



EU Promotion of Deep Democracy in the Southern Mediterranean: A Missed Opportunity?

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Executive Summary

The Southern Mediterranean is a strategic region for the EU. Since the inception of the *Barcelona process* in the mid-1990s, the EU has provided extensive economic and political support to the authoritarian regimes that supposedly offered security, stability, and economic opportunities to Europe, irrespective of the lack of significant progress in the area of human rights and democracy. The popular uprisings that led to the Arab Spring in 2011 revealed the limitations, contradictions, and short-termism of this approach. Economic inequalities, social exclusion, widespread corruption and lack of democratic spaces were the very roots of the unrest that led to the revolutionary changes that took place in Tunisia, in Egypt, and, to a lesser extent, in Morocco.

The EU was caught by surprise, and initially was hesitant as to which side to support. Once the revolutions succeeded, and both Ben-Ali and Mubarak were forced to leave power, the EU turned into a major supporter of the democratic processes that were taking place at the other side of the Mediterranean. The EU announced a paradigm shift in its relations with the Southern Mediterranean, a new partnership based in sustainable and inclusive growth, a greater role for civil society, and a renewed emphasis in human rights and democratic transformation. The main innovation of the EU's new approach to the region was the concept of *deep democracy*, a new term that generated high expectations.

This report aims to analyze the conceptual contours of deep democracy and the EU's human rights and democracy promotion policies and programmes in three countries of the Southern Mediterranean: Tunisia, Egypt and Morocco. While in Tunisia and Egypt the democratic uprisings succeed in a regime change, the *Mouvement du 20 février* in Morocco was able only to achieve some minor top-down political reforms.

The core objective of our analysis is to explore to what extent EU's policies towards these countries have been influenced by the supposedly new paradigm developed by the EU through the concept of deep democracy and through the creation of new programmes and institutions such as the European Endowment for Democracy (EED), the Civil Society Facility (CSF), or the reviewed European Neighbourhood Policy (ENP).

As this report has demonstrated, most changes in EU policies towards the Southern Mediterranean, particularly the reviewed ENP, are essentially rhetoric, since they do not substantially modify the traditionally top-down and business-oriented approach that has dominated these relations. The renewed emphasis of the ENP on the 3 Ms (money, market, and mobility) has not served to reorient the main drivers of the ENP, namely liberalization, the progressive integration of the economies of the Southern Mediterranean into the European market, and the externalization of borders and control of migration and refugee flows. Human rights and democracy have played a relatively small role in the supposedly new approach to bilateral relations between the EU and the Southern Mediterranean, in spite of the ambitious rhetoric enshrined in the official documents coming from Brussels in the aftermath of the Arab Spring.

One aspect that can be described as an innovation is the EU's emphasis on the role of CSOs working in the field of human rights and democracy. The EU has tried to cooperate more closely with CSOs, and has also exerted some pressure on governments to increase the space that CSOs have to work for the promotion of human rights and democracy. While in Tunisia and Morocco the EU has been able to support the work of some independent human rights NGOs, the EU's ability to cooperate with Egyptian CSOs has been much more limited. The current situation in Egypt, with systematic violations of human rights and a more and more restrictive policy on NGOs, has largely reduced the EU's leverage capacity.

The new geopolitical scenario after the Arab Spring in the Southern Mediterranean, and the financial and political crisis the EU is suffering since 2008, are also affecting the EU's capacity to act as a relevant international actor in the region. In Egypt, the EU's leverage capacity has dramatically diminished due to the increasing presence of other actors in the country such as Saudi Arabia, China or Russia. That is not the case in Tunisia and Morocco, where the EU still holds a considerable capacity to influence the respective governments. The EU is by far the main trading partner of these countries. Whether or not the EU uses its potential to push for deep democracy in these two countries remains to be seen.

The EU has to make a strategic and sincere reflection on the role it wants to play in a changing region such as the Southern Mediterranean. The Arab Spring was a wake-up call for an EU that for decades had supported authoritarian stability in the region. It was the right time to conduct such a strategic reflection based on the assumption of past mistakes. This analysis has demonstrated that the Arab Spring has been a missed opportunity to rethink the partnership with the other side of the Mediterranean.

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List of abbreviations

AA: Association Agreement

ANHRI: Arabic Network for Human Rights Information

AP: Action Plan

CFSP: Common Foreign and Security Policy

CIHRS: Cairo Institute for Human Rights Studies

CNDH : Conseil National des Droits de l'Homme (National Council for Human Rights)

CoE: Council of Europe

CSF: Civil Society Facility

CSF: Civil Society Facility

CSOs: Civil Society Organizations

CSP: Country Strategic Paper

CSSP: Civil Society Support Program

EC: European Commission

ECJ: European Court of Justice

EEAS: European External Action Service

EED: European Endowment for Democracy

EIDHR: European Instrument for Democracy and Human Rights

EIPR: Egyptian Initiative for Personal Rights

EMAA: EU-Morocco Association Agreement

EMAC: EU-Morocco Association Council

EMP: Euro-Mediterranean Partnership

ENI: European Neighbourhood Instrument

ENP: European Neighbourhood Policy

ENPI: European Neighbourhood Policy Instrument

EOM: Election Observation Missions

EP: European Parliament

EPD: European Partnership for Democracy

ESCR: Economic, Social and Cultural Rights

EU: European Union

EUSR: EU Special Representative

FJP: Freedom and Justice Party

FTA: Free Trade Agreement

GCC: Gulf Cooperation Council

GONGO: Government-Operated Non-Governmental Organizations

HR/VP: High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission

HRD: Human Rights Defenders

HRW: Human Rights Watch

ICC: International Criminal Court

ICT: Information and Communication Technologies

IMF: International Monetary Fund

MEPs: Members of European Parliament

MINURSO: UN Mission for the Referendum in Western Sahara

NAPs: National Action Plans

NGO: Non-Governmental Organizations

NIP: National Indicative Programme

ODA: Official Development Aid

SPRING funds: Support for Partnership, Reforms and Inclusive Growth funds

SSF: Single Support Framework

UAE: United Arab Emirates

UfM: Union for the Mediterranean

UN: United Nations

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I. Introduction

In the early, heady months of the Arab Spring (January and February of 2011), the regimes of Tunisia's dictator Ben Ali and Egypt's Hosni Mubarak fell as a result of events launched by popular protests that emerged without the support or encouragement of the EU. France's Foreign Minister had even proposed sending French security force to help Ben Ali quell the uprising.¹ Prior to the collapse of the Ben Ali and Mubarak governments, the EU had considered them to be valued partners and good neighbours. The toppling of the two regimes prompted some soul-searching in the EU. Although it had been longstanding official EU policy that long-term stability and long-term security must be founded on the principles of human rights and democracy, short-term EU policy had typically favoured cooperative security and trade relations with the dictators who appeared to understand European security and trade interests.² When the two rulers were finally ousted, some EU officials questioned whether the prior approach to dealing with the Southern Mediterranean, which de facto emphasised security and trade interests over human rights and democratic values, had been misguided.

On 17 February 2011, the EP adopted a resolution criticising the EU's approach to the Mediterranean area that had long been pursued by the Council and Commission in the Euro-Mediterranean Partnership and contrasted it with its own approach that was more broadly democratic:

[W]hereas the promotion of respect for democracy, human rights and civil liberties is a fundamental principle and aim of the EU and constitutes common ground for the development of the Euro-Mediterranean area; whereas the Euro-Mediterranean partnership was mainly focused on economic reforms and was unable to bring about the necessary political and institutional reforms; whereas the Union for the Mediterranean, which was supposed to enhance the EU's policy in the region, proved ineffective to counter the growing mistrust and meet the basic needs of the people concerned,

whereas the quest for stability has often overshadowed the values of democracy, social justice and human rights in the EU's and its Member States' relations with southern neighbours in the past years; whereas human rights clauses in Association Agreements should be systematically backed up

¹ 'Michèle Alliot-Marie et la Tunisie, retour sur une polémique', *Le Monde* (7 February 2011) <http://www.lemonde.fr/politique/article/2011/02/07/michele-alliot-marie-et-la-tunisie-retour-sur-une-polemique_1476436_823448.html> accessed 14 July 2016.

²As the 2009 updated 'EU Guidelines on Human Rights and International Humanitarian Law' state, human rights dialogues with third countries 'are among a range of measures which the EU may use to implement its policy on human rights, and constitutes an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability which (...) are interdependent with respect for human rights and mutually reinforce one another', p. 21. Available: <https://eeas.europa.eu/human_rights/docs/guidelines_en.pdf> accessed 21 September 2016. However, as the European Parliament puts it, 'empirical evidence on the EU's performance undermined such claims [where] problems of clashes between human rights principles and other more compelling interests tied mostly to security or economics (...) have tarnished the EU's reputation', DG for External Policies, EP 'The Role of EU Delegations in EU Human Rights Policy' (2013) 7 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433721/EXPO-DROI_ET\(2013\)433721_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433721/EXPO-DROI_ET(2013)433721_EN.pdf)> accessed 21 September 2016.

by a mechanism to implement those clauses; having regard in this context to the ongoing and necessary review of the ENP.³

Rather than the economic-centred focus of the Council and Commission, the Parliament argued for the necessity of building deeper structures. The Parliament effectively called upon the EU to live up to its grand declarations on mainstreaming human rights and insisted that democracy and good governance be at the core of actual EU policy. The Parliament emphasised:

that events in Egypt, and in other countries in the region, highlight again the urgent need to develop more ambitious and efficient policies and instruments as well as to strengthen their budgetary background to encourage and support political, economic and social reforms in the EU's southern neighbourhood; stresses that the ongoing Strategic Review of the European Neighbourhood Policy must reflect current developments in the region and must come up with new improved ways to meet the needs and aspirations of the peoples; calls for better coordination with the EU's other policies vis-à-vis those countries;

[Parliament reiterates] its demand for the EU to revise its democracy and human rights support policy so as to create an implementation mechanism for the human rights clause in all agreements with third countries; insists that the review of the ENP must prioritise criteria relating to the independence of the judiciary, respect for fundamental freedoms, pluralism and freedom of the press, and the fight against corruption; points out, in this regard, that the current Action Plans must be radically revised with the inclusion of clear priorities accompanied by incentives for political reforms; calls on the Council to define a set of political criteria that ENP countries must fulfil in order to be granted 'advanced status'.⁴

Within the ten days following the EP's challenge, the High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission (HR/VP) Ashton and Commissioner Štefan Füle, whose portfolio included relations with the southern Mediterranean, essentially accepted the Parliament's analysis. On 23 February, speaking in Brussels, Ashton acknowledged that 'events in the region show that the "old stability" wasn't working. That is why we need to build a new "sustainable stability". This will require us to tackle the political and economic aspects in an integrated manner. What these last few weeks have shown us is that political and economic reforms must go hand-in-hand'.⁵

³ European Parliament, 'Resolution of 17 February 2011 on the situation in Egypt', P7_TA-PROV(2011) <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/wgme/dv/201/201103/20110309_situationegypt_epresolution_en.pdf> accessed 26 July 2016.

⁴ *ibid.*

⁵ 'Remarks by the EU High Representative Catherine Ashton at the Senior Officials' Meeting on Egypt and Tunisia' (Brussels, 23 February 2011) A 069/11, 2 <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119459.pdf> accessed 14 October 2016.

While Ashton implicitly acknowledged that the approach of the EU prior to the Arab Spring had been short-sighted, five days later Commissioner Füle was even blunter. In a speech to the EP itself on 28 February 2011, he issued a *nostra culpa*:

[We] must show humility about the past. Europe was not vocal enough in defending human rights and local democratic forces in the region. Too many of us fell prey to the assumption that authoritarian regimes were a guarantee of stability in the region. This was not even Realpolitik. It was, at best, short-termism —and the kind of short-termism that makes the long term ever more difficult to build.⁶

After this candid, albeit brief, admission, the Commissioner assured the Parliament that the lesson had been learned and that there would be no going back. Henceforth, the EU ‘more than ever before, must be faithful to its values and stand on the side of democracy and social justice’. The changes should be welcomed ‘whole-heartedly’. The changes ‘carry the hope of a better life for the people of the region and greater respect for human rights, pluralism, social justice and the fundamental freedoms which are at the core of our values’. The values for which people gave their lives in the streets of Cairo and Tunis were ‘our values’. The EU’s ‘vital interest’ should now be seen as having ‘a democratic, stable, prosperous, peaceful North Africa in its immediate neighbourhood’. Officially, the EU recognised its error in having favoured short-term security over long-term stability and security founded on the values shared by the political dissidents in Egypt and Tunisia and Europeans.⁷

One way of returning European external policy to its core values in the wake of the Arab Spring, was an effort to promote the new concept of deep democracy. On 23 February, the EU’s HR/VP Catherine Ashton gave perhaps her most elaborate statement explaining what she meant by the term that had recently become of staple in her discussions of the Southern Mediterranean:

We need to help build what I call deep democracy (political reform, elections, institution building, fight against corruption, independent judiciary and support to civil society). Where relevant, we can draw on our own history of building democracy and reconciliation including from those among us that have gone through these transitions recently.⁸

The HR/VP’s term had entered into official EU policy by May of 2011, when the EU issued *A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy*. It was announced there that the EU’s policy included a ‘new approach’ to its neighbours that would:

provide greater support to partners engaged in building deep democracy – the kind that lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and

⁶ Štefan Füle, ‘Speech on the recent events in North Africa’, Speech/11/130, np <http://europa.eu/rapid/press-release_SPEECH-11-130_en.htm> accessed 14 July 2016.

⁷ *ibid.*

⁸ ‘Remarks by the EU High Representative Catherine Ashton at the Senior Officials’ Meeting on Egypt and Tunisia’ (n 5).

army forces, access to a competent and non-corrupt civil service — and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion.⁹

The *New Response* outlined several aspects of this new deep democracy, including:

- free and fair elections;
- freedom of association, expression and assembly and a free press and media;
- the rule of law administered by an independent judiciary and right to a fair trial;
- fighting against corruption;
- security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces.¹⁰

In addition, the 2011 *New Response* pledged, in further support of deep democracy, additional support for civil society organisations, intensifying political and security cooperation.¹¹

In December of 2011, the EC and the HR/VP issued a Joint Communication to the Parliament and Council entitled *Human Rights and Democracy at the Heart of EU External Action – Towards A More Effective Approach*.¹² The expressed purpose of the Joint Communication was ‘to open a discussion with the other European institutions on how to make the EU’s external policy on human rights and democracy more active, more coherent and more effective’.¹³ With reference to the recent ‘seismic changes’ that had taken place in the world, the Joint Communication reiterated what it described the *New Response to A Changing Neighbourhood* as having

introduced two concepts: ‘deep democracy’ [and] ‘more for more’ that [would reward] countries that are willing to make real progress on the road towards democracy by making additional funds available for cooperation. The reverse of ‘more for more’ should also apply.¹⁴

The EU, its HR/VP, and Commissioner Füle were now on the record that the EU needed to revise its approach to the Southern Mediterranean by pursuing its deep values rather than short-term interests when dealing with governments, and that two fundamental aspects of this new approach were to promote deep democracy as well as to make aid conditional on serious changes (under such terms as positive and negative conditionality, more for more, and less for less).

⁹ COM (2011) 303, 2.

¹⁰ *ibid.* 3.

¹¹ *ibid.* 4-6.

¹² Commission, ‘Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach’ (Joint Communication to the European Parliament and the Council) COM(2011) 886 final , 12 December 2011 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>> accessed on 17 October 2016.

¹³ *ibid.* 4.

¹⁴ *ibid.* 9.

With regard to the EU policy towards democratisation and human rights in Morocco since 2011, we find no evidence that deep democracy has been promoted in any serious way, nor that the EU has ever attached positive or negative conditionality to Morocco's actions. Indeed, the very term deep democracy (*démocratie solide*) has not become a part of the diplomatic dialogue between the EU and Morocco. Moreover, the EU as a whole appears to have stopped using the term in official documents.¹⁵

We do not opine on whether positive or negative conditionality would have had a beneficial effect, nor on whether deep democracy is a meaningful or helpful way to conceptualize the promotion of democracy. We simply note that they have not been part of EU policy toward Morocco, despite the rhetorical reformulation – on paper – of EU policy in 2011.

Speaking of the crisis in the EU prompted by the Brexit vote in the UK, EU observer Richard Youngs stated in *Foreign Affairs*: 'there is a familiar pattern at work: after every [EU] crisis in the last two decades, European leaders have promised to rethink integration, only to carry on in a business-as-usual fashion as soon as the dust settles'. The Arab Spring and deep democracy appear to be yet another example of this 'familiar pattern'.¹⁶

Against all this background, this report aims to analyze the conceptual contours of deep democracy and the EU's human rights and democracy promotion policies and programmes in three countries of the Southern Mediterranean: Tunisia, Egypt and Morocco. While in Tunisia and Egypt the democratic uprisings succeed in a regime change, the *Mouvement du 20 février* in Morocco was able only to push for some minor top-down political reforms.

The core objective of our analysis is to explore to what extent EU's policies towards these countries have been influenced by the supposedly new paradigm developed by the EU through the concept of deep democracy and through the creation of new programmes and institutions such as the European Endowment for Democracy (EED), the Civil Society Facility (CSF), or the reviewed European Neighbourhood Policy (ENP).

The methodology that has been used to carry out this research is a combination of literature review, document analysis and interviews to key stakeholders. It comprises the analysis of the main documents issued by the EU in the policy formulation phase - Action Plans (AP) and Country Strategy Papers (CSP) -, but also implementation -Statements, National Indicative Programs (NIPs) of the European Neighbourhood Policy Instrument (ENPI), Single Support Framework (SSF) of the European Neighbourhood Instrument (ENI)- and evaluation -European Neighbourhood Policy (ENP) Progress Reports, and Reports of the European Court of Auditors- documents. The analysis of the documentation has been complemented by information provided by semi-structured interviews with European Union

¹⁵ Stavros Lambrinidis did use the term in passing in his 'Human Rights Day' speech on 10 December 2012, when he urged people to 'not point fingers' at human rights violators, but to 'join hands for a common effort'. See, Stavros Lambrinidis, 'On human rights day don't point fingers- join hands' <http://eeas.europa.eu/delegations/belarus/press_corner/all_news/news/2012/10_12_2012_en.htm> accessed on 17 October 2016.

¹⁶ Richard Youngs, 'Democratizing Europe', *Foreign Affairs* (8 August 2016) <<https://www.foreignaffairs.com/articles/europe/2016-08-08/democratizing-europe>> accessed 17 October 2016.

(EU) officials, members of United Nations (UN) Agencies, academics, human rights activists, and members of civil society organizations that have participated in EU funded programmes. Due to the sensitive nature of the issue at stake and for the sake of security and confidentiality, most interviewees preferred to remain anonymous.

II. EU promotion of human rights and democracy in need of conceptual clarification

One of the most puzzling features of the EU's action in the field of human rights and democracy is the lack of conceptual clarity.¹⁷ While the concept of human rights emanating from international human rights law is fairly well-established, the conceptual approach to democracy is still plagued by vagueness, inconsistencies, ambiguities and competing visions.¹⁸ Very often, references to human rights and democracy are accompanied by concepts such as *good governance* and the *rule of law*.¹⁹ In spite of the adoption of the *EU Strategic Framework and Action Plan on Human Rights and Democracy* in June 2012,²⁰ the reality is that the EU is still missing a focused strategy on what it wants to achieve with its human rights and democracy policies and programmes. One very telling example is the introduction of the concept of deep and sustainable democracy²¹ in 2011 in the context of the review of the ENP. Surprisingly, this concept was not mentioned at all in the Strategic Framework adopted one year later, a crystal-clear signal of conceptual inconsistency.²²

Some scholars have argued that this conceptual indeterminacy on the part of the EU is basically due to the existence of different conceptions of human rights and democracy within the EU member states. While some of these endorse a liberal approach, others prefer a social-democratic view. But in the EU's external relations a 'fuzzy liberalism'²³ prevails. Other commentators offer a much more sceptic account of the EU, given that 'the EU acquis on democracy is simply non-existent'.²⁴

In the same vein, the EU has not clearly delineated relations between human rights and democracy. It seems that the EU considers human rights and democracy as mutually reinforcing, but this relation needs further reflection. While the protection of all human rights is a basic ingredient for a democratic system, some rights are more conducive to the strengthening of a democratic process. In the Southern Mediterranean, the EU has prioritized human rights projects in the area of children and women's rights,

¹⁷ Todd Landman and Marco Larizza, *EU Policy Discourse: Democracy, Governance and Human Rights* (International IDEA 2010).

¹⁸ Anne Wetzel and Jean Orbie, 'The EU's Promotion of External Democracy: In Search of the Plot' (2012) *CEPS Policy Brief*, 2.

¹⁹ See Alexandra Timmer, Balázs Majtényi, Katharina Häusler, and Orsolya Salát, 'EU Human rights, democracy and rule of law: from concepts to practice', (2014) FRAME Deliverable 3.2 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/10-Deliverable-3.2.pdf>> accessed 15 September 2016.

²⁰ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 11855/12, 25 June 2012.

²¹ Commission, 'A New Response to a Changing Neighbourhood. A Review of European Neighbourhood Policy' (Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission) COM (2011) 303, 25 May 2011.

²² Deep democracy is not mentioned either in the *EU Action Plan on Human Rights and Democracy (2015-2019)* adopted by the Foreign Affairs Council on 20 July 2015, in Council Conclusions on the Action Plan on Human Rights and Democracy, 10897/15, Brussels, 20 July 2015.

²³ Milja Kurki, 'Political Economy Perspective: Fuzzy Liberalism and EU Democracy Promotion: Why Concepts Matter' in Anne Wetzel and Jan Orbie (eds.), *The Substance of EU Democracy Promotion. Concepts and Cases* (Palgrave Macmillan 2015) 35.

²⁴ Dimitry Kochenov, 'Law Perspective: Praise Undeserved? The EU as a Democracy Promoter: A Sceptical Account', in Wetzel and Orbie (n 23) 27.

projects that tend to be ‘relatively uncontroversial and less relevant to the promotion of democracy’.²⁵ Human rights projects in the field of political participation, freedom of expression and freedom of assembly are more controversial, therefore more likely to generate reactions and resistance from third countries.²⁶

Additionally, the funding of EU democracy promotion activities ‘tends to be very technocratic’,²⁷ as if democracy promotion was a merely technical exercise rather than an ideological endeavour. According to Kurki, this de-politicization of EU democracy assistance to civil society organizations (CSOs) through the European Instrument for Democracy and Human Rights (EIDHR) hides a ‘neoliberal preference’,²⁸ turning CSOs into service providers instead of agents of political and social change, thus promoting a ‘liberal narrative’ and a technocratic approach that do not challenge hegemonic discourses and politics.²⁹

Another criticism of the European model of human rights and democracy promotion is associated with the underlying economic agenda. Most of the time, although not always explicitly formulated, the human rights and democracy support package is accompanied by the promotion of a liberal market economy. In Huber’s view, ‘this is driven by the convictions that the liberalization of the economies of authoritarian countries, and their integration into the world economy, would pave the way for democratization’.³⁰ This is precisely the model undergoing strong criticisms after the Arab Spring, since the root causes of the revolts have much to do with the deep inequalities and exclusions brought about by the liberalization policies imposed by Western countries and by the International Monetary Fund (IMF) and the World Bank.³¹ The EU has been defined as a powerful ‘agent of globalization’,³² since it fully supports the current process of globalization through its trade policy and the establishment of a neoliberal international economic order. Ultimately, the EU ‘contributes to international structures that, while positive in many ways, also reproduce and reinforce patterns of exclusion, alienation and uncertainty’,³³ thus paving the way for legitimate criticisms of arrogance and neo-colonialism from the

²⁵ Federica Bicchì, ‘Dilemmas of implementation: EU democracy assistance in the Mediterranean’ (2010) 17 *Democratization*, 988.

²⁶ Vicky Reynaert, ‘Democracy through the Invisible Hand’, in Wetzels and Orbis (n 23) 156.

²⁷ Kurki (n 23) 43.

²⁸ *ibid.*

²⁹ Hanna Mühlenhoff, ‘Funding Democracy, Funding Social Services? The European Instrument for Democracy and Human Rights in the Context of Competing Narratives in Turkey’ (2014) 16 (1) *Journal of Balkan and Near Eastern Studies*, 113-114.

³⁰ Daniela Huber, ‘US and EU Human Rights and Democracy Promotion since the Arab Spring. Rethinking its Content, Targets and Instruments’ (2013) 48 *The International Spectator*, 100.

³¹ This was also the case in Western support to democratic transitions in Central and Eastern Europe. While it is generally accepted that EU’s human rights and democracy promotion initiatives had a positive political impact, ‘the role of economic reform is more controversial’, given that it ‘also contributed to poverty, inequality and the transformation of former nomenclature into the new rich’, a process that paved the way for a great ‘disillusion with democracy’. See, *Final Report. Evaluation of the PHARE and TACIS Democracy Programme, 1992-1997* (ISA Consult-European Institute-GJW Europe, 1997) 29-30.

³² Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (Palgrave Macmillan, 2014) 33.

³³ *ibid.* See also Eva Maria Lassen et al, ‘Report on in-depth studies of selected factors which enable or hinder the protection of human rights in the context of globalisation’ (2015) FRAME Deliverable 2.3 <www.fp7-frame.eu/wp-

Global South.³⁴ This situation of social and economic exclusion associated with neoliberal economic and social agendas is precisely what ignited the protests that led to the revolutions in a number of Arab countries in 2010 and 2011.³⁵ As Pace and Cavatorta have critically underlined, 'ordinary Arab citizens rose up against precisely those rigged neo-liberal reforms imposed by Western organizations like the IMF and the World Bank that led to an even more unequal distribution of wealth in their countries and impoverished the masses over the last two decades'.³⁶ A coherent and consistent human rights and democracy promotion strategy needs a totally different economic agenda, an agenda that seriously takes into account that the enjoyment of socio-economic rights and human development are an integral part of any substantive democratic project. As Wetzels has rightly emphasized, 'a certain level of socio-economic equality is necessary for meaningful political equality'.³⁷

What is quite clear is that the EU cannot pretend to export its model (if any) of human rights and democracy, since in a post-Western world³⁸ this generates strong and, somewhat, legitimate reactions and contestations. The EU needs to be more modest in its approach, paying attention to the local context, to the local actors, and the local ways of framing concepts such as human dignity, democracy, participation, and inclusion.³⁹ National and local ownership are key components of any meaningful strategy for the promotion of human rights and democracy.⁴⁰

[content/uploads/2015/08/FRAME-Deliverable-2.2-Submitted-30-June-2015.pdf](http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-2.2-Submitted-30-June-2015.pdf)> accessed 15 September 2016; Jeffrey Kenner, Pierre Schmitt, Katrina Sissins and Stuart Wallace, 'Structures and mechanisms to strengthen engagement with non-state actors in the protection and promotion of human rights', (2016) FRAME Deliverable 2.2, <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/26-Deliverable-7.3.pdf>> accessed 15 September 2016.

³⁴ Esther Barbé, 'La UE como promotora de los derechos humanos en Naciones Unidas' in Esther Barbé (dir.), *La Unión Europea en las relaciones internacionales* (Tecnos, 2014) 413.

³⁵ Ester Muñoz Nogal and Felipe Gómez Isa, '¡Pan, Libertad, Justicia Social! Las revueltas populares de Túnez y Egipto y la defensa de derechos económicos y sociales', in Jordi Bonet Pérez and Rosa Ana Alija Fernández (eds.) *La exigibilidad de los derechos económicos, sociales y culturales en la Sociedad internacional del siglo XXI: una aproximación jurídica desde el Derecho internacional* (Marcial Pons, 2016) 219-241.

³⁶ Michelle Pace and Francesco Cavatorta, 'The Arab Uprisings in Theoretical Perspective- An Introduction' (2012) 17 *Mediterranean Politics*, 130.

³⁷ Wetzels and Orbie (n 18) 7.

³⁸ Western power is in a progressive decline, with an increasing economic and political relevance of emerging countries such as Brazil, Russia, India, China, South Africa (the so-called BRICS), the Gulf States or Turkey. This has led to some commentators to proclaim that we have entered a 'post-Western World', a new context in which the EU and the US cannot take the lead any more in issues that have to do with the promotion of a value-based international system. See, Susi Dennison and Anthony Dworkin, *Towards an EU Human Rights Strategy for a Post-Western World* (ECFR, 2010).

³⁹ Martin Dahinden, 'Democracy Promotion at a Local Level: Experiences, Perspectives and Policy of Swiss International Cooperation' (2013) 4 (3) *International Development Policy*, 113.

⁴⁰ For a detailed analysis of the so-called *localisation* paradigm see Koen de Feyter *et al* (eds.), *The Local Relevance of Human Rights* (Cambridge University Press, 2011).

III. Towards deep democracy

The most elaborate statement on the term deep democracy⁴¹ was made by the HR/VP Ashton at a meeting of Senior EU Officials on Egypt and Tunisia held in Brussels on 23 February 2011. After some visits to Cairo and Tunisia to test the course of events of ‘historic proportions’, Ashton started by expressing a *mea culpa*: she openly recognized that ‘events in the region show that the old stability wasn’t working’, and that ‘political and economic reforms must go hand-in-hand’.⁴² After this explicit recognition of past mistakes by the EU, she affirmed that ‘we need to build what I call *Deep Democracy*’ including aspects such as ‘political reform, elections, institution building, fight against corruption, independent judiciary and support to civil society’.⁴³ Clearly, these elements are essential ingredients of the liberal narrative of democracy, a narrative that emphasizes the relevance of civil and political rights for a meaningful process of democratization. In Virgili’s view, deep democracy refers ‘*de facto* to liberal democracy’.⁴⁴

Immediately after her references to deep democracy, the HR/VP addressed the issue of development, stating that ‘we also need to work on economic development’.⁴⁵ It is however not clear whether or not economic development forms an integral part of the very concept of deep democracy, or whether it is simply an element of a context conducive to it. Besides, we find no explicit reference at all to socio-economic rights. These rights are conceived as development issues, not as true rights. According to some scholars, ‘although social and economic issues are not entirely absent from the revised ENP, they are never described as rights and are always noticeably distinct from any definition of deep democracy’.⁴⁶ This is a clear manifestation of the conceptual inconsistencies and lack of clarity on the actual scope of the ill-defined concept of deep democracy, and goes against the well-established concept of indivisibility and interdependence of all human rights under international human rights law.

Another relevant aspect that needs adequate attention is the mutual relationship between democratization on the one hand and economic development on the other. Before the Arab Spring, as we have already mentioned, the EU insisted on the liberal approach to this relationship. Liberalization and economic reforms would create the adequate conditions for democratization processes to take

⁴¹ The first time that Catherine Ashton possibly used the term deep democracy was on 10 February 2011, the day before Mubarak was ousted, when she issued a statement calling for an ‘orderly and irreversible transition towards democracy and free and fair elections’. But she also stated that ‘*deep democracy* is what is now required’. See, ‘Statement by the High Representative/Vice-President Catherine Ashton following the speech of President Mubarak’ (Brussels, 10 February 2011) IP/11/146 <http://europa.eu/rapid/press-release_IP-11-146_en.htm> accessed 14 October 2016.

⁴² ‘Remarks by the EU High Representative Catherine Ashton at the Senior Officials’ Meeting on Egypt and Tunisia’ (n 5).

⁴³ *ibid.* (emphasis added).

⁴⁴ Tommaso Virgili, ‘The Arab Spring and the EU’s Democracy Promotion in Egypt: A Missed Appointment?’ (2014) 6 (3) *Perspectives on Federalism*, 45.

⁴⁵ ‘Remarks by the EU High Representative Catherine Ashton at the Senior Officials’ Meeting on Egypt and Tunisia’ (n 5) 2.

⁴⁶ Andrea Teti, Darcy Thompson and Christopher Noble, ‘EU Democracy Assistance Discourse in Its New Response to a Changing Neighbourhood’ (2013) 9 *Democracy and Security*, 71.

place.⁴⁷ Now, the logic is the opposite, since, as proclaimed in the EU document outlining the review of the ENP, reforms based on the basic elements of deep democracy ‘will not only strengthen democracy but help to create the conditions for sustainable and inclusive economic growth, stimulating trade and investment’.⁴⁸ Accordingly, democratization has to be considered as a priority in the context of the new ENP, given that democratic reforms will operate ‘as a cause of economic growth, thus addressing socio-economic inclusion’.⁴⁹ This new approach has major implications for the main objectives of the ENP. While in the past it focused on economic liberalization and reforms, now the priorities should go to democratic reforms. We will see to what extent this new approach has had any practical consequence in the way in which the EU has managed the ENP policies and programmes in Egypt. Unfortunately, rhetoric shifts are not always accompanied by effective changes on the ground.

