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**One Size Fits All!**  
**EU Policies for the Promotion of Human Rights, Democracy and the  
Rule of Law**

by

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## 1. Introduction

With the end of the Cold War, democracy promotion has been mainstreamed into the development strategies of international organizations such as the UN or the World Bank, but also of individual Western states such as the United States, or the Federal Republic of Germany.<sup>1</sup> The European Union (EU) is no exception. In fact, the EU has been among the first of any Western state or international organization to write human rights, democracy, and the rule of law into its agreements with external partners. The Lomé IV agreement of 1989 between the EU and the so-called ACP countries (African, Caribbean, and Pacific Group, mostly former colonies of Great Britain, France, and Belgium) was the first multilateral development agreement to include political conditionality. Ten years later, in 1999, the EU adopted the European Initiative for Democracy and Human Rights (EIDHR) regulations (975 and 976/1999) as a comprehensive strategy “in support of democratisation, the strengthening of the rule of law and the development of a pluralist and democratic civil society” (EIDHR 976/1999, preamble). Democracy promotion has become a centrepiece of the EU’s foreign policy and it is backed up by considerable financial and personal resources.

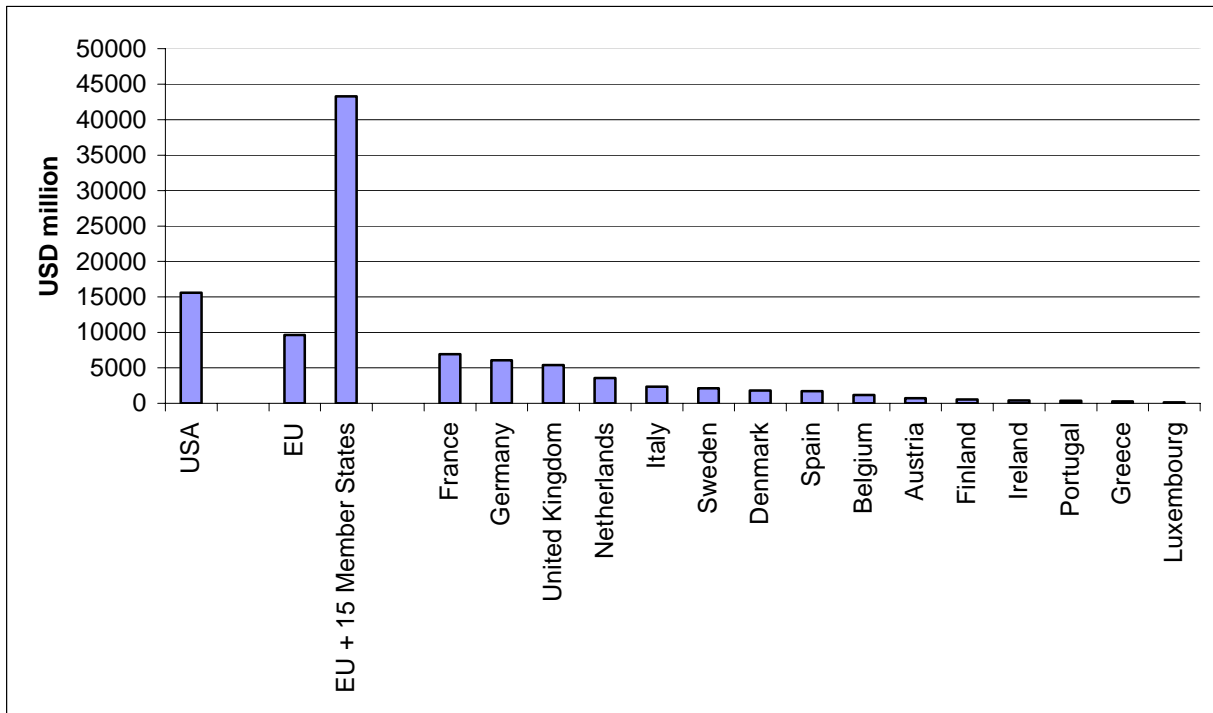
Just to give a rough idea: the EU foreign aid managed by the EU Commission represents 12% of all international financial aid. Combined with foreign aid by individual member states, the EU and its member states account for more than 55% of all financial aid worldwide (according to Petiteville 2003, 138, fn.7). While precise data on democracy promotion funds are hard to come by, the EU and its member states combined spent ca. \$ 900 Mill. on various democracy programmes in 2001, compared to ca. \$ 633 Mill. in the USAID democracy assistance allocation of the same year (according to Youngs 2003, 128). In 1999, the EU Commission spent \$ 98 Mill. to “government and civil society” as part of its foreign aid (ODA), according to the OECD (*ibid.*). The European Initiative for Democracy and Human Rights (EIDHR) website specifies that Euro 110 Mill. were available in 2001 for the promotion of democracy, human rights, as well as for conflict prevention.<sup>2</sup> If we add the democracy and human rights promotion components in programmes such as PHARE for the Eastern European accession states (€1,5 bln/year), TACIS for Russia and the CIS states, or ECHO, the EU’s humanitarian aid programme, the EU’s own funding for democracy, human rights, and good governance exceeds comparable U.S. programmes by far (table 1). If we combine it with the funding for such purposes by EU member states, Europe is probably by far the largest contributor to democracy promotion on the globe.

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<sup>1</sup> We thank Frederik Adriaenssens, Tina Freyburg, Mareike Kleine, Philip Schunke, Elsa Tulmets, and Vera van Hüllen for research assistance and other help with this paper.

<sup>2</sup> See <http://europa.eu.int/scadplus/leg/en/lvb/r10110.htm>, visited on 17/09/04.

Table 1 Official Development Aid Compared (2002)



Source: OECD (<http://www.oecd.org/dataoecd/42/0/23704506.gif>, visited on 29/9/04).

Today, the EU has a comprehensive programme for democracy promotion in place governing all its external relations with third countries. This includes the so-called “circle of friends” and the “neighbourhood policies” toward Russia, the so-called Newly Independent States (NIS = former Soviet Republics, minus the new EU members in the Baltics, of course), the Balkans, the Southern Mediterranean countries, but also EU relations with Africa, Latin America, and Asia. The instruments used by the EU to promote human rights, democracy, the rule of law, and “good governance” look surprisingly similar across the globe. Moreover, countries with an accession perspective have to comply with the Copenhagen criteria of 1993 focussing on democracy, the rule of law, human rights, and the protection of minorities *before* they are entitled to enter accession negotiations. Thus, the strategies and policies to promote democracy are similar, and the mechanisms and incentives to promote compliance vary only slightly with type of third country (accession, association, partner, “circle of friends”, other third world countries). In fact, the EU follows quite clearly a specific cultural script.

This paper focuses on the development of EU policies for democracy promotion including human rights, the rule of law and “good governance” from the 1990s on. However, we will disregard its implementation on the ground as well as its effectiveness because this would be beyond the

scope of this paper (and our current knowledge).<sup>3</sup> We show that the policies and strategies developed through an incremental process of “learning by doing” rather than a great master plan. The instruments adopted were initially developed for the ACP countries, then “travelled” simultaneously to the Eastern enlargement process, to Russia, the NIS countries, the Mediterranean etc. Yet, managing these programmes turned out to be extremely difficult because of the lack of human and financial resources provided by the member states to the EU. As a result, the EU has recently decentralized the administration and management of the various programmes and has tried to delegate administrative tasks to the local “EU delegations” on the ground (EU jargon for “EU embassies” in member states and third countries).

While there is an explicit effort at exporting European values and – most recently – to distinguish these values from overall Western (and US American) ones, the underlying assumption of these programmes implies that the world can be shaped according to European democracy and welfare state standards (including the export of the European model of regional integration). The programmes themselves show little sensitivity for national or local cultures and values, let alone an effort at exploring functional equivalents for Western democratic statehood in weak, failing, or failed states. National and local considerations only come into play through the implementation of the programmes on the ground. The “top down” approach of EU democracy promotion has only changed very recently with the adoption of new public management methods that include the private sector, such as the Open Method of Coordination (OMC).

The paper proceeds in the following steps. We start with a brief history of EU democracy promotion efforts from Lomé IV to EIDHR. We then review the programmes currently in place by type of third country and show their enormous similarities. A brief description of the complex EU decision-making process for democracy promotion programmes follows. The paper concludes with an evaluation of EU strategies at democracy promotion.

