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RESPONDING TO THE EU'S POST-ENLARGEMENT
CHALLENGES?**

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Paper presented at the conference on "The Challenges of European Neighbourhood Policy"
Rome, Ministry of Foreign Affairs, Piazzale Farnesina, 26 -27 November 2004

IAI0424

ISTITUTO AFFARI INTERNAZIONALI

THE EUROPEAN NEIGHBOURHOOD POLICY: RESPONDING TO THE EU'S POST-ENLARGEMENT CHALLENGES?

Nathalie Tocci

Finding new ways to engage the southern and eastern neighbourhoods has become one of the major challenges facing the Union today. The challenge derives from the wish to capitalise on the EU's most evident foreign policy success - enlargement and the process democratic transformation and economic reform that came with it.¹ The EU also wishes to prevent the exclusion effects that could emerge from new dividing lines in Europe. If badly managed, these could deprive countries further to the south and to the east, all of the peace, stability and prosperity dividends of European integration. Finally EU actors increasingly appreciate the global nature of the threats facing Europe today, which cannot be adequately tackled through insulation. Hence, the need to find alternative ways of inclusion, by separating the concept of the 'EU' from that of 'Europe' at large.²

The need to face this challenge has been made explicit both in the EU Constitutional Treaty and in the December 2003 Security Strategy. Article I-56 of the Constitutional Treaty reads: 'the Union shall develop a special relationship with neighbouring States, 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'. In its Security Strategy, the EU has declared that its objective would be to 'promote a ring of well-governed countries to the East of the EU and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations'.³ Pinpointing the neighbourhood as a priority area is the natural consequence of EU proximity. Proximity entails that much of the instability, conflict, state failure, repression and violence that besiege these regions could have negative spill-over effects into the Union. Hence, it is in the EU's interests to contribute to their democratic, rule-bound and peaceful transformation. Focussing on the neighbourhood also has a wider rationale. Global threats such as weapons of mass destruction, terrorism and the illegal trafficking of drugs and people have been identified as either stemming from or transiting through these countries.

In March 2003, the European Commission published its first official proposals for a Wider Europe Neighbourhood Policy.⁴ One year later, upon request of the Council, the Commission further revised its ideas, giving birth to the European Neighbourhood

¹ See the joint letter by Chris Patten and Javier Solana (2002), 'Wider Europe' on 7 August 2002, on www.cec.eu.int

² Judy Batt, Dov Lynch, Antonio Missiroli, Martin Ortega and Dimitrios Triantaphyllou (2003), 'Partners and Neighbours: a CFSP for a Wider Europe', *Chaillot Papers*, No.64, September 2003, EUISS, Paris.

³ European Council (2003), *A Secure Europe in a Better World. European Security Strategy*, Brussels, 12 December 2003, <http://ue.eu.int/pressdata/EN/reports/78367.pdf>

⁴ Commission of the EC (2003), *Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, (COM(2003) 104 final)

Policy (ENP).⁵ The European Security Strategy and the Neighbourhood Policy, having been developed concurrently, seem intended to neatly dovetail each other. While the former provides the general objectives based on an assessment of the EU's interests, the latter provides the strategy and the means to address them.

Indeed, the ENP could provide an important part of the answer to challenges facing the enlarged EU. In a post-enlargement context, the question of the final borders of the Union has become a key strategic issue on the agenda. It has become increasingly clear that despite the success of enlargement, the EU cannot indefinitely rely on the same instrument as a means to positively induce transformation beyond its borders. Doing so would end up making the Union unable to provide the very benefits that have inspired its neighbours to join it.⁶ Future enlargements are likely to see the entry of Bulgaria, Romania, Turkey and the Western Balkan countries. However, the Union's relations with the remaining post-Soviet states (Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan and Russia itself) as well as with the entire southern Mediterranean basin and the Middle East may require alternative policy instruments. Hence the challenge, undertaken by the ENP, of seeking new ways and means to act beyond the traditional accession/non-accession dichotomy.⁷ Can and if so how can the EU operate a successful neighbourhood policy without the ultimate prospect of membership?

This paper provides an assessment of the ENP, its promises and its potential pitfalls. While appreciating the potential value of the initiative and in view of this very value, it raises several questions, concluding on a somber note. The current policy as it is being developed on paper, does not appear to draw sufficiently from the lessons of past and present external policies, particularly when it comes to the Union's contractual ties with third states. As such, it may well emulate the structural and practical defects inherent in the EU's past experiences, without meeting the heightened expectations it has been generating within its neighbourhood.

The Promise: Exporting Peace, Stability and Prosperity to the Neighbourhood

If followed through, the ENP is eventually intended to give rise to a whole set of new bilateral contracts: the European Neighbourhood Agreements. The ENP thus follows the well-trodden path in EU foreign policy, i.e., that of conducting external relations through different forms of contractual ties. These agreements foresee varying degrees of economic, social and legal integration into the EU, ranging from the accession process itself to weaker forms of association and partnership.