In May 2011, in the context of the revision of the ENP, the EU further elaborated on the concept of deep democracy, adding the adjective ‘sustainable’ to it without clarifying its nature and scope. According to the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, ‘deep and sustainable democracy’ requires the following elements: ‘free and fair elections; freedom of association, expression and assembly and a free press and media; the rule of law administered by an independent judiciary and right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces’.⁵⁰ Surprisingly, we do not find the references to civil society that were present in the February document, while the emphasis on the role of civil society in the democratization processes is one of the main innovations in the new approach to the ENP after the Arab Spring.

The renewed emphasis on the importance of civil society for democracy and human rights is probably one of the main consequences of the EU’s new vision when it comes to relations with its neighbours in the Southern Mediterranean. The EU believes that ‘civil society actors have a significant share in the successful democratization process from a bottom-up perspective’.⁵¹ A clear manifestation of this commitment is a Communication from the European Commission (EC) adopted in 2012 on Europe’s engagement with CSOs, which begins by underlining that ‘an empowered civil society is a crucial component of any democratic system’.⁵² It also established three priorities for EU support to CSOs: ‘to enhance efforts to promote a conducive environment for CSOs; to promote a meaningful and structured participation for CSOs in domestic policies (...), in the EU programming cycle and in international

⁴⁷ Vicky Reynaert, ‘Democracy through the Invisible Hand’, in Wetzel and Orbie (n 23) , 151.

⁴⁸ COM(2011) 303.

⁴⁹ Teti, Thompson and Noble (n 46) 71.

⁵⁰ COM(2011) 303.

⁵¹ Christin Knüpfer, ‘The Shallowness of Deep Democracy? EU Democracy Promotion in the MENA Region after the Arab Spring’ (Master’s Thesis, University of Amsterdam 2014).

⁵² Commission, ‘The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions), COM(2012) 492 final, 3. See Jeffrey Kenner, Pierre Schmitt, Katrina Sissins, and Stuart Wallace, ‘Structures and mechanisms to strengthen engagement with non-state actors in the protection and promotion of human rights’, (2016) FRAME Deliverable 7.3 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/26-Deliverable-7.3.pdf>> accessed 15 September 2016.

processes; and to increase local CSOs' capacity.⁵³ It is worth noting that in this Communication there is no a single reference to the concept of deep democracy, another clear signal of conceptual indeterminacy and ambiguity on the part of the EU.

The relevance given to CSOs by the EU in the process of democratization of the Southern Mediterranean after the Arab Spring can be seen in the adoption of two specific programmes addressed exclusively to CSOs. The Communication on 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean',⁵⁴ adopted in March 2011 as a response to the uprisings, announced the creation of a Neighbourhood Civil Society Facility (CSF) aimed at strengthening CSOs in partner countries and promoting an enabling environment for their work.⁵⁵ Although the budget was rather modest (€48.4 million between 2011 and 2013 for the Eastern and Southern Neighbourhood) and there was a risk of overlapping with other programmes such as the EIDHR, it could finance some relevant projects that may have an impact on the empowerment of CSOs to act as catalysers of democratic change. However, in the case of Egypt, with a budget of €600.000 for 2011, the programme was unable to have any significant impact,⁵⁶ and focused basically on non-controversial issues such as climate change, agriculture and rural development, governance for employability, or youth employment promotion.⁵⁷

The second major innovation was the creation of the European Endowment for Democracy (EED) on 25 June 2012. Although the idea of setting up the EED was proposed by Poland in 2010 in the context of the significant deterioration of the human rights situation in Belarus, 'the decisive momentum to create the EED (...) came in 2011, in the aftermath of the Arab Spring'.⁵⁸ The EED is an independent foundation created at the initiative of both the EU and Member States aimed at channelling funds to those local actors that work for democratic change, particularly young leaders, independent media and journalists, non-registered Non-Governmental Organizations (NGOs), and trade unions. Given the flexible procedure, the fast screening of the grant applications, the possibility of submitting applications in Arabic, and the intention to fund local initiatives with a strong democratic potential, the EED could eventually play a major role in Egypt.⁵⁹ Unfortunately, the current political climate and the reluctance of

⁵³ *ibid.* 4. See also Wolfgang Benedek et al, 'Improving EU Engagement with Non-State Actors', (2015) FRAME Deliverable 7.2 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/14-Deliverable-7.2.pdf>> accessed 16 September 2016.

⁵⁴ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean' (Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions) COM(2011) 200 final, 5.

⁵⁵ 'Action Fiche for Neighbourhood Civil Society Facility 2011' <http://ec.europa.eu/europeaid/documents/aap/2011/af_aap-spe_2011_enpi.pdf> accessed 14 October 2016.

⁵⁶ European Court of Auditors, *EU Cooperation with Egypt in the Field of Governance*, Special Report No. 4, 2013.

⁵⁷ EU Neighbourhood Info Centre, 'Regional Project List – Egypt' <http://www.enpi-info.eu/list_projects_med.php?subject=0&country=2&eupolicy=0> accessed 14 October 2016. Only one project was funded under the heading 'Strengthening democratic reform in the Southern Mediterranean'.

⁵⁸ European Endowment for Democracy, 'Supporting Democracy in the European Neighbourhood and Beyond. Annual Report 2015' (Brussels).

⁵⁹ Teti, Thompson and Noble (n 46) 71. So far, the EED has only supported a small number of projects (in 2015 there were 13 EED on-going initiatives), but such projects have great democratic potential if adequately implemented. These are the main projects: 'Skills for tomorrow's Egyptian politicians'; 'Encouraging Women

the Egyptian authorities to allow foreign support to critical CSOs⁶⁰ explain why the impact of the EED is still rather limited. An official of the European External Action Service (EEAS) working on Egypt told us that the projects funded necessarily have to be very 'discrete'.⁶¹ Otherwise, the reaction of the Egyptian authorities would close even further the narrow spaces that CSOs have to work for a more democratic and pluralistic society in the country. In the end, both the EU institutions that deal with democracy promotion programmes (particularly the EIDHR) and, to a lesser extent the EED, end up somehow self-censoring, since they do not want to 'challenge' the Government by funding CSOs without the knowledge and the consent of the domestic authorities. Therefore, it would be politically risky for both the EU and the EED to support CSOs that adopt a 'confrontational' attitude with the Egyptian regime.⁶² We have to bear in mind that, according to Law 84/2002,⁶³ one of the most restrictive laws on NGOs in the region, aimed at inhibiting foreign support to local CSOs and at controlling it, any CSO receiving foreign funds has to inform the Government about all the details of the project and needs its authorization for the operation of the project.⁶⁴ This measure is a very significant obstacle for many local NGOs in need of foreign funds to pursue their activities.⁶⁵ In the end, it is 'a major instrument of the authoritarian elite to re-direct and control the financial flows from the EU'.⁶⁶ This is especially risky in a country like Egypt, where many CSOs have very strong connections with the political and economic elites.⁶⁷ In fact, there are some NGOs whose creation and operation is directly 'inspired' by governmental circles: this is the case of the government-operated NGOs (the so-called GONGOs).

Empowerment and Activism in Egypt'; 'Fair Elections and Effective Campaigns', or 'Legal Assistance to pro-democracy activists', in European Endowment for Democracy, 'We Support' <<https://www.democracyendowment.eu/we-support/?country=egypt>> accessed 16 October 2016. The European Parliament made an evaluation of the overall EED's functioning and acknowledged 'with satisfaction that despite its short period of activity and limited funds, and the challenges inherent in assessing the impact of democracy support actions,... the EED is delivering added value to existing EU democracy support through fast, flexible, bottom-up and demand-driven funding provided directly to beneficiaries...'. See, European Parliament, *Evaluation of Activities of the European Endowment for Democracy (EED)*, P8_TA-PROV(2015)0274, Resolution of 9 July 2015.

⁶⁰ Todd Ruffner, 'Under Threat. Egypt's Systematic Campaign Against NGOs' (*Project on the Middle East Democracy*, March 2015) <<http://pomed.org/pomed-publications/under-threat-egypts-ngo-community/>> accessed 14 October 2016.

⁶¹ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

⁶² *ibid.*

⁶³ Law on Non-Governmental Organisations, 2002, <<http://www.bu.edu/bucflp/files/2012/01/Law-on-Nongovernmental-Organizations-Law-No.-84-of-2002.pdf>> accessed 26 October 2016.

⁶⁴ In September 2014 the Egyptian Penal Code was amended to raise the penalties for accepting funding from a foreign country or a foreign or local private organization with the intent of harming 'national interests'. The sanctions include a life sentence and enormous pecuniary fines.

⁶⁵ Interview with a local activist working for a major Egyptian human rights NGO. For security reasons, the person interviewed decided that her or his identity would remain anonymous.

⁶⁶ Patricia Bauer, *Egypt after the Revolution of 2011-Still a matter of Democracy versus Stability?* (Cairo University, 2011).

⁶⁷ This is the case under the ENPI Programme for the promotion and protection of human rights and civil society in 2008 (€17 million). As stated by the European Court of Auditors, 'two of the organisations selected to implement the programme... were public bodies created by the Mubarak regime, and specifically linked to the President's wife, rather than government ministries', European Court of Auditors (n 56) 15.

Most of the funds for human rights and democracy promotion that the EU and the EED channel to CSOs in Egypt go to NGOs based in the capital and which have international experience and global connections. A challenge that the EU faces is how to establish good relations with Islamic organizations, key local actors in areas of democratization and social justice in Egypt and in the whole region. The EU has been however so far reluctant to engage with Islamic organizations, given that their views on a number of issues differ from the European liberal approach. As highlighted by two analysts with experience in the Arab world, 'there remains a certain danger that the EU's open support for liberal and Western-style CSOs and its almost disregard for Islamic and traditional parts of civil society will only serve to widen the deepening social divide (...) and open the EU to accusations of partiality'.⁶⁸

Once again, we must stress that the EU has to make an extra effort when defining key concepts that will serve as a basis for its human rights and democracy policies and programmes. Otherwise, consistency, clarity and, above all, effectiveness could be negatively affected. As affirmed by Babayan and Viviani, deep democracy can be viewed as a 'new buzz-term in the EU's vocabulary',⁶⁹ as a new source of conceptual confusion, without adding much to existing conceptions of democracy. Following the opinion by Amirah-Fernández and Behr, we are inclined to conclude that 'the EU has largely failed to give some meaning to most of the new catch phrases that it so liberally deploys (...), and definitions of deep democracy vary throughout the speeches of EU officials'.⁷⁰

⁶⁸ Haizam Amirah-Fernández and Timo Behr, 'The missing spring in the EU's Mediterranean Policies' (2013) 1 TGAE-Elcano, 6.

⁶⁹ Nelli Babayan and Alessandra Viviani, 'Shocking Adjustments? EU Human Rights and Democracy Promotion' (2013) 18 Transworld, 6.

⁷⁰ Amirah-Fernández and Behr (n 68) 4. The truth is that EU officials do not pay much attention to conceptual issues and to communications and guidelines coming from the European Commission; they simply do not have the time to process the huge amount of official documents coming from Brussels. As one EU high-ranking official openly recognized in an interview, 'nobody reads the guidelines of the Commission', in Knüpfer (n 51) 46.

IV. EU promotion of deep democracy in Tunisia

A. Introduction

In terms of its geographic situation, its political relations and close economic ties and dependence with the countries of the EU, Tunisia is one of the closest partners in the ENP towards the South-Mediterranean Neighbourhood. Tunisia was the first country in the Mediterranean neighbourhood to sign an Association Agreement (AA) under the Euro-Mediterranean Partnership (EMP) in 1995. The EU is Tunisia's largest trading partner – trade with the EU represented 62.8% of the country's total trade in 2015⁷¹ and the main destination of Tunisians living abroad - 83% of Tunisians abroad lived in Europe in 2009, mainly in France 54.5% and Italy 13.9%.⁷² These are just some concrete examples of the close political, social and economic relations between the EU and Tunisia which result in this small Mediterranean country being considered as a country over which the EU enjoys significant influence compared to other neighbouring countries such as Egypt.⁷³ However, the EU, and its Member States, have prioritized economic and security interest over the promotion of democracy and human rights, and human rights concerns during the time of Ben Ali did not prevent the EU from pursuing the development of relations between the EU and Tunisia.⁷⁴ According to the evaluation report requested by the European Parliament (EP), *EU action to strengthen respect for human rights and democracy in the process of political changes in the Middle East and North Africa*, '[p]revious EU-Tunisian partnerships have not been conducive in improving human rights in Tunisia'.⁷⁵

After the revolution, the vision of Tunisia as the 'success story of the Arab Spring', a label that hides some of the most serious problems that Tunisia is still facing, such as social inequality, unemployment, repression or corruption, has granted the country a central place in EU democracy promotion programmes.⁷⁶ This has been reflected in the increase of funding allocated towards the country and the accession of Tunisia to 'Privileged partnership' with the EU in 2012.

Before the publication in May 2011 of the EC Communication 'A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy' (the first official document of the EU in which the idea of deep democracy is included) Catherine Ashton had already used this concept in her statements about Tunisia and Egypt. In Remarks at a Senior officials' meeting on Egypt and Tunisia in February 2011, Ashton advanced the main features of what she called deep democracy: political reform,

⁷¹ DG-Trade, 'Tunisia' < <http://ec.europa.eu/trade/policy/countries-and-regions/countries/tunisia/> > accessed 27 October 2016.

⁷² Migration Policy Center, 'Migration Profile: Tunisia' (June 2013) 1 <http://www.migrationpolicycentre.eu//docs/migration_profiles/Tunisia.pdf> accessed 27 October 2016.

⁷³ Vicky Reynaert, 'Democracy Through the Invisible Hand? Egypt and Tunisia' (n 26).

⁷⁴ Daniela Huber, *Mixed Signals Still?: The EU's Democracy and Human Rights Policy Since the Outbreak of the Arab Spring* (Istituto Affari Internazionali 2012).

⁷⁵ DG for External Policies, *EU action to strengthen respect for human rights and democracy in the process of political changes in the Middle East and North Africa* (EXPO/B/DROI/2011/23) 28.

⁷⁶ We will further discuss the criticism to and the consequences of the adoption of the 'success story' discourse in the section Positive conditionality or more for more?.

elections, institution building, fight against corruption, independent judiciary, support to civil society, more differentiation and positive conditionality.⁷⁷

Moreover, in an article published in February 2011 in the online journal *The Guardian*, ‘The EU wants ‘deep democracy’ to take root in Egypt and Tunisia’, the HR/VP explained the difference between the concepts of surface democracy and deep democracy:

What we in Europe have learned the hard way is that we need ‘deep democracy’: respect for the rule of law, freedom of speech, an independent judiciary and impartial administration. It requires enforceable property rights and free trade unions. It is not just about changing government but about building the right institutions and attitudes. In the long run, ‘surface democracy’ – people casting their votes freely on election day and choosing their government – will not survive if deep democracy fails to take root.⁷⁸

In this article, HR/VP Ashton affirmed that this concept was already being implemented in Tunisia through support for elections, the fight against corruption, transparency in the local administration, independence of the justice system and support to civil society.⁷⁹

A case study about the implementation of the concept of deep democracy in Tunisia was undertaken in order to understand whether and how the concept is being applied in the EU policies towards Tunisia and what issues are included in the democracy promotion policies of the EU in Tunisia.

In this regard, one criticism that was levelled at the EU democracy promotion towards the Mediterranean before the revolution of 2010-2011 is that its programmes and projects were linked and oriented to the objective of supporting market reforms.⁸⁰ According to Vicky Reynaert, an analysis of the substance of democracy promotion in Tunisia and Egypt shows how ‘[o]verall, the main objective of the EU’s policy towards the Mediterranean region has not changed following the Arab Spring: the goal is still to integrate the Mediterranean neighbours into the EU internal market. Consequently, the promotion of the reform of state administrative capacity also still receives focused attention. In the discourse, the main task of the state is still presented as facilitating access to the EU internal market’, and she continues that ‘the European Commission and the High Representative now argue that these reforms of the state will lead not only to economic development and security, but also to more democracy’.⁸¹

Another common criticism is the narrow conception of democracy, defined as ‘fuzzy liberalism’ that the EU promotes in its policies. Through an analysis of the main documents that orient the EU policies towards third countries, Andrea Teti concluded that the EU, in spite of a change of discourse, still relies

⁷⁷ ‘Remarks by the EU High Representative Catherine Ashton at the Senior officials’ meeting on Egypt and Tunisia’ (n 5).

⁷⁸ Catherine Ashton, ‘The EU wants “deep democracy” to take root in Egypt and Tunisia’ *The Guardian* (4 February 2011) < <https://www.theguardian.com/commentisfree/2011/feb/04/egypt-tunisia-eu-deep-democracy>> accessed 22 July 2016.

⁷⁹ *ibid.*

⁸⁰ Reynaert (n 47).

⁸¹ *ibid* 152-153.

on the same narrow conception of democracy that excludes issues such as social justice, that were central to the conception of democracy expressed by the participants in the Arab uprisings of 2011.⁸²

With this study we try to answer the following questions: How has the concept of deep democracy been received and applied? Does it represent an innovation with respect to the past? And, what is effectively included in the democracy promotion policies of the EU towards Tunisia?

The study is structured in three parts. The first section is devoted to the reception of the concept of deep democracy in the EU documents and in the work of the EU Delegation in Tunisia. A second section analyses EU cooperation with Tunisia to show whether the elements of the concept of deep democracy (elections, conditionality, civil society support, etc.) are being included in EU democracy promotion projects and programmes. And, finally, a third section provides a summary of the main conclusions of the analysis.

B. The reception in Tunisia of the concept of deep democracy in EU policies

The concept of deep democracy has been presented as one of the main innovations in the ENP after the Arab revolutions. According to the HR/VP Ashton, the application of the concept in EU relations with the Tunisian government had already begun by February 2011. The concept grabbed the attention of practitioners and scholars and the HR/VP presented it as a new guiding principle of EU foreign policy.⁸³ This contrasts with the lack of systemic use of the concept in the main programming and implementation documents of EU policies towards Tunisia after 2011.

The new AP that outlines the priority actions and sectors on which relations between the EU and Tunisia will be focused in the period 2013-2017 contains only one reference to the concept of deep democracy (*approfondissement de la démocratie*) in the list of the objectives of the new Neighbourhood policy towards Tunisia: '(a) provide greater assistance to the partners committed with deep democracy, rule of law, human rights, fundamental freedoms and gender equality'.⁸⁴ This objective is also set out both in the programming document of the ENI (2014-2017) and SSF for 2014-2015. However, neither of the documents further develops the concept and in subsequent references to objectives and projects related to democracy promotion the deep democracy formula is not used. The concept is also absent in the ENP progress reports from 2011 to 2014. Regarding other documents of EU foreign policy such as

⁸² Andrea Teti, 'Democracy Without Social Justice: Marginalization of Social and Economic Rights in EU Democracy Assistance Policy after the Arab uprisings' (2015) 24 Middle East Critique 9.

⁸³ 'Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Speech on the Annual Human Rights Report Strasbourg' (Strasbourg, 13 December 2011) SPEECH/11/885 < http://europa.eu/rapid/press-release_SPEECH-11-885_en.htm?locale=en > accessed 14 October 2016.

⁸⁴ '[A]pporter une aide accrue aux partenaires s'engageant dans l'approfondissement de la démocratie et dans le respect de l'Etat de droit, des droits de l'Homme, des libertés fondamentales et de l'égalité des genres', *Relations Tunisie - Union Européenne: Un partenariat privilégié. Plan d'Action 2013-2017* (hereinafter referred to as The Action Plan 2013-2017) 3. Original in French, translation by the author.

HR/VP statements, we find several references in statements made in 2011, but none in statements in 2013 or 2014.⁸⁵ The concept is also absent in the Foreign Affairs Council conclusions.

This lack of consistency in the use of the concept and the virtual absence of references to the content of what is understood to be meant by deep democracy in the EU programming and implementation documents leads to the conclusion that this concept is not used as a guiding principle for EU policy towards Tunisia.

This is consistent with the ideas expressed by one EU source in Tunisia which recognizes that, while there are programmes and projects that cover all the elements included in the definition of deep democracy, these are not applied according to a comprehensive vision based on the concept of deep democracy: 'We work on those issues, but not strategically or holistically'.⁸⁶

In this sense, although the new AP between the EU and Tunisia for 2013-2017 does not include any mention of the concept of deep democracy, the priorities and actions in the section of human rights and democracy envisage the sectors of intervention detailed by HR/VP Ashton in the explanation of the concept (legal administrative and institutional reform, justice sector reform, elections, dialogue and cooperation with international human rights organizations and bodies (UN), freedom of expression, association and assembly, rights of women and children, death penalty and torture, support to civil society and human rights defenders, and universal implementation of the Rome Statute of the ICC). Actions on the fight against corruption and local administrations are included in other sections. The SSF for 2014-2015 also includes those dimensions in the sector of concentration 2 (consolidation of elements of democracy). Support for CSOs is provided by the Civil Society Support Programme (CSSP) and further actions in support of CSOs are included in all the other programmes.

This is also the case of the ENP progress reports. From 2011 to 2014 all the progress reports stressed a common range of topics in the sections devoted to political dialogue and human rights and democracy. Those themes match the definition of deep democracy applied to the context of Tunisia provided at the beginning of this report.

Considering the main documents orienting EU policies toward Tunisia we can conclude that although the concept of deep democracy does not appear in the documents as a guiding principle, the elements included in the concept are present in the programmes and actions financed by the EU in Tunisia.

C. Deep democracy, a new approach to democracy promotion in Tunisia?

After the revolution that led to the ousting of Ben Ali, the EU significantly increased its financial assistance to Tunisia through various instruments and diversified the sectors of intervention in the country. In particular, more resources were provided for democracy related themes compared to

⁸⁵ Statements of former HR/VP Catherine Ashton provided by the official EEAS website, <http://eeas.europa.eu/archives/ashton/index_en.htm> accessed 9 September 2016.

⁸⁶ Interview with an EU source in Tunisia, July 2016 (Tunis, Tunisia).

previous years. After the revolution, the € 240 m. initially allocated under the ENPI for the period 2011-2013 were increased with an additional amount of € 50 m. Tunisia was also the first country to receive assistance under the new Support for Partnership, Reforms and Inclusive Growth (SPRING) funds (€ 155 m. during 2011 and 2013), created according to an incentive base approach (principle of positive conditionality or more for more). The financial allocation of bilateral assistance under the ENI for 2014-2015 amounted to € 234 m., supplemented by € 121 m. through the Umbrella funds (the substitute of SPRING funds that also follows the positive conditionality principle).⁸⁷

The EU has also provided € 200 m. in Macro-Financial Assistance (MFA) for Tunisia and has approved additional MFA amounting to € 500 m.⁸⁸

As we can see in Table 1, during the period 2011-2015, the increase of funds was also translated into a new focus on programmes related to democratization and human rights. However, the main focus of EU relations with Tunisia continues to be economic reforms.

Table 1: ENI financial allocations (in €m.).

European Neighbourhood Instrument - Good governance and democracy						
	2011	2012	2013	2014	2015	Total
Good governance and democracy (€ 96 m.)						
CSSP		7				7
Justice reform		25		15		40
Equality between men and women				7		7
Migrations				3		3
Support for media reform				10		10
Culture sector support					6	6
Security sector support					23	23
Economic reform (€ 511.8 m.)						
Social sector, environment and regional development (€ 193 m.)						

Source: EU Delegation in Tunisia. *Rapport 2015. Coopération de l'Union européenne en Tunisie* (2016).

According to Kaush: 'Donors initially focused on preparing the grounds for the September 2011 elections, and after that, provided extensive support to the constitutional drafting process. Over the past year, they have enlarged their assistance portfolio to include a broader focus on policy

⁸⁷ For a detailed analysis of the new allocations of funds under the ENPI/ENI in Tunisia after the revolution see Gómez Isa, F., et al., 'Challenges to the Effectiveness of EU Human Rights and Democratisation Policies', (2016) FRAME Deliverable 12.3, available at <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-12.3.pdf>. A complete overview of financial assistance by the EU towards Tunisia, Morocco and Egypt can be found in: Rosa Balfour, Sergio Fabbrini and Richard Youngs, *Report on democracy assistance from the European Union to the Middle East and North Africa* (EUSpring Report, 18 May 2016).

⁸⁸ A final instalment of € 100 m. should be disbursed in 2016. See EU, 'Relation between the EU and Tunisia' (15 September 2016) <https://eeas.europa.eu/sites/eeas/files/10_tunisia_4pg.pdf> accessed on 27 October 2016.

development and capacity- and institution-building.⁸⁹ As Annex I shows, this pattern was also followed by the EU in its policies towards democracy and human rights.

In fact, one of the main changes to EU relations with Tunisia has been the increased attention and support in the organization of elections. This is because in the past EU support in the field of elections in Tunisia was ‘almost non-existent’.⁹⁰ In 2004, the EU ‘issued a declaration in 2004 congratulating Ben Ali ‘with his new term as President’, and ‘encouraging the authorities of Tunisia to continue to improve the framework for elections and to take the necessary steps to ensure that the next elections fully meet international standards’.⁹¹ In other elections, like those of 2009, the EU issued no declaration.

After 2011, the EU engaged itself more with electoral processes in Tunisia in a multilevel approach. The EU provided support for domestic institutions, deployed Election Observation Missions (EOM), and provided support for CSOs for the domestic monitoring of elections. The holding of monitored, free and fair elections is one of the elements of positive conditionality:

Following the Arab Spring, the EU also launched a ‘Partnership for Democracy and Shared Prosperity’. In order to benefit from this partnership, the Mediterranean countries are required to hold monitored, free and fair elections. This shows a new focus of the EU on the electoral regime, which according to the EU will be used as a rewards-based conditionality mechanism.⁹²

With the celebration of the parliamentary elections in 2014, and the creation of a new Parliament, the EU launched several projects in support of parliamentary activity. In February 2016, a Joint EP-Tunisian Parliament Parliamentary Committee was set up.⁹³

Specific assistance on human rights and CSOs was also provided through specific thematic instruments such as the CSF – € 2.4 m. during 2011-2012 - and the EIDHR – € 7.2 m. during 2011-2013.⁹⁴ Civil society organizations also received assistance under the EED. Finally, the EU Delegation in Tunisia followed a new approach in its cooperation programmes that mainstream support for CSOs in different programmes and has established a tripartite dialogue involving the EU, Tunisian authorities and CSOs.⁹⁵ The new programmes and measures for CSOs will be discussed in more depth in the following sections.

Apart from the increase in financial assistance and its focus on democracy and CSOs, the EU also created two new institutional structures: the EU Special Representative (EUSR) for the Southern Mediterranean region and the UE-Tunisia task force which staged its first meeting on 27-28 September 2011.⁹⁶

⁸⁹ Kristina Kausch, *‘Foreign funding’ in post-revolution Tunisia* (AFA, Fride and Hivos, 2013) 12.

⁹⁰ Reynaert (n 26) 154.

⁹¹ *ibid.*

⁹² *ibid.* 155.

⁹³ EU Delegation in Tunisia, *Rapport 2015. Coopération de l’Union européenne en Tunisie* (2016) 12.

⁹⁴ Balfour, Fabbri and Youngs (n 87).

⁹⁵ Interview with an EU source in Tunisia, July 2016 (Tunis, Tunisia).

⁹⁶ Commission, ‘Mise en œuvre de la Politique Européenne de Voisinage en Tunisie. Progrès réalisés en 2011 et actions à mettre en œuvre’ (Document de travail conjoint des services) SWD(2012) 123 final, 2.

The assessment of the impact of EU programmes and projects in Tunisia after 2011 was the subject of a chapter in the report entitled *Challenges to the Effectiveness of EU Human Rights and Democratisation Policies*.⁹⁷ In assessing the impact of the creation of new institutions, such as the EUSR on Human Rights and Democracy, and the assistance to national institutions, the report identified three different levels of direct impact: 'the creation of networks and platforms to develop monitoring activities or activities in defence of human rights; the provision of infrastructure and resources; and the provision of services (legal, medical or psychological assistance) to affected population'.⁹⁸

In view of the above, it can be concluded that the response of the EU to the revolution in Tunisia is based on the increase of funds and the creation of new instruments and that the EU gives more attention to issues such as democratization, human rights and its relationship with civil society organizations.

However, some authors have questioned the extent to which these developments are actually an innovation compared to previous intervention in the country and its impact on the substance of EU democracy promotion strategies. It seems to be an agreement in which despite the change of discourse, the rise of funding and the creation of new instruments and structures, the new EU policy towards the south of the Mediterranean, and Tunisia in particular, can be considered as a case of 'old wine in new bottles'⁹⁹, 'more of the same', or even, 'more for less'.¹⁰⁰

On one side, the EU continues to give priority to socioeconomic reforms and development over democracy and human rights as is shown by the distribution of funds in the programming documents of the main financial instruments – economic reform and development programmes represent 70% of the ENI indicative allocations for the period 2014-2015, while democracy related programmes represent 15%.¹⁰¹ Furthermore, the 'prioritization of security interest reflected in policies as migration management that could lead to, and directly cause, violations of human rights' can be considered as a continuation of previous patterns that were and still are criticized.¹⁰²

On the other side, some of the components of the concept of deep democracy had already been on the list of instruments and issues of the EU ENP, at least in the paper. This is the case, for example, of corruption. Although in her paper Catherine Ashton presented the fight against corruption as an innovation, the fight against corruption was one of the principal focuses of EU policies regarding good

⁹⁷ Felipe Gómez Isa et al, 'Challenges to the Effectiveness of EU Human Rights and Democratisation Policies', (2016) FRAME Deliverable 12.3 <<http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-12.3.pdf>> accessed 28 October 2016.

⁹⁸ *ibid.* 96.

⁹⁹ Raoudha Ben Othman, 'European Union Democracy Promotion in Tunisia' in Larbi Sadiki (ed) *Routledge Handbook of the Arab Spring* (Routledge New York 2015) 604.

¹⁰⁰ Federica Bicchì. 'The Politics of Foreign Aid and the European Neighbourhood Policy Post-Arab Spring: 'More for More' or Less of the Same?' (2014) 19(3) *Mediterranean Politics* 318.

¹⁰¹ A more detailed analysis of the allocations of EU funds to Tunisia after 2011 can be found in Gómez Isa et al (n97) 79-84.

¹⁰² *ibid.* 96.

governance and reform of the state in Tunisia and Egypt long before the revolutions.¹⁰³ Another illustrative example is the case of positive conditionality as the next section will show.

1. Positive conditionality or more for more?

Positive conditionality under the principle of more for more has been presented as one of the main innovations of the new ENP after the Tunisian revolution. However, conditionality is one of the traditional mechanisms in EU policies towards neighbouring countries. In practice, it was applied in the enlargement process of the late nineties. In this context, the evolution in the EU accession process was conditional on the political transformation of the Central European countries.¹⁰⁴

The EU has also relied on conditionality, at least in the paper, in its relations with the South-Mediterranean countries in the framework of the Euro Mediterranean Partnership,¹⁰⁵ and in its bilateral relations, through the inclusion of a human rights clause in the AA with third countries. In the case of Tunisia, the AA of 1995 provided that relations between the EU and Tunisia 'shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement'.

Neither before nor after the Tunisian revolution has the EU resorted to negative conditionality.¹⁰⁶ After 2011, respect for democracy, rule of law and human rights is presented as a pre-condition for accessing funds through the SPRING programme, Umbrella funds and MFA. However, the criteria for applying positive conditionality on the basis of respect for the principles of democracy and human rights were not clear.¹⁰⁷

In May 2014, the EP and the Council adopted the decision to provide MFA amounting to a maximum of € 300 m.¹⁰⁸ and in July 2016 adopted the decision to provide further MFA to Tunisia amounting to a maximum of € 500 m.¹⁰⁹ Art. 2 of both decisions contains an identical provision that sets as a 'pre-condition for granting the Union's macro financial assistance' that 'Tunisia respects effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, and guarantees respect for human rights'. The same article also establishes that the EC, in the decision of 2014 and the EC and the EEAS in the case of the decision of 2016, 'shall monitor the fulfilment of this pre-condition through the life-cycle of the Union's macro-financial assistance'¹¹⁰. However, there are no clear monitoring

¹⁰³ Reynaert (n 26) 152.

¹⁰⁴ Rosa Balfour, *EU Conditionality after the Arab Spring* (PapersIEMed, 16, June 2012) 15.

¹⁰⁵ *ibid* 16.

¹⁰⁶ *ibid* 16-17.

¹⁰⁷ *ibid*.

