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Work package 9: Cooperation in the Area of Justice, Freedom and Security

Centre for European Policy Studies (CEPS), Justice and Home Affairs Section

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SECTION A:

Assessing the European Neighbourhood Policy from the Perspective of Migration, Asylum and Borders: Rationale and Implications

Prof. Elspeth Guild¹

1. Introduction

The enlargement of the EU to include the ten new member states in Central and Eastern Europe and the two Mediterranean islands on 1 May 2004 and Bulgaria and Romania on 1 January 2007 was the result of a tremendous effort to reconfigure not only the frontiers of Europe, but also the concept of what Europe is. Enlargements in 2004 and 2007 did not end the debate about where Europe begins and ends, however. Rather it fuelled the discussion, as neighbouring countries continue to express interest in joining the EU. At the moment it seems that enlargement will continue in the short term to include the remaining Balkan states and Turkey. This process is expected to continue well into the second decade of this millennium. But what then? The borders of the EU have been highly unstable since its inception. The possibility, desirability or inevitability of enlargement has become part of the discourse of the EU. Certain practical and institutional problems, however, are increasingly apparent. Physically can the EU institutions cope with endless enlargement? Psychologically can we cope with a 'Europe' that is not constrained by any physically finite framework? Theoretically, is it possible to incorporate the inherently unstable into a constitutional framework?

The pressure towards enlargement of the EU is not overtly driven by the territorial claims of existing member states. Nor is it informed by a geopolitical perspective which seeks to consolidate power within a territory. For instance, the EU seems content with the existence of rich and fairly powerful countries outside the EU but within its geographical domain, such as Switzerland which is surrounded by member states or Norway and Iceland which are on the edges but only border EU member states (or almost so in respect of Norway). If territorial coherence is not the driving force of EU enlargement, what is? According to the European Commission it is the search for

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peace, stability and prosperity which explains the whole process. Successful relations with the neighbours are seen as the way towards this objective and in the EU's experience it is most successfully achieved when the 'carrot' of accession is offered. The EU's ability to promote democracy, human rights and rule of law has been dependent on its willingness to accept those embracing these concepts into the Union. These three concepts are, from the EU's perspective, the ingredients of peace, stability and economic prosperity. However, when the logic of stability begins to confound the imaginal and institutional capacities of the EU, a new direction is required. It is at this junction that the neighbourhood policy was developed.

The European Union launched its new vision for future relations with the countries around it (post the May 2004 enlargement) in March 2003. The proposal was to create "a ring of friends" comprised of the countries to the East and South of the EU. To transform these countries into friends, a range of policies are being designed to tie them to the EU but which stop short of full membership. The mechanism is to embrace the neighbours in the Internal Market, an area without internal borders regarding the free movement of goods, persons, services and capital but to exclude them from participation in the institutions of the EU. This policy means that enlargement is no longer the EU's main policy tool for expanding peace, stability and prosperity around itself. There is another option which is not subject to the intellectual and institutional constraints of the definition of Europe: the neighbourhood.

The completion of EU enlargement is seen by the Commission as providing impetus to draw closer to "the 385 million inhabitants of the countries who will find themselves on the external land and sea border, namely Russia, the Western NIS [Ukraine, Moldova and Belarus] and the Southern Mediterranean [Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia]. Over the coming decade the Union's capacity to provide security, stability and sustainable development to its citizens will no longer be distinguishable from its interest in closer cooperation with the neighbours"². A vision of the relationship between the EU and its neighbours is one which engages the individuals resident in the region around the Union and not just the governments of the countries on the EU's borders. The mechanism is European Neighbourhood Plans (ENPs). It is also based on an unclear delimitation between EU citizens and nationals of the neighbours. All these persons participate in the project and their interests in it are intended to coincide. I will examine below to what extent this coincidence of interests has been realised in the field of movement of persons. It is here that the objective of firm external border controls expressed by the member states' interior ministries will enter into conflict with the softening of the border for the neighbours. If the authorities of the neighbourhood are persuaded to take repressive action against their own

² European Commission Communication on the Wider Europe COM (2003) 104 final p 3.

nationals who seek to travel to the EU on the basis of a common fight against irregular migration as part of the ENPs, then the interests of the neighbours' citizens may not only diverge from those of the EU citizens but also from the actions of their own authorities. In states where the authorities are already in difficulties as regards their popular legitimacy, all too common in some of the neighbours (not to mention member states) this kind of pressure – which may increase popular resentment – may not be conducive to stability. Thus an examination of the ENPs from the perspective of movement of persons is not only important from a legal perspective, it may be vital to the adoption of a coherent EU policy.

2. The European Commission's stated Objectives

The Commission stated that “the aim of the new Neighbourhood Policy is [] to provide a framework for the development of a new relationship which would not, in the medium term, include a perspective of membership or a role in the Union's institutions”³. The new vision is for an open and integrated market functioning on the basis of compatible or harmonised rules and further liberalisation. The Commission considered that it would bring significant economic and other benefits to both the EU and the neighbourhood. In terms of specific actions the Commission proposes that “all neighbouring countries should be offered the prospect of a stake in the EU's Internal Market and further integration and liberalisation to promote the free movement of – persons, goods, services and capital (four freedoms)”.

The positive tone of the Communication towards the inclusion of free movement of persons as part of the policy towards the neighbourhood becomes somewhat less warm when the specifics are developed. In the section: Perspectives for Lawful Migration and Movement of Persons there is still the recognition that all parties have a stake in ensuring that the new external borders are not a barrier to trade, social and cultural interchange or regional cooperation. Taking into account some of the most pressing concerns in the social sphere in the Union, the ageing of the EU population, the demographic decline and the need for skills exchange, the Commission states that “free movement of people and labour remains the long-term objective”⁴. The establishment of free movement of persons in the region as an objective, albeit a long term one, is of considerable importance. The vision of what the EU will become and the role of the movement of persons as a key feature towards stability and security in the region (and the world) is vital. The Communication does not, at least in its

³ Commission *ibid* p 5.

⁴ Communication, *ibid* p. 11.

objective, equate the exclusion of movement of persons with increased security but rather the reverse – inclusion is the way forward. The Communication proceeds to set out eight measures towards the new regime:

- A long-stay visa policy to facilitate cultural and technical interchange;
- An efficient and user friendly system for small border traffic;
- Facilitating movement of citizens of neighbouring countries to participate in EU programmes and activities;
- Visa free access to holders of diplomatic and service passports;
- A wider application of visa-free regimes;
- A common approach to integration of third country nationals with special emphasis on nationals of neighbouring countries;
- Assisting neighbouring countries' efforts to combat illegal migration and returns policies;
- Concluding readmission agreements with all the neighbours as an essential element in joint efforts to curb illegal migration.

There is an incoherence at the centre of the list. The first five elements are designed to improve access for individuals to move between the neighbours and the EU. Item two deserves attention as it is based on article 3(1) of the Schengen Implementing Agreement which envisages the adoption of exceptions and arrangements on local border traffic. The mechanism of facilitated border traffic is being explored in order to avoid some of the more problematic issues of the EU's visa policy (see below). The Commission proposed two measures in 2003 which failed to gain support in the Council⁵. Afterwards, in 2005 they were replaced by another less ambitious proposal⁶.

Item 6 is somewhat ambiguous, is this economic integration only or does it include some idea of cultural integration? The 7th and 8th elements are more contradictory as regards the objective. If providing a stake in the internal market, including the free movement of persons, is central to building stability and security in the region, then surely it is also a key for the neighbouring states in their policies towards their non-EU neighbours as well. The final point is readmission agreements⁷. These are agreements whereby the parties undertake to accept back onto their territory without strict formalities their own nationals found irregularly on the territory of the member states but also nationals of third countries who are found irregularly in the member states and who have arrived there via the other party to the agreement. With the entry into force of the Amsterdam Treaty on 1 May 1999, the EC

⁵ COM (2003) 502, Aug. 2003

⁶ COM (2005) 56, 23 Feb. 2005

⁷ See European Journal of Migration and Law, 1 November 2003, vol. 5, no. 3 which focuses on the legal questions raised by these agreements.

gained competence to negotiate these agreements but so far have only managed to convince a small number of states to enter into them⁸.

3. The Political Importance of the European Neighbourhood Policy

The neighbourhood policy has been a high priority for the European Commission. The need to develop a coherent external relations policy has fuelled this mechanism of differentiation between some states and others. In elaborating the policy, the European Commission first identified which countries merit inclusion in it. In May 2004, and in light of the enlargement which took place that month, the Commission issued a further Communication on the policy⁹. It stated that the policy “is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political, security, economic and cultural co-operation.” While the Communication insists that the Plans are based on a common set of principles which apply to all of them, it nonetheless states that each Plan will be differentiated depending on the state of relations with each country, its needs and capacities and common interests. The degree to which convergence and divergence exist among the ENPs depending on the state involved will be examined below.

With some fanfare, on 9 December 2004 the Commission issued Country reports (in the curious form of Staff Working Documents) on the first group of states to be the subject of further neighbourhood action. The next step was to develop ENPs with these countries, which do not take the form of international agreements as such. Instead they look rather like a ‘heads of agreement’ statement which set out the parameters of a policy. The Commission stated that “the Action Plans, once agreed, will supersede common strategies to become the Union’s main policy document for relations with these countries”¹⁰. The main characteristic of the Plans is heterogeneity. This neighbourhood is highly unequal. Its coherence comes only from its geography – contiguity with the EU rather than any other apparent quality. Taking as the yardstick the Commission’s approach to the neighbours, it would appear that they have nothing else in common at all.

Among the issues which make Neighbourhood Policy both ambiguous and complex is that the EU has existing partnership and cooperation agreements with all

⁸ See Statewatch October 2002 “EU seeking readmission (repatriation) agreements with 11 countries”

⁹ COM (2004) 373.

¹⁰ Commission Communication, Wider Europe – Neighbourhood: A New Framework for relations with our Eastern and Southern Neighbours, COM(2003)104 final, Brussels, 11.3.2003.

the countries in the neighbourhood which already cover many of the issues to hand. For instance, the agreements with the Maghreb countries include provisions on workers, albeit in the form of equal treatment protection for lawful workers and equal treatment regarding social security. The relationship between the Plans and the agreements is not entirely clear.

Some countries also have action plans in certain areas, such as the Ukraine EU Action Plan on Justice and Home Affairs. Thus in the Ukraine Neighbourhood Action Plan there is reference to the other, pre-existing documents: "A specific EU Action Plan on Justice and Home Affairs with Ukraine of 10 December 2001 defines the areas for co-operation in this field"¹¹.

The Commission deals with these issues in a rather lapidary fashion stating "Progress in meeting the agreed priorities will be monitored in the bodies established by the Partnership and Cooperation Agreements or Association Agreements. The Commission will report periodically on progress accomplished. On the basis of this evaluation, the EU, together with partner countries, will review the content of the Action Plans and decide on their adaptation and renewal. Decisions may also be taken, on this basis, on the next step in the development of bilateral relations, including the possibility of new contractual links. These could take the form of European Neighbourhood Agreements whose scope would be defined in the light of progress in meeting the priorities set out in the Action Plans"¹². Thus the ENPs are framed as a part of the existing structure of relations with the neighbours but with added value. Unlike the agreements, they are not legally binding in international law and it is unlikely that either party could rely on them as regards the creation of legal effects. Yet, they are tied to agreements which are international law instruments and which are capable of having direct effect within EU law¹³. Their implementation is intended to be overseen by and fostered by the bodies set up under those agreements. The extent to which this may be compatible with the powers given to those bodies under the agreements remains to be seen. As the ENPs are not protocols nor do they have any formal legal standing vis-à-vis the agreements, it seems unlikely that they can amend the terms of the agreements in particular by changing the duties of the implementing bodies.

In December 2006, the European Commission issued a new communication which focuses on enhancing the relations between the Union and its neighbours¹⁴. In this communication the Commission considers that the ENP could and should be strengthened by way of new mechanisms provided, such as the ENP Action Plans, a new financial instrument that will offer more funds to support the neighbours'

¹¹ This Action Plan was reviewed in 2005.

¹² Com (2004) 373.

¹³ E. Guild, *Immigration Law in the European Community* Kluwer Law International, The Hague, 2001.

¹⁴ Commission Communication from the European Commission on "Strengthening the European Neighbourhood Policy", COM(2006)726 final, Brussels, 4.12.2006.

reforms and a common policy framework. The communication contains proposals in order to improve the impact of the policy, but also tries to expose the weaknesses that the ENP is still facing in certain areas. Likewise, the Commission identifies a number of areas in which the ENP should be strengthened and where the EU should put additional efforts.

In the area of mobility and migration particularly, the Commission confirms that the ENP has not yet allowed significant progress on improving the movement of the citizens of the country partner to the EU, or facilitated procedures for short-term visas. In the area of mobility and migration, the Communication is therefore mainly tackling action points focused on ensuring a better management of both these dimensions. These action points embrace readmission agreements, cooperation in “fighting against irregular immigration” and border management, for instance. Thus, these objectives seem again to be more focused on creating more dividing lines than on truly enhancing the free movement of persons.

The aim of this communication is to present the ENP as an indispensable instrument for the EU and its neighbours. Taking into account the fact that for the neighbours’ partners the ENP does not prejudice the possible future development of their relationship with the EU, in accordance with the Treaty provision, the EU needs to present an attractive offer to them. However, the priorities established for the area of migration and mobility, such as cooperation for a “better border management”, readmission agreements and the fight against irregular immigrants seem to seek more benefits for the EU than for the neighbour countries.

