

**HOW EFFECTIVE IS THE EUROPEAN
NEIGHBOURHOOD POLICY AS A MECHANISM
FOR TRANSPOSING THE EUROPEAN UNION'S
DEMOCRATIC VALUES IN THE SOUTH
CAUCASUS?**

Narine Ghazaryan, LL.M. in European Union Law

**Thesis submitted to the University of Nottingham
for the degree of Doctor of Philosophy**

April 2010

ABSTRACT

How effective is the European Neighbourhood Policy as a mechanism for transposing the European Union's democratic values in the South Caucasus?

The central focus of the research conducted is the European Neighbourhood Policy aimed at developing the relations of the European Union with its neighbours in the East and South. The European Neighbourhood Policy has an extensive nature: it covers a wide-stretching geopolitical area including sixteen countries. The policy is also extensive in terms of its all-encompassing substance: it envisages cooperation between the parties on issues ranging from trade to border control. The research question contextualises the policy in geographical and substantive terms. The region of the South Caucasus was chosen to limit the research question to certain geographical framework. This is motivated by the complexities inherent in this geographical area. The nominal region of South Caucasus comprises Georgia, Armenia and Azerbaijan. The peculiarities of these states derive from complexities inherent within these states, complexities between the states, as well as between various geopolitical actors whose interests come across here. In substantive terms the research question is limited to the framework of promoting the European Union's democratic values. The main questions addressed in this relation are: what the Union's democratic values are and whether the policy in question offers sufficient mechanisms for their transposition to the South Caucasian countries. For this purposes the instruments and methodologies of the policy have been analysed. The democratic values of the Union have also been considered. Within this narrative, a comparative analysis of the process of the ENP implementation in three states has been undertaken to evaluate its effectiveness in promoting the democratic values of the European Union. The research is finalised with a summary of findings.

ACKNOWLEDGEMENTS

There are many people without whom undertaking this research would have been impossible.

It is my supervisor, Professor Jeffrey Kenner, I should mention first. I have been extremely fortunate to have his constant guidance. His knowledge and insight into legal thought were invaluable assets for me. He taught me how to research, how to progress, how to structure my thinking and how to keep improving. His constructive criticism has been always a motivating factor for me. In fact, I was looking forward to our supervision meetings as the highlights of my research. Apart from being an incredible mentor, Professor Kenner is one of the kindest people I have met while being in the University of Nottingham. I cannot thank him enough for his incredible patience with me and, in particular, with correcting my English. Thank you for all this.

I would like to express my gratitude to the School of Law of Nottingham University for giving me an opportunity to undertake research in this institution. It has been a great honour to be funded by the School of Law and to become a part of it. I thank the members of Academic and Administrative staff for their support and ever-present readiness to help.

I know that throughout my time in Nottingham my family's constant thoughts were with me. I am very grateful to my parents for all the opportunities they created for me despite enormous obstacles they faced. It is my parents and my grandparents who passed me their passion for learning. I am very grateful to them.

I also want to thank everyone whose assistance was of great importance for obtaining necessary information for undertaking this research. I thank the European Commission officials, whose willingness to share their knowledge and expertise has been of utmost significance for major parts of my research. I would like to express my appreciation to the representative of Georgian Government, and the Chairman of the Parliament's Committee on European Integration, Mr. Darchiashvili, and Mr. Chkhikvadse, the representative of Eurasia Partnership Foundation, for agreeing to talk to me and pour some light on the process of ENP implementation in Georgia. The interviews in Georgia would have been impossible without my dear friend Nika Devdariani. His efforts and persistence were invaluable for organising the interviews.

I am very grateful to the interviewees in Armenia. Mr. Simonyan in Ministry of Economy was most kind to find time to speak to me and assist subsequently with my enquiries. Mr. Bekaryan and Mr. Kirakosyan were particularly helpful in drawing another side of the story, as representatives of the civil society. And, again I have to thank my dear friends Yeghishe Kirakosyan and Anna Hakobyan for helping me to

establish contacts. I thank Richard Hyde for making it possible for me to remember the information obtained during interviews. His digital recorder was of enormous assistance.

One of the great assets I have is my friends. They made my life in Nottingham interesting, motivating and bright. I want to thank Natalia Dovlatova for her presence in my life and for being such a great person. Karima Righetti, Ioannis Kalpouzos, Artur Margaryan, Nora Hakobyan, Gohar Gouchtchian and all my other friends have been incredibly supportive, for which I am very grateful.

I would like to thank Haniel and Martin Riviere-Allen for their parental care and attention to me since the day I met them.

I have to express my gratitude to Olga Pleshkova, in particular for the time she spent with me on long discussions on legal methodology.

I express my huge gratitude to my friends for proofreading my thesis and for advice they gave me. I cannot thank Gerry Clare, Ioannis Kalpouzos, Isobel Roele, Martin Riviere-Allen, Natalia Dovlatova, Miriam Magala, Artur Margaryan, Olga Pleshkova enough for their time and effort. Thank you very much.

TABLE OF CONTENTS

ABSTRACT	II
ACKNOWLEDGEMENTS.....	III
TABLE OF CONTENTS.....	V
ABBREVIATIONS.....	VIII
CHAPTER I	1
HOW EFFECTIVE IS THE EUROPEAN NEIGHBOURHOOD POLICY AS A MECHANISM FOR TRANSPOSING THE EUROPEAN UNION'S DEMOCRATIC VALUES IN THE SOUTH CAUCASUS?	2
INTRODUCTION	2
1. <i>Research question</i>	2
2. <i>Methodology</i>	11
2.1. International Relations theory and the conceptualisation of the EU	12
2.2. Review of primary and secondary sources.....	17
2.3. Comparative perspective	18
2.4. Interviews.....	19
3. <i>Structure of the thesis</i>	23
CHAPTER II	25
SOUTH CAUCASUS AND THE EU BEFORE THE ENP	26
1. <i>Introduction</i>	26
2. <i>The South Caucasus and its democracy</i>	29
2.1. General description of the countries	31
2.2. Nationalism and conflicts	33
2.3. Democratic reality of the South Caucasus	40
3. <i>South Caucasus and the EU: Phase I</i>	48
3.1. The PCAs with Georgia, Armenia and Azerbaijan	51
3.2. Democracy promotion within Phase I	55
4. <i>Conclusion</i>	62
CHAPTER III	65
THE ENP IN THE SOUTH CAUCASUS	66
1. <i>Introduction</i>	66
2. <i>Interests of the EU in the South Caucasus</i>	68
2.1. Pursuing interests in a crowded geopolitical scene	70
2.2. Interests of other international actors.....	74
3. <i>ENP objectives: democracy promotion within a security framework?</i>	85
3.1. The ENP and the EU's security agenda.....	86
3.2. Democracy promotion within the ENP.....	92
4. <i>ENP as a form of Europeanisation</i>	98
5. <i>Conclusion</i>	101
CHAPTER IV	104
THE EUROPEAN NEIGHBOURHOOD POLICY: CONSTITUTIONAL ASPECTS.....	105
1. <i>Introduction</i>	105
2. <i>The ENP within the EU's constitutional and institutional setup</i>	107
2.1. The ENP and EU constitutional law: Treaty structure	107
2.2. EU institutions and Member States	112
3. <i>Instruments and methods of the ENP:</i>	119
3.1. ENP instruments: borrowing from enlargement	123
3.2. ENP methodology.....	127

4. Eastern Partnership: is it a new European Economic Area?	139
5. Conclusion	146
CHAPTER V	150
DEMOCRATIC VALUES OF THE EU AND THEIR PROMOTION IN THE NEIGHBOURHOOD	151
1. Introduction	151
2. Democratic values of the EU	153
2.1. Democratic theories and the democratic deficit of the EU	156
2.2. Representation as a democratic value	164
2.3. National parliaments	168
2.4. Features of liberal constitutionalism	173
2.5. Participation and deliberation	177
3. Transposition of democratic values in the EU foreign policy: the 2004 and 2007 accession rounds	182
3.1. Creating democracies in accession countries	182
3.2. Transposing democratic deficit to candidate countries	189
4. Conclusion	191
CHAPTER VI	194
TRANSPOSITION OF DEMOCRATIC VALUES TO THE SOUTH CAUCASUS I: ACTION PLANS AND THEIR IMPLEMENTATION	195
1. Introduction	195
2. Action Plans: General observations	198
3. Democratic values in the Action Plans with Armenia, Georgia and Azerbaijan	203
3.1. EU/Armenia Action Plan	204
3.2. EU/Georgia Action Plan	209
3.3. EU/Azerbaijan Action Plan	213
3.4. Analysis of the Action Plans	215
4. Action Plan implementation in the South Caucasus:	220
Democratic credentials of the process	220
4.1. Georgia	221
4.2. Armenia	226
4.3. Azerbaijan	230
5. Implementation of the Action Plans and democratic reform	235
5.1. Georgia	235
5.2. Armenia	238
5.3. Azerbaijan	242
6. Conclusion	245
CHAPTER VII	249
TRANSPOSITION OF DEMOCRATIC VALUES IN THE SOUTH CAUCASUS II: MONITORING AND ASSISTANCE	250
1. Introduction	250
2. Monitoring of political reform in the South Caucasus	252
2.1. Monitoring through political dialogue	252
2.2. Assessment of progress by the Commission	256
3. Implementation: assistance under the ENPI	266
3.1. Democracy within the ENPI	266
3.2. Actual measures financed	273
4. Conclusion	280
CHAPTER VIII	284
CONCLUSION	285

ANNEXES..... 300

 ANNEX A 301

 ANNEX B..... 313

 ANNEX C..... 327

BIBLIOGRAPHY 347

ABBREVIATIONS

ANCEI	Azerbaijan National Committee for European Integration
BTC	Baku-Tbilisi-Ceyhan
BTE	Baku-Tbilisi-Erzurum
BSECO	Black Sea Economic Cooperation Organisation
CEEs	Central and Eastern European countries
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
EA	Europe Agreement
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIDHR	European Initiative for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
ESDP	European Security and Defence Policy
EU	European Union
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental Organisation
NIS	Newly Independent States
OSCE	Organisation for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
TACIS	Technical Aid to the Commonwealth of Independent States
USSR	Union of Soviet Socialist Republics

CHAPTER I

How effective is the European Neighbourhood Policy as a Mechanism for Transposing the European Union's Democratic Values in the South Caucasus?

Introduction¹

1. Research question

The political developments of the last decade of the 20th century have irreversibly changed the European continent and its vicinity. The unification of Europe which took place through the 2004 enlargement had transformed the European Union (hereinafter the EU or the Union) into an actor of a 'continental scale of operation.'² Most importantly, as a result of the 2004 enlargement, the neighbourhood of the Union became an inalienable element of its foreign policy.³ The European Neighbourhood Policy (hereinafter the ENP) is the mechanism established for developing closer relations with the Union's new and old neighbours.

The neighbours of the EU both in the South and East are included within the ENP.⁴ Initially Russia, Ukraine, Belarus and Moldova and South Mediterranean countries were the states included in the ENP by the Wider Europe Communication.⁵ Accordingly, the ENP fused together different regions: the Eastern neighbours as the immediate geographic periphery and the Southern Mediterranean as the historical and

¹ The thesis was completed in November 2009 before the entry into force of the Lisbon Treaty. The Treaty articles are numbered as they were before December 2009. Provisions of the Lisbon Treaty are used as an indication of the current state of constitutional development of the EU.

² Kok, 'Enlarging the European Union: Achievements and Challenges,' Report to the European Commission, EUI, 19 March 2003, at 6.

³ Copenhagen European Council, 12 and 13 December 2002, Presidency Conclusions, at 6; Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003 COM (2003) 104 final, (hereinafter Wider Europe Communication), at 3, 4, 5, 9; Johansson-Nogues, 'The EU and its Neighbourhood: an Overview' in Weber, Smith and Baun, (eds.), *Governing Europe's Neighbourhood: Partners or Periphery*, (Manchester University Press, 2007), 21-35, at 22.

⁴ Cremona, 'The European Neighbourhood Policy as a Framework for Modernisation' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/10, 5-15, at 5.

⁵ Wider Europe Communication, at 4.

economic neighbourhood.⁶ The countries of the South Caucasus were omitted from the initial list of neighbours with whom the EU was prepared to establish closer relations. However, in June 2004 the European Council decided to offer Armenia, Azerbaijan and Georgia the opportunity to participate in the ENP. The reorientation towards the region was a consequence of the inter-institutional stance on the South Caucasus: the European Parliament, the Commission, and the High Representative for Common Foreign and Security Policy (hereinafter the CFSP) had recommended the inclusion of the region in the ENP.⁷

However, the ENP is not merely reactionary to outside events, as is usually the case with the EU's foreign policy making and for which it has been often criticised.⁸ On the contrary, the initiation of the ENP had serious external and internal underpinnings.

The development of the ENP has been significantly affected by global security challenges facing the EU from the beginning of the millennium.⁹ Global security threats, such as international terrorism brought by the 9/11 attacks, and the EU's inability to react to international events demonstrated in the Iraq crisis, required

⁶ A Global Mediterranean Policy was adopted at the 1972 Paris summit aimed at promoting regional stability and trade cooperation with the Community. In 1995 the EU launched a new ambitious policy towards the Mediterranean region, which is the Barcelona Process or Euro-Mediterranean Partnership aimed at creating a large free trade area with the North African and Middle Eastern countries.

Association Agreements have been signed within the Barcelona Process with countries concerned; Missiroli, 'The EU and its Changing Neighbourhood' in Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 12-26, at 23.

⁷ General Affairs and External Relations Council, 14 June 2004, Press Release, 10189/04 (Presse 195), paragraph 12.

⁸ Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke: Palgrave Macmillan, 1999), at 4.

⁹ Aliboni, 'The Geopolitical Implications of the European Neighbourhood Policy', (2005) 10 *European Foreign Affairs Review* 1, at 1; Cremona and Hillion, 'L'Union fait la force? Potential and Limitations of the ENP as an Integrated EU Foreign and Security Policy', in Copsey and Mayhew, (eds.), *European Neighbourhood Policy: The Case of Europe*, Sussex European Institute, SEI Seminar Papers Series Number 1, 2006, 20-44, at 23.

elaboration of a comprehensive security strategy for the Union.¹⁰ The European Security Strategy was established by the Council in December 2003, which not only envisaged the EU's role in tackling global security threats but, most importantly, stressed that 'geography is still important.'¹¹ In particular, the European Security Strategy identified the South Caucasus as a region where the EU should have a 'stronger and more active' interest.¹²

The internal rationale for the development of the ENP is mostly related to the Eastern neighbours, the European countries. While some of the European neighbours, such as Ukraine and Moldova, were hopeful of prospects of EU membership, the EU was far from being prepared for it. First of all, the failure to ratify the Draft Constitutional Treaty imposed a pause in any further developments of the organisation, without clear identification of the direction the EU will take in its future integration.¹³ Moreover, the unprecedented scale of 2004 enlargement, in addition to the anticipation of Romanian and Bulgarian accession, created the need to adapt the EU institutions and policy making to the accession of the new member states. This caused so-called 'enlargement fatigue.'¹⁴ The enlargement fatigue meant that the

¹⁰ A Secure Europe in a Better World, European Security Strategy Paper, Brussels, 12 December 2003, (hereinafter the European Security Strategy Paper); Missiroli and Quille, 'European Security in Flux' in Cameron, (ed.), *The Future of Europe: Integration and Enlargement*, (London: Routledge, 2004), 114-134, at 118-119; Lynch, 'The European Neighbourhood Policy,' Institute for Security Studies, Paper presented at the workshop "European Neighbourhood Policy: Concepts and Instruments", Prague, June 2004, organised by the European Commission with DGAP, CEFRES and IIR, at 2.

¹¹ European Security Strategy Paper, at 7.

¹² *Ibid*, at 8.

¹³ Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy' (2006) 11 *European Foreign Affairs Review* 183, at 186; Meloni, 'Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EU Working Papers, LAW 2007/21, 97-111, at 97; Comelli, Greco, Tocci, 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy', (2007) 12 *European Foreign Affairs Review* 203, at 214-215.

¹⁴ Comelli, Greco, Tocci, *ibid*, at 214-215; Smith and Webber, 'Political Dialogue and Security in the European Neighbourhood: The Virtues and Limits of 'New Partnership Perspectives'', (2008) 13 *European Foreign Affairs Review* 73, at 75; Smith, 'The Outsiders: The European Neighbourhood Policy' (2005) 81 *International Affairs* 757, at 758; Del Sarto and Schumacher, 'From EMP to ENP:

EU's absorption capacity was stretched at the time and demonstrated that it could not 'enlarge ad infinitum'.¹⁵ While further enlargement would threaten the union of current Member States in terms of its institutional operability,¹⁶ closing the EU to other willing countries would breach one of its basic principles, which is to be open to all European democracies under Article 49 EU. In this context, the ENP is an attempt to solve the 'inclusion-exclusion' dilemma brought about by the enlargement.¹⁷ Therefore, both neighbours ineligible for EU membership and those whose membership perspective the EU was not ready to consider, were included in the ENP with the Wider Europe Communication clearly stating that in the medium-term at least the perspective of membership would be ruled out.¹⁸

There were suggestions for the enlargement to be crafted as a 'bridge-building' to the countries of Commonwealth of Independent States (hereinafter the CIS),¹⁹ left outside the EU.²⁰ It, nevertheless, created a new dividing line with its hard borders 'generating differences across it and homogeneity within.'²¹ The ENP is

What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?' (2005) 10 *European Foreign Affairs Review* 17, at 25-26.

¹⁵ Ferrero-Waldner, 'The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument', (2006) 11 *European Foreign Affairs Review*, at 139-140.

¹⁶ Emerson, 'European Neighbourhood Policy: Strategy of Placebo?', Centre for European Policy Studies, Working Document No 215/November 2004, at 1.

¹⁷ Smith, 'The Outsiders: The European Neighbourhood Policy', (2005) 81 *International Affairs* 757, at 757-758.

¹⁸ Cremona, *supra* note 4, at 5; Wider Europe Communication, at 5.

¹⁹ CIS included all former members of the USSR, excluding Baltic countries. It was created by Russia, Ukraine and Belarus in December 1991, and joined later on by Armenia, Azerbaijan, Georgia, Uzbekistan, Tajikistan, Kazakhstan, Kyrgyzstan, Moldova and Turkmenistan. Georgia withdrew from CIS in 2008 after Georgian-Russian war. Turkmenistan withdrew from CIS in 2005 and currently has a status of an associate member. This organisation is aimed at creating a free trade space between the member states and also it has serious defence dimension. However, during the last years, the organisation has been going through a crisis period with certain countries not seeing any benefits in participating in the alliance. Nonetheless, it is still operative as a forum for periodical meetings between the leaders of the member states.

²⁰ Hyde-Price, 'The New Pattern of International Relations in Europe' in Curzon Price, Landau, Whitman, (eds.), *The Enlargement of the European Union: Issues and Strategies*, (London: Routledge, 1999), 111-117, at 116.

²¹ Mungiu-Pippidi, 'Facing the 'Desert of Tartars': The Eastern Border of Europe' in Zielonka. (ed.), *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union*, (London: Routledge, 2002), 51-77, at 55.

aimed at diminishing the importance of hard borders through establishing close relations between the EU and its neighbours spreading security, stability and prosperity in the whole region by 'sharing the benefits of enlargement.'²² Promising European integration short of membership, the ENP entails cooperation on a wide range of matters touching upon economic and political development of countries, including trade and economic liberalisation, justice and home affairs issues, common security threats, cultural development, environment and others.²³

Most importantly the ENP is built around the EU's normative image. In December 2002 the Copenhagen European Council confirmed that the Union should take the opportunity offered by enlargement to enhance relations with its neighbours *on the basis of shared values*.²⁴ Subsequent ENP documents endorsed the EU's democratic values, proclaiming that the adherence to shared values will be the ground for enhanced relations with neighbours.²⁵

Within this context the ENP immediately attracted the attention of major research institutions both of EU legal and political studies.²⁶ Various scholars focused on different aspects of the ENP. One of the distinctive approaches had been the regional contextualisation of the policy, where the research focused on Eastern neighbours or on the Southern Mediterranean region.²⁷ A prominent line of research

²² Wider Europe Communication, at 3, 4, 9.

²³ Wider Europe Communication, at 10-14.

²⁴ Copenhagen European Council Conclusions, 12-13 December 2002, paragraph 22.

²⁵ Wider Europe Communication, at 4; General Affairs and External Relations Council Conclusions, Brussels, 18 March 2003, 6941/03 (P4; Presse 63), at 6; General Affairs and External Relations Council Conclusions, Luxembourg, 16 June 2003, 10369/03 (Presse 166), at V; ENP Strategy Paper, at 3, 12, 13.

²⁶ For instance, European Policy Centre, Centre for European Policy Studies, EUI Academy of European Law.

²⁷ Del Sarto and Schumacher, 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?' (2005) 10 *European Foreign Affairs Review* 17; Baracani, 'From the EMP to the ENP: A New European Pressure for Democratization?', (2005) 1 *Journal of Contemporary European Research* 54; Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Prague: Institute of International Relations, 2006), 59-76; Longhurst and Nies, 'Recasting Relations with the Neighbours-Prospects for the Eastern Partnership', Institut Français des Relations

has been the study of the ENP mechanisms, instruments and objectives with reference to the enlargement experience.²⁸ Others have explored the security dimension of the policy.²⁹ The vast amount of literature that has been generated around the EU and its neighbours since the initiation of the policy serves as an extensive ground for any possible additions to the topic.

This research question was chosen with an intention to contextualise the ENP's effectiveness in regional perspective and with reference to promotion of the EU's democratic values as a constituent element of the policy.

As noted above, in the EU's own rhetoric, the ENP is designed to spread the EU's values to the neighbourhood. Democracy is among those values with which the EU identifies itself.³⁰ In the view of the debates on the EU's democratic deficit it is apposite to ask whether this normativity is justified and to what extent the EU upholds it in its foreign relations. The ENP represents a legal tool of EU external relations through which its values can be spread to the neighbourhood. Thus, the ENP will be analysed in order to assess what values the EU is transposing in its neighbourhood, and to what extent these values are promoted. On the other hand, the ENP is a political instrument which allows the EU to pursue its strategic and

Internationales, February 2009; Wolczuk, 'Adjectival Europeanisation? The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy', European Research Working Paper Series, Number 18, August 2007.

²⁸ Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29; Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006; Meloni, 'Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 97-111; Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', (2006) 11 *European Foreign Affairs Review* 183; Balfour and Rotta, 'Beyond Enlargement. The European Neighbourhood Policy and its Tools', (2005) 40 *International Spectator* 7 etc.

²⁹ Lynch, 'The Security Dimension of the European Neighbourhood Policy', (2005) 40 *The International Spectator* 33; Smith and Webber, 'Political Dialogue and Security in the European Neighbourhood Policy: The Virtues and Limits of 'New Partnership Perspective'', (2008) 13 *European Foreign Affairs Review* 73.

³⁰ Article 6 TEU includes democracy among the founding principles of the EU, *OJ C* 321 E/1, 29.12.2006.

economic interests in vital regions in its immediate or historical neighbourhood. In this sense, the purpose of the research is to find out whether the initiation and the primary implementation of the policy endorses the institutional changes required at instrumental level, that is on the level where the EU can require or influence political reforms. Thus, the promotion of democracy within the ENP will take place within a framework aimed at spreading security and advancing the interests of the EU in its neighbourhood.

The region of the South Caucasus, comprising Georgia, Armenia and Azerbaijan, was chosen to contextualise the research question due to its complexity. The region is challenging for the EU for several reasons. In spite of its size, tensions between the constituent countries of this region have remained high since the break-up of the Soviet Union. In addition to internal tensions, the region attracts the interest of various powers eager to establish their dominance and of those that have historical dominance, thus creating international and regional rivalry. Another aspect, which motivated the selection of the South Caucasus, is the increased attention of international community towards the regions after the signature of the Contract of the Century, when the US chose to support the Baku-Tbilisi-Ceyhan pipeline, thus highlighting its geostrategic importance as an energy corridor.³¹ Within this wider pattern, the inclusion of these states within the ENP manifests the shift of attitude from the EU towards the region, where it has its own interests to pursue. In addition, with the accession of Romania and Bulgaria in 2007, the South Caucasus became part of the immediate vicinity of the Union, where Georgia shares maritime border with existing EU members, thus increasing its importance for the EU's security purposes.

³¹ Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Prague: Institute of International Relations, 2006), 59-76, at 69.

First of all, the proximity of the region is particularly important due to unresolved conflicts of South Ossetia, Abkhazia, and Nagorno-Karabakh which pose immediate threats to the Union. Secondly, the South Caucasus should be considered as a buffer-zone between the EU and farther unstable regions, increasing its importance for the purposes of international security. Thus, a research question focusing on the South Caucasus will explore the ability of the policy to affect democratic development of countries located in an area of high importance for the EU security purposes, including economic security.

The attractiveness of the region for research purposes also lies in the possible characterisation of the countries as European. Such characterisation will immediately include Georgia, Armenia and Azerbaijan within the countries whose membership the ENP tried to rule out. Although sometimes the South Caucasian countries are considered to be 'non-European,'³² the European Commission refers to Georgia, Armenia and Azerbaijan as European countries.³³ Despite the fact that the ENP rejects membership in the visible future, the issue of 'Europeanness' of neighbours cannot be dismissed. The 'Europeanness' is still considered to be a central condition for accession to the EU.³⁴ If the country is qualified as 'European,' the possibility of an EU membership application cannot be ruled out.³⁵ In this sense, it is interesting to note the effect of the ENP on Georgia, Armenia and Azerbaijan as European countries in the process of integration to the EU other than membership.

Georgia, Armenia and Azerbaijan have different aspirations for closer ties with the EU. The Rose Revolution in Georgia, which *inter alia* prompted the decision

³² Koutrakos, *EU International Relations Law*, (Oxford: Hart, 2006), at 364.

³³ http://ec.europa.eu/external_relations/we/index_en.htm.

³⁴ Hillion, 'Enlargement of the European Union: A Legal Analysis' in Arnall and Wincott, (eds.), *Accountability and Legitimacy in the European Union*, (Oxford: Oxford University Press, 2002), 401-418, at 403.

³⁵ Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Field of Democracy and the Rule of Law*, (Austin: Wolters Kluwer Law & Business, 2008), at 29-30.

to include the South Caucasus within the ENP,³⁶ brought European integration to the top of the country's foreign policy agenda. The public discontent with paralysed state institutions and dysfunctional economy due to widespread corruption reached its peak in the fraudulent 2003 parliamentary election.³⁷ This led to revolutionary protests which brought pro-Western Mikhail Saakashvili to power after the resignation of President Shevardnadze and after winning 96 percent of the vote in the January 2004 presidential election.³⁸ Saakashvili's United National Movement party secured the majority in the Parliament in April 2004 elections. Most importantly for the purposes of this research, Georgia's new ruling elite accepted a clear pro-Western course with an unrealistic short-term objective of joining both NATO and the EU, including Georgia in a group of countries clearly manifesting their political orientation towards the EU accession as opposed to its neighbours.³⁹

The political leadership of Armenia has expressed the country's aspirations for European integration on several occasions.⁴⁰ It is mainly the economic integration to the EU's internal market which interests the country due to its past economic isolation.⁴¹

Azerbaijan's interest in the EU is conditioned with flows from the increasing trade between the partners. Rich in natural resources, Azerbaijan is interested in

³⁶ Tocci, 'Does the ENP Respond to the EU's Post-Enlargement Challenges?' (2005) 40 *International Spectator* 21, at 23.

³⁷ 'Georgia: Sliding Towards Authoritarianism?' International Crisis Group, Europe Report No 189, 19 December 2007, at 1.

³⁸ 'Georgia's Rose Revolution: A Participant's Perspective', Giorgi Kandelaki, Special Report, United States Institute of Peace, Washington, at 4-5.

³⁹ Tulmets, 'Can the Discourse on 'Soft Power' Help the EU to Bridge its Capability Expectations Gap?' (2007) 7 *European Political Economy Review* 195, at 205.

⁴⁰ 'Working visit of President Sargsyan to the Kingdom of Belgium and European structures', 06.11.2008, available at <http://www.president.am/events/visits/eng/?visits=1&id=45>; 'Minister Oskanian addressed the Armenia-EU Parliamentary Cooperation Committee', April 18 2006, available at <http://www.armeniaforeignministry.com/>; 'Armenian President: EU Should Adopt Position Over The South Caucasus', 15.09.2003, available at <http://www.armeniaforeignministry.com/PR/PR262.html>; 'European integration Armenia's foreign policy priority' *Arka News Agency*, 07.02.2007.

⁴¹ The dynamics in relations between Armenia and its neighbours will be explored in Chapter III.

cooperation with the EU, however it does not have, unlike Georgia and Armenia, a strong urge to integrate into the EU market. It is rather more interested in balancing relations with major international partners and establishing a role of its own as a political actor.⁴²

The complexity of the region for security purposes and the distinctions of each of the states in their aspirations to integrate into the EU provide a complex ground for evaluating the ENP's effectiveness in their democratisation.

2. Methodology

The complexity of the research question requires a complex methodological approach. First of all, the ENP represents a foreign policy tool, the elements of which are at crossroads between politics and external relations law of the EU. In order to obtain a comprehensive picture of the ENP, application of an interdisciplinary approach is required, where 'inter' means 'derived from two or more' disciplines.⁴³ Bringing together various definitions of interdisciplinary studies it can be noted that this method allows for establishment of a more comprehensive framework for answering a question,⁴⁴ and 'cognitive advancement' via integration of knowledge and modes of thinking extracted from a few disciplines.⁴⁵ The interdisciplinary nature of this research will be apparent in the consideration of both political and legal aspects of the policy. Reference to legal studies only would omit the bigger picture of

⁴² Statements for media representatives by President Ilham Aliyev and President of the European Commission Jose Manuel Barroso, 28 April 2009, available at http://www.president.az/articles.php?item_id=20090430122621112&sec_id=70; Nuriyev, 'EU Policy in the South Caucasus: A View from Azerbaijan', Centre for European Policy Studies, Working Document No. 272/July 2007, at 18-19.

⁴³ Repko, *Interdisciplinary Research: Process and Theory*, (London: Sage, 2008), at 5.

⁴⁴ Klein and Newell, 'Advancing Interdisciplinary Studies' in Graff, Ratcliff and Associates, (eds.), *Handbook of the Undergraduate Curriculum: A Comprehensive Guide to Purposes, Structures, Practices, and Change*, (San Francisco: Jossey-Bass, 1996), 393-415, at 393-394.

⁴⁵ Boix Mansilla, 'Assessing Student Work at Disciplinary Crossroads'. (2005) 37 *Change* 14, at 16.

the ENP, while consideration of the political side of the ENP based on conceptualisation of the EU as a political actor would ensure 'cognitive advancement' for the purposes of answering the main research question.

2.1. International Relations theory and the conceptualisation of the EU

In order to explore the EU's ability to transpose its democratic values through the ENP the EU needs to be conceptualised as a foreign policy actor.

The initial presence of International Relations theory in the EC/EU studies has been focused on the explanation of the European integration process and the appearance of European Common Foreign policy.⁴⁶ In drawing on states as the main actors in an international scene characterised by a state of anarchy, realist and neorealist theories have been sceptical about the political integration in Europe.⁴⁷ Liberal trends allow for a more flexible approach to understanding the European integration. Such flexibility is apparent in accepting international actors other than states, who are able to play role in international politics, within network of relations between various actors on international stage.⁴⁸ Within these theoretical frameworks a number of contending theories of European integration have been developed throughout the existence of EC/EU. Drawing on earlier functionalist approaches, Haas and Lindberg developed the theory of neofunctionalism, which occupied a central place in the debate on EC integration until the mid-1970s.⁴⁹ Neofunctionalist

⁴⁶ Andreatta, 'Theory and the European Union's International Relations', in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 18-38, at 25-26, 30.

⁴⁷ Wayman and Diehl, (eds.), *Reconstructing Realpolitik*, (University of Michigan Press, 1994), at 17; Waltz, *Theory of International Politics*, (Boston: McGraw-Hill, 1979), at 105.

⁴⁸ Various accounts of liberal theory have been explored by Rosecrance, *The Rise of the Trading State: Commerce and Conquest in the Modern World*, (New York: Basic Books, 1986); Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton, N.J.: Princeton University Press, 1984); Olson, *The Rise and Decline of Nation: Economic Growth, Stagflation, and Social Rigidities*, (New Haven: Yale University Press, 1982).

⁴⁹ Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-1957*, (Stanford: Stanford University Press, 1968); Lindberg, *The Political Dynamics of European Economic Integration*, (Stanford: Stanford University Press, 1963).

accounts in the liberal tradition do not assume that states are the only actors on the international scene, and consider the bargaining between elites at supranational level as the main driving force behind the integration.⁵⁰ The central concept of the theory is spillover expressed in the interconnection between various sectors, where a certain goal cannot be effectively achieved without establishing new goals in a related sector.⁵¹

Liberal intergovernmentalism, as developed by Andrew Moravcsik, is the rival approach explaining the process of European integration.⁵² Drawing on previous realist conceptualisation of the EU integration in terms of intergovernmentalism, Moravcsik shifted the focus back to Member States which are acting at both a domestic level, where preferences are formed, and at the international level, where states are bargaining. The EU institutions are solely perceived to be the agents of the Member States ensuring a permanent arena for inter-state bargaining.

Without referring to theories of European integration that follow, it should be noted that a major shift took place in relation to the role of International Relations theory in EU studies. Thus, the EU is not only a phenomenon that researchers attempt to explain, but rather one of the concepts contributing to explanation of other phenomena.⁵³ This shift is first of all concerned with the departure from rationalist, both realist and liberal approaches, whose focus was on exogenous factors, such as

⁵⁰ Strobby Jensen, 'Neo-functionalism' in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 85-97, at 91-92.

⁵¹ Spillover can be functional, expressing the interconnectedness of the economy, or political implying links between policy areas for political or ideological reasons; Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-1957*, (Stanford: Stanford University Press, 1968), at 243, 283-317; Lindberg, *The Political Dynamics of European Economic Integration*, (Stanford: Stanford University Press, 1963), at 10.

⁵² Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', (1993) 31 *Journal of Common Market Studies* 473; Moravcsik, 'Liberal Intergovernmentalism and Integration: A Rejoinder' (1995) 33 *Journal of Common Market Studies* 611.

⁵³ Rosamond, 'New Theories of European Integration' in Cini, (ed.) *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 117-135, at 121.

interests and self-interest, detached from social structures, and where the structures matter to the extent that they are material contributing to the 'logic of consequences'.⁵⁴ On the contrary, constructivists suggest that social structures influence interests, and they are not merely pre-established. Wendt is among the leading authorities in this area.⁵⁵ Identities formed by agents in their socialisation predetermine the subsequent action.⁵⁶ As opposed to rationalist perspective, it is the 'logic of appropriateness' which is the driving force behind the action predetermined by established identity.⁵⁷ Identities, ideas, norms and values are the concepts most frequently used within this approach. Constructivist accounts for the EU's foreign policy have been developed by a number of scholars.⁵⁸ From a constructivist perspective, the foreign policy of the EU derives from shared identity and understanding stemming from certain values as a basis for a collective action aimed at transformation.⁵⁹

The first categorisation of the EU in terms of its distinctive identity was the concept of 'civilian power' developed by Duchene. Two elements have been identified within this concept, including the prominence of economic means in achieving foreign policy objectives as opposed to military forces, and 'a force for the international diffusion of civilian and democratic standards'.⁶⁰ It is mainly the first,

⁵⁴ March and Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, (New York: Free Press, 1989), at 160; 'New Theories of European Integration' in Cini, (ed.) *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), at 130; Sedelmeier, *Constructing the Path to Eastern Enlargement*, (Manchester: Manchester University Press 2005), at 18.

⁵⁵ Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press, 1999).

⁵⁶ Wendt, *ibid*, at 41, 371.

⁵⁷ Sedelmeier, *supra* note 54, at 18.

⁵⁸ Christiansen, Jorgensen and Weiner, 'The Social Construction of Europe,' (1999) 6 *Journal of European Public Policy* 528; Jorgensen, (ed.), *Reflective Approaches to European Governance*, (London: Macmillan, 1997); Tonra, 'Constructing the Common Foreign and Security Policy: The Utility of a Cognitive Approach,' (2003) 41 *Journal of Common Market Studies* 731; Checkel, 'Why Comply? Social Learning and European Identity Change,' (2001) 55 *International Organisation* 553.

⁵⁹ Tonra, *ibid*, at 741, 747.

⁶⁰ Duchene, 'The EC and the Uncertainties of Interdependence' in Kohnstamm and Hager, (eds.), *A Nation Writ Large? Foreign Policy Problems before the European Community*, (London: Macmillan, 1973), 1-21, at 19-20.

descriptive element of the concept of civilian power, which was largely used for analysing the EU foreign policy subsequently.⁶¹ In particular, the introduction of the CFSP with the Maastricht Treaty and subsequent development of European Security Defence Policy (hereinafter the ESDP) were among the reasons to question the existence of 'civilian power' EU.⁶² Within this debate, Stavridis and others brought the focus back to the second, normative element of Duchene's definition, where the 'civilian nature' of the power is not determined by the use of force *per se*, but rather by the way in which the force is used, i.e. for promotion of civilian values.⁶³

Such normative understanding of the EU has been subsequently developed by Manners with the notion of 'normative power.' Manners adds to the understanding of the EU as a 'civilian power' where the EU's unique normative basis is 'diffused' in its international relations predisposing the EU to act 'normatively.'⁶⁴ Among these norms are those defining the EU's identity, including democracy and human rights. In this sense, the norms do not only influence the foreign policy, but most importantly they constitute elements of that very policy. Therefore, promotion of democracy and human rights are considered to be 'identity objectives' for the EU, manifesting its

⁶¹ Hill 'European Foreign Policy: Power Bloc, Civilian Model-or Flop?' in Rummel, (ed.) *The Evolution of an International Actor: Western Europe's New Assertiveness* (Boulder: Westview, 1990); Smith, 'The End of Civilian Power EU: A Welcome Demise or Cause for Concern?' (2000) 35 *The International Spectator* 11, at 13.

⁶² The CFSP constitutes the second pillar of the EU legal order created by the EU Treaty, Title V on Provisions on a Common Foreign and Security Policy, *OJ C* 340, 10 November 1997. The second pillar is intergovernmental in nature implying unanimity in the Council. The ESDP was established by the Amsterdam Treaty in Article 17 and 25 with 1998 St Malo summit heralding common understanding between France and Britain on the security policy; Howorth, 'European Defence and the Changing Politic of the European Union: Hanging Together or Hanging Separately', (2001) 39 *Journal of Common Market Studies* 765, at 767, 769; Smith, 'The End of Civilian Power Europe: A Welcome Demise or Cause for Concern?' (2002) 35 *The International Spectator* 11.

⁶³ Stavridis, 'Militarising' the EU: the Concept of Civilian Power Revisited', (2001) *The International Spectator* 43, at 44, 48; Biscop, 'The European Security Strategy and the Neighbourhood Policy: A New Starting Point for a Euro-Mediterranean Security Partnership?' in Attina and Rossi. (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 25-36, at 29.

⁶⁴ Manners, 'Normative Power Europe: A Contradiction in Terms', (2002) 40 *Journal of Common Market Studies* 235, at 236, 244, 252.

value-driven power as opposed to other actors on the international scene.⁶⁵ In addition, promoting democracy abroad is considered to be a factor enhancing the EU's identity and its values internally in reference to its democratic deficit debate.⁶⁶ It has been noted that the EU's 'self-representation' even on rhetorical level can be 'performative,' which, given necessary structural context can contribute to the formulation of identity of relevant actors.⁶⁷

However, the identification of the EU in constructivist terms does not ultimately dismiss the rationalist accounts for the EU's foreign policy action. The general debate between rationalism and constructivism in International Relations theory has been reflected in the EU studies.⁶⁸ In particular, the current level of EU integration has been identified as one of the factors affecting its international identity, which continues to represent a fusion of both supranationalism and intergovernmentalism.⁶⁹ The inability of the EU to act as a unitary actor in foreign relations is influenced by the complexity of its internal decision-making and sporadic and ad hoc manner of reacting to international events.⁷⁰ Most importantly, the presence of multiple policy-makers of EU international action increases scepticism as to the possibility of formulating a single presumption of the EU's identity and

⁶⁵ Keukeleire and MacNaughtan, *The Foreign Policy of the European Union*, (Basingstoke: Palgrave Macmillan, 2008), at 223; Youngs, 'Normative Dynamics and Strategic Interests in the EU's External Identity', (2004) 42 *Journal of Common Market Studies* 415, at 416; Olsen, 'Promotion of Democracy as a Foreign Policy Instrument of 'Europe': Limits to International Idealism', (2000) 7 *Democratization* 142, at 143.

⁶⁶ Youngs, *ibid*, at 419.

⁶⁷ Lucarelli, 'Values, Identity and Ideational Shocks in the Transatlantic Rift', (2006) 9 *Journal of International Relations and Development* 304, at 319-320.

⁶⁸ Aspinall and Schneider, (eds.), *The Rules of Integration: Institutional Approaches to the Study of Europe*, (Manchester: Manchester University Press, 2001); Checkel and Moravcsik, 'A Constructivist Research Programme in EU Studies?' (2001) 2 *European Union Politics* 219.

⁶⁹ Whitman, *From Civilian Power to Superpower? The International Identity of the European Union*, (Basingstoke: Palgrave Macmillan, 1998), at 28, at 205.

⁷⁰ Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), at 207.

upholding it with equal intensity.⁷¹ Therefore, despite the emerging value-dimension of the EU's foreign policy action, general inconsistencies have been observed in relation to geostrategic concerns or security-driven actions.⁷²

Thus, for the purposes of this research, the EU will be perceived as an actor whose identity requires it to act 'normatively' in its external relations, not however excluding rationalist presumptions behind its actions.

2.2. Review of primary and secondary sources

For the purposes of answering the general research question a review of primary and secondary sources has been undertaken. EU legislation should be considered as the primary source providing the basis for studying the institutional and constitutional aspects of the EU foreign policy action. The primary legislation of the EU constructs the basis for identifying the normative identity of the EU, in particular the place of democratic values within this identity. The founding and revising Treaties of the European Union will be used for the purposes of this research. The provisions of the Lisbon Treaty should frame the narrative for exploring the current state of the EU's constitutional development. In addition to its founding Treaties, EU international agreements signed with the Member States' participation in the context of the EU neighbourhood will be reviewed for analysis of the relations between the EU and relevant neighbours within the existing contractual framework. Most importantly, the secondary legislation of the EU will be revised for the purposes of

⁷¹ Sedelmeier, *supra* note 57, at 36.

⁷² Keukeleire and MacNaughtan, *supra* note 65, at 334; Youngs, *supra* note 65, at 431; Lucarelli, *supra* note 67, at 320; Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *European Foreign Affairs Review* 253, at 254, 272, 273. Tocci, 'The European Union as a Normative Foreign Policy Actor', Centre for European Policy Studies, Working Document No. 281/January 2008; Johansson-Nogues, 'The (Non-) Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?' (2007) 7 *European Political Economy Review* 181, at 185-186.

analysing the development of the ENP and its initial implementation. The secondary sources, such as Communications, Recommendation and Conclusions play the most important role in the process of ENP formulation and subsequent implementation. Other soft law instruments ensuring the implementation of the policy are among legislative sources reviewed.

The wide scope of legal research undertaken in the field of the EU external relations with its neighbours provides a broad foundation for understanding different aspects of the ENP. The scholarly research is particularly relevant for analysing the institutional and constitutional aspects of policy development. In addition, the substance of the ENP in terms of its instruments and mechanisms will be discussed with reference to the research undertaken by leading scholars in the area.

2.3. Comparative perspective

One of the leading general definitions of comparative law has been given by Zweigert and Kotz as ‘an intellectual activity with law as its object and comparison as its process.’⁷³ Among various streams of defining comparative law is accepting it as a method of study rather than a body of law which allows examination of legal rules in comparative context.⁷⁴ For the purposes of this research comparative law will be used as a mean of understanding legal rules. Within this approach two comparative frameworks have been constructed for the purposes of the research question.

First of all, the study is aimed at exploring the transposition of democratic values through the ENP to the countries of the South Caucasus. Georgia, Armenia and Azerbaijan are the three countries comprising the region. In order to answer the general research question, the discussion follows comparative logic. Comparative

⁷³ Zweigert and Kotz, *An Introduction to Comparative Law*, 3rd edition, (Oxford: Clarendon, 1998), at 2.

⁷⁴ De Cruz, *Comparative Law in a Changing World*, 3rd edition, (Abingdon: Routledge-Cavendish, 2007), at 3, 5.

perspective is present in the initial discussion on the democratic reality of the countries in question, and in the EU's previous and current relations with each of the countries. Most importantly, the analysis of legal instruments of the ENP as demonstrating the EU's approach to democracy promotion will be conducted on a comparative basis. A frame for such comparison is construed around the democratic values of the EU with reference to the provisions of the Lisbon Treaty on democratic principles of the EU. Construction of this comparative frame requires identification of the democratic elements of the EU governance constituting its normative basis, which the EU is willing to share with its neighbours. Various theories of democracy have been considered in order to establish a frame for subsequent comparative analysis.

The second comparative narrative present in the thesis is built around the study of the ENP through the prism of the enlargement experience. The instruments and tools of the ENP are borrowed from the pre-accession strategy, which automatically entails comparison. Moreover, the transposition of democratic values to candidate countries serves as a ground for analysing the ENP's potential success or failure to affect democratic development of the South Caucasian countries. The mechanism of conditionality borrowed from the pre-accession strategy is of particular significance for assessing the effectiveness of the ENP in transposing the EU's democratic values. This comparative framework is particularly apparent in Chapter IV and Chapter VI of the thesis.

2.4. Interviews

Selecting interviews as a method for the purposes of this research was influenced by a number of considerations.⁷⁵ The insights into the formation and

⁷⁵ With the view of conducting interviews at certain stage of my research, I attended an 'Interviewing Workshop,' organised by the Graduate School of Nottingham University. The workshop gave me an insight into the purpose of using interviewing as research method, designing and analysing interviews,

implementation of the ENP acquired through the interviews were an important contribution to the analysis undertaken in the thesis. First of all, the selection of interviewees was undertaken in the light of their immediate relation to the ENP as it is taking place in the three Caucasian countries. Three features are considered to be required for effective interview:

- Accessibility-possession of requested information,
- Cognition-understanding of the interviewee of the information required,
- Motivation-the interest of the interviewees to participate in the interview.⁷⁶

Interviews were conducted both with European Commission officials and representatives of Government, Parliament and representatives of NGOs involved in activities related to democratisation of the countries in question. The interviews were conducted in Brussels on January 28th, in Tbilisi on April 6-7th and in Yerevan on April 20-21th, 2009. Due to practical reasons as an Armenian citizen from Nagorno-Karabakh, I could not visit Azerbaijan, and therefore no interviews have been conducted on ENP implementation in Azerbaijan.⁷⁷

The presence of 'cognition' element has been ensured by acknowledging the purpose of interview when establishing contacts with interviewees. Accordingly, e-mails have been sent to the interviewees explaining my position, the purpose of the interview and the information that might be required during the interviews. With

types of interviews and others. The workshop was led by Dr. Peter Gates from School of Education, Nottingham University. The interviews were conducted in accordance with Nottingham University Code of Research Conduct.

⁷⁶ Cannel and Kahn, *The Dynamics of Interviewing: Theory, Technique and Cases*, 2nd edition, (New York: Wiley, 1968), at 535-538.

⁷⁷ Despite these obstacles, contacts have been established with the representatives of Azerbaijan National Committee for European Integration. Special gratitude is expressed to Arzu Abdullayeva.

those interviewees with whom contacts have been established via telephone, the purpose of the interview has been explained during the initial conversation.

The interviewees in Brussels were chosen according to the official position they occupy as desk-officers responsible for the countries of South Caucasus. The purpose of interviewing these particular officials was identifying the role of political reform within the ENP, negotiation, implementation and monitoring of the Action Plans. In other words, to establish the extent to which the normative rhetoric is present in practice. The interviewees in Georgia and Armenia were also chosen due to the first-hand information they have on the ENP issues in respective countries. The choice of the representatives of Government, Parliament and the civil society has been motivated by the intention of identifying their respective roles in the process of the Action Plan implementation and their vision of the role of democratisation within the ENP.⁷⁸

The motivation to participate in the interview depended on different considerations for each category of interviewees. For representatives of the European Commission it has been a continuous practice to communicate with representatives of academia, so as to demonstrate that the EU is more than merely bureaucratic.⁷⁹ It appears that for the representatives of the civil society in both Georgia and Armenia the motivation was not to miss an opportunity of criticising their respective governments. The representatives of state institutions in Georgia were very willing to present information on the ENP in Georgia as a demonstration of their enthusiasm for Georgia's EU integration. Similar motivation was noted in relation to the representative of the Armenian Government responsible for the ENP implementation. The absence of motivation on behalf of the representative of Armenian Parliament

⁷⁸ For the interview transcripts see Annex A, B, C.

⁷⁹ Interview with Anonymous Commission official I, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcript see Annex A.

dealing with the issues of European integration was the reason why that particular interview did not take place.⁸⁰

Design of interviews

The interviews have been designed in a semi-structured way. Questionnaires have been prepared beforehand, however they did not have a pre-established set of answers.⁸¹ The questions set in the questionnaire were used as guidance in the interview, which allowed the conversation to flow, where at points the interviewee could answer more than one question.

The questionnaires prepared for the interviews with the officials of the European Commission included a number of common questions, such as the role of democracy promotion at various stages of the Commission engagement with each of the countries through the ENP. Country-specific questions were also included in the questionnaires. Similarly, a common set of questions and country specific questions were used in the questionnaires in Georgia and Armenia. The questionnaires varied depending on the type of actor was interviewed.

Transcribing and Translating

The interviews were audio-recorded. This allows the interviewer to concentrate on the conversation with the interviewee and not to lose the focus by making notes. Although notes were taken during the interview, they nevertheless did not have the purpose of recording all the information provided by the interviewee. Rather they fixed certain data provided by the interviewee that seemed particularly valuable at the time.

⁸⁰ Despite numerous efforts to organise an interview with representatives of the Armenian Parliament, the interview did not take place.

⁸¹ Structured interviews assume that there is a set of questions established beforehand with a limited set of response categories; Fontana and Frey, 'Interviewing: The Art of Science', in Denzin and Lincoln, (eds.), *Methods of Collecting and Analyzing Empirical Materials*, 3rd edition, (London: Sage, 1994), 361-375.

The recorded interviews have been subsequently transcribed by me. The transcribing of the interviews allowed making preliminary analyses of the information provided by the officials or representatives of the NGOs. In addition, most of the interviews conducted in Georgia and Armenia required translation into English from Russian or Armenian. The translation did not entail any complications, since both Armenian and Russian are my native languages and the ENP vocabulary used by the interviewees was translated from English in the first place.

Ethical issues

As noted above, the purpose of the interviews and the intended use of the information provided were explained via initial correspondence and at the beginning of the interviews. In accordance with the University of Nottingham Code of Research Conduct,⁸² the interviewees were given an opportunity to decide on the confidentiality of the information they have provided. Those who decided not to disclose their identity are cited anonymously. In addition, the transcripts of the interviews, to which the thesis makes reference, were offered for revision to all interviewees. Those interviewees who took up the offer were provided with the relevant transcript of the interview. No objections to the transcript have been raised by any of the interviewees to whom the document was sent.

3. Structure of the thesis

The thesis includes six substantive chapters and is finalised with conclusions. Chapter II, as the first substantive chapter, is aimed at setting a background for the EU's involvement in the South Caucasus through the ENP. The background will include both the presentation of the current stage of economic and political

⁸² Available at http://www.nottingham.ac.uk/ris/local/research-strategy-and-policy/code_of_conduct.pdf.

development of the countries in question, and the relations the countries had with the EU prior to the ENP. Chapter III will be aimed at the discussion of the next phase of the relations between the EU and Georgia, Armenia and Azerbaijan. This phase is primarily concerned with the ENP and its political aspects, including the EU's interests in the region and the objectives pursued through the ENP. Following the political aspects of the ENP, Chapter IV will be aimed at revealing the legal aspects of the ENP. The legal aspects of the policy will be discussed in reference to institutional and constitutional issues, instruments and methods of the policy. In order to assess the effectiveness of the ENP in transposing the EU's democratic values to the neighbourhood, those values will be identified with reference to the constitutional development of the EU as established in the provisions of the Lisbon Treaty in Chapter V. Also, as the most successful example of transposition of democratic values to the neighbourhood, the experience of the 2004 enlargement will be considered. Chapters VI and VII will analyse the EU's actual engagement with Georgia, Armenia and Azerbaijan. With reference to political considerations behind the ENP, the legal framework of the policy and the EU's democratic values, both chapters will be aimed at revealing the consistency of the EU's self-representation as an organisation spreading democracy to its neighbourhood. Chapter VI will focus on the Action Plans with each of the countries in comparative perspective, while Chapter VII will be based on the monitoring of Action Plan implementation in the three countries and the assistance provided to each of them. Finally, Chapter VIII will conclude the thesis with a summary of findings.

CHAPTER II

South Caucasus and the EU before the ENP

1. Introduction

While the EC was going through heated debates on its identity in the end of 1980s and early 1990s, its most powerful neighbour, the Soviet Union, was collapsing.⁸³ It would have been logical to assume that the atmosphere of ‘freedom’ in the USSR, created by the trends of ‘perestroika’ and ‘glasnost’ introduced by Gorbachev, should have turned newly independent countries to establish a certain form of liberal democracy as their new political order. Almost two decades after the disintegration of the USSR very few of the fifteen newly independent states have succeeded in following this path.

The Baltic states, which joined the EU in 2004, should be included within these few states. With reservations, to be discussed in Chapter V, they succeeded in establishing accountable democratic institutions based on the principle of the separation of powers, checks and balances, and other features of liberal democratic regimes mainly due to their strong motivation for EU membership.⁸⁴

Meanwhile the rest of the former Soviet republics established the CIS intending to retain cooperation in certain areas, including economic, legal and military cooperation.⁸⁵ In the CIS Almaty Declaration the signatory states acknowledged their intention of ‘seeking to build democratic law-governed states.’⁸⁶ This seemed to have a declaratory character, since the CIS Charter, adopted by the Council of Heads of States on 22 January 1993, did not have any recall to the

⁸³ Soviet Union included fifteen member states, namely Russian Federation, Ukraine, Belarus, Moldova, Latvia, Lithuania, Estonia, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan, Azerbaijan, Georgia and Armenia.

⁸⁴ Latvia, Lithuania and Estonia have gained their independence amongst the first countries and had immediate orientation towards the EU. This was due to the fact that all three countries preserved strong European identity after being occupied by the Soviet Union in 1940.

⁸⁵ See note 19, Chapter I.

⁸⁶ Deyermund, *Security and Sovereignty in the Former Soviet Union*, (London: Lynne Rienner Publishers, 2008), at 42.

democratic order of the member states whatsoever.⁸⁷ In addition, establishing democratic institutions or other attributes of liberal democracies had not been an item on the agenda of this organisation. Even more, some of its members are considered to be modern autocracies. In the officially democratic republic of Belarus the political power is concentrated in the hands of the president with a state planned economy and suppressed opposition. Belarus is an example of the EU's application of political conditionality in its external relations. A Partnership and Cooperation Agreement (hereinafter the PCA) was negotiated between the parties in 1995, which, nevertheless, did not come into force due to the deteriorating democratic situation after President Lukashenka came to power.⁸⁸ The same obstacles prevented Belarus from benefiting from the ENP.⁸⁹

Most of the former Soviet countries,⁹⁰ including the countries of the South Caucasus, stepped onto the painful path of building democracy through Soviet heritage, establishing new institutions, and changing citizens' conception of participation in political life of the country, alongside efforts to create a market economy. In the South Caucasus this process was interrupted with armed conflicts in

⁸⁷ <http://www.cis.minsk.by/main.aspx?uid=180>

⁸⁸ The Conclusion of the European Council of September 1997 stated that 'the EC and their Member States will conclude neither the interim agreement nor the Partnership and Co-operation Agreement' due to the deteriorating situation. Available at <http://www.delblr.ec.europa.eu/page84.html>. Also the European Parliament has expressed its concerns over the situation in Belarus in a number of resolutions: European Parliament Resolution on the EU's Rights, Priorities and Recommendations for the 60th Session of the UN Commission on Human Rights in Geneva (15 March to 23 April 2004); European Parliament Resolution on Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours (COM(2003) 104 -2003/2018(INI)); European Parliament Resolution on Relations between the European Union and Belarus: Towards a Future Partnership (2002/2164(INI)); European Parliament Resolution on the Freedom of the Press in Belarus (July 4, 2002).

⁸⁹ In its conclusions of 23 November 2004, the Council reiterated its political conditionality and acknowledged Belarus's opportunity, as an EU neighbour, to benefit from the ENP. It called upon Belarus's leadership to revise their policies and improve their democratic record to comply with EU values; Council Conclusions of 22-23 November 2004, 14724/04 (Presse 325), page 26.

⁹⁰ The reference is made with an intention to exclude Belarus and Turkmenistan and the Baltic countries.

all three countries in the beginning of 1990s influencing the political life of Georgia, Armenia and Azerbaijan to this day.

At the same time, the EU, being pre-occupied with its constitutional transformation, forthcoming enlargement and conflicts in the Balkans, was not particularly concerned with engaging with the region and its problems. Hence, the relationship between the EU and the South Caucasus can be generally divided into two stages. The first stage includes the establishment of bilateral relations between the parties and is described with a rather cautious attitude by the Union to the region marked by an absence of a coordinated policy. This attitude persisted until the end of the 1990s and the beginning of the new millennium. During the second stage of the relationship, the new geopolitical reality raised the importance of the region through its proximity after the anticipated enlargement of the EU's which led the Union to acknowledge its interests therein. It expressed a willingness to engage in the region and to develop a comprehensive policy towards the latter with a reference point of 2003.⁹¹ This period mainly reflects the security concerns of the EU and is primarily related to the inclusion of Georgia, Armenia and Azerbaijan in the ENP.

The aim of this Chapter is to present the background of the development of South Caucasian states and the first phase of relationship between the EU and each of the countries. It is the background against which the ENP has to operate. In this context, this Chapter will be aimed at presenting the internal situation of the states in question with reference to their general description, the armed conflicts and their influence on the rise of nationalism. In addition a brief recourse will be made to the current state of democracy building process in the three countries with respect to distribution of power, representative element of democracy, citizens' participation

⁹¹ Popescu considers that the '1990s-style of the EU policy' the region ended in 2003. See Popescu, 'Europe's Unrecognised Neighbours: The EU in Abkhazia and South Ossetia', Centre for European Policy Studies, Working Document No 260/March 2007, at 4.

and freedom of speech. The relations between the EU and the South Caucasus in the first phase as identified above will be discussed next. The PCAs with Georgia, Armenia and Azerbaijan as the main instrument of cooperation will be considered with reference to their general features and their particular role as regards democracy promotion within the first phase.

2. The South Caucasus and its democracy

There is a presumption that the South Caucasus does not constitute a region and that it is just a 'cliché' created during the Soviet era.⁹² The term 'South Caucasus' was an alternative to 'Transcaucasus' in order to nominally separate it from Russia, from whose perspective it was considered to be 'Transcaucasus,' that is, beyond Caucasus.⁹³ Also, the reference to the region as 'South' Caucasus distinguishes it from North Caucasus as a part of the Russian Federation. Although initially the EU was referring to the region as 'Transcaucasia',⁹⁴ Georgia, Armenia and Azerbaijan are currently referred to as the South or Southern Caucasus. Despite the fact that the three countries share much in common, including internally displaced persons, corruption and organised crime,⁹⁵ in fact the relations between all three states do not leave any doubt as to the absence of regional cooperation or identity in general and therefore require a distinctive approach to each of them.

⁹² Heinrich Böll Foundation, 'Regional Preconditions for the Development of an Integrated European Policy Towards the South Caucasus', Documentation of the Conference at the Heinrich Böll Foundation, Tbilisi, June 2004, at 12-13.

Available at http://www.boell.de/alt/downloads/europa/caucasus_conference04.pdf.

⁹³ Sabanadze, 'International Involvement in the South Caucasus', ECMI Working Paper No. 15 (Flensburg, European Centre for Minority Issues 2002), at 3.

Available at <http://www.einiras.org/pub/details.cfm?lng=en&id=19647>

⁹⁴ Towards a European Union Strategy for Relations with the Transcaucasian Republics, Commission Communication, Brussels, 31.05.1995, COM(95) 205 final.

⁹⁵ Labedzka, 'The Southern Caucasus' in Blockmans and Lazowski, (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 575-612, at 577-578.

As identified by Lynch, there is no regional dialogue and an atmosphere of suspicion and insecurity is 'sustained by a lack of trust'.⁹⁶ It can be assumed that at the stage of establishing relations with the three countries they were not perceived as constituting the South Caucasus separately, since the conclusion of the PCAs was a part of a general approach to the former Soviet Union states, which was itself a regional category for the EU.⁹⁷ Apart from the general attention to the former Soviet space through the conclusion of the PCAs, excluding the Baltic countries, the EU has been rather reluctant to intervene in the problems of the South Caucasus, in particular in the armed conflicts. The violent conflicts in Nagorno-Karabakh, Abkhazia and South Ossetia received modest attention from the Union which was more preoccupied with the doorstep conflicts of the Balkans.⁹⁸

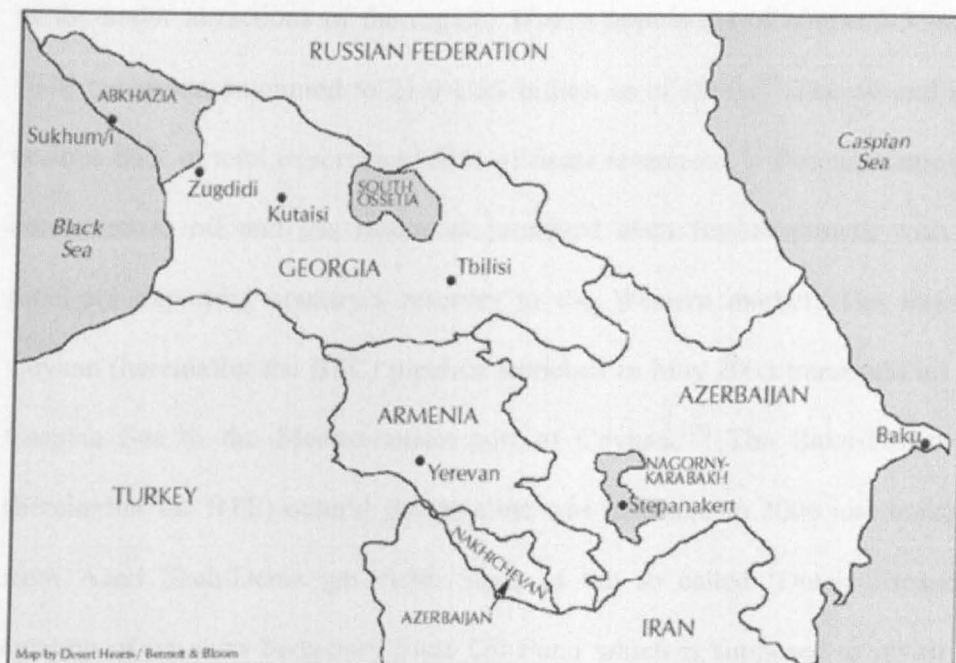
⁹⁶ For the purposes of this research the South Caucasus will be referred to as region; Lynch, 'A Regional Insecurity Dynamic' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 171-200, at 10.

⁹⁷ Lynch, 'The EU: Towards a Strategy' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 9-21, at 179.

⁹⁸ Coppieters, 'An EU Special Representative to a New Periphery' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 159-170, at 169.

2.1. General description of the countries

Situated between the Black and Caspian Seas the region of South Caucasus has land borders with Russia, Turkey and Iran.



Conciliation Resources, South Caucasus map⁹⁹

Armenia is the smallest of all the former Soviet Republics and the only landlocked country among the South Caucasian countries which leads to high transportation costs.¹⁰⁰ The country's population is 3.1 million comprised mostly of ethnic Armenians with minorities totalling less than 3% of the population.¹⁰¹ The current GDP of the country comprises 13.80% per annum with its small economy highly dependent on external markets for sustaining high growth and poverty reduction.¹⁰² With scarce natural resources (gold, copper, zinc and alumina),

⁹⁹ The conflict areas of Abkhazia, South Ossetia and Nagorno-Karabakh are marked on the map.
<http://www.c-r.org/our-work/caucasus/images/map.htm>

¹⁰⁰ The total territory of Armenia is 29.8 square km.

¹⁰¹ Asatryan and Arakelova, 'Ethnic Minorities of Armenia', Yerevan 2002.

Available at http://www.hra.am/file/minorities_en.pdf.

¹⁰² Armenia Country Brief, World Bank,

Available at

<http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,contentMDK:20628754~menuPK:301586~pagePK:141137~piPK:141127~theSitePK:301579,00.html>.

agriculture sector employs about 46 percent of total labour and amounts to 18 percent of national GDP.¹⁰³

Azerbaijan's rich natural resources of oil and gas should be considered as one of the major attractions of the region. With a population of almost 8.3 million, the GDP per capita amounted to 21.0 US\$ billion as of 2006.¹⁰⁴ The oil and gas boom ensures 86% of total exports and 56% of fiscal revenues.¹⁰⁵ The economic prospects connected to oil and gas resources promised even further growth with the new pipelines exporting country's reserves to the Western market. The Baku-Tbilisi-Ceyhan (hereinafter the BTC) pipeline launched in May 2005 transports oil from the Caspian Sea to the Mediterranean port of Ceyhan.¹⁰⁶ The Baku-Tbilisi-Erzurum (hereinafter the BTE) natural gas pipeline was launched in 2006 and transports gas from Azeri Shah-Deniz gas field. Signs of the so called 'Dutch disease' led to creation of an extra budgetary State Oil Fund which is supposed to invest in other sectors of economy.¹⁰⁷

Also for Georgia the cooperation on BTC and BTE pipelines due to its transit position are considered to be good prospects for the development of the economy.¹⁰⁸ Similar to Armenia, Georgia is a small country with a population of 4.4 million and limited natural resources, including manganese, iron, coal, copper, gold, granite, limestone, marble, and mineral waters.¹⁰⁹ Georgia's climate and fertile land create favourable conditions for the development of agriculture, including production of

¹⁰³ *Ibid.*

¹⁰⁴ World Bank data, available at http://devdata.worldbank.org/AAG/aze_aag.pdf.

¹⁰⁵ Country Report Azerbaijan, European Neighbourhood Policy, Commission Staff Working Paper, SEC (2005) 286/3, section 3.1.1.

¹⁰⁶ The pipeline was built by a consortium under BP.

¹⁰⁷ 'Azerbaijan's Q1 inflation rate 16.6%, National Bank chief says.' *Today.Az*, April 14, 2007; Azerbaijan Country Report, section 3.1.1.

¹⁰⁸ Labedzka, *supra* note 13, at 582.

¹⁰⁹ Georgia Country Brief, World Bank.

Available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/GEORGIAEXTN/0,,menuPK:301755~pagePK:141132~piPK:141107~theSitePK:301746,00.html>.

citruses and tea. The liberalisation of economy after the Rose Revolution led to the raise in the GDP to 10% annually reaching 12% in 2007.¹¹⁰ The August 2008 war with Russia, which will be discussed in Chapter III, had major impact on Georgia's growing economy damaging macro-level performance and increasing the numbers of Internally Displaced People.¹¹¹

2.2. Nationalism and conflicts

Nationalism should be considered as one of the major factors leading to an unstable situation in all three countries and constituting a significant barrier to the development of their young democracies. It plays a significant role in almost all fields of political life of these states since their independence. Whilst it replaced communism as the major ideology in the former Soviet Republics first years of independence,¹¹² nationalism in Armenia still dominates the political agenda undermining frameworks for democratisation with national security matters.¹¹³ This observation of Freire and Simao can be equally applied to Azerbaijan and Georgia. The major issues building up the nationalism narrative should be considered the unresolved conflicts in the region.

2.2.1. Nagorno-Karabakh conflict

Though the Nagorno-Karabakh conflict erupted in the end of 1980s, it is rooted in the history of the beginning of the 20th century. After the downfall of the Russian Empire, and the short lived Transcaucasian Republic, three new republics were formed within its territory in 1918: Armenia, and Georgia, which restored their

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Khazanov, *After the USSR: Ethnicity, Nationalism and Politics in the Commonwealth of Independent States*, (London : The University of Wisconsin Press, 1995), at 58.

¹¹³ Freire and Simao, 'The Armenian Road to Democracy. Dimensions of a Tortuous Process,' Centre for European Policy Studies, Working Document No. 267/May 2007, at 4.

statehood after centuries, and Azerbaijan which created its first state.¹¹⁴ Armenia found itself in a position of fighting against Azerbaijan which claimed the historical territories of Armenia-Nakhichevan and Nagorno-Karabakh, predominantly inhabited by Armenians. After both Azerbaijan and Armenia were Sovietised, the disputed territories were incorporated in Armenia.¹¹⁵ In July 1921 Stalin decided that Nagorno-Karabakh together with Nakhichevan were to be passed to Azerbaijan,¹¹⁶ in a continuation of the Imperial Russian policy of creating administrative divisions not according to their ethnicity as a form of 'divide and rule.'¹¹⁷

Despite the reluctance of Armenians to accept the fate of Nagorno-Karabakh in the Soviet era, the powerful Soviet centre successfully suppressed national sentiments for decades.¹¹⁸ With the sense of freedom appearing in the Soviet Union after Gorbachev led 'perestroika' and 'glasnost' and his famous speech on self-determination, Armenians in both Armenia and Nagorno-Karabakh raised their dormant hope of unification. Mass demonstrations took place in the beginning of 1988 in the capital of Armenia, Yerevan, as well as in Stepanakert, the main town of Nagorno-Karabakh, followed with a petition to Soviet authorities in Moscow requiring change in the status of the region.¹¹⁹ In February 1988 the Regional Committee in Stepanakert voted to request the transfer of Nagorno-Karabakh to

¹¹⁴ Georgia and Azerbaijan declared their independence on 26th and 27th of May 1918 without even considering the demarcation of borders with Armenia: at the time Armenia was fighting against Turkey advancing in the Eastern Armenia, and neither Georgia nor Azerbaijan considered that Armenians had any chance against Turkey. Armenia's independence was proclaimed on 29 May 1918 in Tiflis; Walker, *Armenia: The Survival of a Nation* (London: Croom Helm, 1980), at 246-257.

¹¹⁵ On December 1, 1920 it was acknowledged by the Chairman of Azeri Revolutionary Committee Narimanov and Commissioner of Foreign Affairs Huseinov that the disputed territories of Nagorno-Karabakh, Zangezur and Nakhichevan are considered to be part of Armenia; Libaridian, (ed.), *The Karabakh File*, (Cambridge, MA: Zoryan Institute, 1988), at 34.

¹¹⁶ *Ibid*, at 36.

¹¹⁷ Karabakh was included in Yelizovetpol gubernia in Tsarist Russia after the territory of Eastern Armenia was conquered in the Russian-Persian war of 1826-1828; Masih and Krikorian, *Armenia at the Crossroads*, (Amsterdam: Harwood Academic, 1999), at 3; Walker, *supra* note 32, at 46-47, 75.

¹¹⁸ Libaridian, *supra* note 33, at 42-52.

¹¹⁹ Miller, *Armenia: Portraits of Survival and Hope*, (London: University of California Press 2003), at 37-38.

Armenia, which was rejected by the Azerbaijan Supreme Soviet in June of the same year. Violence broke out in different parts of Nagorno-Karabakh and Azerbaijan from 1988 to the early 1990s, including the pogroms of 22 February, 1988 in Aghdam and Karabakh,¹²⁰ and the massacres of Armenians in the Azeri town of Sumgait in 1989.¹²¹ The culmination of violence took place in January of 1990 in the Baku pogroms of Armenians which urged the central Soviet authorities to react by sending in troops.¹²² Throughout this period there was an exchange in refugee populations from both sides.¹²³ The violence turned into full-scale military operations, when, by September 1992, Azerbaijan had captured more than half of Nagorno-Karabakh. The Armenians fought back recapturing most of Nagorno-Karabakh and six surrounding Azerbaijani regions by May 1994.¹²⁴ According to the International Crisis Group the conflict left behind around one million Internally Displaced Persons on both sides.¹²⁵

A ceasefire was signed in May 1994 with the efforts of the OSCE which was followed by numerous high-ranking negotiations on the possible resolution of the conflict within the OSCE Minsk Group. Mainly fruitless negotiations for over a decade accorded the conflict with the status of 'frozen.'¹²⁶ Though it has been hoped that the parties will come to an agreement suitable for all based on the Madrid Basic

¹²⁰ Masih and Krikorian, *supra* note 35, at 7.

¹²¹ Shahmuratian, (ed.), *The Sumgait Tragedy: Pogroms against Armenians in Soviet Azerbaijan*, (New Rochelle, NY/Cambridge, MA: Caratzas Publishers/Zoryan Institute).

¹²² De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, (New York: New York University Press, 2003), at 89-93.

¹²³ 'Azerbaijan: Turning Over a New Leaf?', International Crisis Group, Europe Report No 156. Baku/Brussels, 13 May 2004, at 6.

¹²⁴ According to De Waal it comprises 14% of official territory of Azerbaijan, *supra* note 40, 240.

¹²⁵ 'International Crisis Group, *supra* note 41, at 5.

¹²⁶ Azerbaijan made an attempt to bring the Nagorno-Karabakh issue to the UN level by passing a Resolution on 14 March 2008 in the UN General Assembly requiring 'immediate, complete and unconditional' withdrawal of Armenian forces from Azeri regions (UN General Assembly Resolution 62/243 on 'The Situation in the Occupied Territories of Azerbaijan', 14 March 2008). The US, France and Russia, the three co-chairs of the OSCE Minsk Group, opposed this resolution considering Azerbaijani efforts of bringing the issue to the UN level to be destructive for the negotiations within the OSCE framework; Press Release Concerning UN General Assembly Resolution on Situation in Occupied Territories of Azerbaijan, Ministry of Foreign Affairs of the Russian Federation, 341-15-03-2008.

Available at http://www.un.int/russia/new/MainRoot/docs/off_news/150308/newen1.htm.

Principles,¹²⁷ the recent meetings between the Presidents of Armenia and Azerbaijan did not lead to major developments.¹²⁸

While the EU was not involved in the establishment of peace, the OSCE framework also left it out of the negotiation process. Moreover, the parties of the conflict themselves were not particularly enthusiastic of the EU's involvement.¹²⁹ The constitutional referendum and subsequent presidential elections of Nagorno-Karabakh in 2007 received condemnation from the EU Presidency and Council of Europe.¹³⁰ It should be noted, that in contrast, in Kosovo the EU supported a 'standards before status' policy where it placed high importance on the democratic development of Kosovo 'irrespective of its final status.'¹³¹ Whether this is conditioned with the UN involvement in Kosovo or it is an evidence of double-standards is not clear.

The resolution of the Nagorno-Karabakh conflict in Armenia serves as a matter of speculation in national elections particularly in presidential elections. As an example, taking the 'wrong position' on the Karabakh conflict appeared to be the

¹²⁷ The Basic Principles is the latest framework for peace negotiations proposed by the OSCE Minsk Group.

¹²⁸ 'More innuendos, still little substance: Armenia-Azerbaijan negotiations in Moscow set stage for tense autumn in regional diplomacy,' *ArmeniaNow*, 20 July, 2009. Available at

<http://www.armenianow.com/?action=viewArticle&AID=3955&CID=3756&IID=1244&lng=eng>.

¹²⁹ Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 59-76, at 65.

¹³⁰ Nagorno Karabakh adopted a Constitution in 2006 in a national referendum with 99 percent positive votes. The Constitution describes the Nagorno-Karabakh Republic as 'a sovereign, democratic legal and social state' based on separation of powers and protection of human rights and freedoms. Though the issue of refugees is not particularly referred to in the document, nevertheless it recognises a right of return for 'every citizen and foreign citizen having the right to live in the Nagorno-Karabakh Republic.' The Constitution did not solve the issue of citizenship, and citizens of Karabakh currently hold Armenian passports; 'Declaration by the Presidency on behalf of the European Union on 'Presidential elections' in Nagorno Karabakh on 19 July 2007', Presidency of the European Union, Portugal 2007, 20.02.2007, available at http://www.eu2007.pt/UE/vEN/Noticias_Documentos/Declaracoes_PESC/20070719PESCNAAG.htm; Chair of the Council of Europe's Committee of Ministers: Declaration on the "presidential elections" to be held in Nagorno Karabakh on 19 July 2007, Strasbourg, 12 July 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=1164313>;

Nagorno Karabakh gains a Constitution, but little clarity for future', *Eurasia Insight*, December 13, 2006, available at <http://www.eurasianet.org/departments/insight/articles/eav121206.shtml#>.

¹³¹ Tocci, 'The European Union as a Normative Foreign Policy Actor' Centre for European Policy Studies, Working Document No. 281/January 2008, at 16.

only issue that could bring down a party or a government in Armenia as in the case of the fall of the government of President Levon Ter-Petrosyan in 1998 leading to his resignation.¹³² The 'wrong position' was expressed in the enthusiasm about the 'step-by-step' plan according to which after the withdrawal from occupied territories and the demilitarization of Karabakh, negotiations would continue on the further issues, including the most important one: the status of Nagorno-Karabakh.¹³³

The Karabakh conflict is widely articulated by the politicians due to the fact that it helped previously to unify Armenia's political elite.¹³⁴ The presidential elections of 2008 illustrated the opposite potential of the same issue to polarise public opinion. Levon Ter-Petrosyan's coming back to politics showed how the issue can be articulated to divide the public opinion and link the more general Karabakh issue with the dissatisfaction of certain part of the population with the governing circle referred to as the 'Karabakh clan'.¹³⁵ He used the speculation that President Kocharian had agreed at OSCE negotiations to hand over the Megri region instead of Nagorno-Karabakh.¹³⁶ He also argued that the Madrid Basic Principles mentioned above were similar to the 1997 peace plan that was rejected by the then Prime-Minister Kocharyan almost a decade ago.¹³⁷

The Nagorno-Karabakh conflict was similarly causing instabilities for the political life of Azerbaijan. The military losses in 1992 brought the Popular Front party to power in Baku with Abulfaz Elchibey replacing President Ayaz

¹³² De Waal, *supra* note 40, at 259.

¹³³ Disintegration started in the ruling party headed by Ter-Petrosian after the Prime-Minister Kocharian, together with the Ministers of Defence and Interior opposed to the plan leading to Ter-Petrosian's resignation in February 1998; *ibid*, at 258-259.

¹³⁴ 'Armenia: Internal Instability Ahead', International Crisis Group, Europe Report No 158, 18 October 2004, at 5-6.

¹³⁵ This is due to the fact that at the time President Kocharian and Prime-Minister Sarkisian are originally from Karabakh.

¹³⁶ The Megri region is situated in the South of Armenia and, if handed to Azerbaijan, will link Nakhichevan to Azerbaijan mainland.

¹³⁷ 'Armenia: Picking up the Pieces', International Crisis Group, Policy Briefing, Europe Briefing No 48, Yerevan/Tbilisi/Brussels, 8 April 2008, at 10.

Mutalibov.¹³⁸ The continued military setbacks also discredited the new government resulting in a uprising and other separatist movements in the country, eventually forcing President Elchibey to call to power the former Soviet Politburo member Heydar Aliyev who assumed the presidency in June 1993.¹³⁹ Currently the unresolved conflict and the presence of refugees and Internally Displaced Persons is one of the major reasons for political instability in the country.¹⁴⁰ In addition, it has been noted that the lasting conflict is also being used by the authorities to distract public attention from the poor state of the rule-of-law, human rights and democracy issues.¹⁴¹

.2.2. The conflicts in South Ossetia and Abkhazia before August 2008

Similar to the Nagorno-Karabakh conflict, the South Ossetian and Abkhaz conflicts were based on the rise of nationalism in the Soviet Union at the end of the 1980s. Both Ossetian and Abkhaz people have different ethnicity from Georgians and speak their own language. Abkhazia had a status of an Autonomous Republic within Georgia, while South Ossetia was an Autonomous region. Ossetia claimed to upgrade its status to 'autonomous republic' at the end of 1989, in response to which the Georgian Supreme Council decided to establish the Georgian language as the main language in the country.¹⁴² The situation in South Ossetia got out of control after Georgia banned local parties which was viewed in Ossetia as a move against them and led to the proclamation of the South Ossetian Soviet Democratic Republic in September 1990.¹⁴³ Georgia responded by abolishing the status of autonomous region

¹³⁸ International Crisis Group, *supra* note 41, at 6.

¹³⁹ *Ibid*, at 6.

¹⁴⁰ Nuriyev, 'EU Policy in the South Caucasus: A View from Azerbaijan', Centre for European Policy Studies, Working Paper No.272/July 2007, at 10.

¹⁴¹ 'Nagorno-Karabakh: Risking War', International Crisis Group, Europe Report No. 187, 14 November 2007, at 14.

¹⁴² 'Georgia: Avoiding War in South Ossetia', International Crisis Group, Europe Report 159, November 2006.

¹⁴³ 'Hastening the end of the empire', *Time Magazine*, 28 January 1991; available at

in December 1990.¹⁴⁴ Violence in South Ossetia started in 1991 and lasted until 1992 when the 'Agreement on the Principle of the Settlement of the Georgian-Ossetian conflict between Georgia and Russia' was signed establishing a Joint Control Commission and deploying joint peacekeepers combining Russians, Georgians and Ossetians.¹⁴⁵

The ethnic tension present in the Abkhaz Autonomous Republic from the end of the 1980s reached its peak after the military coup in January 1992 in Georgia forcing the first President, Gamsakhurdia, to leave his post. In particular, the restoration of the 1921 Constitution of the Democratic Republic of Georgia was considered by Abkhazia as a threat to their autonomy and led to the declaration of independence in July 1992.¹⁴⁶ The new President Shevardnadze sent military troops to Abkhazia to preserve its status, and without any resistance gained control over much of Abkhazia.¹⁴⁷ In 1993 the Abkhaz armed forces in fierce fighting managed to get control over Abkhaz territories, apart from Kodori gorge, leaving thousands of dead and displaced people behind.¹⁴⁸ Abkhazia adopted a Constitution in 1994 and declared independence in 1999.

Both the Ossetian and Abkhaz conflicts were considered to be frozen before 2008 when hostilities resumed, this time involving Georgia and Russia.¹⁴⁹ One of the reasons for the resumption of military activities has been the rise of nationalist rhetoric of the post-Revolutionary Georgian Government which made one of its

<http://www.time.com/time/magazine/article/0,9171,972214,00.html>.

¹⁴⁴ International Crisis Group, *supra* note 60, at 3.

¹⁴⁵ The Joint Control Commission included representative of Georgia, South and North Ossetia, Russia and participants from the OSCE.

¹⁴⁶ Cornell, *Small Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus*, (London: Routledge 2001), at 345-349.

¹⁴⁷ Mirsky, *On Ruins of Empire: Ethnicity and Nationalism in Former Soviet Union*, (London: Greenwood Press, 1997), at 72.

¹⁴⁸ 'Abkhazia Today', International Crisis Group, Europe Report 176, 15 September 2006, at 6.

