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The European Neighbourhood Policy as a Process of Democratic Norms Diffusion in Ukraine.

Can the EU Act Beyond Conditionality?

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The European Neighbourhood Policy as a Process of Democratic Norms Diffusion in Ukraine. Can the EU Act Beyond Conditionality?[1] [2]

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Introduction

For decades, EU neighbours have been undemocratic, to the South in Mediterranean developing countries and to the East with countries under the Communist rule. Yet, the third wave of democratization[2] started in the EU neighbourhood, in Portugal (April 1974), Greece (November 1974) and Spain (November 1975), before moving to South America and Asia. In Eastern Europe, it is no sooner than in the late 1980s that democratization began its spread, forming arguably a fourth wave of democratization[3], given its characteristics that differed from Southern Europe (role of the internal changes in the USSR and interconnection between the Eastern European countries).

The EU has proved its efficiency to consolidate emerging democracies, notably through the successive enlargements in the Southern and Central Europe (1980s-2000s). Yet, the question of democratization remains for countries which have no certainty to become EU members, such as the Western Newly Independent States (Belarus, Moldova and Ukraine).

The December 2002 Copenhagen European Council confirmed that the EU should enhance relations with its neighbours on the basis of shared values – defined as democracy, respect of Human Rights and the rule of law. This led to the emergence of the European Neighbourhood Policy (ENP), which was developed in the context of the 2004 enlargement for Central Europe. According to the documents, the ENP aims at avoiding the emergence of new dividing lines between the EU and its neighbours, and promotes 'European values'. Hence, "*The EU must act to promote the regional and sub-regional cooperation and integration that are preconditions for political stability, economic development and the reduction of poverty and social divisions in our shared environment*"[4].

Beyond discourse, the ENP represents for the EU a way to safeguard three key foreign policy priorities concerning its neighbourhood. First, thanks to the ENP, the EU stays away from the question around new accessions in the near or medium term (the 'enlargement fatigue'), especially in the Ukrainian case. Second, the ENP tries to contribute to the securitization of the neighbourhood. Last but not least, the ENP launches a process of

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[2] "*A wave of democratization is a group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of time*". Samuel P. Huntington, *The Third Wave: Democratisation in the Late twentieth Century*, University of Oklahoma Press, 1991, p. 15.

[3] Archie Brown, *Transnational Influences in the Transition from Communism*, Working Paper n° 273, University of Notre Dame, April 2000.

[4] European Commission, "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", COM (2003) 104 Final, p. 3

transformation (through Europeanization) of the neighbouring States in accordance with common European values (among which democratization).

This paper is then focused on the European Neighbourhood Policy and democracy promotion in its Eastern neighbours. Can the EU act beyond 'hard conditionality' experienced during the enlargement process in order to succeed in democratizing its neighbourhood? What are the obstacles to democratisation and political change within the neighbours?

At the heart of the analysis lies the question of efficiency of the ENP without hard conditionality linked with adhesion. Conditionality, i.e. linking the granting of benefits to the fulfilment of some conditions, has been at the core of the EU policy when dealing with accession candidate countries. During the enlargement process, 'hard conditionality' (describing measures a country must meet in order to access any money or political retribution) was the key means for democratic norms diffusion. By contrast, neighbourhood policy uses conditionality in a more flexible way, which is tantamount to 'soft conditionality', destined to influence policies but not to propose a one-fits-for-all policy. It is often argued that because of the lack of an effective or 'hard' conditionality, the EU cannot pretend to a major role as a promoter of democratic norms.

At this point, it is necessary to distinguish between 'procedural democracy' and 'substantive democracy'. Procedural democracy assumes that the electoral process is at the core of its authority and ensures that all the procedures of elections are duly complied with. Thus, in this type of democracy, only the basic structures and institutions are in place. The concept of substantive democracy is a form of democracy which incorporates idealistic connotations, including citizen control over policy, responsible government, informed and rational deliberation, and other civic virtues. In a word, procedural democracy deals with technical aspects while substantive democracy is about the development of a culture.

This distinction being made, the European specificity through the enlargement policy lied in the link between the membership status and the strict application of the conditionality principle. The tacit consequence of this assumption implies that the EU should whether pursue its enlargement policy (e.g. in the Balkans) or accept to have a very limited impact in terms of democratization. Yet, it appears that the process of democratic norms diffusion cannot be limited to the sole conditionality principle in the case of Eastern neighbourhood, and therefore that the EU can promote its own democratic norms and standards with some results.

In order to measure the EU's capacity to diffuse democratic norms, Ukraine is taken as the main case-study in a comparative perspective towards the Central European countries, the Balkans and members of the ENP policy (Moldova, Caucasian and Mediterranean countries).

The first part of the study is dedicated to conditionality in the ENP as a tool for democratic norms diffusion. The genealogy of conditionality in the ENP is drawn in order to investigate on the issue of appropriateness of the democratic norms transfer. The second part deals with European democratic norms diffusion beyond conditionality: the "EU factor" develops its own dynamic of democratization, which should be properly apprehended altogether in order to catch the whole picture. This hypothesis should be tested by taking into consideration the Ukrainian "Orange Revolution".

I- Conditionality as the main tool of a process of democratic norms diffusion

'Hard conditionality' has been said to be by far the most efficient means to spread democracy in former communist countries during the whole 1990s-2000s. This means has worked thanks to a particular interplay between a supply-side of democratization from the EU and a demand-side from the neighbours, which should be put into perspective.

A) The supply-side of democratic norms diffusion through ENP

Historical institutionalism is likely to deal with "*big structures, large processes and huge comparisons*"[5], and traces patterns of social, political, economic behaviour and change across time and space[6]. According to the path dependency theories[7], it may be argued that previous policies have largely shaped the Neighbourhood Policy, and, as a result, have influenced its norm diffusion process.

