Introduction*

THE EUROPEAN NEIGHBOURHOOD Policy (ENP) was initiated in 2003 by the European Union (EU) in search of an international identity. The circumstances surrounding the launch of the policy were complex and multifaceted. The EU made a pledge to boost its economic might by becoming ‘the most dynamic knowledge-based economy’ by 2010 and launching a single currency on its path towards a monetary union.1 Externally, the European continent and its vicinity were about to change irreversibly through the unification of Europe. On an unprecedented scale, the EU was to welcome ten new Member States in 2004, with Bulgaria and Romania expected to join in 2007. The Union was preparing to turn into an actor with a ‘continental scale of operation’.2

Proclaiming itself a ‘success story’ in the Laeken Declaration, the EU sought a new role for itself not only on the continent but in the globalised world, acting within its own ‘moral framework’.3 Traditionally the preconditions for the EU international ‘actorness’ were set in its economic might and prosperity, attracting foreign partners and according the EU with a power of transformation. It is this very logic that laid the foundations of the ENP.

It is said that foreign policy decisions ‘can be understood, predicted, and manipulated only in so far as the factors influencing the decisions can be identified and isolated’.4 The EU foreign policy making has been perceived to be reactive to outside events, often attracting criticism.5 While this in part explains the genesis of the ENP, it nevertheless falls short of acknowledging the internal rationale for policy formation.

The internal rationale is embodied in the ‘environmental’ – in this case geographic – factors linked to the expansion of the EU. The anticipated 2004 round of enlargement would create a new physical proximity between the EU and the former

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* The book represents the state of affairs as of 1 July 2013.
1 Laeken European Council Conclusions, 14–15 December 2001, Laeken Declaration.
3 Laeken European Council, note 1 above, 19.
6 Wolfers, note 4 above, 39–43.
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Soviet Republics, which would become an inalienable element of its foreign policy. The internal rationale thus primarily concerned the ‘European’ neighbours of the EU, namely Russia, Belarus, Ukraine and Moldova. Some of these states had European aspirations, which the Union was neither willing nor able to reciprocate at that stage. The failed ratification of the Draft Constitutional Treaty halted further constitutional development of the EU, which had yet to determine its finalité politique. While the queue for membership already included a number of hopeful states, further ‘deepening’ was needed in terms of adapting the EU institutions and policy making, raising the issue of its ‘absorption capacity’. The Union was suffering from so-called ‘enlargement fatigue’.

Despite the suggestions for the enlargement to be crafted as a ‘bridge building’ to the former Soviet Union states, it created a new dividing line with hard borders and differences across those borders. The necessity of bridging this gap was

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acknowledged by the Commission in 2001 with the concept of ‘proximity’. Some, though, argue that the idea of close relations with neighbours dates back in time to the 1997 enlargement momentum and the parallel conclusion of the Partnership and Cooperation Agreements (PCA) with the former Soviet Republics and the establishment of the Barcelona Process with the Southern partners in 1995.

To bridge the gap the ENP was devised as a means to solve the ‘inclusion-exclusion’ dilemma of the EU. Membership-like, it was to exclude accession while promising close political and economic cooperation with those neighbours ineligible for EU membership and those whose membership prospects the EU was not prepared to consider.

Although the exclusionary rationale of the policy was directed at the Eastern neighbourhood, the Southern neighbourhood was also incorporated at the insistence of certain Member States. It therefore transformed the concept of ‘European’ neighbourhood into a ‘EUropean’ one, leading to an awkward geographic and political amalgamation. Unlike the Southern neighbours involved in the multilateral Barcelona Process, the Eastern neighbours were engaged in bilateral relations via the PCAs. Besides, the Southern dimension was based on a more beneficial bilateral framework through association agreements instead.


15 Smith, note 10 above, 757–58; Cremona, note 14 above, 243.

16 Wider Europe Communication, 5.


19 Euro–Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People’s Democratic Republic of Algeria, of the other part [2005] OJ L265; Euro–Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part [2004] OJ L304; Euro–Mediterranean Agreement establishing an Association between
neighbours, including Ukraine, Moldova, Belarus and the South Caucasian Republics in the East, and Israel, the Occupied Palestinian Territories, Jordan, Syria, Lebanon, Libya, Tunisia, Morocco and Egypt have become the ENP addressees, with an opt-out from Russia. A few years later, with the enterprise of certain proactive Member States, a regional split occurred in the EU policies towards the neighbourhood, introducing the Eastern Partnership (hereinafter the EaP) in the East and a somewhat revamped Union for the Mediterranean (hereinafter the UfM) in the South.

