

*Päivi Leino \**

*Roman Petrov\*\**

## **Between ‘Common Values’ and Competing Universals – The Promotion of the EU’s Common Values through the European Neighbourhood Policy**

***Abstract:** The aim of this article is to discuss the position of common values in the domain of EU external relations. The article looks at the role of common values in defining the EU’s identity in its external policies and uses the European Neighbourhood Policy as an example. It is argued that the notion ‘common values’ is used by the EU institutions as both a ‘universal’ and an ‘EU’ concept, which highlights their abstract nature. Such abstraction is also reflected in the way in which Russia has recently aimed at developing its own set of ‘common values’ to be adopted by the neighbour countries. It is concluded that the ENP does not promote jointly shared common values to be adopted by neighbour countries. Instead, it employs a conditionality policy to ensure that the EU’s own understanding of the meaning of its values are adopted by neighbour countries.*

### **1) Common values as a contemporary legal and political category in the EU**

Since the early 1990’s, the EU has increasingly identified itself with the values that are perceived as laying the foundation of modern civilisation and culture.<sup>1</sup> EU institutions are

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\* Doctor of Laws, Senior Research Fellow, The Centre of Excellence in Global Governance Research, The Erik Castrén Institute of International Law and Human Rights, University of Helsinki (Finland).

\*\* Max Weber Fellow, European University Institute (Italy). Jean Monnet Lecturer in EU Law, Donetsk

referring more and more frequently to "common values" in their recent legal and declarative documents. After becoming the largest customs union in the world with a combined population about 500 million, - and with the largest voting power in many multilateral institutions - the EU is now seeking to acquire the role of a global player. In this setting, common values are being used in order to enhance the EU's own credibility as a global player: the EU wishes increasingly to be profiled as a "messenger of good values".<sup>2</sup>

Currently, the EU founding treaties do not provide any legal definition of the values the EU is invoking. These values receive their most definitive form in the draft Reform Treaty to be signed in December 2007, wherein it is emphasised that common values, which are largely identical to human rights, democracy and the rule of law, constitute the foundation of the EU:

*"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*<sup>3</sup>

The draft Reform Treaty defines the Union's common values as principles of legal and political nature. On the one hand, common values emphasises the nature of the EU as a truly political union. On the other hand, the implementation of these values is bound to certain legal consequences, and both existing and new Member States should respect such values.

This external promotion mission is closely linked to the claimed universality of these

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<sup>1</sup> On this development, see Leino, 'European Universalism? The EU and Human Rights Conditionality, (2005) Yearbook of European Law 24, pp. 330-383.

<sup>2</sup> See the New Transnational Agenda, adopted jointly by the EU and the US in Madrid on 3 December 1995.

<sup>3</sup> Art 2 TEU as amended by the draft Reform Treaty (CIG 1/1/07 REV 1), available at <<http://www.consilium.europa.eu>>, last visited 05 November 2007. Art. 34 TEU as amended by the draft Reform Treaty provides that any European State "which respects the values referred to in Article 2 and is committed to promoting them may apply" for membership in the Union.

values:<sup>4</sup> Since the EU's 'common values' are in fact universal, it follows that they belong to all. Following this vision, the universality of Europe's own values has justified making both trade and development aid conditional on third countries' ability to implement them.<sup>5</sup> At the same time, however, common values are believed to be characteristic of the EU and, ultimately, lay down its borders.

This dual role allocated to common values reflects the philosophy behind European values: on the one hand, the historical heritage of Europe; on the other, universal. The problem with this vision is this: if the EU's 'common values' are universal and as such belong equally to everyone, it is indeed difficult for the EU to base its own identity on them and, at the same time, use the concept of identity as something that should draw a line between 'us' and 'the others'. If 'we' is defined by reference to clear and unambiguous 'good' values, then 'they' are relegated into a vehicle of antivalues or 'bad' values. Therefore, the clearer the value-connection of the EU's identity, the sharper is the dichotomy between the EU and that which is outside it.<sup>6</sup> Alternatively, the EU's identity can be explained in expansionist terms and thus the EU becomes the defender of values that are shared by all. In short, though the values are indeed universal, Europe received them first.<sup>7</sup>

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<sup>4</sup> See the Declaration on Human Rights, adopted by the European Council, [1991] 6 Bull. EC 17, point 1.45 and the Statement on human rights, adopted by the Foreign Ministers meeting in Political Cooperation in Brussels on 21 July 1986, [1986] 7/8 Bull. EC 100, point 2.4.4. See also the Foreign Ministers' Statement on Human Rights, 21 July 1986, Bull. EC 7/8-1986, 100, point 2.4.4. The same vision is continued in *The European Union and the External Dimension of Human Rights Policy. From Rome to Maastricht and Beyond*, Communication from the Commission to the Council and European Parliament, Brussels 22.11.1995, COM (95) 567 final. More recently, in field of EC external trade policy the Commission explicitly states that one the prerequisites for the EU in sustaining global competition is the "sharing our experience, norms and values, to influence the development of emerging global actors and so the future of the world economy". Annex to the Commission Communication "Global Europe: Competing in the World. A Contribution to the EU's Growth and Jobs Strategy" SEC(2006) 1230.

<sup>5</sup> See eg the Declaration of the European Union on the occasion of the 50th anniversary of the Universal Declaration on Human Rights, Vienna, 10 December, 1998, available at <[http://ec.europa.eu/external\\_relations/human\\_rights/doc/50th\\_decl\\_98.htm](http://ec.europa.eu/external_relations/human_rights/doc/50th_decl_98.htm)>, last visited 05 November 2007.

<sup>6</sup> So far, Turkey has formed perhaps the most acute example of the need to clarify the delimitation between 'us' and 'them', and value-based assumptions about who is European and who is not have earlier been central to the accession debate. See Sjurson and Smith, 'Justifying EU Foreign Policy: The Logics Underpinning EU Enlargement', 1 ARENA Working Paper 25 (January 2001).

<sup>7</sup> On this, see especially 'Idea for a Universal History with a Cosmopolitan Purpose' in I. Kant, *Political Writings* (Cambridge University Press, 1990) 41, in which Kant explains history to be moving towards a civil

The confidence with which the EU today speaks of its own common values is, of course, not without connection to the global political transformations of the late 1980's and early 1990's. - it is clearly less risky to speak about the 'universal' when there are few competing models.<sup>8</sup> Today, the discourse of human rights provides social and governmental practices with an unprecedented degree of political legitimacy, especially in the West. That legitimacy cannot be dissociated from the claim of universality, or objectivity, made by human rights defenders. Such values, as established by international human rights instruments, tend to be presented as neutral and free from political confrontation. Rights are not only believed to be 'universal', they are also believed to have automatic consequences that all parties agree on.<sup>9</sup> For the EU, this understanding of the meaning of values has, especially in its external relations, made the need for debate seem unnecessary.

Since the early 1990's, EU membership has become a significant instrument in promoting economic, political and legal change and good neighbourly behaviour.<sup>10</sup> After the 2004 and 2007 enlargements of the EU, much focus has been placed on the development of a European Neighbourhood Policy (ENP), which applies to the EU's 15 immediate neighbours with the exception of Russia.<sup>11</sup> The ENP is largely modelled on the earlier enlargement process applied in the context of the 2004 and 2007 enlargements. However, the political atmosphere in the EU has changed since then and further enlargement is off the table. The ENP does not offer EU membership for the neighbour countries but does not ultimately

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society that can administer justice universally. According to this view, the political constitutions and their constant progress in our continent are likely to serve as a model for all other continents.