## **2. A Brief History of EU Democracy Promotion Programmes: From Lomé IV to EIDHR**

The promotion of democracy, human rights, and the rule of law is part of the cooperation and association policies of the EU. Through the conclusion of bilateral and multilateral cooperation agreements (partnerships in EU jargon), the EU has created preferential trade relations with third

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<sup>3</sup> Tanja Börzel is preparing a comprehensive research project on these questions focussing on the EU’s “circle of friends” and its “neighbourhood policies” as part of the planned Special Research Area (*Sonderforschungsbereich*) at the Freie Universität Berlin.

countries and promoted processes of economic, political, and social transformation. Association agreements prepare for EU membership (enlargement) or compensate for non-membership (neighbourhood policy). Since the beginning of the 1990s, the EU has intensified its efforts in promoting human rights and democracy introducing democracy and human rights clauses in all its agreements with third countries. While the cooperation and association policy of the EU is differentiated in its goals and strategies, it has been mainstreamed with regard to democracy, human rights, and the rule of law. As we will see in the remainder of this section, the mainstreaming started with development policy, but quickly diffused in other areas of the EU's external relations.

### *EU Development Policy: Towards Economic and Political Conditionality*

Until the end of the 1980s, EU development policy used to be about granting preferential trade agreements and financial aid to the former colonies of member states. It centred on the Lomé agreements, the first of which was signed in 1975 between the EU and the African, Caribbean, and Pacific Group (ACP countries). The Lomé system provided the ACP countries with preferential access to the Common Market since they could export almost all their products custom free without reciprocating by opening their markets to EU imports (General System of Preferences). Moreover, Lomé granted financial aid through the European Development Fund, completed by an export stabilization scheme ("Stabex" and the "Sysmin") to compensate ACP countries for losses in exports of agricultural and mineral commodities (Holland 2002: 32-40). The latter constituted a right of ACP countries to EU payments whenever their export income fell below a fixed threshold. Thus, cooperation dealt mainly with economic issues and gave little concern to democracy, human rights, and the rule of law. Political considerations came explicit for the first time in Lomé III (1985-90), which announced the commitment of EU and ACP countries to human dignity (including the value of the human person and equality between genders), and economic, social and cultural rights (preamble, Art. 4 and annex I). But the agreement did not provide for any sanctions in cases of violation of these norms. Yet, the question of the relationship between human rights and development had already been evoked under Lomé I (1975-80) when the EU suspended officially channelled aid to Uganda due to the human rights violations committed by Idi Amin (leaving humanitarian aid in place, however). Since these punitive measures went against Lomé I, the EU proposed to codify them in Lomé II, which met the fierce opposition of the ACP countries.

It was the Lomé IV agreement (1990-2000) that marked the beginning of both economic and political conditionality in EU development policy. In previous agreements, the ACP countries had successfully prevented the EU from introducing clauses on democracy and human rights. Likewise,

they had preserved the right to determine their own aid priorities thereby excluding the incorporation of structural adjustment programmes implemented by the International Monetary Fund and the World Bank. Lomé IV, by contrast, included provisions on democracy, human rights, and the rule of law for the first time, without, however, linking them to specific sanctions. In cases of violation, the EU undertook to examine appropriate measures, which, however, were not specified. Likewise, economic conditionality entered the agreement. Art. 243-250 institutionalized EU support for structural adjustment programmes including financial conditionality (Structural Adjustment Support, cf. Holland 2002: 44, 125-132). Lomé IV required a mid-term review of the financial protocol of agreement, which the EU used to strengthen political conditionality as well.

The revision of Lomé IV upgraded the provisions on democracy, human rights and the rule of law making them into the essential condition for development cooperation with the EU (Art. 5). Art. 5 of the Lomé IV bis Convention also mentions good governance for the first time as a particular aim of cooperation operations excluding it, however, from the essential elements of the agreement. Most importantly, Lomé IV bis implemented the two-track approach to development cooperation which the Council laid out in its Resolution on Human Rights, Democracy, and Development.<sup>4</sup> The pro-active promotion of these principles through financial assistance (indicative programmes) and open and constructive dialogue (political dialogue; Art. 30.3) is complemented by re-active sanctions in case of their violation. Art. 366 set up a special procedure to suspend the cooperation with any state violating these principles. Since good governance did not qualify as an essential element of the agreement, negative conditionality did not apply here. For violations of democracy, human rights and rule of law, however, the EU invoked the suspension clause several times in the 1990s, e.g. against Nigeria, Rwanda, Burundi, Niger, and Sierra Leone (Holland 2002: 134). A more subtle way of sanctioning non-compliance was provided by the introduction of a two-tranche system for indicative programmes. The EU withholds 30% of funds until effective implementation of a programme is established (Holland 2002: 48-9).

The Cotonou Agreement, signed in 2000 and valid until 2020, terminated the Lomé system. Lomé IV had still obtained a WTO Article IX waiver which exempts the EU-ACP trading agreement from complying with the Most Favoured Nation Clause and reciprocity. Instead of lobbying the WTO for a further waiver, the EU and the ACP countries agreed to phase out their preferential trade relations between 2008 and 2020 replacing them by (reciprocal) inter-regional free trade agreements in compliance with WTO rules. Not only does Cotonou reiterate the nexus introduced

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<sup>4</sup> Resolution of the European Council, November 28, 1991, OJ EEC 11-1991: 122ff.

by Lomé IV between development, democracy, human rights, the rule of law, and good governance (preamble). It broadens the scope of development cooperation to peace-building and conflict prevention stressing “an integrated approach taking account at the same time political, economic, social, cultural and environmental aspects of development” (Art. 1.2). Moreover, political conditionality was strengthened. Title II develops the political dialogue introduced by Lomé IV bis into a pro-active instrument of conflict prevention in the area of peace-keeping, human rights, democracy, the rule of law, and good governance. Art. 8.2 stresses the preventive character of the political dialogue which shall preclude the use of sanctions. It shall foster the exchange of information and the development of a mutual understanding of the meaning and application of the principles and strategies laid down in the Convention.<sup>5</sup>

The underlying approach corresponds closely to the Open Method of Coordination (e.g. Hodson and Maher 2001). Unlike in previous Lomé Agreements, the EU no longer unilaterally imposes certain development policies. Rather, goals and principles shall be formulated in consensus with the developing countries and jointly evaluated on the basis of formerly agreed benchmarking criteria. Periodic monitoring, evaluation, and peer review shall induce processes of mutual learning through the diffusion of best practice. These processes of coordination are complemented by reinforced efforts at capacity building. In Cotonou, capacity-building is no longer confined to the public sector but includes the strengthening of civil society (Art. 7). Non-governmental actors, including the private sector, have a right to be consulted and incorporated into the political dialogue. They shall get involved in projects funded under Cotonou, and finally, qualify for support of organizational capacity building and financial assistance. Yet, soft coordination and capacity building still take place in the shadow of sanctions. The suspension clause is retained and extended to good governance, but only as far as serious cases of corruption are concerned, which significantly narrows the enforceable parts of good governance.<sup>6</sup> Moreover, the imposition of sanctions is to be preceded by a consultation process engaging a “constructive dialogue” that involves the exchange of infor-

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<sup>5</sup> Cf. Holland, Martin. 2002. *The European Union and the Third World*. Houndmills, Basingstoke: Palgrave..

<sup>6</sup> Art. 9.3 defines good governance as “the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development”. The definition leaves the meaning of the concept still vague and difficult to measure. The ACP countries refused to accept such as a “fussy” principle as one of the essential elements of the agreement, which would significantly compromise their sovereignty. Unlike democracy, human rights, and the rule of law, good governance therefore entered the Cotonou agreement only as a fundamental element to which the suspension clause does not apply – with the exception of the freedom from corruption, which was added as a new essential element. Consequently, Art. 97 extends the suspension clause to serious cases of corruption, although only as “a measure of last resort” (Art. 97.3).

mation, the analysis of the situation and the search for solutions to remedy the situation.<sup>7</sup> This cooperative approach does not only reflect the reluctance of the EU to impose sanctions (see below) but the lack of clear criteria to evaluate compliance with the rather vague provisions on democracy, human rights, and the rule of law.

Next to negative sanctions (suspension clause)<sup>8</sup> and learning and persuasion (political dialogue), Cotonou provides the EU with a third instrument to bring developing countries into compliance with the principles of democracy, human rights, the rule of law, and good governance: programming. Programming is a concept introduced in EU policy-making through the reform of its structural policy in 1989 (Staeck 1996). It implies that EU funds should be allocated to programmes rather than individual projects and that resource allocation is conditional upon certain criteria. The programme of each recipient country comprises four elements (1) the definition of mid-term development goals, (2) the specification of short-term strategies to implement these goals, (3) the indication of allocated EU funds for the period of five years, and (4) the periodic monitoring and evaluation of the first three elements. Resource allocation (3) provides the EU with the crucial leverage. Unlike under previous agreements, EU financial assistance is now conditional upon the performance of the recipient country with regard to certain indicators including the implementation of reforms on democracy, human rights, the rule of law, and good governance (Art. 3.1b, Annex IV; for an excellent assessment see Beck and Conzelmann 2004). In contrast to Lomé IV, the EU now has complete discretion in the allocation of its development funds (Art. 3, Annex IV, 57.5). The decision, however, which specific programmes and projects are to be funded with how much money is subject to negotiations with the individual recipient countries as specified in Art. 4.3 Annex IV. Since the conditions for resource allocation are no longer fixed by the agreement but to be negotiated, the procedural regulations create a strong incentive for the recipient countries to comply with the principles guiding EU development policy.