Other than degrees of integration per se, this form of EU foreign policy is intended to foster long-run structural change in the economic, political, legal and institutional

⁵ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final)

⁶ William Wallace (2003), *Looking after the Neighbourhood: Responsibilities for EU-25*, Policy Paper No.4, July 2003, www.notre-europe.asso.fr

⁷ Dov Lynch (2004), *The European Neighbourhood Policy*, Paper Presented at the Workshop "ENP: Concepts and Instruments", Prague, June 2004.

spheres both within and between third states.⁸ The ENP Strategy document mentions these goals explicitly. These include supporting regional cooperation, good neighbourly relations and conflict resolution; strengthening democracy, the rule of law, civil society, and the respect of international law, human rights and fundamental freedoms; and fighting corruption, organised crime, terrorism and weapons proliferation. In other words, the ENP, like other EU external policies, aims both to establish closer relations with third states as an end in itself, and as a means to contribute to structural change within and between these countries. By doing so, the ENP document clarifies that its objectives are in line with the goals of the EU Security Strategy.

In principle the ENP also has a clear geographical scope and logic. The Policy is intended for all the neighbouring countries that have been excluded from current and expected future rounds of EU enlargement, i.e., for all the neighbours of the enlarged EU. As such, Bulgaria, Romania and Turkey, currently in the accession process, have been excluded. Also excluded are the five Western Balkan countries, currently in the Stabilisation and Association Process, which since the June 2003 Thessaloniki European Council, is expected to evolve into the full accession process.

Formally included in the ENP are Moldova and the Ukraine and all the countries of the Euro-Mediterranean Partnership, apart from the two new member states (Malta and Cyprus) and candidate Turkey. The ENP is also on offer to Russia, if Moscow wishes to accept it, to Belarus, if progress is made towards democratisation, and to Libya, as the EU embargo is lifted and Libya enters the Barcelona Process. In March 2004 in the light of the 'rose revolution' in Georgia, the Commission also proposed to include the three South Caucasus countries (Georgia, Armenia and Azerbaijan). The South Caucasus were included in the ENP in June 2004.⁹ This leaves only Iraq and Iran, two of the neighbours of candidate Turkey. Commission officials explain that Iran and Iraq have been excluded because Turkey's membership is expected in the long-term (in its October 2004 recommendation, the Commission stated that Turkey's entry could only be expected after 2014). Furthermore, Turkey's accession would be preceded by a thorough reconsideration of the EU's external borders and border policy.¹⁰

The ENP is not intended to supersede the bilateral and multilateral ties that the Union currently enjoys with its neighbours. Its rationale is rather to provide value added to the existing panorama of relations by contributing new instruments and potential benefits to the neighbouring states. These could ultimately be enshrined in new contractual arrangements, of significant symbolic as well as substantive value. All this could in turn facilitate the Union's quest to meet its objectives in these regions. It could also contribute towards meeting the aims already set out in multi-lateral forums such as the Barcelona Process. Indeed, lessons from the first Stability Pact for Central and Eastern Europe, as well as from the second Stability Pact for the Western Balkans, teach that the EU is most successful in promoting sub-regional cooperation once it commits itself to enhanced bilateral relations with third countries.

⁸ Stephan Keukeleire (2000), 'The EU as a Diplomatic Actor', University of Leicester, *Discussion Paper* No.71.

⁹ General Affairs Council (2004), *Press Release*, Meeting of the 14 June 2004, Brussels.

¹⁰ Private interview, Brussels, October 2004.

The new instruments and benefits of the ENP have been summarised by Commission officials as ‘all but membership’ or ‘sharing everything but institutions’. In other words, the Union would offer extremely deep forms of integration, but it would not offer membership itself and thus voting rights and representation in EU institutions. Ideas of this kind have been developing within the Commission since the 1999 Kosovo war, and have been defined by Commission President Prodi, as forms of ‘virtual membership’.

The thinking behind the ENP both conceptualises the gains on offer as ‘membership-minus’, and foresees a policy process that emulates the method of formal accession. While common rules would guide the EU’s relations with all neighbours, the approach would be bilateral, and based on the neighbours’ specific capability and willingness to move forwards. In the process of working towards European Neighbourhood Agreements, all neighbours would have an Action Plan with the EU. The Action Plans would include a selection of the different instruments and benefits on offer in the ENP. The Plans would also state the method and requirements necessary to achieve specific degrees of EU integration.

By far the most appetising carrots available in the ENP are trade liberalisation and measures preparing countries to join the EU internal market. The Action Plans would also include reinforced political dialogue, participation in EU programmes, visa facilitation, and cooperation in infrastructure, energy, information, environment, research and social policy. The ENP is also expected to include a European Neighbourhood and Partnership Instrument (ENPI). This financial instrument is intended to become operational by 2007 and supplement existing MEDA (for the Mediterranean partners) and TACIS (for the post-Soviet states) funding. The ENPI would assist harmonisation with the EU *acquis* and support cross-border cooperation between the enlarged EU and its new and old neighbours. The Instrument would promote sustainable development, border security and people-to-people contact. The assistance proposed by the Commission for 2007-2013, if approved by the Council and Parliament, could also represent an important step forward compared to present levels of funding. It is expected that while in 2007 the ENPI would amount to the sum of TACIS plus MEDA combined, by 2013 it would have risen progressively to reach double that amount.¹¹

The Action Plans would include also jointly agreed requirements that would facilitate the neighbouring countries’ receipt of these benefits. These would cover political, social, economic, legal, institutional and administrative reform priorities. These priorities would be clarified and discussed through reinforced political dialogue. They would also include the commitment by the neighbours to effective action to combat crime and illegal migration.