Moreover, the European Commission, in its Annual Policy Strategy for 2008¹⁵, continues to express its concerns towards the protection of its external borders and makes it a priority in their Programme. Following this line, the EU wants to establish new measures to manage the EU’s external borders, including further development of the External Borders Agency (FRONTEX)¹⁶, improved networking of sea border controls and a European surveillance system to support the member states in tackling irregular migration. Following the priority actions for 2008 concerning the European Neighbourhood Policy specifically, it appears that more attention will be paid to the implementation of programmes in the areas of migration, education, energy, enhancing trade relations and economic integration as well as facilitating mobility. Further, the European Commission appears to be willing to work further on ‘the external dimension’ of Justice and Home Affairs through a combined migration and development agenda, especially with Africa. Relations with the African continent seem to have an important role in the priority actions. The EU wants to reinforce

¹⁵ Commission Communication, *Annual Policy Strategy for 2008*, COM(2007)65, Brussels, 21.2.2007.

¹⁶ S. Carrera (2006), *The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working Document No. 261, March 2007.

relations with Africa at all levels and especially with the African Union (AU). In Eastern Europe, the Commission will follow up the progress towards the conclusion of an agreement with Ukraine and, as regards the Southern Caucasus, the launch of negotiations for successor Partnership and Cooperation Agreements (PCA) with Armenia, Azerbaijan and Georgia.

4. The Plans: Analysis from the perspective of the movement of persons

In the neighbourhood process, the first step is the designation of the neighbours. This step is taken by the Council. The second step is the preparation of a Country Report by the Commission to determine the countries' suitability for an ENP. The next step is taken by the Council – the opening of negotiations. So far, ENPs have been negotiated with:

- Israel
- Jordan
- Moldova
- Morocco
- the Palestinian Authority
- Tunisia
- Ukraine
- Egypt
- Lebanon
- Armenia
- Azerbaijan
- Georgia.

Algeria, Belarus, Libya and Syria have been added to the list as future ENP partners.

Before examining the provisions of the ENPs regarding movement of persons, I will examine the legal position before their negotiation. In order to understand whether the approach of the neighbourhood, which was designed to move towards the inclusion of these countries in the internal market (including free movement of persons), is in fact leading towards a liberalisation of provisions on movement of persons, it is necessary to examine what these countries enjoyed under the pre-existing agreements.

There are three main types of provisions on migration in third country agreements predating the neighbourhood arrangements (this paper will not consider the deployment of service providers and their personnel in the context of movement of persons as a separate category from establishment). These are:

1. Establishment: a number of third country agreements include provisions providing a right of establishment for nationals of the parties in the territory of the other. However, in other agreements with the neighbours, there is at present no right for natural persons to move for the purpose of self-employment. There is only a right of legal persons, i.e. companies to do so and to deploy their key workers for this purpose. Normally where agreements include a right of establishment they also include a right of service provision. Such provisions create a right of access to the territory for service provision by parties (natural persons and companies) for shorter periods where no infrastructure is acquired. In the agreements with the neighbours, again service provision is limited to legal persons (companies) but this can include the sending of their personnel to provide the service. In some agreements these provisions have been found by the European Court of Justice to give rise to directly enforceable rights for individuals.
2. Equal treatment in working conditions and social security for workers: these are the most common provisions. Where clear, precise and unconditional, they have been held by the European Court of Justice to have direct effect but they apply only to workers who have a right of residence and work which emanate from some other source¹⁷.
3. Provisions on immigration and asylum in the framework of justice and home affairs. These provisions are programmatic in nature often including references to irregular migration, repatriation and combating smuggling and trafficking in human beings. The legal effects of these provisions appear to be limited. They do not lead directly to readmission agreements nor to any other clearly enforceable power for Member States to return individuals to the third country party to the agreement.

None of the agreements contain provisions on visas, asylum or border management. The question of short stay visas is determined by Regulation 539/2001 (as amended) hereafter the visa regulation. This regulation sets out which countries' nationals must have visas to enter the EU for short stays (i.e. three months or less) and which are exempt. The first regulation was adopted under Article 100(c) EC (Maastricht) – now abolished. The current regulation was adopted after the entry into force of the Amsterdam Treaty and does not apply to Denmark, Ireland and the UK which operate national systems of short stay visa requirements. All of the designated neighbourhood countries are on the black list of countries whose nationals must obtain a visa before travelling except Israel, whose nationals do not require visas for this purpose.

¹⁷ See for instance C-18/90 *Kziber* [1991] ECR I-199; and C-265/03 *Simutenkov* 12 April 2005.

Readmission agreements are quite separate public international law instruments between states. These agreements permitted the return not only of citizens but also of third country nationals found irregularly on the territory of one party having travelled through the territory of the other party (see above). In the previous enlargement process, the EU linked lifting of mandatory visa requirements to the signature of a readmission agreement. Among the key concerns about readmission agreements is the protection of refugees¹⁸ where an individual who has sought asylum in one state (usually an EU member state) is sent to a third state (not the asylum seeker's country of origin) on the basis that he or she has travelled through that state before arriving in the EU and could have sought asylum there. The concern is that on return to that third state under a readmission agreement the individual really will have his or her asylum claim properly considered and determined. A further international relations problem on readmission agreements is that they tend to be difficult to negotiate as third states see little benefit for themselves¹⁹. Further, readmission agreements have been the subject of substantial criticism on account of their effects on the relationship between what are often relatively weak governments and their citizens²⁰. Where third countries are perceived as submitting to interests of the EU at the expense of the defence of their own nationals' interests, discontent may occur. So far the EU has negotiated readmission agreements with Hong Kong, Macao, Sri Lanka, Albania and Russia (though the agreement has only been initialled so far). Negotiations are ongoing with Pakistan, Morocco, Ukraine, Algeria, Turkey and China (in the order of when the negotiations commenced).

In the Neighbourhood Action Plans there are four main headings which touch on migration:

- Visas for short stays. This is a contentious field which is governed by the EU regulation on countries whose nationals are subject to a mandatory visa requirement²¹;
- Possibilities for legal migration; this includes reference to establishment as will be seen below;
- Irregular migration which is a major matter of consideration and provisions in all of the Neighbourhood Action Plans;
- Asylum and
- Border Management.

¹⁸ D. Bouteillet-Paquet 'Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and its Member States' EJML Vol 5 No 3 pp 357-377.

¹⁹ M. Schieffer 'Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations' EJML Vol 5 No 3 pp 343-357.

²⁰ El Mrabet, EJML 2003, Vol 2.

²¹ Reg. 539/2001 establishing visa list (OJ 2001 L 81/1) – as amended.

In the next section I will examine the agreements which already exist with countries in the Neighbourhood programme and what type of provisions exist. I will then move to the ENPs and examine the provisions on movement of persons which exist in each of them.

I will then draw some conclusions from this analysis of the different sets of measures and their consequences in light of the professed objective of embracing the Neighbours in the internal market.

5. Movement of Persons before the ENPs

Eleven of the twelve countries for which ENPs have been negotiated are states which already have agreements with the EU in the form of legally binding international instruments (a feature missing from the ENPs). All of these agreements have provisions which touch on movement of persons, albeit not always directly. I have noted above the main types of provisions which exist in third country agreements regarding movement of persons. In this section I will examine the existing agreements and the benefits which they provide for the individual as regards movement, work and social protection for their nationals seeking to come to or working in the member states. I will examine the agreements by country (starting by the first package of countries which negotiate the ENPs) rather than by theme in this section. However, when I come to examine the ENPs I will look at each migration provision category and analyse the provisions by country in respect of it. I will not deal with the provisions relating to service provision.

Armenia

Armenia has a Partnership and Cooperation Agreement with the EU which entered into force in 1999²². This agreement includes provisions on labour conditions under Articles 20-22. Within this scope, one of the main priorities envisaged is the provision which establishes that the treatment assigned to Armenian legal workers in the territory of a member state shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal. As regards the establishment of companies, the agreement also contains a provision establishing that there is equal treatment on the right of establishment as well as on the subsidiaries (Article 23 of the Agreement). Although the provisions on labour conditions are extensive in this agreement, there is no mention of the social security issues.

²² OJ L 239 (09/09/1999).

Article 72 stipulates the only provision on “migration issues” which is mainly related to the control of irregular immigration. To this end, both parties agree to readmit their nationals irregularly present on the territory of the other. This provision just focuses on the conclusion of readmission agreements. There are no provisions as regards legal migration or asylum.

Azerbaijan

The Partnership and Cooperation Agreement between the EU and Azerbaijan entered into force in 1999²³. This agreement provides the right for the establishment of companies in Article 23. According to that article, once the company is set up, the conditions are in line with the laws of the home state. As regards working conditions, Article 20 abolishes all discriminatory measures based on nationality which could affect migrant workers, as regards working conditions, remuneration or dismissal.

Moreover, Article 28 provides that the Community company or the Azerbaijani company is entitled to employ, in accordance with the legislation in the host country of establishment, employees who are nationals of the member states and Azerbaijan respectively. Thus, the agreement fosters the free movement of workers, although the provision remarks that the residence and the work permits of these employees only cover the period of employment.

There are no general migration provisions though Article 75 expresses the agreement between the member states and Azerbaijan to prevent and control illegal immigration, concretely through readmission agreements.

Egypt

Egypt is party to a Euro-Mediterranean Agreement, which came into force in 2004²⁴. As regards the right of establishment, Article 30 recognises the latter to companies and the liberalisation of the supply of services. In relation to the working conditions and social security rights of Egyptian workers and member state workers legally resident and employed in their respective countries, Article 62 establishes that both parties agree to initiate talks on bilateral agreements in this regard. Art. 63 also states that this dialogue should cover all issues related to migrant communities’ living and working conditions, migration and irregular migration and actions to encourage equal treatment between Egyptian and Community nationals.

Chapter two of the Agreement deals with the cooperation on the prevention and control of irregular immigration. The articles contained in this Chapter are mainly focusing on readmission agreements. Therefore, the Parties agree to readmit any of its

²³ OJ L 246 (17/09/1999).

²⁴ COM(2001) 184 final.

nationals illegally present on the territory of the other party, upon request and without further formalities once the person has been positively identified (Articles 68 and 69).

Georgia

Georgia has a Partnership and Cooperation Agreement with the EU which entered into force in 1999²⁵. According to the Articles 20 and 23, it established equal treatment for the Georgian and Community nationals legally employed and equal treatment for the establishment of companies. Nevertheless, it is also specified that companies and workers will be subjected to the respective laws of the host country.

Moreover, the agreement also promotes the free movement of workers. Particularly, Article 28 entitles the Community company or the Georgian company to employ employees who are nationals of the respective parties, in accordance with the legislation in force in the host country of establishment.

Finally, in the agreement there is a general provision dealing with migration issues. The issue of irregular immigration appears again as the central issue in this area. In Article 75, it is agreed to cooperate in order to prevent and control illegal immigration. Nevertheless, the provision just focuses on the negotiation and conclusion of readmission agreements.

Israel

In respect of Israel there is a Euro-Mediterranean Agreement which entered into force in 2000²⁶. Only two provisions in that agreement touch on movement of persons. The first, is in respect of the right of establishment. This right, which in the EC Treaty is accorded to both companies and individuals, has been included in some third country agreements and has formed the basis of a right of entry to the territory of the EU for economic purposes²⁷. In the Israel agreement there is only the possibility of extending the agreement to cover establishment and then it is worded only in terms of companies. However, a number of agreements which provide only a right of establishment to companies expressly permit those companies to send their key personnel to the member states²⁸. Thus such a right can provide an EU right of migration for individuals mediated through their employers²⁹. Secondly the Israel

²⁵ OJ L 205 (04/08/1999).

²⁶ OJ 2000 L 147/1.

²⁷ A. Bocker and E. Guild, *Implementation of the European Agreements in France, Germany, the Netherlands and the UK: Movement of Persons* Platinum, London, 2002.

²⁸ Ibid.

²⁹ Article 29: 1. The Parties agree to widen the scope of the Agreement to cover the right of establishment of firms of one Party in the territory of another Party and the liberalisation of the provision of services by one Party's firms to consumers of services in the other.

2. The Association Council shall make the necessary recommendations for the implementation of the objective described in paragraph 1.

agreement includes a rather vague reference to immigration at Article 57: “Migration – The Parties shall cooperate with a view in particular to:

- defining areas of mutual interest concerning policies on immigration,
- increasing the effectiveness of measures aimed at preventing or curbing illegal migratory flows.”

Finally, under Articles 64-66 there is provision for coordination of social security for migrant workers, nationals of the parties. This is subject to implementing measures being adopted by the Association Council. There are no provisions on equality of treatment of workers.

Jordan

Jordan is also a party to a Euro-Mediterranean Agreement which came into force in 2002³⁰. Articles 30-37 provide for a right of equal treatment for subsidiaries of Jordanian companies in the member states vis-à-vis companies of the state. There is also a right, under Article 34 for those companies to send their employees (nationals of the state) who fulfil certain criteria (i.e. who are key personnel as defined) to the member states. Articles 80-82 of the agreement provide for social dialogue on issues of migration and repatriation of irregular migrants.

Lebanon

As regards Lebanon there is a Euro-Mediterranean Agreement which entered into force in 2003³¹. Article 30 contains the provisions concerning the right of establishment. However, it is in the Article 64 that the parties agree on conducting regular dialogue on social matters. This provision also considers that the social dialogue should cover issues such as the living and working conditions of the migrant, migration, irregular immigration as well as programmes to foster equal treatment.

Finally, in the agreement with Lebanon, there are provisions which tackle the prevention and control of irregular immigration, although in these articles the mechanism promoted is the negotiation and conclusion of bilateral agreements with each party, including the regulation of specific obligations for the readmission of their nationals (Articles 68-70).