[5] See Charles Tilly, *Big Structures, Large Processes, Huge Comparisons*, Nottingham, Russell Press, 1984.
[6] Institutions are here used in a broad sense: they can take the shape of a formal bureaucratic structure, but also an ideology or an informal costume. In emphasizing the participation of all kind of groups, not just elites or the state, historical institutionalism offers a dynamic approach to the history of the normative power Europe.
[7] Path dependency theories were originally developed by economists in order to explain industry evolution. Path dependence has primarily been used in comparative-historical analyses to observe the development and persistence of institutions, whether be they social, political, or cultural. In the critical juncture framework, antecedent conditions define and delimit agency during a critical juncture in which actors make contingent choices that set a specific trajectory of institutional development and consolidation that is difficult to reverse. See for instance Michael McFaul, "Institutional Design, Uncertainty, and Path Dependency during Transitions: Cases from Russia", *Constitutional Political Economy*, Vol. 10, n° 1, March 1999, p. 27-52; Jan Ottoson, Lars Magnusson, *Evolutionary Economics and Path Dependence*, Cheltenham, Elgar, 1997; Pierre Garrouste, Stavros Ioannides, *Evolution and Path Dependence in Economic Ideas: Past and Present*, Cheltenham, Elgar, 2001.

In order to understand where the ENP comes from, it is therefore necessary to consider four policies that have prepared it in the 1990s: on the one hand, enlargement and stabilization of the Balkans, and, on the other hand, the Partnership and Co-operation Agreement (PCA) and the European Mediterranean Partnership (EMP). Each of these policies constitutes a particular case management of regional proximities in which the EU is involved, to a variable extent. Then, the ENP conditionality, working through Action plan, should be put into perspective.

1. Democratizing the "close neighbourhood" of Europe: conditionality, enlargement, presence

While the enlargement policy in Central Europe and the EU presence in the Balkans prove differentiated, they are part of the "close neighbourhood" of Europe. The Central European countries are now part of the EU, and the South-Eastern states have the opportunity to join the EU since the Thessaloniki European Summit of 2003. Then, the use of conditionality has been central in these policies.

The enlargement has generally been considered the most successful foreign policy of the EU so far, notably as far as democracy promotion is concerned. It is then a model for the ENP. The Copenhagen criteria made it clear that democracy was a non-negotiable condition for being part of the EU. As a result, the implementation of the *acquis communautaire* has been reached step by step thanks to a strict application of the conditionality principle (pre-adhesion strategy, formal adhesion demand, start of the negotiating process, etc).

The enlargement towards Central Europe has tremendous geopolitical consequences for the internal functioning of the EU[8]. It shapes the preferences of the newly EU-25 (now EU-27), especially in the case of dealing Russia (dilemma *partnership vs rivalry*) the defining of the final borders of the European entity. [9]. However, enlargement cannot be used as an applicable model wherever, given that the EU has already 27 members. As Eneko Landaburu put it, "*Enlargement has been a key tool in projecting stability across our continent. But it is*

[8] See for instance Christopher Hill, "The geopolitical implications of enlargement", pp. 95-116, in Jan Zielonka (ed.), *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union*, London, Routledge, 2002.

[9] Julien Jeandesboz, "Alternative narratives of the European Neighbourhood Policy. Elements for a 'genesis' of the ENP", paper presented at the Challenge doctoral training school "*Perspectives on the European Neighbourhood*", Brussels, April 21st-22nd, 2006

a reality that the EU cannot expand ad infinitum – everything has its limits."[10] Then, it cannot be the sole source of inspiration and comparison for the ENP.

Alongside with the enlargement, the Balkans remained high on the security agenda when the policy-makers were preparing the ENP. The EU had an unsuccessful policy of conflict resolution in its closest neighbourhood, which has negatively affected its international image and credibility[11]. By contrast with enlargement, the European policy in the Balkans can be considered as the major failure of the 1990s, given the outburst of major conflicts in the former Yugoslav Republics, resulting in intervention by NATO forces in Bosnia and Herzegovina, Kosovo and the Republic of Macedonia. However, by contrast with the ENP countries, the European Council of Thessaloniki (2003) stated that the future of Western Balkans[12] "*is within the European Union*". Thanks to this European perspective offered, the EU has a stronger incentive for reforms, although the long-term perspective may not be attractive enough to all the political elites, what explained shortcomings in matter of democratization.

Yet, if the EU conditionality has worked with Slovenia and, to a lesser extent, Croatia, the whole region has not been totally stabilised – considering states such as Albania, Serbia, and Macedonia or the case of the final status of Kosovo. By including the Balkans conditionality in the framework of analysis, it is underlined that conditionality with enlargement is a major means for democratization, but it is neither the only means, nor an all-mighty tool.

2. Exporting democratic norms Southward and Eastward before the ENP

Beyond enlargement and Balkans policies, the EU has tried to export its internal norms toward its Eastern borders and its Mediterranean rimland.

After the collapse of the USSR, the EU was very much involved in the Central European countries and the Balkans, but was more reluctant to intervene in the European Post-Soviet Republics. The EU chose to negotiate a Partnership for Cooperation Agreement

[10] Eneko Landaburu, "From Neighbourhood to Integration Policy. Are there concrete alternatives to enlargement?", *CEPS Policy Brief*, n° 95, March 2006. Eneko Landaburu is Director General, DG External Relations, European Commission.
[11] See for instance Roy Ginsberg, *The European Union in International Politics: Baptism by Fire*, Oxford, Rowman and Littlefield, 2001, p. 85.
[12] Albania, Bosnia and Herzegovina, Croatia, FYROM (Former Yugoslavian Republic of Macedonia), Serbia, Montenegro, Kosovo.

