rule of law', *Financial Times*, 2 March 2001.

<sup>389</sup> Robert McMahon, 'Ukraine: FBI To Probe Gongadze Death', *Radio Free Europe/Radio Liberty*, 7 March 2001.

<sup>390</sup> Tony Wesolowsky, 'Ukraine: Rice Delivers Stern Message During Kiev Stopover', *Radio Free Europe/Radio Liberty*, 25 July 2001.

<sup>391</sup> Mentioned by Chris Patten (2001), Speech to the European Parliament Plenary on the Väyrynen Report on the Common Strategy, SPECH/01/121, Strasbourg: 14 March.

<sup>392</sup> Council of the EU (2001a), 'Declaration by the Presidency on behalf of the EU about working conditions for media and to remind about concerns regarding the Gongadze case', CFSP Statement, 5922/01 (Presse 41), P. 24/01 Brussels, 5 February; Askold Krushenycky, 'Ukraine: Anti-President Demonstrations Continue', *Radio Free Europe/Radio Liberty*, 8 February 2001; Charles Clover, 'EU criticises Kiev on missing journalist', *Financial Times*, 7 February 2001.

investigation of the Gongadze case' and 'will stress the need for continued political [reform] and express concern over democratic principles', especially press freedom.<sup>393</sup>

The EU Troika visited Ukraine, stressing 'the need for continued political [reform] and express concern over democratic principles', especially press freedom.<sup>394</sup> The Swedish Prime Minister too visited Kiev in June; while Solana returned to Kiev in April and July of the same year, and raised the Gongadze question alongside political developments in Ukraine and the state of relations with the EU on all occasions, formally and informally, though his message was not always delivered in the same tone, at least according to the press coverage (the only written sources available regarding these visits). If in July he had praised the new Prime Minister's 'commitment to human rights' and urged him to follow that line,<sup>395</sup> in October he stated at a conference in Warsaw that 'the course Ukraine is taking now is not getting closer to European institutions'.<sup>396</sup>

The member states also coordinated on the question of press freedom through CFSP by issuing two confidential démarches between 2000 and 2003<sup>397</sup> and one declaration in 2001 and three in 2004 on media freedom in the run up to the presidential elections that led to the Orange Revolution (discussed in the following chapter).<sup>398</sup> The sacking of Prime Minister Yushchenko also triggered EU criticism about a possible set back in economic and political reform process, and the Presidency reiterated that Ukraine's priority should be political and economic reform to build a 'stable and prosperous

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<sup>393</sup> Askold Krushenycky, 'Ukraine: Politicians Form a New Anti-Kuchma Alliance', *Radio Free Europe/Radio Liberty*, 13 February 2001.

<sup>394</sup> Anna Lindh (2001), Statement by Anna Lindh in Kiev, Press Release, 13 February, [eu2001.se/eu2001/news/news\\_reas.asp?iInformationID=11869](http://eu2001.se/eu2001/news/news_reas.asp?iInformationID=11869); Askold Krushenycky, 'Ukraine: Politicians Form a New Anti-Kuchma Alliance', *Radio Free Europe/Radio Liberty*, 13 February 2001.

<sup>395</sup> 'EU: Solana Has Talks In Ukraine And Macedonia', *Radio Free Europe/Radio Liberty*, 19 April 2001; Kathleen Knox, 'Ukraine: Kyiv Gains From Playing East Against West', *Radio Free Europe/Radio Liberty*, 1 August 2001.

<sup>396</sup> Tom Warner and Stefan Wagstyl, 'Kuchma under more pressure to step down', *Financial Times*, 21 October 2001.

<sup>397</sup> Council of the EU (2001), *Annual Report on Human Rights*, and Council of the EU (2003), *Annual Report on Human Rights*. The reports do not indicate the exact dates of the démarches.

<sup>398</sup> Council of the EU (2001a), 'Declaration by the Presidency on behalf of the European Union about working conditions for media and to remind about concerns regarding the Gongadze case', CFSP Declaration No. 5922/01, Brussels, 5 February; Council of the EU (2004e), 'Declaration by the Presidency on behalf of the European Union on media freedom and democratic standards', CFSP Declaration No. 7186/04, Brussels: March; Council of the EU (2004f), 'Declaration by the Presidency on behalf of the European Union regarding the Gongadze case in Ukraine', 12452/04, Brussels, 16 September; Council of the EU (2004c), 'Declaration by the Presidency on behalf of the European Union on the forthcoming elections and media freedom in Ukraine', CFSP Declaration No. 1296/04, Brussels: 29 September.

society based on shared values of democracy, a strong civil society and market economy principles. This is crucial for Ukraine, but also very important for maintaining the confidence of the outside world'.<sup>399</sup>

On the one hand, such criticism failed to impress the leadership in Kiev. De facto, both sides were refining the art of empty words. According to critics the EU's 'involvement in the matter is not expected to go beyond a lecture on the significance of free media in a democratic society'.<sup>400</sup> Indeed, the EU did not threaten to resort to any negative measures. On his part, Kuchma 'reiterate[d] emphatically my commitment to a free and open democracy in Ukraine and to protecting freedom and safety of the press, which is an essential element to any democracy',<sup>401</sup> while not substantiating such statements with any action.

On the other hand, Kuchma used the Gongadze issue to fuel the debate over Ukraine's position vis-à-vis the EU: 'if Europe [that is, the EU] wants to help – and not only by criticism that says Ukraine does nothing – then I propose that we discuss everything openly'.<sup>402</sup> He did get some response. That same month the European Parliament called for Ukraine's right to aspire to EU membership.<sup>403</sup> As illustrated in the previous chapter, the Persson-Prodi letter published in the *International Herald Tribune* in May<sup>404</sup> was followed by the invitation to participate in the European Conference, to which Ukraine participated as a special guest in October on the fight against terrorism.<sup>405</sup>

The institutionalised meeting that followed reflected this search for maintaining cooperation while urging Ukrainian authorities to do something about its deterioration

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<sup>399</sup> Council of the EU (2001c), 'Declaration by the Presidency on behalf of the European Union on developments in Ukraine, Press Statement', 01/086, Brussels: 27 April.

<sup>400</sup> Ahto Lobjakas, 'Ukraine: European Union Expected to Keep Kyiv On Hold', *Radio Free Europe/Radio Liberty*, 13 February 2001.

<sup>401</sup> Leonid Kuchma, 'Those responsible for journalist's death should be brought to justice', Letters to the editor, *Financial Times*, 27 February 2001.

<sup>402</sup> Quoted in Askold Krushenycky, 'Ukraine: Politicians Form a New Anti-Kuchma Alliance', *Radio Free Europe/Radio Liberty*, 13 February 2001.

<sup>403</sup> European Parliament (2001), Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, *Report on the Common Strategy of the European Union on Ukraine*, Rapporteur Paavo Väyrynen, C5-0208/2000-2000/2116(COS), Final A5-0083/2001, Brussels: 28 February 2001.

<sup>404</sup> Goran Persson and Romano Prodi, 'Ukraine's Progress Should be Top Priority for All Europe', *International Herald Tribune*, 23 May 2001.

<sup>405</sup> Council of the EU (2001h), *Report to the European Council on the implementation of the Common Strategy of the European Union on Ukraine*, 15195/01, Brussels: 11 December.

of democratic practices. The Ukraine-EU Summit held in September in Yalta did see human rights and democracy issues in the discussion. According to an EU spokesperson,

politically for us the most important thing is that we wish to deliver across a strong message to the leadership of Ukraine that if they are serious about the country's European choice and about putting the recent scandals behind them, they must demonstrate their readiness to do so.

Prodi praised progress in economic reform but said that the authorities should demonstrate their intention to follow democratic standards through the conduct of parliamentary elections the following year.<sup>406</sup> A similar message was delivered at the Cooperation Council meeting in 2002.

At a more informal level, in July 2001 a Consultative Group was set up by the Heads of Mission of the EU national embassies in Kiev to observe the situation of press freedom, and to provide elements for political action, which drafted a report for the Council on the media, the consolidation of institutions, the independence of the judiciary and respect for human rights. It advocated keeping a close and constant watch on the situation regarding the media, especially given the forthcoming parliamentary elections of 2002, and called for sustained political follow-up of *démarches* reminding Ukrainian authorities of their obligations.

The report of the Consultative Group also advised EU institutions to lay emphasis, in its contacts with the Ukrainian authorities, on the necessary independence of the judiciary and on Council of Europe commitments.<sup>407</sup> After the Gongadze episode, the Council of the European Union did continue to deliver messages to Ukrainian authorities, mostly confidentially, though they were also concerned with maintaining dialogue and cooperation in the implementation of the Common Strategy.<sup>408</sup> During the year before

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<sup>406</sup> All in Askold Krushelnycky, 'EU/Ukraine: Kuchma Confirms Desire To Integrate Into Europe', *Radio Free Europe/Radio Liberty*, 11 September 2001.

<sup>407</sup> Council of the EU (2001h), *Report to the European Council on the implementation of the Common Strategy of the European Union on Ukraine*, 15195/01, Brussels: 11 December.

<sup>408</sup> Council of the EU (2002), *EU Annual Report on Human Rights*, Brussels: 21 October, which did highlight that freedom of expression and the independence of the media 'were still a matter of concern', p. 186. In 2002 these issues were confirmed as one of the EU's preoccupations regarding Ukraine and during that year the EU conducted *démarches* and declarations on the media situation and the harassment of journalists. But at the same time, the EU responded to the 2002 Parliamentary elections expressing its satisfaction with the conduct of the elections. EU-Ukraine Summit (2002), 'Joint Statement', 10607/02 (Presse 195), Copenhagen: 4 July.



the presidential elections, the EU initiated the creation of an ad hoc group in Kiev involving diplomatic staff, on the basis of a work plan on promoting diversity of information that was drafted by the Italian presidency for the EU-Ukraine summit of 2003.<sup>409</sup> The ad hoc group was expanded to include ‘like-minded countries’, and addressed a wide range of issues related to press freedom and the conduct of elections through meetings of subcommittees, on the basis of which a few démarches were delivered to the presidential administration.<sup>410</sup> Some ambassadors did follow up informally with the Ukrainian authorities on issues relating to press freedom (the Canadian ambassador for instance criticised the *tenmiki* directly with Medvedchuk himself). Yet notwithstanding the ad hoc group’s recommendation to EU institutions in Brussels to raise the issue of the *tenmiki*, this was done only two years after their introduction in the run up to the presidential elections of 2004.<sup>411</sup>

In terms of targeting assistance to media freedom issues, the Swedish Presidency included support for the establishment of a free media into its Working Programme on the Implementation of the Common Strategy in Ukraine and organised a seminar on independent media in Kiev held in May.<sup>412</sup> Amongst the areas identified for EU assistance were the privatization of state television, the training of journalists, and drafting legislation in line with Council of Europe and OSCE standards. These were carried out through TACIS funding of € 10 million in 2004 in preparation for the presidential elections (see Table 3.1, p. 85) but no specific EIDHR projects on media freedom were selected (Table 3.3, p. 88).<sup>413</sup>

This dual track, supported by limited targeted initiatives of modest financial substance, did not alter the fundamentals of EU policy towards the country, especially in the field of JHA, as box 3 in the Annexes illustrates. Much in the same line, the Commission, in

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<sup>409</sup> The draft, however was criticised by observers in and outside Ukraine due to Italy’s Prime Minister’s media empire. Indeed, the meeting of the ad hoc group were not chaired by the Italian Embassy but by the Canadian Embassy, whose ambassador was particularly outspoken on pressing for the respect of human rights and democracy standards. Interviews embassies of the member states, Kiev: 6 (2) and 7 July 2006, and David Cronin, ‘Italians face double-standards charge over media demand’, *European Voice*, 25 September 2003.

<sup>410</sup> Interviews, embassies of the member states, Kiev: 6 July (2), 6 July (3) and 7 July 2006.

<sup>411</sup> Interviews, embassies of the member states, Kiev: 6 July (2), 6 July (3) and 7 July 2006.

<sup>412</sup> Mentioned by Chris Patten (2001), Speech to the European Parliament Plenary on the Väyrynen Report on the Common Strategy, SPECH/01/121, Strasbourg: 14 March; Council of the EU (2001h), *Report to the European Council on the implementation of the Common Strategy of the European Union on Ukraine*, 15195/01, Brussels: 11 December.

<sup>413</sup> This is also due to the fact that much of EIDHR spending occurs through calls for proposals.

the Country Strategy Paper drafted at the end of 2001, considered that the ‘continuing process of reform in Ukraine and major policy orientations do not call, at the present stage, for a fundamental review of EU strategy’.<sup>414</sup> ‘Business as usual’ continued in the international financial institutions too, where the European Bank for Reconstruction and Development approved a loan to complete two nuclear reactors as a substitute for the closed Chernobyl plant. The International Monetary Fund approved a loan of US\$ 250 million, lifting the year-long freeze on its lending programme to Ukraine,<sup>415</sup> gesture that can be understood as a sign of encouragement towards Yushchenko’s economic reforms.

#### **4. *Explaining the EU’s response***

EU reactions to repeated violations of media freedom are not straightforward to interpret. Although there had been plenty of prior episodes indicating the democracy, human rights and press freedom were under danger in Ukraine throughout the 1990s, it was only once the Gongadze case erupted that the EU pursued action, as the box below indicates.

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<sup>414</sup> European Commission (2001f), *Country Strategy Paper 2002-2006: Ukraine*, [http://europa.eu.int/comm/external\\_relations/ukraine/csp..](http://europa.eu.int/comm/external_relations/ukraine/csp..)

<sup>415</sup> Tom Warner, ‘IMF set to lift freeze on loans for Ukraine’, *Financial Times*, 19 December 2000.

### Box 5.1: Violations of press freedom in Ukraine and EU response<sup>416</sup>

Event	Explanation	EU Response
1990s: Reports of violence and intimidation against journalists		None
2000-1: Gongadze case		CFSP Statement on the media and on concerns over the Gongadze case
2002 Parliamentary elections:	Opposition parties had unfair access to the media	None
September 2002: Introduction of <i>temniki</i>	<i>Temnikis</i> were detailed instructions from the Presidential administration to the media on how to report the news	None
March 2004:	Closure of radio stations and harassment by tax administration against independent journalists and media outlets	CFSP Declaration noting EU's 'great dismay' to events in relation to democratic standards in the run up to elections
September 2004:	Unfair press coverage of the electoral campaign	<p>Presidency declaration on the Gongadze case</p> <p>CFSP declaration on the need for media freedom, on media coverage of opposition candidates, on the use of <i>temniki</i>, on the need for neutrality of state bodies and officials</p>

Once press freedom came in the spotlight of international media, the EU developed a declaratory position through CFSP but also through diplomatic contacts with Ukraine (two démarches were delivered). These expressed concern about the situation and reiterated the need for the respect of international standards. At the same time, the EU did advance some initiatives designed to engage Kiev on press freedom issues. In the following years, press freedom did emerge on the CFSP agenda, (see box 5.2 on CFSP

<sup>416</sup> The selection of events is based on international reporting. See Human Rights Watch, *World Report*, chapters on Ukraine in the editions between 1991 and 2007; Freedom House, *Freedom in the World*, chapters on Ukraine in the editions from 1991 to 2007; Freedom House, *Nations In Transit*, chapters on Ukraine in the editions from 1997 to 2007; Amnesty International, *State of the world's human rights*, Sections on Ukraine in the editions between 1991 and 2007; US State Department, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, chapters on Ukraine in the editions between 1993 and 2007. Council of the EU (2001a), 'Declaration by the Presidency on behalf of the European Union about working conditions for media and to remind about concerns regarding the Gongadze case', 5922/01 (Presse 41) Brussels, 5 February; Council of the EU (2004e), 'Declaration by the Presidency on behalf of the European Union on media freedom and democratic standards', CFSP Declaration No. 7186/04 (Presse 74), Brussels: 18 March; Council of the EU (2004f), 'Declaration by the Presidency on behalf of the European Union regarding the Gongadze case in Ukraine', 12452/04 (Presse 267), Brussels, 16 September; Council of the EU (2004c), 'Declaration by the Presidency on behalf of the European Union on the forthcoming elections and media freedom in Ukraine', CFSP No. 1296/04 (Presse 272) P 110/04, Brussels: 29 September.

actions on p. 147 of this chapter), and as elections approached in 2004 the tone of EU statements was of condemnation, and some aid was used to support media education projects. However, no negative measures were resorted to or even threatened, apart from vague statements questioning Ukraine's European future that were scarcely credible given that the EU seemed to have closed the door to Kiev anyhow (see Chapter 4).

Contemporary observers were highly critical of the West's response and considered it partly responsible for the crisis for not having paid sufficient attention to domestic politics and for not having attached strings to its aid.<sup>417</sup> According to *The Guardian's* Jonathan Steele,

Western silence over this catalogue of misrule appears to be motivated by two things. One is the notion that Kuchma is the best hope for "market reform". The other is fear that criticism will drive Ukraine back into Moscow's arms. Are western governments willing to understand that a process of democratization provides better security than weapons sales or putting flags on a map to denote which countries "belong to us" and which are linked to "the bear"?<sup>418</sup>

In order to explain the EU's response, it is necessary first to address the empirical questions regarding the foreign policy processes outlined in chapter 2 about the actors and factors stimulating or hampering the EU's response. By understanding how the EU reacted it will be possible to address the broader question of *why* the EU reacted in the ways described.

First of all, the member states had quite diverse views of the country's strategic importance. The logic of diversity dominating EU foreign policy towards Ukraine in general can be found with regard to the cases of violations of the freedom of expression. A few players, especially Sweden, acted as 'policy entrepreneurs', stimulating an EU response, though as we have seen only once the question of press freedom became internationally visible with the Gongadze case.

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<sup>417</sup> See, for instance, George Soros, 'Step aside, Mr Kuchma', *Financial Times*, 2 March 2001; 'Kuchma in a corner', Leader, *Financial Times*, 10 March 2001.

<sup>418</sup> Jonathan Steele, 'Kuchmagate. Ukraine's President is accused of ordering murder and intimidation, yet the west is not keen to comment', *The Guardian*, 27 February 2001.

Sweden, traditionally a country promoting human rights and democracy globally, and indeed a country that had spent over half its bilateral assistance for Belarus, Moldova and Ukraine on these aims,<sup>419</sup> was at the same time keen to maintain Kiev engaged with the EU. During its six months as holder of the EU Presidency, it managed to promote the dual track of diplomatic condemnation while offering some incentives to the Ukrainian leadership. This contributes to understanding the EU reaction to the Gongadze case in the first half of 2001. Support for the economic and democratic transition process was also the first priority of Stockholm's work plan on the Common Strategy on Ukraine.<sup>420</sup> Speaking to the European Parliament Persson highlighted how foreign policy, alongside enlargement and the environment, were the Presidency's priorities. Regarding foreign policy, he underlined that 'foreign policy action is increasingly a matter of values, democracy and human rights'. Regarding Ukraine, Persson claimed that it was a country with a 'European identity, a country that must be given a European option'.<sup>421</sup>

The European Parliament was also clear on its view of Ukraine:

The focus should be on internal developments in Ukraine. The case for this is not only a moral one: that the welfare of its people should not be subordinated to power ambitions or often ill perceived security interests of others. There is also a very strong pragmatic argument: that internal developments are the underlying cause of both internal and some external problems and that successful reforms will provide a key to fruitful and harmonious development both in Ukraine and in the region. It will indeed also facilitate the deepening of EU-Ukraine relations.<sup>422</sup>

The EP statement clearly resorted to a strategic argument to persuade the other institutions to support human rights and democracy in Ukraine as a means to ensure stability – reflecting much EU rhetoric and declarations on the importance of these principles in its relations with the rest of the world. The European Parliament was

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<sup>419</sup> Kristi Raik (2006), 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', *CEPS Working Paper* No. 237, February.

<sup>420</sup> European Council (2001a), *Common Strategy of the European Union on Ukraine. The Swedish Presidency Work Plan*, Final Version, (no date or document number available), <http://eu2001se/static/pdf/eng/ukraineplanorgdf.pdf>.

<sup>421</sup> Göran Persson (2001), 'Speech by Prime Minister Göran Persson to the European Parliament', (no document number available), Strasbourg: 3 July.

<sup>422</sup> European Parliament (2001a), Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, *Report on the Common Strategy of the European Union on Ukraine*, Rapporteur Paavo Väyrynen, C5-0208/2000-2000/2116(COS)), Final A5-0083/2001, Brussels: 28 February 2001.

considered important in raising the attention in the EU and in contributing to triggering a response from the other institutions.<sup>423</sup>

Sweden, but also Britain, the other Scandinavian countries and Ireland were not keen to see Ukraine's deterioration of its human rights standards as an indication that it was to be thrown into Moscow's embrace.<sup>424</sup> By 2002-2003 Britain was increasingly concerned about Ukrainian internal developments and in 2003 the unit dealing with Ukraine at the Foreign and Commonwealth Office was moved from the East European to the European department, signalling that Kiev was no longer viewed in terms of relations with Russia.<sup>425</sup>

Yet the other member states were far more cautious, illustrating the 'logic of diversity' governing EU relations with Ukraine. As we have seen in chapter 4, France, Germany and Italy, highly dependent on Russian gas and whose relationships with Moscow were seen as national priorities, were the countries least inclined towards interfering in what was still seen as Russia's zone of interest, and the Gongadze case erupted just as Putin was reinforcing its policy of exerting pressure on its previous empire. Personal relations with Putin also counted for some national leaders in the EU.<sup>426</sup> Alongside these general positions regarding maintaining friendly relations with Russia, other issues would get in the way of the EU's agenda towards Ukraine. Spain, for instance, lobbied against a diversion of attention towards the Mediterranean.<sup>427</sup> Not far in the background was a widespread reluctance to offer any prospect of membership to Kiev, especially after Turkey was recognised as a candidate for accession in 1999 and the Balkan states had been offered a similar option in 2000.

Throughout the period, the Commission privileged a line of greater policy continuity advocating the appropriateness of the existing framework. In the EU institutions,

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<sup>423</sup> Interviews, Delegation of the Commission, Kiev: 4 July 2006 (1); embassy of one EU member state, Kiev: 6 July 2006 (3).

<sup>424</sup> Interviews, Council of the EU, Brussels: 24 April 2006 (4); Ukrainian Representation to the EU, Brussels: 25 April 2006.

<sup>425</sup> Interview, embassy of one EU member state, Kiev: 6 July 2006 (1).

<sup>426</sup> French President Jacques Chirac, German Chancellor Gerhard Schröder and Italian Prime Minister Silvio Berlusconi were all mentioned as leaders willing to follow Putin's suit in Ukraine. Interviews at the Council of the EU, Brussels: 24 April; at embassies of the EU member states, Kiev: 5 and 6 July 2006 (2).

<sup>427</sup> This was confirmed in interviews, Council of the EU, Brussels: 24 April 2006 (1) and at embassies of EU member states, Kiev: 5 July, 6 July (1), 6 July (2) and 7 July 2006.

notwithstanding the constraint posed by relations with Russia, there were tactical reasons for choosing a soft line on Ukraine's human rights violations. Officials at the Council of the EU and at the Commission<sup>428</sup> pointed out that the EU's experience in Belarus did not bode well for its policy on Ukraine. The EU had suspended the entry into force of the PCA negotiated with Minsk in 1997 on human rights grounds and had since frozen relations with the country. Yet this 'principled' position had not born any fruits: Lukashenka strengthened his relationship with Moscow and the country became increasingly impermeable to any Western external influence whatsoever. If Belarus was strategically inconsequential enough to EU interests to warrant such isolation, Ukraine's importance was evident in European capitals, even if secondary to Russia's.

In addition, on the Ukrainian dossier the Commission's role was secondary, if not subservient, to the member states, in particular to the three largest member states: Britain, France and Germany, which were themselves divided on their views of Ukraine and Russia.<sup>429</sup> Throughout the period treated in this thesis, the Commission did not propose any specific measures or actions towards tackling the freedom of expression in Ukraine, reflecting a reluctance to engage more strongly in Ukraine because of the general indecision over the country's prospects.<sup>430</sup>

At the same time, with the approaching of enlargement to Central Europe, Ukraine's importance to the EU as a whole (and not as ancillary to Russia) had grown. The need to ensure Kiev's cooperation on a number of key dossiers, especially in the field of Justice and Home Affairs, was illustrated in the previous chapter (see box 3 on PCA priorities in the Annexes, p. 261). This was virtually the only sector in which EU-Ukraine relations continued to progress and where the EFP system seemed to function efficiently. On the whole, the perceived need to maintain cooperation with Kiev on certain security-related issues prevailed over resorting to punitive measures. Conversely, the role of Kuchma as the 'best hope for market reform' was less strong as a motivation. The ousting of Yushchenko in April 2001 was received as a blow in European

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<sup>428</sup> Interviews, Council of the EU, Brussels: 24 April 2006 (4), and European Commission, Brussels: 24 April 2006 (1); embassies of EU member states, Kiev: 5 and 6 July 2006 (2).

<sup>429</sup> Especially, interview, official of the Commission, Rome, 30 May 2006, but also interview, Ukrainian Representation to the EU, Brussels: 25 April 2006; interview, European Commission, Brussels, 25 April 2006.

<sup>430</sup> Interview, Delegation of the European Commission, Kiev: 4 July 2006 (1).

capitals,<sup>431</sup> and its ensuing condemnation could certainly be interpreted as an instrumental appeal to human rights and democracy principles while the major concern was ‘market reform’, as suggested by Steele.

But more than market reform, the EU and its member states were at that time concerned with the lack of an appealing alternative to Kuchma. As pointed out by many officials, in 2001 Kuchma was still seen as the least worse option available in Ukraine. Up until the parliamentary elections of 2002, when the opposition coalesced with Yushchenko gained good results, even the most vocal EU member states viewed Kuchma as a ‘victim of the situation’ who should not be demonised, making EU reactions ‘balanced and measured’.<sup>432</sup>

In short, EU policy aimed at maintaining the status quo of Ukraine’s ‘multi-vector’ foreign policy – not out in the cold of Russia’s sphere of influence - and was held back by the divergences among the member states on relations with Russia and the unwillingness to offer a prospect of integration into the EU, while fostering cooperation on security-related dossiers. These realist and intergovernmental challenges competed with a development of a stronger normative position on human rights and democracy, which was, by and large, limited to declaratory positions and statements when stimulated by specific ‘entrepreneurs’, such as a few member states and the European Parliament.

## 5. *Conclusions*

Chapter 2 identified a set of hypotheses regarding why the EU would or would not include human rights and democracy in its foreign policy: the first claims that the EU does not genuinely address them if not as a mask for the pursuit of other interests; alternatively they can converge with such interests; they can serve purposes of internal cohesion, they can be the result of policy entrepreneurship at the level of policy-making groups within the institutions; or finally, they are an expression of the EU’s constitutive features.

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<sup>431</sup> ‘Ukraine’s reformer goes’, *The Economist*, 26 April 2001.

<sup>432</sup> Interview, Council of the EU, Brussels: 24 April 2006 (3).



In terms of processes, intergovernmentalism was the dominant decision-making mechanism. The role of the member states has been considered the key trigger determining the EU response, with some Northern EU member states acting as policy entrepreneurs, blocked by others which prioritised key national interests. The divergences of the views on and importance of Ukraine (also vis-à-vis relations with Russia) as well as on the importance attached to human rights and democracy were the main reasons for which the consensus-building exercise led to a response that was by and large limited to declaratory positions. Instead, policy entrepreneurship at the level of the Commission was not observable; rather, the Commission in particular was deeply influenced by the differences between the member states and did not promote stronger EU normative positions.

Patterns indicating a 'logic of appropriateness' or a 'taken-for-grantedness' too were not apparent, and even 'common European interests' did not emerge towards Ukraine, except for the shared reluctance to offer a prospect of EU membership to the country.

The timing of responses should not be underestimated. The total absence of a response (and even of aid targeting issues relating to the freedom of expression) throughout the 1990s reflects the general absence of a shared view and of a committed policy towards Ukraine as a whole, as chapter 4 had shown. Thereafter, the 'brakes' to the development of a stronger response were 'pulled' by the perceived need not to step on Moscow's toes (also a key gas exporter via Ukrainian pipelines), by the need to cooperate with Kiev on emerging security-related issues in the context of advancing enlargement towards Central Europe, and by the reluctance to offer a prospect of membership to Ukraine. In fact, the lack of progress on Ukraine's domestic human rights and democracy front was repeatedly mentioned to justify the EU's non-commitment towards offering the country some prospect of accession, however distant. Conversely, motivations tied to promoting economic interests or to foster economic interdependence, highlighted by some liberal and institutionalist theories, were not apparent.

But these do not explain why the EU did develop a declaratory position and why it used CFSP to convey its condemnation of Ukraine's shortcoming. The triggers for an EU response, found in the policy entrepreneurship of some member states, were compounded by the fact that the Gongadze case received much attention in the European

Parliament and in the European press, which strongly criticised the EU response. This contributed to raising the costs of *not* responding, following rhetorical action patterns. Conversely, ideational institutionalism, whereby changes within the EU institutional structures led by networks of policy makers promoting a set of ideas, did not constitute a feature in the case of Ukraine and freedom of the press. The use of CFSP tools also suggests a 'habit of cooperation' between the member states on these issues. In particular, for the policy entrepreneurs, the logic of the politics of scale can explain the preference for collective rather than national responses, while for the member states most reluctant to criticise developments in Ukraine, a rationale of maintaining cohesion while bargaining for a 'soft' condemnation was at work. Indeed, the divergences between the member states and the primacy of realist considerations ensured that the EU normative stance did not go beyond declaratory positions, unevenly maintained over time.

### Box 5.2: EU Use of CFSP towards Ukraine<sup>433</sup>

Date	Tool
November 1994	Common Position
December 1994	Statement on Ukraine's accession to NPT
May 1996	Declaration on Ukraine on relations with the EU and NPT accession
June 1996	Declaration on nuclear warheads' removal from Ukraine
December 1999	Common Strategy
June 2000–June 2001*	1 Démarche Press freedom
February 2001	Statement on the media and on concerns over the Gongadze case
April 2001	Statement on fall of Yushchenko government
March 2002 Parliamentary elections	CFSP Declaration: notes progress towards international election standards but draws attention to major flaws
June 2001–June 2002*	1 démarche 1 declaration 1 statement at UN General Assembly
December 2003	Council decision on participation in EU PM in Bosnia-Herzegovina
July 2002–June 2003*	1 démarche 1 démarche on freedom of expression
July 2003–June 2004*	1 démarche
January 2004	CFSP Declaration on constitutional amendments to allow President to run for a third time
March 2004	CFSP Declaration noting the EU's 'great dismay' to event in relation to democratic standards in the run up to elections
September 2004	Presidency declaration on the Gongadze case

<sup>433</sup> Council of the EU, *EU Annual Reports on Human Rights*, editions between 1998 and 2007; Council of the EU (1994), 'Common Position on the objectives and priorities of the European Union towards Ukraine', (94/779/CFSP), Brussels: 28 November; Council of the EU (1996a), 'Declaration by the Presidency of the EU on behalf of the European Union on Ukraine', 7319/96 (Presse 140), Brussels: 21 May; Council of the EU (1996b), 'Declaration by the Presidency of the EU on behalf of the European Union on the removal of nuclear warheads from Ukrainian territory', 8076/96, Brussels: 12 June; Council of the EU (2001a), 'Declaration by the Presidency on behalf of the EU about working conditions for media and to remind about concerns regarding the Gongadze case', CFSP Statement, 5922/01 (Presse 41), P. 24/01 Brussels, 5 February; Council of the EU (2002a), 'Declaration by the Presidency on behalf of the European Union on parliamentary elections in Ukraine on 31 March 2002', CFSP Declaration No. 7815/02 (Presse 93), Brussels: 10 April; Council of the EU (2002d), 'Council Decision concerning the Agreements between the European Union and Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Norway, Romania, the Slovak Republic, Slovenia, Switzerland, Turkey and Ukraine on the participation of these states to the European Union Police Mission (EUPM) in Bosnia and Herzegovina', 2003/663/CFSP, Brussels: 10 December; Council of the EU (2004d), 'Declaration by the Presidency on behalf of the European Union on proposals for constitutional change in Ukraine', CFSP Declaration, 5614/1/04 (Presse 32), Brussels: 29 January; Council of the EU (2004e), 'Declaration by the Presidency on behalf of the European Union on media freedom and democratic standards', CFSP Declaration No. 7186/04 (Presse 74), Brussels: 18 March; Council of the EU (2004f), 'Declaration by the Presidency on behalf of the European Union regarding the Gongadze case in Ukraine', 12452/04 (Presse 267), Brussels, 16 September; Council of the EU (2004c), 'Declaration by the Presidency on behalf of the European Union on the forthcoming elections and media freedom in Ukraine', CFSP No. 1296/04 (Presse 272) P 110/04, Brussels: 29 September; Council of the EU (2004b), 'Declaration by the Presidency of the European Union on the presidential elections of 31 October 2004 in Ukraine', Brussels: 1 November; European Council (2004b), *Council Conclusions*, 14292/04, Brussels: 5 November; Council of the EU (2004a), 'Declaration by the Presidency of the European Union on Ukraine', 22 November (document number not available),

[www.eu2004.nl/default.asp?CMS\\_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25](http://www.eu2004.nl/default.asp?CMS_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25).

\* The time period reflects that covered by the Council of the EU, *EU Annual Reports on human rights*.

	CFSP Declaration on the need for media freedom, on media coverage of opposition candidates, on the use of <i>temniki</i> , on the need for neutrality of state bodies and officials
November 2004	Repeated declarations on the two electoral rounds

## CHAPTER 6

### IMPLEMENTING HUMAN RIGHTS AND DEMOCRACY: UKRAINIAN ELECTIONS AND THE ORANGE REVOLUTION

#### 1. Introduction

The presidential elections of 2004 were widely seen as a ‘make or break’ test for Ukraine’s international alignment between Russia and the West, rekindling Cold War-type interpretations of a struggle for mastery over Ukraine. As *The Economist* put it, among the many consensual commentators, ‘Ukraine’s [vote] will help map out not only the future shape of Europe but also the relations between the West and another, colder East: Russia, and its former dominions’.<sup>434</sup> For Russia, the fate of Ukraine was considered crucial in the context of its policy of consolidating its influence in the ‘near abroad’, and the electoral test exemplified Moscow’s fears of a ‘democratic wave’ in the former Soviet empire, following Georgia’s ‘Rose Revolution’ of end 2003,<sup>435</sup> to the extent that the Orange Revolution has been defined as ‘Russia’s 9/11’.<sup>436</sup>

The literature that has since been published has used the Orange Revolution as a case study for theories of transition,<sup>437</sup> and as an example of democratisation due mostly to internal factors, where civil society played an important role.<sup>438</sup> Few have undertaken an examination of the role of external actors and of the EU in particular.<sup>439</sup> And fewer still

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<sup>434</sup> ‘Watch Ukraine’, *The Economist*, 30 October 2004, p. 11. In fact, some commentators have suggested interpretations that follow the Cold War logic of playing geopolitical games to establish areas of influence. Nina Khrushcheva, Nikita Khrushchev’s granddaughter, wrote that Putin was attempting to revive the Russian empire (in Roman Kupchinsky, ‘Why Putin voted for Yanukovich’, *Radio Free Europe/Radio Liberty Belarus and Ukraine Report*, Vol. 6 No. 41, 10 November 2004), while the British journalist Jonathan Steele ran a series of articles on *The Guardian* on the US role in supporting Yushchenko via American NGOs. For a critique, see Katinka Barysh and Charles Grant, ‘Russia should not be part of a “great game”’, *OpenDemocracy*, 7 December 2004.

<sup>435</sup> According to Russian MP Mikhail Zadornov, ‘if the rules of the game are followed in Ukraine, that is a strong example that it is possible in the post-Soviet space’, quoted in Chrystia Freeland, ‘Ukraine’s lively election contest is a rebuke to autocracy’, *Financial Times*, 20-21 November 2004. For an analysis of Russian policy towards Ukraine, see also Steven Lee Myers, ‘Putin re-extends Russian influence’, *International Herald Tribune*, 13 November 2004.

<sup>436</sup> Ivan Krastev, ‘Russia’s post-orange empire’, *OpenDemocracy*, 19 October 2005.

<sup>437</sup> McFaul (2007).

<sup>438</sup> McFaul (2007); Nemyria (2005); Andrew Wilson (2005) *Ukraine’s Orange Revolution*, New Haven, Conn., and London: Yale University Press; Karatnychky (2005).