¹⁰⁸ *Decision No 534/2014/EU of the European Parliament and of the Council of 15 May 2014 providing macro-financial assistance to the Republic of Tunisia* (15 May 2014) OJ L151/9.

¹⁰⁹ *Decision 2016/1112 of the European Parliament and of the Council of 6 July 2016 providing further assistance to Tunisia* (6 July 2016) OJ L 186/1.

¹¹⁰ *Decision No 534/2014/EU*, Art.2. The text of Art. 2 of the *Decision 2016/1112* slightly varies 'shall monitor the fulfilment of the pre-condition set out in paragraph 1 throughout the life-cycle of the Union's macro-financial assistance'.

mechanisms and indicators to assess the fulfilment of this condition. The vague language of this precondition contrasts with the obligation of Art.3 to reach an agreement with the Tunisian authorities 'on clearly defined economic policy and financial conditions' that should 'be laid down in a Memorandum of Understanding'. In this case, the *Memorandum of Understanding between the European Union and the Republic of Tunisia* signed in September 2014¹¹¹ spells out specific conditions in terms of economic reforms for the disbursement of the different instalments of the MFA. It also establishes a monitoring system with concrete indicators and time frames.

In fact, according to Rosa Balfour, in the case of Tunisia, progress on economic reforms was the decisive element of the progress in negotiating the AA and the AP over democracy and human rights concerns: 'Tunisia, for instance, was one of the first to sign an Association Agreement, and was in the first group of countries agreeing on the ENP Action Plan thanks to its advances in economic liberalisation, despite the fact that since the late 1990s Ben Ali's regime had been increasingly restricting freedoms.'¹¹² According to this author, Tunisia was also one of the countries that received less criticism for its lack of respect of human rights.

Another problematic element of the more for more approach is related to the incentives on which it is based - money, market and mobility, or the 'three Ms'. In the first place, it is problematic because those are areas that belong to the foreign policy interests of Member States of the EU. According to Rosa Balfour:

Not only were these aspects beyond the remit of the Commission's External Relations Directorate General dealing with the ENP, but member states maintained strong national control over such dossiers, and when acting collectively would do so under the umbrella of the CFSP, where the relevance of the EU's external relations and its tools were limited. One fallacy of the ENP was to assume that conditionality, developed in the context of the donor beneficiary relations of development cooperation and of EU enlargement, could be exported to policies which fall into the more traditional foreign policy domain.¹¹³

Vincent Durac and Francesco Cavatorta go further to affirm that the reason behind the decision of the EU not to use the human rights clause in its relations with Tunisia was because 'the economic benefits that the EU now derives from the relationship might be jeopardized with a change at the top.'¹¹⁴

Secondly, the selection of the incentives, the three Ms, and particularly access to the market and mobility, has been found to be problematic. Both policies have been heavily criticized by the civil society community in Tunisia because of their potentially negative effects on the human rights of the population and migrants. In the case of the Deep and Comprehensive Free Trade Agreement (DCFTA) being negotiated by the EU and Tunisia, CSOs have expressed their concerns about the possible negative

¹¹¹ The MoU for the second MFA decision was not signed at the time of writing this report.

¹¹² Balfour (n 104) 16.

¹¹³ *ibid.* 17.

¹¹⁴ Vincent Durac and Francesco Cavatorta, 'Strengthening Authoritarian Rule through Democracy Promotion? Examining the Paradox of the US and EU Security Strategies: The Case of Bin Ali's Tunisia' (2009) 36 (1) *British Journal of Middle Eastern Studies*, 29.

effects that an unequal trade agreement could have for example on the right to work, food security and on the national industry.¹¹⁵ For example, according to the ‘shadow report’ to the CDESC drafted by 18 Tunisian CSOs in August 2016, one of the potentially negative effects on the implementation of the DCFTA is the increase of imports and the drop of exports that could aggravate the already precarious unemployment situation in the country.¹¹⁶ The Mobility Partnership signed between the EU and Tunisia on 3 March 2014 was also subject to criticism by Tunisian CSOs. Apart from the lack of transparency in the negotiation process, the main criticisms focused on the prioritization of migratory flow management, readmission, externalization of borders and border management over the rights of migrants and refugees and the few opportunities that it provides for mobility and access to the territory of the EU for Tunisian citizens.¹¹⁷

‘Money’ is also a problematic component inasmuch as it is subject to certain economic reforms that prevent the country being able to build up its own development model¹¹⁸ tailored to the needs of the population and the local context. In fact, the EU conditions all its Macro-Financial Assistance Programmes to the status of being a country benefiting from a disbursing IMF. This is also one of the conclusions of Knüpfer in her assessment on the implementation of deep democracy in Tunisia:

This scepticism also stems from the fact that the socio-economic misery in the first place is a result of Ben Ali’s neo-liberal reforms that have been made possible through Tunisia’s international cooperation, which is now continued through more of the same. Instead, it has been stressed that what would really help is a state of relations where Tunisia can compete at eye level which is impossible as long as DP [Democracy Promotion] is entangled with economic and security interests.¹¹⁹

In view of those concerns, in the terms in which it is being negotiated, more money, market and mobility could have a negative impact on the situation of human rights in the country, apart from being contrary to the demand for work and social justice expressed in the Tunisian revolution.¹²⁰ It is also related with the idea that the shortcomings of EU economic assistance were due to governance problems in the Ben Ali regime, rather than because of the substance of those programmes (the liberalization of the economy and markets and pro-business reforms) that were and still are undergoing heavy criticism.¹²¹

¹¹⁵ *Rapport alternatif de la société civile tunisienne au Pacte International Relatif aux Droits Économiques, Sociaux et Culturels–Août 2016*
<http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/TUN/INT_CESCR_CSS_TUN_24946_F.pdf>
accessed 7 September 2016.

¹¹⁶ *ibid.* 10.

¹¹⁷ ‘Tunisia-EU Mobility Partnership’ <<http://euromedrights.org/publication/tunisia-eu-mobility-partnership/>>
accessed 7 September 2016.

¹¹⁸ Interview with CSO member, September 2016, Tunis (Tunisia).

¹¹⁹ Knüpfer (n 51) 63.

¹²⁰ ‘Déclaration de la société civile à l’occasion du vote au Parlement européen sur l’ouverture des négociations d’un Accord de Libre-Echange entre la Tunisie et l’UE le 15 février 2016’ <<http://ftdes.net/2016/02/declaration-sur-laleca/>> accessed 7 September 2016.

¹²¹ This idea was suggested in a conversation with a Tunisian activist and is also reflected in the ENP Progress Report of 2011 which affirms that: ‘L’intervention de l’UE s’appuiera sur les résultats des précédentes

Lastly, the idea of more for more is also problematic in the sense that it conceives a situation in which the democratization process follows a linear evolution and takes for granted the commitment of the authorities to the improvement of democratic guarantees in Tunisia. In this case, the description of Tunisia as a 'success story' risks neglecting the current dynamics and problems of the country such as unemployment, inequalities among social groups and geographical regions, repression and criminalization of social movements, security, widespread corruption, or the growing influence of the President of the Republic over the Parliament, which has been seen by some experts as a dangerous return to nepotistic practices.¹²²

One example of this is the pressure from the President of the Republic regarding the adoption of a draft law on economic and financial reconciliation that erodes the competences of the Truth and Dignity Commission, the main body in charge of the implementation of the transitional justice process in Tunisia, in the field of corruption and economic crimes. This project has been opposed by a broad range of Tunisian and international CSOs and part of the Parliament that considers it as an attack on the transitional justice process and the efforts of the fight against corruption.¹²³ After a petition by the Truth and Dignity Commission, on 27 October 2015, the Venice Commission of the Council of Europe (CoE) published its interim opinion of the institutional aspects of the draft law; this concluded that in the terms in which this draft law was presented to the Commission it is not compatible with art. 148 of the Tunisian Constitution and Organic Act 2013 - 53 on transitional justice.¹²⁴ Finally, on 20 October 2016, the Tunisian Parliament paralysed the examination of the draft law on economic reconciliation and invited the President to present a new version that respects the constitution and the transitional justice law.¹²⁵ In this case, the recent resolution of the EP on EU relations with Tunisia included an ambiguous provision in which the EP: 'Welcomes the transitional justice law; recalls the high hopes of the Tunisian people for the transitional process; regrets the intense polarisation within the Truth and Dignity Commission; notes that national reconciliation and growth should not be contradictory priorities'.¹²⁶

interventions dans ce domaine qui, malgré les contraintes en termes de gouvernance liées à l'ancien régime, ont eu un impact significatif et positif'. See, EEAS and Commission DG DEVCO, 'Programmation de l'Instrument Européen de Voisinage (IEV) (2014-2017) Cadre Unique d'Appui pour l'appui de l'UE à la Tunisie (2014-2015)' 6.

¹²² 'Kais Saïd : appeler à un gouvernement d'unité nationale est un retour en arrière' *ShemsFM* (3 June 2016) <<http://www.shemsfm.net/fr/actualite/kais-said-appeler-a-un-gouvernement-d-unite-nationale-est-un-retour-en-arriere-142058>> accessed 10 September 2016; Mabrouka M'Barek, 'Essebsi's Power Grab Imperils Tunisia's Nascent Democracy' *Middle East Institute* (29 August 2016) < <http://www.mei.edu/content/article/essebsi-s-power-grab-imperils-tunisia-s-nascent-democracy>> accessed 14 September 2016.

¹²³ Rebecca Chaouch, 'Tunisie : le projet de loi sur la réconciliation économique et financière contesté dans la rue' *Jeune Afrique* (26 July 2016) <<http://www.jeuneafrique.com/344757/politique/tunisie-projet-de-loi-reconciliation-economique-financiere-conteste-rue/>> accessed 14 September 2016.

¹²⁴ Interim Opinion on the institutional aspects of the Draft Law on special procedures concerning reconciliation in the economic and financial fields of Tunisia adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015) CDL-AD(2015)032-e.

¹²⁵ 'ARP : L'examen du projet de loi de la réconciliation reporté', *Mosaïquefm* (20 October 2016) <<http://www.mosaiquefm.net/fr/actualite-politique-tunisie/36686/arp-le-projet-de-loi-de-la-reconciliation-reporte.html>> accessed on 20 October 2016.

¹²⁶ European Parliament resolution of 14 September 2016 on EU relations with Tunisia in the current regional context (2015/2273(INI)) 16.

Another case is the removal of Habib Essid's government after the proposition of a government of national unity by the President of the Republic. As has been mentioned before, some experts see this move as a concentration of power in the hands of the President of the Republic and the return to past practices.¹²⁷ However, the only public statement made by EU representatives in this regard was the statement of HR/VP Federica Mogherini in which she welcomed the formation of the new government on 26 August 2016 and stressed cooperation with it:

After the revolution, the EU has mobilized all its political, technical and financial instruments to support the Tunisian people in their transition. Today, the EU renews its determination to continue, in close cooperation with the government of Youssef Chahed, involving all the forces of civil society, providing effective support that helps to improve the life of the Tunisian population and, at the same time, to restore the confidence of the people, especially young people, in prospects for a better future.¹²⁸

It is too soon to assess the response of the EU to these new challenges. However, some current dynamics in its relationship with Tunisia and other countries in the region are hindering the credibility of its commitment to democratic change in Tunisia. In the first place, and given the situation in other countries such as in Libya or Egypt, it seems that the persistence of human rights problems in Tunisia (such as cases of torture, violations of economic and social rights, LGBT rights, women rights, etc.) or the restriction of rights achieved by the revolution such as freedom of speech or freedom of association¹²⁹, will not prevent the EU from deepening its relations with Tunisia and even praising its steps towards democracy.

This is clearly reflected in the EEAS' 'Assessment of Tunisian Political Reforms' annexed to the ex-ante evaluation for the MFA of 2016 – i.e., the document in which the assessment of the fulfilment of the democracy and human rights pre-condition is based. The assessment acknowledges the prevailing risk of 'short term (authoritarian) reflexes', the concerns among civil society actors about the 'growing number of reported cases of torture and mistreatment in detention', and 'the strong resistance from parts of the political and economic elites as well as institutional structures' against the 'genuine consolidation of democracy'.¹³⁰ However, that does not prevent the EEAS affirming that:

Tunisia's progress in transitioning towards a democratic political system, despite substantial challenges, represents a unique case in the region, in particular when compared with other

¹²⁷ See n 122.

¹²⁸ Original in French, translation by the author: 'Depuis la Révolution, l'UE a mobilisé tous ses instruments, politiques, techniques et financiers, pour soutenir le peuple tunisien dans sa transition. Elle renouvelle aujourd'hui sa détermination à poursuivre, en étroite collaboration avec le gouvernement de Youssef Chahed et en impliquant l'ensemble des forces de la société civile, un appui résolu qui contribue à améliorer la vie des Tunisiens, et ainsi à redonner confiance, particulièrement à la jeunesse, en la perspective d'un avenir meilleur'. See, 'Déclaration de la Haute Représentante/Vice-Présidente Federica Mogherini sur le nouveau gouvernement en Tunisie' (27 August 2016) <http://eeas.europa.eu/node/8962_en> accessed 14 September 2016.

¹²⁹ Olfa Belhassine, 'Tunisie: le gouvernement contre la société civile', *Justiceinfo.net* (12 September 2016) <<http://www.justiceinfo.net/fr/component/k2/29016-tunisie-justice-transitionnelle.html>> accessed 15 September 2016.

¹³⁰ MoU, 20.

Arab countries that attempted a similar path following the 2011 Arab Spring. Consequently, the political preconditions for Macro-Financial Assistance may be considered to be satisfied.¹³¹

Another illustrative example is the recently published EP conclusions on relations between the EU and Tunisia. The text recognizes several human rights problems facing the Tunisian population and even makes strong recommendations to the Tunisian government in this regard that could be considered as a kind of soft conditionality¹³²:

- ‘Calls for support for gender-balanced policies, including by reforming the personal status code in order to abolish discriminatory laws against women such as those related to inheritance and marriage rights’;
- ‘recommends the lifting of Tunisia's general declaration on the Convention for the Elimination of Discrimination Against Women’;
- ‘Calls on the government to take swift measures to prevent the use of torture; encourages Tunisia to abolish the death penalty; raises concerns regarding repeated cases of torture inflicted by Tunisian authorities on minors suspected of wanting to join terrorist organisations’;
- ‘Calls on Tunisia, as a matter of urgency, to reform its 1978 state of emergency law, currently enforced outside the Constitution's basic provisions’; ‘Expresses concern at the overcrowding, lack of food and sanitary conditions in Tunisian prisons and their effects on inmates' basic rights’;
- ‘Calls for a reform of the penal code, and in particular for the repeal of Article 230, which penalizes homosexuality with imprisonment for three years’;
- ‘Is worried that little progress has been made to overhaul the code of criminal procedures and the penal code with a view to upholding freedom of expression; is worried that several citizens have been prosecuted and imprisoned for alleged defamation, insulting state officials in rap songs or harming public morals, including journalists and bloggers, for expressing their opinions’.¹³³

However, after all the recommendations and concerns, the same resolution ‘[c]alls on the Parliamentary Assembly of the Council of Europe to grant Tunisia the status of partner for democracy as a significant step towards consolidating parliamentary democracy and the rule of law in Tunisia’.¹³⁴ The same logic was followed by HR/VP Mogherini in the debate in which the EP resolution was adopted. While acknowledging the challenges of Tunisia, mainly terrorist threats, youth radicalization, difficult economic situation and difficult reform process, she reassured the EU’s commitment towards increasing its assistance towards the country.¹³⁵

¹³¹ *ibid.* 19.

¹³² Interview with CSO member, September 2016, Tunis (Tunisia).

¹³³ EP (2015/2273(INI)).

¹³⁴ *ibid.*

¹³⁵ ‘Federica Mogherini debates EU-Tunisia relations at the European Parliament Plenary’, *European Union External Action homepage* (15 September 2016) <http://eeas.europa.eu/node/10013_en> accessed 16 September 2016.

This dynamic is a reminder of EU practices at the time of Ben Ali, when human rights concerns were not a decisive element in EU-Tunisian relations. Several analysts have found similarities between the way that Ben Ali's Tunisia was depicted as the 'economic reform best student' in the past and Tunisia as 'best democratic student' at present.¹³⁶

This is reinforced by the EU's behaviour towards neighbouring countries such as Morocco and Egypt.¹³⁷ As this report will show, EU intervention in both countries is mainly driven by geopolitical and economic interests and is not paying sufficient attention to the violations of human rights in both countries. This is also hindering the credibility of EU claims of its commitment to democratization in Tunisia. In view of the silence of the EU in the face of attacks on human rights in other countries of the region, particularly in Egypt and Morocco, it is hard to believe that the EU has a sincere commitment to human rights and democratization in Tunisia, and there are serious doubts about its possible behaviour if the situation worsens in the future.¹³⁸

2. Civil society

The other main shift in the ENP is the turn towards closer support of civil society as an important part of the concept of deep democracy.¹³⁹ In the case of Tunisia, apart from financial support under the CSSP and thematic instruments such as the EIDHR, and the newly created CSF and EED, CSO-support projects have been mainstreamed in cooperation programmes and a tripartite dialogue structure between the EU, the Tunisian authorities and Tunisian CSOs has been established.

According to one CSO member, the EU is trying to improve relations with CSOs in the country and to avoid repeating the same mistakes it made in the past. This is related to the fact that Tunisian society is deeply frustrated about the past collaboration of the EU with Ben Ali's regime.¹⁴⁰

This has been reflected in an increase of funding for civil society organizations through thematic instruments such as the EIDHR. The context of authoritarianism under Ben Ali's regime and the protection of economic and political relations resulted in the EU's Delegation in Tunisia not launching any call for proposals until 2011.¹⁴¹ As a response to the revolution, the delegation published the first call for proposals in March 2011, repeated in 2012, 2013, and 2015. The priorities of the calls covered several topics such as election monitoring, minorities' rights, women's rights and migrants and refugees.

¹³⁶ Nadia Marzouki and Hamza Meddeb, 'Tunisia: Democratic Miracle or Mirage?', *Jadaliyya* (11 June 2015) <<http://carnegieendowment.org/2015/06/11/tunisia-democratic-miracle-or-mirage-pub-60387>> accessed 17 September 2016. See also, Corinna Mullin and Brahim Rouabah, 'Requiem for Tunisia's Revolution?', *Jadaliyya* (22 December 2014) <<http://www.jadaliyya.com/pages/index/20334/requiem-for-tunisia%E2%80%99s-revolution>> accessed 17 September 2016.

¹³⁷ See the Section on Egypt and Morocco in this Report.

¹³⁸ Interview with CSO member, September 2016, Tunis (Tunisia). This idea is also mentioned in Knüfer (n51). Interview with activist, July 2016, Tunis (Tunisia).

¹³⁹ Reynaert (n 26) 154.

¹⁴⁰ Interview with CSO member, September 2016, Tunis (Tunisia).

¹⁴¹ Leila Mouhib. 'EU Democracy Promotion in Tunisia and Morocco: Between Contextual Changes and Structural Continuity' (2014) 19(3) *Mediterranean Politics* 359, 363.

CSOs in Tunisia have received €7.3 m. in projects under the EIDHR. During 2011 and 2012, Tunisia received € 2.4 m. in projects under the CSF.

The EED has been presented as a ‘gap-filling’ instrument for human rights and democracy promotion. Tunisia is also the country in which the EED has funded most projects. According to Knüpfer, EED officers have decided to focus their projects in the rural part of Tunisia, on small organizations and elections (voter mobilization and awareness raising) in order to provide support in fields where other instruments have been absent.¹⁴² The EU has also used its procedure to provide emergency funding to one network (*Doustourna*). However, given the open environment that the Tunisian revolution has so far achieved, for CSOs, the main advantages of the EED are limited to ‘quick capacity to act and fewer bureaucratic restrictions than other international donors’.¹⁴³ It is too soon to assess the evolution of the current dynamics of restricting the space for CSOs and whether this will lead to a different approach to the EED by CSOs.¹⁴⁴

One of the main programmes regarding EU cooperation with CSOs in Tunisia is the CSSP (2012-2016) financed with €7 m. under the SPRING funds. This is aimed at strengthening the operational capacities of CSOs and at improving the legal and institutional environment of CSOs in Tunisia.¹⁴⁵

In a recent research work published in the media platform *Nawaat*, the CSSP was subject to criticism for the selection of one of its main partners, the European Partnership for Democracy (EPD), whose director had been one of the supporters of Ben Ali, before and after the transition; for the existence of conflicts between the direction and the regional coordinators of the project, which prompted the resignation of some regional coordinators; and for the prioritization of communicative activities and easily quantifiable projects over substantive work.¹⁴⁶

As has been mentioned before, one of the main innovations in the case of Tunisia with regard to CSO support is the creation of a tripartite dialogue between Tunisian authorities, CSOs and the EU. This structure has been created by the project ‘Mobiliser la société civile tunisienne dans le suivi des relations entre la Tunisie et l’Union Européenne’ implemented in two phases (2014-2015 and 2015-

¹⁴² Knüpfer (n 51).

¹⁴³ *ibid.* 65.

¹⁴⁴ Some of the restrictions of the right of association gained with the revolution are for example the difficulties in the process of inscription, the revision of statutes of organizations demanding to delete mention of ‘monitoring the the work of the government’ or ‘fight against corruption’, the lack of transparency in the distribution of public funds or the attempt by some deputies to prevent the entry of NGOs specialised in OpenGov to the Parliamentary commissions or auditions to the ministries. See, Belhassine (n 129). EuroMed Rights also points to the use of stigmatizing and delegitimizing discourse by the government and the media against CSOs – especially after the terrorist attacks which Tunisia suffered in 2015, arguing that the CSOs’ work on the defense of human rights was hindering the fight against terrorism - considered by the organization as an extra-legal means of repression. See, EuroMed Rights, ‘Shackled Freedoms : What Space for Civil Society in the EuroMed?’ (April 2016) <<http://euomedrights.org/wp-content/uploads/2016/09/Shackled-freedoms-EN-report-06092016.pdf>> accessed 28 October 2011.

¹⁴⁵ EU’s Delegation in Tunisia, *Rapport 2015. Coopération de l’Union européenne en Tunisie* (2006) 113.

¹⁴⁶ Diane Robert, ‘Soutien européen à la société civile : enquête sur un programme controversé’ *Nawaat* (10 August 2016) <<http://nawaat.org/portail/2016/08/10/soutien-europeen-a-la-societe-civile-enquete-sur-un-programme-controverse/>> accessed 14 October 2016.

2019) in partnership with the Euro Mediterranean Network for Human Rights organization. It has a twofold objective: increasing the advocacy capacities of Tunisian CSOs in the follow-up of political relations and cooperation programmes between the EU and Tunisia and contributing to the dialogue between the EU and Tunisian CSOs.¹⁴⁷

According to one member of the Euro Mediterranean Network for Human Rights, the first part of the project was devoted to the creation of the group of partner organizations, among the most active organizations in the areas covered by the project (justice, equality between men and women, migration and economic and social rights). The project seeks to cover a gap in the CSOs' work in relations with the EU. While in Tunisia there are very active organizations working in areas related to EU intervention in the country, these are not working directly with EU officers and institutions.¹⁴⁸

The project has had different outputs depending on the topic. According to one participant in the project, the EU has showed willingness to engage in the dialogue. For example, in the case of negotiations on the DCFTA, the project succeeded in making the process more transparent with the publication on one internet site of information about the evolution of the negotiations, although it is difficult to directly ascribe this output to the project. However, in the case of the negotiations on the Mobility Partnership, dialogue did not succeed.¹⁴⁹

Authors such as Börzel, who have studied the CSOs' channels of participation in the MEDA assistance programmes, have criticized these programmes and have concluded that:

In studying the aims and objectives explicated in the Regulation, it becomes clear that the strengthening of civil society is first of all a matter of increasing effectiveness rather than of democratic participation. On the one hand, the involvement of the civil society in the formulation and implementation of the EU prerequisites shall promote the acceptance thereof on the part of those mainly affected by it. On the other hand, the expertise of civil society representatives and institutions may compensate the lacking capacities of public authorities and administrative bodies. Thus, the MEDA assistance programme is largely oriented towards increasing output legitimacy.¹⁵⁰

When asked about it, one of the participants in this project stated that CSOs must be very critical with what the EU is doing, but that they have no other choice than to get involved with the EU because 'those relations are happening whether we want it or not'.¹⁵¹ This same participant stressed the importance of the project in providing greater transparency on the projects and programmes that the EU is implementing in Tunisia. For example, with regard to the DCFTA negotiations, the participant

¹⁴⁷ EU's Delegation in Tunisia (n 145) 118.

¹⁴⁸ Interview with a member of the EuroMediterranean Network of Human Rights, September 2016, Tunis (Tunisia).

¹⁴⁹ Interview with a CSO member, September 2016, Tunis (Tunisia).

¹⁵⁰ Tanja A. Börzel, 'Transformative Power Europe? The EU Promotion of Good Governance in Areas of Limited Statehood', Paper prepared for the ERD Workshop 'Transforming Political Structures: Security, Institutions, and Regional Integration Mechanisms', Florence, April 16-17, 2009, 25.

¹⁵¹ *ibid.*

stated that even for organizations that are against free trade, DCFTA negotiations are already happening and it is better to have greater transparency.¹⁵²

The DCFTA negotiations marked a difficult point in relations between the EU and CSOs, social movements and activists that opposed it. The reaction of the then EU Ambassador, Laura Baeza, to the media critical with the DCFTA - accusing the journalists of being misinformed – was considered as an attack on journalists critical with the DCFTA and inconsistent with the EU's claimed objective to promote freedom of speech and freedom of the press.¹⁵³

Asked about the CSOs' opinion on the EU and why CSOs participate in EU projects, one CSO member said: 'there is one part that has this "we don't have a choice" position', 'you cannot pretend that it is not there, you can't look the other way'. That person also pointed to the fact that many organisations are receiving money to fund projects that allow them to do their work and that the EU is considered as a good donor. And he also added that it is difficult to make general assessments on the EU because the EU does not often function as an entity. According to that person in the parliament there are people committed to human rights in Tunisia and there are different attitudes among Member States: 'I would be very careful about calling the EU one thing'.¹⁵⁴

Further criticisms regarding the EU approach to CSOs are also found in other countries, such as the focus on organizations working in the capital, the obstacles for smaller organizations to access EU programmes, the lack of use of Arabic¹⁵⁵ or the exclusion of faith-based organizations. Although it is recognized that EU action focuses on international organizations and big and established Tunisian CSOs based in the capital¹⁵⁶, it is also true that new instruments such as the EED offer more facilities to smaller organizations, i.e. applications can be submitted in Arabic, and that the EU is also trying to work with organizations based in the regions.¹⁵⁷ One activist also pointed to the fact that EU conferences and activities are often organized in specific places in the capital that are costly to reach for small CSOs.¹⁵⁸

3. Member States and other actors

Contrary to the case of Egypt, where the emergence of new actors or the importance of its historical ties with actors like the US has been seen as a factor that reduces the EU's room for manoeuvre in the country, the EU continues to be, apart from the country's major commercial partner, the main donor in Tunisia, followed by France, Turkey, Germany, Japan and the Arab Fund (see Figure 1):

¹⁵² *ibid.*

¹⁵³ Thomas Léger, 'Laura Baeza Giral: Ambassadeur de l'Union Européenne et VRP du libre-échange', *Nawaat* (20 April 2016) <<https://nawaat.org/portail/2016/04/20/laura-baeza-giral-ambassadeur-de-lunion-europeenne-et-vrp-du-libre-echange/>> accessed 14 October 2016.

¹⁵⁴ Interview with CSO member, September 2016 (Tunis, Tunisia).

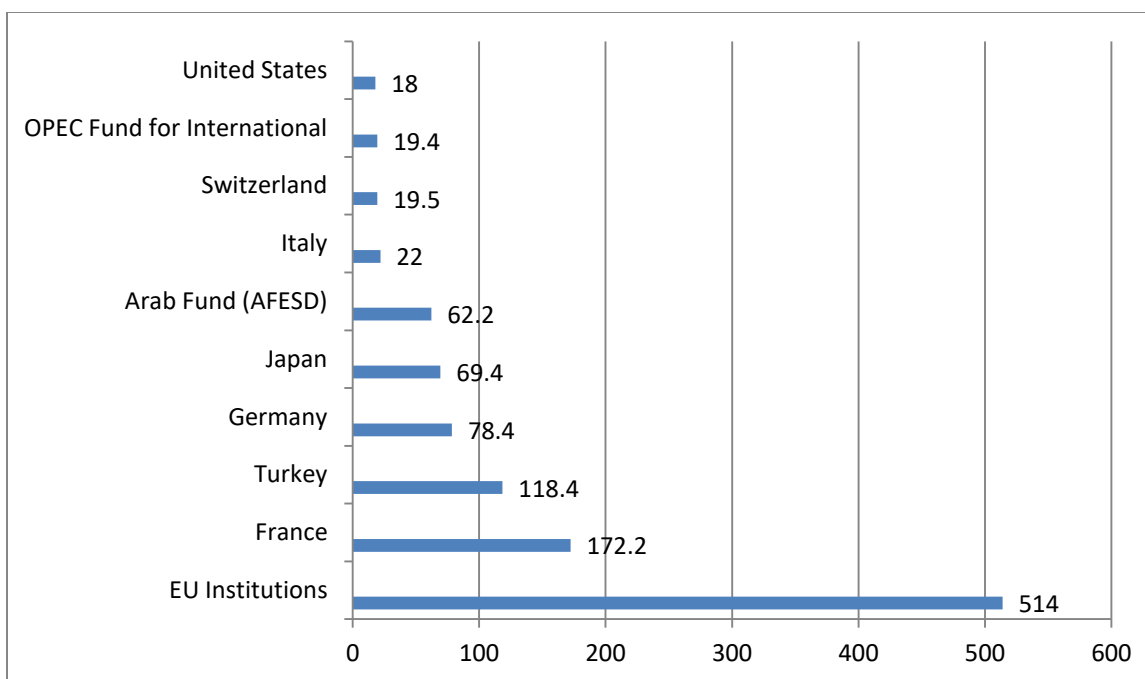
¹⁵⁵ Madi Sharma, 'The role of the EIDHR in democratic transition – Tunisia, a case study (Information Report of the Section for External Relations, European Economic and Social Committee) REX/442.

¹⁵⁶ Interview with an EU source in Tunisia, July 2016 (Tunis, Tunisia).

¹⁵⁷ Interview with a CSO member, September 2016, Tunis (Tunisia).

¹⁵⁸ Interview with activist, July 2016 (Tunis, Tunisia).

Table 2: Top Ten Donors of Gross ODA for Tunisia, 2013-2014 average, USD m.



Source: OECD

The EU is also Tunisia's largest trading partner, accounting for 62.8% of its trade. In 2015, 71% of Tunisia's exports went to the EU.¹⁵⁹ In 2015, France, Italy, Germany and Spain were the main countries to which Tunisia exported goods and France, Italy, China, Germany and Spain were the main importing partners in that same year.¹⁶⁰

The special relations between Tunisia and France have influenced the relations between the EU and the Mediterranean country since independence. During the first moments of the revolution, the reaction of France, promising security assistance to Ben Ali, pointed to the interest of the EU country in maintaining Ben Ali in power.¹⁶¹ After the ouster of Ben Ali, France has continued to be one of the main actors in relations with Tunisia. It was this country that promoted the G-8 meeting of Deauville which designed the foreign assistance road map for Tunisia and other South-Mediterranean partners.

Assistance from other Gulf countries, especially from Qatar, has also been received with suspicion due to its lack of transparency and there are accusations of support going to faith-based organizations and

¹⁵⁹ 'Tunisia', *European Commission Trade* < <http://ec.europa.eu/trade/policy/countries-and-regions/countries/tunisia/> > accessed 17 October 2016.

¹⁶⁰ 'Tunisia Trade at a Glance : Most Recent Values', *World Integrated Trade Solutions* <<http://wits.worldbank.org/CountrySnapshot/en/TUN/textview> > accessed 17 October 2016.