Moldova

As regards Moldova, a Partnership and Cooperation Agreement came into force in 1998³². This agreement also includes provisions on establishment at Articles 29-38.

³⁰ OJ 2002 L 129/3.

³¹ COM(2002) 170 final.

This provision does not extend to natural persons but Moldovan companies are entitled to equal treatment with companies of the member states as regards establishment of subsidiaries in the member states. They are also entitled to send their key personnel, i.e. employees as qualified in the provisions to their subsidiaries in the member states. Thus there is a right for individuals to move and work via their employers.

This agreement includes a provision on equal treatment for workers as regards working conditions and social security (Articles 23 and 24) but the equal treatment provision is qualified in such a way that it is unlikely to have direct effect. The parties are required only to “endeavour” to secure equality in these fields. This means that it does not constitute an obligation. The social security provision only provides that further agreements will be adopted in the field, thus it is also unable to have direct effect. There is no section devoted to immigration or asylum.

Morocco and Tunisia

Morocco and Tunisia have had Cooperation Agreements with the EU since the late 1960s.³³ When these agreements were renewed in 1976 Morocco and Tunisia succeeded in their demand to include provisions guaranteeing equality of treatment of their nationals who are workers in the member states, as regards working conditions and social security. In interpreting these provisions the European Court of Justice has found both of them to have direct effect and thus nationals of these countries are entitled to rely directly on the agreement provisions vis-à-vis action by the member states to the contrary³⁴.

The current EuroMed Agreement with Tunisia entered into force in 1998³⁵ and that with Morocco in 2000³⁶. They are identical for the purposes of this study. As regards self-employment, these Agreements only provide for the widening of the scope of the agreements to include establishment in Article 31. Proposals are to be made by the Association Council as to how to do this. There is a duty to assess progress within the first five years³⁷. As regards workers, the provisions guaranteeing non-discrimination in working conditions, remuneration and dismissal now contained in Article 64 are retained as is the right to equal treatment in social security found in Article 65-68. Articles 69(3)(a), (b) and (c) provide for dialogue on living and working conditions of migrant workers, migration, irregular migration and return. These provisions are not directly effective but expand the scope of the Agreements.

³² OJ 1998 L 181/3.

³³ Tunisia OJ 1969 L 198/1; Morocco OJ 1969 L 197/1 see E Guild, *Immigration Law in the European Community* Kluwer Law International, The Hague, 2001 pp 103.

³⁴ E. Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, Kluwer Law International, The Hague, 2004, pp. 161-163.

³⁵ L 97 (30/03/1998); L 132 (06/05/1998)

³⁶ L 70 (18/03/2000); L 138 (09/06/2000)

³⁷ There is no indication that this has taken place.

The Palestinian Authority

There is a EuroMed Interim Association Agreement dating from 1997 with the Palestinian Authority³⁸. It does not cover any of the issues of concern here.

Ukraine

The Partnership and Cooperation Agreement between the EU and Ukraine entered into force in 1998³⁹. Regarding establishment, Article 30 provides a right to companies to equal treatment as regards their subsidiaries with other EU companies. While the right to establishment is qualified as a right equal to other third countries, the conditions once established are those of the home state's companies. Article 35 provides a right to such companies to send their key personnel (as defined) to the member state. Thus the individual has an indirect right of movement through the employer⁴⁰.

Under Articles 24 and 25 there are provisions on equal treatment as regards working conditions and a rather general provision on coordination of social security. However, these provisions are qualified by the obligation on the member states only to "endeavour" to achieve the result, which raises serious questions as to whether they are capable of having direct effect. There are no general immigration provisions though there are references to mobility of researchers.

6. The Contents of the European Neighbourhood Plans (ENPs)

While the purpose of the Neighbourhood Policy is to increase stability, peace and prosperity in the region, this does not mean that all neighbours are treated alike. In fact, the ENPs differ substantially in many ways. The issue of movement of persons is no exception. Some agreements include many provisions which relate to movement of persons such as the Israel ENP, while others mention nothing at all, such as the Palestinian Authority ENP. In general there are five headings under which movement of persons is raised: visas, regular migration, irregular migration, asylum and border management. Because of the diversity of approaches, I have drawn together under these headings the contents of the ENPs rather than, as in the case of the third country agreements, dealing with them state by state. I have not dealt with services here as this area is very unclear and the overall EU intention as regards movement of persons for service provision appears to be to implement multilateral commitments. These have

³⁸ L 187 (16/07/1997)

³⁹ L 49 (19/02/1998)

⁴⁰ There is also a limitation in Article 47 though it tends to confirm the legal interpretation that there is a right for companies to send their personnel as it qualifies the right of certain categories of persons.

been made and are progressing under the General Agreement on Trade in Services as part of the WTO Agreements. There was rather substantial resistance within a number of member states in 2005 to liberalised movement of third country national service providers and their personnel, so at the moment this field is uncertain. Suffice it to say that none of the ENPs propose free movement of service providers and their personnel, though there are references to GATS commitments in some of them.

6.1. Short Stay Visas

All of the neighbours with ENPs are on the Schengen visa black list except one: Israel. This means that nationals of all the others must submit to what is often a humiliating experience at an EU consulate in their home state to seek a visa to come to the EU, even for a short visit. Elsewhere I have examined the problems surrounding the Schengen visa system⁴¹. As Jileva has described in the case of Bulgaria when it was still on the visa black list, the use of authority by EU officials to belittle the potential visitor seeking a visa is both frequent and a cause of frustration and anti-EU discontent in the country⁴². The preferential treatment of one of the neighbours over all the others in this rather sensitive area might be considered an odd political choice in a policy which seeks to reinforce peace and stability, rather than excite jealousy and suspicions of favouritism.

Armenia: As regards visas, the Armenian Plan does not provide specific actions for short stay visas, however, it approaches exchange of information on visas issues and enhances cooperation to improve security of travel documents and visa in conformity with international standards, including the introduction of biometric features in passports. The Plan of Armenia is innovative as regards the introduction of biometrics in passports. In most of the Plans there is no mention of biometrics while talking about the improvement in the security of travel documents. This aspect reflects the increasing importance of some countries to enhance security rather than fostering the movement of persons.

Azerbaijan: The actions here are directed towards improving security travel documents and visa according to international standards, as well as establishing dialogue on migration issues, where visa issues would be included. However, there is no concrete provision for short stay visas.

⁴¹ "La mise à l' écart des étrangers: la logique du visa Schengen" with Didier Bigo, Cultures et Conflits, l'Harmattan, Paris, Spring 2003.

⁴² E. Jileva 'Insiders and Outsiders in the Enlargement of the EU Borders: Bulgaria' in K. Groenendijk, E. Guild, P. Minderhoud, *In Search of Europe's Borders* Kluwer Law International, 2003, pp. 273-288.

Egypt: In order to improve the movement of persons, the ENPs agreed calls for more cooperation to facilitate uniform visa issuing procedures for certain categories of persons. The Plan provides no action on short stay visas and only focuses on the visa issuing procedures. There is no further action in this regard.

Georgia: The Plan makes no reference to short stay visas. The actions are generally focused on the exchange of information on visa issues and the cooperation to improve security of travel documents and visa in conformity with international standards. At the moment no further development is foreseen with Georgia to foster a better movement of persons between member states nationals and Georgian nationals.

Israel: There is no short stay visa requirement for Israelis visiting member states in EU law. The ENP makes no mention of visa policy.

Jordan: Jordan is on the visa regulation black list so its nationals must obtain a short stay visa to visit the EU. Visa policy is a field covered in the ENP as follows: *“Start and develop dialogue in visa issues*

- Develop visa co-operation, including the possible adaptation of visa systems, the visa and travel documents issuing procedure including their security;
- In order to facilitate the circulation of persons, examine within the context of existing structures, the possibilities of facilitation visa issuing (simplified and accelerated procedures in conformity with the *acquis*).”

This is a far cry from a visa free regime but at least it hints at the possibility of facilitated procedures. This carrot is held out on the basis that the Jordanian authorities take EU advice, it would seem, on document security.

Lebanon: In Lebanon cooperation is also established to improve the security of travel documents and visas according to international standards. In order to facilitate the movement of persons, the Plan establishes more cooperation to examine the scope to facilitate visa procedures for short stay for some categories of persons travelling to Europe and vice-versa.

Moldova: Like the Southern Mediterranean countries, Moldova is a visa regulation black list state. A mandate to negotiate a visa facilitation agreement was given to the Commission in December 2006. When an agreement is concluded this will provide simplified visa issuing procedures for Moldovan nationals seeking to come to Schengen territory for a short stay within the specified categories. Its ENP

also includes visas but the formulation is slightly different from that of Jordan. It reads as follows: “(48) Pursue a dialogue concerning cooperation on visa policy

- Exchange of views on Schengen procedures and initiate a dialogue on the possibilities of visa facilitation in compliance with the *acquis*;
- Dialogue and exchange of views on visa co-operation (criteria and the procedure for the issue of visas);
- Dialogue on document security.”

This is much more explicit than the wording in the Mediterranean ENPs. It states that the issue is the Schengen visa procedures and that the objective is to facilitate the issue of visas. Further, the EU is willing to discuss the criteria and procedure for the issue of visas, at least in principle. This is a substantial concession as our research has indicated that EU state authorities are far from consistent in the application of criteria and procedures regarding the issue of visas. As regards documents, only dialogue is envisaged. One cannot help but wonder whether the facilitated travel document procedure, which has been agreed by the EU with Russia regarding the movement of Russians resident in Kaliningrad across EU territory⁴³, has not influenced the discussion with Moldova.

Morocco: As with its neighbours, Morocco is also an EU visa regulation black list country. All Moroccans must obtain visas to visit the EU for a short stay. The ENP also includes dialogue on visas as an issue of concern. The ENP is only available in French but the wording appears to be the same as for Jordan. Oddly though, the order of the two provisions is reversed. For Morocco it looks as if one might begin with the facilitation of the issue of visas and then address the document security issue. It is, however, unclear that there was any intention to differ between the Plans.

Palestinian Authority: There is nothing in the ENP on visas. Palestinians, apparently, will remain on the black list and there is no suggestion that things will change.

Tunisia: Like Jordan, Tunisia is on the EU visa regulation black list. In its ENP there is also mention of visas, dealt with in a similar manner. There is the suggestion that dialogue on the processing of visa applications be opened. Further, for the purpose of facilitating free movement of persons, the ENP calls for an examination of the structures to aid simplification and acceleration of visa-issuing procedures for certain categories of persons (to be defined). Privileging some groups in Tunisia over others in the issue of short stay visas is somewhat complicated. First, there is the question of ensuring that the basis is legitimate as it will constitute discrimination

⁴³ Regulation 693/2003 and Regulation 694/2003.

against certain persons. Secondly, depending on the groups privileged, this may cause friction within the state.

Ukraine: This is also a country on the visa regulation black list. However, the liberalisation of visa policy is referred to in the ENP. "In the context of EU enlargement and the European Neighbourhood Policy, a constructive dialogue on visa facilitation between the EU and Ukraine will be established, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement." The overt linkage of mandatory visa requirements and progress on readmission agreements echoes EU policy towards many of (what are now) new member states in the late 1990s and early 2000. This policy is clearly continuing as regards the EU and Ukraine. In summer 2005, Ukraine unilaterally lifted its visa obligation on EU nationals to facilitate the movement of visitors to the Eurovision song contest. The suspension of the visa requirement has since been extended by Ukraine. In October 2006 a visa facilitation agreement was initialled between the EU and Ukraine which, when signed and in force will provide facilitated visa issuing for Ukrainian citizens seeking to come to the EU.

6.2. Legal Migration

Armenia: For Armenia, the first priority is the elaboration and implementation of a comprehensive, coherent and balanced national Action Plan on migration issues. Following the same path as the ENPs in Georgia, the Plan is based on the exchange of information and possible cooperation on transit migration and it also includes the establishment of an electronic database for monitoring migration flows. Furthermore, the Armenian Plan includes the provision of assistance in labour migration management. As is stated in its PCA, Armenia is very concerned about labour issues, which is why provisions concerning labour migration have been included in its agreements with the EU.

Azerbaijan: For Azerbaijan, the priority actions envisaged are to ensure the adoption and proper implementation of the State Migration Programme and make use of all existing Community programmes, in order to support actions in the field of asylum and migration. The Plan also includes the exchange of information and cooperation on transit migration. Nevertheless, we find no provision for labour migration in this Plan.

Egypt: the ENPs enhance further dialogue on legal migration, including economic, political, social, security and cultural dimensions of migration, where necessary. The central item of the Plan is the exchange of information and experiences on legal migration. Another important item is the cooperation between Egypt and the EU in order to facilitate the legal movement of people through strengthening of the institutions dealing with the promotion of employment, to provide information about the risks of smuggling and trafficking of migrants and to facilitate the flow remittance transfers.

Georgia: Legal migration is tackled in this ENP from the perspective of better coordination between relevant national agencies dealing with migration, exchange of information and further training in the field of immigration and asylum. Further, the document also mentions the establishment of an electronic database for the monitoring of migration flows. Exchange of information and cooperation between agencies seem to be the central points on which Georgia wants to focus legal migration.

Israel: As noted above, Israel has a EuroMed Agreement with the EU but there is nothing on movement of persons, only the possibility of future provisions on establishment, equal treatment for workers and social security. Its ENP picks up the social security aspect regarding the protection of Israeli workers in the EU:

“2.3.3 Movement of persons, including movement of workers and co-ordination of social security

1. Implement the provisions under Article 64 and 65 of the Association Agreement as regards the co-ordination of social security

- Preparation for a decision of the Association Council, in line with Article 65, concerning the ways and provisions for implementation of the objectives in Article 64.”