In sum, EU development policy changed significantly during the 1990s. The EU has subsequently institutionalized democracy, human rights, the rule of law, and good governance as the guiding principles of its development policy (table 2).<sup>9</sup> In order to promote these principles, the EU

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<sup>7</sup> But note that the EU has the exclusive right to judge whether human rights, democracy, and the rule of law have been breached.

<sup>8</sup> Sanctions mostly concern the downsizing of financial aid, and the freezing of new projects. The suspension of cooperation is only a measure of last resort. Under the second pillar, however, the EU may deploy more severe sanctions, such as an embargo, suspension of diplomatic relations or military intervention.

<sup>9</sup> It is beyond the scope of the paper to trace the causes of these changes. The end of the Cold War surely played a role since it eliminated the main rationale for tolerating human rights violations and authoritarian regimes. At the same time, it became clear that preferential trade relations and financial assistance had not been sufficient to promote



gives priority to a “positive approach” outlined in the Council Resolution on human rights, democracy, and development in 1991. Rather than pressuring recipient countries into compliance, an “open and constructive dialogue” is supposed to stimulate the respect for human rights and encourage democracy. Such a cooperative approach corresponds to the principle of “managed compliance” favoured by proponents of what is known as management school in International relations (Chayes and Chayes 1995) rather than unilateral enforcement supported by power- and interest based approaches, such as realism. The next section will show how this approach of “soft diplomacy” (Petiteville 2003) has spilled over in other areas of the EU’s external relations with third countries.

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economic development nor did they stabilize the share of EU external trade (Petiteville, Franck. 2003. Exporting 'values'? EU external co-operation as 'soft diplomacy'. In *Understanding the European Union's External Relations*, edited by M. Knodt and S. Princen. London - New York: Routledge, 127-141.). Moreover, the WTO ruled the non-reciprocal Lomé trade arrangements as incompatible with international trade law (remember the famous banana dispute where the EU granted preferential market access to high-price banana producers from ACP countries while restricting the importation of low-price banana from non-Lomé developing countries. Cf. Salas, Mauricio, and John H. Jackson. 2000. Procedural Overview of the WTO EC-Banana Dispute. *Journal of International Economic Law* (3): 145ff.).

*Table 2 Towards Economic and Political Conditionality in EU Development Policy*

Pre-1989	1990s		2000
Lomé I-III (1975-89) <i>Policies</i> Economic growth Reference to human dignity, and economic, social, and cultural rights (Lomé III)  <i>Instruments</i> Financial and technical assistance Stabilization of export prices  Preferential trade agreements	Lomé IV (1990) <i>Policies</i> Economic growth Provisions on democracy, human rights, and rule of law  <i>Instruments</i> Financial and technical assistance (economic and political conditionality)  Preferential trade agreements	Lomé IV bis (1995) <i>Policies</i> Economic growth Provisions on democracy, human rights, and rule of law Good governance  <i>Instruments</i> Financial and technical assistance (economic and political conditionality) Suspension clause for democracy, human rights, and rule of law Political dialogue Capacity building (public sector) Preferential trade agreements	Cotonou (2000-2020) <i>Policies</i> Economic growth Provisions on democracy, human rights, and rule of law Good governance  <i>Instruments</i> Financial and technical assistance (economic and political conditionality) Suspension clause for democracy, human rights, rule of law <b>and</b> good governance (corruption) Political dialogue Capacity building (public <b>and</b> private sector) Inter-regional free trade agreements

*EU Enlargement Policy: From Association to Accession*

Eastern enlargement has been the most ambitious effort of the EU to promote democracy, human rights, and the rule of law in third countries. The prospect of membership helped transform ten former communist countries (including Rumania and Bulgaria who will join the EU in 2007) into consolidated liberal democracies with functioning market economies in less than 15 years.

After the collapse of communism in Central and Eastern Europe, the EU started to shift its development priorities from the ACP countries to the transition countries. Between 1991 and 1996, the EU signed 12 association agreements.<sup>10</sup> These so called Europe-Agreements were meant to support the economic, political and social transition in Central and Eastern Europe. They contained provisions on democracy, human rights, and the rule of law, complemented by suspension clauses

<sup>10</sup> Poland, Hungary and Czechoslovakia (still one country at the time) in 1991, Bulgaria, Rumania, the Czech Republic, Slovakia, Estonia, Latvia, and Lithuania in 1995, and Slovenia in 1996.

in 1992 making accession and financial aid conditional upon compliance with democratic principles, human rights, the rule of law, and market economy. It was the European Parliament, in particular, that insisted that political conditionality should be put on equal footing with economic conditionality (cf. Sedelmeier and Wallace 1996: 359-361).

While the EU had initially perceived association as an alternative to rather than a preparation for accession, the Copenhagen European Council of 1993 formally accepted the possibility of membership of all associated CEE countries – provided that they achieve (1) a functioning market economy; (2) stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities, and market economy, and (3) the ability of implementing the *acquis communautaire* (Copenhagen criteria). Thus, the Europe-Agreements became the framework for the applicant countries' integration into the EU. Next to establishing a free-trade area for industrial products by 2002, the agreements should help the accession countries draw up schedules for incorporating the *acquis communautaire* into their national legislation as a precondition for membership.

In order to help accession countries comply with the Copenhagen criteria, the EU installed similar mechanisms as in development policy. The PHARE programme (Poland and Hungary Aid for Economic Reconstruction)<sup>11</sup> has provided 1,5 billion Euro per year of financial assistance to prepare the candidates for institution-building, adopting the *acquis*, and implementing Structural Funds after accession (cf. Bailey and de Propris 2004). But the focus of PHARE has been on capacity-building in the public sector rather than on supporting political reforms. Its main instruments, TAIEX (Technical Assistance Information Exchange Office) and Twinning,<sup>12</sup> were designed to facilitate the transfer of knowledge from member states to accession countries and to assist the candidates to build up the institutional capacities for implementing the *acquis*. ISPA (Instrument for Structural Policies for Pre-Accession) was established in 1999 to help finance environmental and transport infrastructure projects in CEE accession countries. Likewise, SAPARD (Special Accession Programme for Agricultural and Rural Development) assists them in dealing

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<sup>11</sup> Initially meant to help Poland and Hungary make the transition to market economy, PHARE was quickly extended to other transition countries preparing them for EU membership.

<sup>12</sup> Twinning matches civil servants of candidate countries and member states to work together on a specific project (e.g. the implementation of a particular directive) cf. Bailey, D., and L de Propris. 2004. A Bridge to Phare? EU Pre-Accession Aid and Capacity-Building in the Candidate Countries. *Journal of Common Market Studies* 42 (1): 77-98.

with the structural adjustments in their agricultural sectors and rural areas as well as in preparing for the system of the Common Agricultural Policy.<sup>13</sup>

In contrast to Lomé IV and Cotonou, however, technical and financial assistance has not been directly linked to compliance with criteria of democracy, human rights, and the rule of law. While Lomé IV at least provided 80 million ECU (0.5% of the budget) for institutional and administrative reforms aimed at democratization and strengthening the rule of law, PHARE has earmarked hardly any special funds for rewarding candidate countries for similar efforts (see below). The reason for this may be that countries that wanted to obtain funds under PHARE had to pass a “democracy test”. Although not specified in the PHARE regulations, countries seeking access for financial assistance had to provide clear commitments regarding the rule of law, respect for human rights, establishment of a multiparty system, the holding of free elections, and introducing a market economy (Maresceau 2003: 12-13). Consequently, the EU never resorted to negative political conditionality suspending the association agreements. It has, however, delayed the conclusion of accession agreements and the provision of financial aid with Rumania and Bulgaria in order to encourage political and economic reforms.

Next to the “carrots” and “sticks” provided by political conditionality of the Europe-Agreements, the EU has relied on political dialogue. Regular bilateral meetings at the highest political level between the EU and the individual candidate countries allowed for consultations and the exchange of views on all topics of common interest related to the enlargement process. Comparable to EU development policy, the political dialogues have been crucial to clarify the conditions for (opening negotiations for) membership. The Copenhagen European Council had left it to the Commission to elaborate on the content of accession requirements. It took the Commission several years to come up with a detailed “check list”,<sup>14</sup> which it presented as the *justification* why some candidates qualified or did not qualify for the opening of membership negotiations (cf. Smith 2003).