<sup>8</sup> As Barber has found, during the 1990's, liberal democracy became such a powerful model that apparent alternatives for other legitimate forms of politics appear absent. B. Barber, *Strong Democracy. Participatory Politics for a New Age* (University of California Press: 1984/2003).

<sup>9</sup> D. Kennedy, *A Critique of Adjudication {fin de siècle}* (Harvard University Press, 1998) 305.

<sup>10</sup> Cremona, 'Accession to the European Union: Membership Conditionality and Accession Criteria', in W. Czaplinski (ed.), *Poland's Way to the European Union: Legal Aspects*, (Polish Yearbook of International Law, 2002). More recently, see Communication from the Commission to the European Council on June 2006 "Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility", (COM(2006) 278 final).

<sup>11</sup> The ENP applies to Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

exclude it as a possibility.<sup>12</sup> In practice, however, EU actions under the ENP display a clear reluctance to go any further than mere political and economic rapprochement. Thus, the ENP forms a transitional policy leading to an enhanced level of cooperation but not membership.

Like most other EU external policies, the ENP policy includes a strong value dimension:

*The European Neighbourhood Policy's vision involves a ring of countries, sharing the EU's fundamental values and objectives, drawn into an increasingly close relationship, going beyond co-operation to involve a significant measure of economic and political integration. This will bring enormous gains to all involved in terms of increased stability, security and well being.*<sup>13</sup>

In this paper, first, we will focus on the position of the EU's common values in the ENP context by, first, exploring the question relating to the role of common values in defining the EU's identity. By common values we understand principles of legal and political nature which are claimed to lay down a foundation of the contemporary Europe's identity and, therefore, legitimise the future evolution of the EU as a regional political and economic center based on universally respected values. It is argued that the same values can be both 'shared' or 'universal' and the 'EU's' only if they are in fact abstract in nature. This abstraction has various effects on the implementation of values in the context of particular EU external policies. For example, the open-ended nature of these unspecified values also makes it possible to use the same argumentation both for inclusive and for exclusive purposes, as has been the case in the debate over EU borders.

Second, this paper will look into how the claim of the EU's own but largely undefined 'common values' functions in a policy based, on the one hand, on conditionality but which, on the other, provides no clearly determined advantage for the third parties on which the

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<sup>12</sup> European Neighbourhood Policy, Communication from the Commission, Strategy Paper, (COM(2004) 373 final).

<sup>13</sup> Ibid, 5. See also COM (2003) 104 final, 4.

conditionality is imposed in the first place, as in the case of the ENP. It will be argued that the abstraction of ‘shared values’ results in a situation in which the ENP formally promotes jointly shared values but which, in practice, amount to the EU’s own reading of them. This is largely due to the lack of any appropriate legal and institutional mechanism for fostering a genuine debate on the meaning common values between the EU and ENP countries. In the end, this policy could lead to an imbalance between the parties and and, ultimately, the failure of the ENP itself.

## **2) Development of a European identity**

One of the earliest attempts within the European Economic Community (EEC) to give a definition for ‘Europe’ took place in the December 1973 Declaration on European Identity.<sup>14</sup> At that time, it was considered that Europe’s unity was based on the “cherished values of their legal, political and moral order” and the “same attitudes to life”. As a result, the Member States were

*determined to defend the principles of representative democracy, of the rule of law, of social justice – which is the ultimate goal of economic progress – and of respect for human rights. All of these are fundamental elements of the European identity.*<sup>15</sup>

Simultaneously, a simple characterisation of this identity in relation to the rest of the world was attempted (after all, the point of identity is to be something that the others are not):

*The close ties between the United States and Europe of the Nine – who share values and aspirations based on a common heritage – are mutually beneficial and must be preserved. These ties do not conflict with the determination of the*

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<sup>14</sup> Declaration on European Identity by the Heads of State or Government Meeting on 13-14 December 1973, [1973] 12 Bull.EC, 118-122.

<sup>15</sup> Ibid, para 1.

*Nine to establish themselves as a distinct and original entity.*<sup>16</sup>

The common values of Europe were seen as characteristic of Western Europe as opposed to Central and Eastern Europe. They were not the sole property of the EC, however, but shared with the Western world, especially with the United States. However, during the Cold War, it was not only the EEC that cherished the idea of “Europe”. As Balibar has shown, especially after 1945, both of the competing blocs “laid exclusive claim on the idea of Europe in its confrontation with the other”; just like the West, Soviet communism claimed to be “the representative of the European idea, the bearer of its heritage and future”.<sup>17</sup> And neither was rights rhetoric in any way alien to the Soviet block, which had its own interpretation of the meaning and purpose of rights.<sup>18</sup> In short, the discourse on values has always had a political dimension.

After the fall of the Berlin Wall, many things changed. For the EEC, this meant adopting a new understanding of the borders of ‘Europe’. In 1993, the Copenhagen European Council declared that “the associated countries in central and eastern Europe that so desire shall become members of the European Union” as soon as these countries were “able to assume the obligations of membership by satisfying the economic and political conditions required”.<sup>19</sup> The project of enlarging eastwards amounted to the fifth enlargement of the EEC/EU, but it was unique in many ways. It was the first time that the question concerning the identity of Europe clearly became an issue: whether Europe meant those countries already

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<sup>16</sup> Declaration on European Identity by the Heads of State or Government Meeting on 14 December 1973, [1973] 12 Bull.EC, 118-122.

<sup>17</sup> É. Balibar, ‘We, the People of Europe? Reflections on Transnational Citizenship’ (Princeton University Press, 2004) 89.

<sup>18</sup> J. Donnelly, ‘Universal Human Rights in Theory and Practice’ (Cornell University Press, 1989) 55-57.

<sup>19</sup> As is well-known, the Copenhagen criteria for membership in the EU were specified as follows: Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; The ability to take on the obligations of membership including adherence to the aims of the political, economic and monetary union. See Copenhagen European Council, Presidency Conclusions, [1993] 6 Bull. EC, 7.

in the EU, or perhaps Europe from the Atlantic to the Urals.<sup>20</sup> No previous enlargement had focused on so many different countries that were so dramatically removed from the EU in political and economic terms.<sup>21</sup> Nonetheless, integration with Central and Eastern Europe countries was strongly justified on the grounds that these countries were indeed ‘one of us’. Smith describes how

*the ‘European identity’ of the Eastern European states could not be disputed, especially as they implemented political and economic reforms along Western lines. The option of actually denying membership to the East European countries was never considered seriously in the Community.*<sup>22</sup>

But there was also a problem: after fifty years of Communism, the Central and Eastern European countries were in many ways different from the “old” EEC/EU Member States. Many of the qualities that were seen as characteristic of a “European” state were absent, such as independent media, a fully functioning judiciary and a sufficient level of protection of human rights in general. However, if the countries of the former Eastern Block were regarded as ‘European’ and thus fulfilled the most fundamental membership criterion, there was ultimately no valid reason to keep them outside the EU, especially when these states soon expressed their wish to be included.<sup>23</sup> As Cremona has demonstrated, the Copenhagen declaration (1993) developed a perception of the EU as the key-player in the “re-unification or re-creation of Europe” and that the “European Union could, and even should, be open to the inclusion of the whole of Europe”.<sup>24</sup> This was because the EEC/EU had

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<sup>20</sup> Vitzthum, ‘Die Identität Europas’, (2002) 1 *Europarecht* 27. On the limits of ‘Europe’, see also Fritz, ‘New Divisions in Europe? East-Eastern Divergence and the Case of Ukraine’, EUI Working Papers RSC 2000/63.