¹⁴⁹ The Georgian-Russian war of August 2008 will be discussed in Chapter III below, section 2.2.

objectives the integration of both breakaway regions.¹⁵⁰ While the militarisation of the country did not allow focusing the efforts of the new leadership on political and economic reforms solely,¹⁵¹ the August 2008 war destabilised Georgia's political and economic life even further. The country faces being held back for several years in its development through its ruined infrastructure, new wave of displaced population and apparently lost regions.

This will certainly have a negative effect on the democratic development of the country. First of all, political instability draws the attention of the public and the authorities away from the democratic issues, which is natural in conditions, where the country's sovereignty and security is at stake. Second, if immediately after the war the political forces, including the opposition, seemed to have united in the struggle against the 'common enemy', that is Russia, such unity did not last long. The long-lasting mass protests organised by the opposition in 2009 have been demanding the resignation of Saakashvili Government *inter alia* blaming the latter for the events of August 2008.¹⁵²

2.3. Democratic reality of the South Caucasus

As noted in the Introduction, Armenia, Azerbaijan and Georgia after proclaiming their independence expressed their choice for the principles of liberal

¹⁵⁰ 'Georgia's South Ossetia Conflict: Make Haste Slowly,' Europe Report No. 183, 7 June 2007, International Crisis Group, at 1.

¹⁵¹ According to the Ministry of Foreign Affairs of Georgia as a key field in cooperation with the US Train and Equip Program, followed by the Sustainment and Stability Operations Program in 2005 were implemented. These programs were fully financed and supervised by the US and enhanced Georgia's military capability and stimulated military reform. The unprecedented military assistance of the US ever extended in the entire former Soviet Area helped Georgia not only to eliminate any presence of terrorists on the territory of Georgia but also enabled it to become one of the most active members of the US-led Anti-Terror Coalition. Available at http://www.mfa.gov.ge/index.php?sec_id=268&lang_id=ENG.

¹⁵² 'Georgia: opposition gives Saakashvili ultimatum to resign', *EurasiaNet*, 9 April 2009.

democracy.¹⁵³ After a few years of transition all three countries adopted new Constitutions proclaiming their respective countries as democracies.¹⁵⁴ The internal orientation towards democracy coincided with the obligations the three countries undertook in their external relations. All three countries became members of the UN, Council of Europe and OSCE, as well as undertaking obligations as regards to democracy under different international agreements, including the PCAs.¹⁵⁵ On the surface this ensures that 'fundamental values are officially shared and co-owned' with the EU.¹⁵⁶ However, official adoption of democratic values is not always reflected in the political reality of the countries in question.

Despite constitutional provisions on foundations of democratic state and separation of powers, the President is the most influential political institution in Armenia based not only on legislation, but also the informal practices.¹⁵⁷ The misbalance of power is present in relations with the National Assembly. The Parliament, which despite influential constitutional powers, including the right to impeachment of the president, is considered to be a 'rubber stamp' with weak and

¹⁵³ For instance, the Declaration of Independence adopted by the Supreme Council of the Armenian Soviet Socialist Republic in August 1990 stipulated the adherence of the newly proclaimed republic to the principles of freedom of speech, press, and conscience; the separation of legislative, executive, and judicial powers; a multi-party system; the equality of political parties under the law; the depolitisation of law enforcement bodies and armed forces; Georgian Declaration of Independence on 9 April 1991; Armenian Declaration of Independence on 23 September 1991; Azerbaijani Declaration of Independence on 18 September 1991.

¹⁵⁴ The Constitution of Georgia, adopted on 24 August 1995, last amended 27.12.06, Articles 1, 5, 7. Available at http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf; The Constitution of the Republic of Azerbaijan, adopted on 12 November 1995, Articles 7, 26. Available at http://www.azerbaijan.az/GeneralInfo/Constitution/constitution_e.html; Constitution of the Republic of Armenia, adopted at national referendum on 5th of July, 1995, Articles 1, 4, 5, 7.

Available at <http://www.armeniaforeignministry.com/htms/conttitution.html>.

¹⁵⁵ All three states joined the UN and the OSCE in 1992. Armenia and Azerbaijan became members of the Council of Europe in January 2001, while Georgia was admitted earlier in April 1999.

¹⁵⁶ Emerson, 'European Neighbourhood Policy: Strategy of Placebo?', Working Document No 215/November 2004, Centre for European Policy Studies, at 10.

¹⁵⁷ Articles 1, 2, 5 establish Armenia as a democratic state based on separation of powers, where power belongs to people exercising it directly or indirectly. Article 55 provides for wide powers for the President of Republic, including the appointment of the Prime Minister and the Members of the Government, dissolution of the National Assembly. In addition, the President appointed the members of the Constitutional Court, the Prosecutor General and was the head of the procuracy, the police, the National Security Service and the military.

limited opportunity for political discourse.¹⁵⁸ One of the reasons for Parliament's weak role is the failure of the multi-party system. The vast number of parties can be described as leader-based with power concentrated on top of the party and the selection of candidates lacking transparency and open debate.¹⁵⁹ Despite preaching liberal democratic values, the parties are detached from the voters and civil society,¹⁶⁰ creating rivalry over power and not over certain political course. This statement is confirmed by the polarisation of the party system, where parties can be described only as either pro-governmental or as opposition. Distortion in separation of powers in Armenia has been also apparent in relations between the executive and the judiciary.¹⁶¹

In 2005 amendments have been made to the Armenian Constitution on the issues of the appointment of an Ombudsman, independence and plurality of the media, independence of the judiciary, separation of powers and local self-governance. The amendments were drafted in consultation with the Council of Europe Venice Commission and adopted at a national referendum.¹⁶² The amendments on the abolishment of the general immunity of the President, convening of extraordinary meeting of the Parliament by its Speaker, involvement of the Parliament Speaker or the Prime Minister in the process of dissolution of the Parliament for 'technical'

¹⁵⁸ International Crisis Group, *supra* note 52, at 8.

¹⁵⁹ Armenia Political Party Assessment, USAID Report, May 2005, at 10, 12

¹⁶⁰ *Ibid*, at 13.

¹⁶¹ The 1995 Constitution allowed for a misbalance between the executive and the judicial, which heavily depended on the President due to his powers of appointing the judges of different instances based on the annual list drafted by the Judicial Council headed by the President who also appointed the fourteen members of the Council.

¹⁶² The referendum was held on November 27, 2005 after the National Assembly passed the Constitutional amendments in the third reading on September 27, 2005; Council of Europe, Venice Commission (2005), 'Opinion on constitutional reform in the Republic of Armenia', adopted at 64th Plenary Session, Venice, 21-22 October.

reasons by the President and others are expected to restore the balance between the executive and the legislative and create more checks and balances.¹⁶³

Even more apparent is the concentration of power in the President's hands in Azerbaijan. Despite the constitutional separation of powers, the predominance of the executive branch is noted not only in relation to the legislature and the judiciary, but also most elements of society are characterised with authoritarian features.¹⁶⁴ It is noted that the formation of the executive 'has developed into a sprawling bureaucracy that appears mainly to search for bribes and 'official' transaction fees', where the Ministers pay to obtain their position or alternatively they have to be linked to the President of the country.¹⁶⁵

In particular, Azerbaijan is infamous due to its 'corrupt patronage networks' dominating both the political and economic life of the country.¹⁶⁶ The fact that the Parliament is tightly controlled by the President creates imbalance between the executive and the legislature. As in the case of Armenia, the International Crisis Group qualifies the Azerbaijani Parliament as a 'rubber stamp' whose task is to approve the legislative drafts proposed by the presidential administration with the

¹⁶³ The new Constitutional amendments on the composition of Judicial Council by the General Assembly of the judges instead of the President will ensure that the judiciary will no longer have the dependence on the executive it had previously. In addition, the inclusion of the Prosecutor's office in the judiciary branch and the appointment of the Prosecutor General by the Parliament based on a recommendation from the President should also be considered as major development in establishment the independence of the judiciary; 'Honouring the obligations and commitments by Armenia', Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Parliamentary Assembly of the Council of Europe, Doc. 11117, 20 December 2006, paragraph 40.

¹⁶⁴ Article 1 of Azerbaijani Constitution provides for people as the only source of power and for separation of powers, where the directly elected President appoints the government which afterwards obtains the confidence of the Parliament; 'An Assessment of the Development of Political Parties in the Republic of Azerbaijan', USAID, 2003, at 4; Azerbaijan Country Report, European Neighbourhood Policy, Commission Staff Working Paper COM(2005) 72 final, Brussels, 02.03.2005, SEC(2005) 286/3, section 2.1.

¹⁶⁵ International Crisis Group, *supra* note 41, at 9-10.

¹⁶⁶ 'Azerbaijan's 2005 Elections: Lost Opportunity,' International Crisis Group, Europe Briefing No 40, Baku/Brussels, 21 November 2005, at 1.

members of the Parliament directly loyal to the President.¹⁶⁷ The practices of political parties are considered to be non-democratic producing 'a system of patronage and ingrained corruption' without offering the citizens a platform for political debate.¹⁶⁸ In addition, it has been noted that Azerbaijan's political parties are more personalised, than those in the neighbouring countries, where at least constant changes are occurring in political domain.¹⁶⁹ Furthermore, imprisonment for political reasons has been an ongoing practice in Azerbaijan.¹⁷⁰

Despite high hopes attached to Georgia's post-Revolutionary democratic rhetoric, the subsequent political developments proved a disappointment. After coming to power, President Saakashvili initiated constitutional amendments resulting in centralisation of power in his hands without proper system of checks and balances and practical absence of Parliamentary opposition.¹⁷¹ The new institutional arrangement entitled the President with power to dissolve the Parliament and call new elections, and the parliament lost its right to dismiss the prime minister in a no-confidence vote.¹⁷² Also the new amendments provided that the majority of the Council of Justice members should be appointed either directly by the President or by the majority in the Parliament which is controlled by the President.¹⁷³ Similar to its neighbours, Georgia's political parties are largely based on personalities rather than

¹⁶⁷ International Crisis Group, *supra* note 41, at 9-10.

¹⁶⁸ 'An Assessment of the Development of Political Parties in the Republic of Azerbaijan', USAID, 2003, at 5; International Crisis Group, *supra* note 84, at 12.

¹⁶⁹ 'An Assessment of the Development of Political Parties in the Republic of Azerbaijan', USAID, 2003, at 9.

¹⁷⁰ 'The Functioning of Democratic Institutions in Azerbaijan', Report of Monitoring Committee, Parliamentary Assembly of the Council of Europe, Doc. 11627, 6 June 2008, paragraphs 114-133; Resolution 1359 (2004) on Political Prisoners in Azerbaijan of the Parliamentary Assembly of the Council of Europe; Resolution 1457 (2005) follow up to Resolution 1359 (2004) of the Parliamentary Assembly of the Council of Europe.

¹⁷¹ 'Honouring of obligations and commitments by Georgia', Report, Doc. 10383, 21 December 2004, Parliamentary Assembly of the Council of Europe, Introduction, paragraph 4, 6.

¹⁷² 'Georgia: Sliding Towards Authoritarianism?' International Crisis Group, Europe Report No 189, 19 December 2007, at 18.

¹⁷³ 'Honouring of obligations and commitments by Georgia', Report, Doc. 10383, 21 December 2004, Parliamentary Assembly of the Council of Europe, paragraph 41.

ideology or a framework for assembling citizens around certain interests.¹⁷⁴ Saakashvili's ruling United National Movement has a presence at all levels of society; however it does not offer a transparent management, and also it has been claimed that its apparent public support is boosted by use of state resources.¹⁷⁵ The confidence in adherence of new authorities to democratic values has been further undermined with certain undemocratic practices in the so called 'fight against corruption.'¹⁷⁶

The representative element of democracy in all three countries is undermined with fraudulent elections of both to the Parliaments and the Presidents.¹⁷⁷ While Armenia's first presidential elections in 1991 are considered to be the only fair elections held in the country,¹⁷⁸ in Georgia the 2008 extraordinary presidential elections were considered by international observers as 'the first genuinely competitive post-independence presidential election.'¹⁷⁹ It should be noted that though the shortcomings were similar to those taking place at the Armenian and Azerbaijani elections, they did not affect the 'genuinely competitive' nature of the Georgian presidential elections.¹⁸⁰ The past fraudulent elections in the three countries

¹⁷⁴ International Crisis Group, *supra* note 90, at 19.

¹⁷⁵ *Ibid.*

¹⁷⁶ It was perceived to be selectively applied, where the procedures for removing allegedly corrupt judges have lacked transparency and due process. Arrests of several former officials accused of corruption were arbitrary often without warrants or with the use of excessive force. The 'plea bargaining' system, which allowed to reduce or drop charges for suspects in return for the payment of the money they supposedly misused, was criticised by the Council of Europe; 'Honouring of obligations and commitments by Georgia', Resolution 1603 (2008), Parliamentary Assembly of Council of Europe, at 15, 47-49; Human Rights Watch, 2006.

¹⁷⁷ Parliamentary Elections, 12 May 2007, Republic of Armenia, Final Report, OSCE/ODIHR Election Observation Mission; Presidential Election, 19 February 2008, Republic of Armenia, Final Report, OSCE/ODIHR Election Observation Mission, Warsaw, 30 May 2008; Republic of Azerbaijan, Parliamentary Election Observation Mission Final Report, OSCE/ODIHR, Warsaw 2006.

¹⁷⁸ International Crisis Group, *supra* note 52, at 3.

¹⁷⁹ Georgia Extraordinary Presidential Election, 5 January 2008, OSCE/ODIHR Election Observation Mission, Warsaw, 4 March 2008; 'Honouring of obligations and commitments by Georgia', Resolution 1603 (2008), Council of Europe Parliamentary Assembly, paragraph 1.

¹⁸⁰ During the pre-election campaign the line between the state and Saakashvili's party was blurred which gave him an advantage over the other candidates. Among the events overshadowing the proper conduct of the elections were the prompt amendments to the Election Code passed shortly before the election, which caused the concerns of the opposition as to their prompt adoption and inadequate

are largely tolerated by international community, which results in 'electoralist fallacy': 'the superficial legitimization of elections as relatively free and fair, even when the regimes that come to power are authoritarian.'¹⁸¹ For instance, criticism from the EU either has occasional nature,¹⁸² or is left to extreme cases, such as the 2008 post-election violence in Armenia resulting in emergency situation.¹⁸³ As a result of fraudulent elections, the power is retained in the hands of the same governing elite or the same family, as in Azerbaijan, undermining the legitimacy of the ruling regimes.¹⁸⁴

The dark side of the representative democracy in the three countries is complemented with underdeveloped forms of political participation. In Armenia the main forms of political participation by citizens are considered to be demonstrations and public complaints, but even these forms are practised by a very small percentage of the population.¹⁸⁵ While there is a wide NGO sector specialising in different areas, the majority of citizens are not aware of their activities.¹⁸⁶ NGOs are mostly interested in social service delivery or in helping disadvantaged groups than in

inclusiveness of the process. PACE has also expressed its concern over such reforms which did not allow the public to become adequately aware of their consequences. Throughout the pre-election campaign there were allegations of vote buying, instances of intimidation and pressure, including on the employees of public institutions and cases of violence against opposition activists. The voting day was also marked with irregularities, such as tampering with voter list entries, election results or results protocols, not allowing the observers to examine the ballots during counting procedures, not well organised and chaotic tabulation process etc.

¹⁸¹ Light, 'Exporting Democracy' in Smith and Light, (eds.), *Ethics and Foreign Policy*, (Cambridge: Cambridge University Press, 2001), 75-92, at 89.

¹⁸² For instance, Commissioner of External Relations, Benita Ferrero-Waldner has criticised the Parliamentary elections in Azerbaijan: 'Azerbaijan: EU doubtful of Baku's commitment to democracy', *RFE/RL*, 27 October 2005.

¹⁸³ The EU presidency expressed its concerns about the aftermath of the elections calling on the Armenian authorities to release detained citizens and to refrain from further arrests of leaders of opposition; 'EU Presidency Statement on the Situation in Armenia', 12 March 2008. Available at http://www.eu2008.si/en/News_and_Documents/CFSP_Statements/March/0312MZZarmenia.html

¹⁸⁴ MacFarlane, 'The Caucasus and Central Asia: Towards a Non-Strategy' in Dannreuther, (ed.), *European Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 118-134, at 123.

¹⁸⁵ 'Citizens' Awareness and Participation in Armenia' Survey 2004, International Foundation for Electoral Systems, at 23; available at www.ifes.org.

¹⁸⁶ According to Human Rights Watch some 3000 NGOs are registered with the Ministry of Justice (Human Rights Watch, Armenia Report 2007); 'Citizens' Awareness and Participation in Armenia' Survey 2004, International Foundation for Electoral Systems, at 28. Available at www.ifes.org.

advocacy or advancement of the democratic process.¹⁸⁷ Despite certain increase in a number of NGOs in Azerbaijan, they faces such constraints, as, serious interference in their activities and harassment by the Government, exclusion of foreign funded NGOs from various important areas, social apathy etc.¹⁸⁸

At the time of the Rose Revolution, Georgia's civil society also faced constraints, including a burdensome regulatory framework on financial sustainability, lack of links with governmental institutions, as well as general public: the former did not include NGO's expertise in their practice, and the latter lacked understanding of NGO's activities leading to social abstention.¹⁸⁹ However, after the Revolution Georgia's civil society is much more vibrant. One can hardly apply similar observation in relation to freedom of media which after the Revolution became more controlled with authorities' noted intolerance to criticism.¹⁹⁰ Despite certain legislative developments in Armenia in this field, the broadcast media lacks pluralism with prevailing self-censorship. Certain incidents of interference by the authorities have taken places in the cases of criticism of their activities.¹⁹¹ The print media

¹⁸⁷ '10 Years of Independence and Transition in Armenia,' National Human Development Report, United Nations Development Programme, Armenia 2001, at 42.

¹⁸⁸ Azerbaijan Civil Society Sector Assessment', Final Report, USAID Azerbaijan, USAID Centre for Democracy and Governance, January 11 2005, at 8-9; 'Azerbaijan and the European Neighbourhood Policy', Human Rights Watch Briefing Paper, June 15, 2005, at 12-13; Azerbaijan Country Report, European Neighbourhood Policy, Commission Staff Working Paper, COM(2005) 72 final, section 2.2.

¹⁸⁹ Citizens Advocate Programme, Mid-Term Evaluation, Final Report 2004, USAID Georgia, at 6, 14.

¹⁹⁰ Within 18 month of the Revolution, 76 journalists and 20 media outlets signed an open letter protesting against government pressure and citing 'attacks against the media sources from the very first days.' The ruling elite has conducted campaigns to discredit its critics, including financial pressure to control the media, giving a reprieve from tax debts to those outlets it perceives as pro-government and dispatching tax inspectors to those that it perceives as unnecessary critical. In 2007 oppositional Imedi TV station has been stormed destroying much of the station's equipment; International Crisis Group, *supra* note 90, at 24; 'Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television', Human Rights Watch, Volume 19, No. 8(D), December 2007.

¹⁹¹ In 2002 "A1+", Armenia's main independent television station lost its broadcasting license which is considered to be the response by the authorities to their criticism. The subsequent rejections of broadcasting license was challenged in the ECHR, which subsequently ruled in favour of A1+. Another incident involved Armenia Liberty radio station which was rebroadcasting Radio Free Europe/Radio Liberty in the Armenian language. The government complained about its alleged lack of objectivity, and the US-funded program has been forced to use a private station, which reached only Yerevan and delivered poor quality transmissions; Case *Meltex Ltd and Mesrop Movsesyan v Armenia*

enjoys a significantly higher level of independence from state interference, although the production and distribution of newspapers is not widespread, and its readership is less than 2% of the population.¹⁹² The media in Azerbaijan is even more restricted, since even the print media is strongly controlled by the state through various measures.¹⁹³ All main TV broadcasters are owned or controlled by the state due to the fact that the licensing authority consists solely of members appointed by the President.¹⁹⁴ Only the state-funded AzTV's broadcasting covers almost the entire territory with the other broadcasters having only limited coverage.¹⁹⁵

It is this political state of the South Caucasian countries the EU has to face in its endeavours to democratise them within the new phase of relations, in particular within the ENP. The previous phase was not marked with overall success, and in particular in the area of democratic development.

3. South Caucasus and the EU: Phase I

The establishment of relations between the EU and the South Caucasus was part of a general approach towards the countries of the former Soviet Union, which has a history of almost two decades in contrast with the Mediterranean region. At the time the EC stepped into a new stage of external relations towards these regions in the late 1980s and beginning of the 1990s. This was conditioned with such outstanding events as the fall of the Berlin Wall in 1989, the collapse of the Soviet Union in 1991

(32283/04), 17 June, 2008; 'Kocharian: Activities of Radio Liberty Aimed at Shattering Statehood,' *Noyan Tapan*, 5 April 2008; International Crisis Group, *supra* note 55, at 15.

¹⁹² Armenia Political Party Assessment, USAID Report, May 2005, at 4.

¹⁹³ 'The Functioning of Democratic Institutions in Azerbaijan', PACE, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Doc. 11627 6 June 2008, at 13; 'Azerbaijan: Turning Over a New Leaf?', International Crisis Group, Europe Report No 156, Baku/Brussels, 13 May 2004, at 13-14.

¹⁹⁴ 'Azerbaijan and the European Neighbourhood Policy', Human Rights Watch Briefing Paper, June 15 2005, at 10.

¹⁹⁵ After the recommendation from Council of Europe and the OSCE the Public TV was founded; Republic of Azerbaijan, Parliamentary Election Observation Mission Final Report, OSCE/ODIHR, Warsaw 1 2006, at 14; 'Azerbaijan and the European Neighbourhood Policy', Human Rights Watch Briefing Paper, June 15 2005, at 10.

and the birth of independent states on its territory, as well as the collapse of the Communist regimes in Czechoslovakia, Poland, Bulgaria, Romania and Hungary.

The EU's relationship with these countries commenced with a framework agreement with the Comecon trade bloc concluded in 1988.¹⁹⁶ Shortly after this, in December 1989, the Community signed a Trade Development and Cooperation agreement with the USSR.¹⁹⁷ However, the agreement did not have a chance to cause significant consequences for the parties due to the collapse of the Soviet Union and, only for Belarus and Turkmenistan the agreement continues to serve as a framework for relations with the EU.¹⁹⁸ Thus, the collapse of the Soviet Union challenged the EC with a task of reformulating its relationship with newly independent states and deciding on the prospect of the Central and Eastern European countries (hereinafter CEE) to 'return to Europe.'¹⁹⁹ As a result, the EU chose different frameworks for cooperation with the CEE countries. The Union concluded Europe Agreements (hereinafter the EAs) with Eastern European states which were not members of the Soviet Union and only the Baltic states among the members of the USSR, which were returning 'back to Europe.'²⁰⁰ Meanwhile with the rest of the countries cooperation was established through the PCAs.

¹⁹⁶ Comecon, the Council for Mutual Economic Assistance, was an economic organization of communist states. The members included the Soviet Union, Bulgaria, Romania, Czechoslovakia, Poland, Hungary, East Germany, Albania, Mongolia, Cuba and Vietnam; EEC-Comecon Declaration, 1988, *OJ* L157/35.

¹⁹⁷ Council Decision 90/116/EEC of 26 February 1990 on the conclusion of an Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, 1990, *OJ* L68/1.

¹⁹⁸ Petrov, 'Legal and Political Expectations of Neighbouring Countries from the European Neighbourhood Policy' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 7-21, at 10.

¹⁹⁹ Hillion, 'Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex-Soviet Union', (1998) 3 *European Foreign Affairs Review* 399, at 403.

²⁰⁰ Borko, 'The New Intra-European Relations and Russia' in Maresceau, (ed.), *Enlarging the European Union: Relations between the EU and Central and Eastern Europe*, (London: Longman, 1997), 376-390, at 377.

Though the EAs concluded before the 1993 Copenhagen European Council were not initially considered as an instrument for pre-accession by the Union,²⁰¹ they contained a reference to accession by relevant countries. It was only after the Copenhagen Council when membership was recognised as a common objective of both the EU and the CEE countries that the importance of the EAs has increased, where they were supposed to be interpreted with reference to Copenhagen criteria.²⁰²

The first PCAs were concluded with Russia, Ukraine, Kazakhstan and the Kyrgyz Republic, followed by Moldova and Belarus during 1994. The PCAs with Armenia, Azerbaijan and Georgia were concluded in 1996 and entered into force in 1999.²⁰³ It has been noted, that with the view of the ethnic conflicts present in the region the EU was ambivalent about concluding the PCAs with the three countries at all.²⁰⁴ Contrasting with the EAs, the preambles of the PCAs do not provide for ‘the process of European integration’ or the ‘objective of membership’: they aim at a gradual rapprochement between the relevant country and a wider area of cooperation in Europe and neighbouring regions. Thus the PCAs stand ‘several levels below the EAs.’²⁰⁵ In addition, by establishing different frameworks for cooperation, the Union has drawn a dividing line between these countries, which it is now keen to erase with the ENP.

²⁰¹ Maresceau, ‘Pre-Accession’ in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press, 2003), 9-42, at 15.

²⁰² Copenhagen criteria will be discussed in more detail in Chapter IV; Inglis, ‘The Europe Agreements Compared in the Light of their Pre-Accession Reorientation’, (2000) 37 *Common Market Law Review* 1173, at 1178.

²⁰³ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other, *OJ* 1999 L 239/3; Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other, *OJ* 1999 L 246/3; Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Georgia, of the other, *OJ* 1999 L 205/3.

²⁰⁴ Popescu, *supra* note 9, at 2.

²⁰⁵ Peers, ‘From Cold War to Lukewarm Embrace: the European Union’s Agreements with the CIS states’, (1995) 44 *International and Comparative Law Quarterly* 829, at 829, 831.

3.1. The PCAs with Georgia, Armenia and Azerbaijan

As a result of conclusion of the PCAs with the South Caucasian Republics political dialogue and cooperation on a wide range of issues was established between the EU and each of the countries,²⁰⁶ including trade in goods, provisions on business and investment, payments and capital, competition, intellectual, industrial and commercial property protection, legislative cooperation, economic cooperation, cultural cooperation, financial cooperation and institutional, general and fiscal provisions.

A cursory examination of the content and scope of the PCAs with Armenia, Georgia and Azerbaijan would reveal little difference, that is, the name of the country in signing the agreement. The PCAs with all three countries merely repeat each other, which is evidence to the fact that the EU did not actually differentiate between them. It implies also that they did not reflect the concerns of any of these countries and were not meant to address specific challenges they faced at the time,²⁰⁷ while all of these countries had already gone through the first years of their independence and dealt with different problems with the transition of their economies, as well as the conflicts discussed above. This confirms the statement, according to which the conclusion of the PCAs took place more 'by default than design.'²⁰⁸

Though the PCAs were drafted in similar fashion to the EAs, there were important features which gave the emerging relationship an entirely different character. The distinction made by the EU between these countries is apparent, first of all, through the legal basis chosen for each group of agreements. The EAs were

²⁰⁶ As mixed agreements the PCAs were concluded by the European Communities and the Member States.

²⁰⁷ Balfour, 'Promoting Human Rights and Democracy in the EU's Neighbourhood: Tools, Strategies and Dilemmas' in Balfour and Missiroli, 'Reassessing the European Neighbourhood Policy', European Policy Centre, Issue Paper No. 54, June 2007, at 15.

²⁰⁸ Lynch, 'The New Eastern Dimension of the Enlarged EU' in 'Partners and Neighbours: A CFSP for a Wider Europe', Chaillot Paper 64, Institute for Security Studies, September 2003, 34-59, at 42.

based on Article 310 EC which provides for ‘association’ with the Community which, according to the European Court of Justice is establishing a ‘privileged relationship’ between the parties.²⁰⁹ The PCAs however, were based on Articles 133 and 308 EC as a classic trade and economic cooperation agreement.²¹⁰ In addition, a number of other Treaty provisions, including Articles 44(2), 55, 71, 80(2), 93 and 94 EC were included as a legal basis, which according to Peers was influenced by the mixed nature of the PCAs in light of the ECJ’s *Opinion 1/94*.²¹¹ Nevertheless, the difference in legal basis is not only a matter of law, but rather has substantive and political implications,²¹² which puts the PCAs on a level below the EAs as to the ‘closeness’ of relationship relevant countries can obtain with the EU. At the same time, the PCAs should be considered as more advantageous than the standard trade agreements concluded between the EU and a number of countries, since they have established political dialogue between the parties which did not exist previously.²¹³

Despite the fact that in both types of agreement political dialogue was established, their aims differed substantially. Dialogue established by the EAs was used for the pre-accession process, whereas dialogue provided by the PCAs, in particular with South Caucasian countries, aims at accompanying and consolidating the *rapprochement* between the parties, as well as supporting the political and economic changes taking place in these countries. Though the Preambles of the PCAs

²⁰⁹ Case 12/86, *Demirel v. City of Schwabisch Gmund*, [1987] ECR 3719, paragraph 9.

²¹⁰ Maresceau and Montaguti, ‘The Relations between the European Union and Central and Eastern Europe: A Legal Appraisal,’ (1995) 32 *Common Market Law Review* 1327, at 1342.

²¹¹ The conclusions of the Court according to which the Community and the Member States share the competence to take external action over the matters covered by GATS and TRIPS made the Commission base the new ‘transversal’ agreements on a number of legal provisions instead of basing it solely on Articles 133 and 308; Peers, ‘EC Frameworks of International Relations: Co-operation, Partnership and Association’ in Dashwood and Hillion, (eds.), *The General Law of EC External Relations*, (London: Sweet and Maxwell, 2000), 160-176, at 164-165; *Opinion 1/94, WTO* [1994] ECR I-5267.

²¹² Maresceau and Montaguti, see above, at 1342.

²¹³ Peers, *supra* note 123, at 829; Koutrakos, *EU International Relations Law*, (Hart: Oxford, 2006), at 364.

highlighted political conditions, in analogy with the EAs, it nevertheless did not provide for any tangible incentives.²¹⁴ Thus, the conclusion of these different types of agreements created the distinction between these two groups of states. The political reorientation of the EAs to the pre-accession process after the Copenhagen summit deepened this differentiation even more, and in practice the PCAs did 'establish and consolidate in reality a new dividing line in Europe.'²¹⁵

The institutions provided by the PCAs generally responded to those established by the EAs, which provide for similar institutions referred to as 'association' instead of 'cooperation.'²¹⁶ These institutions include the Co-operation Council, meeting at ministerial level once a year, which will be assisted by a Cooperation Committee (members of the Council, Commission and government of relevant country), as well as a Parliamentary Cooperation Committee.²¹⁷ The major difference in institutional set up of the EAs and the PCAs, influencing the nature of the agreement, is the power of the Association Council to make decisions for the purpose of attaining the objectives of the EA, which will be binding upon the parties.²¹⁸ Meanwhile, the Cooperation Council established within the PCAs is not entitled to take decisions implying obligations for the parties, which diminishes the importance of this very institution. In addition, in case of a dispute between the parties, the Cooperation Council is entitled only to issue a recommendation or, if it is

²¹⁴ The preamble stipulates that 'convinced of the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free democratic elections and economic liberalization aimed at setting up a market economy...'.
²¹⁵ Maresceau, 'Association, Partnership, Pre-accession and Accession' in Maresceau, (ed.), *Enlarging the European Union; Relations between the EU and Central and Eastern European Union*, (London: Longman, 1997), 3-22, at 12.

²¹⁶ E.g. EA establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, *OJ L 68/3*, 09.03.1998, Title X.
²¹⁷ PCA with Armenia, Title XI 'Institutional, General and Final Provisions.'

²¹⁸ Article 111 EA with Estonia.

not possible to solve the dispute by means of a recommendation, the Council can appoint a conciliator together with the parties.²¹⁹

Nevertheless, the option of appointing a conciliator cannot be considered more effective, since also in this case the conciliators are allowed to issue a recommendation which will not be binding on the parties. Therefore, the EAs dispute settlement mechanism has more 'far-reaching effects.'²²⁰ The choice of a recommendation for dispute resolution with the PCA countries is evidence of a remote attitude by the Union, which implies the reluctance of the latter to get involved in a special relationship which would have allowed the partner countries to have their input in the dispute resolution process. What the PCAs provide is on the one hand a non-effective method of dispute resolution, where the opposite parties cannot have any influence on the position of the EU, and on the other hand, an opportunity for the Union to suspend the implementation of the Agreement when it considers its essential elements to be violated.

While the EU made a distinction between these countries by concluding different types of agreements, it also put certain distinctions between the countries of the CIS, which gave reason to some commentators to divide the PCAs into groups or categories. Berdiyev distinguishes three different groups of the PCAs, those with the Western (sometimes also referred to as European former Soviet Union countries) countries which are Russia, Ukraine and Moldova, the Caucasian PCAs and the Central Asian PCAs.²²¹ Maresceau and Montaguti divide them in two groups bringing the PCAs with the countries of the South Caucasus and Central Asia together.²²²

²¹⁹ Article 89 PCA with Armenia.

²²⁰ Maresceau and Montaguti, *supra* note 128, at 1343.

²²¹ Berdiyev, 'The EU and Former Soviet Central Asia: An Analysis of the Partnership and Cooperation Agreements,' (2003) 22 *Yearbook of European Law* 463, at 463-464.

²²² Maresceau and Montaguti, *supra* note 128, at 1340-1341.

Indeed, the so called 'Western' PCAs are much more extensive and detailed in comparison with the PCAs with Armenia, Georgia or Azerbaijan.

The major difference between these two groups of PCAs is the possibility of creating a free trade area provided in Western PCAs, which is omitted in any other PCA either with Central Asian countries or South Caucasian countries.²²³ Whereas, the PCAs concluded with Ukraine and Russia refer to 'close' political relations, those with South Caucasian countries do not have such formulations, which highlights the importance the EU was attaching to Russia and Ukraine in comparison with at the time called 'non-European' countries of the former Soviet Union.²²⁴ Probably, at the time they seemed to be rather remoter and had little offer to the EU.

3.2. Democracy promotion within Phase I

Democracy promotion being the focus of this research, urges consideration of democratisation issues within Phase I of the relations between the parties.

Before the conclusion of the PCAs the Declaration on the recognition of new states in Eastern Europe and the former Soviet Union, among the conditions for recognition, mentions respect for provisions of the UN Charter, Helsinki Final Act and the Charter of Paris, 'especially with regard to the rule of law, democracy and human rights.'²²⁵ It has been noted that these provisions served as a basis for inclusion of provisions on human rights and democracy in the future agreements with the newly independent countries.²²⁶

²²³ As noted by Hillion, as well as Koutrakos inclusion of this provision is an evidence of a different attitude to this group of countries.

²²⁴ Koutrakos, *EU International Relations Law*, (Hart: Oxford, 2006), at 364.

²²⁵ Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', 16 December 1991.

²²⁶ Cremona, 'Human Rights and Democracy Clauses in the EC's Trade Agreements' in Emiliou & O'Keefe, (eds.), *The European Union and World Trade Law: After the GATT Uruguay Round*, (Chichester: Wiley, 1996), 62-77, at 65.

Before turning to the provisions on democracy, another distinction between the PCAs concluded with Western ex-Soviet countries and those with Armenia, Georgia and Azerbaijan should be emphasised. Besides the provisions on essential elements and establishment of political dialogue, the agreements with countries of the South Caucasus also provide for a separate title devoted to Cooperation on matters relating to democracy and human rights. Moreover, as noted by Cremona, the PCAs with these three countries, in addition to democracy and human rights, stress also the rule of law both in the essential elements provision, as well as include them among the areas of cooperation.²²⁷ It should be assumed, that at the time of concluding the PCAs, the countries of the South Caucasus were perhaps less democratic in the eyes of the EU than the Western CIS countries.

The first reference to the issues related to democracy is made in the Preamble of the PCAs, which acknowledges that the parties are 'convinced of the paramount importance of the rule of law and respect for human rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy.'²²⁸

The main provisions of the PCA on democracy promotion are similar to those in the EAs and present a so called 'standard clause' included in trade agreements concluded by the EU at the time.²²⁹ Such a clause consists of several provisions situated in different parts of the agreement, which are an essential element clause, a suspension-clause, and a Joint Declaration included in the Final Act of the PCAs. Article 2 of all three PCAs, which is similar to the relevant provision of the EAs of

²²⁷ Cremona, 'The European Neighbourhood Policy: Legal and Institutional Issues', Centre on Democracy, Development and the Rule of Law, Working Papers, No 25, 2 November 2004, at 20.

²²⁸ Article 1 of the PCAs.

²²⁹ Berdiyev, *supra* note 139, at 469; Peers, *supra* note 123, at 831.

the second round or second-generation,²³⁰ states that respect for democracy promotion, *inter alia*, as defined in international law is an essential element of the agreements and the partnership established. It also contains references to international documents, including the UN Charter, the Helsinki Final Act and the Charter of Paris for a New Europe as opposed to *tout court* approach which does not provide for additional information.²³¹ It should be noted that the Charter of Paris in a rather detailed manner defines democracy as the regime for new governance with a focus on free and fair elections, respect for human person and the rule of law, where freedom of expression and tolerance of all groups of society is ensured.²³²

This provision is a 'strong version' of the human rights and democracy clause as opposed to the 'weaker' clause which does not consider democracy and human rights as an essential element of the agreement.²³³ According to Cremona, the 'strong version' of the human rights and democracy clause in PCAs should be considered as linking these principles to the EC's trade policy.²³⁴ The distinction between 'strong' and 'weaker' clauses on human rights and democracy is rationalised with the provisions of the Vienna Convention on Law of Treaties. According to Article 60 the material breach of the treaty provisions, that is breach of a provision 'essential to the accomplishment of the object or purpose of the Treaty,' entitles the opposite part to terminate or suspend the agreement.²³⁵ In this spectrum, the non-execution or non-compliance clause is included in the PCAs similar to the EAs of the second round.²³⁶

²³⁰ According to Smith, the EAs of the 'second-generation' were much more political than the Association Agreements concluded with the Eastern European countries before the Copenhagen European Council; Europe Agreement with Bulgaria, *OJ* L358, 1994; Europe Agreement with Romania, *OJ* 1994 L357; Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke : Macmillan, 1999), at 92.

²³¹ Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, (Hague, London: M. Nijhoff, 2003), at 234, 231.

²³² *Ibid*, at 114.

²³³ Cremona in Emiliou and O'Keefee, *supra* note 44, at 66-69.

²³⁴ *Ibid*, at 70, 75.

²³⁵ Article 60 of the Vienna Convention on the Law Treaties.

The PCAs' non-compliance clause consists of three provisions. The first provision establishes the obligation of the parties to undertake measures necessary for the implementation of the Agreement. The second provision contains the so called 'Bulgarian clause.' As opposed to the 'Baltic clause,' which was included in the EAs with the Baltic countries and Albania and provided for immediate suspension of the agreement in case of breach of its essential provisions, the 'Bulgarian clause' first appeared in the EA with Bulgaria and ensures conformity with Article 65 of the Vienna Convention.²³⁷ The provisions provide for 'appropriate measures' to be taken by the party in case of a breach of the agreement by the other party. Before doing so however, except for the cases of special urgency, the party should provide relevant information to the Cooperation Council which should seek for a solution acceptable for both parties.²³⁸ According to the last paragraph of the provision, in selecting the 'appropriate measures' the relevant party should give preference to those measures which distract the functioning of the agreement the least. Joint Declarations attached to the three PCAs link the essential provision with the non-execution clause setting up conditions for its application in accordance with international law.²³⁹

It should be noted that the breach of essential provisions of the PCAs in general has never been invoked by the EU. The example of Belarus and Turkmenistan demonstrate that the EU was more willing to use its leverage at the time of ratification of the agreements.²⁴⁰ In the case of Turkmenistan, the European

http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

²³⁶ With the exception of the EAs with Poland, Czechoslovakia and Hungary, which did not incorporate any democracy and human rights provisions.

²³⁷ Fierro, *supra* note 149, at 218, 223; Hillion, 'Russian Federation' in Blockmans and Lazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 463-497, at 482.

²³⁸ Article 95, PCA Armenia; Article 98, PCA Georgia; Article 98, PCA Azerbaijan.

²³⁹ Joint Declaration on Article 95.

²⁴⁰ Hillion, 'Introduction to the Partnership and Cooperation Agreements' in Kellerman, Zwaan, Czuczai, (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*, (Hague: T.M.C. Asser Press, 2001), 215-228, at 224.

Parliament did not ratify the PCA due to human rights concerns which delayed entry into force of the agreement for up to five years.²⁴¹ However, the PCA with Turkmenistan was ratified in a few years without significant political developments in the country,²⁴² undermining the consistency of the EU's approach. In particular, in the South Caucasus the PCA with Azerbaijan was concluded despite the criticism of its political developments.²⁴³ Subsequently, the non-execution clause in all the three PCAs has not been referred to in respect to any of the countries, despite, for instance, the elections being constantly marred with serious violations.

As mentioned above, in addition to the 'standard clause' on democracy promotion, the PCAs with the three South Caucasian countries contain a separate title on 'Cooperation on matters relating to democracy and human rights.'²⁴⁴ The title provides for cooperation between the parties on all issues related to the establishment or reinforcement of democratic institutions, as well as the protection of human rights and fundamental freedoms in accordance with international law and OSCE principles. The issues related to establishment or reinforcement of democratic institutions also include those required to strengthen the rule of law. Relevant articles in the second paragraph specify how the parties should cooperate in this field.²⁴⁵ The cooperation will be carried out in the form of technical assistance programmes which would assist in the drafting of relevant legislation and regulations, as well as implementation of such legislation, the operation of the judicial system, the role of the state in matters related to justice and the operation of the electoral systems.

²⁴¹ Berdiyev, *supra* note 139, at 469-470.

²⁴² *Ibid*, at 469-470.

²⁴³ Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29, at 48

²⁴⁴ See Title VII of the PCAs with Armenia, Georgia and Azerbaijan.

²⁴⁵ Article 68 PCA Armenia Article 71 PCA Georgia; Article 71 PCA Azerbaijan.

The cooperation provided above was carried out through the ‘Technical Aid to the Commonwealth of Independent States’ programme (TACIS) which was conceived in December 1990 at a meeting of the European Council in Dublin and Rome. The programme was designed to assist centrally planned economies to move towards market economies and it provided support for economic reform initiatives.²⁴⁶ Within the period of 2000-2006 the TACIS programme was governed by Council Regulation 99/2000 concerning the provision of assistance to the partner states in Eastern Europe and Central Asia.²⁴⁷ TACIS Regulation introduced an element of negative conditionality into the PCA framework providing an option of taking appropriate measures by the Council in case of serious breach of the PCA.²⁴⁸

Despite the fact that the Regulation qualifies the programme as one ‘to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner States’,²⁴⁹ a closer look at TACIS documents and programmes for the three countries indicate absence of particular initiatives directed at democratisation of the countries.²⁵⁰ Whether due to lack of commitment from the parties to the PCAs or the fact that TACIS has been ‘cash-starved’,²⁵¹ it hardly had any impact on the democratic processes in the countries concerned. In its assessment of the project, the Commission found that in the overall region covered by TACIS

²⁴⁶ Council Regulation No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, *OJ L* 165, 04.07.1996.

²⁴⁷ *OJ L* 12, 18.1.2000.

²⁴⁸ Article 16 of TACIS Regulation.

²⁴⁹ Article 1 of Council Regulation 99/2000/EC of 29 December 1999, *OJ L* 12, 18.1.2000.

²⁵⁰ Armenia Country Strategy Paper 2002-2006- TACIS National Indicative Programme 2002-2003; TACIS National Indicative Programme for Armenia 2004-2006; Georgia TACIS Action Programme 2002/2003; TACIS National Indicative Programme 2004-2006 Georgia; Azerbaijan Country Strategy Paper 2002-2006-TACIS National Indicative Programme 2002-2003; TACIS Indicative Programme 2004-2006 for Azerbaijan. Available at

http://ec.europa.eu/external_relations/georgia/docs/index_en.htm

http://ec.europa.eu/external_relations/armenia/docs/index_en.htm

http://ec.europa.eu/external_relations/azerbaijan/docs/index_en.htm

²⁵¹ Stritecky, *supra* note 47, at 63-64.

there has been little real progress towards democratisation and respect for human rights, and the situation even worsened since the ratification of the PCAs.²⁵²

Outside the PCA framework, the EU engaged with the democratic development of Armenia and Georgia through the European Initiative for Democracy and Human Rights (EIDHR). The initiative was primarily concerned with the development of the civil society, and was established under the auspices of the European Parliament in 1994, relying on its budgetary powers, with the main aim of promoting human rights and democracy and conflict prevention in third countries.²⁵³

The main difference of the EIDHR from other Union instruments is that it has a complementary nature and it can be implemented with different partners, such as NGOs and international organisations, and, most importantly, without consent from the government of the host country.²⁵⁴ While such an arrangement allows it to bypass the government and engage with the public sector, it nevertheless did not have significant impact on democratic development of the countries concerned due to the fact that the assistance is directed to small and ad hoc programmes.²⁵⁵

²⁵² Cremona, *supra* note 145, at 21; Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29, at 50.

²⁵³ The initiative did not function in Azerbaijan until 2008. This initiative is regulated by the Council Regulations EC 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which 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, *OJ* L 120/1, 08.05.1999 and (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, 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 in third countries, *OJ* L120/8, 08.05.1999; Emerson, Aydin, Noutcheva, Tocci, Vahl and Youngs, 'The Reluctant Debutante: The European Union as Promoter of Democracy in its Neighbourhood', Working Document No 223/July 2005, Centre for European Policy Studies, at 3.

²⁵⁴ http://ec.europa.eu/europeaid/projects/eidhr/eidhr_en.htm#eidhr2

²⁵⁵ Keukeleire and MacNaughtan, *The Foreign Policy of the European Union*, (Basingstoke: Palgrave Macmillan, 2008), at 227.

4. Conclusion

It is against this background that the EU will be challenged to engage with the democratisation of Georgia, Armenia and Azerbaijan through the ENP framework. While economically the performance of the countries improved throughout the independence period, the political development of the countries did not prove to be fruitful. Despite initial orientation towards liberal democratic values after gaining independence from the USSR, the political transformation of all the three countries was abruptly interrupted with the violent conflicts. The consequences and the unresolved status of the Nagorno-Karabakh, the South Ossetian and the Abkhazian conflicts persist being a source of political instability and rivalry over power in the countries. The efforts of seventeen years to establish liberal democracies with freely elected and accountable institutions, protection of human rights and freedoms resulted in similar 'paper' democracies in all three countries. Although it can be noted about the three countries their democracies are liberal on paper, but barely existent in practice, there are, nevertheless, certain distinctions where Georgia and Armenia are considered to be in transition, and Azerbaijan being defined sometimes as an autocracy.

The cooperation with the South Caucasian states was established through the PCAs only in 1999 more 'by default than design.' The reluctance of the EU to closely engage with the region has been apparent not only in the distinctions to be found between the PCAs and the EAs, but also the PCAs between the South Caucasian countries and those with the Western NIS. The partnership and cooperation under the PCAs was 'a label on a mere trade agreement.'²⁵⁶ As generally noted, the core of the

²⁵⁶ Three possible developments as regards the future of the ENP were envisaged by Hillion, which were partnership as a label on a mere trade agreement, where the parties fail to develop the PCA, partnership as a consistent alternative to the EAs, and the PCA as a 'pre-association strategy'; Hillion, *supra* note 117, at 419-420.

PCAs was trade and economy where the cooperation aimed at bringing the countries to world economy.²⁵⁷ Despite the provisions on democracy and human rights in the PCAs with Georgia, Armenia and Azerbaijan, the agreements did not have significant impact on the political developments of the countries. Whether due to the lack of positive conditionality, or commitment and eagerness by both parties, or due to the fact the assistance under TACIS remained largely technical, the PCAs proved to be inadequate for entailing serious political reforms. Accordingly, the ENP is considered to be an attempt to reform previous unsuccessful policies,²⁵⁸ especially as it does not abolish the PCAs and the Barcelona Process and the institutional setup of the cooperation.²⁵⁹

Finally, the political cooperation established within the PCAs was symbolical of the EU's initial attitude towards the region, which can be described as engagement through 'entry-level agreements'²⁶⁰ without real involvement. The relations established within the PCAs did not manifest any differentiation in terms of particular interests in the three countries or their thorny transformation. However, they provided a legal basis for the fostering of trade relations between the EU and each of the states turning the EU into the biggest trade partner for all three of them.²⁶¹

²⁵⁷ Petrov, 'The PCAs with the Newly Independent States' in Ott and Inglis, (eds.), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, (Hague: T.M.C Asser Press 2002), 175-194, at 193; Lynch, 'The New Eastern Dimension of the Enlarged EU' in 'Partners and Neighbours: A CFSP for a Wider Europe', Chaillot Paper 64, Institute for Security Studies, September 2003, at 43;

²⁵⁸ Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy'. (2006) 11 *European Foreign Affairs Review* 183, at 190.

²⁵⁹ Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003 COM (2003) 104 final, at 15; Council Conclusions on Wider Europe-New Neighbourhood, Thessaloniki European Council, 19-20 June 2003.

²⁶⁰ Petrov, *supra*, at 177.

²⁶¹ In 2008 both imports and exports with the EU comprised 35% of Armenia's foreign trade, 53% of Azerbaijan's foreign trade, and 32% of Georgia's foreign trade. Trade data available at <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/south-caucasus/>.

The political considerations behind the ENP most certainly heralded a major shift in the EU's attitude, which will be discussed below.

CHAPTER III

The ENP in the South Caucasus

1. Introduction

While scholars of European studies continue the debate on the EU's nature as an emerging foreign policy actor, the ENP presents an opportunity to challenge the widely-held perception of the EU as a weak foreign policy actor,²⁶² and to demonstrate potential 'to act beyond the dichotomy of accession/non-accession, drawing on a range of tools to promote its interests.'²⁶³ The ENP is a regional manifestation of the EU's willingness to 'assert its identity on the international stage,'²⁶⁴ whereby geographical proximity requires the EU to define its interests in neighbouring regions and choose instruments to pursue those interests.

The importance of these interests was officially acknowledged in relation to the 2004 accession of ten new member states to the EU. Thus, the ENP emerged as a policy with a clear geographical dimension, in which the main criterion for countries' involvement with the ENP is their vicinity. The ENP covers Eastern Europe, the South Caucasus and the Mediterranean, each of which had previously fallen under separate framework of cooperation.²⁶⁵

While the countries of the South Caucasus were initially not included in the policy, as noted in the Introductory Chapter, certain political developments and the maritime border shared between Georgia, Romania and Bulgaria, which was expected to become an EU border after the accession of both the latter countries, influenced the subsequent inclusion of the region in the ENP. Hence, while attempting to 'fuse

²⁶² Emerson, 'The Wider Europe as the European Union's Friendly Monroe Doctrine', Centre for European Policy Studies, Policy Brief No. 27, October 2002, at 2.

²⁶³ Lynch, 'The Security Dimension of the European Neighbourhood Policy', (2005) 40 *International Spectator* 33, at 33-34.

²⁶⁴ Article 2 EU, *OJ C* 321 E/1, 29.12.2006.

²⁶⁵ Countries involved in ENP are Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, Tunisia as comprising Mediterranean region, Countries of Eastern Europe which are Ukraine, Belarus, Moldova, and South Caucasian states, that is Armenia, Georgia and Azerbaijan.

together policy towards a number of regions hitherto separately treated', the ENP also tried to establish what the European Parliament has called 'a complex geopolitical area stretching from Russia to Morocco, which, for historical and cultural reasons and the fact of its geographical proximity, may be defined as a 'pan-European and Mediterranean region.'²⁶⁶ Though the Wider Europe Communication identified Russia as one of the target countries despite Council's 2002 conclusions referring to Russia as a 'key partner,' Russia refused to negotiate an Action Plan due to its 'asymmetrical and conditional' nature.²⁶⁷ The relations with Russia are currently pursued within a strategic partnership framework based on 'positive interdependence.'²⁶⁸

The interests of the EU in each of the three regions included in the ENP are different. The importance of the South Caucasus is highlighted by its strategic location in the midst of world powers, whose agenda does not always coincide with the EU's. Thus, the wider geopolitical picture of the region can be considered a key determinant of the policy's implementation.

It should be noted that the 'geographic rationale' is not exclusive, but accompanies another 'rationale based on the need to create secure borders and the need to create an alternative to enlargement.'²⁶⁹ This is identified as an objective in ENP policy papers. Security is behind the rationale for integrating the neighbours to a

²⁶⁶ Cremona, 'The European Neighbourhood Policy: Legal and Institutional Issues', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 25, 2 November 2004, at 4.

²⁶⁷ Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003 COM (2003) 104 final, (hereinafter Wider Europe Communication), at 4, 5; General Affairs and External Relations Council Conclusions, Brussels, 18 November 2002, 14183/02, at 13; Van Elsuwege, 'The Four Common Spaces: New Impetus to the EU-Russia Strategic Partnership?' in Dashwood and Maresceau, (eds.), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape*, (Cambridge: Cambridge University Press, 2008), 334-359, at 355.

²⁶⁸ Commission Communication on Relations with Russia, COM (2004) 106, 9 February 2004.

²⁶⁹ Cremona, 'The European Neighbourhood Policy: More than a Partnership?' in Cremona, (ed.), *Developments in EU External Relations Law*, (Oxford: Oxford University Press, 2008), 244-299, at 251.

certain extent without promising them membership. This, in turn, requires identification of the primacy of democratisation within the policy and the normative image the EU exploits within the ENP.

In this context, the Chapter will initially consider the shift of attitude towards the South Caucasus. The interests of the EU in the South Caucasus in general and towards each of the countries in particular, will be discussed in this regard. Moreover, the wider geopolitical picture will be considered in order to assess the prospects for democracy promotion through the ENP. The next part of the Chapter will consider the objectives of the ENP, including a section on democracy promotion as a policy objective. The Chapter will also identify foreign policy motifs defining the ENP in relation to the concept of Europeanisation. Finally, conclusions on the political constituents of the policy will be presented.

2. Interests of the EU in the South Caucasus

Since the beginning of this decade the EU's attitude towards the South Caucasian region has shifted. The General Affairs Council of February 2001 acknowledged the EU's eagerness to engage with the region more actively, in particular with a view to contributing towards conflict prevention and post-conflict rehabilitation.²⁷⁰

The initial engagement with the region appeared not as a part of general approach, but more as *ad hoc* initiatives in Georgia, such as border control initiatives for Georgian borders with North Caucasian Russian Republics,²⁷¹ as well as certain civilian contribution to the conflict settlement in South Ossetia.²⁷² The appointment

²⁷⁰ General Affairs Council, Brussels, 26-27 February 2001.

²⁷¹ The North Caucasian Republics of Russian Federation which share borders with Georgia include Dagestan, Chechnya, Ingushetia, Kabardino-Balkaria, Karachaevo-Cherkessia, and North Ossetia.

²⁷² Joint Action 2000/456/CFSP regarding a contribution of the European Union towards reinforcing the capacity of the Georgian authorities to support and protect the OSCE observer mission on the

of the Special Representative to the South Caucasus in 2003 was aimed at coordinating the Union's activities in the region and developing a comprehensive policy.²⁷³

The mandate of the Special Representative has gradually changed since the first appointment. Initially it included activities contributing to the prevention of conflicts, and preparing for the return of peace to the region. Although the Special Representative was meant to assist in conflict resolution, this did not provide for a separate role for the Union. Rather, it was aimed at supporting the UN Secretary General and his Special Representative for Georgia, the Group of Friends of the UN Secretary General for Georgia, the OSCE Minsk Group, and the conflict resolution mechanism for South Ossetia under aegis of the OSCE.²⁷⁴ The more proactive attitude of the Union to the region led to subsequent amendments to the Special Representative's mandate. Currently it includes assisting in creating the conditions for progress on settlement of conflicts, as well as facilitating the implementation of such settlement in close coordination with the existing frameworks.²⁷⁵

The major development in this trend has been the inclusion of the three countries within the ENP in the ENP Strategy Paper as noted earlier. Following

border of the Republic of Georgia with the Chechen Republic of the Russian Federation, *OJ* 200 L 183/3, amended on 26 July 2001, *OJ* 2001 L 2002/2; Joint Action 2002/373/CFSP regarding a contribution of the European Union towards reinforcing the capacity of the Georgian authorities to support and protect the OSCE observer mission on the border of Georgia with the Ingush and Chechen Republics of the Russian Federation, *OJ* 2002 L 134/1; Council Joint Action 2001/759/CFSP of 29 October 2001 regarding a contribution from the European Union to the conflict settlement process in South Ossetia, *OJ* 2001 L 286/4; Council Joint Action 2003/473/CFSP of 25 June 2003 regarding a contribution of the EU to the conflict settlement in Georgia/South Ossetia, *OJ* 2003 L 157/72.

²⁷³ Article 18 TEU empowers the Council with the right to appoint a special representative with a mandate for particular policy issues. Mr Helkki Talvitie was appointed as a Special Representative for the Southern Caucasus in 2003 by Council Joint Action 2003/496/CFSP of 7 July 2003 concerning the appointment of an EU Special Representative for the South Caucasus, *OJ* 2003 L 169/74.

²⁷⁴ Council Joint Action 2003/496/CFSP of 7 July 2003 concerning the appointment of an EU Special Representative for the South Caucasus, *OJ* 2003 L 169/74; Council Joint Action 2003/872/CFSP of 8 December 2003, *OJ* 2003 L 326/44.

²⁷⁵ Council Joint Action 2006/121/CFSP of 20 February 2006 appointing the European Union Special Representative for the South Caucasus, *OJ* 2006 L 49/14.

inclusion of Georgia, Armenia and Azerbaijan in the policy. Action Plans were signed with each of the countries on 14 November 2006 on the basis of respective Country Reports prepared by the Commission,²⁷⁶ taking the bilateral relations between the parties to a substantially new level. The necessity of developing closer ties with the neighbours in the South Caucasus is based on the political and strategic interests the EU is pursuing in its neighbourhood.

Most notably, the ENP is explicitly framed in terms of the EU's interests. The Wider Europe Communication stresses the strengthened interest of the EU to establish closer relations with neighbours after the enlargement and tackle the 'common challenges.'²⁷⁷ The ENP Strategy Paper, in particular, stressed the EU's 'strong interest in the stability and development of the South Caucasus.'²⁷⁸ The interest in stability and development of the region should be considered in the context of the strategic importance of the latter.

2.1. Pursing interests in a crowded geopolitical scene

One of the tributaries of the ancient Silk Route crosses the South Caucasus. The importance of this route is currently connected with the supply of natural resources from the East to the West. A strong dependence on Russian gas and Middle Eastern oil supply forces the EU to search for alternative solutions.²⁷⁹ The Commission's forecasts predicted energy dependence rising to a level of 70%, or 90% in the case of oil in the next two or three decades, rendering the EU susceptible not only in terms of its dependence on natural resources, but most importantly on

²⁷⁶ ENP Action Plans with Georgia, Armenia and Azerbaijan
Available at http://ec.europa.eu/world/enp/documents_en.htm

²⁷⁷ Wider Europe Communication, at 3, 9.

²⁷⁸ Commission Communication, ENP Strategy Paper, Brussels, 12.5.2004 COM(2004) 373 final, (hereinafter ENP Strategy Paper), at 10.

²⁷⁹ In 2000, 45% of the EU's oil imports came from the Middle East and 40% of natural gas from Russia; Commission Green Paper on a European Strategy for the Security of Energy Supply, COM (2000) 769 final.

exporting partners such as Russia and Middle Eastern oil-producing states.²⁸⁰ In this respect the South Caucasus has major potential, and EU willingness to engage with the region comes without surprise.

While Azerbaijan is a significant exporter of oil from the Caspian basin, Georgia and Armenia are important in particular as an alternative transit route for energy supply from the East to the Western market. The importance of the region has been stressed in the Commission Communication on energy policy for the enlarged EU and its neighbours.²⁸¹ The Caspian basin on its own can be considered to be significant in diversifying energy sources.²⁸² In view of Georgia's shared border with Romania and Bulgaria, Turkey's potential accession and the evolving Black Sea Economic Cooperation Organisation (BSECO), the wider Black Sea region has also required the EU's focus.²⁸³

The EU should be attractive to these countries in order to forge political partnerships. Thus, the inclusion of these three states and three different regions in general within a single policy framework can be considered an opportunity for the EU to create an economically interlinked neighbourhood, providing it with an opportunity to demonstrate its strengths vis-à-vis the US, Russia with its increasing power, and the emerging Asian hegemonies, China and India.

It should be pointed out, that despite the fact that the South Caucasus is referred to as a 'region' in relations with foreign protagonists, nevertheless none of

²⁸⁰ Lavenex, 'EU External Governance in 'Wider Europe'', (2004) 11 *Journal of European Public Policy* 680, at 692.

²⁸¹ Development of Energy Policy for the Enlarged European Union, its Neighbours and Partner Countries, Commission Communication, Brussels, 13.05.2003, COM(2003) 262 final.

²⁸² MacFarlane, 'The Caucasus and Central Asia: Towards a Non-Strategy' in Dannreuther, (ed.), *European Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 118-134, at 126.

²⁸³ The organisation was founded in 1992 after the Istanbul Declaration on Black Sea Economic Cooperation was signed by Albania, Armenia, Azerbaijan, Bulgaria, Romania, Greece, Moldova, Georgia, Ukraine, Russia and Turkey; Lynch, 'Why Georgia Matters', Chaillot Paper No. 86, February 2006, Institute for Security Studies, at 84.
www.bsec.gov.tr

the major political actors cooperates with the three states as a region. On the contrary, each of the international players, including the EU, has different relations and levels of cooperation with each of them.

The EU has established closer political cooperation with Georgia since the Rose Revolution in 2003. The new Georgian government has sought closer cooperation with the US, NATO and the EU. In particular, the EU launched a Rule of Law Mission to Georgia (EUJUST Themis), established with the request of the Georgian Prime-Minister.²⁸⁴ Also the Commission's Rapid Reaction mechanisms were deployed to support the post-revolution democratic processes and the assistance issued to Georgia was substantially increased in comparison with its neighbours.²⁸⁵ The Commission developed close cooperation with other actors in the region, namely the OSCE and the UN, and financed a number of projects aimed at confidence-building and economic development in Georgia and its breakaway regions.²⁸⁶

Relations with Azerbaijan and Armenia have been developing with a major focus on trade cooperation with the EU becoming a significant trade partner for both countries. Azerbaijan is the EU's largest trade partner in the region.²⁸⁷ Its willingness to trade natural resources has renewed EU focus on the country. A dialogue on energy and transport in the Black and Caspian Seas was launched at the Commission's

²⁸⁴ Smith and Webber, 'Political Dialogue and Security in the European Neighbourhood Policy: The Virtues and Limits of 'New Partnership Perspective,' (2008) 13 *European Foreign Affairs Review* 73, at 91; Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ* 2004 L 228/21; Council Decision 2004/924/CFSP of 22 November 2004 concerning the conclusion of the Agreement between the European Union and Georgia on the status and activities of the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ* 2004 L 389/41; Agreement between the European Union and Georgia on status and activities of the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ* 2004 L 389/42.

²⁸⁵ €2 million has been issued in support of the January 2003 presidential election and March 2003 parliamentary elections.

²⁸⁶ <http://www.delgeo.ec.europa.eu/en/programmes/rapidreact.html>

²⁸⁷ For the list of projects in Abkhazia and South Ossetia see Popescu, 'Europe's Unrecognised Neighbours: The EU in Abkhazia and South Ossetia', Centre for European Policy Studies, Working Document No 260/ March 2007.

²⁸⁷ Nuriyev, 'EU Policy in the South Caucasus: A View from Azerbaijan', Centre for European Policy Studies, Working Document No. 272/July 2007, at 13.

initiative in November 2004 in Baku, with the aim of developing a regional energy and transport market and progressively integrating it within the EU market.²⁸⁸ Consequently, a Memorandum of Understanding in 2006 on the strategic energy partnership has been signed between the EU and Azerbaijan. In addition, the EU also expressed its interest in the so called 'Trans-Caspian gas project' aimed at exploitation of gas sources of the Caspian region involving Azerbaijan and Turkmenistan.²⁸⁹ It can be suggested that the chances for positive outcomes of the political conditionality of the ENP will be different with each of the countries. As noted by Balfour, the importance of any country to the EU and its interests therein is one of the factors capable of 'trumping' human rights aims,²⁹⁰ and by analogy also democracy promotion. Thus, it can be suggested the strongest leverage seems to be present in case of Georgia, for which the EU's importance appears to be expressed the most, bearing in mind Georgia's external agenda.

On the other hand, the importance of Azerbaijan as an exporter of natural resources and, therefore, the EU's interests in the country suggest that these two factors might 'trump' the democracy promotion by the EU. The most peculiar will be the case of Armenia. Its role as a transit country to this date was not of great benefit to the EU due to Armenia's economic isolation, which suggests that the ENP will largely start from a neutral stance in this sense. As to the importance of the EU to Armenia, it is not straightforward. Even though EU integration is constantly present on Armenia's political agenda, its strong dependence on Russia might hold the country back from making stronger political commitments to Europe.

²⁸⁸ Cameron, *An Introduction to European Foreign Policy*, (Abingdon: Routledge, 2007), at 122.

²⁸⁹ 'EU bets on Turkmenistan for Trans-Caspian pipeline', New Europe, *The European Weekly*, 2 June 2008; Nuriyev, *supra* note 26, at 9, 13.

²⁹⁰ Balfour, 'Promoting Human Rights and Democracy in the EU's Neighbourhood: Tools, Strategies and Dilemmas' in Balfour and Missiroli, *Reassessing the European Neighbourhood Policy*, EPC Issue Paper No. 54, June 2007, at 14.

2.2. *Interests of other international actors*

The above mentioned interests of the EU in South Caucasus are not easy to pursue since this region is influenced by other political protagonists on the regional scene, such as Russia and the United States, Turkey and Iran. The 2001 General Affairs Council acknowledged the necessity to intensify the political dialogue about the region with the mentioned actors in relations to its willingness to play a more active role therein.²⁹¹

It is mainly the Russian presence in the region which is viewed as a 'fault-line' potentially capable of both undermining the ENP in its Eastern front and distressing the relations between the EU and Russia.²⁹² The EU has been considered to be pursuing a 'Russia first' policy with cautious engagement with the Eastern neighbours: Russia's presence is one of the reasons why the EU has avoided cooperating with the neighbours on the East on regional perspective.²⁹³ Though the initiation of the ENP and the subsequent signing of the Action Plans has been

²⁹¹ General Affairs Council, Brussels, 26-27 February 2001.

²⁹² Haukkala and Moshes, 'Beyond 'Bing Bang': The Challenges of the EU's Neighbourhood Policy in the East', The Finnish Institute of International Affairs, Report 9/2004, at 5-6, 19; Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', (2006) 11 *European Foreign Affairs Review* 183, at 185; Keukeleire and MacNaughtan, *The Foreign Policy of the European Union*, (Basingstoke: Palgrave Macmillan, 2008), at 274; Smith and Webber, *supra note* 23, at 83-84; Smith, 'The Outsiders: The European Neighbourhood Policy' (2005) 81 *International Affairs* 757, at 759-760; Meloni, 'Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 97-111, at 98; Popescu, *supra note* 25, at 6; Aliboni, 'The Geopolitical Implications of the ENP', (2005) 10 *European Foreign Affairs Review* 1, at 14; Lynch, *supra note* 2, at 35, 40; Tassinari, 'A Riddle Inside an Enigma: Unwrapping the EU-Russia Strategic Partnership', (2005) 40 *The International Spectator* 45, at 51.

²⁹³ Longhurst and Nies, 'Recasting Relations with the Neighbours-Prospects for the Eastern Partnership', Institut Français des Relations Internationales, February 2009. Available at http://www.ifri.org/files/Europe_visions/Europe_Visions_4.pdf.

considered as a retreat from 'Russia first' policy,²⁹⁴ the EU will nevertheless advance its interests in a 'Russia-aware' manner.²⁹⁵

Reasons for the Russian influence lie in geography and history. In this context, the EU's engagement with the region will be perceived by Russia as encroachment on its regional position.²⁹⁶ Secondly, legal aspects of the EU's foreign policy action complicate the unitary position towards its powerful neighbour. The EU's position can be undermined with the distinct agendas of the Commission's Directorate Generals and the Council, which is the High Representative for CFSP.²⁹⁷ However, most importantly, the absence of EU legal personality and the competence of the Member States over CFSP matters will likely exert discrepancies in the unified policy. Not only will the positions of the Member States differ, but in view of Russia's importance, they may fail to give the EU the lead role.²⁹⁸ In this context, the EU will have to find a common denominator with Russia to create a 'shared neighbourhood,' otherwise both the EU-Russia strategic partnership and the ENP in Russian neighbourhood might fail.²⁹⁹

The relations between Russia and each of the countries in the South Caucasus will create different conditions for the EU's involvement. Most likely the Russian

²⁹⁴ Vahl, 'EU-Russia Relations in EU Neighbourhood Policies' in Malfliet, Verpoest and Vinokurov, (eds.), *The CIS, the EU and Russia*, (Basingstoke: Palgrave Macmillan, 2007), 121-141, at 130.

²⁹⁵ Popescu, *supra* note 25, at 6, 21.

²⁹⁶ Averre, 'The EU-Russian Relationship in the Context of European Security' in Johnson and Robinson, (eds.), *Perspectives on EU-Russia Relations*, (London: Routledge, 2005), 73-92, at 78; Freire and Simao, 'The Armenian Road to Democracy: Dimensions of a Tortuous Process', Centre for European Policy Studies, Working Document No. 267/May 2007, at 16; Kratochvil, 'The European Neighbourhood Policy: A Clash of Incompatible Interpretations' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 13-28, at 19-20.

²⁹⁷ Tassinari, 'A Riddle Inside an Enigma: Unwrapping the EU-Russia Strategic Partnership'. (2005) 40 *The International Spectator* 45, at 54.

²⁹⁸ *Ibid*, at 54; Smith, 'Enlargement and European Order', in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 270-291, at 286.

²⁹⁹ Lynch, *supra* note 22, at 70.

reliance on 'coercive means' in the relations with its neighbours might undermine the possibility of a 'shared neighbourhood.'³⁰⁰

Russia is Armenia's most important ally, especially in the field of military cooperation. Two Russian military bases are located in the country, and a Treaty on Friendship and Cooperation was signed in 1997 securing the military bond.³⁰¹ Armenia perceived Russia as its main security guarantor due to constant threats from Azerbaijan over the Nagorno-Karabakh conflict and past economic isolation stemming from the close ties and cooperation between Georgia, Azerbaijan and Turkey. Moreover, the country has a strong dependence on energy supplies from Russia. The opening of a gas pipeline from Iran on 19 March 2007 was expected to lessen the country's dependence on Russia. The expectations were dealt a blow when a large share in the project was sold to the Russian Gazprom.³⁰² Moreover, Russian investment is present in sectors as important as banking, telecommunications and electricity, including the Hrazdan power plant.³⁰³

The cooperation between Russia and Azerbaijan has intensified since the first state visit in 2001 by President Putin, with the joint exploitation of energy resources in the Caspian Sea, as well as military cooperation, Azerbaijan participating in Russian-organised naval exercises in the Caspian in 2002.³⁰⁴ However, in comparison with Armenia, Azerbaijan seems to seek more recognition as an independent political

³⁰⁰ Casier, 'The Clash of Integration Processes? The Shadow Effect of the Enlargement EU on its Eastern Neighbours' in Malfliet, Verpoest and Vinokurov, (eds.), *The CIS, the EU and Russia*, (Basingstoke: Palgrave Macmillan, 2007), 73-94, at 88.

³⁰¹ The parties commit to close cooperation for the purposes of guaranteeing the sovereignty, territorial integrity and security of Armenia and the Russian Federation, Article 2. The Treaty is available in Armenian and Russian languages at <http://www.armeniaforeignministry.com/doc/conventions/1997.html>.

³⁰² 'Shadow dancing: Armenia's courtship with independence', *Armenian Diaspora*, 15 December 2006. Available at <http://www.armenianow.com/?action=viewArticle&AID=1903>.

³⁰³ 'Armenia selling more infrastructure, industry to Russia', *Eurasia Daily Monitor*, 7 November 2006; 'Russia steps up economic presence in Armenia', *Armenian Diaspora*, 17 November 2006.

³⁰⁴ Lynch, 'A Regional Insecurity Dynamic' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, at 18.

entity in the region by relying on its natural resources. The call from the Minister of Foreign Affairs of Azerbaijan to the EU in the beginning of 2007 to seek an alternative route for energy supplies through Azerbaijan is evidence of this policy.³⁰⁵

Rather different are Russia's relations with Georgia since the Rose Revolution, when the new leadership made clear its ambition to seek a Western-oriented external policy. This was followed by strong rhetoric from the leaders of both states leading to an open confrontation on the diplomatic level. In order to restrain Georgia, Russia relied heavily on economic sanctions, banning Georgian agricultural products, wine and mineral water imports.³⁰⁶ In addition, arbitrary deportations of Georgians took place in Russia together with tightening of the visa regime and blocking of transportation links.³⁰⁷ While Georgian President Saakashvili, who came to power after the Revolution, made the unification of Georgian territories one of the main goals to be achieved during his tenure,³⁰⁸ the worsening of relations with Russia reverberated in Georgia's relations with its two breakaway regions.

The proclamation of independence by Kosovo in February 2008, and its subsequent recognition by the US and the majority of the Member States of the EU also contributed to the worsening of relations, Moscow perceiving Kosovo as a dangerous precedent and willing to use it to further its own interests with regards to Georgia.³⁰⁹ In March 2008, Russia officially withdrew from the 1996 CIS pact 'On Measures to Regulate the Conflict in Abkhazia, Georgia' imposing various sanctions

³⁰⁵ 'Азербайджан призвал Европу покупать газ у Туркмении, а не у России', *Информационное Агентство Политсовет* 22.03. 2007.

Available at http://news.politsovet.ru/n_news.asp?article=17689.

³⁰⁶ 'Russia restricts imports of agricultural products from Georgia' *Civil Georgia*, 20 December 2005; 'PM: Russia's ban on Georgian wine unfair', *Civil Georgia*, 30 March 2006.

³⁰⁷ 'Georgia: Sliding Towards Authoritarianism?', International Crisis Group, Europe Report No. 189, 19 December 2007, at 8.

³⁰⁸ 'Georgia and Russia: Clashing over Abkhazia', International Crisis Group, Europe Report No 193, 5 June 2008, at 7.

³⁰⁹ 'Putin warns Kosovo will come back to knock the West, as NATO envoys lashes out', Associated Press, *International Herald Tribune*, 22 February, 2008; available at www.iht.com/articles/ap/2008/02/22/europe/EU-GEN-Russia-Kosovo.php.

on Abkhazia, though in fact the sanctions had long been ignored before.³¹⁰ Moreover, after the NATO Bucharest summit in April 2008 promising Ukraine and Georgia membership of NATO though without giving them a Membership Action Plan,³¹¹ Russia increased its military presence in Abkhazia, though within the limits for peacekeepers set by the CIS agreements.³¹²

Several incidents in both breakaway regions in the following months heated the situation to an explosive state.³¹³ Close to midnight on 7 August 2008, a senior Georgian military official announced that Tbilisi had decided to restore 'constitutional order' in South Ossetia.³¹⁴ After a night of massive offensive supported by artillery attacks Georgian forces promptly advanced into the territory of South Ossetia, in response to which Russian forces entered the conflict.³¹⁵ Russia justified its intervention by accusing Georgia of 'genocide' against Ossetian people and upholding its right to protect its own citizens.³¹⁶

The military activities escalated subsequently with Abkhaz forces heading to the Kodori gorge, the only part of their territory still under Georgian control, forcing the escape of Georgians and with Russians troops crossing the Georgian border,

³¹⁰ It should be noted that Abkhazia is strategically, economically and politically much more important than South Ossetia due to its sea border and its attempts to create functioning institutions, develop an economy based on tourism and production of crops; 'Georgia and Russia: Clashing over Abkhazia', International Crisis Group, Europe Report No 193, 5 June 2008, at 2.

³¹¹ Bucharest Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, NATO Press Release (2008)049.

³¹² www.mil.ru/info/1069/details/index.shtml?id=42520.

³¹³ Georgian unmanned aircrafts spying over Abkhazia were downed by Abkhaz and Russian MIG-29 as claimed by the Georgian side. Georgian soldiers from Joint Peacekeepers have been detained by South Ossetian forces, which have been released after an ultimatum by President Saakashvili. This was followed by Russian military planes present in Georgian airspace. Both sides have been accumulating their military power in the conflict area. In the beginning of August five personnel from Georgian police were injured in a car bombing in South Ossetia and heavy fighting broke out between Georgians and Ossetians leaving several dead and injured; International Crisis Group, *supra* note 47, at 4; 'Russia v Georgia: The Fallout', International Crisis Group, Europe Report No 195, 22 August 2008, at 2.

³¹⁴ 'Heavy fighting in South Ossetia', *BBC News*, 8 August 2008.

³¹⁵ 'Georgia conflict escalates as Russian tanks enter South Ossetia' *Telegraph News*, 8 August 2008.

³¹⁶ Though Russia claimed that over 2,000 civilians have been killed in South Ossetia, the Human Rights Watch expressed its concerns over the lack of accurate information; 'Russia exaggerating South Ossetian death toll, says human rights group', *The Guardian*, August 13, 2008.

occupying Georgian military bases and destroying infrastructure.³¹⁷ Also several Georgian naval vessels in the port of Poti were sunk in the following days followed by the blowing up of a vital railway bridge linking Tbilisi with the west of the country.³¹⁸ Mediation by the EU Council President Nicolas Sarkozy produced a six-point ceasefire document on 12 August. As part of the ceasefire agreement, Georgia undertook signing a non-resumption of hostilities agreement, which South Ossetians and Abkhazians had been demanding before the outbreak of fighting.³¹⁹

The diplomatic intervention by the EU Presidency showed that with 'dynamic leadership' the EU can play a significant role in the regional politics.³²⁰ The Member States subsequently approved the ceasefire during the Emergency Session of the Foreign Ministers Council.³²¹ Nonetheless, the limited character of the actions at the EU's disposal was more than evident when the Council was deciding on the possible sanctions against Russia. The Member States were divided, with the Baltic and Eastern European states calling for a tough response to Russia and most of the old Member States calling for a more careful approach.³²² The maximum response by the EU was the suspension of a new agreement with Russia until the complete withdrawal of Russian troops from Georgian territory.³²³ In this context the secondary

³¹⁷ 'Абхазские вооруженные силы начали операцию в Кодорском ущелье', *Россия в Глобальной Политике*, 12.08.2008, available at <http://www.globalaffairs.ru/news/10106.html>; 'Российские войска уходят из грузинского города Гори', *Reuters Россия и Страны СНГ*, 19.08.2008, available at <http://ru.reuters.com/article/topNews/idRUZVE94087020080819?pageNumber=1&virtualBrandChannel=0>; 'Russian jets attack Georgian town', *BBC News*, 09.08.2008, available at <http://news.bbc.co.uk/1/hi/7550804.stm>.

³¹⁸ 'Russia v Georgia: The Fallout', International Crisis Group, Europe Report No 195, 22 August 2008, at 3.

³¹⁹ *Ibid.*, at 9.

³²⁰ *Ibid.*, at 21.

³²¹ Council Conclusions on the situation in Georgia, 13 August 2008.

³²² 'EU shies away from strong action against Russia', *EU Observer*, 01.09.2008, available at <http://euobserver.com/?aid=26667>; 'EU diplomats keen to avoid Russia controversy', *EU Observer*, 13.08.2008, available at <http://euobserver.com/?aid=26605>.

³²³ 'EU suspends talks on Russia pact', 1 September 2008, available at <http://news.bbc.co.uk/1/hi/world/europe/7592541.stm> 'EU secures deal on Russia withdrawal', *EU Observer*, 09.09.2008, <http://euobserver.com/?aid=26708>.

dimension of Russian involvement in the region becomes apparent. Not only can Russian presence undermine the ENP, but the problematic relations of her neighbours will require the EU to arbitrate. The EU, and in particular its Member States, would not be interested in risking their relations with their powerful neighbour. In this sense, Georgia is expected not to create more problems and demonstrate flexibility in its own foreign policy.³²⁴

Russia's readiness to prove to the West its assertive role in the international arena went so far as to recognise the independence of South Ossetia and Abkhazia on 26 August 2008.³²⁵ In December 2008 an Independent International Fact-Finding Mission on the Conflict in Georgia was established by the Council of the EU in order to investigate the causes of the conflict.³²⁶ In its subsequent report the Mission found that neither the use of force by Georgia in South Ossetia, nor the Russian invasion into Georgia following the initial defensive stage against use of force by Georgia was justifiable under international law.³²⁷ It appears that the findings of the Mission further contributed to the EU's role of an arbiter in relations between its neighbours.

The fallout between Russia and Georgia has been considered to be a consequence of close cooperation between the US and Georgia, where unprecedented military assistance has been issued to Georgia in terms of financing and reforming its military.³²⁸ One of the main reasons for the US to engage with the region has been its geopolitical concerns in preventing Russia from regaining its 'hegemonic

³²⁴ Peter Semneby, EUSR to the South Caucasus, to the European Parliament, Foreign Affairs Committee, reported in RFE/RL Caucasus Report, 6 October 2006; RFE/RL Caucasus Report, 20 October 2006. Available at www.rferl.org/reports.

³²⁵ 'Russia recognises Abkhazian and South Ossetian independence', *Russia Today*, August 27, 2008, available at <http://www.russiatoday.com/news/news/29521>.

³²⁶ Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia, OJ L 323/66, 03.12.2008.

³²⁷ Report of the Independent International Fact Finding Mission on the Conflict in Georgia, September 2009, at 22-24. Available at <http://www.ceiig.ch/>.

³²⁸ See note 69, Chapter II.

influence'.³²⁹ The region attracted the US attention after the 11 September terrorist attacks.³³⁰ They are most notably interested in the region's energy resources, its geographic position and the bearing of the moderate Muslim state of Azerbaijan.³³¹ This is significant in the context of US foreign policy in the broader region during recent years with respect to arms control and the anti-terror campaign.³³²

According to Harasimowicz, despite the US' friendly attitude towards the EU, its goals in the region are not fully corresponding to those of the EU and are capable of undermining or weakening the implementation of the ENP.³³³ The US and European approaches to crisis management and conflict resolution can differ significantly.³³⁴ It is in contrast with the US that the EU has been identified as 'soft power'.³³⁵

The military dimension to US involvement in the region is apparent in Georgia and Azerbaijani cases. In 2002, a US national security waiver on the prohibition of aid to Azerbaijan was annulled, allowing it to implement military cooperation between the latter and Armenia in the fight against terror.³³⁶ Azerbaijan proved to be an important strategic partner in the 'war on terror' sending troops to Afghanistan and Iraq, as well as granting permission to use its territory to US military forces. The operation of two American radars near the Russo-Iranian border and a

³²⁹ Haukkala and Moshes, *supra* note 31, at 19.

³³⁰ Smith and Webber, *supra* note 23, at 90.

³³¹ Lynch, *supra* note 43, at 16.

³³² Haukkala and Moshes, *supra* note 31, at 20.

³³³ Harasimowicz, 'The European Neighbourhood Policy of the EU after Enlargement 2004: Empire with a Human Face?' in Sadurski, Ziller and Urek, (eds.), *Apres Enlargement: Legal and Political Responses in Central and Eastern Europe*, European University Institute, R. Schuman Centre for Advanced Studies, Florence 2006, 81-94, at 344.

³³⁴ Smith and Webber, *supra* note 23, at 83.