¹⁶¹ 'TUNISIE - Alliot-Marie : "On ne doit pas s'ériger en donneurs de leçons"', *Le Point International* (12 January 2011) <http://www.lepoint.fr/monde/tunisie-alliot-marie-on-ne-doit-pas-s-eriger-en-donneurs-de-lecons-11-01-2011-129088_24.php > accessed 17 October 2016.

groups. According to Kausch: 'While social and economic donations and grants are valued, the Gulf's omnipresent political and economic influence is perceived as a threat. The lack of transparency in many Gulf states' operations in Tunisia greatly contributes to this perception'.¹⁶²

Unlike the situation in Egypt, US assistance for Tunisia, both at military and development levels, was not significant prior to 2011.¹⁶³ However, recent agreements on military assistance from the US are seen as potentially damaging the Tunisian democracy by reinforcing the powers of the Ministry of Interior and government repressive capacities.¹⁶⁴ This is also the case with Saudi Arabia which has increased its military assistance, especially after 2014.¹⁶⁵ This is particularly relevant in a context in which the threat of terrorism is being used by Tunisian authorities to criticise social and grassroots movement and labour strikes and to accuse them of promoting terrorism.¹⁶⁶

As we will see in the following section, the emergence of new actors has been considered by some analysts as a counterweight to the EU role in the region, particularly in countries like Egypt. Such analyses were made before the uprisings of 2010-2011, when in the context of the unilateralism of the US policy under George W. Bush Administration, some authors presented the EU as an alternative actor. However, according to Durac and Cavatorta: 'The strategies of both the US and the EU, despite some rhetorical differences, show very similar contradictions and inconsistencies because, fundamentally, they are both preoccupied with maintaining the status quo in the absence of a 'reliable' and pliable political opposition in the region'.¹⁶⁷

In view of what has been said above, it seems that the weakness of EU human rights and democracy promotion in Tunisia does not stem from competitiveness with other actors, but from its narrow approach to democracy promotion, the prioritisation of its commercial and security policies and the inconsistencies between the declared objectives of the EU and the different interests of its Member States.

Finally, the support given by European governments, US agencies and Gulf donors to specific political forces, through financial or non-financial means - notwithstanding the prohibition of foreign funding to parties - has been considered as foreign intervention in domestic political matters. According to Kristina Kausch:

¹⁶² Kausch (n 89) 21.

¹⁶³ *ibid.*, 19.

¹⁶⁴ Sam Kimbal, 'Tunisia's Getting More Guns Than Democracy', *Foreign Policy* (21 April 2016) <<http://foreignpolicy.com/2016/04/21/tunisia-getting-more-guns-than-democracy/>> accessed 17 October 2016.

¹⁶⁵ Ruth Hanau Santini and Kevin Koehler, 'Bankrolling containment: Saudi linkages with Egypt and Tunisia', *Project on the Middle East Political Science* <<http://pomeps.org/2016/08/22/bankrolling-containment-saudi-linkages-with-egypt-and-tunisia/>> accessed 17 October 2016.

¹⁶⁶ Thameur Mekki, 'Hizb Ettahrir à Kerkennah : un fantôme politico-médiatique', *Nawaat* (23 September 2016) <<http://nawaat.org/portail/2016/09/23/hizb-ettahrir-a-kerkennah-un-fantome-politico-mediatique/>> accessed 17 October 2016; Nadia Marzouki, 'Tunisia's Rotten Compromise', *Middle East Research and Information Project* (10 July 2015) <<http://www.merip.org/mero/mero071015>> accessed 17 October 2016.

¹⁶⁷ Durac and Cavatorta (n 114) 35.

Fears of foreign influence on the political and electoral process through the financial backing of specific political forces are high in Tunisia. The belief that ‘the big money makes the difference in elections’ is widespread. In this context, two major themes emerge: Western governments ‘picking favourites’, and Gulf countries backing Islamists.¹⁶⁸

According to this author, foreign funding of Tunisian media also raises suspicions about attempts to influence public opinion.¹⁶⁹

4. EU democracy promotion and the struggle for socio-political change

The above-mentioned reflections lead us to ask the following question: do EU democracy promotion programmes follow the same logic as local processes of democratic and social change?

In Tunisia, the motto of the revolution condensed an idea of democracy whereby Tunisian movements and social groups that participated in the revolution were, and continue, fighting for: *Shoghl, hurriya, karama wataniyya/ ‘adala ijtimaiyya* (Work, freedom, national dignity/social justice). Those ideas go well beyond the narrow liberal approach to democratization of the EU and the prevalence of economic and security interests over human rights concerns.

Due to its focus on pro-market and pro-business reforms, the EU is not conceived as an actor whose main objective is the promotion of democracy and human rights. Asked about its opinion on the general policies of the EU, one CSO member stated that ‘It all depends on what you expect’. According to that person, the EU, its origin and the way it evolved, is about the expansion of neoliberalism, not human rights: ‘In my opinion, what we can do is make sure the balance of power is more transparent’. That same person also stated that, while there are human rights components in the EU policies towards other countries, ‘compared to the damage that the EU has done by supporting dictators and authoritarianism in the region, it is of little account’.¹⁷⁰

In the light of the foregoing, it is clear that the logics of EU democracy promotion and genuine democratic and social change are totally different. It was very clear in an interview with a Tunisian activist; during the interview the activist mentioned components of radical democracy such as respect for the principles of transparency and democratic procedures inside the parties, the end of conflict of interest between politicians and economic elites and respect for the sovereign will of the people. This is something which social movements in EU Member States are also struggling to achieve. This shows an aspiration for a really deep democracy that goes well beyond, and is even contradictory to the liberal recipe of the deep democracy supported by the EU in its external and internal policies. According to Corinna Mullin the Tunisian revolutionary movement shares common points with other movements in the world that try to resist the neoliberal model and push for radical forms of democratic participation:

¹⁶⁸ Kausch (n 89) 11. Also raised in the interview with an activist in Tunisia that considered the support for political parties through technical assistance and similar programmes from European countries and associations as a lack of respect of the rules of newly-established Tunisian democracy and free and fair elections.

¹⁶⁹ Kausch (n 89).

¹⁷⁰ Interview with CSO member, September 2016, Tunis (Tunisia).

In addition, by overlooking similarities between the form and content of the Tunisian uprising and those of other recent mass mobilizations across the world, these recent analyses also reinforce orientalism's geographic violence. Although it would be impossible (and unwise) to explain the Tunisian uprising through any one analytical lens, there were certainly facets of the uprising that sit as comfortably alongside the Indignados in Spain, the Occupy movement in the United States, and the Syntagma Square protests in Greece as with the Syrian and Egyptian experiences. Protesters in all of these contexts similarly challenged the (often externally mandated) neoliberal policies that had contributed within their societies to a retraction of the state, deregulation, reduced social spending, high unemployment, entrenched inequality, and increasingly repressive national security policies.¹⁷¹

Moreover, in view of the silence of the EU given a worsening situation in human rights in Morocco and Western Sahara, and the silence and change of priorities in the case of Egypt, it seems that the EU is deploying its democracy and human rights projects in those places or fields where revolutionary movements have created room for EU democratization projects. In the end, the main improvements in human rights and democracy components in Tunisia were not brought by assistance from international organizations. Rights such as freedom of speech or freedom of association have been achieved by the Tunisian revolutionary movement, in spite of the support that foreign actors like the EU were giving to the Ben Ali regime. In this regard, EU policies towards Tunisia are considered as a kind of foreign intervention based on promoting market and pro-business reforms, and the geopolitical interests of the EU itself or its Member States.¹⁷²

Those movements are still struggling and being repressed for the maintenance of the achievements of the revolution and progress in a true and radical approach to democracy, not limited to liberal demands but also radical demands of economic, social and political justice, focused on the transformation of structural patterns of political and socioeconomic exclusion:¹⁷³

Despite widespread acknowledgement that solutions to Tunisia's structural economic problems are the key to consolidating democracy, efforts to decouple the economic question from political contention is telling of a strategy to quell social discontent. Contentious political activity, once the celebrated stimulus of the 2011 Revolution, today is viewed as a threat that needs to be contained, tamed and criminalized at worse, instead of recognized as the crux of the problem that needs to be addressed and resolved.¹⁷⁴

¹⁷¹ Mullin and Rouabah (n 136).

¹⁷² Interview with activist, July 2016, Tunis (Tunisia).

¹⁷³ Laryssa Chomiak, 'The Revolution in Tunisia Continues', *Middle East Institute* (22 September 2016) <<http://www.mei.edu/content/map/revolution-in-tunisia-continues> > accessed 17 October 2016; and Mullin and Rouabah (n 136).

¹⁷⁴ Chomiak (n 173).

D. Conclusions

The response of the EU to the Arab uprisings has had as a central slogan the concept of deep democracy, the idea that democracy promotion programmes should not be limited to electoral assistance but also cover other aspects such as the independence of justice, human rights and fundamental freedoms or the fight against corruption. Especially relevant to this new approach were the principle of positive conditionality and the strengthening of support to civil society organizations. With this chapter we have tried to answer the extent to which this idea of deep democracy has been applied in the bilateral relations between the EU and Tunisia and whether it has been reflected in a transformation in the EU approach to democracy promotion in Tunisia.

After the ouster of Ben Ali in Tunisia, the EU increased its financial assistance towards the country. It was complemented with a diversification of the themes covered by it, particularly under new thematic instruments such as SPRING, EIDHR, EED, and CSF. This was reflected in an increase in attention by the EU for previously neglected issues such as elections or human rights.

Considered as a success story among its neighbours, Tunisia soon received funds under the new positive conditionality instruments (SPRING and umbrella funds). While the close relations of Tunisia and the EU, and its economic dependence, grant a great level of influence to the EU in Tunisia, it is not clear whether this will be translated into stronger pressure from the EU to implement democratic measures. In this study we have shown how EU conditionality and the principle of more for more can be problematic due to the persistence of fundamental elements in EU external policy such as the centrality of economic and security interests over democracy. The contested representation of Tunisia as a success story and the worsening situation in neighbouring countries may lead the EU to downplay current problems in the country.

The EU Delegation took a lead role in reinforcing its relations with civil society in the country. This was done not only through financial assistance using thematic instruments and programmes such as the EIDHR, the CSF and the CSSP, but also by including projects in support of civil society in other programmes such as the justice reform or electoral assistance. The EU has also launched a trilateral dialogue structure between the EU, the Tunisian authorities and Tunisian CSOs. This has been seen as an attempt by the EU to reinforce relations with CSOs and avoid mistakes made in the past. However, while CSOs recognize that there are different approaches to democracy and human rights between institutions and people working in the EU, there is a common vision of the EU as a free trade promoter and not as a human rights promoter. 'That is not what the EU is about'.¹⁷⁵

That poses the question of what role the EU actually plays in the genuine processes of democratic change in Tunisia and other countries of the Southern Neighbourhood. The Arab uprisings showed the world that in the past the EU position was reinforcing authoritarian regimes which repressed movements and organizations working for human rights and real democracy. At present, the EU's intervention in Tunisia, based on the promotion of neoliberal reforms (that 'not that new' approach) is moving in a different direction to the aspirations of the Tunisian movements that continue fighting for

¹⁷⁵ Interview with CSO member, September 2016, Tunis (Tunisia).

real democratic change and social justice. In the words of a Tunisian activist speaking about freedom of speech, 'In Tunisia we really don't care about EU support (...) [freedom of speech] was gained by the Tunisians themselves, they didn't need the support of anyone and will never need the support of anyone because it is about their freedom'.¹⁷⁶

¹⁷⁶ Interview with activist, July 2016 (Tunis, Tunisia).

V. EU promotion of deep democracy in Egypt

A. Introduction

Egypt is a strategic partner for the EU in the Southern Mediterranean due to strong reasons ranging from the guarantee of energy supply through the Suez Canal to the fight against illegal migration and terrorism in the region, or its role in the peace process between Israel and Palestine in the Middle East. Since the inception of the so-called *Barcelona process* in the mid-1990s and the adoption of the AA between the EU and Egypt in 2001, the EU has tried to incorporate human rights and democracy concerns into relations with the country, given the EU's ambition of being considered as a normative power. But the EU cannot be proud of its record in promoting human rights and democracy in the most populous country in the region, since other considerations have prominently dominated the scene. Security and stability have prevailed over human rights and democracy, and the EU and some Member States became active supporters of President Hosni Mubarak's authoritarian regime. When the waves of the Arab Spring arrived on the shores of Egypt in January 2011, the EU was initially hesitant and adopted a 'wait and see' approach, until it was clear that President Mubarak had no option but to leave power. Then, the EU tried to adapt to the new scenario, and opened a process of critically rethinking some of its policies and instruments *vis-à-vis* the whole region, including Egypt. One of the policies in need of an in-depth revision was the ENP launched in 2004. In fact, the revision of the ENP had already started in 2010, some months before the eruption of the uprisings in the Southern Mediterranean. The Arab Spring reinforced the need for reform and gave momentum to the process. In this context, the most significant innovation of the reviewed ENP is the introduction of the concept of deep democracy. The aim of this section is to see to what extent this concept has framed the policies and programmes implemented by the EU in Egypt since 2011.

B. EU human rights and democracy promotion in Egypt before 2011

The *Barcelona Declaration* adopted at the Euro-Mediterranean Conference in November 1995 intended to establish a comprehensive partnership among the countries of the two shores of the *Mare Nostrum*.¹⁷⁷ The Euro-Mediterranean Partnership (EMP) was based on measures in the fields of political dialogue, economic and financial cooperation, and advancements in the social, cultural and human dimension. One of the underlying ideas of this process of cooperation was that 'stability and prosperity requires a strengthening of democracy and respect for human rights'.¹⁷⁸ The AA that was concluded between the EU and Egypt in 2001¹⁷⁹ included the ritual human rights clause that the EU requires from all third countries. As established in Article 2 of the Agreement, 'relations between the Parties, as well as

¹⁷⁷ For a detailed account of the cooperation between the EU and the Mediterranean since the first agreements in the 1970s see Antonio Blanc Altemir, *La Unión Europea y el Mediterráneo. De los Primeros Acuerdos a la Primavera Árabe* (Tecnos, 2012).

¹⁷⁸ Preamble of the Barcelona Declaration (1995).

¹⁷⁹ *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*. Signed in 2001, it entered into force in 2004.

all the provisions of the Agreement itself, shall be based on respect of democratic principles and fundamental human rights as set out in the Universal Declaration on Human Rights, which guides their internal and international policy and constitutes *an essential element of this Agreement*'.¹⁸⁰ The ENP launched in 2004 is basically focused on economic integration and financial aid, but also has a human rights and democracy component. As a manifestation of these strategic objectives, the EU/Egypt AP (2007) prioritized cooperation in the areas of trade, investment and growth so that Egypt can better integrate in the EU economic structures, but it also established as priorities some ambitious actions dealing with key democracy and human rights issues in Egypt. In particular, the AP foresaw specific actions on strengthening participation in political life, on fostering the capacity of civil society to participate and contribute to the political process, on opening a dialogue with the Egyptian Government on human rights and democracy, on ensuring the independence of the judiciary, on engaging in a dialogue on the death penalty, on the rights of women and children, on freedom of association and expression, and on fundamental social rights and core labour standards, among many others.

The Union for the Mediterranean (UfM) created in 2008 following an initiative of French President Nicolas Sarkozy is an intergovernmental organization aimed at promoting regional cooperation and dialogue in the Euro-Mediterranean region. It is a fundamentally business-oriented framework in which human rights and democracy are not even explicitly mentioned. Some projects on women empowerment and education have been approved, but the human rights approach is totally absent. Behr sees this shift from the multilateral framework of the Barcelona process to the more intergovernmental UfM as a worrying sign of an 'increasing marginalization of human rights and democracy issues in the EU's foreign policy agenda for the Mediterranean..., a decline in the EU's normative agenda'.¹⁸¹ The EC has explicitly acknowledged that the UfM has not delivered the expected results and that 'it needs to reform to fully realise its potential'.¹⁸²

All these cooperation frameworks between the EU and Egypt, with the exception of the UfM, insist on the relevance of human rights and democracy, opening the door to the application of the principle of conditionality if the third country does not make sufficient progress. But we must recognize that the EU has been very reluctant to apply this principle, in spite of a significant deterioration of the situation of human rights and democracy in Egypt under President Mubarak. Wouters and Duquet have referred to an 'implementation deficit' in this area. Security and stability concerns have always prevailed over a strong commitment on human rights and democracy. In their view, 'although constituting a form of political conditionality, bilateral relations have never been suspended because of human rights violations in partner States'.¹⁸³ The EU supported for decades Mubarak's authoritarian regime which offered stability, access to natural resources in the region, and an adequate management and control of

¹⁸⁰ *ibid.* (emphasis added).

¹⁸¹ Timo Behr, 'The European Union's Mediterranean Policies after the Arab Spring: Can the Leopard Change its Spots?' (2012) 4 (2) Amsterdam Law Forum, 78.

¹⁸² COM(2011) 200 final, 11.

¹⁸³ Jan Wouters and Sanderijn Duquet, 'The Arab Uprisings and the European Union: In Search of a Comprehensive Strategy' (2013) 98 Working Paper, Leuven Centre for Global Governance Studies, 9.

the rise of political Islam¹⁸⁴ (the *democratization-stability dilemma*).¹⁸⁵ Jonasson has referred to the ‘schizophrenic character’ of EU policies, given that they are trapped by ‘two conflicting logics’:¹⁸⁶ on the one hand, the EU pretends to act as a normative power in the international arena, but, on the other, the EU is always conditioned by security and stability concerns in such a strategic country as Egypt.

The uprisings in January 2011 clearly illustrate the shortcomings and weaknesses of the interest-driven EU approach to the promotion of human rights and democracy in Egypt, paving the way to legitimate criticisms of selectivity, double standards, and lack of effectiveness. As underlined by one scholar, ‘the Arab revolts have not only signified the failure of authoritarian ruling regimes, but also of EU policies towards the region’.¹⁸⁷ Most evaluations of the EU’s human rights and democracy promotion policies in Egypt do recognize the very limited impact of these policies. The EC itself did recognize its failures in the context of the review of the ENP. As the EC openly accepted, ‘recent events and the results of the review have shown that EU support to political reforms in neighbouring countries has met with *limited results*’.¹⁸⁸ In the same vein, according to one evaluation by the European Court of Auditors on EU cooperation with Egypt in the field of governance, the main human rights and democracy projects in Egypt were ‘largely unsuccessful’.¹⁸⁹ The content and scope of the (relatively) ambitious EU human rights and democracy agenda that can be found particularly in the 2007 EU/Egypt AP were ‘filtered by the hosting administration and thus got a more functional rather than a normative impact’.¹⁹⁰ This is a clear manifestation of the progressive ‘functionalization’ of the cooperation between the EU and Egypt, ‘focusing on capacity building and uncontested areas of societal modernization’.¹⁹¹ We must not forget that, overall, the core objectives of the EU’s policy towards the Southern Mediterranean are ‘the integration of the Mediterranean neighbours into the EU internal market’ and the ‘reform of the state administrative capacity’¹⁹² so that the state is in a position to offer security and stability to the EU in areas such as control of illegal migration or the fight against jihadist terrorism.

¹⁸⁴ Worries and concerns about the rise of political Islam highly conditioned the EU’s policies on human rights and democracy in the whole MENA region, Sara Silvestri, ‘EU Relations with Islam in the Context of the EMP’s Cultural Dialogue’ (2005) 10 (3) *Mediterranean Politics*, 388.

¹⁸⁵ See Vincent Durac, ‘The impact of external actors on the distribution of power in the Middle East: the case of Egypt’ (2009) 14 *The Journal of North African Studies*, 75-90.

¹⁸⁶ Ann-Kristin Jonasson, ‘Constructions of Democracy: Meanings of “Democracy” in the EU’s relations with the Mediterranean region’ (2013) 7th ECPR General Conference, Bordeaux, 3.

¹⁸⁷ Irem Askar Karakir, ‘Limits of EU Democracy Promotion in the Arab Middle East: The Cases of Egypt and Morocco’ (2014) *Uluslararası Hukuk ve Politika*, 36.

¹⁸⁸ COM(2011) 303, 1 (emphasis added).

¹⁸⁹ European Court of Auditors (n 56) 15.

¹⁹⁰ Patricia Bauer (n 66) 5.

¹⁹¹ *ibid.*

¹⁹² Vicky Reynaert (n 26) 152.

C. EU human rights and democracy promotion in Egypt after the Arab Spring

The unexpected uprisings that took place first in Tunisia and then in Egypt in 2010 and 2011, respectively, caught Europe 'by surprise'.¹⁹³ A great sense of perplexity and confusion invaded European capitals, as they did not know what line of action to support in relation to their old 'autocratic friends'.¹⁹⁴ In the case of Egypt, given its geostrategic importance and its political weight in the region, initially the EU adopted a very cautious approach, and avoided any open criticism of the Mubarak regime. In the very beginning, the EU and some relevant Member States believed that the Mubarak regime could accommodate the demands of the protests that started on 25 January 2011 and pilot an orderly transition to democracy. From the EU's perspective, 'political reform led by a friendly regime was more preferable..., rather than regime change in the form of an uncontrolled process'.¹⁹⁵ But this strategy very soon proved illusory, as the protesters in Tahrir Square were determined to push for a radical change of regime. On 4 February 2011, the European Council adopted a *Declaration on Egypt and the Region*, and 'called on the Egyptian authorities to meet the aspirations of the Egyptian people with political reform not repression'.¹⁹⁶ Although the Council did not explicitly demand Mubarak's resignation, the EU changed its tone, trying to 'distance itself from the Mubarak regime'.¹⁹⁷ The collapse of the Mubarak regime on 11 February 2011 sent a clear message to the EU and, as a consequence, it opened a process of reflection to adopt a new approach to relations with Egypt. Some days later, as we have already mentioned, the EU HR/VP said that what Egypt and the whole region needed was deep democracy,¹⁹⁸ and that the EU had to develop a 'fundamental review of the ENP'.¹⁹⁹ There was a significant rhetoric shift in the EU, since from now onwards the EU insisted on the idea that democratic reforms and political reforms must go hand-in-hand; long-term stability cannot be achieved without the opening of political space to democratic reform. The new EU document outlining the main components of the reviewed ENP adopted in May 2011 stressed that the goal of the new approach is 'to build and consolidate healthy democracies, and to pursue sustainable economic growth'.²⁰⁰ One of the pillars of this new approach is the principle of *conditionality*. EU support 'will depend on progress in building and consolidating democracy and respect for the rule of law. The more and the faster a country progresses in its internal reforms, the more support it will get'²⁰¹ (*more for more*). On the contrary, for those countries that do not show a sufficient commitment to democratic reforms, 'the EU will reconsider or even reduce funding'²⁰² (*less for less*). The EU promised a substantial increase in the funds allocated to

¹⁹³ Sally Khalifa Isaac, 'Europe and the Arab Revolutions. From a Weak to a Proactive Response in a Changing Neighbourhood' (2012) 39 KFG Working Paper, 7.

¹⁹⁴ *ibid.*

¹⁹⁵ Askar Karakir (n 187) 44.

¹⁹⁶ European Council, *European Council, Conclusions, 4 February 2011*, EUCO 2/1/11, Annex II: Declaration on Egypt and the region, 14.

¹⁹⁷ Askar Karakir (n 187) 44.

¹⁹⁸ 'Remarks by the EU High Representative Catherine Ashton at the Senior Officials' Meeting on Egypt and Tunisia' (n 5) 2.

¹⁹⁹ *ibid.*

²⁰⁰ COM(2011) 303, 1.

²⁰¹ *ibid.* 3.

²⁰² *ibid.*

the whole region, but they will be conditional to a sincere commitment to the promotion of deep democracy. The relevant elements of deep democracy are ‘the main benchmarks against which the EU will assess progress and adapt levels of support’.²⁰³

In spite of the initial rhetoric ambitions of the EU to radically change its approach to the promotion of human rights and democracy in Egypt and the whole region after the Arab Spring, we must recognize that only some cosmetic changes have taken place. The EU ‘has reverted to business as usual with Egypt, despite the country’s return to authoritarian government’.²⁰⁴ The core tenets of the EU’s policies towards Egypt have remained largely unaltered. As has been rightly pointed out by Knüpfer, ‘what has been framed as a new approach or even a paradigm change (...) is no more than a remapping of already existing priorities and approaches (...) The EU quickly returns to old patterns of prioritizing economic development as a driver for political development, leaving the claim of deep democracy as a rhetoric device’.²⁰⁵ More money has been promised to Egypt, some institutions and programmes have been created as a result of the Arab revolts, but the main drivers of EU’s policies are basically the same. According to Behr, ‘current initiatives largely represent a continuation of the EU’s existing policies’,²⁰⁶ therefore the EU’s new policy ‘is unlikely to have a significant impact or to translate into a new role for the EU as a promoter of sustainable stability in the region’.²⁰⁷

For instance, the SPRING initiative was adopted in September 2011 with a budget of €350 million for the period 2011-2013. The main goal of the programme to be financed under the ENP was ‘to respond to the socioeconomic challenges of the countries of the Southern Mediterranean and to support them in their transition to democracy’,²⁰⁸ and it was based on the more for more principle. Given the enormous socioeconomic and political challenges in the Southern Mediterranean, it is obvious that this programme lacks financial strength, thus not representing an appealing incentive to the leaders of the region. This lack of teeth may help explain the ‘SPRING’s silent disappearance’ in 2013, ‘contrasting the bravura with which it was once announced’.²⁰⁹ This is a clear example of an *ad hoc* programme created by the EU to respond to the Arab Spring that did not respond to a strategic vision on the role to be played by the EU in the Southern Mediterranean. As we will see, this lack of strategy and improvisation have also affected other EU policies and programmes, such as the CSF already analysed in the case of Tunisia.

Ultimately, given the serious violations of human rights and democracy taking place in Egypt and the progressive deterioration of the situation, unfortunately we are inclined to share the pessimistic conclusions expressed by Virgili: ‘the EU has been both unable and unwilling to use negative and

²⁰³ *ibid.*, 4.

²⁰⁴ Balfour, Fabbri and Youngs (n 87).

²⁰⁵ Knüpfer (n 51) 7.

²⁰⁶ Behr (n 181) 83.

²⁰⁷ *ibid.* 87.

²⁰⁸ Commission, ‘EU Response to the Arab Spring: the SPRING Programme’, MEMO/11/636, 27 September 2011.

²⁰⁹ Sanderijn Duquet and Jan Wouters, ‘In Search of Green Shoots: Assessing the EU’s SPRING Programme’ (2015) *Mediterranean Yearbook*, 232.

positive conditionality in order to drive the various Egyptian governments to build a deep democracy'.²¹⁰ In the next sections we will explore the main reasons that explain both the inability and the unwillingness on the part of the EU to promote deep democracy in Egypt.

1. Lack of a defined strategy on human rights and democracy promotion in Egypt

In spite of the (mainly rhetoric) initial reactions by the EU to the historic events that have helped shape a rather different political and social context on the other side of the Mediterranean, we must recognize that the responses given to this new scenario so far do not derive from a strategic vision on the part of the EU about its new role in such a key region. At most, the new policies and programmes can be described as an accumulation of new policies sponsored by some EU Member States rather than as a targeted strategy arising from a process of collective and deep reflection within the relevant bodies of the EU. This is the case of the UfM proposed by French President Sarkozy or of the EED's initiative under the auspices of Poland before the eruption of the revolts in the Arab world. In Balfour's opinion, the EU's actions as a response to the Arab Spring have been 'tools-based rather than strategy-led', thus undermining the capacity of the EU to have a clear picture of what it wants to achieve in the field of human rights and democracy in the region.²¹¹ Kochenov has also expressed a negative view about this lack of strategic objectives on the part of the EU. In his view, 'the EU spends, equating this activity with democracy promotion'.²¹² Sometimes, the evaluations of the EU's human rights and democracy programmes see the funds allocated as a clear signal of an increased commitment. This is a wrong assumption, since the lack of a clearly defined strategy can make these programmes relatively successful in the short term and in the local context that benefited from the programme, but totally irrelevant in the long-term.

Even the seemingly most direct innovation that can be found in the relevant official documents adopted by the EU, the concept of deep democracy, is plagued with vagueness, uncertainty, and theoretical inconsistencies. Indeed, it is very surprising that in recent EU documents on human rights and democracy the concept of deep democracy has simply vanished. The announced review of the ENP can be described, at best, as 'more of the same',²¹³ thus not implying the long-awaited paradigm shift in the EU's policies *vis-à-vis* the Southern Mediterranean. In Wouters and Duquet's view, 'it is doubtful whether these renewed (ENP), untouched (EIDHR), and somewhat redundant (EED) frameworks will have a significant impact in the Arab region'.²¹⁴

In the case of Egypt, there is nothing really new under the sun; most of the human rights and democracy policies and programmes are a continuation of previous ones. Since 2011, only some financially modest new programmes such as the CSF, the SPRING, or the EED have been adopted to promote human rights

²¹⁰ Virgili (n 44) 45.

²¹¹ Balfour (n104) 25.

²¹² Kochenov (n 24) 31.

²¹³ Nathalie Tocci, 'One Year On: A Balance Sheet of the EU's Response to the Arab Spring' (2012) Op-Med. Opinions on the Mediterranean.

²¹⁴ Wouters and Duquet (n 183) 23.

and democracy in the country. We must recognize that the political context in the country is not conducive to advancing an ambitious human rights and democracy agenda. Both the Morsi Government (2012-2013) and the Al-Sisi Government have been extremely reluctant to engage in an open and sincere dialogue on human rights and democracy with the EU. On the contrary, they have taken very restrictive measures to close spaces to those actors, both external and domestic, working on human rights and democracy. As explicitly recognized by an EU official, although the ‘politically correct response is that human rights and democracy are a core objective for the EU in its relations with Egypt’, reality shows that these issues are ‘very sensitive’; the EU deals with these issues very carefully and ‘in a context of a region in crisis with an increasing problem of terrorism’.²¹⁵ As always, the stability-democracy dilemma is back, and it plays a major role in defining the content and scope of overall cooperation between the EU and Egypt.

The EU’s CSP on Egypt covering the period 2007-2013 has not been revised since the revolution of January 2011.²¹⁶ This CSP, drafted under the ENP, aims at providing a strategic framework for cooperation between the EU and Egypt. The objective of the EU strategy is ‘to develop a privileged partnership through deeper political cooperation and economic integration, supported by the appropriate package of financial assistance and other ENP instruments’.²¹⁷ The CSP establishes three main priority objectives: political reform and good governance; competitiveness and productivity of the economy; and socio-economic sustainability of the development process. In the context of the first priority, most efforts were aimed at increasing the capacity of the state institutions entrusted with the promotion of democracy and the rule of law, in particular supporting the independence and effectiveness of the judiciary. There is a reference to the need to increasing the capacities of civil society, but the approach is mainly top-down, aimed at strengthening state capacities. This CSP was drafted in 2007, in a totally different context in Egypt. It is urgent to develop a new CSP that takes into account the new scenarios and the new challenges that both the EU and Egypt are facing. According to the new vision of the EU after the Arab Spring, deep democracy should be the silver thread of the new strategy towards Egypt. It is clear that the old stability paradigm did not work properly, since it only served to consolidate Mubarak’s authoritarian regime until its collapse. Therefore, the emphasis must be on promoting human rights and democracy as the best means for achieving a stable and prosperous Egypt. So far, there are no clear indications that the EU has had either the capacity or the willingness to push for this reviewed approach.

2. Need for a joint strategy between the EU and its Member States

One of the main structural features of the EU’s foreign policy is its dual nature. On the one hand, it mainly has an intergovernmental character but, on the other, the EU is progressively assuming more and more functions.²¹⁸ Therefore, the relevant bodies of the EU always have to take into consideration the

²¹⁵ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

²¹⁶ Actually, most of the bilateral frameworks of cooperation between the EU and Egypt are ‘frozen’ since 2011.

²¹⁷ Commission, *Egypt Country Strategy Paper 2007-2013*, 4 January 2007.

²¹⁸ Pol Morillas, ‘Institutionalization or Intergovernmental Decision-Taking in Foreign Policy: The Implementation of the Lisbon Treaty’, in Paul James Cardwell (ed.), *EU External Relations Law and Policy in the Post-Lisbon Era* (Asser

domestic foreign policies of Member States, particularly on such sensitive issues as human rights and democracy promotion in a strategic country like Egypt. We have to recognize that when key strategic interests of relevant Member States are at stake, the margin of manoeuvre of the EU tends to be much more limited.²¹⁹ According to one EU official working on Egypt, one of the main obstacles facing an effective EU policy on human rights and democracy is that ‘Member States are not united’.²²⁰ The Egyptian Government is fully aware of this division among the 28 Member States, and ‘plays with it, exploits this division’²²¹ to its benefit. Sometimes, the Egyptian Government talks openly about this division in meetings with the EU Delegation in Egypt, since it knows that it hinders a common and strong European position on key human rights and democracy issues in the country.²²²

This was the case of the EU’s initial reaction to the Arab Spring, defined as a ‘watered-down compromise between irreconcilable positions’.²²³ In the beginning, when the revolts started on January 2011 in Egypt, the EU was not able to articulate a fully clear position as to which side to support. Initially, driven by some core Member States, the EU opted for a wait and see approach, avoiding taking a clear stance against President Mubarak.²²⁴ The statement by the President of the European Council, Herman Van Rompuy, on 29 January 2011, is very illustrative of this timid reaction: ‘I am deeply troubled by the spiral of violence (...) I sincerely hope that the promises of openness by President Mubarak will translate into concrete action’.²²⁵ Ultimately, Mubarak’s regime still represented stability, security and control of flows of illegal migration for many European capitals. When it was clear that Mubarak was no longer a durable solution for the future of Egypt, the EU supported the new line of action. But the EU was always behind the events, reactive instead of proactive, and some EU Member States were much more decisive than others. As has been underlined by Behr, ‘in particular during the initial phase of the Arab Spring, the EU’s common institutions were regularly sidelined by the Member States and were unable to function as a catalyst for a common policy’.²²⁶

This division among the 28 EU Member States was much deeper when Islamist President Morsi was ousted from power after a coup d’état led by some officials of the Egyptian military elite on 3 July 2013. The EU was not even able ‘to call the Army’s bloody intervention by its name: a coup d’état’,²²⁷ given the strong reticence expressed by some Member States. While some Northern States led by Sweden

Press, 2012) 119-134. See also Wolfgang Wessels and Franziska Bopp, *The Institutional Architecture of CFSP after the Lisbon Treaty- Constitutional breakthrough or challenges ahead?*, Research Paper No. 10, 2008, CEPS.