The provisions referred to here provide for the coordination of social security so that workers who are lawfully working in one of the parties can benefit from the social security system in that country and, depending on the implementation, perhaps export the benefits on their return home. The Moroccan and Tunisian EuroMed Agreements include strong provisions protecting their workers as regards social security in the member states. It would appear that Israel is seeking equal treatment for its nationals using the ENP as a vehicle.

Jordan: The EuroMed Agreement with Jordan includes provision on establishment for companies. There is no suggestion that this might be extended to people as occurs in the Ukraine ENP. However, as in respect of Israel, attention is focussed on social security and equal treatment for migrant workers. In the EuroMed

Agreement, there are no provisions on this at all so the ENP is used as the means to insert social security and working conditions into the agreements. This cannot constitute a right for individuals as the ENPs are not legally binding documents:

“2.3.4 Movement of persons including workers and social security co-ordination

(28) *Facilitate the movement and integration of workers.*

- Equality of treatment of Jordanian and Community workers nationals who are legally residing and working in the territory of the Community or Jordan, elimination of discrimination.
- Coordination of social security schemes.”

Lebanon: The Lebanese Plan offers new priorities in the area of legal migration. First of all, it looks to monitor and analyse migration. The objective is to ensure synergy with the Euro-Med initiatives on research on migration and the Consortium on Applied Research on International Migration in particular. Moreover, in the area of legal migration, the provision of information on the risks of smuggling and trafficking of migrants is included as is the improvement of the links between migration and development. Although it is not extended throughout the Plan within the scope of legal migration, Lebanon also looks at the social integration of migrants and a better management of admission policy and stay.

Moldova: The first mention of migration related issues in this ENP is rather ambiguous. It refers to the right of establishment in the Partnership and Cooperation Agreement but suggests by its wording that there has been some move to diminish the possibility of Moldova companies to use it: “Ensure full application of the best endeavour standstill clause so that the conditions for establishment of companies are not more restrictive than when the PCA was concluded.” The ENP then moves to the familiar territory of social security and non-discrimination in working conditions provisions of the Agreement: in particular: “Ensure full application of the best endeavour clause by abolishing all discriminatory measures based on nationality which affect migrant workers, as regards working conditions, remuneration or dismissal.” In the negotiation of the Agreement, it is understood that the Commission was instructed by the Council to ensure the inclusion of the “best endeavour” wording in order to relieve the Member States of the risk that the provision might have direct effect⁴⁴. It is interesting to note that the ENP seems to suggest that the Member States have had second thoughts about this and want to be bound by the duty of non-discrimination in this field. The ENP also recommends, as with Israel, the adoption of measures to give effect to the coordination of social security between the EU and Moldova.

⁴⁴ D. Martin & E. Guild, *Free Movement of Persons in the European Union*, Butterworths, London, 1996.

Morocco: The ENP makes reference to the EuroMed Agreement in particular the application of the non-discrimination articles on social security and working conditions. As these provisions have already been held by the European Court of Justice to be sufficiently clear and precise to have direct effect, Moroccan workers in the EU already rely on them directly against contrary provisions in national legislation⁴⁵. It is thus somewhat unclear how the ENP will contribute to these provisions already in force. The ENP also calls for the adoption of a measure by the Association Council on coordination of social security.

More generally, the ENP calls for the exchange of information on legal migration within the working party Migration and Social Affairs. It specifically mentions that regard must be paid to existing obligations of the member states. However, the ENP also calls for an information campaign in Morocco on legal migration to the EU including information on family reunification, equal treatment and integration of migrants, as well as the risks of irregular migration. On practical measures of cooperation, the ENP recommends cooperation on transit migration as regards other countries where rules of transit and origin apply, together with accompanying measures. It recommends trilateral and multilateral projects which focus on migration and development and invokes Article 13 of the Cotonu Agreement⁴⁶. As most African countries outside of the ENP are parties to the Cotonu Agreement, and Article 13 provides for measures against irregular immigration, it is likely that this proposal seeks to address irregular migration to the EU overland from sub-Saharan Africa via Morocco. The ENP also proposes Morocco's participation in research and observation of migration phenomena and that Morocco should benefit from EU programmes on migration, though without specifying which. The EU promises support in efficient management of migration flows with regard to the human dimension, socio-economic and other flanking measures.

This is the most elaborate of the migration provisions in the ENPs. Clearly Morocco is seen as an important actor and participant in the migration field vis-à-vis the EU. There is a strong undertone of coercive measures but they seem to be primarily directed at the nationals of Morocco's neighbours rather than at Moroccans themselves. The positive benefits for Morocco are difficult to determine, not least because Morocco has already an agreement with strong non-discrimination provisions on working conditions and social security.

⁴⁵ C-18/90 *Kziber* [1991] ECR I-199; C-58/93 *Yousfi* [1994] ECR I-1353 and many others.

⁴⁶ The Cotonu Agreement is a single agreement between the EU and over 70 countries in Africa, the Caribbean and Pacific. It is the alternative model to ENP as it is based on the principle of solidarity among the third states to ensure that they all enjoy the same benefits and that, in principle at least, the EU cannot privilege some of them over others. Article 13 did not exist in the preceding agreements (the Lomé Agreements) and relates to cooperation in respect of migration, in particular irregular migration.

Palestinian Authority: There are no provisions whatsoever in this ENP regarding legal migration (or indeed any migration at all).

Tunisia: The ENP does not have many proposals as regards legal migration. On establishment, it recommends more freedom including the creation of an environment favourable to companies and putting into effect laws on bankruptcy. There is a suggestion that the rules of establishment should not become more restrictive than was the case at the time the EuroMed Agreement was entered into, in other words a sort of standstill provision regarding establishment and that the establishment provision of the Agreement be widened in accordance with article 31. As regards workers, the ENP calls for full effect to be given to the provisions on non-discrimination in working conditions and social security (which provisions, as in respect of Morocco are directly effective). It also proposes free movement, self employment and professional mobility within the EU for Tunisians already lawfully settled. This is likely to be covered by the directive on long-term resident third country nationals, which provides for an EU wide right of free movement for workers after five years' residence and work in one member state⁴⁷. It also suggests improvement of the right of family reunification within a common EU standard. This proposal appears to correspond to the directive on family reunification adopted in 2003⁴⁸. Of course both of these directives adopted under Title IV EC apply to all third country nationals so there is no preferential treatment for Tunisians.

Substantial emphasis is placed on the full application of the EuroMed Agreement provisions on social security and non-discrimination in working conditions, though as with the recommendations on family reunification and mobility of long term residents, it is not clear how the ENP will be a critical factor in the achievement or otherwise of the objective.

Ukraine: Establishment features strongly in the ENP for the Ukraine as well. It recommends that both Ukrainian subsidiaries and branches receive national treatment but it goes no further than the Partnership and Cooperation Agreement. In no other context is equal treatment with own companies proposed for branches, so this is something of a surprise. It also suggests a progressive abolition of restrictions on establishment. This appears to suggest that Ukraine may be 'upgraded' to the same position as Bulgaria and Romania (and Croatia following transitional arrangements) in that their nationals (natural persons) will get a right to move to the member states for the purpose of self-employment. As regards workers, the ENP makes the same

⁴⁷ 2003/109.

⁴⁸ 2003/86.

recommendation as for Moldova – implementation of the ‘best endeavours’ provision. The same questions arise here as for that state. In addition, the ENP calls for the development of social security coordination along the same lines as the other ENPs.

6.3. Irregular Immigration

Armenia: The negotiation of a readmission agreement is of great importance under this heading. The Plan requests the initiation of a dialogue on readmission at EU level and exchange of experiences and expertise about its implications. Moreover, it adds a further development in the cooperation with international organisations and relevant agencies of main countries of origin, transit and destination in order to manage migration processes, and implementation measures aimed at assisting reintegration of returnees.

Azerbaijan: This Plan also emphasises the necessity to initiate a dialogue on readmission. Again readmission agreements play an important role in controlling irregular immigration. Cooperation is another substantial matter. Nevertheless, in the case of Azerbaijan, the cooperation takes place on the reintegration of returned asylum seekers and irregular migrants, together with international organisations and the relevant agencies.

Egypt: The proposals for action look towards an exchange of information and experiences on the migratory flow. Likewise, the ENPs look to developing dialogue and cooperation to curb irregular migration. Thus, the control of irregular immigration is mainly focused on the exchange of information and cooperation between the relevant agencies. As regards the negotiation of readmission agreements, the Plan is based on the Association Agreement (Art. 69) and therefore fosters the conclusions and cooperation on readmission.

Georgia: The central issue of the Plan is the cooperation with the EU, international organisations and relevant agencies of the main countries of origin and transit, in preventing, combating irregular immigration and managing migration processes. As regards irregular immigration, the Plan requires cooperation on reintegration of returned asylum seekers and irregular migrants. However, the mention on providing assistance to refugees is not clear.

Israel: In this ENP there are four proposals for action in respect of irregular migration. These are:

- Discussion on the issues of management of migration flows, and cooperation to increase the effectiveness of measures designed to prevent or curb the flow of illegal immigration, including co-operation with the Border Police;
- Exchange of information concerning illegal immigration, including transit migration,
- Observation and analysis of migratory flows; participation in the EUROMED migration research network;
- Identification of the conditions under which Israel might be invited as participant/observer in the activities organised in the framework of EU programmes on migration issues (ARGO, AENEAS).

The emphasis seems to be on Israel as a reliable ally in this area. The suggestion that Israeli authorities should participate in EU programmes is an indication of that confidence.

Jordan: The proposals for action with Jordan in this field are more limited. The ENP only specifies two areas for further action:

- Exchange of information on migration issues (entry and stay, integration) and illegal migration;
- Discussion on the possibility of co-operation on transit migration.

Lebanon: Cooperation with the EU and the countries of origin and transit is the central issue as regards irregular immigration, together with the exchange of information and experiences on illegal migration. As regards a readmission agreement, the Plan also provides for further EU-Lebanon cooperation on all forms of readmission. A new issue stated in this Plan is the cooperation on consular affairs and issuing of travel documents.

Moldova: Here the ENP is particularly concerned to assess the scale of irregular migration to, via and from Moldova and to monitor movements in general. The suggestion that an electronic database be created for this purpose indicates a substantial investment in border controls and related activities. It proposes two activities in this regard:

- Exchange of information concerning, and assessment of the scale of illegal migration in the EU and Moldova, including the establishment of an electronic database for the monitoring of migration flows to, via and from Moldova;
- Further alignment of domestic legislation with EU standards in order to criminalise illegal migration.

In respect of supporting Moldova to create an efficient management of migration flows the ENP suggests that financial and expert support will be made available. It refers to the adoption and implementation of Moldova's National Action Programme on Migration and Asylum Issues (migration issues) as the mechanism to make progress in this area.

However, this ENP is particularly interested in the issue of readmission of Moldovans to Moldova. Not only does the ENP recommend that Moldova enter into a readmission agreement with the EU regarding its nationals but the ENP recommends that Moldova enter into readmission agreements with its neighbours as well. Dialogue also features in the Moldova ENP both as regards legal and irregular migration. The possibility that Moldova may participate in EU migration programmes, in particular ARGO and AENEAS, is put forward. Of course, these programmes fund research activities in respect of migration, they do not help migrants directly nor do they open up any routes of lawful migration.

Morocco: As for Israel, irregular migration is a matter of substantial concern in the ENP. Five measures are proposed but none of them indicate the degree of confidence apparent in the Israeli ENP. These are:

- Exchange of information and dialogue on irregular migration including practical assistance in action to prevent irregular migration;
- Assistance for executing the strategy to combat irregular migration through cooperation with the Office of Migration and Surveillance of Borders;
- Development of synergies in regional cooperation to prevent irregular migration;
- EU action against irregular migration and transit migration with countries of origin, in particular through the ACP Agreement and readmission agreement;
- Conclusion and entry into force of a readmission agreement with the EU.

These proposals closely follow the provisions on legal migration, making use of the same instruments. Again the emphasis is on third country nationals in Morocco (i.e. from sub Saharan Africa) as the problem to be addressed under this heading.

Palestinian Authority: There are no provisions on irregular migration in this ENP.

Tunisia: The ENP proposes an exchange of information on irregular migration and further active cooperation among the partners. It is also agreed that there will be a global, coherent and balanced strategy against irregular migration. In addition there will be reinforced operational capacities including surveillance and control of maritime and land borders as part of a general better cooperation in the region and sub region.

Ukraine: In December 2001 the EU negotiated an Action Plan in Justice and Home Affairs with the Ukraine. This includes a Scoreboard on progress and strict deadlines on implementation. The ENP is to be used to provide greater pressure towards the implementation of the Action Plan and achievement of the deadlines. This is perhaps one of the clearest examples of the Neighbourhood Policy being used to reinforce previous JHA efforts which have been received in the third country with something less than complete enthusiasm. The lack of any positive benefit for third countries from these agreements, which tend to place burdens on them in respect of immigration control, has meant that their implementation has been rather difficult. Tying these measures into the Neighbourhood Policy where there are some more general benefits on offer provides a mechanism to put teeth into the JHA provisions.

6.4. Asylum

Armenia: The ENP enhances the exchange of information and best practices on migration and asylum issues. In order to take further steps to modernise the national refugee system in line with international standards, the Plan pushes forward the protection for and support of refugees and IDPs, in particular to enhance their self-sufficiency and integration.