<sup>439</sup> The exceptions are McFaul (2007) whose systematic research, however, is based largely on US and Ukrainian sources; Sushko and Prystayko (2006); Piccone and Youngs (2006).

have examined previous electoral competitions,<sup>440</sup> let alone with a focus on the EU's role. The following chapter will thus focus on the problems inherent to election campaigns in Ukraine, devoting much attention to the 2004 presidential elections that triggered the Orange Revolution, using an empirical approach based on original research and extensive interviewing, and making reference to the few existing interpretations where necessary.

## 2. *Elections in Ukraine, 1998-2004*

Alongside media freedom, the conduct of elections in Ukraine, especially from 1998-99 onwards, provided the EU with plenty of opportunities to make its voice heard over human rights and democratic standards (see box 6.1, p. 156). The 1998 parliamentary elections were considered by OSCE standards free, despite some episodes of violence, but not fair. To the West, Kuchma's authoritarian tendencies became clearer mainly in the 1999 presidential elections, which 'brought Ukraine closer to the Russian version of democracy'.<sup>441</sup> The campaign witnessed, perhaps to a greater degree than in the 1998 parliamentary elections, episodes of violence against campaigners and candidates, a biased media, and the direct involvement of state officials in the campaign,<sup>442</sup> a worrying pattern that was repeated in the 2000 referendum increasing the powers of the Presidency and in the 2002 parliamentary elections. The 2002 elections saw for the first time the consolidation of a strong opposition to the Kuchma regime, with the creation of two allied groups, Yushchenko's *Our Ukraine* and Timoshenko's *Fatherland* which both gained more votes through the proportional system, though an insufficient number of seats to form a majority. In the bitterly fought presidential elections of October-December 2004, electoral fraud reached such unacceptable levels that it constituted the final trigger for the outbreak of the Orange Revolution.

These elections were widely read through the lens of a confrontation between the East and the West. In 2004 the candidates were pitted as reflecting a simplistic division

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<sup>440</sup> With the exception of Kubicek (2001), who argued that the 1994 elections were the only free ones (rather than free and fair).

<sup>441</sup> Berychowska, Grajewski, Gromakzki (2002).

<sup>442</sup> Organisation for Security and Cooperation in Europe (2000), Office for Democratic Institutions and Human Rights, 'Ukraine Presidential Elections, 31 and 14 November 1999, Final Report', Warsaw: 7 March. The head of the election observation mission admitted that there were 'some retrograde steps during the presidential election', in Breffni O'Rourke, '1999 in Review: Free and Fair Elections: Under Threat in Region?', *Radio Free Europe/Radio Liberty*, 16 December 1999.

between East and West: Viktor Yanukovich, designated by the outgoing President and supported by Putin, put closer relations with Russia at the top of its agenda, while Viktor Yushchenko valued greater ties with the West, though he had pledged to withdraw Ukraine's troops from Iraq. But according to the opposition, the battle was also between corruption and democracy:

Cold War-style confrontation presents Ukrainians with a desperate dilemma. They cannot afford to choose between east and west, and yet they are being forced to do so, against their better inclinations. For most Ukrainians, these elections were not about being pro- or anti-Russian. The elections were primarily about ousting a corrupt clique from power in Kiev. It just happened that the clique came from the Russian-speaking east of the country.<sup>443</sup>

The election campaign for the first round of elections, held on 31 October, was far from free and fair and witnessed, rather, the abuse of all possible means at hand in a pseudo-democracy. Of the 23 candidates, the 75% of the electorate that went to vote (a very high turnout for the country) expressed 39.9% of its preference towards Yushchenko and 39.3% for Yanukovich, making the second round necessary. But the international 600-member election observation mission stated that the elections failed to meet a considerable number of European standards: the media coverage of the campaign was almost exclusively of the candidate chosen by outgoing President Kuchma, harassment and beatings of opposition candidates and supporters were widespread up to the poisoning of Yushchenko, allegedly during a meal with the deputy head of the Secret Services.<sup>444</sup> Russian President Vladimir Putin, who had offered Kuchma his support since the latter was in the murky waters of the Gongadze case, joined the campaign also by appearing on television praising the economic reforms carried out by Yanukovich just a few days before the vote.

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<sup>443</sup> Quentin Peel, 'A faultline between Russia and the west', *Financial Times*, 25 November 2004. According to Yushchenko's ally Yulia Tymoshenko, the 'battle is between a criminal group and those who want to put the country on the track of normality', quoted in Fabrizio Dragosei, 'Kiev, ultimo atto della sfida tra i due Viktor', *Corriere della Sera*, 21 November 2004. See also Gwendolyn Sasse, 'Ukraine at the brink of a break-up?', *The Guardian Unlimited*, [www.guardian.co.uk](http://www.guardian.co.uk), 30 November 2004.

<sup>444</sup> International Election Observation Mission (2004a), 'Statement of Preliminary Findings and Conclusions, Presidential Election, Ukraine – 31 October 2004', Kiev: 1 November. The mission was a joint initiative of OSCE Office for Democratic Institutions and Human Rights, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament, and the NATO Parliamentary Assembly.

The second round of elections replicated a similar disrespect of democratic standards. On 24 November the Central electoral committee decreed Yanukovich the winner of the second round (held on 21 November), in contrast with the evaluation of the OSCE electoral observation mission.<sup>445</sup> Yushchenko announced a general strike and the opposition took to the streets, blocking access to government buildings. Yushchenko's supporters invaded the streets of Kiev wearing orange scarves and banners, staging a permanent mass mobilisation protest that deserved the name of 'Orange Revolution'. Yanukovich threatened that the Eastern regions would demand autonomy if 'the state coup continues and the illegitimate President comes to power',<sup>446</sup> triggering the fear of a split along the East and West regional divisions, magnified by rumours of troop movement in the country and by Kuchma raising the spectre of 'civil war'.<sup>447</sup>

At this point, a profound crisis in Ukraine appeared likely. But on 25 November the Supreme Court, to which both candidates had appealed by filing complaints on electoral frauds, suspended the decision over the winner. This prepared the ground for negotiations between sides, mediated by international representatives. The negotiation table included Javier Solana, Polish President Alexander Kwasniewski, Lithuanian President Valdas Adamkus, Kuchma, the two contenders, the President of the Russian *Duma* Boris Gryzlov, and the OSCE Secretary General Jan Kubis, with the association of the President of the Ukrainian Parliament, Volodimir Litvin.<sup>448</sup>

The EU plan was based on negotiating with all the parties involved rather than supporting the opposition, also to ensure that Russia as well as Ukrainian institutions were part of the negotiations, and to persuade the parties, individually and collectively, on a package of legislative reforms that would allow another electoral round. Three round tables were necessary to reach the agreement that was eventually found on 8 December.

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<sup>445</sup> International Election Observation Mission (2004b), 'Statement of Preliminary Findings and Conclusions, Presidential Election (Second Round), Ukraine – 21 November 2004', Kiev: 22 November.

<sup>446</sup> 'Pro-Russia Ukraine Regions Threaten Back', *Deutsche Welle*, 28 November 2005, [www.dw-world.de](http://www.dw-world.de).

<sup>447</sup> Nick Paton Walsh, 'US rejects Ukraine poll as protestors dig in', *The Guardian*, 25 November 2004. In fact, though troops were mobilised to attack the demonstrators, the military and security services began to fragment as the protests gained strength and the authorities dared not intervene. See Kartnycky (2005).

<sup>448</sup> Stefan Wagstyl and Tom Warner and Arkady Ostrovsky, 'Ukraine's election rivals sit down with mediators', *Financial Times*, 26-27 November 2004.



The key to unlocking the crisis came from Ukrainian institutions: on 27 November the *Rada* approved a no-confidence vote in the Central Electoral Committee and condemned the second round of elections. On 3 December the Ukrainian Supreme Court annulled the elections and fixed another date to hold the second round on 26 December,<sup>449</sup> and on 7 December Parliament approved a package of political reforms that strengthened the safeguards against electoral fraud, replaced the Central Electoral Commission (CEC), increased the powers of the Prime Minister and Parliament at the expense of the President – to come into force after the parliamentary elections of March 2006 –<sup>450</sup> and gave new powers to the regions in an attempt to sedate the secessionist temptations that had arisen at the height of the crisis.<sup>451</sup> In the final round, which saw an electoral process that was ‘substantially’ closer to OSCE and Council of Europe standards,<sup>452</sup> Viktor Yushchenko obtained nearly 52% of the vote.

### 3. *The response of the EU*

The box below illustrates that prior to the 2004 presidential elections, the unfair campaigns that characterised most previous elections went barely noticed in the EU. The 1998 and 1999 elections warranted no response whatsoever. According to officials interviewed, this was also due to the fact that Kuchma’s rival, the leader of the Communist party Simonenko, was not seen as a satisfying alternative to the governing

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<sup>449</sup> According to Gwendolyn Sasse, this decision ‘marked the most important moment for Ukraine’s judiciary since 1991. That the judges successfully navigated their way through uncharted legal territory under immense pressure from both sides of the political divide, and under an international spotlight, is an immense achievement and bodes well for the future’, in ‘So near yet so far...’, *The Guardian*, 6 December 2004.

<sup>450</sup> It is worth pointing out that this package had been criticised by the international community the previous January. See Council of the EU (2004d), ‘Declaration by the Presidency on behalf of the European Union on proposals for constitutional change in Ukraine’, CFSP Declaration No. 04/015, 5614/1/04 (Presse 32), Brussels: 29 January.

<sup>451</sup> See Stefan Wagstyl and Tom Warner, ‘Ukraine’s top politicians poised to reach pre-poll deal on reforms’, *Financial Times*, 7 December 2004; ‘Compromise in Kiev, confrontation abroad’, *The Economist Global Agenda*, 8 December 2004, [www.economist.com](http://www.economist.com). Judy Dempsey argued that the reason behind the deal lies in the change of position of powerful oligarchic groups coming to terms with the likelihood of Yushchenko winning the elections. This would also be the reason for which the reform package included extending the powers of Parliament where the oligarchs are represented. See Judy Dempsey, ‘Powerful economic clan are the king-makers in Ukraine’s political drama’, *International Herald Tribune*, 9 December 2004.

<sup>452</sup> International Election Observation Mission (2004c), ‘Presidential Election (Repeat Second Round), Ukraine, Statement of Preliminary Findings and Conclusions, 26 December 2004’, Kiev: 27 December. This mission more than doubled the number of observers compared to the previous round: from 600 to 1370. Altogether, there were 300.000 Ukrainian observers and 12.000 foreign ones. Askold Krushelnysky, ‘Ukraine: New Vote Reflects Transformed Political Landscape’, *Radio Free Europe/Radio Liberty*, 27 December 2004.

elite.<sup>453</sup> The campaign and conduct of the referendum held in 2000 with the aim of increasing the powers of the President at the expense of the Parliament too did not provoke a response from the EU, despite reported and widespread malpractices (whereas the EU encouraged the government to respect the Constitution in implementing the reforms approved through the referendum).<sup>454</sup>

It was only with the 2002 elections and the emergence of the leadership of Yushchenko, that the West began to envisage potential change in Ukraine. Aided by Kuchma's involvement in the Kolchuga sale to Iraq and the appointment of shady Medvechuk at the Presidency, EU member states unofficially and informally started to limit contacts with the Presidency<sup>455</sup> with the exception of Berlusconi,<sup>456</sup> and Schröder who met with him in 2002 and 2003 respectively.

In terms of the use of aid for supporting the establishment of democratic electoral standards, empowering civil society to monitor elections, or raising awareness through media training, the EU developed programmes late. According to one official, until 2003 there was no strategy related to elections whatsoever.<sup>457</sup> Only for 2004-2006 was € 10 million allocated for 'civil society, media and democracy' (including objectives relating to supporting democratic electoral standards) and in 2004 a €1 million electoral project was developed, half of which was directed at training officials of the Central Electoral Commission, and the other half at voter education at the level of civil society (see table 3.3 on p. 88).<sup>458</sup>

Informal diplomacy was used, mostly on the instigation of the Ukrainian opposition to Kuchma's Presidency than of the EU. In the run up to the 2004 elections Yushchenko

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<sup>453</sup> Interview, European Commission official, Rome: 30 May 2006; embassies of EU member states, Kiev: 6 July (2) and 7 July.

<sup>454</sup> The kind of changes that Kuchma was trying to pass through the referendum had been criticised by the Council of Europe's Parliamentary Assembly on the grounds that they would change the balance of power unconstitutionally. Askold Krushelnycky, 'Ukraine: Ignoring European Criticism, President Perseveres With Referendum', *Radio Free Europe/Radio Liberty*, 16 April 2000.

<sup>455</sup> Interviews, embassies of the EU member states, Kiev: 6 July 2006 (2); Council of the EU, Brussels: 24 April 2006 (3), Piccone and Youngs (2006), chapter 4.

<sup>456</sup> Though it appears that the Italian President of the Republic condemned the deterioration of human rights and democracy standards. Interview, embassy of EU member state, Kiev: 6 July 2006 (2).

<sup>457</sup> Interview, Delegation of the Commission, Kiev: 4 July 2006 (2).

<sup>458</sup> Interview, Delegation of the Commission, Kiev: 4 July 2006 (2). The 6 TACIS Projects were launched on voter education, voter mobilisation and media monitoring for a total of € 472,000. Delegation of the European Commission to Ukraine (2004), 'Press Release', Kyiv 19 March.

and his allies established regular contacts with the Western embassies in Kiev – contacts which were maintained throughout the Orange Revolution.<sup>459</sup> Nonetheless, this development did not correspond to an official policy. According to officials at the EU embassies in Ukraine, it corresponded to a growing discomfort with the Kuchma entourage,<sup>460</sup> but some member states (including Germany, Italy and France) were nonetheless prepared to work with the government and its Prime Minister and designated presidential heir Yanukovich.<sup>461</sup>

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<sup>459</sup> The US and Canadian embassies were, unofficially, quite openly supportive of the opposition (the Canadian ambassador was known for wearing an Orange scarf during the revolution). The EU embassies refrained from ‘taking sides’ in the run up to the elections.

<sup>460</sup> Interview, Council of the EU, Brussels: 24 April 2006 (3), and embassy of EU member state, Kiev: 6 July 2006 (2).

<sup>461</sup> Interviews, embassies of EU member states, Kiev: 5 July, 6 July (1) and (2), 7, July 2006, and Delegation of the European Commission, Kiev: 4 July 2006 (1).

### Box 6.1: Elections in Ukraine and EU response<sup>462</sup>

Event	Explanation	EU response
1998 Parliamentary elections	OSCE considered them free but not fair	None
1999 Presidential elections	OSCE considered them free but not fair: deterioration compared to 1998	None
2000 Referendum	On constitutional changes to increase powers of the President to dissolve parliament, reduce the number of deputies, introduce a second chamber, and restrict parliamentary immunity	EU-Ukraine Summit Joint Statement: 'We expressed the importance we attach to democratic character of political reform in Ukraine and the implementation in accordance with the constitution of the results of the referendum held on 16 April 2000'.  President of the European Commission speech in Kiev: 'it is essential that the results of the referendum be implemented fully in accordance with the constitution. Political reform must continue to be conducted in a democratic and legally consistent manner. It is also essential that our shared values are respected'.
2002 Parliamentary elections	Considered free but not fair by international observers: involvement of public officials in the campaign and unfair media coverage	EU: CFSP Declaration: notes progress towards international election standards but draws attention to major flaws
2004 Presidential elections		CFSP Declaration appeals to ensure free and fair elections  GAERC Conclusions: deepening of EU-Ukraine relations will depend on democratic transformation of Ukraine. Democratic standards and media freedom in elections will be an important consideration.

<sup>462</sup> The selection of events is based on international reporting. See Human Rights Watch, *World Report*, chapters on Ukraine in the editions between 1991 and 2007; Freedom House, *Freedom in the World*, chapters on Ukraine in the editions from 1991 to 2007; Freedom House, *Nations In Transit*, chapters on Ukraine in the editions from 1997 to 2007; Amnesty International, *State of the world's human rights*, editions from 1991 to 2007; Bureau of Democracy, Human Rights, and Labor, US State Department, *Country Reports on Human Rights Practices*, chapters on Ukraine in the editions between 1993 and 2007; EU-Ukraine Summit (2000), 'Joint Statement by the President of the European Council Jacques Chirac assisted by the High Representative for Common Foreign and Security Policy of the EU Javier Solana, the President of the Commission Romano Prodi, and the President of Ukraine Leonid Kuchma', Paris: 15 September; Council of the EU (2002a), 'Declaration by the Presidency on behalf of the European Union on parliamentary elections in Ukraine on 31 March 2002', CFSP Declaration, 7815/02 (Presse 93), Brussels: 10 April 2002; Council of the EU (2004c), 'Declaration by the Presidency on behalf of the European Union on forthcoming elections and media freedom in Ukraine', CFSP Declaration No. 12696/04 (Presse 272), Brussels: 29 September 2004; Council of the European Union, General Affairs and External Relations Council, *Conclusions*, Luxemburg: 11 October 2004; 'Declaration by the Heads of Mission of the European Union on the presidential election process in Ukraine', Kiev: 27 October 2004, [www.eu2004.nl/default.asp?CMS\\_TCP=tcpPrint\\_EU2004&CMS\\_ITEM=AEA](http://www.eu2004.nl/default.asp?CMS_TCP=tcpPrint_EU2004&CMS_ITEM=AEA); Council of the EU (2004b), 'Declaration by the Presidency of the European Union on the presidential elections of 31 October 2004 in Ukraine', 1 November; European Council, *Presidency Conclusions*, 14292/04, Brussels: 5 November 2004; Council of the EU (2004a), 'Declaration by the Presidency of the European Union on Ukraine', 22 November (document number not available), [www.eu2004.nl/default.asp?CMS\\_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25](http://www.eu2004.nl/default.asp?CMS_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25).

		<p>Repeats call for end to violations of democratic norms, but continued support of Ukraine's progress towards integration with the EU whoever wins the elections.</p> <p>Repeated declarations on the two electoral rounds</p>
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Against this background, the West placed great importance in these elections, seen as a test of Ukraine's democratic credentials. According to Gunter Verheugen, then the Enlargement Commissioner, 'the year 2004 will see important events [...]. The way Ukraine will conduct the coming elections this year will be a kind of benchmark, and we will watch it very closely'.<sup>463</sup> In the run up to the first round on 31 October 2004, there were repeated calls for free and fair elections, underlining that these would ensure the deepening of 'Ukraine's relationship with Europe and its institutions. A bad election, on the other hand, will force us to re-examine our relationship'.<sup>464</sup> The EU too emphasised the importance of the elections for Ukraine's future, the fact that 'an independent Ukraine which respects human rights and the rule of law [...] is in the interest of the EU', but, in contrast with the US, that it was 'prepared to work closely with any candidate who wins in a free and fair contest'.<sup>465</sup>

The response of international actors to the first round of elections was immediate. The US offered harshest criticism, warning the country its ties with it would be put into question should the next round of elections not be free and fair. This message was delivered to Ukraine but also to Russia, considered as pulling the threads of Ukraine's fate.<sup>466</sup> The EU issued two declarations urging the Ukrainian authorities to ensure a more democratic second round and reiterating the importance of the elections in

<sup>463</sup> Quoted in Ahto Lobjakas, 'Ukraine: "Pragmatic" EU Dodges Request For Membership Prospects', *Radio Free Europe/Radio Liberty*, 13 February 2004.

<sup>464</sup> Richard Armitage (Deputy US Secretary of State), 'Ukraine can ill afford an unfair election', *Financial Times*, 29 October 2004.

<sup>465</sup> 'Declaration by the Heads of Mission of the European Union in Kyiv on the presidential election process in Ukraine', Kiev: 27 October 2004.

<sup>466</sup> Bush, according to the US radio station *Radio Svoboda*, transmitting in Russia, warned Putin against supporting Yanukovich, and warned Ukraine of the implications of following Moscow's lead by clarifying that participation in the Single Economic Space with Russia, Belarus and Kazakhstan would jeopardize its efforts of integration in the WTO and EU. In 'Vladimir Poutine en Ukraine à la veille du second tour de la présidentielle', *Le Monde*, 12 November 2004. On the eve of the second round of elections, Kuchma received a visit from Richard Lugar, head of the US Senate's foreign relations committee, who delivered a personal message from the President stressing the importance of fair elections. Bush gave a final warning in a letter to Kuchma that stated that 'a tarnished election [...] will lead us to review our relations with Ukraine'. See Peter Finn, 'Partial Vote Results Show a Tight Race In Ukraine Runoff', *The Washington Post*, 22 November 2004. This policy line of threatening sanctioning measures was confirmed in McFaul (2007).

relations with the EU.<sup>467</sup> But at this stage EU representatives avoided direct involvement in the matter. The Commission clarified that it would not send officials to Kiev on the grounds that ‘we do not believe in interfering with the democratic process’.<sup>468</sup> The High Representative for CFSP Javier Solana limited his message to a telephone conversation with Kuchma.<sup>469</sup>

International condemnation of the second round of elections was widespread. On 22 November the Dutch Foreign Minister Bernard Bot, holder of the Presidency, announced that the EU did not accept the results and that all the member states would call their Ukrainian ambassadors to deliver formal protests.<sup>470</sup> The EU line was to avoid at all costs any violence against protestors and to take no step to validate the election. In addition, it was suggested that there was talk of ‘many [EU] countries putting Ukraine at a certain distance if this turns out to be the results of the election’,<sup>471</sup> while the US, via Richard Lugar, sent to Kiev to monitor the elections, raised the possibility of using sanctions should an enquiry into the fraudulent elections not take place.<sup>472</sup>

The Polish Foreign Minister Włodzimierz Cimoszewicz, making use of his position as (rotating) Chair of the Council of Europe, visited the country to encourage free and fair elections between the first and second rounds,<sup>473</sup> a move that the EU had avoided fearing accusations of interference. Prior to his arrival in Kiev together with Solana, Aleksander Kwasniewski had sent his foreign affairs adviser Stanisław Ciosek, to Kiev with a three-point plan that was later to become the basis for negotiations. The Polish

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<sup>467</sup> Council of the EU (2004b), ‘Declaration by the Presidency of the European Union on the presidential elections of 31 October 2004 in Ukraine’, 1 November; European Council (2004a), ‘Declaration on Ukraine’, in Annex I, *Presidency Conclusions*, 14292/04, Brussels: 5 November.

<sup>468</sup> Andrew Beatty, ‘Putin’s Ukraine visit raises eyebrows’, *EUobserver*, 12 November 2004.

<sup>469</sup> Tom Warner, ‘Old geopolitical rivalry casts shadows over Ukraine election battle’, *Financial Times*, 20-21 November 2004.

<sup>470</sup> Council of the EU (2004a), ‘Declaration by the Presidency of the European Union on Ukraine’, 22 November 2004 (document number not available), [www.eu2004.nl/default.asp?CMS\\_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25](http://www.eu2004.nl/default.asp?CMS_ITEM=B2C459EC419347E59AA019D53CAE787EX1X60623X25). The General Affairs and External Relations meeting held on the same day decided to toughen sanctions against Belarusian dictator Lukashenko after he won a referendum in October 2004 allowing him to stand for a third term as President. General Affairs and External Relations, ‘Press Release’, 14724/04 (Presse 325), Brussels, 22-23 November 2004.

<sup>471</sup> According to one senior diplomat, quoted anonymously in C.J. Chivers, ‘Protests over election growing in Ukraine’, *International Herald Tribune*, 24 November 2004.

<sup>472</sup> Stefan Wagstyl and Tom Warner, ‘Ukrainian election dispute set to spread’, *Financial Times*, 23 November 2004; ‘EU et Etats-Unis dénoncent les fraudes’ and ‘Washington “gravement préoccupé”’, both in *Le Monde*, 24 and 25 November 2004.

<sup>473</sup> Andrew Beatty, ‘Putin’s Ukraine visit raises eyebrows’, *EUobserver*, 15 November 2004.

President himself had been contacted by Solana as well as Kuchma to take part in the negotiation table, thanks to his previous experience as a mediator in clashes between the government and opposition in Ukraine in 2002.<sup>474</sup> Solana's engagement was justified in the EU to avoid the matter becoming a matter for Polish involvement. Eventually, Solana arrived in Kiev 26 November, backed by a decision of 24 November of the Political and Security Committee (PSC) to give him ample space in conducting negotiations in Kiev,<sup>475</sup> and with the US's acceptance to let EU negotiators take the lead.<sup>476</sup>

#### 4. *Explaining the EU response*

A closer look at events shows that EU engagement in the Orange Revolution was due to a number of external and internal factors. Firstly, all officials interviewed agreed that the EU intervened because it perceived a security problem in its immediate neighbourhood.<sup>477</sup> The unexpected mass mobilisation raised fears that the opposition might try to take power through non-democratic and violent means, and rumours of troop movement and police mobilisation suggested that the authorities might suppress the protest through violence. According to one Council official, there had been much discussion in the PSC and Council about whether to intervene prior to the second round: it was 'the streets' that changed the EU position.<sup>478</sup>

EU action was thus dictated by developments in Ukraine. The realist reading that sees security as the key motivation driving foreign policy is useful in explaining EU involvement in the Orange Revolution negotiations – a case in which security concerns could be merged with more normative human rights and democracy elements (for instance with regard to the solutions identified for the settlement of the crisis), though not as far to justify a 'security community', given the EU's continued reluctance to make a choice over Ukraine's accession prospects.

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<sup>474</sup> Thomas Ferenczi, 'La médiation de l'Union européenne a favorisé une solution pacifique', *Le Monde*, 26 December 2004; Christophe Châtelot, 'La Pologne rêve de voir Kiev rejoindre à son tour l'Union européenne', *Le Monde*, 26 December 2004.

<sup>475</sup> Thomas Ferenczi, 'La médiation de l'Union européenne a favorisé une solution pacifique', *Le Monde*, 26 December 2004.

<sup>476</sup> Daniel Dombey, 'Powell points up differences with Russia', *Financial Times*, 9 December 2004; McFaul (2007).

<sup>477</sup> This can also be found in Sushko and Prystayko (2006), and in Piccone and Youngs (2006).

<sup>478</sup> Interview, Council of the EU, Brussels: 24 April 2006 (4).

The backing of the US, which became deeply involved in Ukraine despite its need to ensure Russia's cooperation on a number of issues considered vital in Washington, such as the fight against terrorism and dealing with Iran's nuclear programme, provided an important external facilitator for the EU, letting it take the lead in negotiations.<sup>479</sup> Thus, the Political and Security Committee nominated Solana as the EU representative to deal with the crisis, flanked by the Polish and Lithuanian Presidents.

This unity, essential to ensuring EU credibility in Ukraine and Russia, was considered an essential ingredient of the successful involvement of external actors in the management of the crisis.<sup>480</sup> Yet it masked internal differences over how to handle the Ukrainian crisis. It has been argued that the EU put aside its traditional 'Russia first' policy thanks to the new member states, and that Solana followed the lead of the Polish President.<sup>481</sup> Alternative explanations see a consensus within the EU over keeping Ukraine out of Russia's sphere of interests, even if until the Orange Revolution its involvement in the country had been piecemeal and did not reveal a strategy of democratisation.<sup>482</sup>

The 2004 enlargement of the EU no doubt constituted one single important change that determined the EU's response.<sup>483</sup> The lines of division were between the new and old member states. But some of the old ones too, such as Sweden and Britain which, alongside the US, preferred a strong position against Russia, while France, Germany and Italy were more inclined towards accommodating Moscow.<sup>484</sup> Some member states (Sweden, Poland, Lithuania and Latvia) feared that EU unity over the Ukrainian crisis would not go beyond calling for a review of the ballot, because of the interests of France, Germany and Italy in preserving relations with Russia, which explained why the EU did not criticise Moscow for its interference in the electoral campaign in Ukraine.<sup>485</sup>

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<sup>479</sup> At this stage, the US preferred to stay behind the scenes. See McFaul (2007).

<sup>480</sup> Sushko and Prystayko (2006), and in Piccone and Youngs (2006), McFaul (2007).

<sup>481</sup> Sushko and Prystayko (2006).

<sup>482</sup> Piccone and Youngs (2006).

<sup>483</sup> This was confirmed in interviews, Council of the EU, Brussels: 24 April 2006 (3) and (4), and European Commission, Brussels: 24 April 2006 (1) and (2).

<sup>484</sup> 'Ukraine: la Russie défend son pré carré face à l'Europe', *Le Monde*, 7 December 2004. On the role of the new member states, see also 'Pologne, Hongrie et Estonie se rangent aux côtés de l'opposition', *Le Monde*, 25 November 2005.

<sup>485</sup> Judy Dempsey, 'EU needs to act, some say', *International Herald Tribune*, 23 November 2004. Even if the EU did not officially criticise Russia's role in Ukraine, it was raised at the EU-Russia summit of 25



Indeed, Germany's position was ambivalent during the crisis. Members of Parliament critical of the Chancellor accused him of disregarding Russian human rights abuses and of supporting Yanukovich because of Germany's extensive vested interests in the Russian gas market.<sup>486</sup> Although Fischer criticised the ballot,<sup>487</sup> and Schröder spoke to Putin twice over the phone during the Ukrainian crisis, agreeing on 30 November on the need to hold new elections, the German Chancellor responded to domestic parliamentary pressure by clarifying that the Ukrainian crisis would not distract him from his main aim of establishing a 'strategic partnership' with Russia.<sup>488</sup>

The Commission too was internally divided due to different inputs from the member states.<sup>489</sup> On 9 December it unveiled the first Action Plans agreed within the framework of the European Neighbourhood Policy, including the one on Ukraine that Kuchma had criticised at the previous EU-Ukraine Summit. The Action Plan was published despite the fact that Kiev had not signed it and despite the disapproval of the Commissioner responsible for External Relations, Benita Ferrero-Waldner. The pressure came from the UK through its Commissioner Peter Mandelson and the Commission President himself, José Manuel Barroso, who saw the move as 'positive signal' towards the country, though there was an agreement not to take further steps until free elections were held.<sup>490</sup>

The external security risk alone, did not modify significantly the substance of the positions of the those member states most inclined towards friendly relations with Moscow. The internal factor that enabled the EU to take on its leadership role in the negotiations was due to policy entrepreneurship of some member states. Polish activism, backed by many of the new member states,<sup>491</sup> the Netherlands (holder of the rotating EU Presidency), Sweden and Britain forced the issue up the agenda, and called for

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November, which ended in failure, in which Putin accused the West of encouraging 'mayhem' on the streets in Kiev. See Nick Paton Walsh and Ewen MacAskill, 'EU anger at Putin's role in election' and 'Ukraine vote on hold after court ruling', both in *The Guardian*, 25 and 26 November 2004.

<sup>486</sup> Bertrand Benoit, 'Schröder and Putin's "cosy" relationship under scrutiny', *Financial Times*, 2 December 2004.

<sup>487</sup> APCOM, 'Ucraina/Germania, Fischer: Preoccupati per accuse di brogli', 22 November 2004.

<sup>488</sup> Bertrand Benoit, 'Schröder and Putin's cosy "relationship under scrutiny"', *Financial Times*, 2 December 2004.

<sup>489</sup> Interviews, European Commission, 25 April 2006, and with official of the European Commission, Rome: 30 May 2006.

<sup>490</sup> Daniel Dombey, 'Brussels endorses Ukraine thaw plan', *Financial Times*, 4-5 December 2004.

<sup>491</sup> 'Statement of the Visegrad Group Meeting of Foreign Affairs on the situation in Ukraine', Cracow: 7 December 2004.

concerted EU involvement. The European Parliament, also thanks to the activity of the nine Polish MEPs (out of 75) in the Foreign Affairs Committee, contributed to raising the stakes over the affair also by attracting the attention of the media, by wearing orange scarves and ties during sessions.

The activism of these actors, which contributed to raising expectations in the EU and in Ukraine, led Solana to be concerned with ensuring a united EU response, rather than a plethora of representatives (for instance the envoy of the Dutch Presidency and of Poland) – to ‘avoid having too many cooks stirring the same soup’.<sup>492</sup> With the backing of the US, and after consultations with Kwasniewski, Solana secured a mandate to travel to Kiev and facilitate negotiations between the parties. According to one official, Solana managed to obtain the PSC mandate before the ambassadors had the time to consult with their respective capitals.<sup>493</sup>

The other priorities were not altogether abandoned. Although the ground for Javier Solana’s involvement in mediation had been prepared between 22 and 24 November, he flew to Kiev only after the EU-Russia summit of 25 November,<sup>494</sup> therefore only after having consulted directly with Putin. The format of negotiations, with the inclusion of the Russian representative, also illustrated the priority of trying to maintain cooperation with Moscow. Nonetheless, given the great importance that Putin attached to the elections and given the extent to which he was personally involved in the campaign and ostensibly supported Yanukovich, the outcome of the crisis was a severe blow to his credibility and to his near abroad policy.

In the case of the Orange Revolution, the EU and US (presumably unexpectedly to Putin<sup>495</sup>) ran the risk of jeopardising their relations with Moscow. This risk ran against key interests of some EU member states such as energy supplies. However, it is worth noting that while countries such as Germany, Italy and France, those most inclined to maintain good relations with Moscow, import around 25% of their energy supplies from Russia, the new member states are almost entirely dependent on Russian gas and oil and

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<sup>492</sup> Interview, Council of the EU, Brussels, 24: April 2006 (3).

<sup>493</sup> Interview, Council of the EU, Brussels: 24 April 2006 (4).

<sup>494</sup> Prior to that time he considered EU involvement ‘premature’. See Thomas Ferenczi, ‘La médiation de l’Union européenne a favorisé une solution pacifique’, *Le Monde*, 26 December 2004

<sup>495</sup> Nemyria (2005).

this did not prevent them from taking the strongest position against Russia in the 2004 elections, though it can be argued that the EU provided a shield to such clear-cut positions. But other interests were also important, such as cooperation with Russia in regional security and in the UN Security Council over key international relations matters, such as Iran, Iraq, the Israeli-Palestinian conflict, and negotiations on the status of Kosovo. In this matter, EU action was more cautious than that of the US, refusing to take sides in the dispute (although the Parliament did manifest its support of the opposition), getting involved only when the crisis reached its peak, and by conducting negotiations with all the parties.

Poland, Lithuania and the EP, with the backing of other new member states, Sweden, the UK, and the Netherlands were successful in ensuring EU participation in the negotiations in Kiev. From the point of view of Warsaw, Solana would provide legitimacy to Western involvement.<sup>496</sup> However, the new member states were less successful in persuading the other member states to offer a renewed prospect to Ukraine's relations with the EU. The Commission rejected the Parliament's idea of keeping the doors open to Ukraine's 'European aspirations', with the argument that the EU had 'done what could be done'.<sup>497</sup> The other member states rejected a Polish proposal, backed by Lithuania, Slovakia, Hungary, the Czech Republic and Slovenia, of going beyond the Action Plan to develop a 'strategic partnership' with Ukraine (a proposal that carefully avoided offering an accession prospect not to antagonise the other member states).<sup>498</sup> The General Affairs and External Relations Council of 13 December and the following European Council of 16-17 December agreed instead to modest aid increases and support for a quick recognition of market status and for integration into the WTO. Ukraine was treated in the context of the discussion on the ENP, the 'Declaration on Ukraine' annexed clarified that 'the EU aims at an enhanced and distinctive relationship by making full use of the new opportunities offered by the European Neighbourhood Policy'.<sup>499</sup>

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<sup>496</sup> Interview, Council of the EU, Brussels: 24 April 2006 (4).

<sup>497</sup> David Cronin, 'Fresh Ukraine election moving ever closer', *European Voice*, 2 December 2004.

<sup>498</sup> Jacek Pawlicki and Robert Soltyk, 'Time to offer more to Ukraine during "birth of a new European nation"', *European Voice*, 16 December 2004.

<sup>499</sup> European Council (2004a), 'Declaration on Ukraine', in Annex I, *Presidency Conclusions*, Brussels: 17 December.

