EuroMeSCo Annual Report 2006

Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualising Ends, Means and Strategies

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Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualising Ends, Means and Strategies

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Executive summary

This report was prepared at the behest of the European Commission in the framework of the EuroMeSCo Rapid Response Facility. It aims at analysing the EU's objective of introducing a benchmarking process in the realm of human rights and democratic development within the European Neighbourhood Policy (ENP) vis-à-vis the southern Mediterranean partner countries that are participating in the Euro-Mediterranean Partnership (EMP). Based on a critical analysis of key concepts in the realm of democratisation and human rights, such as the notion of 'democracy', 'rule of law' and 'human rights' – terms which are often employed without providing clear definitions – the concept of benchmarking, as well as of the first round of Action Plans concluded with Morocco, Tunisia, the Palestinian Auhority, Jordan and Israel in 2004, the report argues that the EU's current benchmarking approach suffers from a number of conceptual and analytical flaws. In view of these difficulties, all of which may have serious implications for the successful and sustainable implementation of benchmarking political development in the Euro-Mediterranean area, this report proposes to take the conceptualisation of democratisation as a process that entails different phases as a starting point of any democracy promotion strategy. It suggests that such a model may be used as a 'check list' of sorts in a cross-country comparison and serve as a 'meta-scheme' within which specific 'benchmarks' in the realm of 'human rights' or 'the rule of law' may be defined and evaluated in the specific context of Euro-Mediterranean relations.

Recognising that the respect for human rights is the first, and most essential, building block of any democratic development, the report makes recommendations on how to transform the EU's current approach into what could be called an 'intelligent benchmarking' strategy. This entails, among other issues, the need to define with clarity objectives and strategies, and thus clear indicators and ex-ante decisions on timetables, regular monitoring and incentives.

Introduction

Over the last decade, the promotion of democratic governance and the rule of law has been one of the declared objectives of the European Union's Mediterranean Policy. In this vein, the Euro-Mediterranean Partnership (EMP) stipulated that the 'strengthening of democracy and respect for human rights' was a central requirement for the overall objective of turning the Mediterranean basin 'into an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity' (Barcelona Declaration, 1995). By adopting the Barcelona Declaration, the Mediterranean partner states theoretically committed themselves to develop democracy and the rule of law in their political system and to act in respect of the United Nations Charter and the Universal Declaration of Human Rights. However, while authoritarianism and the violation of human rights persists in the southern Mediterranean and Middle East, thus far the record of the EU's democracy promotion in the region has been weak (Gillespie and Youngs, 2002; Bicchi, 2004; Gillespie, 2006; Aliboni, 2005).

With the adoption of the European Neighbourhood Policy (ENP) in 2003-2004, the EU declared that it intended to step up the promotion of democracy in what the European Union (EU) came to define as its 'neighbourhood' – which includes the southern Mediterranean area. According to the European Commission, the promotion of the 'commitment to shared values', including human dignity, liberty, democracy, equality, the rule of law, and the respect for human rights, counts as a key priority within the ENP (Commission, 2003; 2004a). The EU's offer of substantially upgrading bilateral relations with the countries covered by the ENP shall depend on whether the respective country respects these values, or at least engages in a process of political reforms. In this vein, the Commission states that '[h]ow far and how fast each partner progresses in its relationship with the EU depends on its capacity and political will to implement the agreed priorities' (Commission, 2005a: 1). Hence, as the ENP introduces the principles of positive conditionality, differentiation, and benchmarking (Del Sarto and Schumacher, 2005), the policy presents an important opportunity of developing a proactive strategy for the spreading of democratic governance and human rights in the southern Mediterranean. The ENP could thus respond to the priority of promoting freedom in the southern partner states, seen as a fundamental requirement of human development, according to the UNDP's 2004 Arab Human Development Report (UNDP, 2005).

Yet, while the opportunity of developing a proactive strategy within the ENP presents a strong case in theoretical terms, developing such a strategy in practice faces a number of formidable difficulties. Indeed, defining priorities of action in the realm of democratic governance and human rights on which the EU's willingness to offer economic and political concessions will depend must start with a clear definition of the long-term objectives as well as the short-term priorities. Similarly, such a strategy must be able to define how 'progress' in democratic transition processes can effectively be 'measured' and 'monitored'.

This report sets out to critically assess the EU's objective of introducing a benchmarking process in the realm of human rights and democratic development within its Mediterranean policy. It starts by drawing the attention to the conceptual and analytical difficulties related to the endeavour of 'benchmarking' human rights and democratic governance, which are viewed as having a number of important *practical* implications. Indeed, conceptual clarity regarding the idea of benchmarking democratisation and human rights is absolutely necessary in order to avoid incoherence and prevent counter-productive results. In this vein, in the first chapter, the report starts by discussing the analytical difficulties related to, and the persisting debates revolving around, a number of key concepts in the realm of democratisation and human rights, such as the notion of 'democracy', 'rule of law', and 'human rights' – terms which are often employed without providing clear definitions. While subsequently problematising the process of *democratic transition*, the chapter ends with a discussion of the similarly diffuse notion of 'benchmarking', and the necessary ingredients of any successful benchmarking process. The second chapter shifts the focus of attention to the objective of benchmarking democratic development and human rights in the Euro-Mediterranean context. This chapter first discusses the gradual introduction of benchmarking in the EU's external relations in general, and the European Neighbourhood Policy in particular, and subsequently provides an analysis of the 'first round' of ENP Action Plans concluded with the Mediterranean partner states in 2004. Considering the conceptual difficulties revolving around the promotion of 'democracy' and human rights on the one hand, and the minimum requirements of benchmarking on the other, this chapter raises the question of whether the Action Plans concluded with Morocco, Tunisia, the Palestinian Authority, Jordan, and Israel are useful examples of 'benchmarking' in practice. As the Action Plans point to a number of conceptual and practical flaws, the third chapter proposes to take the conceptualisation of democratisation as, indeed, *a process that entails different phases* as a starting point of any democracy promotion strategy. While defining the respect for human rights as the first, and most essential, building block of democratic development, this conceptualisation also entails a high compatibility with the dynamic nature of any benchmarking process. With the necessary reservations, such a scheme may be used as a 'check list' of sorts in a cross-country comparison – while acknowledging that the partner states in the southern Mediterranean present very different political and socio-economic characteristics. In this sense, the proposed conceptualisation may serve as a 'meta-scheme' within which specific indicators and benchmarks in the realm of human rights and the rule of law – as used by different organizations – may, first, be defined and evaluated (Landman and Häusermann, 2003), and second, adopted to the specific context of Euro-Mediterranean relations (Mahjoub, 2007). The report concludes with a number of recommendations with respect to the need for conceptual clarity regarding the objectives of the EU's democratization strategy ('democracy' versus some sort of 'political liberalisation'?), the need to focus on democratisation *processes* and their phases for any benchmarking strategy, the

non-negotiability of human rights, the necessity to increase the incentives – along with the use of conditionality, and the indispensable role to be played by the civil society of the partner states within any EU democracy promotion strategy.

I. Concepts, Definitions, and the Analytical Confusion

This chapter aims at bringing some analytical clarity into the discussions on democracy promotion strategies in general, and the idea of 'benchmarking' democratic governance and human rights in particular. To this aim, it focuses on the contested, and often ambiguous, definitions of a number of central concepts and their key ingredients, such as 'democracy', the 'rule of law', human rights, and, last but not least, 'benchmarking'. Although these problems are, at first sight, of a predominantly theoretical nature, it is worth stressing that they have important *practical* implications for the development of strategies in the realm of the promotion of democracy and human rights, as argued in the following section.

1. Human Rights and Democratic Development

The preoccupation with regime types, their emergence, persistence, and transformation is central to political science. But although the extensive literature on democratic transition and democracy has produced important theoretical insights (Sandschneider, 1995; Merkel, 1999), the unclear definition of key concepts has remained a major shortcoming (Munck, 2001). Indeed, the specialised literature employs different terms, yet clear definitions of key features are often lacking, and the same concept may have quite different meanings across the literature. This applies to the notion of democracy, 'good governance' and 'the rule of law' alike, as well as to the concept of human rights, albeit to a lesser extent. At the same time, some conceptual confusion also surrounds the issue of political transformation from authoritarianism to democratic governance, as discussed in the following sections.

1.1. Democracy, good governance, and the rule of law

Starting with the central concept of *democracy,* there is much debate in the political science literature regarding its concrete meaning and its key features. Indeed, some scholars have defined democracy in terms of mass participation and contestation in general (Dahl, 1970), or contested *elections* with mass participation in particular (Collier, 1999). Others have added the agenda-setting power of elected officials to these characteristic (Linz and Stepan, 1996), along with the accountability of elected officials, defined as a by-product of the norms of political pluralism and open competition (Sartori, 1973; 1993). Still other academics have broadened this definition to include the respect for a number of core human rights (Diamond, 1999). In general, there is a widespread agreement in the literature that *democracy is a political system characterised by mass participation, contestation, genuine competition for executive office, accountability, institutional checks on power, and the respect for core human rights.* This conceptualisation entails an institutional, a procedural, and a normative dimension. More concisely, Ralf Dahrendorf (2003: 103) stressed the aspect of *political change occurring without violence* as one of the key characteristics of democracies.

Certainly, the aim of conceptualising democracy remains a challenge as the term refers to an ideal type that is hard to encounter in the real world. While the difference between a prescriptive-normative concept of democracy (i.e. what a democracy *should be*) and the descriptive version of it (*what is*) has been noticed (Sartori, 1993), political scientists have to deal with very different models of democratic systems in practice. Democracies may also vary in their quality, and may thus be more or less functional or 'good' (Morlino, 2003: 225-255; 2004). In addition, it may reasonably be argued that democracy is an instrument for ensuring the freedom and rights of individuals rather than an end *per se* (UNDP, 2005: 49). Therefore, the idea of democracy is necessarily subject to variety in practice.

The problem, of course, is not only a theoretical one. The activities of national and international organisations working in the realm of democracy promotion and human rights very much reflect these conceptual difficulties. These are further exacerbated by the recurrent emergence of alternative – and somewhat fashionable – concepts, which equally remain insufficiently defined. In this vein, academics and practitioners operate with concepts such as 'good governance' and 'the rule of law', which are not only defined in quite different ways (if at all), but which are often also used interchangeably. Yet, while these concepts are undoubtedly interlinked, they are not necessarily identical.

Indeed, 'good governance' originally entailed a predominantly economic perspective and implied the transparent and accountable management of a country's resources (World Bank, 1992). Subsequently, the term came to include public sector management, the transparency of decision-making, organisational accountability, and the rule of law – but not necessarily *democratic* governance. In the late 1990s, the United Nations Development Programme (UNDP) expanded the term to comprise the legitimacy, accountability, and competence of governments, along with the protection of human rights through the rule of law (UNDP, 1997). Although the UNDP's definition added a strong *political* dimension, 'good governance' did not explicitly refer to contestation, the sovereignty of the people, or to the existence of a system of checks and balance. A number of these features have recently been added, such as the efficacy of legislation and oversight, a directly selected and accountable political leadership, and the independence of the judiciary (UNDP, 2005: 63). Hence, although increasingly employed in the sense of 'democratic governance' by academics and practitioners, 'good governance' is not necessarily synonymous with the latter. While the term evidently retains a strongly normative connotation (the definition of what is a *good* is not only contested to begin with, but it may also change over time), the congruity of 'good governance' and 'democracy' very much depends on how both concepts are defined.

The term 'rule of law' is similarly disputed, although it often serves as a defining feature of both democracy and good governance. In a *minimalist* sense, 'the rule of law' implies that 'whatever law exists is written down and publicly promulgated by an appropriate authority before the events meant to be regulated by it, and is fairly applied by relevant state institutions including the judiciary' (O'Donnell, 2004:

33). Defined in this way, the existence of 'the rule of law' does obviously not tell us much about the quality of the laws or the legal system as such. In fact, following this definition, it may be argued that the rule of law does not even necessarily contradict an authoritarian legal system, or authoritarianism *per se*. Scholars have subsequently widened the definition of the 'rule of law' in the sense of a 'democratic rule of law'. The latter is defined as a system under which the law is fairly, consistently, and equally applied to all citizens by an independent judiciary; the laws themselves are clear, publicly known, stable, universal, and non-retroactive; the legal system defends the political and civil rights of citizens as well as the procedures of democracy, and it reinforces the authority of agencies that ensure horizontal accountability, along with the legality and appropriateness of official actions (O'Donnell, 2004).[1]

The degree to which the rule of law exists in a democratic state may well reflect on the *quality* of that democracy, as various studies have indicated (Linz and Stepan, 1996). The problem remains, however, that the rule of law is but one aspect of democracy. In other words, it may well be true that a democracy may not be functional (or 'good') without the rule of law (Diamond and Morlino, 2004; O'Donnell, 2004), but democracies comprise far more than the rule of law. These characteristics include, for instance, participation, competition, horizontal and vertical accountability, the separation of powers, along with the existence of a supportive normative environment. Certainly, promoting the 'rule of law' may be more acceptable than promoting 'democracy' in societies that are critical towards the concept of a pluralist, liberal, 'Western'-style democracy, as some have argued (Youngs, 2001). However, it is not clear how, under the rule of law, the legal system is supposed to defend or promote *democratic procedures* if the latter are not already in place. At the same time, it should be noticed that thus far there is no empirical evidence that implementing the rule of law necessarily *ignites* processes of democratisation.

As discussed more in detail below, the largest conceptual clarity certainly exists on the issue of human rights (Landman and Häusermann, 2003). However, while the political science literature generally treats the respect for human rights as the key ingredient of democracy, good governance, and the rule of law alike, it is worth noting that the respect for human rights often relies on mechanisms that *explicitly bypass democratic procedures*, such as the judicial system or the constitution.

1.2. Liberalisation, democratisation, reforms

Analytical problems also characterise the conceptualisation of regime transformation towards democracy. Not only is it difficult to conceptualise democratisation processes without agreeing on a definition of democracy to begin with. The fact that democracies comprise very different elements and that, moreover, democratisation may proceed at different paces and along different trajectories constitute major conceptual challenges (Linz and Stepan, 1996). Put differently, the transformation of authoritarian regimes into democracies does not follow a binary logic, but rather constitutes a process involving different phases, dimensions, and conditions

[1] Some authors of the French legal tradition, such as for instance Jacques Chevalier, Dominique Rousseau, or J. Claude Cabanne, maintain that the maximalist interpretation of the rule of law also includes universal principles, such as the norms of justice, equality, and freedom, which are interlinked with fundamental liberties and from which a number of principles, such as the separation of powers, derive. Hence, according to this interpretation, the rule of law comprises a number of fundamental rights and legal principles that are judicially superior to state law, and which are binding upon any state.

(Collier, 1999; Morlino 1998; 2003; O'Donnell and Schmitter, 1986). While this finding puts a strain on the comparability of different cases of democratic transition, the terminology used both in the specialised literature and among practitioners is additionally confusing, as the terms *liberalization*, *transition*, *democratisation*, *reform process,* or *reforms* are often employed as synonyms. Yet, these terms may have very different meanings.

As for the terms 'liberalisation' or 'reform process', it should be noted that autocratic regimes may engage in processes of political liberalisation (or political reforms) without truly transforming themselves into a democracy. Indeed, a greater degree of political freedom and human rights protection does not automatically entail the abolition of autocracy. Rather, authoritarian regimes may be more or less oppressive, or more or less 'enlightened'. This observation points to the necessity of analytically subdividing the transformation process of an authoritarian regime into different phases. Thus, while focusing on *process*, the conceptualisation of democratisation processes as comprising different phases, as proposed by Schneider and Schmitter (2004), seems extremely useful. Picking up on previous studies (Merkel, 1999), these authors distinguish between, first, a phase of political *liberalisation of autocratic regimes,* second, a phase of *democratic transition,* and third, a phase of *democratic consolidation*. As discussed further below, each phase is characterised by different features, such as reforms in the realm of political participation and human rights in the first phase, contested elections with mass participation as well as accountability for the second, and the acceptance of the democratic 'rules of the game', i.e. the acceptance of the election results by the governing elite and the electorate, for the third phase.

However, although this conceptualisation is helpful, it is necessary to mention some caveats. To begin with, subdividing democratic transformation into different phases does not imply any *automatic* process nor any path dependency. Indeed, an initial phase of political liberalisation, defined in terms of 'making effective certain rights that protect both individuals and social groups from arbitrary or illegal acts committed by the state or third parties' (O'Donnell and Schmitter, 1986), does not automatically lead to democracy. Rather, and as mentioned above, liberalisation may trigger a rather lengthy transition process the outcome of which is uncertain. In this vein, authoritarian regimes may sustain political liberalisation over extensive periods of time without transforming themselves into a democratic regime. Alternatively, liberalisation processes may also be reversed. Morocco would be an example of the former, Tunisia and Egypt of the latter (Kienle, 2005; on Egypt also Kienle, 2001).

Second, in spite of the usefulness of the *analytical* distinction between different phases, reality is much more ambiguous, as is well exemplified by the political situation in the Southern Mediterranean. Thus, a country may present some indicators of, say, democratic transition (phase II) without having met all the criteria of political liberalisation (phase I). In this context, it is indeed erroneous to assume that the presence of key indicators of democratic transition (phase II) necessarily implies that the criteria of the previous phase are fulfilled, or that the respective state is indeed

on the path towards democracy. The best example is the holding of democratic elections, often (erroneously) defined as the key feature of democratic transition. The cases of Iraq and Palestine clearly demonstrate, however, that democratic elections are not a sufficient condition for defining the respective political system as truly democratic, or on the sure path towards democracy. While the absence of outside interference (and occupation) may arguably be relevant for democratic development, these cases also point to the important role played by institutions, systems of checks and balance, along with the societal consensus about the democratic 'rules of the game'.