While these bilateral and multilateral fora dealt with general political issues, the so called Association Councils supervised the implementation of the Europe-Agreements in more detail. Here, the Commission and national governments could discuss problems and settle disputes related to the adoption of and adaptation to the *acquis*. Moreover, the Commission monitored the performance of each candidate and reported the progress in an annual report presented to the Council together with recommendations for improvement. These annual progress reports, first published in

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<sup>13</sup> The idea was that PHARE would become the precursor to the Structural Funds, ISPA for the Cohesion Fund, and SAPARD the guidance section for the CAP.

<sup>14</sup> European Commission “Agenda 2000: For a Stronger and Wider Union”. EU Bulletin Supplement 5/97.

1997, introduced a system of benchmarking between the accession. Progress in the run up for membership has above all been measured by the number of “closed chapters”, i.e. sectors in which a candidate had fully adopted the legislation in force. Yet, the annual progress reports have also included an assessment of the political Copenhagen criteria, democracy, the rule of law, human rights, and minority rights (cf. Kochenov 2004).<sup>15</sup> Moreover, the Commission and the European Parliament would officially reprimand accession countries for cases of serious non-compliance with these principles. The publication of progress reports created “an atmosphere of permanent follow-up and contributes considerably to the enhancement in the candidate countries of an awareness that the necessary measures must be taken (...) to move forward in the accession negotiations” (Maresceau 2003: 32-34). It is still an open question to what extent benchmarking and naming and shaming by the Commission induced processes of learning and the diffusion of best practice. But once the first round of accession had been scheduled for 2004, this provided a powerful incentive for all candidates to reinforce their efforts of political and economic reforms. While the EU did not suspend membership entirely, it could significantly delay accession. For instance, in 1997, the Commission recommended to open membership negotiations with only five (Czech Republic, Estonia, Hungary, Poland, and Slovenia, plus Cyprus) of the ten CEE applicants. While Bulgaria, Romania, Latvia, and Lithuania had failed the admissibility test on economic grounds and/or lacking administrative capacity, Slovakia was the only candidate which did not meet the political conditions. Thus, political dialogue has always taken place “in the shadow of accession” (membership conditionality).<sup>16</sup>

Accession Partnerships, concluded in 1998 with all 10 CEE candidate countries including those of the second round, were to further assist the applicants in meeting the requirements for membership. Seeking to improve the efficiency and effectiveness of programming under PHARE, the Accession Partnerships set out for each country pre-accession priorities as identified by the Commission. For their part, the candidates had to draw up a multi-annual National Programme for the Adoption of the Acquis (NPAA), outlining the timetable, the laws, regulations, and institutional changes necessary as well as the resources required to meet the pre-accession priorities. The Asso-

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<sup>15</sup> Note that protecting minority rights is not included in the Treaties. Thus, the EU requires accession countries to comply with standards that do not apply to member states. For details on EU policies concerning minority rights see Kelley, Judith G. 2004. *Ethnic Politics in Europe. The Power of Norms and Incentives*. Princeton NJ: Princeton University Press..

<sup>16</sup> The EU used membership conditionality to influence the domestic and foreign policies of the applicant countries beyond the Copenhagen criteria, e.g. by expressing preferences for particular reforms or even the formation of specific coalition governments (cf. Smith, Karen. 2003. *The Evolution and Application of EU EU Membership Conditionality*. In *The Enlargement of the European Union*, edited by M. Cremona. Oxford: Oxford University Press, 105-139.).

ciation Council and Committees monitored the implementation. The NPAA were also subject to the annual review by the Commission, which published the candidate's progress in regular reports (see above). PHARE provided the funds for the implementation of pre-accession priorities, including the political Copenhagen criteria.<sup>17</sup> However, through TAIEX and Twinning, pre-accession support focused on institution- and capacity-building and investment support for infrastructure rebuilding.<sup>18</sup>

Following a decision of the Luxembourg European Council 1997, PHARE linked financial assistance to the candidate's progress in implementing the *acquis*. Given its more technical orientation, however, political conditionality seems to have relied more on the shadow of accession than on financial incentives. The Commission made clear that the five CEE "pre-ins" could still join the "ins" of the first round if they made adequate progress in meeting the objectives of the Accession Partnership. The carrot worked for Latvia, Lithuania, and Slovakia (!) motivating them to improve their performance. While the Commission opened membership negotiations with all five CEE "pre-ins" in 1999, it decided in 2001 that Rumania and Bulgaria would not be part of the first round of enlargement in 2004. Accession Partnership Regulation 622/98 established a conditionality clause that allows to withhold pre-accession assistance in case of insufficient progress towards meeting the Copenhagen criteria and/or the commitments contained in the Europe Agreements. But the EU has never invoked negative political conditionality so far.

Given the success of Eastern enlargement as a transformation tool for the consolidation of CEE democratic transition, the EU invoked membership conditionality as an instrument to stabilize another region that has been vital to its geopolitical interests: the Western Balkans. While the EU had been unable (and initially unwilling) to prevent military conflict in the region, it has been engaged in the stabilization and reconstruction since the early 1990s. The EU's Humanitarian Aid Office (ECHO) has provided emergency supplies, technical assistance and related support since the first war in 1991. Moreover, the OBNOVA programme has funded projects aimed at reconstruction and rehabilitation as well as the reconciliation between conflicting parties preventing the resurgence of ethnic hostilities. In 1997, the EU opened PHARE for supporting development related initiatives in the Western Balkans (e.g. institution-building).

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<sup>17</sup> In 1992, the European Parliament successfully pressured for the launch of a pilot programme on democracy that allocated about 1% of the funds provided by PHARE to projects on the promotion of democratic societies. In 1993, TACIS was included extending the democracy programme to the Western Balkans and the NIS.

<sup>18</sup> Institution-building, of course, can also benefit democratic institutions. But in practice, most measures have focused on strengthening public administration in charge of implementing and enforcing EU law.

After the Kosovo conflict had broken out in 1998, the EU changed its approach toward the Western Balkans. It had become clear by now that development cooperation would not be sufficient to stabilize the region so close to the EU's borders. The Stability Pact for South-Eastern Europe of 1999 promised candidate status to Croatia, Macedonia, Albania, the Federal Republic of Yugoslavia (FRY), and Bosnia-Herzegovina as soon as they would meet the Copenhagen criteria. In April 1997, the Commission had already launched the "Regional Approach to the countries of South-Eastern Europe",<sup>19</sup> which applied the pre-accession method the Commission had developed for the CEE countries to the Western Balkans. The Pact introduced a political dialogue organized in three "working tables" on democratization and human rights, economic reconstruction and development, and security and justice and home affairs. The Commission would periodically assess whether the candidates complied with democracy, human rights, and the rule of law. Its assessment, annually published in regular reports, would determine whether the EU would sign a cooperation agreement providing additional incentives for political and economic reform, such as trade concessions and additional financial aid from PHARE. Next to funding immediate projects of democratization and economic reconstruction, the Commission would grant selective incentives, such as autonomous trade preferences as a reward for specific reforms. Due to the fragile situation in Macedonia and Albania, the two countries were exempt from political conditionality and obtained trade preferences and financial assistance from the start. The Stabilization and Accession Process (SAP) launched in 1999 reinforced the efforts of the EU to secure political and economic stability in the Western Balkans and bring them into the enlargement process. If the candidates satisfied political conditionality, they could open negotiations with the EU for a Stability and Association Agreement (SAA) as the first formal step towards accession. The Stability and Association Agreement provided financial assistance under CARDS<sup>20</sup> for the priorities set by the Commission in the Stabilization and Accession Process, including democratic stabilization, strengthening civil society and the media, protecting minority rights, and promoting good governance. Unlike accession agreements, the SAA do not contain a clear suspension clause. In case of violations of the agreements, the partners can take appropriate measures. Finally, the SAA promises the liberalization of trade between the EU and the candidates. In 2000, the EU restated its promise to Western Balkans for membership under the condition that they comply with the Copenhagen criteria.

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<sup>19</sup> "Council Conclusions on the Application of Conditionality with a view to developing a Coherent EU-Strategy for the Relations with the Countries of the Region", PRES/97/129, Annex 3, April 29, 1997, at 3.

<sup>20</sup> In 2001, the EU decoupled financial aid for the South Eastern countries from PHARE introducing CARDS (Community Assistance for Reconstruction, Democratization and Stabilization), which also replaced OBNOVA.

The pre-accession strategy for the Western Balkans closely follows the CEE trajectory combining financial incentives with trade concessions in the shadow of membership conditionality. Yet so far, EU membership has not motivate Balkan leaders very strongly to undertake the necessary reforms as was the case in Central and Eastern Europe, where regime transformation had been peaceful. Problems of economic backwardness, feeble state institutions, ethnic conflicts, and political extremism are much more severe due to the major wars the Balkan region had suffered. Membership puts up a far greater challenge than for the CEE countries and thus remains a rather distant prospect. In the time of writing, only Macedonia and Croatia have been able to conclude Stability and Accession Agreements. As a result, the EU will have to rely on more “intermediate rewards” (Vachudova 2003: 153) to fuel the efforts of the Western Balkans for political and economic reform.