Following the publication of the Strategy Papers and the Country Reports for all ENP countries in March 2004, the Commission, together with the neighbours, has progressed towards the publication of the Action Plans. The first finalised Action Plan has been that for Moldova. Action Plans for Israel, Jordan, Morocco, the Palestinian Authority, Tunisia and Ukraine are expected to be concluded by the end of 2004. The next batch

¹¹ Michael Emerson (2004), *Beyond EU-25: Europe’s Existential Dilemma*. Paper Presented at the Conference of the Calouste Gulbenkian Foundation, Lisboa, 26-27 October 2004.

will include countries that are due to ratify their existing association agreements, i.e., Egypt and Lebanon, as well as the three South Caucasus countries.

The Pitfalls: A Deeper Look at the ENP

The following sections dissect the various aspects of the ENP: its incentives, its offered benefits and costs, and its possible pitfalls. In doing so, the remainder of this paper raises questions and provides a critical assessment of the initiative, drawing from the lessons of previous EU external policies towards accession and neighbouring countries and regions.

Conditionality or Partnership?

Drawing from the lessons of enlargement, the ENP aims to support long-term domestic reform, regional cooperation and peace-building in its proximity, by providing new incentives to its neighbours. Underlying the language of incentives is the logic of conditionality, i.e., a strategy whereby a reward is granted or withheld depending on the fulfilment or non-fulfilment of an attached condition.¹² Yet when it came to the ENP, the Union was faced with a dilemma.

Imposing conditionality within the accession process was natural enough. Conditionality, despite its limits and its highly intrusive nature, had been a pivotal element in the successful transformation of the eastern European countries.¹³ It was the necessary and accepted means to fulfil the goal of full accession.¹⁴ Reforms induced through conditionality were in the EU's interests. They were in the perceived interests of the candidates themselves only provided they shared the same values and causal beliefs as those prevalent in the Union.¹⁵ But irrespective of whether this was the case during the accession process, candidates were destined to join that very Union. If the reforms were in the EU's interests, they would also become in the candidates' own interests, in view of their future entry. Furthermore, given their desire to enter the EU, it was understandable enough to be required to follow all of its general principles and minute rules and procedures. The process also retained an element of democratic legitimacy. The hard choices made by domestic elites within candidate states would ultimately need approval by the people in popular referenda. Upon accession, the new members would be represented in the institutions responsible for those very laws and decisions which they themselves were called upon to adopt unilaterally prior to membership.

¹² Karen Smith (1998), 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?', *European Foreign Affairs Review*, Vol.3, pp.253-74.

¹³ Heather Grabbe (2001), 'How does Europeanisation affect CEE governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy*, Vol.8, No.6, pp.1013-1031.

¹⁴ Judy Batt, Dov Lynch, Antonio Missiroli, Martin Ortega and Dimitrios Triantaphyllou (2003), 'Partners and Neighbours: a CFSP for a Wider Europe' *Chaillot Papers*, No.64, September 2003, EUISS, Paris.

¹⁵ Marise Cremona (2004), *The European Neighbourhood Policy: Legal and Institutional Issues*, Paper Presented at a Workshop on Democracy and Rule of Law Promotion organised by Stanford University, 4-5 October 2004.

In the case of ENP countries, hardly any of the above considerations apply. Reforms induced or imposed by EU conditions would not have democratic accountability. Neither would the people be called upon to ratify the process given the absence of final membership, nor would their elected leaders be ultimately represented in EU institutions. Furthermore, particularly in the political realm, many of the reforms that are called for by EU conditionality are often viewed as existentially threatening to third countries. This is not least because many do not share the same conception of national security as that prevalent in most EU countries. Hence, why would third countries implement reforms viewed as threatening to them, albeit in the interests of EU stability, when in any event they are destined to remain outside the Union?

Despite its specificities, the case of Turkey is particularly instructive in this respect. Over the 1990s, many of the reforms called upon by EU institutions on human, cultural and minority rights were viewed by many domestic actors in Turkey as too costly and threatening to enact for the 'sake of' the EU. For example, when the civil war between the Turkish state and the separatist PKK was raging in the south-east, calls for the extension of cultural rights in line with EU standards largely went unheard by successive Turkish governments. It was only when Turkey's accession process was launched that Turkey slowly began to embark upon as a process of reform. While underlying mistrust of European attitudes and intentions has been slow to disappear, Turkey's candidacy symbolically demonstrated a European readiness to contribute, through inclusion, to Turkey's stability and security.¹⁶

Aware of the limits of strict conditionality applied beyond the accession process, EU rhetoric has emphasised other key principles in its external relations; those of interdependence, partnership and shared values. The discourse on partnership maintains that the Union shares the same values as its partners, and as such it engages in cooperative and mutually beneficial relations with them.

Yet scratching beneath the surface, ideas about partnership and shared values are far more nebulous. When it comes to the EU's relations with neighbouring states, partnership and interdependence are rarely accurate descriptions of the state of affairs. Forms of economic as well as political dependence and inequality often characterise the EU's relations with several neighbouring states. In other words, the notions of partnership and interdependence, rather than describing the EU's relations with its neighbours, seem to derive from an appreciation that strict forms of conditionality cannot or should not be applied to non-candidate countries.