The fact that security concerns and the presence of the new member states were the two external and internal factors that led to the EU involvement in the resolution of the Orange Revolution – a reading that lends itself to interpreting the case as a form of conflict resolution in favour of the restoration of democratic standards – is confirmed if one looks backwards to previous EU responses to the conduct of elections and to the period running up to the 2004 elections. Officials have pointed out that it was the extent of fraud that triggered the EU response and gave it legitimacy. Yet the first round of elections, after which the EU's response was pretty modest, was evidently fraudulent too. This was justified claiming that the EU wanted to differentiate itself from the US 'regime change' rhetoric,<sup>500</sup> but also by the expectation that the next round, following widespread international condemnation of the first, would be freer.<sup>501</sup>

Prior to the second round of elections, EU involvement was modest. Whereas the US sent many high level visitors to Kiev during 2004, for example non governmental personalities such as George Bush senior, Henry Kissinger, John McCain, Richard Holbrook, Madeleine Albright,<sup>502</sup> and launched a substantial aid programme to support election efforts, as well as non-governmental organisations, little aid was made available to back EU words. Washington spent \$ 18 million in the two years running up to the elections. Political foundations also funded many of the NGOs later leading the Orange Revolution, including political ones such as *Pora*.<sup>503</sup>

In contrast with the US, the EU as a whole was reluctant to fund any kind of initiative that might be interpreted as training or funding partisan politics. Whereas US party foundations, but also some foundations of member states financed with government aid,<sup>504</sup> carried out projects aiming at the training of young party officials, EC assistance was limited to raising voter awareness and training of election observation professionals. Between 2003 and 2004 the US spent \$64 million on funding local Ukrainian groups

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<sup>500</sup> This was spontaneously expressed by all the interviewees.

<sup>501</sup> Interviews, Council of the EU and European Commission, Brussels: 24 April (4) and 25 April 2006.

<sup>502</sup> See Nick Paton Walsh, 'Challenger for Ukraine presidency cries foul over mystery illness', *The Guardian*, 22 October 2004; and Jonathan Steele, 'Where the cold war never died', *The Guardian*, 28 October 2004.

<sup>503</sup> McFaul (2007).

<sup>504</sup> The UK, France and Germany financed some initiatives directed at supporting political parties through foundations and party foundations: the Westminster, Robert Schuman, and Konrad Adenauer Foundations. Interviews, embassies of the member states, and Delegation of the European Commission, Kiev: 4 July (2), 5 July, 7 July 2006.

involved in education, legal reform and election monitoring,<sup>505</sup> which puts the EC's €10 million democracy assistance under a significantly different light.

Critics from within the EU institutions pointed to a number of reasons for this: the lack of a policy behind aid, the need for financial transparency and budgetary control, the lengthy processes between the conception and realisation of aid priorities making assistance tools inflexible and not adaptable to changing environmental needs, and the need to ensure political neutrality in funding democracy promotion.<sup>506</sup> Yet the EC's claim to avoid 'taking sides' was not matched by diplomacy: officials have pointed out that the turning point in EU relations with Kuchma occurred only once Yushchenko emerged in 2002 as an appealing competitor for the presidency.

The diversity of views within the EU over relations with Russia and over the geographical scope of the EU's enlargement process was a crucial 'brake' to the development of a stronger position on the conduct of elections, to the extent that, in contrast with press freedom, the EU did not develop a declaratory position on this issue prior to the 2004 crisis. Even in the policies and aid programmes developed largely through the Commission, the conduct of elections and other related issues did not feature prominently. Essentially, EU policy towards Ukraine had never been a policy aiming at democratic change.

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<sup>505</sup> Jeremy Bransten, "'Orange Revolution': part homegrown uprising, part imported production?", *Radio Free Europe/Radio Liberty* Belarus and Ukraine Report, Vol. 6, No. 47, 23 December 2004.

<sup>506</sup> Interviews, European Commission, Brussels: 24 April 2006 (1) and (2), and embassies of the EU member states, Kiev: 5, 6 July 2006 (3). Referring to the EP and some member states, one of these officials pointed out that the critics of EU aid are often the same who create bureaucratic obstacles in the name of transparency.

## 5. *Conclusions*

The case study on electoral processes in Ukraine reveals similar patterns to the press freedom case study up until the 2004 Orange Revolution. During the 1990s the EU was poorly engaged with Ukraine and human rights and democracy issues failed to reach its radar screens, despite the fact that it was the decade of rhetorical commitment to those principles. Box 5.2 on the use of CFSP (p. 147) and 6.1 (p. 156) summarising EU responses clearly indicate the absence of any position on human rights and democracy in this period beyond including them in the policy documents and agreements with Ukraine.

It was only after 2002 that the EU started to develop some declaratory positions and express a degree of concern at domestic developments in Kiev that can be explained in the same terms as the response that the Gongadze case received. In other words, until the end of November 2004, the primacy of intergovernmentalism in EU relations with Ukraine is confirmed even when human rights and democracy principles are at issue. The underlying diversity of views within the EU also explains the reasons behind the cautious response at the first round of elections, justified with the notion that the EU should not interfere in domestic processes. It was only once the crisis became perceived as threatening to Ukraine's stability that the EU became effectively engaged, human rights and democracy became merged in the conflict resolution package to which the EU contributed.

This also suggests that the institutionalisation of human rights and democracy beyond including respect for these principles in all the documents and policy statements regarding external relations does not necessarily lead to their implementation or to ideational changes within policy communities or institutions. This claim is backed by the Commission's low profile in promoting these principles. There was no evidence to suggest that the policy communities developed within the EU institutions dealing with Ukraine contributed significantly to defining EU policy, let alone to promoting human rights and democracy. The Commission did not fully exploit its powers in proposing to use to negative tools, as foreseen by art. 2 of the PCA in neither of the two cases examined in this thesis; it did not resort to its competences in managing assistance to pursue clearer democracy promotion strategies, including EIDHR funds; and it did not

influence the policy process in such a way as to contribute to stronger normative positions in the EU. In fact, in the case of Ukraine it revealed quite a subservient role compared to the large member states.

The European Parliament has played a role not so much in influencing the type of policies to pursue but in taking advantage of events to raise the stakes of the EU in terms of its credibility triggering ‘shaming’ processes. The case studies reviewed here confirm its role as a ‘norm entrepreneur’ (which resorts to ‘rhetorical action’ as well as strategic arguments to persuade the member states and other institutions of its arguments, as it tried to do, for instance, in 2001 (over the question of offering some prospect of membership to Ukraine) and in 2004 with its support of the Orange Revolution.

However, the intergovernmental framework complicates the explanation of the role of human rights and democracy in EU foreign policy, as there were diverse dynamics motivating the positions of the member states. This also makes the human rights and democracy dimension of EU foreign policy a sphere for negotiation and compromise, with competition between different perceptions on the importance of the principles, different geopolitical visions of Ukraine, as well as different views on approaches (for instance between conditionality and engagement). These differences can be interpreted as divergent cognitive views on Ukraine and on the role of human rights and democracy.

By and large, the dialectic between human rights and democracy principles on the one hand, and security and geopolitical concerns on the other have been the playing field upon which the main decisions were made, mostly but not exclusively at the expense of the former. The ways in which the EU does promote human rights and democracy abroad depends largely on the relationship between these and other concerns. In the case of Ukraine, human rights and democracy remained subservient and, in the words of one official, ‘obscured by relations with Russia’<sup>507</sup> rather than entirely neglected – essentially a declaratory policy where the principles were ‘trumped’ by other interests, except when they became intertwined with security concerns. The role that Russia played in influencing the member states was also more complex than has been assumed. Rather than an uncertain EU policy backed by an understanding that Ukraine should not

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<sup>507</sup> Interview, embassy of EU member state, Kiev: 6 July 2006 (2).

be subjected to Russia's sphere of influence,<sup>508</sup> empirical evidence has shown that the member states were quite uncertain and divided on Ukraine's position on the map of Europe, and that some would have been quite comfortable with Ukraine staying in Russia's orbit.

This lends itself to an interpretation based on an instrumental use of human rights and democracy principles, for instance to keep Ukraine at arm's length from the possibility of one day joining the EU, rather than to ideational or constructivist interpretations of a policy shift within the EU institutions. The importance of human rights and democracy was also determined by the ways in which they related mainly to other interests, especially in relations with Russia. Secondly, if perhaps paradoxically, the fact that such a neglected area of foreign policy remained firmly anchored to the domain of the member states (indeed, in the Ukrainian case the presence of human rights and democracy in EU policies emerges mostly at the level of CFSP), suggests that they are perceived as an important tool that merits limited institutionalisation. This is confirmed by the lack of transparency and openness with which the EU conducts its diplomatic dialogue on these issues. As the European Parliament highlighted,

the conclusions on the assessment of human rights dialogues or press statements published on EU Summits with third countries or Association/Cooperation Council meetings have not proven to be an adequate source of information. [...] In its oral statement on the outcome of the 6th Meeting of the Cooperation Council between the EU and Ukraine in March 2003, the Presidency announced that the issue of media freedom had been discussed, but the official conclusions of the meeting do not refer to that discussion. This gap has to be filled, while taking into consideration the sensitivity of the issue and the necessary diplomacy and discretion in talks.<sup>509</sup>

By maintaining an informal channel, the EU gives itself some space for manoeuvre behind the scenes at its discretion and on the basis of the positions of the member states.

Nonetheless, some questions remain. If human rights and democracy were merely instrumental, why did the EU pursue a declaratory policy, especially on press freedom? On the other hand, if security and geopolitical concerns were paramount, why did the

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<sup>508</sup> Piccone and Youngs (2006).

<sup>509</sup> European Parliament (2003), *Annual Report on human rights in the world in 2002 and European Union's human rights policy*, A5-0274/2003 final, 16 July 2003, p. 41.



conflict resolution package of end 2004 include the restoration of democratic principles as one of its conditions?

Within the negotiating space of intergovernmentalism, there was space for policy entrepreneurs which could push the attention on human rights and democracy. The European Parliament and some active member states, especially the new member states, but also those most concerned with human rights issues such as Sweden, did raise the stakes and the rhetoric, backed by commitments made, on paper, in CFSP and in the PCA. The European Neighbourhood Policy, with its stronger focus on supporting democratisation processes, further raised the level of commitment expected of the EU. In other words, processes of persuasion on the appropriateness of pursuing a declaratory policy, and the possibility of 'shaming' should the EU not coalesce on condemning the breach of principles upon which all had converged in the treaties, can be evident especially when the events are being closely followed by the European press (as in both the Gongadze case and the Orange Revolution).

A final aspect that needs to be taken into account is the fact that, despite the logic of diversity, especially as far as Russia was concerned, EU member states did manifest a preference for coordination on human rights and democracy issues, or a 'habit of cooperation'. In fact, the fear that Poland and Lithuania would pursue unilateral policies in the Orange Revolution was one of the reasons behind the backing of Solana's involvement. CFSP has been used as the main vehicle of the EU's human rights and democracy positions, and in the 2000s it has been used mostly for these purposes. In Ukraine, CFSP appears to have been used to help produce a degree of unity at EU level. In other words, CFSP can be a tool to manage 'inter-relational' objectives and to pursue consensus-building.

## CHAPTER 7

### EU FOREIGN POLICY TOWARDS EGYPT

#### 1. *Introduction*

EU foreign policy towards Egypt is framed by the regional policies that have been developed towards the entire Mediterranean basin. Thus, in order to understand the role human rights and democracy play in EU policy towards Egypt, it is necessary to take some steps back and ask a number of broader questions. First of all, the relative global and regional importance of Egypt needs to be addressed: in what environment did the EU shape its policy towards Egypt? What other actors were important? This is necessary to take into account the external constraints on and opportunities enabling the EU foreign policy system (section 2). Secondly, the drive towards developing a collective policy towards the region too needs to be explored, as it was within this framework that EU policy towards Egypt was defined (section 3). The following section 4 will focus more closely on EU relations with Egypt within the necessary framework of policies towards the Mediterranean: the development of the Euro-Mediterranean Partnership (EMP) in the 1990s (section 4.1), foreign and security policy (section 4.2), and the European Neighbourhood Policy (ENP) in the 2000s (section 4.3).

The aim is to ascertain Egypt's importance from the point of view of European interests and motivations (security, economic and ideational) and to identify the role that EU institutions and member states have played in developing EU policies towards the Mediterranean and Egypt in particular. Section 5 will tie the empirical results of this overview to more theoretically driven questions about the main drivers, actors, processes, and limits in shaping EU policy towards Egypt, while the final section will offer the main conclusions and explanations.

#### 2. *Egypt's regional and global role*

Egypt's historic strategic importance can be grasped in a few words. For millennia it has been a crossroads between Europe, Asia and Africa linking the Mediterranean to the Indian Ocean, and a target of external powers since the days of the Roman Empire. The politics of its geographical position have played a greater role in shaping Egypt's

importance in the world than its relative economic importance – and its foreign policy has been regarded, in the words of a senior western diplomat in the Middle East, as ‘the country’s biggest export earner’.<sup>510</sup> ‘Whether we like it or not we are always at the centre of things,’ according to its longstanding president Hosni Mubarak.<sup>511</sup> Economically, the country constitutes the largest Arab market, with an educated elite and large labour force, enjoys modest oil reserves and ample gas reserves, and is at the centre of strategic communications networks between Europe and the Gulf.<sup>512</sup> But its economic importance has been thwarted by underdevelopment, due to a rapidly growing population (on average by about 2% a year), concentrated into the 5% of its territory that does not belong to the desert, uneven economic growth, often badly hit by the consequences of terrorist activities on the important tourism industry.

Since decolonisation, Egyptian presidents, have thus capitalised on the country’s geographical position to guarantee much needed foreign economic and military aid.<sup>513</sup> External constraints and opportunities have been the most important determinants of Egyptian regional and international policies, together with the personalisation of foreign policy thanks to the President’s ample powers.<sup>514</sup> With the exception of a period under Gamal Abdel Nasser (1956-1970), who sought Soviet support, the country has been a close partner of the United States.

After two wars (1967 and 1973), Anwar Sadat (1970-1981) was the first president of an Arab state to agree a peace treaty with Israel in 1979, at the cost of Egypt’s leadership role in the Arab League. Thanks to its pivotal role in the Israeli-Palestinian conflict, Egypt became a cornerstone of the policies of the Western states in the Middle East, able to entertain a dialogue with Israel, and enjoying fairly extensive contacts with the

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<sup>510</sup> Quoted in David Gardner, ‘Egypt: Regional influence on the way back’, *Financial Times*, 20 May 1996.

<sup>511</sup> James Whittington, ‘Mubarak returns to Arab centre stage’, *Financial Times*, 12 June 1996.

<sup>512</sup> Ibrahim A. Karawan (2002), ‘Identity and Foreign Policy. The Case of Egypt’, in Shibley Telhami and Michael Barnett (eds.), *Identity and Foreign Policy in the Middle East*, Ithaca and London, Cornell University Press: pp. 155-168; Rosemary Hollis (1999), ‘Capitalising on Diplomacy’ in Marr (ed), pp. 129-152.

<sup>513</sup> After depending on Soviet funds in the second half of the 1960s, on Arab sources in the 1970s, since 1978 Egypt has depended on US aid, and is the second largest recipient of US aid after Israel. Ali E. Hillal Dessouki (1991), ‘The Primacy of Economics: the Foreign Policy of Egypt’, in Ali E. Hillal Dessouki and Bahgat Korany (eds.), *The Foreign Policies of Arab States*, Boulder, Oxford, San Francisco: Westview Press, pp. 156-185.

<sup>514</sup> Raymond Hinnebusch (2002), ‘The Foreign Policy of Egypt’, in Raymond Hinnebusch and Anoushiravan Ehteshami (eds.), *The Foreign Policy of Middle East States*, Boulder and London: Lynne Rienner, pp. 91-114; Dessouki (1991).

Palestinian leadership. With the biggest regular army in the Middle East, as a privileged interlocutor of the United States, and through its role in the Middle East negotiations, its importance within the Arab world remained as a counterbalance to Iran after its 1979 Revolution and as an ally of the Gulf states especially after the 1990 invasion of Kuwait. Indeed, Egypt recovered its leadership of the Arab League once it took the lead in mediating between Arab states, for instance between Iraq and Kuwait in 1990 and participating in the war against Iraq in 1990-1991,<sup>515</sup> for which the country had a large proportion of its foreign debt nearly written off.<sup>516</sup> For all these reasons, the US remained a fundamental actor in the region and without doubt the most important external policy shaper, at the expense of the European states.

### 3. *Relations with Europe*

Prior to the 1990s, Egypt's pro-Western foreign policy orientation inaugurated by Sadat never became a pro-European foreign policy because of the dominance of the relationship with the US and the EC's inability to offer any alternative options to US hegemony.<sup>517</sup> The end of the Cold War stimulated major shifts in Egypt's regional and geostrategic position, not least because of the greater regional fluidity that superpower competition had frozen.<sup>518</sup> Since taking over after Sadat's assassination in 1981, Mubarak sought to 'reinvent' Egypt's role by diversifying its regional and international policies, with the aim of re-establishing its central role.<sup>519</sup> Participation in the Gulf War brought Egypt back into the fold of the Arab world, and many Arab states followed Cairo's example in normalising relations with Israel. With regard to the peace process, even if Egypt is technically not involved in negotiations, it acted as a facilitator, established a direct relationship with Yasser Arafat, and promoted talks on regional issues, such as refugees, security and economics.<sup>520</sup> The final pillar of Mubarak's

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<sup>515</sup> On the Gulf, the Middle East and relations with the US see also Abdel Moneim Said Aly and Robert H. Pelletreau (2001), 'U.S.-Egyptian Relations', *Middle East Policy*, Vol. VIII, No. 2, June, pp. 45-58.

<sup>516</sup> Of its foreign debt that totalled \$50 billion, \$15 billion were cancelled and \$10 billion were rescheduled on easy terms. See 'The Sphinx knows how', *The Economist*, 18 January 1992. The reduction of foreign debt provided an opportunity for the Egyptian government to start introducing macro-economic reforms, though not as bold as promised to the donor community. See Brad Glasser (2001), 'Foreign Aid and Reform: The Diverging Paths of Egypt and Jordan in the 1990s', *EUI Working Papers*, RSC No. 2001/20.

<sup>517</sup> Selim (1997).

<sup>518</sup> George Joffé (1999), 'The Future of the Middle East and Egypt', in Marr (ed.), pp. 171-191.

<sup>519</sup> Hollis (1999).

<sup>520</sup> Hollis (1999).

foreign policy strategy was to establish closer relations with European states, also to counterbalance its dependence on US aid.

The long history of economic and human interdependence between the two shores of the Mediterranean has not been translated into a strong role of the EU in the region, especially if compared to the US.<sup>521</sup> Because of the legacy of colonial ties and specific national interest of some member states in certain countries in the Mediterranean, collective EC/EU policy was slow to develop. Former imperial powers cultivated bilateral relations with their ex colonies, despite the difficult heritage of liberation wars and decolonisation processes. The key interests in Egypt of countries like the UK and France were - and remained - political dialogue on regional security issues, trade, access to energy, and security, especially with regard to Arab-Israeli relations.<sup>522</sup> But rather than develop a collective policy towards individual countries, Community initiatives were directed to the entire basin. Their development requires some analysis, because some of the key features are relevant towards explaining the nature of EU policy towards Egypt.

At the Community level even economic relations have been piecemeal, 'random, unsystematic and on a case-by-case basis'.<sup>523</sup> A 'Global Mediterranean Policy' was developed only in the 1970s, motivated by trade interests, access to oil, an attempt to counterbalance the increasing Soviet penetration in the region, and a desire to make the weight of the European Economic Community (EEC) felt internationally, especially in view of increasing divergence with the US over the Middle East.<sup>524</sup> But it was effectively a commercial policy to govern bilateral relations between the EEC and individual Mediterranean states even if it was occasionally used politically, for example by excluding Libya after 1986.<sup>525</sup> The 1973 oil crisis and the OPEC embargo against some EEC member states constituted the trigger towards developing more concerted

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<sup>521</sup> Rosemary Hollis (1997), 'Europe and the Middle East: power by stealth?', *International Affairs*, Vol. 73, No. 1, pp. 15-29.

<sup>522</sup> Søren Dosenrode and Anders Stubkjaer (2002), *The European Union and the Middle East*, London, New York: Sheffield Academic Press, chapter 4.

<sup>523</sup> A. Haiifaa Jawad (1992), *Euro-Arab Relations: A Study in Collective Diplomacy*, Reading: Ithaca Press, quote on p. 7; Ricardo Gomez (1998), 'The EU's Mediterranean policy. Common foreign policy by the back door?', in Helen Sjursen and John Peterson (eds.), *A Common Foreign Policy for Europe? Competing Visions of the CFSP* (London: Routledge), pp. 133-51.

<sup>524</sup> Jawad (1992), pp. 27-30; Gomez (1998); Bicchi (2007), chapter 3.

<sup>525</sup> Dosenrode and Stubkjaer (2002), chapter 4.

collective action, articulated around two fields: Euro-Arab dialogue and involvement in the peace process.<sup>526</sup> The first initiative ended when Egypt was expelled from the Arab League in 1979; the second eventually led to the 1980 Venice Declaration on the Israel-Palestine conflict, a lasting common EPC position on the subject, even if during the 1980s the member states, France and the UK in particular, returned to bilateral policies. Throughout this period, however, the many declarations adopted by the member states, mostly related to the conflict in the Middle East, did not amount to more than declaratory positions.<sup>527</sup>

The EEC's enlargements of the 1980s entailed negative economic repercussions on the Southern Mediterranean. By the time Spain and Portugal acceded to the EEC in 1986, the restriction of trade preferences (especially on agricultural goods) and the reduction of aid led Egypt and the Southern partners to demand a more comprehensive and generous policy.<sup>528</sup> The Gulf War, and the way in which it highlighted the limits of EPC, also constituted another stimulus towards a stronger Mediterranean Policy,<sup>529</sup> inaugurated in December 1990. This too, however, was limited to governing economic and trade relations between the two shores.<sup>530</sup> Increasing engagement was thus driven by externalisation processes and the 'capabilities-expectations' gap.

On the EU side, during the first years of the 1990s a growing convergence in perceptions regarding concerns over migration and the rise of Islamic fundamentalism started to become visible between the member states as well as in the institutions.<sup>531</sup> In contrast with France's policy entrepreneurship of the 1970s,<sup>532</sup> in the 1990s, Spain and Italy (both exposed by geographical proximity to the risks emanating from the Southern Mediterranean shore, but alone too weak to pursue bilateral foreign policies) and the Commission were the actors that most pushed for the development of a collective Mediterranean policy.<sup>533</sup> The context of enlargement towards the East also played a

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<sup>526</sup> Jawad (1992); Bicchi (2007), chapter 3.

<sup>527</sup> Gomez (1998).

<sup>528</sup> Dosenrode and Stubkjaer (2002), chapter 4. See also Gomez on the impact of the accession of Spain.

<sup>529</sup> Dosenrode and Stubkjaer (2002), chapter 5.

<sup>530</sup> Hollis (1997).

<sup>531</sup> Gomez (1998); Bicchi (2007), chapter 4.

<sup>532</sup> Bicchi (2007), chapter 3.

<sup>533</sup> Richard Gillespie (1997a), 'Spanish Protagonismo and the Euro-Med Partnership Initiative', in Gillespie (ed.), pp. 33-48; Alison Pargeter, (2001) 'Italy and the Western Mediterranean', *ESRC 'One Europe or Several?' Programme Working Paper 26/01*; Monar (1998).

role. Rome had been arguing for rebalancing the distribution of resources between Central and Eastern Europe and the Mediterranean and that the two regions should receive 25% each of the external relations budget.<sup>534</sup> France too, hitherto keen to preserve its standing in North Africa and autonomy of action over its *politique arabe*, shifted towards a *politique méditerranée* through multilateralism after its involvement in the 1991 Gulf War had stained its reputation in the Arab countries,<sup>535</sup> and because of its inability to prevent civil war in Algeria.<sup>536</sup> Paris's commitment to counterbalance Germany's role in championing eastwards expansion ensured that the Mediterranean project gained political weight. The Commission also took advantage of the French and Spanish consecutive presidencies of the EU to contribute to shaping the emerging policy towards the Mediterranean.<sup>537</sup> According to its Spanish Commissioner Manuel Marin, 'just as the future of the Baltic states cannot be a matter of interest only to Danes, Germans and British, so the fate of Algeria and Egypt cannot be of interest only to France, Spain and Italy'.<sup>538</sup>

The pro-Mediterranean constituency, mostly thanks to the 'policy entrepreneurship' of Spain, backed by Italy, France and the Commission,<sup>539</sup> had to negotiate with the Northern member states, especially Germany and the UK, most interested in EU enlargement towards the East.<sup>540</sup> In essence, the development of an EU position on the Southern Mediterranean was a result of a compromise between Eastern and Southern priorities, rather than a common view towards the region.<sup>541</sup> The balance between these

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<sup>534</sup> Gomez (1998).

<sup>535</sup> Pia Christina Wood (2002), 'French Foreign Policy and Tunisia: Do Human Rights Matter?', in *Middle East Policy*, Vol. IX, No. 2, June, pp. 92-110.

<sup>536</sup> David Gardner, 'EU turns strategic eyes to south', *Financial Times*, 17 May 1995.

<sup>537</sup> Monar, Jörg (1998), 'Institutional Constraints of the European Union's Mediterranean Policy', *European Foreign Affairs Review*, Vol. 3, No. 2, Autumn 1998, pp. 39-60. Paris and Madrid had reached an agreement to coordinate the development of EU Mediterranean policies, See Reuter, 'Franco-Spanish summit opens', published in *Financial Times* 21 October 1994.

<sup>538</sup> Quoted in Lionel Barber and Francis Ghiles, 'Maghreb nations test EU's united front: No common mechanism for handling powder-keg to the south', *Financial Times*, 6 April 1994. Marin was Commissioner for development and cooperation, but was also responsible for economic external relations with southern Mediterranean countries, Latin America, Asia, African, Caribbean and Pacific countries, and humanitarian aid. See also David Gardner, 'Brussels urges wider trade zone', *Financial Times*, 20 October 1994, with the Commission insisting on the need to 'rebalance' the EU's relationships with its neighbours.

<sup>539</sup> Bicchi (2007), chapter 5.

<sup>540</sup> Gillespie (1997a).

<sup>541</sup> Esther Barbé (1998), 'Balancing Europe's Eastern and Southern Dimensions', in Zielonka (1998b), pp. 117-29; Gomez (1998); David Buchan, 'France aims to divert aid southward', *Financial Times*, 9 December 1994; Lionel Barber, 'Essen Summit: Europe recovers its sense of direction', *Financial Times*, 12 December 1994.

two dimensions of EU external relations was worked out during the 1994 Essen European Council, and at the June 1995 Cannes summit the member states reached an agreement on increasing funds towards the Mediterranean and on the creation of the MEDA external assistance programme.

External contingencies and demands were also to play a role in the development of a collective policy. Growing optimism over the Oslo Accords, as well as fear of social and political collapse in Algeria,<sup>542</sup> helped convince the other member states of the need to develop a stronger collective policy, while the North African states too had been demanding a revision of bilateral agreements, concerned about the impact of the Single Market on preferential trade concessions. Morocco introduced the concept of free trade in a 'Mediterranean space'.

In 1991, in a speech at the European Parliament, Mubarak proposed the creation of a 'Mediterranean Forum' which would give priority to economic and trade issues but could also include political, security, and cultural issues.<sup>543</sup> Egypt's motivations originated in its attempt to diversify its foreign policy position after the Cold and Gulf Wars, to develop trade relations with European states, and in the fact that it was excluded from the so-called '5+5 group'.<sup>544</sup> By expanding participation to the Middle East it wanted to ensure that EU interests were not limited to the Maghreb, which appeared the priority of the 'sponsors' of a Mediterranean policy, nor undermined by the EU's increasing attention towards Eastern Europe.<sup>545</sup> Thus when the EU proposed the Euro-Mediterranean Partnership (EMP) in October 1994, the project found a positive response in Cairo, whose trade and foreign ministries in particular were confident that the Association Agreement would contribute to creating employment, attracting foreign investments, offering market opportunities for Egyptian exports and providing additional loans and technical assistance.<sup>546</sup> The Arab states also had been calling for a greater European involvement in the region as a counterbalance to the dominance of the

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<sup>542</sup> David Gardner, 'Europe looks for southern comfort', *Financial Times*, 28 October 1994.

<sup>543</sup> Selim (1997); Dosenrode and Stubkjaer (2002), chapter 5; interview with officials at the Egyptian Ministry of Foreign Affairs, Cairo, 31 May 2007.

<sup>544</sup> The group includes Morocco, Algeria, Libya, Tunisia and Mauritania and Spain, Portugal, France, Italy, and Malta.

<sup>545</sup> Interview with officials at the Egyptian Ministry of Foreign Affairs, Cairo, 31 May 2007.

<sup>546</sup> Selim (1997); Interview with officials at the Egyptian Ministry of Foreign Affairs, Cairo, 31 May 2007.



US, especially with regard to the Israeli-Palestinian conflict,<sup>547</sup> a view that persisted even during the war against Iraq (2003 onwards).<sup>548</sup>

In terms of motivations, economic and commercial interests of the member states were not the prime aim, given the small size and limited significance of the Mediterranean market, although access to and investments in energy did represent an element for some countries such as Italy (Egypt's second largest trade partner), the UK, and the Netherlands (through the investments of their petrol giants ENI, BP and Royal/Shell).<sup>549</sup> On the other hand, the level of development and the growing population of the southern shore did represent a collective concern.<sup>550</sup> Coupled with growing discontent towards the more or less authoritarian post-colonial regimes, this fuelled perceptions of mass migration flows towards Europe of people in search of employment opportunities and of a revival of Islamic fundamentalism.<sup>551</sup> In the case of Egypt, home to the oldest and one of the largest Islamist parties in North Africa and the Middle East (the Muslim Brotherhood), this concern was expressed by all member states.<sup>552</sup> According to *The Economist*, what united the two shores was fear:

in Europe the fear is of Islamic fundamentalism on the other shore, and of immigrants fleeing either that or poverty. In North Africa and the Middle East, it is the fear that Europe will turn inwards and expel migrants, who will return to make their matters worse at home.<sup>553</sup>

These concerns, if strongly felt by the more directly exposed southern EU member states, were increasingly understood by the northern ones too, such as Sweden, but also UK and Germany.<sup>554</sup>

However, the northern EU member states remained focused on more traditional security concerns, such as security in the Middle East, and broader regional security concerns,

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<sup>547</sup> Hollis (1997).

<sup>548</sup> Hanaa Ebeid (2004), 'The Partnership in Southern Eyes: Reflections on the Discourse in the Egyptian Press', *EuroMeSCo paper*, No. 37, October.

<sup>549</sup> Interviews, embassies of the member states, Cairo: 29 (1), 30 May 2007 (1) and (4).

<sup>550</sup> Kienle (1998a).

<sup>551</sup> Isabel Romeo (1998), 'The European Union and North Africa: Keeping the Mediterranean "Safe" for Europe', *Mediterranean Politics*, Vol. 3, No. 2, pp. 21-38.

<sup>552</sup> Interviews, Council of the EU, Brussels: 14 May 2007; 1 April 2008, and in the embassies of EU member states, Cairo: 29 May (2) and (3), 30 May 2007 (1) and (4).

<sup>553</sup> 'A new crusade', *The Economist*, 2 December 1995.

<sup>554</sup> Tobias Schumacher (2001), 'The Mediterranean as a New Foreign Policy Challenge? Sweden and the Barcelona Process', *Mediterranean Politics*, Vol. 6, No. 3, pp. 81-102.

such as the proliferation of nuclear, chemical and biological weapons.<sup>555</sup> It is significant, therefore, that the convergence between member states over the need to cooperate on Mediterranean affairs was driven by different interpretations and perceptions of security concerns.<sup>556</sup>

With respect to Egypt, the UK, France and to an extent Germany, saw the country as an important partner for key regional and global security issues. Even if London's relations with Cairo had loosened since the Suez affair, with fewer direct material interests there, Britain continued to view it as a fundamental partner in a broad range of international and regional dossiers, first and foremost the Middle East, where it is seen as the most important local facilitator of dialogue between Israel and the Palestinian authorities.<sup>557</sup> Nonetheless, Egypt also retained its importance bilaterally, and UK policy towards the country was not significantly influenced by EU policy or positions.<sup>558</sup> France too has courted Cairo for its role in the Middle East, equally eager to enjoy a leadership role in negotiating the conflict, though the strength of bilateral ties has not been as important as Britain's.<sup>559</sup> Apart from the Middle East, both countries see Egypt as a partner on a broad range of issues regarding Iraq, the broader Middle East, Africa, Sudan, and cooperation on terrorism (though on this issue London, having offered asylum to many Egyptians, and Cairo did not always see eye to eye before September 11). Other countries have different priorities with regard to Egypt. Italy, for instance, is Egypt's second largest trade partner after the US, and places much importance on cooperation in migration management.<sup>560</sup> The Netherlands, in recent years, has privileged cultural dialogue and developing relations with Islamic countries, especially in view of the domestic difficulties that the country has experienced in integrating communities of immigrant origin after September 11.<sup>561</sup>

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<sup>555</sup> Rosemary Hollis (2000), 'Barcelona's First Pillar: An Appropriate Concept for Security Relations?', in Sven Behrendt and Christian-Peter Hanelt (eds.), *Bound to Cooperate. Europe and the Middle East*, Gütersloh: Bertelsmann Foundation Publishers, pp. 107-130.

<sup>556</sup> Bicchi (2007).

<sup>557</sup> Mark Huband, George Parker, 'Blair to call for bigger EU role in Mideast', *Financial Times*, 18 April 1998. At that time Britain also held the Presidency of the EU.

<sup>558</sup> Interview, embassy of EU member state, Cairo: 30 May 2007 (1).

<sup>559</sup> See for instance, Judy Dempsey and Robert Graham, 'France, Egypt seek Mideast peace summit', *Financial Times*, 29 July 1998.

<sup>560</sup> Interviews, embassies of EU member states, Cairo: 29 May 2007 (1) and (2).

<sup>561</sup> Interviews, embassies of EU member states, Cairo: 30 May 2007 (3) and (4).

Engagement of EU member states with Cairo thus depended largely on the issue at stake. *Per se*, Egypt has not been the partner of any particular member state in a similar way to relations between Spain and Morocco or France and the countries of the Maghreb. In other words, Egypt does not enjoy the ‘sponsorship’ of any particular member state.<sup>562</sup> It was its role vis-à-vis other issues that ensured its perceived importance in European capitals as a key partner. And the paramount importance of some of these other issues was such that member states pursued bilateral policies regardless of the EU framework.<sup>563</sup> Bilateral ties have also been strengthened on select issues since September 11.<sup>564</sup>

#### 4. *Institutionalising relations with Egypt*

This section is divided into three parts. The first examines the multilateral framework within which EU relations with Egypt were developed. Given that the Euro-Mediterranean Partnership aimed to be an all-embracing framework with a strong regional dimension, relations with Egypt inevitably need to be examined through this initiative. Furthermore, the Association Agreement with Egypt that replaced the outdated 1977 agreement came into force only in 2004, after protracted negotiations and considerable resistance in Cairo, making the EMP the main institutionalised forum for EU relations with Egypt. The second section examines CFSP proper. Here there was a regional and a bilateral agenda. The 2000 Common Strategy and the 2004 Strategic Partnership are directed to the entire region, whereas at the bilateral level CFSP was used, but to a limited extent. The third part examines the developments in the European Neighbourhood Policy from 2003 onwards. In this framework the bilateral dimension was stronger, as the ENP entailed the development of a more tailor-made policy towards individual countries.

The chronological dimension should not be overlooked. Over time, EU policy towards Egypt became more focused. First of all, bilateral relations between the EU and Egypt were strengthened by the ratification of the AA. In 2005 the two sides started

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<sup>562</sup> Interviews, embassies of EU member states, Cairo: 29 (2), 30 (1) May 2007, and embassy of the Arab Republic of Egypt, Brussels, 16 May 2007.

<sup>563</sup> This was confirmed through interviews, embassies of EU member states, Cairo: 29 May (1) and (4), 30 May 2007 (1) and (4), Ministry of Foreign Affairs, Cairo: 31 May 2007, and embassy of the Arab Republic of Egypt, Brussels: 16 May 2007.

<sup>564</sup> Joffé (2008).

negotiations for an Action Plan in the framework of the ENP, which was approved only in 2007. Secondly, international changes following September 11 contributed to rethinking EU strategy towards the region. On the one hand the focus on terrorism and Islamic fundamentalism was detrimental to the reform process that was supposed to be entailed in the Barcelona Process. The invasions of Afghanistan and Iraq deepened the rift between the Arab world and the West, especially with the US and those EU member states involved in the military interventions. On the other hand Washington's 'regime change' rhetoric brought the democratic and human rights deficits in Egypt to the fore, while the EU initiated a partial evaluation of its policies thus far, also in the field of human rights and democracy.