²¹⁹ See Felipe Gómez Isa et al (n 87).

²²⁰ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

²²¹ *ibid.*

²²² *ibid.*

²²³ Virgili (n 44) 58.

²²⁴ In the case of Tunisia, some EU Member States, particularly France, maintained their support to President Ben Ali until the very end of his mandate, when he had to resign because of the popular uprisings in his country.

²²⁵ ‘Statement by Herman Van Rompuy, President of the European Council, on the situation of Egypt’ (Brussels, 29 January 2011) PCE 020/11
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/118993.pdf accessed 17 October 2016.

²²⁶ Behr (n 181) 79.

²²⁷ Steven Blockmans, ‘Egypt and the EU: Where Next?’ (2013) CEPS Commentary, 2.

wanted to take a very firm position against the Army-led deposition of President Morsi, referring to it explicitly as a coup d'état, some southern States, particularly Greece and Cyprus, defended a more nuanced position as regards the military intervention.²²⁸ When the HR/VP Catherine Ashton issued a statement on the events in Egypt on 14 July 2013, she avoided the use of the term *coup*, and did not call for the restoration of the Presidency of the Muslim Brotherhood. Instead, she proclaimed a democratic principle that every Government should respect: 'the military must accept and respect the constitutional authority of the civilian power as a basic principle of democratic governance'.²²⁹ She also insisted on the 'importance of holding democratic elections in the shortest possible time (...) with the free participation of all political actors, including the Freedom and Justice Party'.²³⁰ To a certain extent, this declaration can be seen as a legitimization of President Morsi's deposition by the Army. Since then, the human rights situation in the country has greatly deteriorated, with the illegalization of the Freedom and Justice Party (FJP) and the imprisonment of its most relevant members, but the EU has not taken a firm stand against this progressive deterioration. According to one scholar, the EU has been 'hesitant and uncertain about how to respond to recent developments in Egypt, which has raised serious doubts about the EU's role as a credible and influential actor'.²³¹

This EU's timid and insufficient reaction to the relevant events in Egypt clearly demonstrates that the political backing of Member States is an essential ingredient for coherent and effective EU action in the field of human rights and democracy. The challenge is to turn the EU's foreign policy into a positive-sum game that can be seen by Member States as a reinforcement of their foreign policies.²³²

3. The democratization-stability dilemma

Relations between the EU and Egypt in recent decades have been conditioned by the dilemma on how to promote human rights and democracy without risking stability and security in Egypt and in the entire region.²³³ The EU has tried to promote human rights and democracy but, at the same time, it has tried to preserve the political stability of the authoritarian regime due to its strategic and geopolitical significance, for its role in the fight against terrorism and illegal migration, for its importance to secure energy routes from North Africa, and for its ability to restrain the rise of political Islam in the country.²³⁴ In case of conflict between these seemingly competing interests, the EU opted without any doubt for supporting its authoritarian friend in Egypt.

²²⁸ Virgili (n 44) 59.

²²⁹ 'Declaration by the High Representative Catherine Ashton, on behalf of the European Union, on the situation of Egypt' (Brussels, 14 July) 201312306/1/13 REV 1
<http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/138072.pdf> accessed on 18 October 2016.

²³⁰ *ibid.*

²³¹ Askar Karakir (n 187) 50.

²³² Keukeleire and Delreux (n 32) 19.

²³³ Michelle Pace, 'Egypt', in Joel Peters (ed.) *The European Union and the Arab Spring. Promoting Democracy and Human Rights in the Middle East* (Lexington Books, 2012) 58. See the sections on Tunisia and Morocco in this report.

²³⁴ Khalifa (n 193) 5.

The uprisings that led to the end of the Mubarak regime in January 2011 showed very clearly that lasting stability cannot be achieved to the detriment of human rights and democracy. In the end, the democratization-stability dilemma is a false dilemma, since the best way to guarantee long-term stability and security is through a firm commitment to democracy, human rights and social justice. This idea has been openly accepted, at least rhetorically, by senior EU officials. The words pronounced by the then President of the EC, José Manuel Durao Barroso, in a speech at the Opera House in Cairo on 14 July 2011 are very illuminating, and sound like a confession of past mistakes on Egypt: 'In the past too many have traded democracy for stability. But recent events have only proven that lasting stability can only be achieved through democratic and accountable governments'.²³⁵ The Arab Spring has acted as a wake-up call for an EU that for decades offered support to 'authoritarian stability'²³⁶ in Egypt, irrespective of the lack of commitment to human rights and democracy on the part of the Egyptian Government and elites. The challenge for the EU is 'to support democracy as well as stability for Egypt at the same time'.²³⁷

Unfortunately, in spite of the *mea culpa* issued by some relevant EU officials, and in spite the rhetoric shift developed by the EU through official statements and through the review of policies such as the ENP, we have to recognize that security and strategic considerations continue to play a prominent role in bilateral relations with Egypt. The EU continues to consider Egypt as a strategic partner in the region and to offer substantial cooperation in spite of the manifest deterioration of the situation of human rights in Egypt and lack of progress in areas such as democratization, freedom of association and assembly, fight against corruption, independence of the judiciary, and the necessary space for CSOs.²³⁸

A very telling example is the EU's accommodation and implicit acceptance of the strong financial and political support offered by Saudi Arabia to Egypt to avoid any influence of the democratic wave brought about by the Arab Spring and to maintain the status quo in the region.²³⁹ Saudi Arabia has been able 'to buy influence and undermine Western leverage for political reforms'.²⁴⁰ This counterrevolutionary role played by Saudi Arabia²⁴¹ points to one of the greatest contradictions of the values-based foreign policy of the EU. Once again, Europe has prioritized security and stability over democracy and human rights,

²³⁵ José Manuel Durao Barroso, 'Partners in Freedom: The EU Response to the Arab Spring' (Cairo, Egypt, 14 July 2011) SPEECH/11/523.

²³⁶ Amirah-Fernández and Behr (n 68) 1.

²³⁷ Bauer (n 66) 9.

²³⁸ According to the European Commission, 'overall, Egypt made limited progress... on deep and sustainable democracy'. Freedom of association and assembly 'were restricted'. The freedom of the press 'was visibly reduced'. There were 'no tangible developments in the fight against corruption or in reforming the judiciary'. There was 'less space for the activities of CSOs due to stricter controls, which led a number of CSOs to decide to close their offices in Egypt'. Besides, 'the continued use of the death sentence... was of particular concern. The restrictions on civil society and peaceful demonstrations were also of concern'. See, Commission, 'Implementation of the European Neighbourhood Policy in Egypt. Progress in 2014 and recommendations for actions' SWD(2015) 65 final, 3.

²³⁹ Ester Sigillò, 'Challenges to Normative power Europe in the Mediterranean. Impact on Arab civil societies and the role of Islamic donors', (2015) Working Paper, ECPR General Conference, Montreal.

²⁴⁰ Os Hazan, 'Undermining the transatlantic democracy agenda? The Arab Spring and Saudi Arabia's counteracting democracy strategy' (2015) 22 Democratization, 492.

²⁴¹ Mehran Kamrava, 'The Arab Spring and the Saudi-Led Counterrevolution' (2012) 56 (1) Orbis, 96-104.

very much in line with the strategic interests of Saudi Arabia.²⁴² We cannot but remember that Saudi Arabia is one of the closest allies of the West in the region, in spite of its manifestly poor record on human rights and democracy.²⁴³ This is a crystal-clear manifestation of one of the main deficits of the EU human rights and democracy policies: the *credibility gap*, as the result of double standards when European strategic interests are at stake in third countries. Obviously, this lack of credibility strongly undermines the EU's legitimacy to pursue an ambitious human rights and democracy agenda, thus hindering the effectiveness and impact of its human rights and democracy promotion efforts. This contradiction was clearly illustrated when General Al-Sisi organized a coup d'état in July 2013 to oust the democratically-elected Islamist President Mohammed Morsi. Not only did the EU avoid the use of the term coup d'état, as we have already seen, but it also offered its implicit approval. As has been affirmed by one scholar, 'the counter-revolution was straightforwardly institutionalized with the implicit approval of the US and the EU',²⁴⁴ prioritizing strategic interests over the promotion of democratic principles. Ultimately, the EU ends up opting for its 'pre-revolutionary logic of action (the authoritarian social contract), i.e. preserving stability rather than pressing for deep transformation'.²⁴⁵

Despite the recognition of past mistakes by the EU, and despite the new rhetoric about deep democracy, 'the EU has not been distancing itself from old politics and attitudes'.²⁴⁶ The old dynamics of stability versus democracy are still a core ingredient of the EU's foreign policy on Egypt,²⁴⁷ thus hindering the EU's capacity to have a significant impact on Egypt's human rights and democracy performance.

4. Europe's diminishing influence in Egypt

A crystal-clear manifestation of Europe's global decline is its significant loss of influence in the Southern Mediterranean region both during and after the Arab Spring. The new geo-political scenario in the region has dramatically affected the EU's position *vis-à-vis* Egypt, where other emerging actors are trying to increase their economic and political roles. In this new context, countries such as Saudi Arabia,

²⁴² Danya Greenfield and Rosa Balfour, *Arab Awakening: Are the US and the EU Missing the Challenge?* (Atlantic Council, 2012).

²⁴³ This challenging situation has been put on the table by the European Parliament Committee on Foreign Affairs. While the Committee 'recognises the interdependence between the EU and KSA in terms of regional stability, relations with the Islamic world, the fate of the transitions in the Arab Spring countries, the Israel-Palestine peace process, the war in Syria, improving relations with Iran, counter-terrorism, stability of the global oil and financial markets, trade, investment and global governance issues,...', it also 'expresses grave concern that human rights violations such as arbitrary arrests and detention, torture, travel bans, judicial harassment and unfair trials continue to be widespread', European Parliament Committee on Foreign Affairs, 'On Saudi Arabia, Its Relations with the EU and Its Role on the Middle East and North Africa', (2014) Brussels, paras 1 and 9.

²⁴⁴ Os Hazan (n 240) 491.

²⁴⁵ Cilja Harders, 'A Revolution in the Logics of Action? Renegotiating the Authoritarian Social Contract in Egypt', in Jakob Horst, Annette Jünemann and Delf Rothe (eds.) *Euro-Mediterranean Relations after the Arab Spring. Persistence in Times of Change* (Ashgate, 2013) 118.

²⁴⁶ Wouters and Duquet (n 183) 23.

²⁴⁷ Abdallah Helmy, *Exploring changes in the European Democracy Promotion Policy in Egypt after the 2011 Events. 'Same cocktail, different portions'* (American University in Cairo, 2015) 6.

Turkey, China²⁴⁸ or Russia have significantly increased their presence as international donors,²⁴⁹ and as strong supporters of the Al-Sisi regime. Accordingly, they have become the new privileged interlocutors with the Egyptian Government, sidelining the traditional influence of the US²⁵⁰ and, to a lesser extent, the EU.²⁵¹ Some EU officials openly acknowledge that the EU finds itself in a situation of ‘more weakness’,²⁵² something that is clearly perceived by Egypt and by the other relevant actors in the country.

One of the side-effects of this shift in geopolitical dynamics both in Egypt and in the whole region is that the EU’s conditionality of aid to progress in human rights and democracy could be seriously undermined, given that recipient countries may be less inclined to follow the European recipes. As has been remarked by Chandy, ‘emerging donors are perceived as showing less regard for environmental and labour standards and for the democratic credentials of recipient governments’.²⁵³ In this new complex scenario, we can expect that the EU will have much less leverage to push for democratic changes in third countries.²⁵⁴ The European model has no longer ‘the sex-appeal it used to have in the past’.²⁵⁵

Against this background, ‘the EU does not seem likely to strengthen its influence in the years to come’.²⁵⁶ The financial crisis which the EU has been facing since 2008, and the political uncertainty and confusion surrounding the European integration project are significantly undermining the EU’s capacity to have a meaningful influence in Egypt’s transition to democracy.²⁵⁷ The EU simply lacks the economic and political strength ‘to play the game of sticks and carrots’.²⁵⁸ The reviewed ENP and its insistence on

²⁴⁸ In January 2016, China’s President Xi Jinping visited Egypt ‘to support Egypt’s efforts to maintain stability, develop the economy..., and play an even greater role in international and regional affairs’. The agreements between the two countries included several development and infrastructure investments, including the first phase of a new Egyptian administrative capital, a 1 Billion USD to finance Egypt’s Central Bank, and a 700 million USD loan to the state-owned National Bank of Egypt, in ‘China’s Xi visits Egypt, offers financial, political support’, *World News* (21 January 2016) <<http://www.reuters.com/article/us-egypt-china-idUSKCN0UZ05I>> accessed 17 October 2016.

²⁴⁹ One development aid analyst has underlined that ‘they are long-standing providers of foreign assistance, with the People’s Republic of China (PRC) commencing its foreign assistance programs in 1950, Russia in 1955, Brazil in 1960, and South Africa in 1968. However, the BRICS’ foreign assistance programs have grown in recent years, some dramatically’, Cinnamon Dornsife, ‘BRICS countries emerging as major aid donors’, *Asia Pathways* (25 October 2013) <<http://www.asiapathways-adbi.org/author/cinnamon-dornsife/>> accessed 17 October 2016.

²⁵⁰ Egypt remains as the second-largest recipient of US foreign military financing, behind Israel, with 1,3 Billion USD per year, plus 200 million USD in economic support funds, US Department of State, *US Aid to Egypt*, 2014, <<http://www.state.gov/r/pa/prs/ps/2014/04/225147.htm>> accessed 27 October 2016.

²⁵¹ Richard Manning, ‘Will ‘Emerging Donors’ Change the Face of International Co-Operation?’ (2006) 24 *Development Policy Review*, 371-385.

²⁵² Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

²⁵³ Laurence Chandy, ‘New in Town: A Look at the Role of Emerging Donors in an Evolving Aid System’, *The Brookings Institution* (2012) <<http://www.brookings.edu/research/articles/2012/04/emerging-donors-chandy>> accessed 17 October 2016.

²⁵⁴ Lindsay Whitfield (ed.), *The Politics of Aid. African Strategies for dealing with Donors* (Oxford University Press, 2009).

²⁵⁵ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

²⁵⁶ Balfour (n 104) 30.

²⁵⁷ Richard Youngs, *Europe in the Middle East. Opportunity or Exclusion?* (Oxford University Press, 2014) 6.

²⁵⁸ Virgili (n 44) 61.

increased cooperation through the 3Ms (money, markets,²⁵⁹ and mobility²⁶⁰) have not been sufficient to engage Egypt in a sincere dialogue on how to advance towards deep democracy. The funds allocated are too limited to be able to make a difference. In Blockmans' opinion, 'the sums of conditional aid (offered mainly in the form of loans) have proved too small and the prospects of increased trade and investment too elusive to entice the Egyptian leadership to sign up to the EU's reform agenda'.²⁶¹ In the aftermath of the Arab Spring, the proposal of a Marshall Plan for the Mediterranean was considered in some European circles as the adequate response to the magnitude of the problems in the region. In the end, the different lines of cooperation offered by the EU 'fall far behind'²⁶² the initial ambitions,²⁶³ a clear sign of the EU's increasing impotence and lack of leverage.

The overall financial assistance allocated to Egypt by the EU is totally irrelevant if compared to the donations and investments coming from the countries of the Gulf Cooperation Council (GCC), in particular from Saudi Arabia.²⁶⁴ According to some relevant analysts in the region, 'Saudi aid flows have played an important political role in Egypt since the fall of Mubarak'.²⁶⁵ Saudi Arabia basically wants to preserve the *status quo* in the whole region,²⁶⁶ to contain the effects of the uprisings on its own authoritarian monarchy, and to block potential Iranian influence in the region given its close ties with the Muslim Brotherhood in Egypt.²⁶⁷ This helps explain why Saudi Arabia and other GCC countries supported so openly the coup d'état by the Egyptian Army on 3 July 2013 against Islamist President Morsi. On 9 July, immediately after the coup, Saudi Arabia, Kuwait and the United Arab Emirates (UAE) 'pledged a total of 12 Billion USD in aid to Egypt, including a combination of grants, loans, central bank deposits, and preferential access to oil'.²⁶⁸ This huge amount of aid contrasts very sharply with the limited amounts offered by the EU. The EU's budgeted support to Egypt amounted to approximately €1 billion during the period 2007-2013 under the ENP.²⁶⁹ But due to increasing instability in the country, the funds delivered were significantly reduced.²⁷⁰ While in 2014 EU funding through the ENI amounted

²⁵⁹ As a clear sign of the lack of real incentives offered by the EU, Egypt did not accept the EU's proposal of a *Deep and Comprehensive Free Trade Agreement* (DCFTA). In the case of Morocco, the DCFTA was one of the 'rewards' given by the EU to this country in view of its commitments to democratic reform.

²⁶⁰ While Egypt is willing to promote mobility of Egyptian citizens to the EU in the framework of 'Mobility Partnerships', it is not much interested in the other side of the partnership, namely making strong efforts to control the flows of illegal migration to Europe.

²⁶¹ Blockmans (n 227) 1.

²⁶² Behr (n 181) 83.

²⁶³ According to one EU official, 'if the EU had really wanted to play sticks and carrots, it should have been ready to commit a large amount of cash in the framework of a Marshall Plan for the Middle East', in Virgili (n 44) 62.

²⁶⁴ Yasmine Farouk, *More than Money: Post-Mubarak Egypt, Saudi Arabia, and the Gulf* (Gulf Research Center, 2014). See also Toby Matthiesen, *Sectarian Gulf Bahrain, Saudi Arabia, and the Arab Spring that Wasn't* (Stanford University Press, 2013).

²⁶⁵ Hanau Santini and Koehler (n 165).

²⁶⁶ René Rieger, *In Search of Stability: Saudi Arabia and the Arab Spring* (Gulf Research Center, 2014).

²⁶⁷ Khalifa (n 193) 22.

²⁶⁸ Hanau Santini and Koehler (n 165).

²⁶⁹ European Court of Auditors (n 56) 7.

²⁷⁰ Virgili (n 44) 71-72, note CIV.

to €115 million,²⁷¹ in 2015 EU funding through the ENI amounted to €105 million.²⁷² As we can see, these are very modest allocations when compared to other sources of funding received by Egypt from other countries.

If we also take into account that development aid funds were also considerably decreased in 2011, 2012, and 2013, we can easily reach the conclusion that the EU's capacity to exert some degree of leverage on Egypt was highly limited. Once again, the distance with the GCC countries is immense. As of May 2016, 'the total volume of pledges by Saudi Arabia, Kuwait, and the UAE since the coup amount to some 60 billion USD, roughly equivalent to a yearly average of 20 percent of government expenditure'.²⁷³ In this changing context, the EU's policies on deep democracy in Egypt run the risk of passing from the inconsistency and double standards of the past to the irrelevance and impotence of the present.

5. Backlash against human rights and democracy promotion in Egypt

As part of the new international climate brought about by the relative decline of Western power and the rise of emerging powers, many countries are expressing a growing hostility to the human rights and democracy support policies and programmes sponsored by the EU and other international donors,²⁷⁴ especially those that seek to empower civil society; promote free media; and strengthen democratic political parties, institutions, and processes'.²⁷⁵ Egypt is a case in point, since it is progressively erecting barriers to the activities of both local and international actors trying to promote human rights and democracy in its territory.²⁷⁶ Egypt has an extremely restrictive law on NGOs, Law 84/2002. The restrictions imposed by Egyptian authorities are increasingly more sophisticated, and have taken the form of mechanisms of state control of the operation of local and international NGOs, difficulties and limitations to access foreign funding, expulsion of human rights activists working for international organizations, creation of the so-called GONGOs, and obstacles to international election

²⁷¹ These were the projects supported under the ENI: Egypt's Natural Gas Connection Programme (€68 million), Kafr El Sheikh Waste Water Management Programme (€17 million), and Expanding Access to Education and Protection for Children at Risk (€30 million) <http://ec.europa.eu/enlargement/neighbourhood/countries/egypt/index_en.htm> accessed 17 October 2016.

²⁷² The following projects were supported: Citizen Rights Project, Promoting Inclusive Economic Growth in Egypt, Upgrading Informal Areas Infrastructures, Fostering Reforms in the Egyptian Renewable Energy and Water Sectors through Developing Capacity Building, 200 MW Wind Farm Project Gulf of Suez, and the Sustainable Energy Finance Facility <http://ec.europa.eu/enlargement/neighbourhood/countries/egypt/index_en.htm> accessed 17 October 2016.

²⁷³ Hanau Santini and Koehler (n 165). Against the background of the sharp decrease in the price of oil on global markets and accusations of large-scale corruption in Egypt, some doubts are emerging as to the sustainability of the GCC's unconditional support to Egypt. In this context, 'GCC business elites have recently expressed frustration with Sisi's unwillingness to implement necessary economic reforms', and have warned Egypt with a reduction or a suspension of aid, in Samuel Ramani, 'America can Exploit Saudi-Egyptian Tensions' (2016) *The National Interest* <<http://nationalinterest.org/feature/america-can-exploit-saudi-egyptian-tensions-17459>> accessed 17 October 2016.

²⁷⁴ Thomas Carothers, 'The Backlash Against Democracy Promotion' (2006) 85 *Foreign Affairs*, 55-65.

²⁷⁵ Carl Gershman and Michael Allen, 'The Assault on Democracy Assistance' (2006) 17 *Journal of Democracy*, 36.

²⁷⁶ Ruffner (n 60).

monitoring.²⁷⁷ Therefore, according to the EC, there is now much ‘less space’²⁷⁸ for CSOs working in Egypt, which has caused many human rights NGOs ‘to decide to close their offices’²⁷⁹ in the country. The last attempt to restrict even further the activities of CSOs operating in the country is the draft law on NGOs adopted on 8 September 2016 by the Government and sent to the Parliament for approval. The draft law significantly increases the capacity of the Government to scrutinize the establishment, activities, membership and funding of CSOs. Article 48 establishes an executive committee that can monitor all CSOs activities, including the receiving of foreign funding, subject to approval by the committee. This committee is composed of representatives from the Ministries of Foreign Affairs, Justice, Interior, International Cooperation, Social Solidarity, as well as the National Security Agency, the Central Bank, and the vice president of the State Council. According to Mohamed Zarea, Director of the Cairo Institute for Human Rights Studies (CIHRS), ‘the draft law was written with a security mentality and culture, based on revenging the January revolution and guaranteeing it doesn't happen again’.²⁸⁰

The last episode of this increasing abuse towards human rights NGOs in Egypt took place very recently, on 17 September 2016, when the North Cairo Criminal Court decided to freeze the individual and bank accounts of some leading human rights NGOs and their directors. It affects the founder of Egyptian Initiative for Personal Rights (EIPR), the journalist Hossam Bahgat, the Head of the Arabic Network for Human Rights Information (ANHRI), Gamal Eid, the Egyptian Centre for the Right to Education and its director, Bahey Eddin Hassan, the CIHRS and its Director Mohamed Zarea, and the Hisham Mubarak Law Center and its manager Mostafa al-Hassan. This asset freeze took place in the context of the so-called *Case 173*, in which 17 human rights defenders from 12 organizations face charges of receiving foreign funding to harm national security.²⁸¹ In Amnesty International’s view, ‘this is a blatant misuse of the criminal justice system to prevent people speaking out about the rapidly deteriorating human rights situation in the country’.²⁸²

²⁷⁷ According to three UN Special Rapporteurs, Michel Forst, Special Rapporteur on the situation of human rights defenders, David Kaye, Special Rapporteur on freedom of opinion and expression, and Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and association, ‘Egypt is failing to provide a safe and enabling environment for civil society in the country’. The Special Rapporteurs were also ‘seriously alarmed by the interrogation of several human rights defenders and the risk that they may face in detention or prosecution for their work, as well as the improper use of travel bans and asset freezing’, in ‘UN experts urge Egypt to end ongoing crackdown on human rights defenders and organisations’ (11 April 2016) <<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=19804&LangID=E>> accessed 17 October 2016.

²⁷⁸ Commission (n 238) 3.

²⁷⁹ *ibid.*

²⁸⁰ Mai Shams El-Din, ‘Rights defenders criticize Egypt's new Cabinet-approved NGO law’, *Mada Masr* (11 September 2016) <<http://www.madamasr.com/sections/politics/rights-defenders-criticize-egypts-new-cabinet-approved-ngo-law>> accessed 17 October 2016.

²⁸¹ ‘Egyptian human rights defenders vow to continue work after asset freeze’, *Mada Masr* (17 September 2016) <<http://www.madamasr.com/news/egyptian-human-rights-defenders-vow-continue-work-after-asset-freeze>> accessed 18 October 2016.

²⁸² Amnesty International, ‘Egypt: Asset freeze is a shameless ploy to silence human rights activism’ (17 September 2016) <<https://www.amnesty.org/en/latest/news/2016/09/egypt-asset-freeze-is-a-shameless-ploy-to-silence-human-rights-activism/>> accessed 17 October 2016.

The root causes of the global phenomenon of backlash are complex, multifaceted, and inextricably linked to structural changes in global politics and the global economy. In the view of Carothers and Brechenmacher, two main factors help us understand the reactions against human rights and democracy promotion. First of all, after the post-Cold War decade in which democracy assistance was favourably perceived, the 2000s witnessed a 'loss of democratic momentum',²⁸³ and power holders in many countries began to view such assistance as 'excessively intrusive and politically threatening'.²⁸⁴ This counter-reaction has also much to do with the 'democracy rhetoric that accompanied the 2003 Iraq War'.²⁸⁵ This disastrous military intervention deepened the weakening of the credibility of the West and negatively affected global views on human rights and democracy support policies. Therefore, the democracy promotion discourse 'became synonymous for Western-imposed regime change',²⁸⁶ something that faced radical opposition by many countries. The second reason that explains this global pushback is the 'greater recognition and fear on the part of many power holders of the capacity of independent civil society to challenge entrenched regimes, especially in light of ongoing advances in communications technology'.²⁸⁷ The protagonist role of civil society in the uprisings that led to revolutionary changes in Egypt in January 2011 only reinforced this negative perception on the part of the elites in power (*demonstration effect*), paving the way for more repression and more obstacles to the activities of civil society organizations. The truth is that the power of civil society to question undemocratic regimes, to inform about human rights violations, to forge domestic and international alliances to advance democratic change, and to use the information and communication technologies (ICT) to mobilize people, has grown exponentially over recent decades.²⁸⁸ That is why the backlash against these actors is so overwhelming in Egypt and in many other countries.

This troubling situation poses once again an old dilemma to the EU and other international donors, since they have to make a difficult choice in a continuously changing international environment: either to support the drivers of change (even against the wishes of local governments), or to continue with traditional *business as usual* for the sake of stability. As pointed out by one EU official working on Egypt, in the current context it is very difficult for the EU to take decisions that do challenge entrenched positions by the Government. For instance, the EU will not support an NGO that is considered by the Egyptian Government as 'terrorist'.²⁸⁹ Unfortunately, in many instances the Egyptian Government uses

²⁸³ Thomas Carothers and Saskia Brechenmacher, 'Closing Space. Democracy and Human Rights Support Under Fire' (Carnegie Endowment for International Peace, 2013) 23.

²⁸⁴ *ibid.*

²⁸⁵ Huber (n 30)

²⁸⁶ Carothers and Brechenmacher (n 283) 25.

²⁸⁷ *ibid.* 61.

²⁸⁸ See, among many other references, Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders. Advocacy Networks in International Politics* (Cornell University Press, 1998); Paul Nelson and Ellen Dorsey, *New Rights Advocacy: Changing Strategies of Development and Human Rights NGOs* (Washington D.C.: Georgetown University Press, 2008).

²⁸⁹ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

the fight against terrorism in the Sinai Peninsula ‘as an excuse’ to increase levels of repression and to avoid any criticism coming from the EU and other international organizations.²⁹⁰

The protection and support to human rights defenders (HRDs) is one of the EU’s strategic goals in the area of human rights and democracy promotion. As a clear manifestation of this priority, it adopted the *EU Guidelines on Human Rights Defenders* in 2004, and revised and updated them in 2008.²⁹¹ Along the same lines, in 2010 the EU created the position of *EU Liaison Officers on Human Rights Defenders* in a high number of EU Delegations, a very promising step forward if adequately used.²⁹² The EU has repeatedly proclaimed that it is ‘profoundly concerned at attempts in some countries to restrict the independence of civil society’, and that it will ‘continue supporting human rights defenders under the European Instrument for Democracy and Human Rights (EIDHR)’.²⁹³ Accordingly, one of the objectives of the *EU Strategic Framework and Action Plan on Human Rights and Democracy* is to offer ‘effective support to Human Rights Defenders’.²⁹⁴ As stated in the *EU Annual Report on Human Rights and Democracy in the World in 2014*,

EU delegations were active in working to protect human rights defenders, who have continued to face increasing pressure from the authorities and from non-state actors in many countries. EU diplomats monitored trials, visited detained activists and issued statements on individual cases. The EU regularly raised individual cases at bilateral meetings, including high-level political dialogues, and urged partner governments to release imprisoned human rights defenders.²⁹⁵

In financial terms, the EU has funded more than 150 projects under the EIDHR in support of HRDs, with a total value of more than EUR 120 million.²⁹⁶ As we can see, HRDs are one of the core priorities of the EU’s human rights and democracy policy but, despite these valuable efforts and very positive initiatives, ‘pushback continues to spread’,²⁹⁷ particularly in Egypt.²⁹⁸ Much remains to be done for a meaningful and effective policy that deals with the protection of human rights defenders and with the necessary responses to the backlash against human rights and democracy promotion worldwide. As Bennet has adequately affirmed in this regard, ‘human rights defenders are key agents of change (...) and make a significant contribution to the international community’s efforts to support democracy and human

²⁹⁰ Interview with a member of a major Egyptian human rights NGO.

²⁹¹ Council of the European Union, *Ensuring Protection-Updated European Union Guidelines on Human Rights Defenders*, 2008.

²⁹² See Jeffrey Kenner, Pierre Schmitt, Katrina Sissins, and Stuart Wallace, ‘Structures and mechanisms to strengthen engagement with non-state actors in the protection and promotion of human rights’, (2016) FRAME Deliverable 7.3, available at <http://www.fp7-frame.eu/wp-content/uploads/2016/08/26-Deliverable-7.3.pdf>.

²⁹³ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 11855/12, 25 June 2012.

²⁹⁴ *ibid.*, Outcome 18.

²⁹⁵ Council of the European Union, *EU Annual Report on Human Rights and Democracy in the World in 2014*, 10152/15, 22 June 2015, 62.

²⁹⁶ *ibid.*, 63.

²⁹⁷ Carothers and Brechenmacher (n 283) 48.

²⁹⁸ The situation of human rights in the country has strongly deteriorated. According to one source from a major Egyptian human rights NGO, ‘the situation now is even worse than under Mubarak’, Interview.

rights'.²⁹⁹ Meaningful support to human rights defenders should be a priority for the EU in Egypt under both the EIDHR and the EED.