(PCA) for each country. The Ukraine was the first country of the CIS to sign it in June 1994; however, it lately went into force on March 1998, was applied to all the former Post-Soviet States, except the Baltic States. The European Union (EU) has encouraged Ukraine to fully implement the PCA before discussions begin on an association agreement. One of the objectives clearly stated in the document was "*to support Ukrainian efforts to consolidate its democracy"*[13]. However, this commitment to democracy was rather weak, since the political dialogue during the regular summit on democratic values and human rights did not prevent setbacks in the democratic trajectory of Ukraine, particularly in the second term of Kuchma. To summarize, many analysts would agree that "*Overall, the EU's policy towards Ukraine has lacked a clear vision, and its instruments have been rather blunt*."[14] The global disappointing results of this policy were an incentive to change the framework. Moreover, the Post-Soviet countries are far from being a homogeneous group now after more than 15 years of evolution, especially in terms of political outcomes. The EU has for instance much less leverage in Central Asia than in Ukraine or Moldova, because of geographic and human proximity.

Finally, the lessons of the Euro Mediterranean Partnership (EMP), initiated in 1995, should be drawn, since it is also becoming part of the ENP (as the PCAs). This large strategy, more comprehensive than the previous ones, tried to avoid the marginalisation of the Southern and Mediterranean countries after EU Eastward enlargement. The EMP was basically designed as a process to create a framework for multilateral as well as bilateral dialogue, and co-operation. Conditionality was a means to achieve democracy promotion: "*The conditionality clause entitles either party to the agreement to take appropriate measures, including suspending the agreement, in the event that the other party fails to comply with specified human rights norms. This clause has been designed to provide a legal basis for the application of sanctions against a country that violates human rights and democratic principles. It was intended to avoid situations in which the European Community might find itself unable to suspend agreements with countries responsible for human rights atrocities*"[15]. However, the results in terms of democratization have proved dubious: "*Both bilateral Association Agreements (…) and multilateral documents attach great importance to progress*

[13] *Partnership and Co-operation Agreement between the European Communities and their member states and Ukraine*, Article 1.
[14] Kataryna Wolczuk, "Ukraine's European Choice", *Centre for European Reforms Policy brief*, downloadable at: http://www.cer.org.uk/pdf/policybrief_ukraine.pdf, p.2
[15] Elena Baracani, "From the ENP to the EMP: New European pressure for democratization?", *Journal of Contemporary European Research*, Vol. 1, n°2, November 2005, p. 55

on democracy and human rights, yet in practice the EU has not shown any determination to see that such undertakings were respected: for example, it has no applied 'conditionality clauses'"[16]. As such, the EMP has been a laboratory for the ENP policy, under the conditions of a poor utilisation of the leverage of conditionality.

3. The ENP and democratic conditionality through Action plan

The global synthesis of *how* conditionality was used in the previous policies gives some features of the ENP democratic conditionality. This policy aims at being as efficient as enlargement, to limit the risk of destabilisation that occurred in the Balkans and to avoid the absence of an efficient democratic conditionality of the PCA and EMP. The priorities between various goals (security, stability, prosperity) may very well lean toward an interest-driven agenda (security) rather than democracy promotion[17], depending on the country or the region concerned.

However, it is equally true that the emerging paradigm of the late 1980s, making good governance, democracy, security and development go together, has paved the way for an EU as a promoter of democratic norms. Thus, both the soar of CFSP[18] and the adoption of the European Security Strategy[19], which have also played a great role in the shaping of this policy, is not an obstacle to the idea according to which the ENP can be an effective democratic norms diffusion process. As such, the ESS is based on a concept of "comprehensive security"[20], which dates back from the Helsinki Final Act (1975), and underlines the idea of interdependence. This idea broadens the defence perspective by taking into account basic Human Rights and fundamental freedoms, economy, ecology, as well as peace and stability. Because of this interdependence, the EU would prefer to have a democratic neighbour, supposedly more stable and more reliable, than an autocratic one.

[16] Martin Ortega, "A new EU policy on the Mediterranean?", in *Chaillot Paper*, n°64, September 2003, p. 92.
[17] Here, the comparison with the EMP proves useful, given that the policy towards Southern neighbours is sometimes less linked with liberal idealism than with realism, according to some authors. However, some differences can be made between Eastern and Southern neighbours. For the instance of Morocco, see Francesco Cavatorta, Raj Chari, Sylvia Kritzinger, "The European Union and Morocco. Security through Authoritarianism?", *Reihe Politikwissenschaft / Political Science Series*, n° 110, June 2006. The application of political conditionality seems more assertive in Ukraine than in Morocco. See Elena Baracani, "ENP political conditionality. A comparison between Morocco and Ukraine", paper presented at the conference "*Perspective on the European Neighbourhood Policy*" at CEPS, Brussels, April 21-22nd 2006.
[18] Jolyon Howorth, "Global Trends and European Norms in the Field of Security and Defence Policy", presentation given at the conference "*Are European Preferences Shared by Others? The Fate of European Norms in a Globalized World*" at CERI, Paris, June 24th, 2006.
[19] Downloadable at: http://ue.eu.int/uedocs/cmsUpload/78367.pdf#search=%22EU%20security%20strategy%22.
[20] See for instance: Sven Biscop, *The European Security Strategy: a Global Agenda for Positive Power*, Aldershot, Hants, England, Ashgate, 2005.

Beyond the normative goal to promote "shared values", the democratization of the neighbours is supposed to help security at home. The ESS legitimates the ENP by insisting on the securitization of the neighbourhood: "*Even in an era of globalisation, geography is still important. It is in the European interests that countries on our borders are well-governed. (…) It is not in our interest that enlargement should create new dividing lines in Europe. We need to extend the benefits of economic and political cooperation to our neighbours in the East while tackling political problems there*."[21] Hence, the ENP birth is largely inspired by the security anxieties of the ESS, and not much by the objectives of encouraging reforms as in the strategic papers of 2004[22].