The same lack of clarity exists when it comes to the notion of shared values. The idea of shared values is mentioned in the EU Constitutional Treaty. Article III-193(1) states that the Union would 'seek to develop relations and build partnerships with third countries and international, regional and global organisations which share (its) values'. However, the same Article adds that the EU's external action would be 'guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement'. As Cremona aptly points out, the Union is attempting to

¹⁶ See Nathalie Tocci (2004), 'Europeanization in Turkey: Trigger or Anchor for Reform?', *South East European Politics and Society*, forthcoming, Winter 2004.

manage and reconcile two seemingly contradictory ideas.¹⁷ If third countries already share the Union's values, what need would there be for the EU to attempt to promote these very values within third countries?

These internal contradictions have hindered effective action. The 'human rights clause', included in all association agreements between the Community and the countries of the Barcelona Process, has been an clear example of this. The human rights clause contains two components. The 'essential elements' clause establishes the norms of the Universal Declaration on Human Rights as essential elements of the agreement. Within this first clause, no obligations are specified, hinting that the parties to the agreement already share and comply with these principles.¹⁸ The second component is the non-execution clause, calling for 'appropriate measures' which 'least disturb the functioning of the agreement', in the event of a material breach of the essential elements.¹⁹ In principle, the non-execution clause could justify the partial suspension of an agreement. But in practice, no agreement, in whole or in part, has ever been suspended within the EMP.²⁰ In line with the notion of partnership and away from that of conditionality, the human rights clause has been used as a justification to raise human rights issues within political dialogue. It has also served to propose financial assistance to support political reform in the partner countries.²¹ The effectiveness of these instruments to foster democracy and human rights within the southern Mediterranean countries has been well below their potential.²²

In its early stages, the ENP contained elements of a possible use of conditionality. In November 2002, the Council stated that: 'the development of relations with the countries concerned *will, of course, depend on* their implementation of further reforms and their willingness to respect international commitments and common values on democracy, the rule of law and human rights'.²³ In April 2003, the Council called for a differentiated approach based on the bench-marking and monitoring of the effective fulfilment of reform priorities.²⁴ The 2003 Wider Europe communication, explicitly stated that : 'in *return* for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including in aligning

¹⁷ Marise Cremona (2004), *The European Neighbourhood Policy: Legal and Institutional Issues*, Paper Presented at a Workshop on Democracy and Rule of Law Promotion organised by Stanford University, 4-5 October 2004.

¹⁸ Lorand Bartels (2004), *A Legal Analysis of Human Rights Clauses in the EU's Euro-Mediterranean Association Agreements*, Paper presented at the Robert Schuman Centre for Advanced Studies, Luncheon Seminar, March 2004.

¹⁹ In all association agreements, other than in those with Israel and Tunisia, grave violations of human rights are considered a material breach of the agreement.

²⁰ Barbara Brandter and Allan Rosas (1999), 'Trade References and Human Rights', in Philip Alston (ed.), *The EU and Human Rights*, Oxford University Press, Oxford, pp.699-722.

²¹ See Eibe Riedel and Martin Will (1999), 'Human Rights Clauses in External Agreements of the EC', in Philip Alston (ed.), *The EU and Human Rights*, Oxford University Press, Oxford, pp.773-754 and Commission of the EC (2003), *Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean Partners*, COM(2003) 294, p.11; and Commission of the EC (2001), *The EU's Role in Promoting Human Rights and Democratisation in Third Countries*, COM(2001) 252, p.9.

²² Iain Byrne and Charles Shamas (2002), 'The Human Rights Implications of the MEDA Programmes' *Euro-Mediterranean Human Rights Network*, Copenhagen.

²³ General Affairs Council (2002), *Presidency Conclusions*, 18 November 2002, (my italics).

²⁴ General Affairs Council (2003), *Presidency Conclusions*, 14 April 2003.

legislation with the *acquis*, the EU's neighbourhood should benefit from the prospect of closer integration with the EU'.²⁵

However, by 2004, this approach had significantly weakened. In its Strategy paper, the Commission continued to state that the objective of the ENP would be that of strengthening the commitment to democracy, human rights, the rule of law and good neighbourly relations.²⁶ It also argued that the Action Plans would '*take into account* the extent to which these values are effectively shared'.²⁷ But the prevalent line of reasoning tilted towards the notion of partnership. The explicit (and questionable) premise of the ENP is the 'mutual commitment to common values' between the EU and its neighbours in the fields of the good governance, the rule of law and the respect for human and minority rights.²⁸ Although the Commission conceded that 'the extent to which neighbouring countries implement commitments in practice varies and there is considerable scope for improvement', it assumed that the neighbours indeed share, at least in principle, the Union's values.²⁹

The ensuing method of the ENP followed this premise. The Action Plans have been negotiated by the EU and the neighbours. Together, the two have defined a set of priorities, whose fulfilment would bring the neighbours closer to the Union. These priorities would build on the existing reform aims identified by the neighbours. The Commission made its stance on conditionality in the ENP clear: 'the EU does not seek to impose priorities or conditions on its partners...these will be defined by common consent and will thus vary from country to country'.³⁰