6. The rise of political Islam

For decades, the EU supported Mubarak's authoritarian regime as the best means to contain the rise of political Islam in the country. The military-led and 'secularly oriented regime served as an immunization strategy against any Western request for more substantial changes';³⁰⁰ it offered the political stability that the EU considered as essential not only for the country but for the whole region. The EU rightly suspected that Islamists in power 'probably would not be as friendly as the existing authoritarian regimes'.³⁰¹ Therefore, the EU did not push much for political reform and democratization in Egypt, since it would eventually pave the way to the access of Islamic political parties to power. We must not forget that when Islamic parties such as the Islamic Salvation Front (ISF) in Algeria in 1990, or Hamas in Gaza in 2006, won democratic elections, the EU was not willing to accept the results.³⁰² As a consequence, the EU has been considered as 'anti-Islamic'³⁰³ in many countries of the Southern Mediterranean, including Egypt. The rise of Islamism has also to be interpreted as a 'reaction against globalization which is perceived as an extension of colonialism and part of the general Western and secular assault'.³⁰⁴ In this sense, the increasing public presence of political Islam is 'closely linked to post-colonial identity building'.³⁰⁵

This political scenario radically changed after the 2011 revolts, and the Arab Spring 'turned out to be an Islamic Winter'.³⁰⁶ Islamic political parties succeeded in gaining significant political space in the first elections after the revolution in Egypt, particularly the Muslim Brotherhood-sponsored FJP. In June 2012, FJP's leader Mohamed Morsi was proclaimed as President of Egypt after winning the presidential elections with a narrow majority. It is interesting to see how a revolution that was initiated 'by a well-educated Arab youth, who is mostly secular and identifies itself with the universal values of democracy, governance and human rights',³⁰⁷ ended up opening the door of power to Islamists. According to Isaac, the youth forces, 'lacking organization and experience, were rapidly fragmented and appeared too fragile to challenge the well-organized Islamists'.³⁰⁸ The success of Islamist parties can be explained because of the great legitimacy they have in Arab societies. Keukeleire and Delreux³⁰⁹ have lucidly analysed the underlying factors of such a success. In their view, they resisted many years against

²⁹⁹ Karen Bennett, 'European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation' (2015) 19 *The International Journal of Human Rights*, 908.

³⁰⁰ Bauer (n 66) 4.

³⁰¹ Askar Karakir (n 187) 39.

³⁰² Khalifa (n 193) 18.

³⁰³ Huber (n 30).

³⁰⁴ Keukeleire and Delreux (n 32) 294.

³⁰⁵ *ibid.*

³⁰⁶ Khalifa (n 193) 18.

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

³⁰⁹ Keukeleire and Delreux (n 32) 296.

regimes ‘widely perceived as violent and corrupt’; Islamist organizations articulated very well-organized networks of solidarity and educational support; they also promoted Arab traditional values and emphasized the importance of economic development and social justice in their programmes. As these scholars underline, ‘EU policies, particularly in its revised ENP and its Partnership for Democracy and Shared Prosperity (...), did not provide a substantial and credible answer to these factors’.³¹⁰

The passive response by the EU to President Morsi’s removal from power on 3 July 2013 can also be explained by the traditional suspicion with which the EU has approached Islamist parties in the past. As we have already seen, some EU Member States were hesitant to define the Army’s intervention as a coup d’état, and prompted the EU to take a very timid position when the new regime illegalized the FJP, imprisoned most of its leaders, and started a process of systematic repression against its militants and its wide network of social organizations. The silent attitude of the EU contributed to the legitimization of the new military-inspired regime, irrespective of serious violations of human rights and lack of a sincere commitment to promote deep democracy in Egypt. As the EC acknowledged in its ENP Progress Report on 2014, ‘overall, Egypt made limited progress in implementing the ENP Action Plan, especially on deep and sustainable democracy’.³¹¹

This new political scenario after the Arab Spring in Egypt and in the entire region should prompt the EU to start a thorough reflection on the type of relations it wants to establish with both Islamic political parties and Islamic civil society organizations. These are an essential ingredient of the social fabric in Arab societies. Any meaningful attempt to promote deep democracy in Egypt has to take into consideration the role of Islamic actors and their conceptions of democracy, not always fully compatible with European liberal notions of democracy. As Karakir has rightly remarked, ‘excluding Islamists from democracy assistance programmes is no longer a valid option for EU policy makers (...) The EU has to pay more attention to civil society assistance through dialogue with representatives from different components of civil society including Islamist organizations’.³¹² Along the same lines, the EU must also be aware of the increasing presence of Islam in Europe. Islam is no longer confined to Muslim countries. As rightly pointed out by Keukeleire and Delreux, ‘the boundaries of the *Umma*, or community of the faithful, have stretched beyond Muslim States to European cities’.³¹³ The increasing radicalization of some Muslim youth in some European countries is also a source of concern, thus forcing the EU to make a thorough analysis and a strategic reflection on its approach to and its relations with Islam both in Europe and in the Muslim world.

In Egypt now, the political climate after the 2013 coup, and, especially, after the illegalization of the FJP and the systematic repression against all social movements and charities related to the Muslim Brotherhood, makes it very difficult for the EU to have relations with them, and to finance them. The official position of the Egyptian Government which considers the Muslim Brotherhood as a terrorist

³¹⁰ *ibid.*

³¹¹ Commission (n 238) 3.

³¹² Askar Karakir (n 187) 57.

³¹³ Keukeleire and Delreux (n 32) 298.

organization is a 'red line'³¹⁴ that the EU cannot cross. The Egyptian Government is totally reluctant to deal with this issue in bilateral relations with the EU in the framework of the AA and the AP.

Ultimately, the engagement with Islamist actors puts on the table a dilemma that the EU is confronted with: in the Southern Mediterranean, particularly in Egypt, 'more democratization often means less liberalism, so that, at the end of the day, more democratization means less human rights'.³¹⁵ Virgili ends his reflection with a very challenging and difficult question that the EU and those that believe in human rights and democracy must try to answer: 'Is it possible or advisable to promote democracy in a world where 'democratization' equates to 'Islamism'?'³¹⁶

D. Conclusions

Due to the strategic nature of Egypt in the Southern Mediterranean, the EU offered significant political and economic support to Hosni Mubarak's authoritarian regime for the sake of stability and security. When the unexpected Arab Spring put an end to Mubarak's era in February 2011, the EU tried to adapt to the new scenario by launching a reflection on its new role in a changing southern neighbourhood. The new approach to the Southern Mediterranean came full of rhetoric, very much in line with the EU's ambition to be considered as a normative power. The supposedly most far-reaching innovation was the concept of deep democracy, put forward as the new pillar of the EU's cooperation with the region by Catherine Ashton. Despite the promising expectations, we must acknowledge that the new concept is plagued with inconsistencies, vagueness, and lack of explicit configuration of its conceptual contours. One very telling manifestation of these unfulfilled conceptual promises lies in the lack of systematic use of the very concept by the relevant EU bodies. In fact, the term deep democracy has virtually vanished in recent EU documents on human rights and democracy, with some minor exceptions such as the ENP Progress Reports.

Most of the announced changes in the EU's policies and programmes on Egypt are mainly cosmetic, and do not alter the traditional approach that has dominated these relations since the 1990s. The reviewed ENP emphasized the relevance of the so-called 3 Ms (money, market and mobility). As we have demonstrated, these innovations point to more of the same, far from a very much needed paradigm shift. One area in which the EU has tried to articulate a new vision is the focus on CSOs as essential ingredients of any meaningful promotion of human rights and democracy. The creation of the EED, the approval of the CSF, and the renewed impetus on supporting HRDs, are modest but relevant signs of this new approach to the role to be played by CSOs in democratic transitions. Unfortunately, the current situation of Egypt does not allow the EU to constructively work with independent and critical CSOs. On the contrary, the dramatic crack-down on human rights in the country is closing the limited spaces that CSOs had to push for democratic change. It seems that the old authoritarian habits and practices are back.

³¹⁴ Interview with a high-ranking official working for the EEAS on Egypt, 27 January 2016.

³¹⁵ Virgili (n 44) 63.

³¹⁶ *ibid.*

The EU is not reacting as strongly as it should against this deterioration of human rights and democracy in Egypt, paying lip service to the principle of conditionality. Once again, the EU is confronted with an old dilemma, and it prefers security and stability in Egypt over democracy and human rights, as in the old times. On the other hand, we also have to recognize that the EU's capacity to exert leverage on Egypt has been dramatically reduced in the aftermath of the Arab Spring. The new geopolitical scenario, with new economic and political actors in Egypt such as Saudi Arabia, China or Russia, is resulting in the EU becoming increasingly impotent and irrelevant. In this changing international context, the EU has to open a strategic reflection about its role in the Southern Mediterranean as a whole, particularly in Egypt. We are afraid that the Arab Spring has been a missed opportunity for the EU to rethink bilateral relations with Egypt, and to base these relations on universal human rights and democratic principles.

VI. EU promotion of deep democracy in Morocco

A. The European Union and Morocco

Morocco's physical and historical proximity to Europe has made it an important interlocutor with the European Union. Morocco has had long historical and cultural ties with Spain going back centuries. Two medieval Moroccan dynasties ruled Andalusian Spain. Many of the Jews expelled from Spain after 1492 settled in Morocco, where some of their descendants live today. As former colonial powers in Morocco, France and Spain take a particular interest in their relations with Morocco, and some individual political figures, such as France's Nicolas Sarkozy, have close personal ties with Moroccans. Different European countries include substantial Moroccan populations, which totalled more than 2.3 million in 2011 for the entire EU.³¹⁷ Moroccan people living in Europe are both the source of a cultural richness as well as social tensions. European Moroccans are often not fully integrated into the European communities and many have been associated with recent terrorist incidents as well as common criminality. Moroccans living abroad play an important role for Morocco, as they constitute a substantial source of income in the form of money transfers to their families in Morocco. Morocco benefits financially from having its nationals living and working in Europe (as do Europeans who employ them, frequently at low wages) and European security services need information that may uniquely be in Morocco's possession. In recent years there have been understandable worries about disenchanted Moroccan youths in Europe becoming radicalised in Islam, leading both Morocco and the European states to cooperate both in measures of de-radicalisation as well as security cooperation among intelligence services.

Morocco entered into its first legal arrangement with the EEC in 1969, an Association Agreement (1969-1978),³¹⁸ followed immediately thereafter by a trade agreement.³¹⁹ Both documents were entirely commercial in nature and contained no provisions on human rights or democracy. In 1976, a new agreement was signed under the rubric of the EEC's Global Mediterranean Policy, the EEC-Morocco Cooperation Agreement (1978-1990).³²⁰ Although slightly expanded in scope over the Association Agreement, it also had no provisions relating to governance or human rights.

The EC-Moroccan Association Agreement of 2000 (EMAA) is the single most important legal document underlying the current bilateral relationship between the European Union and Morocco, having

³¹⁷ Eurostat data shows that the largest foreign-born community from a country outside of the EU was Moroccan in 2011. There were 2.3 million people born in Morocco who lived in the EU-28 in 2011, which equated to 7.2 % of all foreign-born residents from non-member countries or 0.5 % of the total EU-28 population. By share of total country population, France counted with the highest percentage, followed by Belgium. For more information, see Eurostat, 'People in the EU – statistics on origin of residents' (27 November 2015) <http://ec.europa.eu/eurostat/statistics-explained/index.php/People_in_the_EU_%E2%80%93_statistics_on_origin_of_residents> accessed 28 October 2016.

³¹⁸ 'Agreement Establishing an Association between the European Economic Community and the Kingdom of Morocco' (11 July 1969) <https://www.wto.org/gatt_docs/English/SULPDF/90820127.pdf> accessed 15 Sept 2016.

³¹⁹ Council Regulation (EEC) 1465/69 of 23 July 1969 laying down special provisions for imports into the Community of goods coming under Regulation (EEC) 1059/69 and originating in Morocco [1969] OJ L 197/92.

³²⁰ 'EEC-Morocco Cooperation Agreement' (1976) <<http://aei.pitt.edu/12754/1/12754.pdf>> accessed 18 October 2016

superseded the earlier 1978 Cooperation Agreement.³²¹ The EMAA provides the legal foundation for subsequent agreements and protocols between the parties, including, for example, the 2012 protocol on participation in EU programmes;³²² a 2012 exchange of letters on agriculture and fishery products³²³ (the subject of the 2015 European Court of Justice decision described at Part V.E below); and a 2013 fisheries agreement.³²⁴

Although Morocco's formal request for membership in the EEC was denied in 1987, it has been forcefully argued that the country has received 'privileged treatment'³²⁵ from the European Community, as exemplified in 2008 by its becoming the first state to be designated as having an 'advanced status'. Fernandez-Molina shows that Morocco has long presented itself to the European Community as an assiduous and compliant partner that is ready to take steps to please Europeans.³²⁶ As she explains, a high number of Moroccans would like their country to become a member of the EU and public pronouncements by Moroccan officials frequently assert that the country has close ties with it. Morocco pushed hard diplomatically to attain an 'advanced status' with the European Community, even though there is no precise privilege, benefit, or responsibility that flows from the designation.³²⁷ Both the EU and Morocco now frequently refer to Morocco's advanced status as if having a concrete meaning beyond its obvious symbolic value.³²⁸ Morocco achieved this designation, according to Fernandez-Molina, not by making concrete adjustments to its laws, policies, and procedures (or raising its human rights standards). 'Judging by Morocco's poor record on political reform and democratisation, it appears that Moroccan socialisation by the EU has not, broadly speaking, resulted in any substantial change in interests, values and identity in line with the European political norms but has remained on a more limited and superficial level'.³²⁹ Rather, Morocco attained the status by its eager willingness to *discuss* good governance topics with the European Community and to actively promote European projects.

³²¹ 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 L 70/2. The EMAA was signed in Brussels in 1996 and came into force in 2000.

³²² Council Decision 2012/176/EU of 8 March 2012 on the conclusion of a Protocol to the 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, on a framework agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of the Kingdom of Morocco in Union programmes [2012] OJ L 90/1.

³²³ Council Decision of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the 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 [2012] OJ L 241/2.

³²⁴ Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco [2013] OJ L 328/2.

³²⁵ Irene Fernández-Molina, *Moroccan Foreign Policy under Mohammed VI, 1999-2014* (Routledge 2016) 96.

³²⁶ *Ibid* 96-155.

³²⁷ *ibid* 98.

³²⁸ Kristina Krausch, 'Morocco's "Advanced Status": Model or Muddle?' (2010) FRIDE Policy Brief n° 43 <http://fride.org/descarga/PB43_Morocco_advance_status_ENG_mar10.pdf> accessed 28 October 2016.

³²⁹ Fernández-Molina (325) 101.

Whereas many Mediterranean states metaphorically rolled their eyes in 2008 with the announcement of yet another initiative, this time the Union for the Mediterranean (UfM), Morocco enthusiastically embraced the concept and offered to host its institutions.³³⁰

Approximately 60% of Morocco's exports in 2015 (mostly machinery and transport equipment, miscellaneous equipment and food and live animals) were sent to European countries, making the EU (collectively) the single largest importer of Morocco's foreign exports.³³¹ Europe has benefitted by importing low-cost agricultural produce (generally at the expense of Spanish, French, and Italian farmers). Europe also benefits from access to fishing rights off Morocco's extensive Atlantic Coast – particularly when the Sahara is included.

With the turmoil that has enveloped the Arabo-Muslim world, particularly since the U.S. invasions of Afghanistan and Iraq, the European Union has sought interlocutors that are sensitive to European concerns and that can demonstrate that Europe seeks to be a good neighbour to the Arab world. Morocco provides an excellent symbolic and practical avenue, in that it is perceived as being (relatively) stable, welcoming of foreign investment and visitors, a 'moderate' Muslim country, and a place that favours positive cultural interactions. Thus, in many ways, Morocco and the EU, even when their considerable financial interests differ, nevertheless see common ground for trade, security, and cooperation. Whether the EU or Morocco sees reason to place a particularly high priority on the promotion of democracy and human rights in the Kingdom is a separate question.

B. Critical perspectives on human rights and democratisation in Morocco

To enter into a discussion on the actual status of respect for human rights and democracy in Morocco is to some extent to enter into a hall of mirrors. Officially, the European Union, the United States, Moroccan state institutions, and the Moroccan *Conseil national des droits de l'Homme* (CNDH)³³² praise Morocco for undertaking important democratising reforms and making improvements in its human rights record.³³³ The favourable description of Morocco emphasises the new reforming Constitution of 2011 (approved by referendum by more than 98% of voters), a series of fundamental laws adopted by the Parliament in the wake of the new Constitution, and other reforms.³³⁴ The Moroccan press

³³⁰ *ibid* 128-31.

³³¹ Commission, 'European Union, Trade in goods with Morocco', 8, <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113421.pdf> accessed 15 Sept 2016.

³³² The CNDH is the National Human Rights Institution (NHRI) of Morocco. It was launched for the first time in 1991, and was legally upgraded by the 2011 Constitution. For more information, see Monika Mayrhofer and others, 'International Human Rights Protection: The Role of National Human Rights Institutions – a Case Study' (2016) FRAME WP 4, Deliverable 3 <<http://www.fp7-frame.eu/deliverable-4-3/>> accessed 27 October 2016.

³³³ See Part V.D. below.

³³⁴ Said Kirhlani and Irene Fernández Molina, 'Morocco/Constitutional Referendum 1 July 2011' OPEMAM Analysis Briefing Paper, 8 <http://www.opemam.org/sites/default/files/ER-Morocco_constitutional_referendum_2011.pdf> accessed 21 September 2016.

publicizes the positive affirmations of Morocco emanating from the European Union, the United States, and Moroccan institutions.

Major international human rights organisations are, however, much more sceptical and much more likely to describe a deteriorating human rights situation since 2011. Pointedly, recent human rights reports by the European Parliament (as opposed to the EU Council or Commission) as well as the Country Reports on Human Rights of the U.S. Department of State, lend some credence to the more critical analyses offered by human rights NGOs rather than the public political support offered by the EU and the US.

The more sceptical analyses of the situation in Morocco stress the fact that the new Constitution of 2011 did not alter in any fundamental way the distribution of political powers in Morocco nor the powerful role of the most important '500 families'. The King retains the sole power to appoint (and remove) the most important Ministers, and the King's role in the political system is not open for serious public discussion. Indeed, officially, the King is *not* involved in politics but stands above as the arbiter. As the Commander of the Faithful (Amir al-Mu'minin), the King's legitimacy and religious authority cannot be questioned, let alone challenged.

The European Union (as well as the United States and the G8), are not strongly promoting anything like the 'Deep Democracy' promised by Ashton, but are officially supporting Morocco, even when it ignores the human rights and democracy challenges raised by outside observers. Thus it will be seen that there is a noticeable disparity between positive evaluation of Morocco's movement toward democracy as declared officially by the Moroccan government, the CNDH, the European Union, and the United States, and on the other hand, more critical comments by human rights NGOs and indices such as Bertelsmann and Freedom House.

1. The European Parliament and the US State Department Country Report on human rights

Different EU and US instances are mandated with monitoring and internally reporting the human rights situation in third countries, especially in those with which both entities have special ties. What follows is a short explanation that shows how the European Parliament and the US State Department Country Report on Human Rights exemplify to what extent the EU and the US are knowledgeable of the exact situation in Morocco. However, as put by the European Parliament, 'empirical evidence on the EU's performance undermined such claims [where] problems of clashes between human rights principles and other more compelling interests tied mostly to security or economics [...] have tarnished the EU's reputation'.³³⁵

³³⁵ DG for External Policies of the European Parliament, The Role of EU Delegations in EU Human Rights Policy (July 2013) 7 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433721/EXPO-DROI_ET\(2013\)433721_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/433721/EXPO-DROI_ET(2013)433721_EN.pdf)> accessed 21 Sept 2016.

According to the European Parliament in 2016, there are 'serious and substantiated concerns' regarding human rights in Morocco.³³⁶

Despite much progress, which places the country among those with the best record in the Middle East and North African region, significant human rights problems in Morocco include, 'the lack of citizens' right to change the constitutional provisions establishing the country's monarchical form of government, corruption and widespread disregard for the rule of law by security forces'. Laws barring acts deemed harmful to the monarchy or to Morocco's claim of sovereignty over Western Sahara limit freedom of expression, assembly, and association. The UN Mission for the Referendum in Western Sahara (MINURSO) is the only UN mission not to include a human rights dimension in its mandate, offering no mechanism for the reporting of alleged human rights violations, whereas both the Moroccan Government and the Polisario Front have been accused of human rights violations. UN experts have also expressed concern over the reported use of torture to obtain confessions in criminal cases, arbitrary pre-trial detention, and Morocco's sweeping anti-terrorism legislation. Religious freedom is also of great concern.³³⁷

This recent acknowledgement by the European Parliament (EP) of Morocco's negative human rights record is backed up by the organ's reporting mechanism. During the EP's Plenary, MEPs are able to address questions to the Commission. These questions need to be pre-approved in writing by the President of the Parliament. One of the matters of inquiry is third countries' human rights records and the European Commission's approach to them. In the specific case of Morocco, and only so far this year (15 September 2016), 40 out of the 64 questions had a human rights and democracy basis.³³⁸ Among them, 30 questions dealt with different aspects of the human rights situation in Western Sahara, 4 to migration and refugee regulation aspects, 4 to the ECJ ruling on the EU-Morocco trade agreement, one with regards to torture of non-Saharawi human rights defenders and one in relation to freedom of assembly of demonstrators.³³⁹ What these data show is that the EP mechanism of reporting has been making explicit its knowledge and concern over presumable human rights violations in Morocco. In turn, the fact that these questions have been addressed towards the European Commission exemplifies the degree to which the institution is aware of such matters.

The 2015 US state department country report on human rights in Morocco details with great perspicuity the various human rights violations and shortcomings occurring in the kingdom. On a more general level and according to the report,

³³⁶ European Parliamentary Research Service, 'Morocco: Human rights situation' (January 2016) <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573907/EPRS_ATA\(2016\)573907_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573907/EPRS_ATA(2016)573907_EN.pdf)> accessed 15 Sept 2016

³³⁷ *ibid.*

³³⁸ In order to extract these data, an analysis of the European Parliament Plenary's records has been conducted, from 1 January 2016 to the 15 September 2016. The database can be consulted at: European Parliament, Plenary – All the Questions <<http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html?action=1&tabType=all&tabActif=tabResult#sidesForm>> accessed 21 Sept 2016.

³³⁹ *ibid.*

The most significant human rights problems were the lack of citizens' ability to change the constitutional provisions establishing the country's monarchical form of government, corruption, and widespread disregard for the rule of law by security forces.³⁴⁰

The report adds that other human rights violations are reported by various sources and these comprise 'security forces committing human rights abuses on multiple occasions, including reports of torture in detention'.³⁴¹ The Moroccan judiciary system is delineated in the report as lacking independence and denying 'defendants the right to a fair public trial' on several occasions.³⁴² Furthermore, the infringement of civil liberties by the government is also highlighted.³⁴³ The latter is reported to violate the right to freedom of speech and press through harassing and arresting online and print journalists for discussing sensitive issues namely the monarchy, territorial integrity and Islam. Freedom of assembly, association and religion are also limited and restricted in the kingdom while discrimination against girls and women is still a persistent issue.

When it comes to political and democratic governance in the Moroccan context, the report describes the kingdom as:

A constitutional monarchy under which ultimate authority rests with King Mohammed VI, who presides over the Council of Ministers. The King may dismiss ministers, dissolve parliament, and call for new elections or rule by decree.³⁴⁴

This 2015 human rights report on Morocco made by the US State Department shows that the latter is very much aware of the delicate human rights situation and the true political reality of the Kingdom. In contrast to what official and mainstream US representatives say about Morocco, the human rights report demonstrates that the holding of seemingly free elections does not make the kingdom democratic and that 'political stability' is not necessarily an indicator of progress as various ways, including torture, are used to silence the opposition voices requesting genuine democracy instead of the elaborate political theatre aimed to please the international community.

C. Positive evaluations of Morocco by the European Union and others

During the aftermath of the 2011 constitutional changes in Morocco, the EU flattered the state of the democratic reforms and the respect for human rights in different occasions, either by omission of harsher commentaries or by explicit praise.

For instance, the president of the European Commission, J.M Durao Barroso, after a meeting with the still in power PM of the Moroccan Government in 2013, Abdelillah Benkirane, did not doubt to qualify

³⁴⁰ United States Department of State, Country Reports on Human Rights Practices for 2015 – Morocco 2015 Human Rights Report (23 May 2016) 1 <<http://www.state.gov/documents/organization/253151.pdf>> accessed 25 Sept 2016.

³⁴¹ *ibid.*

³⁴² *ibid.*

³⁴³ *ibid.*

³⁴⁴ *ibid.*

Morocco as a lantern (country) in the region in numerous aspects, which has been able to start, some years ago, a process of political, economic and social reforms'.³⁴⁵ This comment would be followed by another statement in which Barroso regards these reforms as the basis for the EU-Morocco state of relations, saying that: 'These democratic advancements are too one of the reasons that explain our excellent bilateral relations and the 'advanced Status' which Morocco enjoys'.³⁴⁶ Indeed, what Barroso says is that Morocco's presumed democratic reforms are the basis for the strategic commitment and engagement with the Kingdom.

Another important indicator of the Commission's stand regarding the Moroccan state of democratic and human rights reforms can be found in the multiple answers voiced by this European institution to the MEPs questions. For instance, when inquired about its position on human rights violations in the Sahara and how the HR/VP had addressed such issues in a visit to Morocco in 2015, the answer cleared that 'on the same occasion, the HR/VP also expressed EU support to the ongoing reform process in Morocco, based on the principles enshrined in the new Constitution and in line with international commitments on human rights'.³⁴⁷ Although the HR/VP also declared their concern about the conflict having implications for human rights overall respect, the message passed to Morocco seems to have omitted this aspect.³⁴⁸ In the following sections, a more detailed account on this and other statements will be analysed in order to state that the official EU rhetoric is clearly oblivious of the deteriorating human rights landscape in Morocco.

1. The European Union and the Constitution of 2011

The EU statements regarding Morocco's approach to reform have been largely positive, although accompanied by modest recommendations for change. This trend is clearly exemplified in the way the EU welcomed the new Moroccan Constitution of 2011, where the European institutions largely played the role of applauding from the sidelines rather than being critically engaged in a serious analysis of what was transpiring.

The case of Morocco during the so-called Arab Spring was, in a sense, much simpler for the EU than were the cases of Egypt, Tunisia, or Libya. Unlike the latter, where heads of state were highly unpopular and scorned by the majority of the populations, King Mohammed VI legitimacy remained fundamentally unchallenged. This reality responds to different factors. On the one hand, the King is generally popular

³⁴⁵ Authors translation. Original in French: 'pays phare dans la région en plusieurs domaines et qui a su commencer il y a déjà plusieurs années un processus de réformes politiques, économiques et sociales', in José Manuel Durão Barroso, 'Déclaration du Président Barroso suite à sa rencontre avec M. Abdelilah Benkirane, Chef du gouvernement du Maroc' (Press Conference, Rabat, 1 March 2013) <http://collections.internetmemory.org/haeu/20160325152123/http://europa.eu/rapid/press-release_SPEECH-13-177_fr.htm> accessed 15 Septembre 2016.

³⁴⁶ Authors translation. Original in French: 'Ces avancées démocratiques sont aussi une des raisons qui expliquent nos excellentes relations bilatérales et le Statut avancé dont le Maroc jouit,' *ibid.*

³⁴⁷ Federica Mogherini, 'Answer Given by Vice-President Mogherini on Behalf of the Commission to Parliamentary Questions' (E-012204/2015, 22 October 2015) accessed 15 September 2016.

³⁴⁸ *ibid.*

among the majority of the Moroccan population (no statistics exist for this discussion, but this reflects widely perceived sentiments). However, legal provisions prohibit any remark or opinion that counters the King or the monarchic institution, rendering very difficult that even reformist or republican political actors to voice any opinion against the monarchy. Even the most left-leaning party in Morocco does not publically disclose any criticism against the King. Islamist parties, too, largely do not contest the legitimacy of Mohammed VI, as any direct attempt to do so would be immediately suppressed by the state apparatus, and would mean, too, a confrontation with most Moroccans.³⁴⁹ This is one of the matters that has brought many outside observers to describe Morocco as a 'semi-authoritarian' regime.³⁵⁰ The political legitimacy of the King is not the only untouchable topic in Morocco. The second and third issues that cannot be contested publicly are the truth of Islam and the territorial integrity of Morocco (meaning Morocco's claim over its 'southern provinces' or what the EU and the UN refer to as 'Western Sahara'). These three taboos are better known as the 'three red lines', and thus, when political protests started in Morocco in mid-February 2011, the authority of the King was never put into question.

Some days prior to the political outburst that would be experienced in Morocco in late February, EU Commissioner Füle visited the country and met with Foreign Minister Taïb Fassi Fihri, offering words of praise for the 'magnificent' country he was visiting and applauded its transformative efforts, while avoiding to offer no cautions or warnings.³⁵¹ Speaking on behalf of the EU, he found that there was a wish to form a closer relationship with Morocco and that the two political entities were linked by centuries of a common history.³⁵²

Prior to the mid-February 2011 wave of demonstrations, protests revolving around the economical and social situation occurred in Morocco for decades. These typically happened as a result of rising prices for basic goods, inability to afford electricity or sanitation costs, cases of corruption and nepotism at the local level, or unemployment among youth, particularly university graduates who were unable to find work.³⁵³ What was new in mid-February of 2011 was the regional component to the public protest, as part of Morocco's contribution to the Arab Spring. The young organisers called for political reform, greater openness, and increased economic opportunity for the poor and unemployed.³⁵⁴ The

³⁴⁹ Krsitina Kausch, 'How Serious is the EU about supporting democracy and human rights in Morocco?' ECFR/FRIDE (Democracy Working Papers 01, May 2008), 2-11 <http://fride.org/download/WP_Democracy-Morocco_ENG_may08.pdf> accessed 27 October 2016.

³⁵⁰ Fernández-Molina (n 325) 119

³⁵¹ Štefan Füle, 'Conférence de presse conjointe avec le Ministre des Affaires étrangères marocain Mr. Taïeb Fassi Fihri' (Visite officielle au Royaume du Maroc, Rabat, 7 Février 2011) <http://europa.eu/rapid/press-release_SPEECH-11-82_fr.htm> accessed 24 September 2016.

³⁵² Authors translation. Original in French: 'Je pense sincèrement que nous sommes en train de forger une relation encore plus étroite avec le Maroc et par là-même que nous démontrons au monde qu'il n'y a pas de place pour un potentiel 'clash' des civilisations. Tout au contraire, le Maroc et l'Union européenne sont intimement liés par des siècles d'histoire commune, un héritage partagé, une relation privilégiée et une mer commune,' *ibid.*

³⁵³ Laura Feliu and M^a Angustias Parejo, 'Morocco: The Reinvention of an Authoritarian System' in Ferran Izquierdo Brichs (ed.), *Political Regimes in the Arab World. Society and the Exercise of Power* (Routledge 2013) 80; Thierry Desrues, 'Mobilizations in a Hybrid Regime: The 20th February Movement and the Moroccan Regime' (2013) 61 *Current Sociology* 409, 413.

³⁵⁴ Desrues (n 353) 411.

Mouvement du 20 Février, as it came to be called had at its core young activists who brought together different ideologies and agendas.³⁵⁵ This 20 February Movement mobilised demonstrations on Sundays, with subsequent demonstrations on 27 February and 6 March. Although the movement lacked a clear target as in the cases of Egypt and Tunisia, the ruling structures began to feel under pressure as a heterogeneous group of actors began to converge in support of the protestors.³⁵⁶

The persistence and character of the protests together with the regional context of turmoil propelled Mohammed VI to address the nation in a televised speech on Wednesday, 9 March.³⁵⁷ The two factors that prompted the King decided to deliver his speech, were the wave of protests sweeping Morocco and the more extreme episodes of upheaval that were transpiring in Tunisia, Egypt, Libya, Bahrain, and Yemen. To set Morocco on a different path, Mohammed VI appealed to his longstanding interest in reform, regionalisation, and promotion of democracy. After mentioning the three red lines – monarchy, religion, and territory (which he characterised as being ‘unanimously’ supported by the nation) – he added ‘a commitment to democratic principles’.³⁵⁸ The most important announcement in his speech was the decision to appoint a committee of experts to draft a new constitution. This initiative was not the result of a consultation with the popular forces that emerged from the Moroccan street. Rather, this was a top-down, palace-controlled initiative from the beginning, and would continue in this path throughout.³⁵⁹ Instead of confronting the protestors, Mohammed VI was more interested in rallying nation in his support and presenting himself as the depositary of the reformist spirit, appealing to shared values, constitutionalism, the rule of law and democracy.³⁶⁰

The EU was not impassive in observing the developments in the region and in Morocco. It was already in February where the concept of deep democracy was used. In such a context, the Commission commented upon the King’s speech the following day.³⁶¹ HR/VP Ashton and Commissioner Füle jointly issued a statement where they ‘welcomed’ the King’s announcement of ‘extensive constitutional reform’. They praised the King’s ‘commitment to further democratization’. The EU enthusiastically

³⁵⁵ *ibid.* 415.