³³⁵ Tulmets, 'Can the Discourse on 'Soft Power' Help the EU to Bridge its Capability-Expectations Gap?' (2007) 7 *European Political Economy Review* 195, at 207.

³³⁶ Freire and Simao, *supra* note 35, at 11.

military centre in Baku to monitor shipping and air travel across the Caspian Sea firmly established US military activity in the country.³³⁷

As a part of the strategy to counterbalance Russian assertion, the US assisted in restructuring Georgian military training as mentioned earlier. It has been considered that the military and energy interests of the US created a solid and credible basis for EU engagement in the region.³³⁸ However, this is not always the case. For instance, Georgia's focus on military reform after the Rose Revolution with the assistance of the US has delayed and distracted the democratic reforms promised by the new leadership. While the US does not have similar strong links with Armenia, its relations are conditioned by the strong Armenian lobby through the Congress of the US. As a result, the aid received by Armenia from the US was the highest per capita among all the former Soviet Republics.³³⁹ This was perhaps the reason for the financial assistance granted to Armenia under the Millennium Challenge Account 'against the assurances by the Foreign Minister to address democratic shortfalls.'³⁴⁰

Certain peculiarities should be noted in relation to the Turkish and Iranian presence in the region. Turkey's active cooperation with Azerbaijan and Georgia resulted in construction of two major pipelines. The BTC pipeline was launched in May 2005 transporting oil from the Caspian Sea to the Mediterranean port of Ceyhan.³⁴¹ The BTE natural gas pipeline was launched in 2006. Both pipelines bypass Armenia, isolating it economically. Besides strained Armenian-Azerbaijani relations, a reason for the economic isolation of Armenia stemmed from the absence of diplomatic relations with Turkey. The latter closed its border with Armenia

³³⁷ Nuriyev, *supra* note 26, at 19.

³³⁸ Freire and Simao, *supra* note 35, at 20.

³³⁹ Shaffer, 'US Policy in the South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, at 59.

³⁴⁰ 'Armenia, Azerbaijan and Georgia: Political Developments and Implications for US interests', Issue Brief for Congress, Congressional Research Service, 23 February 2006, at 12.

³⁴¹ The pipeline was built by a consortium under BP.

following Armenian advances in the Nagorno-Karabakh war in 1993. However, Turkey is willing to undertake a leading role in the regional cooperation. The BSECO initiated by Turkey is currently considered to be the most significant regional organisation.³⁴² Another regional organisation is GUAM, whose aims are to encourage cooperation and development of the Europe-Caucasus-Asia Transport Corridor.³⁴³

The isolated position of Armenia prompts closer political and economic ties with its southern neighbour, Iran. First, of all Iran serves as an alternative to Armenia's main export route through Georgia. Secondly, Iranian cooperation is crucial for Armenia in terms of diversifying energy supplies. However, as noted above, Russia has a tight grip on such economic prospects.³⁴⁴ Armenia's close cooperation with Iran is not without risks not only from the Russian perspective, but also bearing in mind the relationship of Iran with the US. For instance, in 2002, sanctions were imposed by the Bush administration on certain Armenian companies based on accusations of helping Iran to acquire necessary materials for the production of weapons of mass destruction.³⁴⁵ Close cooperation between Iran and Armenia comes as a continuation of the initial engagement of Iran in establishing economic ties, assisting in resolving the Nagorno-Karabakh war and preventing its spread into its own territory, and cooperating with Russia.³⁴⁶ Iran's relations with Azerbaijan are

³⁴² Simao and Freire, 'The EU's Neighbourhood Policy and the South Caucasus: Unfolding New Patterns of Cooperation,' (2008) 2 *Caucasian Review of International Affairs* 225, at 231.

³⁴³ Members of the organisation include Georgia, Ukraine, Azerbaijan and Moldova. Uzbekistan withdrew from the organisation in 2005; Labedzka, 'The Southern Caucasus' in Blockmans and Lazowski, (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 575-612, at 587.

³⁴⁴ 'Hospitality with caution?: Mahmoud Ahmadinejad to visit Yerevan', *ArmeniaNow*, October 5, 2007.

³⁴⁵ 'Political and Economic Situation in Armenia and its Relations with the European Union', European Parliament, 20 January 2005.

³⁴⁶ Harutyunyan, 'Neighbourhood Relations between the EU and Armenia', Centre for EU Enlargement Studies, Central European University, Budapest, June 2006, at 16-17. Available, at <http://193.225.200.73/cens/assets/files/armenia>.

complicated by the separatist activities of several million Azerbaijanis living in Iran, as well as Iran's alleged influence on Islamist powers in Azerbaijan.³⁴⁷

It may be argued that two non-official alliances compete within the Caucasian region.³⁴⁸ On one side, Azerbaijan, Georgia and Turkey are backed by the US in support of exploration and transportation of Caspian oil avoiding Russia. On the other, Armenia has sided with Russia and Iran, in an attempt to guarantee its security and avoid economic blockade. However, the balance of power has shifted in 2007 and 2008. Increased trends of cooperation have been noted between Iran and Turkey recently.³⁴⁹ Besides, the Georgian-Russian war in August 2008 urged the regional actors to reconsider previous relations leading to certain steps towards normalisation of relations between Turkey and Armenia, and the prospects of deeper economic cooperation between Russia and Turkey.³⁵⁰ Accordingly, the region is not only crowded with different interested parties, but the relations with Georgia, Armenia and Azerbaijan reflect geopolitical realities that often depend on the relations between such powers as Russia and the US.

In this complicated scenario of international engagement, the outcome of ENP implementation will be influenced not only by the EU's interests and its leverage with

³⁴⁷ Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 59-76, at 71; Labedzka, see above, at 581.

³⁴⁸ Sabanadze, 'International Involvement in the South Caucasus', ECMI Working Paper No. 15 (Flensburg, European Centre for Minority Issues 2002), at 23.

Available at <http://www.einiras.org/pub/details.cfm?lng=en&id=19647>

³⁴⁹ The countries signed a Memorandum of Understanding on oil and gas transit and joint investment in 2007 followed by another Memorandum of Understanding on transportation in 2009; 'Turkey, Iran sign memorandum of understanding on transportation', *Turkey Daily News*, 02.03.2009, available at <http://www.turkeydailynews.com/news/118/ARTICLE/1635/2009-03-02.html>.

³⁵⁰ A 'Road Map' has been agreed between Turkey and Armenia to establish diplomatic relations between the countries and open the border. A new natural gas pipeline project has been offered by Russia to build new cooperation with Turkey; 'Turkey-Armenia road map sets timetable for ties', *Reuters*, April 23, 2009, available at <http://uk.reuters.com/article/idUKLN96485220090423>; 'Russia offers Turkey cooperation in South Stream', *Hurriyet Daily*, July 2, 2009, available at <http://www.hurriyetdailynews.com/n.php?n=russia-offers-turkey-cooperation-in-south-stream-2009-07-02>

each of the South Caucasian countries, but by general geopolitical circumstances dictated by other significant powers and developments in regional conflicts. This augurs a shaky start for the ENP implementation rooted in politics, where the legal instruments incorporated in the policy, including the political conditionality, will have to co-exist with political elements. Skilful diplomacy will be required by the EU in order to ensure the achievement of its objectives.

3. ENP objectives: democracy promotion within a security framework?

The strategic interests behind the determination to include the South Caucasus in the ENP are not the only factor affecting the EU's decision. The ENP's geopolitical dimension partly derives from 'politics with a view of enhancing the EU's security.'³⁵¹ To understand the wider political rationale behind the ENP, one should turn to the policy objectives.

The objectives of the EU foreign policy action are scattered around various Treaties reflecting pillar division. Articles 133, 177 and 181 EC respectively reflect the Community's objectives on common commercial policy, development cooperation and economic, financial and technical cooperation with third countries. Article 11 EU sets out objectives for the CFSP action. The Lisbon Treaty aims at codification of the foreign policy objectives. Article 21 EU as amended and consolidated by the Lisbon Treaty provides for the following objectives: (1) safeguarding of the Union's values, fundamental interests, security, independence and integrity; (2) consolidating and supporting democracy, the rule of law, human rights and the principles of international law; (3) prevention of conflicts and strengthening international security; (4) and fostering the sustainable economic, social and

³⁵¹ Aliboni, 'The Geopolitical Implications of the European Neighbourhood Policy', (2005) 10 *European Foreign Affairs Review* 1, at 3.

environmental development of developing countries to eradicate poverty.³⁵² These objectives in various forms are also spelled out in the ENP goals, but with different strength and intensity.

3.1. The ENP and the EU's security agenda

The changing language of the policy documents on the ENP has caused some confusion as to the general aims of the ENP and the appropriateness of the instruments chosen to reach them. Is the ENP about preventing the emergence of new dividing lines in the European neighbourhood or is this a secondary objective?³⁵³ Or is it about creating good neighbours who share the EU's values as well as its standards and laws in specific economic and social areas which would promote prosperity and security in the neighbourhood?

Suggestions have been raised that, in addition to more traditional concerns in international relations, the ENP has shifted towards a transformationist agenda.³⁵⁴ Others view the ENP as 'an attempt by the EU to transform its external border from areas of demarcation and division to areas of exchange and interaction' and consider two 'border-related' objectives to be central: development and exchange within border regions, and fostering a 'ring of well-governed countries to the East of the EU and the borders of the Mediterranean with whom [the EU] can enjoy close and

³⁵²The full list of objectives also include encouraging the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade; assisting to develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; assisting populations, countries and regions confronting natural or man-made disasters; promoting an international system based on stronger multilateral cooperation and good global governance.

³⁵³ Smith, 'The Outsiders: The European Neighbourhood Policy' (2005) 81 *International Affairs* 757, at 763; Milcher, 'The Economic Rationale of the European Neighbourhood Policy' Paper prepared for EUI Workshop, December 1-2, 2006.

³⁵⁴ Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', (2006) 11 *European Foreign Affairs Review* 183, at 184, 194, 195-196.

cooperative relations.³⁵⁵ Alternatively, if the EU is viewed as a 'gravity centre' for stabilisation, then the latter objective will be given a central role.³⁵⁶ However, taking into account how the ENP was formulated and the actual language of the policy documents no doubt is left as to the central role of security within its objectives.

The security rationale has been always high on the agenda of the Union and has motivated the economic and social integration in Europe.³⁵⁷ The EU's security agenda acquired an outwards orientation following its internal transformation with the introduction of the CFSP and ESDP, giving the EU a new international role outside its traditional economic spectrum.³⁵⁸ A renewed emphasis on EU security surfaced at the beginning of the new millennium, marked by anticipation of its most extensive enlargement, transforming the borders of the EU and bringing it closer to new neighbours.³⁵⁹

When the idea of the ENP was officially circulated for the first time by the joint Solana/Patten letter of 7 August 2002, special attention was devoted to the problem of security, reflected in the following statement:

'there are a number of overriding objectives for our neighbourhood policy: stability, prosperity, shared values and the rule of law along our borders are all fundamental for our own security. Failure in any of these areas will lead to increased risks of negative spill-over on the Union.'³⁶⁰

³⁵⁵ Comelli, Greco, Tocci, 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy', (2007) 12 *European Foreign Affairs Review* 203, at 203, 208.

³⁵⁶ Meloni in Cremona and Meloni, *supra* note 31, at 99.

³⁵⁷ Tassinari, 'Security and Integration in the EU neighbourhood: The Case for Regionalism', Brussels: Centre for European Policy Studies, 2005, at 2.

³⁵⁸ Marchetti, 'The European Neighbourhood Policy: Foreign Policy at the EU's Periphery', Discussion Paper C158, Centre for European Integration Studies 2006, at 5.

³⁵⁹ Delcour, 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia,' (2007) 7 *European Political Economy Review* 118, at 121.

³⁶⁰ Joint letter by EU Commissioner Chris Patten and the EU High Representative for the Common Foreign and Security Policy on Wider Europe. 7 August 2002. Available at http://www.europa.eu.int/comm/world/enp/pdf/0130163334_001_en.pdf

Thus, the interdependent nature of EU security, and the developments in neighbouring countries, are recognised by the EU and require the action to start from abroad.³⁶¹

One of the first references to the objectives of the ENP is found in the Wider Europe Communication, in which the Commission referred to the December 2002 Copenhagen European Council's affirmation of the 'Union's determination to avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union.'³⁶² As noted by Commissioner Ferrero-Waldner, the question of borders is not merely a matter of definition, but of upholding them as 'key to many of our citizens' urgent concerns - security, migration and economic growth.'³⁶³ Such a formulation of objectives makes clear that this EU initiative is more concerned with the changes occurring in the Union due to its new geographical location,³⁶⁴ and therefore the main objective of the policy is not primarily the prosperity of the neighbours and their 'socio-economic development,' but rather the security and stability of the Union itself.

The logic of protection of the Union through the ENP from any 'negative spillover' in the neighbourhood is apparent also in the language of the Wider Europe Communication, which acknowledged that within the current and future decades the Union's task to ensure 'security, stability and sustainable development to its citizens will no longer be distinguishable from its interest in close cooperation with the neighbours.'³⁶⁵ In reference to the goals of the policy in June 2003 the Council seemed to take similar approach, establishing that new policies should have two

³⁶¹ Lynch, *supra* note 2, at 34-35.

³⁶² Wider Europe Communication, at 3-4.

³⁶³ Ferrero-Waldner, 'The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument', (2006) 11 *European Foreign Affairs Review* 139.

³⁶⁴ Del Sarto and Schumacher, 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?' (2005) 10 *European Foreign Affairs Review* 17, at 25-26.

³⁶⁵ Wider Europe Communication, at 3.

overall goals. The first goal is '[t]o work with the partners to reduce poverty and create an area of shared prosperity and values', and the second one is '[t]o anchor the EU's offer of concrete benefits and preferential relations within a differentiated framework which responds to progress made by the partner countries' in the areas of political and economic reform, Justice and Home Affairs.³⁶⁶ However, taking a closer look at the areas of cooperation emphasised by the Council, it is apparent that preventing and combating security threats is accorded a central place.³⁶⁷ It has been suggested that by asserting its presence in the policy Council brings out 'a securitarian outlook' of the ENP and pushes the Commission towards reorientation.³⁶⁸

Such reorientation is apparent in the ENP Strategy Paper, where the Commission explicitly shifted emphasis to stressing such ideas as security and stability in the ENP Strategy Paper. Two main objectives are highlighted, including strengthening stability, security and well-being for EU Member States and neighbouring countries and, secondly, preventing the emergence of new dividing lines between the enlarged EU and its neighbours.³⁶⁹ In June 2004, the Council stated that the objective of the ENP was 'to share the benefits of an enlarged EU with neighbouring countries in order to contribute to increased stability, security and prosperity of the European Union and its neighbours.'³⁷⁰

The centrality of security issues for the ENP is also apparent taking into account that the launch and development of the ENP was taking place in parallel with the European Security Strategy launched in 2003 partly as a response to the events of 9/11 and in the absence of a common position among the Members States over the

³⁶⁶ General Affairs and External Relations Council, Conclusions on Wider Europe – New Neighbourhood, 16 June 2003.

³⁶⁷ *Ibid.*

³⁶⁸ Zaiotti, 'Of Friends and Fences: Europe's Neighbourhood Policy and the 'Gated Community Syndrome', (2007) 29 *European Integration* 143, at 157.

³⁶⁹ ENP Strategy Paper, at 3.

³⁷⁰ General Affairs and External Relations Council, 14 June 2004.

issue of the invasion of Iraq in 2003.³⁷¹ The ENP has been even considered to embody the 'regional implementation of the European Security Strategy.'³⁷² These two policies should be considered as interlinked and developed in parallel. The ENP Strategy Paper, in its introduction, explicitly provides that the new policy 'will also support efforts to realise the objectives of the European Security Strategy.'³⁷³ The European Security Strategy in turn gave important meaning to the idea of 'building security in the neighbourhood' when declaring that 'we need to extend the benefits of economic and political cooperation to our neighbours in the East while tackling political problems there.'³⁷⁴ The ENP Strategy Paper follows the same logic, establishing a task for the EU to make a particular contribution to stability and good governance in the immediate neighbourhood and 'to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations.'³⁷⁵ In addition to the cross-references in both documents, the terminology used for both the ENP and the Security Strategy seems to be interchangeable.

Therefore, the security aspects should be considered to be fundamental to the entire policy, with security as the central objective, while the objectives of stability and prosperity are designed to lead through political and economic development to

³⁷¹ This Strategy intends to express the role of the Union as a global player able to respond to the global challenges to security generally in the world and its neighbourhood in particular; A Secure Europe in a Better World, European Security Strategy Paper, Brussels, 12 December 2003 (hereinafter the European Security Strategy Paper); Missiroli and Quille, 'European Security in Flux' in Cameron, (ed.), *The Future of Europe: Integration and Enlargement*, (London: Routledge, 2004), 114-134, at 118-119; Lynch, 'The European Neighbourhood Policy,' Institute for Security Studies, Paper presented at the workshop "European Neighbourhood Policy: Concepts and Instruments", Prague, June 2004, organised by the European Commission with DGAP, CEFRES and IIR, at 2; Aliboni, *supra note* 90, at 1.

³⁷² Hillion, 'The EU's Neighbourhood Policy towards Eastern Europe' in Dashwood and Maresceau, (eds.), *Law and Practice of EU External Relations*, (Cambridge: Cambridge University Press, 2008), 309-333, at 314.

³⁷³ ENP Strategy Paper, at 2, 6.

³⁷⁴ European Security Strategy Paper, at 8.

³⁷⁵ ENP Strategy Paper, at 6.

security.³⁷⁶ Security on the EU borders will be increased if stability is spread 'both within and between the neighbouring states' and their prosperity is increased through social and economic development.³⁷⁷ It has been suggested that the ENP is a 'logical extension of CFSP concerns,' where the CFSP which 'did not have at its core a coherent strategy towards the EU's immediate neighbours would be a contradiction in terms.'³⁷⁸

In this sense the role of the neighbourhood as regards the EU's security is two-fold. First, the neighbourhood is a threat on its own, the conflicts in the South Caucasus, Transnistria and in the Middle East presenting direct risks for the EU whether in the form of migration, trafficking, or suspension in energy flow. The integration of neighbours as a 'potential security menace' will eventually contribute to achieving the security goal.³⁷⁹ Second, transforming its neighbours into politically and economically stable countries will help the EU to create a necessary 'buffer zone' or 'functioning semi-periphery' between the EU and the troubled areas further in the East and South.³⁸⁰ Thus, one can conclude that security as a strategic objective is the main catalyst behind the ENP and the EU's involvement in the neighbourhood.

³⁷⁶ Cremona and Hillion, 'L'Union fait la force? Potential and Limitations of the ENP as an Integrated EU Foreign and Security Policy' in Copsey and Mayhew, (eds.), *European Neighbourhood Policy: The Case of Europe*, Sussex European Institute, SEI Seminar Papers Series Number 1, 2006, 20-44, at 22-23.

³⁷⁷ Cremona, 'The European Neighbourhood Policy as a Framework for Modernisation' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/10, 5-15, at 7.

³⁷⁸ Wallace, 'Looking after the Neighbourhood: Responsibilities for the EU-25', Policy Papers No. 4, Notre Europe 2003, at 27; Smith and Webber, *supra* note 23, at 81.

³⁷⁹ Meloni, 'Who's My Neighbour?' (2007) 7 *European Political Economy Review* 24, at 33.

³⁸⁰ Zaiotti, *supra* note 107, at 149; Marchetti, *supra* note 97, at 16-17; Lynch, 'The European Neighbourhood Policy', Institute for Security Studies, Paper presented at the workshop 'European Neighbourhood Policy: Concepts and Instruments,' Prague, June 2004, organised by the European Commission with DGAP, CEFRES and IIR; at 2; Tovias, 'Is the ENP Directed to Its Mediterranean Partners Coherent?', Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy, at 5.

Despite the presence of security on the ENP agenda, it has been considered that the ENP is ‘the example *par excellence* of civilian power in Europe,’ where the security element is ‘devoid of military component.’³⁸¹ The instruments of the policy are clearly civilian, that is focused on ‘persuasion and negotiation’ and based on the EU’s economic power and without a threat of using force,³⁸² which will be discussed in the next chapter. However, one can hardly reject the rationalist presumption that stabilising the neighbours will serve the aim of the EU’s security and allow it to pursue its own political interests. What is the role for democracy promotion then?

3.2. *Democracy promotion within the ENP*

Although the central place accorded to the security issues within the ENP objectives raises scepticism regarding democracy promotion, the latter does appear within the ENP, in two ways.

While there is an opinion that together with stability democracy appears as one of the overarching goals of the entire policy,³⁸³ the analysis of the policy documents reveal no precise role for democracy *per se* within the objectives of the policy, but also some of the documents are rather silent on this matter. Rather, one can assume that democracy promotion is present within the objectives of the policy as an element of stability. As noted by Cremona, ‘stability is closely linked to democratisation, political reform and good governance.’³⁸⁴ In this perspective, promotion of democracy also contributes to the security interests of the EU, where

³⁸¹ Khasson, Vasilyan, Vos, ‘Everybody Needs Good Neighbours’: The EU and its Neighbourhood’ in Orbie, (ed.), *Europe’s Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 217-237, at 220, 223.

³⁸² Smith, ‘The End of Civilian Power EU: A Welcome Demise or Cause for Concern?’ (2000) 35 *The International Spectator* 11, at 13.

³⁸³ Schimmelfennig, ‘European Neighbourhood Policy: Political Conditionality and its Impact on Democracy in Non-Candidate Neighbouring Countries’. Paper prepared for the EUSA Ninth Biennial International Conference Austin, March 31-April 2, 2005.

³⁸⁴ Cremona in Maiani, Petrov, Mouliarova, *supra* note 116, at 7.

promotion of democracy within the ENP is vital 'if the deeper roots of insecurity are to be resolved effectively.'³⁸⁵ However, there is a fear that stability might be interpreted narrowly as 'an instrument to achieve an overarching security goal' risking exclusion of democracy promotion, since strictly speaking it is not necessary for the purposes of EU security.³⁸⁶ This seeming contradiction derives from security as an objective in long-term and short-term perspectives. While in the short-term democracy as an objective can be compromised for pursuing security interests, in the long term efficient security cannot be achieved without stable democracies functioning in neighbouring countries.

However, democracy promotion appears also in a more clearly spelled out way within the ENP, which is the reference to 'shared values' as a basis for the policy. In this sense, promotion of democracy has been present on the ENP agenda since the launch of the project. In December 2002 the European Council declared that the new circumstances brought by enlargement 'presents an important opportunity to take forward relations with neighbouring countries based on *shared political and economic values*.'³⁸⁷ It is the determination of the Union to uphold its values in international relations as specified in the ENP Strategy Paper,³⁸⁸ which according to Article 6 EU include liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Thus, the EU does not have to designate the promotion of democracy as a separate objective: it should be assumed everywhere, since these principles should be applied to the entire framework of international relations of the

³⁸⁵ Dannreuther, *supra* note 93, at 201.

³⁸⁶ Meloni in Cremona and Meloni, *supra* note 31, at 102.

³⁸⁷ Copenhagen European Council, 12 and 13 December 2002, Presidency Conclusions, paragraph. 22.

³⁸⁸ ENP Strategy Paper, at 12.

Union.³⁸⁹ It is, therefore, the self-representation of the EU which brings democracy forward.

Therefore, while the EU is not concealing its real interests, it nevertheless formulated the ENP to express ‘the aim of exporting the EU's values to its immediate periphery.’³⁹⁰ In this sense, commitment to ‘shared values’ including democracy, is considered to be one of the main aims of the policy.³⁹¹ Using the terms of Manners, it can be suggested that through the rhetoric of shared values, the EU is ‘diffusing’ its unique normative basis, including democracy as a norm, in its relations with neighbours.³⁹² It is this ‘value dimension’ which is often referred to as a significant development in comparison with previous EU policies.³⁹³

Although legitimate concerns have been expressed as to whether the EU in fact questions the ‘sharedness’ of its values on behalf of its neighbours,³⁹⁴ this aspect of the policy has another dimension to it, which is the fact that commitment to ‘shared values’ will serve a reference point for closer economic integration. Thus, even if the policy is not directly aimed at democratisation of the neighbouring countries, it is an inherent part of the ENP’s methodology, in its conditionality element. Therefore, ‘each of the aspects of the neighbourhood cooperation will be

³⁸⁹ Koutrakos, *EU International Relations Law*, (Oxford: Hart, 2006), at 484.

³⁹⁰ Del Sarto and Schumacher, ‘From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?’ (2005) 10 *European Foreign Affairs Review* 17, at 23.

³⁹¹ Tocci, ‘Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law’ in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 23-35, at 27.

³⁹² Manners, ‘Normative Power Europe: A Contradiction in Terms’, (2002) 40 *Journal of Common Market Studies* 235, at 236, 244.

³⁹³ Bosse, ‘Values in the EU’s Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?’ (2007) 7 *European Political Economy Review* 38, at 39.

³⁹⁴ Tocci, in Cremona and Meloni, see above, at 28.

connected to the question of ownership of shared values' making the relationship to take place.³⁹⁵

Turning to the countries of the South Caucasus, one can assume that they officially share the EU's values, including democracy and human rights, since they all are members of the Council of Europe and submit to the jurisdiction of the European Court of Human Rights.³⁹⁶ However, as discussed in Chapter II, genuine commitment to these values in all three countries is still to be instigated. As a matter of fact, this has been realised on behalf of the Commission, which when including Georgia, Armenia and Azerbaijan in the policy in the Strategy Paper, stressed 'the desire of the EU to see reinforced a credible and sustained commitment towards democracy, the rule of law, respect for human rights, and progress towards the development of a market economy'.³⁹⁷

Consequently, one can conclude that democracy promotion found its place both within the ENP objectives and its methodology. However, certain concerns should be raised in this respect. There is a general presumption of the EU being inconsistent in its method of promoting democracy outside the enlargement framework.³⁹⁸ Such inconsistency can be explained in the difference between the objectives of enlargement and the EU's foreign policy outside the enlargement framework. This suggests that the EU's identity objectives will not be as compelling as in the enlargement case, in particular when there are clearly identifiable

³⁹⁵ Cremona, 'Values in the EU Constitution: the External Dimension, Centre on Democracy, Development and the Rule of Law', Stanford Institute for International Studies, Working Papers, No 26, 2 November 2004, at 10.

³⁹⁶ Emerson, 'European Neighbourhood Policy: Strategy of Placebo?', Centre for European Policy Studies, Working Document No 215/November 2004, at 10.

³⁹⁷ ENP Strategy Paper, at 11.

³⁹⁸ Schimmelfennig, 'European Neighbourhood Policy: Political Conditionality and its Impact on Democracy in Non-Candidate Neighbouring Countries', Paper prepared for the EUSA Ninth Biennial International Conference Austin, March 31-April 2, 2005; Raik, 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', Centre for European Policy Studies, Working Document No 237/February 2006, at 18.

rationalistic considerations to the cooperation offered. This potentially takes a form of contradiction in the objectives of the ENP. A distinction has been made by Tocci between the ENP's milieu and possession goals.³⁹⁹ The milieu goals include the promotion of democracy and human rights, as well as the rule of law, international law, conflict resolution and good neighbourly relations.⁴⁰⁰ In contrast, the possession goals (alternatively they can be called strategic objectives) include advancing narrower EU interests in commercial relations, migration, border management and energy security,⁴⁰¹ which can be summarised in the broader concept of security. Though it might seem that achievement of normative goals is necessary for the strategic objectives which have a long-term perspective, an intrinsic controversy is apparent in their nature. While milieu objectives are value-based, the possession or strategic objectives seem to be rooted in the EU's political interests. In addition, the means of engagement are different in order to pursue the two groups of objectives. 'Conditional engagement' is required to promote the milieu goals, while the strategic objectives will be achieved by means of cooperation with *de facto* actors, whether it is an authoritarian government or not.⁴⁰² This requires clear identification of the 'the real point of EU engagement,' where the democratisation agenda can even become a complication for pursuit of such interests as energy resources or the fight against terrorism requiring strong, if not authoritarian, leadership, '*à la* Aliev.'⁴⁰³

What matters is that the EU already has a record of undermining normative goals at the expense of strategic ones, such as security, energy supply, diplomacy and

³⁹⁹ Tocci, in Cremona and Meloni, at 29-30.

⁴⁰⁰ *Ibid*, at 29. Arguably conflict resolution can be located in the second group of objectives.

⁴⁰¹ *Ibid*, at 29-30.

⁴⁰² *Ibid*, at 30.

⁴⁰³ MacFarlane, *supra* note 21, at 131.

other political factors.⁴⁰⁴ Thus, even though most of the time the EU stems in its external relations with normative rhetoric, it ultimately acts in a realist, imperialist or *status quo*-oriented way.⁴⁰⁵ Such an example has been noted in relation to Azerbaijan in Chapter II as regards the conclusion of the PCA.⁴⁰⁶ In relation to other neighbours, a clear example of compromise of milieu goals serves the EU's reaction to Russia's human rights violations in Chechnya, where the PCA's 'essential element' conditionality has been avoided.⁴⁰⁷

The trend seems to continue with the ENP. The EU has been noted as not taking a role of active promoter of democracy in Action Plans signed with Azerbaijan, Morocco, Tunisia, Egypt and Jordan.⁴⁰⁸ Moreover, certain instances of 'imperialist' and 'status-quo' EU action within the ENP have been observed.⁴⁰⁹ The EU can also engage in *realpolitik* within the ENP. For instance, the decision to facilitate a visa regime for Georgian citizens in 2008 was hardly based on Georgian achievements on a normative basis advocated through the ENP.⁴¹⁰ Rather it can be considered to be a consolation step after the war with Russia in order to assert the EU's its presence in the region and demonstrate a positive attitude towards Georgia. Thus, credit should be paid to the view according to which, at least in the ENP domain, the EU is nothing but a 'normal' political force, whose external actions are

⁴⁰⁴ Emerson, Aydin, Noutcheva, Tocci, Vahl and Youngs, 'The Reluctant Debutante: The European Union as Promoter of Democracy in its Neighbourhood', Centre for European Policy Studies, Working Document No 223/July 2005, at 3.

⁴⁰⁵ Tocci, 'The European Union as a Normative Foreign Policy Actor,' Centre for European Policy Studies, Working Document No. 281/January 2008.

⁴⁰⁶ See page 34, Chapter II.

⁴⁰⁷ Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *European Foreign Affairs Review* 253, at 273; Hillion, 'Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex-Soviet Union', (1998) 3 *European Foreign Affairs Review* 399, at 417; Petrov, 'The Partnership and Cooperation Agreements with the Newly Independent States' in Ott and Inglis. (eds.), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, (Hague: T.M.C Asser Press, 2002), 175-194, at 179.

⁴⁰⁸ Emerson and other, see *supra* note 43, at 15.

⁴⁰⁹ Tocci, *supra* note 144, at 19-22, at 25-28.

⁴¹⁰ Conclusions of Extraordinary European Council, Brussels, 1 September 2008.

‘an organic whole with multiple dimensions and in which competing visions of different intervening actors co-habit.’⁴¹¹

Therefore, there is an apparent complication between the rationalist and constructivist conceptualisation of the EU’s foreign policy in its proximity, or simply speaking the EU’s interests in its neighbourhood and its determination to uphold its identity internationally. Despite ostensibly being committed to EU values, the objectives of the ENP will at points undermine the normative stance of the EU, which will most certainly preserve the rhetoric, but not necessarily be faithful to it. These complications will be apparent in the ENP methodology.

4. ENP as a form of Europeanisation

The concept of Europeanisation is used for the purposes of conceptualising the patterns of European transformation in terms of institutional or policy developments. The definitions of Europeanisation vary depending on ‘inwards’ or ‘outwards’ approaches. The ‘inwards’ looking approach considers patterns of European transformation between the EU and its Member States in various scenarios: a ‘top-down’ and ‘bottom-up’ approaches, a comparative perspective of the changes taking place in different Member States, or Europeanisation of Member States policies in one particular policy field, or a more general institution building at the EU level.⁴¹²

⁴¹¹ Johansson-Nogues, ‘The (Non-) Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?’ (2007) 7 *European Political Economy Review* 181, at 187.

⁴¹² Olsen, ‘The Many Faces of Europeanization’, (2002) 40 *Journal of Common Market Studies* 921; 923-924; Quaglia, Neuvonen, Miyakoshi, Cini, ‘Europeanization’ in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 405-419, at 406-408; Wong, ‘The Europeanisation of Foreign Policy’, in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 135-153, at 136-138.

The concept of Europeanisation in outwards terms encompasses the idea of 'exporting forms of political organisation' by the EU.⁴¹³ Though Olsen classifies the case of enlargement as Europeanisation through 'changes in external boundaries,'⁴¹⁴ the enlargement policy can also be brought with the previous concept, that is the 'exporting forms of political organisation.' Understood within the narrative, the concept of Europeanisation can be defined as the extension of the EU rules beyond its borders and their adoption by the countries which are not member countries of the Union.⁴¹⁵ 'Europeanisation' is a consequence of the transfer of the policies of the Union into surrounding countries or the EU projecting its governance beyond its borders. The EU's internal model as a 'normative' one serves as a basis for policy transfer to addressee countries.⁴¹⁶

Integration and stabilisation are two types of outwards understanding of the Europeanisation.⁴¹⁷ Though both types of policies develop a relationship with the neighbours of the EU, they have substantively different aims. The integrationist approach is aimed at transforming the neighbouring countries into 'European' countries and bringing them within the EU based on the conditionality approach, while the policy of stabilisation draws on regional cooperation and partnership on widely ranging matters.⁴¹⁸ The latter has been also called 'regionality.'⁴¹⁹

⁴¹³ Olsen, see above, at 924.

⁴¹⁴ *Ibid*, at 923.

⁴¹⁵ Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006, p. 386.

⁴¹⁶ Youngs, (ed.), *New Terms of Engagement: Global Europe*, The Foreign Policy Centre and British Council, Brussels, 2005, at 3.

⁴¹⁷ Tassinari, *supra note* 96, at 5.

⁴¹⁸ Moschella, 'European Union's Regional Approach towards its Neighbours: The European Neighbourhood Policy vis-à-vis Euro- Mediterranean Partnership' in Attina and Rossi, (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 58-66, at 58.

⁴¹⁹ Missiroli, 'The EU and its Changing Neighbourhood' in Dannreuther, (ed.). *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 12-26, at 12.

An example of the integrationist type of Europeanisation is the enlargement policy can be cited which is based on 'internal incentives model' and follows the 'logic of consequentialism.'⁴²⁰ This type of Europeanisation based on conditionality largely proved to be successful in transformation of relevant countries through adoption of the EU's model of governance. Conversely, the stabilisation patterns established with the Eastern and Southern neighbours before their inclusion in the ENP, in the absence of a strong motivation, did not boost any changes in the countries involved judging by the experience of the last decade.⁴²¹

As noted earlier, the ENP tries to solve the 'inclusion-exclusion' dilemma and minimise the importance of the border between the enlarging EU and its neighbours.⁴²² In this context this dilemma has another dimension to it, which is the choice between the integration and stabilisation patterns. The ENP can be considered to be a type of Europeanisation combining elements of both models, where the EU attempts at transposing its model of governance into its vicinity. Preserving the previous stabilisation pattern, the ENP is aimed also at integration with promises made to neighbours of a 'stake in the internal market' or 'sharing everything with the Union but institutions.'⁴²³ In this sense, the ENP can be considered as a new type of Europeanisation fusing in a single framework the traditional models of stabilisation and integration.

⁴²⁰ Meloni, nevertheless, cites four different models of Europeanisation, including the conditionality and the lesson drawing model following a 'logic of consequentialism' and the social and the model learning schemes focusing on persuasion and socialisation; Schimmelfennig and Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', (2004) 11 *Journal of European Public Policy* 661, at 663-664; Meloni, *supra* note 31, at 103.

⁴²¹ Haukkala and Moshes, *supra* note 31, at 14.

⁴²² Smith 'Engagement and Conditionality: Incompatible or Mutually Reinforcing?' in Youngs, (ed.), *Global Europe: New Terms of Engagement*, The Foreign Policy Centre, UK, 2005, 23-29, at 28.

⁴²³ Prodi 'A Wider Europe-A Proximity Policy as the Key to Stability', Speech to the Sixth ECSA-World Conference, 2002, Brussels 5-6 December, Speech/02/619; for further discussion of the ENP incentives see section 3.2.1 of Chapter IV.

The ENP as a type of Europeanisation will entail transformation of the EU's policies to the neighbourhood legal order. The calls for aligning the legislation of neighbours with the *acquis* for extension of internal market, for instance, can be considered as an expression of Europeanisation.⁴²⁴ Most importantly, the ENP's rhetoric on 'shared values' should be build into the bigger picture of Europeanisation, where democratic transformation is part of 'becoming like the EU.'

5. Conclusion

The major developments of the beginning of the millennium, such as new threats to international order after 9/11, the energy policies, and the Rose Revolution in Georgia, caused a shift in the attitude of the EU towards the South Caucasus. The strategic location of the region as an alternative transit route for natural resources and Azerbaijan being an exporter itself urged more attention from the EU towards the region, more correctly towards each of the countries.

Indeed, the relations between the EU and each of the three countries vary depending on the expectations and interests of the parties. Azerbaijan, being the biggest trading partner of the EU in the region, is expected to deliver on energy cooperation. Relations with Georgia can be described as reactive. Georgia's European aspirations are paying out in the form of more intense cooperation and enhanced assistance, and where the ENP has real potential to boost reforms. Armenia, on the other hand, is in a position of 'wait and see.' While not having much to offer to the EU, the potential of the ENP in this case will depend on the country's internal motivation and orientation in its external policy. Thus, different relations with each of the countries suggest that the EU will have different leverage to influence reforms through the ENP.

⁴²⁴ Wider Europe Communication, at 4, 10.

The potential of the ENP will also depend on the relations of the countries with other major international players who might potentially see the EU as creeping into their 'natural zone' of influence or whose foreign policy agenda is not always conforming the EU's. After the initial reluctance to engage with the region, through the inclusion of the South Caucasus in the ENP, the EU stepped into a region torn by conflicts and interlinked and very often contradicting interests of such powers as Russia, the US, Iran and Turkey. In contrast with its enlargement policy, the ENP has had a shaky start rooted in complex politics, where the international, regional and national rivalries make it even more difficult for the EU to assert its presence, which would allow it to pursue its objectives and to implement the ENP. In this sense, the promotion of democracy in the South Caucasus through the ENP bears the burden of not only EU's interests in the three countries, but also the geopolitical situation in the region.

In addition to strategic interests of the EU in the South Caucasus, the 2004 enlargement and at the time anticipated accession of Romania and Bulgaria turned Georgia into an immediate neighbour. Therefore, the political instability and insecurity in all three states are accompanied with such threats for the EU as illegal migration, trafficking etc. Though various objectives and aims have been articulated within different policy documents, the major objective the Union is pursuing through the ENP is ensuring its security through stability and prosperity being spread to the neighbourhood. The stability and prosperity of neighbours will not only ensure the EU's security from threats in the neighbourhood, but will also create a 'buffer zone' around it.

The ENP is clearly built around strategic objectives, where normative objectives, such as promotion of democracy should be either implied within the

concept of stability or considered to be present within the policy objectives as a 'shared value' of the Union to be upholding in its vicinity. The clear focus on the strategic objectives within the ENP which might lead the EU to act in a 'much more conservative and status quo-orientated approach' will be a reality check for the claims of the EU as a 'normative power' in the neighbourhood.

Possible conceptualisation of the ENP as a type of Europeanisation also reflects the idea of the 'shared values'. The ENP can be defined as Europeanisation in its 'outwards' understanding, where the EU transposes its model of governance to its vicinity. The ENP is significantly distinct from the usual stabilisation patterns, since in this case the EU has stronger incentives for the neighbouring countries. Despite similar institutional setup, similar instruments and mechanisms, and the conditionality principle, the ENP is also substantially different from the integrationist model of enlargement due to the absence of the membership perspective. However, at the same time it fits the integrationist model since it gives neighbours possibilities to integrate to EU. Thus, the ENP encompasses both stabilisation and integration patterns and presents a new model of Europeanisation, where the EU is attempting to export its 'normative model.'

Europeanisation in the neighbourhood will take place through the application of certain instruments and methods, which requires consideration of legal aspects of the ENP. Given, the complications inherent in the political nature of the policy, the coherence of its legal positions should be considered as vital for the implementation of the policy, in particular for democracy promotion.

CHAPTER IV

The European Neighbourhood Policy: Constitutional Aspects

1. Introduction

In order to pursue its interests and objectives in the neighbourhood the EU designed the ENP as a comprehensive policy instrument 'integrating related components from all three 'pillars' of [EU's] present structure.'⁴²⁵ The inclusion of the elements of the policy from different pillars is required for the integration of neighbours in different areas to allow the matters of cooperation to flow into each other. However, it is precisely this feature of the policy which presents the long-standing weakness of the EU's foreign policy action: the differentiated nature of decision-making procedure.⁴²⁶ The ENP, before the ratification of the Lisbon Treaty,⁴²⁷ raised the issue of the EU's lack of legal personality which required a fallback position on the established legal personality of the Community, as recognised in Article 281 EC, and the Member States. Within this context the role of EU institutions will be particularly important for the policy formulation.

The ENP was drafted within a period of almost one year, following the EU acknowledgment of the necessity of establishing new relations with its neighbours after the expected 2004 enlargement.⁴²⁸ One year is a rather short period of time for elaborating a policy including sixteen countries and cutting across all the three pillars of the EU legal order. The haste with drafting the idea of a 'Wider Europe' explains the automatic reliance on existing strategies which more or less proved to be successful, which is the enlargement policy. Therefore, different features of the

⁴²⁵ Commission Communication, ENP Strategy Paper, Brussels, 12.5.2004, COM (2004) 373 final, (hereinafter ENP Strategy Paper), at 6.

⁴²⁶ Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), at 401.

⁴²⁷ Article 47 of consolidated and amended EU Treaty states that 'the Union shall have legal personality', *OJ C* 115, 09.05.2008.

⁴²⁸ The General Affairs European Council of 15 April 2002 welcomed the intention of the Commission and the High Representative for the CFSP to prepare contributions for development of the relations with the neighbours. The Commission's Wider Europe Initiative has been presented in March 2003.

enlargement policy, such as the institutional setup, the mechanisms and the instruments, have been transferred to the ENP, allowing some commentators considering it as ‘mechanical borrowing.’⁴²⁹ Nevertheless, the different objectives of the two policies necessarily entail major differences between the two, such as different incentives, or new elements of methodology. These in turn pose a question mark over the ultimate success of borrowing instruments and methods from previous policies. Therefore, the major similarities between the ENP and pre-accession strategy should be found in the ENP substantive or internal aspects, while its external aspects will be the ones marking the difference between the two policies.

The Eastern Partnership is the most recent development in the ENP establishing an Eastern front for the policy. Not only does it nominally separate the Eastern neighbours from the Southern ones, but also attempts to accord the Eastern dimension of the ENP with features promising to take cooperation between the parties to a higher level.

In this light, this Chapter will explore the legal aspects of the policy. The first part of the Chapter will address the composition of the ENP as it follows from the EU’s multi-pillar constitutional structure. The role of the EU institutions and the Member States will be also considered within this part in order to define their function in the ENP formulation and subsequent implementation. The instruments and methodology of the ENP will be discussed further to picture the legal framework for democracy promotion. The discussion will be constructed with reference to the legal aspects of the enlargement policy. Finally, the Eastern Partnership, as the latest development of the ENP, will be addressed to reveal its potential of altering the democracy promotion pattern of the ENP. The Chapter will be summarised with

⁴²⁹ Kelley, ‘New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy’, (2006) 44 *Journal of Common Market Studies* 29, at 32.

conclusions on the ENP and its nature, and the prospects of democracy promotion within its legal framework.

2. The ENP within the EU's constitutional and institutional setup

In addition to its policy dimension, the ENP is a legal tool combining elements of the EU's constitutional structure and raising the matters of competence. This is one of the prominent questions of the EU's foreign policy action.

2.1. The ENP and EU constitutional law: Treaty structure

The scope of the ENP as a policy is very broad comprising issues of economic development, cooperation on environmental issues, justice and home affairs, border management, etc. As noted in the Introduction, it was the intention of the Commission to make the ENP a 'comprehensive policy' to include issues cutting across the EU's legal order. The multi-pillar structure of the Union's legal order was created by the Treaty of Maastricht and developed further by the Amsterdam Treaty.⁴³⁰ Thus, the legal order of the Union includes the first pillar made up of the three founding Communities.⁴³¹ The other two pillars identified by the EU Treaty were the CFSP and Cooperation in the Fields of Justice and Home Affairs, which was divided soon after to create a revised third pillar.⁴³²

The Union is rather ambitious to integrate its neighbours in various areas from trade related issues to border management through the ENP. For instance, the Action Plans with the South Caucasian states envisage cooperation on foreign and security

⁴³⁰ Article 1 of the TEU, 1991, provided that the Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by the Treaty, *OJ C 321 E/1*, 29.12.2006.

⁴³¹ The European Community, the European Coal and Steel Community, and the European Atomic Energy Community.

⁴³² The Amsterdam Treaty separated asylum, immigration by nationals of non-Member States, and judicial cooperation in civil matters from the third pillar and formed a new Title IV in the EC Treaty, while the third pillar was renamed Police and Judicial Cooperation in Criminal Matters; Denza, *The Intergovernmental Pillars of the European Union*, (Oxford: Oxford University Press, 2002), at 2.

policy, economic development, poverty reduction, cooperation on trade related issues, development of the energy sector, cooperation in the field of justice, freedom and security, conflict resolution, the fight against terrorism and others.⁴³³ All of these issues are combined from all three pillars of the Union. The ENP's cross-pillar dimension is an important aspect of its security basis and separate objectives which might be related to the first pillar, second or the third pillars, are aimed at contributing to the overall security objective.⁴³⁴ It is the complexity of the security issues challenging the EU in the neighbourhood which require diffusion of elements from different pillars.⁴³⁵ Therefore, it is not only the aims of the policy, but also its very content that are assembled around the security concerns of the EU.⁴³⁶

While this aspect of the ENP is considered to be 'a clear innovation' of the new policy,⁴³⁷ it nevertheless, raises the old issues of legal basis and competence.

The Lisbon Treaty contains a new provision setting the legal basis for the actions of the EU in its neighbourhood. According to Article 8 EU, the Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. Paragraph 2 of the same article provides for an opportunity to conclude specific international agreements with neighbouring countries. However, the complications with the ratification of

⁴³³ EU/Armenia Action Plan, EU/Georgia Action Plan, EU/Azerbaijan Action Plan.

Available at http://ec.europa.eu/world/enp/documents_en.htm#2.

⁴³⁴ Cremona and Hillion, 'L'Union fait la force? Potential and Limitations of the ENP as an Integrated EU Foreign and Security Policy', in Copsey and Mayhew, (eds.), *European Neighbourhood Policy: The Case of Europe*, Sussex European Institute, SEI Seminar Papers Series Number 1, 2006, 20-44, at 24.

⁴³⁵ Lynch, 'The Security Dimension of the European Neighbourhood Policy', (2005) 40 *International Spectator* 33, at 35.

⁴³⁶ Zaiotti, 'Of Friends and Fences: Europe's Neighbourhood Policy and the 'Gated Community Syndrome', (2007) 29 *European Integration* 143, at 148.

⁴³⁷ Comelli, 'The Challenges of the European Neighbourhood Policy', (2004) 3 *The International Spectator* 97, at 105-106.

Lisbon Treaty left the position uncertain.⁴³⁸ Thus, the ENP, as a part of the external policy of the Union, may be considered to be a joint product of the interaction between the Member States, the European Community for the issues under the first pillar and the broader European Union for the second and third pillars.⁴³⁹

One way to bypass the complex matters of competence and legal basis has been found through 'soft law' framework. Senden defines soft law as 'rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects.'⁴⁴⁰

Among the instruments through which the EU institutions undertake their tasks Article 249 of the EC Treaty mentions also recommendations and opinions, which have no binding force. The ENP added to this list of soft law instruments. Currently the instrumental framework of the ENP comprises a wide range of tools with no binding force. Thus, the main ideas of the ENP were circulated through the conclusions of the Council and communications and other policy documents from the Commission. The Action Plans with neighbouring states are legally binding neither on the Union nor on the relevant countries. In this scenario the Council and Commission are not bound to certain legal bases to establish conclusions or strategy papers.⁴⁴¹ It means that by referring to soft law instruments, the Union manages to avoid 'long competence discussions and 'pillar politics' from stalling and undermining policy development and coherence.'⁴⁴² The soft law framework as a

⁴³⁸ The Lisbon Treaty will enter into force in December 2009 after the ratification from the last Member State, the Czech Republic. The possible consequences of this event for the development of the ENP will be referred to in Chapter VIII.

⁴³⁹ Cremona and Hillion, *supra* note 10, at 20.

⁴⁴⁰ Senden, *Soft Law in European Community Law*, (Oxford: Hart Publishing, 2005), at 112.

⁴⁴¹ Cremona, 'The European Neighbourhood Policy: More than a Partnership?' in Cremona, (ed.), *Developments in EU External Relations Law*, (Oxford: Oxford University Press, 2008), 244-299, at 264.

⁴⁴² Cremona and Hillion, *supra* note 10, at 30-31.

policy characteristic will likely remain so,⁴⁴³ even when the Treaty of Lisbon enters into effect.

In addition to complex matters of competence, considerations on the complexities of a binding treaty with the neighbouring countries, not yet desirable due to the EU's indecisiveness as to the level of integration, the flexibility of the Action Plans and avoiding that the document becomes part of Community legal order have also influenced the adoption of soft law framework for the ENP.⁴⁴⁴

Even the hard law instruments such as the ENPI Regulation include soft law tools for programming of assistance issued to neighbours within the so called 'policy framework.'⁴⁴⁵ While more detailed discussion of the ENPI will proceed in Chapter VII, it is suffice to note that its soft law framework aims at elevating the status of the Action Plans, when indicating that the Action Plans will serve as a point of reference for establishing assistance priorities.⁴⁴⁶

Another group of hard law instruments within the ENP are the PCAs and the Association Agreements with the Southern neighbours. As noted earlier, the PCAs with the South Caucasian countries had their legal basis in Articles 300 and 308 EC. All three Action Plans with South Caucasian states envisage that the progress in implementing the Action Plans will serve as a basis for further development of cooperation, including conclusion of a new agreement. The delays with the ratification of the Lisbon Treaty have not allowed for the conclusion of a

⁴⁴³ Cremona, *supra* note 17, at 264; Cremona, 'The European Neighbourhood Policy as a Framework for Modernisation' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/10, 5-15, at 6.

⁴⁴⁴ For instance, the Action Plans with South Caucasian states provide for the possibility to review the content of the documents and their renewal; Van Vooren, 'The Hybrid Legal Nature of the European Neighbourhood Policy' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/2010, 17-27, at 22-23.

⁴⁴⁵ Regulation No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI Regulation), *OJ* L310/1, 09.11.2006, Article 3.

⁴⁴⁶ Article 3, ENPI Regulation.

neighbourhood agreement. However, the policy documents from the Commission refer to the possible conclusion of a new bilateral agreement aimed at establishing a deep and comprehensive free trade area.⁴⁴⁷ It has been suggested that such an agreement will be likely concluded as an Association Agreement based on Article 310 EC with the Community becoming a signatory together with the Member States.⁴⁴⁸ It is the very 'mixed' nature of such agreements which will require the participation of both the Community and the Member States.⁴⁴⁹

Conclusion of such an agreement through other legal bases, such as Article 300 EC, Article 308 EC or 181a EC will not mark a step forward in relations between the parties.⁴⁵⁰ Signing an agreement falling short of 'privileged partnership,' as defined by the ECJ, will not prove a major development as it is no longer necessary to make political distinction, as in the case of the EAs and the PCAs, and as it will undermine the importance of the cooperation as opposed to the Southern neighbours.⁴⁵¹

Moreover, once the Lisbon Treaty enters into force, Article 8(2) LTEU will likely be a new legal basis for any potential agreement. Since to date, the negotiations on conclusion of a new agreement have been taking place only with Ukraine, it can be

⁴⁴⁷ Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003 COM (2003) 104 final, (hereinafter Wider Europe Communication), at 17; ENP Strategy Paper, at 3; Communication from the Commission to the Council and the European Parliament on Strengthening the ENP, 4 December 2006 COM (2006) 726 final, (hereinafter Communication on Strengthening the ENP), at 4-5.

⁴⁴⁸ Hillion 'A New Framework for the Relations between the Union and its East-European Neighbours' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 147-154, at 149, 151; Cremona, *supra* note 17, at 290.

⁴⁴⁹ Smith defines mixed agreements to include 'areas within the Community's competence and within the competence of the Member States'; Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke : Macmillan, 1999), at 7.

⁴⁵⁰ Cremona, *supra* note 17, at 290.

⁴⁵¹ Hillion, 'Mapping-Out the New Contractual Relations between the European Union and its Neighbours: Learning from the EU-Ukraine 'Enhanced Agreement'', (2007) 12 *European Foreign Affairs Review* 169, at 175-176.

suggested that the possible agreements with the South Caucasian Republics will be negotiated based on the new Article 8(2) EU.

2.2. EU institutions and Member States

At first sight, the activities of the Community institutions within the ENP can be generally assessed as fitting into the theory of liberal intergovernmentalism. The first initiative of the activity appears on the intergovernmental meeting and is passed to the Commission which follows the issue up and then the Council, as an agent of the Member States, makes a decision.⁴⁵² The Member States are acting as the principals, where the Commission and the Council's High Representative for the Common Foreign and Security Policy are the agents.⁴⁵³

However, this integrationist theory does not solely explain the evolution of the ENP, since the Commission is a serious actor which has active participation in elaborating on the scope and content of the policy. As was noted by one of the Brussels officials, 'with its plethora of rhetorical devices, the Council of Ministers may have appeared as the most influential arbitrator of EU foreign policy, however when we are talking about 'real' foreign policy impact of the Union in the last decade, the power vests with the Commission.'⁴⁵⁴ Such a salient role of the Commission can be generally explained with the institutional set up for the elaboration of the ENP drawn from the enlargement experience. The latter was noted to be 'characterized by a high level of integration,' which involves a special

⁴⁵² Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', (1993) 31 *Journal of Common Market Studies* 473, at 480.

⁴⁵³ Emerson, Aydin, Noutcheva, Tocci, Vahl and Youngs, 'The Reluctant Debutante: The European Union as Promoter of Democracy in its Neighbourhood', Centre for European Policy Studies, Working Document No 223/July 2005, at 32.

⁴⁵⁴ Kelley, *supra* note 5, at 31.

arrangement between the institutions and the Member States, with a central role for the Commission.⁴⁵⁵

The Commission has followed the December 2002 Copenhagen European Council's initiative to enhance relations with Union's neighbours. It brought forward the Wider Europe Communication setting out the main ideas for future policy.⁴⁵⁶ In June 2003, the Thessaloniki European Council welcomed this Communication as a basis for developing a new range of policies towards the neighbours and defined the overall goals and principles. The Council's conclusions looked forward to the work to be undertaken by the Council and Commission in elaborating the essential features these policies.⁴⁵⁷ The decision-making during the period from the launch of the ENP initiative was undertaken by the Council. At the beginning of the process the Commission prepared Country Reports assessing the political and economic situation of relevant countries. The reports were submitted to the Council which decided whether to proceed with the next stage of relations.⁴⁵⁸ The next stage included the elaboration and signing of the ENP Action Plans with the partner countries. As a 'watchdog' of the implementation of all Community policies, also here the Commission is responsible for monitoring the process of the Action Plan implementation.⁴⁵⁹

As noted above, the ENP is projected on the basis of successful experience with the enlargement policy of the EU. Since the Commission played a major role in the transformation of acceding countries, subsequently in the case of ENP it continued to play the same role. Also, the Commission itself was eager to retain its leading role in the foreign policy of the Union, and therefore by adapting the pre-

⁴⁵⁵ Cremona and Hillion, *supra* note 10, at 28.

⁴⁵⁶ COM (2003) 104 final.

⁴⁵⁷ COM (2004) 373 final.

⁴⁵⁸ http://ec.europa.eu/world/enp/howitworks_en.htm.

⁴⁵⁹ ENP Strategy Paper, at 10.

accession process to the ENP, it has extended the significant foreign policy role it acquired previously.⁴⁶⁰ Consequently, the reliance on the pre-accession strategy in developing the ENP by the Commission is considered to be an important institutional 'mission creep.'⁴⁶¹ Since the Commission is traditionally considered to be a strong internal actor as opposed to its place in foreign relations domain, the role played by the Commission within the ENP is not happily accepted by the Member States, which went into shadows since the initiation of the policy.⁴⁶² Such a leading role for the Commission in the policy elaboration and monitoring process has been evaluated with positive connotations: it will pursue the Union's interests impartially therefore, avoiding different interests of the Member States.⁴⁶³ Nevertheless, despite the Commission's central role, one cannot dismiss the roles of the Council and the Member States.

The Council is the ultimate decision-making body.⁴⁶⁴ It seemed that the Council wished to limit the role of the Commission and to ensure its presence in the process of policy formation. For, instance after approval from the Council, the ENP Strategy Paper prescribed participation of the High Representative on the issues of political cooperation and CFSP matters during the Action Plans preparation.⁴⁶⁵ Accordingly, while drafting national reports, the Commission worked in close cooperation with the Council's CFSP High Representative. In particular, for the Action Plans with South Caucasian Republics, the Council instructed the Commission

⁴⁶⁰ Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006, at 396.

⁴⁶¹ Emerson *et al*, *supra* note 29, at. 5.

⁴⁶² *Ibid*.

⁴⁶³ Ott and Wessel, 'The EU's External Relations Regime: Multilevel Complexity in an Expanding Union' in Blockmans and Lazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 19-59, at 51.

⁴⁶⁴ Balfour and Missiroli, 'Reassessing the European Neighbourhood Policy', European Policy Issue Paper No 54, June 2007, at 21.

⁴⁶⁵ ENP Strategy Paper, at 4.

to undertake joint discussions in close cooperation, for questions connected with political cooperation and the CFSP, with the Presidency and the High Representative and, where appropriate with the Special Representative for the South Caucasus.⁴⁶⁶

Close cooperation with the High Representative for CFSP will be required for drafting periodic reports on the implementation of the Action Plans on the issues related to political dialogue and cooperation, as well as CFSP.⁴⁶⁷ This cooperation between the Commission and the High Representative for the CFSP is considered to be the contrasting point with the institutional practice of the enlargement policy demonstrating the first steps towards the 'dual-hatting' system proposed by the Constitutional Treaty and later on incorporated in the Lisbon Treaty.⁴⁶⁸ The cooperation between the Commission and the High Representative should ensure that there is a common position between the Commission and the Council, in particular that there is a coordinated action on behalf of the External Relations Commissioner and the High Representative for CFSP.

Second, the Council significantly influenced the pragmatic and rationalist turn the policy took after the Commission's Wider Europe Communication as noted earlier. The promise of 'everything but institutions' in the initial speeches and Wider Europe Communication was substantially abandoned since the ENP Strategy Paper. Not only the Council 'shuffled priorities' shifting the focus to the security challenges of the neighbourhood, but it also limited the incentives, where the freedom of

⁴⁶⁶ Council Conclusions of 25 April 2005.

⁴⁶⁷ On 13 December 2004, the GAER Council recalled its intention to undertake a first review of the implementation of the action plans at the latest two years from their adoption, on the basis of assessment reports to be prepared by the Commission, in close co-operation with the Presidency and the SG/HR on issues related to political cooperation and the CFSP, and with the contribution of ENP partners. At its meeting on 16/17 December 2004, the European Council also invited the Commission and the High Representative to report regularly on progress accomplished.

⁴⁶⁸ New Article 17 of the EU Treaty as amended and consolidated by Lisbon provides that the High Representative of the Union for Foreign Affairs and Security Policy shall at the same time occupy a position of a Vice-President of the Commission, *OJ C* 115/13, 09.05.2008; Cremona and Hillion, *supra* note 10, at 33.

movement of persons was noted to be 'the first victim of the Council's intervention.'⁴⁶⁹

As to the role of the European Parliament, parliaments are traditionally considered to be weak foreign policy actors. The European Parliament in its turn was excluded from being an actor in the foreign policy of the Union at all, and the general feature of the EU's policy action assumed a weak role for the European Parliament.⁴⁷⁰ However, the Parliament has gained considerable weight through its partial powers over the budget, where it has made common cause with the Court of Auditors over matters of financial control.⁴⁷¹

In the case of the ENP, the Parliament has adopted certain soft law instruments, such as the European Parliament resolution on the European Neighbourhood Policy.⁴⁷² It expressed its solidarity with other Community institutions in elaboration and further promotion of the ENP, and invited Commission's attention on certain aspects of the process of developing the ENP.⁴⁷³ Rather significant was the Parliament's role in lobbying for the inclusion Georgia, Armenia and Azerbaijan into the ENP to support political and economic reforms therein and to ensure greater involvement in conflict zones.⁴⁷⁴ Parliament adopted a

⁴⁶⁹ Balfour and Rotta, 'Beyond Enlargement. The European Neighbourhood Policy and its Tools', (2005) 40 *International Spectator* 7, at 9, 12-13.

⁴⁷⁰ Steter, 'Cross-pillar Politics: Functional Unity and Institutional Fragmentation of EU Foreign Policies', (2004) 11 *Journal of European Public Policy* 720, at 733.

⁴⁷¹ Emerson *et al*, *supra* note 29, at 34.

⁴⁷² European Parliament Resolution on the European Neighbourhood Policy, P6_TA(2006)0028.

⁴⁷³ Other documents by Parliament include European Parliament Resolution of 15 November 2007 on Strengthening the European Neighbourhood Policy (2007/2088(INI)); European Parliament Report on the Review of the European Neighbourhood and Partnership Instrument, (2008/2236(INI)).

⁴⁷⁴ Bosse, 'Values in the EU's Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?' (2007) 7 *European Political Economy Review* 38, at 43.

resolution with a recommendation to the Council inviting more attention to the EU policy towards the South Caucasus.⁴⁷⁵

Parliament's role is particularly important in relation to the issues of democracy and human rights on the external agenda of the EU. An early example of the Parliament upholding these values took place before the conclusion of the PCAs with South Caucasian states. The Parliament threatened to block the agreements if the Council did not include Title VIII on the Democratic clauses, discussed in Chapter II.⁴⁷⁶ It appears, the European Parliament adopted similar stance for the ENP. In its 2006 Resolution the Parliament emphasised the need to establish an effective monitoring mechanism and demonstrated readiness to restrict or suspend aid and even to cancel agreements with countries violating European and international standards of democracy.⁴⁷⁷ In its 2008 Resolution on South Caucasus the Parliament stressed that the 'ENP reviews and funding must be used to promote institution-building, respect for human rights, the rule of law, democratisation.'⁴⁷⁸

Such institutional interactions support the standpoint that the role of the Community institutions within the ENP stepped over the ordinary constitutional set up envisaged by the EC Treaty replicating institutional arrangements of the pre-accession experience.⁴⁷⁹ The Commission's activity is more than a mere guardian of the Treaty *vis-à-vis* the Member States. These institutional aspects of the ENP

⁴⁷⁵ European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on The European Union's Relations with the South Caucasus under the Partnership and Cooperation Agreements, P5_TA (2002) 0085, *OJ C* 293 E/96, 28.11.2002.

⁴⁷⁶ European Parliament, The European Parliament and the Defence of Human Rights, Sanctions, EP Report, Brussels, 2006.

⁴⁷⁷ European Parliament Resolution on the European Neighbourhood Policy, 19.01.2006, 2004/2166(INI).

⁴⁷⁸ European Parliament Resolution of 17 January 2008 on a more Effective EU Policy for the South Caucasus: from Promises to Actions, (2007/2076(INI)), paragraph 6.

⁴⁷⁹ Hillion, 'The EU's Neighbourhood Policy towards Eastern Europe' in Dashwood and Maresceau, (eds.), *Law and Practice of EU External Relations*, (Cambridge: Cambridge University Press, 2008), 309-333, at 317; Cremona and Hillion, *supra* note 10, at 28.

evolution bring out institutionalism as a theory of integration. In particular, it explains the role of the Commission in impacting the political outcomes within the so called 'neo-institutionalist' approach.⁴⁸⁰

However, there is a more sceptical view from Kochenov as to the precise role of all the institutions together with 27 Member States in the implementation of the ENP, according to which the institutional rivalry affects the direction of the ENP.⁴⁸¹ Although it is possible to disagree on qualifying the relations between the institutions as 'rivalry,' one can agree with the rationale that the sensitivities of the Member States will likely affect the progress of the ENP.⁴⁸² These remind us that the intergovernmentalist aspects of the EU's foreign policy cannot be abandoned.

Most importantly, the concerns of the Member States are reflected through the Council's participation in the policy. An example is noted above: the ENP objectives received a more 'securitarian outlook' with the Council's push. In addition, the European Council, heads of governments or states, serves as an alternative arena for Member States to influence the elaboration and subsequent development of the policy. Most importantly, the 2002 Copenhagen Summit acknowledged the opportunity brought by the enlargement 'to take forward relations with neighbouring countries based on shared political and economic values' setting the ground for the subsequent policy development.⁴⁸³ Consequently, the role of the European Council seemed to be marginal leaving the tasks of policy formation to the Commission and the Council.⁴⁸⁴ However, it is without a doubt that where a serious political decision

⁴⁸⁰ Rosamond, *Theories of European Integration*, (Basingstoke: Macmillan, 2000), at 113-122.

⁴⁸¹ Kochenov, 'The ENP Conditionality: Pre-Accession Mistakes Repeated' to appear in Delcour and Tulmets, (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, (Baden Baden: Nomos, 2008), available at <http://ssrn.com/abstract=1310780>, at 12.

⁴⁸² *Ibid.*

⁴⁸³ Copenhagen European Council, 12 and 13 December 2002, Presidency Conclusions, at 6.

⁴⁸⁴ Thessaloniki European Council, 19 and 20 June 2003, Presidency Conclusions, at 13; Brussels European Council, 16 and 17 October 2003, Presidency Conclusions, at 13.

is to be made, the European Council will be the platform for such decision-making. The inability to implement a coherent policy towards all neighbours in the East and South led to the necessary split in the policy according to its regional dimension, as predicted by Missiroli.⁴⁸⁵

The historical links of Southern European Member States with the Mediterranean region influenced their initiative of launching a Mediterranean Union within the ENP during the French Presidency in July 2008. On the other hand, Sweden together with Poland brought up an initiative of Eastern Partnership endorsed at the European Council in June 2008. The Eastern Partnership will include Ukraine, Moldova, Armenia, Azerbaijan, Georgia and possibly Belarus.⁴⁸⁶ Most importantly, the dissenting opinions of the Member States will be apparent in the instances of reacting to international developments, which was apparent in the EU's reaction to Russia after the Georgian-Russian war.

3. Instruments and methods of the ENP:

Quasi-enlargement integration?

The resemblance of the ENP instruments and methods with the enlargement policy is striking. It stems from the twofold connection the ENP has with the enlargement policy. The first dimension to this connection is that the ENP is not only the result of the 2004 and 2007 enlargement rounds, but it is also designed to be an alternative to the enlargement. The ENP was launched twelve days after the enlargement of 1 May 2004.⁴⁸⁷ The second dimension of this two-fold connection reflects the fact the ENP is largely based on the pre-accession strategy. One of the

⁴⁸⁵ Missiroli, 'The ENP Three Years on: Where From-and Where Next?', European Policy Centre, Policy Brief, March 2007.

⁴⁸⁶ See Section 4 below.

⁴⁸⁷ Harasimowicz, 'European Neighbourhood Policy, 2004-2006: the Growing Need for Strategy' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 81-94, at 81.

reasons behind this is the perceived success of the enlargement experience.

Enlargement is generally considered to be one of the most successful instruments of EU policy both by the EU institutions and academia.⁴⁸⁸ The outstanding success of this policy should be seen in its unique ability to increase political stability and prosperity, to boost radical economic reforms based on adoption of a new transparent and stable legislative and regulatory framework in the candidate countries by a sole promise of membership of the Union. One of the unique features of the success of enlargement is that the stability of acceding countries is rooted in common European values such as democracy, the rule of law, respect for human rights and the protection of minorities: the elements of EU normative basis.⁴⁸⁹ The importance of this political stability is in being a precondition for peace and neighbourly co-existence, as well as for a successfully functioning economy.

As of today there have been six rounds of enlargement in the Union.⁴⁹⁰ For the purposes of the ENP, the most important phases of enlargement are the recent rounds of enlargement in May 2004 and January 2007.⁴⁹¹ These enlargements welcomed the

⁴⁸⁸ Wider Europe Communication, at 5; Cremona, 'The European Neighbourhood Policy: Legal and Institutional Issues', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 25, 2 November 2004, at 6-7; Cremona, 'Enlargement: A Successful Instrument of EU Foreign Policy?' in Tridimas and Nebbia, (eds.), *European Union Law for the Twenty-First Century*, (Oxford: Hart, 2004), 317-414, at 397; Hillion in Dashwood and Maresceau, *supra* note 55, at 311; Kok, *Enlarging the European Union: Achievements and Challenges*, Report to the European Commission, EUI, 19 March 2003; Comelli, Greco, Tocci, 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy,' (2007) 12 *European Foreign Affairs Review* 203, at 210; Smith, 'Enlargement and European Order', in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 270-291, at 271.

⁴⁸⁹ Towards the Enlarged Union, Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries, 9 October 2002, COM (2002) 700, at 5.

⁴⁹⁰ The first three countries to join the European Community in 1973 were Britain, Denmark and Ireland. Eight years later Greece acceded to the Community. Spain and Portugal obtained the status of Member States of the Community in 1986 after the fall of their dictatorships. The fourth phase of enlargement included Austria, Finland and Sweden in 1995 within the Union.

⁴⁹¹ The countries acceded to the European Union in May 2004 are Malta, Cyprus, Czech Republic, Slovak Republic, Hungary, Poland, Latvia, Lithuania, Estonia and Slovenia. In January 2007 Romania and Bulgaria have successfully acceded to the European Union.

Central and Eastern European (hereinafter CEE) countries previously part of the Warsaw Pact and three Baltic republics of the former Soviet Union, as well as Malta and Cyprus. They were substantially different from the previous phases since they were based on unprecedented use of conditionality, the so called 'Copenhagen criteria.'⁴⁹²

There is another side to the rationale of relying on the enlargement experience. It derives from the presumption, that in times of crisis, the EU has a tendency of drawing on its previous policy 'even if it is clearly no longer appropriate.'⁴⁹³ The urgency to respond to new challenges and formulate a new policy addressed to neighbours compelled the EU institutions to rely on the existing resources and previous experience.⁴⁹⁴

Although it has been noted that nearly all official ENP related documents are silent on the obvious similarities of the ENP and enlargement process,⁴⁹⁵ from the very early stages of the circulation of the Wider Europe idea, it was clear that the Union would heavily rely on its experience with the enlargement process. In a speech in 2002 the then President of the Commission, Romano Prodi explicitly noted that many of the elements of the new policy would be accepted from the enlargement process due to the success of the latter.⁴⁹⁶

Thus, it is not surprising that the DG Enlargement of the Commission was entrusted with the task of elaborating the ENP. A Wider Europe Task Force was

⁴⁹² See section 3.2.1 below; Inotai, 'The CEECs: From the Association Agreements to Full Membership?' in Redmond and Rosenthal, (eds.), *The Expanding European Union: Past, Present, Future*, (Linne Rienner Publishers: London, 1997), 157-176, at 159.

⁴⁹³ Magen, *supra* note 36, at 401.

⁴⁹⁴ Delcour, 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia', (2007) 7 *European Political Economy Review* 118, at 122.

⁴⁹⁵ Kratochvil, 'The European Neighbourhood Policy: A Clash of Incompatible Interpretations' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 13-28, at 15.

⁴⁹⁶ Prodi 'A Wider Europe-A Proximity Policy as the Key to Stability', Speech to the Sixth ECSA-World Conference, 2002, Brussels 5-6 December, Speech/02/619.

created by the Commission which was supposed to frame the political concepts and methodologies of the ENP. This task force was acting under the direction of the Enlargement Commissioner, Günter Verheugen. However, at the end of 2004 the ENP together with the experts of the Task Force were transferred to the DG External Relations inheriting the functions previously carried out by the Task Force, and the new head of the Directorate General, Commissioner Benita Ferrero-Waldner, was called Commissioner for External Relations and Neighbourhood Policy.⁴⁹⁷ Nevertheless, even after these developments, the DG Enlargement did not retreat in its struggle with DG Relex to influence the policy shaping.⁴⁹⁸ It should be mentioned that the central place of security on the agenda of the ENP was also due to the influence of DG Justice, Liberty and Security. It claimed more participation over time and eventually succeeded in centralising the issues of asylum, illegal immigration and trafficking within the policy.⁴⁹⁹

Hence, most commentators agree that resources accrued by the Commission for elaboration of the enlargement policy, leading of negotiations and monitoring the process of implementation have been used for the ENP elaboration and affected the choice of rationale and instruments of the neighbourhood policy.⁵⁰⁰

⁴⁹⁷ Official website http://ec.europa.eu/comm/external_relations/index.htm; Comelli, Greco, Tocci 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy,' (2007) 12 *European Foreign Affairs Review* 203, at 213; Tulmets, 'Adapting the Experience of Enlargement to the Neighbourhood Policy: the ENP as a Substitute to Enlargement?' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 29-57, at 30.

⁴⁹⁸ Zaiotti, *supra* note 12, at 156.

⁴⁹⁹ *Ibid*, at 156-157.

⁵⁰⁰ Ott and Wessel in Blockmans and Lazowski, *supra* note 39, at 48-49; Kelley, *supra* note 5; Hillion in Dashwood and Maresceau, *supra* note 55, at 310; Meloni, 'Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 97-111, at 105.

3.1. ENP instruments: borrowing from enlargement

The similarities with the pre-accession strategy are particularly striking as regards the instruments, such as legal and policy documents, and mechanisms of the ENP, such as monitoring and reporting of the process. The ENP's mainly soft law framework is symptomatic of the tendency to rely on instruments 'not explicitly envisaged by the EU Treaty,'⁵⁰¹ according the policy with certain flexibility around the EU's multi-pillar structure. References have been made to numerous Commission documents, Council and European Council Conclusions, as well as letters and speeches of Commission officials, all being soft law instruments of the ENP.

This soft law framework includes Country Reports modelled after the Opinions and Progress Reports with the countries of Central and Eastern Europe during the pre-accession process. The Country Reports accompanying the ENP Strategy Paper presented the state of relations between the EU and each of its neighbours at the time.⁵⁰² Magen highlights that political principles defined as EU values are prioritised at the head of the reform agenda and the classification of the sections follows the broad structure of the Copenhagen criteria.⁵⁰³

Based on the Country Reports, the first policy documents of the ENP, that is the Action Plans, were elaborated establishing the main priorities for cooperation for a period of five years for the South Caucasian countries. In general, the Action Plans correspond to the Accession Partnerships with candidate countries during the pre-accession process. However, the Action Plans are more informal political documents negotiated by the parties and endorsed at the Cooperation Councils established by the PCAs as noted above. In contrast with the Action Plans, the Accession Partnerships

⁵⁰¹ Hillion in Dashwood and Maresceau, *supra* note 55, at 309.

⁵⁰² Bosse, *supra* note 50, at 48.

⁵⁰³ Magen, *supra* note 36, at 407-408.

were adopted by the Council in the form of a Decision based on an Article 308 EC Council Regulation.⁵⁰⁴ Further on, the Commission reports on progress achieved by each relevant country. The Action Plans envisage that the Commission, in close cooperation with the Secretary-General/High Representative will at regular intervals produce reports on the Action Plan's implementation.⁵⁰⁵ The Commission issued Progress Reports annually fixing the progress made by the parties in 2007 and 2008.⁵⁰⁶ This mechanism is also adapted from the pre-accession process, where every year the Commission reports on progress accomplished by candidates. Based on the results of the revision of the progress, the EU will decide on the adaptation and renewal of the Action Plan, whereas in the case of the enlargement process the Union updates the priorities contained in the Accession Partnerships almost every year.⁵⁰⁷ The Action Plans, in particular their focus on political reforms, will be discussed in detail in Chapter VI.

⁵⁰⁴ Hillion, 'Enlargement of the European Union: A Legal Analysis' in Arnulf and Wincott, (eds.), *Accountability and Legitimacy in the European Union*, (Oxford: Oxford University Press, 2002), 401-418, at 416-417.

⁵⁰⁵ For instance, EU/Armenia Action Plan, section 5.

⁵⁰⁶ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Azerbaijan, Brussels, 3 April 2008, SEC(2008) 391; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Azerbaijan, Brussels, 23 April 2009, SEC(2009) 512/2; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Armenia, Brussels, 3 April 2008, SEC(2008) 392; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Armenia, Brussels, 23 April 2009, SEC(2009) 511/2; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Georgia, Brussels, 3 April 2008, SEC(2008) 393; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Georgia, Brussels, 23 April 2009, SEC(2009) 513/2.

⁵⁰⁷ Baracani, 'The EU and Democracy Promotion: A Strategy of Democratization in the Framework of Neighbourhood Policy?' in Attina and Rossi, (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 37-57, at 55.

Besides these instruments and mechanisms following the pre-accession strategy examples, certain other new legal instruments have been adopted for the ENP.⁵⁰⁸ A new assistance instrument, the European Neighbourhood and Partnership Instrument (ENPI) has been introduced to replace the previous financial instruments, TACIS and MEDA operating in the neighbourhood including Russia.⁵⁰⁹ The assistance policy is complemented by other instruments like cross-border cooperation, Twinning, TAIEX: also a result of policy transfer from enlargement.⁵¹⁰ They also complement the soft law instruments and are examples of 'cooperation and education/training/learning strategies'.⁵¹¹

Apart from the ENPI Regulation, the PCAs are the only other hard law instruments within the ENP legal framework to this date. As noted earlier these bilateral agreements have been incorporated within the ENP,⁵¹² and the ENPI is envisaged to continue their financing.⁵¹³

This is rather interesting, since the ENP, as a primarily security driven policy, is being built upon the PCA framework which is primarily concerned with trade and economic related issues. Hillion considers that the inclusion of the PCAs within the ENP will cause 'political reorientation' for the agreements.⁵¹⁴ Indeed, the ENP documents are attempting to revive the contractual obligations between the parties. The Wider Europe Communication stressed that full implementation of the provisions

⁵⁰⁸ Cremona, *supra* note 17, at 263.

⁵⁰⁹ MEDA was the equivalent of TACIS for Southern neighbours; ENPI Regulation.

⁵¹⁰ TAIEX is Technical Assistance and Information Exchange Unit of DG Enlargement. The twinning programme allows bilateral relations between governmental institutions in the neighbouring countries and the EU Member States enables transfer of expertise; Tulmets, *supra* note 73, at 30; Cremona, *supra* note 17, at 265.

⁵¹¹ Cremona, *supra* note 17, at 265.

⁵¹² Wider Europe Communication, at 15; Council Conclusions on Wider Europe-New Neighbourhood, Thessaloniki European Council, 19-20 June 2003.

⁵¹³ Article 2, ENPI Regulation.

⁵¹⁴ Hillion in Dashwood and Maresceau, *supra* note 55, at 319.

of already existing agreements is a necessary precondition for any new development.⁵¹⁵

The continuation of the PCAs in the ENP is also apparent from the fact that the development and implementation of the Action Plans would start from analysing the achievements and failures of the PCAs. The Strategy Paper stressed the link between the ENP and the PCAs more accurately. First, the Action Plans will be aimed at the implementation of the provisions of the PCAs.⁵¹⁶ For instance, the Action Plans with the three South Caucasian countries make references to the PCA in certain areas.⁵¹⁷ In fact, while including the countries of the South Caucasus in the ENP, the Commission *inter alia* stressed the need for partner countries to make further progress in implementing their respective PCAs.⁵¹⁸ Second, the parties will benefit from the institutional structures of the PCA which are already in place for the purposes of political dialogue and monitoring.⁵¹⁹ Together with such 'political reorientation' new features of the ENP such as the new system of monitoring and new incentives might 'instil dynamism in the relationship.'⁵²⁰

However, the enhanced focus on the PCAs within the Action Plans *per se* cannot bring dynamism to the entire spectrum of relations between the parties. First, the trade oriented core of the PCAs will be relevant for the issues of economic integration without having a major impact on other areas of cooperation, including political reform. Second, domestic elites might not always be enthusiastic about the

⁵¹⁵ Wider Europe Communication, at 17.

⁵¹⁶ ENP Strategy Paper, at 15.

Also in 2005 Commissioner Ferrero-Waldner in one of her speeches has stated that the ENP (which in practice means the Action Plans) will bring into sharper focus the established the PCAs and Association Agreements; Ferrero-Waldner, 'Europe's Neighbours-Towards Closer Integration,' Speech given at the Brussels Economic Forum, 22 April 2005. Available at http://ec.europa.eu/external_relations/news/ferrero/2005/sp05_253.htm.

⁵¹⁷ Priority Area 5 of EU/Armenia Action Plan; EU/Georgia Action Plan, General Actions 4.3, 4.5; EU/Azerbaijan Action Plan, Priority Area 7.

⁵¹⁸ ENP Strategy Paper, at 11.

⁵¹⁹ ENP Strategy Paper, at 7.

⁵²⁰ Hillion in Dashwood and Maresceau, *supra* note 55, at 321.

PCA implementation.⁵²¹ The wide spectrum of cooperation issues within the ENP and the new incentives require a new agreement.

3.2. ENP methodology

The ENP has been noted to contain ‘diluted versions of enlargement methodologies.’⁵²² The ‘diluted’ presence of conditionality is most certainly apparent. Besides, the ENP methodology is further weakened with the contradictions present between the principles of conditionality, joint ownership and differentiation, all comprising elements of the ENP methodology.

3.2.1 Conditionality principle

As mentioned earlier, the major reason behind using enlargement’s rationale for the ENP was the perceived success of the last two rounds of enlargement. This success was linked to the idea of conditionality. As described by Smith, conditionality is the linking by an international organisation or a state of perceived benefits to another state to the fulfilment of economic and/or political conditions.⁵²³ In the EU context, most commonly conditionality is understood to describe the positive conditions the candidate countries must satisfy to become members of the Union. Thus, conditionality is the mechanism which allows the EU to use its ‘power of attraction’ to ‘try to effect change, to shape the surrounding environment.’⁵²⁴ They are the changes linked to the foreign policy objectives that enlargement is supposed to

⁵²¹ For instance, in Georgia it has been noted that the current authorities are not willing to implement the PCA, since the latter has been concluded by the previous Government. In Armenia, the efforts to implement the PCAs through a National Programme encompassing major legislative and institutional reforms have been mainly left on paper, which serves as a point of reference for ad hoc reforms within the Action Plans.

⁵²² Magen, *supra* note 36, at 386.

⁵²³ Smith ‘Engagement and Conditionality: Incompatible or Mutually Reinforcing?’ in Youngs, (ed.), *Global Europe: New Terms of Engagement*, The Foreign Policy Centre, UK, 2005, at 28.