This approach is laudable in many respects. It is both far less patronising than strict forms of conditionality. It may also be more realistic than one in which the Union expects its turbulent neighbourhood to reach glittering standards of democracy and human rights by simply imposing conditions on it. Furthermore, this approach could yield far more positive results than one whereby the Union imposes independent conditions, with little domestic resonance within third countries, and thus little chance of contributing to long-run substantive change there.³¹

However, as the practice from the Euro-Mediterranean Partnership teaches, vague statements about shared political values without clear enforcement mechanisms could amount to little more than a set of lofty ideals. Without clear rules for how violations could be punished and progressive change rewarded, the likely inaction of the EU

²⁵ Commission of the EC (2003), *Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, (COM(2003) 104 Final) (my italics).

²⁶ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final), p.13.

²⁷ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final), p.3, (my italics).

²⁸ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final), p.3.

²⁹ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final), p.12.

³⁰ Commission of the EC (2004), Communication from the Commission to the Council *European Neighbourhood Policy Strategy Paper*, (COM(2004) 373 final), p.8.

³¹ Gwen Sasse (2004), 'EU Conditionality and Minority Rights in Central and Eastern Europe', *Conference Paper Nations and Minority Problems in Europe*, EUI, 6-7 May 2004.

would at best result in a diplomatic forum whose language is far removed from realities on the ground. At worst it could damage the Union's credibility in these regions.

The benefits on offer and the costs of compliance

The decision on whether to engage in conditionality or to emphasise exclusively the notion of partnership depends pivotally on the benefits on offer and the costs of compliance with ENP obligations. Only if the potential gains relative to the costs are perceived to be sufficiently high, could the Union, if it so wishes, meaningfully attempt to exert some form of influence on its neighbours through conditionality.³²

The Commission has been clear in stating that there are currently no membership prospects for the neighbours. As put by Commissioner Verheugen: 'let me be clear once more that our Neighbourhood Policy is distinct from enlargement. It neither prepares for enlargement, nor rules it out at some future point...'.³³ The forthcoming institutional set-up follows this logic. The ENP countries, while initially being dealt with also by Enlargement Commissioner Verheugen, will be transferred entirely to DG External Relations. The Western Balkans instead, excluded from the ENP in view of their membership prospects, will be moved from DG External Relations to DG Enlargement, joining Turkey, Romania and Bulgaria there. By shifting the Western Balkans to DG Enlargement while allotting the neighbours to DG External Relations, the Commission has effectively drawn (for the foreseeable future) the final frontiers of the EU. The geographical scope of the ENP reinforces this point. By grouping together Moldova and the Ukraine, with the southern Mediterranean countries that have no prospect of joining the Union, the Union has sent out clear signals concerning the end-point of the ENP.

When it comes to the Mediterranean, this is not necessarily a problem. Apart from the 1987 Moroccan application for membership and minority voices in Israel calling for full EU accession, no southern Mediterranean country realistically aspires to enter the Union. The same can be said for Russia and Belarus. For the time being, the South Caucasus countries, while aspiring to membership in principle, are aware that time is not ripe, and are content with their long-sought inclusion in the ENP.

However when it comes to Moldova and the Ukraine, denying outright the prospect of membership, while having the benefit of lowering expectations there, acts in itself as a major disincentive. No matter how valuable the ENP instruments may be, to the extent to which they are viewed as a second-class substitute to full membership, they are not appreciated by the Neighbours. The same has been true in the past also for Turkey. Irrespective of the 1996 customs union and whatever form of special partnership Turkey-sceptics in Europe may offer, anything short of full accession would not be viewed as a desirable alternative in Ankara. In other words, the carrots on offer may be extremely appetizing in theory. But some, simply do not eat carrots.

³² See F.Schimmelfennig, S.Engert and H.Knobel (2002), 'Costs, Commitment and Compliance', *EUI Working Paper Series*, May 2002, Florence.

³³ Commissioner Verheugen's speech at the Prime Ministerial Conference of the Vilnius and Visegrad Democracies, Bratislava, 19 March 2004, (SPEECH/04/141).

In its early days, the architects of the neighbourhood policy seemed to appreciate the importance of fudging the question of EU inclusion versus exclusion. In their joint letter in August 2002, Commissioner Patten and High Representative Solana argued against 'closing any options for the more distant future'.³⁴ In his speech on 6 December 2002, Commission President Prodi stated that the neighbourhood policy would not start with the promise of membership but would not exclude eventual membership either.³⁵ The mixed institutional-set up in 2002-2004, reinforced this point. The ENP was dealt with by a Task Force which responded directly to Enlargement Commissioner Verheugen, but which was led by the Deputy Director General of DG External Relations. These statements and facts, exemplifying typical EU 'constructive ambiguity' may have been to the detriment of clarity and transparency vis-à-vis the neighbours. However, they had the value of raising the appeal of the initiative to countries that ultimately aspire to accession.