<sup>21</sup> Inglis, ‘The Europe Agreements Compared in Light of Their Pre-Accession Reorientation’, (2000) 37 *Common Market Law Review* 1173, 1176.

<sup>22</sup> K. Smith, *The Making of EU Foreign Policy – The Case of Eastern Europe* (St. Martin’s Press, 1999) 108.

<sup>23</sup> Hungary and Poland (applied in March and April 1994) were followed in 1995 by other East and Central European countries: Romania, Slovakia, Latvia and Estonia (June, October and November 1995), Lithuania and Bulgaria (December 1995), the Czech Republic and Slovenia (January and June 1996).

<sup>24</sup> Cremona, ‘Accession to the European Union: Membership Conditionality and Accession Criteria’, in W. Czaplinski (ed.), *Poland’s Way to the European Union: Legal Aspects*, (Polish Yearbook of International Law, 2002).



*never been a closed club, and cannot now refuse the historical challenge to assume its continental responsibilities and contribute to the development of a political and economic order for the whole of Europe.*<sup>25</sup>

The key question for defining Europe's identity and subsequently its borders was: what is Europe? The requirement that the Member States are 'European' was included in the EU founding treaties from the very beginning. It occupies a "fundamental place in the body of accession principles",<sup>26</sup> even if what was actually meant by 'European' was intentionally left ambiguous. In 1992 it was, in the Commission's view that it was "neither possible nor opportune" to establish the frontiers of the future EU:

*It combines geographical, historical and cultural elements which all contribute to the European identity. The shared experience of proximity, ideas, values and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation.*<sup>27</sup>

The 1990's idea was to bring together the peoples that shared the same mythical construction of Europe in terms of 'common values', a 'common heritage and culture', even including a 'common destiny'.<sup>28</sup> Thus, when the old geographical division between the East and the West became outdated, the values that the both sides of Europe were believed to share made an appearance.

*From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union.*<sup>29</sup>

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<sup>25</sup> "Europe and the challenge of enlargement", Bull. EC, Supplement 3/92, Section on "The new context", at 9-10.

<sup>26</sup> Hillion, 'Enlargement of the European Union: A Legal Analysis', in A. Arnulf, D. Wincott (eds), *Accountability and Legitimacy in the European Union* (Oxford University Press, 2002) 401-418.

<sup>27</sup> "Europe and the challenge of enlargement", [1993] Bull. EC, 3, Section on "Conditions for new members", 11.

<sup>28</sup> Williams, 'Enlargement of the Union and human rights conditionality: a policy of distinction?' (2000) 25 *European Law Review* 601, 604.

<sup>29</sup> Presidency Conclusions, Tampere European Council 15 - 16 October 1999, "Towards a Union of Freedom,

In practice, the EU's common values were allocated a role in controlling the enlargement of the EU and their unconditional acceptance served as a precondition for EU membership for all applicant states.<sup>30</sup> But in this context the vagueness of the language used to refer human rights soon made itself visible: since numerous human rights related problems existed, the strict implementation of the human rights criteria would not enable the 'unification of Europe' but would ultimately lead to exclusion. In other words, the criteria would. This was problematic, because the promise of membership had already been given. Thus, flexibility in the application of the criteria was needed. This meant that in the end, arguments about common values did not really play a decisive role in the process; instead, they were simply one of the aspects to be adjusted to the greater objective of enabling enlargement, showing how the "principle of a Union open to European states"<sup>31</sup> was fundamentally incompatible with the idea of making enlargement conditional on the strict fulfilment of certain well-defined criteria. The 2004 enlargement was celebrated in the declaration on "One Europe" by the Copenhagen European Council in December 2002, jointly signed by the old and future EU Member States:

*Today is a great moment for Europe. [...] Our common wish is to make Europe a continent of democracy, freedom, peace and progress. The Union will remain determined to avoid new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union. [...] Our aim is one Europe.*<sup>32</sup>

But does this mean that the borders of 'Europe' are now definitively drawn? The way in which values have laid down borders reminds us of the very emptiness of such values. During the cold war, and in 1993, it was values that were used to define Europe's borders: the same

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Security and Justice: The Tampere Milestones", para 1.

<sup>30</sup> In addition to the Copenhagen criteria, the value aspect was also included in the Association agreements with the CEECs, which recognise the "common values that [the Community, its Member States and the Applicant State] share", eg the preamble to the Europe Agreement with the Czech Republic (OJ L 360, 31 December 199).

<sup>31</sup> Conclusions of the Presidency at the European Council in Lisbon, 26 - 27 June 1992, Section on Enlargement, para A.

<sup>32</sup> Declaration on "One Europe", adopted in Copenhagen 13 December 2002, (SN 369/02).

values both closed and opened up Europe. Today, values are again assigned the same role in the context of the ENP. The recent Berlin Declaration celebrates how “[w]ith European unification a dream of earlier generations has become a reality”,<sup>33</sup> since the division of Europe has now been brought to an end with the unification of Europe. But today behind Europe’s new borders new dreams are being dreamed. However, the Commission reminds us that

*any decision on further EU expansion awaits a debate on the ultimate geographic limits of the Union. [...] A response to the practical issues posed by proximity and neighbourhood should be seen as separate from the question of EU accession.*<sup>34</sup>

For the time being, Europe’s door remains closed. This is a reflection of how in fact in the new political setting that is ‘unified Europe’ in fact a “great trial of truth” is on-going:

*“now or never is the moment for the dream to materialize, for Europe to rise up, renewed or revitalized. This is also the moment when the dream risks being smashed into pieces.”*<sup>35</sup>

However, as far as ‘common values’ are concerned the real issue can be explained thus: values as such are empty and therefore give little guidance in drawing the boundaries of ‘Europe’. Instead, values receive their meaning in political balancing, which keeps the definition of ‘Europe’ open to change over time.

### **3) Towards a European Neighbourhood Policy**

Prior to the emergence of the ENP the EU neighbour countries enjoyed asymmetrical

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<sup>33</sup> Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, <[http://www.eu2007.de/de/News/download\\_docs/Maerz/0324-RAA/English.pdf](http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf)>, last visited 05 November 2007.

<sup>34</sup> 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) 5.

<sup>35</sup> É. Balibar, *We, the People of Europe? Reflections on Transnational Citizenship* (Princeton University Press, 2004) 90.

relations with the EU ranging from association agreements to partnership and cooperation agreements.<sup>36</sup> The former USSR republics had been kept in the “waiting room” by encouraging them to accelerate their democratic, political and economic reforms in order to upgrade from the “entry-level” Partnership and Cooperation Agreements (PCA) to a new and enhanced level of partnership with a possibility of full membership in the distant future.<sup>37</sup> The PCAs have exhausted their potential of “entry-level” agreement for most of the PCA countries. Some of the PCA countries have joined the WTO and have since been recognized as market economy countries, but a minority of the PCA countries remains outside active partnership with the EU due to their failure to pursue the required internal political and economic reforms. Those PCA countries which fulfilled major but not all PCA conditions have asked the EU to revisit the framework of the PCAs and to initiate dialogue on a new and much more enhanced level of cooperation with a real prospect of obtaining EU membership.