#### *4.1 The Euro-Mediterranean Partnership*

Launched in Barcelona in 1995, the logic behind the very broad set up of the Euro-Mediterranean Partnership was that supporting the economic development of the Southern Mediterranean partners would support their stability which in turn would automatically contribute to the stability of the EU as a whole. This was seen as the best means to address those 'hard' and 'soft' security challenges that were the prime motivation behind the EU's engagement.<sup>565</sup> Economics were thus intended as the means for securing stability. One underlying assumption was also that economic development and prosperity would also lead to democratisation, despite the lack of evidence to support this proposition.<sup>566</sup>

The EMP – also known as the Barcelona Process - is structured in three broad chapters inspired by the Helsinki process developed during the last fifteen years of the Cold War through the Conference for Security and Partnership in Europe.<sup>567</sup>

- i) a political and security partnership, based *inter alia* on the principles of human rights and democracy, and of dialogue and cross cultural respect. In this field the aim was to build security through partnership, cooperation, and mutual confidence building, on the model of the Helsinki process.

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<sup>565</sup> Bicchi (2007).

<sup>566</sup> Kienle (1998a).

<sup>567</sup> Beverly Crawford (2004), 'Why the Euro-Med Partnership? Explaining the EU's Strategies in the Mediterranean Region', in Vinod K. Aggarwal and Edward A. Fogarty (eds.), *Between Regionalism and Globalism: European Union Interregional and Transregional Trade Strategies*, New York: Palgrave, pp. 93-117.

- ii) An economic and financial partnership with the ambitious aim of creating a Free Trade Area across the two shores. Here the ultimate aim is to create a 'zone of prosperity' through economic integration.
- iii) A social and cultural dialogue to nourish cross-shore exchanges.

The EMP created a number of multilateral and bilateral institutions through which relations between the two shores were managed (see box 7.1 below). Alongside this multilateral structure, the Association Agreements, signed between the EU and the individual Southern Mediterranean states, are governed bilaterally following the same pattern (Ministerial Council and Senior Officials Committees) of the EMP (box 7.2 below). Responsibility for managing and implementing the EMP lies largely with the Commission, though it acts on the basis of the Council decisions.<sup>568</sup>

The EMP is thus characterised by a dense institutionalisation of multi- and bilateral policy making processes involving EU and national bureaucrats and politicians from the two shores flanked by many networks formed by non-governmental actors including advocacy groups and associations, academics and universities, research institutes and think tanks, journalists and media representatives and so on. This means that there is ground to explore the possibility of 'policy-shaping' processes occurring at the 'sub-systemic' level, and for socialisation dynamics.

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<sup>568</sup> See also Eric Philippart (2003), 'The Euro-Mediterranean Partnership: A Critical Evaluation of an Ambitious Scheme', *European Foreign Affairs Review*, Vol. 8, No. 2, pp. 201-220.

**Box 7.1: Institutional structures governing EU relations with the South Mediterranean**

<p>Euro-Mediterranean Conference</p> <p>Euro-Med Committee</p> <p>Sectoral ministerial conferences</p> <p>Sectoral ministerial working groups/committees</p>	<p>Meets twice yearly (informally and formally) at Ministerial level with representatives of the EU troika and the Southern Mediterranean governments. It has the overall responsibility for the running of the EMP, including political dialogue, and is responsible for handling any dispute.</p>
<p>Senior officials' Committee</p>	<p>Meets six times a year. Is in charge with the functioning of the EMP. Composed by members of the EU Troika and the partners but work is prepared by the Commission.</p> <p>Human rights dialogue was introduced in the EMP under the Swedish Presidency in 2001.</p>
<p>Euro-Mediterranean Parliamentary Assembly (since 2004)</p>	<p>Includes members of the EP and the national parliaments of all the EMP states. Meets at least one a year. But its role is purely consultative</p>
<p>Euro-Mediterranean networks</p>	<p>Sectoral networks of cultural and research institutes, of NGOs (Euromed Non Governmental Platforms)etc.</p>

Negotiations with Cairo for the AA were protracted and difficult. The main reasons for the delay regarded EU trade protectionism in certain goods, Egypt's search for greater concessions on agricultural exports, its concern about the social impact of industrial and trade liberalisation, and competition with EU products – issues that were widely discussed in some of the press<sup>569</sup> but that found little appreciation among the EU member states.<sup>570</sup> However late in being approved, one advantage offered by the AA was that since its entry into force relations with Egypt have not been confined to the multilateral framework of the EMP, as the box below illustrates. The aims of the AA are similar to those of the PCA with Ukraine: it provides a framework for political dialogue aimed at a process of liberalisation of trade in goods, services and capital, is supposed to contribute to economic and social development in Egypt, to promote regional

<sup>569</sup> Niveen Wahish, 'Egypt-EU partnership enters final stage', *Al-Ahram Weekly Online*, 1-7 July 1999; Simon Taylor, 'Patten seeks to boost EuroMed ties', *European Voice*, 3 August 2000; Niveen Wahish, 'Free trade or false hopes?' *Al-Ahram Weekly Online*, 28 June-4 July 2001; Ebeid (2004).

<sup>570</sup> Elizabeth Wise, 'EU ministers face dilemma in Egypt talks', *European Voice*, 17 October 1996; David Gardner, 'Relations With Europe: "Partnership" falls well short of expectations', *Financial Times*, 13 May 1997.

cooperation, and further cooperation with the EU. In addition, it envisages the completion of a Free Trade Area (theoretically by 2010). Given the volume of Egypt's trade with the EU (around 40% of its exports and 34% of its imports are with the EU) the agreement contained a strong economic incentive for Cairo.<sup>571</sup>

**Box 7.2: Institutional structures governing relations with Egypt**

The EU-Egypt Association Council	Is supposed to meet regularly at ministerial level, Since the AA entered into force there have been 3 meetings
EU-Egypt Association Committee	Held at the level of senior officials to discuss political and economic issues as well as bilateral or regional co-operation.
Subcommittees	

EU institutions repeatedly recognised that the Barcelona Process had not made sufficient progress (box 4 in the Annexes synthesises developments of the EMP and of relations with Egypt, p. 264). By 1999 diplomats were making efforts to communicate the positive aspects of the Partnership: the fact that the Arab and Israeli states sat around the same table (though not on all occasions), and that the Southern Mediterranean countries had begun to accept the inclusion of the 'human rights clause' in the Association Agreement.<sup>572</sup> But in 2000 the planned Charter for Peace and Stability was abandoned, while by 2001 the agenda was expanding to include a stronger focus on migration and the growing Justice and Home Affairs dossier in the first and third baskets (as was the case with Ukraine), but also on cultural dialogue projects. Both received new impetus by September 11, the first in terms of strengthening cooperation, the second based on a widespread belief among Commission officials and some member states (notably Sweden and Spain) of the need to counter the 'clash of civilisations' mantra.<sup>573</sup> Counter-terrorist cooperation was thus launched through the Valencia Action Plan in 2002 and all new Association Agreements included anti-terrorism clauses.<sup>574</sup> After the terrorist bombings in Casablanca in May 2003, MEDA aid was also directed at counter-terrorist programmes. Even if it was agreed that cooperation in the fight against terrorism should

<sup>571</sup> James Drummond, 'EU agreement to kick-start policy reforms', *Financial Times*, 9 May 2001.

<sup>572</sup> Simon Taylor, 'Arab-Israeli stalemate threatens EuroMed programme', *European Voice*, 4 February 1999.

<sup>573</sup> Richard Gillespie (2003), 'Reshaping the Agenda? The Internal Politics of the Barcelona Process in the Aftermath of September 11', in Jünemann (ed.), pp. 21-36.

<sup>574</sup> Euro-Mediterranean Agreement Establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part (2004), Official Journal L 304, 30 September, art. 59.

respect human rights principles,<sup>575</sup> this area of security cooperation stood uneasily with respect of human rights.<sup>576</sup>

As the tenth anniversary of the Barcelona Process in 2005 came closer, the institutions and bodies involved in the EMP began a process of evaluation of the achievements and merits of the structure and its policies.<sup>577</sup> The evaluation that emerged of the EMP was a 'mixed picture', where the relevance of the Barcelona Declaration was recognised, notwithstanding the changing circumstances,<sup>578</sup> though results were considered far less satisfactory than the principles, structure and aims. But the summit to celebrate the anniversary was widely seen as a failure, with the attendance of few high-level Mediterranean partners and the ensuing impossibility of reaching commonly agreed conclusions. The conference held the following year under the Finnish Presidency was left to pick up the pieces: the simple acceptance of the conclusions was considered an achievement itself.<sup>579</sup>

## 4.2 CFSP

The transition from EPC to CFSP did not change the political and security deficit of the EU's policies towards its immediate south.<sup>580</sup> In fact, the CFSP continued the EU's selective engagement with regional issues. While it was resorted to with regard to Libya and the Middle East Peace Process, on other issues it remained silent, such as over Algeria throughout the 1990s and the Western Sahara conflict.

At the request of Spain, Italy, and Greece, in 2000 the EU's third and last Common Strategy was devised to satisfy those member states that had a stronger commitment

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<sup>575</sup> Euro-Mediterranean Mid-Term Meeting of Ministers of Foreign Affairs (2004), *Presidency Conclusions*, Dublin, 5-6 May

<sup>576</sup> Youngs (2005); Joffé (2008).

<sup>577</sup> See European Commission (2005d), *Tenth Anniversary of the Euro-Mediterranean Partnership: A work programme to meet the challenges of the next five years*, Commission Communication to the Council and the European Parliament, Document number not available, [http://ec.europa.eu/external\\_relations/euromed/barcelona\\_10/docs/10th\\_comm\\_en.pdf](http://ec.europa.eu/external_relations/euromed/barcelona_10/docs/10th_comm_en.pdf); EuroMeSCO (2005), *Barcelona Plus. Towards a Euro-Mediterranean Community of Democratic States*, Lisbon: EuroMeSCO Secretariat; Euro-Mediterranean Conference (2005a), *The Euro-Mediterranean Partnership, 10 Years After Barcelona: Achievements and Perspectives. Conclusions*, Luxembourg: 30-31 May.

<sup>578</sup> Euro-Mediterranean Conference (2005), *The Euro-Mediterranean Partnership, 10 Years After Barcelona: Achievements and Perspectives. Conclusions*, Luxembourg: 30-31 May.

<sup>579</sup> Euro-Mediterranean Conference (2006), *Conclusions*, Chairman's statement annexed, Tampere: 27-28 November 2006 See also box 4 in the Annexes.

<sup>580</sup> Gomez (1998), p. 141.



towards the South (see box 3.2, p. 78).<sup>581</sup> But it received support by some northern member states also because it was seen as strengthening the EU's position as a unitary actor in the region, symbolically reaffirming the EU's commitment towards the Mediterranean, and helping simplify EU decision-making structures because it allowed for the use of QMV for joint actions.<sup>582</sup>

Despite the problems that the Barcelona Process had encountered during its first five years, the Common Strategy did not offer any evaluation of it, but reiterated its structure and three 'chapter' philosophy. It did, however, reflect developments in the EU by referring to the 1999 Tampere Conclusions of the European Council on Justice and Home Affairs regarding the coordination on migration policy, and ESDP developments.<sup>583</sup> In other words, as much as the Common Strategy on Ukraine, it did not introduce any innovative approach nor did it play an important role in pushing for increased cooperation between the member states, as the Council Report later commented,<sup>584</sup> but contributed to broadening the areas of interest for cooperation.

Given its failure, and in the context of rethinking Barcelona after September 11 and the US changing policy towards the Middle East, in 2004 the High Representative produced, in coordination with the Commission, a 'Strategic Partnership with the Mediterranean and the Middle East' which fine-tuned the EU's approach to the region (extended to the Gulf), somewhat identifying a new hierarchy of priorities, which also included new policy fields reflecting novel challenges posed by the consequences of September 11. The cornerstones of the Strategic Partnership can be found in an implicit recognition that the EU had failed to develop a concerted policy towards the region, also due to an inability to prioritise the areas for action, and that cooperation of partner governments was fundamental for domestic change. Among the principles recognised were: the importance of the partnership approach, the need for differentiation between countries (as the European Neighbourhood Policy was preparing to do), the recognition that reform processes need to be generated endogenously and cannot be imposed by

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<sup>581</sup> Simon Taylor, 'Hopes rise for early deal on EU strategy for Mediterranean', *European Voice*, 20 January 2000; Claire Spencer, (2001), 'The EU and Common Strategies: The Revealing Case of the Mediterranean', *European Foreign Affairs Review*, Vol. 6, No. 1, pp. 31-51.

<sup>582</sup> Schumacher (2001).

<sup>583</sup> Spencer (2001).

<sup>584</sup> The Secretary General/High Representative (2000), Common Strategies Report, Brussels: 21 December, reprinted in Missiroli (2001b), Annex E. See also Chapter 3, section 4.2 on CFSP.

external actors, the need for consistent EU policies, and the need for a more pragmatic and concrete policy agenda. It is worth noting the change in terminology whereby democracy was abandoned in favour of rule of law and good governance (see box 3.3, p. 79). This also followed the ENP concept of 'ownership', whereby both the Commission and the Council considered it essential to ensure that their partners would not feel that relations were exogenously imposed.<sup>585</sup> Here too the Council recognised the need for differentiation between partners.<sup>586</sup>

The general guidelines on EU action towards Egypt were therefore included in the framework of EU policy towards the whole region. At the same time, Cairo was the object of specific CFSP positions. As box in chapter 8.2, p. 202, shows, and as was the case with Ukraine, the EU resorted to CFSP to express its concern on a number of specific cases relevant to human rights and democracy. In fact, CFSP in Egypt has been used mostly on such issues, such as over the trial of Saad Eddin Ibrahim, or elections in 2005. The content of such statements was largely declaratory: the EU never mentioned the possibility of taking any action nor did it voice the possibility that such domestic problems could have an impact on the country's relations with the EU. Instead, stronger condemnation was used at the confidential level through a few *démarches* issued over the years. It is also worth noticing, before a more in-depth discussion on these issues in Chapters 8 and 9, that this occurred largely after 2000.

#### 4.3 *The European Neighbourhood Policy*

The recognition of the need to differentiate between countries rather than tie them to a regional framework was also contained in the European Neighbourhood Policy developed between 2003 and 2004. Although initially conceived with the East European countries in mind, the Mediterranean partners were soon included in the ENP, largely as a consequence of the preoccupation of the Southern EU states that with enlargement, resources and political attention would move further East at the expense of the

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<sup>585</sup> This point was reiterated by officials interviewed in the Council but especially the Commission, Brussels, 15 May 2007 (1) and (2).

<sup>586</sup> European Council (2004c), *Report on an EU Strategic Partnership with the Mediterranean and the Middle East*, June.

Mediterranean.<sup>587</sup> The failures and problems encountered in the regional framework of the Barcelona Process, largely but not exclusively due to the downward spiral of the Middle East Peace Process, also strengthened the rationale in favour of introducing a more country-specific approach towards the Southern neighbours. With regard to some EMP partners, whose non EU members were being reduced by the accession to the EU of Cyprus and Malta in 2004 and Turkey starting accession negotiations in 2005, the ENP represented a chance for those countries most willing to strengthen relations with the EU to do so at bilateral level, disengaging themselves from the regional format that for some represented a setback, given the diversity of countries involved and the high level of conflict in the region. The ENP added a further layer to EU policies towards its South rather than a replacement of existing structures.

The Action Plan negotiations with Egypt were extremely long compared to those carried out with the other ENP countries (the Country Strategy Report was published March 2005 while the Action Plan was approved in January 2007), and the biggest hurdles were over political matters, with human rights as the hardest obstacle.<sup>588</sup> Initially, the EU attempted, without success, to include lifting the emergency laws in the aims of the Action Plan.<sup>589</sup> Later, the major controversy emerged over the EU proposal to set up a subcommittee on human rights (as had been done with Morocco and Tunisia), which Cairo opposed. Eventually, the subcommittee was given the broader mandate of 'political matters: human rights and democracy and international and regional issues', on the model of the one established with Israel.<sup>590</sup> These issues will be discussed at greater length in chapter 8.

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<sup>587</sup> Interviews, European Commission and Council of the EU, Brussels: 24 April 2006 (1) and 14 May, 15 May 2007 (2). See also chapter 4.

<sup>588</sup> According to the head of the European Commission Delegation in Cairo interviewed in Niveen Wahish, 'Liberalise or bust', *Al-Ahram Weekly On-line*, 6-12 April 2006; interviews, European Commission, Brussels: 24 April 2006 (1) and 15 May 2007 (1) and (2), and European Commission Delegation, Cairo: 28 May 2007 (1); interviews, Egyptian Ministry of Foreign Affairs, Cairo: 31 May 2007.

<sup>589</sup> Andrew Beatty, 'Human rights doubts could hit Egypt deal', *European Voice*, 8 June 2006, meeting with officials of the European Commission, Rome, January 2005.

<sup>590</sup> Council of the EU (2007), 'Third Meeting of the EU-Egypt Association Council', Luxembourg: 27 February.

#### 4.4 *Conclusions*

The Barcelona Process did not produce a strong incentive for further cooperation between the EU member states. In the case of Egypt, European capitals continued their bilateral ties, especially in key security fields such as counter-terrorism.<sup>591</sup> Despite the fact that relations between the EU and Egypt have been characterised by the creation of highly institutionalised regional relations, spanning across very broad spectrum of policy fields, and involving a broad range of actors, the main actors remained the member states.

The Commission has had significant responsibilities in shaping and influencing policies in both the EMP and the ENP. In turn, and together with the European Parliament, the dialogue with non-institutional actors that the EMP and the ENP both entail, has exposed them to external influences. On paper, human rights and democracy figured prominently in both policy frameworks, yet EU institutions has themselves recognised that this aspect has been one of the hardest to carry out. The key interests that did emerge, as box 4 in the Annexes (p. 264) clearly illustrates, were cooperation in justice and home affairs issues, in terrorism, migration, economic development.

Conversely, human rights and democracy were the subject of CFSP cooperation between the member states: declaratory positions were on occasion accompanied by confidential condemnation (see box 8.2, p. 217), though the use of any form of negative conditionality was never envisaged. In this area, the limited degree of convergence between member states hampered the development of a stronger collective policy towards Egypt: national bilateral relations on important foreign policy dossiers persisted despite the experience of Barcelona.

#### 5. *The drivers of EU policy towards Egypt*

EU foreign policy towards its immediate South, and the EMP especially, has been subject to extensive academic analysis focusing primarily on its limits and failures, whereas EU policy towards Egypt has been virtually absent from the literature. This

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<sup>591</sup> Joffé (2008).

section will therefore try to identify the factors and processes that are relevant to understanding EU-Egypt relations.

There is a general agreement in the literature that contextual factors and regional crises have played an important role in developing the EMP, but also in constraining its performance. From its conception and inception, the Barcelona Process was intended to be kept separate from the Middle East Peace Process. But it was always haunted by the problems of Israeli-Palestinian and Arab relations that spilt over into all issues relating to the EMP, not just the political and security ones. So long as antagonism persisted between the Southern countries, the EMP was bound to have difficulties in fostering cooperative relations.<sup>592</sup> The hegemonic presence of the US also put constraints to the EU's role in Middle East, especially due to Washington's direct involvement in the Israeli-Palestinian conflict.<sup>593</sup>

All these fed directly into relations with Egypt, compounded by the country's importance as a partner in the search for a peace settlement. This is reflected in the Council's priorities: as a frequent destination of Solana's trips, Cairo is inevitably consulted on any policy regarding the Middle East, the Gulf, the Arab League, and parts of Africa, such as Sudan. But beyond a convergence on strengthening the EU's role in the Middle East, a convergence of interests of the EU member states on Egypt was not equally evident. Even if the importance of partnership with Cairo was recognised by all, individual states have pursued bilateral interests and relations notwithstanding the dense relations and policies that the EU developed collectively through the EMP, the CFSP and the ENP. EU cooperation on Egypt depended on the issue at stake.<sup>594</sup> Human rights and democracy did represent an area for cooperation in CFSP; chapter 8 and 9 will explore how, when, and why this occurred.

Such a 'logic of diversity' was also at the heart of the problems of the Barcelona Process which made the EU 'a clearing house of different interests rather than a unitary actor',

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<sup>592</sup> Hollis (2000).

<sup>593</sup> Dosenrode and Stubkjaer (2002), chapter 7.

<sup>594</sup> This point has been confirmed in all interviews, Council of the EU and European Commission, Brussels: May 2007, and embassies of the member states, Cairo: May 2007.

largely to the 'dual' nature of foreign policy making.<sup>595</sup> Coordination at both cross-pillar level and between the EU and its member states has been extremely hard.<sup>596</sup> If the 'politics of scale' has driven the member states to resort to the EU to strengthen their interests and influence, this has not necessarily led to a shared vision, and the lack of convergence between priorities is often felt.<sup>597</sup> In an intergovernmental reading, the member states were the main drivers, led by the Mediterranean countries concerned with their geographical exposure to the South and unable, alone, to address the broad variety of risks. The collective framework could thus serve the purpose of enhancing their role in international dossiers such as the Middle East Peace Process and in supporting the pursuit of national interests.

This was implicitly recognised by MEP Pasqualina Napoletano:

we need to overturn structural limits on the policy towards our southern partners. In fact, Euro-Mediterranean policy cannot be founded only on bilateral relations. Particularly with regard to the question of human rights and democracy, it is important to have a multilateral vision'. [Bilateral approaches] could be useful to several regimes, which are far from interested in the introduction of democratic reforms.<sup>598</sup>

The incentive towards developing a 'politics of scale' was strong also for some Northern member states that shared some perceptions of risks with the Southern states, such as the fear of immigration and of a rise in Islamic fundamentalism. In addition, there were concerns about the balance of power in Europe in the context of enlargement towards the East.

September 11 had a contradictory and paradoxical impact. On the one hand, it did not significantly change the EU's relations with Egypt, though it did modify the agenda of the EMP in favour of a sharpening of both the new security and strategic elements as well as heightening, albeit for a limited timeframe, the political reform rhetoric (as

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<sup>595</sup> Monar (1998), quote on p. 50; Richard Youngs (1998), 'The Barcelona Process after the UK Presidency: The Need for Prioritization', *Mediterranean Politics*, Vol. 4, No. 1, pp. 1-24.

<sup>596</sup> Spencer (2001).

<sup>597</sup> This point has been confirmed in all interviews, Council of the EU and European Commission, Brussels: May 2007, and embassies of the member state, Cairo: May 2007.

<sup>598</sup> Pasqualina Napoletano, 'Helping Europe's southern neighbours take a leap forward', *European Voice*, 12 May 2005.

opposed to human rights).<sup>599</sup> In part this reflected the shift in US policy and the ensuing debate in Brussels and within the European foreign ministries on ‘Arab democracy’, but as we shall see, the emphasis on political reform was also the result of dynamics internal to the EU policy process, where the debate following the UNDP Arab Human Development Reports, the ‘reflection’ over the ten years of Barcelona, the development of the ENP, and the failures of the EMP to generate a momentum for change, all contributed to raising awareness over the relationship between authoritarianism, security and development.

If the democracy rhetoric was raised for a while, it remains to be seen whether the substance of policy actually changed. According to most observers, the ‘stability versus democracy’ dilemma that had characterised the EMP from its inception was sharpened in favour of the latter.<sup>600</sup> The next chapter will investigate these questions more thoroughly in the Egyptian case.

## **6. *Conclusions: explaining EU policy towards Egypt***

Why do the member states choose to act together on Egypt? what actors and processes make EU foreign policy? and what are the limits of the policy? This chapter has tried to illustrate the evidence to provide some answers to these questions.

In terms of foreign policy making processes, a collective policy towards the Mediterranean was developed largely driven by logic of the ‘politics of scale’, led by the Southern member states seeking political and financial support to deal with the problems that could materialize on their border. But, however important Egypt has always been as a partner to Europe in key international dossiers, it has never enjoyed the ‘sponsorship’ of single states. The southern EU member states most interested in the Euro-Mediterranean Partnership have seen Egypt as an important member of Barcelona, but have fewer historical ties with Cairo. When dealing with political stability, containing terrorism, illegal migration, and economic relations, they have been the least interested in promoting human rights and democracy and have considered these issues even

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<sup>599</sup> Roberto Aliboni (2005), Youngs (2006a).

<sup>600</sup> For a synthesis, see Annette Jünemann (2003a), ‘Security Building in the Mediterranean after September 11’, in Jünemann (ed.), pp. 1-20; Youngs (2006).

harmful towards maintaining the stability of relations with Arab governments.<sup>601</sup> The large member states have continued pursuing their bilateral agenda despite the development of a collective EU policy towards Egypt.<sup>602</sup>

These intergovernmental and realist interpretations, coupled with a strong influencing role of external dynamics in the region and of the US, provide the most powerful explanations for EU engagement with Egypt. However, this does not explain the reasons for which the human rights and democracy components were included in the rhetoric of the EU when developing policies towards the Mediterranean through the EMP and the ENP. The EMP in particular has a strong focus on 'holistic' approaches to issues, on political dialogue, confidence building measures, aid policies, including human rights and democracy promotion, and socio-cultural exchanges.

Ideational interpretations seem more apt to explain the nature of the EMP regime, as a dense network characterised by multi- and bilateral policy making and shaping processes where there is scope for 'spillover' from NGO networks, at least in normative terms.<sup>603</sup> This comprehensive approach had been pushed by different EU institutions, starting from the Commission, and supported by the European Parliament.<sup>604</sup> The influence of the 2002 UN Arab Development Report in particular, can be interpreted as evidence of an ideational change within a restricted group of Commission officials.<sup>605</sup>

The relationship between the two dynamics – ie the extent to which intergovernmentalism and institutional and ideational dynamics were influencing each other – will be further explored with regard to the role human rights and democracy played in EU foreign policy through empirical testing.

It will be argued that, thanks to its role in shaping the EMP and the ENP, the Commission had a stronger role (compared to Ukraine) with regard to Egypt, aided by a dynamic Delegation that has developed relations with Cairo that go beyond the technical

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<sup>601</sup> Pargeter (2001), Wood (2002), Laura Feliu (2003), 'A Two Level Game: Spain and the Promotion of Democracy and Human Rights in Morocco', in Jünemann (2003b), pp. 90-111; interviews, embassies of EU member states, Cairo: 29 May (1), (3) and (4).

<sup>602</sup> Interviews, embassies of the member states, Cairo: 30 May 2007 (1).

<sup>603</sup> Crawford (2004).

<sup>604</sup> Gomez (1998), p. 142.

<sup>605</sup> Interview, European Commission, Brussels: 9 April 2003.



matters of cooperation. Furthermore, the Commission exploited the opportunities offered by its role in negotiating the ENP Action Plan. Although the member states were the key decision-makers, especially at the beginning and at the end of the process, the Commission did manage to carve out some influence in its direct dealings with Cairo.

The Egyptian case study nevertheless confirms the problems of coordination between collective and bilateral policies of the EU member states. The degree of coordination on the ground between the embassies was extremely limited, and in Brussels Egyptian diplomacy often succeeded in pursuing policies that would undermine the member states' consensus (an example of which will be described in the following chapter). This was possible because of the lack of unitary views on Egypt, also due to the multiple roles that the country could cover as an important partner in a number of broader security dossiers.

## CHAPTER 8

### IMPLEMENTING HUMAN RIGHTS AND DEMOCRACY: TORTURE IN EGYPT

#### 1. *Introduction*

Torture has been identified as the single largest human rights violation in Egypt, both for its pervasiveness as a method used by the secret services and by ordinary police officers, and for its recurrence over time. Individual cases as well as the general problem were repeatedly raised by international and Egyptian NGOs throughout the period under consideration (between 1995 and the present), even if the issue has rarely raised any attention in the European press.

However, torture has not been just an internal matter. It continues to be justified because Egypt is at the forefront of the fight against terrorism of Islamic inspiration.<sup>606</sup> Mubarak's strategy shifted from appeasing the Muslim Brotherhood (the largest Islamist group in Egypt) while cracking down on extremist militant groups, to harassing the Muslim Brotherhood and more moderate Islamist groups in the mid-1990s, at the height of Egypt's struggle with internal terrorism, which caused close to 1000 deaths and severely damaged its important tourist industry. The government's fight against terrorism was conducted also thanks to the freedom of manoeuvre insured to the security forces by the emergency law.

This policy was never challenged in Washington<sup>607</sup> until after the terrorist attacks on 11 September 2001 (in which an Egyptian was involved), prompting the US to scrutinise more closely Egyptian domestic affairs. This sent some alarm bells ringing in Arab countries that appeasement of authoritarian regimes may not last.<sup>608</sup> After seeking the cooperation of intelligence and security services in the Arab states in the fight against terrorism, for a brief period during the George W. Bush administration (2004-2005), US policy towards Egypt appeared to change. In the context of the so-called 'forward strategy of freedom' in the Middle East, and of military interventions in Afghanistan (2001 onwards) and Iraq (2003 onwards), the US launched a policy that saw 'regime

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<sup>606</sup> Hinnebusch (2002); Micheal Doran (1999), *Pan-Arabism before Nasser: Egyptian power politics and the Palestine Question*, New York: Oxford University Press.

<sup>607</sup> See, for instance, 'A Wobbly Hand of Friendship', *American Survey, The Economist*, 26 August 1995.

<sup>608</sup> The Economist Intelligence Unit (2005), *Country Report: Egypt*, London: September.

change' as an integral part of its 'war' against terrorism.<sup>609</sup> Chapter 9 will show that Mubarak did introduce some short-lived changes.

The consequences of September 11 on Egypt were manifold and contradictory. Egypt itself suffered a string of terrorist bombings in Red Sea resorts from 2004 onwards. First all, the ensuing fight against terrorism legitimised the Egyptian government to brand internal opposition as 'terrorist', to step up the crackdown on opposition. In the immediate wake of September 11, US Secretary of State Colin Powell appreciated Egypt's cooperation and claimed that the country was 'ahead of us on this issue [the fight against terrorism]. [...] We have much to learn from them and there is much we can do together'.<sup>610</sup> One form of cooperation of US and European states was the practice of 'rendition' of suspects to the Egyptian authorities despite reports of them being tortured – a practice forbidden by international law.<sup>611</sup>

Thus, it is necessary to place the issue of torture within the international context of the fight against terrorism, in order to understand the background against which the EU developed its responses. Nonetheless, it did constitute a field in which the EU had the means and tools to respond. Alongside the foreign policy tools developed towards Egypt, the EU has also developed global guidelines to fight torture, providing it with additional tools to address these concerns. This makes the case of torture in Egypt particularly fruitful area of investigation to explain the role of human rights and democracy in EU foreign policy.

## 2. *The practice of torture in Egypt*

Torture, arbitrary arrest and detention, prison and detention conditions are overwhelmingly considered the single largest human rights abuse in Egypt, despite the fact that its laws and Constitution include some provisions for the protection from these violations. This has been recognised not just by international NGOs but also by the EU

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<sup>609</sup> See Steven A. Cook (2005), 'The Right Way to Promote Arab Reform', *Foreign Affairs*, Vol. 84, No. 2, pp. 91-102; Gregory Gause III (2005), 'Can Democracy Stop Terrorism?', *Foreign Affairs*, Vol. 84, No. 5, pp.77-86.

<sup>610</sup> Secretary Colin L. Powell (2001), 'Remarks with Egyptian Minister of Foreign Affairs Ahmed Maher', Washington, DC: 26 September, <http://www.state.gov/secretary/former/powell/remarks/2001/5066.htm>.

<sup>611</sup> Amnesty International (2007).

and the US in their assessments of the country.<sup>612</sup> Even the first report of the Egyptian Council for Human Rights, established in 2003 and headed by Boutros Boutros Ghali, singled out torture as one key shortcoming of the country.<sup>613</sup>

Article 42 of the Constitution states that any person arrested, detained or restricted in his freedom shall be treated in the manner concomitant with the preservation of his dignity. If a confession is proved to have been made by a person under duress or coercion, it shall be considered invalid and futile. The Constitution and other legislation protect civil liberties and freedoms such as the right to bodily integrity. The state, embodied in the executive must not only respect but actively protect these rights and put in place laws which will deter transgression of them. The Penal Code too criminalises torture.<sup>614</sup> Finally, Egypt had acceded in 1986 to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) though it has not implemented all its provisions (which would allow the UNCAT to decide on the complaints filed by individuals), and it has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which would allow UN inspection of detention places).

The emergency law has allowed the State Security Investigation Services (SSIS) and the various security forces to bypass all these constitutional and legal provisions. The emergency law gives ample powers of arrest and detention for long periods (up to 6 months detention without charge) and without granting the right to access lawyers. Under the emergency law ‘terrorist suspects’ are tried by military rather than civilian tribunals, giving undue power to the military in repressing Islamist opposition in particular and curbing the powers of the judiciary. The extraordinary increase in the use

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<sup>612</sup> US State Department, Bureau of Democracy, Human Rights, and Labor (2006), *Country Reports on Human Rights Practices 2005*, Washington: 8 March; US State Department, Bureau of Democracy, Human Rights, and Labor (2007), *Country Reports on Human Rights Practices – 2006*, Washington: 6 March; European Commission (2005b), Commission Staff Working Paper, *Annex to : “European Neighbourhood Policy” Country Report Egypt COM(2005) 72 final, SEC(2005) 287/3* Brussels: 2 March.

<sup>613</sup> National Council for Human Rights (2004-2005), *Annual Report of the National Council for Human Rights 2004-2005*, Cairo. Whereas the first report of the Council was critical of human rights standards in Egypt, following editions offered far less insightful assessment due to pressure from the government. Interview, European Commission Delegation, Cairo: 28 May 2007 (1).

<sup>614</sup> Nonetheless, according to Egyptian human rights NGOs, freedom from torture and ill-treatment would still require constitutional modifications beyond abolishing the emergency law. See Cairo Institute for Human Rights Studies (2006), *Recommendations on the Plan of Action of the European Neighbourhood Policy with the Government of Egypt on enhancing political dialogue and reform*, [www.cihrs.org/Act\\_file/PDF/33?73200672824.pdf](http://www.cihrs.org/Act_file/PDF/33?73200672824.pdf).

of administrative detention during the 1990s represented an infringement on personal liberties, which was renewed in the aftermath of September 11 as a means to crackdown on secular and Islamist opposition.<sup>615</sup>

The issue of torture thus became more salient in the 1990s during the security forces' repression of Islamist violence, and cases involving Islamists were transferred to military courts.<sup>616</sup> During this period, it has been estimated that over 20,000 people were detained.<sup>617</sup> Cases of torture, disappearances, administrative detention without charge or trial increased substantially in the 1990s and from the end of 1992 onwards an increasing number of civilians were sentenced by military courts. Towards the end of the decade the successful repression of terrorist activities after the 1997 Luxor attack and the imprisonment and ceasefire of the two main groups (*Jihad* and *Gamaa al-Islamiyya*) led to a brief relaxation of anti-Islamist policies and the release of hundreds of prisoners. But September 11 justified the government's renewal of 'anti-terrorist' policy and the use of brutal investigative, arrest, prison detention and judicial tools that arguably amounted to a breach of fundamental rights on many counts: torture, unfair detention and trials, and further severe limitations of the freedom of association and expression, while western governments turned a blind eye.<sup>618</sup> According to Amnesty International, in 2007 there were 18,000 administrative detainees (people held without charge or trial) in degrading prisons.<sup>619</sup>

Human rights monitors believe that torture and mistreatment are also carried out by the regular police. One NGO has documented 567 cases of torture, including 167 deaths allegedly due to torture and mistreatment between 1993 and 2007.<sup>620</sup> The Egyptian Organisation for Human Rights (EOHR) regularly reports on instances of torture and beatings for suspects of petty crimes, claiming that 'torture has changed from being "an

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<sup>615</sup> Kienle (2001), chapter 4, Amnesty International, *State of the world's human rights*, sections on Egypt in the editions from 1991 to 2007; Human Rights Watch, *World Report*, chapters on Egypt in the editions between 1991 and 2007.

<sup>616</sup> Brown (1997), chapter 4.

<sup>617</sup> 'The retreat from fundamentalism', *The Economist*, 29 April 1999.

<sup>618</sup> 'Chance for a clampdown', *The Economist*, 25 October 2001; 'For whom the Liberty Bell tolls', *The Economist*, 29 August 2002; Diane Singerman (2002), 'The Politics of Emergency Rule in Egypt', *Current History*, January, pp. 29-35; Roula Khalaf, 'Freedom becomes a casualty of the war against terrorism', *Financial Times*, 6 January 2002.

<sup>619</sup> Amnesty International (2007).