But even in the case of neighbours with no intention to join the Union, the ENP may face the limits deriving from insufficiently valuable gains. In the case of Belarus, President Lukashenko does not appear interested in establishing closer ties with Brussels. His foreign policy remains firmly anchored to Russia, on which Belarus is highly dependent. Given the status quo, the Commission has opted to keep Belarus on hold, stating that while theoretically included, it could only participate in the ENP in practice following a political and policy change in Minsk. In the case of Russia, Moscow has already made its underlying lack of interest in the ENP explicit. Rather than negotiating an Action Plan with the Commission that would mention a whole array of domestic reform priorities, Moscow is happier to pursue the agenda outlined at the 2003 St Petersburg Summit (which included four spaces for cooperation covering cross-border crime, terrorism, WMD and crisis management/conflict prevention). At most Russia seems willing to benefit from the future Neighbourhood Instrument .

In the case of all other countries, the Commission has set out a long list of potential benefits on offer. It has also explained that each individual Action Plan would carefully select the precise mix of instruments to be deployed in each neighbour. In principle this could be an important addition to strictly multi-lateral initiatives.³⁶ Rather than a crude one-size-fits-all approach, each Action Plan would include the precise mix that would be most valuable to each neighbour.

Yet several questions arise when delving deeper behind these promises. Some countries already enjoy many of the benefits on offer in the ENP. Israel for example, through its current association agreement, already enjoys visa-free access to the EU and trade liberalisation in industrial and most agricultural products, it participates EU research programmes and since June 2004 it has been included in Galileo, the EU's satellite and radio navigation programme. As discussed below, the Draft Action Plan with Israel foresees a long list of measures to strength and deepen the relationship further.

³⁴ See the joint letter by Chris Patten and Javier Solana (2002), 'Wider Europe', on 7 August 2002, on www.cec.eu.int

³⁵ Quoted in William Wallace (2003), *Looking after the Neighbourhood: Responsibilities for EU-25*, Policy Papers No.4, July 2003, www.notre-europe.asso.fr

³⁶ See the joint letter by Chris Patten and Javier Solana (2002), 'Wider Europe', on 7 August 2002, on www.cec.eu.int

However, it remains doubtful whether, in the light of the existing highly integrated relationship, the additional benefits on offer would be sufficiently valuable for the EU to gain significantly more political influence on the country.

Other countries of the south and the south-east would value highly the liberalisation of the four freedoms, and in particular the free movement of persons and visa facilitation into the EU. When it comes to the Middle East and the Caucasus, the problem of access to Europe is being exacerbated by candidate Turkey's adoption of the Schengen *acquis*. Since the Özal era in the late 1980s, Turkey has maintained an exceptional degree of openness towards its neighbours, from both the former Soviet Union and from the Middle East.³⁷ This openness has yielded important benefits to all parties, including large movements of tourists, traders, business people and students. The 'sticker' visa system that Turkey currently applies to most Middle Eastern and Eurasian states is expected to terminate by the end of 2004, as Turkey strives to comply with JHA laws and regulations. The negative exclusion effects this would entail, has rendered the openness of the EU as a whole an even more pressing desire for the south-eastern neighbours.

Yet it seems highly unlikely that the Union would be willing to extend these internal market freedoms to the south and the south-east. The fear of terrorism, smuggling and organised crime, illegal migration and the wider spill over effects of chaos and instability has induced most Europeans, leaders and publics alike, to retain a 'fortress Europe' mentality when it comes to the south. The member states have already clarified that at most the ENP could offer three of the 'four freedoms' (i.e., excluding the free movement of persons). It is also highly debatable that the Union would consider a full liberalisation of its protectionist agriculture market to the south. It thus remains unclear what would be the precise value added of the ENP relative to the current association agreements that many of these countries enjoy, which remain largely under-exploited.

The EU would be more willing to consider visa facilitation and trade liberalisation when it comes to Moldova and the Ukraine. EU actors now appreciate the need to avoid new dividing lines to the east. The problems that have been created by the imposition of the Schengen *acquis* to border movements between Poland and the Ukraine (which reduced crossings by a factor of 7), or to the question of Kaliningrad, have softened the Union's call for a rigid application of the Schengen system there. The agreement between the EU and Russia for a facilitated transit from Kaliningrad to the rest of Russia, or the current development of the L-type visas, facilitating local border traffic on the EU's eastern land frontiers are welcome steps of this slow realisation.³⁸ The concept of the ENP itself also derives from this realisation. Hence, 'maze Europe', rather than 'fortress Europe', may well come to characterise the Union's eastern borders.³⁹

Moldova and the Ukraine, whose relationship with the EU is based on the highly constrained Partnership and Cooperation Agreements, could certainly benefit from

³⁷ On this see Michel Emerson and Nathalie Tocci (2004), *Turkey as Bridgehead and Spearhead: Integrating EU and Turkish Foreign Policy*, CEPS, Brussels, www.ceps.be

³⁸ The European Commission has recently proposed special measures (L-type visas) for local border traffic for residents living within 50 kilometres of the EU's external borders.

³⁹ Jan Zielonka (ed.) (2002), 'Introduction', *Europe Unbound*, Routledge, London, p.13.

upgraded contractual ties with the EU. For these two countries, visa facilitation and other forms of inclusion in the single market would be certainly welcome developments. For example, to date, Moldovans wishing to travel to Brussels and thus obtain a Schengen visa, have to travel several times to Bucharest, given that Belgium has no consulate in Chisinau.⁴⁰ However, irrespective of the important benefits derived from future visa facilitation and other forms of inclusion, the ENP would remain far below these two countries' ultimate aspiration to full membership. To them, while joining the EU is perceived as highly valuable, joining the neighbourhood, irrespective of its gains, is simply not.