Finally, the sequence of the different phases is not binding. Autocratic regimes may transform themselves into democracies through quite different trajectories and with different timelines (O'Donnell and Schmitter, 1986; Linz and Stepan, 1996; Kitschelt et al., 1999). Although rare, even the skipping of one of the phases may occur. In this context, it is worth stressing that the timeline of regime transformation may be critical for a democratic outcome.

1.3. The Centrality of Human Rights – But Which Ones?

In view of the general conceptual confusion revolving around the key concepts of democratisation, which obviously results in serious difficulties in the definition of indicators (Landman and Häusermann, 2003), the positive finding is that the minimal common denominator of all concepts is the *respect for, and protection of, human rights*. Indeed, the respect for human rights is a key ingredient of democracies; it is a key feature of political liberalisation processes; human rights are included in the otherwise rather hybrid concept of 'good governance'; and they are also a key component of the (democratic) 'rule of law'. Given that, in turn, many scholars maintain that political 'liberalisation' and 'the rule of law' are indispensable elements of democracies and/or democratisation processes (Schneider and Schmitter, 2004; Morlino, 2004), taking the respect for human rights seriously is undoubtedly the most important starting point for any democracy promotion strategy of an external actor.

Besides the moral imperative, defining the respect for human rights as *sine qua non* of any democratisation strategy has also a number of 'practical' advantages: First, human rights have been recognized by the international community as being universal; their importance is generally not contested. Second, a state's *commitment* to international human rights agreements is documented by the respective body (such as the UN or the European Convention on Human Rights), and the respective data is easily retrievable. Similarly, a large number of organisations regularly monitor both the *de jure* protection of human rights (that is, a state's legal compliance with its human rights obligations) and the *de facto* realisation of human rights (the enjoyment or violation of human rights in practice). Hence, a large data pool is also available on this aspect. Third, human rights have been codified in international law as well as in national legal frameworks; developing human rights indicators that

can be applied to different states is therefore a comparatively manageable task. However, it is worth noting that human rights organisations around the world still rely on different indicators and methodologies, although a trend towards standardisation is discernable. Thus, an increasing number of these organisations have adopted the standardised system developed by the Human Rights Documentation Systems (HURIDOCS), a global network of human rights organisations.

Some debate, however, persists on the question of whether some human rights shall enjoy priority over others. Although the UN Vienna Declaration of 1993, which was adopted by the representatives of 171 states, solemnly declares that '[a]ll human rights are universal, indivisible and interdependent and interrelated' (UN, 1993: Article 5), the differentiation between the first and subsequent generations of human rights is still relevant. In this vein, governments are still obliged to immediately ensure the implementation of the civil and political human rights (the so-called first-generation human rights as codified in the UN Covenant on Civil and Political Rights that entered into force in 1976). These rights, which are also called 'negative' human rights, denote actions that a government should not take. Conversely, states are entitled to realise the respect for economic, social, and cultural rights progressively (the so-called second generation of human rights, or 'positive' human rights, as specified in the UN Covenant on Economic, Social, and Cultural Rights). Accordingly, the literature generally insists on the protection of the first generation of human rights, and tends to treat social, economic, and cultural rights as optional, or as rights to be addressed at a later stage. The same applies to the third generation of human rights (collective rights), such as minorities' rights, or the right of national self-determination, although this position is certainly contested.

The persisting debates revolving around the prioritisation of human rights (if any) often reflects the divide between a liberal and a socialist-inspired tradition, whereby the former gives priority to political and civil rights, and the latter to economic and social ones. In this context, it has also been noted that – particularly if maintained by autocratic political elites – the prioritisation of social and economic rights often serves as a cover for the continuous violation of political and civil rights (Howard and Donnelly, 1987a: 26-27). Without entering into this long-standing debate, it may certainly be argued that the realisation of social and economic rights is a key concern for (autocratic) *developing* countries. Indeed, the concept of 'sustainable development', along with the UN's Millennium Development Goals in general, incorporates a number of these rights, such as the right to a universal primary education, the right to a decent standard of living and freedom from hunger, and the right to a safe working environment (UN, 2000). The 2005 Arab Human Development Report also adds to its calls for greater *political* freedoms the need to disseminate high-quality education for all (UNDP, 2005: 3). As the promotion of sustainable development is among the declared aims of the EU's Mediterranean policy, the inclusion of at least some of the second-generation human rights is certainly important. Moreover, in autocratic developing states, the *legitimacy and acceptance* of political reforms and democracy – particularly if supported by an

external actor, such as the EU – may very well hinge upon the promotion of a number of these rights, among which the right to a decent standard of living, basic nutrition, and the right to education may be the most relevant. However, while the protection of *political and civil rights* are by now recognised as being central to economic development (UNDP, 1998), the aim of introducing benchmarks in the realm of democracy promotion must necessarily rely on a progressive model that starts from minimum requirements. Therefore, it may be argued that the first generation of human rights corresponds to these minimum standards. In other words, the respect for civil and political rights are the absolute minimum on which no democracy promotion strategy should compromise – also because they include the (individual) right to a *materially and physically* secure existence.

Finally, the question of which rights are included in the core of civil and political rights remains disputed to some extent. However, a review of the relevant literature indicates that there is a widespread consensus on at least some of these rights. According to the liberal tradition, these include

- freedom from torture and other cruel or inhumane treatment by authorities;
- humane treatment of prisoners;
- non-discrimination on the basis of race, sex, religion, ethnicity, etc.;
- *habeas corpus* ensuring freedom from arbitrary and unlawful arrest or detention;
- a number of legal standards, such as
    - the right to a fair hearing before an impartial tribunal,
    - equality before the law,
    - the presumption of innocence until proven guilty,
    - a prompt and fair trial,
    - the right to counsel,
    - the right to review by a higher court.
- freedom of thought, opinion, and speech;
- freedom of conscience and religious conviction;
- freedom of movement;
- freedom of assembly and association;
- the sanctity of the private home and correspondence;

This catalogue is obviously not meant as being exhaustive, rather, it comprises the minimum requirements. As some authors have suggested (Mahjoub, 2007), in the specific context of Euro-Mediterranean relations, it might be considered whether to include the protection of *minorities* into the list of core human rights (which remains disputed in the literature). The next paragraphs will draw the focus of attention to the concept of ‘benchmarking’.

2. Benchmarking

In the last decade, benchmarking has gradually entered the political arena and nowadays is a popular and integral part of the political vocabulary relating to any measurement of political progress and reform. In the mid-1990s benchmarking was added to the European Union's tool box as the European Commission in 1996 decided to apply and utilise it as a method of sorts to evaluate and compare the efficiency and performance of the national labour markets of individual member states. With the adoption of the Wider Europe Policy in March 2003 and the European Neighbourhood Policy (ENP) into which the former subsequently developed, benchmarking was also introduced to and incorporated in the EU's foreign policy. Given the importance the EU has repeatedly attached to it (for example, Verheugen, 2004), and in order to assess the limits and potentials of benchmarking, it is essential for the purpose of this study to shed some light on the etymological underpinnings, as well as the content-wise and contextual characteristics of the concept.

2.1. Origin, Characteristics, and Success Factors of a Diffuse Concept

Originally, the terms *benchmark* and *benchmarking* have their roots in the pre-modern and pre-industrialised wood manufacturing sector where *marks* were carved into the work *benches* in order to guarantee that certain parts that had to have the same size and length did not differ from each other. In more recent times, however, benchmarking is said to be first utilised by the multinational Xerox Corporation in the late 1970s in response to declining market shares, but is historically based on the Japanese *Kaizen* model of continuous incremental improvements, and the competitive advantage approach that was developed by Michael Porter (2004).[2]

Conceptually, the concept evolved in the framework of modern economics and computer science and has become a standard term for formalised systems that aim at identifying concrete possibilities for improvement by comparing pre-defined indicators and benchmarks. In other words, in order to achieve a higher degree of efficiency, both disciplines regard it as the main objective of benchmarking to detect potential flaws and weaknesses of processes, services, products, policies etc. through the means of comparison with other relevant objects. For this comparison to prove fruitful, it is recommended to collect two subsequent sets of relevant data or, if that is not possible, to collect data of two different objects simultaneously. To put it differently, *in the broadest sense benchmarking is a system that aims at comparing in a systematic manner organisational processes and/or performances with the objective of improving these processes and thus creating new (and higher) standards.*

[2] The Kaizen approach is a Japanese management concept for incremental change and improvement and is based on the assumption that every aspect of life needs to be constantly improved. In Japanese, *Kai* means 'change' and *zen* 'to become good'.

These comparative measures can adopt four forms (Bogan and English, 1994):

- *Internal benchmarking* is an inward-looking approach that is usually applied within an organisation/polity whereby departments, production or business units are compared. Sometimes this approach is also labelled *best-practices-* or *process benchmarking*;
- *Competitive benchmarking* is an outward-oriented approach that allows for comparative studies of selected processes/actions of an organisation/actor with its competitors/rivals;
- *Functional benchmarking* enlarges the comparative focus by benchmarking, and thus comparing, similar processes within one business or industrial sector;
- *Generic benchmarking* goes beyond the method of functional benchmarking as it compares processes and operations between unrelated sectors.

Irrespective of the approach that is eventually being applied, it is of utmost importance for the success of any benchmarking operation during all phases, i.e. the preparation phase, the implementation phase and the final evaluation phase, to consider and thus comply with a number of relevant criteria.

First, it needs to be pointed out that benchmarking *requires a high degree of commitment of all actors involved*. As it is a highly complex undertaking that implies the screening of a potentially large number of factors, and as benchmarking is very often not a single event, but rather an approach that is being repeated in regular intervals, a lack of commitment and support on the part of those actors that define, conduct and evaluate the process, as well as of those that provide the former with the relevant data, can have a detrimental and therefore counterproductive effect on the results, and subsequently the conclusions and potential recommendations. Hence, for any benchmarking initiative to be considered meaningful and sustainable, the free flow of information needs to be guaranteed and a commonly agreed decision with respect to the purpose of the entire process in place. The latter entails that any reference to competitive sensitivity, (socio-)cultural specifics or the 'we are different' syndrome must be ruled out from the very start of the process.

Second, any benchmarking process needs to be based upon, and thus be embedded in, *detailed and transparent timetables* that determine the exact time horizon that all actors involved need to comply with. The definition of the time horizon, in turn, depends on the *scope definition* and therefore the type of benchmarking, as explained above, that may be applied. Regardless of the choice, however, *all benchmarking models require an ex ante decision as regards the measurement methods, the units to be measured, the chosen and appropriate (quantitative and/or qualitative) indicators, and the preferred data collection method*. Eventually, this somewhat determines whether the process in question can be considered as *naïve benchmarking* or as *intelligent benchmarking*. Whereas the former is characterised by intuition and superficial comparisons, which can be easily misinterpreted and

– depending on how seriously they are taken – have problematic and sometimes even socially damaging implications, the latter, i.e. intelligent benchmarking, is much more concrete, systematic and holistic. In other words, intelligent benchmarking identifies and takes into consideration (the complex web of) political, economic and social phenomena, and aims at understanding what good practice is and how – and if so to what extent – its results can be transferred to other potential areas. Yet, at the same time, it is based on the understanding that its heuristic instruments are limited and that a context dependency exists between practice and performance.

Undoubtedly, benchmarking is always linked to decision-making, either in the private or the public sector. Hence, its global objective is to facilitate decisions even if the information may sometimes be characterised by uncertainty. Ideally though, if intelligent benchmarking is applied, the degree of uncertainty is supposed to be rather low, not least due to the utilisation of peer reviews and periodic monitoring, and allows for a concrete analysis of the deficiencies and/or discrepancies, the adoption of improvement plans or new procedures, and in a final stage, a follow-up monitoring of progress, as well as an elaboration of plans for ongoing and thus permanent benchmarking.

2.2. Problems associated with benchmarking

Even the most intelligent benchmarking approach may be confronted with problems that could have a detrimental effect on the process as such, as well as on the usefulness of the results. One of the most common phenomena is certainly the actors' wish to conduct a large-scale benchmarking process and measure as many dimensions as possible. This habit, however, is very often bound to lead to misalignment, a confusion of macro- and micro-level indicators, and tends to make the entire process too complex and finally unmanageable. In a way, this phenomenon is similar to the problem of choosing the 'wrong' topic as many issues are simply intangible and difficult to measure. In particular in the framework of country performance(s) comparisons this is a common feature and many indexes neglect country specificities, the differing political, economic and social characteristics, as well as pre-eminent socio-cultural habits and religious factors. Instead, they base their benchmarking models strictly on quantitative indicators that allow for the results to be expressed in putatively comparable and well-understandable figures.[3]

Not only does such a practice take place at the expense of a broader and all-encompassing process, another problem related with it and actually any benchmarking model, is the fact that too often benchmarking processes result in fancy and well-publishable figures and reports, but eventually suffer from what can be called a 'process fatigue': instead of utilising the acquired results to improve the organisation/unit or policy in question, the actors after a very often time-consuming, complex and sometimes even expensive process lose the original enthusiasm and interest and do not engage in a serious follow-up. Equally noteworthy is the

[3] See for instance www.freedomhouse.org

widespread notion that benchmarking should only be concerned with actors, policies and/or organisations' stated objectives. Such a limited view translates into a saturated 'sit back and relax' attitude that precludes the relevant actors from undertaking steps towards true improvements, which, as a matter of fact, were the original motivation to set in motion a benchmarking process. Moreover, it has the potential to let actors (wrongly) believe that *good practice does not necessarily correspond with good performance*.

Finally, a last point deserves mention: benchmarking processes that involve more than just one organisation/polity and that rely on comparative measures may encounter serious difficulties in the implementation and final evaluation phase if all actors involved have failed to commonly agree on a code of ethics and a contract or memorandum of understanding that sets out the rules and binds all parties to comply with the various steps that the benchmarking process in question may imply.

3. Summary

The discussion so far indicates that the idea of introducing benchmarking procedures in the realm of democratisation and human rights is a challenging undertaking. Indeed, benchmarking is a very complex procedure that requires the monitoring of a potentially large number of elements; it must rely on clear concepts, objectives, and transparent time tables; and it necessitates the commitment of all actors involved, including the free flow of information. However, the subject matter, that is, democratisation and, to a lesser extent human rights, remains conceptually ambiguous, contested, and remarkably complex. In spite of persisting theoretical debates on the concepts of 'democracy', the 'rule of law', and human rights – reflected by an inconsistent use by practitioners – a review of the literature shows that there is at least some consensus on the key ingredients of these concepts – as well as on the differences between them. Hence, in order to develop a proactive strategy for the support of democratisation and human rights, a clear *ex-ante* definition of what is meant by the central concepts of 'democracy', 'rule of law', and human rights, and which key features they comprise, is imperative. This is even more important in the context of the persisting debate on universal values versus cultural specificities in the Euro-Mediterranean context and beyond, whereby reform-reluctant regimes are eager to emphasise the importance of the latter. Yet as mentioned above, although there certainly are different forms of democratic governance that may well reflect cultural specificities, a clear definition of universally valid characteristics of democracies, along with the endorsement of the universal nature of human rights, is essential for any credible democracy promotion strategy.

II. Benchmarking Democracy and Human Rights in the Euro-Mediterranean Context

Based on the analytical considerations developed thus far, the next chapter assesses the idea of benchmarking in the Euro-Mediterranean context. It first traces the gradual adoption of 'benchmarking' within the EU's Mediterranean policy – and the difficulties related to it. Subsequently, the chapter analyses the ENP Action Plans concluded with Morocco, Tunisia, the Palestinian Authority, Jordan, and Israel in light of the EU's underlying idea of benchmarking human rights and democratic development in Euro-Mediterranean relations.

1. Benchmarking and Euro-Mediterranean Relations

1.1. Meaning(s) of benchmarking in Euro-Mediterranean relations

An assessment of the idea of benchmarking in the Euro-Mediterranean context must start with the assertion that there is, as far as we know, no legally binding definition of benchmarking yet adopted at the European (or international) level. As mentioned above, definitions of benchmarking approaches differ themselves in various ways, but one can at least identify a number of similar components. It is worth reminding that the 'process of setting benchmarks' is the product of improvement strategies used notably in the industrial sector and then adapted to other sectors, such as development co-operation. In the later case, benchmarking is more about measuring and comparing the performance of a programme, a policy, or a strategy. It is, in fact, a permanent monitoring process designed to improve the performance of such programmes or policies according to identified best practices and on the basis of a number of pre-determined criteria and indicators. It is therefore a mainly strategic management technique.

However, there has been and there is still much confusion regarding the precise meaning of the introduction of this new management technique in Euro-Mediterranean relations. Regarding the main components of benchmarking that could be used in the EMP and ENP frameworks one can identify three of them. First of all, setting benchmarks is obviously linked to the idea of a continuous process of (comparative) evaluation. It is therefore at least a medium term approach. A first element to be taken into account, as mentioned in section 2.1 of this study, is that benchmarking is a process that needs a certain length of time to be properly developed because it is precisely about measuring the improvement of the performance over a given period of time and to compare it with best practices producing superior performances.

Second, as was also outlined above, defining clear pre-determined criteria is crucial in this process in order to compare progress (or results) achieved in a specific sector during a given period of time. In this respect it is also important to define in advance precise goals or objectives that will be considered as targets.

Third, the context in which this management technique was introduced in EU spheres must be recalled. As Keith Richardson (2000) stressed at the end of the 1990s:

> "The ERT's competitiveness working group (…) decided to make another push in this area by putting the emphasis on hard figures rather than abstract ideas, using the concept of "benchmarking" which was already well tried in business management. The idea was to establish criteria relevant to competitiveness and then publish figures in a regular and systematic way that would encourage each country to try to catch up with the best practice elsewhere, but without dictating the specific policy measures needed. It was the Irish presidency that first grasped the political attraction to member states, that here was a tool that would help them to work together towards common goals without jeopardising their freedom to take their own decisions in the light of their own circumstances, and benchmarking rapidly found its way on to the Council of Ministers agenda. (…) Yet patient deployment and constant repetition of the arguments won through, and in his 1999 speech Jacques Santer said simply that "we are all benchmarkers now". Successive EU summits committed themselves to the Cologne, Luxembourg and Cardiff "processes", which are nothing more than glorified benchmarking exercises to deal with macro-economics, employment and structural reforms respectively, all tied together into a coherent package at Lisbon."