Thus, the study of conditionality in the supply-side toolbox shows that it is a highly important means in order to export the EU model in its neighbourhood. Concretely, in return for concrete progress in democratic reforms, aligning Ukrainian standard with the European *acquis*, the Commission suggested that Kiev should be offered the prospect of a stake in the EU's internal market and further integration (notably in terms of freedom of movement for people).

The conditionality envisaged in the ENP works through bilateral relations between the EU and the country partner, resulting in an 'Action plan'[23]. This document, 'tailor-made', becomes the 'roadmap' on which the level of cooperation can be estimated and sets out short and medium-term priorities. Ukraine has signed its own Action plan in February 2005 for three-year duration. This Action Plan is cross-pillar, setting out comprehensive sets of priorities in political, economic and security areas of co-operation. It underlines the primary importance of the respect for democratic values and human rights. Despite the differences in the precise agendas for each neighbouring state, they are drawn on a common set of principles and have a similar structure, which seems to be derived from the experience of the accession negotiation process.

[21] *ESS*, p. 8.
[22] "European Neighbourhood Policy – Strategy Paper", COM(2004) 373 Final, 15 May 2004.
[23] In December 2004, the European Commission has launched the first seven Action Plans under the ENP. (Israel, Jordan, Moldova, Morocco, Palestinian Authority, Tunisia and Ukraine).

B) The demand-side for a process of democratic norms diffusion

The will to diffuse democratic norms through 'hard conditionality' cannot be effective without a strong influence of local actors in favour of the adoption of the democratic norms. Thus, the 'demand-side' of the problem should not be forgotten, given that the political leadership in new members was dedicated to democratic reforms, which in the end has made the success of the enlargement policy.

1. An interactive approach of the ENP

The relationship between international actors, such as the EU, and the domestic actors has been underestimated as a factor under which conditionality can work. The social interaction, as a process consisting of actions, reactions, and mutual adaptations is central in the diffusion of democratic values.

After the demise of the USSR, significant resources were made available by the European Union to assist Ukraine in its transition from a communist regime to an emerging democracy. It has helped to support training, capacity-building and projects aimed at developing democracy. It is therefore necessary to remind that European norms and rules affect neighbouring countries' policy choices through the action of domestic political actors. Government officials (or members of the political game) and societal groups (members of the civil society) can appeal to an international rule or norm in an effort to further their objectives in the national area. The latter were for instance crucial in the internationalisation of the "Orange Revolution" when they broadcast images of the overcrowded Maidan place[24].

Then, two conditions can be identified for the appropriation of European norms by domestic actors[25]: the structural internal context and the signification of the norm on the internal plan.

First, the EU should take into account the question of "appropriateness" of the norms. The ENP should keep in mind the initial conditions of the neighbours, whose starting point is sometimes far enough from a stable state, *e.g.* being captured by interest groups (oligarchies) as in the Kuchma's Ukraine. As Ivan Krastev puts it, "*one clear thread is visible in the post-communist puzzle of success and failure: only nation-states have succeeded in the European*

[24] See for instance Andrew Wilson, Ukraine's Orange Revolution, Yale, Yale University Press, 2005.
[25] Andrew P. Cortell, James W. Davis, "How Do International Institutions Matters? The Domestic Impact of International Rules and Norms", *International Studies Quarterly*, vol. 40, 1996, p. 451-478.

integration project"[26]. If the state apparatus is not able to carry through the reforms, or does not respect the rule of law, no conditionality could work. The European integration presupposes both national consensus and a functioning and legitimate state for its citizens, and to understand that it is more a project of internal transformation than a civilisation-based geopolitical choice.

Second, conditionality efficiency relies on the neighbour elites and their political will. For years, under Kuchma's rule, Ukraine has mainly had a declaratory policy concerning Europe, wishing "integration without Europeanization"[27]. Leadership took stances in favour of rapprochement with the EU, but if nobody was against European integration, less people were in favour of harsh reforms, especially in the economic sector, the Eastern part of Ukraine being more industrialized than the Western one. The European candidacy was a way for Ukrainian foreign policy to open new options and lessen dependency toward Moscow, without claiming for immediate NATO adhesion. This issue of the NATO enlargement was much more contentious in Russia in the 1990s than the enlargement of the EU[28], although this perception increasingly put into question after the mediation of the European troika during the Orange Revolution.

2. Conditionality, domestic actors and democratic norms importation

The "demand-side" should emphasize on domestic actors and effects of conditionality, in order to understand well the local conditions for democratic norms diffusion. The "enlargement rhetoric" (implying that an enlargement promise is a prerequisite for democracy promotion) tends to underestimate the weigh of domestic actors in the process of democratic norms diffusion. If the Central European political elites were united and supported by peoples to reform, the situation is more complex in Ukraine (as it is currently in the Balkans, despite enlargement promise).

It is generally well noted that Ukraine's foreign policy orientation is determined by the internal dynamics of Ukrainian politics and society, and rests on the dilemma between Russia and the West. Cultural and identity issues play an important role in the debate on the general character of foreign policy in Ukraine as do interest groups lobbying for a pro-Russian or a

[26] Ivan Krastev, "Bringing the State Back up", Conference paper, September 2003, http://suedosteuropa-gesellschaft.com, quoted in Judy Batt, "The Western Balkans: Moving on", *Chaillot Paper,* n°70, October 2004, p. 13.
[27] Kataryna Wolczuk, "Integration without Europeanisation: Ukraine and its Policy toward the European Union", EUI Working Papers, RSCAS N°2004/15, October 2004.
[28] See Dov Lynch (ed.), *What Russia sees*, Paris, Chaillot Paper, January 2005, n°74.

pro-European orientation. The East-West divide in historical terms remains a major cleavage in Ukrainian politics, as it was heavily emphasized during the Orange Revolution. The internal balance of power between Russian and Ukrainian culture and language is closely linked with the foreign policy orientation. Elites from the Eastern city of Donetsk and the Western city of Lviv have lobbied extensively for a Russia-centred and an EU-centred foreign policy respectively. It was uppermost in the leaders' mind in Kiev, and they have responded with a policy that prevents the alienation of major ethnic groups in Ukrainian society by steering a 'multi-vector policy' between Russia and the EU. For all those reasons, the domestic actors are central in the democratic norms importation, on the condition that they do not mix the implementation of a democratic regime with geopolitical orientation.