Finally, is the cost of compliance with the provisions of the ENP. The Policy offers a 'stake in the single market' to the neighbours. Yet it remains unclear whether this would be a benefit or a cost. A stake in the single market would entail the costly harmonisation with the thousands of pages of minute laws, rules and regulations of the *acquis communautaire*. In areas such as Justice and Home Affairs, *acquis* harmonisation would also be a politically (as well as administratively and financially) costly affair, given this often entails hindering free access to kin-communities in neighbouring states. Furthermore, harmonisation would not culminate in accession and thus with the voting rights and representation in EU institutions. As such, without significant financial and technical EU support, it appears unlikely that most neighbouring countries would have both the administrative capability and the political will to engage in this arduous legal and administrative revolution. Moreover, given that the prospect of accession is excluded, it remains unclear whether the 'europeanization' of the neighbourhood ought to take this precise 'EUization' form. It is doubtful whether supporting the overall modernisation and democratisation of the neighbourhood should come with an imposition of the binding and detailed *acquis*, if accession is excluded from these countries' political horizon.

The danger of political discretion

An effective neighbourhood policy would necessitate the automatic entitlement to rights when obligations and identified priorities are fulfilled and the automatic withdrawal of benefits when they are not. Yet such automaticity is never present in practice. Beyond the contract lie the political imperatives of EU actors. The eastern enlargement occurred despite the fact that some conditions were not fulfilled. The importance of the fifth enlargement went way beyond the minutia of compliance with the *acquis communautaire*. The same is true for the withdrawal of a benefit. Suspending EMP association agreements would eliminate the contractual links between the EU and Mediterranean states, and thus reduce both the gains the Union derives from these countries and the potential source of influence on them.

Some degree of political discretion in bilateral relations is inevitable. However, when blatant violations persist without consequences or when benefits are not granted despite the general fulfilment of contractual obligations, then the EU's own credibility is harmed. When other conditions unspecified in the contract govern the Union's relations with third states, then EU policy loses its effectiveness.

⁴⁰ Michael Emerson (2004), *Beyond EU-25: Europe's Existential Dilemma*, Paper Presented at the Conference of the Calouste Gulbenkian Foundation, Lisboa, 26-27 October 2004.

The dangers of political discretion exist with each and every neighbour. However, the danger rises when the country in question has influence over and can exert forms of pressure on the Union. The case of EU-Israel relations is particularly important in this respect. The EU-Israel contractual relationship in the form of the association agreement is already highly developed. The parties are also considering whether, how and when to extend the agreement to allow for the free movement of services, the freedom of establishment as well as the pan-European cumulation of the rules of origin through an amendment of the Protocol on Origin in Israel's Association Agreement.

Israel is also included in the ENP. Despite the current mood of euro-scepticism prevalent in Israel, most Israeli policy-makers have greeted the ENP with enthusiasm. The ENP potentially offers two principal advantages. First, it offers the scope for greater forms of economic integration into the EU. Hence, the scope for progress on the free movement of persons, the liberalisation of services, as well as greater cooperation in research, investment promotion, education, energy, transport and communications. The second and arguably more important advantage to Israel is political. For the first time since the 1994 Essen European Council, the EU, through the neighbourhood policy, would promote the notion of bilateralism and differentiation over multilateralism and regional cooperation. Although, this runs counter to the EU notion that the ENP would enhance the multilateral Barcelona Process, the former is viewed in Israel as the means to escape (*de facto* rather than *de jure*) the latter (in which Israel is surrounded by Arab countries).

These Israeli preferences are understandable. Yet the risks of proceeding on this track, from a European perspective, are two-fold. First, is the question of Europe's political message. Irrespective of the (largely inconsequential and exclusively declaratory) condemnations of Israel's human rights and international law violations, the EU is concurrently proceeding with a substantially more integrated relationship with Israel. The Commission worked towards the finalisation of the Israel Action Plan in Brussels the same week as the Council of Ministers in Luxembourg strongly condemned the Israeli incursions in Gaza in October 2004.⁴¹ While the EU is reluctant to sanction any state (and not only Israel), the additional non-conditional extension of benefits to a country the EU harshly condemns in its declaratory diplomacy is paradoxical, and thus harmful to the EU's credibility, to say the least.