Furthermore, the benchmarking approach is very much linked to the implementation of the so-called Open Method of Coordination (OMC) that

> "rests on soft law mechanisms such as guidelines and indicators, benchmarking and sharing of best practice. This means that there are no official sanctions for laggards. Rather, the method's effectiveness relies on a form of peer pressure and naming and shaming, as no member state wants to be seen as the worst in a given policy area. Generally, the OMC works in stages. First, the Council of Ministers agrees on policy goals. Member states then translate guidelines into national and regional policies. Thirdly, specific benchmarks and indicators to measure best practice are agreed upon. Finally, results are monitored and evaluated. However, the OMC differs significantly across the various policy areas to which it has been applied (…). Generally, the OMC is more intergovernmental in nature than the traditional means of policy-making in the EU, the so-called community method. Because it is a decentralised approach largely implemented by the member states and supervised by the Council of the European Union, the European Commission has primarily a monitoring role and the involvement of the European Parliament and the European Court of Justice is very weak indeed."[4]

[4] According to the online wikipedia encyclopedia.

This definition is indeed of interest for the present analysis as it clearly underlines one of the main characteristics of the ENP: the soft law approach (as for the new strategic partnership with the Mediterranean and the Middle East, for example) contrary to the traditional 'hard conditionality approach'. Also to be stressed is the democratic deficit and the lack of judicial protection implied by the use of the OMC.

Claudio M. Radaelli (2003: 8) stressed that

"open coordination enables policy-makers to deal with new tasks in policy areas that are either politically sensitive or in any case not amenable to the classic Community method. The result is that practices that up until a few years ago would have been simply labelled 'soft law', new policy instruments, and benchmarking are now presented as 'applications' if not 'prototypes' of 'the' method'."

Nowadays, the OMC is mainly used within the framework of the implementation of the Stability and Growth Pact, social policy, employment policy, Economic and Monetary Union (Council, 2005: 31), or competitiveness (Commission, 1996).

1.2. The integration of benchmarking under the EMP

Under the Global Mediterranean Policy (1972-1992) the system of financial protocols was very different from the current MEDA programme approach, as 5-years financial envelopes were attributed in advance to the beneficiaries within the framework of contractual financial protocols annexed to the main agreements (Schumacher, 1998). The Renewed Mediterranean Policy (1992-1995) policy was innovated through the introduction of horizontal cooperation but did not change the financial protocols management system (Schumacher, 2005). The financial and technical cooperation of the EMP, in its original version (1995-1999) was, for its part, based on three main elements:

1. the-non legally binding Barcelona Declaration defining the main areas of intervention and overall objectives of the cooperation;
2. the legally binding Euro-Mediterranean Association agreements (adopted progressively) defining bilaterally the objectives and priorities of the economic, financial, social and political cooperation;
3. The MEDA I regulation defining objective priorities and financing procedures.

One should note that in this basic structure, only the Barcelona Declaration is a soft law instrument and no proper benchmarking as such did exist. Of course, cooperation objectives and timetables[5] were provided for, but in MEDA I the overall management system was quite different compared to MEDA II. MEDA I was more rigid in terms of financing procedures (MEDA I used the 'management committee procedure') but lacked more precise, strategic implementing, monitoring and medium/long-term tools.

[5] MEDA I was a 5-years programme whereas MEDA II was a seven years programme.

Progressively, new management and supervisory tools and techniques were introduced, the turning point being the evaluation made by the members of the EMP during the Marseille ministerial conference in 2000 when the very weak disbursement rate of MEDA funds from 1995 to 1999 was highlighted. This evaluation also coincided with the publication of the white paper on the reform of the European Commission which stressed that the

> "financial management, control and audit system will be radically overhauled, updated and brought into line with best practice. In order to make the best use of resources and expertise and take account of the different types of spending for which the Commission is responsible, new organisational structures will have to be brought in and others phased out. Benchmarks will be introduced to measure progress in reducing payment delays and recovering funds unduly paid" (Commission, 2000).

This is a direct consequence of the dismissal of the Santer Commission. One should also recall that this decision generated a major reform at the level of the organisation of the system of the 'Relex family', and notably the creation of the Europeaid Cooperation office (Aidco) that is nowadays playing a major role in the project management cycle of EU external aid. Patrick Laurent, a senior official of the Commission, highlighted the changes introduced by MEDA II:

> "the new Regulation was meant to be much more programme-oriented and strategic than its predecessor. MEDA I operated on the basis of a single series of programming papers[6] and of individual projects being presented to the MED Committee in large numbers, each being assessed on its own merits but without taking into account the broader strategy. MEDA II is based on the assumption that providing the MED Committee with annual financing plans (one for each country that receives bilateral aid and one for regional aid) brings in a more strategic approach and more efficient management. These financing plans fit into a programming process consisting of two series of upstream strategic papers: medium-term Indicative Programmes[7] and long-term Strategy Papers. Thus the analysis for each Partner starts with a fairly general approach then gets down to a sectoral approach at three-year plan level and finally determines concrete operations to be implemented at financing plan level. Through this more structured programming process the Union's financing choices will be made clearer and more demanding. (…) it is essential that the Partners that follow the path of reforms as provided for and supported by the Association Agreements reap the benefits. Encouragement by the EU will henceforward be more differentiated than in the past. But strategic choices will be made in partnership as within the process leading to the achievement of Barcelona's goals each Partner starts from a situation of its own."

Here again, one can clearly identify the shift from 'hard conditionality' to 'soft conditionality' (or from 'negative conditionality' to 'positive conditionality') through

[6] This refers to the three-year Indicative Programmes.

[7] Covering a three-year period, as with MEDA I.

the use of incentives and rewards. Hence, MEDA II resources are subject to a more complex programming system:

1. Strategy papers covering the period 2000-2006 were established at national and regional level (Commission, 2001a);
2. based on these papers, three-year national indicative programmes (NIPs)[8] were finalised with the beneficiaries and a regional indicative programme (RIP) covering the multilateral activities was adopted (Commission, 2001b);
3. Financing plans derived from the NIPs are then adopted on an annual basis.

In fact the changes brought by MEDA II actually introduced benchmarking in the MEDA system. In this respect one must quote the amendments introduced by MEDA II in the new article 5 § 2 and 3:

> "Strategy papers covering the period 2000 to 2006 shall be established at national and regional level, in liaison with the Bank. These strategy papers shall have the purpose of defining the long-term objectives of cooperation and of identifying priority areas of intervention. To this end, due account shall be taken of all relevant evaluations, a problem-oriented analysis shall be used and crosscutting issues shall be integrated. As far as possible, implementation benchmarks will be developed in order to facilitate the evaluation of the attainment of the objectives of cooperation. (…) 3. Indicative programmes national and regional covering three-year periods shall be based on the corresponding strategy papers. They shall be established at national and regional level in liaison with the Bank, and they may include, respectively, interest rate subsidies and risk capital" (European Communities, 2000).

The emphasis clearly proves the explicit progressive introduction of benchmarking in the management of the MEDA II programme, that is to say from the year 2000 not only for the Commission but also at the level of the European Investment Bank. Taking the project-sheet of a loan contracted by Morocco regarding professional training[9] as an illustration, one can see that the project description clearly mentions that each of the sectors of activity selected is covered by a benchmark partnership agreement (framework agreement between the Moroccan Government and the CGEM (Confederation of Moroccan Industry) defining the type of cooperation and the objectives pursued.

1.3. Soft benchmarking versus hard benchmarking?

As the ENP is very much based on the EU's pre-accession strategy, it is interesting, by way of introduction, to recall the basic elements of this specific approach of benchmarking, and the modifications it underwent in the framework of the ENP.

[8] The Indicative Programmes are based on guidelines adopted in 1996 by the Council of Ministers.

a) Benchmarking in the pre-accession process

The pre-accession strategy uses benchmarking techniques in the sense that clear indicators and criteria are pre-established to evaluate the progress achieved by candidate countries towards accession, the ultimate goal being, of course, the accession to the EU through the ratification of an Accession Treaty (incorporating itself benchmarks over sectors subject to transitional derogating measures from the full effective implementation of certain sectors of the Community *acquis*).

Accession Partnerships are designed to set out the specific principles, priorities, intermediate objectives and conditions for each candidate specifying the adjustments to be made by the candidate to align its respective legislations on the *acquis* in the pre-accession process. On the basis of the Commission's Regular Reports and of the Commission's screening process, the Council, acting by unanimity, lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter of the Community *acquis* during the negotiations. Such benchmarks are then communicated to the candidate country. If one takes the example of the negotiations with Turkey, the negotiating directives clearly stressed that

> "depending on the chapter, precise benchmarks will refer in particular to the existence of a functioning market economy, to legislative alignment with the acquis and to a satisfactory track record in implementation of key elements of the acquis demonstrating the existence of an adequate administrative and judicial capacity. Where relevant, benchmarks will also include the fulfilment of commitments under the Association Agreement, in particular those pertaining to the EU-Turkey customs union and those that mirror requirements under the acquis. Where negotiations cover a considerable period of time, or where a chapter is revisited at a later date to incorporate new elements such as new acquis, the existing benchmarks may be updated" (Commission, 2005b).

Exporting this methodology to neighbouring partner countries without the so-called 'golden carrot', i.e. the accession to the EU, but instead with quite vague promises such as a 'stake in the internal market' (the 'silver carrot') or Prodi's formula: 'everything but institutions' is however a major challenge for the EU (Del Sarto and Schumacher, 2005; Aliboni, 2005; Tocci, 2005). Indeed, if the Accession Partnerships clearly inspired the tools designed for the ENP (Action Plans) they differ to the extent that the former are clearly based on a 'hard conditionality approach'. In other words, without fulfilling properly the Copenhagen criteria (pre-conditions), the essential elements clauses of bilateral agreements and the additional conditions provided for in the Accession Partnership, a candidate country is sanctioned as it cannot accede the Union until the Commission, through its screening process[10], considers that it can give a positive opinion regarding the conclusion of the accession negotiations (definitive closure of all of the chapters) and the opening of the Accession Treaty for signatures and ratification processes of the parties.

[9] The beneficiary is the *Ministère de l'emploi, des affaires sociales et de la solidarité* (that is, the Ministry of Labour and Social Affairs).

[10] Screening process of the candidates' progress in 'adopting' and 'being able to implement the community *acquis*'.

b) Benchmarking in the ENP framework

With the ENP, a new system of financial cooperation will be introduced in the framework of the new financial perspectives (2007-2013). In its communication of March 2003 'Wider Europe-Neighbourhood', the Commission mentioned the fact that

> "the setting of clear and public objectives and benchmarks spelling out the actions the EU expects of its partners is a means to ensure a consistent and credible approach between countries. Benchmarks also offer greater predictability and certainty for the partner countries than traditional 'conditionality'. Political and economic benchmarks could be used to evaluate progress in key areas of reform and against agreed targets. Beyond the regulatory and administrative aspects directly linked to market integration, key benchmarks should include the ratification and implementation of international commitments which demonstrate respect for shared values, in particular the values codified in the UN Human Rights Declaration, the OSCE and Council of Europe standards. Wherever possible, these benchmarks should be developed in close cooperation with the partner countries themselves, in order to ensure national ownership and commitment" (Commission, 2003: 16).

Several elements of importance must be underlined. First, there is the confirmation of the shift from hard to soft conditionality. Second, two types of benchmarks are identified: 'political' and 'economic' ones. Third, the consultation of the partner is not compulsory ('wherever possible'). In this regard, the Committee of the Regions (2003), in an Opinion adopted in October 2003, and more particularly in a paragraph entitled 'Neighbourhood: different countries, common interests – a differentiated, progressive and benchmarked approach', stated that it supported the Commission's proposal to

> "apply a structured and progressive approach to moving forward with cooperation, based on mutual obligations and the ability of each partner to meet their commitments, and the establishment of specific targets against which results can be measured before moving on to succeeding stages."

Furthermore, it also agreed with 'the establishment of country action plans to be negotiated between the European Commission, the Member States and each of the neighbouring countries'. However, the Committee of the Regions asked "to be consulted during the negotiating process for each of the action plans, so that the active role of European regional and local authorities in the neighbourhood policy can be taken into account" (Committee of the Regions, 2003).

The European Parliament, through the opinion of the Committee on Budgets expressed itself in favour of the idea of some form of conditionality, including the setting of benchmarks. The new system proposed is nevertheless clearly based on soft law instruments that will therefore limit the power of the EP. The only exception is, as is shown in the following table, the European Neighbourhood and Partnership Instrument (ENPI).

Type of instrument	Items of interest regarding the benchmarking approach	Legal and political nature of the instrument
Country Reports	Identifying criteria and indicators (for example the unemployment rate at a given period of time) that will serve as benchmarks for subsequent evaluations (regular progress reports).	Soft Law. Unilaterally drafted by the European Commission.
Action Plans	- Defining priorities and objectives; - Defining political and economic benchmarks of sorts; - Covering a defined period of time (from 3 to 5 years).	- Soft law (adopted via a recommendation of the Association Council (AA)); - Some degree of bilateralism depending on the input of the partner regarding the proposal unilaterally drafted by the Commission (in certain cases: limited input of the civil society), forwarded to Council of Ministers for approval and then proposed to the beneficiary for discussion in the AA.
Regular Progress Reports	Will evaluate the progress achieved by the partners (screening process).	Soft law. Unilaterally adopted by the European Commission (expected limited cooperation with civil society actors).
European Neighbourhood and Partnership Instrument	Defining general objectives, sectors of interventions and financial procedures.	Unilateral autonomous EC regulation.

To quote Joe Borg (2004):

> "A vital step in the development of the European Neighbourhood Policy will be the progressive drawing up of Actions Plans together with partner countries. These constitute key jointly-owned policy instruments, and should be political documents that build on existing agreements and set out clearly the over-arching strategic policy targets, common objectives, political and economic benchmarks used to evaluate progress in key areas, and timetables for their attainment."

That means that one must not forget that these instruments are, in principle, still based on the legally binding and 'hard conditionality' oriented Euro-Mediterranean Association Agreements (EMAAs). However, again, there is no legally binding instrument defining precisely the inter-relationships between the old and new tools. This could lead to practical consequences regarding for example the use of the 'essential element clause' of the EMAAs as the ENPI contains a very weak conditionality clause compared to the one that is inserted in the MEDA regulation (Lannon, 2006).

1.4. Civil society and its role in implementing the ENP

The Committee of the Regions, in the opinion mentioned above, asked that "EU local and regional authorities be consulted before new neighbourhood policy initiatives are proposed, in keeping with the Commission's White Paper on European governance, particularly with regard to identification of objectives, benchmarks and the timetable for implementing the action plans for each country" (Committee of the Regions, 2003). Unfortunately, to date, consultation with civil society actors during the drafting of the Country Reports and Actions Plans has been very limited. It seems extremely important that in the ENP implementation phase, civil society actors (such as regional, local authorities, NGOs, Trade Unions etc.) be associated to the screening process.

Three other issues should be addressed very carefully.

1. Without a clear objective, and very attractive and well-defined incentives (carrot) it will be very difficult to promote reforms in those partner countries that are not commercially dependent on the European Single Market (in this respect one can compare Tunisia to Egypt for example);
2. Strong differentiation in the implementation of the ENP among Mediterranean partners seems inevitable. This could generate frustrations and not necessarily the expected virtuous competition among partners that is actually supposed to be generated by a benchmarking strategy using best practices;
3. The use of political criteria and indicators is extremely difficult in practice. For example how is it possible to measure an increase in political confidence between two partners? Therefore, traditional benchmarking should be balanced with other types of assessments (opinion polls, surveys etc.) and institutionalised consultation with civil society actors is to be established.

The ENP was obviously more designed to respond to the preoccupations and strategic interests of the EU and its Member States rather than those of its partners. To quote Günter Verheugen (2004), in charge of the drafting of this policy:

> "the Neighbourhood Policy sets out a comprehensive framework. (…) It will provide fresh momentum by measuring progress against benchmarks within a given and limited timeframe. With this policy we are entering new territory. For this reason it has to be implemented in a careful way. We must guarantee that the stakeholders involved on our side, Commission, Council and Member States, co-operate closely, keep each other informed and strike the right balance between the European common interest and the national interests of the Member States."

There is indeed no reference to the interests of the beneficiaries. This contradicts the fact that the ENP is also supposed to be based on the principle of ownership.

2. The ENP Action Plans: A Case of 'Benchmarking'?

This section will assess the ENP Action Plans concluded with Morocco, Tunisia, the Palestinian Authority (PA), Jordan, and Israel in light of the EU's declared objective of introducing a benchmarking principle. It specifically analyses the provisions dealing with democracy and human rights, which represent approximately one third of the document – the other provisions dealing with trade relations, regional politics, and 'justice and home affairs'. These Action Plans were negotiated during 2004, first published in early December 2004, and formally adopted in early 2005. Although the Action Plans are not legally binding documents, they set out to define the priorities of bilateral relations over the next three to five years. The Commission's ENP Country Reports, which were prepared in early 2004 and meant to serve as the basis of the negotiations on the Action Plans, are employed here as the main term of reference for evaluating the Action Plans. It should be noticed, however, that the Country Reports are already relatively 'soft' in their description of the political system and the human rights records of the Mediterranean partner states, particularly if compared to the reports of international human rights organisations, such as Amnesty International or Human Rights Watch.