⁵²⁴ Smith, ‘The Evolution and Application of EU Membership Conditionality’ in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press) 2003, 23-29, at 136.

achieve, such as good neighbourliness, settlement of border disputes, economic reforms and the strengthening of democracy.⁵²⁵

The conditionality mechanism applied during the last two rounds of enlargement particularly stands out. The political and economic conditions and the requirement to adopt the *acquis* were also present within the previous rounds of accession to the EC or EU. However, the major significance of the last two rounds of enlargement is influenced with the way the conditions of accession have been 'defined and applied': that is 'in a predictable manner.'⁵²⁶ Not only was it spelled out what is required from the candidate countries, but also the Commission undertook a rigorous role of monitoring their progress. The definition of the accession criteria took place at the 1993 European Council in Copenhagen opening the prospect of enlargement for the countries of Eastern and Central Europe. The re-defined accession criteria, which came to be called 'Copenhagen criteria,' are:

1. stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for human rights and respect for and protection of minorities;
2. a functioning market economy with the capacity to cope with competitive pressures and market forces within the EU;
3. ability to adopt the *acquis* and accept the aims of economic and political union.⁵²⁷

Following the European Council in Copenhagen certain other requirements were added to these main three membership conditions.⁵²⁸ One of these new

⁵²⁵ Cremona, 'Enlargement: A Successful Instrument of EU Foreign Policy?' in Tridimas and Nebbia, (eds.), *European Union Law for the Twenty-First Century*, (Oxford: Hart, 2004), 317-414, at 400.

⁵²⁶ Hillion in Arnall and Wincott, *supra* note 80, at 405-407; Hillion, 'The Copenhagen Criteria and their Progeny' in Hillion, (ed.), *EU Enlargement: A Legal Approach*, (Oxford: Hart, 2004), 1-22, at 3-4.

⁵²⁷ Conclusions of the Presidency, European Council in Copenhagen, 21-22 June 1993, SN 180/93, 12.

conditions was the so called ‘good neighbourliness,’ also referred to as the Essen condition,⁵²⁹ which assumes that applicant countries must cooperate with each other with an accent on peaceful resolution of any possible conflicts. In December 1995 the European Council in Madrid stated that the membership criteria also require that the candidate country must have created the conditions for its integration through the adjustment of its administrative structures to ensure not only the adoption but also the implementation of the *acquis*.⁵³⁰ The aim of this criterion is to assess a country’s ‘ability to take on the obligations of membership, including adhering to the aim of political, economic and monetary union.’⁵³¹

There is another distinct condition for membership: it is directed not to the candidates but to the Union itself, sometimes cited as the fourth Copenhagen criterion.⁵³² It is the Union’s own ability of absorbing new member states without overstretching its institutional and other capacities.⁵³³

It has been noted that the Copenhagen criteria demonstrate the civilian power of the EU, where it influenced the transformation of the candidate countries through adding a ‘coercive’, though still civilian element to its soft power.⁵³⁴ Adopting enlargement-like conditionality was supposed to accord the ENP with a similar

⁵²⁸ Smith, ‘The Evolution and Application of EU Membership Conditionality’ in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press, 2003), 105-139, at 118; Cremona, ‘EU Enlargement: Solidarity and Conditionality’ (2005) 30 *European Law Review* 3, at 16.

⁵²⁹ Inglis, ‘EU Enlargement: Membership Conditions Applied to Future and Potential Member States’ in Blockmans and Łazowski, (eds.), *The European Union and its Neighbours: a Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration*, (Hague: T.M.C. Asser Press, 2006), 61-92, at 74.

⁵³⁰ Tulmets in Kratochvil, *supra* note 73, at 31.

⁵³¹ Madrid European Council, 1995, Presidency Conclusions.

⁵³² Inglis in Blockmans and Łazowski, *supra* note 105, at 65-67.

⁵³³ Copenhagen European Councils, 21-22 June 1993, Presidency Conclusions, p. 13.

⁵³⁴ Smith in Hill and Smith, *supra* note 64, at 271; Ridder, Schrijvers, Vos, ‘Civilian Power Europe and Eastern Enlargement: The More the Merrier’ in Orbic, (ed.), *Europe’s Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 240-257, at 244.

‘transformationist rationale.’⁵³⁵ In his speech of 2002, Prodi proposed ‘to set benchmarks to measure what we expect our neighbours to do ..., we might even consider some kind of Copenhagen proximity criteria.’⁵³⁶ Since then, it has been obvious that the ENP is to be based on the same kind of positive conditionality that underpins the enlargement process.⁵³⁷

However, borrowing the conditionality principle from enlargement is not straightforward and it has its peculiarities. First of all, the accession criteria seem to be replaced with ‘the discourse on common values.’⁵³⁸ Undeniably, most of the ENP policy documents are built around the language of ‘shared values.’ For instance, the Wider Europe Communication provides that in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, the neighbouring countries should benefit from the prospect of closer economic integration with the Union.⁵³⁹ This has been considered to be ‘a quid pro quo’ approach similar to the one used in the accession process.⁵⁴⁰

Similarly, in the ENP Strategy Paper, the Commission stressed that ‘the ambition and the pace of development of the EU’s relationship with each partner country will depend on its degree of commitment to common values, as well as its will and capacity to implement agreed priorities.’⁵⁴¹ Tulmets notes that the Commission civil servants admit that the ‘common values,’ identified in the ENP Strategy Paper as respect for human rights, including minority rights, the rule of law, good governance, the promotion of good neighbourly relations, and the principles of

⁵³⁵ Comelli *et al*, *supra* note 64, at 210.

⁵³⁶ Prodi, *supra* note 72.

⁵³⁷ Hillion, ‘The Copenhagen Criteria and their Progeny’ in Hillion, (ed.), *EU Enlargement: A Legal Approach*, (Oxford: Hart, 2004), 1-22, at 14; Ferrero-Waldner, ‘The European Neighbourhood Policy: The EU’s Newest Foreign Policy Instrument’, (2006) 11 *European Foreign Affairs Review* 139.

⁵³⁸ Tulmets, *supra* note 73, at 30.

⁵³⁹ Wider Europe Communication, at 4.

⁵⁴⁰ Kelley, *supra* note 5, at 35.

⁵⁴¹ ENP Strategy Paper, at 8.

a market economy and sustainable development, have been defined based on the accession criteria.⁵⁴² Even the ENPI places a stronger emphasis on the commitment to common values and principles than the previous TACIS, which will be discussed in more detail in Chapter VII.⁵⁴³

The Action Plans with the countries of the South Caucasus also follow the language of ‘shared values,’ where they state that the ENP sets ambitious objectives based on commitments to shared values and effective implementation of political, economic and institutional reforms.⁵⁴⁴ This seems to replicate the Copenhagen criteria for the accession to the Union which, as was mentioned above, can be generally divided into political, economic and administrative criteria.

In addition, the cooperation with neighbours based on the Union’s values will be the imperative for the policy under Article 8 EU after the Lisbon Treaty enters into force.

Some commentators consider that the conditionality in the ENP case is different, since ‘the way to pursue this policy is not anymore political conditionality but rather benchmarks: clear and public definitions of the actions that the EU expects the partners to implement.’⁵⁴⁵ Nevertheless, setting up ‘clear and public definitions of the actions’ does not change the nature of conditionality *per se*, rather it might make the conditions more specific and detailed, which is still to be doubted.

It has been also noted, that the ENP is founded on negative conditionality based on the ENPI Regulation.⁵⁴⁶ The Regulation stipulates that the Council may take appropriate measures in respect of any Community assistance if a partner

⁵⁴² Tulmets, *supra* note 73, at 32.

⁵⁴³ Bosse, *supra* note 50, at 57.

⁵⁴⁴ Introduction to the EU/Armenia, EU/Georgia, EU/Azerbaijan Action Plan.

⁵⁴⁵ Rossi, ‘The European Neighbourhood Policy’ in Attina and Rossi, (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre “Euro-Med”, Department of Political Studies: 2004, 8-14, at 11.

⁵⁴⁶ See section 3 of Chapter VII below; Cremona, *supra* note 17, at 284.

country fails to observe the principles of democracy, liberty, respect for human rights, etc.⁵⁴⁷ In difference with positive conditionality, where the fulfilment of conditions takes cooperation to the next level, negative conditionality assumes the negative impact on the relations between the parties that can occur, once the pre-conditions are breached. The negative impact can take a form of suspension of aid, imposing sanctions or even suspension of the relations between the parties.⁵⁴⁸ Thus, the ENP conditionality can be described both in positive and negative terms.

Conditionality is also classified as 'ex-ante' and 'ex-post,' where the former refers to fulfilment of some conditions before establishing certain relations, and the latter assumes appearance of conditions after the establishment of relations.⁵⁴⁹ The ENP should be considered to include both the elements of ex-post and ex-ante conditionality. The above mentioned provision of the ENPI regulations has been considered to be an element of ex-post conditionality.⁵⁵⁰ Although it can be noted that for establishing relations within the ENP the neighbours did not have to satisfy any conditions, ex-ante conditionality is present in the policy as the further development of relations will depend on fulfilling certain criteria.

However, the major peculiarity of borrowing the conditionality principle from enlargement is linked to the question of incentives. There is an almost unanimous scepticism among the commentators as to the ability of conditionality to provide a boost for similar to enlargement reforms in the neighbourhood without the

⁵⁴⁷ Article 28, ENPI Regulation.

⁵⁴⁸ Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, (The Hague, London: M. Nijhoff, 2003), at 100-101; Baracani, 'The ENP-A New Anchor for Conflict Settlement?', Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy, at 20.

⁵⁴⁹ Fierro, *ibid*, at 98.

⁵⁵⁰ Cremona, *supra* note 17, at 284.

membership promise at stake.⁵⁵¹ The Wider Europe Communication made it clear that the development of a new relationship through the ENP will not include the membership perspective.⁵⁵² It also failed to establish what exactly the EU is offering to its neighbours instead. In this context, the policy has been rather ambiguous from the outset. There even might be a rationale behind Prodi's 'why should a less ambitious goal not have some effect?'⁵⁵³ However, it would work only if this 'less ambitious' goal is defined precisely.

The urgency to establish new relations with neighbours and to decide what to offer to all sixteen of them without disappointing the willing neighbours compelled the Commission to turn 'to the well-known delaying strategy of constructive ambiguity.'⁵⁵⁴ Indeed, ambiguity has been following ENP incentives since the initiation of the policy. Initially, grand promises have been voiced by the then Commission President Prodi in the form of 'more than partnership and less than membership' and 'sharing everything, but institutions.'⁵⁵⁵ The subsequent Wider Europe Communication referred to 'a stake in the EU's internal market and further integration and liberalisation to promote the four freedoms.'⁵⁵⁶ Although, the ENP Strategy Paper preserved the language on 'stake in the internal market,'⁵⁵⁷ the incentives of cooperation, in particular with Council involvement, were 'gradually watered down.'⁵⁵⁸

⁵⁵¹ Hill and Smith, (eds.), *International Relations and the European Union*, (Oxford: Oxford University Press, 2005), at 287-288; Cremona and Hillion, *supra* note 10, at 39; Missiroli, 'The EU and its Changing Neighbourhood' in Dannreuther, (ed.) *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 12-26, at 19.

⁵⁵² Wider Europe Communication, at 5.

⁵⁵³ Prodi, *supra* note 72.

⁵⁵⁴ Comelli, Greco, Tocci, *supra* note 64, at 213.

⁵⁵⁵ Prodi, *supra* note 72.

⁵⁵⁶ Wider Europe Communication, at 4.

⁵⁵⁷ ENP Strategy Paper, at 8, 14.

⁵⁵⁸ Kochenov in Delcour and Tulmets, *supra* note 57, at 15; Kelley, *supra* note 5, at 29, 39; Magen, *supra* note 36, at 413.

The language of the policy significantly changed with the Council Conclusions of 16 June 2003, where the initial extension of the internal market was replaced by the ‘perspective for participating progressively in the EU’s internal market and its regulatory structures, including those pertaining to sustainable development, based on legislative approximation.’ The perspectives for movement of persons were exchanged to enhanced cooperation on matters related to legal migration and, in general, the shift to security concerns has been apparent in different areas of cooperation.⁵⁵⁹ As noted earlier, the security dimension of the ENP is obvious also in the discourse on the four freedoms, where the free movement of persons, in terms of economic integration, is no longer articulated, and it is mostly migration issues which are at stake.⁵⁶⁰

The 2006 Communication on Strengthening the ENP in its turn recognised the necessity of enhancing the incentives of cooperation: ‘deeper economic integration with our ENP partners will be central to the success and credibility of the policy’ with a possibility of concluding a free trade agreement.⁵⁶¹ Thus, instead of the internal market, the focus currently is on deeper economic integration. Cremona considers that such integration will go significantly beyond a model free trade area not necessarily with all four freedoms, but most importantly it will allow for certain scope of ‘flexibility in the level of integration in different sectors.’⁵⁶²

Unless, the ‘carrot’ at stake is made clear to the neighbours, the ENP casts a shadow on the ultimate success of the policy implementation. It also risks undermining the efforts of the neighbours to integrate to the EU as a result of poor

⁵⁵⁹ General Affairs and External Relations Council, Conclusions on Wider Europe – New Neighbourhood, 16 June 2003, endorsed at the Thessaloniki European Council 19- 20 June 2003; a detailed comparison is undertaken by Balfour and Rotta, *supra* note 45, at 12-14.

⁵⁶⁰ Cremona in Maiani *et al*, *supra* note 19, at 13; Cremona, *supra* note 17, at 292.

⁵⁶¹ Communication on Strengthening the ENP, at 3-4.

⁵⁶² Cremona in Maiani *et al*, *supra* note 19, at 12; Cremona, *supra* note 17, at 290.

political back-up from top level leaderships.⁵⁶³ Absence of a well-defined 'common overarching goal' even questions the appropriateness of using conditionality at all, thus giving ground for certain commentators to consider other models of Europeanisation as more suitable for the neighbourhood.⁵⁶⁴

However, the lack of precise incentive is not the only factor undermining conditionality within the ENP. Other principles in the policy methodology might cause complications. It has been noted, that the language of conditionality has faded from the Wider Europe Communication to the ENP Strategy Paper in favour of an emphasis on partnership and differentiation.⁵⁶⁵

3.2.2 Principles of joint ownership and differentiation

The rationale behind the ENP rooted in the security concerns of the EU could not rest solely on the conditionality mechanism. In order to secure its interests and achieve the cooperation of the neighbours, conditionality was complemented by 'more compromising measures.'⁵⁶⁶

The Strategy Paper on the ENP has introduced a new principle of joint ownership.⁵⁶⁷ Following the language of the Strategy Paper, this principle entails that the EU will not impose priorities or conditions on its partners and Action Plans will take into account a clear recognition of mutual interests in addressing a set of priority issues. While it is intended to reflect also the interests of the neighbouring countries,

⁵⁶³ Helly, 'EU's Influence in its Eastern Neighbourhood: The Case of Crisis Management in the Southern Caucasus', (2007) 7 *European Political Economy Review* 102, at 108.

⁵⁶⁴ Meloni in Cremona and Meloni, *supra note* 76, at 107.

⁵⁶⁵ Tocci, 'Does the ENP Respond to the EU's Post-Enlargement Challenges?' (2005) 40 *International Spectator* 21, at 27.

⁵⁶⁶ Tulmets, *supra note* 73, at 35.

⁵⁶⁷ ENP Strategy Paper, at 8.

the principle of joint ownership in this sense gives the ENP a certain degree of flexibility.⁵⁶⁸

It should be noted that the Wider Europe Communication also touched upon the principle of joint ownership. The Commission stressed that the ENP has ‘a differentiated, progressive and benchmarked approach’ and the ‘benchmarks should be developed in close cooperation with the partner countries themselves, in order to ensure national ownership and commitment.’⁵⁶⁹ In the Commission’s view benchmarks are supposed to be more predictable and precise in comparison with traditional conditionality.⁵⁷⁰ In this sense the joint ownership principle should be viewed to supplement conditionality and bring more credit to the policy.

Indeed, the 2006 Commission Communication on Strengthening the ENP mentioned joint ownership as one of the strengths of the policy, where the Action Plans present a result of negotiation and political consensus between the parties.⁵⁷¹ The parties would be expected to be more committed to the priorities of cooperation which are the result of a joint negotiation process.

However, there are apparent contradictions within the ENP methodology. On the one hand, it seems that joint ownership does not sit well with the unequal conditions implied by conditionality.⁵⁷² The conditionality principle assumes that there are certain requirements set up from the very beginning, where the party establishing the requirements is strictly monitoring the fulfilment of the obligation by the other party eager to achieve what was promised. In addition, imposing certain requirements from the very start of the partnership process by one cooperating party to another, without considering the internal readiness of the neighbouring country,

⁵⁶⁸ Koutrakos, *EU International Relations Law*, (Oxford: Hart, 2006), at 377.

⁵⁶⁹ Wider Europe Communication, at 15, 16.

⁵⁷⁰ *Ibid*, at 16.

⁵⁷¹ Communication on Strengthening the ENP, at 3.

⁵⁷² Cremona and Hillion, *supra* note 10, at 40.

outlines the ownership of the process and raises doubts as to its joint nature. It can be assumed that joint ownership will be only possible within the limits created by the requirements imposed by unequal conditionality.

It has been also noted that the principle of joint ownership is not followed during the whole process of policy formulation. The neighbours do not affect the process of setting the agenda. The objectives and means of the policy are the same for all partners, and the partner countries can have a vote only where the partners are consulted in the elaboration of Action Plans.⁵⁷³ One can agree with this view while taking a closer look at the wording of the Commission's Communication. Accordingly, the Council should establish the Action Plans and accompanying benchmarks based on proposals from the Commission, and *wherever possible* with prior discussion with the cooperating countries.⁵⁷⁴

On the other hand, different intentions behind the conditionality and joint ownership,⁵⁷⁵ together with the principle of differentiation, are capable of undermining the conditionality itself.

The principle of differentiation is another element of the ENP's methodology which intends to adapt the pre-accession strategy to new tasks. Although the principle of differentiation has been present during the enlargement policy, within the ENP it acquired an official status.⁵⁷⁶ The application of this principle will likely have different implications for the ENP. If differentiation within the enlargement entailed that membership is a matter of time which might be different for different candidates, for the ENP it will lead to different levels of integration with the EU.

⁵⁷³ Haukkala, 'A Hole in the Wall? Dimensionalism and EU's New Neighbourhood Policy', The Finnish Institute of International Affairs, UPI Working Papers N.41, 2003, at 18-19.

⁵⁷⁴ Emphasis added; Wider Europe Communication, at 16.

⁵⁷⁵ Kelley, *supra* note 5, at 36.

⁵⁷⁶ Ridder et al, *supra* note 110, at 246.

Embodying a 'tailor-made' approach, differentiation assumes that, based on the common set of issues corresponding to the objectives of the ENP, the drafting of Action Plans and the priorities agreed with each partner will depend on the particular circumstances of that country.⁵⁷⁷ On its own it seems to be a promising basis for cooperation since, depending on the motivation and commitment of a certain country, the latter can achieve a higher level of integration in the absence of a single goal established for all the countries involved in the policy.⁵⁷⁸ Its significance was already apparent during the process of developing the ENP. Already at that stage, it was possible to classify neighbours involved depending on their ambitions within the policy.⁵⁷⁹ At the same time, it is exactly this aspect of differentiation which, instead of supporting the principle of joint ownership is more likely to 'create new dividing lines and undermining rather than supporting the principle of joint ownership',⁵⁸⁰ since, together with conditionality, it will lead the level of integration to differ from country to country as noted above.

Among the positive aspects of the introduction of the principle of differentiation to the ENP would make the use of conditionality 'less arbitrary by negotiating a set of realistic objectives with the partners, and by giving the process greater transparency and predictability.'⁵⁸¹ On the other hand, it could also predict the outcomes of conditionality with countries where the EU's leverage is not strong enough, either due to its own interests or the neighbouring country's unwillingness to integrate to the internal market. In addition, revising the different intentions behind

⁵⁷⁷ ENP Strategy Paper, at 8, 14.

⁵⁷⁸ Haukkala and Moshes, 'Beyond 'Big Bang': The Challenges of the EU's Neighbourhood Policy in the East', Helsinki: Finnish Institute of International Affairs, 2004, at 52.

⁵⁷⁹ These countries are classified as willing, passive, reluctant and excluded partners in Emerson, Noutcheva, Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an 'ENP Plus'', Centre for European Policy Studies, Policy Briefs, No 126, 21 March 2007.

⁵⁸⁰ Cremona and Hillion, *supra* note 10, at 40-41.

⁵⁸¹ Balfour and Rotta, *supra* note 45, at 13.

these principles, it should be noted that the conditionality mechanism is the one which allows the EU to act as a 'gravity centre' and transpose its normative model to the neighbourhood. On the opposite, the joint ownership and differentiation principles accord the ENP with flexibility for securing the EU's interests via responding to neighbours interests. It is these principles which, depending on the EU's interests in each neighbour country, will potentially undermine the EU's normative power, in particular 'trump' democracy promotion. Therefore, while conditionality assumes values embedded in law, joint ownership and differentiation assume interests deriving from political considerations.

One can conclude that initially relying on the enlargement experience seems to offer a credible start for the new policy. However, the absence of a membership perspective and the lack of precision as to the new incentives, together with the apparent contradictions implanted in the ENP methodology leave much scope for scepticism regarding the success of political reform within the latter. In addition, the new Eastern Partnership initiative seems to bring more confusion than ever.

4. Eastern Partnership: is it a new European Economic Area?

Application of similar set of instruments and mechanisms within the ENP to the Eastern and Southern neighbours was not justified due to the differences that existed in the relations between the parties, different political rationale pursued in both regions and the fact that Southern neighbours had a multilateral framework of cooperation with the EU. Against this background the regional split in the ENP between the Mediterranean and Eastern neighbours did not come with a surprise.

The idea of the Union for the Mediterranean was first articulated in 2007, and the Eastern Partnership was officially initiated by Poland and Sweden at the European Council in June 2008. The Conclusions of the European Council in June 2008

referred to the Eastern Partnership as an 'Eastern dimension' to the ENP and was addressed to Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan.⁵⁸² Whether this implied solely a regional split in the policy or accorded the cooperation between the EU and its 'European' neighbours with new nature was left for elaboration by the European Commission by spring of 2009. Due to the Georgian-Russian war in August 2008 the Extraordinary European Council of 1 September instructed the Commission to present a proposal earlier. The Commission drafted a Communication for the Eastern Partnership published on 3 December 2008. Accordingly, from bringing a new Eastern dimension to the ENP, the Eastern Partnership will 'make a step change in relations with these partners' in comparison with the ENP.⁵⁸³ This is embedded in the prospect of signing Association Agreements with each of the partners aimed at establishing a comprehensive and deep free trade area. The Commission's Communication went further to envisage the possibility of creating a Neighbourhood Economic Area based on the model of the European Economic Area 'where appropriate'.⁵⁸⁴

One could suggest that grouping the Eastern partners in a separate multilateral framework amounts to recognising the 'Europeanness' of Ukraine, Moldova, Belarus and the states of the South Caucasus as opposed to Southern Mediterranean states. However, the official documents on the Eastern Partnership are careful to avoid stressing this.⁵⁸⁵ Instead, the Eastern Partnership Communication solely mentions that the Eastern Partnership is 'without prejudice to individual countries aspirations for

⁵⁸² Presidency Conclusions, Brussels European Council 19/20 June 2008, at 19.

⁵⁸³ Eastern Partnership, Communication from the Commission to the European Parliament and the Council, COM (2008) 823 final, Brussels, 03.12.2008, at 2.

⁵⁸⁴ *Ibid*, at 10.

⁵⁸⁵ 'Brussels to recognise 'European aspirations' of post-Soviet states', *EU Observer*, 24.11.2008.

their future relationship with the EU,⁵⁸⁶ further heating the debates on the perspective of membership of the Eastern neighbours.

Apart from political and practical reasons requiring a special focus on the Eastern neighbours,⁵⁸⁷ the initiation of the Eastern Partnership can be linked to the incentives of cooperation. What the ENP lacked the most, in particular in this region where different countries had different aspirations towards the EU, was the clear incentives for cooperation, as discussed above.⁵⁸⁸ One would expect the Eastern Partnership to offer the neighbours in the East a precise 'carrot' to intensify the reforms, as the general aim of the Partnership is creating 'the necessary conditions to accelerated political association and further economic integration between the EU and interested partner countries.'⁵⁸⁹

The new initiative seems to offer promising incentives. According to the Commission's Communication, the Eastern Partnership will go so far to aim at establishing a single deep and comprehensive free trade area in the longer-term.⁵⁹⁰ It has been noted that the Eastern Partnership takes cooperation to the stage the ENP did not reach, suggesting liberalisation of more protectionist areas in agricultural and industrial goods.⁵⁹¹ In the long term the Eastern Partnership will be aimed at creating a visa free travel regime. Moreover, the Commission went so far to consider labour

⁵⁸⁶ Eastern Partnership Communication, at 2.

⁵⁸⁷ Among such reasons can be cited the Russian presence in the region discussed in Chapter II. Also the difference of Eastern Partners together with the objectives the Union is pursuing in its Eastern Neighbourhood justified a differentiated focus as opposed to the Southern neighbours.

⁵⁸⁸ While the authoritarian regime established in Belarus in 1990s is still ruling, the Orange Revolution in Ukraine has officially turned the political path of the countries towards democratisation bringing European integration to political agenda. The official orientation of Ukraine has attracted special attention to them by the EU. European aspirations of Moldova are close to those of Ukraine, where without making equivalent to Ukrainian political statements, it is expected that similar cooperation similar to the one offered to Ukraine would be available also for Moldova.

⁵⁸⁹ Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009, 8435/09, at 6.

⁵⁹⁰ Eastern Partnership Communication, at 3, 10.

⁵⁹¹ Balfour and Missiroli, 'Dealing with Troubled Neighbourhoods', Commentary, European Policy Centre, 12.02.2009.

mobility and opening up of the EU labour markets for the citizens of neighbours.⁵⁹²

The Joint Declaration of the Eastern Partnership Summit followed the Commission's Communication and focused on three priority areas of cooperation, which are trade, mobility and energy cooperation.⁵⁹³ Much will depend on the financial assistance the EU will provide to neighbouring countries to reach these incentives. A budget of €600 million is promised for the Eastern Partnership in addition to the ENP.⁵⁹⁴ Nevertheless, the assistance should come along with real promises for real commitments.

In instrumental terms the Eastern Partnership provides for the conclusion of Association Agreements with each of the six partners. Although, as noted above, the perspective of new agreements within the ENP would have most likely be concluded in the form of Association Agreements, the novelty of the Eastern Partnership is that it acknowledges that 'a step change in relations with these partners' should not affect each country's aspirations for their relations with the Union.⁵⁹⁵ This brings even more confusion to the incentives of the ENP.

If the ENP was drafted to exclude membership and the future agreements would have likely been concluded as an alternative to membership, the Eastern Partnership brings out the issue of membership again.⁵⁹⁶ This means that if the conclusion of Association Agreements is without prejudice to individual countries' aspirations,⁵⁹⁷ then, given necessary political context, the agreements can serve as a

⁵⁹² Eastern Partnership Communication, at 6.

⁵⁹³ Joint Declaration of the Prague Eastern Partnership Summit, at 7-8.

⁵⁹⁴ 'Eastern Summit to strengthen EU links with Eastern Europe and South Caucasus', Rapid-Press Release, 6 May 2009, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/700&format=HTML&aged=0&language=EN&guiLanguage=en>.

⁵⁹⁵ Eastern Partnership Communication, at 2.

⁵⁹⁶ Fierro distinguishes three types of association agreements: as a special form of development assistance, as preliminary to membership and as a substitute for membership; Fierro, *supra* note 124, at 27-28.

⁵⁹⁷ Eastern Partnership Communication, at 2, 4.

basis for future membership. Moreover, according to the Eastern Partnership Communication, the cooperation through the Association Agreements has been envisaged to lead to the creation of a network of Free Trade Areas that can eventually evolve into a Neighbourhood Economic Community 'taking inspiration from the European Economic Area where appropriate.' There have been certain discussions on prospect of EEA-like integration within the ENP,⁵⁹⁸ and the idea of creating a Neighbourhood Economic Community was even articulated in the Communication on Strengthening the ENP.⁵⁹⁹

Nevertheless, the official reference to the EEA model within the Eastern Partnership is rather significant. Initially created as an alternative to membership of the Community in 1994, the EEA included European Free Trade Association countries who were not members of the Community.⁶⁰⁰ The main purpose of the EEA was to create a 'dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition.'⁶⁰¹ The Commission envisaged the homogeneous economic area to embrace law which is substantially identical to the EC law and which should be enforced as uniformly as possible.⁶⁰² As in case of EEA countries, the Eastern Partners will have to adopt the entire *acquis communautaire*, as well as to accept the rulings of the ECJ on references from national courts.⁶⁰³

⁵⁹⁸ Pardo, 'Europe of Many Circles: European Neighbourhood Policy,' (2004) 9 *Geopolitics* 731, at 733; Gould, 'The European Economic Area: A Model for the EU's Neighbourhood Policy?' (2004) 5 *Perspectives on European Politics and Society* 171, at 177-184.

⁵⁹⁹ Communication on Strengthening the ENP, at 5.

⁶⁰⁰ Agreement on the European Economic Area, *OJ* L1, 03, 01.1994; Cremona, 'The "Dynamic and Homogeneous" EEA: Byzantine Structures and Various Geometry,' (1994) 19 *European Law Review* 508, at 508.

⁶⁰¹ Fourth Recital, Preamble to EEA Agreement, *OJ* 1994 L 1/1, Art. 1.

⁶⁰² The submissions of the Commission in Opinion 1/91, The Draft Treaty on a European Economic Area (No 1) (1991) 1 *CMLR* 245, at 259.

⁶⁰³ Cremona, see above, at 516, 518.

However, establishing a single neighbourhood area based on the model of the EEA will once again raise the issue of membership. This can be the possible significant difference between the ENP and the Eastern Partnership, since one of the principal distinctions between the ENP and the EEA was the fact that the latter did not exclude the membership of EFTA countries to the EU. Sweden, Finland and Austria were members of the EEA prior to their accession to the EU. Non-membership of the EU by Iceland, Norway and Lichtenstein is not the consequence of exclusion by the EU, but the choice of the citizens of these countries. In addition it should be noted, that the EEA is considered to bring a 'difficulty of managing deep integration in the absence of shared law-making institutions.'⁶⁰⁴ Thus, the EEA has been an alternative type of integration to accession without at the same time excluding the possibility of the latter.⁶⁰⁵

Nevertheless, the subsequent Council Declaration and the Joint Declaration of the Eastern Partnership Summit are both silent on the perspective of creating a Neighbourhood Economic Area. In addition, it should be pointed out that the success of this venture would have been questionable in any case due the preservation of the ENP methods under the Eastern Partnership. The Communication on the Eastern Partnership noted that the progress in the evolution of the relationship will depend on the commitments to the rule of law, good governance, respect for human rights, minorities and the principles of the market economy and sustainable development, therefore retaining the principle of conditionality.⁶⁰⁶

The Communication also stresses the essential nature of the principle of joint ownership and the interaction with the six partners based on 'tailor-made' approach.

⁶⁰⁴ Cremona in Tridimas and Nebbia, *supra* note 101, at 410.

⁶⁰⁵ The Preamble to the EEA Agreement states that it 'shall not prejudice in any way the possibility of any EFTA State to accede to the European Communities', *OJ* 1994 L 1/1.

⁶⁰⁶ Eastern Partnership Communication, at 4.

The Joint Declaration of the Eastern Partnership Summit again referred to the principle of differentiation.⁶⁰⁷ The combination of the three principles depending on the political orientation and ambitions of each of the partners will dictate the speed of Europeanisation. One can assume that eagerness of Ukraine to join the 'European family' will lead to the establishment of the free trade area with the EU much earlier than Azerbaijan, for instance, which does not have equivalent motivation and objective necessity to join international organisations and therefore establish a free trade area with the EU in the short term.

Hence, the principles the Eastern Partnership inherits from the ENP could prove to be counterproductive for solving the task of bringing all the six partners to the same level of cooperation with the EU within the bilateral framework of cooperation. The Eastern Partnership, in addition to the bilateral framework of cooperation, introduces a new multilateral framework of political cooperation for Eastern neighbours. Such a framework can serve as an arena for linking the reforms within the neighbours.⁶⁰⁸

The Eastern Partnership not only brings more confusion as to what the EU is offering to its Eastern neighbours, but it also risks seriously undermining its credibility and the seriousness of its intentions due to the absence of a common position among the Member States. The Eastern Partnership Summit, where the

⁶⁰⁷ Joint Declaration of the Prague Eastern Partnership, at 5.

⁶⁰⁸ This dimension of the cooperation will be based on a new operational structure on different levels, including meetings of the heads of the states or governments of Eastern partners held every two years and annual spring meetings of Ministers of Foreign Affairs. The next operational level will include meetings twice a year at the level of senior officials in four thematic platforms, including democracy and good governance; economic integration and convergence with EU policies; energy security; and contacts between people. Perhaps the constant interaction of Eastern Partners on matters of EU integration within this multilateral framework will provide a basis for the exchange of practice and will create motivation for healthy competition as to the speed of reforms and therefore integration, thus making a creation of single neighbourhood area possible in the future.

leaders of certain Member States did not consider the event important enough to attend,⁶⁰⁹ did not send promising signals to the neighbours.

5. Conclusion

The perceived success of the enlargement policy and the urgency of dealing with different neighbours at the EU's periphery influenced the hasty formulation of the ENP.

To ensure all-encompassing security, the ENP has been drafted ambitiously in substantive terms, where the areas of cooperation cut across all three pillars of the EU's constitutional order. The delay in ratifying the Lisbon Treaty did not allow the EU to rely on new legal basis for its initial actions with the neighbours. The solution to avoid competence issues, was framing the policy in terms of soft law instruments. Very few binding instruments have been envisaged, including the possibility to sign new bilateral agreements, which most probably will take a form of an Association Agreement based on Article 310 EC and will be concluded as a mixed agreement. The agreements to be signed with neighbours under Article 8 EU as amended by Lisbon will be of 'specific' nature, which is yet to be defined. What's important is that Article 8 provides that the agreements may provide mutual rights and obligations for the parties, and prospects for undertaking joint activities.

The ENP's institutional pattern largely reminds us of the enlargement experience with a distinctive role for the Commission as a policy drafter and its guardian. However, the prominent role of the Council, expressed in its decision-making powers, had a major effect on the securitarian shift the policy took with the ENP Strategy Paper. An increased role should be noted for the Parliament, which not only makes use of its budgetary power, but also plays an important role in upholding

⁶⁰⁹ 'Big names to stay away from Prague summit', *EU Observer*, 4 May 2009.

the normative image of the EU. As to the Member States, the split in the regional dimension of the ENP demonstrates that wherever there is an important political decision to make, the Member States will be the primary actors. In difference with the enlargement, where it has been considered that the Member States' ultimate decision to enlarge was to a great extent motivated by identity considerations,⁶¹⁰ the 27 Member States will be more likely to be guided by rationalist considerations in relation to the Eastern neighbours.

The resemblance to the enlargement practices is rather striking as regards policy instruments and methodology. The Country Reports used for evaluating the development of the neighbours and for elaboration of the ENP are based on Progress Reports and Opinions issued during the pre-accession. The main policy documents of the ENP, the Action Plans, are drafted after the Accession Partnerships with the candidate countries. Apart from these soft law instruments, the ENPI Regulation and the acting bilateral agreements with the parties are the only hard law instruments available.

The conditionality principle, as part of the EU's methodology, is the main borrowing from the enlargement experience. The Copenhagen conditionality has been used to shape the ENP's stance on shared or common values. The progress of the parties in coming closer to the EU will be evaluated based on these shared values. However, the borrowing of conditionality is accompanied with a credibility problem of using similar conditionality without a membership perspective. Not only is the membership perspective absent, but also the EU fails to offer the neighbours a precise 'carrot' at stake. The incentives changed from document to document limiting the scope of initial great promises. It seems that 'deeper economic integration' is

⁶¹⁰ Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke: Palgrave Macmillan, 2004), at 180-181; Sedelmeier, *Constructing the Path to Eastern Enlargement*, (Manchester: Manchester University Press 2005), at 9.

currently the reward for neighbours for undertaking economic and political reforms. Though the Eastern Partnership seems to bring more focus on incentives, it, nevertheless, confuses the partners even more by declaring that the prospect of signing new Association Agreement is without prejudice to the European aspirations of neighbouring countries.

Moreover, other elements of the ENP methodology, the principles of joint ownership and differentiation, also cause concern regarding the ultimate efficiency of the policy. While there is a view that the ENP is a unilateral policy towards the neighbours, rather than with them,⁶¹¹ of which conditionality is symptomatic, the flexibility offered by the principle of joint ownership and differentiation is vital for the EU to achieve the strategic objectives of the policy. The latter can be secured better with cooperative means. Despite the EU's determination to uphold its values through the conditionality mechanism, joint ownership and differentiation will give way to the EU's interests in certain neighbouring countries and in particular those who have their own leverage on the relationship. This gives away the tension in 'the balance between engaging partners in a cooperative relationship and the transformative content of the ENP.'⁶¹²

The Eastern Partnership, which attempts to inject a new boost to the Eastern dimension of the policy, preserves the methodological complications of the ENP. Despite its intention to clarify the incentives of the policy and to bring the conclusion of new agreements to the immediate agenda, its potential was undermined by the changing presidency of the Council and dissenting ambitions of the Member States towards their Eastern neighbours. The position of the President of the Council to be

⁶¹¹ Tassinari, 'Security and Integration in the EU Neighbourhood: the Case for Regionalism', Brussels: Centre for European Policy Studies, 2005, at 9.

⁶¹² Balfour and Rotta, *supra* note 45, at 19.

introduced by the Lisbon Treaty perhaps will ensure continuity of the initiative as it will not depend on rotating presidency of the Council.⁶¹³

Thus, this leaves one with scepticism as to the EU's normative image, of which democracy promotion is a constituent. This raises the questions of how should one understand the concept of the EU's democracy and whether the same concept is promoted in its foreign relations.

⁶¹³ Article 15 EU as amended and consolidated by Lisbon Treaty, *OJ C* 115/13, 09.05.2008.

CHAPTER V

Democratic Values of the EU and their Promotion in the Neighbourhood

1. Introduction

As once noted by Romano Prodi, 'Europe needs to project its model of society into the wider world,' a model which is based on 'the principles of democracy, freedom and solidarity - and it is a model that works.'⁶¹⁴ After several years this idea was embodied in the Draft Treaty establishing a Constitution for Europe⁶¹⁵ and is currently included in the Lisbon Treaty.⁶¹⁶

The improvement of democratic governance has been a central feature of the EU's attempt to enhance its legitimacy. The Laeken Declaration calling for a 'more democratic, more transparent and more efficient' EU has paved the way for further development of the EU governance system.⁶¹⁷ The orientation taken at Laeken materialised in the draft Treaty establishing the Constitution for Europe which provided for a separate title on the Democratic Life of the Union.⁶¹⁸ Most of the provisions of the Title are currently included within the Lisbon Treaty signed on 3 December 2007. A new Article 2 would be included in the amended and consolidated EU Treaty establishing the founding values of the Union which are 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.' In addition, a new Article 3(5) provides that, in its relations with the wider world, the Union 'shall uphold and promote its values and interests.' This provision is specified in particular as regards

⁶¹⁴ President of the European Commission, (2000) '2000-2005: Shaping the New Europe' Speech to European Parliament, Strasbourg 15 February 2000, Speech/00/41.

⁶¹⁵ Treaty establishing a Constitution for Europe, 16 December 2004, *OJ C* 310.

⁶¹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 17 December 2007, *OJ C* 306.

⁶¹⁷ Laeken Declaration on the Future of the European Union of 15 December 2001, section II, paragraph I.

⁶¹⁸ Treaty establishing a Constitution for Europe, 16 December 2004, *OJ C* 310, Title VI.

the neighbours of the EU in the new legal basis for developing the Union's relations with its neighbours. According to the new Article 8 EU, 'the Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, *founded on the values of the Union* and characterised by close and peaceful relations based on cooperation.'⁶¹⁹ Therefore, the Lisbon Treaty, once ratified, would directly oblige the EU to promote democracy through the ENP, as the current framework for developing relations with the Eastern neighbours. In addition, Title II of the EU Treaty, as agreed at Lisbon, on 'Provisions on democratic principles' is instructive as to the democratic values of the EU.⁶²⁰

According to the Commission, the EU's substantial political and moral weight to promote democracy derives from the fact that all the Member States 'are democracies espousing the same Treaty-based principles in their internal and external policies.'⁶²¹ According to Balfour this implies that the EU can promote its principles in its external policy by 'virtue of what it is,'⁶²² i.e. a normative power. It is the constructivist understanding of the EU which justifies the projection of its normative identity in its external relations. However, a series of questions arise as to the aptness of the EU to promote democracy when it is much criticised because of its own democratic deficit.

⁶¹⁹ Emphasis added.

⁶²⁰ Though Articles 8a and 8b repeat similar Articles in the Constitutional Treaty, Title VI on the Democratic Life of the Union had a wider scope. In particular, it included provisions on the role of social partners and autonomous social dialogue, the European Ombudsman and transparency of proceedings of the institutions, bodies, offices and agencies of the Union. Though the Protocol on the Role of National Parliaments in the EU was provided also in the Constitutional Treaty, the role of the national parliaments was not highlighted within the provisions on the democratic life of the Union. Title II of the Lisbon Treaty would introduce one important article which was not foreseen by the Constitutional Treaty, which is Article 8c on the contribution of national parliaments in the good functioning of the Union; *OJ* C115, 09.05.2008.

⁶²¹ The European Union's Role in Promoting Human Rights and Democratisation in Third Countries, Communication from the Commission to the Council and the European Parliament, 8 May 2001, COM (2001) 252 final.

⁶²² Balfour, 'Principles of Democracy and Human Rights. A Review of the European Union's Strategies Towards its Neighbours' in Lucarelli and Manners, (eds.), *Values and Principles in European Union Foreign Policy*, (London: Routledge, 2006), 114-129, at 114.

First, in light of long and numerous debates on the nature of democracy in the EU and its deficiencies certain apposite questions arise: is there a genuine commitment to democracy in the Union? Second, what model or models of democracy most adequately describe the democratic values of the EU? Third, is it the same democratic values that the Union transposes in its external relations and how do they relate in particular to the ENP?

Several sections of this Chapter will be aimed at answering these questions. The first part of the Chapter will be devoted to the definition of democratic values of the EU. In order to assess these values, brief reference will be made to the discussion of the democratic deficit of the EU. Within the next sections of the same part democratic features of the EU governance will be revealed with reference to the provisions of the Lisbon Treaty as an indication of the direction towards which the EU's democracy is developing. A section on the democratic deficit transposed to national democracies and their possible recovery will be included in this part. The latter will also serve the purpose of answering the question whether democracy is an element of the EU's normative identity, and whether the EU is in a position of transposing its democratic values outside its geographic scope. Part 3 of this Chapter will focus on the transposition of EU's democratic values in the last two rounds of enlargement. The Chapter will be summarised with conclusions on democracy within the EU's normative identity and the way it was transposed within the enlargement as a precedent for the ENP.

2. Democratic values of the EU

One might get an impression that the debate on democratic issues, namely popular consent and legitimacy of the Union, is a matter of the last two decades. Nevertheless, these issues were subject of consideration at the time of the signing of

the Rome Treaty with challenges presented by President de Gaulle of France.⁶²³

There was a belief on behalf of Jean Monnet, the first President of the European Commission, that the problem of popular consent should be postponed until the effective administration at European level would result in improvements in economic welfare of members of society, which would ultimately ensure public support.⁶²⁴

Therefore, it had been viewed that the delivery of economic benefits due to the action on EC level would ensure output democracy of the organisation as defined by Scharpf.⁶²⁵ He considers democracy as a two-dimensional concept related to inputs and outputs of governance aimed at collective self-determination. Input democracy requires the citizens to be the source of political choices for which the governments should be held accountable.⁶²⁶ Output democracy implies 'effective fate control',⁶²⁷ which means that the government is able to provide the most effective solution to the problems which citizens might be concerned with.

Nonetheless, the 'problem of popular consent' could not stay in the shadows for long time due to the gradual transformation of the EC and the establishment of the EU with competence creeping into more and more spheres of national and international affairs of the Member States. Economic improvements did not ensure public support for the Union as demonstrated by the complications with the ratification of the Maastricht Treaty,⁶²⁸ and the debate on enhancing the democratic features of EU governance persisted throughout the last two decades.

⁶²³ Wallace and Smith, 'Democracy or Technocracy? European Integration and the Problem of Popular Consent,' (1995) 18 *West European Politics* 137, at 143-144.

⁶²⁴ *Ibid.*

⁶²⁵ Scharpf, 'Economic Integration, Democracy and the Welfare State', (1997) 4 *Journal of European Public Policy* 18, at 19.

⁶²⁶ *Ibid.*

⁶²⁷ *Ibid.*

⁶²⁸ The Danish voters rejected the Maastricht Treaty with 52% No votes in 1992. In France the Treaty was ratified with only 51.05% Yes vote with a turnout of 69.69%.

Together with the previous developments, which will be discussed in more detail below, the creation of the European Union with its multipillar structure and the introduction of the EU citizenship concept have radically transformed the Community. From a mere economic entity it became a more substantial political actor which has assumed new internal and external obligations. At the beginning of the 1990s democracy and related issues were brought to the direct attention of Community institutions. Previously democracy was not *per se* considered as an EU value. The Community did not have its own values and was merely incorporating the values of its Member States.⁶²⁹ It was identified with democratic values due to the fact that its Member States were 'pluralistic democracies.'⁶³⁰ The Maastricht Treaty was not explicit on the EU's democracy as such and in its preamble merely confirmed that the Member States were attached to the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.⁶³¹

It was the Amsterdam Treaty of 1997 which highlighted democracy to be the EU's own feature, as a founding principle, therefore according it with a European status.⁶³² Through the Amsterdam Treaty the EU accepted this value of its Member States as its own, but also assumed an obligation of calling a Member State to responsibility through suspension of certain rights in case of serious or persistent violation of the principle of democracy as mentioned above.⁶³³ Therefore, the EU assumed an obligation of preserving the democratic models of its Member States,

⁶²⁹ Hoskyns and Newman, (eds.), *Democratising the European Union. Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), at 185.

⁶³⁰ Pinder, 'The European Community and Democracy in Central and Eastern Europe' in Pridham, Herring and Sanford, (eds.), *Building Democracy? The International Dimension of Democratisation in Eastern Europe*, (London: Leicester University Press, 1994), 110-132, at 120.

⁶³¹ Preamble of TEU, *OJ C 191*, 29 July 1992.

⁶³² Article 6 EU.

⁶³³ Article 7 EU.

adding 'another layer to their protection.'⁶³⁴ The Lisbon Treaty with its new provisions on the democratic life of the Union is a further stage in the normative understanding of democracy. Further discussion of the EU's democratic life with reference to the provisions of the Lisbon Treaty demonstrates that the general assumption that the nature of democracy has been changing over time, 'evolving from a rather elitist and restrictive form to a more open and participatory system of government'⁶³⁵ is applicable also to the EU.

2.1. Democratic theories and the democratic deficit of the EU

Democracy has been one of the most discussed concepts in political theory present from the times of Aristotle till now. Scholars can hardly agree on its content and elements, rendering it a highly contested notion. Therefore, the initial problem to encounter while studying democracy is that 'there is no democratic theory- there are only democratic theories.'⁶³⁶ Various democratic theories have been referred to in order to identify different models of democracy: direct and indirect or representative democracy, majoritarian, pluralistic, consensus, liberal democracy, parliamentary democracy, participatory and deliberative democracy etc. While some of these models will be discussed further below in relation to democratic values of the EU, it should be noted that political equality, popular sovereignty and rule by majority have been running through various concepts of democracy.⁶³⁷ The variety of democratic theories results in diverse definitions of democracy with the three concepts noted above appearing in various forms. The most accepted conceptualisation of democracy

⁶³⁴ Laffan, 'Democracy and the European Union' in Cram, Dinan and Nugent, (eds.), *Developments in the European Union*, (Basingstoke: Macmillan, 1999), 330-349, at 341.

⁶³⁵ Meny, 'De la Democratie in Europe: Old Concepts and New Challenges', (2002) 41 *Journal of Common Market Studies* 1, at 10.

⁶³⁶ Dahl, *A Preface to Democratic Theory*, (Chicago, London: University of Chicago Press, 1956), at 1.

⁶³⁷ *Ibid*, at 34.

has been Dahl's definition of institutions of large-scale democracy or polyarchy.

These institutions include:

- elected officials
- free, fair and frequent elections
- freedom of expression
- alternative sources of information
- associational autonomy
- inclusive suffrage
- right to run for office.⁶³⁸

Alternatively, Weale defines democracy in contrast with non-democratic forms of government with a focus on minimum conditions, where vital for public decisions are made based on the public opinion 'formally expressed by citizens of the community, the vast bulk of whom have equal political rights.'⁶³⁹

Various approaches have been adopted in the context of conceptualising EU's democracy comparing it to the republican model of separation of powers,⁶⁴⁰ viewing it as consensual democracy,⁶⁴¹ a pluralist one,⁶⁴² or 'a Schumpeterian competitive elite' democracy.⁶⁴³ Some scholars consider democracy as a system of governance. According to Meny, democracy constitutes two pillars: popular and constitutional,

⁶³⁸ Dahl, *On Democracy*, (New Haven, London: Yale University Press, 2000), at 85-86, 90; Dahl, *Democracy and Its Critics*, (New Haven: Yale University Press, 1989), at 221.

⁶³⁹ Weale, *Democracy*, (Basingstoke: Palgrave Macmillan, 2007), at 18.

⁶⁴⁰ Moravcsik, 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', (2002) 40 *Journal of Common Market Studies* 603, at 610.

⁶⁴¹ Manners, 'The Constitutive Nature of Values, Images and Principles in the EU' in Lucarelli and Manners, (eds.), *Values and Principles in European Union Foreign Policy*, (London: Routledge, 2006), 19-41, at 34.

⁶⁴² Coultrap, 'From Parliamentarism to Pluralism. Models of Democracy and the European Union's 'Democratic Deficit'', (1999) 11 *Journal of Theoretical Politics* 107, at 124.

⁶⁴³ The Schumpeterian competitive elite model is based on rejection of the classic eighteenth century model of democracy and is described as a decision-making system where the power to decide is acquired by individuals through 'a competitive struggle for the people's vote'; Weiler, Haltern and Mayer, 'European Democracy and its Critique'. (1995) 18 *West European Politics* 4, at 32; Craig, 'Democracy and Rule-making Within the EC: An Empirical and Normative Assessment', (1997) 3 *European Law Journal* 105, at 126-127.

which present the expression of popular will and choice and constitutional mechanisms of checks and balances.⁶⁴⁴ Lord refers to a specific political meaning of democracy where the 'irreducible core' of the concept would seem to be 'responsive rule' according to 'the related principles of popular control and political equality.'⁶⁴⁵

Others highlight the importance of democracy as a necessary prerequisite for the acceptance of EU governance by the public, therefore bringing forward the issue of legitimacy. For instance, Weiler describes it as 'a condition for the long-term stability and acceptability of European governance.'⁶⁴⁶ For Lenaerts and Smijter democracy is 'a means to increase legitimacy and thus the effectiveness of the polity in exercising public authority.'⁶⁴⁷ Combining these different approaches to define democracy of the EU, one can describe the democracy in the EU as a system of governance, which represents the will of the European populace to be governed at the European level in such a way that will ensure the acceptance of that governance. Such a definition is a manifestation of the intertwined nature of democracy and legitimacy of EU governance, which in turn can be linked to the legitimacy of expectations of neighbours. Promotion of democracy by the EU in its neighbourhood can be legitimate if European governance is accepted as democratic by its own people.

Nevertheless, the simplicity of this definition cannot reveal or explain all elements of the EU governance. What is notable from the literature on democracy is the choice of different models of democracy in order to illustrate that it does not fully exist in the EU, or to judge the deficiencies of democratic life of the Union within

⁶⁴⁴ Meny, *supra* note 22, at 4.

⁶⁴⁵ Lord, *Democracy in the European Union*, (Sheffield: Sheffield Academic Press, 1998), at 12.

⁶⁴⁶ From political theory he draws on such notions as autonomy, dignity and self-determination of the individual and in similar societal notions of freedom, justice and equality. From social sciences he links the democratic imperative to the social legitimacy of European governance; Weiler, 'Amsterdam and the Quest for Constitutional Democracy' in O'Keefe and Twomey, (eds.), *Legal Issues of Amsterdam Treaty*, (Oxford: Hart, 1999), 1-21, at 5.

⁶⁴⁷ Lenaerts and Smijter, 'The Question of Democratic Representation' in Winter, Curtin, Kellermann and de Witte, (eds.), *Reforming the Treaty on European Union: The Legal Debate*, (London: Kluwer Law International, 1996), 173-197, at 175.

such a normative framework. For this purpose various models of democracy have been used by different commentators in order to define a normative framework for considering democratic problems of the Union, not evaluating the present features, but mostly pointing out those that are absent or not well suited. Consequently, a vast amount of literature has evolved during the last two decades on so called 'democratic deficit of the EU.'

While there is no clear definition of democratic deficit which would provide an exhaustive content of its features, in the words of Meny, it is a 'powerful catchword,' which allows manipulating its meaning by everyone who in any respect is not satisfied with the operation of the EU institutions.⁶⁴⁸ Though, different critics can imply different content for this concept,⁶⁴⁹ Lord highlights the 'classical democratic deficit theory' brought forward by Dehousse as a 'dispossession' of national representative institutions that is only 'partly compensated' at the European level.⁶⁵⁰ This is in accordance with the European Parliament's vision of the democratic deficit notion in 1988, in the Toussaint Report, as a concept embracing two elements which are the transfer of the sovereign power from the Member States to the EU level, and the exercise of such powers by institutions other than the European Parliament.⁶⁵¹ Such an approach shows that ideally the central place within Community institutions should have been awarded to the Parliament deriving from

⁶⁴⁸ Meny, *supra* note 22, at 8.

⁶⁴⁹ Weiler et al, *supra* note 30, at 7-9; Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), at 3; Schmidt, *Democracy in Europe: The EU and National Politics*, (Published to Oxford Scholarship Online: January 2007), at 21, 28, 29, 39.

⁶⁵⁰ Lord, 'Assessing Democracy in a Contested Polity', (2001) 39 *Journal of Common Market Studies* 641, at 642.

⁶⁵¹ European Parliament, Committee on Institutional Affairs, 1 Feb. 1988 PE 111.236/fin. (Toussaint Report), at 10-11.

the theory of parliamentary democracy with the focus on the notions of 'popular sovereignty' and 'party government' within the EU.⁶⁵²

The criticism is focused on the fact that the European Parliament still does not occupy a central place within the institutions of the Union even after the expansion of its competences through the co-decision procedure, since the ultimate decision-making power within the Union in many policy areas is still the non-elected Council. In the main, the legislative initiative belongs to the appointed Commission. Although the Parliament has been directly elected since 1979, the elections are considered to be 'second-order,' where turnout is low and there is no strong party governance at Union level.⁶⁵³ This is mainly explained by the fact that European elections are dominated by national politics,⁶⁵⁴ and the remoteness of this institution from the citizens of the Union.

The electorate cannot hold the main decision-makers, that is the Council at the Union level directly accountable. Only national governments can be held accountable at national level, which is rather limited due to diverse and complex nature of decision-making at Union level, as well as qualified majority voting in the Council, where it becomes unreasonable to hold national governments responsible for positions they did not take.⁶⁵⁵

Thus, despite the constitutional developments transforming the European Parliament, the chances of the EU constitutional arrangement satisfying the conditions of normative understanding of parliamentary or Westminster systems are

⁶⁵² The main elements of the first feature is the presence of an elected parliament as the centre of the political system, which highlights the importance of free and fair elections through which voters can express their will. Party government implies that elected officials are in charge of all major decisions, the policy proposals are formulated within the parties and the elected officials are called to accountability through their respective parties; Katz, 'Models of Democracy: Elite Attitudes and the Democratic Deficit in the European Union', (2001) 2 *European Union Politics* 53, at 55.

⁶⁵³ Laffan, *supra* note 21, at 337; Schmidt, *supra* note 36, at 21.

⁶⁵⁴ Crum, 'Legislative-Executive Relations in the EU', (2003) 41 *Journal of Common Market Studies* 375, at 380; Weiler et al, *supra* note 30, at 8.

⁶⁵⁵ Wallace and Smith, *supra* note 10, at 147; Weiler et al, *supra* note 30, at 7; Crum, *ibid*, at 379-380.

minimal.⁶⁵⁶ A fallback position was taken by other commentators, which used the liberal understanding of democracy or 'liberal constitutionalism' to consider the features of EU's governance.

However, there are also those arguing against the democratic deficit of the EU. While the vast critique of the democratic deficit mainly focuses on the deficiencies of the 'input democracy,' very few commentators, other than Moravcsik and Majone, argue in defence of the democratic deficit. According to Schmidt their argument is based on the standpoint of 'output democracy' linked to the effectiveness of governance at EU level.⁶⁵⁷ Moravcsik justifies positioning of the EU as regards the issues of social welfare and redistribution, at the same time he develops a substantial argument on the institutional functioning of the EU.⁶⁵⁸ Considering the EU as a system of separation of powers where the power is vertically divided between the EU institutions and horizontally among local, national and transnational level, Moravcsik finds that there is an effectively functioning system of checks and balances, indirect democratic control is exercised through national governments and that the increasing powers of the European Parliament can ensure the representation of the popular will.⁶⁵⁹ Majone, viewing the EU as a 'regulatory state,' considers as its main task undertaking 'Pareto-efficient' policies, which does necessarily have to be democratic in its traditional understanding.⁶⁶⁰

In response to Majone and Moravcsik, Follesdal and Hix contend that while there is increased democratic contestation both in Parliament and in the Council

⁶⁵⁶ Westminster system is a form of parliamentary democracy, for the definition see Weale, *supra* note 26, at 43.

⁶⁵⁷ Schmidt, *supra* note 36, at 47-48.

⁶⁵⁸ Moravcsik, *supra* note 27, at 618.

⁶⁵⁹ *Ibid*, at 605, 610.

⁶⁶⁰ The concept of Pareto efficiency occupies a significant place in economics. It refers to situation where arrangements to make one person better off cannot be made without making someone else worse off; Majone, 'The Rise of the Regulatory State in Europe', (1994) 17 *West European Politics* 78; Majone, *Regulating Europe*, (London: Routledge, 1996); Majone, 'The Credibility Crisis of Community Regulation', (2000) 38 *Journal of Common Market Studies* 273.

through 'transnational alignments and coalitions along left-right lines,' the link between these developments and the EU's society preferences cannot be justified by 'large distributive consequences, rendering a purely unique Pareto-improvement argument insufficient.'⁶⁶¹ Therefore, they dismiss the opportunity of qualifying the EU's governing practices as democratic based solely on 'output democracy,' because it cannot be viewed separately from 'input' elements, one of which is the formation of citizens' preferences.

A major drawback noted by various commentators as regards the EU democratic debate is the application of the theories of democracy developed for states.⁶⁶² Instead, the Union should be compared not to the state model, but to the practice of the institutions which are established 'in order to deal with problems of global interdependence in a globalised world, that is intergovernmental decision-making bodies.'⁶⁶³ Nevertheless, it is hardly possible to find any other intergovernmental entity which has a similar transfer of powers from the national level and the same diffusion of supranational governance into democratic, political and economic life of the Member States. In this respect, Meny, acknowledging that comparing the EU to a state is problematic because of the different levels of governance, nevertheless, accepts that the *sui generis* nature of the EU does not give an alternative of comparison with any other similar entity and that the statal model of democracy allows for 'fallback positions.'⁶⁶⁴

⁶⁶¹ Follesdal and Hix, 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', (2006) 44 *Journal of Common Market Studies* 533, at 551-557.

⁶⁶² Heriter, 'Elements for Democratic Legitimation in Europe: an Alternative Perspective' (1999) 6 *Journal of European Public Policy* 269, at 280; Craig and de Burca, *EU Law: Text, Cases and Materials*, (Oxford: Oxford University Press, 2008), at 136; Jachtenfuchs, 'Democracy and Governance in the EU', (1997) 1 *European Integration Online Papers*, at 40.

⁶⁶³ Heriter, *ibid*, at 280.

⁶⁶⁴ Meny, *supra* note 22, at 10.

Accepting such a fallback position should be accompanied with certain conditions. First of all, we should bear in mind that 'a substantial gap exists between actual and ideal democracy.'⁶⁶⁵ Second, as noted by Weale, normative concepts of democratic institutions as functioning at the national level can hardly be transferred to the international level without substantial modifications in their operation and effect.⁶⁶⁶ This is particularly true in the context of the EU as a supranational institution with its distinctive mode of operation. Instead of specifying 'different ideal types of Euro-democracy' and according them with relevant criteria,⁶⁶⁷ it should be accepted that the EU is 'a system of complex governance, consisting of multi-tiered, geographically overlapping structures of government and non-government elites' which assumes a new type of not-ideal democracy derived from that very combination.⁶⁶⁸

The constitutional evolution of the EU into such a polity itself requires a specific-evolutionary model of democracy. The mere comparison of provisions of the Rome Treaty of 1957, where democracy as a separate principle or value was not articulated at all, and the provisions of the recent Lisbon Treaty, stipulating the principles of representative and participatory democracy in the Union, demonstrates the evolution of democracy in the political life of the Union. Therefore, it is not the institutions we should start with, but rather the values, which might be conceptualised in a different way once transferred to the supranational level.⁶⁶⁹

If considered in an evolutionary perspective the provisions of the Title VI on Democratic Life of the Union of the Draft Treaty establishing a Constitution for

⁶⁶⁵ Dahl, *On Democracy*, *supra* note 25, at 31.

⁶⁶⁶ Weale, *supra* note 26, at 239.

⁶⁶⁷ Lord, *supra* note 37, at 656.

⁶⁶⁸ Wessels, 'The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity' in Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), 57-69, at 63-64.

⁶⁶⁹ While Weale was referring to international organisations, his argument should be accepted also for the EU which he views as an example of an international organisation; Weale, *supra* note 26, at 245.

European Union on representative, participatory and deliberative democracy, as well as provisions on social partners and autonomous social dialogue⁶⁷⁰ were the first normative indications as to the EU's democratic values, which are currently reflected in the provisions of the Lisbon Treaty.⁶⁷¹ Considering the EU's democracy as an evolutionary concept, it is at this particular period, when democracy promotion by the EU can be considered most justified.

2.2. Representation as a democratic value

While majority rule is behind each notion of democracy, it is the mechanism of representation that is used in the modern democracies to ensure popular governance. In particular in large-scale systems direct democracy can hardly seem possible for the solution of daily issues. Thus, through free and fair elections people choose those who will represent them in parliament.⁶⁷²

Article 8a EU, as agreed at Lisbon acknowledges that the functioning of the Union shall be founded on representative democracy and establishes the principle of dual representativeness of the Union. The latter assumes that the citizens of the Union are directly represented at Union level in the European Parliament, while the Member States are represented in the European Council and in the Council by their governments, which are democratically accountable either to their national parliaments or to their citizens. Lenaerts and Smijter call this 'double capacity representation': citizens are represented directly in the 'supranational' integration structure and indirectly as citizens of a Member State. They argue that transfer of power from national level to European level does not harm overall democracy since

⁶⁷⁰ Treaty establishing a Constitution for Europe, *OJ C* 310/11, 16.12.2004.

⁶⁷¹ Title II of the EU Treaty as amended and consolidated by the Lisbon Treaty, *OJ C* 115/18, 09.05.2008.

⁶⁷² Laffan, *supra* note 21, at 331.

the role of each of the institutions primarily reflects the level of integration of the EU.⁶⁷³

In this sense the transformation of European Parliament from a mere formal institution to the one which comes close to fulfilling the conditions of an ordinary parliament, is evidence of the level of EU integration and at the same time of the most important processes in legitimising EU governance. The transformation was influenced by several developments, including introduction of direct elections to the Parliament, the cooperation procedure, subsequent invention of the co-decision procedure, which gave the Parliament a real 'say' in the Community decision-making process.⁶⁷⁴ In connection with the consultation procedure the ECJ in *Roquette Freres* ruled that participation of the Parliament:

'represents an essential factor in the institutional balance intended by the treaty. Although limited, [such powers] reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly.'⁶⁷⁵

The institutional perception of the European Parliament has changed over time as well and already in relation to the co-decision procedure, the Commission has acknowledged the role of the latter in enhancing the 'two-fold legitimacy' of the EU.⁶⁷⁶ It is considered that due to the gradual changes, which have taken place as regards Parliament's competences and its relations with the Commission and Council,

⁶⁷³ Lenaerts and Smijter, *supra* note 34, at 176.

⁶⁷⁴ The first direct elections to the European Parliament took place in 1979. The cooperation procedure was introduced by Single European Act to be found in Article 252 EC. The co-decision procedure, introduced by the EU, Article 251 EC, allows for Parliament to feature as a joint legislator together with the Council. This legislative procedure was further extended to more policy areas by Amsterdam and Nice Treaties.

⁶⁷⁵ Case 138/79, *SA Roquette Frères v Council of the European Communities*, [1980] ECR-03333, at para 33.

⁶⁷⁶ Scope of the Codecision Procedure, SEC(96) 1225/4, July 1996, Pt. IIA, para. 1.

there is ‘a classic two chamber legislature: in which the Council represents the states and the European Parliament represents the citizens.’⁶⁷⁷

In addition, Article 10(3) LTEU recognises the right of every citizen to participate in the democratic life of the Union and provides that decisions shall be taken as openly and as closely as possible to the citizen. Political parties at supranational level should contribute to forming political awareness on European matters and to expressing the will of EU citizens.⁶⁷⁸ This provision might support Craig’s view according to which participation is important not only to the issues of input and output democracy, but also to other important questions of decision-making at European level, such as subsidiarity.⁶⁷⁹ Thus, citizens’ participation in the decision-making will lead to the acceptance of the outcomes of the governance, and will secure that decisions are made at the necessary level in accordance with the subsidiarity principle. Enhancing such classical mechanism of representation in the Union would justify the EU’s stance on conduct of free and fair elections in the neighbourhood.

While the role of the European Parliament does not have to be defended within the representation narrative due to the fact that it is the only institution at EU level directly elected by citizens of the Union, the role of the Council as a main decision making institution has been a matter of concern.

The Council’s role as a representative institution can be defended on several grounds. First of all, before transforming into a Union of its peoples or citizens, the EU as an entity has been and continues to be the Union of its peoples through the Member States. The Council in this sense should be considered as having a direct mandate from the Member States. This reveals the second element of the EU’s ‘twofold legitimacy’ which derives also from the Member States. In addition, the

⁶⁷⁷ Hix, *The Political System of the European Union*, (Basingtoke: Macmillan, 1999), at 56.

⁶⁷⁸ Article 10(4) LTEU, *OJ C* 115, 09.05.2008.

⁶⁷⁹ Craig, *supra* note 30, at 122-123.

Council does have an indirect democratic mandate, since those who sit on the Council will normally be elected members of their own national executives.⁶⁸⁰

Weiler, nevertheless, is rather critical regarding the absence of a basic condition of representative democracy that at election time the citizens 'can throw the scoundrels out.'⁶⁸¹ However, if it was felt that the EU could be properly democratic only if the citizens were able to vote out the Council directly, then this would entail 'a radical restructuring of the institutions.'⁶⁸² In addition, this would question the general legitimacy of the Union.

According to Weale, for the type of issues that are best solved at international level, the supranational level in the case of the EU, 'a degree of mutual assurance among decision makers that can only be given when credible commitments can be made by those who are party to the agreements' is required and 'states are in the best position to be able to make such commitments credible.'⁶⁸³

Another justification for the role of the Council has been highlighted by Lenaerts and Smijter. The fact that the EU budget comes from the Member States requires the national parliaments to exercise control over one of the institutions entrusted with power at EU level.⁶⁸⁴ While the participation of a European 'demos' through the concept of citizenship is necessary for democratic decision-making and ultimate acceptance of the latter, nevertheless it is not sufficient for comprehensive input and output democracy in the EU, which is based also on the Member States. Participation in the decision-making of the Member States on behalf of their governments is a composite element of the 'twofold legitimacy' of the EU. This should be considered the significant modification of the element of representation

⁶⁸⁰ Craig and de Burca, *supra* note 49, at 137.

⁶⁸¹ Weiler in O'Keeffe and Twomey, *supra* note 33, at 6.

⁶⁸² Craig and de Burca, *supra* note 49, at 138.

⁶⁸³ Weale, *supra* note 26, at 240-241.

⁶⁸⁴ Lenaerts and Smijter, *supra* note 34, at 182-183.

once transposed to the supranational level, which nevertheless should not question the role of representation as a value. Therefore, one would expect the EU to direct significant attention to the role of parliaments in neighbouring countries, as a central element of representative democracy.

Despite the increasing role of the European Parliament there are still grounds to question 'whether the European Parliament offers potential solutions to problems of democratic accountability and legitimacy.'⁶⁸⁵ Among contributing factors to such scepticism the low turnout at elections, and the fact that the citizens vote for domestic issues articulated at national level were noted above.⁶⁸⁶ This requires us to turn to national parliaments in terms of another dimension of representation valued by the EU.

2.3. National parliaments

As mentioned earlier, the European Commission bases the EU's authority to promote democracy in its external relations on the ground that all its Member States are democratic countries. The EU currently comprises 27 states, each with a different history of democracy both in respect of its formation and time frame. While one can debate the credentials of democratic practices in some old and new Member States, the centrality of parliament in the political life of the countries with varying models of democracy is not a matter of debate. However, it is the national parliaments who

⁶⁸⁵ Hix, Raunio, Scully, 'Fifty Years On: Research on the European Parliament', (2003) 41 *Journal of Common Market Studies* 191, at 192.

⁶⁸⁶ Corbett, Jacobs and Shackleton, 'The European Parliament at Fifty: A View from the Inside', (2003) 41 *Journal of Common Market Studies* 353, at 359; Amtenbrink, 'Towards a More Democratic Union? Comments on Treaty Establishing a Constitution for Europe' in Inglis and Ott, (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?* (Groningen: Europa Law Publishing, 2005), 31-55, at 50; Laffan, *supra* note 21, at 337.

are perceived as the 'biggest losers in Europeanisation' and the national governance level is even noted to be 'the real locus of the 'democratic deficit.'',⁶⁸⁷

There is a distinction drawn between the Member States for whom membership of the Union is a way to protect democracy and those for whom membership itself is a threat to their established and effectively operating democratic system.⁶⁸⁸ Probably, the Members States, which joined the EU in the last two rounds of enlargement, are being implied in the first group of countries. However, as will be discussed in the following part of this Chapter, the EU has come under a strain of criticism for transferring its democratic deficit also to the candidate countries.

The main criticism derives from the fact that the role of national parliaments is undermined both at the EU level and inside the Member States. First of all, national parliaments lost power when competence was transferred to supranational level in the most important spheres of national politics, lacking efficient instruments to call the Council to accountability through national governments.⁶⁸⁹ Not many parliaments of the Member States can control or veto the position of their government in the Council.⁶⁹⁰ The control by national parliaments diminishes even further with the transfer of competence in more fields of national affairs to the EU level.

In addition, when decision-making in the Council is subjected to qualified majority voting, it renders national control by parliaments not very efficient as the governments cannot be held accountable for the positions they did not take at the EU level. Also it is considered that the lack of information and competence in national parliaments in addition to the limited capacity of the parliamentarians to control the

⁶⁸⁷ Schmidt, *supra* note 36, at 54, 223.

⁶⁸⁸ Laffan, *supra* note 21, at 342.

⁶⁸⁹ Lenaerts and Smijter, *supra* note 34, at 185.

⁶⁹⁰ Sadurski, 'EU Enlargement and Democracy in New Member States' in Sadurski, Czarnota and Krygie, (eds.), *Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders*, (Dordrecht: Springer, 2006), 27-49, at 35.

issues to be decided in the Council, results in the inability of the parliaments to safeguard the principle of subsidiarity.⁶⁹¹

Contrary to these arguments, it is considered that the cause of the trouble is not the democratic deficit of the EU, but the democratic deficit in Europe. Though it is the democratic deficiencies of the EU that are often being justified on the ground of the effectiveness of the governance, it has been noted by Andersen and Eliassen, that the tendency to prioritise effectiveness over parliamentary control is common also in national political systems in Western Europe, as a result of 'post-parliamentary or organic democracy'.⁶⁹² They see the reason for the absence of criticism of national democracies in the fact that national parliaments formally embody the main requirement of democratic theory: they are able to control national decision-making.

From this perspective, the EU, with its democratic deficiencies, can be considered not as the cause of the governance problems in the Member States, but rather a consequence of it. It can be explained as a calculation of Member States to give up their autonomy in order to ensure effective problem-solving on other levels of governance whether subnational or transnational.⁶⁹³ However, the problems with legitimacy and accountability will continue to persist. It is perhaps, these problems within the general constitutional trend of 1990s to enhance the EU's legitimacy that has undermined the role of national parliaments. This in turn carries a risk of threatening not only the EU's, but also the legitimacy of national democracies.

⁶⁹¹ Sajo, 'Becoming 'Europeans': The Impact of EU 'Constitutionalism' on Post-Communist Pre-Modernity' in Sadurski, Czarnota and Krygie, (eds.), *Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders*, (Dordrecht: Springer, 2006), 175-192, at 183.

⁶⁹² Andersen and Burns, 'The EU and the Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance' in Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), 227-251, at 229-230.

⁶⁹³ Wessels, *supra* note 55, at 62.

This danger was taken into account in the Amsterdam Treaty, 1999, where a Protocol on the role of national parliaments was attached. The provisions of the Lisbon Treaty, once ratified, should be considered as the most important development in this trend introducing a separate article on the role of national parliaments under Title II on Democratic Principles and establishing a Protocol on the role of national Parliaments in the European Union.

Article 12 of the amended and consolidated EU Treaty endorses several methods of participation of national parliaments in the decision-making process in the Union. One way is enabling the national parliaments to safeguard the principle of subsidiarity, where the annual legislative programme of the Commission and draft legislative acts which are presented to the European Parliament and the Council should be forwarded to national parliaments.⁶⁹⁴

Another method demonstrating the importance of the control of executives by their national parliaments is the introduction of a provision obliging the Council to send the agendas for, and the outcome of, its meetings, including the minutes of meetings where draft legislative acts have been discussed, directly to national Parliaments together with the governments of the Member States.⁶⁹⁵ The new provisions not only aim at increasing national parliaments role in day-to-day legislation making, but also in such aspects of the functioning of Union which previously were considered to be purely intergovernmental. Thus, the participation of the national parliaments should be ensured in the revision procedures of Union Treaties, as well as their right to be notified of applications for accession to the EU.

⁶⁹⁴ Article 1 and 2 of the Protocol on the role of national parliaments in the European Union. In this connection Article 3 of the Protocol entitles national parliaments to send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on the compliance of a draft legislative act with the principle of subsidiarity.

⁶⁹⁵ Article 5 of the Protocol on the role of national parliaments in the European Union.

The last feature of the new Article 12 EU is the clause setting inter-parliamentary cooperation not only between national Parliaments, but also with the European Parliament in accordance with the Protocol on the role of national Parliaments in the European Union. This, perhaps, should be considered as a means to counterbalance the dominance of the executive branch at European level, but most importantly at national level as regards European issues.⁶⁹⁶

In addition to Article 12 EU, an important provision is included in the Lisbon Treaty which obliges the Council to meet in public when considering and voting on a draft legislative act.⁶⁹⁷ This will increase the accountability of the national governments *vis-a-vis* the national parliaments and electorates.⁶⁹⁸

It might be possible to get an impression that the role of national parliaments within the internal decision-making process of the Union is not very important for determining the democratic values of the latter. However, the inclusion of the mentioned provisions in the Lisbon Treaty is an evidence of what the EU values as a democratic principle: the representation of the citizens through their national parliaments not only at national level, but also at European level. In addition, this provision should be considered as an attempt on behalf of the EU to preserve the democratic values of the Member States with their respective parliamentary or liberal democracies, where a parliament with its central position is a precondition for proper functioning democracy. In other words, the importance of parliaments, whether at European or national level, is a shared value of the EU and its Member States. In this context, it would be expected from the EU to demonstrate similar keenness on the role of parliaments in the neighbouring states it is eager to share its values with.

⁶⁹⁶ In addition, Article 12 EU provides for participation of national parliaments in the evaluation of mechanisms for the implementation of policies in the area of freedom, security and justice.

⁶⁹⁷ New Article 16 LTEU.

⁶⁹⁸ Amtenbrik in Inglis and Ott, *supra* note 73, at 40.

Apart from the element of representation expressing the majority rule or popular governance of the traditional understanding of democracy, in order to prevent the tyranny of the minority there should be restrictions on the exercise of power as developed in the liberal democratic approach. In this context, Meny considers that the EU rather suffers from ‘democratic overload’: ‘checks and balances are too many rather than too few,’ and the ‘constitutional’ pillar of the EU governance expands at the expense of the ‘popular’ one.⁶⁹⁹

2.4. Features of liberal constitutionalism

Liberal democracy is one of the foundations of ‘legitimate statehood’ in the EU.⁷⁰⁰ Liberal democracy, or liberal constitutionalism, as described by Weale, is characterised by accountability of the executive branch of power to the parliament, a clear division of power between legislative, executive and judicial branches and the ‘judicial and other counter-majoritarian devices’ primarily through the system of checks and balances.⁷⁰¹ One of the main elements of liberal democracies is the protection of rights and freedoms of the citizens, which are granted political, social and legal rights because of their belonging to the respective polity.⁷⁰²

It is the idea of ‘institutional balance’ of the Union as established in Article 7 EC that serves as a reference point for drawing parallels with the republican understanding of democracy based on separation of powers.⁷⁰³ The notion of

⁶⁹⁹ Meny, *supra* note 22, at 4, 9.

⁷⁰⁰ Schimmelfennig, Engert and Knobel, ‘The Impact of EU Political Conditionality’ in Schimmelfennig and Sedelmeier, (eds.), *The Europeanization of Central and Eastern Europe*, (London: Cornell University Press, 2005), 29-50, at 29.

⁷⁰¹ Weale, *supra* note 26, at 331-332.

⁷⁰² Laffan, *supra* note 21, at 331-332.

⁷⁰³ Van Elsuwege and Vermeersch, ‘Institutional Reform in the European Union: A Difficult Balancing Act’ in Inglis and Ott, (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?* (Groningen: Europa Law Publishing, 2005), 57-84, at 80; Craig, *supra* note 30, at 113; Corbett, Jacobs and Shackleton, ‘The European Parliament at Fifty: A View from the Inside’ (2003) 41 *Journal of Common Market Studies* 353, at 368.

institutional balance assumes that various institutions, representing different interests within the society, can ensure the balance between them and therefore serve the public good.⁷⁰⁴ Accordingly, each of the EU institutions has its role 'in relation to questions of democracy, legitimacy and also institutional efficiency.'⁷⁰⁵ Most importantly, each of the institutions plays an important role in balancing the others. For instance, the role of the ECJ has its significance since it does not only embody the idea of independent judicial authority, but also has a central role in the matters of competence of other institutions within the system of separation of powers as provided in Article 7 EC.⁷⁰⁶

It should be noted that the idea of the institutional balance, in particular the Parliament-Council and the Parliament-Commission relations has a rather dynamic nature.⁷⁰⁷ The balance of powers between the Parliament and the Council has been discussed in section 2.2 above, where one of the important elements of the system of checks and balances lies in the Parliament's power to veto legislation in the co-decision procedure.⁷⁰⁸ The Lisbon Treaty, once ratified, will further extend Parliament's powers, since the co-decision will become the ordinary legislative procedure and will be extended to certain new areas of policy making.⁷⁰⁹

It should be mentioned in relation to the Parliament-Commission relations that the EU does not strictly satisfy the conditions of the accountability of the executive to the parliament. However, the post-Amsterdam right of the European Parliament to veto the choices of the Member States for the President and the members of the

⁷⁰⁴ Craig, *supra* note 30, at 115-116.

⁷⁰⁵ Shaw, *Law of the European Union*, (Basingstoke: Palgrave Macmillan, 2000), at 238-239.

⁷⁰⁶ *Ibid*, at 239.

⁷⁰⁷ Van Elsuwege and Vermeersch, *supra* note 90, at 81.

⁷⁰⁸ Amtenbrink in Inglis and Ott, *supra* note 73, at 37.

⁷⁰⁹ Article 251 as amended by Lisbon Treaty, new Articles 16b and 16e, amended Articles 18, 45.

Commission substantially increases the role of the Parliament in the area.⁷¹⁰ In addition, the Commission is currently more accountable to the Parliament than in the past. The latter has an informal right to scrutinise the Commission's activities through the appearance of individual Commissioners in Parliament's specialised committees.⁷¹¹

Moreover, there is a view that introduction of the co-decision procedure not only has enhanced Parliament's role in the general institutional structure, but also this feature developed to the detriment of the Commission's position.⁷¹² Also it has been noted in relation to the Commission that the Parliament shows willingness to 'throw the scoundrels out.'⁷¹³ A recent example of this trend was Parliament's readiness to remove the controversial Italian Commissioner Rocco Buttiglione.⁷¹⁴

In addition, Parliament's exercise of budgetary powers allows it to control the Commission through stressing the need 'to devote more attention to the resources required for policies and to better implementation and management,' as well as through ensuring greater access to relevant documents and information by the Commission.⁷¹⁵

The Lisbon Treaty with Article 14(1) EU will further enhance Parliament's powers against the Commission, where the Parliament will be entitled with a right to elect the President of the Commission.⁷¹⁶

⁷¹⁰ Article 214 EC.

⁷¹¹ Peterson, 'The College of Commissioners' in Peterson and Shackleton, (eds.), *The Institutions of the European Union*, (Oxford: Oxford University Press, 2002), 71-93, at 88.

⁷¹² *Ibid.*, at 88.

⁷¹³ The EU Treaty entitled the Parliament to allow the Commission to take office through a vote of confidence; Eriksen and Fossum, 'Democracy through Strong Publics in the European Union', (2002) 40 *Journal of Common Market Studies* 401, at 412.

⁷¹⁴ 'European Parliament comes of age' *EU Observer*, 27.10.2004.

Available at <http://euobserver.com/?aid=17644>.

⁷¹⁵ The Parliament was granted with limited budgetary powers with the Treaty of Luxembourg in 1970; Corbett, Jacobs and Shackleton, *supra* note 73, at 366.

⁷¹⁶ Article 9a EU as introduced by Lisbon Treaty.

As noted above, citizens and their rights is an inalienable feature of the liberal democracy model. This feature of liberal democratic governance can be considered as theoretically present only after the creation of the concept of EU citizenship.⁷¹⁷ However, one would argue that the operation of the EU institutions is not primarily aimed at the safeguarding the rights of individuals. Besides, it is a widely debated issue whether the EU has its own people with the concept of 'demos' elaborated by Weiler.⁷¹⁸ As an alternative to statal 'demos', this concept can be understood also as a demos 'coming together on the basis of shared values, shared understanding of rights and societal duties and shared rational, intellectual culture which transcend ethno-national differences' which is not intended to replace the national ethno-cultural view.⁷¹⁹ This possible view of demos can be awarded with a title of Habermas's 'nation of citizens' which should be understood as 'an intersubjectively shared context of possible understanding',⁷²⁰ and is capable of reflecting the reality of the EU.