In response to growing demand to reconsider the different external policies towards the neighbour countries, the European Commission initiated in 2003 the “Wider Europe-Neighbourhood” policy towards third countries which share an immediate post-enlargement border with the EU.<sup>38</sup> The ENP was launched as an “umbrella” policy with a strong degree of differentiation and covering a ‘ring of [immediate] neighbours’ including the Southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia

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<sup>36</sup> As regards candidate and potential candidate countries, the accession model based on strong conditionality and monitoring. The EU launched the Barcelona Process through which it intended to engage Mediterranean countries in close political and economic cooperation without any prospect of future membership in the EU. The Barcelona Process countries signed association agreements with the EU which enabled them to move closer to the establishment of a free trade area with the EU. The Barcelona Process covers Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, the Palestinian Authority. It took its name from the Barcelona Declaration adopted at the Euro-Mediterranean Conference on 27-28 November 1995.

<sup>37</sup> EC-Russia PCA (OJ 1997 L 327); EC-Ukraine PCA (OJ 1998, L 49); EC-Moldova PCA (OJ 1998, L 181); EC-Armenia PCA (OJ 1999, L 239); EC-Azerbaijan PCA (OJ 1999, L. 246); EC- Georgia PCA (OJ 1999, L 205); EC-Republic of Kazakhstan PCA (OJ 1999, L 196); EC-Kyrgyz Republic PCA (OJ 1999, L 196); EC-Uzbekistan PCA (OJ 1999, L 229); EC- Belarus PCA (COM (95)137 final), signed in 1995, but in 1996 EU-Belarus relations were stalled following political setbacks; EC-Turkmenistan PCA (COM (97) 693 final).

<sup>38</sup> 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 the Palestinian Authority) and “Western” PCA countries (Ukraine, Belarus and Moldova). Nevertheless, from the very beginning the ENP has proven itself to be a dynamic EU external policy without clear geographical limits. Due to the extremely important energy and security value of the Caucasus region, the ENP has been expanded to Georgia, Armenia and Azerbaijan,<sup>39</sup> while two major immediate EU neighbours, the Russian Federation and Belarus, are currently excluded from the scope of the ENP.<sup>40</sup>

The underlining ENP objective is to open up certain sectors of the EC internal market for the ENP countries and to enhance political dialogue between the parties in return for substantive political, economic, and legal reforms and the implementation of shared or common values.<sup>41</sup> The objectives of the ENP are to be met through the implementation of a set of priorities in tailor-made jointly-agreed Action Plans within the key areas of political dialogue, economic reform, trade, and cooperation within justice and home affairs. All Action Plans emphasise the need for the neighbour countries to adhere to shared/common values as a precondition for further enhancement of bilateral relations with the EU. The Action Plans illustrate in greater detail the way ahead over the next three to five years. The next stage of the ENP offers a new privileged partnership in the form of European Neighbourhood Agreements to replace the present generation of bilateral agreements when the Action Plan priorities are met.<sup>42</sup>

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<sup>39</sup> ENP Action Plans with Armenia, Georgia and Azerbaijan were signed on November 14<sup>th</sup> 2006.

<sup>40</sup> Russian Federation has opted for a strategic partnership with the EU through the four common spaces initiative. Defined at the St. Petersburg Summit in May 2003 as four ‘common spaces’: a common economic space; a common space of freedom, security and justice; a space of co-operation in the field of external security; as well as a space of research and education, including cultural aspects. At the Moscow Summit in May 2005 the EU and Russia adopted a single package of Road Maps directed at the practical realisation of the common spaces project. Belarus, while being a formal participant of the ENP, is not yet part of the ENP due to the prolonged political isolation of the “authoritarian and antidemocratic” Lukashenko regime put in place by the EU and other European organisations.

<sup>41</sup> The terms “common” and “shared” values in the ENP documents are applied interchangeably and thus may be considered synonymous.

<sup>42</sup> On the potential objectives and scope of future enhanced agreements between the EU and neighbour countries see Hillion, ‘Mapping-Out the New Contractual Relations between the European Union and its Neighbours: Learning from the EU–Ukraine ‘Enhanced Agreement’’, (2007) 12 European Foreign Affairs Review 169-182.

Quite crucially, the ENP does not offer a substantively new institutional framework for effective bilateral cooperation between the EU and the neighbour countries. Instead, the ENP is based on already existing contractual relations between the parties (Euro-Mediterranean Association Agreements (EMAAAs) and PCAs). Institutional arrangements within the EMAAAs and PCAs are not of equal value. EMAAAs (concluded with all countries from the Barcelona Process with the current exception of Syria) envisage the functioning of the Association Council and the Association Committee, which are authorised to issue binding decisions pertaining to the functioning of the agreement. The institutional framework of the PCAs comprise the Cooperation Council and Parliamentary Committee, which can issue only non-binding recommendations. Therefore, while decisions adopted by the EMAAAs Association Councils may constitute part of the EC legal order,<sup>43</sup> recommendations issued by the PCAs Cooperation Councils do not. Furthermore, neither EMAAAs nor PCAs provide informal level of consultations between the EU and the neighbour countries experts in comparison to those envisaged with the EU's other neighbours who benefit from more developed relationships under the EEA Agreement,<sup>44</sup> the EC-Swiss sectoral agreements and decisions adopted within the framework of the EC-Turkey Customs Union.<sup>45</sup>

It is argued that despite the claim of “sharing common values” between the EU and the neighbour countries, the ENP, in fact, provide them quite limited opportunities to engage into an equal or almost equal dialogue for the purpose of developing these values through informal mutual consultations. In the context of ENP, the EU institutions justify the failure to set up a platform for mutual cooperation on the ground that the objectives are shared by the parties and effectively promoted by the ENP:

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<sup>43</sup> For example, Case 12/86 Meryem Demirel v Stadt Schwabisch Gmund, [1987] ECR 3719.

<sup>44</sup> Art 99(1) EEA Agreement provides: ‘[the Commission] *shall informally* (emphasis added) seek advice from the EFTA experts in the same way as it seeks advice from the EC Member States for the elaboration of its proposals’.

<sup>45</sup> See eg Decision 1/95 EC-Turkey Association Council (OJ 1996 L 35/1), Decision 1/96 EC-Turkey Customs Cooperation Committee (OJ 1996 L 200/14), Decision 2/97 EC-Turkey Association Council (OJ 1997 L 191/1).

*The ENP is an offer made by the EU to its partners to which they have responded with considerable interest and engagement. Joint ownership of the process, based on the awareness of shared values and common interests, is essential. The EU does not seek to impose priorities or conditions on its partners.*<sup>46</sup>

“Joint ownership” forms one of the key characteristics of the ENP: the idea is that the parties elaborate the framework of their cooperation through jointly agreed Action Plans. The idea of conditionality within the ENP is formally rejected:

*The Action Plans depend, for their success, on the clear recognition of mutual interests in addressing a set of priority issues. There can be no question of asking partners to accept a pre-determined set of priorities. These will be defined by common consent and will thus vary from country to country.*<sup>47</sup>

The ENP provides that relations between the EU and the neighbour countries will build on mutual commitment to common values [emphasis added] principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development.<sup>48</sup>

However, other elements have also been added to the list of commitments for the neighbours with a more distant relationship to the allegedly shared ‘values’:

*Commitments will also be sought to certain essential aspects of the EU’s external action, including, in particular, the fight against terrorism and the proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution.*<sup>49</sup>

The extent of shared/common values within the APs extends beyond the values referred to above, which are almost identical to the common values listed in the EU Treaty by

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<sup>46</sup> European Neighbourhood Policy Strategy Paper (COM(2004) 373 final) 8.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

making reference to democratic norms and standards developed by other international and regional institutions (UN, OSCE, Council of Europe, ILO).<sup>50</sup>