2.1. Morocco

The EU-Morocco Action Plan (Commission, 2004c) refers to a relatively large number of democratisation and human rights issues, thus reflecting the relatively advanced status of Morocco's reform process.[11] As in the other Action Plans, three sections specifically address political reforms, namely 'Democracy and the Rule of Law', 'Human Rights and Fundamental Freedoms', and 'Fundamental Social Rights and Core Labour Standards'. In the realm of 'Democracy and the Rule of Law', the Action Plan defines three priorities, namely, first, the consolidation of 'administrative bodies responsible for reinforcing respect for democracy and the rule of law', second, the access to justice, and, third, cooperation in tackling corruption. Under the heading of 'Human Rights and Fundamental Freedoms', the Action Plan addresses the issues of, first, human rights protection according to international standards, second, freedoms of association and expression, and third, the rights of women and children. Finally, the Action Plan refers to the aim of implementing 'fundamental social rights and core labour standards', which, unoriginally, is listed under the heading of 'Fundamental Social Rights and Labour Standards'. But which objectives in the realm of democratisation and human rights does the EU-Moroccan Action Plan actually address, and how are the short-term and medium-term priorities defined?

a) Democracy and the Rule of Law

The first item in the democracy section refers to the consolidation of 'the administrative bodies responsible for reinforcing respect for democracy and the rule of law'. It defines political parties, administrative capacity, and the decentralisation of central

[11] It should be noted that the Action Plan with Morocco, as all other Action Plans discussed in the subsequent sections, does not contain page numbers. The indicated page numbers here refer to the document in pdf format.

authority as short-term objectives. Local authority reform is defined as medium-term objective under this heading. Certainly, the strengthening of political parties is central to any democratisation strategy. In this vein, the Commission's Country Report on Morocco unequivocally states that Morocco's political parties are 'quite highly centralised, the focus tends to be on personalities rather than posts and the parties are institutionally weak' (Commission, 2004b: 6). Yet, while the Country Report already failed to recall the practice of co-opting Morocco's political parties into the political patronage system, the Action Plan is even more vague on this point. Indeed, it is not clear what the document's formulation of '[e]xchange experience and know-how in relation to development of the regulatory framework governing political parties' means in practice.

Similar remarks apply to the second item, namely the 'stepping up [of] efforts to facilitate access to the law'. Interestingly, this item does not contain short-term and medium-term objectives, thus raising the question of how the 'stepping up of efforts' shall be assessed and monitored in practice. Provisions under this heading address the simplification and shortening of judicial procedures, the improvement of legal assistance, the support for family courts in implementing Morocco's new family code (*mudawwana),* support for youth courts in implementing the new criminal code, the modernisation of the prisons' administration, the protection of prisoners' rights, and the training of judges and court staff. However, this list does not include the objective of ensuring the *impartiality* of judges, an issue that is critically addressed in the Commission's Country Report on Morocco (Commission, 2004: 7).

Finally, while it is certainly important that the Action Plan addresses the issue of corruption, identified as a 'serious problem' in the Commission's Country Report (Commission, 2004: 7), the objective of 'cooperating in the fight against corruption' comprises three rather unspecific short-term and one long-term objectives. Thus, in the short term, both sides agreed to 'follow up the conclusions of the "justice and security" sub-committee', 'exchange information on respective laws and international instruments' as well as on the 'assistance in the application of the measures provided for in the UN Convention'. The medium-term objective is defined as the support of the 'implementation of a national anti-corruption strategy, including training expert anti-corruption services, applying a code of conduct and public awareness-raising campaigns'.

b) Human Rights and Fundamental Freedoms

The Action Plan's provisions on 'human rights and fundamental freedoms' refer to a comparatively wide array of issues. In this vein, in the realm of the first item, namely 'ensuring the protection of human rights and fundamental freedoms according to international standards', the Action Plan lists seven short-term priorities. They include the implementation of international human rights conventions through national legislation, the implementation of a 'human rights dialogue' within the EU

as well as at the national level, the examination of 'the possibility of accession' to the optional protocols to international human rights conventions and the review of opt-outs from the latter, the promotion of minority rights ('cultural and linguistic rights of all peoples of the Moroccan nation'), and criminal law reform with a view to introduce a 'definition of torture in line with that of the UN Convention against Torture'. Regarding torture, which until recently was not defined in Morocco's penal code (thus preventing all acts of torture from being treated as crimes), it should be noticed that in late December 2004, the Moroccan cabinet endorsed such a draft legislation – which is obviously not indicative of the *de facto* incidence of torture, as the reports of Amnesty International demonstrate. It is also worth stressing that the formulations in this section are noticeably vague. Thus, 'strengthen dialogue on human rights at all levels' is not very specific, and neither does the document mention the international human rights conventions and optional protocols to which Morocco should 'examine the possibility' of reviewing opt-outs or accession.[12]

Similar observations apply to the subsequent items under the heading of 'Freedom of association and expression' and 'Further promote and protect the rights of women and children'. Concerning the former, the Action Plan refers to the implementation of the law on freedom of association and assembly in accordance with international law, the implementation of Morocco's new Press Code, and the new law liberalising the audiovisual sector. The section on women's and children's rights address the implementation of the reformed family code, the combat of all forms of discrimination and violence against women according to international human rights conventions, children's rights according to the Convention of the Rights of the Child, the promotion of women in 'economic and social progress', as well as the protection of pregnant women in the workplace. Finally, the last 'action' regarding 'Fundamental social rights and core labour standards' stipulates the implementation of these rights by 'initiat[ing] dialogue' 'so as to identify potential challenges and measures, in particular in the light of the 1998 ILO Declaration.'

While these sections do not indicate whether the listed 'targets' are meant for the short term or the medium term, the Action Plan is far more 'diplomatic' than the Commission's Country Report – which is, arguably, already comparatively 'soft' (Baracani, 2005). Indeed, the Country Report stresses that Morocco's implementation of the 2002 laws on the right of association and assembly remains 'problematic' (Commission 2004b: 8) as far as public meetings and demonstrations are concerned (in practice requiring the permission of the Interior Ministry). The same document is also critical regarding the freedom of expression, noticing that in spite of an overall improvement of the press freedom under Mohammed VI, 'journalists are still arrested and imprisoned on libel and slander charges' (Commission 2004b: 8). On women's rights, the Country Report praises the 2004 reform of the muddawana, as well as Morocco's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2002. But while stressing that Morocco did not sign the option protocol of the latter, the Country Report also notes that 'although general prohibitions of the Criminal Code address domestic violence,

[12] Morocco has not signed the Optional Protocols to the International Covenant on Civil and Political Rights (one of which aims at the abolition of the death penalty) as well as the Optional Protocol to the Convention against Torture (Commission, 2004b: 7).

legislation does not specifically prohibit it' (Commission, 2004b: 9). Moreover, regarding the issue of children's rights and labour standards, the Country Report underlines the widespread non-compliance with child labour laws, and criticises the limited rights of certain categories of workers (such as agricultural labourers). Finally, the same document explicitly states that in spite of Morocco's progress in the realm of human rights legislation of recent years, in practice the 'thoroughness with which legislation is implemented is uneven' (Commission, 2004b: 7). The Action Plan, however, remains remarkably unspecific on most of these issues, or does not mention them at all.

c) Summary and Assessment

The Action Plan concluded with Morocco does not adopt a clear conceptualisation of either democracy or the rule of law. Indeed, the Action Plan addresses core elements of both concepts in a selective manner at best. Certainly, the document does address political parties, administrative effectiveness, the 'access' to the judicial system, and the fight against corruption. However, much in contrast to the Commission's Country Report on Morocco, at no point does the Action Plan refer to the separation of powers (in particular the need for limiting the powers of the executive and the strengthening of parliament), or the need for ensuring the *independence* of the judicial system, along with the *impartiality* of judges (also Baracani, 2005). Similarly, on human rights, the Action Plan has a clear preference for elusive formulations, while it addresses some human rights (and not others). In this vein, the document refers to the freedom of assembly and expression, as well as to women's rights, but not to some central elements of the *habeas corpus* principle, such as the freedom from arbitrary and unlawful arrest or detention. Moreover, given the document's rather vague formulations of short-term and medium-term objectives, different interpretations may be possible, and monitoring 'progress' will be expectedly difficult. And while the concepts of 'reform', 'democracy' and the 'rule of law' are often used interchangeably, the logic behind the timetable of short-term and medium-term objectives is not particularly translucent, or, indeed, 'logic'.

2.2. Tunisia

In the ENP Action Plan concluded with Tunisia (Commission, 2004e) the section on 'Democracy and the Rule of Law' contains two specific 'targets', which address the strengthening of institutions and the judiciary. The section on 'Human Rights and Fundamental Freedoms' comprise three objectives, namely international human rights conventions, freedom of expression and association, and the rights of women and children. The third heading on the list concerns 'Fundamental Social Rights and Core Labour Standards', the formulation of which is similar to the respective section of the EU-Morocco Action Plan.

a) Democracy and the Rule of Law

The Action Plan's first item in the 'democracy section' stipulates the 'strengthening of institutions guaranteeing democracy and the rule of law'. However, the five short-term objectives under this heading fall short of being either comprehensive or specific. Thus, the Action Plan vaguely recommends to 'further increase participation by all sections of Tunisian society in political life', to 'further develop the role of civil society', and to 'continue support to political parties so as to further strengthen their involvement in the democratic process'. Furthermore, it recommends to 'encourage exchanges of experience between Tunisian and European members of parliament' and to 'set up a subcommittee under Article 5 of the Association Agreement with a view to developing structured political dialogue on democracy and the rule of law'. Under the same heading, both sides agreed in the medium term to 'support the efforts of the Tunisian authorities in the area of administrative reform, with a view in particular to greater transparency'. As in the case of Morocco, the Commission's Country Report on Tunisia is remarkably more critical on these issues. Thus, the document describes the strong executive powers of the president, the weakness of parliament, the 'unclear rules regarding the criteria for setting up a political party' (Commission, 2004d: 6), defined as one of the factors constraining political pluralism in Tunisia. Similarly, while noting that 'the current legal framework does not in fact facilitate the development of an independent civil society' (Commission, 2004e: 8), the Country Report on Tunisia also stresses that Tunisia's civil service – although described as 'qualified' and 'relatively efficient' – is still 'very centralised, hierarchical and with strong links to the party in power' (Commission, 2004e: 7). Compared to these statements, the Action Plan's formulations appear particularly weak.

The second item in the Action Plan's section on democracy and the rule of law addresses the judicial system. Thus, the heading explicitly refers to the objective of consolidating the *independence* and the *efficiency* of the judiciary as well as the *improvement of prison conditions*. The measures meant to achieve this objective include first, the strengthening of judicial procedures and the right of defence, second, reform of the penal code, third, the improvement of prison conditions (in particular regarding the holding of minors), prisoners' rights, the training of prison staff, the development of alternatives to incarcerations as well as reintegration schemes, and fourth, judicial reforms, particularly regarding access to justice and modernisation. While the Action Plan, however, is silent on whether these measures are meant to be for the short or medium term, it should be noticed that its provisions by and large correspond to the analysis of the Commission's Country Report on Tunisia. The latter states that despite recent progress towards improving the rights of defendants and convicted offenders, the 'reform of the judiciary is one of the major challenges for the years ahead' (Commission, 2004e: 7).

b) Human Rights and Fundamental Freedoms

If the Action Plan's provision on judiciary reforms were exceptionally concise, the document's human rights sections fall back into the flaws of vague formulations, 'selectivity', and non-existent time tables (i.e. no specification of short-term or medium-term objectives). Thus, the first item addresses Tunisia's compliance with international human rights conventions, and its sub-items specifically recommend to ensure that Tunisia's national legislation complies with international standards, to 'pursue and extend dialogue on human rights issues', and to 'support training measures' of law enforcement officers on human rights. Furthermore, the document relies on the same formulation as the EU-Morocco Action Plan regarding the adoption of the optional protocols to international human rights conventions, namely 'examine the possibility of accession' – which is obviously not a very obligating one. Again, the document does not specify which optional protocols are meant.[13]

The subsequent item dealing with the '[r]espect for the freedom of association, freedom of expression and for media pluralism in accordance with the UN International Covenant on Civil and Political Rights' contains six elements, which are not defined as either short-term or medium-term objectives. Thus, the right to associate and to assemble, along with the freedom of expression and opinion, are addressed, and the role of NGOs is mentioned. One provision deals with data protection, and two with the media, that is, media liberalisation and Internet access. The remaining two provisions regard the EU-Tunisian cooperation of 'voluntary sectors', as well as bilateral cooperation in the realm of civil society and human rights. Again, compared to the Country Report's analysis of Tunisia's human rights record, the Action Plan's provisions are very unsubstantial. Indeed, the Country Report refers to specific violations of the freedom of expression and association in Tunisia, such as the harassment of human rights activists and journalists, the government's denial of granting recognition to associations, the relatively small number of truly independent NGOs, and the difficulties of Tunisian NGOs of receiving foreign funding – effectively blocking the implementation of EU-funded human rights projects (Commission, 2004e: 7-8). Similarly, the Country Report clearly addresses the 'wide censorship' of the media and the authorities' control over private communication, while mentioning that in Tunisia, 'Internet access providers cannot connect directly to a foreign site' (Commission, 2004e: 8). Yet the Action Plan limits itself to some general formulations such as 'continue to promote the right to associate' 'strengthen legislation on private data protection', and 'encourage cooperation initiatives [..] designed to promote human rights and civil society.'

Finally, the Action Plan's provisions on women's (and children's) rights set out the objectives of 'strengthen[ing] the role of women in social and economic progress', combat discrimination against women, and 'consolidate children's rights'. Yet, on these issues, there are no specific references to persisting legal discriminations between men and women (for instance regarding women's rights to inherit), and the Action Plan's provisions do equally not address the issue of domestic violence, which is *de jure* punishable in Tunisia, but 'reportedly regarded as a problem to be handled within the family' (Commission, 2004e: 9).

[13] The Country Report on Tunisia states that the country has not adopted the two optional protocols to the International Covenant on Civil and Political Rights, the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the optional protocol to the Convention against Torture (Commission, 2004e: 8).

c) Summary and Assessment

While the EU-Tunisia Action Plan is relatively specific in addressing the reform of Tunisia's judicial system – explicitly aiming at ensuring the judiciary's *independence* and *effectiveness* – the document does not give evidence of a clear conceptualisation of democracy and its key elements. Thus, it does not address the issue of checks and balances, including the limitation of the executive's prerogatives and the strengthening of parliament. Neither does it contain specific measures aimed at ensuring free and fair elections with mass participation, contestation, competition for office, and the accountability of elected officials. The document does (vaguely) mention the role of political parties, but falls short of calling for laws that would ensure their independence. Similarly, the document refers to civil society, but it does not call for legally regulating the status of NGOs and ensuring their independence. Regarding human rights, the document's provisions are not only vague, but also fail to address a number of specific – and equally important – issues, such as torture (and specifically, the need for effective legal actions against it), arbitrary detentions, media censorship, the violation of the sanctity of the private home and correspondence, and the domestic abuse of women. Finally, as in the EU-Moroccan Action Plan, the definition of short-term and medium-term objectives (if any) is unclear, and the vague formulation of the Action Plan's provisions in general will make it extremely difficult to assess 'progress' in these realms.

2.3. Palestinian Authority

The ENP Action Plan concluded with the Palestinian Authority (PA)[14] takes account of the bloodshed that has been marking the region after the breakdown of the Oslo process, the persisting Israeli occupation, and the fact that the Palestinian territories are a state-in-the-making (at best, one should add in the current situation). Thus, under the heading of 'Development of enhanced political dialogue and cooperation', the Action Plan's first section refers to various regional issues, such as the resolution of the Middle East conflict, combating racism, humanitarian assistance, the fight against terrorism, and the non-proliferation of weapons of mass destruction (Commission, 2004g). In the subsequent section on 'Democracy and Rule of Law', the Action Plan contains four main items: first, the establishment of an independent and efficient judiciary, second, transparent general and local elections, third, constitutional and legislative reforms, and finally, public administration and civil service reform. The document's subsequent sections on 'Human Rights and Fundamental Freedoms' address two elements, namely, freedom of speech, assembly and association, and the wider principle of 'the respect of human rights and basic civil liberties in accordance with the principles of international law'. The EU-PA Action Plan does not contain any definition of short-term or medium-term objectives, arguably because of the difficulties of defining timetables in this part of the world.

[14] It should be noticed that the Palestinian Authority is not a legal entity, which is probably irrelevant for the non-binding legal character of the Action Plan. The Interim Association Agreement on Trade and Cooperation of 1997 was signed between the European Community and the Palestine Liberation Organization (PLO), which is considered a legal entity.

a) Democracy and the Rule of Law

The first item under the heading 'Democracy and the Rule of Law' consists of the 'establishment of an independent, impartial and fully functioning judiciary' and the 'strengthen[ing of] the separation of powers'. Specific 'targets' to be addressed here include the adoption of a coherent strategy for judicial reform, the unification of the legal codes of the West Bank and Gaza Strip[15], the 'division of responsibility' between the Supreme Judicial Council and the Justice Ministry, the improvement of the court infrastructure, and the training of judges and court personnel. In addition, this section recommends the implementation of the reform of the PA's security services. Undoubtedly, establishing a functioning judicial systems has been one of the major challenges in the Palestinian territories since the establishment of the PA, particularly considering the existence of different legal systems, the insufficient training of judges, the courts' poor infrastructure, the executive's persisting interference, and the ineffective communication procedures between courts – which has been further exacerbated by the movement restrictions imposed by the Israeli army (Commission, 2004f: 9). Regarding the reform of the numerous Palestinian security services, which had been operating independently of each other while maintaining separate detention and interrogation centres (Commission, 2004f: 9), some progress was achieved in early 2005, but much work needs still to be done.[16] It is interesting to note in this context that the Action Plan's reference to the 'separation of powers' refer to the judicial system *only*. Indeed, the separation between the executive and the legislative is not mentioned in the document.