Such an understanding of the concept of demos allows proceeding with a discussion of the issues on Union citizenship.⁷²¹ Even those with a rather sceptical approach to the concept of citizenship, acknowledge its potential if an extension of political rights is paralleled with certain social underpinning to make citizens' political rights a reality.⁷²² In addition to the ECJ longstanding practice on fundamental rights, the adoption of the Declaration of the Charter of Fundamental Rights in 2000 demonstrated a gradual creation of this missing element of a liberal

⁷¹⁷ The EU Treaty introduced the concept of citizenship in Article 17-22.

⁷¹⁸ Weiler et al, *supra* note 30, at 12-15.

⁷¹⁹ *Ibid*, 19, 23.

⁷²⁰ Habermas as cited in Kuper, 'Democratization: a Constitutionalising Process' in Hoskyns and Newman, (eds.), *Democratising the European Union: Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), 156-173, at 165.

⁷²¹ Article 2 EU.

⁷²² Kuper, see above, at 168-172.

regime. The binding nature of the Charter once the Lisbon Treaty enters into force will add further to the protection of citizens' rights in the EU.

The introduction of citizenship has been considered to enhance democratic decision making by concretising the link between the people and the European system.⁷²³ This feature of governance is a necessary attribute of liberal democratic regimes. However, one can hardly argue that the creation of EU citizenship led to immediate participation of Member State's nationals to the political life of the Union.

Indeed the lack of citizens' participation and deliberation has been another reason for the criticism of the governance at the EU level.⁷²⁴ More generally, the representative democracy has been widely criticised in Western Europe where a 'non-democratic process-bargaining among political and bureaucratic elites' is taking place in parallel with democratic processes.⁷²⁵ This is more obvious at European level where the system enables 'a cartel of elites to exert tight control over the policy agenda.'⁷²⁶ It is at this point where the legitimacy of the Union should be supplemented by a 'process-oriented' approach which enables citizens to have a say in the post-legislative phase.⁷²⁷

2.5. Participation and deliberation

It is noted that in 'large-scale political systems,' an example of which the EU represents, it is more difficult to ensure the effective participation of citizens in the political process which is reflecting the opinion of those affected by the decision-

⁷²³ Hoskyns and Newman, (eds.), *Democratising the European Union. Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), at 196.

⁷²⁴ Chalmers, Hadjiemmanuil, Monti, Tomkins, *European Union Law: Text and Materials* (Cambridge: Cambridge University Press, 2006), at 167.

⁷²⁵ Dahl, *On Democracy*, *supra* note 25, at 113.

⁷²⁶ Dehousse, 'Beyond Representative Democracy: Constitutionalism in a Polycentric Polity' in Weiler and Wind, (eds.), *European Constitutionalism Beyond the State*, (Cambridge: Cambridge University Press, 2003), 135-156, at 156.

⁷²⁷ *Ibid*, at 149.

making.⁷²⁸ While large political organisations potentially provide effectiveness in decision-making in comparison with national level of governance, the dilemma between effectiveness and participation is closely linked to the input and output democracy as noted above. It has been noted that the EU's legitimacy suffers from the fact that the governance targets only groups of people, where citizens have minimal access to EU decision-making.⁷²⁹ In the light of the EU's efforts to enhance its legitimacy the issue of citizens' participation could not have passed unnoticed.

As a matter of fact democratic theory has been filled with debates on enhancement of citizens' participation. Within the normative understanding of participatory democracy, with its focus on the central place of citizens' participation in the democratic process, different approaches have been elaborated. These include discursive democracy as developed by Habermas, strong democracy of Barber, and the directly-deliberative model developed by Cohen and Sobel.⁷³⁰ Fuchs notices two common features of these approaches, which are the direct nature of citizens' participation in governance and the central place of deliberation in political will formation.⁷³¹ According to Habermas, deliberative politics exists within two spheres, including democratically institutionalised will formation and informal opinion formation, where the communication taking place among those who are potentially affected, develops into solution to relevant problem in the political public sphere.⁷³² Deliberation or discourse among those who will be affected by the decision-making is

⁷²⁸ Dahl, *On Democracy*, *supra* note 25, at 110, 125-231; Laffan, *supra* note 21, at 339.

⁷²⁹ Petitioning through the European Parliament was the only available way for citizens' direct involvement, and only after the institution of Ombudsman was introduced by the Maastricht Treaty, the citizens acquired another possibility to bring complaints at the EU level; Schmidt, *supra* note 36, at 28.

⁷³⁰ Fuchs, 'Participatory, Liberal and Electronic Democracy' in Zittel and Fuchs, (eds.), *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back in?* (Abingdon: Routledge, 2007), at 39.

⁷³¹ *Ibid.*

⁷³² Habermas, *Contributions to a Discourse Theory of Law and Democracy*, (Cambridge: Polity, 1996), at 308, 365.

the necessary element in the chain of that very process.⁷³³ It should be noted that the quest for participation through deliberation does not require replacement of traditional representative institutions, rather it 'supplements the processes.'⁷³⁴

Fuchs notices also another shared feature of different approaches within the notion of participatory democracy, which is the 'attempt to adapt the model to the conditions of modern societies.'⁷³⁵ It will be legitimate to expect the EU to adapt certain features of these models to its decision-making process.

Public participation was a matter of focus since the early 1990s, though mainly linking participation to the issue of transparency.⁷³⁶

The most notable development in functional term as regards public participation on the EU level was the conventional method of elaboration of the Declaration of the Charter of Fundamental Rights.⁷³⁷ The Charter and the way it was drafted should be considered to be directed at the citizen in order to acknowledge the EU's 'commitments in a public process' which will enhance its troubled legitimacy.⁷³⁸ The significance of the process of drafting the Charter lies in the composition of the drafting Convention, its participative and deliberative nature which served as a relatively 'open forum for constitutional debate.'⁷³⁹ The

⁷³³ Barber, *Strong Democracy: Participatory Politics for a New Age*, (Berkeley: University of California Press, 1984), at 136; Dryzek, 'Legitimacy and Economy in Deliberative Democracy', (2001) 29 *Political Theory* 651, at 651; Cohen, as cited in Weale, *supra* note 26, at 78; Verhoeven, *The European Union in Search of a Democratic and Constitutional Theory*, (London: Kluwer Law International, 2002), at 39.

⁷³⁴ Weale, *supra* note 26, at 81.

⁷³⁵ Fuchs, *supra* note 117, at 39.

⁷³⁶ Chryssochoou, Democracy and the European Polity, in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 359-373, at 363; Scope of the Co-Decision Procedure, Commission Report under Article 189b (8), SEC(96) 1225/4, July 1996, para 23, 39; Inter-Institutional Declaration on Democracy, Transparency and Subsidiarity, adopted by the Commission, Council and the European Parliament at the Brussels European Council in October 1993.

⁷³⁷ The Charter was proclaimed by the European Parliament, the Council and the Commission on 7 December, 2000; *OJ C* 3634, 18.12.2000.

⁷³⁸ De Burca, 'The Drafting of the European Union Charter of Human Rights,' (2001) 26 *European Law Review* 126, at 130.

⁷³⁹ The Convention had European and national level institutional representatives of the Member States, European Parliament, national parliaments and one representative of the Commission; *ibid*, at 138;

Convention was also unprecedented due to availability of information on the procedure and content of the drafting process, and due to limited involvement of civil society through hearings.⁷⁴⁰ The Charter stipulating political rights of the Union citizens alongside a separate provision on participative democracy is included in the Lisbon Treaty.⁷⁴¹

Subsequently, similar approach was undertaken as regards the Convention on the Future of Europe responsible for drafting the Treaty establishing Constitution for Europe.⁷⁴² Despite certain criticism as to President's excessive power, the secretive nature of deliberation of the Presidium, 'hearing' and 'consultation' instead of a 'dialogue' with the civil society, the Convention has been considered to be a success in terms of deliberation and consensus making and openness of the proceedings.⁷⁴³ These trends in EU legislation-making will be institutionalised with the new provisions of the Lisbon Treaty.

Along new Article 10 EU, as amended by Lisbon Treaty, recognising the right of every citizen to participate in the democratic life of the Union, Article 11 EU

Maduro, 'The Double Constitutional Life of the Charter of Fundamental Rights of the European Union' in Hervey and Kenner, (eds.), *Economic and Social Rights under the EU Charter of Fundamental Rights-A Legal Perspective*, (Oxford: Hart, 2003), 269-299, at 271.

⁷⁴⁰ Eriksen and Fossum, 'Democracy through Strong Publics in the European Union', (2002) 40 *Journal of Common Market Studies* 401, at 417-418.

⁷⁴¹ Article 12 of Charter provides that everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters. It also stipulates that political parties at Union level should contribute to expressing the political will of the citizens of the Union. Article 6 EU as amended by Lisbon Treaty provides that the Charter shall have the same legal value as the Treaties.

⁷⁴² The Convention was comprised of representatives of the Member States and candidate state governments, members of national parliaments and European Parliament, two representatives of the Commission, and representatives of other Community institutions with a status of an observer.

⁷⁴³ Schonlau, 'The Convention Method' in Castiglione, Schonlau, Longman, Lombardo, Pierez-Solorzano Borrigan, Aziz, *Constitutional Politics in the European Union: The Convention Moment and its Aftermath* (Basingstoke: Palgrave Macmillan, 2007), 90-11, at 90, 95, 96, 98; Lombardo, 'The Participation of the Civil Society' Castiglione, Schonlau, Longman, Lombardo, Pierez-Solorzano Borrigan, Aziz, *Constitutional Politics in the European Union: The Convention Moment and its Aftermath* (Basingstoke: Palgrave Macmillan, 2007), 153-169, at 154, 155.

regulates the participation of citizens in governance at Union level.⁷⁴⁴ The Article stipulates the obligations of the EU institutions to safeguard the participation of citizens, thus institutionalising the informal opinion formation. It includes provisions on the obligation of the institutions to give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action, as well as to maintain an open, transparent and regular dialogue with representative associations and civil society. In addition, in order to provide the coherence and transparency of the Union's actions, the Commission shall hold broad consultations with interested parties.

One can conclude that these provisions are an attempt to ensure that deliberation and discourse resulting in informal will formation in the EU is a necessary part of the decision-making at supranational level. It can be assumed, that the drafters of the Constitutional Treaty and the Lisbon Treaty accepted deliberative politics as central to understanding of participatory democracy in the EU context. Adopting participatory modes in its constitutional practice and obliging the institutions to ensure citizens' participation can entail that the EU will require its neighbours to share this value.

Another major feature of the new Article is the opportunity of legislative initiative for citizens of the Union. Paragraph 4 of Article 11 EU provides that not less than one million citizens may take the initiative of inviting the European Commission to submit any proposal on the issues where citizens consider that a legal act is required. This feature potentially represents the idea of 'outside initiative model' where the initiative stems from the outside of the political system.⁷⁴⁵

⁷⁴⁴ The earlier Article I-47 of the draft Treaty establishing a Constitution for Europe had a Title 'The principle of participatory democracy.'

⁷⁴⁵ Habermas, *supra* note 119, at 379-380.

To summarise the discussion on democratic values of the EU, one should note that despite all the shortcomings and drawbacks, the EU has its own evolutionary and dynamic democratic model. Democracy as a value is shared between the EU and its Members States, since the EU has been attempting not only to enhance its democratic credentials, but also to preserve the democratic models of its Member States as demonstrated by the provisions of the Lisbon Treaty. The specific characteristics of the EU as a multi-level polity explain the difference of its democratic model from the models of democracy existing in the Member States. However, it can be noted that the democratic values of representation, liberal constitutional features and participation are values shared between the EU and its Member States. It is based on these values that the neighbours should expect the EU to promote in its external action. Whether these values are reflected in the notion of democracy that the EU is promoting in its foreign policy is discussed further with particular focus on the last two rounds of enlargement.

3. Transposition of democratic values in the EU foreign policy: the 2004 and 2007 accession rounds

The first comprehensive approach to the promotion of democracy has been undertaken during the last two rounds of enlargement as a matter of 'retaining the EU's essential identity.'⁷⁴⁶

3.1. Creating democracies in accession countries

While there is an opinion that European integration positively affected democratic consolidation even in some of its old Member States 'with less than

⁷⁴⁶ Youngs, 'Normative Dynamics and Strategic Interests in the EU's External Identity', (2004) 42 *Journal of Common Market Studies* 415, at 416.

perfect historical democratic credentials,⁷⁴⁷ it is the last two rounds of enlargement which is widely considered to be successful and the experience of which the EU tries to replicate in the case of the ENP.

The accession process of CEE is considered to be an exception to the rule according to which external factors are secondary for regime change, which is primarily motivated by domestic developments.⁷⁴⁸ The success of democratisation of CEE states, nevertheless, cannot be awarded to the integration process only. The latter has coincided with a number of other factors. Among such factors is the timing of the accession process, where the 'EU models are being presented at the same time as CEE policymakers are seeking institutional models to replace or to create new structures.'⁷⁴⁹ In addition, the enlargement process was taking place in parallel with integration of relevant countries to other organisations of the 'western community of states' such as NATO, OSCE, and the Council of Europe advocating the principles of liberal democracy.⁷⁵⁰

The accession of the 1990s and early 2000s processes was primarily concerned with the conditionality mechanism established at the Copenhagen European Council, discussed in Chapter IV. The condition for being a democratic state in order to qualify as an EU Member State has been articulated since the creation of the EEC through Article 237 of the Rome Treaty which required the member countries to be liberal democracies. According to Hillion, it is within the

⁷⁴⁷ Weiler, 'Europe 2004- Le Grand Debat: Setting the Agenda and Outlining the Options' (Brussels, Conference Paper 15 and 16 October 2001), note 42 of Conclusion.

⁷⁴⁸ Pridham, 'The International Dimension of Democratisation: Theory, Practice, and Inter-regional Comparisons' in Pridham, Herring and Sanford, (eds.), *Building Democracy? The International Dimension of Democratisation in Eastern Europe*, (London: Leicester University Press, 1994), 7-31, at 9.

⁷⁴⁹ Grabbe, 'How Does Europeanization Affects CEE Governance? Conditionality, Diffusion and Diversity,' (2001) 8 *Journal of European Public Policy* 1013, at 1014.

⁷⁵⁰ Schimmelfennig and Sedelmeier, 'Conclusions: The Impact of the EU on the Accession Countries' in Schimmelfennig and Sedelmeier, (eds.), *The Europeanization of Central and Eastern Europe*, (London: Cornell University Press, 2005), 210-228, at 212.

relations of the Community with former dictatorships in Greece, Spain and Portugal that the political conditionality 'first materialised'.⁷⁵¹

The European Council of 1978 established that 'respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities'.⁷⁵² The Commission made references to 'pluralist democracy' as an element essential for pre-accession.⁷⁵³ Ultimately when Spain and other Southern European countries joined the EC, they satisfied formal conditions of liberal democracies.⁷⁵⁴ This and subsequent 'institutional acknowledgement of political conditionality',⁷⁵⁵ embodying the existing practice, were given a stronger recognition in the accession process in Eastern Europe, where the political conditionality was the 'most prominent and firmly stated'.⁷⁵⁶ It was after the Copenhagen European Council officially established the formal accession criteria. However, certain issues in relation to the prominence of political conditions should be emphasised.

The first point of concern in relation to political conditionality has to do with the content of political criteria. While, the Copenhagen criteria indicated the elements of political conditionality, including democracy, the specific criteria were left undefined and vague without clear indications as to a model of democracy the

⁷⁵¹ Hillion, 'The Copenhagen Criteria and their Progeny' in Hillion, (ed.), *EU Enlargement: A Legal Approach*, (Oxford: Hart, 2004), 1-22, at 4.

⁷⁵² Copenhagen European Council, 7-8 April 1978, 'Declaration on Democracy'. EC Bulletin, No. 3 (1978), at 6.

⁷⁵³ *OJ* 1979 L291/3; *OJ* 1985 L302/3.

⁷⁵⁴ Pridham, 'The European Union's Democratic Conditionality and Domestic Politics in Slovakia: the Meciar and Dzurinda Governments Compared' (2002) 54 *Europe-Asia Studies* 203, at 205-206.

⁷⁵⁵ Hillion, see above, at 5-6.

⁷⁵⁶ Youngs, 'European Union Democracy Promotion Policies: Ten Years On', (2001) 6 *European Foreign Affairs Review* 355, at 358.

candidate countries were expected to establish, rendering the implementation of democratic conditionality 'disaggregated' without full awareness of its meaning.⁷⁵⁷

Starting from 1997, the Commission initiated the evaluation of the progress of candidate countries in annual reports where political conditionality obtained a 'real bite.'⁷⁵⁸ It was the necessity to assess the progress that urged the EU to specify the content of democracy within the political conditionality.⁷⁵⁹ Thus, it was first the Council which referred to the democratic principles, including:

- Representative government, accountable executive;
- Government and public authorities to act in a manner consistent with the constitution and the law;
- Separation of powers;
- Free and fair elections at reasonably intervals by secret ballot.⁷⁶⁰

While these conditions did not bring much specificity to the concept of democracy, some ideas could be found in certain other EU documents. The Guidelines for the Phare and TACIS programmes aimed at contributing to 'the consolidation of pluralist democratic procedures and practice' including support for 'acquisition and application of knowledge and technique of parliamentary practice and organisation.'⁷⁶¹ Also, strengthening of non-governmental institutions with their potential to contribute to development of a pluralist society was included.⁷⁶²

⁷⁵⁷ Pridham, 'EU Enlargement and Consolidating Democracy in Post-Communist States-Formality and Reality', (2002) 40 *Journal of Common Market Studies* 953, at 958.

⁷⁵⁸ Sadurski in Sadurski, Czarnota and Krygie, *supra* note 77, at 29.

⁷⁵⁹ Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, (Austin: Wolters Kluwer Law & Business, 2008), at 86.

⁷⁶⁰ Council Conclusions of 29 April 1997 on the application of conditionality with a view to developing a coherent EU strategy for its relations with the countries in the region, Bull. EU 4-1997, point 1.4.67.

⁷⁶¹ Olsen, 'Promotion of Democracy as a Foreign Policy Instrument of 'Europe': Limits to International Idealism' (2000) 7 *Democratization* 142, at 148.

⁷⁶² *Ibid.*

The most detailed reference to the substance of democracy as an element of Copenhagen political criteria was provided in the Commission's 'Agenda 2000'.⁷⁶³ The specification provided in the Agenda was intended at evaluating whether accession negotiations with relevant countries should be opened.⁷⁶⁴ The Commission referred to formal criteria of democracy under the heading of 'Democracy and Rule of Law,' thus mixing these concepts together. The conditions include the constitution of applicant countries, which should guarantee democratic freedoms, including political pluralism, the freedom of expression and the freedom of religion, establishment of democratic institutions and independent judicial and constitutional authorities permitting different state authorities to function normally. Another feature the Commission paid attention to is free and fair elections, allowing the alternation of different political parties in power, and a greater role for opposition.⁷⁶⁵

After referring to the above mentioned prerequisites, the Commission then considered the political practice of democracy in different applicant countries. This relates to how is the power distributed in practice, whether there is a political culture of participation, whether protection of constitutional freedoms is guaranteed in practice and others.⁷⁶⁶ In this connection, Kaldor and Vejvoda differentiated between formal and substantive conditions for democracy. The formal conditions imply inclusive citizenship, the rule of law, separation of powers, elected power-holders, free and fair elections, freedom of expression, associational autonomy, and civilian control over the security forces; and substantive democracy assumes political

⁷⁶³ European Commission, 'Agenda 2000: For a Stronger and Wider Union', *EU Bulletin Supplement* 5/97.

⁷⁶⁴ Smith, 'The Evolution and Application of EU Membership Conditionality' in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press, 2003), 105-139, at 115.

⁷⁶⁵ Agenda 2000, at 40.

⁷⁶⁶ *Ibid*, at 40-41.

equality, power distribution and a political culture of democratic participation.⁷⁶⁷

Perhaps based on these developments, it has been suggested that the Union has 'moved beyond conditions of formal democracy to those pertaining to substantive democracy.'⁷⁶⁸ Making a similar distinction between procedure and process, it has been noted that processes cannot be easily imported from abroad.⁷⁶⁹

Nevertheless, the conditions were still perceived to be vague and ambiguous. On the one hand, this could be considered as a way out from the challenge that the Commission was facing with a choice of a particular model to impose on candidate countries allowing for national variations.⁷⁷⁰ It has been noted that the lack of precision and clarity regarding the criteria and also the benchmarks of compliance eventually resulted in lower threshold of meeting the criteria, difficulty in assessment of progress, 'poor analysis quality provided by the Commission, including random choice of issues, unreliable conclusions, numerous contradictions and a curious approach to democracy.'⁷⁷¹ Moreover, a closer look at the Commission's Reports and Opinions brings out the elements that the Commission was considering in assessing progress, which are the executive, parliament, judiciary and their functioning.⁷⁷² Sadurski also mentions anti-corruption measures.⁷⁷³ Such important elements of democratic transformation for the purposes of ensuring proper representation as

⁷⁶⁷ Kaldor, 'Eastern Enlargement and Democracy', in Hoskyns and Newman, (eds.), *Democratising the European Union. Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), 139-155, at 140-141; Kaldor and Vejvoda, (eds.), *Democratisation in Central and Eastern Europe*, (London; New-York: Continuum, 2002), at 4-5.

⁷⁶⁸ Pridham, 'The European Union's Democratic Conditionality and Domestic Politics in Slovakia: the Meciar and Dzurinda Governments Compared', (2002) 54 *Europe-Asia Studies* 203.

⁷⁶⁹ Light, 'Exporting Democracy' in Smith and Light, (eds.), *Ethics and Foreign Policy*, (Cambridge: Cambridge University Press, 2001), 75-92, at 90.

⁷⁷⁰ Kochenov, *supra* note 146, at 94.

⁷⁷¹ *Ibid*, at 300-301.

⁷⁷² *Ibid*, at 88.

⁷⁷³ Sadurski in Sadurski, Czarnota and Krygie, *supra* note 77, at 29.

functioning of political parties and the electoral process have been noted as ‘the forgotten elements of transformation.’⁷⁷⁴

Apart from these problems inherent in the democratic conditionality and its assessment consistency, the application of the latter was overshadowed by a greater focus on compliance with the *acquis*, in particular its economic part.⁷⁷⁵ Perhaps the reason behind this is the determination that the political criteria of conditionality mostly serve to establish a new reform-oriented leadership able to undertake necessary economic reforms.⁷⁷⁶ In this respect, the phases before and after opening the accession negotiations have been distinguished. While democratic conditionality was a prominent feature in the first phase, in the second phase the emphasis on democratic conditionality was much weaker due to the absence of the direct link with the accession, since the membership negotiations had been already started.⁷⁷⁷

Thus, while it can be said that with the invention of Copenhagen political conditionality a legal framework has been created in order to transform the acceding countries, the political bargaining left scope for uncertainty and did not allow revealing the real potential of the conditionality mechanism.⁷⁷⁸

One can agree with the view that the EU’s political conditionality enjoyed high credibility in terms of ‘neither of the elements was disputed and was not a subject for manipulation by the candidate countries.’⁷⁷⁹ However, the above

⁷⁷⁴ Pridham notices that political parties did not feature in EU programmes for democracy assistance in general; Pridham, *supra* note 144, at 959; Kochenov, *supra* note 146, at 162.

⁷⁷⁵ Olsen, *supra* note 148, at 149; Kochenov, *supra* note 146, at 301.

⁷⁷⁶ Henderson, ‘Reforming the Post-Communist States: Meeting the Political Conditions for Membership’ in Jenkins, (ed.), *The Unification of Europe? An Analysis of EU Enlargement*, (Centre for Reform, London, 2000), 27-35, at 29.

⁷⁷⁷ Smith in Cremona, *supra* note 51, at 114; Ridder, Schrijvers, Vos, ‘Civilian Power Europe and Eastern Enlargement: The More the Merrier’ in Orbie, (ed.), *Europe’s Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 240-257, at 250-251.

⁷⁷⁸ Hillion, ‘Enlargement of the European Union: A Legal Analysis’ in Arnall and Wincott, (eds.), *Accountability and Legitimacy in the European Union* (Oxford: Oxford University Press, 2002), 401-418, at 418; Kochenov, *supra* note 146, at 312.

⁷⁷⁹ Schimmelfennig, Engert and Knobel, *supra* note 87, at 33.

discussion suggests that the pre-accession process largely affected the formal prerequisites of democracy at the stage before opening the accession negotiations, while substantive prerequisites of democracy were not significantly influenced.⁷⁸⁰ Nonetheless, new Member States which joined the EU in 2004 and 2007 qualified for the status of liberal democracies at least formally. The democratic conditionality seemed to be less efficient than the *acquis* conditionality which in its turn undermined the democratic processes in the CEE countries.⁷⁸¹

3.2. *Transposing democratic deficit to candidate countries*

Along the general discussion on the democratic deficit of the EU, there was a concern that within the last two rounds of enlargement much criticised features of the EU governance would have potentially widened the gap between ruling elites and masses in CEE countries with their Communist heritage.⁷⁸²

Such concerns were based on the structural aspects of the accession process, where national governments played the most important role in the transformation process. The necessity created by the EU in having a compact team ensuring efficient and coordinated management of the pre-accession process has resulted in establishment of a 'core executive.'⁷⁸³ The institutional set up of the accession process reflects this statement. As discussed in Chapter II, the EAs established the Association Councils composed of the EU representative and the representatives of respective countries, mostly members of the governments.⁷⁸⁴

⁷⁸⁰ Kaldor in Hoskyns and Newman, *supra* note 154, at 141.

⁷⁸¹ Schimmelfennig and Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', (2004) 11 *Journal of European Public Policy* 661, at 675-676.

⁷⁸² Pridham, *supra* note 144, at 954

⁷⁸³ Grabbe, *supra* note 136, at 1018.

⁷⁸⁴ Sadurski, *supra* note 77, at 34.

The Association Councils were endowed with a competence to adopt legally binding decisions which would take precedence over national law, therefore passing by the national legislator. Thus, national parliaments had a minimum role and awareness in the adoption of legislation as opposed to what the EU officially required from the candidate countries, that is 'stable democratic institutions and the development of capable law-makers.'⁷⁸⁵ Also negotiations for accession were taking place in a secret atmosphere, where national parliaments had limited opportunity to ensure a counterweight to the role of the executive.⁷⁸⁶ Legislative-executive relations are not the only relations distorted during the accession process. Certain weakening of checks and balances may well occur also as regards the guarding role of constitutional courts which could not revise the executive regulations implementing Community legislation.⁷⁸⁷

The problem was aggravated with the EU favouring the political consensus in former applicant countries, which ultimately resulted in discouraging serious debate about accession.⁷⁸⁸ What was more disappointing is the fact that the entire process concerned only the top governing circles in candidate countries, where the general public had restricted participation in the process of integration.⁷⁸⁹ Similar to their Communist past, citizens of these countries should have considered politics as 'external, instrumental and manipulative: as an act of distant institutions,' where democracy loses its credibility.⁷⁹⁰

⁷⁸⁵ Grabbe, *supra* note 136, at 1017.

⁷⁸⁶ Sadurski, *supra* note 77, at 34.

⁷⁸⁷ Sajo, 'Accession's Impact on Constitutionalism in the New Member States' in Bermann and Pistor, (eds.), *Law and Governance in an Enlarged European Union*, (Oxford: Hart, 2004), 415-435, at 432.

⁷⁸⁸ Pridham, *supra* note 155, at 207.

⁷⁸⁹ Sajo, *see above*, at 415.

⁷⁹⁰ Kaldor and Vejvoda, *Democratization in Central and Eastern Europe*, (London; New-York: Continuum, 2002), at 164.

Therefore, the enlargement process, while arguably having a positive influence on formal prerequisites of democracy, may have also had an adverse effect on the substantive aspects of democracy in these particular countries. Will this be the case also in neighbouring countries?

4. Conclusion

Throughout the democratisation process of Central and Eastern European countries there was an irony that ‘a democratically deficient body is telling them how to become functioning democracies.’⁷⁹¹ Would this irony be appropriate in the case of the ENP? Is the EU democratic enough to tell its neighbours how democratic they should be? This brings us back to the questions posed in the introductory part to this Chapter. Is there a genuine commitment to democracy in the Union? Second, what model or models of democracy most adequately describe the democratic values of the EU? Third, is it the same concept of democratic values that the Union transposes in its external relations and how, in particular in the enlargement process upon which the ENP is largely based?

Taking a retrospective look at different parts of this Chapter the answer to these questions can be summarised as follows.

Considering the EU’s past and present democratic reality at the supranational level against models of democracy functioning in its Member States, one thing is clear: statal models of democracy solely cannot reflect the democratic reality of the Union. While addressing the question on the genuine commitment to democracy in the Union, it is impossible to dismiss the fact of its multi-level governance and specific legitimacy. It cannot be equalised to the idea of legitimacy of the state.

⁷⁹¹ Grabbe, ‘How Does the EU Measure when the CEECs are Ready to Join?’ in Jenkins, (ed.), *The Unification of Europe? An Analysis of EU Enlargement*, (Centre for Reform, London, 2000), 37-46, at 45.

However, this statement does not entail that the EU should not attempt to adopt those features of democratic governance functioning in its Member States, which are potentially operative also at the supranational European level. Accordingly, an observer should notice the evolutionary, dynamic nature of the EU's democratic model.

New provisions introduced by the Lisbon Treaty should be considered as a further step in the deepening of the European democracy. This should be understood in several forms. First, of all, it establishes the EU's two-fold legitimacy based on the representation of citizens of the Union and its Member States. Representation as the EU's democratic value is, furthermore, demonstrated through the importance attributed to the role of national parliaments in the EU decision making process. Second, the Lisbon Treaty enhances the institutional balance of the EU governance. In addition, it contributes to creating the link between the governing circles and the demos through the mechanism of participation and deliberation giving 'a say' to the European citizens. Therefore, the analysis of the democratic evolution of the EU culminating in the new provisions of the Lisbon Treaty is an illustration of the EU's unique democratic system with its specific features justifying the multi-level structure of the Union and its dynamic evolving nature.

Hence, in spite of the much criticised drawbacks of the governance at the EU level as opposed to idealised national democracies, it should be concluded that the role allocated to the democracy of the Union and its Member States on the agenda of the Union proves it as a concept 'valued' by the EU, and thus expresses the EU's constitutional commitment to democracy. In this context, the transposition of democracy by the EU in its external relations as an element of its normative identity can be considered as justified.

Despite acknowledged success of the last two rounds of the EU enlargement as an example of such transposition, serious inconsistencies in the application of the political conditionality should be noticed. While the membership perspective has been considered to be a strong catalyst for national transformation and the EU has been seen to move beyond formal criteria at least officially, in practice the implementation of the latter did not make the best use of the available legal framework. The countries that joined the EU in 2004 and 2007 enlargement rounds have been considered to satisfy the criteria of modern democracies in general. However, the EU largely failed to put specific meaning to this concept. Even those features of its own democratic model that can be qualified as democratic values have been in the main omitted or not equally paid attention to in the accession documents. This allowed for an inadequate approach in evaluating the progress of candidate countries, where consistency was often compromised resulting in differentiated treatment of candidates, criticism or its absence on certain chosen issues etc. Moreover, the political conditionality mattered mainly before opening the accession negotiations with candidate countries.

This conclusion casts another shadow over the potential of the ENP to positively influence democratic development of the Southern Caucasian countries. While the political conditionality is one of the elements transposed to the ENP from the enlargement process, it should be expected to be further compromised due to the political nature of the ENP and the new elements of the ENP methodology.

CHAPTER VI

Transposition of Democratic Values to the South Caucasus I: Action Plans and their Implementation

1. Introduction

From the moment when the states of the South Caucasus were included in the ENP, the EU took on the challenge of supporting the democratisation processes of Georgia, Azerbaijan and Armenia. All three states had taken the path of building democratic states since gaining independence and had been engaged in a tortuous process undermined by external and internal problems. In contrast to the enlargement of CEE countries, where the offering of institutional and legislative models by the EU coincided with the post-independence identity search,⁷⁹² in the ENP the EU has had to face already established models of governance. The question now is not one of establishing a new system, but of improving the system already in place.

As discussed in previous chapters, despite certain complications, promotion of democracy is reflected within both the objectives and the methodology of the ENP. The identification of the democratic values of the EU serves as guidance in considering the extent to which the ENP promotes these values in the countries of the South Caucasus. Therefore, we need to identify those instruments and mechanisms in the ENP by which the EU attempts to transform the governance of these states. The Action Plans with respect to each of them, the monitoring of their implementation, and the assistance programmes will serve as a ground for analysing the extent to which the EU upholds its democratic values.⁷⁹³ This will be aimed at revealing whether the EU is loyal to its democratic rhetoric and whether the ENP methodology

⁷⁹² Grabbe, 'How Does Europeanisation Affect CEE Governance? Conditionality, Diffusion and Diversity,' (2001) 8 *Journal of European Public Policy* 1013, at 1014.

⁷⁹³ Baracani identifies these elements as the constituents of the 'ENP method'; Baracani. 'The European Neighbourhood Policy: A New Anchor for Conflict Settlement?', Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy, at 22.

is suitable for democratising the countries of the South Caucasus. This Chapter will aim to discuss the Action Plans as the main instrumental basis for the ENP implementation in the three countries.

The PCAs should be largely dismissed as the instrumental basis for political conditionality, even though the Action Plans with the three Caucasian states make reference to them with respect to the states' priority in strengthening respect for human rights and fundamental freedoms. Even with their political reorientation with the ENP, the PCAs do not largely feature in the ENP's conditionality mechanism and, most certainly, the Action Plans should be considered as 'the central point of reference' for the application of the ENP conditionality.⁷⁹⁴ Also the fact that the implementation of the Action Plans will be monitored accords them with practical importance as opposed to the PCAs.⁷⁹⁵ Therefore, the Action Plans and their implementation will be relied upon to analyse the conditionality in terms of credibility of the conditions for compliance as an indicator of values promoted. The discussion will proceed in a comparative perspective with reference to democratic values of the EU as identified in Chapter V.

The consideration of the process of the Action Plan implementation in the three states is instructive in two ways. Firstly, it refers to the institutional and operational developments that the implementation of the Action Plan brought about in the three countries, therefore questioning the democratic credentials of the ENP implementation process in general. This will reveal whether the EU is transposing its 'democratic deficit' onto its neighbours. The second aspect refers to the place of

⁷⁹⁴ Van Vooren, 'The Hybrid Legal Nature of the European Neighbourhood Policy' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/2010, 17-27, at 17.

⁷⁹⁵ Interview with Anonymous Commission official II, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcript see Annex A.

issues on the democratic life of each country within the measures on implementation of the respective Action Plans.

As mentioned in the Introductory Chapter, the following part of the thesis is partly based on empirical research. Interviews were conducted with European Commission officials and representatives of national governments, parliament as well as NGOs involved in activities related to the democratisation of the states in question. The interviews were conducted in Brussels on January 28th, in Tbilisi on April 6-7th and in Yerevan on April 20-21th, 2009. Due to practical reasons, as an Armenian citizen from Nagorno-Karabakh, I could not visit Azerbaijan, and therefore no interviews have been conducted on ENP implementation in Azerbaijan.⁷⁹⁶

The interviews in Brussels were aimed at revealing the role of political reform within the ENP, negotiation, implementation and monitoring of the Action Plans. The interviews in Georgia and Armenia explored certain issues with respect to the role of each institution in the process of the Action Plan implementation and the place the issues of democratisation are accorded within the latter. General questions in connection to the ENP's leverage with respect to its incentives and future prospects connected to the Eastern Partnership have been also addressed. The empirical data obtained will be used within this and the next Chapter to test whether the ENP with its instruments and mechanisms delivers on promoting democratic values identified in Chapter V.

Within this background, the Chapter will be aimed at analysing the role of the Action Plans and their implementation on the potential of the ENP to influence political reform in Georgia, Armenia and Azerbaijan. Thus, the first part of the Chapter will focus on the Action Plans as the main instrument for cooperation

⁷⁹⁶ Despite these obstacles, contacts have been established with the representatives of ANCEI. Special gratitude is expressed to Arzu Abdullayeva for her assistance.

between the parties. The main advantages and disadvantages of these instruments will be highlighted. Next, comparative analysis of the Action Plans for Armenia, Azerbaijan and Georgia will be undertaken in order to reveal their consistency with the EU's normative image. The democratic aspects of the Action Plan implementation in all three countries will then be discussed. The last substantive part of the Chapter will reveal the measures undertaken in the three states for the implementation of the Action Plans, including their components on democratic reform. The Chapter will then conclude on the potential of the Action Plans and their implementation to influence democratic reform in Georgia, Armenia and Azerbaijan.

2. Action Plans: General observations

In order to consider the Action Plans on the countries of the South Caucasus, a brief reference should be made to the Commission Country Reports which served as a basis for the preparation of the Action Plans. The Country Reports contained sections on political issues, including democracy and the rule of law, human rights and freedoms. It has been noted that the South Caucasian Country Reports appeared 'fairly direct and concrete,' including criticism of the deficiencies of the democratic practices.⁷⁹⁷ The evaluation of democratic issues within the 'Democracy and the rule of law' section has been fairly consistent in all three Country Reports as regards the details and the issues of concern. The criticism of the Commission in all three Reports has revolved around the issues of separation of powers, elections, reform of the judiciary, reform of the executive, including the functioning of local authorities and the civil service reform.⁷⁹⁸ It should be noted that such issues as freedom of the

⁷⁹⁷ Bosse, 'Values in the EU's Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?' (2007) 7 *European Political Economy Review* 38, at 49.

⁷⁹⁸ Country Report Georgia, European Neighbourhood Policy, Commission Staff Working Paper, SEC(2005) 288/3, section 2.1; Country Report Armenia, European Neighbourhood Policy,

media, freedom of expression, participation through NGOs are included within the section on 'Human rights and fundamental freedoms.'⁷⁹⁹ This demonstrates that there is no single approach towards the definition of democracy in the external policy of the EU, since, for instance, in the definition of democracy in the Agenda 2000, freedom of expression and freedom of religion are considered to be elements of the democracy element of the political criteria.⁸⁰⁰ One would expect the Action Plans to adopt a similar stance on the issues to focus on and the detail with which the reforms should be undertaken.

The conditionality principle in all three Action Plans is built up around the 'shared values' concept, as discussed in Chapter IV. The progress in the development of the relationship between parties will depend on the degree of the countries' 'commitment to common values, as well as [their] capacity to implement jointly agreed priorities.'⁸⁰¹ The blurred nature of the incentives of the policy, as discussed in Chapter IV, are reflected in the South Caucasian Action Plans, casting the first shadow on the success of conditionality, already undermined by the absence of a membership perspective. According to the Action Plans, an opportunity of an 'increasingly close relationship, going beyond co-operation, to involve a significant measure of economic integration and a deepening of political cooperation' which assumes 'a stake in the EU's Internal Market' and a possibility 'to participate progressively in key aspects of EU policies and programmes' is offered to Georgia, Armenia and Azerbaijan.⁸⁰² The Georgian Action Plan goes so far as offering

Commission Staff Working Paper, SEC(2005) 285/3, section 2.1; Country Report Azerbaijan, European Neighbourhood Policy, Commission Staff Working Paper, SEC(2005) 286/3, section 2.1.

⁷⁹⁹ Section 2.2 of the Country Reports.

⁸⁰⁰ See Chapter V, section 3.1.

⁸⁰¹ Introduction, EU/Armenia Action Plan, EU/Georgia Action Plan, EU/Azerbaijan Action Plan.

Available at http://ec.europa.eu/world/enp/documents_en.htm#2.

⁸⁰² Action Plans, sections 1 and 2.

‘gradual extension of four freedoms.’⁸⁰³ Thus, one can say that the EU is being responsive to Georgia’s European aspirations and is prepared to take the cooperation further in comparison with Armenia and Azerbaijan. Also, the more indicative nature of incentives in the Georgian Action Plan can suggest that Georgia will be more eager to undertake reforms within the ENP.

Against such incentives the Action Plans in general, and the South Caucasian Action Plans in particular, follow the broad Copenhagen criteria stipulating conditions of democracy, a market economy and the ability to take on the EU’s *acquis communautaire*.⁸⁰⁴ The elements of political conditionality, which are democracy, human rights, minority rights and the rule of law, have been elevated to priority areas in all the three Action Plans. Such prominence of political objectives within the Action Plans has been considered to be one of their ‘striking’ features.⁸⁰⁵ Indeed, democracy promotion in the South Caucasus was not largely on the agenda before the ENP due to the trade and business related core of the PCA. Elevating it to a priority area within the ENP can be considered as ‘added value’ to the normative side of the policy.

Nevertheless, the Action Plans cannot be solely viewed in light of ‘weak’ conditionality. The principles of joint ownership and differentiation most certainly played their role in drafting and negotiating of the Action Plans. In this sense, certain major distinctions should be noticed in comparison with the Accession Partnership of

⁸⁰³ EU/Georgia Action Plan, section 2.

⁸⁰⁴ EU/Azerbaijan Action Plan, section 3, priority areas 2, 3, 4, 6, 7; EU/Georgia Action Plan, section 3, priority areas 1, 2, 3; EU/Armenia Action Plan, section 3, priority areas 1, 2, 3, 4, 5; Sasse, ‘The ENP Process and the EU’s Eastern Neighbours: ‘Conditionality-lite’, Socialisation and ‘Procedural Entrapment’, Paper presented at workshop ‘The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges’, University of Nottingham, 25th-26th October 2007, UACES/ The British Academy, at 12.

⁸⁰⁵ Smith, ‘The Outsiders: The European Neighbourhood Policy,’ (2005) 81 *International Affairs* 757, at 765.

the pre-accession strategy as their instrumental prototype.⁸⁰⁶ The first major distinction is apparent in the use of methodology. While the Accession Partnerships ‘were almost written by the Commission officials themselves,’ the Action Plans should be considered to be the outcome of the negotiations between the Commission and the neighbouring countries.⁸⁰⁷

The Accession Partnerships have been noted to strengthen ‘the system of the quasi-legal/soft law nature of the Copenhagen criteria’ making the latter to look like ‘primary law,’⁸⁰⁸ the Action Plans are clearly political documents leaving their implementation to the good will of neighbours.⁸⁰⁹ Thus, as an example of the EU’s ‘power of persuasion,’ the Action Plans are non-binding documents setting out the expectations on behalf of the EU.⁸¹⁰ In other words, the Action Plans contain a ‘wish list’ of the reforms the EU would like the states to implement through the incentives offered within the policy.⁸¹¹ For the states involved, this suggests that the EU merely indicates the direction for development.⁸¹²

Most importantly, if the Accession Partnerships were drafted to emphasise the priorities and intermediate objectives necessary for meeting the Copenhagen

⁸⁰⁶ As noted in Chapter IV, the Action Plans generally resemble the Accession Partnerships used during the enlargement.

⁸⁰⁷ Tulmets, ‘Adapting the Experience of Enlargement to the Neighbourhood Policy: the ENP as a Substitute to Enlargement?’ in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 29-57, at 44; Tocci, ‘Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law’ in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 23-35, at 25.

⁸⁰⁸ Hillion, ‘Enlargement of the European Union: A Legal Analysis’ in Arnulf and Wincott, (eds.), *Accountability and Legitimacy in the European Union*, (Oxford: Oxford University Press, 2002), 401-418, at 417.

⁸⁰⁹ Action Plans, see Introduction.

⁸¹⁰ Cremona, ‘The European Neighbourhood Policy: More than a Partnership?’ in Cremona, (ed.), *Developments in EU External Relations Law*, (Oxford: Oxford University Press, 2008), 244-299, at 277.

⁸¹¹ Interview with Anonymous Commission official I, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcript see Annex A.

⁸¹² Interview with Anonymous Official, State Ministry for European Integration of the Republic of Georgia, 7 April 2009, Tbilisi. For interview transcript see Annex B.

criteria⁸¹³ the drafting of the Action Plans has been a major disappointment in this respect. While it has been considered that the Action Plans generally suffer from clear vision of the overall picture of the reforms the neighbours should be undertaking,⁸¹⁴ the conditionality is even more undermined in the way the conditions for progress are spelled out or, more precisely, are not spelled out. Whereas, it is well known that the success of the conditionality will depend on the precision and clarity with which the conditions, benchmarks and timeframes are defined.⁸¹⁵

Not only can the actions be called ‘clear benchmarks,’ but also most of the time they lack precision due to the general nature of the priorities established in the absence of specific deadlines, turning the priorities into summarised objectives.⁸¹⁶ The discrepancy between the initial language on ‘shared values’ and the final outcome in the Action Plans’ measures on democracy and human rights is particularly obvious. The Action Plans contain rather general and weak language on ‘shared values’ in comparison with the ENP Strategy Paper and the accompanying Country Reports.⁸¹⁷ A possible explanation can be is that the EU has shifted its priorities in the process of ENP evolution from the logic of political conditionality to

⁸¹³ Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, (Austin: Wolters Kluwer Law & Business, 2008), at 74.

⁸¹⁴ Kochenov, ‘The ENP Conditionality: Pre-Accession Mistakes Repeated’ to appear in *Pioneer Europe? Testing EU Foreign Policy in The Neighbourhood*, Delcour and Tulmets, (eds.), (Baden Baden: Nomos, 2008), available at <http://ssrn.com/abstract=1310780>, at 14; Magen, ‘The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?’, Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006, at 415.

⁸¹⁵ Schimmelfennig and Sedelmeier, ‘Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe’, (2004) 11 *Journal of European Public Policy* 661, at 664; Magen, ‘The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?’, Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006, at 411; Lynch, ‘The European Neighbourhood Policy,’ Institute for Security Studies, June 2004, at 6.

⁸¹⁶ Smith, *supra* note 17, at 757, 765; Kochenov, *supra* note 23, at 13; Tocci, *supra* note 16, at 31; Emerson, ‘Is there to be a Real European Neighbourhood Policy?’ in Youngs, (ed.), *Global Europe: New Terms of Engagement*, Foreign Policy Centre, UK, 2005, 15-22, at 20.

⁸¹⁷ Johansson-Nogues, ‘The (Non-) Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?’ (2007) 7 *European Political Economy Review* 181, at 188-189; Bosse, *supra* note 6, at 50-52.

‘cooperation with its neighbours aimed at jointly tackling problems of migration and border management, securing reliable energy supplies.’⁸¹⁸

The Action Plans with Georgia, Armenia and Azerbaijan are symbolic of this trend. The three documents have been noted to have a more general nature in comparison with the Ukrainian and Moldovan Action Plans, which are much more detailed and focused, and concerns have been expressed by the representatives of civil society that the benchmarks of the Action Plans are not as strict as the commitments the South Caucasian countries have made to the Council of Europe.⁸¹⁹

Nevertheless, the Action Plans with the South Caucasian countries include priorities and general actions on democratisation. In an interview, a Commission official explained that the EU’s position that democracy is a necessary precondition for cooperation makes it distinct from other international actors.⁸²⁰ However, the mere fact of prioritising measures on democratic development is not sufficient, and the way the conditions for adherence to democratic values are established in the Action Plan brings into doubt the distinct position of the EU.

3. Democratic values in the Action Plans with Armenia, Georgia and Azerbaijan

There is a presumption that short term interests in energy security, crisis management and the fight against international crime and corruption in relations between the EU and the countries of the South Caucasus take precedence over democracy promotion, which is considered to have ‘secondary’ importance in all three countries.⁸²¹ A closer look at the Action Plans with each of the countries is required to identify the place of democracy promotion.

⁸¹⁸ Tocci, *supra* note 16, at 31.

⁸¹⁹ ‘Conflict Resolution in the South Caucasus: The EU’s Role’, International Crisis Group, Europe Report No 173, 20 March 2006, at 13.

⁸²⁰ Anonymous Commission official I, Annex A.

⁸²¹ Bosse, *supra* note 6, at 57.

3.1. EU/Armenia Action Plan

While political reforms are envisaged within the first two priority areas, it should be noted that the major focuses of the Action Plan with Armenia can be considered to be on economic liberalisation, legislative reform in line with the economic *acquis*, and energy strategy.⁸²² The actions on political reform reflect the substance of the Copenhagen political criteria, including democracy, the rule of law, protection of human rights, and rights of minorities. Both priority areas contain rather long lists of actions, the negotiation of which did not cause any opposition by the Armenian side.⁸²³ It is assumed that the principle of joint ownership should not have significantly affected the negotiation process of the document, since the country does not have any effective leverage with the EU.

The specific actions in priority area 1 are devoted to strengthening of democratic structures and the rule of law, thus mixing these two concepts in one. A deviation from the Country Report should be noted at the outset in respect to the issues the parties decided to prioritise within the Action Plan. Similar to the Country Report, the Action Plan requires actions on proper implementation of the constitutional reform, ensuring better separation of powers. However, as regards the operation of the three branches of power, the main focus is on the independence and functioning of the judiciary and reform of the executive, including the functioning of local self-government and reform of the civil service. Reform of the judiciary is particularly prominent with the necessity of undertaking legislative and institutional

⁸²² Actions for encouraging further economic development, further improvement of investment climate and strengthening of private sector-led growth, further convergence of economic legislation and administrative practices, development of energy strategy are the main priority areas; EU/Armenia Action Plan, section 3, priority areas 3, 4, 5, 6.

⁸²³ Interview with Anonymous Commission official III, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcript see Annex A.

reform.⁸²⁴ The operation of the Parliament or political parties is a largely neglected area. Consistent with the Country Report, a full compliance of the electoral framework with OSCE commitments and recommendations of the Venice Commission of the Council of Europe is required by amending the Electoral Code and improving electoral administration.

Thus, within a general trend to make references to international instruments rather than to specific EU values,⁸²⁵ in the area of democratisation, references are commonly made to the international obligations of the states, meaning that the EU does not create additional obligations and merely calls the neighbouring countries' attention to the commitments they had previously undertaken. This justifies the reliance on behalf of the Commission during the assessment of the progress on reports from relevant international organisations. Such 'multilateralism',⁸²⁶ is a shared feature of all the three Action Plans.

Also in line with the Country Report, issues such as ensuring the independence of the media through strengthening the independent regulatory body for public and private broadcasters which are responsible for awarding broadcasting licenses and supervision, is included in the Human Rights section.⁸²⁷ These priority actions are to be implemented again in compliance with the international obligations

⁸²⁴ Special attention in relation to the principle of separation of powers is paid to the independence of judiciary, as well as on laws for the procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, and the scope of their powers. Another action directly refers to the status of the Council of Justice (the Council of Justice is responsible for drafting the annual list of judges, based on which the President of the country appoints the judges.), independence of which should be guaranteed from the legislative and the executive branches. It should be ensured that the Council is able to guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates.

⁸²⁵ Cremona, 'Values in the EU Constitution: the External Dimension', Centre on Democracy, Development and the Rule of Law', Stanford Institute for International Studies, Working Papers, No 26, 2 November 2004, at 11.

⁸²⁶ Khasson, Vasilyan, Vos, 'Everybody Needs Good Neighbours': The EU and its Neighbourhood' in Orbie, (ed.), *Europe's Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 240-257, at 225.

⁸²⁷ Priority area 2 of EU/Armenia Action Plan.

of the country, including under PCA, Council of Europe, OSCE and UN. However, the operation of NGOs and public participation, noted in the Country Report, did not find any place in the list of priorities.

It should be noted, that, with the exception of the priority of developing the Ombudsman institution and the electoral framework with a clear reference to an international standard,⁸²⁸ the rest of the priorities appear to be a general call to develop and adopt laws without any specific reference to their content. What these actions do is rather generally state the ultimate objective. In addition, the actions not only lack precision in substance, but also, most of the time, no concrete deadlines are envisaged for their implementation. In the view of the Action Plan being adopted for five years timeframe, it is unfortunate that only four actions have a deadline, which was 2006. Such allocation of reform time-wise is particularly at odds with the fact that the Action Plans with South Caucasian countries were endorsed in late 2006. In this context, the Armenian Action Plan is a standing proof of the criticism voiced in the previous section.

The inadequate approach to democracy promotion as opposed to the rhetoric of the ENP on 'shared values' is not confined to priority areas solely. Besides priority areas, the Action Plan contains section 4 on General Objectives and Actions which are noted to complement the prioritised actions. It is rather odd that the document is drafted from the specific to the general, where the specific actions are presented first and mostly without precision and detail. Similar observation can be noted as regards the Action Plans with Georgia and Azerbaijan. While from a legal perspective, such composition of the document can be viewed as demonstrating lack of precision, it

⁸²⁸ In relation to the development of the Human Rights Ombudsman's institution "Paris Principles" based on UN General Assembly Resolution 48/134 of December 1993 have been emphasised. The development of the electoral framework shall take place in line with OSCE/ODIHR and CoE Venice Commission recommendations.

nevertheless should be kept in mind that the Action Plans are political documents, non-binding in nature, and not even signed by any of the EU institutions.⁸²⁹ In this respect, the actions included in the different sections of the Action Plan are considered to be a 'wish list' the EU would like the partner country to implement and the allocation of sections is purely 'a matter of presentation.'⁸³⁰ While this might entail that there is no major difference between the actions within the prioritised areas and those under section 4.1.1, according to the Action Plans the progress of the relationship *inter alia* will depend on the partner's capacity to implement jointly agreed priorities. This suggests that the priorities should outweigh the general actions in section 4.1.1.

An even longer list of actions of democratic reforms is contained in section 4.1.1. Certain vital issues for Armenian political life which were disregarded or paid little attention in the priority areas have been included on this list. Therefore, greater attention is paid to local self-governance, in particular strengthening capacities of local communities and civil service institutions are among these actions.⁸³¹ This is more detailed than the brief action on development of local self-governance mentioned in priority area 1 in relation to constitutional reform without any specific indicators or particular components highlighted. Another issue as regards the reform of the executive is civil service reform, with wide-ranging actions on the agenda.

The general actions include the functioning of the political parties in Armenia and strengthening of political pluralism by encouraging co-operation between Armenian and EU political parties and legislative bodies, as well as the establishment of clear and transparent rules on party financing. As noted in Chapter II the

⁸²⁹ Anonymous Commission official I, Annex B.

⁸³⁰ *Ibid.*

⁸³¹ This reform shall take place in line with European standards and the implementation of the European Charter of Local Self Government.

functioning of political parties is a vital issue for the functioning of the Armenian Parliament. On the one hand, considering its omission from priority areas, the inclusion of this activity within the general actions should be welcomed. On the other hand, taking into account the importance the EU attributes to the role of the Parliament and to the issue of citizens' participation, omitting this action in combination with a general silence on the activity of the Parliament in the priority areas is a clear retreat from the EU's democratic values.

Another major issue omitted from the priority areas and included in the general actions is the development of civil society which is important in the context of citizens' participation in the political life of the country. However, no details as to how or in which direction civil society should develop are identified, thus turning it into another general call for action without much substance to it.

Hence, it can be noted that most of the actions are general in nature and lack specificity as regards particular measures or dates of implementation. As noted by a Commission official, lack of specificity should not necessarily be considered negatively, since restricting actions to certain measures and deadlines will 'bind the hands' of the parties.⁸³² From this perspective the imprecision inherent in the Action Plan allows the partner country to choose measures of implementation flexibly and decide its own timetable. On the other hand, this not only undermines conditionality by blurring the conditions in addition to incentives, but also potentially creates a loop hole to avoid implementation of this or that action for an indefinite term. Moreover, this throws into question the basis on which the Commission is supposed to evaluate the progress of the ENP partners.

⁸³² Anonymous Commission official III, Annex A.

3.2. EU/Georgia Action Plan

It has been suggested that among the three South Caucasian countries, Georgia is the one which puts 'the strongest emphasis on political reform and human rights standards.'⁸³³ At the start of the ENP, Georgia was viewed as a country with a credible potential for making major progress in the short term and one of the most suitable countries for the implementation of the ENP.⁸³⁴ Political commitments made by the Georgian government seemed to coincide with the EU's position on democracy promotion through the ENP and its enthusiasm to support Georgia by changing the direction of the 'leader based' reforms to a more 'programme or ideology' oriented reforms.⁸³⁵

Therefore, it is in the case of Georgia that one would expect to encounter a clearly expressed commitment to democratic reform in the main document that sets out the conditions for cooperation between the parties. The Georgian Action Plan is a disappointment in this sense. Although it has been noted that despite Georgia's main emphasis on conflict resolution during the Action Plan negotiations, the EU was pushing for democratic and economic reform,⁸³⁶ the actions on democratic reform prioritised in the document do not manifest evidence of a concerted effort.

It is striking that the Georgian Action Plan merges together not only democracy and the rule of law, but also protection of human rights and fundamental freedoms within one priority area combining a short list of actions to be implemented

⁸³³ Balfour, 'Promoting Human Rights and Democracy in the EU's Neighbourhood: Tools, Strategies and Dilemmas' in Balfour and Missiroli, *Reassessing the European Neighbourhood Policy*, EPC Issue Paper No. 54, June 2007, at 20.

⁸³⁴ Anonymous Commission Official 1, Annex A..

⁸³⁵ *Ibid*; Interview with Anonymous Official, State Ministry for European Integration of the Republic of Georgia, 7 April 2009, Tbilisi. For interview transcript see Annex B.

⁸³⁶ Popescu, 'Europe's Unrecognised Neighbours: The EU in Abkhazia and South Ossetia', Centre for European Policy Studies, Working Document No 260/March 2007, at 8-9.

in compliance with Georgia's international obligations under PCA, Council of Europe, OSCE and UN.⁸³⁷

Within this priority area the major focus is on the reform of the judiciary by continuing the criminal justice reform which was taking place within the EUJUST Rule of Law Mission.⁸³⁸ The prioritised measures primarily relate to the reform of the judiciary according to European standards in order to ensure proper separation of powers, independence of the judiciary, prosecution, as well as the police and law enforcement agencies.⁸³⁹ These generally framed actions come without any intermediary deadlines.

The only more or less detailed actions are required regarding the conduct of local (2006), parliamentary (2008) and presidential (2009) elections in Georgia in accordance with international standards, through the implementation of OSCE/ODIHR and Council of Europe recommendations. In particular, the need for a reliable voter registry and a functioning and transparent electoral commission has been noted. In addition to this, Georgia is required to develop a functioning civil register by the end of 2009. Inclusion of these measures indicates the emphasis the EU puts on the representative element of Georgia's unstable post-revolutionary democracy.

Calls for action as regards civil service reform and the finalisation and implementation of a strategy and programme for local government reform in

⁸³⁷ EU/Georgia Action Plan, section 3, priority are 3.1.

⁸³⁸ Adoption of a new Criminal Procedural Code by 2007 is envisaged. Some actions are provided for the prohibition of torture, such as implementation of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (notably to improve detention conditions) and implementation of the Optional Protocol to the UN Convention Against Torture.

⁸³⁹ These measures include improvement of training of judges, prosecutors, and officials in judiciary, Ministry of Justice administration, police and prisons, in particular with regard to the human rights issues and judicial internal cooperation; improved access to justice notably through the establishment of an effective legal aid system; penitentiary and probation service; system of execution of Court decisions.

accordance with Council of Europe recommendations, are included within the same priority area.⁸⁴⁰ While this is particularly important to ensure bottom-up decision making through decentralisation of governance,⁸⁴¹ the absence of deadlines and concrete benchmarks do not take account of political conditionality. These are the only actions prioritised in the document, where such important issues as the separation of powers, checks and balances, the role of the Parliament are excluded. Accordingly, one can conclude that such elements of democratic governance that the EU has been so keen to develop itself and protect in its Member States, such as representation of citizens in the Parliament and elements of liberal democratic governance, are not being highlighted.

Certain assumptions can be made in relation to such a permissive approach towards democratic reform in comparison with the Armenian Action Plan. One reason stems from the consideration that Georgia was already committed to democratic values. Nevertheless, it has been acknowledged by the Commission that, despite the short-term reforms which were considered to be a start of a promising process, democracy building requires long-term commitment.⁸⁴² Therefore, the serious problems with the functioning of democratic institutions and the factual failures in the democratic practices of Georgia after the Rose Revolution should not have been ignored by the EU. In addition, taking into account Georgia's orientation towards European integration, the EU's failure to put a stronger emphasis on democratic reform should be considered as a major omission by the Commission,

⁸⁴⁰ It also includes actions related to the rule of law, such as adoption of a public service reform strategy and legislation for the civil service in order to improve good governance and transparency; EU/Georgia Action Plan, Priority Area 1.

⁸⁴¹ It has been noted that despite certain legislative reforms, power significantly rests with regional and Tbilisi-based officials and further decentralisation of power is required with clarification of powers and competencies between central and local levels; Georgia Country Programme Action Plan 2006-2010, UNDP Georgia, section 2.5; 'Georgia's Armenian and Azeri Minorities', International Crisis Group, Europe Report No. 178, 22 November 2006, at 12.

⁸⁴² Anonymous Commission official 1, Annex A.

especially taking into account that Georgia is considered to be a country, where, according to a Commission official, the ENP is perceived to have the potential to deliver.⁸⁴³

In addition to the priority actions, like the Action Plan on Armenia, section 4.1.1 on democracy and the rule of law, human rights and fundamental freedoms of the Georgian Action Plan provides for general actions complementing the priorities. The actions aimed at democratisation in this section can be summarised around the reform of the judiciary, civil service and the strengthening of Parliament. Strengthening Parliament is required particularly so that it can fulfil its oversight role (including in the security and defence sector) and establishing clear rules regarding lobbying and conflicts of interests. Also, encouraging greater political pluralism by strengthening the role and functioning of political parties is required. However, including these important actions within general actions will not necessarily lead to the Georgian authorities' giving urgent attention to matters of political pluralism and strengthening of the Parliament. The mere inclusion of such vital issues in the section on general actions is symptomatic of the importance they were accorded at the time.

An action on raising the level of legal expertise and law-screening in the processes of harmonisation of Georgian legislation with the European standards is also included in the part on strengthening democratic institutions. This potentially suggests a differentiated approach to Georgia, which nevertheless is not urgent as it is not prioritised. It should be noted that the issues of citizens' participation, including through development of civil society, have been generally disregarded in the Georgian Action Plan.

⁸⁴³ Anonymous Commission official I, Annex A.

Thus, the few priority and general actions mainly constructed around the reform of the judiciary without any precision and mostly without deadlines are rather strong indicators as to the actual position of the EU on democracy promotion within the ENP. Such a soft approach towards democratic reform with a country which has strong commitment to EU integration should be considered as an omission on behalf of the Commission. In addition, the country does not have strong leverage on the EU to suggest that as a result of joint ownership and differentiation the EU had to retreat from its normative approach in contrast with Azerbaijan, discussed below.

3.3. EU/Azerbaijan Action Plan

It has been noted that due to EU's interests in closer energy relations with Azerbaijan, its concern for political reforms has been 'low key.'⁸⁴⁴ The Action Plan is instructive in terms of the place accorded to democratic reform, taking into account Azerbaijan's democratic record. In this sense the Azerbaijan's Action Plan is outstanding in respect to the democratic priorities. There are four very generally formulated actions in the priority area 2 on strengthening democracy in the country.

Balfour's observation that, as a result of the principle of joint ownership, the Action Plans can be 'less incisive in identifying political and human rights priorities' in comparison with the Country Strategy Papers,⁸⁴⁵ is particularly apt in Azerbaijan's case. It has been noted that the principle of joint ownership comes down to the negotiation process, where in order to reach out to the opposite party to accept the document, it is necessary to take into account actions the party is not willing to undertake or to impose no deadlines.⁸⁴⁶ Another factor affecting the composition of

⁸⁴⁴ Emerson, Noutcheva, Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an 'ENP Plus'', Centre for European Policy Studies, Policy Briefs, No 126, 21 March 2007, Annex: Perceptions of the ENP Partner States.

⁸⁴⁵ Balfour, *supra* note 42, at 19.

⁸⁴⁶ Anonymous Commission official II, Annex A.

the Action Plan is the subjectivity inherent in the nature of the negotiation process, where different desk officers from the Commission deal with different countries and their negotiating position might reflect their own views.⁸⁴⁷ These views can be affected by either normative or rationalist considerations.

It can be suggested that these views will be based on the EU's interests in a particular country. Therefore it was to be expected that in the Azerbaijani Action Plan the EU would engage more closely in the energy sector, and less in the areas of democratisation and conflict prevention.⁸⁴⁸ The fact that the priority area 1 is dedicated to the contribution to the peaceful resolution of Nagorno-Karabakh conflict also demonstrates the stronger leverage Azerbaijan has in relations with the EU in comparison with its neighbours.

The actions within priority area 2 evolve around the issue of elections, including the continuous reform of the electoral process and the conduct of elections in line with general reference to the Council of Europe and OSCE standards without any precision or deadlines. Common reference to continue institutional reforms to ensure proper checks and balances between executive and legislative powers in conformity with the commitments to the Council of Europe is also among the priority actions. The last actions within priority area 2 are legislative and administrative reforms aimed at strengthening of local self-government. Despite the criticism addressed to the Action Plans with Armenia and Georgia, the Azerbaijan Action Plan is a more striking example of the EU preserving the normative rhetoric, but limiting its call for reform to a minimum without complementing it with substantive content. Taking into account Azerbaijan's democratic practice, the priorities seem to be

⁸⁴⁷ *Ibid.*

⁸⁴⁸ Nuriyev, 'EU Policy in the South Caucasus: A View from Azerbaijan', Centre for European Policy Studies, Working Document No. 272/July 2007, at 22.

rhetorical statements used in political dialogue, and merely fulfil a ‘box ticking exercise.’

Moreover, Azerbaijan’s Action Plan also demonstrates inconsistency in comparison with the Armenian and Georgian Action Plans, where an action on the improvement of organisation of the judiciary is included in the priority area 3 on the protection of human rights and fundamental freedoms and the rule of law. As in the case of the Georgian and Armenian Action Plans reference is made to the compliance with the country’s international obligations under PCA, Council of Europe, OSCE, UN. This priority area also contains an action on the development of civil society. The broad requirement to promote the growth of civil society and its organised forms is complemented with a more specific requirement to alleviate the complicated procedures required for NGO registration, though without any deadline.

Similar to Action Plans with Armenia and Georgia, section 4 on general objectives and actions provides for further actions complementing the priorities. Section 4.1.1 on democracy, rule of law, human rights and fundamental freedoms also provides for a shorter list than those in the Armenian and Georgian Action Plans. References formulated similar to priority actions are made to the reform of electoral process and local governance. Reform of the judicial system, together with civil service reform and administrative capacity building are envisaged, merely indicating the ultimate objectives.

3.4. Analysis of the Action Plans

To summarise the review of the Action Plans with the three countries, it should be emphasised that a major retreat is noted on behalf of the EU in comparison with the initial focus on democratic values. The focus on political reforms has been largely decreased to rhetorical actions framed in the most general possible terms.

The application of the principle of differentiation is rather noticeable, since despite certain common features in all three countries, such as elections and proper functioning of the judiciary, certain differences are apparent in relation to the varying focus of action. However, the principle of differentiation is not applied to highlight those features of governances which are particularly problematic in this or that country. In this context the principle of differentiation as an element of the ENP methodology was not used where it was needed the most to highlight the obstacles the three states face, such as the patronage networks in Azerbaijan or some particular post Revolutionary reforms in Georgia. The Action Plans do not demonstrate a consistent approach as regards the elements of the democratic governance valued in the EU.

Thus, a rather weak approach is apparent in relation to such important issues for all three countries, as the activity of the Parliament, separation of powers, and efficient functioning of checks and balances system. The absence of citizens' participation issues and the development of civil society is another manifestation of the fallback position the EU undertook in promoting participation and deliberation as an element of democratic governance. It appears that mostly the formal prerequisites of democracy as entailed by the obligations of the countries in various international organisations will be the ones requiring attention.

In this respect, the overview of the Action Plans suggests that the EU does not offer its democratic values to the countries of the South Caucasus. It rather relies on the obligations of the countries in other international organisations, such as the Council of Europe, the OSCE and the UN. One of the possible explanations for this position might be found in the soft law nature of the Action Plans, where the EU is aware that the states ultimately are not bound by these documents. Therefore, in order

to achieve at least a certain level of compliance, reference is made to the obligations of the neighbouring countries in the organisations, they may have obligations under international treaties or potentially risk losing membership, as in the case of the Council of Europe. This also explains the reliance on the PCAs as a source for international obligations of the three countries, which despite its economic core, nevertheless has binding legal force.

From this perspective, the reliance on partners' obligations in other international organisations should be evaluated positively since the EU ultimately endeavours to ensure that democratic reforms are taking place in the three countries. However, this also suggests that the EU will not be taking a prominent role in democratising the South Caucasian states within the ENP. This might be dangerous in terms of the countries' perception of the EU's attitude towards democratic reform: the EU does not add anything to the requirements they already had to satisfy, therefore rendering its role in democratising the South Caucasian countries as supplementary or ancillary to other international organisations.

Even within this supplementary attitude a serious retreat on the part of the EU is particularly notable in the case of Azerbaijan, where the drafting of the relevant priority areas suggests that as a part of general approach the EU appears to require democracy-building, but in fact limits it to calls of general character. While the case of Azerbaijan can be viewed as an outcome of joint ownership of the process, the Georgian case is also instructive in this sense. Despite the country's aspirations towards the EU, even in this case the EU did not use its leverage to push for democratic reforms.

It is perceived in the European Commission that the implementation of the actions included will potentially turn the relevant countries into EU membership

candidates.⁸⁴⁹ However, even in the case of Georgia, which has the most expressed European aspirations, the Action Plan's provisions on democratic reform do not seem to be of any assistance, where they fail to establish a clear and detailed set of actions that would address currently existing drawbacks in the governance and would in fact contribute to genuine democratic development. In this context, one can conclude, that whereas in the case of Azerbaijan the rationalist considerations have been prioritised, the example of Georgia generally calls into question the EU's adherence to its democratic values even in the case of a willing country, which is hardly affected by the element of joint ownership in the ENP's methodology.

Not only do the priorities and general actions on democratic reforms lack substance, precision and time-frames, but they also fail to prioritise democratic reform over the other areas. This introduces a challenge in terms of prioritising among priorities from both the EU and the partner countries' perspectives. Two possible scenarios for partner countries might be envisaged. Under the first scenario, the country might be regarded as reluctant to undertake democratic reforms, and the fact of presence of various other priority areas serves as an escape point. Under the second scenario, there are other pressing matters for the country, such as economic development or poverty reduction, requiring shifting of efforts, thus distracting even a 'willing' country's efforts.

The second scenario seems to fit the Georgian reality where, despite Georgia's post-revolutionary democracy-oriented Government, pressing domestic or external factors have required urgent attention by the Government, thus postponing the democratic reform. The external environment of Russian embargos and military pressures has had a distracting effect on Georgia's political reforms, requiring the

⁸⁴⁹ Anonymous Commission official III, Annex A.

Government to concentrate on short-term priorities.⁸⁵⁰ This is a clear example of the geopolitics of the region impeding the success of the ENP. Thus, after the August 2008 war, the President announced a new wave of democratic reforms which were welcomed by the EU.⁸⁵¹

In any case, the second scenario suggests that democratic reforms should be prioritised externally by the EU with a similar approach as to pre-accession, where the opening of accession negotiations depended on the fulfilment of political criteria.⁸⁵² Otherwise, urgent economic, social or other issues will distract not only the willing government's efforts but also its capability to concentrate on political reform. The other side of the coin is the implementation of conditionality 'under multiple criteria' by the EU. Should the EU advance relations with a party which, despite worsening democracy, makes progress in other areas of cooperation, such as energy or economic development?⁸⁵³ This potentially creates a major source for what Maier and Schimmelfennig have called 'goal conflict and inconsistency within the ENP'.⁸⁵⁴ This conflict within the ENP is particularly apparent when considering the importance of the democratic reform in comparison with the enlargement experience. In the absence of a strong precondition such the opening of negotiations with candidate countries, democratic reform as it is currently presented in the non-binding Action Plans will be unlikely to cause major developments.

However, it can be suggested that the Eastern Partnership initiative provides for the possibility of creating an equivalent to opening the accession negotiations

⁸⁵⁰ Popescu, *supra* note 45, at 20.

⁸⁵¹ Anonymous Commission official I, Annex A.

⁸⁵² Smith, 'The Evolution and Application of EU Membership Conditionality' in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press, 2003), 105-139, at 114.

⁸⁵³ Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29, at 51.

⁸⁵⁴ Maier and Schimmelfennig, 'Shared Values: Democracy and Human Rights' in Weber, Smith and Baun, (eds.), *Governing Europe's Neighbourhood: Partners or Periphery*, (Manchester: Manchester University Press, 2007), 39-57, at 43.

factor. First, the conclusion of new agreements can be used for requesting significant democratic reform from partners. Even if the new agreements are concluded without preconditions, strict compliance with democratic conditionality should be required within such a binding document for any further development of the relations.

4. Action Plan implementation in the South Caucasus:

Democratic credentials of the process

As noted in the Introduction, the interviews conducted in Georgia and Armenia were partly directed at identifying the leading actors in the process of Action Plan implementation, the distribution of roles between the executive and the legislature, and the participation of civil society in Georgia and Armenia. These findings will be presented together with certain comments.

It has been noted that the openness of national elites in post-communist countries is considered to be one of the major factors affecting the EU's influence.⁸⁵⁵ The openness of national elites to influence from the EU, in particular through the ENP, should be judged according to whether the countries are willing to create a necessary framework for that influence, or in other words for the ENP Action Plans implementation. This first of all assumes assigning the task of policy programming and monitoring to certain institutions of the state.

Within the enlargement experience there were two prominent approaches to the issue of institutional arrangements, including the assignment of relevant responsibilities to a certain ministry or the establishment of a separate institution responsible for the integrative processes.⁸⁵⁶ All three South Caucasian Republics have distinct approaches to these matters which indirectly reflect the level of each

⁸⁵⁵ Grabbe, *supra* note 1, at 1015.

⁸⁵⁶ *Ibid.*, at 1018.

country's political commitment and at the same time reflects on the ENP's methodology.

4.1. Georgia

Considering that Georgia has been classified as a 'willing' neighbour,⁸⁵⁷ it is not surprising to find a separate institution in Georgia entrusted with the task of EU integration. The State Ministry for European Integration is a permanent institution that deals with the process of EU integration that was established in 2004 after the Revolution.⁸⁵⁸ The Vice Prime-Minister holds the position of Minister for EU integration, thus ensuring a high level of political representation. In addition, a State Committee on Integration to the EU was established. It is chaired by the Prime Minister, and essentially repeats the composition of the Cabinet of Ministers. After establishment of this Committee, the State Ministry for EU and Euro-Atlantic integration started to serve as the Secretary to it. The main task of the Committee is to coordinate the activity of the Government in the area of European integration.⁸⁵⁹ Apart from these vertical institutions there is also a horizontal network involving officials responsible for the issues of EU integration in each ministry as experts and also a relevant Vice-Minister or vice head of other state institutions, such as agencies or others.⁸⁶⁰

In addition to this, a Committee on European Integration was established in 2004 within the Georgian Parliament with the main task of assisting in the process of harmonisation of Georgian legislation to that of the EU. It introduced, *inter alia*, a legislative amendment obliging all initiators of legislation to ensure non-contradiction

⁸⁵⁷ Tocci, *supra* note 16, at 27.

⁸⁵⁸ Later on the task of the Ministry was widened to include also the Euro-Atlantic integration; Anonymous Official, State Ministry for European Integration of Georgia, Annex B.

⁸⁵⁹ *Ibid.*

⁸⁶⁰ *Ibid.*

to EU rules.⁸⁶¹ It is interesting to note how the Committee perceives the role of the Parliament in the process of ENP implementation.

Two possible scenarios for Parliament's involvement have been identified by the Chairman of the Committee, including initiation of the legislation and the monitoring of the process.⁸⁶² Taking into account the number of legislative acts to be adopted and the fact that the executive is better positioned for identifying the areas where priority action is required, involvement in the ENP implementation process by scrutinising Government's activity is considered to be more adequate for the Georgian Parliament.⁸⁶³ This position suggests that the Parliament's participation in ENP implementation is limited to the general procedure of monitoring the Government's activity, where the Government will have the awareness and the leading role in the reforms being undertaken within the ENP. Thus, the already weak Georgian Parliament will be left out of the main process of undertaking reforms in the country. The Government will not be challenged as to the course of reforms, ultimately undermining the role of the Georgian Parliament. If this pattern of institutional functioning within the ENP continues, then the criticism that the democratic deficit has been transposed by the enlargement process⁸⁶⁴ will also be valid in the case of the ENP, and will be clearly against the EU's position on the role of Parliament in democratic governance.

Therefore, it is the Government who decides the main directions for the Action Plan implementation which takes place on an annual basis. The State Ministry for EU Integration in cooperation with other Ministries prepares annual programmes established in the form of a matrix. The matrix provides for the main indicators for

⁸⁶¹ Interview with David Darchiashvili, Chairman of the Committee on EU Integration, Parliament of the Republic of Georgia, 7 April 2009, Tbilisi. For interview transcript see Annex B.

⁸⁶² *Ibid.*

⁸⁶³ *Ibid.*

⁸⁶⁴ See Chapter V, section 3.2.

the Action Plan implementation, which are the measures to be undertaken by responsible institutions, deadlines for various measures and the allocated financial assistance.⁸⁶⁵ The Government's leading role in the Action Plan implementation is also strengthened by the fact that the latter is in charge of the assistance received from the EU.⁸⁶⁶

Apart from the role of the Government and the Parliament, one should note the role of civil society in the process of ENP implementation. Georgia's civil society appears to be very willing to undertake a serious role in programming and monitoring ENP implementation. At the state of elaboration of the Action Plan, in September 2005, some 70 civil organisations forwarded recommendations to the Georgian Government.⁸⁶⁷ The Government officials claimed many of these recommendations served as a basis for its activity.⁸⁶⁸ This suggests that the Government initially expressed a willingness to involve civil society.

The same association of NGOs established a monitoring group in 2006, which continues to function today, by organising the public debate around the issues of EU integration, as well as maintaining the dialogue with the representatives of the Commission and the European Parliament.⁸⁶⁹ Despite its readiness and enthusiasm to become involved in the process and raise public awareness, civil society currently faces certain barriers. The absence of any formal or official arena for establishing contact between not only the Government and the civil society, but also the EU representatives, was noted to be an obstacle for the involvement of civil society.⁸⁷⁰

⁸⁶⁵ Anonymous Official, State Ministry for European Integration of Georgia, Annex B.

⁸⁶⁶ See Chapter VII below, section 3.2.

⁸⁶⁷ Interview with Ivane Chkhikvadze, Eurasia Partnership Foundation, 6 April, 2009, Tbilisi; Eurasia Partnership Foundation is a public organisation with a mandate to increase civic participation inter alia in the area of EU integration., for interview transcript see Annex B; Report. 'Civil Society on priorities of the ENP Action Plan for Georgia 2007-2009', available at www.enp.ge.

⁸⁶⁸ *Ibid.*

⁸⁶⁹ *Ibid.*

⁸⁷⁰ Ivane Chkhikvadze, Annex B.

Therefore, the actual engagement is left to informal contacts and personal relationships.⁸⁷¹ Examples of informal practice are the participation of the representatives of civil society in the meetings of the Parliament's Committee on European Integration, which in its turn forwards the recommendations made by civil society to the Government.⁸⁷²

Despite the informal practices, it has been reported in 2008 that the Government does not disclose relevant information to the public, and the representatives of the Government do not participate in meetings and discussions organised by the public sector.⁸⁷³ One can conclude that although at the outset of the process the Government seemed to be responsive to the enthusiasm of civil society, lack of transparency and the absence of any formal framework obliging the parties to make contact with civil society undermines the ability of the civil society to play a serious role in the ENP implementation process. This not only makes the process of ENP implementation elite-driven, but also deprives the civil society of one of its main functions; ensuring the public discourse and deliberation, which could potentially have led to political participation valued by the EU. In its turn, public participation will not be possible without public awareness. Certain constraints are identified here as well.

It has been noted that during a sociological survey undertaken in the country in 2006, the vast majority of the population supported Georgia's integration into the EU.⁸⁷⁴ However, the public lacks knowledge as to the EU itself and the process of EU

⁸⁷¹ Civil Society and Monitoring Implementation of ENP AP, Civil Society Survey Results, Open Society Georgia Foundation and Eurasia Partnership Foundation, Tbilisi 2008.

⁸⁷² Ivane Chkhikvadze, Annex B.

⁸⁷³ Civil Society and Monitoring Implementation of ENP AP, Civil Society Survey Results, Open Society Georgia Foundation and Eurasia Partnership Foundation, Tbilisi 2008.

⁸⁷⁴ David Darchiashvili, Annex B.

integration, including its 'costs and benefits.'⁸⁷⁵ According to the representatives of the Government and the Parliament, measures are undertaken to provide objective information on European integration, EU values and institutions.⁸⁷⁶ Nevertheless, these measures are considered to be insufficient, especially due to the passive attitude of the media to enlighten the public on the EU matters.⁸⁷⁷ It has been noted that only 18% of the population consider they have sufficient knowledge about the EU to make an informed decision about country's future integration.⁸⁷⁸ Moreover, any awareness is mostly restricted to the capital; the regions are even less knowledgeable of the process of European integration.⁸⁷⁹ The weak system of local governance should be assumed to add to participative incapacity of the population in the regions.

To sum up, the results of the interviews presented above, it can be noted that the unawareness of the public and restricted opportunities of the civil society leave the process of ENP implementation to political institutions. Here, the power distribution between the executive and the legislature brings us back to the criticism regarding the EU's transposition of its democratic deficit to the pre-accession process. Major political and economic reforms undertaken in the country with the leadership of the executive and with minimal involvement by the Parliament, isolated efforts of the civil society and an unaware public, are factors that raise questions about the credibility of the process not only as regards formal representative

⁸⁷⁵ Ivane Chkhikvadze, Annex B.

⁸⁷⁶ According to the representative of the Parliament bulletins with information on the EU are published through the Parliament's Information Centre established as a result of an EU project on strengthening the Parliament; Anonymous Official, State Ministry for European Integration, Georgia; Mr. Darchiashvili, Annex B.

⁸⁷⁷ Ivane Chkhikvadze, Annex B.

⁸⁷⁸ 'Georgian National Voter Study,' October-November 2005, IRI, US Agency for International Development (USAID), Baltic Surveys/The Gallup Organization, IPM.

⁸⁷⁹ Ivane Chkhikvadze, Annex B.

elements. They also undermine substantive elements of democracy, including political participation valued by the EU.⁸⁸⁰

4.2. Armenia

Though Armenia has been classified as a 'hesitant' partner,⁸⁸¹ major institutional developments took place in the country manifesting its determination to implement the Action Plan.

In 2006 a National Council for cooperation with the EU chaired by the Prime Minister was established. It was assigned with the task of introducing a mechanism for coordinating relations and discussion between all interested parties, providing information on the process of integration to the public and ensuring the participation of the civil society representatives in the process of EU integration.⁸⁸² The members of the Council include the Ministers, the Vice-Speaker of the Parliament and the representatives of civil society, whose meetings should take place at least once a year.⁸⁸³ Together with the National Council, a Committee for Coordinating the Cooperation with the EU was created with the same composition, excluding the representatives of the civil society. It had the task of elaborating the policy and strategy for EU integration.⁸⁸⁴ What is interesting is that both institutions have been established for the implementation of the National Programme for PCA implementation for 2006-2009, thus expressing a fragmented approach by the Government, where the ENP was not yet acknowledged.

⁸⁸⁰ As identified in Chapter IV, the formal criteria for democracy refer to the institutional and procedural requirements, such as a constitution guaranteeing democratic freedoms, political pluralism, establishment of democratic institutions, free and fair elections, while the substantive criteria for democracy focus more on political culture of participation, distribution of power and equality.