<sup>620</sup> Egyptian Organisation for Human Rights (2007), *Torture in Egypt, culprits without punishment*, Report, Cairo: 8 August, [www.eohr.org/report/2007/re0808.shtml](http://www.eohr.org/report/2007/re0808.shtml)

ordinary crime” to a widespread phenomenon’, present in all Egyptian governorates (the 28 administrative divisions of the country) and affecting all social classes, age or gender. About a third of cases followed by EOHR over a decade ended in the death of the suspect, and a majority of cases occurred in police stations.<sup>621</sup> While political activists are at risk of torture when detained on SSIS premises, in the case of non-political detainees, torture and mistreatment seems to occur largely in police stations, regardless of the crime the suspect is allegedly held for and of the sex or age of the suspect (complaints have been filed on behalf of children too).<sup>622</sup> The token sentencing of low-ranking police officers that has occurred supports these allegations. Torture is resorted to as an interrogation method and its most common methods include beatings, electric shock, suspension by the wrists and in contorted positions for long periods, and threats of violent repercussions on the victims and their families.<sup>623</sup>

Until recently, the very word ‘torture’ was *de facto* censored by the authorities. Despite the existence of a livelier press in Egypt compared with much of the Arab world, there was virtually no debate in newspapers over such grave a human rights abuse. The revelations about torture and mistreatment in the Abu Grahیب prison in Iraq by US army officials, the rendition of the Egyptian imam Osama Mustafa Hassan Nasr, better known as Abu Omar (see below section 3.2), and the alleged existence of CIA detention centres in some EU member states all triggered some discussion on the use of torture in Egypt, especially against members of the Muslim Brotherhood.<sup>624</sup> Technology overcame the silence when an Egyptian blogger posted on *YouTube* a video showing the rape and mistreatment of a male prisoner in early 2006, which paved the way for a stronger public debate,<sup>625</sup> forced the case to be put on trial, and provided the EU with a reason to discuss the problem of torture with Egyptian authorities.

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<sup>621</sup> Egyptian Organisation for Human Rights (2004), *Torture in Egypt...an unchecked phenomenon*, [www.eohr.org/report/2004/re3.htm](http://www.eohr.org/report/2004/re3.htm).

<sup>622</sup> Amnesty International (2003), *Egypt: Time to implement the UN Committee against Torture recommendations*, Index: MDE 12/038/2003, London: 20 November.

<sup>623</sup> Amnesty International (2007).

<sup>624</sup> ‘Torture in camera’, *Al-Ahram Weekly online*, 24-30 June 2004; Gihan Shahine, ‘NCHR speaks out, finally’, *Al-Ahram Weekly online*, 21-27 April 2005; Amira Howeidly, ‘Zero tolerance for torture’, *Al-Ahram Weekly online*, 30 June-6 July 2005; Ayman El-Amir, ‘Power bears its teeth’, *Al-Ahram Weekly online*, 22-28 December 2005.

<sup>625</sup> Interviews, Delegation of the European Commission, Cairo: 28 May 2007 (1) and (2); interviews, embassies of the EU member states, Cairo: 29 May (4), 30 May 2007 (3) and (4), and based on observations on the occurrence of articles on torture in the English language Egyptian press.

### 3. *EU policy on Torture*

EU policy on torture in Egypt was not shaped in a vacuum. Protest and reporting on the use of torture in Egypt has not been limited to national and international NGOs but also to international organisations. The UN's Committee against Torture has examined Egypt's case in 1988, 1993 and 1999, and in 2002 the UN's Commission on Human Rights (CHR) too addressed the country's shortcomings. The Committee against Torture has also repeatedly condemned Cairo for failing to respond to a request – outstanding since 1996 - of its special *rapporteur* to visit the country.

From the point of view of EU policy towards Egypt, two issues need to be explored which bear relevance to the role that human rights issues played in the EU's relations with Cairo: its actions against torture, and its position against the emergency law which enables the state to pursue anti-constitutional practices.

Before this, however, EU action against torture in Egypt should also be placed in the framework of its general policy against torture, one of its global policies on select human rights issues (see chapter 3). The prevention of torture is considered a 'priority' in bilateral and multilateral cooperation and should be included in the EU's political and human rights dialogues.<sup>626</sup> Since 2001 the Guidelines against torture list the various international conventions and instruments that underpin EU policy, of which the most important and relevant to the case of Egypt are the UN Convention Against Torture, and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.<sup>627</sup>

The Guidelines also specify the process that the EU response to cases of torture should follow, the tools to be used, and the issues to address with third countries. First of all, as far as action is concerned, they refer to the EU as whole, including all its institutions, its Delegations in third countries, as well as the embassies of the member states. The process of reporting and evaluating should start with the EU member states' Heads of

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<sup>626</sup> Council of the EU (2002c), 'Declaration by the Presidency on behalf of the European Union on the Implementation of the EU Guidelines on Efforts to Prevent and Eradicate Torture', 15493/02 (Press 398) P 188/02, Brussels: 11 December.

<sup>627</sup> Council of the EU (2001f), *Guidelines to EU policy on torture and other cruel, inhuman or degrading treatment or punishment*, available at [www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf).

Mission in third countries, which are supposed to inform the Council Working Group on Human Rights (COHOM) of the occurrence of torture and ill treatment in third countries. Together with the geographic Working Groups, and on the basis of information available also from other organisations (such as UN bodies, NGO reports), the COHOM should identify the situations where EU actions are called upon, and make recommendations to the Council. If action is adopted, the Heads of Mission should offer, *ex post*, an evaluation of EU performance.<sup>628</sup>

The instruments to convey EU condemnation of episodes of torture include: raising the issue of torture in multilateral institutions and support resolutions at UN bodies such as the General Assembly and Human Rights Council (which replaced the Commission on human rights in 2006), bilateral and multilateral political dialogue, diplomatic démarches, bilateral and multilateral cooperation, and aid - including EIDHR - to combat and prevent torture and ill-treatment. In addition, the Guidelines explicitly mention the types of measures that the EU should encourage third countries to adopt. These include: adherence to international norms and procedures; cooperation with the relevant international bodies; establishment of domestic legal guarantees and procedures for complaints and reporting; and introduction of changes, training and of procedures in prisons, in medical assistance, in the police and judicial sectors and so on.<sup>629</sup>

In 2005 the EU initiated a system of regular reporting from the Heads of Mission in third countries and started to issue démarches systematically to those countries, such as Egypt, that had not ratified the UNCAT, its Optional Protocol and implemented its provisions.<sup>630</sup> In addition, in 2005 the EU adopted a Regulation which prohibited the export and import of goods whose only practical use is to carry out capital punishment or to inflict torture and other cruel, inhuman or degrading treatment or punishment.<sup>631</sup> This sets out a broad range of tools governed by Community and CFSP decision making processes.

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<sup>628</sup> Council of the EU (2001f), *Guidelines to EU policy on torture*.

<sup>629</sup> Council of the EU (2001f), *Guidelines to EU policy on torture*.

<sup>630</sup> Council of the EU (2005), *EU Annual Report on Human Rights*.

<sup>631</sup> Official Journal (2005), 'Règlement (CE) n° 1236/2005 du Conseil du 27 juin 2005 concernant le commerce de certains biens susceptibles d'être utilisés en vue d'infliger la peine Capitale, la torture ou d'autres peines ou traitements cruels, inhumains ou dégradants', L2000, Brussels: 30 July.



Despite the availability of a global policy, and of the multilateral and bilateral tools and channels through which condemn widespread reporting of episodes of torture, over the years EU's record in Egypt has on the whole been patchy, as the table below shows.

### Box 8.1: Torture in Egypt and EU response<sup>632</sup>

Event/Issue	Explanation	EU Response
Torture, prison conditions, and the emergency laws	International human rights groups have raised the issue of torture in every yearly report	Aid: EU has supported local NGOs dedicated to torture victims' rehabilitation and advocacy. Diplomacy: EU raised issue in the Association Council in 2006. CFSP: démarche in 2005. Multilaterally: EU raised the issue at the UN in 2000, 2001 and 2004. European Parliament: Resolution in 2003 and 2008 on a variety of human rights issues including torture and prison conditions
2002-3 Arrest and trial of over 20 men	Tried and sentenced for their homosexuality. Reported mistreatment and torture.	2003: EP Resolution on gay rights and various other human rights issues
January 2005: arrest of Aynam Nour.	Former journalist and lawyer, became leader of <i>Al-Ghad</i> Party, member of the Egyptian Parliament, and presidential candidate in 2005 was sentenced to 5 years of imprisonment on 24 December 2005, charged with forging signatures in an effort to obtain formal party status for <i>Al-Ghad</i> . He was also the victim of mistreatment.	EU démarche Statement of EU Presidency European Parliament: Resolution in 2006, included in Resolution of 2008.
May 2006	Imprisonment of activists protesting against the renewal of the emergency law	In raising concern at the 'disproportionate measures' used against activists, the EU urges Cairo to respect its commitment to use emergency

<sup>632</sup> The selection of events is based on: Council of the EU, *EU Annual Reports on Human Rights*, 1998-2007; European Parliament, *Annual Reports on human rights*, 1995-2007; Human Rights Watch, *World Report*, chapters on Egypt in the editions between 1991 and 2007; Freedom House, *Freedom in the World*, chapters on Egypt in the editions from 1991 to 2007; Amnesty International, *State of the world's human rights*, sections on Egypt in the editions from 1991 to 2007; US State Department, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, chapters on Egypt in the editions between 1993 and 2007. Also: European Parliament (2003), *Resolution on human rights violations in Egypt*, P5\_TA(2003)0192, Strasbourg: 10 April; UK Presidency of the EU, 'EU Presidency statement on the outcome of the trial of Mr Ayman Nour in Egypt', 27 December 2005, <http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1107293561746&a=KArticle&aid=1134650253515&date=2005-12-27>; Council of the EU (2006e), 'Declaration by the Presidency on behalf of the European Union on measures by the Egyptian authorities against civil society activists', CFSP 9364/06, Press 143, Brussels: 15 May; General Secretariat of the Council (2006), Second Meeting of the EU-Egypt Association Council on 13 June 2006, 'Statement by the European Union', Brussels: 12 June; Council of the EU (2007a), 'Declaration by the Presidency on behalf of the European Union on the constitutional reform process in Egypt', CFSP 8205/07, Press 73, Brussels: 3 April; European Parliament (2008), *Resolution on the situation in Egypt*, P6\_TA(2008) 0023, Strasbourg: 17 January.

		law powers only in the fight against terrorism
April 2007	Referendum on Constitutional changes that included incorporating emergency laws in the Constitution	CFSP Declaration on constitutional reform

Through its multilateral policies, the EU has called upon Egypt to invite the Special Rapporteur on Torture to visit the country, but has not used the United Nations General Assembly, the Committee against Torture or the CHR/Human Rights Council to condemn Egypt's shortcomings in this field. The strongest words of condemnation were at the General Assembly, in 2001, in which the EU criticised the emergency law but fell short of making the issue of torture explicit:

while stating that the situation had remained unchanged in Egypt, the European Union expressed its grave concern, particularly, over the use of emergency powers such as laws and tribunals, when concerning civilian cases. The EU also expressed its preoccupation with the increase in administrative obligations of nongovernmental organisations, impeding the development of an active civil society.<sup>633</sup>

Furthermore, in 2004 Denmark, with the co-sponsorship of the EU member states, presented a Resolution on Torture the 59<sup>th</sup> session of the UN General Assembly and at the 61<sup>st</sup> UN Council on Human Rights, in which it 'reiterated the absolute prohibition on torture and other cruel, inhuman and degrading treatment or punishment in international law and underlined its concern at the use of torture in several countries and regions', but Egypt was not mentioned among the countries singled out. Instead, it was called upon to extend an invitation of the UNCAT's Special Rapporteur on Torture.<sup>634</sup>

Hence, at the multilateral level, the EU has been reluctant to condemn Egypt's record. Indeed, in 2007 Egypt ran unopposed and was elected at the first round to the new UN Human Rights Council without stirring the opposition of EU member states as Belarus's candidacy did, and despite the messages of protest filed by human rights groups to the UN General Assembly.<sup>635</sup> According to one official interviewed, there was a 'division'

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<sup>633</sup> Council of the EU (2002), *EU Annual Report on Human Rights*.

<sup>634</sup> Council of the EU (2005), *EU Annual Report on Human Rights*.

<sup>635</sup> See Gihan Shahine, 'Seat of mystery', *Al-Ahram Weekly*, 24-30 May 2007; Egyptian Initiative for Personal Rights (EIPR) and Human Rights Watch (HRW), 'Human Rights Council Membership Requires Steps to Address Violations', Briefing Paper, May 2007, [hrw.org/backgrounder/mena/egypt0507/](http://hrw.org/backgrounder/mena/egypt0507/);

on this issue between the Northern and Southern<sup>636</sup> EU member states, with the latter 'pragmatically' arguing against 'isolating' Egypt.<sup>637</sup> This split, however, might not have been so clear-cut. While the NGO community saw the EU as a whole as supporting Egypt's election, the UK claimed it was not 'actively' supporting Egypt (but was not opposing it either).<sup>638</sup>

The implementation of the EU's policy on torture at the bilateral level was also patchy, confirming a general evaluation of the Guidelines commissioned by the European Parliament, according to which while the Commission Delegations knew about the Guidelines, only a few member state embassies had included them in their work programmes.<sup>639</sup> In Cairo, member states' embassies and the Commission Delegation were especially cautious on the specific issue of torture. While concern has been raised publicly and unofficially even at the highest levels at the prison conditions of individuals such as Ayman Nour, with both the UK and France raising the issue informally at ministerial level during diplomatic bilateral visits<sup>640</sup> there has been no systematic diplomatic policy of delivering messages to the Egyptian authorities on this matter. Even the countries most active in including human rights and democracy priorities in their bilateral relations and aid programmes, such as the Netherlands, prefer to avoid direct confrontation on torture in favour of disseminating ideas about human rights and torture, and supporting those groups that are combating torture within the country.<sup>641</sup>

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Freedom House and UN Watch (2007), *Evaluation of 2007 – 2010 UN Human Rights Council Candidates*, Joint Analysis 7 May, [www.unwatch.org](http://www.unwatch.org).

<sup>636</sup> Interviews, embassy of EU member state, Cairo: 30 May 2007 (2), and NGO representative, Cairo: 30 May 2007.

<sup>637</sup> Interview, embassy of EU member state, Cairo: 29 May 2007 (1).

<sup>638</sup> Interviews, embassy of EU member state, Cairo: 30 May 2007 (2), and NGO representative, Cairo: 30 May 2007.

<sup>639</sup> Interviews, Delegation of the Commission and embassies of EU member states, Cairo: 28 May (1), 29 May (2), 30 May (2) and (3) 2007; Anna-Lena Svensson-McCarthy (2007), *The implementation of the EU guidelines on Torture and other cruel, inhuman or degrading treatment or punishment*, Directorate General for External Policies of the Union, Directorate for Interparliamentary Delegations and Policy Department, Policy Department External Relations, Brussels, European Parliament: March.

<sup>640</sup> UK Presidency of the EU (2005), 'EU Presidency statement on the outcome of the trial of Mr Ayman Nour in Egypt', 27 December, <http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1107293561746&a=KArticle&aid=1134650253515&date=2005-12-27>; interviews, embassies of EU member states, Cairo: 29 (3), 30 (2) May 2007.

<sup>641</sup> Interviews, European Commission Delegation and embassies of EU member states, Cairo: 28 May (1), 30 May 2007 (3) and (4).

At the CFSP level, torture has been the subject of one confidential démarche and was included in a broader démarche, both in 2005 (when the EU launched a concerted round of démarches). In May 2006 the Presidency issued a declaration on the measures used to repress activists in which it also criticised the Egyptian government's recent renewal of the emergency law, despite its pledges to end it, and recalled the promise to use the emergency law powers only with regard to combating terrorism.<sup>642</sup> But in general the member states have preferred avoiding the Troika format to relay such messages to the Cairo authorities, reflecting a widely shared view that official public condemnation was counterproductive to political dialogue.<sup>643</sup> Furthermore, the government would often refuse to receive the Troika delegation, making the member states prefer informal and confidential discussions with the authorities.<sup>644</sup>

On the other hand, torture, prison conditions and the emergency law were explicitly discussed in the Association Council meetings held in 2006 and 2007, and in 2006, under the Austrian Presidency, the EU's position was unusually open in mentioning 'its concern at the alleged use of torture', 'urging' Cairo to end the emergency law and the practices of torture,<sup>645</sup> a position that was not well received in Cairo.<sup>646</sup>

In 2007 the government passed a constitutional reform package that included, among other things, the replacement of the emergency laws with a new anti-terrorist law, and the suppression of judiciary in supervising the elections. Despite the controversies that these reforms raised, the EU's response was quite muted due to differences between the member states, some of which claimed confidence that the new anti-terrorist law would conform to international standards.<sup>647</sup> The draft statement prepared by the German Presidency was thus significantly watered down (the EU position on this matter will thus be discussed in the following chapter).

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<sup>642</sup> Council of the EU (2006e), 'Declaration by the Presidency on behalf of the European Union on measures by the Egyptian authorities against civil society activists', CFSP 9364/06, Press 143, Brussels: 15 May.

<sup>643</sup> Interviews, Council of the EU, Brussels: 14 May 2007, embassies of EU member states and European Commission Delegation, Cairo: 28 May (1), 29 May (1), 30 May 2007 (4).

<sup>644</sup> Interview, Council of the EU, Brussels: 14 May 2007.

<sup>645</sup> Council of the EU (2006h), 'Second Meeting of the EU-Egypt Association Council', Luxemburg 13 June; Council of the EU (2007b), 'Third Meeting of the EU-Egypt Association Council', Luxemburg 27 February.

<sup>646</sup> Interview, Egyptian Embassy in Brussels, 16 May 2007

<sup>647</sup> Interview, Council of the EU, Brussels, 14 May 2007, and EU member state embassy, Cairo, 30 May 2007 (3). See also section 3 in chapter 9.

The European Parliament mentioned issues related to torture in its various resolutions on Egypt. This was seen in the Commission as a 'healthy' contribution to the debate, helping put the issue on the agenda.<sup>648</sup> However, it did not produce a specific resolution on torture, while it did on other issues such as gay rights and the imprisonment of Saad Eddin Ibrahim and Ayman Nour.

Whereas the EMP as a whole was silent on issues of torture in its members, the Neighbourhood Policy seemed to promise to play a stronger attention to human rights issues.<sup>649</sup> The European Parliament had been backing a stronger role for human rights and democracy issues. When the Commission was preparing to identify the themes to be included in its draft Action Plan, the possibility of including the abolition of the emergency law was debated within the Commission and with the member states.<sup>650</sup> Torture had also been identified as a fundamental problem in the Country Report that had preceded the Action Plan.<sup>651</sup> Yet in the final text, the word torture is not even mentioned, a fact that came under the scrutiny of Egyptian NGOs, disappointed with EU performance on this issue.<sup>652</sup>

This was due to the Egyptian government's veto on including the issue. Faced with the choice between abandoning the negotiations on the Action Plan over human rights disagreements, the Commission (according to one Egyptian official, on the prompting of the member states)<sup>653</sup> opted for a compromise solution by eliminating any explicit mention of the word torture while maintaining issues pertaining to it by keeping all the references to the relevant international instruments and conventions that Egypt was supposed to implement. The Commission maintained that all the key issues were included in the human rights and political reform section of the Action Plan, albeit not

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<sup>648</sup> Interviews, European Commission, Brussels: 15 May 2007 (1).

<sup>649</sup> And it was perceived to do so in Cairo. Interviews, Egyptian Embassy, Brussels: 16 May and Egyptian Ministry of Foreign Affairs, Cairo: 31 May, 1 June 2007.

<sup>650</sup> Informal meeting with officials from the Commission and the Italian Ministry of Foreign Affairs, Rome, January 2005.

<sup>651</sup> European Commission (2005), Commission Staff Working Paper, *Annex to* : "European Neighbourhood Policy" Country Report Egypt COM(2005) 72 final, SEC(2005) 287/3 Brussels, 2 March.

<sup>652</sup> International Federation of Human Rights, Euro-Mediterranean Human Rights Network, World Organization Against Torture, Egyptian Initiative for Personal Rights, Egyptian Organisation for Human Rights, Cairo Institute for Human Rights (2007), 'EU-Egypt Association Council: Action Plan's Human Rights Section Falls Short of NGO Expectations', Press Release, Brussels and Cairo: 7 March, [www.cihrs.org/print\\_press\\_en.aspx?per\\_id=197](http://www.cihrs.org/print_press_en.aspx?per_id=197); interview, Egyptian NGO, Cairo, 30 May 2007.

<sup>653</sup> Interview, Egyptian Embassy, Brussels: 16 May 2007.

explicitly.<sup>654</sup> The idea was that torture could be addressed ‘through the back door’, through other priorities such as strengthening the judiciary, police reform, addressing prison conditions.<sup>655</sup> The ways in which the EU was to keep up a dialogue with Egypt on human rights issues was supposed to be through the subcommittee envisaged in the ENP dealing with human rights issues.

Negotiations on the subcommittee were a tortuous affair. The precedent within the ENP framework was set by Morocco, Jordan and even by Tunisia, making it difficult for Egypt to oppose its creation. However, Israel had managed to negotiate a subcommittee that would focus on broader issues as well. Egypt thus insisted on the same formula: ‘human rights and democracy, international and regional issues’. While the Scandinavian member states insisted that the subcommittee should focus on human rights and democracy, the Commission was weary of insisting on this with Cairo because of the protracted difficulties in negotiating the political dimension of the Action Plan in the first place (see chapter 7).<sup>656</sup>

The Commission justified its position and openness to compromise through its commitment to the concept of ‘partnership’ that was supposed to underpin the ENP, arguing that it would be pointless to try to impose issues that would not be approved or implemented. This negotiation was particularly complicated and delicate in the case of Egypt. According to Commission officials, the Egyptian government was sensitive to the EU’s insistence on human rights and democracy, because it cared about the country’s image abroad, even if it was aware that the EU would never exercise any credible disincentive or sanctioning measure.<sup>657</sup>

If the ENP has not led to a fundamental change in EU policy against torture in Egypt, it does appear to have offered opportunities to develop strategies based on informal diplomacy. According to Commission officials interviewed, since 2005 pressure on human rights issues in general (rather than torture in particular) has been exercised informally, and at all levels - ‘never missing an opportunity’, according to one

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<sup>654</sup> Interviews, European Commission, Brussels: 15 May 2007 (1) and (3).

<sup>655</sup> Interviews, European Commission: Brussels: 15 May 2007 (1) and (3).

<sup>656</sup> Interviews, European Commission: Brussels: 15 May 2007 (1) and (2), European Commission Delegation, Cairo: 28 May 2007 (1).

<sup>657</sup> Interviews, European Commission, Brussels: 15 May 2007 (1) and (2); interviews, European Commission Delegation, Cairo: 28 May 2007 (1).

Commission Delegation official. Given that Cairo has been ‘masterful’ in avoiding the Troika format, EU Delegation and member state representatives in Egypt have discussed repeatedly the best means through which to convey messages to the Egyptian authorities.<sup>658</sup>

The subcommittee set up through the ENP had been considered by many of the officials interviewed as the ‘litmus test’ of the ENP’s ability to discuss human rights issues. However, concentrating the dialogue on torture and human rights in Egypt in the subcommittee did not pay off. The first meeting that was to take place in November 2007 was rescheduled to January 2008 allegedly due to the engagement of the EU and of Egypt with the Annapolis conference on the Middle East. The rescheduling was accepted on part of the EU precisely because it was preoccupied that the meeting would focus overwhelmingly on issues relating to the plight of the Palestinians,<sup>659</sup> replicating an oft-occurring experience during meetings in the framework of the Barcelona Process. Yet the January meeting was cancelled as well, following Cairo’s protest at the European Parliament’s Resolution on human rights in Egypt.<sup>660</sup>

Until recently, EU sensitivity to Egyptian opposition to any discussion on torture has meant that even its aid programmes did not tackle the problem directly. In fact, as chapter 3 illustrated, human rights and democracy did not figure high in EU assistance towards Egypt or in EIDHR funding (see table 3.7, p. 93). In 2004, torture was singled out among the thematic priorities of EIDHR, yet Egypt did not feature in the list of micro-projects. It was only later that the Delegation in Cairo managed to retrieve €1 million from unspent resources. Since 2005-2006 the question of torture has made its way up the EU aid priority list, if perhaps through the back door. EIDHR has included projects on improving prison conditions, and has been supporting the Human Rights Center for the Assistance of Prisoners (HRCAP) through its micro-project funding.

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<sup>658</sup> Interviews, Council of the EU and European Commission, Brussels: 14 and 15 May 2007 (3); interviews, European Commission Delegation, and embassies of EU member states, Cairo: 28 May (1), 30 May 2007 (4).

<sup>659</sup> Phone interview, Council of the EU, Brussels: 1 December 2007.

<sup>660</sup> European Parliament (2008), Resolution on the situation in Egypt, P6\_TA(2008) 0023, Strasbourg: 17 January. Phone Interview, European Commission, Brussels: 14 February 2008.



MEDA has also taken over a project initially funded by some member states on training police officers.<sup>661</sup>

Another final issue needs to be taken into account: bilateral relations between the EU member states and Egypt in the practice of rendition of so-called terrorist suspects. Even if this area is strictly speaking not within the remit of traditional EU foreign policy, it overlaps uncomfortably with a number of its external activities.

The question of renditions of terrorist suspects has become, since the introduction of new anti-terrorist laws in many EU member states, an issue of foreign policy. Some member states have ignored their obligations under the Convention against Torture, which prohibits states to return foreign citizens to their countries of origins if that country practices torture, by seeking 'diplomatic assurances' against torture or ill-treatment of the suspect. Alongside the most notorious case of Abu Omar extradited in 2003 from Milan to Cairo by the CIA with the alleged cooperation of the Italian secret services;<sup>662</sup> other cases involved the Swedish government for the rendition of two men to Egypt in 2001, and the UK, Netherlands, Austria, and Germany towards other Southern Mediterranean countries.<sup>663</sup> However, international human rights experts maintain that diplomatic assurances do not provide an effective safeguard against torture and ill-treatment, as reflected in strong statements against their use during 2006 by the United Nations High Commissioner for Human Rights and the UN Special Rapporteur on torture, the Council of Europe Commissioner for Human Rights, and the EU Network of Independent Experts on Fundamental Rights.<sup>664</sup>

The consequences on human rights of the anti-terrorism policies of EU member states also undermined the EU's ability to demand certain human rights standards in its neighbouring countries:<sup>665</sup> 'we are no longer angelic', as one Council official put it.<sup>666</sup> This has undermined EU credibility, according to many Egyptian NGOs, in its positions

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<sup>661</sup> See table 3.7, p. 93; interviews, European Commission, Brussels: 16 May 2007; interview, European Commission Delegation, Cairo: 28 May 2007 (2).

<sup>662</sup> Cécile Hennion, 'Enlevé par la CIA, torture en Egypte', *Le Monde*, 8 June 2007.

<sup>663</sup> Human Rights Watch (2006), *World Report 2006*, pp. 352-364, Human Rights Watch (2005), *World Report 2006*, pp. 369-381.

<sup>664</sup> Human Rights Watch (2007), *World Report 2007*, pp. 376-378.

<sup>665</sup> Ana Carbajosa, 'El precio de ser cómplice en la guerra de Bush', *El País*, 28 January 2007.

<sup>666</sup> Interview, Council of the EU, Brussels: 1 April 2008.

against torture as well as in the 2005 elections, discussed in chapter 9.<sup>667</sup> Indeed, it has been argued that counter-terrorism cooperation since September 11 has diverted the EU from its 'normative agenda' towards the South Mediterranean.<sup>668</sup> However, it is debatable whether such normative agenda actually ever existed. In fact, although it cannot be denied that September 11 led to a stronger attention to fighting terrorism, for instance by including anti-terrorist clauses in agreements with third countries,<sup>669</sup> and far greater difficulties in balancing out security versus normative aims, the rhetoric on human rights and democracy actually increased during the 2000s. As box 8.2 shows (p. 217), prior to 2000 human rights and democracy were hardly addressed through CFSP declarations and the issue of torture was never raised in formal and informal diplomacy. This suggests that the security versus human rights and democracy argument is not the prime explanation for EU action (or inaction).

#### 4. *Explaining the EU response*

The EU has a global, regional and country-specific commitment to combating torture, as well as a wide range of tools to do so. Yet the discrepancy between its commitment and its actions in Egypt is significant. During the first decade of the Barcelona Process, which introduced human rights and democracy in relations between the two shores of the Mediterranean, torture did not feature in relations with Egypt, even through aid programmes or EIDHR. It was only after 2005 that some timid and largely informal attempts were made to address issues regarding torture in Egypt.

But even after 2005, at the EU level, a generalised reluctance to engage with Cairo on the issue of torture was apparent. The Egyptian authorities were repeatedly and ostensibly opposed to any such discussion on a domestically extremely sensitive issue and, after the *démarches* of 2005, would not receive official delegations and the Troika to discuss torture and the mistreatment of prisoners. Such position was acknowledged by member states, Council and Commission officials who, as we have seen, agreed to drop

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<sup>667</sup> Hossam Bahgat, 'Match your words with action: Britain can help expand human rights and political freedom in Egypt, but only if it leads by example in its anti-terror campaign', *The Guardian*, 7 September 2005.

<sup>668</sup> Joffé (2008); Youngs (2006a).

<sup>669</sup> Youngs (2006a).

the issue of torture in the ENP Action Plan, despite having recognised it as a key deficit in Egypt in the preparatory Country Report.

For all the actors involved, the priority that emerged in this case was the need to maintain a relationship of partnership with Egypt. For the Commission, 'partnership' was the keyword to the recently developed Neighbourhood Policy, and Egypt's participation in it was seen as crucial to the success of a policy<sup>670</sup> that also strengthened the Commission's role in EU external relations. For the member states, the importance of partnership differed from country to country, as chapter 7 illustrated.

In the case of Egypt, a line of division emerged between the Mediterranean EU member states, more inclined towards maintaining dialogue, and the Northern ones, led by the Scandinavian countries and the Netherlands, which would push for stronger EU positions on human rights and democracy. Nonetheless, on torture there was caution throughout.

For the larger countries, especially Britain and France, Egypt represented a key partner with regard to all their relations with the Middle East, the Arab world and Africa. Nonetheless, there were shades of difference between the two. When the French officials at the Cairo embassy raised the issue of torture with Paris, the reply was to maintain a distinction between international issues and the internal affairs of Egypt.<sup>671</sup> This general French position of non interference is shared by other member states such as Italy, and has been confirmed by EU officials too.<sup>672</sup> Conversely, Britain was more attentive towards human rights and democracy issues, but would measure carefully any condemnation of Egyptian authorities against its long list of priorities towards the country, often to the detriment of human rights issues.<sup>673</sup>

Even the Northern EU member states, traditionally more concerned and vocal about human rights issues, found the issue of torture particularly difficult to deal with in

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<sup>670</sup> Interviews, European Commission, Brussels: 24 April 2006 (1) and 15 May 2007 (1).

<sup>671</sup> Interview, embassy of EU member state, Cairo: 29 May 2007 (4).

<sup>672</sup> Interviews, embassy of EU member state, Cairo: 29 May 2007 (1) and (2), 30 May 2007 (4), Council of the EU, Brussels: 14 May 2007. See also Rosa Balfour (2005), 'Italy's Policies in the Mediterranean', in Fernández and Youngs (eds.), pp. 121-130.

<sup>673</sup> Interviews, embassy of EU member state, Cairo, 30 May 2007 (2), confirmed in interviews, Council of the EU, Brussels: 14 May 2007, and Egyptian Ministry of Foreign Affairs, Cairo: 1 June 2007.

relations with Cairo. The Netherlands, whose interests in Egypt were important compared to the other Northern member states, had to weigh condemnation of torture against one of its priorities of establishing a dialogue with Islamic culture, due to its recent domestic problems in relations with Muslim communities.<sup>674</sup>

In essence, for different reasons, there was a convergence between the member states towards adopting a 'soft' position (in the words of one Council official) on torture in Egypt due to shared perceptions of the need to maintain friendly relations with Cairo. Secondly, condemning torture could have led to retaliatory positions by Cairo, given the occurrences of renditions of terrorist suspects to Egypt. The motivations behind this emphasis on partnership, however, were driven by different logics and priorities within each European capital, confirming intergovernmentalism as one of the main processes guiding European foreign policy. Furthermore, there were differences in emphasis on the importance of human rights and democracy issues in the capitals. Even after the publication in 2001 of the Guidelines on torture and in 2005 of systematic reporting from the Heads of Mission, not all embassies were aware of the Guidelines and few were monitoring the situation in Egypt.<sup>675</sup>

Despite this 'logic of diversity' guiding EU relations with Egypt, human rights issues were debated between the member states, especially on the ground, and cooperation was sought.<sup>676</sup> This needs to be explained. First of all, EU commitment to pursue a global anti-torture policy at the multilateral and bilateral levels suggests that there was a general convergence between the EU member states on the appropriateness of developing certain positions collectively – a 'habit of cooperatin'. However selective and inconsistent its engagement with torture in Egypt, the fact that the EU *did* issue some measures undermines the hypothesis that the principles did not exist, or that they were resorted to just instrumentally.

Internal EU actors played a secondary role compared to the member states, but had some scope to influence policy. The European Parliament called upon the EU to

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<sup>674</sup> Interviews, embassy of EU member state, Cairo: 30 May 2007 (4).

<sup>675</sup> Svensson-McCarthy (2007); interviews, Council of the EU, Brussels: 14 May 2007; interviews, embassies of EU member states, Cairo: 29 May 2007 (2).

<sup>676</sup> This coordination on human rights issues was confirmed in interviews, embassies of the member states, Cairo: 30 May 2007 (4), although at Council of the EU the stronger emphasis was on the diversity of national priorities, interviews, Council of the EU, Brussels: 14 May 2007.

strengthen its policy on fighting torture in Egypt,<sup>677</sup> but did not produce a Resolution devoted to this issue and focused instead its efforts in Egypt on other concerns. By contrast, the Commission, once the negotiations on the ENP Action Plan started, did seek to identify the key political deficits in Egypt, and used, also through a dynamic Delegation, many of the informal tools that it had at its disposal in its dialogue with the Egyptian authorities, suggesting some degree of 'ideational shift' amongst its officials.

It was recognised in Brussels and Cairo that the ENP does introduce some form of bland conditionality on human rights principles that in practice was absent from the EMP.<sup>678</sup> It also provided an opportunity for the Commission to have a greater role in shaping policy and it had the possibility to resort to informal diplomacy through the new avenues opened by the negotiations on the Action Plan. These windows of opportunity have strengthened its ability to conduct diplomatic efforts on human rights issues in Egypt.

But, according to Commission officials, torture represented a taboo subject by Cairo and the final draft of the Action Plan was substantially watered down on all human rights and political issues. Nonetheless, Commission officials maintained that since 2005 torture has been a subject for dialogue and considered this a substantial improvement. However, due both to internal considerations regarding the appropriateness of antagonising a government which it was seeking to engage on the ENP, and to the final word of the member states, the Commission compromised on the text of the Action Plan, also claiming to expect the thorniest issues (such as torture) to be discussed in the framework of the ENP subcommittee for political dialogue. This bet did not pay off. Cairo has managed to repeatedly postpone the first meeting of the subcommittee without incurring any retaliation or condemnation. The Commission did, however, start to address issues related to torture through its aid programmes.

The Commission in particular, but also the European Parliament's activism in raising some human rights issues in Egypt (though without a focus on torture) contribute to explaining the internal EU dynamics that led to the policy shift in 2005. However, other factors played an important role too, and these can be located in environmental changes

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<sup>677</sup> European Parliament (2006), *Resolution on on Egypt: Violence against Sudanese refugees*, P6\_TA(2006)0031, Brussels: 19 January.

<sup>678</sup> Interviews, Council of the EU, European Commission and Egyptian Representation to the EU, Brussels: 14 May, 15 May (1), 16 May 2007.

outside the EU foreign policy making process. The short-lived change in US policy was probably the largest single factor that influenced the position of the member states.<sup>679</sup> Even in France, among the least critical countries of human rights abuses, US policy triggered a debate in the Ministry of Foreign Affairs on whether its traditional approach of non-interference and cultural tolerance was justifiable.<sup>680</sup>

Secondly, the fact that torture began to be discussed in the Egyptian press, and that the government addressed some cases of torture and mistreatment with some token trials against low ranking police officers, opened a window of opportunity for EU institutions and some member states to start mentioning torture in their informal dialogue with the Egyptian authorities.<sup>681</sup> Even if the general issue of torture in Egypt has barely been noticed in the European press,<sup>682</sup> the question of renditions and the revelations of torture on part of the US army in the Abu Grahیب prison in Iraq put the member states in a difficult position subject to accusations of double standards.<sup>683</sup>

## 5. *Conclusions*

What do these research conclusions highlight about the patterns of EU foreign policy-making and the role of human rights and democracy? The first hypothesis developed considered human rights and democracy as a residual aim due to competing priorities. This approach certainly explains the absence of any normative position on torture throughout the 1990s, as boxes 8.1 and 8.2 illustrate (pp. 202 and 217). Even aid did not focus on projects that might be connected to torture, prison conditions, or police training.