Parliamentary elections, however, are the topic of the following item, which refers to the organization of 'transparent general and local elections according to international standards'. It comprises specific recommendations regarding the updating of the voters' registry, the adoption of a legal framework for political parties, the independence of the elections committee, and the freedom of media coverage. It is worth reminding, in this context, that these provisions (with which the Palestinian Authority by and large complied) were negotiated before the Palestinians voted a *Hamas*-led government into power in the January 2006 legislative elections.

The third topic in the section on democracy concerns constitutional and legislative reform, and more specifically the drafting of a democratic constitution (since 2002 the Palestinian territories rely on a Basic Law). The last item on the list is the reform of the public administration. While referring to the PA's reform programme, the Action Plan specifically refers to the *accountability* of civil service officials, including a clear definition of mandates, and the strengthening of the 'capacity of institutions responsible for implementing the reform programme'. On this issue, the Commission's Country Report on the Palestinian Authority is far more specific, by mentioning for instance the 'proliferation of public institutions and agencies within or attached to the Palestinian Authority', 'the growing civil service payroll comprising 70,000 officials (excluding the security services), 'the lack of a clear division of responsibilities, job profiles and unclear lines of reporting', and the 'absence of any

[15] Jordanian (and French-inspired) law was used in the West Bank, whereas Egyptian and British law continued to be in use in Gaza. Ottoman and Israeli laws continue to be applied to both areas.

[16] In April 2005, Chairman Mahmoud Abbas, by presidential decree, ordered the merger of the thirteen (or so) security forces into three branches (National Security, Interior, and Intelligence) with a clear chain of command. In addition, Abbas ratified the retirement law, which requires security personnel to step down at the age of 60, thus permitting him to dispose of some of the longest-standing, and most corrupt, security officers (PASSIA and DCAF, 2006). However, due to considerably internal resistance, the presidential decree has thus far not been fully implemented, and the election of *Hamas* has further complicated the reform of the security forces.

coherent human resource development programme and training for civil servants' (Commission, 2004f: 8). While noticing that the announced civil service reform has not been fully implemented, the Country Report also notes that the Israeli incursions in, and re-occupation of, Palestinian territories during the second *Intifada* severely affected the functioning of public institutions (Commission, 2004f: 8).

b) Human Rights and Fundamental Freedoms

Although the Action Plan only mentions two items under the heading of 'Human Rights and Fundamental Freedoms', a relatively wide array of issues are covered. The first item recommends strengthening 'legal guarantees' for freedom of speech, assembly and association, as well as the freedom of the press. The specific elements under this heading address the freedom of the media and the rights of journalists (both *de jure* and *de facto*), as well as the full implementation of the NGO law of 2000 and the by-laws adopted in 2003. The second human right topic calls for the respect of human rights and civil liberties, as well as the fostering of a culture of 'non-violence, tolerance, and mutual understanding'. Specific recommendations here include the implementation of a programme on non-violence and tolerance covering the education system, the media, and public institutions; strengthening the 'possibility' for legally addressing violations of human rights, the enforcement of legal provisions against torture, women's rights, and the training of public officials on human rights issues. A short comparison with the Commission's Country Report is also interesting in this case. In fact, the Action Plan does refer to most of the human rights issues covered in the latter (torture, ill-treatment of prisoners and illegal arrests, *de facto* restrictions of the freedom of expression, the Authority's close monitoring of civil society organisations promoting reforms and human rights, excessive delays in legally registering NGOs, intimidation and arrests of trade union leaders, and women's rights). But reflecting the pattern observed thus far, the Action Plan is also comparatively 'mild', as it does not specifically address some human rights concerns, such as arbitrary detention or other principles of *habeas corpus.*

c) Summary and Assessment

Defining 'priorities for action' in the case of the Palestinian territories is admittedly a difficult endeavour, mainly because of the need for institution-building, the unstable regional setting in general, and the ongoing Israeli occupation in particular. However, it is interesting that while the EU-PA Action Plan – unlike other Action Plans – refers to the 'separation of powers', it focuses solely on the establishment of an independent judiciary. Indeed, there are no explicit references to a reform of the PA's 'semi-presidential' system (Commission, 2004f: 7), the curbing of the executive's powers, and the strengthening of parliament. Moreover, the Action Plan stresses the importance of elections, but it simultaneously points to the malfunctioning of public institutions, the difficulties in maintaining law and order, and the weak support for democratic values. Thus, the Action Plan concluded with the PA reflects what the literature has termed

the 'electoralist fallacy', and once more points to an unclear notion of the concept of democracy. At the same time, and in contrast to the Moroccan and Tunisian Action Plans, the document does address most human rights concerns. But while adopting a relatively 'soft' tone, the list is not inclusive. For instance, the application of the death penalty – which considering the non-functioning of the judicial system is of particular concern – is not addressed.[17] Interestingly, the sections dealing with *financial accountability* are far more specific than the Action Plan's human rights provisions. Finally, the EU-PA Action Plan does not contain any timetable, and while probably underlining the sense of reality of the actors involved, monitoring any form of progress will expectedly be extremely difficult, if not impossible.[18]

2.4. Jordan

The Action Plan concluded with Jordan (Commission, 2004i) by and large reflects the priorities of the reform programme adopted by King Abdallah II in late 2002. Termed 'Jordan First', the latter defines four main objectives: first, the development of an independent judicial system, second, political parties and electoral law reform, third, gender equality, and fourth, the development of independent media. In this vein, under the section 'Democracy and the Rule of Law', the Action Plan defines two priorities, namely the promotion of 'stability and effectiveness of institutions strengthening democracy and the rule of law including good governance and transparency', and the development of an independent judiciary. Similarly, in the chapter on 'Human Rights and Fundamental Freedoms', the Action Plan defines the freedom of the media and women's rights as priorities, but also adds (more generally) the respect for human rights 'in line with Jordan's international commitments', the issues of freedom of association and civil society, and the promotion of social rights and core labour standards.

a) Democracy and the Rule of Law

Under the heading of 'Democracy and the Rule of Law', the first issue area addressed by the Action Plan is the promotion of 'the stability and effectiveness of institutions strengthening democracy and the rule of law'. Under this heading, five more specific aspects, or 'targets', are listed: First, the establishment of a dialogue between the Jordanian and the European Parliament, and second the 'support [of] the ongoing efforts to improve good governance and transparency'. Here, the document specifically refers to the 'Jordan First Programme', that is, the reform agenda of the Jordanian government as well as to 'UN Conventions to which Jordan is party'. It is interesting that the Action Plan does not define whether these two (unspecific) objectives are meant to be for the short or medium term. The third, fourth, and fifth items, which are defined as medium-term objectives, include the promotion of a 'national dialogue on democracy, political life and relevant issues', the reform of political parties and the electoral law, and finally the implementation of a 'government plan' for public sector reform.

[17] Neither does the Country Report on the Palestinian Authority address the death penalty.

[18] It should be noted, however, that after the January 2006 Palestinian legislative elections, and the EU's subsequent decision of halting the direct disbursement of funds to the *Hamas*-led government, the monitoring and implementation of the EU-PA Action Plan has become obsolete.

The second major objective within the section on democracy addresses the judiciary. This objective contains two more specific 'targets', for which, however, the timetable is left undefined. These 'targets' include, first, to 'implement the Judicial Upgrading Strategy 2004-2006, to simplify judicial procedures, and to improve the speed and efficiency of decisions', and second to 'strengthen the capacity and efficiency of the justice administration, including adequate training of judges.' It is interesting to note that specific 'targets' under the heading of 'impartiality and independence of the judiciary' do address efficiency and modernisation, but they do not refer to the *impartiality* nor the *independence* of judges. This is the more interesting as the Country Report on Jordan (Commission, 2004i: 6) clearly states that the appointment, advancement and dismissal of judges are determined by the Higher Judiciary Council, whose members are appointed by the king.

b) Human Rights and Fundamental Freedoms

In the section on 'Human Rights and Fundamental Freedoms', the Action Plan addresses five major issues. The first, freedom of expression, contains four 'targets', one of which stipulates to 'intensify on-going efforts to promote freedom of expression and independence of the media'. This proposition immediately raises the question of how the 'intensification' of 'on-going efforts' shall be measured. The same observation applies to the second 'target' in the realm of media freedom, namely to 'strengthen the Higher Media Council'. The third item stipulates the development of training programs for media professionals, and the last one the promotion of the private sector in the media. Given that Jordanian legislation considerably restricts the freedom of expression, and in view of the interference of the executive in media affairs (Commission, 2004i: 8), along with regular reports of human rights organisation on the harassment of journalists, the Action Plan's 'targets' on media freedom are particularly weak. In fact, these provisions do not contain any clear reference to the *protection of the freedom of expression*.

A similar observation applies to the next major item, namely the freedom of association and the 'development' of civil society. Specific targets include here the implementation of government plans 'for the development of civil society' and the reform of the legislation on associations – the latter being the only item that is defined as a medium-term objective. While the Commission's Country Report on Jordan refers to *de jure* and *de facto* restrictions on the right of association, including the tight government control over NGOs and the harassment of human rights activists (Commission, 2004i: 7-8), the Action Plan does not even state that the *effective protection* of this civil liberty shall be a priority.

The third major item is rather general, namely the 'respect of human rights and fundamental freedoms in line with Jordan's international commitments'. Under this heading, there are some rather vague references to, first, the implementation of international human rights conventions to which Jordan is party, second, the

'strengthening [of] the capacity and effectiveness of the National Commission for Human Rights', and third, the establishment of a dialogue for human rights and democratisation with the EU. The remaining two 'targets' are somewhat more precise, namely the protection of children's rights, and finally, the effective application of 'existing legislation against ill-treatment' (assumedly of prisoners, although the document does not say it). Again, the Commission's Country Report is far more specific on Jordan's treatment of prisoners. In this vein, it notes that although torture is prohibited by law, human rights organisations report 'incidents of ill-treatment of political detainees, including arbitrary arrests and "incommunicado" detention' (Commission, 2004i: 8). The Country Report also addresses the absence of an impartial body in charge of supervising prisons, although it notices that the situation has been improving with the establishment of the National Centre for Human Rights in 2003. Finally, the Country Report also addresses the issue of the death penalty, which continues to be applied in Jordan. Conversely, the Action Plan does not even mention the words torture, arbitrary detention, or death penalty.

The fourth major topic on the human rights list is gender equality (indeed corresponding to one of the objectives of Jordan's national reform plan). However, the three 'targets' appertaining to this objective are neither exhaustive nor specific. Thus, the first 'target' is the transposition of 'international Conventions to which Jordan is party concerning women's rights' into national legislation, which is to include the 'implementation of measures strengthening the punishment of crimes'. Although not explicitly mentioned, reference is here the UN CEDAW, which Jordan has signed, but not incorporated into national law. Similarly, we may assume that the Action Plan's reference to the punishment of 'crimes' actually means the issue of domestic violence and so-called 'honour crimes', for which Jordanian law still permits reduced punishment. The second 'action' concerning gender equality is the exchange of information and the development of reliable statistics 'on these matters' – assumedly honour crimes and physical abuse, but the Action Plan does not specify. The third measure, which is the only designated medium-term objective, is the increase of women's participation in economic and political life, which shall be achieved through the development of a 'plan'. Again, unlike the Country Report, the Action Plan's provisions on women's rights are unspecific and incomprehensive. Thus, the document does not mention the persisting legal discrimination of women on matters such as divorce, inheritance, pension, social benefits, and the 'weight of court testimony' (Commission, 2004i: 9), and neither does it call the relevant issues by their name, such as honour killings and the physical abuse of women. At the same time, developing dialogues, statistics, and plans may not only be insubstantial, but also quite impossible to measure or 'benchmark'.

Finally, the last point on the Action Plan's human rights list regards social rights and labour standards, for which the 'targets' are the development of a dialogue on these issues, and, for the medium-term, the implementation of the relevant international law standards.

c) Summary and Assessment

Among all the Action Plans discussed so far, the Action Plan with Jordan belongs to the group of the least specific ones. Altogether, there are no short-term objectives in the democracy and human rights sections, only some medium-term targets. Yet, the latter end to coincide with the more relevant issues, at least according to the Commission's own assessment as contained in the Country Report on Jordan. While the Action Plan by and large reflects the development priorities of the Jordanian government, it actually talks around the important issues, such as the *de jure* and *de facto* protection of core human rights and political and civil liberties. Neither does the Action Plan address the basic elements of democracy and the rule of law. Thus, parliament is not even mentioned in the Action Plan, and the document's provisions on the strengthening of the judiciary's independence do not even bring up the aspect of reducing the government's interference into the judicial system. Instead, the document repeatedly defines the establishment of a 'dialogue', or the development of plans and statistics, as means to address specific issues – measures the relevance of which is not only questionable, but which also render the idea of benchmarking meaningless.

2.5. Israel

The Action Plan negotiated with Israel (Commission, 2004k) notably differs from the other Action Plans discussed so far. This difference not only reflects the fact that Israel is a parliamentary democracy – albeit certainly not a flawless one[19] – but also the well-developed economic and political relations between Israel and the EU. Indeed, the Action Plan's economic chapters are far more specific and 'advanced' than those of other Action Plans; furthermore, the *promotion* of democracy is not an EU objective vis-à-vis Israel. However, Israel's human rights record, particularly regarding the Palestinians in the Occupied Territories, is an issue of bilateral disagreement. The EU-Israel Action Plan also differs from other Action Plans in terms of structure. Indeed, the political chapter is entitled 'Political Dialogue and Cooperation' and contains a preamble-like paragraph, which underlines the common values of human rights, democracy, good governance and international humanitarian law. This political chapter is subdivided into two sections, dealing with 'shared values' and 'regional and international issues' respectively. It should also be noted that the EU-Israel Action Plan does not contain any timetables or definitions of short-term and medium-term objectives.

a) Human Rights[20]

The Action Plan's provisions on 'shared values' include the objective of promoting democracy and human rights, combating anti-Semitism, and fighting 'racism and xenophobia, including Islamophobia'. In the following, however, the Action Plan lists a number of rather general intentions. In this vein, both sides agreed to cooperate in

[19] In addition to the treatment of the Palestinians in the occupied territories, problematic aspects of Israel's democratic system are the unclear separation between state and religion, and herewith related, the unequal treatment of its Arab Israeli citizens.

[20] The following paragraphs draw on Del Sarto, 2006a and 2006b.

the promotion of 'the shared values of democracy, rule of law and respect for human rights and international humanitarian law', to 'promote and protect the rights of minorities', to foster the evaluation and monitoring of policies on gender equality, and to develop a dialogue on policies for the disabled. While these propositions are rather unspecific, the EU-Israel Action Plan also contains the expression of '[e]xplor[ing] the possibility to join the optional protocols related to international conventions on human rights' as other Action Plans. Here, the reference is, *inter alia,* to the Optional Protocol to the International Civil and Political Rights Covenant, which Israel has not signed. In the context of repeated international criticism of Israel's human rights violations in the Occupied Territories, and considering the controversy of whether the Geneva Conventions apply to the Occupied Territories (as most international lawyers maintain), or not (as Israeli governments claim), the Action Plan's provisions on human rights are actually strikingly elusive. This is even more so since Brussels repeatedly affirmed the applicability of the 4th Geneva Convention, which governs the status of civilians under military occupation, to the West Bank and Gaza Strip.[21] A similar observation applies to the Action Plan's provision on minorities' rights. In fact, Israel's 2003 amendment of the law on citizenship and entry into Israel attracted considerable criticism from human rights organizations. Justified by the Israeli government with security concerns, this law discriminates against Arab Israeli citizens, who already suffer from a number of discriminatory practices in terms of budget allocations, official planning, employment, education, health, and political representation (Commission, 2004j: 10). Yet, while the EU's Country Report on Israel critically addressed the amended law, the Action Plan is conspicuously silent on this issue.

The sections on the common endeavour to combat anti-Semitism are somewhat more concrete. In this context, the Action Plan explicitly refers to the Berlin Declaration of the OSCE of April 2004 (OSCE, 2004) and commits both sides to promote its implementation. To this end, a number of measures are listed, such as the strengthening of the legal framework, the promotion of education on, and remembrance of, the Holocaust, the support for civil society and international organisations in their efforts to combat anti-Semitism, and the exchange of information among experts on best practices and educational tools. A number of similar provisions are reiterated in the following section on the fight against racism and xenophobia.

Finally, provisions addressing the human rights of the Palestinians are somewhat hidden in the section on 'Regional and International Issues', in particular in its sub-section on 'Situation in the Middle East'. Here, the Action Plan declares as one objective:

> "While recognising Israel's right of self-defence, the importance of adherence to international law, and the need to preserve the perspective of a viable comprehensive settlement, minimising the impact of security and counter-terrorism measures on the civilian population, facilitate the secure and safe movement of civilians and goods, safeguarding, to the maximum possible, property, institutions and infrastructure."

[21] Israel denies the applicability of the 4th Geneva Convention to the West Bank and Gaza Strip by arguing that these territories have never been part of a sovereign state.

Similarly, the Action Plan states that 'improving economic and social conditions for all populations' is an objective, along with the further improvement of 'access and co-ordination to facilitate the implementation and delivery of humanitarian and other forms of assistance and facilitate the reconstruction and rehabilitation of infrastructure.' However, it should be stressed that the provisions listed in this section are preceded by an important sentence that notably reduces their relevance. Indeed, the Action Plan does not state that both sides *will* cooperate on these issues. Rather, the document states that both sides will 'strengthen political dialogue and identify areas for further co-operation on', which is then followed, *inter alia,* by the items just mentioned. Yet, the objective of identifying areas for further cooperation is obviously not a very precise one. And neither does the Action Plan mention the renewed allegations raised by international organisations regarding the ill-treatment of prisoners since the outbreak of the second *Intifada*, much unlike the Commission's Country Report (Commission, 2004j:9).

b) Summary and Assessment

The ENP Action Plan concluded with Israel certainly reflects a different starting point, and it is also indicative of the well-developed bilateral political and economic relations. Moreover, the document extensively refers to regional issues in general, and Israeli-Palestinian peace-making – and the EU's role within it – in particular. However, while omitting references to contested issue in the realm of human rights and international law mentioned in the Commission's Country Report on Israel, elusive formulations dominate the EU-Israel Action Plan, which is, in fact, 'a real masterpiece of diplomacy' (Del Sarto, forthcoming). The pronounced ambiguity of the document, along with the complete absence of definitions of short-term and medium-term priorities, does not bode well for the EU's intention of introducing a benchmarking process on political issues in EU-Israeli relations.