*EU Neighbourhood Policy: Close Friends but not Members!*

The promotion of democracy, human rights, and the rule of law also constitutes the core of the EU’s effort in achieving political and economic stability in its immediate neighbourhood. Eastern enlargement has stretched the EU’s backyard considerably East, as a result of which Russia, Ukraine, and some of the Newly Independent States have been admitted to the club of “close friends”. Between 1997 and 1999, the EU entered eight partnership and cooperation agreements.<sup>21</sup> The EU uses the same strategies and instruments to induce these countries into compliance with the Copenhagen criteria – with one major exception. In sharp contrast to Central and South Eastern European countries, these agreements envision close trade relations and political cooperation but not EU membership. They envision a political dialogue on democracy, human rights, and the rule of law but do not contain a suspension clause. In cases of violation, the partners of the agreement can only take “appropriate measures”. Like PHARE and CARDS, TACIS (Technical Assistance for the Commonwealth of Independent States) provides financial assistance to political, legal and administrative reforms aimed at promoting these political principles. The NIS also qualify for the PHARE/TACIS Democracy Programme (see Fn. 17). In 1999, the EU strengthened its relations with Russia and Ukraine through “reinforced partnerships” that shall promote democratization and institutional reforms in the two countries.

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<sup>21</sup> Russia (signed in 1994 but entered in force only 1997), Ukraine (1998), Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Moldavia, and Uzbekistan (1999). Note that the agreements with Kazakhstan and the Kyrgyz Republic do not contain human rights clauses.



While the EU adopted a bilateral approach to its far Eastern friends, its policy towards the *Mediterranean* neighbours has been firmly based on a regional (multilateral) framework (on the history of EU Mediterranean Policy see Gomez 2003: 25-41). Within the framework of its “Global Mediterranean Policy”, the EU signed cooperation agreements with Israel (1975), Algeria (1976), Tunisia (1976), Morocco (1976), Lebanon (1976), Egypt (1977), Jordan (1977), Syria (1977), and association agreements with Greece (1962), Turkey (1963),<sup>22</sup> Malta (1970) and Cyprus (1972). Both types of agreement focused on economic cooperation providing free access to the EU market for industrial commodities and (non-reciprocal) preferential treatment for certain agricultural goods. They did not include financial aid or technical assistance. This only changed when the EU decided to upgrade its relations with the Mediterranean after the end of the Cold War and the rise of new security challenges in the Southern Mediterranean and the Middle East. As in the case of its development policy, the EU realized that preferential trade agreements neither reduced the development gap between the Mediterranean countries and EU member states nor did they have an impact on democratic reforms. The “Barcelona Process”, established by the Barcelona Declaration of the Euro-Mediterranean Conference in 1995, sought to re-launch the EU-Mediterranean cooperation and provide it with a multilateral framework. It identified three baskets<sup>23</sup> on which the new Euro-Mediterranean Partnership would focus:

- *Political stability and security*, including the establishment of a common area of peace and stability, comprising measures to promote the respect for human rights, democracy, and the rule of law, conflict prevention and peaceful conflict resolution, arms control, and confidence building,
- *Economic and financial cooperation*, including the creation of a Euro-Mediterranean free-trade area by 2010 to be realized through bilateral association agreements, increased economic, financial and technical cooperation and other forms of support for economic development,
- *Cooperation on social, cultural and humanitarian issues*, including the dialogue between societal organizations, cultural exchanges (e.g. between schools and universities), and other forms of cooperation between non-governmental actors to promote cultural and religious tolerance.

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<sup>22</sup> The agreements envisioned the establishment of a customs union and recognized the eligibility for membership of both countries.

<sup>23</sup> The similarity with CSCE terminology is no coincidence. It is reminiscent of the failed attempt to launch a Conference on Security and Cooperation in the Mediterranean in 1990.

These goals were to be operationalized in a working programme and the EU provided financial and technical assistance for its implementation through MEDA (Mediterranean Development Assistance) and through loans of the European Investment Bank. As usual, political conditionality applied. The signatories of the Barcelona Declaration subscribed to the Copenhagen criteria. The Declaration provided a catalogue of principles against which the cooperative behaviour of the participating countries could be assessed and be made subject to a political dialogue on the progress made. The MEDA Association Agreements restate the provisions on democracy and human rights and include a suspension clause. Moreover, they establish a bilateral political dialogue.<sup>24</sup>

The Euro-Mediterranean Partnership institutionalized an ongoing process of negotiations and consultations among the governments and non-governmental actors across a wide range of issues. But there has been only little transition from dialogue to action. The Arab-Israeli conflict and the breakdown of the Middle East Process in 1996/97, in particular, have seriously obstructed the implementation of the Barcelona Working Programme.<sup>25</sup> Measures on strengthening democracy and the respect for human rights have been sidelined by the gulf between the signatories on security issues and the rejection of EU interference with domestic policies by the Mediterranean countries. As a result, economic and financial cooperation has become the centre piece of the Barcelona process. MEDA Democracy has funded projects directed towards training and education on human rights and democracy, awareness campaigns, women's rights and the media. The large bulk of the MEDA budget, however, has gone into bilateral financial support to structural adjustment and private sector development as well as trans-border cooperation.<sup>26</sup>

### *EU Policies towards Asia and Latin America: Far Away but Important*

While not belonging to its immediate neighbours, the EU has also intensified its cooperation with Asia and Latin America during the 1990s. Since the 1970s, the EU has maintained contractual relations with Latin American countries, mostly as preferential trade agreements. In the 1980s, however, issues of democracy and human rights gained momentum starting with the Declaration on a

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<sup>24</sup> So far, the EU has signed Association agreements with Tunisia (1995), Israel (1995) Morocco (1996) Jordan (1997), the Palestinian Authority (1997), Egypt (2001), Algeria (2002), and Lebanon (2002). Negotiations with Syria are still under way.

<sup>25</sup> However, it should be noted that the Barcelona process provides the only institutionalized forum in which Israel and the Arab world still participate together.

<sup>26</sup> <http://www.euromed.net/meda/evaluation/mdp/final-report-meda-96-98-16.htm>, visited on 29/9/04.

political dialogue with the Andean Community<sup>27</sup> in 1983 and the San José Group<sup>28</sup> in 1984 and later also involving the Rio Group.<sup>29</sup> The interregional relations with the different groups, however, used to focus on economic, technological, and scientific cooperation funded by various programmes, such as AL Invest, Alfa and others (see below). Moreover, like Asian countries, Latin America receives EU aid under the ALA programme. In the mid-1990s, the EU signed agreements with Mexico, Chile and the MERCOSUR to prepare them for association. All three agreements create a framework for political dialogue on issues of democracy, human rights, and the rule of law. Chile was the first to conclude the association agreement in 2002. It contains provisions on democracy human rights, the rule of law, and good governance (the letter, however, is not subject to the suspension clause).

In its relations with Asia, the EU has been less effective in pushing political conditionality. The cooperation agreement between the EU and ASEAN,<sup>30</sup> signed in 1980, does not contain any provisions on democracy and human rights. With its new Asian Strategy adopted in 1994, the EU has sought to intensify the political dialogue with Asian countries but issues of human rights and democracy have been largely banned from the agenda of the Asia-Europe Meetings (ASEM)<sup>31</sup> established in 1996 and the talks within the regional forum of ASEAN (ARF).<sup>32</sup> Bilateral cooperation agreements with India (1994), Sri Lanka (1995), Nepal (1997), Cambodia (1997), Vietnam (1997), Bangladesh (2000), and Pakistan (2001) contain democracy and human rights clauses. In contrast, China, South Korea, Laos, the Philippines, and Malaysia refused to have political conditionality included in their sectoral trade agreements with the EU.

In sum, the EU has mainstreamed its external relations with third countries with regard to the promotion of democracy, human rights, and the rule of law. Since the Maastricht Treaty went into force in 1992, political conditionality has become mandatory in all formal agreements between the EU and third countries. By 1995, these agreements also included suspension clauses in cases of democratic and human rights violations. Only few countries have been able to resist political condi-

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<sup>27</sup> Bolivia, Ecuador, Colombia, Peru, Venezuela.

<sup>28</sup> Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama.

<sup>29</sup> Argentina, Bolivia, Brasil, Chile, Ecuador, Colombia, Mexico, Panama, Peru, Uruguay, Venezuela.

<sup>30</sup> Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Cambodia, and Myanmar.