This argument can also be found in the research that has focused on the consequences of September 11, whereby security policies stifled EU condemnation of human rights abuses in the South Mediterranean countries.<sup>684</sup> Yet research findings in this case study show that it was precisely in the 2000s, when security concerns were stronger, that the

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<sup>679</sup> This was confirmed by all officials interviewed in EU institutions and member states' embassies.

<sup>680</sup> Interview, embassy of EU member state, Cairo: 29 May 2007 (3).

<sup>681</sup> Interviews, European Commission Delegation and embassies of EU member states, Cairo: 28 (1), 30 May 2007 (4).

<sup>682</sup> On the basis of a review of major newspapers, such as *The Financial Times*, *The Economist*, *Le Monde*, *El Pais*, *Il Corriere della Sera*, *European Voice*.

<sup>683</sup> Interview, Council of the EU, Brussels: 1 April 2008.

<sup>684</sup> Jünneman (2003b), Youngs (2006a), Joffé (2008).

EU began to raise some concerns over human rights and democracy in a 'quietly declaratory' fashion.

The positions that the Union did develop remained declaratory to the extent that they were never followed by action, though one torture-related project aid was funded in 2005. Only the more notorious case of Ayman Nour's ill treatment, despite his frail health, merited a concerted response through CFSP. In fact, the response to Ayman Nour's imprisonment and to the earlier trial against Saad Eddin Ibrahim (discussed in chapter 9), suggests that the EU preferred referring to clear cases against individuals, especially if westernised and secular, as the two 'famous' critics of Mubarak's regime are, rather than to thematic or structural human rights shortcomings, such as torture. In other words, concerns over the persistence of the use of torture were quietly expressed confidentially and through informal diplomatic channels.

In this case, hypotheses regarding processes can help explain more than the security versus human rights argument. The logic of diversity between the EU member states and the primacy of national interests to be pursued bilaterally rather than within the institutionalised framework that the EU had put in place especially through the Barcelona Process can be considered as the main factors limiting the development of an EU position on torture in Egypt. A split that follows the division between Northern and Southern member states has emerged, with the EU Mediterranean countries preferring engagement with Cairo to condemnation, also in view of the negative reactions that any form of condemnation have encountered with the government. The primacy of the need for cooperation with Egypt represented the single largest factor jeopardising stronger normative positions – a priority that was shared by all EU member states.

Intergovernmental and realist interpretations, however, do not offer a complete explanation of processes and dynamics occurring within the EU. While they can explain why the EU did not develop normative positions, in the case of torture in Egypt they do not explain the reasons for the responses that were, after all, produced. Unprecedentedly, the EU did call on Cairo to end the emergency law, even if the counter-terrorist agenda was becoming increasingly important.

Within the EU, rhetorical action patterns triggered by stronger ‘policy entrepreneurs’, and helped by public attention through the media or NGOs, were not strong, especially given that even the most principled EU member states were debating the opportunity and the tactics to address the problem of torture. So the question does remain of why the EU did mention such issues, albeit marginally and not forcefully, in its relations with Egypt. Furthermore, however inconsequential EU positions on the substance of relations with Cairo, Egyptian authorities did resent any form of interference on these issues, as demonstrated by the ways in which the negotiations for the AA and for the Action Plan were tiresomely protracted.

First of all, contextual influences played an important role. Washington’s ‘regime change’ rhetoric, notwithstanding its underlying motivations, did trigger a debate within EU capitals and institutions about the appropriateness of its policy based on partnership, as interviews with officials confirmed. This not only raised the stakes of EU credibility in terms of the consistency between its rhetoric and action; it also contributed to questioning the validity of the EU’s approach.

This process was also occurring within the EU institutions, where hypotheses derived from institutionalism can offer some insights. In contrast with the Ukrainian case study, the role of the Commission appears to have been stronger in Egypt, especially since the beginning of negotiations for the ENP Action Plan which, incidentally, coincided with the year in which Mubarak made promises of reform under pressure from the United States (see chapter 9) and held presidential and parliamentary elections.

In terms of foreign policy processes, dynamics that can be interpreted through institutionalism the fact that changing beliefs within the Commission did make their way into the EU-Egypt agenda – a recognition of which has been offered by Council and Egyptian officials – suggests not just a degree of ideational shift within an EU institutions, but also that it had the scope to have some influence on policy. Thus, in this case there is some evidence to suggest a role for other constituencies, such as EU institutions, epistemic communities and the press, in influencing EU behaviour. These issues will be treated further in the conclusions of chapter 9.



**Box 8.2: EU Use of CFSP towards Egypt<sup>685</sup>**

Date	Tool	Mention of human rights and democracy
April 1996	Declaration killing of Greek tourists	No
June 2000	Common Strategy on the Mediterranean Démarche on human rights	Yes
May 2001	Declaration on Sentence against Saad Eddin Ibrahim and his colleagues	Yes
July 2002	Declaration on trial of Saad Eddin Ibrahim and his colleagues	Yes
July 2002-July 2003	Démarche on human rights	
March 2003	Declaration on the acquittal of Saad Eddin Ibrahim and colleagues	Yes
2004	Strategic Partnership	Yes
July 2003-July 2004	Démarche on human rights Declaration on human rights	Yes
July 2004-June 2005	Démarche on human rights	Yes
June 2005-June 2006	EU raised questions regarding the use of the death penalty Démarche on torture and ill-treatment Démarche to promote the universality and integrity of the Rome Statute Démarche on Ayman Nour's trial and imprisonment	Yes
July 2005	EU Presidency statement condemning bombings in Egypt	No
September 2005	Declaration on Presidential elections	Yes
December 2005	Statement on Parliamentary elections Statement of EU Presidency on the trial against Ayman Nour	Yes

<sup>685</sup> EU Annual Reports on Human Rights, various editions EU Annual Reports on Human Rights, various editions; Council of the EU (1996c), 'Declaration by the Presidency on behalf of the European Union on the killing of Greek tourists in Cairo', CFSP 6717/96, Press 105, 22 April; Council of the EU (2001b), 'Declaration by the Presidency on behalf of the European Union on the sentences against Dr. Saad Eddin Ibrahim/Ibn Khaldoun Centre, CFSP 9119/01, Press 204, 28 May; Council of the EU (2002b), 'Declaration by the Presidency on behalf of the European Union on the trial in Egypt against Dr. Saad Eddin Ibrahim and the employees of the Ibn Khaldoun Centre and Hoda Association', CFSP 11415/02, Press 225, Brussels: 30 July; Council of the EU (2003a), 'Declaration by the Presidency on behalf of the European Union on the acquittal of Dr. Saad Eddin Ibrahim and his associates', CFSP 7796/03, Press 94, Brussels: 26 March; Council of the EU (2005b), 'EU Presidency condemns bombings in Egypt', 23 July; Council of the EU (2005a), 'Declaration by the Presidency on behalf of the European Union on the presidential elections in Egypt', CFSP 12084/05, Press 229, 8 September; Council of the EU (2005d), 'Statement by the Presidency on behalf of the European Union on the Egyptian Parliamentary elections', CFSP 15631/05, Press 355, 9 December; UK Presidency of the EU, 'EU Presidency statement on the outcome of the trial of Mr Ayman Nour in Egypt', 27 December; Council of the EU (2006f), 'Declaration of the Presidency on the ferry disaster in the Red Sea', CFSP Statement, 3 February; Council of the EU (2006e), 'Declaration by the Presidency on behalf of the European Union on measures by the Egyptian authorities against civil society activists', CFSP 9364/06, Press 143, Brussels: 15 May; Council of the EU (2006g), EU Presidency statement on the train collision in Egypt, Press release 303/2006, 21 August; Council of the EU (2007a), 'Declaration by the Presidency on behalf of the European Union on the constitutional reform process in Egypt, CFSP 8205/07, Press 73, 3 April; Germany's Presidency of the EU (2007), 'EU Presidency statement on the Shura Council elections in Egypt', 22 June.

February 2006	Declaration on ferry disaster in the Red Sea	No
May 2006	Declaration on measures against civil society activists	Yes
August, 2006	EU Presidency statement on the train collision in Egypt	No
April 2007	Declaration on constitutional reform	Yes
June 2007	Presidency statement on Shura Council elections	Yes

## CHAPTER 9

### IMPLEMENTING HUMAN RIGHTS AND DEMOCRACY: ELECTIONS IN EGYPT

#### 1. *Introduction*

In February 2005 Mubarak unexpectedly announced the first multi-candidate presidential elections in Egypt's history, to be held a month before the parliamentary elections of October-December. This marked an important departure from previous practices, and was heralded by some as the start of a process of reform within Egypt.<sup>686</sup> This chapter therefore, while overviewing the EU response to previous rounds of parliamentary and presidential elections, will focus the analysis on the 2005 events.

The EU's positions on elections in Egypt needs to be understood in relation to the role that the US played in stimulating such changes, and in the context of the international debate triggered by Washington's 'regime change' rhetoric. According to external observers, 'any elections that have been held in the region seem to owe more to American abruptness than to European patience'.<sup>687</sup> Early in 2005, Secretary of State Condoleezza Rice had recognised the mistakes of US governments:

for 60 years, my country, the United States, pursued stability at the expense of democracy in this region here in the Middle East - and we achieved neither. Now, we are taking a different course. We are supporting the democratic aspirations of all people.<sup>688</sup>

Arab regimes were not deaf to such pressure and subscribed to the universal principles of human rights and to political reform during meetings of the Arab League.<sup>689</sup> In Egypt Mubarak had partly responded to US pressure by creating the Human Rights Council, reforming the National Democratic Party, and by introducing multi-party elections.

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<sup>686</sup> Bahgat Korany (2006), 'Egypt's Overdue Reform: A Prototype of the Middle East to Come?', *Mediterranean Politics*, Vol. 11, No. 1, pp. 83-89.

<sup>687</sup> 'Barcelona dreams', *The Economist*, 24 November 2005.

<sup>688</sup> Condoleezza Rice (2005), Secretary of US State Department, ;Remarks at the American University in Cairo, Cairo: 20 June, [www.state.gov/secretary/rm/2005/48328.htm](http://www.state.gov/secretary/rm/2005/48328.htm), accessed 23 April 2007. For a review of US democracy promotion under G. W. Bush, see Katerina Dalacoura (2005), 'US democracy promotion in the Arab Middle East since 11 September 2001', *International Affairs*, Vol. 81, No. 5, pp. 963-979.

<sup>689</sup> See for instance Arab League (2004), 'Tunis Declaration of 16<sup>th</sup> Arab Summit', Tunis: 23 May, [www.saudiembassy.net/2004News/Statements/StateDetail.asp?cIndex=421](http://www.saudiembassy.net/2004News/Statements/StateDetail.asp?cIndex=421).

These, as we shall see, did not challenge the status quo.<sup>690</sup> The free elections in Iraq in January 2005 also sparked a debate about political reform in the Arab world,<sup>691</sup> though the breakthrough that they seemed to promise was shortlived.

But this change did not last. Washington's inability to bring any form of stability in Iraq and Afghanistan, the success of the Muslim Brotherhood in the Egyptian parliamentary elections at the end of 2005, the democratic election of Islamist Hamas in the Occupied Territories of Palestine in January 2006 all stifled the US 'regime change' discourse. By 2006, relations between the two countries appeared to do a U-turn back to the previous track.

As we shall see, these policy changes in Washington played an important role in shaping EU policy.

## 2. *The conduct of elections in Egypt*

After 27 years of uninterrupted power, Egyptians have invented many jokes to describe Mubarak's 'pharaonic tendencies'. Until 2005, presidential elections were essentially a referendum confirming the People Assembly's nomination of Mubarak – referenda whose outcomes have overwhelmingly been an endorsement of Mubarak and his National Democratic Party.

Elections to the People's Assembly (Parliamentary) in 1990, 1995, 2000 and 2005 all witnessed unfair campaigns, unequal access to the media, widespread manipulation of results, insufficient and bypassed judicial supervision despite repeated Constitutional Court sentences requiring the presence of judges at the ballot boxes, and serious harassment of opposition candidates, including prison detention.<sup>692</sup>

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<sup>690</sup> Dalacoura (2005).

<sup>691</sup> Dalacoura (2005); Fahmi Hweidi, 'Ieri a Bagdad, domani nel mondo arabo', *Corriere della Sera*, 31 January 2005, translated from the Cairo daily *Al-Ahram*.

<sup>692</sup> US State Department (2006), *Country Reports on Human Rights Practices – 2005*, Bureau of Democracy, Human Rights, and Labor, Washington: 8 March; US State Department (2007), *Country Reports on Human Rights Practices – 2006*, Bureau of Democracy, Human Rights, and Labor, Washington: 6 March; European Commission (2005b), Commission Staff Working Paper, Annex to: "European Neighbourhood Policy" Country Report Egypt COM(2005) 72 final, SEC(2005) 287/3 Brussels, 2 March.

If the late 1980s had seen a degree of pluralism, with over 20% of members of parliament elected from the lists of independent candidates (mostly Muslim Brotherhood affiliates who could not stand as representatives of an illegal organisation), by 1990 the NDP's share of the vote started to increase again. The 1990 election represented a turning point, with a new mode of manipulating the elections and managing them from above. They were called two years early following the Supreme Constitutional Court's ruling that had declared the electoral system adopted in 1987 illegal, giving the appearance of a new course in Egyptian politics. But the ways in which the new regulations were drafted and the constituencies formed favoured NDP candidates to the extent that the main opposition parties boycotted the elections.<sup>693</sup>

The 1995 elections were preceded by a law that restricted freedom of the media and by the arrest of over 80 influential Muslim Brotherhood members, and the timing of the announcement of the elections severely limited the opposition's ability to mobilise and campaign.<sup>694</sup> According to the *Economist*,

Egypt is a master at the art of electoral manipulation: when it sent observers to oversee last year's Palestinian elections [in 1996], voters in Gaza joked that the winner was sure to be Egypt's President Mubarak. Its election record, says a European Union observer, is "exceptionally awful".<sup>695</sup>

Whereas in 1990 the opposition parties boycotted parliamentary elections, in 1995 a record 3,980 candidates and 14 political parties vied for the 444 seats in the parliament that were open to electoral competition (a further 10 seats were allocated by appointment of the President). After an assassination attempt against Mubarak in Addis Abeba, the campaign was characterised by government pressure on its critics and opposition groups, a ban on public gatherings, and a new press law that imposes harsh penalties for criticising public figures. Many candidates complained that their agents were prevented from entering polling booths to monitor the procedures and there were widespread allegations of electoral abuses. At the end of an election marred by violence (with dozens of deaths) and widespread abuses, Egypt's ruling National Democratic Party won 317 of the 444 available seats in parliament. Independent candidates, many of

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<sup>693</sup> Kienle (2001), chapter 2.

<sup>694</sup> Kienle (2001), chapter 2; James Whittington, 'Egypt: The active political arena shrinks', *Financial Times*, 20 May 1996.

<sup>695</sup> Quoted in 'Arab autocracy for ever?', *The Economist*, 7 June 1997.

whom were supporters of the NDP, took 114 seats while candidates from the 13 opposition parties standing won a collective 13 seats.<sup>696</sup>

In 2000 the Supreme Constitutional Court ruled that judges must fully oversee elections, implying that Egypt's parliaments elected in 1990 and 1995 were illegitimate. The Parliament responded surprisingly quickly by passing amendments establishing full judicial supervision. But the NDP found other ways to thwart it.<sup>697</sup> The result was that the 2000 elections increased multi-party competition and eliminated some of the most outrageous forms of fraud, so that the NDP's control of parliament fell from 94 to 85% of the seats, even if the elections were far from being considered free and fair. The practice of NDP candidates standing in so-called 'independent' lists, only to join the NDP upon election, increased so much that they outnumbered the NDP official candidates (who alone did not achieve half of the seats). The Egyptian press ironically described the competition as one of 'the NDP running against the NDP'.<sup>698</sup> Whereas in the 1995 elections security forces had concentrated on harassing the opposition candidates, especially those affiliated to the Muslim Brotherhood, in 2000 they focused on their aides and allies. The presence of the judiciary at the polling booths gave an appearance of legitimacy, but the change was 'cosmetic'.<sup>699</sup>

In early 2005, Mubarak surprised the Egyptians by announcing direct multi-candidate presidential elections. The announcement came just after Bush had urged Cairo to accelerate political reform during his European tour,<sup>700</sup> one day after Condoleezza Rice had postponed a visit to Egypt amid growing US concern at the detention of Ayman Nour, the head of the *al Ghad* party.<sup>701</sup> But internal factors were to play a role too. First of all, Egypt was hit by economic slump that forced the population to queue for bread for the first time in a generation, causing dissatisfaction with the government. Secondly, the influence of Gamal Mubarak, the son of the President, in the ruling party began to be

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<sup>696</sup> James Whittington, 'Egyptians vote amid tough restrictions', *Financial Times*, 30 November 1995; James Whittington, 'Mubarak wins huge majority', *Financial Times*, 8 December 1995.

<sup>697</sup> Brownlee (2002); Mona Makram-Ebeid (2001), 'Egypt's 2000 Parliamentary Elections', *Middle East Policy*, Vol. VIII, No. 2, pp. 32-44; 'The law v the state', *The Economist*, 22 October 2001.

<sup>698</sup> Makram-Ebeid (2001), p. 38.

<sup>699</sup> According to Muhammad Sid Ahmed, a leading Egyptian commentator, quoted in James Drummond, 'Tight lid kept on Egyptian poll dissent', *Financial Times*, 31 October 2000.

<sup>700</sup> Khaled Diab, 'Will Mubarak let Egypt's people pick a president?', *European Voice*, 3 March 2005.

<sup>701</sup> For a review of the reactions of the Egyptian press on the role of the US in pushing Mubarak's decision, see Fatemah Farag, 'Egyptian press: "Respect yourself"', *Al-Ahram Weekly Online*, 3-9 March 2005.

felt.<sup>702</sup> He had been appointed head of the NDP's policy bureau with the aim of modernising its internal organisation and image to help the party recover from the losses of the 2000 elections.<sup>703</sup>

Thus, under international pressure and supported by some domestic dynamics, in March 2005 the People's Assembly adopted a bill amending the Constitution to allow for direct presidential elections, approved through a referendum the following May. The Muslim Brotherhood, the three main opposition parties and the protest movement *Kifaya* boycotted the referendum, as the constitutional amendments still posed numerous restrictions: only legal parties vetted by a state-controlled committee could propose a candidate, while for independent candidates 250 endorsements from elected officials were required, most of whom belonged to the ruling party. In the end, of the thirty-nine applications, ten candidates stood against Mubarak on 7 September 2005, of which only two were credible: Noman Gomaa, head of the liberal *Wafd* party, and Ayman Nour, temporarily freed on bail, who had split from the *Wafd* to form the *al Ghad* (Tomorrow) party. The results were, nonetheless, a forgone conclusion: of the 23% of Egyptians who went to the ballot box, over 88.6% confirmed Mubarak for another term, while Ayman Nour obtained only 7.6% of the vote and Noman Gomaa 2.7%.<sup>704</sup> According to observers, 'the fight was lopsided, hastily arranged, poorly refereed and pitted a big bruiser against bantams. Still, Egypt's first-ever multi-candidate presidential election marked a watershed'.<sup>705</sup> Even the Egyptian Organisation for Human Rights (EOHR) recognised that despite the many pitfalls in the conduct of elections, they did represent an 'important step'.<sup>706</sup> In the run up Mubarak made lots of promises: to repeal emergency laws as well as laws restricting freedom of the press, the judiciary and the formation of parties.

Parliamentary elections were then held in three rounds in November-December 2005.<sup>707</sup> Independent monitors complained of the procedural methods used to elect the members

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<sup>702</sup> 'Surgery on hardened arteries', *The Economist*, 2 October 2003; William Wallis, 'Breaking the mould of inertia', *Financial Times, Special Report Egypt*, 23 November 2004.

<sup>703</sup> Michele Dunne (2006), 'Evaluating Egyptian Reform', *Carnegie Papers*, No. 66, January.

<sup>704</sup> Amira Howaidy, 'Beyond the figures', *Al-Ahram Weekly On-line*, 15-21 September 2005.

<sup>705</sup> 'Only a first step, but it matters', *The Economist*, 8 September 2005.

<sup>706</sup> Egyptian Organisation for Human Rights (2005a), *The 2005 presidential election: a critical analysis*, Cairo: 10 September, [www.eohr.org/report/2005/re0910.shtml](http://www.eohr.org/report/2005/re0910.shtml).

<sup>707</sup> Three rounds were necessary because of a Constitutional Court ruling that required judicial supervision in every polling station.

of parliament, and of violations during the election process including violence, tampering with electoral registers, bribery, abuse of public funds, assaults on supervising judges, media representatives, and civil society observers, which for the first time organised themselves in the Civil Society Election Monitoring Coalition to supervise presidential and parliamentary elections in the absence of international monitors.<sup>708</sup>

The results were a victory for the independent candidates tied to the Muslim Brotherhood, who ran for only 141 of the total 454 parliamentary seats and obtained 88 – nearly 20% of the seats, whereas the NDP's parliamentary group's share dropped to below 70%. The rise of Islamists was probably the main reason for the subsequent clamp down of democratic practices: Mubarak has since postponed local elections indefinitely, mounted pressure on the judges who had protested against vote-rigging, had Ayman Nour put in jail in December 2005 together with the arrest of dozens of Muslim Brotherhood sympathisers, and in May 2006 renewed the emergency law. By the end of the year, *The Economist* spoke of 'one of the fiercest campaigns of repression against the Muslim Brotherhood and other dissidents', including the intimidation of judges.<sup>709</sup> This backtracking, after the partial and largely symbolic responses to Western pressure for reform between 2004 and 2005 in Egypt and in other countries in the region (that witnessed the holding of some elections and the Cedar revolution in Lebanon), was interpreted also as a response to the rise of Hamas which won elections in the Palestinian territories at the start of 2006, frightening the Arab and Western governments alike,<sup>710</sup> as well as a consequence of prolonged crisis and violence in Iraq that undermined US policy in the Middle East.

In March 2007, the same amendments that constitutionalised some of the emergency law provisions on torture also concerned the electoral process by curbing the powers of the judiciary in supervising elections, widely considered by the opposition as the only

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<sup>708</sup> Egyptian Organisation for Human Rights (2005b), "Future Parliament"? Not Yet! EOHR Report on Parliamentary Elections 2005 Results, Cairo: 14 December, [www.eohr.org/report/2005/re1214.shtml](http://www.eohr.org/report/2005/re1214.shtml); 'Not yet a democracy', *The Economist*, 8 December 2005.

<sup>709</sup> The president digs in, yet again', *The Economist*, 30 November 2006.

<sup>710</sup> 'Not yet, thanks'. *The Economist*, 29 June 2006; interviews, Council of the EU, Brussels: 14 May 2007, embassy of Egypt, Brussels: 16 May, embassies of EU member states, Cairo: 29 May 2007 (1) and (3).



means to ensure some degree of transparency of the vote despite the experience of restraints in 2005.<sup>711</sup>

### 3. *The responses of the EU*

The EU was silent and policy-less on all electoral processes preceding the 2005 announcement of the first multi-candidate presidential elections and the subsequent parliamentary elections. The only case related to electoral issues in which the EU engaged regarded protesting at the imprisonment and trial of Said Eddin Ibrahim and his colleagues, who had directed a project on voter education at the Ibn Kaldun Centre, financed by the Commission (see box 9.1, p. 226)

It was only after Mubarak's announcement that the EU made some timid steps towards encouraging a more open electoral process. In March, the Commission stated: 'We welcome this development in Egypt as a positive step in the right direction', according to Emma Udwin, the Commission's External Relations spokesperson. But she also added that reforms cannot be 'imposed from outside' and that 'we hope we can be supportive of Egypt in its own efforts to modernise'.<sup>712</sup> Solana too welcomed the 'potentially positive changes' occurring in Egypt, though he added that

democratic movements have to be home-grown [...]. But outsiders can and should play a role. They can help create a context conducive to political change. Once change is underway, they can support and reward reformist forces.<sup>713</sup>

The two main institutions of the EU were thus implicitly underlining the limits of EU involvement in pushing for the introduction of some democratic change in Egypt, emphasising the need for domestic ownership of political reform processes as well as seeking to characterise the EU as an actor that supports – rather than exports - human rights and democracy. This approach had also been outlined in the CFSP's Strategic Partnership with the Mediterranean, as a way to differentiate EU policy from Washington's regime change mantra:

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<sup>711</sup> Mouna Naïm, 'Le président Mubarak somet à referendum des amendements constitutionnels contestés', *Le Monde*, 23 March 2007.

<sup>712</sup> Khaled Diab, 'Will Mubarak let Egypt's people pick a president?', *European Voice*, 3 March 2005.

<sup>713</sup> Javier Solana, 'Europe's role in the spread of democracy', *Financial Times*, 14 March 2005.

These challenges will not be overcome by maintaining the status quo; political, social and economic reform is required. Such reforms can succeed only if they are generated from within the affected societies; they cannot and should not be imposed from outside.<sup>714</sup>

**Box 9.1: Elections in Egypt and EU response<sup>715</sup>**

Event	Explanation	EU response
1995 Parliamentary elections	Opposition candidates and campaigners jailed. Military court sentenced 54 Muslim Brotherhood members to death	None
September 1999: Referendum confirming President	Until 2005 elections, President was 'nominated' by Parliament for a 6 year term (he was the only candidate) and confirmed through a referendum. Turnout was 84%, of which 94% confirmed Mubarak	None
2000 Parliamentary elections	Not free and fair. Harassment of Muslim Brotherhood aides.	None
2000-2001 Case of Saad Eddin Ibrahim and his colleagues of the Ibn Khaldun	Arrested in June 2000, found guilty in May 2001 of embezzlement and receiving funds from the European Commission (€315.000 on voter education), sentenced to 7 years of imprisonment, and released in May	EU reaction: three CFSP Declarations Chris Patten: 'I was dismayed to learn of these sentences and reiterate that the European Commission has no evidence of

<sup>714</sup> European Council (2004c), *Final Report on a EU Strategic Partnership with the Mediterranean and the Middle East*, 17-18 June.

<sup>715</sup> Council of the EU, *EU Annual Reports on Human Rights*, editions from 1998 to 2007, European Parliament, *Annual Report on human rights in the world and European Union's human rights policy*, editions between 1995 and 2007; Human Rights Watch, *World Report*, chapters on Egypt in the editions between 1991 and 2007; Freedom House, *Freedom in the World*, chapters on Egypt in the editions from 1991 to 2007; Amnesty International, *State of the world's human rights*, sections on Egypt in the editions from 1991 to 2007; US State Department, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, chapters on Egypt in the editions between 1993 and 2007; Council of the EU (2001b), 'Declaration by the Presidency on behalf of the European Union on the sentences against Dr. Saad Eddin Ibrahim/Ibn Khaldoun Centre', CFSP 9119/01, Press 204, 28 May; European Parliament (2002), *Resolution on Egypt: the case of Mr Saad Eddin Ibrahim*, P5\_TA(2002)0410, Strasbourg: 5 September; Council of the EU (2002b), 'Declaration by the Presidency on behalf of the European Union on the trial in Egypt against Dr. Saad Eddin Ibrahim and the employees of the Ibn Khaldoun Centre and Hoda' Association', CFSP 11415/02, Press 225, Brussels: 30 July; European Commission (2002), Press Statement, 'Commissioner Patten deplores ruling of Egyptian State Security Court against Saad Edin Ibrahim', IP/02/1161, Brussels, 30 July; Council of the EU (2003a), 'Declaration by the Presidency on behalf of the European Union on the acquittal of Dr. Saad Eddin Ibrahim and his associates', CFSP 7796/03, Press 94, Brussels: 26 March; Council of the EU (2005a), 'Declaration by the Presidency on behalf of the European Union on the presidential elections in Egypt', CFSP 12084/05, Press 229, 8 September; Council of the EU (2005d), 'Statement by the Presidency on behalf of the European Union on the Egyptian Parliamentary elections', CFSP 15631/05, Press 355, 9 December; Council of the EU (2007a), 'Declaration by the Presidency on behalf of the European Union on the constitutional reform process in Egypt', CFSP 8205/07, Press 73, Brussels: 3 April; Germany's Presidency of the EU (2007), 'EU Presidency statement on the Shura Council elections in Egypt', 22 June, [www.eu2007.de/en/News/CFSP\\_Statements/June/0622ShuraRat.html](http://www.eu2007.de/en/News/CFSP_Statements/June/0622ShuraRat.html).

Centre	2003. The arrest and trial was considered as a signal of (among other things) the risks of accepting foreign funding, and investigating fraud in the 1995 elections.	the alleged falsification of documents, which seems to have been central to the case for the prosecution. We deplore the continued use of State security courts to prosecute cases of this nature'. EP Resolution
2005	First multi-candidate presidential elections 2005	Aid: voter education and voter registration projects. Diplomacy: EU raised issue through CFSP
October-December 2005	Parliamentary elections 2005	Diplomacy: EU raised issue through CFSP
April 2007	Referendum on Constitutional changes	CFSP Declaration on constitutional reform
June 2007	Shura Council elections	Statement of the Presidency

Beyond issuing encouraging declarations, indeed, EU action did not support the organisation of the elections. It did not discuss the possibility of sending an Electoral Observation Mission to monitor the various electoral rounds of the autumn of 2005, ostensibly because it had not received an invitation from the Egyptian government to do so<sup>716</sup> – one of the political criteria guiding the EU's electoral observation policy.<sup>717</sup> As an alternative, and for the first time uninvited, the European Parliament sent a small delegation to witness the parliamentary election rounds which, however, did not return for the final round as 'there was little point in returning because of the negative impressions it had on 9 November'.<sup>718</sup>

EU diplomatic actions towards Mubarak and the government during this year of elections also reflected this strategy of caution: it insisted on the president's agenda for political reform to which he had committed at the beginning of the year and during the election campaign, and praised the judicial supervision of the election and the observation missions organised by civil society groups. It also recalled that in the future international observation missions could play a role.<sup>719</sup> Solana congratulated Mubarak upon his re-election, but also reminded him of his 'ambitious programme' for political

<sup>716</sup> Interviews, Council of the EU, Brussels: 1 December 2007 (phone interview), and 1 April 2008.

<sup>717</sup> European Commission (2000a), *On EU Election Assistance and Observation*, COM(2000) 191 final, Brussels: 11 April, especially Annex III: Council Decision 9262/98 – PESC 157 – COHOM 6 Guidelines – EU Policy on electoral observation.

<sup>718</sup> European Parliament (2005), 'EP delegation will not go back to Egypt for final phase of elections', Press Release REF.: 20051122IPR02740, Brussels: 22 November.

<sup>719</sup> Council of the EU (2005a), 'Declaration by the Presidency on behalf of the European Union on the presidential elections in Egypt', 12084/05 (Presse 229), Brussels: 8 September.

reform and of the commitment to democratic principles in the Arab League's Tunis Declaration of May 2004.<sup>720</sup> The 'encouraging' messages were followed by 'concern' at the incidents and irregularities reported during the parliamentary elections.<sup>721</sup>

If the 2005 election year for Egypt, widely heralded as a new era of reform in the Arab world, produced a declaratory engagement on part of the EU, in 2007 the referendum approving Constitutional changes and the elections to the *Shura* Council (the Upper Chamber) attracted a weaker response. The story of the EU Declaration on Constitutional Reform is illustrative. The Commission Delegation in Cairo made a first draft of the text, viewed by some Northern member states' embassies, which was sent to the German Presidency. Berlin modified the draft to include a fairly harsh condemnation of the constitutional amendments that were extremely likely, among other things, to curtail further the right to humane prison conditions, freedom from torture, as well the role of the judiciary in supervising the elections (hence the relevance of this declaration for issues relating to torture as well as to the conduct of elections).

The Egyptian government and its Representation in Brussels, having viewed the text redrafted by Germany, lobbied the representations to the EU of the member states and alerted all its embassies in the EU member state countries in an attempt to block the Declaration. Some member states (France, the UK, Portugal) presented amendments that substantially softened the tone of the condemnation. The German Presidency faced the choice between either endorsing a heavily watered down version of the original draft or issuing a Declaration on behalf of the Presidency only, without the backing of the EU.<sup>722</sup> The text upon which an agreement was finally reached was considered by many of the officials interviewed as 'soft': it underlines that the EU has been 'actively' following the constitutional reform process in Egypt and will continue to so on the new anti-terrorism law, but limited its condemnation of the referendum and 'noted' the lack of a public debate on constitutional reform. The justification used by the member states that pushed

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<sup>720</sup> Council of the EU (2005c), 'Javier Solana, EU High Representative for CFSP, Congratulates President Mubarak on his Re-election', Brussels: 10 September, S295/05.

<sup>721</sup> Council of the EU (2005d), 'Statement by the Presidency on behalf of the European Union on the Egyptian Parliamentary Elections', 15631/05 (Presse 355), 9 December.

<sup>722</sup> Interviews, Council of the EU, European Commission, and Egyptian Representation, Brussels: 14 May, 15 May (1), 16 May 2007; interviews, Delegation of the European Commission, and Egyptian Ministry of Foreign Affairs, Cairo: 28 May (2), 31 May 2007.

for a 'soft' declaration was the clarification with the Egyptian authorities that the EU expected 'any new legislation to abide by international standards'.<sup>723</sup>

In the case of Constitutional reform, Germany preferred to seek consensus between the member states, but the elections to the *Shura* Council barely attracted any attention in the EU. The lack of endorsement of a statement condemning the elections on part of the same member states that had watered down the previous declaration on constitutional reform left the German head of the rotating EU Presidency to issue a statement that was *not* on behalf of the EU. The text 'regrets' the widespread irregularities and 'encourages the Egyptian authorities to investigate these occurrences thoroughly and to ensure that future elections are fair and democratic'.<sup>724</sup>

In the context of such official responses, informal initiatives require mentioning. Some embassies of the EU member states (including the UK, the Netherlands, Sweden, Austria) with the Commission Delegation carried out a coordinated effort to oversee the electoral process and report back to their respective capitals. After the elections, these officials met together to 'compare notes' and question EU policy on the election rounds.<sup>725</sup>

Aid projects related to raising voter awareness have been a particularly contentious issue in relations between Egypt and the EU. In 2001, Said Eddin Ibrahim and his colleagues were imprisoned on the accusation of embezzlement and of receiving European Commission funds. Indeed, the Ibn Kaldun Centre had received €315.000 of MEDA funds for a project based on voter education. At that time, the EU issued two CFSP declarations and raised far more diplomatic pressure than over many other cases, but it was criticised for not going beyond diplomatic statements and for criticising the government only once it was satisfied that the funds it had given to the Centre had been properly accounted for.<sup>726</sup> By 2005, however, the Commission had reactivated its aid in

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<sup>723</sup> Council of the EU (2007a), 'Declaration by the Presidency on behalf of the European Union on the constitutional reform process in Egypt', CFSP 8205/07, Press 73, 3 April. Interviews, Council of the EU, Brussels: 14 May 2007.

<sup>724</sup> Germany's Presidency of the EU (2007), 'Statement on the Shura Council elections in Egypt', 22 June, [www.eu2007.de/en/News/CFSP\\_Statements/index.html](http://www.eu2007.de/en/News/CFSP_Statements/index.html).

<sup>725</sup> Interviews, Delegation of the European Commission and embassies of EU member states, Cairo: 28, 29, 30 May 2007.