3. Summary

The ENP clearly sets out to introduce a *differentiated* approach towards the EU's 'neighbours'. In this vein, the ENP Action Plans are meant to take into account 'the specificities of each neighbour, its national reform process and its relations with the EU'. The Commission also reiterated that 'Action Plans should be comprehensive but at the same time identify clearly a limited number of key priorities and offer real incentives for reform' (Commission, 2004l: 3). These priorities are identified as the 'strengthening [of] democracy and the rule of law, respect of human rights and fundamental freedoms, including freedom of media and expression, rights of minorities and support fro the development of civil society'. (Commission, 2004l: 3). In order to achieve these objectives, the EU intends to rely on a 'soft conditionality' approach.

However, our analysis of the Action Plans concluded with five Mediterranean partner states in 2004 shows that, in contrast to the Commission's declarations, any clear

identification of *specific key priorities* in the realm of democratisation and human rights is conspicuously lacking. In fact, the Action Plans' provisions on democracy and the rule of law, and the respect of human rights, are sketchy and ambiguous at best. At the same time, the Action Plans point to a manifest inconsistency and a conceptual confusion regarding the key notions of democracy and the rule of law. Thus, there are extensive references to democracy and the rule of law, but none of the documents addresses the strengthening of parliament, or the separation of powers (the exception is the EU-Palestinian Authority Action Plan, where, however, the terms refers only to the strengthening of the judiciary). Similarly, some of the documents put a strong emphasis on elections while neglecting other crucial elements of either political liberalisation or indeed, democratisation. In all documents, the list of core human rights to be protected is far from being comprehensive. Moreover, ambiguous formulations are a characteristic of all the Action Plans. Hence, if the Action Plans were meant to be 'as precise and specific as possible so as to allow concrete follow-up and monitoring of the commitments taken by both sides', as the Commission (2004l: 3) envisaged, the documents clearly miss the target. Along with the observed conceptual confusion and the imprecise formulations of 'priorities', the definition of short-term and medium-term priorities is inconsistent, not transparent, and rather illogical. Hence, the Action Plans contradict the idea of seriously benchmarking political reforms of the single states themselves, let alone in a comparative cross-country perspective.

Certainly, the Action Plans were negotiated with governments, which apparently succeeded in defending at least some of their interests. Thus, on the one hand, it may be argued that the involvement of governments in negotiating the priorities of bilateral relations with the EU is an indication of 'co-ownership' and 'partnership'. Yet, if democracy and human rights promotion is a serous objective, it is more than questionable whether governments should be given the prerogative of defining priorities in this realm, as it somewhat reminds of letting the cat guarding the milk (or letting the fox guarding the chickens, for that matter). In fact, it is more than obvious that civil society organisations of the partner countries were not involved in defining the priorities of democratisation and human rights of the Action Plans, given that particularly human rights organisations of the partner states would certainly have put forward a different, well-informed, and more comprehensive, reform agenda.

III. Benchmarking Democratisation: A Focus on Process

In spite of the persisting analytical confusion revolving around the key concepts of 'democracy', the 'rule of law' and 'good governance' discussed in the first chapter of this report, it is worth recalling that there are at least some commonly accepted criteria that define democracies. Hence, in defiance of the 'culturalist argument'[22], variations of democratic regimes (that may reflect specific cultural preferences or political considerations of different types) do respect the limits set by these criteria as well as the catalogue of universally valid human rights. At the same time, however, and as mentioned previously, it is almost impossible to conceptualise and operationalise processes of *democratic change* in a comparable and standardised way. Autocratic regimes may have quite different starting conditions and points of departure while envisioning very distinct points of arrival. At the same time, democratisation processes across time and place (such as in Latin America or in Eastern Europe) have followed different trajectories and timelines. Thus, it remains questionable whether the insights gained from previous 'waves of democratisation' (Huntington, 1991) are applicable to the promotion of democracy in the Mediterranean partner states. In other words, there is no blueprint for democratic change. And while the role of external actors in the promotion of democracy remains debatable (Sandschneider, 1997), the definition of indicators and 'benchmarks' with respect to democratisation must necessarily remain an approximate endeavour. However, precisely because of these difficulties, a greater conceptual clarity in the realm of democracy promotion is imperative. Combined with the ambitions of developing concrete benchmarks in the realm of human rights and democracy promotion – benchmarking being a *dynamic procedure over time* – and in view of the flaws of the Action Plans discussed in the previous chapter – it indeed seems necessary to redirect the focus of attention to the *process of democratisation*.

A focus on process permits subdividing democratisation processes into different stages, for which different key criteria can be identified, and for which different benchmarks may be set. With the necessary caution, and considering the difficulties related to the definition of clear stages of democratisation discussed above, a focus on process and its phases nevertheless permits developing a basic scheme within which it is possible to define, and assess, concrete indicators and ways of 'measurement'. Moreover, while enabling to define the respect for core human rights as a starting point of any democratisation process, a dynamic conceptualisation of democratisation permits – again *cum grano salis* – a cross-country comparison. Based on a slightly modified version of the propositions of Schneider and Schmitter (2004), this section proposes a basic scheme of democratisation processes, which is viewed as an important analytical tool for developing a proactive strategy in this realm. Subsequently, this chapter explores how the key elements of the different democratisation phases may be translated into concrete criteria that may be 'benchmarked' and 'monitored'.

[22] For the agenda-setting role of specific definitions of cultural diversity in the Euro-Mediterranean area, see for example Del Sarto, 2005 and Stetter, 2005.

1. Phases and Components of Democratisation

While respecting the EU's declared objectives of tying the 'upgrading of bilateral relations' to democratic reforms in the ENP framework (Commission, 2003; 2004; 2005), this chapter suggests to conceptualise the democratisation process as comprising three different phases, thus by and large following the proposition of Merkel (1999) and Schneider and Schmitter (2004). The first phase consists of the *liberalisation of autocracy*, the second is the mode of *democratic transition*, and the third corresponds to the *consolidation of democracy*. With regard to Arab Mediterranean states, they certainly differ from each other in terms of their political system and engagement into any type of reform process, but none of them has entered a phase of *democratic consolidation* yet. Hence, only the first and second phases of this framework of analysis are relevant. Israel, on the other hand, in many respects is a consolidated democracy, but it is also characterised by persistent human rights violations both vis-à-vis the Palestinians in the Occupied Territories and its Arab citizens. The case of Israel thus supports the argument developed above regarding the possibility of non-compliance with *all the* criteria of the different democratisation phases. But what are the main criteria that characterise each of the stages of democratisation processes, and how relevant are these criteria for the Euro-Mediterranean context?

1.1. Liberalisation from autocratic rule

According to Schneider and Schmitter (2004), the first phase of democratisation processes consists of (political) *liberalisation from autocratic rule*, and is mainly characterised by the increasing realisation of core human rights that protect individuals and groups from arbitrary and unlawful acts committed by the state and its institutions. This phase, however, does *not* imply the accountability of rulers to their citizens, and neither does it include fair competition and contestation in the political process nor the introduction of an effective system of checks and balance. Hence, it does not connote the right of citizens to hold their rulers *accountable* and the possibility of removing rulers from power by a pre-established procedure (Schneider and Schmitter, 2004: 61). In other words, states that find themselves in a phase of political liberalisation may have a parliament, relatively free elections, and even opposition parties, but this does not automatically entail that parliament has the power to effectively control the executive, that the principle of popular sovereignty is respected, or that opposition parties may win and replace previous rulers. Indeed, the elements of accountability and contestation characterise subsequent phases of the democratisation process. While the relevant criteria of this phase reflect the requirement of respecting and protecting first-generation human rights in a minimalist sense, as discussed above, Schneider and Schmitter (2004) define seven main criteria of this phase. However, after reviewing the relevant literature and taking into account the realities in the southern Mediterranean, this report suggests adding two criteria that revolve around institutions. Indeed, following the important work on the rule of law in the context of the protection of human rights (O'Donnell, 2004;

Morlino and Magen, unpublished manuscript), the development of an independent judiciary should be added as eighths criterion to the liberalisation phase; and the development of efficient, transparent, and accountable administrative structures has been added as the ninth criterion. Hence, the main criteria of this first phase are the following:

Phase I: Political Liberalisation of Autocracy

The following criteria characterise the phase of political liberalisation of autocracy:

1. The regime makes significant public concessions at the level of human rights.
2. There are no political prisoners.[23]
3. There is an increased tolerance for dissidence and public opposition by social groups and both formal and informal organizations, such as political parties, associations, and NGOs.
4. There is more than one legally recognized independent political party, that is, there is no one-party rule.
5. There is at least one recognized opposition party in parliament.
6. Trade union or professional associations are not controlled by state agencies or governing parties.
7. There is an independent press and access to alternative means of information that are tolerated by the regime.
8. The regime is engaged in developing an independent and impartial judiciary system.
9. The regime is engaged in developing efficient, transparent, and accountable institutions of the public administration.

It shall be noticed that most criteria in this phase relate to core political and civil rights, thus reflecting the centrality of human rights discussed above. In this vein, the 'significant public concessions at the level of human rights' contained in the first criterion cover, or should cover, core political and civil rights, including freedom from torture or other cruel treatment by authorities and the right to physical integrity; *habeas corpus* ensuring freedom from arbitrary and unlawful detention; equality before the law and non-discrimination; the right to a fair trial; the sanctity of the private home and correspondence; freedom of expression, opinion, conscience; freedom of movement; and freedom of assembly and association.

The second criterion ('no political prisoners') relates to specific civil and political rights within the catalogue listed above, such as *habeas corpus,* freedom of free speech, opinion, and conscience. The third element (increasing tolerance towards dissidents, associations, parties, NGOs etc.), as well as the fourth (existence of political parties) and sixth (independent media), is an additional manifestation of the

[23] It should be noted that Schneider and Schmitter (2003: 64) define this criterion as 'the regime has no (or almost no) political prisoners'. The authors of this reports maintain that a stricter interpretation of this criterion ('no political prisoners') is imperative.

freedom of speech, opinion etc., while they also specifically relate to the freedom of assembly and association. The same remark applies to criteria five and six (opposition parties and independent trade unions/ professional associations respectively).

The eighth criterion (judiciary), which this report adds to those proposed by Schmitter and Schneider (2004), stresses the importance of an independent and impartial judiciary for the protection of human rights, as well as for the emergence of an efficient system of checks and balance. The last element (efficient, transparent, and accountable administration), which has also been added, stresses the relevance of introducing accountability and fighting corruption, which ensures equality before the law and the protection from the arbitrary use of power.

1.2. Democratic transition

The second phase, termed *democratic transition*, is characterised by the introduction of mass participation, contestation, accountability (including the removal of non-accountable actors), and legal checks on political power. The holding of free and fair elections (sometimes termed 'founding elections' in the literature), which were held with a low degree (or in the absence) of political violence, and the broad acceptance of the results of these elections, are additional key criteria of the transition mode (adopted from Schneider and Schmitter, 2004: 65-67).

Phase II: Democratic Transition

The following criteria characterise the democratic transition phase:

1. Social and/or political movements opposing the existing regime enter into public negotiations with the latter.
2. There are open conflicts within the administrative apparatus of the state over public policies and these are acknowledged by the government.
3. Formal legal changes are introduced, intended to limit arbitrary use of power by the regime.
4. Constitutional or legal changes are introduced that eliminate the role of non-accountable powers of veto-groups (such as the military, security services, economic elites, etc.).
5. A constitution has been drafted and ratified that guarantees equal political rights and civil freedoms to all citizens.
6. Free and fair elections have been held; the degree of political violence has been low (or absent).
7. The results of these elections have been widely accepted.

As mentioned previously, the transition mode is, by definition, in flux, and its outcome is not automatically the consolidation of democratic governance.

1.3. Democratic consolidation

At this stage, we shall also briefly list the main elements of the third phase of the democratisation process according to Schneider and Schmitter (2003: 68). Although of only limited relevance to our discussion at present, the third phase of the democratisation process is certainly relevant for the aim of thinking ahead in the Euro-Mediterranean context.

Phase III: Democratic Consolidation

1. No major political party advocates major changes in the existing constitution.
2. Regular elections are held and their outcomes are respected by those in position of public authority and major opposition parties.
3. Elections have been free and fair.
4. No significant parties or groups reject previous electoral conditions.
5. Electoral volatility has diminished significantly.
6. Elected officials and representatives are not constrained in their behaviour by non-elected veto groups within the country.
7. A first rotation-in-power or significant shift in alliances of parties in power has occurred within the rules already established.
8. A second rotation-in-power has occurred within the rules already established.
9. Agreement, formal or informal, has been reached on the rules governing the association formation and behaviour.
10. Agreement, formal or informal, has been reached on the rules governing the executive format.
11. Agreement, formal or informal, has been reached on the rules governing the territorial division of competencies.
12. Agreement, formal or informal, has been reached on the rules governing the rules of ownership and access to mass media.

Of course, it should be stressed once again that this scheme comprises ideal-type phases of democratisation, and, in fact, an ideal-type of democracy. While reality is much more ambiguous, it is worth noting that most of the existing democracies in Europe and beyond would have difficulties in fulfilling all the criteria listed here. Similarly, in the Euro-Mediterranean context, many of the southern partner states, at least formally, seem to fulfil many of the criteria of the first and second phase listed above, while, *de facto*, they may be far from having entered either a political liberalisation or a democratic transition phase. Hence, how can these elements be translated into concrete criteria, or benchmarks, that can be monitored within democratisation strategies?

2. Translating Criteria into Indicators? Some Proposals

The question of how to translate the relevant criteria into concrete indicators that can be monitored is a rather complex task. This is particularly the case since all elements of the proposed matrix comprise various aspects and dimensions. For instance, as far as legal arrangements are concerned, the existence of laws (or a constitution for that matter) does not tell us much about the situation in practice and the compliance with the law. Hence, indicators must respect different dimensions, namely a *de jure* dimension (e.g. are international treaties ratified? Is a specific subject-matter regulated by law?), a *procedural dimension* (are international treaties translated into national law? Are subject-matters regulated by specific statutes and procedures? Are there systems and mechanisms of accountability and independent supervision for the issues in question?), and, finally, the *de facto dimension*, defined by the implementation of, and the respect for, the law in practice. Certainly, some indicators may prevalently be of a legal or procedural nature to begin with, whereas others may predominantly concentrate on the *de facto* dimension. By and large, a combination of the key elements of the different phases with the three dimensions allows to define more specific indicators that could be measured in any benchmarking process within a democratisation strategy. However, considering the realities in the southern Mediterranean, a special emphasis must be put on the *de facto* dimension of this scheme, given that at least some of the regimes seem to formally fulfil many criteria without having truly entered the phase of democratic transition.

2.1. Liberalisation of autocratic regimes (phase I)

1. The regime makes significant public concessions at the level of human rights (first-generation human rights: *habeas corpus*, non-discrimination on basis of race, religion, gender, etc., freedom of expression, association, assembly, movement, privacy of the home and of correspondence, right to a fair trial and legal defence, protection against torture and inhuman behaviour etc.).