It is argued here that the ENP belongs to a new generation of EU external policies which, despite their rhetorical reference to ‘shared values’, in actual fact pursue the objective of promoting and protecting the EU’s own values. In fact, neither the EU development agreements (Cotonou), nor the Barcelona Declaration, nor the partnership and cooperation agreements acknowledge so explicitly the objective of exporting the EU’s common values. In the context of the ENP, the EU institutions acknowledge that common or shared values should be understood as the “the EU’s fundamental values and objectives”.<sup>51</sup> In other words, common values in the context of the ENP do not, in practice, mean jointly shared values between the neighbour country and the EU Member States but, rather that, the EU’s own fundamental values and objectives enshrined in the EU founding treaties and reflected in the ENP Strategy Paper, should be adopted by the neighbour country. In the context of the ENP Action Plans, it is recognised that while the values of

*democracy, pluralism, respect for human rights, civil liberties, the rule of law and core labour standards are all essential prerequisites for political stability, as well as for peaceful and sustained social and economic development*<sup>52</sup>

and that they are effectively shared between the parties, the neighbouring countries still have much to learn: nearly all of them have “a history of autocratic and non-democratic governance and poor records in protecting human rights and freedom of the individual”.<sup>53</sup>

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<sup>50</sup> For example, the EU-Ukraine AP states that “Ukraine will continue its internal reforms based on strengthening democracy, rule of law, respect for human rights, the principle of separation of powers and judicial independence, democratic election in accordance with OSCE and Council of Europe norms and standards”. Furthermore, the EU-Ukraine AP envisages: the “effective implementation of the European Court of Human Rights judgements” by Ukraine; participation in the specific UN and Council of Europe initiatives (Group of States against Corruption).

<sup>51</sup> Ibid.

<sup>52</sup> 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) 5.

<sup>53</sup> Ibid.



Thus the ENP countries are to follow the EU's example. In the words of the EU institutions, the ENP is "a priority of the EU's external relations which seeks to harness the attraction and influence of Europe, with strong emphasis on institution building and reform".<sup>54</sup> However, it is clear that the obligation of reform is not mutual but only involves one of the parties: the neighbour countries are expected to change their political, legal and economic heritage in line with the EU's common values.

Consequently, it is argued that the notion of common values in the ENP is, in fact, underpinned by strong conditionality. It is explicitly stated that "the level of ambition of the EU's relationships with its neighbours will take into account the extent to which *these values* [emphasis added] are effectively shared".<sup>55</sup> Any progress in relations between the EU and a neighbour country is conditional on "degree of commitment to common values, as well as [...the] will and capacity [of the neighbour country] to implement agreed priorities". In addition, the ENP pursues the policy of differentiation, which again, is based on the successful implementation of the EU's common values by the neighbour countries:

*The ambition and the pace of development of the EU's relationship with each partner country will depend on its degree of commitment to common values, as well as its will and capacity to implement agreed priorities.*<sup>56</sup>

In practice, the policy of differentiation is executed through the bilateral APs which highlight the programme for reforms for each neighbour country – something that for some neighbour countries has been difficult to accept.<sup>57</sup> Every Action Plan contains "specific actions which confirm or reinforce adherence to share values". Conditionality is visible through country reports and monitoring procedures directed at the way in which the ENP countries implement

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<sup>54</sup> European Neighbourhood Strategy Paper (COM(2004) 373 final).

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, 8.

<sup>57</sup> For example, for the "pro-European" PCA countries, the ENP resulted in placing their EU relations behind certain Mediterranean countries, which have signed association agreements of their own and moved closer to the establishment of a free trade area with the EU. Some "pro-European" neighbour countries have realised that their participation in the ENP requires much more political and economic involvement in order to upgrade their relations with the EU than was required of them in the "pre-ENP" period.

“EU fundamental values”. The country reports, modelled on the accession country reports, enable the Commission to scrutinize the progress made by the neighbour countries in achieving the objectives of their individual AP.<sup>58</sup> During the comparatively short history of the ENP, these reports testify to the fact that the neighbour countries have achieved considerable successes in implementing the EU’s common values.<sup>59</sup> There is little doubt that the application of the conditionality policy has played quite an important role in achieving these results. Nevertheless, the Commission has also been eager to highlight areas in which the neighbour countries are required to accelerate the pace of their reforms.<sup>60</sup>

It must be admitted that the ENP provides an excellent playing field for the promotion of the EU’s common values to third countries. Several factors favour such a proposition. First and foremost, despite the publicly proclaimed joint ownership of the ENP by the EU and the neighbour countries, the ENP remains a policy of an asymmetrical nature which imposes unequal mutual commitments on both parties. Unlike the previous enlargement process of the EU eastwards, the ENP does not envisage the possibility of full or even associate EU membership for neighbour countries in return for their fulfilling the objectives of the ENP and adopting the EU’s common values. Nevertheless, the neighbour countries are required to implement a significant portion of the *acquis communautaire* and to launch ambitious political, legal and economic reforms under a “pre-accession” type monitoring process carried out by EU institutions. In other words, the ENP offers the neighbour countries several

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<sup>58</sup> Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament ‘On Strengthening the European Neighbourhood Policy: Overall Assessment’ (COM(2006) 726 final).

<sup>59</sup> For instance, in case of Ukraine the Commission acknowledged that parliamentary elections in March 2006 and September 2007 had been conducted in free and democratic manner, and considerable progress had been made towards consolidating respect for human rights and the rule of law. The Commission praised Ukrainian, Moldovan, and Jordan achievements in the fight against corruption and judiciary reform and progress in economic and social reforms in Tunisia. The Morocco Country Report stated that Morocco has implemented important reforms in most of the main areas of the Action Plan (liberalization of the audiovisual sector, lifting reservations to some human rights international conventions, financial sector, transport, and environment).

<sup>60</sup> In the case of Moldova “the implementation of reforms needs to be given greater attention, including areas which have shown good legislative progress”. In the case of Tunisia the Commission underlined “slow progress on freedom of association and expression and on implementing the programme for modernizing the justice system”.

relatively undefined “carrots”: a stake in the EC internal market; an upgrade in political cooperation; the provision for additional financial assistance through the new Neighbourhood Financial Instrument. Furthermore, the ENP, as it is promoted by the EU, is an external policy of a temporary nature. The neighbourhood countries that successfully adopt the EU’s common values and the other AP objectives are promised the opportunity to access an enhanced (though yet undefined) level of relations: the provision of a new enhanced agreement, a free trade area, or perhaps a visa facilitation regime.

Second, most of the neighbourhood countries enjoy traditionally close historical, legal and trade links with most of the EU Member States. For example, the legal systems of the neighbour countries stem from the same legal tradition as those of continental EU Member States. Most of the neighbour countries participating in the ENP have chosen to accept and to implement general legal principles and specific model laws (ie civil law codes, company laws, contract laws) in force in those EU Member States which share Roman legal traditions (ie France, Germany, the Netherlands). However, this does not mean that the legal systems of the neighbour countries replicate the legal systems of the EU Member States but simply that national courts in the neighbour countries are more likely to apply general principles of law originating from the EU Member States than from countries with other legal traditions.