<sup>726</sup> James Drummond, 'Egypt condemned for sentencing of activist', *Financial Times*, 25 May 2001; and Judy Dempsey and Heba Saleh, 'Egypt and EU take big step on free trade', *Financial Times*, 26 June

support of electoral processes, by supporting many of the local NGOs that developed a network to observe the conduct of elections.<sup>727</sup> Voter registration also became a priority for EU aid, given that around 50% of the population does not have an identity card – this is being addressed through European Neighbourhood Policy Instrument funding rather than EIDHR, given that it constituted an issue upon which cooperation with Egyptian authorities was possible.<sup>728</sup>

#### 4. *Explaining the EU response*

EU action on electoral processes in Egypt shares with the case study on torture the shift that occurred in 2005. Mubarak's response to US pressure with the holding of multi-candidate presidential elections was also picked up by the EU. During the year, the EU produced a declaratory policy of encouragement of electoral liberalisation processes, recalling the President's commitments at Tunis and during the electoral campaign. However, a closer look at the actions produced and the processes that led to them reveal some differences with the case of torture.

First of all, the Egyptian government was never condemned publicly or confidentially, as it was twice in 2005 with confidential démarches on torture. Secondly, informal diplomacy, also through the Commission, was largely absent. After the problems incurred with the Egyptian authorities over the case of the Ibn Kaldun Centre, the Commission has been cautious in its use of aid, for instance to promote voter education projects. In 2005 it supported a voter registration project that was carried out in cooperation with Egyptian government structures. By contrast, EIDHR has not been used to promote projects with relevance to improving standards in the conduct of elections.

The EU's position on electoral standards was hostage, more than EU policy on torture, to divergences between the member states.<sup>729</sup> If in 2005 there was sufficient agreement

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2001, which raised the contradiction between the human rights clause and its lack of use on part of the EU for cases of this kind.

<sup>727</sup> Interview, Delegation of the European Commission embassy of one EU member state, Cairo: 28, 30 May 2007.

<sup>728</sup> Interviews, European Commission, Brussels: 15 May 2007; interview, European Commission Delegation, Cairo: 28 May 2007.

<sup>729</sup> Interview, Council of the EU, Brussels: 1 April 2008.

on producing declaratory statements encouraging respect for fundamental standards, by 2007 this consensus had evaporated: the statement on the elections to the Shura Council were issued by the German presidency alone without the backing of the other EU member states. Similarly, the Constitutional reforms that wiped out the victories of the judiciary in securing their supervision of elections, ‘approved’ through a referendum, were met in the EU with an enfeebled declaration that had been watered down by those member states that were keen to prevent Cairo’s promised negative reaction.

The results of the 2005 parliamentary elections should also be taken into account in understanding the EU position. The clear success of the Muslim Brotherhood was not seen favourably in many European capitals, fearing the consequences of a rise of Islamist political forces in Egypt. The government’s crackdown on the opposition following the elections, and the EU’s reaction to it is enlightening: whereas the imprisonment of Ayman Nour was criticised formally and informally by EU national governments and by the EU,<sup>730</sup> the imprisonment of dozens of Muslim Brotherhood affiliates did not raise any concern in Europe. The electoral victory in January 2006 of Hamas in the Palestinian Occupied Territories was overwhelmingly singled out as the most important factor in changing the EU position<sup>731</sup> by and large brought to an end the brief season of Western pressure on electoral liberalisation in Egypt.

The EU paradigm whereby democracy and security are seen as two sides of the same coin, as the EMP and ENP rhetoric and policies would establish, is thus fundamentally contradicted when the consequences of political reform lead to the fear of a rise of ‘fundamentalism’. Far from being ‘merged’, they are in a relationship of mutual contradiction. This confirms the conflict between security and normative interests that previous research in the field of EU relations with the Mediterranean as a whole has postulated.<sup>732</sup>

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<sup>730</sup> Ayman Nour’s imprisonment was also criticised informally during visits of European heads of state and government ministers. See Chapter 8.

<sup>731</sup> Interviews, Council of the EU and European Commission, Brussels: 14 May, 15 May 2007 (1), 1 April 2008, and (2), and embassies of the member states, Cairo: 29(1), 30 May 2007 (4).

<sup>732</sup> Gillespie and Youngs (2002); Jünemann (2003a); Joffé (2008), Michelle Pace (2007), ‘Norm shifting from EMP to ENP: the EU as a norm entrepreneur in the south?’, *Cambridge Review of International Affairs*, Vol. 20, No. 4, pp. 659 – 675.

On the whole, in the case of elections in Egypt, therefore, the realist interpretations represent the most powerful explanation for the virtual absence of any EU position prior to the 2005 events and to the brakes pulled during the election year. The EU did take some advantage of the external circumstances that offered a window of opportunity largely thanks to Washington's brief period of pressure on Cairo to hold multi-candidate presidential elections with some diplomatic encouragement of the changes and some support of local NGOs to monitor the electoral processes of 2005. How to explain these 'push' factors?

## 5. *Conclusions*

Human rights supporters in Cairo, non-governmental but also from within the government, see the EU's position on human rights and democracy-related issues as 'hypocritical, naïf and unfocussed'.<sup>733</sup> Opposition parties and movements have been united in calling upon the EU to articulate binding reform benchmarks in approaching Egypt, and many doubt that EU commitment to promoting democracy is real, while others worry about its 'real intentions'.<sup>734</sup> In the member states too the EU's self-portrayal as a supporter of global human rights meets the scepticism of observers:

the US and its European allies have long used the smokescreen of democracy and human rights to undermine regimes of which they do not approve [such as Belarus], while turning a blind eye to undemocratic practices and rights abuses in countries [including Egypt] that do their bidding.<sup>735</sup>

The evaluation of such external inconsistency in performance, however, requires a deeper analysis of the priorities of the different actors, and of the processes that led to EU actions.

This instrumentalist view, whereby on single issues it is possible to find a prioritisation on security rather than on democracy, is weakened if placed in a broader historical context, and does not explain the reasons for the differences in the reactions over each

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<sup>733</sup> Interview, Egyptian Ministry of Foreign Affairs, Cairo: 1 June 2007.

<sup>734</sup> Amr Hamzawy (2005), 'Euro-Mediterranean Partnership and Democratic Reform in Egypt: Contemporary Policy Debates', in Fernández and Youngs (eds.), pp. 131-137.

<sup>735</sup> Neil Clark, 'You cannot be serious: The Belarus saga exposes the hollowness of the west's support for human rights and democracy', *The Guardian*, 27 March 2006.



case. First of all, an examination of the processes and motivations guiding the EU member states help us understand the nature of the 'other' priorities that hindered the development of stronger normative positions.

Chapter 7 illustrated that there was a convergence within the Council on viewing Egypt as a key partner in the pursuit of other important foreign policy dossiers in the Middle East, in the Arab world and in Africa – issues of particular importance to the large member states with a tradition of presence in the region. But the issues to be dealt with through partnership with Cairo varied among the member states. The strength of intergovernmentalism can be seen not only in terms of divisions between the member states but also on varied importance of types of motivations driving foreign policy. Whereas for Britain the key concern was Egypt's role as a partner in a number of international affairs questions, Italy's prime interests were related to economic and (partly) migration cooperation. France held interests in both fields, though mitigated by strong interests in other countries of the area. These differences were fed into the Council as well as in the Commission.<sup>736</sup>

Although the Council's diplomatic activity included talks with Mubarak on all the broader issues in which Egypt's role was important, CFSP was rarely resorted to for such issues. Indeed, the member states continued to pursue bilateral relations with Cairo regardless of the dimensions of the EMP or ENP.<sup>737</sup> This is counterfactually proved also by Cairo's strategy of putting pressure on the individual member states as well as on EU institutions. Egyptian authorities saw the member states as the key actors in developing an EU position,<sup>738</sup> as much as they were aware that the dialogue with the member states on external affairs was more important than any human rights dialogue with EU institutions.<sup>739</sup>

Nonetheless, two key priorities stand out: the importance of partnership and of maintaining good relations with an important partner on numerous international and regional dossiers, and the overwhelming understanding that the stability of the region

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<sup>736</sup> Interviews, Council of the EU, and European Commission, Brussels, 14 May, 15 May 2007 (1).

<sup>737</sup> Interviews, embassies of EU member states, Cairo: 29 May (3), 30 May 2007 (1).

<sup>738</sup> Interview, Egyptian Embassy to the EU, Brussels: 16 May 2007.

<sup>739</sup> Interview, European Commission Delegation, Cairo: 28 May 2007 (1).

depends on the containment of Islamist political forces, especially in a key regional country like Egypt. Both required cooperation with Cairo.

The importance of partnership was a key inhibiting factor in pursuing action relating to human rights and democracy deficits. The sensitivity of EU institutions and member states to the reaction of Egyptian authorities to strong condemnation was taken into consideration in the debate on how to convey messages to the government. Troika-delivered messages, for instance, were seen as counterproductive, often leading to a preference for informal diplomacy.

In contrast with Ukraine's Orange Revolution at the end of 2004, there has been no strong motivation that led member states and institutions to perceive human rights and democracy goals as 'merged' with other interests, despite the rhetoric on democracy as the best guarantor for stability. On the contrary, the fear of 'Islamic fundamentalism' through the rise of the Muslim Brotherhood, toned down the EU's brief flirtation with stronger diplomacy in 2005. Nor was there any evidence to suggest that the human rights and democracy rhetoric would be used as a vehicle to pursue other interests, or as a means to appease domestic demands for human rights promotion.

But why did the EU member states on occasion pursued collective declaratory positions on human rights and democracy? Why was there an increase in normative CFSP positions after 2000, when the security 'stakes' grew stronger? And why did the EMP and ENP increasingly insist on these principles and standards? There is no evidence to suggest that they could act as a Trojan horse for hegemony or economic penetration (in fact, if anything they could be detrimental to such aims, as argued by an Egyptian official comparing the supposed strings attached to aid by the EU to Chinese investments).<sup>740</sup>

The Egyptian case illustrated the diversity of perceptions between the member states on the role that human rights should play, as well as the means and tools to use when human rights issues are eventually raised. Interviews have confirmed that the Scandinavian countries and the Netherlands have been the most active regarding human

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<sup>740</sup> Interview, Egyptian Embassy to the EU, Brussels: 16 May 2007.

rights, and that Germany adopted high profile positions during its presidency of the EU in the first half of 2007. Britain too has not refrained from human rights based public diplomacy (CFSP was used on human rights issues in Egypt during its presidency in the second half of 2005, when the parliamentary and presidential elections were held in Egypt), as well targeting its aid projects towards human rights and democracy, but as the EU member state with the strongest ties to Egypt, it balanced its public condemnation extremely carefully.

France, Spain, Portugal and Italy were instead particularly sensitive to avoid issues they consider 'internal affairs', mistrusted the 'lecturing style' of the northern EU member states and favoured a 'mercantilistic view based on *Realpolitik*'.<sup>741</sup> Although Spain was a secondary actor in Egypt, it has played an important role in developing EU policies towards the Mediterranean basin. But with regard to human rights and democracy, according to one source, 'Spanish foreign policy is often rather lenient towards some regimes, and this is out of concern that Spanish policies might look too American. There are no democracy promotion policies against any government'.<sup>742</sup> Italy has traditionally shied away from any initiative regarding human rights and democracy issues in Egypt, preferring to 'follow suit rather than promote'.<sup>743</sup> In other words, it would not block CFSP action on human rights and democracy, given its commitment to greater European cooperation in foreign affairs, but would avoid promoting an emphasis on human rights and democracy. Conversely, as we have seen, France has blocked EU action in the name of its more pressing interests of maintaining friendly relations. In other words, the qualitative interviews reveal different cognitive views of the ways in which relations with Egypt, over human rights and democracy, should be developed.

The brakes put by the member states seem to support interpretations that have the supranational EU institutions as driving human rights and democracy in foreign policy. What has been defined as 'institutional schizophrenia' has the Council preferring a pragmatic approach led by political considerations, and the Commission acting as policy entrepreneur seeking to combine national interests and regional cooperation, and the EP

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<sup>741</sup> Interview, Council of the EU, Brussels: 14 May 2007.

<sup>742</sup> Quoted in Kimana Zulueta Fülcher (2008), 'Democracy promotion during Zapatero's government 2004-2008', *FRIDE Democracy Backgrounder*, Madrid: February.

<sup>743</sup> Interview, embassy of EU member state, Cairo, 29 May 2007.

acting as a critical watchdog to denounce violations.<sup>744</sup> In the case of Egypt, this was confirmed for example by the Council initiatives that *de facto* have excluded the Commission, such as the Policy Planning Dialogue on CFSP held twice a year with some Southern Mediterranean states, Egypt included, to deal with international affairs such as the Middle East Peace Process and Sudan, initiated by the Council's Policy Planning Unit to which the Commission is just invited.<sup>745</sup>

However, if the pragmatism of the Council can be generally confirmed, the roles of the Commission and the Parliament need further qualification.

The Commission played an influencing role, but can only secondarily be considered a policy shaper. The 2003 Communication on promoting human rights in the Euro-Mediterranean Partnership, strongly backed by the then Commissioner for External Relations Chris Patten,<sup>746</sup> and published two months before the first proposal for the Neighbourhood Policy was launched (see chapter 3), did not lead to any changes in EU relations with Egypt, even with regard to human rights and democracy funding, which did not see an increase in the percentage of aid spending on human rights and democracy in Egypt.

It did, however, suggest a degree of 'ideational shift' that had occurred amongst Commission officials as a result of the dissatisfaction with the ineffectiveness of the Barcelona Process on human rights and democracy issues and the perceived need to improve these types of interventions. In the case of the Commission, there is evidence of influence stemming from non-institutional sources, such as the UN Arab Development Reports and interactions with the Euro-Mediterranean NGO and research institutes' networks,<sup>747</sup> validating the hypothesis of ideational changes through epistemic communities. This suggests that the dense web of relations and networks created by the

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<sup>744</sup> Stefania Panebianco and Rosa Rossi (2004), 'EU attempts to export norms of good governance to the Mediterranean and Western Balkan countries', *Jean Monnet Working Papers in Comparative and International Politics*, No. 53, October, quote on p. 12.

<sup>745</sup> Interview, Council of the EU, Brussels, 14 May 2007.

<sup>746</sup> Youngs (2006a), interview European Commission, Brussels: 9 April 2003.

<sup>747</sup> The UNDP Reports (1 million copies of the first edition were downloaded in 2002-3) were extremely influential in establishing the link between lack of development and the democratic deficit. Interviews, European Commission, Brussels: 9 April 2003, and 15 May 2007 (3).

EMP has produced ‘processes of socialisation’ at the meso-level that can contribute to influencing the agenda, even if they have not led to fundamental policy shifts.<sup>748</sup>

Perhaps more importantly, the Commission was also struggling to define EU rhetoric on human rights and democracy as different to the ‘regime change’ doctrine of the Bush Administration, more focused on participatory dynamics and empowering local actors in pushing for political reform from within the countries concerned rather than exported from external sources,<sup>749</sup> as the change in the language from the Common Strategy to the Strategic Partnership also illustrates. This suggests that some dynamics relating to building an ‘EU identity’<sup>750</sup> in differentiation to the US were at work at the ‘meso-level’ of institutional processes.

Yet the Commission’s role as a ‘norm entrepreneur’ on human rights and democracy promotion was limited. Most interviewees within and outside the Commission did see it pushing more strongly with the ENP to ensure that human rights and democracy are discussed. Even in the Council there are officials who admit that the ENP and the Action Plan have helped the EU ‘to get one foot in the door’ on these matters.<sup>751</sup> Thus, in the very recent past, the Commission has been exploiting these avenues to strengthen its informal diplomacy. However, in the belief that any reform path in Egypt will be long and difficult, and keen to maintain dialogue with Cairo, the Commission also favoured persuasive and gradualist tactics to public condemnation or confrontation on human rights and democracy issues.<sup>752</sup>

The European Parliament has also managed to raise its profile, to partly influence policy decisions through the use of the media and parliamentary interrogations, as well as put pressure on Cairo on specific human rights abuses. This role has been considered ‘healthy’ by Commission officials: by putting the spotlight on certain problematic

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<sup>748</sup> Interview, Council of the EU, 1 April 2008.

<sup>749</sup> Interviews with Commission officials, Brussels: 9 April 2003 and 15 May 2007 (3). It is worth reminding that this of change stemming from within featured also in the CFSP Strategic Partnership of 2004 (see chapter 6).

<sup>750</sup> Keukeleire and MacNaughton (2008), chapter 1.

<sup>751</sup> Interviews, Council of the EU, Brussels: 14 May and 1 December 2007.

<sup>752</sup> Interviews, European Commission, Brussels: 15 May 2007 (2); Interviews, European Commission Delegation, Cairo: 28 May 2007 (1).

issues, the EP has forced responses from the other institutions.<sup>753</sup> However, its role as a ‘critical watchdog’ also requires some qualification: European Parliament involvement with human rights in Egypt too has been selective, even if at times vociferous and following an agenda that was not necessarily developed in coordination with the other EU institutions. Major issues relating to human rights and democracy, such as torture and elections, have received far less attention than other cases – with consequences on perceptions of the EU in Egypt too.<sup>754</sup> Indeed, one Egyptian official defined the European Parliament’s action as ‘pseudo-pressure’.<sup>755</sup>

Nonetheless, what is relevant in this context is that the EU foreign policy processes were not solely determined by the member states but also shaped by the positions of the other institutions and informed by external influences. The debates triggered by Washington’s stronger push for change in Egypt at the beginning of 2005, but also the epistemic communities revolving around the EU’s Mediterranean policies and structures both contributed to a reflection in European capitals and in Brussels.

In terms of agency and processes, the intergovernmental interpretations alone are insufficient to explain the ways in which EU policy evolved towards Egypt, despite the primacy of the member states’ foreign policies. This has been evident especially in explaining the partial change in EU policy, and has been recognised by external actors too. According to NGO networks:

Although the EU on several occasions in recent years has adopted a more open diplomatic discourse on human rights issues in the Southern Mediterranean region, the use of such discourse has been selective and unbalanced.<sup>756</sup>

If the Commission and the EP influenced policies, especially those in which they had formal powers, but were not instrumental in determining EU diplomatic action, why did such action occur? The debate within the EU regarding human rights and democracy principles in policies towards Egypt can help uncover these analytical gaps. The

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<sup>753</sup> Interviews, European Commission, Brussels: 15 May 2007 (1); Council of the EU, Brussels: 1 April 2008; Egyptian Embassy to the EU, Brussels: 16 May 2007.

<sup>754</sup> Interview, Egyptian Ministry of Foreign Affairs, Cairo: 1 June 2007.

<sup>755</sup> Interview, Egyptian Embassy to the EU, Brussels: 16 May 2007.

<sup>756</sup> Euro-Mediterranean Human Rights Network (2007), *European Neighbourhood Policy: Human Rights in EU-Egypt Relations*, Cairo: 26-27 January.

different views between member states did not regard solely the importance attributed to human rights and democratic standards, but also the type of diplomatic tools that were considered most appropriate to convey messages and pursue dialogues with governments. Recurring themes raised by all EU and member states interviewees regarded the choice of issues to pursue and the means the opportunity and efficacy of, for instance, public condemnation statements, of sending an official delegation or a representation of the Troika to convey commonly shared concerns about human rights and democracy, which often in the case of Egypt would be declined audience. Conversely, cooperation rather than confrontation, informal diplomacy through non official delegations and by using established formats for political dialogue were seen by many as the best means to entertain a dialogue as well as to achieve some response.<sup>757</sup>

Secondly, if the EU member states continued to pursue strong bilateral ties with Egypt, on human rights and democracy issues there has been a consolidated 'habit of cooperation' and of consultation on the ground as well as in the Council, illustrated for example in the EU's global policy against torture, but also in the negotiation process that occurred for the drafting of the CFSP Declaration on the 2007 constitutional reform in Egypt. This conforms both to a 'logic of appropriateness' as well as to a shared belief that the EU *should*, as a whole, pursue such issues collectively, also because bilateral action of individual countries would not be taken seriously.<sup>758</sup> On the one hand, this shields those member states more concerned with human rights and democracy issues from retaliation, should it develop a strong position alone. On the other, it forces those member states that are more reluctant to promote human rights and democracy to follow suit when pressure is raised in Brussels to develop a position on a specific issue or to incorporate the principles into policies.

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<sup>757</sup> Alongside numerous interviews, these findings were also highlighted in Svensson-McCarthy (2007).

<sup>758</sup> Interviews, embassies of EU member states, Cairo: 29 (3), 30 May 2007 (4). These findings were confirmed in Svensson-McCarthy (2007).

## CHAPTER 10

### CONCLUSIONS

#### 1. *Introduction*

This thesis has focused on the gap between the EU's self-portrait as an actor pursuing human rights and democracy abroad and its actual performance in foreign policy: does the EU include human rights and democracy objectives in its foreign policy? If so, why? And if not, why? The hypotheses developed to guide research regarded EU motivations as well as foreign policy-making processes, in an attempt to uncover the complexities of decision-making dynamics, and to go beyond both the rhetoric and the criticisms that are often levelled at the EU in European press.

These hypotheses can be summarised in five broad arguments. The first sees the EU as using human rights and democracy rhetoric instrumentally to justify or to conceal the pursuit of other objectives, which can range from establishing hegemonic power over third countries, to seeking legitimacy vis-à-vis domestic electorates. Alternatively, these principles are not translated into foreign policy action because they do not correspond to or because they compete with other EU foreign policy aims. Both these approaches challenge the genuineness of the Union's rhetoric on promoting human rights and democracy.

The second sees the EU's claim as tied to liberal views about peace and democracy; this approach allows for the EU pursuing human rights and democracy as a means for increasing security and stability for the EU and its surrounding environment. With this hypothesis, the search would be for the degree to which the EU conforms to this post-Cold War paradigm.

The third hypothesis is tied to internal rather than external aims: the EU pursues human rights and democracy as a consequence of intergovernmental and/or inter-institutional dynamics with the aim of building or maintaining consensus between member states. Human rights and democracy can form the backbone for a concerted CFSP or even to strengthen the EU's international identity or image, feeding into more constructivist-based theoretical approaches.



The fourth sees EU institutions as forces capable of shaping state preferences. The EU's rhetorical commitment, through institutionalisation, would lead to further commitments to respond to human rights and democracy problems in third countries. Policy entrepreneurs, that can range from member states to epistemic communities, can act as a 'constituency' persuading and shaming more reluctant member states to address human rights and democracy.

The fifth sees human rights and democracy as a constitutive element of the EU's internal and external identity. On the basis of this hypothesis, one would expect the EU to pursue normative positions, even if it is recognised that this is not always the case.

This chapter will focus on drawing some conclusions from the two case studies: to what extent can it be claimed that human rights and democracy were included in foreign policy actions towards the two countries? What priorities emerged? The aim would be to identify sets of dynamics regarding actors, motivations, and priorities that characterise the EU foreign policy making process in action. The third section will identify the ways in which the case studies can provide some generalisations about EU foreign policy and the role of human rights and democracy therein. The final section will outline the ways in which these can challenge assumptions about the EU's international identity, and relate my conclusions to literature on the subject. Are the normative power interpretations sustainable empirically? If not, what implications can be derived from empirical research that help understand the interplay between strategic foreign policy objectives and more 'normative' or immaterial principles?

## **2. *The EU and human rights and democracy in Ukraine and Egypt***

Both cases illustrated the diversity of views within the EU member states about the general role and importance of the two countries considered. And both cases showed that EU responses also need to be placed within the context of external influences. In both cases, the 'regime change' rhetoric pushed by the US was one determinant stimulating EU action. The 'brakes' to EU action on human rights and democracy also stemmed partly from the international context and from the relative importance that the EU and its member states attached to other issues and actors.

In the case of Ukraine, the role of Russia and the relations of some member states with Moscow constituted an important variable in determining their action towards Kiev. In contrast with other findings,<sup>759</sup> the aim of keeping Ukraine out of Russia's orbit was not shared by the member states. The responses of the EU were determined by policy entrepreneurs and by the threat of chaos in 2004. In the case of Egypt, relations with Arab world, Cairo's role in the Middle East, and political dynamics pertaining to the Middle Eastern countries, such as the rise through elections of Islamist parties, all provided important inputs into EU foreign policy choices. Hence, the understanding of EU foreign policy needs to be placed with this broader playing field of interaction with other actors, regional and international dynamics, and stimuli coming from within the country concerned as well as from other external actors.

It is in these dynamics, best understandable through intergovernmentalism and realism, that the 'brakes' pulled to EU action on human rights and democracy can be found. As we have seen, the two case studies both presented problematic and long-term issues relating to human rights and democracy, as well as specific episodes of abuse. With regard to the episodes which could have warranted an EU response, the human rights and democracy concerns interplayed with other interests and priorities of the EU member states. The most important consideration that emerged from the case studies was the priority of maintaining the partnership with Egypt and, in the case of Ukraine, with Russia, although cooperation with Kiev was increasingly seen as important with regard to border management and regional security issues in the context of approaching EU enlargement.

This priority was often at odds with engaging with the human rights and democracy problems that emerged in the two countries. In the case of Egypt, maintaining friendly relations with Cairo, as an important partner on a broad range of key international and regional issues, trumped the importance of human rights and democracy in the foreign policy agenda of the EU and its member states, substantiating the realist hypothesis that principles and interests were in mutual opposition. The case of Ukraine can also be explained through realism, though with different interpretations. Here, two dynamics

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<sup>759</sup> Especially Piccone and Youngs (2006).

were discernable. Human rights and democracy strengthened the EU's justification for keeping Kiev's demands for a prospect of accession at bay. However, once the country's lack of democratic standards led to the internal crisis of the Orange Revolution, the EU did intervene to support a resolution of the crisis that would also be based on respect of those principles. Here, human rights and democracy considerations were merged into concerns about the stability of Eastern Europe.

These conclusions would validate the first two hypotheses developed. Yet it does not necessarily lead to the conclusion that human rights and democracy are a peripheral concern, if a concern at all, except for cases in which they challenged the stability of the Union and its proximity. In fact, paradoxically, it could be argued that they are an important concern, precisely because action on such issues *would* impinge on a wide range of sensitive problems for EU partners, given that they go to the heart of the legitimacy of the government in power in the respective countries, but also for the EU. Action on human rights and democracy could imply putting key interests at risk. The use of informal diplomacy through political dialogue, which according to officials represents a more constructive way of approaching sensitive issues with third countries, could also be an indication of the lack of transparency with which the EU treats human rights and democracy, as lamented by the European Parliament (see p. 168), precisely because of their relation with sensitive issues such as the relationship between sovereignty and interference, and 'values and interests'.

The prioritisation of other concerns is just the immediate conclusion reached. As we have seen, especially in the case of Egypt, but also with regard to Ukraine, the importance of human rights and democracy in diplomacy actually increased with the rise in the importance of the two countries on foreign policy dossiers considered crucial within the EU. With regard to Egypt, it is undeniable that the fight against terrorism raised the security stakes for the EU in cooperating with Cairo, even if I have argued that the discontinuity with Barcelona's normative agenda after September 11 has not been as sharp as assumed.<sup>760</sup> Human rights and democracy had been the weakest feature EU policies towards its immediate South throughout the 1990s when the rhetoric was at its peak.

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<sup>760</sup> Jünneman (2003b), Youngs (2006), Joffé (2008).

Paradoxically, human rights and democracy became increasingly addressed when the sharpest tensions between ‘values and interests’ emerged. These illustrated conflicts between the need for cooperation in counter-terrorism from those same governments that the EU was supposedly pushing to reform, double standards and conflicts between internal and external consistency (as the cases of renditions showed), also leading to problems of credibility and legitimacy in pursuing human rights and democracy. In Ukraine too, Russia’s renewed policy of cultivating its sphere of influence coincided with the EU’s gradual extension of its Eastern reach through enlargement, posing new micro-security challenges on the future border, as well as potential competition with Moscow on influence in Eastern Europe. In both cases, therefore, there was a rationale pushing for greater engagement and a demand for cooperation that could lead to conflict with the principles.

Yet at the same time, the Union’s declaratory policy, at times dressed in tones of condemnation, the stronger emphasis on informal diplomacy in Egypt and the cooling down of relations with the President and his entourage in Ukraine, and the increased use of CFSP cooperation to convey messages to the two governments all witnessed greater activism in the 2000s than in the 1990s. This would be a paradoxical finding if the main obstacle to developing human rights and democracy in EU foreign policy were solely the existence of competing priorities. In other words, if diversity and competing priorities were the key drivers, why would the EU have developed its rhetoric and image on human rights and democracy?

Changes and stimuli from the international environment have been important influencing factors for the EU. The international debate triggered by Washington’s ‘freedom’ discourse has already been mentioned as a factor that contributed to shaping debates within Europe. Furthermore, the Orange Revolution was not the only event that led to speculations of another democratisation wave after 1989-1991. In 2003 Georgia witnessed the ‘Rose Revolution’, in January 2005 Iraqis went to the polls for the first time in decades, and the following month the ‘Cedar Revolution’ in Lebanon offered a glimpse of change in the Middle East. Secondly, it could be argued that by the 2000s the EU was better ‘equipped’ to support human rights and democracy. This argument would certainly contribute to explaining the near-absence of aid projects relevant to the specific

human rights and democracy problems in Ukraine and Egypt in the 1990s. The reform in the management of aid and the introduction of Country Report no doubt improved the ability of the Commission and its strengthened Delegations to pursue more targeted priorities through aid. Yet the tools and their legal basis were already in place by the 1990s, even if the 2000s saw the growth of global strategies.

The most important element that has consistently been uncovered in this thesis regards the politics of intergovernmentalism within the EU. Each of the responses that the EU produced to human rights and democracy problems in Ukraine and Egypt showed that the member states had different assessments of the country in question, the issue it raised, the role that human rights and democracy should play, the most appropriate ways to deal with the issue, and the potential impact that an EU response would have. Interviews have confirmed that, had it not been for the issue being pushed up the agenda, some member states would have favoured not responding to breaches of those principles.

In other words, differences between member states were not just about 'casual beliefs' regarding the tools to use or the most effective diplomacy; they regarded the opportunity of pursuing normative positions in the first place. Behind these views were different general assessments of the role of the country in question, but also competing *cognitive* views on the importance of human rights and democracy vis-à-vis partnership, cooperation, non-interference in the internal affairs of other states, and a sensitivity to cultural specificities, alongside *rationalist* cost-benefit analyses on the potential impact of EU condemnation.

So if this 'logic of diversity' that invests material as well as ideational concerns was dominant, coupled with the risks that a normative position could pose on single key issues on a case by case basis, why *did* the EU raise human rights and democracy in its relations with Ukraine and Egypt? However declaratory and 'safe' the EU's normative stance, it could have chosen *not* to resort to such positions. Notwithstanding the concrete (in)action on human rights and democracy, there has been an attempt to develop policies, initiatives and guidelines that are relevant to this field. So the other side of the question also needs to be addressed: why did the EU raise human rights and democracy concerns. Do realism and intergovernmentalism help explain these reasons?

At the intergovernmental level, the processes that triggered EU action still show that the role of the member states was important in initiating the debates about developing normative positions on specific episodes. Policy entrepreneurs can be found in the member states, and their role was more effective in setting the agenda than the European Parliament and the Commission. In both cases, the Presidencies were indicated by all interviewees as important initiators of declaratory positions on key human rights and democracy violations.

In the ensuing debates, the Northern EU member states were fairly consistently amongst those pushing for the EU to adopt stronger normative positions, and had to negotiate with the other member states more concerned with other priorities. The incentives for these states to resort to the EU to develop normative positions was the 'politics of scale' of making such position stronger vis-à-vis the country concerned. This group was strengthened with the accession of the new member states from Central Europe, with Poland often taking the lead, especially in using normative positions against Russia (hence their role in the Ukrainian case study). Furthermore, the possible costs of a collective normative position are lower: the supposed recipient of the EU's normative position would be less likely to retaliate against the EU than against a single member state.

Britain, Germany, and France were, according to interviewees, the most powerful in determining the foreign policy choices of the EU. The first two, on the basis of the case studies examined here, did take into account human rights and democracy, but the balance in their favour depended on the other issues involved.

France, together with other countries like Italy, Spain (Portugal also emerged with regard to Egypt), were far less committed to developing normative positions on human rights and democracy. Interviews revealed that, alongside the search for diplomatic engagement with Russia, Ukraine, Egypt and the Arab world, these two countries had doubts about 'the lecturing style' of the Northern EU member states, valued the principle of non-interference in the internal affairs of other states, and privileged cooperation also because they saw it as a vehicle to strengthen multilateralism at the international level. Germany's position with regard to Ukraine changed over time. If it

supported EU engagement with Ukraine in the early 1990s, by the end of the decade and in the 2000s, maintaining strong relations with Moscow emerged as the overriding priority. Conversely, with regard to Egypt it adopted stronger normative positions. Changes of government in Berlin could also be a reason for such oscillations. Britain's position has revealed a favour towards strong normative positions. It was amongst those backing Sweden with regard to Ukraine and it did on occasion antagonise the leadership in Cairo with its criticisms of human rights and democracy.<sup>761</sup> But Britain's stakes and interests in Ukraine and Egypt and the importance of their roles with regard to Russia, the Middle East, the Arab world, Africa, and the US have all constituted issues that London deals with at a national as well European level.

This 'logic of diversity' regarding the role that human rights and democracy concerns should play in EU foreign policy also helps explain why the outcome of the process was 'declaratory' and often reflecting the minimum common denominator. Nonetheless, once the issue was raised through 'policy entrepreneurs', different dynamics can be discerned. The rhetorical use of norms could 'shame' the more reluctant actors into following the line (a method used by the European Parliament, whose role will be discussed later). Domestic dynamics could also advise for caution in opposing the development of normative positions (Germany's Chancellor was questioned by his parliament about his position towards Russia at the time of the Orange Revolution, for instance). Finally, a commitment towards European cooperation in foreign policy in general could also convince member states not to block (but water down) the development of normative positions. All these explanation point to a 'habit of cooperation' behind EU guiding EU responses on human rights and democracy.

Indeed, it is significant that the EU did use CFSP to coordinate its statements on human rights and democracy issues. In fact, in both case studies, CFSP was used to address human rights and democracy related problems more than it was resorted to for other matters. This suggests that the member states did share the view that it was appropriate for CFSP to deal with such issues, even when they pursued their interests in the countries concerned outside the EU framework. In both cases, however, this development became evident over time: it was roughly after 2000 that the content of

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<sup>761</sup> Interviews, Egyptian Embassy to the EU, Brussels: 16 May 2007; Egyptian Ministry of Foreign Affairs, Cairo: 1 June 2007.

CFSP became far more characterised by the presence of human rights and democracy related issues.

Processes and dynamics that include the other EU institutions can help shed some light. We have seen that the European Parliament can play the role of a 'norm entrepreneur'. Even with limited powers in CFSP, the EP has used 'strategic arguments' to push the human rights and democracy agenda. It also has put pressure on the Council and the Commission, through parliamentary questions, to make sure that human rights and democracy would be part of relations developed with third countries, and has been key to guaranteeing that a percentage of aid would be dedicated to those aims. In other words, the Parliament has contributed to raising expectations from within on the EU's pursuit of normative positions, and has lobbied the other institutions through its resolutions and human rights reports. Its influence, however, has varied according to the case study. In the case of Ukraine during the Orange Revolution, it played an important part in building an internal EU constituency in favour of intervening to solve the crisis. In the case of Egypt, the European Parliament's insistence on raising particular concerns has worked against the human rights and democracy agenda that the Council and the Commission had agreed upon: political dialogue through the subcommittee established with the ENP.

The European Commission can play the role of a 'policy shaper', also thanks to its formal responsibilities in drafting policy proposals. Together with the European Parliament, we have seen that it has played a significant role in contributing to 'institutionalising' the aim of including human rights and democracy in foreign policy considerations. Since the early 1990s, the Commission has identified the areas in which the institutional 'set up' and the policy tool box was insufficient compared to the aims that were rhetorically stated in declarations and in CFSP. This process of institutionalising and 'mainstreaming' human rights and democracy concerns has in turn raised the pressure, within the EU foreign policy making processes, to take these principles into account.

However, the action of the Commission, on the basis of the case studies examined here, differed from country to country. In a perhaps counter-intuitive conclusion, it could be argued that the Commission played a more important role in pushing the human rights



and democracy agenda in relations with Egypt than with Ukraine. In Ukraine, despite its privileged role in drafting the first CFSP Action Plan, in managing aid towards the former Soviet Union, and later in drafting the ENP Action Plan, the Commission did not push for an EU normative position. It continued to advocate continuity of policy and the adequacy of the existing policy set-up, and did not lobby for a stronger human rights and democracy content to such policy. Even the aid dedicated to Ukraine did not reflect any prioritisation accorded to human rights and democracy, let alone to the problems that the country manifested in those fields.