Azerbaijan: The aim for Azerbaijan is to develop a more modern and efficient national asylum/protection system in line with international standards. Further, it also aims to implement standard procedures relating to treatment of asylum applications and provide assistance to IDPs and refugees.

Egypt: As regards asylum, the ENP mainly concentrates on the exchange of information and best practices in the field of asylum policy, refugee status determination and legislation. The provision extends no further however.

Georgia: It recommends more development in the cooperation on migration and asylum issues. Furthermore, Georgia is advised to take further steps to modernise the national refugee system in line with international and European standards.

Israel: The ENP recommends an exchange of information and best practices in the field of asylum policy between Israel and the EU. Nothing more is specified.

Jordan: The EU only seeks to have a dialogue on asylum issues with Jordan. This is slightly less ambitious than the exchange proposed to Israel.

Lebanon: The ENP calls for developing a comprehensive protection system, in line with international standards, to process asylum applications. Once again, the exchange of information and best practices on asylum policy are playing a central role in this Plan.

Moldova: This ENP and that of Morocco are similar in the field of asylum. There is a section on approximation of Moldovan legislation to the Geneva Convention with particular emphasis on access to the procedure and the principle of non-refoulement. In addition it proposes:

- Development of a system for electronic information exchange between all relevant authorities (border guards, police, migration department).
- Advice on Eurodac Regulation and functioning of the Eurodac system⁴⁹.
- Adoption and implementation of Moldova's National Action Programme on Migration and Asylum Issues (asylum issues).

It would appear that the EU intends to integrate Moldova more closely into its own asylum allocation system. The emphasis on electronic information exchange indicates an approach consistent with the interest of the EU in obtaining information electronically from the Moldovan authorities in this sphere. The reference to Eurodac is interesting in this regard. It is not clear from the ENP whether the longer term intention is that Moldova should participate in the Eurodac system; it does not appear at the moment that Moldova will participate. However, Eurodac is a tool to assist in the allocation of responsibility for asylum seekers under the Dublin II Regulation⁵⁰. This then makes it somewhat peculiar to seek to extend the fingerprinting obligation when it no longer corresponds to the objective of the regulation.

Morocco: There are substantial provisions in this ENP on asylum. A section entitled: Development of Legislation in Accordance with International Standards in the Area of Asylum and Refugees and the Implementation of the Relevant UN Conventions includes three main provisions:

⁴⁹ Regulation 2725/2000 on Eurodac; Regulation 407/2002 implementing Eurodac Regulation. EURODAC is a database maintained by the Commission which holds fingerprint data on all asylum seekers in the EU and on persons apprehended irregularly crossing the external border. Member States may send fingerprints of asylum seekers or persons irregularly on their territory to check whether they have already sought asylum in another member state and hence should be returned there for the processing of their application.

⁵⁰ Dublin II Regulation 343/2003.

- Implementing the principles of the Geneva Convention (and protocol) not least the principle of non-refoulement, acquisition and maintenance of refugee status and determination of manifestly unfounded applications for asylum;
- Place expertise at the disposal of Morocco in the transposition of the Geneva Convention into national law;
- Develop administrative structures capable of receiving and determining asylum applications in particular through the training personnel.

The importance of asylum related issues in respect of Morocco reflects the EU's concern over whether all of the neighbours respect the Geneva Convention. The EU's policy as expressed in the asylum procedures directive⁵¹ that there be no suspensive appeal right for asylum-seekers who arrive in the EU through safe third countries depends on the countries through which EU destined asylum seekers travel, respecting the Geneva Convention. If they do not then it is unlikely that the courts of the member states will permit their authorities to return asylum seekers to these third countries, as the courts may not be convinced that these are in fact 'safe' countries for the asylum seeker.

Palestinian Authority: There are no provisions on asylum in this ENP.

Tunisia: The ENP proposes new legislation for Tunisia which conforms to international standards in the field of asylum and refugees and gives force to the UN conventions in the field, in particular the Geneva Convention. The EU offers expertise as regards transposition of the Geneva Convention and help with the administrative capacity to deal with refugee claims, including for an authority responsible for refugees and training for personnel. Importantly, the ENP proposes assistance with reception capacity.

Ukraine: No specific mention is made to asylum in the ENP. Regarding migration issues, reference is made to the December 2001 Action Plan between the EU and Ukraine on JHA and an EU Ukraine JHA Ministerial Troika meeting in November 2002.

6.5. Border Management

Armenia: There is just one action approached in the cooperation on border management, which is to envisage a 'BOMCA type' technical assistance programme in the Southern Caucasus region in order to develop regional cooperation between relevant law enforcement bodies.

⁵¹ Directive 2005/85 on asylum procedures.

Azerbaijan: The plan for Azerbaijan is more focused to develop a comprehensive education and training strategy on border management in order to reach a proper efficiency of the law enforcement authorities from Azerbaijan and develop regional cooperation between these relevant bodies.

Egypt: For Egypt the main priority in this field is to enhance border management cooperation, particularly cooperation between relevant law enforcement bodies in Egypt and in the EU, like FRONTEX. Moreover, it also looks at cooperation in order to reinforce the organisational capacities of controlling and surveillance in the borders, including training. Thus, here we can see that the European Border Agency (FRONTEX) is starting to be involved and play an important role concerning border management in the ENP.

Georgia: The ENP asks Georgia to fulfil its commitments on border management reforms, such as the integration of the Georgian State Border Guard Department in the MoI and reform of the Ministry of Interior (notably in the fields of human resources and management). It also requests the implementation of a strategy for an integrated system of border management. Moreover, it looks at the EU-Georgia cooperation on Border Management and how to enhance inter-agency cooperation among State authorities involved in border management.

Israel: There is no mention of border management in the Israel ENP.

Jordan: This ENP has limited references to border management, mainly in the form of an exchange of information and practices regarding EU standards and the intention to develop regional co-operation between relevant law enforcement bodies.

Lebanon: Lebanon is required to develop a strategy for an integrated system of Border Management, enhancing interagency cooperation. It is also to enhance development of cross-border and regional cooperation between relevant law enforcement agencies and an effective surveillance along the border. The Plan also enhances a comprehensive education and training strategy with regard to border management matters. Finally, an interesting point is the action it foresees to initiate contacts for cooperation at operational and technical level between Lebanon border authorities and FRONTEX. Thus, following the same path as Egypt, Lebanon is called to cooperate at operational level with the European Border Agency, making the interests of FRONTEX more obvious in intervening in the scope of the ENP.

Moldova: This ENP plans a system of efficient, comprehensive state border management including on the segment of the Moldovan-Ukrainian border, which is controlled by the break-away region of Transnistria. To achieve this the ENP recommends:

- Implementation of the Concept on Border Control adopted on 4 December 2003, in particular the transformation of the Border Guards into a law enforcement agency, and make necessary amendments to national legislation.
- Enhancement of inter-agency co-operation (among authorities involved in state border management) as well as co-operation with neighbouring countries, including border demarcation and the conclusion of co-operation agreements.
- Starting to develop a comprehensive education and training strategy on state border management, including improved understanding of Schengen rules and standards.
- Enhancement of equipment and the development of infrastructure for efficient state border management.

Further the ENP proposes more cross border cooperation not only between Moldova and the EU but also between Moldova and its neighbours. This cooperation envisages including law enforcement bodies.

Morocco: There is more emphasis in this ENP on border management. It is agreed that there will be reinforced organisational and institutional capacities for border controls regarding exit and entry into the country. The four funding headings under the EU financing programme MEDA relating to border management are stressed – institutional support, training for staff, equipment and sensitising a targeted public in regions and sectors particularly affected – are mentioned, as is further cooperation in the region regarding border management.

Palestinian Authority: There are no provisions in this ENP on the subject.

Tunisia: The ENP proposes six measures in respect of the management of borders. These are:

- Reinforcing the organisational capacities and institutions responsible for borders and entry and exit;
- Securing travel documents (and visas);
- Exchange of information on experiences and systems of border management; the EU proposed to make available to Tunisia expertise on border management;
- Development of a training strategy for border management;

- Development of regional cooperation among border management authorities;
- Improvement of the administrative capacities of the border guards including infrastructure at control points.

Clearly the EU wishes to make better mechanisms of border management available to Tunisia.

Ukraine: As in respect of asylum, there is no overt reference to border management. Rather reference is made to the existing Ukraine EU Action Plan on JHA dating from December 2001 and a joint ministerial meeting in the field in November 2002.

7. Conclusions

The EU neighbourhood is highly differentiated area. When one examines the provisions on movement of persons one has the impression that the neighbours are extremely different even when they border one another. When the neighbourhood policy was developed, it was inspired by an expansive spirit of inclusion of the neighbours in the benefits of the internal market, including free movement of persons. By the time a process was established to develop the neighbourhood policy, the approach towards persons appears to have changed substantially. On the positive side, there is little on offer as regards short stay visa policy or legal migration. In respect of the former, for some countries there is the possibility of facilitated visa issuing but this is a small minority. Concerning legal migration, there is very little on the table which the neighbours do not already have by virtue of their agreements with the EU or, in the case of Tunisia, what has already been extended to all EU resident third country nationals. On reading the recommendations, one has the impression that a bundle of rights and possibilities which have already been accorded elsewhere and by other means are being repackaged in the ENPs and presented as ‘carrots’ to encourage the neighbours to buy into the repressive measures. This is particularly so the case regarding the promise of equal treatment on working conditions and social security for their nationals legally working in the EU. Not only is this a basic component of the EuroMed Agreements, it is also incorporated more generally in EU law through a number of other measures.

As regards irregular migration, the emphasis is on placing obligations on the neighbours to act as the buffer between the EU and other third countries as regards irregular migration. Exchanges of information, monitoring irregular migration flows,

readmission agreements, these are the staples of the ENPs in this area. The consequences of this approach are likely to be to harm the neighbours' relations with their own neighbours beyond the EU, as our neighbours will be required to take coercive action against the nationals of their neighbours. Instead of reinforcing solidarity in the region, such an approach is likely to create tension and instability.

On asylum, there is a positive emphasis on upholding the standards of the Geneva Convention. Those neighbours which are not yet party to the Convention are encouraged to do so. This is a very good neighbourhood policy, widening the application of refugee protection in accordance with international law. Unfortunately the ENPs also give the impression that the reason for the insistence that the neighbours live up to the Geneva Convention protection of refugees is not so much inspired by concern for refugees but in order to apply the safe third country rule to the neighbours and return asylum seekers from the EU to their neighbours more efficiently. At the moment, one of the hindrances which the EU member states encounter as regards the application of the safe third country principle is the suspicion of their own judges that the neighbouring states are not in fact fully compliant with the Geneva Convention, and thus an asylum seeker returned there would not be well-protected from *refoulement*.

Finally, as regards border management, the emphasis is very much on the neighbours as the border guards of the EU responsible for keeping out of the EU those third country nationals which the member states do not want. Exactly how these persons are to be identified is not clear but the objective is. However, in the ENPs which have been negotiated since 2006, one finds a new institutional item, the European Borders Agency (FRONTEX). Particularly, in the Plans of Egypt and Lebanon, the EU is putting forward enhanced cooperation between these countries and this Community body in charge of implementing the EU's strategy on Integrated Border Management (IBM).

Concerning the positive aspects for the neighbours, the repressive aspects of migration policy included in the ENPs seem to be the same measures which have been recommended for the neighbours in the former Third Pillar by the interior ministries of the member states and consolidated in the work of the High Level Working Group. They have been repackaged and placed in a setting where there are more benefits globally for the neighbours. Whether they are any more in the interests of the neighbours now than before remains to be seen. By adopting repressive measures against their own nationals who seek to travel to the EU, the neighbours' authorities risk diminishing their legitimacy in the eyes of their own people. Instead of protecting their nationals against what is often seen as unfair treatment by the EU (particularly in the field of the issuing of short stay visas and readmission agreements), these authorities may appear to be abandoning their people in favour of good relations with the EU; what is at stake is the stability of the region.

SECTION B:

A State of the Art on Key Legal and Political Documents on ENP and Justice and Home Affairs⁵²

PART 1. Main publications on European Neighbourhood Policy

Albert, Mathias, Jacobson, David, Lapid, Yosef *Identities, Borders, Orders: Rethinking International Relations Theory*: University of Minnesota Press 2001, 349 p.

Informed by current debates in social theory, *Identities, Borders, Orders* brings together a multinational group of respected scholars to seek and encourage imaginative adaptations and recombinations of concepts, theories, and perspectives across disciplinary lines. These contributors take up a variety of substantive, theoretical, and normative issues such as migration, nationalism, citizenship, human rights, democracy, and security. Together, their essays contribute significantly to our understanding of sovereignty, national identity, and borders.

Andreas, Peter "Redrawing the Line: Borders and Security in the Twenty-first Century", *International Security*, Vol. 28, No. 2, 2003, pp. 78-111.

Border control – the effort to restrict territorial access – has long been a core state activity. As territorially demarcated institutions, states have always imposed entry barriers, whether to deter armies, tax trade and protect domestic producers, or keep out perceived ‘undesirables’. All states monopolise the right to determine who and what is granted legitimate territorial access. But there is significant historical variation in border control priorities. Although military defense and economic regulation have traditionally been central border concerns, in many places states are retooling and reconfiguring their border regulatory apparatus to prioritise policing. Thus, rather than simply eroding, as is often assumed, the importance of territoriality is persisting – but with a shift in emphasis. In many cases, more intensive border law enforcement is accompanying the demilitarisation and economic liberalisation of borders.

⁵² This compilation has been carried out by Viktoriya Khasson (CEPS) under the supervision of Thierry Balzacq (University of Namur, Belgium).