Finally, democratic norms importation and conditionality, the main incentives for reforms, may be contradicting in the case of Ukraine. It is worth mentioning that if conditionality was the key factor of the enlargement policy, this process of transformation was in the end legitimate because it contains an element of democratic legitimacy through popular referenda. Yet, in the case of the ENP, reforms implied by the EU conditionality would have no democratic accountability, given that it does not enable a negative feedback after the implementation of the *acquis*. There can be no referendum on that issue, and the neighbours could not be represented in the EU institutions. Therefore, there is a fundamental dilemma between exporting democratic norms without democratic accountability, or being accused of lacking of political will as a promoter of democracy.

In the early stage, Nathalie Tocci notes, "*the ENP contained elements of conditionality. The 2003 Wider Europe Communication explicitly stated that: "in <u>return</u> for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms… the EU's neighbourhood should benefit from the prospect of closer integration with the EU*"[29]. However, as she follows, this approach has been softened significantly in the strategy paper of 2004[30].

[29] Nathalie Tocci, "Does the ENP Respond to the EU's Post-Enlargement Challenges?", *The International Spectator*, Vol. XL, n° 1, 2005, p.25. The term "return" is in italic in original.
[30] European Commission, "Communication from the Commission to the Council, European Neighbourhood Policy Stategy Paper", COM(2004) 373 Final, Brussels, 12 May 2004.

As such, the core role played by conditionality to promote democracy has been underlined, but put in a relational perspective. If conditionality cannot play the same role as it did during the enlargement, can other means ensure the diffusion of democracy in Ukraine?

II- Beyond conditionality? European democratic norms diffusion in the light of the Ukrainian Orange Revolution

Most of the analysis of the ENP underlines the crucial role of conditionality, as in the enlargement process. Yet, it turns a blind eye to the fact that norms can diffuse through other means.

After considering various democratic norms diffusion models, the Orange Revolution is taken as a case-study in order to define the ability of the EU to promote its preference for democracy.

A) ENP, EU and democratic norms diffusion: alternative views to "hard conditionality only"

The ENP and, beyond, the EU as a global actor, can promote his message of democracy in the neighbourhood by other means than conditionality. In fact, if the conditionality principle is closely linked with a policy (ENP here), the promotion of democracy should take into account the broader influence of the EU, its 'soft power'. According to Joseph Nye, it "*rests on the ability to shape the preferences of others"* [31]. Thus, the EU is not only considered as a "Westphalian actor"[32] in international relations, but also analysed its capabilities through the prism of its "presence"[33]. As Hill put it, this concept emphasizes "*outside perceptions of the Community and the significant effect it has on both*

[31] Joseph .S. Nye Jr, *Soft Power: the Means to Success in World Politics*, New York, Public Affairs, 2004, p.5. On the limits of the characterization of the EU as a soft power only, see Zaki Laïdi, *norme sans la force, l'énigme de la puissance européenne*, Paris, Presses de Sciences Po, 2005, p. 26-35.

[32] The concept of 'actorness' incorporates both the internal dynamics of institutional development and the changing nature of the international environment in which the EU has to operate. The concept diffuses the classical notion of what constitutes an 'international actor'. See Mette Sicard Filtenborg, Stefan Gänzle, Elizabeth Johansson, "An alternative Theoretical Approach to EU Foreign Policy. 'Network Governance' and the Case of the Northern Dimension Initiative", *Cooperation and Conflict: Journal of the Nordic International Studies Association*, Vol. 37, n° 4, p. 391-392.

[33] Dave Allen, Mike Smith, "Western Europe's Presence in the Contemporary International Area", *Review of International Studies*, Vol. 16, n° 1, p. 19-37.

psychological and the operational environments of third parties"[34]. This presence is a precondition for 'actorness', both concepts being useful to catch the power of influence of the EU as a promoter of democracy[35].

Paul Kubicek identifies three tools thanks to which the EU can promote democracy in Ukraine[36]: conditionality, contagion and convergence. It is worth noting that those tools are not exclusive but can function altogether.

Many analysts remind that conditionality should be less efficient in Ukraine, because it does not offer the "carrot" of an enlargement promise. At the same time, there is neither a "stick" policy, since the EU is rather reluctant to impose sanctions to third-parties. The EU feared that sanctions would marginalise Ukraine, and give birth to a Kiev-Moscow axis at its expense. Restricting the EU-Ukraine relationship through the prism of conditionality limits the analysis to the formal relations among states, and forgets the informal interactions – such as socialisation of state elites and different sectors of society.

Contagion refers to the EU non-intentionally spreading norms, by its very presence in the international era, as a model of regional integration or through the gravity model of democratization[37]. During the Kuchma era (1994-2004), contagion seems to have had a limited impact, given the fact that Ukraine has not followed the path of the Central European countries. It has not changed in the same direction as the newly EU members.

Convergence "*entails gradual movement in system conformity with a grouping of established democratic states*"[38], and results from the internationalization of democratic norms, growingly accepted. Persuasion and elite socialisation are used to support convergence to the desired norms.