Second, are the legal repercussions to the EU of extending additional benefits to Israel. To date, EU actors have been aware but have failed to rectify Israel's material breach of its Association Agreement. The breach has derived from fact that Israel has applied its preferential trade agreements with the Community to the territories it has occupied since 1967, as if they were part of its own national customs territory. Importing under preferences products certified by Israel but made in occupied territories (i.e., in settlements) violates Community Law. Aware of this problem, the Union informed Israeli authorities that pending a solution to this problem, it would be unable to amend the Protocol on Origin of Israel's Association Agreement to allow for pan-European

⁴¹ Negotiations over the Action Plan with Israel were stalled in October 2004 because of disagreements over the precise references to the Middle East Peace Process and weapons proliferation in the political dialogue section of the Plan.

cumulation.⁴² In order to rectify this problem without antagonising Israel, the Commission has sought a 'technical arrangement'. The arrangement would lighten the administrative burdens on the customs authorities of both sides while Israel's malpractice continues. Indeed, the arrangement does not require Israel to end its malpractice. As such, accepting the arrangement and proceeding with pan-European cumulation would entail that Community Law would have entitled Israel to continue to apply its current and future preferential trade relations to the occupied territories. In turn, EC Law would become in contradiction with the obligations of the member states enshrined in the 4th Geneva Convention and in the July 2004 ICJ Advisory Opinion. EU Law and practice would also become incompatible with the stated objectives of the ENP and the Security Strategy concerning the relevance of international law for conflict resolution in the Middle East.

Conclusions

In principle, the ENP could offer an important response to challenges stemming from the EU's troubled neighbourhood. Based on the awareness that enlargement cannot continue indefinitely and that accession proved to be the most tangible success of European foreign policy, the architects of the ENP have been drawing key lessons from past EU experiences. They have been seeking alternative carrots to that of full membership, which could be sufficiently valuable both to allow for deeper levels of European integration and to induce progressive reform within the neighbourhood.

The ENP could also serve to rectify an important structural defect which has afflicted the enlargement process, i.e., that of 'time inconsistency'.⁴³ This has two important aspects. First, is the disincentive to reform in the short-term. Within the accession process, expected reforms are demanded in the short and medium run, but the actual delivery of the benefit (membership) occurs in the long run. Yet long-term benefits are valued less than short-term ones. The unpredictability of the long term reduces the value of the carrot and in turn the potential incentives for reform. Time inconsistency may also induce domestic policy-makers to delay reforms until the delivery of the benefit is closer. This is true particularly when reforms are viewed as risky or costly. Second, separating the question of long-term membership from the gains of integration could serve to address the immediate challenges that arise from the creation of new dividing lines in Europe. The ENP could rectify to some extent these problems, in so far as the benefits on offer, being far more varied and graduated than the ultimate carrot of membership, could be delivered gradually over time.

However, the ENP, in its current form has been absorbing several of the defects which have affected past EU initiatives, from the enlargement process to the Euro-Mediterranean Partnership. More systematic thinking about the incentives, the benefits

⁴² The EU's Declaration at the Fourth EU-Israel Association Council of 17-18 November 2003 stated that: '(t)he EU stresses the importance of solving the bilateral issue of rules of origin before the origin protocol is amended'.

⁴³ See Germana Noutcheva and Nathalie Tocci (2004), 'Europeanization and Secessionist Conflicts: Concepts and Theories', in B.Coppieters, M.Emerson et. al. *Europeanization and Conflict Resolution*, (Academia Press, Gent), pp.13-62. p.43.

and the costs on offer, and the potential dangers of political discretion would be desirable at this early stage. It would allow the ENP to maximise its potential value. Greater clarity concerning the institutional set-up and rationale of the initiative would also be important. However in the light of the EU Constitutional Treaty, definite answers at this stage would be hard to give.

The initiative sprung from the Council in April 2002. Over the course of 2002-03 it was taken over by the Commission, not least because the policy instruments under consideration fell under the Commission's competence (essentially pillar one instruments). The Commission, through its Delegations in the neighbourhood countries, also has the main source of expertise to collect information for the Country Reports and Action Plans. Within the Commission, the ENP has been dealt with both by DG External Relations and by DG Enlargement. In the summer of 2004, ideas were floated concerning the possible establishment of a 'DG Europe', which would both cover the remaining accession countries as well as the non-accession ENP countries. The logic behind this idea was that the ENP, while distinct from the accession process, relied in part on its methodology, and thus Commission expertise in this field could be valuable.

In his nomination of the new Commission, forthcoming Commission President Barroso discarded the idea, and opted to retain two separate DGs, where all current and future candidates would be dealt with by Enlargement, and all ENP plus other third states would be dealt with by External Relations. This choice certainly has the benefit of clarity concerning who is and is expected to be 'in' and who is destined to remain 'out'. As such it contributes to a healthy reassessment of external expectations.

However the decision could have two principal draw-backs. First it could act as a disincentive to neighbours with clear aspirations to long-term membership. Second, it would weaken the positive analogies and lessons derived from the accession process. These problems could exacerbate if, following the (uncertain) ratification of the Constitutional Treaty, the ENP would be transferred under the competence of the EU Foreign Minister.

Yet others argue, and part of this analysis vindicates, that the choice would not fundamentally alter the policy realities that are being set up. There seems to be little point for the ENP to rely excessively on the logic of enlargement if the prospect of membership is definitely denied. It would also appear meaningless for the Union to attempt to exert influence for reform within the ENP, if EU actors are not truly willing to offer sufficiently valuable gains to the neighbours. And if reform priorities are only due to be discussed within diplomatic forums for political dialogue, then the political leadership of the ENP may as well pass on to the Council. Yet the value added of the Policy could be well below its potential. And this would be a lost opportunity for an initiative which holds the promise of becoming one of the next major elements in the EU foreign policy agenda.