Apap Joanna, Tchorbadjiyska Angelina, *What about the Neighbours? The importance of Schengen along the EU's External Borders*, CEPS WD No. 210, October 2004.

Over the last few years, the EU's discourse concerning border controls has presented a paradox – on the one hand, the EU promotes good neighbourly relations, while on the other hand it emphasises the need to strictly implement the Schengen acquis on border controls and visa regimes. The main underlying obstacle to a good and open partnership between the EU and the candidate states, and in turn between the enlarged EU and its neighbours, is a lack of trust towards the EU's neighbours. One major challenge now for neighbours such as Ukraine, Moldova and Belarus is how to convince the EU that they can be good partners in fulfilling the objectives of Schengen and protecting the EU's interests with respect to who comes in and out of its external borders.

The two main questions on which this working paper is centred are:

- To what extent can there be flexibility in implementing Schengen rules to prevent marginalising the new EU neighbours as a result of fears about 'threats' moving westwards across borders?
- What can the EU neighbours do in the short, medium and long term to promote trust and to one day hope to come off the Schengen 'negative list' with respect to freedom of movement?

Baracani, Elena *ENP Political Conditionality: A Comparison between Morocco and Ukraine*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The paper presents an empirical assessment of the implementation of the European Neighbourhood Policy, as well as, an analysis of the political or democratic conditionality in the case of two ENP partners belonging to different geographic areas. It is widely recognised that the European Union has succeeded in favouring a fast democratisation of new member states and acceding countries through the main instrument of political conditionality and the incentives of membership. Thus, the main goal of this paper is to explore whether the ENP political conditionality can succeed in promoting a democratic transformation of its partners without offering them the incentive of full political integration.

Benedek, M. *From Neighbour to Member or Associate? The Future of the European Neighbourhood Policy*, Paper, EU Policy Network, 2003.

The upcoming expansion to the east has made it necessary for the European Union to formulate an explicit neighbourhood policy towards its new proximity.

Barring a veto from member states or a negative outcome in national referenda in the accession countries, the first wave of eastern enlargement will push the external frontiers of the EU to Kaliningrad, Russia proper, Belarus, and Ukraine in the north, and Romania, Serbia-Montenegro, and Croatia in the south-east. The EU's new 'near abroad' will comprise a highly heterogeneous group of countries and sub-regions, each posing challenges of a different kind to the enlarged Union. The purpose of this essay is to explore the nature of these challenges and to develop alternative scenarios of how the EU may choose to address them.

Bojkov, Victor D. *'The Neighbours of an Enlarged EU: Conceptual Links between Policies of Enlargement and Policies of Neighbourhood'*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The European Union only started developing a substantial neighbourhood policy after completing the latest of its enlargements. It could be reasonably claimed that the policy of enlargement fares highly among EU's external-oriented initiatives. With respect to this the proposed paper will analyse the relations between the two policies, in terms of conceptual foundations, institutional organisation and practical outcomes. It is based on the assumptions that the policy of enlargement has served as a model to inform the development of the Union's neighbourhood policy and asks the question why this is so and how such influence has come about.

Bosse, Giselle *'Towards a Framework for Analysing the ENP: External Governance, Institutions and Ideas'*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The paper is part of the ongoing research and consists of four parts: The first section comprises a brief review of the existing literature on the ENP and its shortcomings in respect to explaining the processes of its formulation. The second section explores the conception of the EU as an entity based on state-centric governance and the limits of such approaches to generate explanations of why and how the ENP was formulated. In the third section, the ENP is established as an essential aspect of an emergent system of EU external governance, which no longer assumes member states as the primary actors in the formulation of EU policies towards neighbouring states. In order to move beyond the descriptive character of the external governance approach, the fourth and final section is an attempt to tentatively map the various ways in which institutionalist and modern constructivist assumptions may inform why and how the ENP was formulated.

Cremona, Marise “*The European Neighbourhood Policy: legal and institutional issues*”, Stanford University. Centre on Democracy, Development and the Rule of Law Working Paper No 25, 2 November 2004.

This paper will address some of the legal and institutional issues that arise in relation to the European Neighbourhood Policy (ENP), its genesis, rationale and policy context. These include the interaction between the ENP and other legal instruments governing EU relations with the neighbourhood states, the appropriateness of its methodology and structures, and the approach taken towards the membership aspirations of (some of) the states concerned. It will focus in particular (and with an emphasis on the Eastern European states) on the EU's emphasis on the rule of law, in the light of its overall objectives in relation to the ENP states, especially its security objectives.

Di Puppo, Lili ‘*The Corruption Aspect in the EU Policy in the South Caucasus*’. Paper presented at the 1st Challenge Training School “*Perspectives on the European Neighbourhood Policy*”, CEPS, Brussels, 21-22 April 2006.

This paper aims at examining some questions related to the EU anti-corruption policy and rule of law promotion in the South Caucasus in the ENP framework. First, the EU's objectives in the South Caucasus in the ENP framework will be analysed. Secondly, the EU's approach to anti-corruption, in particular in the context of enlargement, and the instruments on which the EU bases its anti-corruption policy towards candidate states and third countries will be examined. Finally, the appropriateness of the EU's approach to the corruption problem in the South Caucasus countries and the EU's foreign policy instruments in the South Caucasus (conditionality, socialisation) will be discussed.

Emerson, Michael *Institutionalising the Wider Europe*. CEPS Policy Brief, October 2003.

The Wider Europe has become a prominent feature in European foreign policy discourse. The EU's first policy documents on this subject, however, have been thin in substance, mainly seeking to develop more active bilateral relations with countries such as Ukraine and Moldova. At the same time, however, the EU is discussing bilaterally – just with Russia – a set of common European policy spaces that should be at the heart of a Wider Europe policy. This paper argues that the EU should adopt a systematic approach to defining a complete set of seven common European policy spaces, with multilateral institutional developments to match, thus bringing together the bilateral and multilateral approaches. The overarching institutional mechanism should be through transforming the present very weak ‘European Conference’ into a seriously structured ‘Pan-European Conference’, led by a Coordinating Group

consisting of the EU, Russia and a few other rotating places for non-EU states, with institutionalised linkages to the Council of Europe and other European multilateral organisations for the specific common policy spaces.

Emerson, Michael (ed.) *Democratisation in the European Neighbourhood*, CEPS Paperback Books, 1 October 2005.

This is the first state-of-the-art work on the process of democratisation in the wider European neighbourhood since the seminal events of 2004, with the EU's enlargement and the Orange, Rose and Cedar Revolutions beyond. Covering both the European CIS states and the Mediterranean Arab world, leading experts from these regions interpret the recent revolutions and prospects for further democratisation in the European neighbourhood. These analyses are accompanied by a comprehensive critique of the EU as promoter of democracy.

Emerson, Michael and Noutcheva, Gergana *'From Barcelona Process to Neighbourhood Policy: Assessments and Open Issues*, CEPS WD No. 220, March 2005.

The Barcelona process so far has been a valuable systemic/institutional advance in Euro-Med relations and a confidence-building measure on a large scale. But it has not been a sufficient driving force to have created a momentum of economic, political and social advance in the partner states. It is therefore quite plausible that the EU should seek some new advance – through the European Neighbourhood Policy (ENP) – to build on the positive features of Barcelona and so try to introduce some new driving force. The Action Plans currently being adopted seek to make the often vague intentions of the Association Agreements of the Barcelona process more operational by linking them to either domestic policy programmes of the partner state or to EU policy norms and standards as an external anchor. In this paper we first crystallise alternative approaches for the ENP to become a real driving force under the headings of 'conditionality' and 'socialisation'. The conditionality concept would mean that the EU sets out i) what incentives it offers, and ii) the conditions on which these incentives would be delivered. The socialisation concept relies essentially on a learning process that comes from the extensive interaction between actors in the partner states and the EU, which induces the partner states to engage in policy reforms that are to a degree modelled on EU norms or derive some inspiration from them. For the EU to become a driving force for reform in the region also requires that it does not have to face an uphill struggle against negative tendencies, for example in the widening and deepening of radical Islam – and here the issue of coherence in the approaches of the EU and US together is paramount.

Emerson, M., Aydýn, S., Noutcheva, G., Tocci, N., Vahl, N., Youngs, R. *The Reluctant Debutante: The European Union as Promoter of Democracy in its Neighbourhood*, CEPS WD No. 223, July 2005.

In its discourse, the EU places democracy and the rule of law as paramount. This paper examines the extent to which the EU is a coherent actor in pursuing these goals in practice, especially in its wider neighbourhood. Case studies are presented, covering much of the neighbourhood: Balkans, Turkey, Russia and Ukraine, Maghreb and Israel-Palestine.

Gammeltoft-Hansen, Thomas *'Bounded Spheres of Justice: the Externalization of Asylum in the EU and the advent of 'protection light'*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

As this paper will try to show, European states have been keen to exploit this very structure to deflect the burden of asylum or change its obligations altogether. Paradoxically, the current interest in developing asylum policies with a global reach seems to be accompanied by an increasingly restrictive interpretation by European states of the refugee protection regime as something tied exclusively to the territory of the acting state. The following section sets out to clarify the territorial principles of the current refugee regime and the paper then goes on to show how these impact the different mechanisms of the current EU framework to externalise asylum. As will be shown, externalisation largely serves to achieve an increased operational flexibility of European states in deciding whom to offer asylum and the quality of protection provided. To the extent that these initiatives become a substitute for asylum in the EU, one could fear that this will institutionalise a new paradigm of 'protection light', in which more developed countries with a global reach are able to exploit this set of mutually exclusive spheres of justice to shuttle protection seekers towards less costly solutions.

Garcia Andrade, Paula *'Readmission Agreements and Development Cooperation. A Feasible Challenge for European Neighbourhood Policy ?'* Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

Readmission agreements are now considered a priority of the European Immigration Policy. This also constitutes evidence of the trend to introduce migratory issues within the European external relations with third countries.

Obviously, entering into this kind of agreement will have an important influence on the European Neighbourhood Policy, for two main reasons. On one hand, this policy is part of the external relations politics of the European Union, and on the other

hand the fact that neighbouring countries are increasingly linked with illegal migration, as source or transit countries. However, the conclusion and effective enforcement of readmission agreements by sending and transit countries of migratory flows is rather complicated as a result of their limited financial means. Above all, the third countries are reluctant to take charge of refused illegal migrants without compensation from host states. Hence, it has been deemed necessary to implement supplementary measures of incitement, beyond technical and financial assistance. As a consequence, I propose to link readmission agreements coherently to development cooperation measures, which should take into account the existing nexus between migration and development. The effective and successful introduction of these synergies into association agreements and partnerships with the EU's closest countries represent a challenge for European Neighbourhood Policy.

Gatev, Ivaylo 'Good Neighbours Make Good Fences: Europeanising Ukraine's Eastern Border'. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

In an article titled "The Frontiers of the European Union: A Geostrategic Perspective", William Walters argues that Europeanisation implies and manages a process of disintegration because it involves the dismantling and reorganisation of social and economic relations that constitute the legacy of previous or alternative systems of order (Walters, 2004). This paper examines the potential of the European Neighbourhood Policy (ENP) to hollow out alternative regional integration projects by reference to several EU initiatives directed towards the management of Ukraine's eastern border with Russia. Drawing on an array of policy documents and official statements in the media, the paper aims to demonstrate that in three related areas – border demarcation, remote policing, and direct policy export – the neighbourhood initiative seeks to disarticulate the presently open and practically unguarded Ukrainian-Russian border from a post-Soviet arrangement conducive to regional integration, and to rearticulate it into a security regime centred on the Schengen acquis. ENP can thus be said to serve a dual function: it not only advances the Union's security with regard to certain border-related concerns like contraband and human trafficking but also attends to the EU's wider geopolitical ambition, namely, to establish itself as the core integration project in Europe.

Guild, Elspeth, *What is a Neighbour? Examining the EU Neighbourhood Policy from the Perspective of Movement of Persons*, CHALLENGE Observatory, Academic Texts, June 2005, <http://www.libertysecurity.org/article270.html>.

The author's interest is focussed on the European Neighbourhood policy as far as it provides actions and measures on the movement of persons. Existing agreements

with countries in the Neighbourhood programme as well as the European Neighbourhood Plans with regard to the provisions on movement of people are examined, in particular visa rules, legal migration, irregular migration, asylum and border management. With regard to visa rules and legal migration the author concludes that there is little on offer from the EU. It appears to her that most of the measures intended as 'carrots' amount to a repackaging of already existing agreements. As regards irregular migration, the emphasis is on placing obligations on the neighbours to act as the buffer between the EU and other third countries. On asylum, there is a positive emphasis on upholding the standards of the Geneva Convention. Those neighbours that are not yet party to the Convention are encouraged to sign up. This, according to the author, is very a good neighbourhood policy, widening the application of refugee protection in accordance with international law. She considers it unfortunate, however, that the ENPs also give the impression that the reason for the insistence on neighbours respecting the Geneva Convention's protection of refugees is not so much inspired by concern for refugees but in order to apply the safe third country rule and return asylum seekers from the EU to their neighbours more efficiently. Finally as regards border management, the author states that emphasis is very much on the neighbours as the border guards of the EU responsible for keeping those third country nationals out of the EU which the member states do not want. The main concern, however, is that in the context of the Neighbourhood Policy, neighbouring states might be forced to adapt repressive measures against their own nationals in order to comply with EU rules. "By adopting repressive measures against their own nationals who seek to travel to the EU, the neighbours' authorities risk diminishing their legitimacy in the eyes of their own people. Instead of protecting their nationals against what is often seen as unfair treatment by the EU (particularly in the field of the issuing of short stay visas and readmission agreements), these authorities may appear to be abandoning their people in favour of good relations with the EU; what is at stake is the stability of the region."