To make a synthesis of these theories, three levels of a conceptual framework need to be distinguished in order to incorporate the 'EU factor' in the democratization of non-

[34] Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role", *Journal of Common Market Studies*, Vol. 31, n°3, 1993, p. 309.
[35] Charlotte Bretheron, John Vogler, *The European Union as a Global Actor*, New York, Routledge, 2003, p.35.
[36] Paul Kubicek, "The European Union and democratization in Ukraine", *Communist and Post-Communist Studies*, vol. 38, n°2, June 2005, p. 269-292.
[37] Michael Emerson, Gergana Noutcheva, "Europeanisation as a Gravity Model of Democratisation", *CEPS Working Document*, n°214, November 2004.
[38] Geoffrey Pridham, "Rethinking regime-change theory and the international dimension of democratization: ten years after in East-Central Europe", in Geoffrey Pridham, Attila Agh, *Prospects for democratic consolidation in East-Central Europe*, Manchester, Manchester University Press, 2001, p. 57.

candidates but potentially member states[39]. First, the EU promotes democratization through political dialogue, by the means of regular summits, committee meetings and negotiations within existing framework. Second, there is a direct influence of the EU on elite mentalities and external policy orientation. The idea of the "return to Europe", which was a motto of Central European countries during their transformation, has catalysed the effect of "magnet Europa". Third, the EU supports the NGO sector in Ukraine, and has developed programs to strengthen civil society.

B) The "Orange Revolution" in perspective

In order to evaluate the EU in terms of democracy promotion, it is necessary to reconsider the Orange Revolution, by distinguishing two sequences of action in which different interactions will lead to democratic norm diffusion: "Revolution as a moment" and "Revolution as a movement".

1. Reconsidering the Orange Revolution

The preconditions of the Orange Revolution, in order to evaluate the EU effect in the diffusion of democratic norms, should be noted.

The Orange Revolution cannot be understood apart from the features of the former regime, given that scholars consider that domestic factors continue to be decisive for the success or failure of democratization[40]. The Kuchma regime can be categorised as a "competitive authoritarianism"[41], that is to say a hybrid fusion of the former Soviet system and the emerging reformed economy and polity. Yet, the project of a full authoritarian Ukrainian regime has failed both because of oligarchs divisions and a formidable

[39] Svitlana A. Kobzar, "The European Union as a Factor in the Democratization of Ukraine", presentation given at the conference "*New Perspectives on Contemporary Ukraine: Poliics, History, and Culture*" at the University of Toronto, March 17th-19th, 2006.
[40] According to Michael McFaul, preconditions greatly help democratic breakthrough to happen. See Michael McFaul, "Transitions from Post-Communism", *Journal of Democracy*, Vol. 16, n° 3, July 2005, p. 5-19.
[41] Taras Kuzio, "Regime Type and Politics in Ukraine under Kuchma", *Communist and Post-Communist Studies*, Vol. 38, n°2, 2005, p. 167-190.

opposition[42]. This opposition illuminates the role of civil society in the failure of Yanukovych take-over on power. It has heavily been emphasised in the studies of the Orange Revolution[43].

In order to understand the dynamics of this massive social movement, the term of "Revolution" should be further defined. According to Motyl, revolution can be conceived as "*a type of upheaval (sudden, mass), a type of change (rapid, fundamental, comprehensive), or a type of turmoil (sustained, all encompassing)*"[44]. The third type, "Revolution as turmoil", synonymous with "chaos", seems misleading given the peaceful character of the Orange Revolution. Then, defining Revolution as an upheaval would be tantamount to consider that the Orange Revolution runs from November 2004 to the so-called "third round" of the elections (December 2004). The other type, "Revolution as a change" lasting from November 2004 to July 2006 (come back of Yanukovych as Prime Minister[45]), is also persuasive, because it constitutes a whole cycle of the Ukrainian democratic trajectory.

This distinction between "Revolution as a moment" and "Revolution as a movement" is useful to assess the European ability to promote democracy. These two sequences imply different sets of actions and types of influence, which should be analysed.

2. Revolution as a moment: the EU and the crisis

The presidential elections of 2004 announced long before as "watershed"[46] for the democratic trajectory of Ukraine, because massive frauds were expected and done. It was fought by a lasting mobilization of citizens on the Maidan place in Kiev, forming part of a

[42] Lucan A. Way, "Authoritarian State Building and the Source of Regime Competitiveness in the Fourth Wave: the Cases of Belarus, Moldova, Russia and Ukraine", *World Politics*(2005-01)vol.57:n°2, p.231-261.
[43] See for instance: Alexandra Goujon, "La révolution orange en Ukraine: enquête sur une mobilisation post-soviétique", *Critique internationale*, n°27, April-June 2005, p. 109-126; Olaf Hillenbrand, "Good Governance and the Need for Consensus-Building – A Framework for Democratic Transition", in H. Kurth and I. Kempe (eds.), *Presidential Election and Orange Revolution Implications for Ukraine's Transiti;on*, Kyiv, Zapovit, 2005; Andrew Wilson, *Ukraine's Orange Revolution*, New Haven, Yale University Press, 2005.
[44] Alexander Motyl, *Revolutions, Nations, Empires. Conceptual Limits and Theoretical Possibilities*, New York, Columbia University Press, 1999, p. 24.
[45] Ironically, the term "Revolution" also means etymologically "*a way round*"[0]. It entered English from the Old French "*révolution*" in 1390, originally only applied to the celestial body. Only circa 1450 it was generalised as "an instance of great change in affairs"; the presently dominant political meaning was first recorded in 1600, again following French.
[46] Taras Kuzio, "EU and Ukraine: a turning point in 2004?", Institute for Security Studies, *Occasional Paper*, n°47, November 2003.

"coloured revolution"[47]. Many competing explanations can be endorsed in the case of the EU democratic promotion in the case of crisis-management.

The realists would generally be sceptics about the EU as an international actor, given the fact that internal structures of EU governance could paralyse the foreign policy-makers from reaching agreements on the formulation and implementation of coherent foreign policy, because the member-states and institutions pursue their own self-interests[48]. The EU stance during the crisis seems to invalidate, in that case, this framework of analysis. A realist stance would have pushed toward inaction, since many members in the EU consider that Ukraine and Russia are closely linked, and should have then lower the chance of a common action to happen.