³⁵⁶ Mounah Abdel-Samad, ‘Why reform not revolution: a political opportunity analysis of Morocco 2011 protests movement’ (2014) 19 *Journal of North African Studies* 792.

³⁵⁷ King Mohammed VI, ‘Speech’ (9 March 2011) <http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/Morocco_1_King_Mohammed_VI_Spech.pdf> accessed 15 September 2016.

³⁵⁸ The full text in English is: ‘The sacred character of our immutable values, which are unanimously supported by the nation – namely Islam as the religion of a state which guarantees freedom of worship; Imarat al-Muminin (Commandership of the faithful); the monarchy; national unity and territorial integrity; and commitment to democratic principles – provides solid guarantees for a historic consensual agreement and a new charter between the Throne and the People,’ *ibid.* Reference to democratic principles was a part of ongoing political discourse in Morocco and was not an innovation.

³⁵⁹ Anna Theofilopoulou, ‘Morocco’s New Constitution and the Western Sahara Conflict – a Missed Opportunity?’ (2012) 17 *The Journal of North African Studies* 687, 689.

³⁶⁰ Desrues (n 353) 417.

³⁶¹ ‘Joint statement by EU High Representative Catherine Ashton and Commissioner Stefan Füle on Morocco’s future constitutional reform’ (MEMO/11/155, 10 March 2011) <http://europa.eu/rapid/press-release_MEMO-11-155_en.htm> accessed 6 October 2016.

described the Palace-controlled text as being ‘a qualitative leap in the process of reforms already initiated’ and assured Moroccans that the EU ‘stands ready to support Morocco’s efforts to implement such far-reaching reforms’.³⁶² A week later, Commissioner Füle, speaking to the European Parliament, described the events in Morocco as being one of the ‘encouraging developments’ of the Arab Spring.³⁶³

During the following weeks, the 20 February movement continued to hold its Sunday protests, although its strength was diminishing as some of the actors fell under the spell of the King’s reform agenda. The King had successfully seized the momentum. The Palace increasingly, and intentionally, portrayed itself to the country as arbiter standing above competing factions and political disputes.³⁶⁴ In April, the King pardoned 190 Islamists prisoners apparently in an effort to calm one of the competing factions.³⁶⁵ Later in the same month, a bomb exploded in the Argana Café, a well-known and popular tourist spot, killing at least 14 people.³⁶⁶ Throughout 2011, more confrontations followed, although with the February 20th Movement clearly losing popular support. In its place, the protests would take the shape of those that predated the 20 February Movement, based on socio-economic issues.³⁶⁷ Within this context of popular unrest, the role of the police was relatively constrained. However, protests in Casablanca and Safi on 29 May were met with harsh police violence.³⁶⁸ On the same day, 200 kilometres away, the protestor Kamal Amari was severely beaten by security officials. He died four days later.³⁶⁹

On 17 June, the draft constitution was presented to Morocco after the appointed committee had been working on it for three months. This presentation came accompanied by a call for a referendum two weeks after. The drafting process was opaque and non-participatory. For instance, ‘the organisations [CSO, labour unions and political parties] were not shown any written draft until 8 June when they could only listen to an oral presentation’³⁷⁰. In any case, the text that was voted under referendum on 1 July would formally put Morocco closer to the Parliamentary system, where the leader of the majority party in the legislative chamber would be slated to become Prime Minister, who in turn has more power

³⁶² *ibid.* One might speculate on the effect this enthusiastic pre-emptive endorsement might have had on democratization activists who were suspicious of the stage-managed process. With whom was the EU aligning itself, power or principle?

³⁶³ Šteffan Füle, ‘European Neighbourhood Policy,’ (Speech/11/186, Brussels, 16 March 2011) <http://europa.eu/rapid/press-release_SPEECH-11-186_en.htm> accessed 15 September 2016.

³⁶⁴ Silvia Colombo and Benedetta Voltolini, ‘“Business as Usual” in EU Democracy Promotion Towards Morocco?’ (2014) 371 *L’Europe en Formation* 41, para 25; Theofilopoulou (n 334) 689; Desrues (n 353) 420.

³⁶⁵ ‘Le Roi du Maroc gracie 190 détenus, dont des prisonniers politiques’ *Le Monde* (Morocco, 14 April 2011) <http://www.lemonde.fr/afrique/article/2011/04/14/le-roi-du-maroc-gracie-190-detenus-dont-des-prisonniers-politiques_1507868_3212.html> accessed 4 November 2016.

³⁶⁶ Michael Slackman and Souad Mekhennet, ‘Bomb Strikes Moroccan Cafe, Killing Mostly Foreigners’ *The New York Times* (Morocco, 28 April 2011) <<http://www.nytimes.com/2011/04/29/world/africa/29morocco.html>> accessed 4 November 2016.

³⁶⁷ Desrues (n 353) 421.

³⁶⁸ Cécile Loïal, ‘Une manifestation à Casablanca réprimée avec une extrême brutalité’ *Les Observateurs* (Morocco, 30 May 2011) <<http://observers.france24.com/fr/20110530-manifestants-casablanca-brutalite-policiers-repression-maroc>> accessed 15 September 2016 (with links to videos).

³⁶⁹ ‘Morocco groups report protest death, govt denies’, *Reuters Africa* (Rabat, 3 June 2011) <<http://af.reuters.com/article/topNews/idAFJOE75203420110603>> accessed 30 September 2016.

³⁷⁰ Theofilopoulou (n359) 687.

to choose some members of the governing cabinet, although requiring the Royal sanction.³⁷¹ The King nevertheless retains the authority to appoint the three 'sovereign ministers': Interior, Foreign Affairs, and Islamic Affairs. The King himself also effectively serves as the equivalent of a minister of defence.

Different commentators and scholars have shown scepticism with regards to changing character of the 2011 Constitution.³⁷² Their accounts and analyses typically point out that any improvements in areas such as accountability, the independence of the judiciary, or human rights are ultimately dependent on further enabling legislation. At the same time, the new Constitution did not challenge the King's prerogatives in any significant way.³⁷³ In other words, the proposed new Constitution, according to commentators, offered little more than cosmetic changes that in no way undermined the power or influence of the Moroccan elite or that opened the system to democratisation or that improved human rights in any fundamental way.

Despite the few and limited constitutional reforms, EU officials Ashton and Füle nevertheless released another statement on 19 June.³⁷⁴ They again 'welcomed' the new constitution and characterised it as 'a significant step and signals a clear commitment to democracy and respect for human rights'.³⁷⁵ Once 'fully implemented', they declared, 'it would be a major step forward in the process of reforms already initiated by Morocco'.³⁷⁶ With regards to the ongoing cooperation between the EU and Morocco, the Ashton suggested that 'the proposed constitutional reform is in line with the ambitions of the Advanced Status in the relations between Morocco and the EU'³⁷⁷ and that Europe 'is ready to support Morocco's efforts to implement such far-reaching reforms'.³⁷⁸

It is difficult to see how this immediate and enthusiastic endorsement by the EU could have been based on a careful legal and political analysis of the draft text. One might well ask whether the EU had any factual basis for asserting that the new Constitution would in reality improve democracy and human rights.

A politically orchestrated operation to promote the new Constitution began short after the announcement of a referendum for 1 July. In this campaign, the population was encouraged to endorse the new Constitution not only by political parties, but also from state institutions, mainstream media

³⁷¹ Constitution du Maroc 2011, art. 47.

³⁷² Driss Maghraoui, 'Constitutional Reforms in Morocco: Between Consensus and Subaltern Politics' (2011) 16 *The Journal of North African Studies in Conflict & Terrorism* 679, 695-696; Marina Ottaway, 'The New Moroccan Constitution: Real Change or More of the Same?' (*Carnegie Endowment for International Peace*, 20 June 2011) <<http://carnegieendowment.org/2011/06/20/new-moroccan-constitution-real-change-or-more-of-same-pub-44731>> accessed 4 October 2016; Irene Fernández-Molina, 'The Monarchy vs. the 20 February Movement: Who Holds the Reins of Political Change in Morocco' (2011) 16 *Mediterranean Politics* 435.

³⁷³ Maghraoui (n 372) 696; Fernández Molina (n 372) 439.

³⁷⁴ 'Joint statement by High Representative/Vice-President Catherine Ashton and Štefan Füle on the announcement of the new Constitution of Morocco' (MEMO/11/424, 19 June 2011) http://europa.eu/rapid/press-release_MEMO-11-424_en.htm accessed 27 October 2016.

³⁷⁵ *ibid.*

³⁷⁶ *ibid.*

³⁷⁷ *ibid.*

³⁷⁸ *ibid.*

and mosques during Friday sermon.³⁷⁹ The Constitution was officially backed by an eyebrow-raising 98.5 per cent of voters.³⁸⁰

Following the official announcement of the result, the EU released a statement that was supportive and uncritical of the referendum process, not hinting at the possibility of any irregularities:

We welcome the positive outcome of the referendum on the new Constitution in Morocco and commend the peaceful and democratic spirit surrounding the vote.

The reforms proposed in it constitute a significant response to the legitimate aspirations of the Moroccan people and are consistent with Morocco's Advanced Status with the EU.

The reforms include important commitments to enhancing democracy and respect for human rights; strengthening separation of powers notably by increasing the role of parliament and the independence of the judiciary; advancing regionalisation and enhancing gender equality.

Now we encourage the swift and effective implementation of this reform agenda. Moroccan citizens should remain at the centre of this process and the inclusive dialogue with their representatives should continue and grow stronger. The European Union is ready to fully support Morocco in this endeavour.³⁸¹

The EU saw exactly what it wanted to see.

The Monarch boldly directed the development of the events during the first half of 2011 to skilfully return Morocco to a state largely resembling that of before the Arab Spring. With the 20 February Movement marginalised and the EU enthusiastically applauding Morocco's purported reforms the King's legitimacy and ruling strategy remained intact. There was no project that challenged the King, what was reinforced by the growing deal of chaos and conflict that was starting to be seen in neighbouring countries. As a result, Morocco remained in a state of affairs after the 4-month long process of change, leaving the country near where it was before the Arab Spring, albeit with the image of having responded to its demands.

³⁷⁹ Maghraoui (n 372) 693-694. CNDH, 'Summary of Final Report on the 1 July Constitutional Referendum Observation' (Rabat, August 2011) <<http://moroccoonthemove.com/wp-content/uploads/2014/02/CNDH-Report-on-Constitutional-Referendum.pdf>> accessed 4 November 2015.

³⁸⁰ Maghraoui (n 372) 694.

³⁸¹ 'Joint statement by High Representative Catherine Ashton and Commissioner Stefan Füle on the referendum on the new Constitution in Morocco' (MEMO/11/478, 2 July 2011) http://europa.eu/rapid/press-release_MEMO-11-478_en.htm accessed 27 October 2016.

D. The case of the Moroccan/Western Sahara

From an international perspective, probably the most salient human rights issue in Morocco is that of the 'Moroccan Sahara' (as it is called in Morocco) or the 'Western Sahara' (as identified by the United Nations, the US, and the EU. The territory is identified on the UN's list of 17 'Non-Self Governing Territories' as the largest of all contested areas in terms of land area and population³⁸². Occupied by Spain during the colonial period, Morocco first claimed its sovereignty in 1956, shortly after becoming independent. Spain did not abandon the territory until 1975, when the dictator Francisco Franco passed away.³⁸³

It was on 6 November of that year that King Hassan II instigated the 'Green March' campaign to send approximately 350,000 Moroccans to march towards the Southern provinces, with the objective of seizing what had theretofore been ruled by a colonial power. The Green March led to a 15-year war involving neighbouring countries and the Polisario Front (the group claiming representation of the indigenous Sahrawi people). Commemorated yearly as a major Moroccan national holiday, the Green March is seen as a triumph for the country and criticism of the role and actions of Morocco are not discussed in public. All public discussion and debate reflects the official rhetoric on the subject.³⁸⁴ This sentiment is properly cultivated, accentuated and instrumentalised by the Moroccan authorities. For instance, Morocco has a mixed record granting internationally recognised human rights organisations permission to operate in the contested territory in their fact-finding missions.³⁸⁵ This matter does not only confront international NGOs and human rights organisations with the state of Morocco. Equally, any attempt to confront the Moroccan position, even at the discursive level, by international organisations, the EU or the US, is vigorously and immediately repudiated by Morocco. An example of this is best illustrated by the mediatised uproar following the declarations of Ban Ki-moon in March 2016, who in a visit in Algeria called for the restoration of discussions between Morocco and the Polisario, declaring Morocco had annexed and occupied the Sahara. As a result of these declarations, a diplomatic conflict escalated between Morocco and the UN, resulting in the temporary expulsion of the UN's MINURSO staff.³⁸⁶ Indeed, 'few analysts doubt that the Western Sahara conflict is the cornerstone around which the puzzle of Morocco's foreign policy has been constructed and structured for

³⁸² UN, 'Non-Self-Governing Territories' <<http://www.un.org/en/events/nonselgoverning/nonselgoverning.shtml>> accessed 27 October 2016.

³⁸³ Theofilopoulou (n 359) 691.

³⁸⁴ *ibid.* 691.

³⁸⁵ In 2013, the royal speech at the occasion of the national holiday commemorating the 1975 Green March discussed the issue of human rights violations in the contested territory. This came after NGOs such as Human Rights Watch or Amnesty International voiced their concerns regarding this matter in the preceding months. These claims were directly challenged by the Moroccan King in the 2013 speech, in which he declared that human rights organisations had taken a few isolated cases out of their proper context in order to trivialise and ignore the important progress made by Morocco. For the entire speech, see 'Discours du Roi Mohammed VI à l'occasion de la Marche Verte' (Rabat, 6 November 2013) <<http://www.bladi.net/discours-roi-mohammed-6-marche-verte.html>> accessed 31 October 2016.

³⁸⁶ Michelle Nichols, 'U.N. Western Sahara Mission still Recovering from Morocco Dispute' Reuters (UN, 27 July 2016) <<http://www.reuters.com/article/us-morocco-westernsahara-un-idUSKCN1062QQ>> accessed 4 November 2016.

decades'.³⁸⁷ In the following sections, the EU-Morocco relation and issues with regards to the Western Sahara will be explained, in order to understand up to what extent the EU is rather inclined to publically support Morocco, at the expense of neglecting the human rights situation in Western Sahara.

a) The European Union and the Sahara (2004-2015)

Independent international human rights organisations are generally inclined to reject Morocco's assumptions on the matter. These NGOs see the Sahara as an occupied territory, and Morocco as a power that is not willing to conform to the claims of the Sahrawi. These organisations regularly attempt to record the human rights situation on the ground, specially focusing its attention on the presumed abuses that political activists suffer. Some members of the European Parliament have similarly revealed some scepticism about Moroccan claims and regularly put pressure to the Commission and the Council to take more vigorous stands.³⁸⁸ At the same time, the behaviour of EU member states in this matter shapes the final foreign policy of the EU. In this sense, France and Spain, for different reasons, show a position that is more in line with Moroccan interests, whereas Scandinavian states such as Sweden and Denmark directly challenge Moroccan claims regarding the Sahara.³⁸⁹

Scholars find in this difficult puzzle of member states positions the reason for the timid EU stand with regard to the Sahara issue.³⁹⁰ Although the EU has seen itself in a position of relative leverage on some occasions, such as during the negotiations for advanced status in 2008, it ultimately preferred to remain silent. The

'Western Sahara conflict was notably absent from the Advanced Status negotiations, and was not referred to at all in the Joint Document. Such striking silence, which was already present in the 2005 ENP Action Plan, amounted to a reflection or replication of taboos within Moroccan official discourse. This can be regarded as an unintended consequence of the ENP's mild introduction of co-ownership, which in practice allowed neighbouring countries to exclude any topic they wished from bilateral dialogue or negotiations with the EU (Gillespie, 2013: 180)'.³⁹¹

³⁸⁷ Fernández-Molina (n 325) 96.

³⁸⁸ The European Parliament system allows for MEPs to address other EU institutions (Commission, Council...) to guarantee an appropriate system of check and balances. During 2016 (until 4 November), 44 of the these questions revolved around the Western Sahara issue, and in many cases MEPs were asking the Commission or the Council to explain what was being done by them. For instance, see Question E-003355-16 and its subsequent answer in 'VP/HR – Expulsion of European Lawyers from Western Sahara' (26 April 2016) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bWQ%2bE-2016-003355%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>> accessed 4 November 2016.

³⁸⁹ Vish Sakthivel, 'The EU, Morocco, and the Western Sahara: A Chance for Justice' ECFR (10 June 2016) <http://www.ecfr.eu/article/commentary_the_eu_morocco_and_the_western_sahara_a_chance_for_justice_704_1> accessed 4 November 2016.

³⁹⁰ Richard Gillespie, 'European Union responses to Conflict in the Western Mediterranean' (2009) 15 *The Journal of North African Studies* 85; Karima Benabdellah, 'The Position of the European Union on the Western Sahara Conflict' (2009) 17 *Journal of Contemporary European Studies* 417.

³⁹¹ Fernández-Molina (n 325) 145.

The next important negotiated pact, the 2013-2017 EU-Morocco Action Plan, also is silent on the Sahara issue. In order to illustrate the nuances of treatment of this salient matter, it is useful to compare Human Rights Watch reports, the ENP Progress Reports, and the preparatory statements of the EU presented during the EU-Morocco Association Council (EMAC) meetings. Importantly, the question of the Sahara is present in all three set of documents.

Of the three, Human Rights Watch reports are the most vocal in identifying the Western Sahara issue and reporting on human rights violations caused by Moroccan representatives in the contested territory. Equally, the 2011 report included a section about human rights violations by the Polisario.³⁹² At the same time, the Moroccan state advancements in implementing reforms are also highlighted by the NGO. For instance, the latest report welcomed the recognition by Morocco for the first time of a Sahrawi human rights organisation in 2015.³⁹³

The ENP Progress Reports for the period 2005 to 2007 are fact-based, and they concentrate their efforts on describing the developments of the talks among the actors at stake, coupled by references to the excessive use of force used by security officers and the hazards encountered by human rights organisations operating in the territory. In the two following years, the Sahara is mentioned in relation to violations against freedoms of association and expression. The 2011 ENP Progress Report did not mention the Sahara. For the period following the Arab Spring, the 2012 and 2013 ENP Progress Reports highlight the tensions between Morocco and MINURSO, and the pressing cases of torture related to political activism. However, these reports are limited in details, and there are scarcely any references to the ways in which the Moroccan state violates human rights on the ground.³⁹⁴

The EMAC statements drafted by the EU from 2007 to 2015 consistently raise the issue of the Sahara, but in no case did they question the Moroccan claim over its sovereignty nor the means to reach a solution proposed by Morocco. They do call upon the parties to put an end to violence and human rights violations. In this context, the EMACs praise the Moroccan NHRI (CNDH) for its monitoring and protection tasks, especially after the Arab Spring.³⁹⁵

³⁹² HRW, 'World Report 2011. Events of 2010' (2011) 574

<https://www.hrw.org/sites/default/files/related_material/wr2011_book_complete.pdf> accessed 4 November 2016.

³⁹³ HRW, 'World Report 2016. Events of 2015' (2016) 409

<https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf> accessed 4 November 2016.

³⁹⁴ Commission, 'Rapport de Suivi PEV – Maroc' SEC (2006) 1511; Commission, 'Mise en œuvre de la politique européenne de voisinage en 2007' SEC (2008) 398; Commission, 'Mise en œuvre de la politique européenne de voisinage en 2008' SEC (2009) 520/2; Commission, 'Mise en œuvre de la politique européenne de voisinage en 2009' SEC (2010) 521; Commission, 'Mise en œuvre de la politique européenne de voisinage en 2010 – Rapport pays: Maroc' SEC (2011) 651; Commission, 'Mise en œuvre de la Politique Européenne de Voisinage au Maroc. Progrès réalisés en 2011 et actions à mettre en œuvre' SWD (2012) 119 final; Commission, 'Mise en œuvre de la Politique Européenne de Voisinage au Maroc. Progrès réalisés en 2012 et actions à mettre en œuvre' SWD (2013) 81 final; Commission, 'Mise en œuvre de la politique européenne de voisinage au Maroc. Progrès réalisés en 2013 et actions à mettre en œuvre' SED (2014) 94 final; Commission, 'Mise en œuvre de la politique européenne de voisinage au Maroc. Progrès réalisés en 2014 et actions à mettre en œuvre' SWD (2015) 70 final.

³⁹⁵ Council, 'Adoption of the European Union's position for the sixth meeting of the Association Council' (ST-11801/07, 17 July 2007); Council, 'Adoption of the European Union's position for the seventh meeting of the

b) The EU and the European Court of Justice on the Sahara Case (2015-2016)

A telling example of the complicated interaction of trade, human rights, and the political relations between Morocco and the EU can be seen in the serious diplomatic rift that began in late 2015 and that continues as of the time this paper is being submitted. As a part of their bilateral relations, Morocco and the EU entered into a trade agreement in 2012 that led to a reduction on tariffs of many agricultural products.³⁹⁶ Although EU policy is to integrate human rights issues into all agreements, the 2012 agreement implicitly included the 'Western Sahara' within its terms without noting the human rights dimension of what many in the international community (but not Morocco) see as being an occupied territory. A case was brought before the EU's European Court of Justice, which ruled on 10 December 2015 that the portion of the agreement pertaining to the Western Sahara was 'annulled' because of the failure to address the requisite human rights concerns for the claims of the indigenous Sahrawi people of the 'Western Sahara'. The ECJ:

Declares that Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the 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 is annulled in so far as it approves the application of that agreement to Western Sahara.³⁹⁷

Morocco promptly protested the ECJ's decision and the European Commission immediately appealed on its own behalf as well as that of Morocco. From the Moroccan perspective, a long and painfully negotiated agreement was undermined by a European institution that interfered in Moroccan internal

Association Council' (ST-13653/08 REV 1, 4 November 2008); Council, 'Adoption of the European Union's position for the Association Council's eighth meeting' (ST-16651/09 COR 1, 30 November 2009); Council, 'Adoption of the European Union's position for the Associations Council's ninth meeting' (ST-17064/10, 30 November 2010); Council, 'Statement by the European Union for the Association Council's 10th meeting' (ST-9088/12, 23 April 2012); Council, 'Adoption of the European Union's position for the Association Council's eleventh meeting' (ST-17567/13, 9 December 2013); Council, 'Adoption of the European Union's position for the twelfth meeting of the Association Council' (ST-16443/14, 9 December 2014); Council, 'Adoption of the European Union's position for the thirteenth meeting of the Association Council' (ST-15300/15, 14 December 2015).

³⁹⁶ Council Decision of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the 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 [2012] OJ L 241/2; Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco [2013] OJ L328/2.

³⁹⁷ Case T-512/12 *Front Polisario v Council* [2015] ECR II-953, final declaration.

affairs on the most sensitive political issue in Morocco. Although the Commission's appeal may be seen as agreeing with Morocco that human rights issues were not implicated, Morocco was sufficiently annoyed that it immediately broke off most of its diplomatic communications with the EU, albeit without fully explaining its reasons. By 2016 Morocco publically announced that it was breaking off diplomatic discussions with the EU. In order to calm relations, the EU's Vice President for External Action, Mogherini, travelled to Rabat and met with Moroccan officials on 4 March 2016. Although official EU external policy is that human rights should be integrated into every document and every discussion at every level, this sensitive issue was largely omitted from discussion. And, although official EU policy is that human rights are universal, interdependent, and indivisible, and that they should be fully 'mainstreamed' in all aspects of EU external relations, the EU Commission and EEAS – knowing the fervour with which Morocco adheres to its claims – does not engage in discussions regarding 'deep democratisation' in the Sahara, the human rights of the Sahrawi people, or the legitimacy of Morocco's acquisition of the territory.

E. The European Union financial assistance to Morocco

The EU's policy of 'conditionality' (or 'more for more') was officially reinvigorated during 2011 by policymakers who wanted to strengthen the newly developing policy of deep democracy. However, a look at the data suggests that there is no clear strategy of conditionality, and that in any case human rights and democratisation grants play a miniscule role in EU policy toward Morocco.

The EU repertoire with regards to financial instruments is vast. In the specific domain of human rights and democracy efforts in third countries, the EU does not galvanise all its efforts in this sphere in the same instrument. Rather, different policies and their financing schemes may concentrate to a varying extent its efforts on human rights, through specific programmes dealing with it. The most important instruments in the case of Morocco are the European Neighbourhood Instrument (ENI) (formerly the ENPI) and the European Instrument for Democracy and Human Rights (EIDHR). At the same time, the new European Endowment for Democracy (EED) has also funded projects in Morocco in the domain of human rights and democracy promotion.

1. The European Neighbourhood Instrument

The ENI, launched in 2014 to substitute its former edition that had started in 2007 (ENPI)³⁹⁸, channels funding at regional and country levels. Its administration is dependent of DEVCO, but with the participation of other EU organs at different stages. The scope and content of the projects that will be funded by this instrument is established in the Action Programmes agreed between the EU and the recipient country, in this case Morocco, periodically. Through a system of call for proposals, Moroccan CSOs and other institutions can apply for funds on matters mutually decided beforehand between

³⁹⁸ Regulation (EU) No 1638/2006 OJ L310/1 [2006].

Morocco and the EU.³⁹⁹ The following three tables illustrate the EU programmed and committed sums (without including disbursed figures) through the ENPI (and later the ENI) from 2007 to 2015.

Table 3. Morocco ENPI (2007-2010) in € m.

	Programmed	Committed
Social sector	45.3%	310 (42.9%)
Governance and human rights	4.3%	7.95 (1.1%)
Institutional support	6.1%	93.22 (12.9%)
Economic sector	36.7%	261.58 (36.2%)
Environment	7.6%	49.86 (6.9%)
NIP 2007-2010	654	722.6

Source: European Commission, 'European Neighbourhood and Partnership Instrument 2007-2013. Overview of Activities and Results' 28-30 (8 September 2014) <http://ec.europa.eu/europeaid/sites/devco/files/overview_of_enpi_results_2007-2013_en_0.pdf> accessed 1 November 2016.

Table 4. Morocco ENPI and SPRING Programme (2011-2013) in € m.

Morocco National Indicative Programme (NIP) (2011-2013)		
	Programmed	Committed
Social sector	116.1 (20.0%)	185.63 (26.2%)
Economic sector	58.05 (10.0%)	60.22 (8.5%)
Institutional support	232.2 (40.0%)	252.23 (35.6%)
Governance and human rights	87.08 (15.0%)	45.34 (6.4%)
Environment	87.08 (15.0%)	36.84 (5.2%)
SPRING (2011-2013)*		
SPRING – Democratic transformation and institution building	-	14.88 (2.1%)
SPRING – Partnership with	-	9.92

³⁹⁹ Regulation (EU) No 232/2014 OJ L77/27 [2014].

people		(1.4%)
SPRING – Sustainable and inclusive growth and economic development	-	103.44 (14.6%)
Subtotal NIP 2011-2013	580.5	555.5
Subtotal SPRING	-	128
Special measures	-	25
Grand Total Morocco (2007-2013)	1234.5	1431.1

Source: European Commission 'European Neighbourhood and Partnership Instrument 2007-2013. Overview of Activities and Results' 21 (8 September 2014) <http://ec.europa.eu/europeaid/sites/devco/files/overview_of_enpi_results_2007-2013_en_0.pdf> accessed 1 November 2016. *Programmed figures for SPRING do not appear in this table given that it is an *ad hoc* programme

Table 5. ENI Morocco 2014 and 2015 in € m. (programmed)

2014	
Health reforms	90.0
Justice	70.0
Solar power plant	38.0
Support for the green energy sector (loans)	20.0
Total ENI 2014	118.0
2015	
Reform of the penitentiary system	5.0
Reform of the vocational training system	45.0
Boost of economic growth and competitiveness	100.0
Sustainable development and competitiveness of the private sector	30.0
Total ENI 2015	180.0

Source: 'European Commission – EU Neighbourhood Policy. Morocco' (28 June 2016) <http://ec.europa.eu/enlargement/neighbourhood/countries/morocco/index_en.htm> accessed 1 Nov 2016

In sum, what these tables show is the programmed and committed quantities and sectors of expenditure for the ENPI/ENI in the period ranging from 2007 to 2015. However, if final disbursed amounts are taken into consideration, the picture changes dramatically, as can be observed in the following table.

Table 6. Programmed, Committed and Disbursed funds under the ENPI/ENI for the period 2007-2014 in € m.

	Programmed	Committed	Disbursed
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2007	162	190	227.5
2008	163	228.7	224.9
2009	164	145	200.7
2010	165	158.9	170.1
2011	178.5	166.6	151.5
2012	193.5	207	110.1
2013	208.5	334.9	84.1
2014	n/a	218.0	76.2
TOTAL	1234.5*	1649.1	1245.1

Source: Commission, 'Implementation of the European Neighbourhood Policy in 2014 – Statistics' SWD (2015) 77 final, section IV, p. 60-62; Commission, 'Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013 – Statistical Annex' SWD (2014) 98 final, section IV, p. 64-66. * The total amount of programmed sums is incomplete, as it does not include the data for 2014.

The two most striking facts that table 6 discloses is the big difference between committed and disbursed funds (of approximately € 400 million for the period between 2007 and 2014) and the trend that disbursed sums per year describe, from € 227 million in 2007 to € 76.2 million in 2014.

2. The European Instrument for Democracy and Human Rights

The other most important financing instrument in terms of human rights and democracy promotion content is the EIDHR, which focus on issues related to human rights in non-EU countries throughout the world. The main difference that exists between the ENPI/ENI and the EIDHR is the role of the non-EU country where funds are allocated in its conception and management. Indeed, the EIDHR does not distribute funds through states or governments, but has as its direct recipient various types of non-state actors.⁴⁰⁰ At the same time, not all funds allocated under this instrument are publically disclosed, in order to protect the recipient organisations and individuals from difficult situation. In 2014, a new edition of the mechanism was launched, differing from its predecessor in terms of budget increases designed to improve EU responses to emergency situations, strengthening of civil society, and protecting vulnerable minority groups and promoting economic and social rights.⁴⁰¹

Table 7 displays the disbursed amounts for the period comprised between 2007 and 2014 through the EIDHR for those projects that can be publically disclosed.

Table 7. EIDHR Disbursement breakdown by year (2007-2014) in € m.

EIDHR	Morocco
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⁴⁰⁰ Commission, 'What is EIDHR?' <<http://www.eidhr.eu/whatis-eidhr>> accessed 1 November 2016.

⁴⁰¹ *ibid.*

2007	0
2008	0,92
2009	0,81
2010	2,04
2011	1,16
2012	1,00
2013	1
2014	1
2015	1
TOTAL	8,93

Source: Direct contact with DG-DEVCO and DG-NEAR

3. The European Endowment for Democracy

Beyond the immediate realm of the EU instruments rests a new institution created in 2013, the European Endowment for Democracy (EED). The idea of launching this new organ was tightly linked to the Arab revolts occurring in 2011, and appeared in the review of the ENP of May 2011.⁴⁰² During the remaining months of 2011 and 2012, the EU institutions agreed upon organisational matters, funding structure and type of possible recipients. By 2013, the organisation was officially set to work as an independent international trust fund, with the initial financial support of the European Commission (€ 6 million in late 2012)⁴⁰³ and the Polish and Swedish governments.⁴⁰⁴

The innovative features of the EED are its demand-driven nature, its focus on those vulnerable groups and individuals that are not eligible for EU support by other instruments and that have no formal or informal connection with the state in which the fund is allocated.⁴⁰⁵ EED worked during its first two years of existence in the exclusive European Neighbourhood area. From 2015 onwards, applicants from the periphery of the European Neighbourhood were also accepted.⁴⁰⁶

⁴⁰² 'Joint Communication by the HR/VP and the European Commission, A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy' (Brussels, 25 May 2011) 6 <https://eeas.europa.eu/enp/pdf/pdf/com_11_303_en.pdf> accessed 16 Jul 2016.

⁴⁰³ Council of the EU, 'Council conclusion on the European Endowment for Democracy' (Brussels, 1 December 2011) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/126505.pdf> accessed 2 November 2016.

⁴⁰⁴ Richard Youngs, 'The European Endowment for Democracy, Two Years On' *Carnegie Europe* (4 September 2015) <<http://carnegieeurope.eu/strategieurope/61190>> accessed 2 November 2016. Richard Youngs and Kinga Brudzinska, 'The European Endowment for Democracy: Will it Fly?' (2012) Fride Policy Brief 128 <http://fride.org/download/PB_128_EED.pdf> accessed 2 November 2016.