The external rationale for the development of the ENP is closely linked to the wider security challenges facing the EU from the beginning of the millennium. Global security threats, such as international terrorism associated with the 9/11 attacks, and the EU’s inability to react to external events due to Member States’ divergences, apparent in the Iraq crisis, required the elaboration of a comprehensive security strategy for the Union. The 2003 European Security Strategy (ESS) envisaged the EU’s role in tackling global security threats but, most importantly, emphasised the significance of ‘geography’ in this task.

The presence of frozen conflicts in the East, as well as the Arab–Israeli conflict continuously threatening the peace in the Middle East, in themselves justify the prioritisation of security issues in the neighbourhood. Most recently, the Arab

the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2002] OJ L129; Euro–Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part [2000] OJ L147; Euro–Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part [2000] OJ L070; Euro–Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part [1998] OJ L97.


Ibid 7–8.
Spring revolutions have illustrated the interlinked relationship between the stability of the EU and the events in its neighbourhood. The overthrowing of the ruling regimes in Tunisia, Libya and Egypt not only led to increased risks of illegal migration, arms proliferation, and even military intervention by EU Member States, but also placed question marks over the very nature of the EU’s engagement in the South. Thus, the security rationale of the ENP is ever present, and the neighbourhood cannot be ignored.

These internal and external determinants were to have an irrevocable impact on the legal nature of the ENP and the role of the EU democratic values within the latter.

1.1 AIMS AND APPROACHES

As a political instrument, the ENP is a fusion of wide-ranging objectives, policies and instruments. Its ambition and vast content immediately attracted much attention.

One of the distinctive approaches in the studies on the ENP has been the regional contextualisation of the policy. A prominent line of research has been the study of the ENP mechanisms, instruments and objectives with reference to the enlargement experience. Others have explored the security dimension of the policy. Legal scholars analysed inter alia the role of the ENP in EU external relations law, its legal instruments and mechanisms.

The discussion that follows is set to contribute to the debate on the legal aspects of the ENP. The analysis offered aims in particular at linking the legal aspects of the ENP with the discourse on democracy promotion by the EU. The latter has become a prominent line of research in EU external relations. Although initially the human rights discourse dominated the literature, a much wider approach based on the ethical aspects and value dimension of EU foreign policy has emerged.
in recent years.\textsuperscript{30} The ENP occupies a special place in this discourse due to the apparent prominence of democracy promotion on its agenda. The transformationist rationale associated with the export of EU values was injected into the ENP from the start on the high wave of the EU’s ‘political and moral weight’ to promote democracy abroad.\textsuperscript{31}

However, this raises another ‘capability–expectations gap’: can the ENP uphold democracy, as an EU value, in its neighbourhood? Besides, what is to be understood as ‘democracy’ that is being promoted on the ENP territory? Although the Commission justifies the EU’s standing to promote democracy on the basis of its Member States being democracies,\textsuperscript{33} it cannot possibly promote their model of democracy, as no single or common model can be discerned. It is rather an ‘EU’ concept of democratic values that lays the foundations for democracy promotion within the ENP. This concept can be revealed with reference to the constitutional development of the EU, allowing the distillation of those features of its governance that can credibly be called ‘values’.

It is in this light that the study also necessitates the analysis of the enlargement practices. First, the accession of Central and Eastern European (CEE) states is perceived to be one of the most successful foreign policy actions of the EU in achieving political and economic transformation in third states, despite general scepticism regarding \textit{ab extra} democracy imposition. Moreover, the ENP has been devised predominantly on the basis of the pre-accession instruments and methodology, including the conditionality principle. It is therefore considered that the enlargement and the ENP policies ‘can be treated within the same brackets’ as regards democracy promotion.\textsuperscript{34} The comparison between the legal aspects of the ENP and the enlargement policy therefore contributes to the identification of the prominence of democracy promotion within the ENP.