⁸⁸¹ Tocci, *supra* note 16, at 27.

⁸⁸² Decree No. 1282-N, September 7, 2006, Government of the Republic of Armenia.

⁸⁸³ *Ibid.*

⁸⁸⁴ *Ibid.*

This perhaps might be one of the reasons for further institutional developments. It appears that the main institution entrusted with the task of the coordination of policy preparation and implementation is the Ministry of Economy, in particular the EU and International Economic Cooperation Department, coordinating a working group established by a Presidential decree.⁸⁸⁵ Entrusting the task of ENP implementation to the Ministry of Economy reflects the importance of economic integration aspects of the ENP for Armenia.

In addition, in September 2008, a Council on Cooperation with European Institutions under the President of the National Security Council was established which involves all Vice-Ministers. One of the objectives of the Council is oversight of the Action Plan's implementation.⁸⁸⁶ On the one hand, it can be suggested that establishment of these high-level institutions, in addition to the Ministry of Economy responsible for the Action Plan implementation, demonstrates the seriousness of the Armenian authorities to relations with the EU. On the other hand, the existence of these various institutions causes confusion about their tasks and their role in the implementation of the ENP.

Apparently it is the Ministry of Economy which is coordinating the process of actual preparation of the Action Plan implementation. After the adoption of the Action Plan, the Ministry, in cooperation with other ministries, initiated and drafted a programme for the measures to be implemented in 2007 based on the ENP Action Plan. The Programme was established by a Government Decree in July, which was much criticised by civil society, since only six months were left for its

⁸⁸⁵ Interview with Varos Simonyan, Head of Department of EU and International Economic Affairs, Ministry of Economy of the Republic of Armenia, 20 April, 2009, Yerevan. For interview transcript see Annex C.

⁸⁸⁶ *Ibid*; Armenia Progress Report 2008, Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament and the Council, Brussels, 23.04.2009, SEC (2009) 511/2, at 3.

implementation.⁸⁸⁷ The decision establishes measures based on Action Plan priorities and institutions responsible for their implementation which are required to submit a report on their progress.⁸⁸⁸ The Government has been involved in preparation of a new document for the period of 2009-2011, which will be referred to below. It should be noted that the programming of the implementation is left to the Government without any involvement from the Parliament.

Similar to Georgia, a Committee on European Integration in the Parliament was established in 2008 and is responsible for the links with the European Union and the Council of Europe.⁸⁸⁹ The Committee is currently undergoing a process of identifying its role and place and, therefore, cannot claim a strong presence for the Parliament in the process of the ENP implementation. A suggestion has been made by the civil society representatives for the Committee to review legislative drafts as regards their conformity with EU legislation.⁸⁹⁰ Nevertheless such a suggestion would have been ultimately unrealistic due to limited knowledge of EU legislation on the part of committee members and too small an administration comprising only three or four personnel.⁸⁹¹

In a similar manner to Georgia, public awareness of the ENP and its implementation in Armenia is rather low. This is noted not only by the representatives of civil society, but also the state officials responsible for policy implementation.⁸⁹² Likewise, the picture differs from the capital to the regions,

⁸⁸⁷ Interview with Karen Bekaryan, Head of NGO European Integration, 20 April, 2009, Yerevan. For interview transcript see Annex C.

⁸⁸⁸ Varos Simonyan, see Annex C; the Ministry also collects information from other ministries and agencies about the implementation of ENP Action Plan 2009-2011 and submits the results to the RA Government.

⁸⁸⁹ <http://www.parliament.am/committees.php?do=show&ID=111150&lang=eng>.

⁸⁹⁰ Karen Bekaryan, Annex C.

⁸⁹¹ *Ibid.*

⁸⁹² Varos Simonyan; Karen Bekaryan; Interview with Artak Kirakosyan, NGO Civil Society Institute, April 21, 2009, Yerevan. The NGO aims to assist and promote the establishment of a free and democratic society in Armenia. For interview transcripts see Annex C.

because the latter are less informed on the matters of cooperation between Armenia and the EU.⁸⁹³ The media fails to deliver information to the public as well. Even events organised within the ENP framework are presented without highlighting their connection with the policy.⁸⁹⁴ As to the civil society, it expressed readiness to participate in the programming and subsequent implementation of the Action Plan by organising public events, discussions, and seeking foreign grants for undertaking monitoring activities.⁸⁹⁵

However, according to the NGOs, it has been noticed that civil society is generally excluded from the process of programming the ENP implementation. Government representatives are reluctant to attend events organised by civil society and there are no guarantees that the results of the monitoring will be taken into account.⁸⁹⁶ For instance, the process of the preparation of the Government's 2007 Decree on the ENP Action Plan Implementation Tools has been described as 'closed and not accountable to the civil society and to the Armenian public.'⁸⁹⁷ It has been noted that the contacts between the Government and the representatives of the public sector seem to be those which are based on reputation or the status of the organisation.⁸⁹⁸ Thus, it would seem, that as in Georgia, the absence of an official framework within the ENP ensuring the contacts between the Government, the public and the EU, explains the exclusion of civil society from the implementation process.

However, it is to be noted that, in the case of Armenia an institutional framework has existed from 2006 at least on paper: the National Council for the

⁸⁹³ Karen Bekaryan, Annex C.

⁸⁹⁴ *Ibid.*

⁸⁹⁵ Karen Bekarya; Artak Kirakosyan, Annex C.

⁸⁹⁶ Artak Kirakosyan, Annex C.

⁸⁹⁷ 'Analyses of the RA Government Decision on ENP Action Plan Implementation Tools for 2007', Partnership for Open Society Armenia.

⁸⁹⁸ For instance, the European Integration NGO is cooperating with Parliament's Committee on EU integration, EU department of Ministry of Foreign Affairs; Karen Bekaryan, Annex C.

cooperation with the EU mentioned above was designed to involve the representatives of civil society. Although the Council was established in 2006, none of the representatives of the civil society interviewed mentioned its existence. The representative of the Government, acknowledging the importance of the civil society, noted that a reform of the Council has been initiated to ensure the effective presence of the civil society in the process.⁸⁹⁹

Hence, it can be concluded that Armenia's approach generally follows a similar pattern to Georgia. The major role in the ENP implementation belongs to the Government and the Parliament is incapable of balancing the power of the latter. Furthermore, civil society has limited opportunities to participate. Such a method of organisation renders the Action Plan implementation an executive-driven and led process in both countries. Moreover, in comparison with the enlargement, where the accession process was a legally binding and ultimately retained democratic legitimacy through popular referenda, the ENP led reforms will fall short of such legitimacy.⁹⁰⁰ The estrangement of the general public and the civil society from the process of implementation is particularly disappointing in this sense.

4.3. Azerbaijan

Azerbaijan has been classified as a 'passive' or 'hesitant' ENP partner.⁹⁰¹ Despite the fact that Armenia was also described as 'hesitant' partner, as discussed above, in its efforts to implement the Action Plan, the country is rather close to Georgia. It is interesting to note that the representatives of civil society in both

⁸⁹⁹ Varos Simonyan, Annex C; During 2009 some measures were undertaken by the Government of RA to involve representatives of civil society in the process of implementation ENP Action Plan. With the assistance of EU Social and Economic Committee a workshop was organised in Yerevan with the participation of representatives of Armenian civil society.

⁹⁰⁰ Tocci, 'Does the ENP Respond to the EU's Post-Enlargement Challenges?' (2005) 40 *International Spectator* 21, at 25.

⁹⁰¹ Emerson et al, *supra* note 53, at 24; Tocci, *supra* note 16, at 27.

Georgia and Armenia perceive each of the three countries to have its own pace of integration with the EU, with Azerbaijan being far less active in the ENP implementation.⁹⁰²

Perhaps one of the reasons for separating Azerbaijan from the other two Caucasian states in these terms is to be found in the political commitments the country's leadership have been expressing from the commencement of the ENP. While Georgian and Armenian determination to integrate with the EU has been reiterated on various occasions at the highest political level, it has been noted that the Government of Azerbaijan 'remains vague on the issue' of EU integration.⁹⁰³ This assumption can be supported with the fact that since the commencement of the ENP, European integration has not been prioritised in the foreign policy of the country.

Although in a statement made by President Aliyev in Brussels in April 2009, the country is willing 'to bring all the criteria of ... life close to the criteria of the European Union,' the ENP as such did not figure at all in this perspective.⁹⁰⁴ Moreover, energy cooperation has been prominently positioned at the core of cooperation between the EU and Azerbaijan.⁹⁰⁵

During the preparation of the Action Plan, it became clear that more ambitious prospects of integration would be emphasised less than energy cooperation,⁹⁰⁶ which offers real benefits for the country. It should be noted that though the provision of the Azerbaijani Action Plan on the country's 'European aspiration' is common to Georgia and Armenia, it nevertheless had not been included in the initial draft of the

⁹⁰² Karen Bekaryan, Annex C; Ivane Chkhikvadze, Annex B.

⁹⁰³ Boonstra, 'Azerbaijan', in Youngs, (ed.), *Is the European Union Supporting Democracy in its Neighbourhood?* (Fride, 2008), at 136.

⁹⁰⁴ Statements for media representatives by President Ilham Aliyev and President of the European Commission Jose Manuel Barroso, Brussels, 28.04.2009. Available at http://www.president.az/articles.php?sec_id=70&item_id=20090430122621112.

⁹⁰⁵ *Ibid.*

⁹⁰⁶ Alieva, 'EU and South Caucasus,' Discussion Paper, Bertesmann Group for Policy Research, Centre for Applied Policy Research, December 2006, at 18.

document and was included only under pressure by the Azerbaijan National Committee for European Integration (ANCEI), involving representatives from different segments of public life.⁹⁰⁷

It is not surprising, therefore, that the EU is seen by the Azerbaijan government and its population as an important economic partner. The Government is mostly interested in the EU's assistance and economic projects, and the population largely associates the EU with the economic interests of the country.⁹⁰⁸ The implementation of the ENP is based on 'cost-benefit' calculations,⁹⁰⁹ where the amount of assistance provided serves as stimuli for the Government to undertake reforms. And since the assistance promised by the EU is merely a drop in the ocean when compared to Azerbaijan's budget,⁹¹⁰ little effort on behalf of the government has been undertaken to create an institutional and legislative framework for the implementation of the Action Plan.

In this context, the focus on economic cooperation between partners explains the fact that the only institution dealing with the issues related to the EU integration is the National Coordinating Unit for EU technical assistance. This body is responsible for relations with the EU and for allocating assistance within the country.⁹¹¹ There is no dedicated ministry or other executive institution in Azerbaijan which is entrusted with the task of coordination and implementation of issues defined in the Action Plan. There is a Euro-Integration division operating in the Ministry of Foreign Affairs'

⁹⁰⁷ 'European Neighbourhood Policy and Azerbaijan', Annual Report of the Azerbaijan National Committee for European Integration, at 10. Available at http://aamik.az/ts_general/download/ANCEI_report_eng.pdf.

⁹⁰⁸ Boonstra, *supra* note 112, at 131.

⁹⁰⁹ 'Institutional Convergence of CIS towards European Benchmarks,' Report No. 82/2008, Centre for Social and Economic Research, Warsaw, 2008.

⁹¹⁰ Boonstra, *supra* note 112, at 135.

⁹¹¹ *Ibid*, at 140.

Economic Cooperation and Development Department.⁹¹² This is also indicative of the particular importance of the economic dimension of the ENP for the Government. The absence of an established institutional legislative process directed at the implementation of the Action Plan explains the evaluation made by the Commission as regards Azerbaijan's progress. Both in 2007 and 2008 the Commission concluded that Azerbaijan made 'none or limited progress' in overall implementation of the Action Plan.⁹¹³ As a matter of fact, good progress is noted in the area of energy cooperation.⁹¹⁴

Although the absence of coordinated and comprehensive efforts on the part of the country's authorities to implement the ENP Action Plan renders the discussion on the democratic credentials of such a process insubstantial, the position of civil society should be noted here. In contrast to the official policies, Azerbaijani civil society considers the integration to the EU as a priority for the country's future development.⁹¹⁵ Despite its enthusiasm as regards EU integration, representatives of civil society were excluded from participation in the only major stage of ENP developments in the country: the preparation of the Action Plan. The representatives of various segments of civil society had established the ANCEI in February 2006 and immediately claimed a serious role in preparing proposals for the Action Plan and

⁹¹² 'European Neighbourhood Policy and Azerbaijan', Annual Report of the Azerbaijan National Committee for European Integration, at 12. Available at http://aamik.az/ts_general/download/ANCEI_report_eng.pdf.

⁹¹³ 2008 Progress Report Azerbaijan, Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament and the Council, 'Implementation of the European Neighbourhood Policy in 2008', Brussels, 23.04.2009, SEC(2009) 512(2), at 2.

⁹¹⁴ *Ibid.*

⁹¹⁵ 'Azerbaijan National Committee for European Integration and Increase of Civil Society Participation in European Neighbourhood Policy', External Evaluation of the Project, at 2. Available at http://aamik.az/ts_general/download/EXTERNAL_EVALUATION_OF_THE_PROJECT_IN%20AZERBAIJAN_eng.pdf; Boonstra, *supra* note 112, at 136.

expressing its eagerness to undertake monitoring activities.⁹¹⁶ However, the ANCEI was largely deprived of an opportunity to comment on the elaboration of the Action Plan because the Government refused to make the draft of the document available to it.⁹¹⁷

Despite the efforts of civil society to engage in a dialogue with the authorities, it has been suggested that any contacts with the authorities that have occurred have been merely a 'box-ticking exercise.'⁹¹⁸ It is also said that it is premature to expect stable cooperation between civil society and the Government.⁹¹⁹ Efforts to involve civil society in the ENP processes have been more noticeable on the part of the EU recently: Commission officials are prepared to hold discussions with its representatives.⁹²⁰

Also, the opening of the Commission Delegation in 2008 and the initiation of the EIDHR in the beginning of 2009 mark positive developments in this respect where they allow the Commission to engage directly with public organisations. Though the issues related to allocation of assistance will be addressed in the next part, it should be noted that due to the reluctance of the Government to implement the policy as such, and therefore also involve civil society, the eagerness of civil society to become engaged in EU integration processes should be supported by the EU within the ENP framework. This should occur in particular with funding opportunities through the ENPI and not through other projects.

⁹¹⁶ Alieva, *supra* note 115, at 10-11; 'European Neighbourhood Policy and Azerbaijan'. Annual Report of the Azerbaijan National Committee for European Integration, at 8-10; available at http://aamik.az/ts_general/download/ANCEI_report_eng.pdf.

⁹¹⁷ Alieva, *supra* note 115, at 10.

⁹¹⁸ 'Azerbaijan National Committee for European Integration and Increase of Civil Society Participation in European Neighbourhood Policy', External Evaluation of the Project, at 11. Available at http://aamik.az/ts_general/download/EXTERNAL_EVALUATION_OF_THE_PROJECT_IN%20AZERBAIJAN_eng.pdf.

⁹¹⁹ *Ibid.*

⁹²⁰ Anonymous Commission official II, Annex A.

To summarise, while in case of Georgia and Armenia the eagerness to implement the ENP is noticed at both institutional and legislative level, Azerbaijan's lack of operational framework for the Action Plan implementation does not create a basis for policy implementation, which makes the discussion of its democratic credentials rather insubstantial.

5. Implementation of the Action Plans and democratic reform

While the aim of the previous section was to assess the democratic credibility of the ENP implementation process as regards its institutional and operational basis, at the same time it also reflected on the eagerness of each of the countries to engage with ENP implementation in general. Within this general framework the programmes on Action Plan implementation should be considered with the view of their relevance for the transposition of the EU's democratic values.

An analogy can be drawn with the enlargement experience where it has been noted that the Commission is basing the evaluation of the progress of implementation not on what has been achieved but rather 'whether the country is moving in the right direction, and if so, how fast.'⁹²¹ The legislative initiatives and acts aimed at the implementation of the Action Plan should be considered for each of the states to identify whether they are 'moving in the right direction.'

5.1. Georgia

According to the Programme of the Georgian Government for 2008-2012, its main objectives for this period are poverty reduction, national security and territorial and civil integration. In addition to this, sustainable and transparent democratic

⁹²¹ Henderson, 'Reforming the Post-Communist States: Meeting the Political Conditions for Membership' in Jenkins, (ed.), *The Unification of Europe? An Analysis of EU Enlargement*, (Centre for Reform, London, 2000), 27-35, at 30.

institutions, free mass media facilities, active dialogue with civil society and an independent and impartial judiciary are considered to be the preconditions of Georgia's future stable development. Relations with the European Union on the Government's agenda appear in connection with the achievement of the four freedoms of the internal market.⁹²² Thus, while specific targets of EU integration focus on internal market integration, issues of democratisation are part of a wider governmental agenda. As noted by a representative of the Georgian Government, Georgia's orientation towards democratic reform coincides with the EU's democracy promotion agenda.⁹²³ The question is whether this wider agenda is also reflected in the measures on Action Plan implementation.

As mentioned above, the Georgian Government establishes annual programmes for Action Plan implementation. Using a matrix, particular measures are allocated to certain institutions for implementation in an assigned time frame and within established assistance.⁹²⁴ The Government claims that when drafting the annual plans, the comments of the Commission based on its monitoring processes are taken into account to the extent that it is possible.⁹²⁵ According to a civil society representative, many of the Action Plan priorities on democracy-related issues are not implemented even though the Government intended to implement it in three years.⁹²⁶

On the one hand, it can be suggested that the democracy-related issues will not necessarily be implemented because of the non-binding nature of the Action Plan. On the other hand, although the PCA as an international agreement binds the country to the implementation of the obligations contained in it, the present Government is

⁹²² http://www.government.gov.ge/index.php?lang_id=ENG&sec_id=4.

⁹²³ Anonymous Official, State Ministry for European Integration of Georgia, Annex B.

⁹²⁴ *Ibid.*

⁹²⁵ *Ibid.*

⁹²⁶ Ivane Chkhikvadze, Annex B; 'Georgia and the European Neighbourhood Policy, Perspectives and Challenges,' Report, Open Society Georgia Foundations jointly with the NGO Coalition 'For Transparency of Public Finances,' at 11.

considered to be reluctant to implement it because it was the previous Government that concluded the PCA.⁹²⁷ Although certain measures have been undertaken for the implementation of the PCA, it could hardly be suggested that they have had the effect of democratic reform in the country.⁹²⁸

It is interesting to note the way commitments to democracy in the Action Plan are perceived in Georgia. First of all, it is considered that the major discussions with EU representatives most prominently evolve around economic and social issues, while the discussion of issues concerning democratic development and protection of human rights are usually framed with reference to Georgia's obligations in the Council of Europe and OSCE as well as to the assessments of those organisations and international non-governmental organisations.⁹²⁹ In addition it is thought that the Council of Europe is better positioned and has weightier leverage in the country's democratisation process than the EU, since Georgia potentially risks losing its membership.⁹³⁰ This view ultimately corresponds to the EU's position of referring to commitments its neighbours have undertaken in other international organisations. However, at the same time, it may mean that the neighbours, in particular Georgia, do not consider democracy promotion to be the EU's priority.

⁹²⁷ Ivane Chkhikvadze, Annex B.

⁹²⁸ After conclusion of the PCA with Georgia, its Parliament adopted a resolution No. 828-IS of 2 September 1997, according to which all laws and other normative acts adopted by the Georgian Parliament from 1 September 1998 shall be compatible with the standards and rules established by the European Union. In 2001, a Strategy of Harmonisation of the Georgian Legislation with that of the European Communities, elaborated by the Georgian-European Policy and Legal Advice Centre (GEPLAC), was approved by Presidential enactment No. 613 of 14 June 2001, which assigned the Government to make the next step towards the alignment of the legislation - the elaboration of the National Programme of the Harmonisation of the Georgian Legislation with that of the EU. In 2003 the National Programme was elaborated with the assistance of GEPLAC (Enactment of the Government No. 22 of 8 May 2004). Nevertheless, it is clear that legislative approximation was meant to be carried out in areas envisaged by Article 43 of the PCA with Georgia, that is trade and business related fields. Available at <http://www.geplac.org/eng/harmonization.php>.

⁹²⁹ David Darchiashvili, Annex B.

⁹³⁰ Ivane Chkhikvadze, Annex B.

In addition, supporting Henderson's view mentioned above,⁹³¹ there is a perception that the EU side ultimately understands the complicated and time-consuming nature of the process.⁹³² What is ultimately required is to start the process and demonstrate that the country is moving in the right direction.⁹³³ This might be the reason for adopting measures of a general nature for Action Plan implementation: to demonstrate that the reforms will proceed in the required direction.⁹³⁴ It is civil society which is not satisfied with the general direction the reform will be taking and which demands detail and precision.⁹³⁵

It has been noted that the reforms are ongoing due to the fact that they are included in the Government's own reform agenda. The various measures undertaken should be considered as part of the democratisation process, but are not necessarily within the ENP process.⁹³⁶ Also while the Government can introduce legislative reforms in the short term, such as reform of the judiciary, other additional factors might affect its immediate efficiency, such as lack of resources and professionalism.⁹³⁷ Therefore, it appears that the state sees its primary role as establishing the formal criteria for democracy only.

5.2. Armenia

Though the Government of Armenia does not make such strong declarations on democratic reform as Georgia does, it is understood by some that the ENP offers

⁹³¹ Henderson in Jenkins, *supra* note 130, at 30.

⁹³² David Darchiashvili, Annex B.

⁹³³ David Darchiashvili, Annex B.

⁹³⁴ At the adoption of the Action Plan the Government of Georgia introduced an Implementation strategy for 2007, Decree No. 498, 20 October 2006, which identified certain priorities including support to democracy and civil society development.

⁹³⁵ 'Georgia and the European Neighbourhood Policy,' Perspectives and Challenges, Report, Open Society Georgia Foundations jointly with the NGO Coalition 'For Transparency of Public Finances, at 16-17.

⁹³⁶ Such an example is the reform of the Council of Justice which was a consultative body during the previous Government. From 2006 it is an independent institution, this supports the rule of law, it might not necessarily be indicated in the ENP reports; David Darchiashvili, Annex B.

⁹³⁷ David Darchiashvili, Annex B.

an outstanding opportunity for the country's economic development. The programme allows undertaking extensive economic and democratic reforms, necessary for establishing a free market.⁹³⁸ Thus, Armenian aspirations for integration with EU internal market will require democratic reform as a condition for successful performance.⁹³⁹

It should be noted that the implementation of the Action Plan starts where the previous framework, the PCA implementation, proved inefficient.⁹⁴⁰ In that context the Armenian Government had to bring about new stimuli and motivation for its own institutions to undertake the Action Plan implementation.⁹⁴¹

A Governmental Decree on the Implementation Tools for ENP Action Plan for 2007 was adopted in August of that year.⁹⁴² Adoption of an annual measure as late as eight months into the year reduces the chances of its implementation. Furthermore, representatives of civil society have also criticised the Government's approach

⁹³⁸ Varos Simonyan, Annex C.

⁹³⁹ Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 59-76, at 67.

⁹⁴⁰ The implementation of the PCA in a single legislative framework was on the agenda of the Armenian Government from 2004. A National Programme for PCA implementation was approved by a Government Decree on 23 March 2006. The Programme could be described as a comprehensive agenda for the harmonisation of Armenian legislation with the *acquis*, where certain democracy related matters were envisaged such as the compliance of human rights, constitutional reforms, freedom of speech and thought, reform of the judiciary, the electoral system, and other measures relevant to EU standards. The implementation of the Programme required vast financial and technical resources, which were not provided by the EU. The Government would not have committed to its implementation requiring institutional and legislative harmonisation in numerous areas without strong incentives. These factors led to the stagnation of the process. Currently the latter merely serves the purpose of a reference document for institutions in certain areas of EU law, which will possibly remain so. Although the PCAs were concluded for initial period of 10 years. According to Article 94 of the PCA Armenia after the initial period of 10 years the agreement shall be automatically renewed year by year provided that neither party gives written notice of denunciation of the agreement 6 months before it expires. The PCA will likely remain in force until a new agreement is negotiated within the ENP; Varos Simonyan, Annex C.

⁹⁴¹ While working on the preparation of the National Programme in AEPLAC, on numerous occasions I encountered reluctance on behalf of Government officials or experts to engage with the programme where they did not see any motivation for the efforts undertaken, requiring extra workload without any rewards.

⁹⁴² Decree No. 927, August 22, 2008, Government of the Republic of Armenia.

because it did not bring much concreteness to the activities to be implemented or establish a timetable for doing so. It did not provide ‘any deliverables resulting from implementation or any benchmarks towards which the implementation shall be measured.’⁹⁴³ In particular, out of the vast list of priorities and general actions on democratisation contained in the Action Plan with Armenia, only a few of them were addressed in the 2007 Programme and worded in more general terms than the Action Plan itself.⁹⁴⁴ Despite the fact that the measures did not bring much specificity to the Action Plan, limited progress was achieved in 2007, as will be discussed in the next chapter. Again, as in the case of Georgia, it appears that the general direction towards required reforms is present.

Subsequently, a new approach to implementing the Action Plan has been adopted by the Government in order to avoid lengthy preparatory drafting process involving different ministries.⁹⁴⁵ Thus, a new document comprising almost 200 measures for the Action Plan implementation for the period of 2009-2011 has been approved by the Armenian President in May 2009.⁹⁴⁶ The document seems to have a similar approach to the one applied in the Georgian annual plans: it is based on ‘benchmarks’ elaborated by the Ministry of Economy, and other institutions submit a list of measures and expected results for the period in their relevant field of competence.⁹⁴⁷ Through this document the Government intends to bring specificity to

⁹⁴³ Partnership for Open Society, Armenia, Analyses of the RA Government Decision on ENP Action Plan Implementation Tools for 2007, July 2007.

⁹⁴⁴ Thus, the measures for constitutional reforms provide for development in local governance by enhancing the capabilities of local communities and institutions of the civil service without specifying what this means or how and when the measures should be achieved. Among other generally worded measures were further development of the activity of the Ombudsman office, increasing judicial transparency by periodical publication of judicial acts, ensuring independence of the media through measures to enhance independence and pluralism of the public and private media, and ensure the freedom of organising public meetings and demonstrations; Decree No. 927, August 22, 2008, Government of the Republic of Armenia.

⁹⁴⁵ Varos Simonyan, Annex C.

⁹⁴⁶ Presidential Decree No. NK-68-A, May 6, 2009.

⁹⁴⁷ Varos Simonyan, Annex C.

the Action Plan implementation by indicating the sub-measures for implementation, the results to be achieved annually, and the responsible institutions.⁹⁴⁸

As noted by a Government representative, the exclusive practices in relation to the Parliament and civil society within the initial implementation process are being tackled. For instance, the new programme of implementation has been published in order to enable civil society to monitor the process.⁹⁴⁹ It should be noted that the document is one of the few pieces of Armenian legislation which is currently available on the website of the Ministry of Economy.⁹⁵⁰ The document includes a long list of measures to be undertaken in the area of political reform in form of sub-measures with particular results for each year envisaged. Most of these measures are included in the document without being on the Government's own agenda.⁹⁵¹ This means that the Government expresses its commitment at least at a legislative level to follow the Action Plan priorities.

On the other hand, there are no immediate expectations attached to the implementation of the political reform within the ENP either at official or at public level.⁹⁵² Representatives of civil society consider that it is better to have the ENP than 'nothing,' where the Government in any case will engage in some sort of implementation. In this context two problems have been identified, the first being the slow speed of reforms.⁹⁵³ In particular, in relation to the democracy related issues, the Government's discretion as to which reforms should be implemented or can be

⁹⁴⁸ *Ibid.*

⁹⁴⁹ *Ibid.*

⁹⁵⁰ Available at <http://www.mineconomy.am/en/13/>.

⁹⁵¹ The 6th column of the table of measure indicates the conformity of a particular measure with Government's own programme.

⁹⁵² Varos Simonyan; Karen Bekaryan, Annex C.

⁹⁵³ Karen Bekaryan, Annex C.

postponed potentially affect its short-term delivery.⁹⁵⁴ Also, it is considered that the ENP creates institutional opportunities for democratisation in the future.⁹⁵⁵

The second problem has been identified as the slow operation of the heavy bureaucratic machinery of the EU, where the element of swift response is missing.⁹⁵⁶ The identification of the second problem potentially suggests that the EU's monitoring on the level of political dialogue or political demarches do not pass unnoticed in the country and that it has its own influence. The Government officials similarly do not deny the inability of the ENP to influence democratic reforms in the short-term. However it is considered that democratic reform will take place in parallel with economic reforms.⁹⁵⁷ The time factor and the Government's willingness to accept 'the best practice' will be an important consideration.⁹⁵⁸

Thus, the 2007 programme for the Action Plan implementation can be described as a series of half-hearted efforts: measures were envisaged in more general terms than in the Action Plan and with very limited time for their implementation. Nevertheless, the programme for 2009-2011 demonstrates that the Government is ready to take democratic reform on its agenda. Committed implementation of its own current agenda can bring Armenia closer to Georgia once there are clear examples of following the political conditionality.

5.3. Azerbaijan

The situation with the Action Plan implementation in Azerbaijan in general is not promising without a particular institution responsible for the ENP implementation. As mentioned earlier the only institution responsible for the process

⁹⁵⁴ Artak Kirakosyan, Annex C.

⁹⁵⁵ *Ibid.*

⁹⁵⁶ Karen Bekaryan, Annex C.

⁹⁵⁷ Varos Simonyan, Annex C.

⁹⁵⁸ *Ibid.*

of EU integration is the National Coordination Unit,⁹⁵⁹ which shows that essentially economic assistance plays the important role in the case of Azerbaijan. Another factor related to Azerbaijan's motivation adds to this affecting the effectiveness of the ENP in transforming the governance of this particular country. On the one hand, in the case of Georgia and Armenia, it has been noted that the initial focus of the ENP implementation was on economic development which entails democratic reform. In this ancillary way, the latter is continuously present on the agenda of both Governments.

On the other hand, the EU's has more limited leverage as regards Azerbaijan due to the latter's stronger position conditioned by its natural resources. This appears to affect the entire process of the ENP implementation. It has been suggested that ENP incentives are not efficient in improving governance in Azerbaijan, which has the lowest level of institutions among Eastern ENP countries. Despite the fact that the economic institutions have improved, this was not preceded by similar development of political ones: on the contrary, they have even deteriorated.⁹⁶⁰

This is influenced not only by Azerbaijan's reluctance to engage with the EU stemming from its relative economic independence, but also by the reluctance of the EU to push for domestic reforms. These are not viewed as necessary as long as the country provides stability which will not threaten economic cooperation, and most importantly in the energy sector.⁹⁶¹ In addition, civil society feared that the deepening of energy cooperation by signing a memorandum on EU-Azerbaijan energy

⁹⁵⁹ The Unit was established by Decree No 576 of the Cabinet of Ministers, October 22, 1992.

⁹⁶⁰ Institutional Convergence of CIS Towards European Benchmarks, Report No. 82/2008, Centre for Social and Economic Research, Warsaw, 2008, at 34.

⁹⁶¹ *Ibid*, at 39.

cooperation in 2006 weakened the strength of the ENP.⁹⁶² This might have served as a clear indication for the domestic elites of what the EU values the most.

Thus, the contradictions apparent in the ENP methodology, which comprises the principles of conditionality, joint ownership and differentiation, are apparent in the case of Azerbaijan. It appears that the principles of joint ownership and differentiation undermine the conditionality principle and are capable of stagnating the implementation of the ENP, or restricting its implementation to certain areas where the interests of the parties dominate, that is energy cooperation.

Therefore, it will not be surprising to notice, in contrast to Georgia and Armenia, the absence of any comprehensive legislative measures intended to implement the priorities of the Action Plan, including those related to democratic development of Azerbaijan. The absence of an institutional and legislative framework makes it difficult for assistance issued by the EU to be directed at the implementation of different priority areas, including those on democratisation. Thus, from the two scenarios for overshadowing the democratic reforms within the ENP noted above, Azerbaijan seems to represent the first one. The national ruling elite is reluctant to change itself, especially when there is no pressure imposed by the EU. In addition, these factors were aggravated by a limited presence of the EU in the country. As noted earlier EU Delegation opened two years after the launch of the ENP and after initial delays in signing the ENPI National Indicative Programme.⁹⁶³ One might suggest that these circumstances explain the overall failure to implement the priorities of the Action Plan on strengthening democracy.⁹⁶⁴

⁹⁶² Alieva, *supra* note 115, at 16.

⁹⁶³ Boonstra, *supra* note 112, at 132.

⁹⁶⁴ 'Progress Assessment on the Action Plan which Azerbaijan signed with the European Union'.

January 2008, Azerbaijan National Committee for European Integration, at 9-15.

Available at http://aamik.az/ts_general/download/ANCEI_Report_on_AP_Azerbaijan-2007_eng.pdf.

Thus, it can be noted that while Georgia and Armenia shared much in their institutional and legislative approach to the ENP implementation process, in Azerbaijan it is not only the Action Plan's measures on democratisation, but the Action Plan in general that remains a paper commitment.

6. Conclusion

To summarize the findings of this Chapter, it should be noted that at the outset the ENP seems to take democracy promotion to a higher level in comparison with the PCA through prioritising political reforms. In terms of conditionality, the Action Plans are much weaker in comparison with their instrumental prototype: the Accession Partnership. The conditionality is weakened due to its framing within the 'shared values' narrative.

The drafting of priority actions on political reform merely amount to general political statements without any precise or detailed vision of comprehensive transformation. Not only are the priority actions far away from being called 'benchmarks,' but also the Action Plans are drafted in an odd manner. For instance, the general actions in section 4 at times provide for more detailed measures of implementation than the priorities. The political nature of the documents largely explains the uncoordinated and scattered nature of the Action Plans undermining their legal characteristics.

The major issues which are addressed in the priority actions in the three Action Plans mainly evolve around the separation of powers, reform of the judiciary, reform of the executive. There is also a focus on the civil service and local governance, and the development of electoral reform ensuring proper conduct of elections. However, most of the priorities lack substance, precision, detail and deadlines turning the actions into a rhetorical call for reform. Such vital issues as the

role of Parliament, political parties and the development of civil society are not even prioritised and are included among general actions.

The EU's retreat from its normative stance is apparent in Azerbaijan and, surprisingly, Georgia's Action Plans. These are the result of the principles of joint ownership and differentiation. This is explicable in Azerbaijan's case, because of the EU's self-interest in the energy cooperation and the joint ownership of the process through which Azerbaijan could express its reluctance to democratic reform. However, it is striking in Georgia's case, where similarly it can be noted that very few priorities are on the agenda of democratic reform focusing on judiciary and elections mainly. In this light, the Armenian Action Plan appears to be the most loyal to the democratic rhetoric of the EU.

The political nature of the Action Plans leaves the fortune of democratic reform to the neighbours depending on their ambitions. This is particularly the case where there is no specific pressure to implement political reforms, such as the one in the enlargement process for the opening of negotiations. This might be the reason why the EU relies on the countries' commitments in the Council of Europe and OSCE, where they have binding obligations to implement democratic reforms. In this way, despite the soft law nature of the Action Plans, the EU attempts to ensure that the countries will continue to make political reforms. At the same time the EU will contribute to the trend apparent in all three countries where the EU is viewed mostly as an economic partner, and where the democratic obligations seem to be real in the organisations where the countries risk losing membership.

It might be suggested that the EU is capable of overcoming this stigma by according the democratic reforms primary importance using the instruments at its disposal currently. Democratic reform could be given precedence over other priorities

by the EU, for instance, by a promise to sign a new agreement. Or even if the agreement is to be signed without preconditions, the enhanced cooperation and future integration into a single neighbourhood area should be made conditional upon genuine democratic development.

The Action Plans notably fail to establish a strong requirement for political reform, and the initial process of implementation lacks democratic legitimacy. The executives are the ones responsible for negotiation and implementation of the Action Plans. The general public lacks knowledge of the processes taking place in all three countries, and the civil society, despite its eagerness for engagement, lacks relevant capacities. In addition, the central position of national governments, as opposed to the role of the national parliaments, repeats the enlargement experience which was criticised for creating strong executives dominating transformation of the candidate countries. Hopes were raised that the new institutional frameworks established within the Eastern Partnership will increase the role of the civil society in integrative processes.⁹⁶⁵

As to the actual implementation of the Action Plans, it should be noted that the countries can be differentiated according to their efforts undertaken within the last two years. In the case of Georgia, serious efforts on behalf of the Government to deliver implementation of the Action Plan can be noted both on institutional and legislative levels. Although Armenia has been considered to be a 'hesitant' partner, it demonstrates, similar to Georgia, readiness to engage with the Action Plan implementation. This is demonstrated through establishing different institutions, though with confusing tasks, and programming the actual implementation, though with debatable efficiency. On the contrary, in Azerbaijan the ENP implementation is

⁹⁶⁵ Artak Kirakosyan, Annex C.

diminished to the allocation of the assistance and the realisation of the central role of the energy cooperation in relations with the EU.

However, for none of the countries is democratisation, as part of the ENP, considered to be a high priority. For both Armenia and Georgia democratic reforms are viewed as a precondition for necessary economic reform which is considered to be the core of cooperation with the EU. This at least suggests that for both countries political reform will be a necessary part of ENP implementation, increasing their chances of success in this area. However, at the current stage, only the formal prerequisites of democracy on the legislative level can be expected. In the case of Azerbaijan the importance of the democratic reforms is diminished together with the generally decreased meaning of the ENP as a policy requiring political and economic reform. However, it is a result of not only the national Government's reluctance to undertake political reforms, but also the EU's permissive attitude to democratic conditionality, where the stability of present energy agreements is the top issue on the agenda.

Thus, the Action Plans prove their political nature, leaving their implementation to the ambitions of the countries concerned. The importance of economic reform for Georgia and Armenia could provide a good basis for implementing the Action Plans in both countries. However it has become apparent that, in the short-term, the most they can deliver is certain legislative developments that might affect the formal criteria of democracy. In Azerbaijan, the economic considerations of the EU and the country's perception of what the EU values the most in these particular relations, render the democratic reform within the ENP more of an illusion for the foreseeable future.

CHAPTER VII

Transposition of Democratic Values in the South Caucasus II: Monitoring and Assistance

1. Introduction

It has been argued that the EU possesses sufficient tools to exercise ENP conditionality even without the membership incentive.⁹⁶⁶ The monitoring of implementation, together with the assistance mechanisms, should be considered among those tools allowing the EU to exercise conditionality.

Controlling the progress of political and economic reforms has been considered the best way to guarantee the ultimate success of candidate countries during the process of enlargement.⁹⁶⁷ The role of monitoring in the implementation of the ENP is to ensure that the process is not merely one-sided, but that the presence of the EU is consistently guaranteed.

As with enlargement, the ENP provides for monitoring of the progress of the partner countries through adopting the mechanism of joint evaluation, and progress reports issued unilaterally by the Commission.⁹⁶⁸ According to the Action Plans with the South Caucasian countries, the PCA joint institutions will advance and monitor the implementation of the Action Plan, while the Commission will produce reports on implementation in cooperation with the Secretary-General/High Representative.⁹⁶⁹ Monitoring of the Action Plan implementation is the element of the ENP mechanism

⁹⁶⁶ Balfour and Rotta, 'Beyond Enlargement: The European Neighbourhood Policy and its Tools', (2005) 40 *International Spectator* 7, at 10.

⁹⁶⁷ Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, (Austin: Wolters Kluwer Law & Business, 2008), at 51.

⁹⁶⁸ Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29, at 33; Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance', Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006, at 409.

⁹⁶⁹ See section 5 of EU/Georgia, EU/Armenia, EU/Azerbaijan Action Plans.

which emphasises the determination on behalf of the EU to send a regular message to the partner countries on their potential to come closer to the EU.⁹⁷⁰

As discussed in the previous chapter, the composition of the Action Plans lacks clarity and detail in terms of required action. This creates a weak ground for monitoring the implementation of these documents. The issue therefore is that, is it legitimate to expect the Commission to bring specificity and direction to the Action Plans?

The assistance provided to the partner countries is another element through which the EU supports the conditionality mechanism. It is important for purposes of identifying two issues. First, it is necessary to consider whether the new ENPI framework prioritises assistance for democratic reform in general and, in particular, in the countries of the South Caucasus. Secondly, the actual allocation of assistance serves as another indication of the role of democratic reform in the process of ENP implementation in three states.

Moreover, taking into account the weak conditionality of the Action Plans, the elements of monitoring and assistance should be considered even more important. Sufficient focus on democratic reform can still rehabilitate the EU's credibility as to its intention to promote democracy in the South Caucasus.

As noted previously, this Chapter relies also on the information obtained during interviews conducted in Brussels, Tbilisi and Yerevan. In particular, the information provided by the officials of the Commission contributed to framing the discussion on monitoring undertaken by the EU.⁹⁷¹ The interviewees in Tbilisi and

⁹⁷⁰ Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003 COM (2003) 104 final, at 18.

⁹⁷¹ Specific questions have been addressed to the process of monitoring during the interviews. See interview transcripts, Annex A, B, C.

Armenia provided information on the process of assistance allocation in each of the countries.

In this context, the Chapter will be aimed at analysing monitoring of the Action Plans via political dialogue and the regular reports issued by the Commission. The Progress Reports issued by the Commission will be discussed in order to reveal the focus and detail on democratic reform. This exercise will demonstrate how the Commission manages to evaluate the implementation on the basis of the Action Plans. The next part of the Chapter will focus on the ENPI as a new instrument for assistance to the South Caucasus and its focus on democratic reform. Within this part, a comparative analysis of the assistance to democratic reform in Georgia, Armenia and Azerbaijan will be undertaken. Ultimately, the Chapter will conclude with a summary of findings.

2. Monitoring of political reform in the South Caucasus

The Action Plans with the three countries mention the joint assessment and the reports issued by the Commission as two ways of monitoring. The joint assessment mentioned in the Action Plan can be included within a more general type of monitoring through political dialogue taking place in different formats. The second type of monitoring is the actual evaluation of the progress achieved in relation to specific actions by the Commission on an annual basis. These two types of monitoring as undertaken in the South Caucasus will each be addressed in turn.

2.1. Monitoring through political dialogue

Monitoring through political dialogue can be described as acknowledging the progress in the ENP implementation on behalf of the EU. It takes place either at high official level or within the institutional set-up of the PCAs. Hence, External Relations

Commissioner or Troika visits should be considered as high level monitoring, which guarantee that the issues of democracy promotion and human rights protection are constantly present on the dialogue agenda.⁹⁷²

A lower level of political dialogue is recorded at the level of institutions established within the PCAs. According to the South Caucasian Action Plans, the PCA joint bodies 'will advance and monitor' the Action Plan implementation.⁹⁷³ The most appropriate among these institutions for the Action Plan monitoring is the Cooperation Council which meets once a year at ministerial level. Since the adoption of the Action Plans the Cooperation Councils of the three countries held meetings in October 2007 and December 2008. A closer look at meetings of the Cooperation Councils indicates that, in fact, they do not engage in monitoring amounting to evaluation of the progress in Action Plan implementation.

The 2007 Cooperation Council merely invited the attention of respective states to the challenges they have to face in building functioning democracy.⁹⁷⁴ Although as regards the 2007 Cooperation Councils it can be argued that the operation of the Action Plans within several months was not such to be assessed, the 2008 Cooperation Council meetings made it clear that their role is confined to political dialogue, where the meetings of about half an hour are not intended to evaluate or assess the developments or their lack in detail.⁹⁷⁵ The main task of the Cooperation Council is to reflect on the level of relations between the parties, which explains the discursive nature of its meetings. Thus, the EU-Georgia and EU-Armenia

⁹⁷² Anonymous Commission officials I and II, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcripts see Annex A.

⁹⁷³ Section 5 of the Actions Plans.

⁹⁷⁴ EU-Georgia Cooperation Council Eighth meeting, Brussels, 16 October 2007, Press Release, 13969 (Presse 243); EU-Armenia Cooperation Council Eighth meeting, Brussels, 16 October 2007, Press Release, 13967 (Presse 241); EU-Azerbaijan Cooperation Council Eighth meeting, Brussels, 16 October 2008, Press Release, 13968 (Presse 242).

⁹⁷⁵ Interview with Anonymous Commission official II and III, DG RELEX, European Commission, 28 April, 2009, Brussels. For interview transcripts see Annex A.

Cooperation Councils noticed progress in certain areas of cooperation for both countries, although distinguishing Georgia with its strong commitment to the implementation of the Action Plan.⁹⁷⁶ Conversely, the 2008 EU-Azerbaijan Cooperation Council did not mention any progress achieved, but stressed the necessity to implement the Action Plan.⁹⁷⁷ All the Cooperation Council meetings with the three countries highlight the essential elements of political dialogue being the rule of law, democratic principles, protection of human rights and fundamental freedoms, political pluralism, freedom of expression and freedom of media. This ensures that at least on a declaratory level the EU is upholding its normative image.

It should be noted that during all three Cooperation Councils of December 2008, readiness on behalf of the Union was expressed to assist in the further process of democratisation in each of these countries 'including in the framework of the ENP.' This accordingly suggests that the ENP will not be the single framework for this purpose.

In order to explain the role of the Cooperation Councils as a 'hand-shaking exercise,' it has been noted that the task of the Council is limited to summarising the developments taking place throughout the year, including the activities of other joint bodies under the PCAs.⁹⁷⁸ It is the lower levels of Cooperation Committees and subcommittees which advance and monitor the implementation. However, the importance of these bodies for the issues of democracy promotion should be largely dismissed as they are mainly technical in nature and are based on a presumption that

⁹⁷⁶ EU-Georgia Cooperation Council Ninth meeting, Brussels, 9 December 2008, Press Release, 17028 (Presse 368); EU-Armenia Cooperation Council Ninth meeting, Brussels, 9 December 2008, Press Release, 17028 (Presse 366).

⁹⁷⁷ EU-Azerbaijan Cooperation Council Ninth meeting, Brussels, 9 December 2008, Press Release, 17028 (Presse 367).

⁹⁷⁸ Anonymous Commission officials I and III, DG RELEX, Annex A.

democracy related issues require high-level interaction.⁹⁷⁹ In any case, within the few subcommittees operating in the South Caucasian countries, none practically is of direct relevance to the democratisation process. The only subcommittee which comes close to the purpose of political reforms is the justice, liberty and security Committee operating in Georgia and focusing *inter alia* on the judiciary.⁹⁸⁰ In the case of Armenia one subcommittee is purposed at handling trade, economic and legal issues.⁹⁸¹ There is however the possibility of establishing a second subcommittee of justice, liberty and security similar to Georgia once an agreement is reached with the Armenian Government.⁹⁸² Two subcommittees are functioning in Azerbaijan, one focusing on energy, environment and transport, and the other on trade and economic issues.⁹⁸³

As a matter of fact, the European Parliament called on the Commission to negotiate the establishment of human rights sub-committees with all three countries.⁹⁸⁴ It is perhaps surprising to note, that it is the Commission which is reluctant to engage in comitology.⁹⁸⁵ Nonetheless, it was decided to establish ‘a dialogue on human rights’ for all the three states in 2008 and progress was expected on the issue in 2009.⁹⁸⁶

Therefore, it can be concluded that the role of the PCA joint bodies in the implementation of the Action Plans’ priorities related to the promotion of democracy is rather weak, as their function of monitoring is confined to broad statements and expectations expressed once a year. The discursive nature of the Cooperation

⁹⁷⁹ Anonymous Commission official I, Annex A.

⁹⁸⁰ *Ibid.*

⁹⁸¹ Anonymous Commission official III, Annex A.

⁹⁸² *Ibid.*

⁹⁸³ Anonymous Commission official I, Annex A.

⁹⁸⁴ European Parliament Resolution of 17 January 2008 on a More Effective EU Policy for the South Caucasus: from Promises to Actions (2007/2076(INI)), paragraph 21.

⁹⁸⁵ Anonymous Commission official I, Annex A.

⁹⁸⁶ Anonymous Commission officials I, II and III, Annex A.

Councils' meetings can be seen in the example of 2008 EU-Armenia Cooperation Council meeting. The EU side did not address its previous expectations as regards the conduct of presidential elections. Though considered to be fair in general, these nevertheless fell short of certain standards and were followed by political turbulence, resulting in the death of seven citizens.⁹⁸⁷ Similarly, none of the deficiencies in the political life of Georgia and Azerbaijan within the considered timeframe have been addressed at the Cooperation Council. The factual evaluation of the progress achieved is left to the Commission, which issues reports once a year. This is more reasonable in terms of the political weight accorded to an evaluation by the Commission, in comparison with the Cooperation Councils.

2.2. Assessment of progress by the Commission

As with enlargement, where the Commission's traditional role of 'guardian of the Treaty' extended to evaluating the progress of the candidate countries,⁹⁸⁸ the Commission continues to be the 'watchdog' of the policy implementation also in the case of the ENP. One might suggest that the Commission is the appropriate institution to meet the expectations on a strict approach towards the EU values that the neighbouring states are required to comply with.

As noted in the Introduction, the Commission issues annual Progress Reports based on the model of the Progress and Annual Report used during pre-accession. Since the Commission's reports in the enlargement experience helped the candidate

⁹⁸⁷ According to the results of 2008 Presidential Elections, Prime Minister Sargsyan won the election in the first round with 52.8 per cent of all votes cast, while ex-President Ter-Petrosian received 21.5 per cent of votes. Before the official results were announced the opposition initiated peaceful protests and demonstrations in the capital Yerevan lasting almost 20 days and leading to the authorities' decision to disperse the masses. The decision resulted in the dramatic death of six civilians and one representative of the police. More than 100 people were injured according to official reports.

⁹⁸⁸ Hillion, 'The Copenhagen Criteria and their Progeny' in Hillion, (ed.), *EU Enlargement: A Legal Approach*, (Oxford: Hart, 2004), 1-22, at 13.

countries to meet the accession criteria,⁹⁸⁹ one would expect the ENP Progress Reports to assist the neighbours in meeting the conditions for integration into the EU.

Even in the case of the enlargement policy, it has been noted that the Commission's Reports should be understood 'as contextual assessments': in the absence of a specific model of evaluation the Reports have been based on agreements reached between governments and the Commission, influenced by the opinions of both EU and local experts.⁹⁹⁰ Combining this with the political element of the ENP, one should also expect the ENP Progress Reports to include a degree of politicisation which is capable of undermining the idea of evaluating the implementation objectively.

In addition, it has been suggested that the composition of the Progress Report is a subjective exercise by a Commission official, who can influence the language of the document in terms of his or her particular vision of the progress.⁹⁹¹ It should also be mentioned that the assessment takes place on individual basis without any regional comparative perspective. It is only after the report is written that a horizontal unit on Neighbourhood Policy coordination in Directorate D compares the progress reports in order to ensure 'that the evaluation of Azerbaijan makes sense for example in comparison with Tunisia.'⁹⁹² Most importantly, in the absence of clear vision of democratic values the EU is transposing, it is logical to assume certain discretion on behalf of the Commission in evaluating the progress in the Action Plan implementation.

⁹⁸⁹ Dunay, 'Strategy with Fast Moving Targets: East-Central Europe' in Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 27-47, at 32.

⁹⁹⁰ Smilov as cited in Kochenov, *supra* note 2, at 311.

⁹⁹¹ Anonymous Commission official II, Annex A.

⁹⁹² *Ibid.*

According to the South Caucasian Action Plans, the actual progress in their implementation is measured based on jointly agreed benchmarks, followed by reports produced at regular intervals by the Commission in cooperation with the Secretary General/High Representative.⁹⁹³ The reports should be submitted to the Council, which accordingly should make a decision on future prospects with relevant partners.⁹⁹⁴

What causes concern is the absence of clarity as to what constitutes 'jointly agreed benchmarks' for the evaluation. The priorities of the Action Plan lack specifics and particularities to constitute benchmarks. The evaluation of compliance will depend on the precision of the actions the partner countries are required to undertake.⁹⁹⁵ Precision and consistency can be hardly expected from the Commission, which has to judge the progress of the partner countries based on 'benchmarks' such as insuring 'proper separation of powers,' whatever this means for each of the states.

It should be noted that the reports are based on the information provided by the relevant countries, as well as close cooperation by the Commission with the Council of Europe, the OSCE, relevant UN bodies, and International Financial Institutions. The intention of the Commission to rely on cooperation with relevant international organisations, as regards the neighbours that have agreed Action Plans, has been reiterated in the Communication on the implementation of the ENP in 2007.⁹⁹⁶ The Communication stresses that the fact of the membership of the partners to the OSCE and the Council of Europe 'contributes to a particular reform agenda

⁹⁹³ Section 5 of Armenia, Georgia and Azerbaijan Action Plans.

⁹⁹⁴ General Affairs and External Relations Commission Conclusions, 22 January 2007.

⁹⁹⁵ Kochenov, 'The ENP Conditionality: Pre-Accession Mistakes Repeated' to appear in *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Delcour and Tulmets, (eds.), (Baden Baden: Nomos, 2008), available at <http://ssrn.com/abstract=1310780>, at 13.

⁹⁹⁶ Communication from the Commission to the Parliament and the Council, Implementation of the ENP in 2007, Brussels, 3 April 2008, COM (2008) 164, at 3.

aiming at close approximation to the fundamental standards prevailing in the EU.⁹⁹⁷

In this context, as an addition to the discussion in the previous chapter, it should be noted that the reliance by the Commission on general international obligations of the countries in the OSCE or the Council of Europe might undermine the EU's role in terms of highlighting its complementary nature. The EU's monitoring will serve as an additional instance for monitoring the obligations, which are already monitored by the OSCE or the Council of Europe.

In addition, it has been suggested that the annual picture of progress is obtained in a continuous process of contacts between the EU delegation and the Government, interaction with the national Parliament and NGOs and communication between the EU embassies, aimed at elaboration of a comprehensive vision on political reform.⁹⁹⁸ Having an EU Delegation in relevant countries is a major source of contact and point of reference for analysis for the Commission. The absence of an EU Delegation in Azerbaijan until 2008 was considered to have a restraining impact on the Commission's capacity for analysis.⁹⁹⁹ Such an observation is valid also for Armenia, since the EU Delegations in both countries were opened at the same time.

To date two Progress Reports evaluating the process of Action Plan implementation for each of the South Caucasian states have been issued for 2007 and 2008 accordingly. Though the Action Plans can be regularly amended or updated to reflect progress in addressing the priorities, no revision has been undertaken so far in either of the South Caucasian states.

⁹⁹⁷ *Ibid.*

⁹⁹⁸ Anonymous Commission official I, Annex A.

⁹⁹⁹ *Ibid.*

In the 2007 Georgian Progress Report, the Commission initially noted overall good progress.¹⁰⁰⁰ Before evaluating the actual progress on the priorities of the Action Plan, the Commission made a general reference to the dominance of executive power, a weak separation of institutional powers and an ineffective system of democratic checks and balances, calling on Georgia to follow the recommendations of the Council of Europe's Venice Commission.¹⁰⁰¹ There is a further rather detailed evaluation of the priorities of the Action Plan. Although the Commission failed to address improvements in relation to such as a voter registry and a functioning and transparent electoral commission prioritised in the Action Plan, it paid major attention to the conduct of Presidential elections in January 2008 right after the reporting period.

The reform of the judiciary has been considered in the most detail with a focus on independence of the judiciary. After a brief reference to the absence of comprehensive reform of the civil service, the Commission referred to the reform of local governance noticing major reforms undertaken on the legislative level. However, the Commission also emphasised that in practice the powers of the local authorities have not changed much, and that control over self-governing units is still exercised by the government.¹⁰⁰² Overall, the 2007 Progress Report for Georgia evaluated the actions prioritised in the Action Plan without addressing such important

¹⁰⁰⁰ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Georgia, Brussels, 3 April 2008, SEC(2008) 393.

¹⁰⁰¹ 2007 Progress Report Georgia, at 3.

¹⁰⁰² In cooperation with the Council of Europe a draft national decentralisation strategy and a draft national work programme for better local self-government were elaborated in January 2007; the law on state supervision over activities of local authorities was adopted by the Parliament in June 2007; draft laws aimed at improving the institutional arrangement of local self-governing units, facilitation of citizens' participation in the implementation of local self-governance as well as modification of the equalizing transfer formula defined by the law on budget of local self-governing unit were elaborated in the second half of 2007; 2007 Progress Report Georgia, at 6.

issues as strengthening of the Parliament and enhancement of political pluralism in Georgia within the general actions under section 4.1.1.

Similarly, the 2008 Progress Report was drafted around the priorities of the Action Plan with a focus on Presidential elections and new measures for judicial reform, as well as the failure to undertake civil service reforms and developments in local governance reform confined to the establishment of a new ministry.¹⁰⁰³ In addition, the strengthening of Parliament, separation of powers and the role of political parties have also been an object of the Commission's consideration due to a 'new wave of democratic reform' the President announced after the August 2008 war. Thus, rather positive language of the Commission is noted on reforms initiated and partially implemented in relation to Parliament's control over the executive, public funding of political parties and increase of its role in parliamentary committees.

In addition, the President initiated reforms limiting his powers to dissolve the Parliament and to simplify the process by which Parliament can express a lack of confidence in the government. At the same time, the Commission went on to notice that the proposal of such amendments as such is not sufficient to guarantee an institutional balance between parliamentary and presidential powers.¹⁰⁰⁴ The detail of this evaluation demonstrates that the Commission is ready to engage in the assessment, especially via positive evaluation, where the country's leadership is undertaking reforms and seeks appreciation. This can be viewed as a part of a more general picture. This urgency on behalf of the Georgian Government to reassure the EU in its commitment to democratic values after the August 2008 war has been reciprocated by the EU. It made this commitment part of the new package of political

¹⁰⁰³ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Georgia, Brussels, 23 April 2009, SEC(2009) 513/2, at 3-5.

¹⁰⁰⁴ *Ibid.*

conditionality linked to increased EU post-conflict assistance agreed in January 2009.¹⁰⁰⁵ To sum up, both 2007 and 2008 Progress Reports for Georgia paid attention to the issues of representation and elements of liberal governance in general. However, the issues of participation as a necessary attribute of democracy, even in form of civil society development, have been omitted in both Progress Reports.

In relation to political reforms in Armenia, the Commission's Progress Report for 2007 noted overall good progress. However, for the next year it noted the effects of the political crisis after the Presidential elections of February 2008.¹⁰⁰⁶ The overview of the progress in 2007 is rather extensive and balanced highlighting the achievements or omissions of the authorities. Among major developments, a package of legislative reforms has been undertaken which improves the legislation regulating the separation of powers, in particular increasing powers for the National Assembly and improving local self government, the independence of the judiciary, the Ombudsperson and freedom of the media.¹⁰⁰⁷ Within the priorities of the Action Plan major attention has been paid to the reform of the judiciary, conduct of elections, together with a brief reference to civil service reform.¹⁰⁰⁸

Most importantly, in addition to the prioritised actions, the Commission considered the progress on certain general actions under section 4.1.1. These include local governance reform and ensuring political pluralism in the country. In relation to political pluralism, the Commission's willingness to proceed to evaluation of this general action can be explained by the fact that Armenia had undertaken certain

¹⁰⁰⁵ *Ibid*, at 4.

¹⁰⁰⁶ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Armenia, Brussels, 3 April 2008, SEC(2008) 392, at 2.

¹⁰⁰⁷ The role of the Ombudsperson has been strengthened in terms of institutional immunity and authority to investigate claims of human rights violations. The Ombudsperson will be involved in the legislative process through reviewing legislative drafts relating to democracy and human rights before they are submitted to the government; *Ibid*, at 3.

¹⁰⁰⁸ 2007 Progress Report Armenia, at 3-4.

relevant measures which should not have passed unnoticed.¹⁰⁰⁹ However, the reference by the Commission to the general action of undertaking local reform even without any measures undertaken by the country suggests that it is the discretion of the Commission whether or not to address the general actions in section 4.1.1 of the Action Plan. Therefore, it can be concluded that in the case of Armenia the Commission did not restrict its evaluation to the priorities only, which once again questions the rationale behind the Action Plan drafting.

It is unfortunate to note a less strict approach taken by the Commission in the 2008 Progress Report, where the section on democratic reform is limited to nearly a page. The main issues the Commission referred to have been the February 2008 Presidential elections and the subsequent political crisis.¹⁰¹⁰ The only other issues, the Commission made a short reference to, were the reform of the judiciary and local governance without any details or guidelines for further action.¹⁰¹¹ No other prioritised or general measures of the Action Plan have been considered, thus revealing inconsistency on the part of the Commission in comparison with the 2007 Report. On the other hand, within the section on human rights and fundamental freedoms, the Commission considered the issue of participation via engagement of the NGOs, the development of which was included in the Action Plan as a general measure.¹⁰¹²

In Azerbaijan's case in both the 2007 and 2008 Progress Report the Commission noted that the country did not exploit the opportunities offered to undertake reforms on democracy, the rule of law, protection of human rights and

¹⁰⁰⁹ New measures have been undertaken to enhance political pluralism in the country through legislative initiatives on establishing a body to monitor party financing and relevant drafts were submitted to the Council of Europe for opinion.

¹⁰¹⁰ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Armenia, Brussels, 23 April 2009, SEC(2009) 511/2, at 3.

¹⁰¹¹ *Ibid*, at 3-4.

¹⁰¹² *Ibid*, at 5.

fundamental freedoms. This suggests that despite its position on Azerbaijan and the broadly formulated Action Plan on political priorities, the Commission has to evaluate the state's progress, at least formally. It is a different question whether, or how, the assessed progress will affect the relations between the parties. It is at this point that the 'goal conflict'¹⁰¹³ is particularly apparent. What is more important: the absence of progress on democratic reform, or 'good progress' made within the 2006 Memorandum of Understanding on strategic partnership in the field of energy, and Azerbaijan's increasing role as an energy producer, as identified in the 2008 Progress Report?¹⁰¹⁴

The consideration of political reform in 2007 has been presented in the Report without a clear separation of measures aimed at strengthening democracy, the rule of law or human rights. As noted in the previous chapter, the Action Plan with Azerbaijan similarly had a confusing structure providing for judicial reform among the measures on respect for human rights. The Commission evaluated the progress in relation to some prioritised areas, such as electoral reform, local governance, the judiciary, and the development of the civil society under the priority area 3 on human rights.¹⁰¹⁵ However, it remained silent on such important prioritised issues as institutional reforms to ensure proper checks and balances. In this context, the Commission would hardly have been expected to address vital issues of the

¹⁰¹³ Maier and Schimmelfennig, 'Shared Values: Democracy and Human Rights' in Weber, Smith and Baun, (eds.), *Governing Europe's Neighbourhood: Partners or Periphery*, (Manchester: Manchester University Press, 2007), 39-57, at 43.

¹⁰¹⁴ Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Azerbaijan, Brussels, 23 April 2009, SEC(2009) 512/2, at 2.

¹⁰¹⁵ Three national associations of municipalities were established in cooperation with the European Congress of Local and Regional Authorities, and a law on delegating additional powers to municipalities was signed in October 2007. Nevertheless, the legislative and institutional developments did not lead to short-term results and decentralisation of power is still very limited; Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Azerbaijan, Brussels, 3 April 2008, SEC(2008) 391, at 3-4.

strengthening of Parliament and guaranteeing political pluralism omitted in the Action Plan. This is rather unfortunate, since the Progress Reports could have been used on behalf of the Commission to address issues, which due to certain reasons, arguably including the principle of joint ownership, were not included in the Action Plan. In this way, the Commission would have upheld the importance the EU allocates to representation in a democratic state and to the issue of political participation.

Even more unfortunate is that the evaluation of democratic reform in the 2008 Progress Report is confined to almost half a page with a brief recall of the Presidential elections in October 2008, reference to the election code, the limited progress of judicial reform and local democracy.¹⁰¹⁶ In the human rights section, development as regards civil society has been considered similar to the 2007 Progress Report. Similarly, no reference is made to the separation of powers or strengthening of the Azerbaijani Parliament.

Based on these observations, it can be noted that inconsistency and incoherence is present in several dimensions. First of all, it is not clear whether the prioritised actions are the basis for evaluation due to the Commission's occasional tendency to visit the progress on general actions under section 4 of the Action Plans. Second, the Commission addresses the progress as regards prioritised action with varying detail and scrutiny, not only depending on the countries, but also the year. In addition, Progress Reports are not indicative as to further actions and as such do not serve as guidance for the country's future actions. Third, at times the Commission fails to address some priorities at all, such as the issue of separation of powers in

¹⁰¹⁶ 2008 Progress Report Azerbaijan, at 3-4.

Azerbaijan. In addition, the Commission does not address the general national measures aimed at the Action Plan implementation.

3. Implementation: assistance under the ENPI

Following the 2003 General Affairs and External Relations Council's invitation to present a Communication on a new Neighbourhood Instrument, the Commission presented its Communication 'Paving the Way for a New Neighbourhood Instrument' proposing a two-step approach.¹⁰¹⁷ During the first phase, 2004-2006, coordination of the existing financial instruments was envisaged. The second phase covers the period after 2006 where a new instrument, the ENPI, was established. The conclusion of the Action Plans with South Caucasian Republics in 2006 makes the ENPI the only instrument through which these countries received assistance for the Action Plan implementation.

3.1. Democracy within the ENPI

The new instrument was officially established in October 2006 as a mechanism to provide assistance to countries involved in the ENP and Russia for the period of 2007-2013.¹⁰¹⁸ The ENPI upholds the ENP rhetoric on common values incorporating the commitment to promote EU values, including democracy, to neighbouring countries via dialogue and cooperation,¹⁰¹⁹ reiterating the EU's image as a 'normative' and 'soft' power. While the assistance under the ENPI will promote in particular the implementation of the PCAs or future agreements, the Action Plans

¹⁰¹⁷ Paving the Way for a New Neighbourhood Instrument, Commission Communication, COM(2003) 393 final, Brussels, 1 July 2003.

¹⁰¹⁸ Regulation No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI Regulation), OJ L310/1, 09.11.2006.

¹⁰¹⁹ Article 1, ENPI Regulation,

will be used as a reference point for establishing the priorities for assistance.¹⁰²⁰ This suggests that if assistance under the TACIS, aimed at PCA implementation, was not focused on democratisation issues, the prioritisation of the latter under the Action Plans should assume their prioritisation also under the ENPI assistance. Indeed, supporting democratisation, by enhancing the role of civil society and promoting media pluralism, as well as through electoral observation and assistance, is one of the areas envisaged for Community assistance.¹⁰²¹

A better use of funds has been identified as one of the strengths of this new instrument, where, in its relevant communication, the Commission highlighted that, under the ENPI, Community assistance will be 'explicitly policy-driven' and will bring a major development for the countries previously covered by TACIS 'moving from technical assistance to fully-fledged cooperation.'¹⁰²² Though it is not clear what the 'fully fledged cooperation' entails, a number of distinctions between these two instruments can be highlighted.

The assistance under the ENPI is established in partnership between the Commission and the beneficiary, involving national, regional and local authorities, economic and social partners, civil society representatives etc.¹⁰²³ In comparison with TACIS, engaging with respective governments only, the new regulations should mark a major shift towards a more inclusive approach allowing relevant stakeholders to engage with the establishment of the assistance. Moreover, Article 14 of the Regulation establishes the list of participants eligible for funding, including not only the state actors, but also decentralised bodies and non-state actors, thus incorporating the bottom-up approach in contrast to the top-down approach of TACIS assistance.

¹⁰²⁰ Article 2.1 and Article 3.1, ENPI Regulation.

¹⁰²¹ Article 2.2, ENPI Regulation.

¹⁰²² Communication from the Commission to the Council and the European Parliament on Strengthening the ENP, 4 December, 2006 COM (2006)726 final, at 3.

¹⁰²³ Article 4.2, ENPI Regulation.

Nevertheless, there is a common feature shared between TACIS and ENPI which is the negative conditionality of assistance provided. As discussed in Chapter IV, positive and negative conditionality impact on the development of relations between the parties in a distinct way.¹⁰²⁴ While positive conditionality dictates the development of cooperation, negative conditionality assumes that the cooperation can be interrupted if a party breaches certain established preconditions. Preconditions for negative conditionality are present in Article 28 of the ENPI Regulation which provides for suspension of Community assistance where a partner country fails to observe the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.

Cremona considers that irrespective of this provision, the positive conditionality embedded in the general policy should be considered as a 'real development' in the use of conditionality to neighbouring countries, where the future evolution of relations will depend on the achievements of mutually agreed goals.¹⁰²⁵ Accordingly, one can suggest that negative conditionality will hold the parties back from deviating from the basis of relations, including the adherence to common values. Positive conditionality will motivate further progress in adherence to these values or achievement of the goals the parties have envisaged in the Action Plans. Another observation could be made in the context of the legal nature of the ENP instruments. The positive conditionality is embedded in the policy documents which have no binding force, and therefore cannot guarantee adherence to the shared values strictly speaking. The negative conditionality is established by the ENPI Regulation, a

¹⁰²⁴ See section 3.2.1 of Chapter IV.

¹⁰²⁵ Cremona, 'The European Neighbourhood Policy: More than a Partnership?' in Cremona, (ed.), *Developments in EU External Relations Law*, (Oxford: Oxford University Press, 2008), 244-299, at 284.

hard law instrument. Thus, one can consider that the ENPI's negative conditionality supports the positive conditionality in terms of highlighting its political element.

Though the ENPI Regulation is one of the few hard law instruments within the ENP, its policy framework incorporates soft law instruments, where no legal basis is required allowing it to include components from all three pillars of the TEU as mentioned in Chapter IV.¹⁰²⁶ The ENPI Country Strategy Papers 2007-2013 and the ENPI National Indicative Programmes for 2007-2010 are examples of such soft law instruments. The Country Strategy Papers provide a general overview of the objectives of the cooperation, the political and economic situation and overview of past and future EU assistance.¹⁰²⁷ All three Strategy Papers with the South Caucasian states provide an evaluation of the previous instruments of assistance and the results achieved. It is evident that among the previous programmes and instruments operating in the South Caucasus only the EIDHR had been concerned with the issues of democracy promotion.¹⁰²⁸ The focus of the EIDHR solely on small-scale projects involving NGOs implied that there was a major gap in this area of funding.

The National Indicative Programmes bring more focus to the Strategy Papers and establish details of the actions under the ENPI national allocations. All three Indicative Programmes establish certain Priority Areas for providing assistance under the ENPI including the support for democratic development in the first area with varying sub-priorities for each of the countries.¹⁰²⁹ They also allocate the budget for respective countries according to the priority areas. It should be noted that the financial envelope of the ENPI amounting to approximately €11 billion for 2007-

¹⁰²⁶ Article 3, ENPI Regulation; Cremona, *ibid*, at 264.

¹⁰²⁷ ENPI, Armenia Country Strategy Paper, 2007-2013; ENPI, Georgia Country Strategy Paper, 2007-2013; ENPI, Azerbaijan Country Strategy Paper 2007-2013. Available at http://ec.europa.eu/world/enp/documents_en.htm#2.

¹⁰²⁸ Section 3.3, Chapter II.

¹⁰²⁹ Section 4 of Armenia ENPI National Indicative Programme 2007-2010, Georgia ENPI National Indicative Programme 2007-2010; Azerbaijan National Indicative Programme 2007-2010.

2013 has been considered as inadequate for financing reforms in all desired sectors similar to the pre-accession strategy.¹⁰³⁰ This observation should be supported by the fact that the cooperation with Russia will be financed from the same budget.

Though the development of civil society did not occupy a central place within the Action Plans priorities, the ENPI documents accord a place to civil society both in terms of its participation in the allocation of EU assistance and its development being one of the areas, to which EU assistance will be directed.¹⁰³¹ The ENPI National Indicative Programmes for three states strongly emphasise the bottom-up approach to governance. Citizens should participate in the political life of the country through a stronger local self government, participation in the decision-making processes and control through civil society organisations.¹⁰³² The focus on development of bottom-up governance and also the eligibility of civil society to receive assistance under the ENPI, assumes that the development of civil society will be supported both under the ENPI and the EIDHR which is primarily directed at non-state organisations.¹⁰³³

It should be noted that the new EIDHR (European Instrument for Democracy and Human Rights) replaced the previous EIDHR initiative in 2006 and is supposed to bring more flexibility to support for democracy and human rights worldwide.¹⁰³⁴ The distinctive feature of the EIDHR as an initiative and currently as an instrument is that the assistance does not depend on the governments of relevant countries. The ENPI seems to adopt a similar stance within its negative conditionality. It foresees

¹⁰³⁰ Tulmets, 'Adapting the Experience of Enlargement to the Neighbourhood Policy: the ENP as a Substitute to Enlargement?' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 29-57, at 46.

¹⁰³¹ Article 2 and 4, ENPI Regulation.

¹⁰³² Armenia ENPI National Indicative Programme, at 7-8; Georgia ENPI National Indicative Programme, at 6; Azerbaijan ENPI National Indicative Programme, at 6, 9.

¹⁰³³ According to Balfour due to pressure from the European Parliament the latter has not been fused with new regional or thematic assistance programmes; Balfour, 'Promoting Human Rights and Democracy in the EU's Neighbourhood: Tools, Strategies and Dilemmas' in Balfour and Missiroli, *Reassessing the European Neighbourhood Policy*, EPC Issue Paper No. 54, June 2007, at 20.

¹⁰³⁴ Regulation No. 1889/2006 concerning the financing instrument for the promotion of democracy and human rights worldwide, *OJ L* 386/1, 29.12.2006.

support to non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratisation processes in case of suspension of general assistance.¹⁰³⁵ It can be argued that the ENPI acknowledges the lessons learnt from TACIS, which lacked mechanisms to support political developments in case the assistance to the government was suspended due to their democratic record. As a matter of fact, the total budget of the EIDHR for the period 2007-2013 is over €1 billion, which is not huge for a worldwide instrument. The South Caucasus is included within a general group of ENPI and Middle Eastern addressee countries, whose shares in the assistance are modest.¹⁰³⁶

At first sight it might seem that having two instruments aimed at supporting civil society might result in fragmentation of the overall assistance in the area, therefore undermining its general efficiency. It is nevertheless important to remember the nature of the EIDHR which focuses on small-scale projects and is even described as ‘a drop in the ocean’ as opposed to the enormous tasks on the agenda of democratisation of relevant states.¹⁰³⁷ From this perspective, the ENPI’s attempt to engage with civil society should be considered as a step further to enhance citizens’ participation on political life of the country, which will complement already existing instruments. Nevertheless, positive results will be achieved only when efficient coordination of relevant projects is guaranteed, where the ENPI keeps its focus on larger programmes in order to avoid overlaps on the agendas of these two programmes or a vast number of small-scale projects.

It appears that annual Action Programmes based on the National Indicative Programmes will be adopted subject to a number of measures with ‘inbuilt

¹⁰³⁵ Article 28, ENPI Regulation.

¹⁰³⁶ EIDHR Strategy Paper 2007-2010, (DG RELEX/B/1 JVK 70618), Indicative EIDHR Financial Allocations 2007-2010, Annex 1.

¹⁰³⁷ Balfour, *supra* note 68, at 20.

flexibility,' implying that there are no fixed programmes.¹⁰³⁸ According to a Commission official, instead of particular projects, a dialogue with the government is maintained through which particular goals to support are decided based on conditions, that certain achievements should be recorded, which represent a 'more forward-looking, more structural approach.'¹⁰³⁹ Various forms of assistance, including sector or multi-sector programmes, through sectoral budget or general budget support, budgetary and non-budgetary support are envisaged.¹⁰⁴⁰ New cooperation tools such as TAIEX and Twinning are introduced to contribute to areas of regulatory reform and administrative capacity building.¹⁰⁴¹ The Country Strategy Papers outline the programmes within the ENPI. As a thematic programme, a new Instrument for Democracy and Human Rights is mentioned for Armenia and Azerbaijan in the ENPI National Indicative Programmes.¹⁰⁴² Currently, there are no indications as to the operation of this instrument.¹⁰⁴³

In contrast with Armenia and Azerbaijan, the National Indicative Programme for Georgia provided for an opportunity to increase allocation under the Governance facility announced by the Commission in its Communication on Strengthening the ENP.¹⁰⁴⁴ The governance facility intends to top up the country allocations based on the progress achieved in implementing the Action Plans with the focus on key governance issues: democratic practice, respect for human rights and fundamental freedoms and the rule of law.¹⁰⁴⁵ Nevertheless, the Governance Facility has not been

¹⁰³⁸ Georgia ENPI National Indicative Programme 2007-2010, at 15.

¹⁰³⁹ Anonymous Commission official I, Annex A.

¹⁰⁴⁰ Georgia ENPI National Indicative Programme 2007-2010, at 16; Armenia ENPI National Indicative Programme 2007-2010, at 14.

¹⁰⁴¹ Armenia ENPI National Indicative Programme 2007-2010, at 14.

¹⁰⁴² Armenia ENPI Country Strategy Paper, 2007-2013 at 23; ENPI Azerbaijan Country Strategy Paper 2007-2013, at 27.

¹⁰⁴³ Interviewed Commission officials had no knowledge about such an instrument.

¹⁰⁴⁴ Georgia ENPI National Indicative Programme 2007-2010.

¹⁰⁴⁵ Communication on Strengthening the ENP; Principles for the Implementation of a Governance facility under ENPI.

articulated so far, perhaps, because the last two rounds of elections have raised doubts in the EU as regards Georgia's loyalty to its proclaimed commitments.

3.2. Actual measures financed

As noted by Bosse, the greater emphasis the ENPI places on the commitment to shared values should be tested once the actual measures are financed.¹⁰⁴⁶

30% of the general assistance of €98.4 million for Armenia for 2007-2010 is allocated to the support for strengthening of democratic structures and good governance.¹⁰⁴⁷

Priority area 1: Support for Strengthening of Democratic Structures and Good Governance	29,52 m € 30%
Priority area 2: Support for Regulatory Reform and Administrative Capacity Building	29, 52 m € 30%
Priority area 3: Support for Poverty Reduction Efforts	39,36 m € 40%

In the case of Georgia support for democratic development, rule of law and governance will receive 26% of €120.4 million for the period of 2007-2010.¹⁰⁴⁸

Priority area 1: Support for democratic development, rule of law and governance	31,5 m € 26%
Priority area 2: Support for economic development and ENP AP implementation	31.5 m € 26%
Priority area 3: Poverty reduction and social reform	38,4 m € 32%
Priority area 4: Support for peaceful settlement of Georgia' internal conflicts	19.0 m € 16%

¹⁰⁴⁶ Bosse, 'Values in the EU's Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?' (2007) 7 *European Political Economy Review* 38, at 57.

¹⁰⁴⁷ Armenia ENPI National Indicative Programme, for 2007-2010, at 4.

¹⁰⁴⁸ Georgia ENPI National Indicative Programme, 2007-2010, at 4.

Support for Azerbaijan democratic development and good governance will receive €30 million out of €92 million for all priority areas for the same period.

Priority area 1: Support for Democratic Development and Good Governance	30 m € 32.6%
Priority area 2: Support for socio-economic reform (with emphasis on regulatory approximation with the EU <i>acquis</i>), fight against poverty and administrative capacity building	32 m € 34.8%
Priority area 3: Support for legislative and economic reforms in the transport, energy and environmental sectors	30 m € 32.6%

If one calculates the common share allocated to South Caucasus out of the overall €11 billion for 2007-2013 as twice more what was allocated for 2007-2010, it will amount approximately to 600 million for the three countries, which is rather indicative of the region's priority, unless the financial envelope for the 2010-2013 period is substantially increased. Nevertheless, the overall picture of financial assistance is promising in comparison with the previous assistance where strengthening of democracy has not been considered as a separate line for funding. The means and instruments through which these funds will be allocated are of the most importance.

In the absence of fixed programmes on democracy, the assistance is allocated as a result of dialogue between parties, which, as noted earlier, should involve not only the Commission and the beneficiary, but also national, regional and local authorities, economic and social partners, civil society representatives. However, this does not appear to be the case in either of the countries.

For instance in Georgia, taking into account the fact that the Government should make the decisions as to how to spend the financial assistance issued by the

EU, there are no fixed programmes to which the money will be issued.¹⁰⁴⁹ Thus, it is left to the Government to allocate the assistance which it is assumed will be monitored by the EU.¹⁰⁵⁰ Therefore, the civil society is not involved in the process of allocation of the assistance and the monitoring is left to the EU.¹⁰⁵¹ In addition, the direct budgetary support cannot be issued to civil society, which is one of the addressees of the assistance according to the ENPI Regulation. According to a Georgian Government official, the assistance allocated to state institutions can be further redirected through certain established procedures to non-state organisations for implementation of relevant projects.¹⁰⁵² Because allocating assistance to civil society by the government would contradict the very idea of civil society,¹⁰⁵³ it should be done separately from the direct budgetary support. In addition, the prerogative of the Government to allocate budgetary assistance brings us back to the non-binding nature of the Action Plan and the political will of the country in question.

According to the Ministry of the European Integration, within the budgetary support, one or two priority concentration areas are selected, whereas most of the assistance is provided in the form of direct support to the state budget. Of the budgetary support allocated annually, only the 2008 allocation included democracy-related issues, where budgetary support was issued to the Ministry of Justice to undertake reform of the criminal justice system, whereas the assistance for 2007 was aimed at public finance management reform and, for 2009, at the reform of the

¹⁰⁴⁹ Anonymous Commission official II, Annex A.

¹⁰⁵⁰ Interview with Anonymous Official, State Ministry for European Integration of the Republic of Georgia, 7 April 2009, Tbilisi, Georgia. For interview transcript see Annex B.

¹⁰⁵¹ Interview with Ivane Chkhikvadze, Eurasia Partnership Foundation, 6 April, 2009, Tbilisi. For interview transcript see Annex B.

¹⁰⁵² Anonymous Official, State Ministry for European Integration of Georgia, Annex B.

¹⁰⁵³ Raik, 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', Centre for European Policy Studies, Working Document No 237/February 2006, at 21.

vocational education and training system.¹⁰⁵⁴ Thus, within the two years of assistance under the ENPI, the reform of the judiciary has been the only area from the list of priority and general actions envisaged in the ENP Action Plan to which comprehensive assistance has been allocated.

In addition, it should be noted that the Commission finances certain other projects related to democracy promotion on an *ad hoc* basis. For instance, the one-year EUJUST THEMIS advisory mission has helped Georgia to draw up an extensive proposal for reforming the criminal justice system.¹⁰⁵⁵ Though the project was initiated before the adoption of the ENP, it appears it will be renewed also because the Action Plan makes reference to the latter. The Stability Instrument has been used in Georgia to support the electoral process in 2008 with a view of addressing the shortcomings of the most recent elections by the international observers. The possibility of using the Stability Instrument in Armenia and Azerbaijan is envisaged to be used primarily in relation to the Nagorno-Karabakh conflict.¹⁰⁵⁶

Another project on the strengthening of the Parliament, financed by the EU, ended in April 2008 and resulted in creating a documentation centre, translation centre and translation of EUROVOC.¹⁰⁵⁷ It can be suggested that the project created institutional opportunities for the Parliament. However, its influence on strengthening Parliament's role or diminish its dependence on the executive has been doubted.¹⁰⁵⁸

¹⁰⁵⁴ Available at http://eu-integration.gov.ge/?que=eng/AP/EU_A_I/E_N_ENPI/N_P; Progress Reports 2007, 2008.

¹⁰⁵⁵ Established by the Council Joint Action 2004/523/CFSP of 28 June 2004, it has been the first Rule of Law mission launched by the EU in the context of the ESDP.