Third, common values represent an incentive for further legal, political and economic reforms: Political elites in the neighbour countries can refer to the “shared values” enshrined in the AP as objectives and benchmarks for further internal legal, political and economic reforms in the neighbour countries. In fact, many of the ENP countries have made considerable progress in democratic and market reforms as a result of influence and political pressure from European organizations. For example, since gaining independence in 1991, Ukraine, with little previous experience of the Western understanding of the right to freedom and the right to personal integrity, the prohibition of torture and inhumane treatment or right

to privacy, has achieved significant success in adopting European standards of civil and political rights.<sup>61</sup> International actors have initiated various programmes of technical assistance offering educational and information training for judges and lawyers. These programs became a priority for the main donors acting in Ukraine at that time. The coordination of their different positions and fields became an opportunity for real change.<sup>62</sup> However, these advances are more related to the efforts of the Council of Europe than the EU. Still, these examples show how external actors can effectively contribute to the development of domestic discussions by providing incentives for change within the country's own political system. While the term of conditionality included in a trade agreement may, at the most, serve as a starting point for the implementation of change, its main objective should be to launch a political discussion within a third country itself. Human rights argumentation serves its most powerful function when it serves its original purpose as a language for change: in opposition to something as a part of a largely emancipatory, or critical, enterprise so as to enable political contestation of powerful institutions or actions. However, this is a discussion which needs to be addressed primarily within third countries themselves. Indeed, as Allot has argued, "meaningful and lasting changes can only come from within".<sup>63</sup> If this is forgotten, the application of common values conditionality may also cause certain

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<sup>61</sup> The "first wave of reforms" focused on alignment in the Ukrainian Civil Code, Civil and Criminal Procedure Codes, information legislation, election laws, the legislation on associations of citizens with the highest European standards. From 1995 onwards, the year in which Ukraine obtained Council of Europe membership, the European Court on Human Rights has heavily influenced the development of the system for the protection of human rights in Ukraine and can be rightly considered one of the most active external change agents in this process. This also applies to cases in which its judgments did not concern Ukraine. In 2002, in the *Sovtransauto-holding vs. Ukraine* judgment, the European Court on Human Rights ascertained the existence of serious violations of human rights in the Ukrainian legal system (absence of guarantees on protection of the right to property, risks of intervention of the executive power in the activity of the courts). In further judgments the European Court on Human Rights has raised other important issues which led to substantial legal reforms in Ukraine. As a result of the pressure exerted by certain international actors (i.e. the Council of Europe, the EU) Ukrainian courts have become inclined to refer in their judgments to decisions of the European Court on Human Rights and general principles of international law.

<sup>62</sup> For example, the programs of the Council of Europe and the EU focused on the spreading of standards issued by the European Court for Human Rights in cases of mass media dispute resolution. These efforts to reform the Ukrainian political and judicial systems through the influence of the EU and other regional organizations culminated in the "Orange revolution" which led to considerable democratization of Ukrainian society.

<sup>63</sup> Alston, 'International Trade as an Instrument of Positive Human Rights Policy', (1982) *Human Rights Quarterly* 155, 169.

disadvantages for third countries.

#### **4) Problems linked to the use of common values as a reference for external policies**

Most of the neighbour countries are transition countries, which are undergoing the process of transformation from either colonial or Soviet style legal, political and economic traditions to Western standards of liberal democracy. The EU's common values are believed to provide an appropriate and credible model framework for domestic reforms. Market reforms form the core of the EU agenda – after all, the agreements forming the core of the ENP are in their essence trade and cooperation agreements. In this setting, the language of common values is used to justify the market reforms: it connects the EU objectives to much greater goals, thus giving these reforms “an aura of authority and legitimacy” and suggesting that they actually provide protection against abuse by those in powerful positions.<sup>64</sup> The Western reform agenda evidences the alliance between democracy and market economies; while the market is supposed to enhance freedom and autonomy, the markets are also said to present the essence of democracy. But, at the same time, individuals and countries are expected to adapt and subordinate their desires to the demands of a market economy, making their options highly restricted and coercive:

*The result is a curious movement between apparently incompatible propositions: homage to equality and democracy and neutrality regarding social, cultural and political priorities coexist alongside vehement declarations of the utter necessity of some of the most radical and potentially transformative aspects of the agenda.*<sup>65</sup>

Like with the Central and Eastern European candidate countries nearly 20 years before, the EU approach to the neighbour countries largely reflects an idealized and artificial vision of

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<sup>64</sup> K. Rittich, *Recharacterizing Restructuring. Law, Distribution and Gender in Market Reform* (Kluwer Law International, 2002) 68.

<sup>65</sup> *Ibid*, 290.

Western market economy,<sup>66</sup> in which the EU represents the most advanced instantiation of the liberal democratic model. The neighbours, on the other hand, are placed under an obligation to ‘democratise’ following an agenda set by the EU before they can be considered for true participation.<sup>67</sup> Consequently, the internationalisation of democratic rhetoric accompanies a domestic displacement of democratic policies, as “politics is treated as having somehow already happened elsewhere”<sup>68</sup> - in practice in the deliberations of the European Commission. In many ways, the ENP replicates the arrangements surrounding the previous enlargement, representing “the worst of both worlds”, causing the neighbours to lose a level of independence at a crucial time in their democratic reform and economic restructuring programmes,<sup>69</sup> while they receive even fewer tangible benefits in return than the applicant countries did before them.

However, the main problem with conditionality being attached to common values in the context of the ENP derives from their level of abstraction. To some extent, it is most certainly appropriate to talk about the idea of these values as something commonly shared. But, for ‘common values’ to be both nation-specific and common to all countries at the same time, they necessarily need to be very general and allow for local adjustments and exceptions. It thus appears that ‘common values’ rely on the great degree of abstraction at which they are articulated in national constitutions or legislations or indeed in the resolutions and reports of international organizations. While values might indeed be shared at some abstract level, they allow for many different readings even among the EU’s own Member States.<sup>70</sup>

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<sup>66</sup> In relation to the 2004 and 2007 enlargement, see Kennedy and Webb, ‘The Limits of Integration: Eastern Europe and The European Communities’, (1993) 30 *Common Market Law Review* 1095-1117, 1116.

<sup>67</sup> Kennedy, ‘Turning to Market Democracy: A Tale of Two Architectures’, (1991) 32 *Harvard International Law Journal* 373, 384.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Supra* note 66, 1115.

<sup>70</sup> The same point was demonstrated by the European Court on Human Rights in its discussion of the conception of morals that could be used as a basis for delimiting rights in the *Handyside* case: “In particular, it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place

This suggests that while most Europeans embrace the idea of certain shared/common values at some abstract level, and even agree on the enumeration of a number of civil, political, economic and social rights, they often completely disagree on what such values might mean in at policy level, i.e. in terms of how they should be implemented. This is reflected in the discussions on the meaning of values that frequently surface in and among the EU Member States. Most recently, this has been reflected in the refusal of two EU Member States to sign up to a binding EU Charter of Fundamental Rights in the context of the Reform Treaty, limiting its applicability in relation to their national authorities.<sup>71</sup> Such ambiguity and absence of a consensus among EU Member States on common values does not have a positive impact on transition reforms in third countries, which find themselves moving towards a largely undefined target whose meaning is variously interpreted from case to case. The question is thus not about these values being ‘shared’ at some abstract level – for example both the EU Member States, Russia and Ukraine are signatories to the core Council of Europe conventions. The question is about who decides about the implementation of these values and how they receive their meaning. It is when conditionality is attached to these vague values that problems emerge.