The proclamation of the objective to promote democracy abroad in the revised Treaties, as well as the prominence of the discourse on ‘values’ in the ENP documents compel an investigation into the EU’s ‘normative’ identity. As a foreign policy instrument, the ENP and its elements are at a crossroads between the disciplines


\textsuperscript{34} Cardwell, note 30 above, 32.
of international relations and external relations law of the EU. To understand the ENP and in particular the role of the democratic values therein, one needs to creep into the realm of international relations theory. Mere reliance on legal studies carries the risk of omitting the comprehensive picture of the ENP: the identification of the EU’s nature as a political actor provides the background against which to analyse the role of the democratic values in the ENP legal framework.

In a departure from rationalist approaches, both realist and liberal, with their focus on exogenous factors such as interests and self-interest detached from social structures,\(^35\) constructivists suggest that social structures influence actions. According to Wendt, identities formed by agents in their socialisation predetermine the subsequent action.\(^36\) As opposed to rationalist perspective, it is the ‘logic of appropriateness’ which is the driving force behind the action predetermined by established identity.\(^37\) Identity, ideas, norms and values are the concepts most frequently used within this approach. Constructivist accounts of the EU foreign policy have been explored by various scholars,\(^38\) based on a presumption of shared identity and understanding stemming from certain values as a basis for a collective action aimed at transformation.\(^39\) These include the ‘civilian power’ of Duchêne with the characterisation of the then European Community (EC) as ‘a force for the international diffusion of civilian and democratic standards’ which achieves foreign policy objectives via economic means.\(^40\) Where the first element of this conceptualisation acquired centrality in analysing the EU foreign policy subsequently,\(^41\) others brought the focus back to the second, normative element of Duchêne’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, ie for the promotion of civilian values.\(^42\)


\(^37\) Sedelmeier, note 35 above, 18.


\(^39\) Tonra, note 38 above, 741, 747.


The most recent identity-based understanding of the EU has been the ‘normative power’ of Manners. Accordingly, the unique normative basis of the EU is ‘diffused’ in its international relations, predisposing the latter to act ‘normatively’. This normative basis comprises norms defining the EU’s identity, including democracy and human rights. The norms not only influence the foreign policy, but they become the very constituents of it. The promotion of democracy and human rights are considered to be ‘identity objectives’ for the EU, manifesting its value-driven power as opposed to other actors on the international scene. It has been noted that the EU’s ‘self-representation’ – even on a rhetorical level – can be ‘performative’, which, given necessary structural context, can contribute to the formulation of identity of relevant actors. Furthermore, it is also considered to be a factor enhancing the EU’s identity and its values internally in reference to its ‘democratic deficit’ debate.

However, the identification of the EU in constructivist terms does not ultimately dismiss the rationalist accounts of its foreign policy action. According to Diez, no facile distinction can be discerned between norms and strategic interests: there is no normative existence without accompanying interests. Hence, the general debate between rationalists and constructivists in international relations theory has been reflected in EU studies. 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. 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. Most importantly, the presence of multiple policymakers increases scepticism as to the possibility of


46 Youngs, note 44 above, 415, 419.


formulating a single presumption of the EU’s identity and upholding it with equal intensity.\footnote{Sedelmeier, note 35 above, 36.}

Thus, the legal analysis of the ENP will be grounded on the definition of the EU in the following terms: it is an actor whose identity requires it to act ‘normatively’ in its external action, which nevertheless is not devoid of rationalist motivations.

1.2 STRUCTURE

The book is structured as follows. Chapter 2 considers the role of democracy promotion within the external relations agenda of the EU, and within the ENP framework in particular. It analyses the objectives of the foreign policy of the EU as established in the Treaties. The ENP-specific objectives are discussed to reveal the focus or lack of it on the promotion of democratic values in the neighbourhood.

Chapter 3 analyses substantive legal issues arising in relation to the ENP. It first refers to the institutional arrangements of policy initiation and formation and the subsequent impact of the Lisbon Treaty on those arrangements. Matters related to legal competence in EU external relations law as applied to the ENP contribute to the discussion in the next part of the chapter. Further, the instruments and methods of the policy are considered with a view to determining their appropriateness for promoting the democratic values of the EU. The EaP, as a regional dimension of the ENP affecting the Eastern neighbours, is analysed to identify the impact it has had on the legal aspects of the policy and the democracy promotion within it. The discussion of the EaP as opposed to the Union for the Mediterranean is dictated by the choice of the case study identified below.