By contrast, the liberal intergovernmental theory may give some clue to analyse how the EU has fostered democratic promotion in the Orange Revolution case. Andrew Moravcsik defines this theory through policy demand (domestic preference formation), policy supply (interstate bargaining), and supranational institutions[49]; at the end of the day, domestic interests are a driving force shaping the pattern of cooperation at the European level. The EU "Eastern dimension" can be seen as a preference of the Central European countries for order at their borders. Their new weigh within the EU has been fundamental in the making of the decision to support the opposition, as the case of Poland seems to show.

This debate is particularly obvious when the respective positions of Germany (the leader of the old EU member states for Eastern policy) and of Poland (the leader of the new members) are mentioned about the ENP and Moscow.

After 1989, Berlin had three strategic objectives[50]: maintaining good relations with Moscow; playing a decisive role on behalf of Central European countries, e.g. Poland; and coordinating German initiatives with its European and transatlantic partners. Until the Orange Revolution, Berlin answered to the Ukrainian aspiration toward Europe that it should reform

[47] The first instances of such revolutions started in 2000 in Serbia, with the ousting of Milosevic from power, and in 2003 in Georgia, with the removal of Shevardnadze. It is interesting to note that each successful revolution has produced an experience spread by NGOs and emulated by local social movements. For instance, the organisation of radical youth movements using unconventional protest tactics to undermine the possibility for the regime to repress can be witnessed in all three cases. *Pora*, the Ukrainian youth movement, has developed his own program in spring 2004 following the Serbian (*Otpor*) and Georgian (*Kmara*) models. [0]

[48] Jan Zielonka, *Explaining the Euro-Paralysis. Why the European Union is Unable to Act in International Politics*, London, Macmillan, 1998.

[49] Andrew Moravcsik, "Preferences and Power in the European Community: a Liberal Intergovernmental Approach", *International Organization*, n° 51, 1997, p. 513-553.

[50] Iris Kempe, From a European Neighbourhood Policy toward a New *Ostpolitik* – The Potential Impact of the German Policy, *C.A.P. Policy Analysis*, n°3, May 2006, p. 6.

its political institutions and strengthen its civil society. Yet, the reactions during the crises were rather limited comparing with Poland, Schroeder having a very personalized relation with Vladimir Putin.

By contrast, Warsaw claims that the EU should continue to enlarge to neighbouring countries in order to avoid them to fall in the Russian orbit. The Polish leadership believes in the 'Brzezinski Principle' according to which "it cannot be stressed enough that *without Ukraine, Russia ceases to be an empire, but with Ukraine suborned and then subordinated, Russia automatically becomes an empire*"[51]. The considerations about the Orange Revolution are enlightening in this respect: Kwasniewski overtly claimed in December 2004 that '*Russia without Ukraine is a better solution than Russia with Ukraine*'[52], whereas two years later, the former President Walesa criticized the West: "*we have lost Belarus and now we risk losing Ukraine*"[53]. The value-driven Polish agenda for democratic promotion in Ukraine was mixed with an equally important interest-driven agenda for preventing a Kiev-Moscow axis.

The visible role and presence of Poland during the Orange Revolution can be explained thanks to geography (Poland shares borders with Ukraine, as well as Belarus and Russia with the *Kaliningrad oblast'*) and history, since large parts of contemporary Ukraine have been under Polish rule longer than under Russian rule. Until the Versailles Congress (1918), the Polish political thought aimed at the reconstitution of the pre-1772 Greater Poland to accomplish its '*mission civilisatrice*'. It is not by chance that publications dealing with the Eastern frontiers of Poland flourished in the 1990s[54]. Hence, Poland has been politically very active in the making of this policy, both at the level of think-tanks and government, and has for long developed networking activities in Kiev[55]. The EU programs to reinforce civil society were fundamentally more able to *strengthen* civil society (through the PHARE program in Central Europe) than to *create* the "third sector" in the CIS countries (through the TACIS project).

Yet, if the notion of preferences is well embedded in Moravcsik's work and useful for my purpose, considering "revolution as a moment" implies to lay more the emphasis on the non-state actors. In that regard, a tempered constructivism, in order to answer the need of a

[51] Zbigniew Brzezinski, "The Premature Partnership", Foreign Affairs, Vol.72, n°2, March-April 1994, p. 80.
[52] Interview with the President Kwasnievski, *Polityka*, 18 December 2004. Our Translation.
[53] "Lech Walesa appeals for faster European integration to avoid losing Ukraine", *Kyiv Post*, 15 September 2006.
[54] About the Polish "civilising mission" in Ukraine, see Daniel Beauvois, "Deux "prétendants" historiques à la domination de l'Ukraine", *Transitions & Sociétés*, n°10, juin 2006, p. 25-43.
[55] Polish-Ukrainian co-operation and reconciliation started before the formal independence of Ukraine, during the government of Tadeusz Mazowiecki in 1989-1990, the first non-communist Polish prime minister since the WWII. At the unofficial level, this dialogue was built on the links between Solidarity and the Ukrainian nationalist *Ruch* in the 1980s, or even before in the review *Kultura* (Paris) directed by Jerzy Giedroyc

multi-actor theory, should be favoured. Rather than focusing on state interests (USA, Russia, Poland) and EU institutions and policies (ENP), the need for a multi-level governance to explain the dynamics of the EU. The informal interactions between states and societies are preferred to formal relations between states.

In fact, the EU politics can be understood as the two-way process of policy-making and institution-building at the European level which then feeds back into the member states and their political process and structures, including NGOs. Poland has not acted by itself in Ukraine, but has been successful because it has resorted to a whole set of formal and informal rules as well as socialisation patterns of the EU foreign policy. As such, the EU has acted on two plans, both as an observer and a mediator. In cooperation with the OSCE, the EU has sent observers for the presidential elections. Thanks to this information they provided, the EU has from the very start denounced the frauds, while Russian president congratulated Yanukovych. Moreover, the post-enlargement EU has acted as an efficient mediator, with a troika composed by the Polish President Kwasniewski[56], the Lithuanian President Adamkus and the High-Representative for ESDP, Javier Solana. However, the Polish posture raised some opposition within the EU, or at least scepticism. For instance, José Borell, President of the European Parliament, criticized the role of Poland and Lithuania for acting under the American influence and having a different stance from the majority of the other European countries[57].