⁴⁰⁵ European Endowment for Democracy, 'FAQ' <<https://www.democracypendowment.eu/support/questions-and-answers/>> accessed 2 November 2016.

⁴⁰⁶ *ibid.*

In Morocco, the EED has deployed its efforts in numerous projects, engaging with non-state actors and individuals that seek to advance democracy and the state of human rights in the Kingdom. Table 8 shows some of the projects and organisations that the EED has funded in Morocco.⁴⁰⁷

Table 8. Publicly disclosed EED projects in Morocco

Name	Starting date	Closing date	Area of action
Adala	15 August 2016	15 November 2016	Justice Reform
ICT4Dev	1 September 2015	31 August 2016	Law Disclosure activities
Association Démocratique des Femmes du Maroc (ADFM)	1 October 2015	21 December 2015	Capacity building activities for elected female representatives
Université Populaire	25 May 2015	4 May 2017	Right to education
Marocain Pluriels	1 September 2014	30 September 2015	Elections
SimSim	1 April 2014	31 March 2016	Parliamentary-Constituency relations
Instance Marocaine des Droits de l'Homme	1 April 2014	30 March 2015	Human rights advocacy
Association des rencontres Méditerranéennes du Cinéma et des Droits de l'Homme	15 January 2014	31 March 2016	Human rights advocacy through films
Euro-Mediterranean Federation against Enforced Disappearances	1 April 2014	31 March 2015	Enforced disappearances

Source: European Endowment for Democracy, 'We Support - Morocco' <<https://www.democracyendowment.eu/we-support/?country=morocco>> accessed 2 November 2016.

4. Analysis of EU support to Morocco

It is often reported – including by the EU – that Morocco has been the largest recipient of EU Official Development Aid (ODA) among the EU's nine Southern Mediterranean Partners.⁴⁰⁸ In fact, since 2007,

⁴⁰⁷ It should be noted that many of the projects funded by the EED are not publicly disclosed (as for EIDHR), so the information shown in table 5 is not all encompassing, but rather a selection of the information available in the EED website.

Morocco has been the second largest recipient of ODA among the nine partners, as can be seen in Table 1 below (Morocco was, however, the largest recipient of total aid among these countries between 2000 and 2006). The single largest recipient of aid during the latter period (2007-2014) was Palestine (the West Bank and Gaza Strip or WB&GS). The choice to display ODA figures instead of disaggregate allocations per instrument (EIDHR, ENPI/ENI, DCI...) answers to many factors. On the one hand, human rights and democratisation projects are not only funded by one instrument. At the same time, some of the most important human rights EU projects are confidential, and do not appear in the official figure for EIDHR, but are included (although disguised) in total ODA figures. In this sense, as will be disclosed below, the comparison between ODA disbursed amounts and the sum of different human rights and democratisation would be impossible if only disbursed amounts per instruments were considered.

Table 9. Total disbursed EU ODA to Southern Neighbourhood countries (2007-2014) in € m.

	Morocco	Egypt	Tunisia	Algeria	Jordan	Lebanon	WB&GS	Syria	Libya
2007	225.34	161.19	98.10	62.98	49.19	56.30	389.95	34.04	0.82
2008	228.4	141.18	57.51	61.09	73.90	90.31	459.73	37.04	2.97
2009	203.35	147.01	77.64	59.44	60.88	52.35	386.57	43.33	7.38
2010	168.7	103.33	69.82	39.07	98.12	40.23	333.29	38.95	0.80
2011	152.54	48.11	130.38	57.35	80.99	39.34	287.52	26.18	35.56
2012	113.14	92.86	147.28	46.98	106.27	50.07	247.09	27.82	22.73
2013	86.6	29.96	88.51	50.87	167.80	136.06	270.30	137.08	45.25
2014	80.94	102.88	181.81	44.90	139.40	161.56	364.29	146.18	28.88
TOTAL	1259.01	826.48	851.05	422.68	776.55	626.22	2738.74	490.62	144.39

Source: Annual Reports on the European Community's Development and external assistance policies in 2007-2014.

However, if one considers the amount of aid donated on a per capita basis, Morocco drops from second to fifth, as can be seen in table 10.

⁴⁰⁸ Different scholarly accounts state that Morocco has been the leading EU funds recipient of the countries under the different policy frames in place since 1995. Indeed, 'Rabat was the main beneficiary of the MENA funds, receiving €1.1 billion in the period 1995-2003. (...) The intensification of cooperation was also reflected in the amount of money that Morocco received under the ENPI: the country was again the main recipient of EU money' Silvia Colombo and Benedetta Voltolini, "'Business as Usual' in EU Democracy Promotion towards Morocco? Assessing the Limits of the EU's Approach towards the Mediterranean after the Arab Uprisings' (2014) 371 L'Europe en Formation 43; Another scholar observes: 'Between 1995 and 2006, this country was the largest recipient of the EMP, in terms of both commitments and disbursements. (...) The relative financial advantage over its peers enjoyed by Morocco under the EMP and the MEDA Programmes was to be maintained and accentuated with the implementation of the ENPI' Fernández-Molina (n 325) 113 and 118.

Table 10. Total disbursed EU ODA per capita to Southern Neighbourhood countries (2008-2014) in € m.

	Morocco	Egypt	Tunisia	Algeria	Jordan	Lebanon	WB&GS	Syria	Libya
2008	7.49	1.94	5.69	1.86	13.33	22.52	122.20	1.96	0.50
2009	6.28	1.74	7.48	1.68	9.41	12.31	87.67	1.93	1.13
2010	5.28	1.27	6.66	1.10	15.86	9.52	82.51	1.91	0.13
2011	4.77	0.59	12.44	1.62	13.09	9.31	71.18	1.28	5.59
2012	3.54	1.14	14.05	1.32	17.18	11.84	61.17	1.36	3.58
2013	2.71	0.37	8.44	1.43	27.12	32.18	66.92	6.72	7.12
2014	2.56	1.32	17.10	1.21	20.90	37.22	90.78	6.79	4.78
TOTAL	32.63	8.37	71.86	10.22	116.89	134.90	582.43	21.95	22.83

Source: Annual Reports on the European Community's Development and external assistance policies in 2008-2014.⁴⁰⁹

Thus the total €1259 million in ODA donated by the EU to Morocco during this eight-year period is roughly the equivalent to € 36.97 per person (or a little more than € 4.62 on average per person and per year). Since 2011, ODA grants to Morocco have shown a steady yearly decline, while since 2011, there have been significant steady increases for Lebanon and Syria, though the latter case is due to the refugee crisis. There also have been significant, though uneven, increases for Egypt, Tunisia, Jordan, and Palestine. Of the €1259 million ODA disbursed total grants to Morocco over the eight-year period, approximately €76.1 million had been committed to human rights and democratization projects.⁴¹⁰ On a per capita basis, this is equivalent to approximately € 0.28 approximately per person per year.⁴¹¹

In short, what this section has shown is that the EU has not changed its commitment to democratisation in Morocco in any sense. True, the EU has put forward the EED in order to increase the flexibility and appropriateness of its financial aid especially in those cases where the other existing instruments could not operate. However, if the scope of the analysis is enlarged, despite more funds programmed and committed on a yearly basis to Morocco (including therein projects that could lead to the establishment of a deeper democracy), disbursed figures (both for the ENPI/ENI and total ODA) keep showing a downgrading tendency. This trend cannot be attributed to the use of conditionality due to a deteriorating scenario in any case, as that would be reflected in the bilaterally negotiated sums, and not in the disbursed figures. At the same time, the percentage of the total disbursed ODA to Morocco that

⁴⁰⁹ In table 10, data for 2007 is not included. For this reasons, it has not been calculated by the authors, given that both sets of results would not be comparable.

⁴¹⁰ This figure is the result of adding to the EIDHR disbursed funds for the period 2007-2014 in Morocco (€7.93 million – table 7), the committed 'governance and human rights' budget lines for the ENPI (2007-2010) which was €7.95 million (1.1% of the National Indicative Programme - NIP), the ENPI (2011-2013), that committed €45.34 million (6.4% of the NIP, the SPRING disbursed amount under 'Democratic transformation and institution building', €14.88 million that represented 2.1% of the total ENP committed funds for Morocco (including Special Measures and the ENPI) from 2011-2013. For the year 2014, no major projects with a governance and human rights mandate were programmed. Because an important part of this component is built upon committed funds, and not yearly finally disbursed amounts, the figure suffers from oversize. Thus, a smaller figure for ODA disbursed for human rights and democracy should be expected bearing in mind that disbursed amounts never exceed the committed funds.

⁴¹¹ The total population figure has been consulted at World Population Prospects – United Nations Population Division. In the year 2015, the reference year used, Morocco counted with 34.05 million people.

was approximately directed to human rights and democratisation projects in the period comprising from 2007 to 2014 does not exceed 6.1%.

F. Conclusions

In the midst of the Arab Spring in 2011, high officials of the European Union called for a re-evaluation of EU policy towards its Southern Mediterranean partners. Rather than treating relations with states with a 'business as usual approach', the EU committed itself to taking seriously the issue of promoting 'deep democracy' in the region and re-invigorating its pre-existing doctrine of positive conditionality ('more for more'). It may reasonably be questioned whether the EU has taken either seriously with regard to Morocco.

The clear message to Morocco coming from political leaders in Europe, the United States, and the G8 is that they will extravagantly praise the country even as it ignores the human rights abuses identified by the European Parliament and the US State Department. For example, Morocco World News reported on 30 January 2015, following the visit of the EU's Special Representative for Human Rights, Stavros Lambrinidis,

EU special representative for human rights Stavros Lambrinidis expressed, on Friday in Rabat, EU's support for all reforms undertaken by Morocco to promote human rights, deeming that the Kingdom has become an example to follow regionally.

Lambrinidis, who is on a working visit to the Kingdom, lauded on this occasion the results of his talks with the Moroccan officials, highlighting the major strides made by Morocco to uphold human rights and freedom, the same source added⁴¹².

Moreover, by ignoring or dismissing the evidence and examples published by Human Rights Watch, Amnesty International, Bertelsmann, and others, the EU and the US are doing an active disservice to the cause of democratisation and human rights by undermining human rights activists both in Morocco and abroad who call for serious change and for genuine efforts to promote democratisation. Morocco can expel representatives of Human Rights Watch and Amnesty International, and pressure their own citizens in part, because it will continue to be praised officially by EU and US officials and will be described as a 'role model' for other countries and for being serious about democratisation. Morocco broadly republishes within the country the flattering official European and American praise while suppressing or ignoring critical commentary, even when it comes from the European Parliament and the

⁴¹² 'EU Official Voices Support for Morocco's Human Rights Reforms' *Morocco World News* (Rabat, 30 January 2015) <<http://www.morocoworldnews.com/2015/01/150657/eu-official-voices-support-moroccos-human-rights-reforms/>> accessed 27 October 2016 (emphasis added). This press release was cited by the European Parliament without any criticism. Another newspaper reported Lambrinidis as saying: 'The European official lauded the achievements made by the North African nation in terms of human rights as well as action plans seeking their promotion. He also described the new immigration and asylum policy adopted by Morocco as 'an ambitious plan'' in 'Morocco's Human Rights Achievements Lauded' *Business Standard* (Rabat, 30 January 2015) <http://www.business-standard.com/article/news-ians/morocco-s-human-rights-achievements-lauded-115013000907_1.html> accessed 27 October 2016.

US State Department. It reasonably appears that EU and US policy may be counterproductive for the cause of genuine human rights and democracy in Morocco. Rather than promoting 'deep democracy' or seriously applying positive conditionality, it appears that the EU in fact provides more for less.

VII. General conclusions

The Southern Mediterranean is a strategic region for the EU. For decades, the EU provided extensive support to the authoritarian regimes that supposedly offered security, stability, and economic opportunities to Europe, irrespective of the lack of significant steps forward in the field of human rights and democracy. The three cases analysed are a clear manifestation of the stability-democracy dilemma that the EU was confronted with. The popular uprisings that started in Tunisia in December 2010 and in Egypt and Morocco in January and February 2011, respectively, revealed the fallacies and contradictions of the stability-democracy dilemma. Ultimately, the economic development and liberalization that the EU was trying to pursue in the region must go hand-in-hand with the promotion of human rights and democracy. Economic inequalities, social exclusion, widespread corruption and lack of democratic spaces were the very roots of the unrest that led to the Arab Spring in the Southern Mediterranean.

The EU tried to reflect about its new role in a rapidly changing context, and to articulate a response to the new scenario. Against the background of the consideration of the EU as a normative power, it aimed at placing human rights and democracy as the new pillars of a renewed partnership with the region. The main innovation of the EU's new approach to the region was the concept of deep democracy. While it generated high expectations, our analysis has demonstrated that this concept has been full of rhetoric, inconsistencies, and lack of a precise definition. Many EU bodies, including the EEAS or the Council, ignore the term, and no longer use it in their official statements.

Most changes in EU policies towards the Southern Mediterranean, particularly the reviewed ENP, are essentially rhetoric, since they do not substantially modify the traditionally top-down and business-oriented approach that has dominated these relations since the Barcelona process in the mid-1990s. The renewed emphasis of the ENP on the 3 Ms (money, market and mobility) has not served to reorient the main drivers of the ENP, namely liberalization, the progressive integration of the economies of the Southern Mediterranean into the European market, and the externalization of borders and control of migration and refugee flows. Human rights and democracy have played a relatively small role in the supposedly new approach to the bilateral relations between the EU and the Southern Mediterranean, in spite of the ambitious rhetoric enshrined in the official documents coming from Brussels in the aftermath of the Arab Spring.

One aspect that can be described as an innovation is the EU's emphasis on the role of CSOs working in the field of human rights and democracy. The EU has tried to cooperate more closely with CSOs, and has also exerted some pressure on governments to increase the space that CSOs have to work for the promotion of human rights and democracy. The creation of the EED, the approval of a new funding scheme for CSOs through the CSF or the support offered to HRDs under the EIDHR are a clear illustration of the EU's attempt to strengthen the CSOs' capacities to actively participate in the development of inclusive and democratic societies. While in Tunisia and Morocco the EU has been able to support the work of some independent human rights NGOs (though certainly not those in Morocco that challenge the legitimacy of Morocco's claim to the Sahara), the EU's ability to cooperate with Egyptian CSOs has been much more limited. The current situation in Egypt, with systematic violations of human rights and a more and more restrictive policy on NGOs, has largely reduced the EU's leverage capacity, therefore

leading to a situation of impotence and increasing irrelevance when it comes to human rights and democracy issues in the country.

Both Morocco and Egypt have established some 'red lines' as to the EU's support to CSOs. In the case of Morocco, the EU is fully aware of the sensitiveness of supporting NGOs that challenge the official Moroccan position on its territorial integrity. In the same vein, Egypt has also declared that cooperation with political and social circles of the illegalized Muslim Brotherhood, considered as a 'terrorist organization', is simply not an option for the EU. In both cases, the EU has been unable and unwilling to take a stronger stance, thus limiting the potential use of the principle of conditionality. Actually, conditionality (more for more, and less for less) was one of the core pillars of the new approach to the Southern Mediterranean after the Arab Spring. Once again, the EU's credibility is at stake.

In the three countries analysed, Islamic political parties and social organizations enjoy a considerable degree of legitimacy. They are an essential component of the social and political fabric. So far, the EU has been reluctant to open spaces of dialogue and cooperation with Islamic organizations, and it has been suspicious as to the rise of political Islam, particularly in Egypt. The EU needs to strategically reflect about its relations with Islamic actors if it really wants to promote deep democracy. Local ownership is a key element of deep democracy. We must not forget that both in Tunisia and in Morocco, Islamic parties Ennahdha and Justice and Development Party are in power now. In Egypt, the FJP won the first democratic parliamentary and presidential elections after the January revolution, until it was ousted by a coup d'état in July 2013. EU support to Islamic organizations and political parties will not necessarily lead to more Western-style democratization; actually, none of the above-mentioned Islamic parties supported the demands of the popular movements for more democratization during the revolutions. But the EU can no longer ignore the role of Islamic organizations in the Southern Mediterranean.

The new geopolitical scenario after the Arab Spring in the Southern Mediterranean, and the financial and political crisis the EU is suffering since 2008, are also affecting the EU's capacity to act as a relevant international actor in the region. In Egypt, the EU's leverage capacity has dramatically diminished due to the increasing presence of other actors in the country such as Saudi Arabia, China or Russia. These countries are offering strong political and economic support to the current Egyptian regime, turning the EU into an increasingly irrelevant player when it comes to human rights and democracy. That is not the case in Tunisia and Morocco, where the EU still holds a considerable capacity to influence the respective governments. The EU is by far the main trading partner of these countries. Whether or not the EU uses its potential to push for deep democracy in these two countries remains to be seen.

In this sense, the EU's attitude towards democratic reforms in Morocco remains ambivalent. The EU has considered the democratic transition in Morocco after the uprising led by the 20 February Movement as the model for the countries of the region, irrespective of significant gaps in the area of human rights and democracy. While some relevant improvements have been made, very little has changed structurally regarding the centralization of power, the role of the King in the political and religious spheres, and repression of opposition and human rights defenders in Morocco and, especially, in the Western Sahara. Once again, these are 'red lines' that the EU cannot dare to challenge.

A similar pattern is taking place in Tunisia, where the representation of Tunisian transition to democracy as a 'success story' can pave the way to downplaying some relevant obstacles to the process of democratization. The EU has increased its financial support, and has diversified its projects and programmes on human rights and democracy. However, there has not been a shift in the priorities (economic pro-business reforms and access to the market) and in the substance of its democracy promotion activities. While persistent structural problems as widespread corruption, social exclusion and inequalities between the different regions of the country figure prominently in the EU discourses and policies on Tunisia, the economic recipes that the EU promotes in Tunisia can clash with the aspirations of the Tunisian people in terms of social justice and real democracy. It is worth noting that these structural problems were at the very origin of the popular uprisings in December 2010.

In sum, the EU has to make a strategic and sincere reflection about the role it wants to play in a changing region such as the Southern Mediterranean. The Arab Spring was a wake-up call for an EU that for decades had supported authoritarian stability in the region. It was the right time to conduct such a strategic reflection based on the assumption of past mistakes. This analysis has demonstrated that the Arab Spring has been a missed opportunity to rethink the partnership with the other side of the Mediterranean. Much time and resources have been wasted since 2011, therefore the EU should change and to base its bilateral relations on human rights and deep democracy.

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IX. Annex I: EU Human Rights and Democratization Programs and Projects in Tunisia (2011-2015)

Name of the Program/Project	2011	2012	2013	2014	2015
<i>Democratic transition and elections</i>					
Renforcer le rôle de la société civile dans la promotion des droits de l'homme et des réformes démocratiques: observation domestique des élections (2011-2014), 300.000 €	X	X	X	X	
Suivi et contribution au processus de transition démocratique en Tunisie (2012-2014), 261.000 €		X	X	X	
Renforcer les éléments constitutifs d'une démocratie: appui aux partis politiques	X	X			
Tous les tunisiens aux urnes	X	X			
Jumelage «Appui à la démocratisation en Tunisie et aux organisations de la société civile en préparation à l'observation domestiques des élections»	X	X			
TRANSPROCESS : Vers une transparence du processus Electoral-Bilatéral (Mourakiboun)	X	X			
Assistance électorale à la Tunisie	X	X			
Appui de l'Union européenne au processus constitutionnel et parlementaire en Tunisie (2012-2016) 1,8 mill. €		X	X	X	X
Soutenir la transition démocratique en Tunisie en appuyant les organisations de la société civile et les acteurs politiques (2013-2014), 350.000 €			X	X	X
Dialogue sur le pluralisme politique en Tunisie (2013-2014, 217.000 €)			X	X	
Assistance électorale à la Tunisie (2014), 1 million €				X	
Observation, suivi et évaluation des élections – OSEE (2014 - 2016), 395 000 €				X	X
Citoyenneté active, élections et transition démocratique en Tunisie - Vox in Box (2014 - 2016), 394 000 €				X	X
Connecter les agents politiques : préparer des réformes inclusives (2014-2015), 211 000 €				X	X
Jumelage « Renforcement des capacités de L'Assemblée des Représentants du Peuple » (2015-2018)					X
<i>Human rights</i>					
Appui à la restructuration de la Ligue Tunisienne pour la Défense des Droits de l'Homme	X	X			
Journées du cinéma des droits et des libertés de Tunis- Thala-El Kef	X	X			
Renforcement de l'action des défenseurs des droits de l'Homme et des acteurs de la société civile tunisienne, notamment des acteurs émergents, dans le contexte de transition démocratique	X	X			
Périphérie active : support à la société civile du Gouvernorat de Sidi Bouzid dans sa capacité de participation, travail en réseau et expression libre ainsi que d'inclusion des instances des groupes vulnérables		X			
En quête d'autres regards – Réfléchir les images de la prison (2013-2016) 300 000 €			X	X	X
Lutte contre la torture et prévention des mauvais traitements en Tunisie (2012-2014), 440.000€		X	X	X	X
Droits Sociaux et de Citoyenneté (2011-2014), 650.000 €	X	X	X	X	
La défense des droits économiques et sociaux des groupes			X	X	105

vulnérables des régions de Monastir et du Bassin Minier de Gafsa (2013-2014), 220.000 €					
Programme d'Appui à la réforme de la justice (2012-2016) 25 millions €					
MarsadMajless : Renforcement de la redevabilité et des capacités des élus et plaidoyer pour une réforme démocratique, inclusive et participative de la législation tunisienne (2015-2018) 411 990 €					X
<i>Justice and SSR</i>					
<i>Programme d'Appui à la réforme de la Justice (PARJ), 25 millions € Extension et réhabilitation selon les normes internationales des juridictions et établissements pénitentiaires, et dotation du Ministère de la Justice en équipement informatique (2013-2016), 12.8 millions € Amélioration de la justice pour les enfants en Tunisie (2013-2016), 1,8 million € UNICEF</i>		X	X	X	X
<i>Programme d'appui à la réforme de la justice (PARJ 2)2, de 15 millions €</i>				X	X
<i>Renforcement des capacités institutionnelles de l'Institut Supérieur de la profession d'Avocat (ISPA) » (2011-2014), 630.000 €</i>	X	X	X	X	
<i>Appui de l'Union européenne au processus constitutionnel et parlementaire en Tunisie</i>		X			
<i>Jumelage d'Appui à la modernisation du Tribunal Administratif</i>		X			
<i>Programme régional Euro-Med Justice III (2011-2014), 5 millions €</i>	X	X	X	X	
<i>Renforcer la réforme démocratique dans les pays du sud de la Méditerranée – Programme Sud, (2012-2014), 4,8 millions €</i>		X	X	X	
<i>Assistance technique au programme d'Appui à la réforme de la justice - ATPARJ (2014-2017), 3,1 millions €</i>				X	X
<i>Appui aux initiatives de la société civile contribuant à la réforme de la justice et du système pénitentiaire en Tunisie, 1,7 million € Modernisation du système pénitentier tunisien par la réduction de la surpopulation et la prestation de services aux détenus (2015-2017) 450 000 € Adela – Améliorer l'accès à une justice de qualité en Tunisie (2015-2018) 500 000 €</i>				X	X
<i>Amélioration de la justice pour les enfants en Tunisie (2013-2016), 1,8 million €</i>			X	X	
<i>« Soutien aux enquêtes et des poursuites respectant l'Etat de droit dans la région du Maghreb » (2014-2018) 3 Millions €</i>				X	X
<i>Renforcement des capacités du Ministère de la Justice et des juridictions (2015-2018) 1,8 million €</i>					X
<i>Appui à la formation des personnels de justice (2015-2017) 1,3 million €</i>					X
<i>Renforcement des institutions de l'administration pénitentiaire (2015-2018) 1,8 million €</i>					X
<i>Appui au traitement judiciaire des dossiers de justice transitionnelle et aux mécanismes de protection des victimes et des témoins - PARJ 2 (2015-2017) 800 000 €</i>					X
<i>Réhabilitation de l'infrastructure et dotation d'équipements pour la réforme de la justice - PARJ 2 (2015-2019) 9,2 millions €</i>					X
<i>Vers une gouvernance démocratique renforcée dans le Sud de la Méditerranée – Programme Sud II, (2015-2017) 7,37 millions €</i>					X
<i>Projet de soutien aux pays en transition pour la mise en oeuvre de la</i>				X	X

récupération des avoirs (2014-2016) 2,7 millions					
Programme d'appui à la réforme et à la modernisation du secteur de la sécurité de la République tunisienne (2015-2019) 23 millions €					X
Programme d'appui au gouvernement tunisien dans le domaine de la gestion intégrée des frontières (2015-2017) 2 millions €					X
Prévention de la radicalisation et de l'extrémisme violent (2015-2017) 2 millions €					X
EUROMED Police IV (2016-2020) 4,8 millions €					
Projet pilote pour contrer la radicalisation et l'extrémisme violent dans la région du Sahel et du Maghreb (2015-2019) 5 millions €					X
Projet global sur le renforcement du cadre juridique pour la poursuite des combattants terroristes étrangers dans la région Moyen-Orient, Afrique du Nord et Balkans (2015-2017) 5 millions €					X
Programme de l'Union Européenne de prévention régionale contre l'extrémisme violent dans le Maghreb et le Sahel- PPREV-UE (2015-2016) 1,6 million €					X
Gender					
Promotion de l'égalité par le renforcement de la société civile et la participation des citoyennes et citoyens au processus démocratique dans le nord-ouest tunisien (2011-2014), 215.000 €	X	X	X	X	
Appui d'urgence au renforcement des capacités de plaidoyer de la société civile pour une transition démocratique sensible au genre en Tunisie (2011-2013), 365.000 €	X	X			
Prévention de la violence fondée sur le genre et accompagnement des femmes victimes dans le Nord-Ouest Tunisien (2013-2016), 550.000 €			X	X	X
Centre Femme Solidarité: soutien à l'inclusion et à l'économie sociale féminine dans le Gouvernorat de Jendouba (2012-2014), 353 000 €		?	X	X	
Coopération pour l'égalité entre les hommes et les femmes «SpringForward - un bon en avant pour les femmes» (2012-2016), 7 millions € dont 600.000 € pour la Tunisie		X	X	X	X
Appui à l'émancipation socio-économique des femmes rurales en Tunisie et Maroc à travers leur inclusion dans les réseaux de l'économie sociale (2012-2015), 940.000 €		X	X	X	X
Enhancing women's rights, gender equality and civil society participation in the context of the Istanbul-Marrakesh Process (2011-2014), 721.000 €	X	X	X	X	
Pour une meilleure insertion sociale et professionnelle des mères célibataires au Maghreb (2013 – 2016), 845.000 €			X	X	X
Women's response to the Arab spring (2013-2015), 588 000 €			X	X	X
Promouvoir un agenda commun pour l'égalité entre les femmes et les hommes à travers le processus d'Istanbul (2011-2013), 495.000 €	X	X	X		
Promotion de l'égalité professionnelle Femmes-Hommes en Tunisie (2014-2016), 240 000 €				X	X
Projet « Karama-Dignité » (2014-2015), 211 000 €				X	X
Projet de prévention de la violence sexuelle à l'égard des enfants et notamment des petites filles (2014-2016), 229 000 €				X	X
Sensibilisation des étudiant(e)s tunisiens à la préservation des droits de la femme et à une meilleure compréhension du modèle patriarcal (2014-2016), 300 000 €				X	X
Programme de promotion de l'égalité femmes-hommes en Tunisie (2015-2018) 7 000 000 €					X
Pour une meilleure application des droits des enfants sans soutien					X

<i>familial en Tunisie (2016-2019) 600 000 €</i>					
<i>Renforcer les capacités dans le Sud de la Méditerranée afin d'ouvrir le dialogue et le suivi des politiques pour les femmes dans la société (2015-2017) 969 000 €</i>					X
<i>Freedom of expression and media</i>					
<i>Renforcement des capacités de la Radio Nationale de Tunisie en vue d'assurer une couverture des travaux de l'ANC et des cycles électoraux et de jouer pleinement son rôle de service public et de proximité (2012-2014), 306.530€</i>		X	X	X	
<i>Création d'une commission mixte de consultation pour la Radio Tunisienne (2011-2013), 233.289 €</i>	X	X	X		
<i>Observation et plaidoyer pour le soutien aux défenseurs indépendants des droits de l'homme en Tunisie</i>		X			
<i>TUNISIE 4.0 réalisation d'un web documentaire sous la forme de films d'anticipation</i>	?	X			
<i>Radio 3R «Regueb, Révolution, Renouveau», soutien à l'information, l'insertion sociale et la valorisation des jeunes tunisiens dans la région de Sidi Bouzid (2012-2016), 134.593 €</i>		X	X	X	
<i>Décryptages : du droit d'informer au droit d'être informé</i>	X	X			
<i>Renforcement du Syndicat National des Journalistes Tunisiens (2011-2013), 200.000 €</i>	X	X	X		
<i>Le Tunisie Bondy Blog : Une école de journalisme par les citoyens (2012-2015), 236.987 € - (http://tunisiebb.com)</i>		X	X	X	X
<i>Une expression démocratique de la liberté: soutenir les médias démocratiques en Tunisie (2011-2013), 185.964 €</i>	X	X	X		
<i>Forum de Hammamet pour la déontologie et la liberté de la presse maghrébine (22- 24 janvier 2013)</i>			X	X	
<i>Défense de la liberté de l'information en Tunisie (2013-2015), 200.000 €</i>			X	X	X
<i>Périphéries actives: appui à la participation et libre expression de la société civile et des groupes vulnérables du Gouvernorat de Sidi Bouzid (2012-2015), 206.489 €</i>		X	X	X	X
<i>Formation et Application du Code de Déontologie de la Presse écrite au Maghreb (2013-2015), 300.000 €</i>			X	X	X
<i>Med Media (2014-2017), 3 millions €</i>				X	X
<i>Med Net: société Civile et Développement des médias (2013-2015), 1.501.688 €</i>			X	X	X
<i>Programme d'appui au secteur des médias en Tunisie (2015-2019) 10 millions €</i>					X
<i>OPEN - MEDIA HUB PROJECT (2015–2019)</i>					X
<i>Support for civil society</i>					
<i>Formation aux organisations de la société civile qui souhaitent participer aux appels à propositions sur la ligne «Instrument Européen pour la Démocratie et les Droits de l'Homme»</i>		X			
<i>Le Programme d'Appui à la Société Civile PASC TUNISIE (2012-2016), 7 millions €</i>		X	X	X	X
<i>PROJET PASC, EPD, 2013-2016 7 millions €: Renforcement des autorités locales et des OSC pour l'implémentation des politiques publiques municipales 321 000 € Agissons ensemble pour un développement local conceté des territoires (2015-2017) 400 000 € Filles rurales en action (2015-2017) 163 000 €</i>			X	X	X

<i>Contribuer à rendre la société civile actrice de la gouvernance locale en matière de gestion des ressources naturelles (2015-2017) 376 000 €</i> <i>KolnaKesra (2015-2017) 349 000 €</i> <i>Renforcer la participation de la société civile dans le développement du quartier de Sidi Amor Abada – Kairouan (2015-2017) 193 000 €</i> <i>Projet pour soutenir l'implémentation de la gouvernance locale dans le Grand Tunis/ la gouvernance locale aux jeunes (2015-2017) 353 000 €</i> <i>Renforcement du tiers secteur local (2015-2017) 361 000 €</i>					
<i>Renforcement des Capacités Associatives (ARCA)</i>	X				
<i>Contribuer au renforcement des capacités de la société civile pour un débat plus démocratique au niveau national et dans le cadre du Partenariat Euro-méditerranéen et de l'Union pour la Méditerranée</i>	X	X			
<i>Élaboration d'une plateforme associative : www.jamaity.org (2014-2016), 218.000 €</i>				X	X
<i>Mobiliser la société civile tunisienne dans le suivi des relations entre la Tunisie et l'Union européenne (2013-2015) 200.000 €</i>			X	X	
<i>Mobiliser la société civile tunisienne dans le suivi des relations entre la Tunisie et l'Union Européenne – PHASE II (2015-2019) 500 000 €</i>					X
<i>Renforcer les capacités des jeunes à devenir des acteurs de changements en Libye, Jordanie, Palestine, Egypte et Tunisie (2012-2015), 1.000.000 € (Regional)</i>		X	X	X	X
<i>Marsad Baladia : Engagement citoyen, redevabilité des municipalités et décentralisation (2015-2018) 600 000 €</i>					X
<i>« We gov !Empowering MENA CSOs participation in policy making» (2015-2018) 990 000 €</i>					X

Source: Information provided by the reports on EU cooperation with Tunisia from 2011 to 2015 made by the EU Delegation in Tunisia.