Conversely, in Egypt the Commission did increasingly push for a stronger normative content to the policies, and pushed this line also through informal diplomacy. This was particularly the case once the ENP Action Plan began to be negotiated. One difference between the two cases was that the Commission was, in the case of Egypt, far more exposed to processes of socialisation brought about by the structures of the Euro-Mediterranean Partnership. There is evidence of an ideational shift within the Commission due to exposure to analyses developed within the policy networks revolving around the EMP. And with regard to the Arab world, both the Council and the Commission were keen to develop a response to the Bush administration's 'regime change' doctrine. The ENP also represented a 'policy window',<sup>762</sup> for the Commission to develop a stronger role in EU foreign policy.

The types of response that the EU adopted also can reveal some of the dynamics at play. As we have seen most of EU action on human rights and democracy was limited to the development of declaratory positions, often cushioned in encouraging terms, stating EU preoccupation on the matter and without raising the possibility of any EU action condemning the occurrences. In neither of the two cases were negative measures used, the 'human rights' clause was never invoked, and even positive tools were scarcely used.

However, it is significant that the member states would engage in a debate regarding the measures to adopt to address the human rights and democracy violations described in chapters 5, 6, 8 and 9. The main debate revolves around whether it is more productive to

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<sup>762</sup> Bicchi (2007), pp. 175-178.

issue public statements and make a noise over certain issues (ie satisfying the EP and the press/public opinion) or whether it is better to act behind closed doors and exercise pressure carefully bearing in mind the sensitivity of the country concerned. The Commission, the Council and many member states prefer this latter option which suggests two things. Firstly, that public opinion pressure and the media is important but not essential. In other words, where the EU issues public statements, a correlation with public opinion pressure can be found. But the EU does not take initiatives solely based on this. Member states' embassies do monitor the internal situation in the countries in which they are stationed and debate between them on means to address human rights and democracy problems that might emerge. Secondly, although human rights and democracy are not very high on the agenda, a policy guided by it can interfere in damaging ways with EU foreign policy agenda. In this sense, human rights and democracy have acquired importance and the member states are careful in handling them, and they often like to keep a firm hand over them.

In sum, the debates revealed different views on the opportunity of adopting a normative position and on the most appropriate ways to express that position. Considerations of potential impact, costs, and appropriateness of action all constituted part of the debate. The preferences that generally emerged were to ensure that the status quo in the receiving country would not be fundamentally challenged and to maintain engagement and partnership. These positions could be justified instrumentally using the human rights and democracy rhetoric: strategic arguments on the need to pursue longer term goals and on the importance of processes of 'socialisation' with partner countries are common justifications for the EU's 'soft' positions on human rights and democracy.

### 3. *EU Foreign Policy*

What do the two case studies tell us about the role of human rights and democracy in EU foreign policy in general? Both countries are without a prospect of accession but within the proximity of the EU – an area considered a priority not only of EU foreign policy, but also for the promotion of democracy and human rights, as the ENP and the ESS underlined. Both countries posed substantial challenges to the normative rhetoric that the EU has developed, and both entertained important relations with European capitals. Within the context of the European Neighbourhood Policy, Ukraine and Egypt

were widely seen by the Commission as crucial countries with which to make progress in order to have some ‘success stories’ that could be of demonstrative relevance to the entire neighbourhood:<sup>763</sup> Ukraine was the only country in the Eastern neighbourhood without outstanding unresolved conflicts; Egypt because of its diplomatic standing in the Arab world and geopolitical importance. In short, their relative strategic importance, their geographical proximity to the EU, their relevance in the policies that the EU developed towards their respective regional contexts, as well as the ways in which they were seen as providing an example to their neighbours of EU engagement, all make Ukraine and Egypt as two cases from which broader conclusions can be drawn on the role of human rights and democracy in EU foreign policy.

The first generalisation regarding EU foreign policy is it is still dominated by the ‘logic of diversity’ that makes intergovernmentalism a crucial framework to understand the processes at the level of the interaction between member states. Realism’s methodology based on an analysis of the historical context in which the EU operates also provides more appropriate tools to reconstruct the processes and circumstances that lead to cooperation in CFSP,<sup>764</sup> the context in which the EU was operating, and the external influences that condition foreign policy processes. The processes that occur at the intergovernmental level show that different dynamics interact with each other. Normative positions can be debated and developed in the Council, following patterns of strategic argumentation, rhetorical action, and consensus-building in the search for unity.

The role of human rights and democracy concerns thus can vary according to the number of issues at stake, which in turn can reflect a commitment to cooperation in foreign policy, but also key national interests of some member states. In other words, the ‘values versus interests’ dichotomy is a simplification that hides the dynamics at play. What is remarkable is that, despite the fact that such diversity of views on human rights and democracy mostly leads to declaratory positions rather than to concerted action, there is a shared understanding that in most cases such issues should be pursued collectively. In other words, the EU’s declaratory normative role can serve a self-

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<sup>763</sup> Interviews, European Commission, Brussels: 24 April 2006 (1), 15 May 2007 (1).

<sup>764</sup> Hill and Smith (2005), Chapter 18.

referential purpose of building consensus within the EU rather than being directed externally, in the sense of achieving external objectives.

Yet such commitment towards developing a collective policy has been limited to the 'soft' issues, such as human rights and democracy, aspects of the political dialogue, aid, managing economic relations. Many of the 'hard' issues have continued to be dealt with bilaterally. Furthermore, cooperation on 'soft' foreign policy issues has not always stimulated a rationale to deepen cooperation. Especially in Egypt, twelve years of the Barcelona Process, and the Common Foreign and Security Policy have not altered the fundamentals of member states' interests there.

Institutionalist approaches can help explain the endurance of the norms, their increasing 'institutionalisation', the growing level of commitment of EU institutions towards 'mainstreaming' the principles into external action, and the growing expectations from within the EU to act on human rights and democracy. In other words, these dynamics, and the role that the other institutions played therein, can be seen as having a 'socialisation' effect that mitigate the intergovernmentalism dominating EU foreign policy. In short, rationalist frameworks have been used here to explain the decisions of the EU member states and institutions to establish and maintain over time human rights and democracy concerns in EU foreign policy.

But the dominant process has been the logic of diversity, investing cognitive as well as rationalist interpretations about the appropriateness of the EU's pursuit of normative foreign policy positions. The fact that human rights and democracy have become part of the debate on EU foreign policy suggests that it is *believed* that the EU level is the most appropriate for such concerns. But rationalist arguments provided much more powerful explanations on EU *action* and *inaction*: even if coordination on developing EU normative positions can entail a socialisation or even identity-building process within the EU, especially at the level of EU institutions, empirical research suggests that these dynamics are insufficient to support a constructivist interpretation of the EU that acts normatively in the world.

#### 4. *Conclusions*

The case studies also generated further questions for future research. First of all, the role human rights and democracy play in national foreign policies, and the degree to which the member states try to push these issues on the EU agenda, would warrant further examination, exploring two-way 'Europeanisation' processes regarding influences from Brussels onto national capitals and *viceversa*. Research into this field would be highly significant to a further understanding of EU action in this field. The member states have developed quite diverse national approaches, also with regard to aid (indeed, the Commission has complained of the difficulties even just in obtaining data, let alone homogeneous information on national human rights and democracy programmes), and the playing field at the EU level revealed a range of views on what priority accord to normative aims as well as about the means to pursue them.

These national differences, and the ways in which they feed into European foreign policy-making could also include an examination of the cognitive and normative views of the member states. In other words, the ways in which competing ideas about EU foreign policy, its aims and tools to pursue them, would require further research that takes into account the 'logic of diversity' from a cognitive as well as material point of view.

Secondly, empirical research should focus on uncovering specific case studies. The proliferation of academic literature on the Euro-Mediterranean Partnership, for instance, has focused overwhelmingly on EU processes and, with few exceptions, little on examining the interaction between EU foreign policy and domestic dynamics in North African and Middle Eastern countries. Research on EU global policies for human rights and democracy, such as torture and election assistance too could constitute fertile ground for research, especially if placed in a comparative context with competing political factors (for example the fight against terrorism, arms' exports, or the rise, through electoral competition, of governments that are 'uncomfortable' for EU member states).

As we have seen, the academic literature that has highlighted the shortcomings of EU policies on human rights and democracy has pointed at the conflicting interests and at the limits of the EU's rhetorical claims.<sup>765</sup> This literature nonetheless points at a number of 'distinctive' ways in which the EU pursues its aims, including human rights and foreign policy,<sup>766</sup> many of which can be confirmed by the empirical research carried out in this thesis: the EU privileges using international norms and standards to justify its positions, develops its web of relations by institutionalising them through agreements that contain such standards,<sup>767</sup> prefers developing political dialogue and partnership with third countries rather than using negative tools,<sup>768</sup> and uses informal as well as formal tools, such as quiet diplomacy, to pursue these principles.<sup>769</sup> Indeed, the preference for political dialogue at the level of subcommittees (and behind closed doors) confirms a reluctance to use 'megaphone diplomacy'.<sup>770</sup> This would also conform to the desire to differentiate EU human rights and democracy policy from US regime change rhetoric, which was highlighted in interviews.

The question is whether the limits to the actual pursuit of human rights and democracy are sufficient to challenge the assumptions about the EU acting 'normatively'. This thesis does not aim to develop alternative models to 'normative power' ones. However, its research findings do cast some empirical doubts over some of the theoretical assumptions of such constructs.

Beyond the inclusion of human rights and democracy in statements of principle, the patterns uncovered here suggest that the EU's actual incorporation of those principles and their translation into foreign policy practice is far more complex than is generally assumed. As one official put it, 'the EU does not have a real human rights and democracy policy. It has some bullet points'.<sup>771</sup>

The EU resorts to normative arguments to justify its interaction with the world. But the normative content needs to be undressed and divorced from self-representational

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<sup>765</sup> Olsen (2000); K. Smith (2001); K. Smith (2003).

<sup>766</sup> K. Smith (2003).

<sup>767</sup> K. Smith (2003). See also Ward (1998) and Cremona (1998).

<sup>768</sup> Youngs (2001); Bicchi (2004).

<sup>769</sup> Aliboni (2005).

<sup>770</sup> In the words of Benita Ferrero-Waldner, EU Commissioner for External Relations and European Neighbourhood Policy, speaking at an EPC Breakfast meeting, Brussels: 11 July 2008.

<sup>771</sup> Interview, Council of the EU, 1 April 2008.

rhetoric. First of all, 'normative power' seems to be based on the false premise that norms are inherently devoid of power and that interests are devoid of normative content, implying that the legitimacy of the EU can be found in the fact that it represents a 'force for good'.<sup>772</sup> As E.H. Carr put it, 'we can neither moralize power nor expel power from politics'.<sup>773</sup> The prescriptive notion that the EU should do good is also full of ideological content. Secondly, the empirical research conducted here highlighted that spreading norms may be backed by more traditional justifications rooted in rationalist explanations. The absence of action too was often motivated by classical realist hypotheses.

The fact that human rights promotion might be guided by self-interest rather than by abstract altruism<sup>774</sup> does not necessarily entail that the principles the EU is promoting are not valid or legitimate.<sup>775</sup> However, a question that emerges is: what is normative? As we have seen, the logic of diversity regarded not just rationalist external foreign policy objectives, but also cognitive differences on the role of human rights and democracy in foreign policy in general. Amongst these different cognitive views, the importance of partnership emerged as a consistent priority. Competing dynamics on what normative power EU should be uncovered further, which have constituted the main obstacle to stronger positions on human rights and democracy. One conclusion therefore is that norms and power are inter-related and that the pursuit of human rights and democracy should not be divorced from issues regarding power, nor from other beliefs that can clash with human rights and democracy, such as cooperation, multilateralism, non interference, and partnership.

Nonetheless, the dominant ideological status of human rights and democracy norms have entailed that they have become increasingly part of EU foreign policy rhetoric. This also includes the possibility for them to be manipulated for the pursuit of instrumental gains. In much of the rhetoric, strategic and security arguments and idealist concerns are often intertwined, with the European Security Strategy, one of the most read and quoted EU documents, representing a good example.<sup>776</sup>

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<sup>772</sup> Sjursen (2006).

<sup>773</sup> Carr (1981), p. 95.

<sup>774</sup> Youngs (2004).

<sup>775</sup> Sjursen (2006).

<sup>776</sup> See for instance the quotation on p. 78.

The second conclusion that runs against the normative power argument is based on the processes that would earn the EU the adjective of normative. Empirical research carried out in this thesis has highlighted the ways in which the EU developed its normative positions in a context of interaction with the outside world. In many cases, it was largely external stimuli that motivated the key decisions on introducing normative content to its relations with third countries and that triggered coordinated responses on human rights and democracy issues. In other words, rather than see normative action as a reflection of constituent features of the EU projected on the outside world, the processes identified in this thesis point in the opposite direction: changes in the global environment that warranted an EU response. Coordination on human rights and democracy, despite the diversity of constituencies within the EU regarding the role they should play in foreign policy, provided one area that supported coordination on foreign policy. In turn, however, it was precisely the cognitive diversity of views between the EU member states and institutions that helped explain the outcome of a declaratory policy backed by little action.



## ANNEXES

### **Box 1: EU-Ukraine European Neighbourhood Policy Action Plan: ‘actions’ on human rights and democracy<sup>777</sup>**

<p><i>Strengthen the stability and effectiveness of institutions guaranteeing democracy and the rule of law</i></p> <ul style="list-style-type: none"> <li>• Ensure democratic conduct of presidential (2004) and parliamentary (2006) elections, in accordance with OSCE standards and OSCE/ODIHR recommendations, including on the media</li> <li>• Ensure that legislative reforms is conducted in line with international standards</li> <li>• Continue administrative reform and strengthening of local self-government, through appropriate legislation, in line with standards of European Charter on Local Self Government</li> </ul>
<p><i>Further judicial and legal reform, independence of the judiciary and strengthen its administrative capacity, ensure impartiality and effectiveness of prosecution</i></p> <ul style="list-style-type: none"> <li>• Ensure implementation of recent reforms of civil, criminal and administrative codes and codes of procedure, based on European standards</li> <li>• Continue the reform of the prosecution system in accordance with the relevant Council of Europe Action Plan (and supported by the European Commission/Council of Europe Joint Programme)</li> <li>• Address reported shortcomings in the work of the law enforcement organs and prosecution</li> <li>• Complete and implement reform of the court system to ensure independence, impartiality and efficiency of the judiciary</li> <li>• Effective implementation of ECHR judgements</li> <li>• Enhance training of judges, prosecutors and officials in judiciary, administration, police and prisons, in particular on human rights issues (and supported by the European Commission/Council of Europe Joint Programme)</li> <li>• Implement actions envisaged in the EU-Ukraine Action Plan on JHA matters and the implementation scoreboard</li> </ul>
<p><i>Ensure the effectiveness of the fight against corruption</i></p> <ul style="list-style-type: none"> <li>• Join the Council of Europe Group of States Against Corruption (GRECO) and implement relevant recommendations, including a revision of the Ukrainian national strategy for the fight against corruption</li> <li>• Promote transparency and accountability of the administration, in particular concerning the reform of the civil service based on European standards</li> <li>• Implement relevant measures as foreseen under the JHA scoreboard</li> </ul>
<p><i>Ensure respect of human rights and fundamental freedoms, in line with international and European standards</i></p> <ul style="list-style-type: none"> <li>• Promote adherence to and ensure implementation of core UN and Council of Europe Conventions and related protocols</li> </ul>
<p><i>Foster the development of civil society.</i></p> <ul style="list-style-type: none"> <li>• Ensure respect of freedom of association and involvement of the citizens in the decision making process, including through civil society organisations</li> </ul>
<p><i>Ensure respect for the freedom of the media and expression.</i></p> <ul style="list-style-type: none"> <li>• Further improve and enforce the legal and administrative framework for freedom</li> </ul>

<sup>777</sup> European Commission (2004), *EU/Ukraine Action Plan*, Brussels: 9 December.

<p>of media. taking into account relevant Council of Europe recommendations</p> <ul style="list-style-type: none"> <li>• Ensure effective respect of freedom of media, including journalists' rights</li> </ul>
<p><i>Ensure respect for rights of persons belonging to national minorities</i></p> <ul style="list-style-type: none"> <li>• Continue efforts in designing relevant legislation and effectively protecting the rights of persons belonging to national minorities, based on European standards</li> <li>• Continue close cooperation between government authorities and representatives of national minorities</li> </ul>
<p><i>Prevention of ill-treatment and torture</i></p> <ul style="list-style-type: none"> <li>• Further improvement of the legal basis and practice in the sphere of detention, in particular pre-trial detention, in order to address effectively the problem of arbitrary detentions, detention conditions and ill-treatment of detainees by law enforcement officials, including through provision of training. Implement European Committee for the Prevention of Torture (CPT) recommendations</li> <li>• Enhance the human rights training of police</li> </ul>
<p><i>Ensure equal treatment</i></p> <ul style="list-style-type: none"> <li>• Continue efforts to ensure the equality of men and women in society and economic life</li> </ul>
<p><i>Ensure respect of Children's rights</i></p> <ul style="list-style-type: none"> <li>• Implement the recommendations by the UN Committee on the Rights of the Child of 2002</li> <li>• Ensure full implementation of juvenile justice standards in line with relevant international standards</li> <li>• Exchange of information on the results of the implementation of the UN and Hague Conventions on protecting the rights of the children in the EU and Ukraine</li> </ul>
<p><i>Ensure respect for trade unions' rights and core labour standards</i></p> <ul style="list-style-type: none"> <li>• Continue efforts to ensure trade unions' rights and core labour standards, based on European standards and in accordance with relevant ILO conventions</li> </ul>
<p><i>Ensure international justice</i></p> <ul style="list-style-type: none"> <li>• Enhance co-operation to promote international justice and fight impunity, including through further support to the International Criminal Court and the establishment of a consultation mechanism on ICC's activities and functioning</li> <li>• Establishing close cooperation aimed at elaboration of appropriate draft laws, necessary for ratification of the Rome Statute</li> <li>• Signing and ratification on the agreement on privileges and immunities of the ICC</li> <li>• Maintain co-operation within the framework of the Special Working Group on the Crime of Aggression and other special groups</li> </ul>

## Box 2: EU-Egypt European Neighbourhood Policy Action Plan:

### 'actions' on human rights and democracy<sup>778</sup>

#### **Democracy and rule of law**

*Enhance the effectiveness of institutions entrusted with strengthening democracy and the rule of law*

- Strengthen participation in political life, including the promotion of public awareness and participation in elections
- Exchange experience in the field of elections and jointly develop cooperation in areas of shared interest; assistance on registering electors and capacity building
- Foster the role of civil society and enhance its capacity to contribute to the democratic and political process as well as to the economic and social progress
- Pursue and support Egypt's efforts towards decentralization and reform of local administration
- Enhance political dialogue between the Egyptian and the European Parliaments
- Establish a formal and regular dialogue on Human Rights and Democracy in the framework of the AA
- Modernization and development of public services, promoting accountability, transparency and contestability

*Consolidate the independent and effective administration of justice and improve prison conditions.*

- Strengthen, maintain and ensure the independence of the judiciary. Increase the capacity and efficiency of the justice administration (including prison) and access to justice, including capacity building of bodies entrusted with the implementation of the law.
- Support Egyptian government policies and programmes to improve places of detention and prison conditions, especially the placement of minors

#### **Human rights and fundamental freedoms**

- Support Egyptian government efforts to protect human rights and fundamental freedoms in line with international conventions and to elaborate a human rights strategy in partnership with the NCHR
- Strengthen the culture of respect for human rights and fundamental freedoms in Egypt and in the EU
- Support Egyptian efforts to strengthen the capacity and effectiveness of Egyptian public institutions and councils
- Continue the review of respective national legislations to further align their laws and practices with international human rights instruments to which they are party and taking into account relevant UN recommendations
- Examine the possibility of accession to the optional protocols to international human rights conventions to which Egypt is a party
- Cooperation with UN and African human rights treaty mechanisms, as well as with the newly established UN Human Rights Council
- Examine the possibility for the EU Member States to sign the UN Convention on the Rights of Migrant Workers and Members of their Families
- Promote dialogue on policies for physically and mentally disabled

<sup>778</sup> European Commission (2007c), *European Neighbourhood Joint Action Plan*, adopted at the 3<sup>rd</sup> EU-Egypt Association Council, Brussels: 6 March.

- Promote a dialogue on Rome Statute of International Criminal Court
- Examine the relevant UN recommendations and the recommendations of the Egyptian National Council for Human Rights pertaining to security, detention conditions and prison staff
- Initiate a review of laws and regulations dealing with pre-trial and administrative detention systems
- Ensure the possibility of legal recourse against death sentences for all types of courts, (UN Safeguards guaranteeing protection of the rights of those facing the death penalty and Arts. 4 and 6 of the International Covenant on Civil and Political Rights)
- Engage in a dialogue on the death penalty.
- Co-operate to promote the achievement of the right to development in bilateral and multilateral fora

*Rights of women and children*

- Promote the enhancement of women's participation in political, economic and social life as well as their role in the political decision-making process by supporting the formulation and implementation of Egypt's government policies and programmes
- Support Egypt's efforts to promote gender equality and reinforce the fight against discrimination and gender-based violence
- Consolidate the rights of the child (UN Convention on the Rights of the Child) and consider revising existing legislation taking into account the recommendations of the relevant UN Committee
- Support Egypt's efforts to eradicate the practice of female genital mutilation

*Freedom of association and of expression and pluralism of the media*

- Promote the right of assembly and association (International Covenant on Civil and Political Rights)
- Assert freedom of expression and independence of the media
- Examine the possibility for developing specific legislation on the protection of private data
- Pursue the liberalisation process in the information sector and increase access to information by reviewing the legal and administrative frameworks
- Establish joint cooperation activities on media issues including capacity building

*Fight against discrimination, intolerance, racism and xenophobia*

- Cooperate to combat all forms of discrimination, intolerance, racism and xenophobia and in particular hate or defamatory discourse based on religion, beliefs, race or origin.
- Strengthen the role of media in combating xenophobia and discrimination
- Promote efforts, in Egypt and the EU, towards increasing tolerance, understanding and respect of all religions and cultures

*Fundamental social rights and core labour standards*

- Develop a dialogue on fundamental social rights and core labour standards
- Development and independence of trade unions and their role in economic and social life
- Enhance implementation of core ILO labour standards

### Box 3: PCA Meetings with Ukraine<sup>779</sup>

	EU Priorities	Mention of human rights and democracy
1997	<ul style="list-style-type: none"> <li>• Closure of Chernobyl</li> <li>• Abolition of trade barriers to EU products</li> </ul>	None
1998	<ul style="list-style-type: none"> <li>• Closure of Chernobyl and nuclear safety</li> <li>• Abolition of trade barriers to EU products</li> <li>• Cross-border cooperation on Ukraine's Western borders</li> <li>• Transport and energy</li> <li>• Financial system in Ukraine</li> <li>• Increased cooperation in the fight against crime (drugs and money laundering)</li> </ul>	Joint statement of EU-Ukraine summit includes the 'importance they attach to the democratic and market economy values and to the pursuit of the reform process in Ukraine', but no mention of specific issues
1999	<ul style="list-style-type: none"> <li>• Abolition of trade barriers to EU products</li> <li>• Closure of Chernobyl and nuclear safety</li> <li>• Common strategy</li> </ul>	Joint statement of EU-Ukraine summit mentions 'common attachment [...] to Ukraine's democratic development', but no mention of specific issues
2000	<ul style="list-style-type: none"> <li>• Reforms in trade, agriculture and energy</li> <li>• Privatisation of 'strategic' enterprises</li> <li>• Enlargement</li> <li>• Illegal migration and trafficking in human beings</li> <li>• JHA cooperation</li> <li>• EU considered removing Ukraine from the list of non-market economies</li> <li>• Closure of Chernobyl</li> </ul>	<p>Joint statement of EU-Ukraine summit mentions that the partnership is based on 'principles of democracy, respect of human rights, the rule of law and market economy'</p> <p>Referendum of April 2000: 'importance attached to democratic character of political reforms'</p>
2001	<ul style="list-style-type: none"> <li>• Energy: reform of the market and privatisation, energy transport, nuclear safety</li> <li>• Trade: accession to WTO</li> <li>• JHA: border management, immigration, judicial reform, combating organised crime.</li> </ul>	<p>Recognition that economic development is based on further democratic reform, the rule of law and the development of civil society.</p> <p>Recognition of Ukraine's European</p>

<sup>779</sup> Sources: '5 September EU-Ukraine Summit', *European Voice*, 11 September 1997; EU-Ukraine Cooperation Council (1998a), 'Press Release' 9594/98 (Presse 217), Brussels, 9 June; EU-Ukraine Cooperation Council (1998b), 'Joint Press Release', Vienna, 16 October; EU-Ukraine Cooperation Council (1999a), 'Press Release', Luxembourg: 26 April; EU-Ukraine Cooperation Council (1999b), 'Joint Press Communiqué', 10391/99 (Presse 244), Brussels: 23 July; EU-Ukraine Cooperation Council (2000a), 'Press Release', 8741/00 (Presse 171), Brussels: 23 May; EU-Ukraine Cooperation Council (2000b), 'Joint Statement', 11241/00 (Presse 312), Paris: 15 September; EU-Ukraine Cooperation Committee (2000), 'Press Release', Brussels: 18 December; EU-Ukraine Cooperation Council (2001a), 'Press Release', 10230/01 (Presse 252), Luxemburg, 26 June; EU-Ukraine Cooperation Council (2001b), 'Joint Statement', 11772/01 (Presse 315), Yalta: 11 September; Council of the EU (2001d), *EU Action Plan on Justice and Home Affairs*, 2003/C 77/01, Brussels: 10 December; EU-Ukraine Cooperation Council (2002a), 'Press Release', 7026/02 (Presse 64), Brussels: 11 March; EU-Ukraine Cooperation Council (2002b), 'Joint Statement', 10607/02 (Presse 195), Copenhagen: 4 July; EU-Ukraine Cooperation Council (2003a), 'Press Release', 7412/03 (Presse 75), Brussels: 18 March; EU-Ukraine Cooperation Council (2003b), 'Joint Statement', Yalta: 7 October; Council of the EU (2004h), 'Meeting on Justice and Home Affairs between the Troika of the European Union and Ukraine on 29 March 2004', 'Press release', 7515/04 (Presse 40), Brussels: 30 March; EU-Ukraine Cooperation Council (2004a), 'Press Release', 9259/04 (Presse 151), Brussels: 18 May; EU-Ukraine Cooperation Council (2004b), 'Joint Press Release', The Hague, 8 July.

	<ul style="list-style-type: none"> <li>• Approximation of Ukraine's legislation</li> <li>• Environmental protection: Kyoto Protocol</li> <li>• Transport</li> </ul> <p><u>Political dialogue:</u></p> <ul style="list-style-type: none"> <li>• Ukraine's participation in the European Conference</li> <li>• Impact of enlargement</li> <li>• ESDP dialogue</li> <li>• Cooperation in science and technology and in the development of the European Global Navigation Satellite System</li> <li>• Ukraine's alignment on CFSP</li> <li>• Regional cooperation and security, Transnistria and border controls between Ukraine and Moldova</li> </ul> <p>EU Action Plan on JHA in Ukraine:</p> <ul style="list-style-type: none"> <li>• Ratification of international instruments regarding illegal migration, organised crime and corruption</li> <li>• Migration issues and border management</li> <li>• Combat organised crime</li> </ul> <p>International terrorism</p>	<p>aspirations but stress on importance of democratic political and economic development</p> <p>Need to strengthen pluralist and independent media. Need for transparent and impartial investigations in cases of violence against journalists.</p> <p>Encouragement for democratic and transparent parliamentary elections in 2002</p> <p>EU Action Plan on JHA in Ukraine:</p> <ul style="list-style-type: none"> <li>• Develop the rule of law, access to justice, independence of the judiciary and good governance</li> <li>• Increase human rights and rule of law awareness and transparency</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Reform of the energy sector</li> <li>• Trade and investment: accession to WTO</li> <li>• JHA Action Plan: readmission agreement, border management and infrastructure, immigration, judicial reform, rule of law, organised crime</li> <li>• Enlargement and visa issues</li> <li>• Approximation of Ukraine's legislation</li> <li>• Environmental protection</li> <li>• Transport regional and cross-border cooperation</li> <li>• Science and Technology agreement</li> </ul> <p><u>Political dialogue:</u></p> <ul style="list-style-type: none"> <li>• Regional security and cooperation (Moldova, Belarus)</li> <li>• Ukraine's alignment on CFSP (Middle East, proliferation of weapons of mass destruction)</li> </ul>	<p>Free and fair elections, reform of the judiciary and transparent state-media relations</p>
2003	<ul style="list-style-type: none"> <li>• JHA: readmission agreement, organised crime, immigration</li> <li>• Trade and investment: accession to WTO</li> <li>• Approximation of Ukraine's legislation</li> <li>• Reform of the energy sector</li> <li>• Environment</li> <li>• Transport</li> </ul> <p><u>Political dialogue:</u></p> <ul style="list-style-type: none"> <li>• Wider Europe – New Neighbourhood initiative</li> <li>• SES with Russia, Belarus and Kazakhstan</li> <li>• Transnistria</li> <li>• European Security Strategy</li> </ul>	<p>Democracy, rule of law and respect for human rights as vital to strengthen relations with the EU</p>
2004	<ul style="list-style-type: none"> <li>• JHA: migration, illegal migration,</li> </ul>	<p>JHA: strengthening the judiciary, rule</p>

<p>readmission agreement, visa issues, border management, fight against organised crime, relations with Europol and Eurojust</p> <ul style="list-style-type: none"> <li>• Enlargement</li> <li>• Neighbourhood Policy: development of Action Plan</li> <li>• Trade and investment: accession to WTO and implementation of PCA</li> <li>• Energy, nuclear issues, environment and transport</li> <li>• Conclusion of steel agreement</li> </ul> <p><u>Political dialogue:</u></p> <ul style="list-style-type: none"> <li>• CFSP cooperation and Ukraine's participation in EU Police Mission in Bosnia-Herzegovina and FYROM</li> <li>• Regional stability and security and crisis management</li> <li>• Moldova, Iraq, non proliferation, fight against terrorism</li> </ul>	<p>of law and good governance</p> <p>Importance of free and fair presidential elections in October and free media</p>
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**Box 4: Euro-Mediterranean and EU-Egypt Association Council meetings and priorities<sup>780</sup>**

	EMP	Mention of human rights and democracy	EU-Egypt
<b>1997 Malta Euromed Conference</b>	-Recognition of Middle East problems as obstacle to progress -Work on Charter for Peace and Stability -Free Trade Area by 2010 and customs union -Develop joint approaches to illegal migration -Unable to reach agreement on cooperation against terrorism	None	
<b>1999 Stuttgart Euromed Conference</b>	Barcelona objectives	Barcelona objectives	
<b>2000 Marseilles Euromed Conference</b>	( <i>June: Common Strategy on Mediterranean approved</i> ) -Accelerate AA negotiations -Steps towards FTA -Charter for Peace and Security abandoned -Enhance political relations -Increase Senior Officials' dialogue in fields of terrorism and migration	None	Accelerate AA negotiations with Egypt
<b>2001 Brussels Foreign</b>	-Deepen political dialogue on terrorism, human rights, good neighbourly relations,	Yes: strengthen political dialogue on human rights	AA with Egypt signed and approved by EP

<sup>780</sup> The table deliberately does not include references to the Middle East Peace Process. It summarises the main priorities in the three chapters of the EMP. Sources: '6 May Euro-Mediterranean meeting', *European Voice*, 15 May 1997; Euro-Mediterranean Conference (1997), *Conclusions*, Malta: 15 and 16 May; Simon Taylor, 'Israel holds key to fate of Euro-Med talks', *European Voice*, 8 April 1999; Euro-Mediterranean Conference (1999), 'Chairman's formal conclusions', Stuttgart: 15-16 April; European Commission (2000c), *Reinvigorating the Barcelona Process*, COM(2000), 497 final, Brussels: 6 September; Euro-Mediterranean Conference (2001), *Presidency Conclusions*, Brussels: 5-6 May; Euro-Mediterranean Conference (2002a), *Presidency Conclusions*, Valencia: 22-23 April; Euro-Mediterranean Conference (2002b), *Valencia Action Plan*, Valencia: 23 April 2002; Khaled Diab, 'Barcelona limps on despite Middle East crisis', *European Voice*, 25 April 2002; Euro-Mediterranean Conference (2003), *Presidency Conclusions*, Naples 2-3 December; Euro-Mediterranean Conference (2004), Mid-Term Meeting of Ministers of Foreign Affairs, *Presidency Conclusions*, Dublin, 5-6 May; Council of the EU (2004), *EU Annual Report on Human Rights*; Euro-Mediterranean Conference (2005a), *Euro-Mediterranean Partnership. 10 Years After Barcelona. Achievements and Perspectives. Conclusions*, Luxembourg: 30-31 May; Euro-Mediterranean Conference (2005b), *Presidency Conclusions* to the tenth anniversary of the Euro-Mediterranean Partnership, Barcelona: 27-28 November; European Commission (2005a), Five Year Work Programme, and Euro-Mediterranean, and Code of Conduct on Countering Terrorism, *Euromed Report*, Issue No. 92, 30 November 2005; Euro-Mediterranean Conference (2006), *Conclusions*, Tampere: 27-28 November; Euro-Mediterranean Conference (2007), *Agreed Conclusions of the 9<sup>th</sup> Euro-Mediterranean Meeting of the Ministers of Foreign Affairs*, Lisbon, 5-6 November.



<b>Ministers Conference</b>	rule of law, security -Accelerate AA negotiation process -South-south trade and integration -Dialogue between cultures and civilisations -Involvement of civil society in third chapter activities -Migration		
<b>2002 Valencia Euromed Conference</b>	-Reinforce political dialogue, including on defence -Develop parliamentary dimension of EMP -Action Plan for regional integration; promote investments -Regional cooperation programme in the field of Justice, combating drugs, organised crime and terrorism, and cooperation in migration issues launched. -Extension of the TEMPUS programme	Yes: commitment to human rights and democracy; introduce national and regional presentations on human rights.	
<b>2003 Crete and Naples Euromed Conferences</b>	<i>(European Neighbourhood Strategy launched)</i> -ESDP cooperation, including in civilian crisis management -Dialogue on terrorism -Creation of a Euro-med parliamentary assembly -Creation of the Euro-Med - Facility for Investments and Partnership (FEMIP) -Creation of Euro-Med Foundation for Dialogue of cultures	<i>(Commission Communication on HRD in the Mediterranean)</i>  Yes: 'Cooperation in promoting human rights and democracy is crucial to the success of the Partnership.' Communication on human rights 'welcomed'.	AA ratified by Egypt's Assembly
<b>2004 Dublin and The Hague Euro-Med Conferences</b>	<i>(Strategic Partnership approved)</i>  Approval of improvement of working methods of EMP	Focus on political pluralism, regulatory reform for the implementation of international commitments, judicial and penal systems, transparency, education. HRD: to be addressed in ENP Action Plans HRD: sub-committee established in EU-Morocco AA. Establishment encouraged with other countries	January: Interim Agreement on trade enters into force. June: AA with Egypt enters into force  May: Human Rights Dialogue launched June:

			Association Council meeting
<b>2005</b> <b>Luxembourg</b> <b>Euromed</b> <b>Conference</b>  <b>Barcelona</b> <b>Ten Year of</b> <b>the EMP</b> <b>Meeting</b>	-Evaluation of EMP and recognition of need to identify specific and agreed objectives. -Recommendation to adopt a Road map for trade liberalisation -Dialogue in subcommittees on 'justice and security' and 'migration and social affairs'. -5 Year work programme approved -Code of Conduct on Countering Terrorism approved -Joint Statement was not approved because of divergences over Israel-Palestine -Implement Code of conduct in countering terrorism -Strengthen ESDP dialogue	From 5 Year work programme: More EU support for political reform and HR principles on basis of ENP and commitment of countries involved Establishment of a financial facility to support political reform Meet international standards in election conduct Deepen HR dialogue through AA Gender equality actions	
<b>2006</b> <b>Tampere</b> <b>Euromed</b> <b>Conference</b>	-Commitment to implementing the Code of conduct on terrorism -Trade liberalisation in services and agriculture -Transport and energy -Women in society -Management of migratory flows	Human rights in fight against terrorism	June: AA Council meeting
<b>2007</b> <b>Lisbon</b> <b>Euromed</b> <b>Conference</b>	-ESDP dialogue -Civil protection -Progress in FTA -Energy and Transport -Energy, climate change and sustainable development -Migration	-Launch of joint programme on cooperation in area of elections	EU-Egypt Association Council: Approval of the ENP Action Plan

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