Overarching human rights criterion

a) legal basis:

- Signatory to relevant human rights conventions, ratification
- Incorporation of HR conventions into domestic law (constitution, criminal law, civil law, administrative law, statutes etc.)
- Additional domestic legislation aiming at protecting fundamental human rights

b) procedural:

- composition / structure / independence of responsible bodies
- existence of specialised bodies monitoring implementation
- establishment of specialised courts (family courts, juvenile courts…)
- training of administration / supervising bodies / police force / military etc.

c) de facto:

- incidence of human rights violations
- effectiveness of and compliance with legal and procedural provisions
- efficacy / influence / authority / independence of supervising bodies

2. Number and treatment of political prisoners

habeas corpus, freedom of expression, protection against torture and inhuman treatment, right to a fair trial etc.

a) legal basis:

- constitution, criminal law, administrative law (including police statutes, prison statutes etc.)

b) procedural:

- existence and nature of a prison supervising body (composition / structure / independence)
- existence and nature of a body tackling respective human rights complaints (composition / structure / independence)
- abolishment of special courts and procedures (e.g. extra-judicial courts)
- training of judges / police force / military / prison personnel etc.

c) de facto:

- number of political prisoners
- incidence of unfair trials, administrative detentions, torture, etc.
- effectiveness of and compliance with legal and procedural provisions
- efficacy / influence / authority / independence of supervising bodies

3. Increased tolerance for dissidence and public opposition by social groups or formal and informal organisations: parties, NGOs, associations etc.

freedom of speech, media freedom, freedom of association and assembly

a) legal basis:

- constitution, public law (including laws regulating political parties and associations, NGO law, etc.), criminal law

b) procedural:

- existence / composition / structure / independence of monitoring body
- existence / composition / structure / independence of implementing bodies (e.g. regarding admission of political parties, NGOs, etc.)

c) *de facto:*

- incidence of harassment/imprisonments of dissidents and opposition
- incidence of harassment of journalists, human rights activists etc.
- efficacy / influence / authority / independence of supervising or monitoring body
- effectiveness of and compliance with legal and procedural provisions

4. More than one legally recognized independent political party (no one-party rule)

freedom of speech, of association

a) *legal basis:*

- constitution, public law (specifically laws regulating political parties), criminal law

b) *procedural:*

- existence / composition / structure / independence of authority regulating the admission of political parties and their legal and financial status

c) *de facto*

- space of manoeuvre of legally recognised political parties
- independence of legally recognised political parties from the regime (e.g. in terms of financing, direct personnel ties, etc.)
- incidence of harassment of parties and their members
- effectiveness of and compliance with legal and procedural provisions
- efficacy / influence / authority / independence of supervising or monitoring body

5. At least one recognized opposition party in parliament

freedom of speech, freedom of association

a) *legal basis:*

- constitution, public law (specifically laws regulating political parties and party financing laws), criminal law

b) *procedural:*

- existence / composition / structure / independence of authority regulating the admission of political parties and their legal status
- existence / composition / structure / independence of monitoring body

c) *de facto*

- degree of independence of recognized opposition party (or parties) from influence of the state (e.g. in terms of financing and direct personnel ties)
- space of manoeuvre of recognized opposition party (or parties)
- incidence of harassment of party/parties and their members
- effectiveness of and compliance with legal and procedural provisions

6. Trade unions or professional associations, not controlled by state agencies or governing parties

freedom of speech, of association

a) legal basis:

- constitution, public law (specifically laws regulating professional associations and trade unions), criminal law

b) procedural:

- process of registering/licensing trade unions
- internal statutes (e.g. regarding finances of syndicates and trade unions)

c) de facto

- degree of independence and space of manoeuvre of profession associations and trade unions from the state and/or the governing party (e.g. in terms of financing, personal ties)
- incidence of harassment of professional associations and trade unions and their members
- effectiveness of and compliance with legal and procedural provisions

7. Independent press, access to alternative means of information (tolerated by the regime)

freedom of expression, media freedom

a) legal basis:

- constitution, public law (specifically laws regarding the licensing and legal status of media including the Internet, censorship, media structure, economic ownership), criminal law

b) procedural:

- existence / composition / structure / independence of authority regulating the licensing of newspapers, radio stations, television, internet, satellite and cable TV and their legal status, as well as the rights and/or ethical code of journalists

- existence / composition / structure / independence of monitoring bodies

c) de facto

- media landscape (number, variation, subjects covered etc.)
- space of manoeuvre / incidents of harassment of (opposition) media and journalists
- degree of independence of media from direct influence of the government / the regime / the ruling party (e.g. through economic ownership or direct personal ties)
- effectiveness of and compliance with legal and procedural provisions
- efficacy / independence / influence / authority of supervising or monitoring body

8. Development of independent and impartial judiciary system

effective protection of human rights through the 'rule of law'

a) legal basis:

- constitution, public law

b) procedural:

- existence / composition / structure / independence of courts
- existence / nature of statutes
- training of judges
- existence / composition / structure / independence of monitoring bodies

c) de facto

- degree of independence of judiciary from government / regime / ruling party (e.g. in terms of financing, direct personal ties etc.)
- incidence of harassment of judges
- efficacy of the judiciary (e.g. in term of length of judicial procedures, structure of the judicial system, etc.)
- type of recruitment / nomination procedures for judges and court personnel
- efficacy / independence / autonomy of supervising body
- incidence of corruption within the judiciary system
- degree of citizens' access to the courts
- relevance of extra-judicial procedures
- existence / relevance of courts with 'special' competencies

9. The regime is engaged in developing efficient, transparent, and accountable institutions of the public administration.

accountability element, protection against ill-treatment by the authorities, rule of law

a) Legal basis:

- constitution, public law (e.g. anti-corruption law)

b) procedural:

- composition / structure of public administration
- access to public administration positions
- training of officials
- statutes and internal procedures
- existence/structure/composition of monitoring body (e.g. ombudsman)

c) de facto

- incidence of corruption, inefficiency, etc.
- degree of transparency of public administration
- degree of accountability of the state bureaucracy to citizen / parliament / supervising bodies
- efficacy / independence / influence / authority of supervising or monitoring body
- type of access / recruitment to civil service positions

2.2. Democratic transition (phase II)

1. Social and political movements opposing the existing regime enter into public negotiations with the regime

political contestation and participation

a) legal basis:

- presupposes that opposition is protected by relevant laws

b) procedural:

- A procedural (and non-violent) framework for these negotiations is in place

c) de facto

- no harassment/imprisonment of opposition
- regime considers alternatives, negotiates

2. Open conflicts within the administrative apparatus of the state over public policies and these are acknowledged by the government

political contestation and participation

a) legal basis:

- presupposes that 'dissidents' are effectively protected by the law

b) procedural:

- A non-violent framework for these negotiations/conflicts is in place

c) de facto

- no harassment/imprisonment of 'dissidents'
- regime considers and debates alternatives, negotiates
- regime takes responsibility for its policies

3. Formal legal changes are introduced, intended to limit arbitrary use of power by the regime

separation of powers: limiting powers of the executive, strengthening powers and independence of the legislative and judiciary

a) legal basis:

- Constitution and laws: introduction of checks and balances / separation of powers comprising the executive, legislative, and judiciary
- criminal law (e.g. anti-corruption legislation)
- electoral law
- public finances / budgetary law

b) procedural:

- statutes of parliament, government and public administration, the judiciary
- existence / composition of supervising bodies
- introduction of judicial review of legislative and executive actions
- statutes regulating public finances
- training of public administration, judges, police officers, etc.
- statues of public administration, the police, security services etc.

c) de facto

- impact / implementation of these formal legal changes, such as:
  - degree of involvement / consultation / approval of parliament in decision-making procedures
  - possibility / incidence of judicial oversight and/or review
  - efficacy / independence of parliament
  - efficacy / independence of the judiciary

- efficacy / independence of other supervising bodies
- transparency of public finances
- involvement / consultation of non-state actors (e.g. civil society) in decision-making procedures

4. constitutional or legal changes are introduced that eliminate the role of non-accountable powers of veto groups

accountability

a) legal basis:

- constitution, criminal law, civil law regarding e.g. the military, the police force, secret services, special advisors, state bureaucracy, royal family, etc.

b) procedural:

- statutes of the military, police, etc.
- setting up independent bodies of oversight (military, intelligence services, etc.)

c) de facto

- efficacy / *de facto* impact / implementation of introduced constitutional and legal changes
  - degree of de facto interference of veto powers into the political and decision-making process
  - degree of transparency of decision-making processes
  - efficacy / independence of supervising bodies
  - transparency of public finances

5. a constitution has been drafted and ratified that guarantees equal political rights and civil freedoms to all citizens

consensus on protection of human rights and fundamental civil and political liberties

- criteria with exclusive focus on the legal basis, which, however, shall be complemented by consideration of the *de facto* dimension, such as
  - transposition of constitution into national law
  - implementation of laws
  - possibility / degree / efficacy of judicial review on the basis of the constitution
  - *de facto* incidence of violations of political and civil rights

6. free and fair elections have been held

mass participation and contestation, accountability of elected officials

- criteria with exclusive focus on the *de facto* dimension, but presuming existence of fair electoral law, political party law, freedom of expression and association, existence of respective monitoring bodies, etc.

7. results of these elections have been widely accepted

acceptance of democratic 'rules of the games', accountability of political power

- low degree / absence of political violence etc.
- losers of the elections accept to renounce/step down

3. Summary

Although quite detailed, the matrix proposed here has the advantage of systematizing any democratisation strategy not only in a cross-country comparison, but also regarding the single states themselves. Moreover, as relevant indicators have already been developed for most elements and aspects of the proposed scheme, the latter can be used as a 'check-list' for implementing a proactive strategy in the realm of democratisation and human rights, while defining concrete benchmarks with a long-term perspective. Relying on this scheme does, however, necessitate a high degree of commitment from the side of the external actor(s), along with the involvement of country experts and/or human rights activists of the partner countries.

Conclusions and Recommendations

The idea of introducing a benchmarking process in the framework of the ENP is interesting, and it certainly has an important potential as far as democracy and human rights promotion are concerned. However, going beyond fashionable rhetoric, seriously aiming at benchmarking democratic development entails applying a complex system, which must rely on clear indicators and *ex-ante* decisions on objectives and timetables, to a subject area that is characterised by a persistently high degree of conceptual confusion, complexity, and a lack of reliable 'blueprints' in the real world. The ENP Action Plans concluded with southern Mediterranean partner states in 2004 bear witness to a lack of conceptual clarity regarding objectives and timetables, which renders the idea of benchmarking obsolete. Given that important human rights and democratisation indicators have already been developed and are applied by different international and national organisations, it is imperative to rethink the idea of benchmarking in the realm of human rights and democratisation *by defining with clarity objectives, strategies, and incentives and conceptualising democratisation processes.*

1. Promoting democracy: A need for defining scope and objectives

If Brussels is indeed serious in wanting to support human rights and democratisation through a benchmarking approach, it is important to first define *what it is that it wants to promote.* ENP documents refer to democracy, reform, rule of law, and liberalisation interchangeably, but these terms are not synonymous. Indeed, by considering the 'priorities' for reform as agreed in the Action Plans, the reader is left wondering whether Brussels indeed aims at supporting the spread of democracy, or merely some sort of political liberalisation – which may proceed over extensive periods of time without ever leading to a truly democratic governance. It may be suspected that the objective of 'political liberalisation' is preferred over real 'democratisation' processes for the sake of stability. However, while democratisation processes may well need to proceed in an incremental manner in order to be successful, the experience with autocratic regimes in the southern Mediterranean over the last decades also demonstrates that sacrificing democracy to the goals of 'stability' and 'security concerns' is not only condescending, but also counter-productive in the long term, to say the least. Hence, it is indeed about time to seriously focus on the promotion of democracy as medium-term objective, a concept that has a number of key ingredients and aspects (such as the separation of powers, mass participation, and the accountability of elected officials) that must be addressed.

2. A focus on process and intelligent benchmarking

Both benchmarking and democratisation are *processes.* Hence, in order to develop an appropriate benchmarking process in the realm of democracy and human rights,

thinking of democratisation as a process that goes through different phases is analytically extremely useful. As each phase is characterised by different elements and 'thresholds', a focus on process not only permits to compare the status of democratisation and human rights in a cross-country perspective. It also enables to address the weak points of a specific country in a systematic manner. While the respective matrix proposed in this report may be used as a 'background check-list', it also permits to translate the different key ingredients of the different democratisation phases into specific aspects along a legal, procedural, and *de facto* dimension, for which indicators already exist. Put differently, there is no need to reinvent indicators of democratisation and human rights. While it may be useful to adopt some indicators specifically to the Euro-Mediterranean context, a conceptual clarity on process and phases facilitates the choice of specific indicators, while rendering a consistent application of benchmarking more logical and manageable. Given the realities in the southern Mediterranean, it is important to be particularly attentive to the *de facto* dimension of democratisation and human rights. Indeed, some southern partner states may *formally* meet a number of democratisation criteria, while the translation of these criteria into practice, however, remains deficient.

3. Periodic monitoring

Although the Actions Plans are supposed to set out the priorities of bilateral relations over the next three to five years, neither they nor any of the Commission's relevant documents stipulate a clear-cut time frame for the monitoring of progress or potential setbacks. As a regular evaluation and assessment of the agreed benchmarks is inherent in any (intelligent) benchmarking process, and thus key to the success of the entire undertaking, it is essential to update the ENP and the Action Plans in that regard and incorporate clearly defined time horizons according to which all developments under scrutiny are being assessed. Apart from the fact that benchmarking by definition cannot function without these time frames, they have the additional advantage of providing the country in question with a greater degree of planning security and both parties, i.e. the EU and each signatory of an Action Plan, with an early warning system that allows them to detect and thus reverse unexpected and unplanned developments and measure whether progress is taking place according to the defined benchmarks.

4. Making EU policies coherent

In the light of recurring criticism of scholars and the countries in question alike that the EU's policies vis-à-vis the Southern Mediterranean lack coherence, and also given the insights of this study that the Action Plans in their current form can hardly be said to be coherent with the Commission's country reports, it is recommended to adjust the ENP and the Action Plans, the EMP and the dormant and somewhat unfinished Strategic Partnership with the Mediterranean and the Middle East to

each other. Such an overhaul is intended to simply avoid further confusion with, and duplication of, policy frameworks and gives Southern Mediterranean partners one coherent policy reference at hand and guarantees that the process of benchmarking is embedded in, and thus always refers to, one overarching policy. Furthermore, given the EU's long history of rather unsuccessful efforts to develop a sustainable and flawless Mediterranean policy that keeps all partners committed over time, such a step may contribute to prevent the ENP from suffering from the pattern of *process fatigue* that Southern Mediterranean governments have regularly displayed since the early days of the Global Approach in the early seventies.

5. No compromise on human rights

All concepts used interchangeably in the 'democratisation jargon' – such as the rule of law, good governance, liberalisation, and democracy itself – put the respect for human rights at the centre. The respect for human rights is also considered as the basic element of the first phase of any democratisation process. Thus, any proactive EU strategy for the promotion of democratisation should make no compromise on human rights. Besides being of fundamental importance *per se,* extensive information on the human rights records of different countries (based on specific indicators) is available and accessible; this holds true for the legal, procedural, and *de facto* dimensions of human rights protection (or violations). Certainly, in the post-9/11 climate, the increasing limitation of civil liberties for the sake of combating terrorism has become a global phenomenon, also affecting EU-Mediterranean relations. This development may well be co-responsible for the discernible inconsistencies within the EU's democratisation strategy. However, this report stresses the necessity of *engaging the partner governments in effectively protecting core human rights*, which are universally valid and recognised, in defiance of any 'culturalist argument'. While human rights should be defined, and treated, as the *sine qua non condition* of EU-Mediterranean relations, the protection of human rights must be considered as a first step towards a real process of democratisation, which must be treated with a similar importance.

6. Incentives and 'conditionality'

The introduction of 'soft' or 'positive' conditionality with the ENP framework offers an opportunity to increase the EU's 'leverage' in the realm of democratisation and human rights. However, particularly compared to the EU's enlargement policy, after which many of the ENP's mechanisms are modelled, the incentives of the ENP are relatively limited. Combined with an observed reform reluctance of most southern Mediterranean governments, weak incentives are formidable obstacles to the idea of benchmarking democratisation and human rights in the Euro-Mediterranean context. Hence, there certainly is a need to strengthen the EU's incentives (for example, liberalisation of agricultural trade, opening various

EU-funded programmes, facilitation of visa regimes up to the free movement of people, increased financial assistance, etc.). At the same time, the EU has become perceptible to the accusations of 'imperialism' and 'interference' from the partner states whenever it seeks to set some sort of 'conditions'. However, while such accusations are predominantly voiced by *governments* (and, much less so, by human rights activists in the partner countries), it is worth reminding that the Euro-Mediterranean Association Agreements remain the *legal basis* of EU-Mediterranean relations. These agreements contain a 'negative' conditionality clause, implying the suspension of the agreement in the event of serious human rights violations (Schumacher, 2005: 266). 'Co-ownership' and 'positive conditionality' are certainly nice and well. However, the authors of this report reiterate the recommendation – put already forward by several authors beforehand (Aliboni, 2005; Tocci, 2005) – to make use of the *legal provisions of bilateral relations* in the event of serious human rights abuses. Applying the 'negative conditionality' clause in those cases, or threatening to apply it, will not reduce the EU's credibility in these matters, on the contrary.

7. Involving civil society

The definition of 'priorities for action' in the framework of the Action Plans has been negotiated with governments, which were quite successful in defending their prerogatives. This fact partly explains the pronounced inconsistency in the Action Plans, along with the extreme selective way of addressing some human rights and democratisation issues, but not others. As much as the principle of 'co-ownership' is laudable, leaving governments to co-define the priorities in the realm of democratisation and human rights is not a recipe for success, to put it mildly. On the other hand, civil society, and in particular human rights organisations in the partner countries, are undoubtedly far more credible when it comes to defining the priorities in the realm of human rights and democratisation. These organisations do not only have more expertise on the situation of the respective state than the officials in Brussels (or in the EC Delegations, for that matter), but they are also able to define clear priorities in support of democratisation and the respect for human rights. While the civil society organisations in the partner states are called upon developing such a clear list of priorities to present in Brussels, it is imperative, on the other hand, that Brussels develops a far stronger, and preferably institutionalised, type of relations with civil society in the partner countries. NGOs working in the realm of human rights and democracy are also the most reliable partners to involve in any 'benchmarking' process over time.

Bibliography

Adler, Emanuel, Beverly Crawford, Federica Bicchi, and Raffaella A. Del Sarto (eds.) (2006): *The Convergence of Civilizations: Constructing a Mediterranean Region*, Toronto: University of Toronto Press.

Aliboni, Roberto (2005): 'EMP Approaches to Human Rights and Democracy', in H. Amirah Fernández and R. Youngs, eds., *The Euro-Mediterranean Partnership: Assessing the First Decade,* Madrid: Real Instituto Elcano de Estudios Internacionales y Estratégicos and Fundación para las Relaciones Internacionales y el Dialogo Exterior**,** pp. 47-58.

Amirah Fernández, Haizam and Richard Youngs (eds.) (2005) *The Euro-Mediterranean Partnership: Assessing the First Decade,* Madrid: Real Instituto Elcano de Estudios Internacionales y Estratégicos and Fundación para las Relaciones Internacionales y el Dialogo Exterior; also available at http://realinstitutoelcano.org/publicaciones/libros/Barcelona10_eng.pdf

Baracani, Elena (2005): 'From the EMP to the ENP; A New Pressure for Democratization?, *Journal of Contemporary European Research* (electronic journal), 1(2) : 54-66.

Bicchi, Federica (2004). 'L'Unione Europea e la promozione della democrazia', in F. Bicchi, L. Guazzone, and D. Pioppi, eds., *La Questione della Democrazia nel Mondo Arabo: Stati, società e conflitti*, Monza: Polimetrica, pp. 143-170.