¹⁰⁵⁶ ENPI Strategy Paper Azerbaijan 2007-2013, ENPI Strategy Paper Armenia 2007-2013.

¹⁰⁵⁷ EUROVOC means European legal terminology; 'European Neighbourhood Policy and Georgia: Analyses of Independent Experts', Friedrich-Ebert-Stiftung, 'Open Society-Georgia' Foundation and CORDAID Foundation, Tbilisi 2007, at 38. Available at <http://www.enp.ge/?l=1&i=117>.

¹⁰⁵⁸ Ivane Chkhikvadze, Annex B: A clear example is the Law on Food safety which was amended several times, this law a precondition for signing a free trade agreement, but it was the Parliament which made amendments and suspended the implementation of the law, so the Parliament is not independent, so it cannot be said that in the results of the project on Parliament the latter got empowered.

Moreover, the European Union provided support for Parliamentary elections in May 2008 by issuing €2 million aimed at improving the administrative procedures and voter information.¹⁰⁵⁹

Apart from the envisaged ENPI budget for 2007-2012, after the Georgian-Russian war, the Commission issued post-conflict assistance amounting to €500 million for the period of 2008-2010.¹⁰⁶⁰ Within this assistance, €181.9 million was provided for 2008 and distributed into several areas, including 'ongoing assistance' under various programmes among which were democracy, human rights and support for non-state actors. Though it has not been specified which particular issues this assistance will be directed at, what seems clear is that the EU is very responsive on the assistance level to even such signals as declaratory commitments.

The responsiveness of the EU to the political declarations made by the Georgian leadership is reciprocated by some tangible results in the sphere of democratic reforms. Following the reinstatement of commitment to continuous democratic reform by the Georgian Government after the August 2008 war, some of the proclaimed reforms were initiated and partially implemented by the end of the year, including strengthening of parliamentary opposition and involvement in the constitutional reform process.¹⁰⁶¹ The reinstated political commitments have been included in a package of political conditionality linked to increased EU post-conflict assistance which was eventually agreed in January 2009.¹⁰⁶²

The general assistance allocation under the ENPI to Armenia follows the same pattern as in the case of Georgia, where the direct budgetary support is allocated with

¹⁰⁵⁹ <http://www.delgeo.ec.europa.eu/en/press/6may2008.html>.

¹⁰⁶⁰ EU Assistance Fact Sheet, Website of EC Delegation to Georgia; available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/645&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹⁰⁶¹ 2008 Georgia Progress Report, at 4.

¹⁰⁶² *Ibid.*

focus on the same issues. Thus, for the direct budgetary support for each year an annual financial agreement is concluded within the amount for 2007-2010 as established by the ENPI National Indicative Programme. This assumes approximately 20 million for each year, where the assistance does not go to fixed programmes only but is mostly transferred to state budget where the Government is better positioned to decide which areas should be financed as priorities.¹⁰⁶³ Although, it is left to the Government to decide the projects that should be financed through the budget, there are certain preconditions.¹⁰⁶⁴ As with Georgia, vocational educational training has been a priority for 2007 and 2008, and judicial reform for 2009, which is again the only area related to democratisation.¹⁰⁶⁵ Since budgetary assistance merges with the national budget, by merely looking at the Law on Budget it is hard to track whether particular measures on democratic reform, if there are any, are related to the assistance through the ENPI or not.

The civil society representatives have been estranged from the process of allocation of assistance, and although they are mentioned as addressees of the assistance in the ENPI documents, for the initial two years no programmes can be noted to be financed through the ENPI to support civil society. Nonetheless, the representatives of civil society are hopeful that elements of civil society will emerge as professional service providers in certain areas on which the Government will rely more and more.¹⁰⁶⁶

¹⁰⁶³ Interview with Varos Simonyan, Head of Department of EU and International Economic Affairs, Ministry of Economy of the Republic of Armenia, 20 April, 2009, Yerevan. For interview transcript see Annex C.

¹⁰⁶⁴ *Ibid.*

¹⁰⁶⁵ *Ibid*; Progress Report Armenia 2007 and 2008.

Also see http://www.delarm.ec.europa.eu/en/programmesactions/full_listprojects.htm.

¹⁰⁶⁶ Interview with Karen Bekaryan, Head of NGO European Integration, 20 Armenia, 2009, Yerevan. For interview transcript see Annex C.

Outside the framework of direct financial assistance only one project has been negotiated for Armenia which is related to the proper functioning of the Ombudsman office and is supposed to be initiated in the near future.¹⁰⁶⁷

Similar gaps are identifiable in the case of Azerbaijan under the ENPI assistance. Allocating €24 million for 2007 under annual Action Programme under ENPI, the emphasis was put solely and entirely on the reform of the energy sector through a sector support programme. The 2008 annual action programme placed emphasis on support for justice reform, primarily relating to the rule of law, and twinning operations for the implementation of the Action Plan.¹⁰⁶⁸ No other projects have been noted to be undertaken in the country aimed at implementation of the Action Plan measures on democratisation.¹⁰⁶⁹

The Progress Reports for the three countries make references to the assistance provided also through horizontal thematic programmes, such as the EIDHR and the Non-State Actors and Authorities in Development.¹⁰⁷⁰ It follows that while there are two programmes through which the EU engages with the development of public sector, it will hardly follow up the rhetoric of the ENPI regulation and other documents on the alleged support to civil society.

Thus, it should be noted that while the ENPI appeared to put a greater emphasis on shared values and democratisation, the way the assistance is allocated in practice and the issues to which the assistance is allocated is yet another factor undermining the ENP conditionality.

¹⁰⁶⁷ Varos Simonyan, Annex C.

¹⁰⁶⁸ Azerbaijan Progress Report 2008, at 18; Anonymous Commission official II, Annex A.

¹⁰⁶⁹ European Commission Delegation to Azerbaijan, see

<http://www.delaze.ec.europa.eu/index.php?l=en>.

¹⁰⁷⁰ 2008 Armenia Progress Report, at 17; 2008 Azerbaijan Progress Report, at 18; 2008 Georgia Progress Report, at 6, 21.

4. Conclusion

To conclude on the operative elements of the ENP methodology, it should be emphasised that the monitoring of the process and the assistance provided for the Action Plan implementation decrease the efficiency of the ENP in instigating democratic reform.

Though the Action Plans envisage the joint PCA institutions to undertake monitoring of the Action Plans implementation, in the case of all the three countries these institutions merely uphold political dialogue. The Cooperation Council meetings can be described as 'hand-shaking exercise,' which together with the political dialogue on higher levels, ensures that at least on declaratory level, the EU is upholding its values, including commitment to democracy.

It is the Commission, which undertakes the actual evaluation of Action Plan implementation through issuing annual Progress Reports. Expectations for the Commission evaluation at the outset could not have been high. This follows from the drafting of the Action Plans, where the conditions for compliance were not spelled out in detail and sufficient precision. The analyses of the Progress Reports of the three countries manifest major inconsistencies. Not only does the Commission make general and brief recall to progress or absence of progress as regards certain priorities, but very often the evaluation lacks substance as to indications for further compliance. The Commission chooses to bypass or ignore certain vital issues, such as strengthening of the Parliament in Georgia or ensuring proper checks and balances between the executive and legislature in Azerbaijan. In addition, it is not clear whether there is any difference between the Action Plan prioritised measures and those provided under section 4 of the Action Plans as general complementary actions,

since the Commission occasionally evaluates the progress in implementing the general actions.

Moreover, the determination of the Commission to evaluate political reform has softened judging by the Progress Reports on Armenia and Azerbaijan for 2008. What is more important is what are the consequences of the Commission monitoring and how does it affect the relations between the parties. To date the advancement or the stagnation in relations between the parties has not been made conditional upon the results of the Commission's evaluation of their progress. Nor have any of the Action Plans been revised in order to bring certain actions under the spotlight or require further reform.

It is particularly interesting to consider this in the context of positive conditionality and negative conditionality of the ENP. A clear example of advance in relations between the EU and a partner country can be found in the negotiation of a visa facilitation agreement with Georgia. There is nothing to suggest that such advancement in the relations between the parties depended on Georgia's adherence to democratic principles. Rather it can be suggested, that the talks on the agreement were initiated after the 2008 August war within the general approach of the EU's support to the country.

As regards negative conditionality, it should be noted that it has not been referred to in relation to any of the South Caucasian states to date. Despite the fact that Azerbaijan made no or limited progress in political reform as evaluated by the Commission in its Progress Reports, the negative conditionality was practically disregarded. It is apparent that the EU will unlikely undermine the progress on energy cooperation with the state invoking negative conditionality related to political reforms. Also, in the case of Armenia, one can question why the EU did not use

negative conditionality after the 2008 Presidential elections. The most reasonable explanation is that in this case the country clearly demonstrates willingness and efforts to implement the policy: should one instance of non-compliance trigger the negative conditionality mechanism, the prospect of future cooperation would be undermined. Not only does this demonstrate one of the drawbacks of the application of negative conditionality, but also it illustrates the mostly formal nature of this type of conditionality.

An even greater gap in the ENP mechanism should be noted with reference to the assistance allocation, despite a greater emphasis the ENPI puts on promotion of democracy, together with a more inclusive approach to the participation of the civil society. The only two general instruments relevant for democratisation mentioned in the ENPI documents are the new Instrument for Democracy and Human Rights for Armenia and Azerbaijan and the Governance facility for Georgia. Two years after these documents were established neither of these instruments has been enacted for any of the countries.

Thus, a flexible approach to the assistance based on annual action programmes focusing on certain priorities of the National Indicative Programmes is the main EU strategy in the South Caucasus. What is striking is that despite democratisation being identified as a priority area in all three National Indicative Programmes, the only area to be financed in the first two years is the reform of the judiciary for 2008. The progress reports do not identify any other general programmes in this area financed through the ENPI. Although certain *ad hoc* projects can be identified, such as a programme to support Parliament or assistance issued for elections under the Stability Instrument in Georgia, or a programme strengthening the

institutional capacity of the Ombudsman in Armenia, nevertheless, the blueprint approach of the ENPI Regulation is not apparent in practice.

The Eastern Partnership was noted to increase the budget for the neighbourhood, suggesting that the South Caucasian countries will have bigger shares in comparison with general ENPI countries, which include Russia and Southern neighbours. However, it is too early to assume that the Eastern Partnership will lead to any modifications to the assistance allocation procedures or additional focus on financing projects on democratisation.

CHAPTER VIII

Conclusion

The major political developments of the last two decades have radically changed the European continent. The fall of the Berlin wall, the collapse of the Soviet Union and the subsequent enlargement of the EU, transformed the EU substantially bringing it closer to geographical areas previously considered remote. The ENP has been created to respond to the EU's enhanced role in its new and old neighbourhood. The new neighbourhood includes the South Caucasus, whose own importance increased substantially since Georgia, Armenia and Azerbaijan gained independence from the USSR. The significance of the region as an alternative energy root and a potential source of insecurity for the EU could not have passed unnoticed for the EU institutions and the Member States. With the inclusion of the South Caucasus within the ENP, the EU established a framework for pursuing its interests therein and preventing threats that might potentially emerge from the region. At the same time the ENP declared the EU's inherent interest in transformation of the countries concerned via bringing them closer to Europe, through promoting its values to the neighbourhood.

Within its transformation agenda the EU faces three countries undergoing both economic and political transition. Georgia, Armenia and Azerbaijan are developing countries, whose economic performance has improved throughout the last few years. The export of Azerbaijan's natural resources via BTC and BTE pipelines ensured a rapid increase in the state budget, benefiting also Georgia as a transit country. Armenia's economic isolation has not allowed the country to benefit from its transit position to date. Politically the three countries undertook an obligation in their Constitutions and before different international organisations to establish democratic republics. The Rose Revolution in Georgia gave a new impetus to political reforms in

the country which had its own drawbacks. Armenia's transition is expressed through democratic development via constitutional and legislative reforms, which are not always the practice in reality. Azerbaijan's transition is at the stage of power concentration in the hands of the President, where strong patronage networks allow the President to control different areas of public life. The conflicts in Nagorno-Karabakh, Ossetia and Abkhazia interrupted the democratisation process at the beginning of 1990s and continue to affect the political life of these states.

In this context, the region was too troubled and too far away for the EU to engage closely in the 1990s. Thus, within the general approach towards the countries of the CIS, bilateral PCAs were signed with each of South Caucasian states based on Articles 133 and 308 EC in order to make a distinction with the Association Agreements signed with the CEE candidate countries. The partnership and cooperation within the agreements mainly evolved around the integration of the countries to the international market. Most importantly, political dialogue was established between the parties aiming at *rapprochement*.

The PCAs contained hard versions of democracy and human rights provisions usually present in standard trade agreements at the time. The fact that it was an essential element of the agreement allowed the parties to undertake measures in case of its breach via the 'Bulgarian clause,' which nevertheless, has never been invoked in respect of the countries of the South Caucasus. Despite the inclusion of separate titles on cooperation in the area of democracy, the agreements did not cause significant consequences in terms of political reforms. Apart from the absence of motivation to undertake reforms, the mainly technical and limited nature of TACIS assistance also affected the ability of the PCAs to democratise either of the South

Caucasian states. The PCAs continued their operation within ENP framework, which should be considered as an attempt to compensate for past failures.

However, as opposed to the EU's previous reluctance to engage with the countries closely on a differentiated basis, the ENP creates a framework for closer engagement of the EU with the three states in order to pursue its interests. These interests currently entail a differentiated approach from the EU, where each of the countries has its own attraction. The EU's interest in Azerbaijan revolves around energy cooperation. The Rose Revolution in Georgia reoriented the country towards integration to Western alliances, thus asking for the EU's presence in the country. The EU has not shown as strong an interest in Armenia as it has in Azerbaijan and Georgia. The EU's interest can still however be connected to the transit position of the country, especially taking into account the political dynamics of the region in light of the ongoing process of normalisation of the relations between Turkey and Armenia.

The diversity of interests suggests a difference in the initial EU role for each of the countries. Prospects of economic cooperation with the EU are important for all three states. The EU's role for Georgia and Armenia is built around the urge of both countries to integrate to the EU or to its internal market. In circumstances where the both countries do not have their own leverage on the EU, this suggests that the EU's normativity is not necessarily threatened by rationalist considerations. As to Azerbaijan, the country does not have equivalent interest in integrating to the EU and it has much to offer to its partner in terms of its natural resources. This decreases the EU's 'power of persuasion' from the start. But even in case of Georgia and Armenia the ability of the EU to act normatively through the ENP is not straightforward due to the presence of numerous other actors in the region.

The complex relations each of the countries developed with Russia, the USA, Turkey and Iran influences major political developments among these world and regional powers, as well as their relations with the EU. Such disposition guarantees that politics in its rationalist understanding is deeply rooted in the South Caucasus. The Russian-Georgian war of August 2008 demonstrated how the efforts to democratise a country through the ENP can be undermined if political developments with one of the actors take a wrong turn. The past inability to establish a common agenda on the shared neighbourhood with Russia, for instance, will undermine not only the EU-Russia relations, but the ENP itself. Political developments in the region therefore will require the EU to act rationally, whether in terms of establishing its dominance as opposed to other actors, or reacting to the political events. For instance, the decision to start negotiations on visa facilitation with Georgia after the August 2008 war can be considered as *realpolitik* with the EU making a statement of its support to Georgia, even though it could not have taken a tough response to Russia due to the split of its Member States on the matter of sanctions. Thus, the geopolitical reality of the South Caucasus can be considered as a fault line that is capable of undermining the ENP's agenda to democratise the EU's neighbours.

The role of democratisation of the EU's neighbours within the ENP agenda is not straightforward. Although the official objectives of the policy are articulated around the idea of avoiding new dividing lines in Europe and spreading stability to the neighbourhood, gradually the shifted focus on security-oriented cooperation areas allowed positioning of security concerns as central to the ENP's objectives. Other articulated objectives, such as the stability and prosperity of the neighbourhood are, therefore, contributing to the objective of the EU security. In this context, the democratisation of the countries of the South Caucasus has a peculiar connection with

the EU's security. On the one hand, according to the presumption that democratic states do not fight wars with each other, long-term security in the EU's vicinity requires democratisation of its neighbours. On the other hand, security in the short-term perspective can undermine the necessity to democratise neighbours. In particular, in order to ensure security, understood widely to include economic security, the EU might as well cooperate with those neighbours, which despite an absence of significant progress in political reform, ensure effective border control or the fulfilment of their obligations in the energy sector. The ENP as a foreign policy instrument is 'civilian' in terms of the means of cooperation without use of force. However, the importance of security on its agenda suggests that the second element of the concept of civilian power, that is the normativity of actor, might be given up to due narrower, short-term self-interest.

Since the early days of articulating the idea of a neighbourhood policy, democracy has been cited as one of the values the EU intends to spread in the wider Europe. How is one supposed to understand democracy as the EU's value and its transposition to the neighbourhood? In the view of the debate on the Union's democratic deficit, its democratic life requires substantive consideration to justify the EU's normative rhetoric on democracy promotion in its vicinity. Looking at various stages of the EU's constitutional development, it should be noted that EU has its own unique, evolving democratic model required by its multi-level governance system. It does not replicate state models of democracy, rather democratic features of state governance are transposed to the European level with their peculiarities. In addition the EU's democracy is not static and has a dynamic nature. This statement is supported with continuous constitutional developments in the EC/EU with the provisions of the Lisbon Treaty, once entered into force, being the latest indicator of

such evolution. In addition, the democratic models of the Member States should be considered as one of the EU's democratic values. In this context, the EU can be viewed to be in a position of transposing its democratic values, such as representation of citizens, liberal governance, citizens' participation in decision-making etc, to its neighbourhood.

The experience of transposing democratic values through the last two phases of enlargement, as the most successful example and as the policy on which the ENP is largely based, has been considered for comparative purposes. Despite the acknowledged success of this experience, the transposition of democracy to candidate countries was not flawless. The political reform had a limited nature and was concentrated on the operation of the three branches of power. In addition, its importance was limited to formal criteria of democracy at the stage before opening of the accession negotiations. This means that even when the EU institutions did not hesitate on their position as to the necessity of the candidate countries to improve their democratic record, the results of the political reform were still ambiguous.

Operation of this pattern from the enlargement experience can be more complicated due to instrumental and methodological aspects of the policy. In particular, considering the role of the EU institutions in the policy formation, it is hard to expect unity from all institutions on their vision of the EU in the neighbourhood. The European Commission preserving its central role from the enlargement experience has a key position within the ENP. Nevertheless, its initial all-promising attitude towards the policy was subsequently narrowed down by the Council in terms of incentives of the policy and its guaranteed presence in the process of policy formulation, such as Action Plan preparation, as well as subsequent monitoring of the process. Among the EU institutions the European Parliament is the

one with a strong normative vision of the EU in its neighbourhood. However, despite a more enhanced presence in the EU's external relations, the European Parliament is not able to influence major policy outcomes.

The 27 Member States have the capacity to provide leadership but cannot agree on a common stance for the EU's action in the neighbourhood. Rather, different groups of the Member States will be interested in promoting relations with their close neighbours in their own backyard. The 27 Member States will hardly share a common normative identity based on which the EU will cooperate with its neighbours. Even if the Commission and the Council decide on a common denominator for their neighbourhood, the political context for enhancing relations will ultimately depend on the Member States. For instance, the Eastern Partnership is initiated by Member States and its development to date depends *inter alia* on the priority given by the rotating Presidency. It might be suggested that the initiative will have more stable agenda under Lisbon, once the lead is given to the new President of the European Council and High Representative for Foreign and Security Policy.

In order to ensure all encompassing security, the ENP, as a hybrid type of Europeanisation policy, envisages cooperation in all three pillars of the EU's constitutional structure. Constructing a policy combining elements from the three pillars entails complex competence issues. In order to bypass such complexities, the ENP legislative instruments elaborating the policy are mostly soft law in substance. The only hard law instruments are the PCAs which will probably be replaced by Association Agreements, and the ENPI regulation setting conditions for provision of assistance. The main instruments through which the relations between the parties were established resemble those used during the pre-accession process. The use of Action Plans setting the conditions for cooperation, the Commission's monitoring

reports evaluating the implementation, and the assistance instruments suggest that the ENP is based on logic similar to enlargement transformation. Indeed the conditionality based on the Copenhagen criteria is present within the ENP, though in a weaker version. While the Copenhagen criteria were used to establish the conditions for cooperation by the European Commission, the ENP's language of political conditionality is nevertheless much weaker, since it is based on the rhetoric of adherence to 'shared values.' Moreover, if during the enlargement the focus on political reform required primary attention of the candidate countries in order to qualify for opening accession negotiations, in the case of the ENP, there is no specific phase for which significant progress in political reform is required. Thus, the inclusion of the countries in the Eastern Partnership can be regarded as missed opportunity in this context. At the moment, the possibility of signing Association Agreements can be used as a precondition for the neighbours to make a strong commitment in terms of political reforms.

The ENP's conditionality is also undermined by other elements of the ENP methodology, such as the principles of joint ownership and differentiation. The three principles are based on a different rationale. The conditionality manifests the coercive in civilian understanding approach aimed at transformation. On the contrary, the principles of joint ownership and differentiation entail a more cooperative approach. The principle of joint ownership allows for neighbours with their own leverage on the EU to influence the course of relations between the parties. In the South Caucasus, Azerbaijan is the case, where the principle of joint ownership would permit the country to benefit from its importance for the EU. Thus, the EU/Azerbaijan Action Plan provides as the first priority area the contribution to the resolution of Nagorno-Karabakh conflict, while in the Georgian Action Plan, despite the desired focus on a

stronger presence of the EU in the Abkhazian and South Ossetian conflicts, the joint ownership of the process did not have similar results. The differentiation has a two-fold connection with conditionality. On the one hand, it will allow for each country to establish closer links with the EU at its own pace depending on its progress. On the other hand, due to differentiation, the EU cannot be accused of being arbitrary, since the principle implanted in the ENP's methodology allows for a flexible approach towards each of the countries.

The effect of these principles is apparent in the operative elements of the ENP as applied in the three South Caucasian states. These elements are the Action Plans, the monitoring of their implementation and the assistance issued to the neighbours. The Action Plans, as soft law instruments and political documents, do not entail legal obligations for the parties. The Action Plans with the three countries inherit the weak conditionality in terms of its formulation around the concept of 'shared values' and the incentives. The three Action Plans promise the South Caucasian countries 'a stake in the internal market,' but only in the Georgian case is reference to the 'four freedoms' made. Thus, Georgia in comparison with Armenia and Azerbaijan has apparently more to look forward to.

The three Action Plans share certain similarities. First of all, the Action Plans contain priority areas on democratic measures which should be considered as a major advance in comparison with the PCAs. However, in all three of them the conditions for political reform are phrased in most general terms without a defined approach towards democracy. The measures on democratic reform are mixed with those on the rule of law, and at points are even situated in the priority area on human rights. Very few deadlines are specified in the Action Plans. The major issues the EU is paying attention to are the functioning of the judiciary and executive together with general

requirements as regards separation of powers. Such important issues as the role of the parliament and public participation are either omitted or mentioned in section 4 on general actions, which is supposed to have a complementary role. Most importantly, the EU does not impose the necessity of democratic reform as its own value. Rather it relies on the obligations the three countries undertook in the Council of Europe and the OSCE. While it can be suggested that in this way the EU tries to allow the Action Plans to invoke democratic reform in the three countries by referring to their legal obligations in the relevant organisations, it nevertheless fails to create and uphold a role of its own for the EU as an organisation which promotes democracy.

Thus, all three Action Plans fail to create a framework for political reform establishing concrete conditions for compliance. Rather the 'wish list' of actions merely states objectives for political reform leaving their implementation to the political will of the country. In addition, the effect of principles of joint ownership and differentiation is apparent. Differentiation is present in all three Action Plans highlighting different actions for different countries although around similar lines of the reform of the judiciary and executive.

The principle of joint ownership is most evident in the EU/Azerbaijan Action Plan. As noted above, the Nagorno-Karabakh conflict found its place in the first priority area as opposed to EU/Georgia and EU/Armenia Action Plans. Also the priority area on democratic development presents the most generally formulated and scarce list of actions to be implemented with practically no deadlines. In addition, the reform of judiciary is included in the Action Plan priority area on human rights. While apart from joint ownership, such an outcome of the negotiations of the Action Plan can be also attributed to the importance of Azerbaijan in the energy cooperation sector, the case of Georgia demonstrates another type of retreat from the EU's

normative stance. Taking into account Georgia's determination to integrate into the EU, it is strange to note the insufficient attention paid to democratic reform, including it in the common bulk of measures on the rule of law measures and human rights with a major focus on the continuation of the judicial reform. In this context, the EU/Armenia Action Plan seems to be the most loyal to the EU's determination to promote democracy, despite the fact that the general criticism noted above applies also in this case.

In this light, the South Caucasian Action Plans on their own should be considered as a major retreat from the EU's determination to instigate political reforms. The most peculiar observation should be made in connection to the fact, that the joint discussions of the Action Plans involved the Commission, the Presidency and the High Representative for the matters of political cooperation and CFSP. Thus, it should have been mainly the Commission responsible for negotiating these documents where the Member States could not have had much opportunity to sabotage the stance on democracy issues.

The actual implementation of the Action Plans can nevertheless create prospects for future reforms. In Georgia and Armenia a clear institutional and legislative determination is notable for the Action Plan implementation. At this stage of the ENP implementation, the democratic reform is viewed as a necessary element of the policy implementation and will likely result in legislative reforms establishing formal prerequisites of democracy. The substantive prerequisites might even be undermined by the process of the Action Plan implementation. As in the case of enlargement, it creates strong executives responsible for major reforms without sufficient engagement with the Parliaments, with marginal roles for civil society and practical unawareness of the general public. The prospects of democratic reform in

Azerbaijan through the ENP are even more limited. The country did not express any eagerness to implement the Action Plan in institutional or legislative terms.

The Action Plans serve as basis for subsequent monitoring of the ENP implementation. The actual monitoring takes place annually, when the Commission issues the progress reports. The role of the PCA institutions in the monitoring of progress is limited to political dialogue ensuring the presence of democratic rhetoric between the parties annually. The features of the Action Plans noted above suggest indefinite basis for the Commission's evaluation of each state's progress. Indeed, the Commission is inconsistent in its evaluation based on priority actions and sometimes the general actions contained in section 4 of the Action Plans. Moreover, the degree of scrutiny varies from action to action, and from year to year. The main role of the Commission in drafting the documents does not demonstrate adherence on behalf of the EU to democracy as its value.

Most importantly, it is not clear what the practical implications of the monitoring are for the ENP implementation. The progress reports are not indicative of the further reform and do not fulfil a purpose of assisting the countries in their transformation. Nor did they lead to the revision of any of the three Action Plan priorities, even though such a possibility is envisaged in all three documents. Besides, it is uncertain to what extent the results of monitoring are important for developing the relations between the parties. There is no apparent reliance on the results of monitoring for positive or negative conditionality. The example of negotiating a visa facilitation agreement with Georgia mentioned above can be cited here in relation to positive conditionality.

Another example can be taken from the 2007 and 2008 progress reports for Azerbaijan where no progress has been noted in the Action Plan implementation.

Such evaluation did not result in any revision of the Action Plan, nor has any substantial action been taken to invite the country's attention to the Action Plan implementation. Therefore, the results of the monitoring are not particularly essential in terms of negative conditionality. It might be suggested, the negative conditionality will be probably used as a last resort, since it would potentially undermine the pursuit of the EU's rationalist interests, such as energy cooperation with Azerbaijan, or it would alienate a country willing to undertake reforms and therefore discourage it from further reforms, what can happen in the case of Armenia. Although this questions the rationale of the negative conditionality within the ENP, it seems that the ENPI Regulation, as a hard law instrument, is used to make a statement on the values of the EU, including democracy.

The ENPI regulation upholds the ENP's rhetoric of the democracy promotion in the neighbourhood, envisaging it as one of the areas for assistance, and demonstrates a more inclusive approach towards civil society. However, issuing assistance as the third element in the chain of the EU's involvement with neighbouring countries can be controversial. The allocation of the assistance for Georgia, Armenia and Azerbaijan provides for approximately a third of the funds to political reform, including democratic development and human rights issues. However, in practice, the direct budgetary support issued to the countries leaves the national Governments in charge of the assistance, thus excluding the civil society. Also, in none of the countries the civil society had been noted to receive assistance. The direct budgetary support naturally does not issue money to the civil society. Most importantly, out of the measures financed through the ENPI in all the three countries the reform of judiciary was the only measure related to democratic development in

the first two years of the ENP implementation. Certain *ad hoc* programmes are financed in Georgia and Armenia.

To conclude, this thesis demonstrates, in seeking to answer the research question posed, that in the short term perspective the effectiveness of the ENP on democratising the countries of the South Caucasus based on the EU's values is rather marginal. In Georgia and Armenia the importance of integrating to the internal market will require accompanying democratic reform, suggesting that the ENP can positively affect at least the formal criteria of democracy in the medium to long-term. Thus, positive conditionality can deliver in these countries, if the incentive of integration to the internal market is supported in practical terms. Such a prospect can hardly be seen in the case of Azerbaijan, where rationalist interests for energy are likely to continue to dominate for the foreseeable future. The principles of differentiation and joint ownership are required for developing relations in the most needed areas with focus on energy cooperation. They may ultimately overshadow the principle of conditionality, especially taking into account the insignificance of the ENP incentives for the country as opposed to Georgia and Armenia, therefore, one can conclude that the start of ENP was not particularly significant for the democratic reform in the three countries.

There is more however to look forward to. Most importantly, the entry into legal effect of the Lisbon Treaty will have important implications for the EU's neighbourhood. As elaborated in Chapter IV, Article 8 of the amended EU Treaty will oblige the EU to establish relations with its neighbours 'founded on the values of the Union.' The promotion of democracy in the neighbourhood will become concrete obligation imposed upon the EU by the Treaty. Furthermore, the new provisions on democratic principles of the EU will reiterate the EU's role as democratic entity.

What will remain for the EU is to establish this role in the neighbourhood. The question to ask is whether the ENP offers sufficient mechanisms for this. Despite the faultlines inherent in the ENP in terms of its objectives, instruments and methods, it can be suggested that the EU possesses certain mechanisms to influence the democratic reforms in the countries concerned. First of all, the Eastern Partnership brings signing of new agreements to the immediate agenda in the relations between the parties.¹⁰⁷¹ The new agreements should alter the positive conditionality as it operates currently. The EU should make a shift from the weak conditionality phrased in 'shared values' to Copenhagen-like criteria while acknowledging officially that the values are yet to become shared. This will require further clarifications of the incentives of the policy. It is time for the EU to make up its mind in relation to the South Caucasian countries. The logic of its policy should be either to offer a genuine routemap to membership or a halfway house, such as an EEA style arrangement, in which the transposition of the EU's democratic values is paramount.

With the new posts of the President of the European Council and High Representative for Foreign and Security Policy, it can be suggested that a unified front in dealing with the neighbours can be created, where a common EU position can be established notwithstanding the dissenting approaches of the Member States. Also, the regional dynamics in the advancing relations between Armenia and Turkey, EU and Russia, and the EU's perceived role as an independent arbiter, suggest that it might be possible to neutralise the necessity to act in rationalist way, therefore giving room for the EU to carry out its normative role.

¹⁰⁷¹ In the context of Article 8 EU as amended by Lisbon Treaty, the first neighbourhood agreements might be signed within the framework of Eastern Partnership.

ANNEXES

ANNEX A

Interview I

*Anonymous Commission official I, DG RELEX
European Commission,
28 April 2009, Brussels*

1. Negotiation of the Action Plan: to which extent the inclusion of democratisation issues within the first priority areas reflect the Commission's position/persistence on these matters? To what extent the opposite party agreed or resisted it?

-The issue of democratisation is the basics of cooperation. Understanding of the values is not new, it was also in the PCA. This is one of the features which make the EU different from other international actors. From this perspective it is not a coincidence that the first priority area is devoted to democratisation.

-In case of Georgia specifically, the EU could see a potential to do a lot in short period of time. However, democracy per se cannot be achieved shortly, there should be a culture to change, people have to learn to adhere to rules, there should be shift from politics based on leaders to politics based on ideas and programs. We could see that this stage is not complete. It was obvious that the reforms were ideology-oriented and not all of them were positively evaluated, for instance the constitutional amendments strengthening the executive. Although, this could be justified based on the fact that the country just came out of a revolution. So instead of attributing a good mark, the Commission could see a start of a promising process, especially in comparison with neighbours. Georgia is a 'laboratory' for the ENP where the EU can see the ENP can work.

2. How were the Action Plans drafted? Why do general actions and objectives (section 4) follow the priority areas? Based on which criteria were the priority actions chosen? (section 4 also includes actions on pressing matters). In case of Armenia, for example political pluralism, functioning of political parties is not reflected in either of priority areas, but is mentioned within the general actions.

-The position of sections should not be given much importance, since it is just a matter of presentation. The idea was to include the important issues in the priority areas, and section 4 to complete with other issues. However, they always made it clear, that it doesn't mean that they should implement the actions under priority area and abandon the ones in section 4 or vice versa, it is a comprehensive package. Section 4 is more about establishing the objectives. During the implementation no distinction was made between these two. The Action Plan can be considered as 'a wish list'. During the preparation of the document there wasn't much focus on this, it is a political document (things included by Commission, by Georgia) and not a legal one: no mandate by Council. It is not binding on the parties, there are no legal obligations. It is left to Georgia to implement it or not. It is not signed by any of the institutions.

3. *How is each of the countries different from the other two? Is there a practice of considering the democratisation of each of the countries in a comparative or regional perspective?*

-Provisions are more or less the same, most of them derive from international obligations these countries have in the Council of Europe. Sometimes they can be more specific, sometimes they make reference to international commitments, in this sense they are similar. There are some differences related to specific issues, for example freedom of media should be more urgent in case of Azerbaijan. However, the core of objectives is the same: separation of powers and working towards participatory democracy, rule of law, independence of judiciary, protection of HR, strengthening democratic institutions.

4. *The monitoring process: can it be assumed that it is undertaken by the Cooperation Council and the Commission (more evaluation)?*

-Having an EU Delegation is a major development for analysis. There is regular political dialogue on high level, the Commissioner or Troika during their meetings always stress the issues of democratisation.

5. *What is the role of the Cooperation Council? It meets only once a year and makes rhetorical statements. Is it more about political dialogue than the monitoring of the implementation? For instance, the 2008 Georgia and Armenia Cooperation Council notices 'significant progress in certain areas': how is the progress measured? Is it evaluated by the Cooperation Council at all? Or the detailed evaluation is left to the Commission?*

-The Cooperation Council is a rather formal meeting which takes talk of number of events which took place on lower than ministerial level. This monitoring process has continuous nature that starts with contacts between the EU delegation and relevant government, with support to NGOs, parliament directly, reform strategy of criminal justice in case of Georgia, summarised the work which was done in an intense dialogue. So, there is already a good knowledge of what was happening, having a delegation is a major achievement here. In case of Azerbaijan, there was no delegation until recently which was restraining the capacity for analysis. Another important source is international organisations, their reports, which help to build an idea of what is going on.

-There is a constant political dialogue. Troika, visits of the Commissioner also adds to this. Democracy, rule of law and human rights are always a part of discussion. So, there is a systematic and continuous process of where the implementation stands with some points of more formal checking which is the Cooperation Committee and Council. So, the revision doesn't take place only once a year, the work is already done, so when there is a meeting in Cooperation Council the other side already knows the position of the opposite side. In case of Georgia the EU embassies are closely cooperating, trying to come out with a consolidated vision of whether the reforms are advancing or not. It is part of informal process, continuous interaction, especially in such dynamic country as Georgia.

-In November 2008 Georgian President made new commitments in respect to democratisation. There was a joint statement signed when the Commissioner in

Tbilisi a week ago, acknowledging these commitments and also the fact that the financial assistance is increased by €500 million, the Commission will be even more attentive to the process of implementation of these commitments. It is in this sense that Georgia is viewed as a laboratory: there are commitments, there is assistance and also close scrutiny. There is a legal framework to implement this, although not ideal. Georgia has very lively civil society, the opposition is fragmented and weak, but there are some influential people appearing. And this is one of the messages sent to Saakashvili: his government has a moral obligation to deliver, since there is not serious opposition, and the idea of assigning key positions to the representatives of the opposition is very important. The EU tries to encourage the opposition, the Commission regularly meets the opposition representatives. In addition, the Commission tries to bring the government and opposition together, expecting constructive dialogue from both sides. The opposition should be willing to engage within the existing framework and not only orient towards changing the power.

6. Sub-committees of the Cooperation Council: are there any subcommittees whose competence includes democratisation issues? The European Parliament in its 2008 Resolution called on the Commission to negotiate with all three countries establishment of human rights subcommittees: are there any developments in this respect?

-The subcommittees are quite technical (for issues such as trade, transport, environment, taxation). As regards democracy related issues it is the political dialogue (high level meetings, Troika demarches, informal meetings) which is important, and assumes a high level of interaction, non-technical. There is Justice, Liberty and Security Committee which focuses inter alia on judiciary. There is a principle of dialogue on human rights, however there has been no meeting so far. The Czech Presidency wants to have a meeting. This definitely takes account of the Parliament's recommendation. Subcommittee is a heavy machinery, creating too many instruments can be dangerous, dialogue is more efficient.

7. Are the opportunities offered by the EIDHR for implementing and monitoring the implementation of the ENP used by the Commission (as recommended by the EP in its resolution)? If yes, then how?

-The EIDHR and the NGOs and Non-State Actors –two major budget lines-programmes are separate from the Government, while the ENP and the ENPI primarily engages with the Government. There is EUJUST mission-high profile, endorsed by the president and the parliament of Georgia-implemented the reform of criminal justice system in 2007. Receiving more funding is conditional on implementation of reforms. So, instead of having particular projects, they have a dialogue with the government, decide on particular goals, and then give the money to government based on conditions that certain achievements should be recorded-more forward-looking, more structural approach.

Criminal justice is related to democratisation, where independent judiciary is necessary. Otherwise, there is some small project under the ENPI with the aim to strengthen the Parliament. Apart from this, the Stability Instrument (exceptional intervention) has been used in 2008 between the presidential and parliamentary elections, to address the shortcomings of the reports of the international missions.

8. *Technical and Financial Assistance: Commission's 2006 Communication on Strengthening the ENP notices that 'for those ENP countries which were covered by TACIS, the ENPI will mark a major improvement, moving from technical assistance to fully-fledged cooperation': what will the 'fully fledged cooperation' mean for democratisation?*

-The ENPI has a project to strengthen Parliament's capacity. Also there is the Stability Instrument for 2008.

9. *Georgia ENPI Indicative Programme notices that financial resources for Georgia might be increased under new Governance Facility. This is not provided for Armenia and Azerbaijan: is it because there is more significant progress achieved or expected to be achieved by Georgia?*

-After the last 2 elections and the 2007 election aftermath there were concerns regarding Georgia's commitment to democracy. This will depend on the joint statement reiterating the commitments announced by the President Saakashvili. Before 2007 Georgia was considered to be a very good candidate.

Whether it was a coincidence or no, it was after the war with Russia that the President came up with a new wave of democratic reforms: it is important to have stable democracy when the country is faced with serious problems, the opposition has been pretty calm (united against Russia), there was tendency not to criticise much, this is changing. The fact that the opposition is more active, precondition for the opposition to become more constructive, the leadership is realising the need to be more democratic, the opposition understands the need to be more organised and mature to challenge the ruling majority from a more solid position.

10. *In the ENPI documents the Commission mentions on several occasions 'bottom-up' approach? Does this mean that not only the Governments will benefit from financial resources, but also the NGOs? If yes: how does it happen? How are the NGOs chosen?*

-It is a different unit in the Commission which is responsible for financial implementation.

11. *What is the importance of the PCA within the ENP?*

-It is a legal document, binding in its nature, the two things are absolutely complementing. The values under the PCA were stated in general terms, and there was less operational character, whereas there was more specificity on trade and economy related issues. In this sense the ENP is more operational, able to translate the general terms of the PCA as regards democracy. The ENP can be considered as 'changing the gear' of the cooperation, however the PCA is a treaty/legal basis.

12. *How do you think the ENP will develop through the Eastern Partnership? Will it have mainly economic consequences or might also affect democratisation?*

-The Eastern Partnership will definitely affect the democratisation. To start this fundamental partnership there should be a strong commitment to democracy, to show

that it is functioning before any developments on signing the Association Agreement, or the financial assistance is increased or any dialogue on free movement is started. It is believed that the Eastern Partnership will be a stronger incentive, at least for Georgia which was ready to undertake reforms.

Interview II

*Anonymous Commission official II, DG RELEX
European Commission,
28 April 2009, Brussels*

1. To which extent the inclusion of democratisation issues within the first priority areas reflect the Commission's position/persistence on these matters? To what extent the opposite party agreed or resisted it?

-There is a general presumption that the issues of democratisation are always urgent. In response to the criticism that the priorities are not concrete and comprehensive, it should be kept in mind that this is a mutually agreed document. The respective Government must be willing to sign it. Because if the Government is not willing to go beyond what has been proposed by the Commission, then there is simply no ownership of that document from both sides.

2. Democratisation issues are positioned after Priority Area 1 on Settlement of Nagorno-Karabakh conflict: did Azerbaijani side insist on prioritisation of conflict settlement? Is the latter considered to be more urgent than democratisation?

In evaluation by the Commission first focus is on political issues despite the fact that Nagorno-Karabakh conflict is a priority area 1 in the Action Plan. It is a relatively small paragraph on Nagorno-Karabakh in the end of political part. Not matters really.

3. The EU identified numerous issues in the Country Report which was used to develop its negotiating position. However, not all of them are reflected within Priority Area 1 or those reflected seem to be rhetorical statements without specificity or deadlines. Did the Azerbaijani side insist on less stressed political commitment? Or is the EU is paying more attention to other matters of cooperation, such as energy?

-The Government has to agree to this document: it is based on joint ownership. The negotiation of the document assumes that the sides have to agree to it. Another important factor is that different desk officers deal with different countries. This means that to some extent there might be some subjectivity reflecting their ambitions. Even writing the progress report might reflect this. Writing a report by a desk officer to a large extent depends on the way he gets information, or perceives the developments. The desk officer might be able to put it in a tone, in a negative or positive light. So, this assumes some extent of subjectivity (only one person is dealing with that). The information and level of detail is less and less the higher you go in the hierarchy, it has a big impact who's preparing the first draft.

4. How were the Action Plans drafted? Why general actions and objectives (section 4) follow the priority areas? Based on which criteria were the priority actions chosen?

-There's been a lot of criticism especially for Southern Caucasian Action Plans. Criticism in particular is received from the civil society: the priorities are very general

and not specific (this is particularly true if you compare them with the Ukrainian or Moldovan APs).

5. How is each of the countries different from the other two? Is there a practice of considering the democratisation of each of the countries in a comparative or regional perspective (which is not evident from Action Plans)?

-There is no regional or comparative context for the evaluation really. There is a horizontal unit on Neighbourhood Policy coordination in Directorate D. They have a responsibility to compare the progress reports in order to make sure that the evaluation of Azerbaijan makes sense for example in comparison with Tunisia. Comparison by this unit is better because they are more distanced from those issues and they can compare countries, because they deal with all of them.

6. The monitoring process: can it be assumed that it is undertaken by the Cooperation Council and the Commission?

-There are several instruments of monitoring. These include the institutionalised structures of the PCA: Cooperation Council, Cooperation Committee and subcommittees. It involves also monitoring through the Commission's Progress Reports. Besides, monitoring takes place through high-level contacts. The visits by the Commissioner, who is aware of the assessment, also allow pushing the speeding up of the reforms.

7. What is the role of the Cooperation Council? If it meets only once a year and makes rhetorical statements: is it more about political dialogue? Is the detailed evaluation is left to the Commission?

-The role of the Cooperation Council is practically a formality, lasting about 45 minutes. There is not a lot of evaluation in the Cooperation Council, it is a channel for political dialogue. The Commission is providing debriefings, so it can be noted in which areas there are achievements or not. It is very general, no specific references to any actions.

8. Sub-committees of the Cooperation Council: are there any subcommittees whose competence includes democratisation issues? The European Parliament in its 2008 Resolution called on the Commission to negotiate with all three countries establishment of human rights subcommittees: are there any developments in this respect?

-There are two subcommittees for Azerbaijan on energy, environment, transport; and trade and economic issues. It was decided in spring 2008 that a human rights dialogue will be established in Baku, however, it is always up to the Presidency. The French Presidency did not follow this up, so it is expected that the Czech Presidency will launch this as an urgent measure.

9. Are the opportunities offered by the EIDHR for implementing and monitoring the implementation of the ENP used by the Commission (as recommended by the EP in its resolution)? If yes, then how?

-No, they are not used for monitoring the ENP Action Plan. The EIDHR stands separately. EIDHR in Baku has been launched recently. It was launched only on 22nd of January. A number of NGOs were selected to start projects. EIDHR is a global instrument. It also covers countries not included in the ENP. There is no direct link with the ENP. They are linked only indirectly through general objectives of the EU external policy to promote democracy and human rights. The EIDHR is not envisaged to implement any of the actions under the Action Plan.

10. *In relation to technical and financial Assistance: Commission's 2006 Communication on Strengthening the ENP notices that 'for those ENP countries which were covered by TACIS, the ENPI will mark a major improvement, moving from technical assistance to fully-fledged cooperation.' What will the 'fully fledged cooperation' mean for democratisation?*

-There is an annual programme on support of justice system to Azerbaijan concerning the rule of law and indirectly human rights. Also €18 million from 2008 budget has been allocated. There is no financing agreement signed yet. It should be signed at the latest in September 2009. This is the only large programme.

11. *In the ENPI documents the Commission mentions on several occasions 'bottom-up' approach. Does this mean that not only the Governments will benefit from financial resources, but also the NGOs? If yes: how does it happen? How are the NGOs chosen?*

The Action Plans are agreed with the Government. The Commission tries to promote also dialogue with the civil society: both the Government and the civil society. Civil society is very keen to provide information and contribute. The Commission has an obligation to include the civil society for the programming documents from 2011. The Commission opened its delegation only recently, so there was no opportunity on spot to engage with the civil society. Round table was organised with civil society to get information for the progress report. However, I fully agree with the criticism that there is more engagement with the Government and there should be more done for civil society. Much more money should be given to civil society, however it's difficult, because the projects are very small on funding. They are very labour intensive, and there is nobody in Azerbaijan to implement those projects. The situation is going to improve in that sense. Although, it is easier for the Commission to issue money to Government for one large programme. It assumes less administrative burden for the EU side, rather than ten micro programmes assuming the work to be 10 times more. There is no resistance from the Government in involvement of the civil society. The representative of the Government attended the EIDHR opening ceremony.

12. *What is the importance of the PCA within the ENP?*

-The PCA gives us the institutional framework important for dialogue, but there is not PCA regular monitoring as in case of ENP. And the ENP is a step further, it's a closer relationship requiring closer monitoring.

13. *How do you think the Eastern Partnership will affect the ENP? Will there be any implications for democratisation?*

-It's no clear what form the Eastern Partnership will take, especially with some Member States being concerned with such issues as freedom of movement of persons, visa regulations etc. The Eastern Partnership is less interesting for Azerbaijan since trade related issues are not offered to them. Azerbaijan is not a WTO member, therefore it cannot have a deep comprehensive free trade agreement. Either the country will have to decide to join the WTO or it will not benefit from the Eastern Partnership. I'm not sure which stand will be adopted by Azerbaijan: contradicting signals are being sent. I'm not sure if there will be reforms for example in agriculture sector. Azerbaijan exports mainly oil, hence it is not very interested in joining the WTO unless they opt out for diversifying their economy.

Interview III

*Anonymous Commission official III, DG RELEX
European Commission,
28 April 2009, Brussels*

1. Negotiation of the Action Plans: to which extent the inclusion of democratisation issues within the first priority areas reflect the Commission's position/persistence on these matters? To what extent the opposite party agreed or resisted it?

-These issues are very important in all Action Plan: they are not treated as additional or complementary measures.

It was part of a general approach. I assume there was not much opposition by the country's government. In addition, the Commission already had an experience with Action Plans with Ukraine and Moldova. Therefore the negotiation of the Action Plans with the South Caucasian countries was quite well handled. They may be not very concrete, but they shouldn't be very specific. They shouldn't bind the hands of the parties. Also the joint ownership of the process affects the outcome of the Action Plan, the partner can agree or not on something, that's why the nature of some measures is general. The issues are more or less the same, but the countries are different assuming different platform for negotiation.

2. How were the Action Plans drafted? Why general actions and objectives (section 4) follow the priority areas? Based on which criteria were the priority actions chosen?

-The Action Plans with these three countries are similar. It involves work by different Directorates. Also the delegations and the countries themselves take part. Only then the documents are being composed after long discussions on what is more important, what is less important. That's why the result might be disappointing. The results of negotiations with the countries were supposed to be agreed in the Council, by the Member States. The Action Plans have a lot of actions which are beyond the level of ambitions of the country, 80 percent of priorities were not fulfilled. If the imperfect actions under the Action Plan are implemented, the country can be at a level of a candidate to membership. It's not easy to implement. Also the document is for 5 years, so the country is not expected to achieve everything in 1 year. Country specific issues, like the elections in Armenia, can slow down the process. When there are elections, the legislation should be in place, however it is the implementation which is important. It all relates to lack of experience, administrative staff, people are trained under TAIEX and twinning.

3. How is each of the countries different from the other two? Is there a practice of considering the democratisation of each of the countries in a comparative or regional perspective?

-The interrelation was more geographical than mental, because of the general situation. The PCA were signed at the same time, they have common Cooperation council meetings. For instance, if the Commissioner goes to one of the countries, it

goes to the other as well. In this case they are treated as 'treated as a basket'. Georgia in fact is different: the level of cooperation with the EU is different, and it is not justified that they are treated as a block in the Council. The free trade agreement is considered for Georgia, therefore it will be considered for Armenia too (not for Azerbaijan, since it's not a member of the WTO), it's just a matter of time. The difference only is in case of support to the conflict.

4. Can it be assumed that monitoring is undertaken by the Cooperation Council and the Commission?

-The main role of the monitoring of relations, not only for Action Plan takes place on several levels. It includes subcommittees, which are very technical. Committees play crucial role in monitoring which takes place at ministerial level. Normally it is a half of the day meeting. This is the level where the details are being talked, different ministers present the situation in relation to the implementation of the APs and the general situation. This is organised by the Commission involving deputy ministers and deputy prime-ministers. The Cooperation council is more of a hand-shaking exercise, it has political nature. It takes place once a year to sum up the developments. The main role is for the committees. This is organised by the Council, so it's not a Commission exercise.

5. Sub-committees of the Cooperation Council: are there any subcommittees whose competence includes democratisation issues? The European Parliament in its 2008 Resolution called on the Commission to negotiate with all three countries establishment of human rights subcommittees: are there any developments in this respect?

-There is one subcommittee established on trade, economic and legal related issues. Second subcommittee might be created on justice, liberty and security if the Armenian Government agrees. It might be brought together with the human rights dialogue instrument (not started yet). There are six subcommittees in case of Ukraine.

6. The first review of Action Plans' implementation by the Commission took place in 2008. When is the next report due?

-It is the progress in implementation which matters. Not important where you start, you have to show progress. The progress reports are not a general assessment of the country, they concentrate on the actions, it should be very dry, it's not assessment oriented paper, it is actions-oriented paper. Sometimes, the countries, especially the opposition, expect more radical evaluation. It is difficult to be neutral in moving from numbered actions to the achievements.

7. Are the opportunities offered by the EIDHR for implementing and monitoring the implementation of the ENP used by the Commission (as recommended by the EP in its resolution)? If yes, then how?

-The Government engages with Action Plans. EIDHR is not engaged with the Government, it is not big money. The projects are interesting for EU, may give some advantage for country through developing the civil society. It's difficult to use the EIDHR for these purposes, the main reason being the fact that the Action Plans are

with the Government, it has very weak relation with the Action Plans. It operates on the level of small scale projects which are not visible for the ENP Progress Reports. And also this programme was established before the ENP.

8. *Which are the programmes related to strengthening democracy and good governance (if any at all)?*

-The assistance to the Government will include judicial reform (new code entered into force, independence of judges is the main goal). There was a project on Ombudsman strengthening. Also an EU advisor and expert group is being established under Stability instrument, but not under the ENPI. It is an unprecedented pilot project.

9. *New Instrument for Democracy and Human Rights is mentioned in Armenia Country Strategy Paper: is it established? Who is the beneficiary? Will this be the only programme through which the financial allocations will be used?*

-There was discussion on this for quite a long time in the Commission, however no developments were recorded.

10. *In the ENPI documents the Commission mentions on several occasions 'bottom-up' approach? Does this mean that not only the Governments will benefit from financial resources, but also the NGOs? If yes: how does it happen? How are the NGOs chosen?*

-It will be through the EIDHR.

12. *What's the importance of the PCA within the ENP?*

- PCA can stay there for another 10 years. There is no big pressure to replace these contracts. But there are political reasons for signing an Association Agreement. The PCAs' might be outdated politically, but not practically. Politically it becomes too tight to go to Association Agreements.

13. *How do you see the ENP developing through Eastern Partnership? Will it have mainly economic consequences or it might also affect democratisation?*

-Creation of the civil society forum will be important, it will ensure exchange of practice between different countries. It will serve also as a platform for Government to meet with the Commission to exchange the views on situation in comparison with other countries, for instance looking at how Ukraine succeeded in establishing political pluralism and what hasn't been done in Armenia. Good for Eastern Partnership countries, because of the common history, mentality, issues. The general conditionality will remain the same. The Eastern Partnership is another way to upgrade the system, it will add new multilateral platform, no major difference for democratisation or for human rights.

ANNEX B

Interview I

*David. Darchiashvili, Chairman of the Committee on European Integration,
Parliament of the Republic of Georgia*

7 April 2009, Tbilisi

Interview conducted in Russian

1. What is the role of the Georgian Parliament in the institutional structure for the ENP Action Plan implementation and monitoring?

-The fact of functioning of the Parliament's Committee on EU integration is the result of the relations between Georgia and EU within the ENP framework. The committee was established in 2004 after the Rose Revolution and after the South Caucasian countries were included in the ENP. The main task of the Committee, as was in the pre-accession countries, for instance in Baltic countries, is to assist in the process of harmonisation of Georgian legislation to the EU norms and regulations. A legislative amendment was introduced obliging all initiators of legislation to note whether the legal draft is in contradiction with EU rules. This is the main task. There can be two approaches to this process which is to initiate legislation aimed at harmonization with the EU norms or to deal with the monitoring of the process. The second way seems to be more adequate, since as in many countries most of the legal drafts are initiated by the executive, because the executive deals on daily basis with different areas of politics, it is more aware of what and where is not working. The Parliament has to filter this. If the Parliament had to deal with the initiation of the legislation, then the process would have been the opposite one, where the Parliament has to go to Government and prove its position, it is more complicated, especially when there is such a workload, several hundreds of legal drafts.

-Most of the drafts have technical nature, because Georgia has a general system of legislation, and very often amendments and additions to already existing legislation are required. The Action Plan and also the PCA serve as criteria to observe whether the country departs from its obligations. Of course one can question how detailed and fully elaborated are the actions of the Action Plan, and often Georgian government during the last years had objections to some of the requirements of the European Commission. For instance, there were serious disagreements related to labour legislation or slow advancements in ratification of certain international agreements. And despite the fact that in the autumn 2008 the Government had to deal with the post-war situation, it was able to reform the labour legislation and ratify a Protocol on Genetically modified products, which gave Georgia an opportunity to extend the GSP for another 3 years.

2. What is the place of the principle of democracy within the process of legal approximation?

-It is a paradox that most of the debates with the EU take place in the social-economic field, and if the opposition wants to criticize the Government they should pay more attention to this area instead of democratic issues. The Georgian economic policy until recently was aimed at total liberalization, elimination of as many regulations as possible. Several licensing agencies were abolished, the vehicles did not have to pass technical control. In order to fight the corruption all structures where the corruption could take place were supposed to be abolished, and sometimes it results in 'throwing the baby with the bath water.' Currently a process of reconsideration is taking place regarding the issues that have to be regulated, for instance sanitary control, on which there are a lot of debates currently. We think that there is going to be some progress in this sense. As regards democratic reforms, the Action Plan's first priority area focuses on the issues of democracy, however I cannot not recall that there were serious disagreements, objections from the Commission on these matters. The Commission is paying more attention to whether Georgia implements its obligations in the Council of Europe. Also NATO requires democratic reforms and looks at the obligations in the Council of Europe or OSCE as organizations having a stronger leverage as to how they evaluate the situation. There was a concrete focus relation to human rights and the rule of law, that is to the system of justice where within the ENP the first large mission took place which was the EU Justice Themis within CFSP. Certain issues are still under development, for instance related to the Criminal Procedural Code, however almost all is completed. In this sense the EU should be satisfied. On the legislative level there are almost no problems. Of course, there are certain disputable issues, such as the age for criminal responsibility that should be discussed with human rights organizations, but I cannot recall pressure from the EU side on particular issues. They are interested in whether the system works in overall. There were discussions on probation system, shelters, but it's mostly on technical side and not on certain aspects of legislation.

3. What about the project on empowering Georgian Parliament financed by the EU?

-The Technical Reform of Georgian Parliament is still continuing, it will be completed soon. On the one hand it was directed at establishing a centre for Information and Documentation. On the other hand the project assisted the Informational department to ensure proper informational basis for the legislative process, including providing with computers, software, and developing Euro-vocabulary in order to ensure proper translation. The project paid some attention to civic education as well, in this term not much had been achieved and it is still in the future. It is not clear whether the project was financed through the European Neighbourhood and Partnership Instrument (ENPI). All the financial issues are decided by the Government. As to the Parliament's involvement in the allocation of assistance, it just gets informed eventually. The Parliament's participation is on

substance, how the project will develop, the Parliament will not be ignored. It will be decided what the project will focus on, but most importantly the Information centre will be operating. There are also other programmes: Twinning, TAIEX. Parliament's opinion on what to do within this assistance programmes is taken into account, but we don't deal with technical issues such as who should get how much salary.

4. How can the effects of the ENP be summarized to this point? Is there a connection between the democratization process in the country and the ENP implementation? Or is the implementation process confined to the approximation of the legislation?

-Certain issues are progressing and some others are not. The GSP was extended, despite the fact that the Europeans can get scared when someone from Georgian government states that the model from Dubai or Singapore is attractive. Despite this, steps are taken in the right direction. Georgia is currently required to implement a stricter border control, regulate migration processes. There are ongoing negotiations in this sense, and they are expected to be successful. They are connected with the visa regime facilitation. Concluding an agreement with the EU on readmission is a possibility. It is not that the Georgian government lacks political will or does not want to implement reforms. This is just a matter of additional time, the workload is enormous. For instance, when the EU gives 4 million Euro to build a shelter for illegal person from third countries, the response might be that this is not just the matter of constructing a building, it is an entire institution. Resources are required to implement this task: the country might just lack the human resource to do that. So the matter is what, when and how. The Europeans ultimately have understanding for this: they want us to start the process, to show that the country moves in a right direction. It is not an easy task, but it moves forward.

-The problem with the Action Plan is that in any case each Government has its reform agenda, a lot of reforms are taking place in parallel without indicating whether it is for the ENP. The process is ongoing; there is a radical reform of the judicial system. The claims of the opposition that the courts are not independent are partially unjustified and partly are a matter of resources and professionalism. On the legislative level, for instance, the Council of Justice was a consultative body during the previous Government, from 2006 it is an independent institution. This supports the rule of law, but it might not necessarily be indicated in the ENP reports.

5. Are the ENP incentives sufficient for undertaking similar to enlargement reforms?

-The main issue where the country lacks behind is the adoption of the bulk of the EU legislation. It is a quite complicated task. The Baltic states have succeeded probably due to the fact that they had a clear incentive which was the membership promise. It might be that the absence of such perspective is some sort of an impediment to the implementation of this task, but nevertheless the country is moving in that direction. First of all it is necessary for the Georgian society and the EU: the country is just

moving with its own speed. If there were clear incentives promising that in case of certain speedy reforms the country would join the EU, the process would have been much quicker. There is also the issue of implementation: it is not only the adoption of the bulk of legislation. There is no use of doing that if the legislation is not ultimately adequately implemented. It would have been cheating oneself and encountering problems in implementation leading to a new wave of middle and low level corruption.

6. Do you think the Eastern Partnership will bring more motivation to the implementation of the reforms, in particular to the democratic reforms?

-It will not bring motivation for reforms, the current Government came to power with the reforms in mind, it might have succeeded in some and failed in others, but Georgia did not have such a government before with such reform agenda. The process became more complicated currently, because the Government is not as popular as it used to be, and the traditional threats have increased. Nevertheless the reforms are being implemented and will continue in any case. As to the incentives, they have increased, especially after the involvement of the EU in the Georgian-Russian war. Georgia realized that NATO is a matter of long time, the US cannot deliver everything that was promised, and it is the EU whose close cooperation the country must seek. In this sense the incentives have increased also with the link to the security of the country. We need to do what the EU requires in order to ask for what Georgia needs, for instance a larger mission/presence in the occupied territories.

-As to the Eastern Partnership, it has a more detailed and technical nature in relation to Ukraine, the bilateral relations are more advanced, they are already negotiating on the conclusion of FTA agreement. Not yet with Georgia. The Eastern Partnership will help Georgia to speed up the process and catch up with Ukraine. Also it will bring a symbolical political pressure, because Russia started to oppose this-as in case of anything that might lead to diminishing its influence. Any increase of EU's influence is important for Georgia politically, and also symbolically-the fact of being 'associated' with the EU, whatever this means, gives self-confidence to the country in being 'associated.'

7. What about the awareness and participation of the general public?

-A sociological survey by Soros foundation was undertaken in 2006 which showed that the popularity of the EU and the willingness to integrate was even higher than to the NATO, which shows that the public is interested and consider it important. It is a different matter whether they have detailed knowledge on what the process assumes. Their awareness on the EU is probably not sufficient, that's why together with the Information centre a bulletin is being published. It used to be published previously for members of Parliament in its short version, but currently it is more extended, on 4

pages with illustrations for the purposes of propaganda. The Parliament tries to organize meetings, there is going to be a meeting with businessmen soon.

Interview II

*Anonymous Official, State Ministry for European Integration, Republic of Georgia
7 April 2009, Tbilisi*

Interview conducted in Russian

1. What is the institutional structure for the implementation of the Action Plan?

-The permanent institution is the Ministry for European Integration which was created in 2004 after the Rose Revolution. Initially it was dealing only with the coordination of European integration processes, but later on the Euro-Atlantic integration was included as well. The State Minister, who at the same time is the Vice Prime-Minister, coordinates these issues. In parallel with this institution a State Committee is established under the Prime Minister. The office of the State Minister for European integration serves as a secretary to this committee. The committee practically repeats the composition of the Government; the ministers are the members of this committee. The committee coordinates the activity of the Government in the area of European integration. Apart from these main two institutions there is also a horizontal network, there are responsible people dealing with these issues in each ministry. It can be departments on foreign relation or legal departments in some institutions. At the same time there are responsible officials in the management of each institution: Vice-Ministers or vice-head of other institutions. This provides the comprehensive nature of the institutional side of the activity on European integration.

2. What is the role of the Georgian Parliament in this process?

-According to Georgian Constitution the Parliament is the institution adopting political decisions. The issues which require serious decisions to be taken on the direction of economic and political development are, of course, the prerogative of the Parliament. At the same time the Parliament carries out monitoring of the activity of the Government and hearings are taking place with certain regularity, the government reports to the Parliament on its activity.

3. How does the Government programme the implementation of the Action Plan?

-The implementation of the AP goes on already for the third year. It is one of the priorities of the current Government, and of course we're trying to match our desires with our capabilities. Certain reforms are quite complicated and require relevant finances and economic preparedness; the economy should be adapted to these reforms. So summing up different directions, we gradually advance in this process. The Action Plan is generally a convenient instrument for the implementation of the objective on integration. Every year we establish annual programmes for its implementation where in the form of matrix it is established which institution is

responsible for which issues, the deadlines, certain concrete activities are established in time and also relevant financial allocation.

4. And who is responsible for the preparation of the annual plans?

-The Ministry of European Integration in cooperation with other ministries is responsible for this task.

5. So, it is mainly the Government?

-Yes.

6. Are these annual plans based on the monitoring by the European Commission?

-Yes, of course. The comments received in the process of monitoring by the European side in the annual report are maximally taken into account. We have a special meeting with all relevant ministries in relation to separate issues with certain explanations. So, the comments are taken into account according to possibilities, whatever is necessary is taken into account.

7. How central are the issues related to democracy in the programming of the implementation?

-These issues are very important issues, and they are constantly paid special attention. In fact much is being done in relation to these issues. Of course, there are certain drawbacks that the Government accepts and works towards their solution. This is one of the compositional parts and it's constantly paid attention to.

8. Can you say that social-economic development is more important than democratic reforms? Is democratic development a priority for Georgia or for European side?

-We do not implement reforms to demonstrate it to the EU. First of all, the reforms are being implemented, because we think that they are very important for our country. So the question is that our vision of the process coincides with the EU's, so we can say that it helps to attain our goals, and these are our goals and not European. We consider this to be very important itself, that is why we are not trading: you do something for us and we will implement these reforms. This is not the case and it cannot happen. These reforms are irreversible. On the other hand we also want economic integration to the EU and there are certain difficulties there as well, so we move in this direction.

9. So, do you connect the democratic reforms with economic integration?

-No, Georgian side does not tie economic reforms with the democratic ones.

10. *And what about the European side? Do you think such connection is made on the European side?*

-I cannot say they do: more no, than yes. Of course, all reforms are connected with the political themes. You cannot build fully functioning market economy without relevant democratic institutions. But the process takes place in parallel, and, as I mentioned, we don't trade on these. There are difficulties in political reforms, there are difficulties in economic reforms, but they are implemented independent of each other.

11. *How are the financial resources allocated? How is it decided which priority actions to finance?*

-The issues of assistance are decided based on the source of assistance. If it is European assistance, decisions on allocation of the assistance are made by the Government in consultation with relevant European institutions. We can say that the Government actively participates in the allocation of the assistance, but it is being done according to certain scheme and there is very close monitoring from the European side. Taking into account that the work on technical assistance is going quite well, we had certain success, and from last year the amount of budget assistance has been increased. It means that this assistance goes to certain areas, but the mechanism is that you implement the reforms not directly receiving the money from the EU, but with your own capabilities and the EU is just giving additional financial resources to your budget. And the budget is single, so the money that goes in different directions cannot be directly tracked.

12. *Is financial assistance being allocated to the NGOs?*

-We can say that the big part of the assistance goes to state institutions, because as usual the result of this financial assistance are certain projects in different areas, and the projects are implemented by non-state institutions. There is certain mechanism for allocating assistance through a tender.

13. *And this financial assistance is being allocated through the ENPI?*

-There are several directions, I don't deal with the issues of financial assistance. We have a special coordination unit which deals with these issues, so I cannot really answer this question.

14. *Do you know if there is any thematic program dealing with the issues of democracy?*

-There are some, but you better ask this Unit. It's called Coordination Unit.

15. How would you summarise the effects of the ENP to this point? Do you connect them with democratic processes in the country?

-Of course, the ENP is an instrument which helps us to implement reforms. There is much done already, you can check our website which will be updated soon, the information on which reforms have been implemented. However, there is still a lot of work. And generally the ENP Action Plan does not concretise what should be done and its full implementation cannot be discussed, because it's impossible to fully implement it. It just stipulates the directions for development. It is hard to access how fast you are moving in that direction, we wish we could do it faster. But in any case we are moving in that direction.

16. What about the awareness of the Georgian society on the ENP and its implementation?

-We work with Georgian public, there are many NGOs working on European integration. There have been special surveys related to the EU integration, where the population strongly supported the idea. The majority supports these processes. As to the awareness, we are trying to provide objective information on European integration, EU values, institutions, we assist in publishing certain literature. We work in different directions. One can say that the objective of such work is not to attract more supporters of EU integration, they are enough even without that. The goal is to just explain the process, the benefits and the disadvantages of the latter, to provide objective information to the public. Probably after giving such information we risk losing rather than gaining more supporters of EU integration process, but in any case we try to give objective information.

17. Is there a general understanding of the obligation regarding the promotion of democracy under the ENP? What about 'common values' within the neighbourhood?

-The EU political leaders, of course, understand the advantages of democracy and they are willing to promote democracy in the regions where they expect certain destabilizing processes, conflicts, including the South Caucasus, thus trying to establish stability on the continent.

18. You mentioned that Georgia doesn't bargain on reforms. What about the incentives of the ENP? What if they were clearer? And also what are your expectations from Eastern Partnership?

-Of course, you always want more than you are offered. From the very beginning, when there were the first negotiations on the ENP, we wanted to include very important points relating to free trade and free travel. It would have been very attractive to us and would have led to more intensive implementation of those reforms, quite complicated ones that the ENP requires. Ukraine was particularly

critical of this document. In any case despite this criticism, we are in such a state that we will soon start negotiations on FTA agreement. This is for the first time that such significant promises are made. We have already negotiations on readmission. Within the last 20 years there have been no discussions on visa facilitation regime. We are starting a dialogue in this relation. Even the start of this process is already a very important moment. So, the progress, in the directions that interest us, is already visible and it is impossible to imagine the progress without the ENP. Certain objective might not be indicated in the document itself, but the results of the reforms that are undertaken within this policy give an opportunity in the future for closer, perhaps within another framework. This is a very slow process requiring hard-work, which will certainly bring tangible results.

-So, do you consider the Eastern Partnership to be promising in this respect?

-Yes. The Eastern Partnership is what will eventually lead to serious integration of participating states. At the same time it will make the goal of membership for those countries that have it more tangible results. Despite the fact that the Eastern Partnership does not talk about it directly, it nevertheless will lead to the EU.

Interview III

Ivane Chkhikvadze, Eurasia Partnership Foundation

6 April 2009, Tbilisi

Interview conducted in English

1. What can you say about general institutional structure for the Action Plan implementation and the role of the civil society?

-The dividing line is to be drawn between the Government and the civil society from the moment of inclusion of Georgia in the ENP. The Government EU integration committee was established headed by Vice-Prime-Minister, Minister for European integration and it still exists. The FES-Eurasia Partnership Foundation-Open Society Georgia Foundation signed a Memorandum of Understanding and created a working coalition involving around 80 NGOs and prepared an alternative action plan advocating the inclusion of recommendations in the Action Plan that was later on signed by the Government. According to the Government, around 40 percent of these recommendations were included in the ENP Action Plan. The coalition still exists and now it took the role of monitoring the AP implementation, they organize round tables on different topics. They elaborate recommendations and send it to Brussels, or meet with the representatives from the European Commission and European Parliament. Unfortunately, there is no formal or official triangle for cooperation between on the one hand the EU, on the other the Government and the civil society. However, there is an informal practice: for instance, the civil society representatives participated in the meeting of the Georgian Parliament's Committee on European Integration, which then presented the recommendations made by the civil society to the Government.

2. What about the ENP Implementation Strategy?

-It was adopted in 2007, it is called an ENP Action Plan Implementation Plan. It is not a strategy as such. The Government wanted to call it a strategy, but then it was downgraded to some sort of decree on implementation (it can be found on the website of Minister for European Integration).

3. What about the involvement of the civil society in the monitoring?

-The civil society is involved through the coalition mentioned above with the focus on different topics. The Eurasian Partnership Foundation worked on the possible FTA. There was a visibility study done by CASE, a Polish think-tank. It tried to bring together all the stakeholders to discuss the FTA and then communicate all the messages to the Government from stakeholders, businesses, and professional associations: what they think about this FTA, the benefits and the costs of the FTA.

4. What do you think about the efficiency of the monitoring by the Commission on political dialogue level and through the Progress Reports?

-More hopes are attached to Eastern Partnership. Hopefully, it will create more room for civil society involvement. As regards, the ENP we can't say that there was a big room for civil society involvement in the monitoring process. The only chance for the civil society is the stage before issuing the Progress Reports. In 2008 some Georgian NGOs, Green Association, Young Lawyers Association send their recommendations to the Commission before issuing the Progress Report. It was noted that some of the opinions presented by the civil society were shared by the Commission and were reflected in the Report.

5. Do you think the Eastern Partnership will add anything to the democratic conditionality of the ENP?

-Firstly, what is very important about the Eastern Partnership is that it separates the neighbours of the EU and the European neighbours. The positive side to it is that the European neighbours are now in a different basket. However, there is not much financial assistance regarding the implementation. There are also the institutional changes, the annual meeting of the heads of the state, much more regular and regulated. However, in terms of the offer, there is not much there that was not included in the ENP before in case of Georgia. If you take visa facilitation example, it was in the ENP. If you take the FTA, it was in the ENP. What is significant is the possibility of establishing sectoral agreements, which are important in terms of meeting the EU standards in relevant areas. So, if you take the European Energy Community and the Agreement on that, Georgia changes from an observing party to a neighbour of this community, it will definitely be better. The Eastern Partnership gives a better opportunity for approximating Georgian legislation to that of the EU, but at the same time it will be very difficult for the Georgian Government to implement so many sectoral agreements.

6. Will the incentives 'clarified' by the Eastern Partnership stimulate the implementation of the conditionality (democratic)? Will this be a way to membership?

-At this stage there was no official statement by the Georgian government that they want EU membership. Approximately a month ago President Saakashvili announced in Barcelona that membership to the EU is much more important for Georgia than NATO membership, that was viewed positively from civil society, but it was just a sentence. Personally, I support if one day Georgia claims that it wants EU membership and even tries to apply for it. The Georgian Government's position is that they're trying to postpone it for longer and longer, however this is a process where you should push harder rather than the EU, since the EU will never invite you to become a member. Even if you look at the 1995 enlargement the EU was reluctant to

accept Austrian membership, nobody would wait for us there, so we should press harder this topic. I don't think that Eastern Partnership will change much: Georgia needs the EU just against Russia. If there is no Russia, Georgia does not need the EU, so we don't really need the EU as such for integration, but we need to use the EU against Russian presence.

7. So would you say that the geopolitical situation around Caucasus affects our external policies? For instance, Armenia is too dependent on Russia to make clear choices in its external policy.

-Integration to the EU is to counterbalance Russia. On the other hand there is reluctance from the EU to get engaged more in Georgia. I do not believe in romanticism in politics, I more rely on realpolitik. From realpolitik view what can Georgia offer to the EU Member States, in particular to the countries representing the engine of the EU, that is France and Germany? Not too much, not more than Russia can. I don't think that in the foreseeable future the situation will change from what it is currently.

8. What is your opinion on public awareness on the ENP, or actions on behalf of the Government to raise awareness and involve the public?

-People don't really know much about the ENP. There is GALOP Report, survey done on EU integration in the EU. Half of the population does not know what's going on. The process is between the EU and the governments, general population is not aware on what's going on there. In this regard Georgia has done almost nothing to make people aware what are the EU values, what are the EU institutions. If you go outside and ask people, they will say that they support the EU integration and want the membership. What matters for them is visa free travel, this is some tangible opportunity. They don't really want to hear about democracy: democracy is something which you cannot see, cannot touch, so in this regard people do not know much. Particularly in the regions the awareness is even lower. Eurasia Partnership foundation is going to start a household survey designed to reveal exactly what people know about the EU, what the Georgian government should do in order to raise awareness on EU values and institutions. There are not many TV talk-shows on the EU integration, there used to be some on NATO, but not many on the EU. When there was a plebiscite hold in 2008, 72% supported NATO membership, but half of them probably don't know what NATO is about. It is the same in case of the EU: people want the EU membership, but they don't know what the EU is. What they see is just benefits, they consider the EU as a paradise without seeing the costs to get there.

9. What about the financial assistance. Is anything allocated to the civil society?

-There is straight budgetary support from the EU to the Government, the civil society doesn't know how the Government spends this money, it is the EU which monitors its. And then there is also the ENPI-120 million-a little chunk of this money goes to the civil society development, there are some grants issued by the European Commission Delegation in Tbilisi, but the amount is not huge. It's not surprising: if you go back and look at TACIS, its allocations for civil society were very small. The trend seems to continue.

10. *How can the effects of the ENP be summarized to this point?*

-The population is not really aware of the ENP, the processes are not linked to the ENP. Even in the Government there are supporters of the EU integration and those against it. Particularly in the economic bloc of the Government some members were anti-EU, so from economic perspective Georgia did not do much. From democratic perspective, if you look at the relevant priorities of the Action Plan, much is not done, for instance freedom of speech is in worse state that it was before (especially after the Imedi TV station was shut down), or property rights protection. I can't say that the ENP effected Georgia much from this perspective. The Government steps over its obligations under the Action Plan, because it is not binding, they can do whatever they want. Even with the PCA they have a reluctance to implement, since they say that it was Shevardnadze's government that signed it. With the ENP Action Plan the Government can choose some topics, they are not obliged to implement all the priorities.

11. *Will this change with signing an Association Agreement under Eastern Partnership?*

-I think so, because it should be legally binding, it should reflect the new realities. The PCA came into force in 1999 and various changes happened after, and also democracy was not reflected much in there. Much will depend on what will be included in the Association Agreement, if it is drafted after an Association Agreement with Egypt for instance, we can see that the latter doesn't implement it. There should be the mechanism of carrots and sticks, which should be strong enough.

12. *To what extent the influence from membership in Council of Europe, OSCE affects the democratization process? What is the connection with the ENP?*

-The country itself tries to follow more the obligations in the Council of Europe, rather than those put by the EU. But even in this case, the country can make constitutional amendments and send it to Venice Commission only after the approval and the latter cannot really do anything as a clear example of how the Government abides with the Council of Europe obligations. But overall, the country will not totally ignore the Council of Europe, because they are afraid of losing their membership. As to the OSCE, their mandate is supposed to expire.

13. *General understanding of the obligation regarding the promotion of democracy under the ENP. Do they relate to the EU's notion of 'common values' in the neighbourhood?*

-I don't think of these as shared values. At the point of drafting the Action Plan, the priorities on democracy and human rights were not something forwarded by the EU, rather it was dictated by the EU, we can't say that these are shared values. This is something that the EU offers and you can accept it or not. Also if you look at the Action Plans with all three countries, they are similar: these countries don't share these values between themselves, Azerbaijan is different from Georgia, so even this fact that the Action Plans are so similar indicates that these countries were not really interested in these priorities to offer them, it was the EU putting them forward.

14. *What is the current process of implementation in relation to the priorities on democracy?*

-The Commission gives a lot of money to Ombudsman development, this institution is quite weak, the person himself is quite objective, he says what he thinks. There was also support to the Parliament, however it did not bring any tangible results. The project on Parliament did not change much-the Parliament itself is quite weak. A clear example is the Law on Food safety which was amended several times, this law a precondition for signing a free trade agreement, but it was the Parliament which made amendments and suspended the implementation of the law, so the Parliament is not independent. It cannot be said that in the results of the project on Parliament it got empowered.

15. *Is it possible to summarize that the ENP did not affect much the processes taking place in Georgia?*

-It is difficult to say that something which was done was done because of the ENP. Certain developments can be attributed more to deregulation than regulation. Another important issue is that at the beginning when the ENP Action Plan was signed, there were no clear objectives and goals, it was like an open process without clear knowledge as to where the process is going to. That's why the Eastern Partnership should bring clarity to the objectives. Also when you don't have a goal, it is difficult to measure the success of the developments. If we take the priorities on visa facilitation, FTA, conflict prevention, we can say that none of them has been implemented so far: FTA is not signed, the negotiations haven't even started; visa facilitation-first negotiations took place last week, but the agreement is not signed. In terms of conflict resolution, the war speaks for itself. In terms of timeframe as well, AP was signed in 2006 for 5 years, it expires at 2011, and the Government announced that they will implement it in 3 years time, which means they were supposed to

implement it by the end of this year, however none of these 3 clear objectives were implemented. It is hard to say whether it was because of Georgia or the EU.

-Do you think that if the incentives were clearer it would have worked?

-I think so. Sarkozy's idea on identifying the borders of the EU is positive. We should know where our future lies, maybe it's in Shengen cooperation agreement or something else, so we will see the incentives.

-Do you think the Eastern Partnership will work as it is now, without membership?

-I don't think so. It will depend on the Association Agreement. And also, it should be first defined what is success, if it is the ultimate EU membership, it doesn't seem that the Eastern Partnership will bring this-there are so many other countries waiting for it currently. Also much depends on Turkey's accession. Unfortunately, there are not many discussions on this, and the Government of Georgia does not have any official statement supporting Turkey's accession. Even in case of good neighbourly relations Georgia loses in this sense, because of its relations with Russia in case there is an issue of accession.

PAGE

NUMBERING

AS ORIGINAL

ANNEX C

Interview I

*Varos Simonyan, Head of Department of EU and International Economic Affairs,
Ministry of Economy of the Republic of Armenia*

20 April, 2009, Yerevan

Interview conducted in Armenian

1. What is the institutional structure for Action Plan implementation?

-As you know the priorities of the Action Plan include many important areas and the first two of them are devoted to democracy and human rights issues which show that both the EU and Armenian side considered them very important: the principles of democracy-the founding values of the EU which are the human right, freedom of speech and media. The principles of market economy are impossible without democracy, these two are connected.

-As to the institutional structure, for undertaking the negotiations a working group was created consisting of three sections by a Presidential decree. It was coordinated previously by the Ministry of Trade and Economic Development, currently the Ministry of Economy which remained the same after the negotiations. And also the PCA had its institutions: the Cooperation Council meetings taking place annually in Europe, Cooperation Council which is its executive body and is co-headed by our Minister. So the Ministry is carrying out the executive activities. Last year at the Cooperation Council meeting it was decided to create a new subcommittee which is currently is in an unclear state for judicial issues. It exists de jure, but not de facto. So in order to avoid duplicating institutions and create new ones, our Ministry undertook these activities.

-When the Action Plan was signed in 2006 and entered into force in 2007 the Ministry initiated and drafted together with other interested ministries a programme for the measures to be implemented in 2007 based on the Action Plan. And these are not only the measures to be implemented in 2007 only, but starting from 2007 onwards, it also establishes a timetable. The decision entered into force quite late, because it's a quite complicated document, Decision No 927, July 19. Each institution which is involved in the decision as a responsible institution presents a report every three months on the activities on the Action Plan implementation. Procedurally we present our activities on the implementation to the EU side through the Cooperation Council and the Cooperation Committee. In the end of 2007 a document was presented officially by Armenia on the measures implemented within the Action Plan. Subsequently after different questioning, also working in parallel with public organisations in order to form an independent opinion, in April 2008 the

Commission published the first Progress Report. Since it was the first one, it was generally stating which are the strengths and weaknesses of Armenia, which are the areas we should concentrate our efforts on.

-In parallel the Ministry is also working on another document which will not establish annual measures but will be a global document dividing the measures according to years, so there is no need to present a new decision to the Government every time. Also in September 2008 a Council on Cooperation with European Institutions was established under the President of National Security Council involving all Vice-Ministers. One of the objectives of this Council is the successful implementation of the Action Plan. So, based on the document that we have prepared, the activities began on drafting a paper of new quality. Within this period we had to present again to the EU what has been done in 2008. Continuing to collect information on the measures that haven't been finalised in 2007-2008 a new report was prepared on what has been done, and the President presented this in the European Commission during one of his official visits. The results were also presented by our Minister during the Cooperation Council meeting. Now we're waiting for the second Progress Report. Another document that I mentioned is being drafted by the Council under the Security Council defining the priority directions taken from the Action Plan and was taken into account by the Government. But since these are just the directions, we need concrete measures and for this purpose there is a Committee under the Prime-Minister on cooperation with European Institutions. The ministry have prepared a relevant 'benchmark' and the priority objectives were included, which were established by the Security Council. All institutions were supposed to present a list of measures and expected results for 2009-2011, since the document that was established was called the Program for measures guaranteeing the implementation of the Action Plan for 2009-2011.