<sup>31</sup> Brunei, China, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

<sup>32</sup> The cooperation with SAARC (Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka) does not include a political dialogue.

tionality, among them the US and China. While democracy and human rights mainstreaming has been an incremental process, the EU passed two regulations in 1999 as an attempt to establish a coherent framework for the EU's global efforts in "developing and consolidating democracy and the rule of law and so that of respecting human rights and fundamental freedoms in third countries".<sup>33</sup> One Regulation covers operations within, the other operations outside the framework of EU development cooperation.<sup>34</sup> The part not related to EU development policy applies to operations implemented within the framework of existing programmes, such as TACIS, PHARE, or MEDA (Art. 2). The programmes complement each other in so far as the latter mostly allocate funds to institution- and capacity-building, while the regulations specifically focus on democracy and human rights (including administrative accountability and the fight against corruption, i.e. good governance). For the period of 1999 until 2004, the two regulations foresee the allocation of €410 mill. on technical and financial assistance, humanitarian aid, and other measures.

The new framework also provides the legal basis for the European Initiative on Democracy and Human Rights (EIDHR). The EIDHR is complementary to other EU programmes, such as PHARE, TACIS, MEDA, or CARDS, in that it can be implemented with partners other than national governments (and without their consent), and in particular with non-governmental organizations and international governments.<sup>35</sup> In 1998, EIDHR integrated the democracy programmes under PHARE, TACIS, and MEDA. Since 1994, the EIDHR has provided funding (100 million Euro per year) for projects that promote representative structures in both government and working place, access to reliable information, ethical practices in government and public service agencies, principles of equal opportunity and non-discrimination against minorities, respect for human rights, just to name a few. Due to its decentralized character, EIDHR does not contain any provisions on political dialogue and political conditionality.

### **3. Decision-Making on Democracy Promotion in a Multi-Level Governance System**

Ideally, a comprehensive strategy at democracy promotion such as the one outlined above would be proposed by a government, decided upon by a legislature, and then implemented by a specialized agency. At least, we would expect an effort to coordinate these policies between, say, the foreign

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<sup>33</sup> Council Regulation 976/1999 adopted on April 29, 1999, preamble, OJ 120/8 of May 8, 1999.

<sup>34</sup> Council Regulations 975/1999 and 976/1999 adopted on April 29, 1999, preamble, OJ 120/8 of May 8, 1999.

<sup>35</sup> Thus, EIDHR allows to circumvent the governments of the recipient countries and can be used even if other programmes have been suspended, e.g. in case of violations of human rights.

ministries, the ministries of foreign aid and development, and, probably most recently, the defence ministries involved in humanitarian interventions and state-building. Yet, the EU is not a state, but a multi-level governance system (for general reviews see Jachtenfuchs and Kohler-Koch 2003; Hooghe and Marks 2001; Laffan, O'Donnell, and Smith 2000). As a result, both decision-making and implementation of democracy promotion programmes are located at various levels and involve a variety of actors.

There is no “ministry for democracy promotion” in the EU (it would be a General Directorate in the EU Commission), but these programmes are part of the EU’s general foreign policy, on the one hand, and of development and foreign assistance policies, on the other. This means for the EU system of governance that democracy promotion programmes encompass both the “communitarized” first pillar where EU competences for trade and external cooperation programmes reside, and the “intergovernmental” second pillar with the Common Foreign and Security Policy (CFSP). In the first pillar, the EU Commission functions very much as a European executive. It has the exclusive right of initiative, while the Council of Ministers essentially serves as the second legislative body next to the European Parliament (EP). In contrast to most policies under the first pillar, the Commission is in this case also responsible for the implementation of programmes for development and foreign assistance. The CFSP pillar, in contrast, continues to be dominated by the member states and the Council secretariat including the EU’s High Representative for External Affairs (currently Xavier Solana), while the Commission’s role is reduced and the EP’s powers are negligible.

Democracy promotion is both a cross-pillar and a multi-level issue in the EU system of governance. To give just two examples:

1. Economic sanctions form part of the instruments with which the EU can enforce political conditionality principles. Economic sanctions are “second pillar” type of decisions and, thus, require the approval of the Council of (Foreign) Ministers. Implementing economic sanctions, however, is a “first pillar” question and, thus, the Commission’s task.<sup>36</sup>
2. The 2000 Cotonou framework agreement with its extensive provisions for democracy promotion and good governance represented primarily an intergovernmental agreement between EU member states and the ACP countries, while EU’s GD Development manages the agreement. Financial aid for ACP countries comes from the European Development Fund (EDF) which is

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<sup>36</sup> For an interesting case study of EU policy-making on ex-Yugoslavia in this regard see Gegout, Catherine. 2003. An Evaluation of the Making and Functioning of the European Union's Common Foreign and Security Policy (CFSP) System. PhD. dissertation, Department of Social and Political Sciences, European University Institute, Florence..

equally administered by the Commission, but depends on voluntary contributions from the member states.

Before we get into details of EU policy-making on democracy, human rights, and “good governance” promotion, we need to take a brief look at the treaties prescribing the EU’s competences in this area. First, of course, democracy and human rights are constitutive features of the EU system of governance. Yet, it is important to note that the 1957 Treaty of Rome contained no reference to democracy and human rights as conditions for entering the European Community, let alone a provision to promote democracy in the EC’s external affairs. While the original Art. 237 of the Treaty of Rome (EEC Treaty) stipulated that any European state could apply for membership, it was only in 1978 that the European Council clarified the meaning of this article as entailing a constitutional guarantee of democratic principles and human rights.<sup>37</sup> It was the 1992 Treaty of Maastricht (Treaty of the European Union, TEU) that included democracy and human rights as constitutive principles of the European Union (Art. 6.1 TEU)<sup>38</sup>, while the 1997 Amsterdam Treaty essentially enshrined the Copenhagen Criteria (see above) into the EU’s primary law (Art. 49 TEU).<sup>39</sup>

The 1992 Maastricht Treaty stipulated that the promotion of democracy, the rule of law, and of human rights constitute primary goals of the Common Foreign and Security Policy (CFSP, Art. 11 [1] TEU). The Maastricht Treaty also included development cooperation for the first time among the competences of European Union, to be exercised in a complementary fashion with the development policies of the member states (Art. 177 TEC). The Community and the member states “shall co-ordinate their policies on development co-operation and shall consult each other on their aid programmes, including international organisations and during international conferences” (Art. 180 (1) TEC; on the complementarity principle see Holland 2002, 114-119). Art. 177.2 TEC follows an almost similar wording as Art. 11.1 TEU prescribing that the EU development policy should “contribute to the general objective of developing democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.” In sum, democracy promotion as an objective of the EU’s external relations has become part of EU primary law since the early 1990s. Moreover,

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<sup>37</sup> “Declaration on Democracy”, Copenhagen European Council, August 7-8, 1978, EC Bulletin No. 3 (1978), at. 6.

<sup>38</sup> The EU makes life especially hard for non-legal scholars by changing the numbering of the treaty articles almost every time, a new intergovernmental conference changes the treaties. In the following, we use the 1997 Amsterdam numbering of the Treaty of the European Union (TEU) and of the Treaty of the European Communities (TEC) even if we refer to the 1992 Treaty of Maastricht.

<sup>39</sup> Political conditionality now also applies to current member states. The Amsterdam Treaty incorporated a membership suspension clause. If a member state has seriously and persistently violated principles of liberty, democracy, human rights, and the rule of law, the EU can decide to suspend some of its membership rights (Art. 7 EUT). The Nice Treaty provides a consultation process similar to the one specified in the Cotonou Agreement (Art. 1.1).

the Maastricht Treaty established the promotion of democracy, human rights, and the rule of law as a cross-pillar issue governing both CFSP (second pillar) and development policies (first pillar) in a multi-level system of governance.

The recently finalized Constitutional Treaty which is to be signed in Rome later this year, reaffirms democracy and human rights promotion as primary goals of the EU's external affairs without adding much substance as compared to earlier treaties. The EU commits itself to promoting its values in its external relations including human rights, "in particular the rights of the child" (Art. I-3 [4]). Art. III-292 (1) then states: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law." In other words, the EU very self-consciously tries to project its own identity onto its foreign policies. The promotion of democracy, the rule of law, and of human rights is then re-iterated as fundamental principles governing its external affairs (Art. III-292 [2b]). While the Constitutional Treaty removes the pillarization of the EU policy-making structure, democracy promotion remains an objective governing both the intergovernmental foreign and security policy and the supranationalized development assistance policies.