To trace the role of EU democratic values within the implementation of the ENP, Chapter 4 identifies those values with reference to EU constitutional evolution as legalised in the provisions of the Lisbon Treaty. The practice of the 2004 and 2007 accession rounds is reflected upon as a precedent of promoting democratic values, on which the ENP heavily draws.

Chapters 5 and 6 are dedicated to the ENP implementation process in Georgia, Armenia and Azerbaijan and comprise the case study chosen. Constituting the so-called region of the South Caucasus the three countries were latecomers to the ENP. The first phase of EU relations with the three states via the establishment of almost identical PCAs was part of a more general approach towards the former Soviet Union states, itself a regional category for the EU.\footnote{D 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, 179.} This so-called ‘1990s style’ approach\footnote{N Popescu, ‘Europe’s Unrecognised Neighbours: The EU in Abkhazia and South Ossetia’, CEPS Working Document No 260, 2007, 4.} was marked by a lack of a coordinated policy, and a reluctance to become involved in the South Caucasian conflicts.\footnote{N Ghazaryan, ‘The ENP and the South Caucasus: Meeting Expectations?’ in R Whitman and S Wolff (eds), The European Neighbourhood Policy in Perspective (Basingstoke, Palgrave, 2010) 223–46,}
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A shift in the relationship between the EU and the three states occurred at the beginning of the new millennium with a view to contributing towards conflict prevention and post-conflict rehabilitation. This eagerness was translated into a number of ad hoc Common Foreign and Security Policy (CFSP) initiatives in Georgia, as well as the appointment of a Special Representative for the South Caucasus in 2003. The initial omission of the South Caucasian states from the list of the ENP addressees, therefore, came as a counter-trend. Due to the importance accorded to the region in the ESS, the ‘Rose Revolution’ in Georgia, and the inter-institutional stance taken by the European Parliament (EP), the Commission and the High Representative for CFSP, the three states were included within the list of the ENP addressees in 2004.

The interests of the EU in the region, where Azerbaijan is a significant exporter of oil and gas, while Georgia and Armenia can secure an alternative transit route, are closely linked to the pressure of diversifying its energy supplies. The Baku-Tbilisi-Ceyhan and the Baku-Tbilisi-Erzurum pipelines for oil and gas secured Georgian–Azerbaijani cooperation, but left Armenia isolated due to its problematic relations with Azerbaijan and Turkey. This suggests that security understood in broad terms occupies a prominent role in the politics of the EU in the


57 European Security Strategy Paper, 8.
59 Council Conclusions, General Affairs and External Relations, 14 June 2004, para 12.
region. Moreover, the presence of unresolved conflicts in Nagorno-Karabakh, South Ossetia and Abkhazia also support the presumption that rationalist considerations cannot be dismissed, particularly in a region prone to influences from other international actors.

The choice of the case study is conditioned also by the continuous political transition in the three states. Although according to their national constitutions they have embraced liberal democracy as a political model, supported by membership of international organisations, none has succeeded in realising a full transition to a liberal democratic regime, while Azerbaijan is also characterised by authoritarian features.

Within this context, Chapters 5 and 6 are aimed at revealing the consistency of the EU’s self-representation as a normative actor. The two chapters trace the operative elements of the policy implementation, that is the Action Plans setting the main parameters of cooperation, the monitoring and assistance provided. Chapter 5 focuses on the Action Plans established with each of the countries in comparative perspective, while Chapter 6 discusses the role of democratic values with a focus on monitoring of progress and financial assistance provided.

Finally, Chapter 7 summarises the main findings of the book.

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62 The conflict erupted over the status of the largely Armenian-populated autonomous oblast in Azerbaijan at the end of 1980s. Full-scale military activities intensified after the break-up of the Soviet Union. A ceasefire was signed in May 1994 with the efforts of the OSCE. Negotiations over the conflict settlement are pursued within the OSCE Minsk Group.


64 On the role of the US, Russia and Turkey, see South Caucasus: 20 Years of Independence, note 54 above, 241–98.