Bicchi, Federica, Laura Guazzone, and Daniela Pioppi (eds.) (2004): *La Questione della Democrazia nel Mondo Arabo: Stati, società e conflitti,* Monza: Polimetrica.

Bogan, Christopher E. and Michael J. English (1994): *Benchmarking for Best Practices. Winning through Innovative Adaptation*, Columbus: McGraw-Hill.

Borg, Joe (2004): 'European Policy Summit on EU Enlargement', Brussels, 13 May 2004, SPEECH/04/247.

Collier, Ruth Berins (1999): *Paths toward Democracy: Working Class and Elites in Western Europe and South America.* New York: Cambridge University Press.

Commission of the European Communities (1996): 'Benchmarking the Competitiveness of European Industry', Communication of the Commission, COM (1996) 463.

Commission of the European Communities (2000): 'Reforming the Commission - White Paper Part I', 1 March 2000, COM(2000) 0200 final.

Commission of the European Communities (2001a): 'Euro-Med Partnership: Regional Strategy Paper 2002-2006 and Regional Indicative Programme 2002-2004', at http://ec.europa.eu/comm/external_relations/euromed/rsp/rsp02_06.pdf

Commission of the European Communities (2001b): 'Euro-Mediterranean Partnership: MEDA Regional Indicative Programme 2005-2006', at http://ec.europa.eu/comm/external_relations/euromed/rsp/meda_nip05_06_en.pdf, last accessed 18 October 2006.

Commission of the European Communities (2002a): 'eEurope Benchmarking Report – 2002', Communication from the Commission, COM (2002) 62.

Commission of the European Communities (2002b): 'eEurope 2005: Benchmarking Indicators', Communication from the Commission COM (2002) 655.

Commission of the European Communities (2003): *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Communication from the Commission to the Council and the European Parliament, Brussels, 11 March, COM(2003) 104 final.

Commission of the European Communities (2004a): *European Neighbourhood Policy: Strategy Paper*, Communication from the Commission, Brussels, 12 May, COM (2004) 373 final.

Commission of the European Communities (2004b): *European Neighbourhood Policy: Country Report Morocco*, Commission Staff Working Paper, Brussels, 12.5.2004, SEC (2004) 569.

Commission of the European Communities (2004c): *EU/Morocco Action Plan,* at http://ec.europa.eu/world/enp/pdf/action_plans/morocco_enp_ap_final_en.pdf, last accessed 2 October 2006.

Commission of the European Communities (2004d): European *Neighbourhood Policy: Country Report Tunisia*, Commission Staff Working Paper, Brussels, 12.5.2004, SEC (2004) 570.

Commission of the European Communities (2004e): *EU/Tunisia Action Plan,* at http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf, last accessed 2 October 2006.

Commission of the European Communities (2004f): *European Neighbourhood Policy: Country Report Palestinian Authority of the West Bank and Gaza Strip*, Commission Staff Working Paper, Brussels, 12.5.2004, SEC (2004) 565.

Commission of the European Communities (2004g): *EU/Palestinian Authority Action Plan,* at http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf, last accessed 3 October 2006.

Commission of the European Communities (2004h): *European Neighbourhood Policy: Country Report Jordan,* Commission Staff Working Paper, Brussels, 12.5.2004, SEC (2004) 564.

Commission of the European Communities (2004i): *EU/Jordan Action Plan,* at http://ec.europa.eu/world/enp/pdf/action_plans/jordan_enp_ap_final_en.pdf, last accessed 5 October 2006.

Commission of the European Communities (2004j): *European Neighbourhood Policy: Country Report Israel,* Commission Staff Working Paper, Brussels, 12.5.2004, SEC (2004) 568.

Commission of the European Communities (2004k): *EU/Israel Action Plan,* at http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf, last accessed 10 October 2006.

Commission of the European Communities (2004l): *Communication from the Commission tot eh Council on the Commission Proposals for Action Plans under the European Neighbourhood Policy (ENP),* Brussels, 9 December 2004, COM (2004) 795 final.

Commission of the European Communities (2005a): *Implementing and Promoting the European Neighbourhood Policy*, Communication to the Commission from Commissioner Ferrero-Waldner, Brussels, 22 November 2005, SEC (2005) 1521.

Commission of the European Communities (2005b): 'Negotiating Framework, 3 October 2005' (with Turkey), at http://ec.europa.eu/comm/enlargement/turkey/docs.htm, last accessed 18 October 2006.

Committee of the Regions (2003): 'Opinion of the Committee of the Regions of 9 October 2003 on the Communication from the Commission to the Council and the European Parliament Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, (COM (2003) 104 final) and on the Communication from the Commission: Paving the Way for a New Neighbourhood Instrument (COM (2003) 393 final)', Brussels, 9 October 2003, Relex 013, Brussels, 6 November 2003, CdR 175/2003 fin, at http://coropinions.cor.europa.eu/coropiniondocument.aspx?language=EN&docnr=175&year=2003, last accessed 13 October 2003.

Council of the European Union (2005): 'Presidency Conclusions – Brussels, 22 and 23 March 2005', Council Report to the European Council, 7619/1/05 REV 1 21, ANNEX II: Improving the Implementation of the Stability and Growth Pact.

Dahl, Robert A. (1970): *Polyarchy: Participation and Opposition,* New Haven, Connecticut: Yale University Press.

Dahrendorf, Ralf (2003): 'The Challenge of Democracy', *Journal of Democracy*, 14 (4): 101-114.

Del Sarto, Raffaella A. (2005): 'Setting the (Cultural) Agenda: Concepts, Communities, and Representation in Euro-Mediterranean Relations', *Mediterranean Politics,* 10 (3): 313-330, special issue on 'Conceptualising Cultural and Social Dialogue in the Euro-Mediterranean Area', edited by M. Pace and T. Schumacher.

Del Sarto, Raffaella A. (2006): *Contested State Identities and Regional Security in the Euro-Mediterranean Area*, New York and Basingstoke: Palgrave Macmillan.

Del Sarto, Raffaella A. (forthcoming, 2007): 'Wording and Meaning(s): EU-Israeli Political Cooperation according to the ENP Action Plan', *Mediterranean Politics,* 11(1), 2007.

Del Sarto, Raffaella A. and Tobias Schumacher (2005): 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?', *European Foreign Affairs Review* 10(1): 17-38.

Diamond, Larry (1999). *Developing Democracy*: *Toward Consolidation.* Baltimore: Johns Hopkins University Press.

Diamond, Larry, and Leonardo Morlino (2004): 'The Quality of Democracy: An Overview', *Journal of Democracy,* 15 (4): 20-31.

Euro-Mediterranean Human Rights Network (2006): *European Neighbourhood Policy: Human Rights in EU-Egypt Relations - Recommendations of Egyptian Non Governmental Organizations for the EU-Egypt Action Plan*, March 2006, at http://www.euromedrights.net/english/emhrn-documents/countryreports/EMHRN%20Egypt%20and%20ENP%20en%20FINAL.pdf, last accessed 5 October 2006.

European Communities (2000): 'Council Regulation (EC) No 2698/2000 of 27 November 2000, amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, *Official Journal of the European Communities*, L 311, 12.12.2000, p.1.

Gillespie, Richard (2006): 'A Political Agenda for Region-Building? The EMP and Democracy Promotion in North Africa', in E. Adler, F. Bicchi, B. Crawford, and R. Del Sarto, eds., *The Convergence of Civilizations: Constructing a Mediterranean Region, Toronto:* University of Toronto Press, pp. 83-108.

Gillespie, Richard, and Richard Youngs (eds.) (2002): *The European Union and Democracy Promotion: the Case of North Africa,* London: Frank Cass.

Haddadi, Said (2004): 'The EMP and Morocco: Diverging Political Agendas?, in Annette Jünemann (ed.), *Euro-Mediterranean Relations After September 11 – International, Regional and Domestic Dynamics*, London: Frank Cass.

Haddadi, Said (2006): 'Securitisation and Democratisation in the Maghreb: Ambiguous Discourses and Fine-tuning Practices for a Security Partnership', in E. Adler, F. Bicchi, B. Crawford, and R. Del Sarto, eds., *The Convergence of Civilizations: Constructing a Mediterranean Region*. Toronto: University of Toronto Press, pp. 168-190.

Hanelt, Christian.-Peter, Giacomo Luciani, and Felix Neugart (eds.) (2004): *Regime Change in Iraq: The Transatlantic and Regional Dimensions*, Florence: RSCAS Press.

Howard, Rhoda E. and Jack Donnelly (eds.) (1987a): 'Human Rights in World Politics', in R. Howard and J. Donnelly, eds., *International Handbook of Human Rights,* New York: Greenwood Press, pp. 1-27.

Howard, Rhoda E. and Jack Donnelly (eds.) (1987b): *International Handbook of Human Rights,* New York: Greenwood Press.

Huldt, Bo and Elisabeth Davidsson (eds.) (2002), *Strategic Yearbook 2003: Mediterranean Security, Stability and Cooperation*, Stockholm: Elanders.

Huntington, Samuel P. (1991): *The Third Wave: Democratization in the late Twentieth Century,* Norman: University of Oklahoma Press.

Jünemann, Annette (ed.) (2004): *Euro-Mediterranean Relations After September 11 – International, Regional and Domestic Dynamics*, London: Frank Cass.

Kienle, Eberhard (2001): *A Grand Delusion: Democracy and Economic Reform in Egypt*. London: I.B. Tauris.

Kienle, Eberhard (2005): 'Political Reform through Economic Reform? The Southern Mediterranean States Ten Years after Barcelona', in H. Amirah Fernández and R. Youngs, eds., *The Euro-Mediterranean Partnership: Assessing the First Decade,* Madrid: Real Instituto Elcano de Estudios Internacionales y Estratégicos and Fundación para las Relaciones Internacionales y el Dialogo Exteriorpp, pp. 23-34.

Kitschelt, Herbert, Zdenka Mansfeldova, Radoslaw Markowski, and Gabor Toka (1999): *Post-Communist Party Systems: Competition, Representation, and Inter-Party Cooperation.* New York: Cambridge University Press.

Landman, Todd, and Julia Häusermann (2003): *Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance,* Essex: University of Essex, Human Rights Centre, July 2003, available at <http://www.oecd.org/dataoecd/0/28/20755719.pdf >, accessed 30 April 2006.

Lannon, Erwan (2004): 'Egypt and the European Neighbourhood Policy (ENP): The Democracy, Rule of Law, Human Rights and Fundamental Freedoms Dimensions', in Euro-Mediterranean Human Rights Network: *European Neighbourhood Policy: Human Rights in EU-Egypt Relations - Recommendations of Egyptian Non Governmental Organizations for the EU-Egypt Action Plan*, March 2006, pp. 29-40, at http://www.euromedrights.net/english/emhrn-documents/countryreports/EMHRN%20Egypt%20and%20ENP%20en%20FINAL.pdf, last accessed 5 October 2006.

Linz, Juan J., and Alfred Stepan (1996): *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe,* Baltimore: Johns Hopkins University Press.

Mahjoub, Azzam (2007) : *Système de mesure pour l'évaluation des progrès en matière de droits humains et de développement démocratique dans le cadre du Partenariat Euro-méditerranéen*, Lisbon, EuroMeSCo Report.

Merkel, Wolfgang (1999): *Systemtransformation. Eine Einführung in die Theorie und Empirie der Transformationsforschung*, Opladen: Leske + Budrich.

Morlino, Leonardo (1998): *Democracy between Consolidation and Crisis: Parties, Groups, and Citizens in Southern Europe,* New York: Oxford University Press.

Morlino, Leonardo (2003): *Democrazie e democratizzazioni,* Bologna: Il Mulino.Morlino, Leonardo (2004): 'What is a "Good" Democracy?', *Democratization* 11(5): 10-32.

Morlino, Leonardo and Amichai Magen (unpublished manuscript): 'Assessing the EU's Promotion of the Rule of Law', paper prepared in the context of the Euclides Project, 2006.

Munck, Gerardo L. (2001): 'The Regime Question: Theory Building in Democracy Studies', *World Politics* 54, October 2001: 119-144.

Neugart, Felix and Tobias Schumacher (2004): 'Thinking about the EU's Future Neighbourhood Policy in the Middle East: From the Barcelona Process to the Euro-Middle East Partnership', in C.-P. Hanelt, G. Luciani, F. Neugart, eds., *Regime Change in Iraq: The Transatlantic and Regional Dimensions*, Florence: RSCAS Press, pp. 159-192.

O'Donnell, Guillermo (2004): 'Why the Rule of Law Matters', *Journal of Democracy,* 15 (4): 32-46.

O'Donnell, Guillermo, and Philippe C. Schmitter (1986): *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies,* Baltimore: Johns Hopkins University Press, 1986.

OSCE (Organization for Security and Cooperation in Europe) (2005): 'Berlin Declaration', April 2004, at <http://www.osce.org/documents/cio/2004/04/2828_en.pdf>, accessed 2 September 2005.

PASSIA (Palestinian Academic Society for the Study of International Affairs) and DCAF (Geneva Centre for Democratic Control of Armed Forces) (eds.) (2006): *Palestinian Security Sector Reform: Challenges and Prospects,* Workshop on Security Sector Reform: Summary Report, at <http://www.dcaf.ch/_docs/bm_palestinian_ssg.pdf>, accessed 2 October 2006.

Porter, Michael E. (2004): *Competitive Advantage: Creating and Sustaining Superior Performance,* Detroit: Free Press.

Radaelli, Claudio M. (2003): 'The Open Method of Coordination: A New Governance Architecture for the European Union?', Rapport n° 1, March 2003, Stockholm: Swedish Institute for European Policy Studies.

Richardson, Keith (2000): 'Big Business and the European Agenda', SEI working Paper n° 35, Sussex: Sussex European Institute, at http://www.sussex.ac.uk/sei/documents/wp35.pdf, last accessed 18 October 2006.

Sandschneider, Eberhard (1995): *Stabilität und Transformation politischer Systeme. Politikwissenschaftliche Aspekte einer Theorie der Systemtransformation*, Opladen: Leske und Budrich.

Sandschneider, Eberhard (1997): ‚Demokratieförderung von außen', *Internationale Politik* 5: 11-18.

Sartori, Giovanni (1973): *Democratic Theory*, 2nd edition, Westport, Connecticut: Greenwood Press.

Sartori, Giovanni (1993): *Democrazia: cosa è,* Milano: Rizzoli.

Schneider, Carsten Q. and Phillipe C. Schmitter (2004): 'Liberalization, Transition and Consolidation: Measuring the Components of Democratization', *Democratization* 11(5): 59-90.

Schumacher, Tobias (2002): 'From Barcelona to Valencia: The Limits of the EU's Political and Security Partnership with the Southern Mediterranean Countries', in B. Huldt and E. Davidsson, eds., *Strategic Yearbook 2003: Mediterranean Security, Stability and Cooperation*, Stockholm: Elanders, pp. 215-237.

Schumacher, Tobias (2004): 'Riding on the Wind of Change: The Future of the Euro-Mediterranean Partnership', *International Spectator,* 2004 (2): 89-102.

Schumacher, Tobias (2005): '*Die Europäische Union als internationaler Akteur im südlichen Mittelmeerraum „Actor Capability" und EU-Mittelmeerpolitik'*, Baden-Baden: NOMOS.

Schumacher, Tobias (2006): 'Entwicklungen im grossen Maghreb und Sudan', in W. Wagner, H. Hubel, K. Kaiser, H. Maull, E. Sandschneider, K.-W. Schatz, eds., *Jahrbuch Internationale Politik 2000/2004*, Munich: Oldenbourg Publishers, pp. 251-263.

Schumacher, Tobias and Michelle Pace (eds.) (2005): 'Conceptualising Cultural and Social Dialogue in the Euro-Mediterranean Area', special issue of *Mediterranean Politics,* 10(3), November 2005.

Stetter, Stephan (2005): ‚The Politics of De-Paradoxification in Euro-Mediterranean Relations: Semantics and Structures of "Cultural Dialogue"', *Mediterranean Politics,* 10 (3): 331-348, special issue on 'Conceptualising Cultural and Social Dialogue in the Euro-Mediterranean Area', edited by M. Pace and T. Schumacher.

Tocci, Nathalie (2005): 'Does the ENP Respond to the EU's Post-Enlargement Challenges?', International Spectator, 2005 (1): 21-32.

UNDP (United Nations Development Programme) (1997): *Governance for Sustainable Human Development: A UNDP Policy Document,* United Nations Development Programme, January 1997, available at <http://magnet.undp.org/policy/>, accessed 20 June 2006.

UNDP (1998): 'Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document', New York and Washington: UNDP.

UNDP (2005): *Arab Human Development Report 2004: Towards Freedom in the Arab World,* Amman: National Press.

United Nations, General Assembly (1993): *Vienna Declaration and Programme of Action,* adopted at the World Conference on Human Rights, Vienna, 14-25 June 1993, A/CONF.157/23, 12 July 1993; also available at <http://www.ohchr.org/english/law/vienna.htm>, accessed 15 June 2006.

United Nations, General Assembly (2000): *United Nations Millennium Declaration,* 18 September 2000, A/RES/55/2.

Verheugen, Günter (2004): 'Towards a Wider Europe: the New Agenda', The European Neighbourhood Policy Prime Ministerial Conference of the Vilnius and Visegrad Democracies, Bratislava, 19 March 2004, speech/04/141.

Wagner, Wolfgang, Helmut Hubel, Karl Kaiser, Hanns Maull, Eberhard Sandschneider, Klaus-Werner Schatz (eds.) (2006): *Jahrbuch Internationale Politik 200/2004*, Munich: Oldenbourg Publishers.

World Bank (1992): *Development and Good Governance,* Washington, D.C.: World Bank.

Youngs, Richard (2001): *The EU and the Promotion of Democracy,* Oxford: Oxford University Press.

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