As to the intergovernmental CFSP including those aspects of democracy promotion subject to Council of Ministers decisions, the Constitutional Treaty failed to establish qualified majority voting as the standard decision-making procedure of the EU. CFSP remains the one comprehensive policy area in EU policy-making which is still governed by the unanimity rule (with some exceptions, such as "constructive abstention" and other arcane provisions). It also means that EU's supranational institutions, i.e., the Commission, the European Parliament (EP), and the European Court of Justice (ECJ) have little influence in EU foreign policy. These provisions of the Constitutional Treaty affect democracy and human rights promotion insofar as adding "teeth" to these policies has to be decided as part of the CFSP framework. Decisions on political, economic, or military sanctions including decisions on humanitarian interventions are CFSP/ESDP decisions and, thus, require consensus in the Council of Ministers, even though the Commission is in charge of *implementing* economic sanctions, once they have been decided (see above). It remains to be seen whether the new institution of a double-hatted European Foreign Minister will increase the decision-making effectiveness of EU foreign policy and overcome the limitations of intergovernmental CFSP decision-making.

As to democracy promotion in the framework of foreign and development assistance policies, first pillar rules apply, and, thus, the Council of Ministers decides by qualified majority voting. The European Commission has the right of initiative and also manages foreign aid policies. Yet, there are five Directorate Generals (DGs) in charge of its various aspects. First, the DG of External Relations (DG Relex) handles the EU Commission's external affairs with all countries that are not accession candidates. If the Constitutional Treaty ever enters into force (a big IF right now), the EU's Foreign Minister will have the double job of heading DG Relex and the EU's diplomatic service as well as being in charge of the Council of (Foreign) Ministers and of the Common Foreign and Security Policy (CFSP) in general. DG Relex used to have a human rights section for more than twenty years. Around 1997, democratization issues were included in this section's portfolio. Today, the DG Relex's directorate for multilateral relations and human rights is in charge of all human rights policies including ACP countries. Yet, in 2001, the implementation of these programmes has been moved to EuropeAid, the agency now executing the EU's foreign aid programmes which is jointly administered by DG Relex and DG Development.

Second, DG Development (DG DEV), the EU's "Foreign Aid Ministry," is primarily in charge of cooperation with the ACP and other developing countries. Thus, DG DEV oversees the implementation of the Cotonou Agreement (see above). It has its own department for "Human and Social Development" which works in an advisory function including recommendations to suspend development cooperation based on political conditionality. Starting with the Prodi Commission, the Commissioner for Development also oversees the European Community Humanitarian Office (ECHO) which used to have its own Commissioner (Holland 2002, 100-111). In 2003, ECHO alone spent 600 million Euro in humanitarian assistance programmes worldwide including projects in failing and failed states.

Third, of course, the DG for Enlargement (DG ENL) oversees negotiations with EU accession candidates. To the extent that EU enlargement – from the Southern enlargement of the 1980s to the current Eastern enlargement and future expansion of the EU to the Balkans and Turkey – constitutes the most extensive programme for the promotion, stabilization and consolidation of democracy ever undertaken by an international body, DG ENL is in charge of it. Not only does DG ENL oversee programmes such as PHARE for Eastern Europe, the Commissioner in charge of enlargement is also the person who has to give the "thumbs up or down" on whether a country qualifies for accession negotiations thereby fulfilling the Copenhagen criteria.

And fourth, the DG for Justice and Home Affairs deals with some aspects of human rights insofar as it regulates refugee policies and external cooperation in criminal law, customs, and police



matters. Last not least, DG Trade manages the EU's external trade policies and is, therefore, not involved in democracy and human rights promotion as such. But the more questions of external trade dominate EU relations with the developing world (see the Cotonou agreement as compared to Lomé IV), the more economic interests have to be reconciled with policy interests toward the promotion of human rights and democracy.

Of course, there are quite a few management problems involved when four Commissioners and their DGs oversee different aspects of EU democracy promotion. In particular, the last fifteen years have seen a constant expansion of the portfolios of DG Trade and DG Relex at the expense of DG Development concerning third countries that are not accession states. Moreover, EU foreign assistance and democracy/human rights promotion programmes suffered from the same problems as most other EU programmes, i.e., they were understaffed and over-bureaucratized. This is all the more true, since the Commission cannot rely on the administrative capacity of the member states to execute EU policies when it comes to relations with third countries. At the end of the 1990s, it took on average four years to disburse funds after a decision to launch a project had been taken (Petiteville 2003, 135). The exposure in 1999 of the maladministration of EU funds, including aid programmes, is another indicator of the capacity problems the Commission is facing in the promotion of democracy, human rights, and the rule of law. Since then, several attempts have been made to better co-ordinate these policies which have direct implications for efforts at democracy promotion:

- In 1998, a Common Service for External Relations was created. The External Service which works under the collegial authority of the Commissioners in charge of external affairs not only functions as the EU's diplomatic service and staffs the EU delegations ("embassies") around the globe. In 2000, the EU increased the autonomy of its external service considerably in order to facilitate the implementation of its various foreign assistance programmes and to also make them easier adjustable to local needs (see Petiteville 2003, 135). This "devolution" of tasks toward the EU delegations is still underway and will transform the EU's foreign service considerably.
- Also in 1998, the EU created a new service (Service Commun Relex, SCR) to manage its foreign aid including implementation of human rights and democracy promotion policies (Holland 2002, 87-100). In 2001, SCR was transformed into EuropeAid (see above). EuropeAid is jointly controlled by DG Relex and DG Dev and includes units for democracy and human rights support.

- Of course, the 1999 program reform institutionalizing the European Initiative for Democracy and Human Rights to govern all aspects of EU democracy and human rights promotion has to be mentioned here, too. The two regulations mentioned above helped clarify the distribution of competencies between the EU and the member states. They give the Commission significant executive powers and create a member state committee for human rights and democracy chaired by the Commission.

Whether these management reforms will change the incredibly cumbersome process of EU foreign assistance, whether they will increase transparency and accountability, and whether they will enhance their sensitive to local needs and cultures, remains to be seen.

An overview of the EU's policy-making structure with regard to human rights and democracy promotion would not be complete without mentioning the European Parliament (EP). The EP has very limited competences with regard to CFSP (including sanctions), but co-decides on first pillar foreign assistance programmes according to Art. 251 TEC. Art. 179.3 TEC, however, exempts the relations with the ACP countries from co-decision and leaves the member states the possibility to organize this cooperation on the basis of international treaties. While the 1987 Single European Act already gave the EP the power to veto agreements with third countries, it must be only informed on issues of their implementation (e.g. the application of the suspension clause). Nevertheless, the EP has been the single most vocal and most prominent promoter of human rights policies among the EU institutions. In its annual debate on human rights and monthly "emergency decisions", it has constantly hammered the Commission and the Council of Ministers to promote human rights and democracy worldwide and to put the EU's money where its mouth is. A majority of centre-right and centre-left MEPs have continuously criticized the Union for inconsistent human rights policies and for giving in to great powers' rights violations for economic or security reasons. While the EP's power to influence specific EU policies toward third world countries remains limited in this regard, it has relied mainly on tactics of "naming and shaming" vis-à-vis member states and the Commission.

In sum, the EU decision-making process with regard to democracy and human rights promotion is as complex and complicated as any policy-making in such a multi-level system of governance. It is all the more remarkable that the EU nevertheless managed to formulate the most comprehensive strategy including policy instruments of any Western state and international organization.

#### 4. Evaluation and Conclusions

For a long time and similar to most other Western political systems, the EU had ignored the promotion of democracy, human rights, and the rule of law. Its development policy mainly focused on economic cooperation. Moreover, the member states had made hardly any effort to bring their policies in line with the EU. Consequently, the role of the EU had been rather weak acting as an additional donor rather than a coordinator of European development policies (Stokke 1995). By 1999 at the latest, everything had changed. The EU now has a comprehensive strategy for the promotion of democracy, human rights, the rule of law, and “good governance” in place covering the entire globe. The various programmes concern accession candidates with a membership perspective, the “circle of friends” and immediate neighbours which are explicitly to be kept out of the union, as well as the ACP countries, Latin America, and Asia. The EU is making an explicit effort to project its own identity of a democratic polity into its relations with third countries. The goal of democracy promotion is enshrined in the EU treaties since the early 1990s and has been formulated in the 1999 Regulations on Democracy and Human Rights in a comprehensive fashion.

The various policies consist of remarkably similar tools which usually encompass three types of instruments (table 3). These instruments differ mainly with regard to the steering mechanisms by which democracy and human rights are being diffused. First, “political dialogues” use persuasion and learning strategies. Second, political conditionality clauses try to manipulate cost-benefit calculations through creating incentive structures (positive and negative). Finally, there are various programmes in place geared toward capacity-building for institutionalizing democracy, human rights, and the rule of law.