The abstraction of common values means that their specific meaning is decided in each case by whoever is empowered to implement those values and take the particular decision at that time. In the context of the ENP, the main issue is the lack, on the one hand, of an institutional framework enabling the neighbour countries to participate in decision-making about the actual meaning of common values and, on the other, of institutional and political

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to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject.” Case of *Handyside v the United Kingdom* (1976) Series A No 24 at para 48, confirmed later in the Case of *Müller and Others v Switzerland* (1988) Series A No 133 at para 35. Both judgments are all the more interesting insofar as they date back to the period before the Central and Eastern European States joined the Council of Europe and the “Contracting States” referred to in the judgment mainly consisted of the Western EU Member States, which, after all, are relatively homogenous.

<sup>71</sup> See Protocol 7 on the application of the Charter of Fundamental Rights to Poland and to the United Kingdom (CIG 2/1/07 REV 1), available at <<http://www.consilium.europa.eu>>, last visited 05 November 2007.

means for promoting the concept of genuinely shared values between the EU and the neighbour countries. The ENP does not even provide the neighbour countries with the opportunity of being consulted during decision making. Instead, it is concerned primarily with the correct application of legal terminology and case law language by national courts and law enforcing agencies in the neighbour countries. This process poses the neighbour countries under constant legal and political influence of the EU institutions and political elites. In the last instance, it is the European Commission that sets the agenda for political reforms in the neighbour countries through its Country Reports. For example, the European Commission frequently links the enhancement of bilateral relations with a neighbour country with certain political reforms and concessions and proceeds to justify its own requests by the need to follow and implement the EU's common values.<sup>72</sup> Thus, instead of values serving as a neutral, mutually shared basis, they turn to politics – the politics of the European Commission in relation to the neighbour countries.

The promotion of the EU's common values under the ENP stands the chance of being successful only if they are positively received and supported domestically by people and political elites in the neighbour countries themselves. In this respect, the EU's common values have not been uniformly received by the neighbour countries. Some countries have happily accepted the need to adopt and share the EU's common values in order to enhance bilateral relations with the EU within the ENP. For example, the former Soviet ENP participants have repeatedly declared their adherence to the EU's common values in the course of internal political, legal, and economic reforms. In particular, Ukraine has endorsed

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<sup>72</sup> In the case of Ukraine, the EU decided to sign the Action Plan only after the victory of pro-European political elites during the “Orange revolution” in Ukraine thereby displaying its support for a specific political regime. Furthermore, the EU had been refusing to grant to Ukraine the long-awaited market economy status for anti-dumping investigations on the grounds that the Ukrainian economy was incompatible with European market economy standards. However, the market economy status was granted on December 21<sup>st</sup> 2005 in time enough to emphasise achievements of the “Orange revolution” government on the eve of decisive parliament elections in Ukraine in March 2006 (Regulation 2117/2005 (OJ L 340/17)).



its adherence to “European democratic values” even at the normative level.<sup>73</sup> The governments of Georgia, Armenia, Azerbaijan, and Moldova repeatedly emphasise the importance of sharing the EU’s common values in implementing further democratic reforms in their countries.<sup>74</sup>

However, post-Soviet Russia has not unreservedly accepted the hegemony of the EU’s common values. In fact, the Western concept of human rights is considered by the Russian political and intellectual elite as a dubious concept, insofar as it is not only used to protect personal freedom, but also to impose and promote values which contradict the religious, national and traditional values of Russia. In response to the expansion of the EU’s common values, modern Russia has strived to develop an alternative set of values which should be shared by its former peers of the vanished Soviet Union. Political statements of the Russian government reiterate the need to

*keep own [emphasis added] values, not lose own achievements and support sustainability of the Russian democracy. We should find our own way [emphasis added] to the construction of a democratic, free and justice society.*<sup>75</sup>

The Russian government does not hide its intention to compete with the EU in promoting its own values abroad. The Russian President V. Putin emphasises

*undoubtedly, the civilizing mission of the Russian nation on the Eurasian continent must be continued. The objective [of the civilizing mission] is that*

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<sup>73</sup> For example, the Ukrainian Strategy of National Security explicitly claims that the system of government and the political system in Ukraine should be built on “European and democratic values”. Edict of the President of Ukraine 105/2007 12 February 2007 “About Strategy of National Security of Ukraine”.

<sup>74</sup> Interview with the Minister for European and Euroatlantic Integration of Georgia, Georgiy Baramidze, on 22 March 2007 <<http://www.svobodnaya-gruzia.com/interview/?p=11-12/01>>, last visited 05 November 2007. Speech by the Speaker of the Georgian Parliament Nino Burjanadze in Paris on 19<sup>th</sup> December 2006 <[http://www.parliament.ge/index.php?lang\\_id=ENG&sec\\_id=36&info\\_id=14307](http://www.parliament.ge/index.php?lang_id=ENG&sec_id=36&info_id=14307)>, last visited 05 November 2007. Speech by the Minister of Foreign Affairs of Armenia, Mr. Vartan Oskanian, at the Council of Europe on November 17<sup>th</sup> 2005 <[http://www.armeniaforeignministry.com/speeches/051117\\_vo\\_strasburg.html](http://www.armeniaforeignministry.com/speeches/051117_vo_strasburg.html)>, last visited 05 November 2007. Report of the Government of Moldova “Programme of economic and social reforms: achievements and challenges” in Dublin, December 2006, <[http://www.iiea.com/images/managed/events\\_attachments/Mold\\_grec\\_Roadshow\\_Dublin.ppt](http://www.iiea.com/images/managed/events_attachments/Mold_grec_Roadshow_Dublin.ppt)>, last visited 05 November 2007.

<sup>75</sup> Address of President V. Putin to the Federal Assembly on 25 April 2005, <<http://www.kremlin.ru>>, last visited 05 November 2007.

democratic values multiplied by national interests [*emphasis added*] enrich and strengthen our historical unity.<sup>76</sup>

Acknowledging that Russian foreign policy is based on principles of pragmatism, predictability and supremacy of international law, President Putin adds that “such values as strong ties of friendship, mutual help and reliance, comradeship and trust remain inviolable and immovable values on Russian soil for many centuries”. “Only *our values* [*emphasis added*] determine our aspiration to strengthening the statehood and sovereignty of Russia”.<sup>77</sup>

At a closer look, the values invoked by President Putin display both similarities and differences with the universal set of human rights invoked by the EU. Putin reiterates that Russia shares and supports international legal standards and norms.<sup>78</sup> At the same time, however, Putin argues in favour of some room for “national, historical and cultural” interpretation of these principles.<sup>79</sup>

This is problematic for the EU, which has made quite a specific point about sharing its ‘universal’ values both with Russia<sup>80</sup> and with the ENP countries. Somewhat paradoxically, the EU is now faced with the argument that Russia's common values are not the EU’s common values - or that the values perhaps are the same, but they are interpreted in quite

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<sup>76</sup> Address of President V. Putin to the Federal Assembly on 10 May 2006, <<http://www.kremlin.ru>>, last visited 05 November 2007.

<sup>77</sup> Ibid.

<sup>78</sup> Furthermore, the Russian Constitution provides some room for supremacy of international law principles in the Russian legal system by recognising that these form a component part of the Russian legal system and have primacy over national law in case of conflict. See Article 15(4) of the Constitution of the Russian Federation <<http://www.departments.bucknell.edu/russian/const/ch1.html>>, last visited 05 November 2007.