Hadfield, Amelia 'ENP and EMP: The Geopolitics of 'Enlargement Lite'. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The following paper examines the dynamics of two of the EU's three region-based projects: the Euro-Mediterranean Partnership targeted at the Maghreb and Mashreq states of the Mediterranean area and the more recent European Neighbourhood Policy blending EMP and WNIS states. The genealogy of the EMP and the ENP are examined in Part One. Do the motivations behind the ENP stem from the EU's own internal dynamics or form the geopolitical fallout of enlargement? The construction of a buffer zone suggests rather more self-interested motivations than a simple commitment to

face the chronic socio-economic problems of the Mediterranean periphery. Part Two follows on from these suggestions, and analyses the ENP for paradoxical content and 'goodness of fit' with EMP goals. Part Three suggests that the ENP relies upon a series of unreflective assumptions that stem from, and quite possible work to promote, an Orientalist quality that currently lies at the heart of the EU's north-south foreign policy and may damage the chances of reform within the EMP.

Hanggi, Heiner and Tanner, Fred, "Promoting security sector governance in the EU's neighbourhood", *Chaillot Paper*, Paris: ISS-EU, n. 80, July 2005.

The study examines the extent to which the EU is able to address the question of security sector governance with its neighbours and how it interacts, if at all, with other multilateral actors promoting democratic governance of the security sector in its eastern and southern neighbourhood. It takes a look at both the normative and policy dimensions of security sector governance, as well as issues related to operational implementation. The study presents the emerging concepts of security sector governance and security sector reform, explores the EU's current approach and considers how the EU and other key actors such as NATO have assisted the eastern and southern neighbours in this politically sensitive domain. It concludes that the EU pursues the reform of security institutions such as police forces, border guards or judicial systems on a piecemeal basis, often neglecting the crucial governance dimension. Thus, to date the EU has neither developed a comprehensive policy framework nor mainstreamed its manifold activities aimed, intentionally or not, at promoting security sector governance. The paper ends by recommending that the EU develop a holistic approach to promoting security sector governance.

Haukkala, H. 'A Hole in the Wall? Dimensionalism and the EU's New Neighbourhood Policy', *UPI Working Papers*, Finnish Institute of International Affairs, no. 41, 2003.

The paper classifies cooperation format taken by the ENP as "increased and gradually deepening dimensionalism" and points out to the shortcomings of such an approach. Dwelling from the experience of the Northern Dimension, the first conclusion is that such blurring of the clear inside/outside division in the EU is a source of problems for its internal structures. At the same time, blurring the lines will not satisfy the new neighbours' call to belong in full. To make dimensionalism work, requires 'responsiveness': taking into consideration the new neighbours' views by fostering genuine partnership in contrast to the present EU tendency to dictate the terms of cooperation.

Haukkala, Hiski, “Beyond “Big Bang”: The Challenges of the EU’s neighbourhood Policy in the East”, *FIIA Report*, n. 9/2004, Helsinki: The Finnish Institute of International Affairs, 2004.

This FIIA Report analyses what is perhaps the most significant of these, namely the advent of new neighbours – Belarus, Ukraine and Moldova – along the Union’s Eastern perimeter. The report recommends that, in order to be a success, the ENP should vigorously pursue differing approaches to different partners and endeavour to make progress incrementally. Conditionality should be strict, balanced and realistic: The EU is in a position to offer partners significant economic packages which will serve as a strong incentive for them to cooperate, but the carrot of a neighbourhood policy falls far short of an accession promise. The prospect of membership should not, therefore, be totally excluded for the Eastern neighbours. The task of preventing the widening of the ‘wealth gap’ on the EU’s Eastern borders can best be solved by the gradual opening up of EU markets rather than by mere assistance, resources for which will, in any case, be limited. In other words, ‘trade not aid’ should be the working slogan. Building up cooperation in the field of Justice and Home Affairs in the regional format (EU plus all its Eastern neighbours) should be seen not only as an instrument to control common soft security risks, but even more so as a vehicle for transferring European standards of behaviour to the legal sphere. Promoting new business as well as a political and legal culture, while fostering new elites, is a precondition for the successful transformation of the Eastern neighbours and should, therefore, be a matter of utmost priority.

Hayoz, N. Jesien, L., van Meurs, W. *Enlarged EU-enlarged neighbourhood: perspectives of the European neighbourhood*, Frankfurt/Main: Lang, 2005, 392 p.

This is an anthology of the models for future neighbourhood: it comprises mainly contributions of the fifth Eastern European Day at the University of Fribourg on June 3-4, 2004.

Jeandesboz, Julien, ‘Alternative narratives of the European neighbourhood policy. Elements for a “genesis” of the ENP’. Paper presented at the 1st Challenge Training School “Perspectives on the European Neighbourhood Policy”, CEPS, Brussels, 21-22 April 2006.

The paper focuses on the institutional dimension of the ENP, more specifically on the interactions between the actors – individuals and organisations – of the EU’s ‘institutional triangle’ during the drafting stages of the policy. Its main assumption is that in order to explain the current shape of the neighbourhood initiative, one needs to go beyond a chronological and linear account of how it was set up. This

study thus focuses not only on what the ENP consists of, but also on the outlooks and proposals that were marginalised in the drafting process, offering elements of a genesis that goes beyond the official accounts of the policy. For this purpose, the paper brings together an empirical, sociologically-oriented research based on a series of interviews with EU officials, and a discursive analysis of a selection of official documents related to the ENP. Basing itself on these elements, it underlines the existence of three distinct narratives of what the ENP is about and what it should achieve, respectively labelled the 'threats narrative' (prioritising security issues ranging from inter-state conflicts to the discursive linking of terrorism, organised crime and migrations), the 'duty narrative' (focusing on the obligation for the EU to share core values and freedoms with the neighbours) and the 'opportunity narrative' (promoting a neo-liberal, free-tradist and utilitarian perception of the relations between the EU and its 'neighbours'). It argues that the process that led to the creation of the ENP can be analysed as the progressive marginalisation of the 'duty narrative' by the 'threats narrative', fuelled by institutional rivalries both between and within the components of the EU institutional triangle, as well as by developments in the field of European security (such as the externalisation agenda regarding the treatment of migrations for instance). This process, however, does not imply the complete disappearance of the 'duty narrative', nor does it suggest the demise of the 'opportunity narrative'. To a large extent, the paper concludes, the current (and seemingly diverging) orientations of the ENP can be explained through this cohabitation within the initiative of several distinct visions of what the neighbourhood is about.

Kelley, Judith, "New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy", *Journal of Common Market Studies*, vol. 44, no. 1, 2006, pp. 29-55.

The EU's newly launched European Neighbourhood Policy (ENP) is a fascinating case study in organisational management theory of how the Commission strategically adapted enlargement policies to expand its foreign policy domain. From the use of action plans, regular reports and negotiations to the larger conceptualisation and use of socialisation and conditionality, the development of the policy shows significant mechanical borrowing from the enlargement strategies. Given the lack of the membership carrot, the question is whether such adaptation from enlargement can promote political reforms in the ENP countries, which are generally poor, often autocratic and, in some cases, embroiled in domestic conflicts. This article traces the development of the policy and assesses prospects for human rights and democracy reforms.

Kienzle, Benjamin *'The European Union as a Security Provider in its Neighbourhood: The Case of Non-proliferation of Weapons of Mass Destruction in the Mediterranean area'*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

Abstract: As a consequence of the terrorist attacks of 9/11 and the US-led war against Iraq, WMD and their proliferation have become a central element of the EU security agenda. In December 2003, the European Council even adopted a EU Strategy against Proliferation of WMD. The approach adopted in this Strategy can be largely described as a 'cooperative security provider' approach and is based on effective multilateralism, the promotion of a stable international and regional environment and the cooperation with key partners. The principal objective of this paper is to examine how far the EU has actually implemented the 'cooperative security provider' approach in the area which the Non-proliferation Strategy identifies as one of its priorities – the Mediterranean. Focusing on the concept of security interdependence, the paper analyses first the various WMD dangers with which the EU is confronted in the Mediterranean area. Afterwards, it examines how the EU has responded to these hazards in the framework of the Barcelona process and, in particular, the new European Neighbourhood Policy. It is argued that despite its relatively powerful rhetoric, the EU has largely failed, for a number of reasons, to apply effectively its non-proliferation approach in the Mediterranean area and, thus, to become a successful security provider.

Lavenex, S. 'EU External Governance in 'Wider Europe'', *Journal of European Public Policy*, (2004) 11/4, pp. 680-700.

The 'Wider Europe' initiative opens the possibility for a far-reaching association of the EU's eastern and southern European neighbours which, by offering 'everything but institutions' (Prodi), proposes an alternative to membership. This article presents this initiative as part of an ambitious external governance agenda by the enlarged Union with the aim to manage its new interdependence in an altered geopolitical context. Focusing on the conception of interdependence and the institutional configuration of EU relations with its near abroad, external governance seeks to expand the 'legal boundary' of the Union with only limited openings of its 'institutional boundary', thereby oscillating between an inclusionary and exclusionary approach towards its near abroad.

Léonard, Sarah *'The External Dimension of the EU Asylum and Migration Policy. A Comparison of the EU Policies Towards Central and Eastern Europe and Towards North Africa.'* Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

This paper analyses the development of the so-called ‘external dimension’ of the asylum and migration policy of the European Union (EU). It starts by tracing its roots back to early Communications of the European Commission, before examining its gradual evolution in three stages. It shows that the control approach of the external dimension has been increasingly supplemented by two other approaches, namely the ‘root causes’ approach and the ‘regional protection’ approach. Nevertheless, whilst the ‘regional protection’ approach has already seen concrete applications, the implementation of the ‘root causes’ approach has been very slow. Therefore, the two main elements of the external dimension of the EU asylum and migration policy currently are ‘extraterritorial control’ and ‘regional protection’. As this is a fast-moving policy area, it remains to be seen how the delicate balance between the three components of the policy will evolve over the next few years.

Manners, I., ‘Normative Power Europe: A Contradiction in Terms?’, *Journal of Common Market Studies*, (2002) 40/2, pp. 235-58.

An attempt is made to argue that by thinking beyond traditional conceptions of the EU’s international role and examining the case study of its international pursuit of the abolition of the death penalty, the EU is best conceived as a ‘normative power Europe’.

Monar, Jörg, “Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion”, ESRC ‘One Europe or Several?’ Programme Working Paper 07/00.

The study analyses the rationale of the Union’s new ‘area of freedom, security and justice’ and then looks more in detail at the dynamics of inclusion and exclusion it is generating in the wider Europe, focussing on the inclusion and exclusion of EU Member States, European third-countries and third-country nationals. Although primarily focussed on questions linked to ‘internal security’ (in the broadest possible sense) the EU JHA regime in justice and home affairs also has major implications for the ‘outside’, especially for those European countries not fully or partially participating in it and for non-EU nationals who want to work and live within the EU or only want to cross its external borders. It has in fact already generated a dynamic of inclusion and exclusion which is likely to have a major impact on developments in the wider Europe for many years to come. With the rapid development of the EU’s justice and home affairs regime this dynamic is likely to increase, creating new opportunities for integration but also new risks of division and exclusion.

Paiano, Max, ‘Carrots and Sticks: Civilian Power EU and ENP: A Theoretical Defense of Political Conditionality’. Paper presented at the 1st Challenge Training School “Perspectives on the European Neighbourhood Policy”, CEPS, Brussels, 21-22 April 2006.

Political conditionality has been the best and most visible means available to civilian power Europe in its relations with third countries, traditionally in aid and development and enlargement policies and, more recently, in European Neighbourhood Policy (ENP). However, because of the presumed coercive character of conditionality, it has been claimed that the EU cannot be a civilian power in the first place. The paper analyses the theoretical nature of power relationships and of freedom, drawing on Lukes work on power, defending, justifying and reconciling the use of the political conditionality stick and of ENP carrots with civilian power Europe theory. I argue that civilian power's conditionality does not invade the freedom of partner's countries because of the adopted definitions of power and freedom and of the very norms that are the objects of conditionality.

Pusterla, Nicoletta, *'The Impact of the ENP on Cross-border Communities Life. Possible Evolution for a Local Border Traffic Regime with the Eastern Neighbours.'* Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The paper aims at understanding if and to what extent the ENP can facilitate the life of a cross border community divided between a member state and a neighbour. In this perspective, it focuses on the influence of EU policies on the life of ethnic communities living across the new EU Eastern Border. On the one hand, the paper highlights the impact of the recent EU Eastern Enlargement. On the other hand, it investigates the possible positive effects deriving from the application of ENP Action Plans for the Eastern Neighbours. The starting point is the existence of ethnic minorities living in border areas and their cross border relations. Reference will be made to the tensions arising from the requests of ethnic minorities and the support given them by certain member states (i.e. Hungary supporting Hungarian ethnics in Ukraine). The Commission proposal for a regulation on Local Border Traffic at the future Schengen external border will also be a subject of analysis. The objective of this analysis will be that of understanding if the implementation of ENP Action Plans could favour the implementation of legislation on LBT.

Raik, K., *'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood'*, CEPS WD No. 237, February 2006.