As to the first instrument, “political dialogues” at the multilateral and bilateral level are regularly conducted with

- the Balkan states as part of the Balkan Stability Pact and bilateral accession agreements,
- the Mediterranean countries in the framework of the Euro-Med-Partnership and bilateral association agreements,
- the Newly Independent States, the successor states of the Soviet Union, albeit on a bilateral basis,
- the ACP countries in the framework of the Cotonou Agreement,
- Latin American states as part of the EU-Mercosur and the EU-Andean Community dialogues and bilateral association agreements with Mexico (1997) and Chile (2002),

- finally, Asia within the framework of the Asia-Europe Meetings (ASEM) and the regional for a of ASEAN.

Association and stability agreements contain conditionality clauses to further the same goals. Of course, the toughest conditionality clauses apply to accession candidates such as the Balkan states and Turkey. In these cases, the Commission has to certify to the European Council that the accession candidates have fulfilled the 1993 Copenhagen criteria before membership negotiations can begin (see, however, Kochenov 2004 for the inconsistency with which the Commission has applied the criteria in practice). Membership is by far the biggest incentive structure which the EU can offer to promote democracy and the rule of law. As various analyses show, it has also been a most effective and successful instrument in the EU's arsenal to promote these goals (see e.g. Kelley 2004; Schimmelfennig forthcoming). Democracy promotion via offering membership as an EU strategy is currently being put to its biggest test with the potential opening of accession negotiations with Turkey. Beside membership conditionality, financial incentives for democracy promotion provided by the European Initiative of Democracy and Human Rights pale (about 1% of the EU's total external assistance).

However, political conditionality is not confined to EU policies toward accession candidates. Lomé IV of 1990 introduced political conditionality in the EU agreements with ACP states, while the 2000 Cotonou agreement added good governance to the list. All association agreements with Mediterranean and Central and South American states contain similarly worded conditionality clauses. By contrast, negative conditionality (suspension) is suspiciously absent in the various bilateral partnership and cooperation agreements with the NIS countries and the bilateral agreements with selected Asian countries.

The third EU instrument to promote democracy, human rights, and the rule of law concerns programmes for capacity-building. The following programmes have to be mentioned in this context:

- CARDS (Community Assistance for Recreation, Development, and Stabilisation) for the South Eastern Europe and the Balkans;
- MEDA (Mediterranean Development Assistance);
- TACIS (Technical Assistance for the Commonwealth of Independent States) for the Soviet Union's successor states (NIS);
- Capacity building efforts for ACP countries are funded by the European Development Fund (EDF);
- @lis, Alβan, Urb-Al, Alure, AL Invest, and Alfa for Latin America;
- Asia-Invest, Asia IT&C, Asia-Link, AUNP, Asia-Urbs, Asia Pro Eco for Asia.

The most remarkable feature of these three types of instruments is their similarity across regions. The EU follows one single cultural script that it uses to promote democracy, human rights, and the rule of law across the globe. With EIDHR at the latest, policy goals and instruments have been streamlined and written into the union's standard operating procedures. "One size fits all" appears to be the mantra of EU democracy promotion. If the programmes vary at all, it concerns their budgetary allocations. While the programmes and instruments appear to be strikingly similar, this does not mean that the EU can ignore local conditions. Indeed, the recent empowerment of the EU Delegations in the implementation and management of these programmes together with the decentralization of their administration should lead to a greater sensitivity to the varying political, economic, and cultural situations on the ground. It is questionable, however, whether it is sufficient when democracy assistance strategies only pay attention to cultural traditions and local conditions during the implementation phase.

*Table 3 Towards a Coherent Approach in the Promotion of Democracy, Human Rights, and the Rule of Law*

<b>Africa, Caribbean, Pacific</b>	<b>Central and Eastern Europe</b>	<b>Western Balkans</b>	<b>Newly Independent States</b>	<b>Mediterranean Countries</b>	
democracy, human rights, and the rule of law (Copenhagen criteria)					<b>Policies</b>
					<b>Instruments</b>
					political conditionality
Suspension clause	Suspension clause	Appropriate measures	Appropriate measures	Suspension clause	- Negative
Market access	Membership	Membership	Market access	Market access	- Positive
	PHARE democracy programme	PHARE democracy programme	TACIS democracy programme	MEDA democracy programme	1992-1998
EIDHR	EIDHR	EIDHR	EIDHR	EIDHR	since 1998
√	√	√	√	√	Political dialogue
Cotonou	PHARE	CARDS	TACIS	MEDA	Capacity-building

The EU's approach to the promotion of democracy, human rights, and the rule of law reflects its preference for "soft security" and "soft power" in its foreign policy, i.e. the eschewal of purely military security concerns in favour of the economic, societal and environmental aspects of secu-

rity,<sup>40</sup> on the one hand, and inducing compliance with its policies by incentives, capacity-building, and persuasion and learning, on the other. Compliance management rather than enforcement does not only correspond to the EU's self-understanding as a civilian power. In the absence of uniform criteria for the evaluation of compliance and application of sanctions in case of violation, a cooperative and process-oriented approach allows to develop a common understanding of the behavioural requirements under the Copenhagen criteria. Socialization also appears to be more promising since the EU has no means of forcing the more than 120 countries with which it signed cooperation and association agreements into compliance with democracy and human rights norms.

The most recent development in this context concerns the Open Method of Coordination (OMC), a new learning and benchmarking device for EU governance that adapts new public management procedures to EU policy-making. OMC had originally been introduced as a new policy instrument in areas in which the EU had no competences to legislate, such as employment policies. It constitutes a non-hierarchical mode of steering based on the diffusion of norms and procedures with a strong focus on jointly setting common objectives, implementing these objectives through regular annual and multi-annual programming, ensuring compliance by mutual learning through periodic progress reviews, benchmarking, naming and shaming, and exchange of best practice. OMC also tries to systematically include non-state actors into norm generation and implementation processes. OMC procedures are now being used in various programmes for democracy and human rights promotion.<sup>41</sup>

One should not overlook, though, that the evolution of EU democracy promotion programmes did not follow a grand design, but incremental "learning by doing." The policy instruments of conditionality were first developed in relations with the ACP countries as part of the 1990 Lomé IV agreement. From there, conditionality clauses quickly travelled to the so-called Europe Agreements with the Central Eastern European countries during the early 1990s. By the mid-1990s, political conditionality had become an essential ingredient of the EU strategy for democracy promotion.

A similar process of a new instrument travelling from one EU regional strategy to another can be observed with regard to capacity building including knowledge and financial transfer. In this context, it was the PHARE programme for Central Eastern Europe which was initially developed

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<sup>40</sup> Javier Solana "Europe: Security in the Twenty-First Century", The Olaf Palme Memorial Lecture, given on June 20, 2001, CFSP High Representative Website, <http://ue.eu.int/solana/default.asp?lang=en>, visited on 29/9/04. See also the "European Security Strategy", adopted by the European Council in December 2003.

<sup>41</sup> We thank Elsa Tulmets for alerting us to this point (cf. Tulmets, Elsa. 2003. Les programmes d'aide de l'Union Européenne à l'Est: Analyser l'impact des réformes. *Revue d'études comparatives Est-Ouest* 34 (3): 5-36.).

for Poland and Hungary in 1989. One year later, TACIS was created to help the transition process in Russia and the Soviet successor states. The experiences with PHARE and TACIS were then used to build the CARDS programme for the Western Balkans and the MEDA programme for the Mediterranean region.

In sum, in the course of the 1990s, the EU has embarked on a major effort at “value export” that tries to systematically incorporate the promotion of a specific European version of democracy into its external relations with the rest of the world. In this regard, the EU is surprisingly explicit about promoting a particular democratic self-understanding and identity distinguishing itself from, e.g., the U.S. version of democracy and capitalism. Examples for such identity markers in the human rights area include the opposition to the death penalty and an emphasis on social and economic rights. As to democracy promotion, the EU appears to distinguish itself from similar U.S. efforts by focussing more strongly on the formation of political associations including party systems and civil society. Concerning regional cooperation, the EU tries to promote its own model of regional integration, i.e., including strong supranational institutions and going beyond mere free trade areas. In Latin America, for example, the U.S. and the EU seem to compete in advertising their preferred models of regional integration.

In general, however, this kind of “value transfer” is based on the assumption that the European model of democracy, market economy, and regional integration can be exported across the globe. The “one size fits all” model for the promotion of human rights, democracy, and the rule of law including the various instruments appears to be rather insensitive for cultural and socio-economic differences and diversity. While the various instruments and multilateral as well as bilateral agreements look surprisingly similar, diversity and sensitivities for local context enter the picture mostly in the implementation phase and via the local EU delegations. This is particularly problematic with regard to the increasing number of countries with weak state capacity, a lack of monopoly over the use of force, and the like. It is not clear at all whether the EU model of a functioning democracy and welfare state that is deeply embedded in a regional integration scheme can be planted around the globe. The EU (and others) are currently learning these lessons the hard way in the Balkans and elsewhere.

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