<sup>79</sup> A prominent role in determining the content of Russian common values is played by the Russian Orthodox Church, which has recently regained its influence in Russian society and initiated various activities aimed at developing the concept of common values in Russia. In April 2006, the World People’s Council adopted the Declaration of Human Rights and Dignities stating that human rights need to be accepted as a common value “insofar they help a person to achieve good, they protect a human being from internal and external evil, and help him to realise himself in society”. The Declaration further states that “there are values, which equal human rights. They are: faith, morality, sanctuaries, the Motherland. When these values and the realisation of [universal] human rights conflict [with each other], society and the state must act to establish a harmonic coexistence between them. It is undesirable that the realisation of [universal] human rights suppresses faiths and moral traditions....It is dangerous when such “rights” are innovated with purpose of legitimising behaviour which is condemned by traditional morality and all historical religions”. See <<http://www.patriarchia.ru/db/text/103244.html>>, last visited 05 November 2007.

<sup>80</sup> As with the neighbours, the EU emphasis with Russia has been on 'common values of the parties'. See for example the preamble of the EU-Russia PCA, which makes reference to the “importance of the historical links existing between the Community, its Member States and Russia and the common values that they share”.

contradictory or particularist ways. As for the ENP countries, this argumentation places them rather uncomfortably in a position between two competing sets of common values and two competing universals. This also suggests that even though the language of 'common values' is said to signify the end of the cold war and the disappearance of opposing camps through the victory of the Western liberal democratic market-oriented world-view, the language of common values is actually flexible enough to enable the continued existence of opposing camps. In fact, it might also be that the end of communism did not simply represent the lifting of the obstacle that was blocking the way to European unity; instead, it might come to mark the opening of a new era of exclusive nationalisms.<sup>81</sup> When offering an alternative to the EU's conception of universal values, common values also provide Russia with a welcomed counter-proposal to the conditionality attached to the EU's reading of common values.

However, this also leads us to of another question: even if it was shown that the common values the EU (or Russia) invokes were indeed "shared", the legitimation for enforcing them does not automatically follow. The question thus seems to be: Under what conditions may the EU enforce 'shared values' and thus 'represent' the universal? On a theoretical level, the EU's strategy aims at connecting the particular (the European, the Western) with the universal (the common values it invokes). Žižek argues that since the universal only exists at an abstract level and escapes definition, it is impossible to articulate it in any specific manner. The universal does not have a representative of its own, because there is no actor with an absolutely universal coverage. The universal is thus necessarily represented by a particular.<sup>82</sup> The universal 'shared values' and the particular (the EU) never coincide completely; rather, the particular may come "to *stand for* the universal without

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<sup>81</sup> É. Balibar, *We, the People of Europe? Reflections on Transnational Citizenship* (Princeton University Press 2004) 90.

<sup>82</sup> On this, see Žižek, 'Class Struggle or Postmodernism? Yes, please!' in J Butler, E Laclau and S Žižek (eds), *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left* (Verso, 2000) 90, 111.

becoming identical with it".<sup>83</sup> However, the universal and the particular can never coincide completely.<sup>84</sup>

Still, the EU presents itself as the 'representative' of that which is universally shared – after all, the universal is always rooted in and coloured by some particular content without having an independent substance.<sup>85</sup> This situation is far from unique in world history: the EU is not the first to speak about universal values. But it would also not be the first case in which the reference to universal values would be used to cover the actor's own particularist objectives.<sup>86</sup> In our case at hand, this would be so if it appeared that the particular (the EU) used the language of 'common values' mainly in order to promote its own objectives. This would suggest that in referring to 'common values' the EU is, in fact, not representing that which is genuinely shared.

For the ENP countries, the co-existence of two sets of universal values which are partly overlapping and partly different is difficult as they are put in a position where they are expected to choose between two competing interpretations of the universal. This demonstrates how, as Žižek argues, the universal is in fact always 'empty' and for this reason there is a constant on-going battle between various particulars over who should be entitled to define the contents of the universal.<sup>87</sup> For the outsider, like the neighbours in our case, this creates a problem of needing to adjudicate between the various competing notions of universality.<sup>88</sup> Butler's suggests this can be solved by measuring how each particular manages to actualize its own political goals.<sup>89</sup>

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<sup>83</sup> Butler, 'Competing Universalities' in J Butler, E Laclau and S Žižek (eds), *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left* (Verso, 2000) 136, 165-166.

<sup>84</sup> Laclau, 'Identity and Hegemony: The Role of Universality in the Constitution of Political Logics', in J Butler, E Laclau and S Žižek (eds), *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left* (Verso, 2000) 44, 56.

<sup>85</sup> *Supra* note 81, at 90, 110.

<sup>86</sup> Koskenniemi, 'Human rights, politics and love', (2001) 4 *Mennesker & Rettigheter* 33-41.

<sup>87</sup> *Supra* note 81, at 90, 111.

<sup>88</sup> *Supra* note 82, at 136, 163.

<sup>89</sup> *Ibid*, 168.

This is because a political agenda is not necessarily wrong from the just because it is particular. On the contrary, the EU agenda may well include many worthy objectives. In our case, the EU's agenda might ultimately be a positive framework for change if it coincides with the wishes of the people in the neighbour countries. The real challenge, therefore, is more of a political than of a legal nature. It consists of maintaining political control over the process at large by both the Union and the ENP countries. Because 'common values' are open-ended, they offer a possibility for democratic contestation both on the side of the EU and that of the ENP states.<sup>90</sup> This presumes the understanding of the ENP as mainly a political process. Politics is about resource allocation and about limiting the identity of Europe and adjusting to and managing these decisions. This will create Europe's identity through politics and keep it open for further enlargement.

## **5) Conclusion**

Recently, the notion of 'common values' has been frequently applied within internal and external dimensions of the EU activities as the EU's universal values are being exported to third countries in the course of their internal democratic and market reforms. The EU societal model (Western, liberal market economy) is presented as the 'final destination' which other countries should be moving towards. To achieve these objectives some EU external policies, and the ENP in particular, are distinguished by the strong emphasis they place on the acceptance of the EU's common values by third countries. However, there are several factors which may impede the effective adherence to the EU's common values by third countries.

The main question relates to the vagueness of these values: even within the EU itself, there is a lack of genuine European consensus on the content and scope of values, which the

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<sup>90</sup> Ibid, 161.

EU Member States do share. Common values receive their meaning in the processes through which they are implemented. In the context of the ENP, the main problem is that the policy provide a moderate degree of the involvement of the neighbours' representatives in discussion about the content and scope of 'common values' and about how these values should be implemented in practice. Consequently, these objectives risk representing certain political EU preferences instead of being a reflection of any genuinely 'common values'. Notwithstanding the strong terms of conditionality of the ENP, the vagueness of the EU's common values has transformed this concept, which is generally believed to be of a legal nature and thus objective and neutral, into a political instrument which the EU institutions can employ in order to influence the pace and direction of reforms in the neighbour countries.

In the end, the policy of promoting the EU's fundamental values under the label of 'common values' without ensuring third countries' national specifics and traditions are fully addressed and catered for undermines the credibility of the ENP policy of common value conditionality. As a result, this creates serious disadvantages for third countries. In order to rectify these shortcomings, a much more political understanding of 'common values' should be adopted by the EU. In disregarding the need for political debate about the meaning of values, EU policies also seem to be doing away with the need for political contestation and transformation of all the EU policy objectives through a democratic process within the neighbours themselves. In the case of the ENP, it is argued that there is much less need for fixed criteria and standards - in particular as they are unilaterally applied by the EU - than for dialogue. However, the mechanisms for implementing the ENP do not currently allow for dialogue, which is a matter in need of rectification.

Finally, when a more political understanding of values is adopted, it becomes apparent that values as such do not guide policies nor are they capable of laying down the limits of Europe, since values receive their meaning through political debate. For this reason, values

will not close Europe's borders in any permanent sense but keep them open for new members in the future.