The European Union has successfully supported democratisation in its new Eastern member states and candidate countries. Now it needs to become more engaged in those post-communist countries where democratisation is incomplete or stalled. This study argues that civil society should be a more important priority of democracy promotion in the EU's Eastern neighbourhood and calls for a strategic and differentiated approach

designed according to the stage of democratisation in the target country. The paper focuses on three countries that represent three types of case in the eastern neighbourhood: Ukraine, which has become a 're-transition' country after the Orange Revolution; Moldova, where we can observe a prolonged transition; and Belarus, an outright dictatorship. One of the well-known obstacles to enhancing the EU's support to civil society in these countries is posed by the bureaucratic procedures of aid programmes. However, even if the rules were substantially reformed, it would still be difficult for the European Commission to work extensively with NGOs in foreign countries for political as well as institutional reasons. Hence, the EU should create new mechanisms of democracy assistance. The German and US foundations set up specifically for this purpose have proved to be a model with many advantages; similar European foundation(s) could be an invaluable tool for supporting pro-democratic forces in authoritarian countries in particular. The paper also examines two other exemplary models for the European Neighbourhood Policy: the Swedish practice to channel support through domestic NGOs, and the EU's own policy, which has only been applied in candidate countries so far, to use local civil society development foundations.

Sabiote A., Maria, 'When ESDP Confronts ENP: Security Sector Reform as a Bridge in the EU's Foreign Policy'. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The European Neighbourhood Policy's birth has taken place in parallel with the renewed momentum of the European Security and Defence Policy, which has launched 14 operations since 2003. Both policy instruments have converged in the neighbouring area covered by ENP: Georgia, in the East and the Palestinian Territories in the South. In both cases, the Security Sector Reform strategies have been the main focus for ESDP and an important objective for ENP. In this paper, two objectives are pursued: first, to assess the EU's involvement in both cases in SSR terms; and second, to analyse whether the convergence of ESDP operations with a broader EU neighbourhood policy implies that the former has become an instrument for the EU external action.

Smith, K.E. "The use of political conditionality in the EU's relations with third countries: how effective?" *European Foreign Affairs Review*, 1998 (3:2), pp. 253-274.

The first section of the paper further defines political conditionality and discusses some of the problems that arise with its use. The second section reviews how conditionality came to be adopted by the union. The way in which the EU has implemented conditionality is discussed in the third section.

Smith, K.E., “The Outsiders: the European Neighbourhood Policy” in *International Affairs*, Vol. 81, No. 4, July 2005, pp. 757-773.

In May 2004, the European Union acquired not just ten new member states but several new neighbours. At about the same time, it began to flesh out a European Neighbourhood Policy (ENP) to bring some order to the EU's relations with its old and new neighbours and to ensure that the newly enlarged EU would be surrounded by a 'ring of friends'. The ENP is also supposed to stave off further enlargement to eastern Europe. However, several problems with the ENP are evident. It requires much of the neighbours and offers only vague incentives in return, making it unlikely that the ENP can meet its core objectives. Furthermore, the ENP is ambiguous about where the EU's borders will end, and it is already apparent that such ambiguity is not helping to foster reform in eastern Europe. Either the EU should say 'no' to further enlargement, so the ENP becomes the framework for relations with the neighbour for the foreseeable future, or it should say 'yes' to eventually letting in a specified number of neighbours which then move out of the ENP.

Smith, K.E., *Still Civilian Power EU?* European Foreign Policy Unit working paper 2005/1, London School of Economics (21/03/2006).

<http://www.lse.ac.uk/Depts/intrel/pdfs/EFPU%20Working%20Paper%202005-1.pdf>

The contention here is that clinging to the notion of civilian power EU not only stretches the term 'civilian' beyond its breaking point, but also tends to induce excessively rosy-eyed views of the EU as an international actor. 'Civilian' often means 'good', and deploying the 'civilian power EU' argument can close down critical analysis of actual EU foreign policy activities. This article thus attempts to knock off once and for all the idea of 'civilian power EU', and indeed the idea of naming the EU as a specific kind of international actor. The first section defines an ideal type of civilian power; the second argues that the EU is no longer a civilian power. The third section pleads for more critical analysis – and judgment – of EU foreign policy goals in particular.

Smith, M.E., “The European Union and a Changing Europe: Establishing the Boundaries of Order”, *Journal of Common Market Studies*, 1996, Vol. 34, No. 1, pp. 5-28.

This article seeks to explore the relationship between the European Union and the changing European order, with particular respect to the ways in which the EU structures and shapes the boundaries between itself and the broader European arena. It evaluates a range of available international relations theories, and adopts a 'critical neoliberal institutionalist' approach to the problem. It applies this approach by assessing the EU's boundary-constructing and boundary-maintaining behaviour in a number of areas, before developing two models of the EU's role: the 'politics of exclusion' and the 'politics

of inclusion', the EU has moved towards a 'politics of inclusion' to reflect the changing demands of the European order. Nevertheless, the tensions between the two types of politics will continue to be a central feature of the EU's role.

Tiirmaa-Klaar, Helli, 'Construction that might not work: Institutional Limitations of the European Neighbourhood Policy.' Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The paper concentrates on the institutional origins and efficiency of the ENP, and analyses whether institutionalisation of new policy areas using the best practices from previous policies is successful in the EU external relations sphere. It addresses the three major policy mechanisms of the ENP that have been adapted from the EU's Eastern enlargement: conditionality, socialisation and differentiation, and discusses whether these mechanisms are likely to make the ENP successful. The paper will reveal that the ENP suffers from conceptual standardisation and undermines the regional cooperation between the EU and the ENP countries, from the weak socialisation networks, and from policy incoherence and other deficiencies characteristic to the EU's external relations policies.

Trauner, Florian, *EU Justice and Home Affairs Strategy in the Western Balkans: Conflicting Objectives in the Pre-Accession Strategy*, CEPS WD No. 259, February 2007.

The states of the Western Balkans constitute a major source of 'soft security' threats to the EU. The EU attaches a great deal of importance to this subject, as reflected by the fact that justice and home affairs is officially one of the most prominent areas of cooperation in the region. This paper aims at elaborating on this process and poses as its key analytical question: What are the actual routes of influence through which the EU can bring these states closer to EU standards in justice and home affairs?

The analysis presents the EU's pre-accession strategy as one of the chief mechanisms for exerting influence on the domestic political processes and structures of the Western Balkan states. Yet the application of the EU's pre-accession framework to this regional setting suffers from two major shortcomings, namely the EU's 'commitment deficit', which generates doubts about the credibility of the EU's membership promise, and the uncertain timeframe within which compliance with EU rules will be rewarded. To counterbalance these shortcomings, the EU uses its visa regime for the region as a threat and main incentive for strengthening reform efforts. The analysis concludes with the argument that this strategy creates tension with the broader objectives for the region. Although the EU's overall aim is to integrate these countries and to support them in their

transformation towards stable democracies and open, European-oriented societies, its visa regime functions as an obstacle to this very aim by confining the movement of persons, such that they lose sight of the wider horizon.

Trenin Dmitri, *Russia, the EU and the common neighbourhood. Centre for European Reform Essays, September 2005,*

<http://www.cer.org.uk/pdf/essay%5Frussia%5Ftrenin%5Fsept05.pdf>

Through its new 'neighbourhood policy' the EU seeks to forge closer ties with the countries beyond its eastern border, namely Ukraine, Belarus, Moldova and the Caucasus states. Russia has traditionally taken a strong interest in this region, although it has been retreating reluctantly in recent years. Both the EU and Russia have an interest in their neighbourhood becoming more stable and prosperous. The current lack of warmth in EU-Russia relations will make it more difficult for them to work together to achieve this objective. But it also offers them an opportunity for reflection and learning from past mistakes. The EU needs to engage more constructively with its eastern neighbourhood. And Russia has to develop a more enlightened view of its 'national interest' in countries such as Ukraine and Belarus, and in the 'frozen' conflicts in Moldova and Georgia.

Wallace, William, *Looking after the neighbourhood. Responsibilities for the EU-25, Notre Europe, Policy Paper No. 4, July 2003.*

The paper urges that the EU shall not neglect external policy while preoccupied with internal readjustments during the enlargement negotiations. As the basis for any coherent common foreign policy strategy towards the EU's immediate neighbours must include an institutional framework for partnership and consultation with the states of the wider Eurasian and Euro-Mediterranean region; a Free Trade Area for Europe and the Mediterranean; and the investment of political leadership, both within the EU and the domestic politics of its member states and across the neighbourhood, required to raise this issue from peripheral to priority status.

Wichmann, Nicole, '*Promoting the Rule of Law in the ENP – Strategic or Normative Power EU?*' Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The ENP aims at overcoming the "stabilisation vs. integration" dilemma. Its hybrid nature, between foreign policy and enlargement, makes it an interesting testing ground for analyzing the EU's international 'actorness' (Smith 2004, Youngs 2004). This paper focuses on how the EU promotes the rule of law in the framework of the ENP by analytically mapping the ends and the modes of governance prevailing in the external

dimension of the EU's anti-drugs, anti-corruption and judicial reform policies. It will be argued that both the overall shift towards security in the ENP and the differences between the issue areas across time can best be explained by referring to the bureaucratic politics approach (Piana 2002, Allison, Halperin 1972). The theoretical expectation advanced by these scholars is that the players with the greatest amount of power have the greatest influence on policy outcomes. The main findings of this paper are that internal security actors have increased their influence in the external dimension of all of the issue areas and that they have succeeded in resorting to more hierarchical modes of governance for promoting a securitised version of the Rule of Law.

Wolff, Sarah, *'Judicial and Police Cooperation in the Mediterranean: EU's International Actorness by the Backdoor?'* Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006.

The aim of this paper is to investigate the degree to which Justice and Home Affairs (JHA) impacts on the European Union (EU)'s external action, what form does it take, and what are the consequences for EU policy-making. One of the guiding questions throughout the paper will be whether JHA constitutes an added-value to EU's external action or not. Following an inductive approach, this paper starts with a case-study on the Mediterranean where the phenomenon of JHA externalisation will be highlighted. It will then be argued that this particular mode of governance with neighbours has been institutionalised within the framework of the European Neighbourhood policy (ENP). Finally, drawing on the two previous sections, this paper will attempt to raise some fundamental issues about the integration of JHA issues in EU's external action and address the question of its added value for the EU as an international actor.

Youngs, R., *'The European Union and Democracy in the Arab-Muslim World'*, CEPS Working Papers – CEPS Middle East and Euro-Med Project, (2002) No.2, Brussels.

Democracy should be conceived as an important element of European strategic policy towards North Africa and the Middle East, but the complex prerequisites to its stability-enhancing potentiality also recognised. While EU policy has come to incorporate such a perspective, its approach to democracy promotion in the Arab-Muslim world has remained tentative and nebulous in its conceptualisation of how stable and sustainable political change can best be encouraged. A summary of European democracy and human rights aid projects reveals the notable extent to which these have expanded, but also raises concerns over imbalances in the profile of EU political aid. In sum, this calls for a number of changes to EU policy that broaden

the understanding of how different levels of policy instruments can dovetail together in a more comprehensive and sophisticated approach to democracy promotion.

Zaiotti, Ruben *'Of Friends and Fences: Europe's Neighbourhood Policy and the 'Gated Community Syndrome'*. Paper presented at the 1st Challenge Training School "Perspectives on the European Neighbourhood Policy", CEPS, Brussels, 21-22 April 2006

The goal of the European Neighbourhood Policy (ENP), the European Union's recently launched initiative towards the countries that after the last round of enlargement find themselves around the Union's borders, is "to avoid new dividing lines across the continent", and to establish around Europe's edges a 'ring of friends' with whom the EU can enjoy "close, peaceful and co-operative relations". In this paper I argue that, despite its stated objectives, the ENP is actually reproducing – if not reinforcing - some of the existing barriers between the EU and its neighbours and, more problematically, is creating new ones. There is therefore an inherent tension within the ENP between the goal of 'friendship' and the construction of 'fences'. I contend that this tension is a symptom of a pathological condition affecting the ENP that I call the 'gated community syndrome'. In order to explain how the ENP 'caught' the syndrome, I propose a sociological account centred on the concept of 'Schengen culture of security'. From this perspective, the emergence of the syndrome should be understood as the result of the recent consolidation of this culture and its 'spread' across various policy fields in Europe. This account provides an alternative to institutionalist arguments that make reference to the legacy of the enlargement process, or to the contradictory dynamics characterising the EU's 'external governance' to explain the ENP's shortcomings. It also sheds some light on the future of the ENP and whether it might be 'cured' of the gated community syndrome.

Zielonka, Jan, *How New Enlarged Borders will Reshape the European Union*, *Journal of Common Market Studies*, Vol. 39, No. 3, 2001, pp. 507-536

Debate about the final destination of European integration is again in vogue and it is largely state-centric. The future EU is usually seen as a new type of Westphalian (federal) state with a central government in charge of a given territory with clear-cut borders. An overlap between its functional and geographic borders is also envisaged with few complication opt-outs, and no variable geometry. However, this article shows that achieving an overlap between the functional and geographic borders of the EU is very unlikely given the huge degree of divergence that will result from the forthcoming enlargement. The article also questions the EU's ability to acquire one of the most fundamental attributes of a Westphalian type of state: a fixed and relatively hard external border. It offers evidence suggesting that an enlarged EU would more

closely resemble a neo-medieval empire rather than a neo-Westphalian state with serious practical and conceptual implications.

PART 2. Bibliography

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2.3. Official Documents on ENP

2.3.1. ENP documents

Main policy documents

The European Neighbourhood Policy (ENP) was first outlined in a Commission 'Wider Europe' Communication in March 2003, followed by a more developed Strategy Paper on the European Neighbourhood Policy published in May 2004. This document sets out in concrete terms how the EU proposes to work more closely with these countries, offering a privileged relationship, and building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development).

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2.3.2. Relevant documents and Reports in specific areas

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