-Is it available currently?

-No, not currently. I am currently making the final amendments and then it has to be presented for approval of the President. So, look, here is the measure which is taken from the AP, and then the measures that have to be implemented in particular, and the measures have sub-measures. Another column shows whether the measure coincides with the Government's program, and if yes then with which part, since our main source for activity is the Government's program. And since the Action Plan has a mandatory nature, it's a bilateral document that the country has signed...

-But isn't it a political document and isn't its implementation left to the political will of the country?

-Yes, but probably in this relation we can pass to the next question, which is the assistance. The document is a good one. Through this document we have new qualitative cooperation with the EU, from a partner country through the PCA we

became a neighbouring country. It might seem to be unrealistic but at the same time this initiative allows for a deeper integration with the EU economically and in other areas. In this way we can avoid duplication of functions and measures, so we have measures coinciding. If some institution is implementing certain measure based on this or that document, then we can attribute the implementation of the measure to the relevant point. This will be a more efficient document, and the results will be summarised according to years. As to financial assistance: it is very important to consider whether a particular measure requires financial assistance. So we are trying to implement more efficiently our obligations and reach the goals we have established. The document also stipulates the responsible institutions. The document will be available publicly after its official adoption, since one of the principles of implementation is the involvement of the civil society in all activities, including monitoring. Why do we do this? This is one of the principles, ways of reform with a view of changing our living conditions. It's not only the Government: we need the civil society which feels the changes faster. We have to also accept the criticism, both the positive sides and negative sides, so we can work more efficiently.

2. Were the representatives of the civil society participating in the drafting process of this document?

-I mentioned the Committee under the Prime-minister, within this committee there is a Coordination Council which is being reformed with our immediate initiative, and it will be soon approved at the Government's session. And there are civil society representatives involved in the Council, which is the first one to engage the representatives of the civil society on issues of EU integration. We have to keep in mind, Armenia, as a young developing state, is trying to do something that has been done for 30-40 years in other countries. So we accept the best practice as a basis and try to make it local which is not an easy task, but we have to do it. One might ask on why we didn't do it before, say in 2007. It's a matter of practice, we had different practice, the results were not bad, but we want to improve further. This is the reason why we want to reform this process, which will lead to a more successful implementation.

3. While preparing this document did you take into account the results of the monitoring by the European Commission, the Progress Report 2007?

-We take the results into account to the extent that when the Progress Report mentions for instance that in relation to customs there were some developments but they were not sufficient, they can be deeper- wider, all the measures that we haven't done before are now included, the measures are established in a more detailed way with submeasures.

4. What about the issues related to democracy?

-The Ombudsman has been involved in the process. The document regularly had been presented to him. Besides, a new committee is being established under the Secretary of the Security Council, also working groups are being created under the Cooperation Committee with the EU. So, we received comments in relation to this document which were fully accepted.

5. For instance, in 2008 Report the Commission noted the lack of development in relation to freedom of media. Is this taken into account?

-They are taken into account, and they are included in the document with the expected outcome. Why do we indicate the expected outcome? The purpose is to ensure that the measures we are undertaking adequate for the objective we are aiming at. That's why we fix the results. All ministries, agencies have participated in this hard work. The document currently comprises 113 pages. This is the first document in the history of Armenia where the expected results are already put on paper with institutions responsible for implementation.

6. And what about the National Programme for PCA implementation?

-The National Program is standing, it was for 2006-2009, but it lacked relevant financial assistance necessary for implementation of such extensive and wide document, not all institutions started its implementation. For instance, Ministry of Agriculture is trying to implement it including relevant measures in its annual programme. But the National Programme as such is not a 'national' programme, it's just a programme for legal approximation which is not a national program for PCA implementation, but only Article 43 of the PCA on legislative approximation. At this moment we don't need that document. If we're aiming at developments in certain areas, we can consider it, since we have obligations to approximate Armenian legislation and standards. But we cannot start its implementation without appropriate financial resources and clear motif 'why are we doing this.' It is the candidate countries who implement national programme for legislative approximation. After signing an Association Agreement they create working groups and start negotiations based on the *acquis* chapters. Without the latter we established a National Programme which is a good document in the areas where we are trying to ensure legislative compliance. For instance, for phyto sanitary regulations: if we need our products to conform with EU standards and reach the market easily, we can open the document and find out the regulations we need. It will be very useful for relevant experts in order to assess the conformity or to figure out what needs to be done. Another factor leading to its stagnation was that the Government just adopted it and did not make its implementation mandatory.

7. As you mentioned the issues on democracy are necessary because of their link to market economy. So while preparing this document did the matters of democracy have priority, or they were simply included because of their necessity for economic reform?

-Of course, they are necessary. This document includes all measures including those in the Priority Areas and in Part 4. As to the measures on establishing market economy, they are merely the same which were fixed in the PCA. They include the principles on democracy, human rights, market economy- all the founding values of the EU which we accept. We have our directions of EU integration and that is the direction we move in.

8. So do you consider that the ENP really assumes the general obligation to promote democracy as EU's notion of 'shared values'?

-Yes of course.

9. How is the financial assistance allocated? Is it directed to the Government?

-The financial assistance by the EU is allocated in two ways: budgetary support and technical assistance (Twinning and TAIEX, also cross border cooperation). The main line is the budgetary support which has preconditions stipulated in the National Indicative Program for 3 years, establishing the areas where monitoring will be carried out. For each year an annual financial agreement is concluded. If the National Indicative Programme establishes for 2007-2011 about 100 million Euro, for each year that's 20 million, out of which 5 goes to twinning and vocational educational training. There are preconditions for monitoring. It's not important that the measures are immediately undertaken with that assistance, it doesn't directly go to the programme, it goes to the budget and then the allocations will be made from the general budget. Based on what you've undertaken, the second and then the third transfer is taking place. The country is more developed than it was before to give money for fixed projects. The EU considers us as more as a developing state where you know what the priority areas are for you. That is why the EU gives the money to the Government, but while giving the money they establish preconditions on VET or judicial reform which is considered for this year.

10. Are there any programmes related to democratisation issues currently?

-Yes, there are within Twinning programme, which are usually for 1 or 2 years. And already a project on the Ombudsman office has been agreed within the discussions with the European Commission. The projects that are being implemented within Twinning should be put on the Ministry's website soon.

11. How can I find out what are the projects that the money is allocated to?

-Through the Law on Budget. And for Twinning we have a special agency-Project Administration office which is dealing with Twinning, Taiex and cross-border

cooperation instruments. But I don't think that they have a comprehensive document to have a look at.

12. And are there any resources from budget allocated to the NGOs?

-The budget doesn't give money to the NGOs. There are procedures for receiving money from the budget. For instance, if the Ministry of Foreign Affairs carries out a project related to the development of civil society, it will apply according to budgetary procedures, and then will implement the project.

13. How would you summarise the results of the ENP to this date? Are they connected to the democratisation processes in the country? Is the public aware of the ENP?

-To some extent the public is aware. I would lie if I say they are fully aware. It is related to social issues and conditions of the population. For instance if I was unemployed and I was occupied with the task of finding something to eat for the day, of course I wouldn't be interested in anything like this, especially if it hasn't been shown on TV. So, it is closely connected with the social conditions and the fact of how much the civil society participates. Frankly speaking, I can say that not everybody is aware, we have to undertake a major PR campaign and lobby this process. The role of civil society is very important here. We need to lobby to show to the public that this is important for our life. But for now the social-economic conditions do not let people to think about this.

14. Is the ENP influencing the democratisation of the country? Can you say that the OSCE, Council of Europe are more influential?

-The Council of Europe is an international organisation whose main task is the human rights, democracy, freedom of media. Armenia has its obligations there. The OSCE is similar organisation with a wider mandate. And the ENP is an economic initiative which tries to transform neighbouring countries. It is aimed at reforms, including political component. And for us this is a good opportunity to accept the good practice, including the EU experience, to take the best practice and try to use it for us instead of going through everything again. But we can't take and accept all EU standards in one day, the country will stop functioning from the airports till supermarkets. We have to achieve it with time.

15. I'll try to ask the same question in a different way. We have obligations in these organisations. But through the ENP we are offered certain incentives if we undertake certain measures. Which do you think will be successful in motivating us to undertake political reforms? Does the ENP give us such incentive?

-Yes, it does. That is why I mentioned at the beginning that it is connected with the market economy. It is impossible to transform the country from state planned economy to market economy without democracy. For example, if there is a factory trying to produce something and if I have certain impediments I could address them through the media, rule of law would work. The fact that it does not work properly is also a matter of ethics, it's not only the law that should be changed. You can always amend, revise the law, but it is the mindset of people that should change: so they understand there are institutions they could apply to etc. The same is the Council of Europe, which can be used efficiently.

16. What about the Eastern Partnership (EP)? Will it add anything to the ENP, in particular in relation to political reforms?

-The EP is mostly politically directed to Ukraine and Moldova and then to South Caucasian countries, but we should try to take as much as possible from this initiative. I'll try to come from economic to political. The EP envisages the creation of a free trade area. The free trade agreement with the EU will assume deep economic integration which leads to solution of political issues. So it is similar to the creation of the EU: stemming from political perspectives, but based on economic unity. The creation of ECSC developed further into different structure-EC-EU which is currently solving political issues. So the two are related, you can solve economic issues through political and the opposite.

-It's just when the ECSC was being established, the countries more or less satisfied the criteria for democratic states. So, when I had meeting in European institutions, for EU officials considered that adherence to democratic values should be a precondition for proceeding with the free trade area agreement? Do you consider it in the same light?

-Yes, I agree with that. We have similar experience already. I will give you an example of the GSP. We were granted GSP for undertaking certain reforms at the time. GSP+ is a more heavy and strict system requiring membership to 27 international conventions and their effective implementation. So signing these conventions only would not be sufficient for us to obtain GSP+, we showed the implementation records. In addition the country undertook a commitment to strictly follow the provisions of the conventions.

17. Do you think the ENP as it is currently provides stimuli for political reforms in our country?

-Definitely yes, because it cannot be otherwise.

18. Do you think Armenia is free politically to express its EU intentions taking into account Russian presence?

-Currently politically and economically we are ready and we actually cooperate with everyone, EU, Russia, US, Asian countries. We are building our state accepting the best practice whether it comes from the EU, Russia or somewhere else. We cannot aimed at EU membership now, we need to see the signals from the EU. So I can't really speak for that moment what will happen with Russia. Currently, we have relations with Russia in different framework, the CIS, etc. You can cooperate with all parties trying to obtain all possible benefits for the country.

19. *Would you consider the EP as a way to membership if we implement all measures required by the EU?*

-It is a document for deeper integration, it is not for membership, it is a reform agenda which will take the country to a new level. So if in several years the EP succeeds and there is a free trade area between Ukraine, Moldova, Southern Caucasus and we have customs union with the EU, then a political process will start: monitoring, democratic institutions will start working. Then there might be a question of membership.

Interview II

Artak Kirakosyan, Civil Society Institute, NGO, Armenia

21 April, 2009, Yerevan

Interview conducted in Armenian

1. What is the role of the civil society in the Action Plan implementation? How involved are you?

-In fact we are not involved. There is an objective reason to that which the way it was programmed: the involvement was very problematic. We had certain meetings with the representatives of civil society, where we presented certain issues, problems. But because there is no reciprocal connection to understand what our influence is, somehow you lose motivation to waste your efforts on preparing reports etc.

-And what about the Government? Does it create any opportunities, frameworks for civil society participation?

-I'm not aware of any. We are mostly interested in human rights, and as far as we are aware they haven't organised anything in this area.

2. And what about monitoring? Are you participating?

-Certain public organizations are carrying out some activities. There was some monitoring group created, not sure whether it was for the Council of Europe. When we meet with European bureaucrats they are very enthusiastic and tell us to write reports promising that they will take into account everything...

-So your interaction is mostly with the European side and not internal?

-Well, internally we know what is going on. For instance we are interested in certain Protocol to the Torture Convention. There are certain activities undertaken for this, but the requirement is general, there should be this, should be that.... We have everything on the level of 'should' but deeper understanding of how it is applied, whether it is properly implemented, the civil society does not get a say in this. There is no opportunity to participate. We are trying to undertake some activities with the Government, but the issue is that there is no common arena. When there were talks on ENP, one of our suggestions was creating a forum, where the Government, civil society and the EU side can come together. So if there is no feedback, no response to your activity, you don't see it as necessary.

-So can I say that your interaction is with the EU?

-No, on the opposite: our interaction is with the Government on specific issues. Since the issues brought up by the EU have quite general nature, the interaction with them is meaningless. Even if we carry out some activity or present something, we have no idea what is the result of it. This is the main issue.

-How eager is the Government to involve the society?

-There is no difference whether we are talking about the ENP or any other area. The civil society's stance in this respect is taken into account as much as on any other issue. Again to say that there are special mechanisms for involving the civil society in particular as regards the ENP, I have not heard of any.

3. What about the ENPI? Do you think any assistance will go to the civil society?

-I do not really know, but I strictly doubt that. The program itself is a positive one, but I don't really see a space there for the civil society or measures undertaken.

4. What about the EU's monitoring? Is it efficient?

-Of course it has certain effects.

5. What about democracy as a 'shared value' within the ENP? Is this on declarative level?

-In any case the Action Plan provides for concrete actions, it is not only declarative. In the long-term it will have impact. The problem is that in the short-term the Government tries to distort all the mechanism, so they have very little influence today. As a strategic instrument it is very important, since currently Armenia has a strategy for the European integration, certain relations with NATO, relations with the Council of Europe. Besides, there is no policy or document with Russia, US or any other partner like the ENP.

-So, in these terms do you think the conditionality of the ENP will work in Armenia?

-Certainly it will. But the issue is: does it affect current processes or we are talking about slow future progress, where the Government will have to implement little by little, avoiding this, doing that, or avoiding that, doing this. But, still there will be a prospect of these actions being carried out. So, this suggests that eventually it would be implemented and in this sense it is promising.

-Can I say that the democratic processes in the country, if there are any, don't have strict connection with the ENP but they might have some in the future?

-There is a connection. The problem is that if we talk about democratisation, I can't say that there is democratisation process as a result of the ENP, but it creates institutional opportunities for democratisation in the future.

6. What about Council of Europe and OSCE, connection with the ENP?

-Well, they have influence, you cannot say that they don't. The problem is that the mechanisms are bureaucratised. For instance, in relation to elections, the evaluation by the OSCE is really focused on improvement of mechanisms, organisational issues, but of course people expect more. For instance, they expect that the issue of legitimacy will be addressed. So, there are different expectations. Even in the case of Azerbaijan's elections, they were evaluated as well organised: what does this mean?

7. What do you think about the Eastern Partnership? Will it add anything to the ENP conditionality?

-Well, there are hopes that it will be more flexible. So far it's not clear what the policy would entail. So there will be a forum for civil society, may be more will become clearer then. So far it is more of a desire to deepen the relations with the EU, but there will be issues with bilateralism and which countries to include. If Belarus included as well, then this will lead to comparing and drawing an average, where Armenia will not look that bad.

8. What is your opinion on the effects of the ENP to this date, in particular as regards democracy?

-Developments are hard to notice when you live here. Also it is hard to notice positive developments, especially when we are talking about such developments which should be considered as 'normal' or 'ordinary' criteria. The society in institutionalised form is not ready to have any influence. That is why we consider it necessary to have certain common forum. What is taking place currently is that they invite the representatives of the civil society to discussions and either nobody turns up from the Government or may be a single person will turn up, or the Europeans might appear or not. And all the criticism is usually directed to those who turned up, which is usually the European side: they don't really like this. So, it is very important for the Eastern Partnership to introduce a forum like this, where all parties can talk to each other.

Also, it should be mentioned that very few know about this policy, which is so important: it is the only strategic program for country's development.

9. If you were given an opportunity to add something to democratic conditionality of the ENP in relation to Armenia, what would you do? Would you make it stricter?

-I would think about the necessity of creating certain institutional framework for bringing together the EU side, Government and the public sector, so all these various circles are interconnected. This will raise the interest of the general public, the media would be more interested and the developments will have more sustainable nature.

10. Can I conclude that the ENP implementation process currently is led by the Government without the society participating or being aware much?

-Yes, quite so.

11. To sum up, are you optimistic about the effects of the policy?

-In general yes: we better have the ENP than nothing. On the other hand, much more could have been done. It has a lot of potential. More focus should be directed to the bilateral element, which I'm sure we need more, because the comparative element can let us down. For instance, we shouldn't be compared to Azerbaijan, because we are very different states at this moment and constant comparison will lead to the average and none of us will move forward. Azerbaijan doesn't have an objective of moving forward. We have clearly different directions for development, and bringing these states together will not satisfy any of the parties.

Interview III

Karen Bekaryan, European Integration, NGO, Armenia

20 April, 2009, Yerevan

Interview conducted in Armenian

1. What is the role of the civil society in the implementation of the ENP in Armenia?

-We should break the question into some points. First of all, there is the ENP and its political component. As you know the ENP includes very different countries. It will be impossible to have the same standards in Ukraine and Jordan. Therefore, to say that the ENP in institutional terms has big impact in relation to democratic issues will be wrong. You have to keep in mind the logic of the ENP as an instrument for ensuring security through establishing relations with neighbours. The neighbours would be more predictable and will not threaten the EU's security understanding the latter in wide terms (trafficking, drugs, migration, economic security etc). Therefore, on the one hand it is wrong to expect this from the ENP. On the other hand, during the last five years quite close coordination is noted between the European institutions (meaning the EU and the Council of Europe).

-We are being monitored within the Council of Europe, and in case of Armenia the process of monitoring on the issues of democracy and human rights is ongoing. Even more, after each elections we have new issues, new resolutions: resolution 1643, 1621 etc.

-The question to ask is what the opportunities offered by the ENP and how the EU can use them. So now, the Council of Europe has certain problems with the country: the ENP can be used, including its financial and consultative tools, to ensure compliance. This can be called ancillary connection. So even if the tool does not have that opportunity in itself, in ancillary way it offers such a possibility. Of course the situation is changing with Eastern Partnership, which I will address later.

-From the moment when the ENP was initiated, all the Eastern neighbours were convinced that the same instruments and principles for these countries and the southern neighbours are not justified. With time also the Europeans started to reflect this, because in fact it is not adequate to have these tools in the same format for these different regions. And from time to time there were different conversations on format, for instance on ENP+, where the idea was to separate this 5 or 6 (with Belarus) countries which eventually led to the EP.

-Another question is what is taking place in terms of planning? In difference with other international programmes, including the Millennium Challenge with the EU, the ENP, as such, does not provide for the NGO sector participation. And this always has

been considered as one of the major omissions of the ENP and its Action Plan implementation. We all know that in developing democracies if the Government is not obliged to do that, it will not willingly with its own initiative open up a space for the participation of the civil society. So, on the one hand, there is this 'not being written' code with its consequences. On the other hand, we should not forget that the Action Plan is a bilateral document between the European Commission and the Armenian Government. The party that is taking obligations is the Government and not the public in general, which in its turn leads to a situation where it is left to the good will of the country or the Government. The question here is how willing or ready will the Government be to engage the civil society.

-There are states where such participation will amount to zero, such will be the cases of Middle Asian countries or even Azerbaijan. Armenia is in a quite average situation, where it did not follow the path the Ukraine followed and Georgia tried to follow, but didn't succeed very much, but on the other hand it also didn't follow Moldova or Azerbaijan, where there are limited opportunities for civil society engagement. Such a comparison is not something to be proud of, but at least there are certain opportunities. But if you ask whether the civil society had participation in the programming of the implementation, I would say no.

-The civil society had another opportunity. For instance, when the Action Plan was signed for 5 years, its declarative nature caused a strong resonance which was followed by a programme of measures adopted by the Government annually. This was already a step. It introduced certain elements of concreteness. The next element that can be positively viewed in this line is that the European countries and institutions initiated assistance to civil society to implement projects on monitoring of the Action Plan implementation. Our organisation performed monitoring with the assistance of DFD in four areas of the Action Plan, including regional cooperation, Nagorno-Karabakh conflict resolution, migration and sustainable development and environment.

-Did this assistance come from the ENPI?

-No, it had no connection with the ENPI whatsoever, it was a project directly initiated by us which was presented to DFD. There were also other partner organizations which undertook various monitoring tasks, but again it did not have any connection with the ENPI. The first annual program for Action Plan implementation was widely criticized because it was adopted for 2007 in the August of that year. This on its own was already a problem. After this criticism the next year programme was adopted in April. Hopefully, we will gradually reach the point when we adopt the programme and then start implementation.

-In terms of results, the ENP was not considered to be a financial tool for us, it was seen to be primarily a political tool which gives an opportunity for EU integration to

reach totally new level. This is a different approach. We have these opposing examples: Ukraine always considered that the ENP too little for it and it always wanted something like associated membership. I'm not even discussing the Southern neighbours. Amongst former Soviet Union countries, Azerbaijan is an opposite example: it is not interested in political factors. What's important for the latter is the money: if the amount is real, it would cooperate. These are the two extreme examples. Armenia is somewhere in the middle: it behind Ukraine not only on declarative level but in terms of process, but it wants more than Azerbaijan. It is rather tricky to compare Armenia with Georgia. In Georgia the declarations were too strong, but the underlying actions are quite unclear and complicated. At the same time we are more advanced than Moldova, which does not consider the relations with the EU independently. Either these relations were considered through Romania, however it was impossible to join the EU with Romania. And now it is considered that if Ukraine joins, then also Moldova will join. This is the picture of the region.

-Of course, there will be changes with the Eastern Partnership, which offers wider opportunities. The political underpinnings are that it was for the first time that even half-officially EU membership perspective was expressed for these countries. Before that it was always stressed that the ENP has nothing to do with membership. Apart from this new political context, the Eastern Partnership is a more real program in two ways. First, it is really a programme which is projected for similar countries. The southern element was taken out and naturally the criteria have immediately changed. Second, it is much more real in terms of instruments: it is much clearer in terms of what is at stake and what it wants.

2. Do you think the Eastern Partnership will add anything to the political conditionality of the ENP?

Yes, it will. Again in ancillary way, but in this case it will be followed up more extensively.

-So the Eastern Partnership will not have the democratisation as a central issue?

-No, again there will be no focus on democracy. But there is this essential factor that when increased attention on behalf of the EU will come with more scrutiny over 'values'. They will be more apparent, because it will be hard to cooperate as partners if there are contradictions in this area. Here the ancillary mechanism will work in a more real way. For instance, if the EU members decide to proceed with some sanction they can do via Council of Europe.

3. So did I understand correctly that you consider that democracy is not a central issue within the ENP even though the first two priority areas of the Action Plan are devoted to the issues of democracy and human rights?

-Yes, it does not have such focus. Of course, it does on a declaratory level. But apart from this, there is an institutional dimension to it. For instance, in relation to the most essential elements of democracy-the judiciary, the ENP calls for action in this area, however the implementation is left out to the ancillary effects, under very weak monitoring. Hopefully the Eastern Partnership will make it stronger due to an increased focus on the country itself, due to its political factor. So the attention on Armenia is currently much more than before August 2008, Georgian-Russian war. There are various factors that will add on and bring more clarity to the requirements and their implementation.

-And also the increase in budget assumes stronger monitoring.

4. Does that mean that the idea of 'common values' within the neighbourhood had declarative nature from the beginning? How was it perceived by the neighbours?

-This is a very interesting question: how declarative or real it was. I did not mention security rationale accidentally. The issue is that if the EU undertakes this for its security, it offers an opportunity and relevant financial instrument, so each of the neighbours will 'Europeanise'. Each of the neighbours 'Europeanise' as much as it considers reasonable, but in any case the EU will have guarantees that the neighbours are no longer 'threats'. So, whether the issue of the call for commitment in relation on the one hand wasn't declarative, because that's what Europeanisation assumes.

-So this is important for the EU?

-Yes, of course. From this point of view it wasn't declarative. But starting from the point where the EU has to follow this up, it is clear that this is not going to happen: the EU will not work instead of neighbours. It is left to one's own opinion whether it was declarative or not.

-So democratic reforms will be left to the political will of the country?

-Naturally. It is left to the neighbouring countries creating something in this ancillary way within the ENP, which might be strengthened by the Eastern Partnership. What does a competitive space assume? It assumes an opportunity and challenge at the same time, so it's not only left to country's own political will. If we assume that within these six countries Belarus is the one with the worst democratic record, naturally their financial assistance will be less to the advantage of the others. And naturally the policy perceived in relation to this country will be less beneficial. If this happens, for example, with Palestine or Jordan, you might take it easy, but here, in this competitive space, it is your neighbour that benefits: also to some extent on your account. This is not only political will, if you don't want to lose in your external politics or on your way to Europe, then be kind to cooperate and deliver. This is not

only an issue of political will, but also of interests. So, the policy can work through this competitive element as well.

-So, the Eastern Partnership will add more to this competitive element especially when we're talking about the creation of a free trade area.

-Most certainly.

5. What do you think about the EU's monitoring? Would you consider it to be effective? Do you think our Government following the results of monitoring?

-I'll try to answer that question maximally honest which might be also surprising to you. Our society in general suffers from very interesting disease which can be called naivety. There are some objective reasons for this: short existence of statehood, the tendency to avoid responsibility etc. In fact the problem is the following: I don't doubt that the EU carries out efficient monitoring and I also don't doubt that they are totally aware of what's going on, but I have serious doubts as to how much from this is being published. There is a part in everything published which reflects political interests and creates opportunities to have leverages in relation to the country. Therefore, asking the question whether the monitoring is efficient or not, we should also question efficient for whom? For European side it is always efficient. Because if the EU closes its eyes on certain drawbacks, it will be only seemingly so. In fact it is leverage for its interests, some sort of political opportunity which it can use to pursue its own interests at some point. So this is the issue.

- So does the Armenian Government follow the results of EU monitoring, the comments of the Progress Report?

-On the level of announcements they do of course, but in reality they take it into account not in 100 percent. Armenia submits its report annually reporting on what has been undertaken.

6. Do you think that the conditionality borrowed from the enlargement experience is working?

-Of course it does, it works in a particular way. I can transfer the example to the Council of Europe. There are so many discussions in Armenia that we had so many breaches, so many violations, so many issues but there are no sanctions, aren't these double standards? Pro-governmental forces consider this as double standards, arguing that there are states that are worse than us but we are always discussed. On the other hand, the opposition also considers this as double standards arguing that we don't satisfy necessary conditions but yet we are not punished. So the both sides manipulate this politically. The reality can be compared to family relations between a parent and a teenage child. For instance, if the child doesn't behave, the parent doesn't expel him

from the family. Instead he will try to bring him to more predictable and reasonable behaviour through long-term activity. It is the same with the Council of Europe or the EU. If you close the door, that country will become a 'black hole' - lost for you, you will no longer have influence over the latter.

-As in case of Belarus.

-Yes, Belarus can be an example. On the other hand, if you disregard all drawbacks, the country will become the 'weakest link' in relevant community which infects also the others. Therefore, the EU will opt for the situation in between these two. It has to try to educate these countries but not by slamming the door. This is what in fact happens in reality.

7. What about the financial assistance? The ENPI documents talk a lot about civil society, even as an addressee of assistance. But the assistance is mainly budgetary. So are there any resources for civil society?

-For the first two years there was no such task, no such attention to civil society. But there are some developments. The civil society comes forward as a professional service provider in certain areas. And this is a culture not yet properly developed in Armenia. We just have the initial steps and it's not clear where they will lead to. To suggest say that it's related to huge financial sums won't be true. There's also another aspect to the issue. A programme has been arranged to send experts for different areas in state institutions. So, there is a positive element in this, but how fully it will be implemented is another question. Also, there is a matter that at times the European side refuses to accept: the question is who the experts are. Sometimes you can look at the age of experts and that will indicate the level of their expertise. The country has to have the threshold of requirements, where the experts can really make a contribution.

8. How would you summarize the effects of the ENP so far and their connection to the democratisation of the country?

-It will be wrong to say that there are no effects. But we are citizens of this country and therefore we hurry to see the results. The main point is that if there was no involvement by the European side, mainly through the EU, we would have been in much worse and complicated situation both in political terms and in terms of indefinite direction generally. However, there are two problems: one of them is the slow pace of the process, which might be even objective. And the second one is the heavy machinery of EU bureaucracy. Sometimes quick response on their behalf can be a huge problem. So, from the ENP to the EP there was wasted time and wasted energy: bringing together so many different countries was already a problem. On the other hand, it's at least good that our countries were involved. As you know the South Caucasus was included in the policy later. So from one side, it's good that we were

involved and they started to pay attention to the region, but on the other hand much time and effort was wasted.

9. Are there any efforts on behalf of the Government to engage the civil society in the implementation process or programming?

-The civil society has its unique role in relation to EU integration. It's currently popular to talk about these issues, but the trends for EU integration had their roots in the civil society and it cannot be disregarded currently. We as an organization cooperate with Parliament's Committee on EU integration, EU department of Ministry of Foreign Affairs. Mutual consultations, discussions or even involvement on certain issues started to appear gradually. Since the Eastern Partnership itself widens the cooperation, the participation of the civil society will also widen.

-There will be more beneficiaries.

-Yes. Even in media area the enlightenment on EU integration and development was never state-motivated, it was more stemming from public organizations. There are the elements which show that this culture is slowly developing throughout the last several years.

-What about the awareness of general public?

-It is quite low. In addition the situation is different when we talk about Yerevan and the regions. This is one of the biggest problems and there is a lot of work to be done there. We raise these issues both in front of the Government and the EU.

-So would you describe the ENP implementation as a process solely led by the Government detached from the general public?

-I wouldn't say that it is totally disconnected, but I can say that the public is not aware of many processes taking place within the ENP. But this is not only the Government's problem, it's first of all the problem of media, there should be editorial policy to bring this topic out. There was a very important event within the ENP's social component, which is very vital for the public, and the media presented it without indicating the basis for this policy. The public probably thought that the event was carried out by the Government on its own initiative.

10. What about the role of the Parliament?

-My opinion about the role of the Parliament is not very positive. However, its role might increase. The Committee on European Integration has been created only during the last Parliament, just for a year, so now it has a task of finding its place and role in the process. If it succeeds in doing this, then we can talk about Parliament's role.

There are certain objective barriers currently. For instance, we suggested that draft legal acts should be reviewed by the Committee on their conformity with the EU standards. However, the members of the committee are mostly not familiar with the EU system, and their administration comprises 3 or 4 staff members. So would it be able to undertake this function? Naturally, not. It should be also mentioned, that the civil society sees its role in attracting international donors in order to start projects on helping the Parliament to undertake this role.

11. To what extent the influence from membership in Council of Europe, OSCE affects the democratisation process?

-We don't really expect the OSCE to influence our democracy, because their mandate is different. Also taking into account the fact that members of the OSCE can be Russia, Turkmenistan, which brings it down to certain average gray criteria. Let the OSCE deal with security issues. The Council of Europe has a serious role in this area, because democracy and human rights are its main function. Armenia's membership to the Council of Europe brought many results: from 2001 till now the developments in institutional terms are incomparable to previous period starting with independence. This is a irreversible process that has been started, and therefore the Council of Europe has a serious role here. The EU had other instruments as well before the ENP, the PCA which to a certain extent touched upon these issues. However, the EU is a different institution which uses political instruments very gently and it is a source of political force in difference with the Council of Europe. In this context, working in different directions with different organizations will entail more effects.

12. Do you think the EU integration process that our Government seemingly chose is an irreversible process? Why I am asking this question is that if it is mostly a Government-led initiative-without general public involvement, then the next government might not be so keen on these issues.

-It's in a human nature to follow example and experience, so we we're within this process of choosing examples. We can see that the EU is one way of developing, even irrespective of the fact that the awareness on the EU itself is not high. It is still viewed in its prosperity and opportunities for individual: we will not have a huge clash in terms of values with the EU. People gradually understand that you cannot develop alone in a globalized world. Here comes the question in which direction to develop. In any case the choice will be for the EU: it is what happens now and will continue. It is irreversible in the sense that there's so much to be gained. We cannot say: we don't need you. This will lead to the Belorussian collapse.

BIBLIOGRAPHY

Primary Sources

Treaty on European Union and the Treaty on the functioning of the European Union, amended and consolidated by Lisbon Treaty, *OJ C* 115, 09.05.2008.

Treaty establishing a Constitution for Europe, *OJ C* 310, 16.12.2004.

Treaty on European Union and the Treaty establishing the European Community, consolidated text, *OJ C* 321E, 29.12.2006.

The Constitution of Georgia, adopted on 24 August 1995, last amended 27.12.06.

Available at

http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf.

The Constitution of the Republic of Azerbaijan, adopted on 12 November 1995.

Available at

http://www.azerbaijan.az/_GeneralInfo/_Constitution/_constitution_e.html.

Constitution of the Republic of Armenia, adopted on 5 July 1995.

Available at <http://www.armeniaforeignministry.com/htms/conttitution.html>.

Agreement on the European Economic Area, *OJ L* 1, 03.01.1994.

Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, *OJ L* 68/3, 09.03.1998.

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other, *OJ L* 239/3, 01.07.1999.

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other, *OJ L* 246/3, 01.07.1999.

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Georgia, of the other, *OJ L* 205/3, 01.07.1999.

Agreement between the European Union and Georgia on the status and activities of the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ L* 389/42.

Decree No. 1282-N, 7 September 2006, Government of the Republic of Armenia.

Decree No. 927, 22 August 2008, Government of the Republic of Armenia.

Decree No. NK-68-A, 6 May 2009, President of the Republic of Armenia.

Decree No. 498, 20 October 2006, Government of the Republic of Georgia.

Opinion 1/94, *WTO* [1994] ECR I-5267.

Case 12/86, *Demirel v. City of Schwabisch Gmund*, [1987] ECR 3719.

Case 138/79, *SA Roquette Frères v Council of the European Communities*, [1980] ECR-03333.

Regulation No. 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument, *OJ L* 310/1, 09.11.2006.

Regulation No. 1889/2006 concerning the financing instrument for the promotion of democracy and human rights worldwide, *OJ L* 386/1, 29.12.2006.

Council Regulation No. 975/1999 laying down the requirements for the implementation of development cooperation operations which 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, *OJ L* 120/1, 08.05.1999.

Council Regulation No. 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, 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 in third countries, *OJ L* 120/8, 08.05.1999.

Council Regulation No. 1279/96 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, *OJ L* 165, 04.07.1996.

Council Decision 2004/924/CFSP concerning the conclusion of the Agreement between the European Union and Georgia on the status and activities of the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ L* 389/41, 30.12.2004.

Council Decision 90/116/EEC on the conclusion of an Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, *OJ L* 68/1, 15.03.1990.

Council Decision 2008/901/CFSP concerning an independent international fact-finding mission on the conflict in Georgia, *OJ L* 323, 3.12.2008.

Charter of Fundamental Rights of the European Union, *OJ C* 303, 14.12.2007.

EEC-Comecon declaration, *OJ L*157/35, 24.06.1988.

European Commission, 'Agenda 2000: For a Stronger and Wider Union', *EU Bulletin Supplement* 5/97.

Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Communication from the Commission to the Council and the European Parliament, 11.04.2003, COM (2003) 104 final.

Paving the Way for a New Neighbourhood Instrument, Communication from the Commission, 01.07.2003, COM (2003) 393 final.

Strengthening the ENP, Communication from the Commission to the Council and the European Parliament, 04.12.2006, COM (2006) 726 final.

Eastern Partnership, Communication from the Commission to the European Parliament and the Council, 03.12.2008, COM (2008) 823 final.

European Neighbourhood Policy Strategy Paper, Commission Communication, 12.5.2004, COM (2004) 373 final.

Relations with Russia, Commission Communication, 09.02.2004, COM (2004) 106.

Development of Energy Policy for the Enlarged European Union, its Neighbours and Partner Countries, Commission Communication, 13.05.2003, COM(2003) 262 final.

A Secure Europe in a Better World, European Security Strategy Paper, European Commission, Brussels, 12.12.2003.

The European Union's Role in Promoting Human Rights and Democratisation in Third Countries, Communication from the Commission to the Council and the European Parliament, 08.05.2001, COM (2001) 252 final.

Towards a European Union Strategy for Relations with the Transcaucasian Republics, Commission Communication, 31.05.1995, COM (95) 205 final.

Towards the Enlarged Union, Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries, 09.10.2002, COM (2002) 700.

Commission Green Paper on a European Strategy for the Security of Energy Supply, COM (2000) 769 final.

Joint letter by EU Commissioner Chris Patten and the EU High Representative for the Common Foreign and Security Policy on Wider Europe, 7 August 2002.

Prodi, 'A Wider Europe-A Proximity Policy as the Key to Stability', Speech to the Sixth ECSA-World Conference, Brussels, 5-6 December 2002, Speech/02/619.

Ferrero-Waldner, 'Europe's Neighbours-Towards Closer Integration,' Speech given at the Brussels Economic Forum, 22 April 2005.

President of the European Commission, (2000) '2000-2005: Shaping the New Europe' Speech to European Parliament, Strasbourg 15 February 2000, Speech/00/41.

Inter-Institutional Declaration on Democracy, Transparency and Subsidiarity, adopted by the Commission, Council and the European Parliament, Bulletin of the European Communities, No. 10/93.

Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009, No. 8435/09.

Laeken Declaration on the Future of the European Union, 15 December 2001.

Conclusions, Brussels Extraordinary European Council, 1 September 2008.

Conclusions of the Presidency, Brussels European Council, 19-20 June 2008.

Conclusions on Wider Europe-New Neighbourhood, Thessaloniki European Council, 19-20 June 2003.

Conclusions of the Presidency, Brussels European Council, 16-17 October 2003.

Conclusions of the Presidency, Copenhagen European Council, 12-13 December 2002.

Conclusions of the Presidency, Copenhagen European Council, 21-22 June 1993.

Conclusions on the situation in Georgia, General Affairs and External Relations Council, 13 August 2008.

Conclusions, General Affairs and External Relations Council, 25 April 2005.

Conclusions, General Affairs and External Relations Council, 14 June 2004.

Conclusions, General Affairs and External Relations Council, 22-23 November 2004.

Conclusions on Wider Europe – New Neighbourhood, General Affairs and External Relations Council, 16 June 2003.

Conclusions, General Affairs and External Relations Council, Brussels, 18 March 2003.

Conclusions, General Affairs and External Relations Council, 18 November 2002.

Conclusions, General Affairs and External Relations, Council, 26-27 February 2001.

Conclusions, General Affairs and External Relations Council, 29 April 1997.

European Parliament Resolution on a More Effective EU Policy for the South Caucasus: from Promises to Actions (2007/2076(INI)), *OJ C* 41 E/53, 19.02.2009.

Parliament Resolution on Strengthening the European Neighbourhood Policy (2007/2088(INI)), *OJ C* 282E, 6.11.2008.

European Parliament Resolution on the European Neighbourhood Policy (2004/2166(INI)), *OJ C* 287 E, 24.11.2006.

European Parliament Resolution on Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours (2003/2018(INI)), *OJ C* 87 E, 07.04.2004.

European Parliament Resolution on the EU's Rights, Priorities and Recommendations for the 60th Session of the UN Commission on Human Rights in Geneva (15 March to 23 April 2004), *OJ C* 97E, 22.4.2004

European Parliament Resolution on the Freedom of the Press in Belarus, P5_TA(2002)0379, *OJ C* 271 E/614, 12.11.2003.

European Parliament Resolution on Relations between the European Union and Belarus: Towards a Future Partnership (2002/2164(INI)), *OJ C* 43 E, 19.2.2004.

European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on 'The European Union's Relations with the South Caucasus under the Partnership and Cooperation Agreements', P5_TA (2002) 0085, *OJ C* 293 E/96, 28.11.2002.

European Parliament Report on the Review of the European Neighbourhood and Partnership Instrument, (2008/2236(INI)), 28 January 2009.

European Parliament Report, The European Parliament and the Defence of Human Rights, Sanctions, Brussels, 2006.

Council Joint Action 2006/121/CFSP appointing the European Union Special Representative for the South Caucasus, *OJ* 2006 L 49/14.

Council Joint Action 2004/523/CFSP on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, *OJ* 2004 L 228/21.

Council Joint Action 2003/473/CFSP regarding a contribution of the EU to the conflict settlement in Georgia/South Ossetia, *OJ* 2003 L 157/72.

Council Joint Action 2003/496/CFSP concerning the appointment of an EU Special Representative for the South Caucasus, *OJ* 2003 L 169/74.

Council Joint Action 2002/373/CFSP regarding a contribution of the European Union towards reinforcing the capacity of the Georgian authorities to support and protect the OSCE observer mission on the border of Georgia with the Ingush and Chechen Republics of the Russian Federation, *OJ* 2002 L 134/1.

Council Joint Action 2001/759/CFSP regarding a contribution from the European Union to the conflict settlement process in South Ossetia, *OJ* 2001 L 286/4.

Joint Action 2000/456/CFSP regarding a contribution of the European Union towards reinforcing the capacity of the Georgian authorities to support and protect the OSCE observer mission on the border of the Republic of Georgia with the Chechen Republic of the Russian Federation, *OJ* 200 L 183/3, amended on 26 July 2001, *OJ* 2001 L 2002/2.

Report of the Independent International Fact Finding Mission on the Conflict in Georgia, September 2009.

EU/Armenia ENP Action Plan, available at
http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf.

EU/Georgia ENP Action Plan, available at
http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf.

EU/Azerbaijan ENP Action Plan, available at
http://ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf.

Country Report Azerbaijan, European Neighbourhood Policy, Commission Staff Working Paper, SEC (2005) 286/3.

Country Report Georgia, European Neighbourhood Policy, Commission Staff Working Paper, SEC (2005) 288/3.

Country Report Armenia, European Neighbourhood Policy, Commission Staff Working Paper, SEC (2005) 285/3.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Azerbaijan, Brussels, 3 April 2008, SEC (2008) 391.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Azerbaijan, Brussels, 23 April 2009, SEC (2009) 512/2.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Armenia, Brussels, 3 April 2008, SEC (2008) 392.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Armenia, Brussels, 23 April 2009, SEC (2009) 511/2.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2007', Progress Report Georgia, Brussels, 3 April 2008, SEC (2008) 393.

Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, 'Implementation of the European Neighbourhood Policy in 2008', Progress Report Georgia, Brussels, 23 April 2009, SEC (2009) 513/2.

Georgia, ENPI Country Strategy Paper 2007-2013.

Georgia ENPI National Indicative Programme 2007-2010.

Armenia, ENPI Country Strategy Paper 2007-2013.

Armenia ENPI National Indicative Programme 2007-2010.

Azerbaijan ENPI Country Strategy Paper 2007-2013.

Azerbaijan ENPI National Indicative Programme 2007-2010.

Secondary sources

Aliboni, 'The Geopolitical Implications of the European Neighbourhood Policy', (2005) 10 *European Foreign Affairs Review* 1.

Alieva, 'EU and South Caucasus', Discussion Paper, Bertesmann Group for Policy Research, Centre for Applied Policy Research, December 2006.

Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996).

Andersen and Burns, 'The EU and the Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance' in Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), 227-251.

Andreatta, 'Theory and the European Union's International Relations' in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 18-38.

Amttenbrink, 'Towards a More Democratic Union? Comments on Treaty Establishing a Constitution for Europe' in Inglis and Ott, (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?* (Groningen: Europa Law Publishing, 2005), 31-55.

'An Assessment of the Development of Political Parties in the Republic of Azerbaijan', USAID Report, 2003.

'Armenia: Internal Instability Ahead', International Crisis Group, Europe Report No 158, 18 October 2004.

'Armenia: Picking up the Pieces', International Crisis Group, Policy Briefing, Europe Briefing No 48, Yerevan/Tbilisi/Brussels, 8 April 2008.

'Armenia Political Party Assessment', USAID Report, May 2005.

Aspinal and Schneider, (eds.), *The Rules of Integration: Institutionalist Approaches to the Study of Europe*, (Manchester: Manchester University Press, 2001).

Averre, 'The EU-Russian Relationship in the Context of European Security' in Johnson and Robinson, (eds.), *Perspectives on EU-Russia Relations*, (London: Routledge, 2005), 73-92.

'Azerbaijan: Turning Over a New Leaf?', International Crisis Group, Europe Report No 156, Baku/Brussels, 13 May 2004.

'Azerbaijan's 2005 Elections: Lost Opportunity', International Crisis Group, Europe Briefing No 40, Baku/Brussels, 21 November 2005.

'Azerbaijan Civil Society Sector Assessment', Final Report, USAID Azerbaijan, USAID Centre for Democracy and Governance, January 11 2005.

Balfour, 'Promoting Human Rights and Democracy in the EU's Neighbourhood: Tools, Strategies and Dilemmas' in Balfour and Missiroli, 'Reassessing the European Neighbourhood Policy', European Policy Centre, Issue Paper No. 54, June 2007.

Balfour, 'Principles of Democracy and Human Rights: A Review of the European Union's Strategies Towards its Neighbours' in Lucarelli and Manners, (eds.), *Values and Principles in European Union Foreign Policy*, (London: Routledge, 2006), 114-129.

Balfour and Missiroli, 'Dealing with Troubled Neighbourhoods', Commentary, European Policy Centre, 12.02.2009.

Balfour and Rotta, 'Beyond Enlargement. The European Neighbourhood Policy and its Tools', (2005) 40 *International Spectator* 7.

Baracani, 'The European Neighbourhood Policy: A New Anchor for Conflict Settlement?', Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy.

Baracani, 'From the EMP to the ENP: A New European Pressure for Democratization?', (2005) 1 *Journal of Contemporary European Research* 54.

Baracani, 'The EU and Democracy Promotion: A Strategy of Democratization in the Framework of Neighbourhood Policy?' in Attina and Rossi, (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 37-57.

Barber, *Strong Democracy: Participatory Politics for a New Age*, (Berkeley: University of California Press, 1984).

Berdiyev, 'The EU and Former Soviet Central Asia: An Analysis of the Partnership and Cooperation Agreements', (2003) 22 *Yearbook of European Law* 463.

Biscop, 'The European Security Strategy and the Neighbourhood Policy: A New Starting Point for a Euro-Mediterranean Security Partnership?' in Attina and Rossi, (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 25-36.

Boix Mansilla, 'Assessing Student Work at Disciplinary Crossroads', (2005) 37 *Change* 14.

Borko, 'The New Intra-European Relations and Russia' in Maresceau, (ed.), *Enlarging the European Union: Relations between the EU and Central and Eastern Europe*, (London: Longman, 1997), 376-390.

Boonstra, 'Azerbaijan', in Youngs, (ed.), *Is the European Union Supporting Democracy in its Neighbourhood?* (Fride, 2008), 123-143.

- Bosse, 'Values in the EU's Neighbourhood Policy: Political Rhetoric or Reflection of a Coherent Policy?' (2007) 7 *European Political Economy Review* 38.
- Cameron, *An Introduction to European Foreign Policy*, (Abingdon: Routledge, 2007).
- Cannel and Kahn, *The Dynamics of Interviewing: Theory, Technique and Cases*, 2nd edition, (New York: Wiley, 1968).
- Casier, 'The Clash of Integration Processes? The Shadow Effect of the Enlargement EU on its Eastern Neighbours' in Malfliet, Verpoest and Vinokurov, (eds.), *The CIS, the EU and Russia*, (Basingstoke: Palgrave Macmillan, 2007), 73-94.
- Chalmers, Hadjiemmanuil, Monti, Tomkins, *European Union Law: Text and Materials*, (Cambridge: Cambridge University Press, 2006).
- Checkel and Moravcsik, 'A Constructivist Research Programme in EU Studies?' (2001) 2 *European Union Politics* 219.
- Checkel, 'Why Comply? Social Learning and European Identity Change,' (2001) 55 *International Organisation* 553.
- Christiansen, Jorgensen and Weiner, 'The Social Construction of Europe,' (1999) 6 *Journal of European Public Policy* 528.
- Chrysoschoou, 'Democracy and the European Polity', in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 359-373.
- Comelli, Greco, Tocci, 'From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy', (2007) 12 *European Foreign Affairs Review* 203.
- Comelli, 'The Challenges of the European Neighbourhood Policy', (2004) 3 *The International Spectator* 97.
- 'Conflict Resolution in the South Caucasus: The EU's Role', International Crisis Group, Europe Report No 173, 20 March 2006.
- Coppieters, 'An EU Special Representative to a New Periphery' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 159-170.
- Corbett, Jacobs and Shackleton, 'The European Parliament at Fifty: A View from the Inside' (2003) 41 *Journal of Common Market Studies* 353.
- Cornell, *Small Nations and Great Powers: A Study of Ethno-political Conflict in the Caucasus*, (London: Routledge 2001).

- Coultrap, 'From Parliamentarism to Pluralism. Models of Democracy and the European Union's 'Democratic Deficit'', (1999) 11 *Journal of Theoretical Politics* 107.
- Craig and de Burca, *EU Law: Text, Cases and Materials*, (Oxford: Oxford University Press, 2008).
- Craig, 'Democracy and Rule-making within the EC: An Empirical and Normative Assessment', (1997) 3 *European Law Journal* 105.
- Cremona, 'The European Neighbourhood Policy: More than a Partnership?' in Cremona, (ed.), *Developments in EU External Relations Law*, (Oxford: Oxford University Press, 2008), 244-299.
- Cremona, 'The European Neighbourhood Policy as a Framework for Modernisation' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/10, 5-15.
- Cremona and Hillion, 'L'Union fait la force? Potential and Limitations of the ENP as an Integrated EU Foreign and Security Policy' in Copsey and Mayhew, (eds.), *European Neighbourhood Policy: The Case of Europe*, Sussex European Institute, SEI Seminar Papers Series Number 1, 2006, 20-44.
- Cremona, 'EU Enlargement: Solidarity and Conditionality', (2005) 30 *European Law Review* 3.
- Cremona, 'The European Neighbourhood Policy: Legal and Institutional Issues', Centre on Democracy, Development and the Rule of Law, Working Papers, No 25, 2 November 2004.
- Cremona, 'Enlargement: A Successful Instrument of EU Foreign Policy?' in Tridimas and Nebbia, (eds.), *European Union Law for the Twenty-First Century*, (Oxford: Hart, 2004), 317-414.
- Cremona, 'Values in the EU Constitution: The External Dimension', Centre on Democracy, Development and the Rule of Law', Stanford Institute for International Studies, Working Papers, No 26, 2 November 2004.
- Cremona, 'Human Rights and Democracy Clauses in the EC's Trade Agreements' in Emiliou & O'Keefee, (eds.), *The European Union and World Trade Law: After the GATT Uruguay Round*, (Chichester: Wiley, 1996), 62-77.
- Cremona, 'The "Dynamic and Homogeneous" European Economic Area: Byzantine Structures and Various Geometry', (1994) 19 *European Law Review* 508.
- Crum, 'Legislative-Executive Relations in the EU' (2003) 41 *Journal of Common Market Studies* 375.
- Dahl, *On Democracy*, (New Haven, London: Yale University Press, 2000).

- Dahl, *A Preface to Democratic Theory*, (Chicago, London: University of Chicago Press, 1956).
- Dahl, *Democracy and Its Critics*, (New Haven: Yale University Press, 1989).
- Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', (2006) 11 *European Foreign Affairs Review* 183.
- Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004).
- De Burca, 'The Drafting of the European Union Charter of Human Rights,' (2001) 26 *European Law Review* 126.
- De Cruz, *Comparative Law in a Changing World*, 3rd edition, (Abingdon: Routledge-Cavendish, 2007).
- Dehousse, 'Beyond Representative Democracy: Constitutionalism in a Polycentric Polity' in Weiler and Wind, (eds.), *European Constitutionalism Beyond the State*, (Cambridge: Cambridge University Press, 2003), 135-156.
- Delcour, 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia', (2007) 7 *European Political Economy Review* 118.
- Denza, *The Intergovernmental Pillars of the European Union*, (Oxford: Oxford University Press, 2002).
- De Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, (New York: New York University Press, 2003).
- Del Sarto and Schumacher, 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?' (2005) 10 *European Foreign Affairs Review* 17.
- Deyermont, *Security and Sovereignty in the Former Soviet Union*, (London: Lynne Rienner Publishers, 2008).
- Dryzek, 'Legitimacy and Economy in Deliberative Democracy', (2001) 29 *Political Theory* 651.
- Duchene, 'The EC and the Uncertainties of Interdependence' in Kohnstamm and Hager, (eds.), *A Nation Writ Large? Foreign Policy Problems before the European Community*, (London: Macmillan, 1973), 1-21.
- Dunay, 'Strategy with Fast Moving Targets: East-Central Europe' in Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 27-47.

Emerson, Noutcheva, Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an 'ENP Plus',' Centre for European Policy Studies, Policy Brief No 126, 21 March 2007.

Emerson, Aydin, Noutcheva, Tocci, Vahl and Youngs, 'The Reluctant Debutante: The European Union as Promoter of Democracy in its Neighbourhood,' Centre for European Policy Studies, Working Document No 223/July 2005.

Emerson, 'Is There to be a Real European Neighbourhood Policy?' in Youngs, (ed.), *Global Europe: New Terms of Engagement*, Foreign Policy Centre, UK, 2005, 15-22.

Emerson, 'European Neighbourhood Policy: Strategy of Placebo?' Centre for European Policy Studies, Working Document No 215/November 2004.

Emerson, Noutcheva, 'Europeanisation as a Gravity Model for Democratisation,' Centre for European Policy Studies, Working Document No. 214/November 2004.

Emerson, 'The Wider Europe as the European Union's Friendly Monroe Doctrine', Centre for European Policy Studies, Policy Brief No. 27, October 2002.

Eriksen and Fossum, 'Democracy through Strong Publics in the European Union' (2002) 40 *Journal of Common Market Studies* 401.

Ferrero-Waldner, 'The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument', (2006) 11 *European Foreign Affairs Review* 139.

Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, (Hague, London: M. Nijhoff, 2003).

Follesdal and Hix, 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', (2006) 44 *Journal of Common Market Studies* 533.

Fontana and Frey, 'Interviewing: The Art of Science', in Denzin and Lincoln, (eds.), *Methods of Collecting and Analyzing Empirical Materials*, 3rd edition, (London: Sage, 1994), 361-375.

Freire and Simao, 'The Armenian Road to Democracy. Dimensions of a Tortuous Process,' Centre for European Policy Studies, Working Document No. 267/May 2007.

Zittel and Fuchs, (eds.), *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back in?* (Abingdon: Routledge, 2007).

'Georgia and Russia: Clashing over Abkhazia', International Crisis Group, Europe Report No 193, 5 June 2008.

'Georgia: Sliding Towards Authoritarianism?' International Crisis Group, Europe Report No 189, 19 December 2007.

- 'Georgia's South Ossetia Conflict: Make Haste Slowly,' International Crisis Group, Europe Report No. 183, 7 June 2007.
- 'Georgia's Armenian and Azeri Minorities', International Crisis Group, Europe Report No. 178, 22 November 2006.
- 'Georgia: Avoiding War in South Ossetia', International Crisis Group, Europe Report 159, November 2006.
- 'Georgia's Rose Revolution: A Participant's Perspective', Giorgi Kandelaki, Special Report, United States Institute of Peace, Washington.
- Gould, 'The European Economic Area: A Model for the EU's Neighbourhood Policy?' (2004) 5 *Perspectives on European Politics and Society* 171.
- Grabbe, 'How Does Europeanization affects Central and Eastern European Governance? Conditionality, Diffusion and Diversity', (2001) 8 *Journal of European Public Policy* 1013.
- Grabbe, 'How Does the EU Measure when the Central and Eastern European Countries are Ready to Join?' in Jenkins, (ed.), *The Unification of Europe? An Analysis of EU Enlargement*, (London: Centre for Reform, 2000), 37-46.
- Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-1957*, (Stanford: Stanford University Press, 1968).
- Habermas, *Contributions to a Discourse Theory of Law and Democracy*, (Cambridge: Polity, 1996).
- Harasimowicz, 'European Neighbourhood Policy, 2004-2006: the Growing Need for Strategy' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 81-94.
- Harasimowicz, 'The European Neighbourhood Policy of the EU after Enlargement 2004: Empire with a Human Face?' in Sadurski, Ziller and Urek, (eds.), *Apres Enlargement: Legal and Political Responses in Central and Eastern Europe*, European University Institute, R. Schuman Centre for Advanced Studies, Florence 2006, 339-349.
- Harutyunyan, 'Neighbourhood Relations between the EU and Armenia', Centre for EU Enlargement Studies, Central European University, Budapest, June 2006.
- Haukkala and Moshes, 'Beyond 'Bing Bang': The Challenges of the EU's Neighbourhood Policy in the East', The Finnish Institute of International Affairs, Report 9/2004.
- Haukkala, 'A Hole in the Wall? Dimensionalism and EU's New Neighbourhood Policy', The Finnish Institute of International Affairs, UPI Working Papers N.41, 2003.

Helly, 'EU's Influence in its Eastern Neighbourhood: The Case of Crisis Management in the Southern Caucasus', (2007) 7 *European Political Economy Review* 102.

Henderson, 'Reforming the Post-Communist States: Meeting the Political Conditions for Membership' in Jenkins, (ed.), *The Unification of Europe? An Analysis of EU Enlargement*, (London: Centre for Reform, 2000), 27-35.

Heriter, 'Elements for Democratic Legitimation in Europe: An Alternative Perspective', (1999) 6 *Journal of European Public Policy* 269.

Hill 'European Foreign Policy: Power Bloc, Civilian Model-or Flop?' in Rummel, (ed.) *The Evolution of an International Actor: Western Europe's New Assertiveness* (Boulder: Westview, 1990), 31-55.

Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005).

Hillion 'A New Framework for the Relations Between the Union and its East-European Neighbours' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 147-154.

Hillion, 'Mapping-Out the New Contractual Relations between the European Union and its Neighbours: Learning from the EU-Ukraine 'Enhanced Agreement'', (2007) 12 *European Foreign Affairs Review* 169.

Hillion, 'Russian Federation' in Blockmans and Lazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 463-497.

Hillion, 'The Copenhagen Criteria and their Progeny' in Hillion, (ed.), *EU Enlargement: A Legal Approach*, (Oxford: Hart, 2004), 1-22.

Hillion, 'Enlargement of the European Union: A Legal Analysis' in Arnall and Wincott, (eds.), *Accountability and Legitimacy in the European Union*, (Oxford: Oxford University Press, 2002), 401-418.

Hillion, 'The EU's Neighbourhood Policy towards Eastern Europe' in Dashwood and Maresceau, (eds.), *Law and Practice of EU External Relations*, (Cambridge: Cambridge University Press, 2008), 309-333.

Hillion, 'Introduction to the Partnership and Cooperation Agreements' in Kellerman, Zwaan, Czuczai, (eds.), *EU Enlargement: The Constitutional Impact at EU and National Level*, (Hague: T.M.C. Asser Press, 2001), 215-228.

Hillion, 'Partnership and Cooperation Agreements between the European Union and the New Independent States of the Ex-Soviet Union', (1998) 3 *European Foreign Affairs Review* 399.

Hix, Raunio, Scully, 'Fifty Years On: Research on the European Parliament', (2003) 41 *Journal of Common Market Studies* 191.

Hix, *The Political System of the European Union*, (Basingstoke: Macmillan, 1999).

Hoskyns and Newman, (eds.), *Democratising the European Union. Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000).

Howorth, 'European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately', (2001) 39 *Journal of Common Market Studies* 765.

Hyde-Price, 'The New Pattern of International Relations in Europe' in Curzon Price, Landau and Whitman, (eds.), *The Enlargement of the European Union: Issues and Strategies*, (London: Routledge, 1999), 111-117.

Inglis, 'EU Enlargement: Membership Conditions Applied to Future and Potential Member States' in Blockmans and Łazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: T.M.C. Asser Press, 2006), 61-92.

Inglis, 'The Europe Agreements Compared in the Light of their Pre-Accession Reorientation', (2000) 37 *Common Market Law Review* 1173.

Inotai, 'The CEECs: From the Association Agreements to Full Membership?' in Redmond and Rosenthal, (eds.), *The Expanding European Union: Past, Present, Future*, (Boulder: Lynne Rienner Publishers, 1997), 157-176.

'Institutional Convergence of CIS Towards European Benchmarks', Report No. 82/2008, Centre for Social and Economic Research, Warsaw, 2008.

Jachtenfuchs, 'Democracy and Governance in the EU', (1997) 1 *European Integration Online Papers*.

Johansson-Nogues, 'The EU and its Neighbourhood: an Overview' in Weber, Smith and Baun, (eds.), *Governing Europe's Neighbourhood: Partners or Periphery*, (Manchester: Manchester University Press, 2007), 21-35.

Johansson-Nogues, 'The (Non-) Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?' (2007) 7 *European Political Economy Review* 181.

Jorgensen, (ed.), *Reflective Approaches to European Governance*, (London: Macmillan, 1997).

Kaldor, 'Eastern Enlargement and Democracy' in Hoskyns and Newman, (eds.), *Democratising the European Union. Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), 139-155.

- Kaldor and Vejvoda, (eds.), *Democratisation in Central and Eastern Europe*, (London, New-York: Continuum, 2002).
- Katz, 'Models of Democracy: Elite Attitudes and the Democratic Deficit in the European Union', (2001) 2 *European Union Politics* 53.
- Kelley, 'New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy', (2006) 44 *Journal of Common Market Studies* 29.
- Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton: Princeton University Press, 1984).
- Keukeleire and MacNaughtan, *The Foreign Policy of the European Union*, (Basingstoke: Palgrave Macmillan, 2008).
- Klein and Newell, 'Advancing Interdisciplinary Studies' in Graff, Ratcliff and Associates, (eds.), *Handbook of the Undergraduate Curriculum: A Comprehensive Guide to Purposes, Structures, Practices, and Change* (San Francisco: Jossey-Bass, 1996), 393-415.
- Khasson, Vasilyan, Vos, 'Everybody Needs Good Neighbours': The EU and its Neighbourhood' in Orbie, (ed.), *Europe's Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 217-237.
- Khazanov, *After the USSR: Ethnicity, Nationalism and Politics in the Commonwealth of Independent States*, (London: The University of Wisconsin Press, 1995).
- Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Field of Democracy and the Rule of Law*, (Austin: Wolters Kluwer Law & Business, 2008).
- Kochenov, 'The ENP Conditionality: Pre-Accession Mistakes Repeated', in Delcour and Tulmets, (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, (Baden Baden: Nomos, 2008), 105-120.
- Kok, *Enlarging the European Union: Achievements and Challenges*, Report to the European Commission, EUI, 19 March 2003.
- Koutrakos, *EU International Relations Law*, (Oxford: Hart, 2006).
- Kratochvil, 'The European Neighbourhood Policy: A Clash of Incompatible Interpretations' in Kratochvil, (ed.), *The European Union and its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 13-28.
- Kuper, 'Democratization: a Constitutionalizing Process' in Hoskyns and Newman, (eds.), *Democratising the European Union: Issues for the Twenty-first Century*, (Manchester: Manchester University Press, 2000), 156-173.

- Labeledzka, 'The Southern Caucasus' in Blockmans and Lazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 575-612.
- Laffan, 'Democracy and the European Union' in Cram, Dinan and Nugent, (eds.), *Developments in the European Union*, (Basingstoke: Macmillan, 1999), 330-349.
- Lavenex, 'EU External Governance in 'Wider Europe'', (2004) 11 *Journal of European Public Policy* 680.
- Lenaerts and Smijter, 'The Question of Democratic Representation' in Winter, Curtin, Kellermann and de Witte, (eds.), *Reforming the Treaty on European Union: The Legal Debate*, (London: Kluwer Law International, 1996), 173-197.
- Libaridian, (ed.), *The Karabakh File*, (Cambridge, MA: Zoryan Institute, 1988).
- Light, 'Exporting Democracy' in Smith and Light, (eds.), *Ethics and Foreign Policy*, (Cambridge: Cambridge University Press, 2001), 75-92.
- Lindberg, *The Political Dynamics of European Economic Integration*, (Stanford: Stanford University Press, 1963).
- Lombardo, 'The Participation of the Civil Society' in Castiglione, Schonlau, Longman, Lombardo, Pierrez-Solorzano Borraran, Aziz, *Constitutional Politics in the European Union: The Convention Moment and its Aftermath* (Basingstoke: Palgrave Macmillan, 2007), 153-169.
- Longhurst and Nies, 'Recasting Relations with the Neighbours-Prospects for the Eastern Partnership', Institut Français des Relations Internationales, February 2009.
- Lord, 'Assessing Democracy in a Contested Polity', (2001) 39 *Journal of Common Market Studies* 641.
- Lord, *Democracy in the European Union*, (Sheffield: Sheffield Academic Press, 1998).
- Lucarelli, 'Values, Identity and Ideational Shocks in the Transatlantic Rift', (2006) 9 *Journal of International Relations and Development* 304.
- Lynch, 'The Security Dimension of the European Neighbourhood Policy', (2005) 40 *The International Spectator* 33.
- Lynch, 'The New Eastern Dimension of the Enlarged EU' in 'Partners and Neighbours: A CFSP for a Wider Europe', Chaillot Paper 64, Institute for Security Studies, September 2003, 34-59.
- Lynch, 'The EU: Towards a Strategy' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 9-21.

Lynch, 'A Regional Insecurity Dynamic' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 171-200.

Lynch, 'Why Georgia Matters', Chaillot Paper No. 86, February 2006, Institute for Security Studies.

Lynch, "The European Neighbourhood Policy", Institute for Security Studies, Paper presented at the workshop "European Neighbourhood Policy: Concepts and Instruments", Prague, June 2004, organised by the European Commission with DGAP, CEFRES and IIR.

MacFarlane, 'The Caucasus and Central Asia: Towards a Non-Strategy' in Dannreuther, (ed.), *European Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 118-134.

Maduro, 'The Double Constitutional Life of the Charter of Fundamental Rights of the European Union' in Hervey and Kenner, (eds.), *Economic and Social Rights under the EU Charter of Fundamental Right: A Legal Perspective*, (Oxford: Hart Publishing, 2003), 269-299.

Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?', Centre 'on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006.

Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/10.

Maier and Schimmelfennig, 'Shared Values: Democracy and Human Rights' in Weber, Smith and Baun, (eds.), *Governing Europe's Neighbourhood: Partners or Periphery*, (Manchester: Manchester University Press, 2007), 39-57.

Majone, 'The Credibility Crisis of Community Regulation', (2000) 38 *Journal of Common Market Studies* 273.

Majone, 'The Rise of the Regulatory State in Europe', (1994) 17 *West European Politics* 78.

Majone, *Regulating Europe*, (London: Routledge, 1996).

Manners, 'The Constitutive Nature of Values, Images and Principles in the EU' in Lucarelli and Manners, (eds.), *Values and Principles in European Union Foreign Policy*, (London: Routledge, 2006), 19-41.

Manners, 'Normative Power Europe: A Contradiction in Terms'. (2002) 40 *Journal of Common Market Studies* 235.

March and Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, (New York: Free Press, 1989).

Marchetti, 'The European Neighbourhood Policy: Foreign Policy at the EU's Periphery', Discussion Paper C158, Centre for European Integration Studies 2006.

Maresceau and Montaguti, 'The Relations between the European Union and Central and Eastern Europe: A Legal Appraisal', (1995) 32 *Common Market Law Review* 1327.

Maresceau, 'Pre-Accession' in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press, 2003), 9-42.

Maresceau, 'Association, Partnership, Pre-accession and Accession' in Maresceau (ed.), *Enlarging the European Union: Relations between the EU and Central and Eastern European Union*, (London: Longman, 1997), 3-22.

Masih and Krikorian, *Armenia at the Crossroads*, (Amsterdam: Harwood Academic, 1999).

Meloni, 'Who's My Neighbour?' (2007) 7 *European Political Economy Review* 24.

Meloni, 'Is the Same Toolkit Used during Enlargement Still Applicable to the countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 97-111.

Meny, 'De la Democratie in Europe: Old Concepts and New Challenges'. (2002) 41 *Journal of Common Market Studies* 1.

Milcher, 'The Economic Rationale of the European Neighbourhood Policy' Paper presented at EUI Workshop, December 1-2, 2006.

Miller, *Armenia: Portraits of Survival and Hope*, (London: University of California Press, 2003).

Mirsky, *On Ruins of Empire: Ethnicity and Nationalism in Former Soviet Union*, (London: Greenwood Press, 1997).

Missiroli, 'The ENP Three Years on: Where From-and Where Next?'. European Policy Centre, Policy Brief, March 2007.

Missiroli, 'The EU and its Changing Neighbourhood' in Dannreuther, (ed.), *European Union Foreign and Security Policy: Towards a Neighbourhood Strategy*, (London: Routledge, 2004), 12-26.

Missiroli and Quille, 'European Security in Flux' in Cameron, (ed.), *The Future of Europe: Integration and Enlargement*, (London: Routledge, 2004), 114-134.

- Moschella, 'European Union's Regional Approach towards its Neighbours: The European Neighbourhood Policy vis-à-vis Euro- Mediterranean Partnership' in Attina and Rossi (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 58-66.
- Moravcsik, 'Liberal Intergovernmentalism and Integration: A Rejoinder' (1995) 33 *Journal of Common Market Studies* 611.
- Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', (1993) 31 *Journal of Common Market Studies* 473.
- Moravcsik, 'In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union', (2002) 40 *Journal of Common Market Studies* 603.
- Mungiu-Pippidi, 'Facing the 'Desert of Tartars': The Eastern Border of Europe' in Zielonka, (ed.), *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union*, (London: Routledge, 2002), 51-77.
- 'Nagorno-Karabakh: Risking War', International Crisis Group, Europe Report No. 187, 14 November 2007.
- Nuriyev, 'EU Policy in the South Caucasus: A View from Azerbaijan', Centre for European Policy Studies, Working Document No. 272/July 2007.
- Olsen, 'The Many Faces of Europeanization', (2002) 40 *Journal of Common Market Studies* 921.
- Olsen, 'Promoting of Democracy as a Foreign Policy Instrument of 'Europe': Limits to International Idealism', (2000) 7 *Democratization* 142.
- Olson, *The Rise and Decline of Nation: Economic Growth, Stagflation, and Social Rigidities*, (New Haven: Yale University Press, 1982).
- Ott and Wessel, 'The EU's External Relations Regime: Multilevel Complexity in an Expanding Union' in Blockmans and Lazowski, (eds.), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, (Hague: TMC Asser Press, 2006), 19-59.
- Pardo, 'Europe of Many Circles: European Neighbourhood Policy', (2004) 9 *Geopolitics* 731.
- Parrot, 'Perspectives on Postcommunist Democratisation' in Dawisha and Parrot, (eds.), *The Consolidation of Democracy in East-Central Europe*, (Cambridge: Cambridge University Press, 1997), 1-39.
- Peers, 'EC Frameworks of International Relations: Co-operation, Partnership and Association' in Dashwood and Hillion, *The General Law of EC External Relations*, (London: Sweet and Maxwell, 2000), 160-176.

- Peers, 'From Cold War to Lukewarm Embrace: the European Union's Agreements with the CIS states', (1995) 44 *International and Comparative Law Quarterly* 829.
- Peterson, 'The College of Commissioners' in Peterson and Shackleton, (eds.), *The Institutions of the European Union*, (Oxford: Oxford University Press, 2002), 71-93.
- Petrov, 'Legal and Political Expectations of Neighbouring Countries from the European Neighbourhood Policy' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 7-21.
- Petrov, 'The Partnership and Cooperation Agreements with the Newly Independent States' in Ott and Inglis, (eds.), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, (Hague: T.M.C Asser Press 2002), 175-194.
- Pinder, 'The European Community and Democracy in Central and Eastern Europe' in Pridham, Herring and Sanford, (eds.), *Building Democracy? The International Dimension of Democratisation in Eastern Europe*, (London: Leicester University Press, 1994), 110-132.
- Popescu, 'Europe's Unrecognised Neighbours: The EU in Abkhazia and South Ossetia', Centre for European Policy Studies, Working Document No 260/March 2007.
- Pridham, 'The European Union's Democratic Conditionality and Domestic Politics in Slovakia: the Meciar and Dzurinda Governments Compared' (2002) 54 *Europe-Asia Studies* 203.
- Pridham, 'EU Enlargement and Consolidating Democracy in Post-Communist States-Formality and Reality', (2002) 40 *Journal of Common Market Studies* 953.
- Pridham, 'The International Dimension of Democratisation: Theory, Practice, and Inter-regional Comparisons' in Pridham, Herring and Sanford, (eds.), *Building Democracy? The International Dimension of Democratisation in Eastern Europe*, (London: Leicester University Press, 1994), 7-31.
- Quaglia, Neuvonen, Miyakoshi, Cini, 'Europeanization' in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 405-419.
- Raik, 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', Centre for European Policy Studies, Working Document No 237/February 2006.
- Repko, *Interdisciplinary Research: Process and Theory*, (London: Sage, 2008).
- Ridder, Schrijvers, Vos, 'Civilian Power Europe and Eastern Enlargement: The More the Merrier' in Orbie, (ed.), *Europe's Global Role: External Policies of the EU*, (Aldershot: Ashgate, 2008), 240-257.
- Rosamond, *Theories of European Integration*, (Basingstoke: Macmillan, 2000).

Rosecrance, *The Rise of the Trading State: Commerce and Conquest in the Modern World*, (New York: Basic Books, 1986).

Rosamond, 'New Theories of European Integration' in Cini, (ed.) *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 117-135.

Rossi, 'The European Neighbourhood Policy in Perspective' in Attina and Rossi (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, The Jean Monnet Centre "Euro-Med", Department of Political Studies: 2004, 8-14.

'Russia v Georgia: The Fallout', International Crisis Group, Europe Report No 195, 22 August 2008.

Sabanadze, 'International Involvement in the South Caucasus'. European Centre for Minority Issues, Working Paper No. 15 (Flensburg, 2002).

Sadurski, 'EU Enlargement and Democracy in New Member States' in Sadurski, Czarnota and Krygie, (eds.), *Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders*, (Dordrecht: Springer, 2006), 27-49.

Sajo, 'Becoming 'Europeans': The Impact of EU 'Constitutionalism' on Post-Communist Pre-Modernity' in Sadurski, Czarnota and Krygie, (eds.), *Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders*, (Dordrecht: Springer, 2006), 175-192.

Sajo, 'Accession's Impact on Constitutionalism in the New Member States' in Bermann and Pistor, (eds.), *Law and Governance in an Enlarged European Union*, (Oxford: Hart, 2004), 415-435.

Sasse, 'The ENP Process and the EU's Eastern Neighbours: 'Conditionality-lite', Socialisation and 'Procedural Entrapment', Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy.

Scharpf, 'Economic Integration, Democracy and the Welfare State', (1997) 4 *Journal of European Public Policy* 18.

Schimmelfennig, 'European Neighbourhood Policy: Political Conditionality and its Impact on Democracy in Non-Candidate Neighbouring Countries', Paper prepared for the EUSA Ninth Biennial International Conference Austin, March 31-April 2, 2005.

Schimmelfennig, Engert and Knobel, 'The Impact of EU Political Conditionality' in Schimmelfennig and Sedelmeier, (eds.), *The Europeanization of Central and Eastern Europe*, (London: Cornell University Press, 2005), 29-50.

Schimmelfennig and Sedelmeier, 'Conclusions: The Impact of the EU on the Accession Countries' in Schimmelfennig and Sedelmeier, (eds.), *The Europeanization of Central and Eastern Europe*, (London: Cornell University Press, 2005), 210-228.

Schimmelfennig and Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe', (2004) 11 *Journal of European Public Policy* 661.

Schonlau, 'The Convention Method' in Castiglione, Schonlau, Longman, Lombardo, Pierez-Solorzano Borragan, Aziz, *Constitutional Politics in the European Union: The Convention Moment and its Aftermath* (Basingstoke: Palgrave Macmillan, 2007), 90-111.

Schmidt, *Democracy in Europe: The EU and National Politics*, (Published to Oxford Scholarship Online: January 2007).

Sedelmeier, *Constructing the Path to Eastern Enlargement*, (Manchester: Manchester University Press 2005).

Senden, *Soft Law in European Community Law*, (Oxford: Hart Publishing, 2005).

Shaffer, 'US Policy in the South Caucasus: A Challenge for the EU' in 'The South Caucasus: A Challenge for the EU', Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 53-61.

Shahmuratian, (ed.), *The Sumgait Tragedy: Pogroms against Armenians in Soviet Azerbaijan*, (New Rochelle, NY/Cambridge, MA: Caratzas Publishers/Zoryan Institute).

Shaw, *Law of the European Union*, (Basingstoke: Palgrave Macmillan, 2000).

Simao and Freire, 'The EU's Neighbourhood Policy and the South Caucasus: Unfolding New Patterns of Cooperation,' (2008) 2 *Caucasian Review of International Affairs* 225.

Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke: Palgrave Macmillan, 1999).

Smith, 'The End of Civilian Power EU: A Welcome Demise or Cause for Concern?', (2000) 35 *The International Spectator* 11.

Smith, 'Enlargement and European Order', in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 270-291.

Smith and Webber, 'Political Dialogue and Security in the European Neighbourhood: The Virtues and Limits of 'New Partnership Perspectives'', (2008) 13 *European Foreign Affairs Review* 73.

- Smith, 'The Outsiders: The European Neighbourhood Policy' (2005) 81 *International Affairs* 757.
- Smith 'Engagement and Conditionality: Incompatible or Mutually Reinforcing?' in Youngs, (ed.), *Global Europe: New Terms of Engagement*, (The Foreign Policy Centre, UK, 2005), 23-29.
- Smith, 'The Evolution and Application of EU Membership Conditionality' in Cremona, (ed.), *The Enlargement of the European Union*, (Oxford: Oxford University Press: 2003), 105-139.
- Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe*, (Basingstoke: Macmillan, 1999).
- Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *European Foreign Affairs Review* 253.
- Stavridis, 'Militaryising' the EU: the Concept of Civilian Power Revisited', (2001) *The International Spectator* 43.
- Steter, 'Cross-pillar Politics: Functional Unity and Institutional Fragmentation of EU Foreign Policies', (2004) 11 *Journal of European Public Policy* 720.
- Stritecky, 'The South Caucasus: A Challenge for the ENP' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Prague: Institute of International Relations, 2006), 59-76.
- Stroby-Jensen, 'Neo-functionalism' in Cini, (ed.), *European Union Politics*, 2nd edition, (Oxford: Oxford University Press, 2007), 85-97.
- Tassinari, 'Security and Integration in the EU Neighbourhood: The Case for Regionalism', Brussels: Centre for European Policy Studies, 2005.
- Tassinari, 'A Riddle Inside an Enigma: Unwrapping the EU-Russia Strategic Partnership', (2005) 40 *The International Spectator* 45.
- Tocci, 'Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law' in Cremona and Meloni, (eds.), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 23-35.
- Tocci, 'Does the ENP Respond to the EU's Post-Enlargement Challenges?', (2005) 40 *International Spectator* 21.
- Tocci, 'The European Union as a Normative Foreign Policy Actor' Centre for European Policy Studies, Working Document No. 281/ January 2008.
- Tonra, 'The Impact of Political Cooperation' in Jorgensen (ed.), *Reflective Approaches to European Governance*, (London: Macmillan, 1997), 181-198.

Tonra, 'Constructing the Common Foreign and Security Policy: The Utility of a Cognitive Approach' (2003) 41 *Journal of Common Market Studies* 731.

Tovias, 'Is the ENP Directed to Its Mediterranean Partners Coherent?'. Paper presented at workshop 'The Study of the European Neighbourhood Policy: Methodological, Theoretical and Empirical Challenges', University of Nottingham, 25th-26th October 2007, UACES/ The British Academy.

Tulmets, 'Adapting the Experience of Enlargement to the Neighbourhood Policy: The ENP as a Substitute to Enlargement?' in Kratochvil, (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, (Institute of International Relations, Prague, 2006), 29-57.

Tulmets, 'Can the Discourse on 'Soft Power' Help the EU to Bridge its Capability Expectations Gap?' (2007) 7 *European Political Economy Review* 195.

Vahl, 'EU-Russia Relations in EU Neighbourhood Policies' in Malfliet, Verpoest and Vinokurov, (eds.), *The CIS, the EU and Russia*, (Basingstoke: Palgrave Macmillan, 2007), 121-141.

Van Elsuwege, 'The Four Common Spaces: New Impetus to the EU-Russia Strategic Partnership?' in Dashwood and Maresceau, (eds.), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape*, (Cambridge: Cambridge University Press, 2008), 334-359.

Van Elsuwege and Vermeersch, 'Institutional Reform in the European Union: A Difficult Balancing Act' in Inglis and Ott, (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?* (Groningen: Europa Law Publishing, 2005), 57-84.

Van Vooren, 'The Hybrid Legal Nature of the European Neighbourhood Policy' in Maiani, Petrov, Mouliarova, (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives*, EUI Working Papers, MWP 2009/2010, 17-27.

Verhoeven, *The European Union in Search of a Democratic and Constitutional Theory*, (London: Kluwer Law International, 2002).

Walker, *Armenia: The Survival of a Nation*, (London: Croom Helm, 1980).

Wallace, 'Looking after the Neighbourhood: Responsibilities for the EU-25', Policy Papers No. 4, Notre Europe 2003.

Wallace and Smith, 'Democracy or Technocracy? European Integration and the Problem of Popular Consent,' (1995) 18 *West European Politics* 137.

Waltz, *Theory of International Politics*, (Boston: McGraw-Hill, 1979).

Wayman and Diehl, (eds.), *Reconstructing Realpolitik*, (University of Michigan Press, 1994).

- Weale, *Democracy*, (Basingstoke: Palgrave Macmillan, 2007).
- Weiler, 'Europe 2004- Le Grand Debat: Setting the Agenda and Outlining the Options' (Brussels, Conference Paper 15 and 16 October 2001).
- Weiler, 'Amsterdam and the Quest for Constitutional Democracy' in O'Keeffe and Twomey, (eds.), *Legal Issues of Amsterdam Treaty*, (Oxford: Hart, 1999), 1-21.
- Weiler, Haltern and Mayer, 'European Democracy and its Critique', (1995) 18 *West European Politics* 4.
- Wessels, 'The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity' in Andersen and Eliassen, (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), 57-69.
- Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press, 1999).
- Whitman, *From Civilian Power to Superpower? The International Identity of the European Union*, (Basingstoke: Palgrave Macmillan, 1998).
- Wong, 'The Europeanisation of Foreign Policy', in Hill and Smith, (eds.), *International Relations and the EU*, (Oxford: Oxford University Press, 2005), 135-153.
- Youngs, (ed.), *New Terms of Engagement: Global Europe*, The Foreign Policy Centre and British Council, Brussels, 2005.
- Youngs, 'Normative Dynamics and Strategic Interests in the EU's External Identity', (2004) 42 *Journal of Common Market Studies* 415.
- Youngs, 'European Union Democracy Promotion Policies: Ten Years On', (2001) 6 *European Foreign Affairs Review* 355.
- Zaiotti, 'Of Friends and Fences: Europe's Neighbourhood Policy and the 'Gated Community Syndrome'', (2007) 29 *European Integration* 143.
- Zweigert and Kotz, *An Introduction to Comparative Law*, 3rd edition (Oxford: Clarendon, 1998).