The EU role may also be considered through the prism of "revolution as a movement", and thus embracing the whole transformation process of Ukraine.

3. Revolution as a movement: 'Sustainable Revolution' and substantive democracy?

The Orange Revolution started a process of democratic reforms, particularly in terms of press freedom and transparency; as such, it has improved the democratic governance beyond the respect of elections.

[56] President Kwasniewski was able to lead the team of international mediators during the crisis for three main reasons. Firstly, he was trusted by the outgoing President Kuchma during Ukraine's international isolation between the 'Gongadze scandal' (2000) and the dispatch of Ukrainian troops to the invasion war in Iraq (2003). Secondly, he remained relatively neutral before the elections, underlining only his support for the principal of an open, fair and democratic poll, which made him an acceptable mediator to both sides. Thirdly, Kwasniewski's knowledge of Ukrainian affairs made him a legitimate candidate for the mediation.

[57] See *Gazeta Wyborcza*, January 5th, 2005, p. 1.

Yet, the 'democratic transition' concept has recently been under attack, being too closely linked to a procedural definition of democracy. Carothers identified five assumptions that have proved misleading in the past decade[58]. First, Ukraine was a hybrid regime during the Kuchma era, but the demise of his chosen successor (Yanukovych) does not necessary lead to democracy in the short or medium term. Second, the democratic trajectory of Ukraine in the 1990s and 2000s shows that there are reversals in the course of democratization. If 2004 was a turning point, it is far from being enough to get rid of the Kuchma era. Third, if respect for the elections is central for democratization, it does not equate with democracy *per se*. Fourth, whereas it was generally assumed that economic development, history and socio-cultural factors would not be major factors, the Orange revolution has shown two competing mobilisation from the opposing sides. Last but not least, democratization requires a coherent, functioning state, whereas the Ukrainian State has been at times captured by oligarchic groups and sometimes suffers from inconsistency. The whole set of critiques partially explains why the 'Orange parties' have lost the momentum of democratization of late 2004.

Apart from the 2004 crisis, the Orange Revolution initiated a process of internal reforms in Ukraine and realignment in foreign policy. The answer of the EU was rather technical than political, in the sense that it offers a wide range of possibilities within the ENP framework. Although trying not to alienate Russia too much, deeply concerned by its "near abroad"[59] and even more by Ukraine[60], the new government shows its willingness to cooperate with the EU. The most visible effort of Ukraine in regional cooperation has been made in a European monitoring-border operation (EUBAM) on the Transnistrian-Ukrainian segment[61]. The EU, Moldova and Ukraine signed a Memorandum of Understanding on the

[58] Thomas Carothers, "The End of the Transition Paradigm", *Journal of Democracy*, January 2002, Vol. 13, n°1, p. 5-21.

[59] The concept of « near abroad » (*blijne'e zarubeje*) refers in the Russian foreign policy toward the post-Soviet countries, and witnesses of a shift in Russian strategic thought after years of Westernization. According to the 1993 foreign policy concept, Russia is still a great power with several foreign policy priorities: ensuring national security through diplomacy; protecting the sovereignty and unity of the state, with special emphasis on border stability; protecting the rights of Russians abroad; providing favourable external conditions for internal democratic reforms; mobilizing international assistance for the establishment of a Russian market economy and assisting Russian exporters; furthering integration of the Commonwealth of Independent States and pursuing beneficial relations with other nearby foreign states, including those in Central Europe; continuing to build relations with countries that have resolved problems similar to those that Russia faces; and ensuring Russia an active role as a great power.

[60] Russian historiography generally considers Eastern Slavic - Russians ("Great Russians"), Belarusian ("White Russians") and Ukrainians ("Little Russians") to be part of a single nation, linked by history, ethnicity and a common religion (Orthodoxy).

[61] Transnistria, officially "*Pridnestrovskaia Moldavskaia Respublica*" (PMR), is a political entity with a small territory (4163 km²) on the Eastern border of Moldova, neighbouring Ukraine. This "frozen conflict" is often associated with criminal networks and "contraband capitalism", because it relies on a large part on illegal and semi-legal trade in order to make economy run. See Florent Parmentier, "Construction étatique et capitalisme de contrebande en Transnistrie", *Transitions*, Vol. XLV, n° 2, March 2006, p. 135-151.

Border Assistance Mission on October 7th, 2005, whereas the official opening ceremony was celebrated on December 1st, 2005. The goal of the mission was to ensure security at the EU border and to prevent smuggling, trafficking and customs fraud by giving advice and training. Yet, if the democratization of Transnistria may be a step toward conflict settlement, the EU has not put the emphasis on that objective[62]. It was rather concerned with security matters rather than democracy promotion, which may in the end legitimate the existence of the secessionist entity. Although the security aspects may also be normative, they remind that stability and security are sometimes favoured in lieu of democratization.

After the flawed elections of 2004, the European authorities immediately supported the claims of the opposition. On January 31st, 2005, the European Council stated that recent events had clearly shown the choice of the Ukrainian electors in favour of democracy, founded on the respect of fundamental liberties and peace. On February 21st, the European Council declared again his determination to support an ambitious program of political and economic reforms, with an Action plan in ten points. However, despite being critical of the ENP, Ukraine still has to evolve in its framework. Another incentive was given to it in December 2005 when Kiev was officially recognized as a "market-economy". Finally, neither the European Commission nor the European Council have taken commitments on that matter, and the European Parliament only evoked it on January 13th, 2005.

At the same time, Ukraine wishes recognition for a perspective to join the EU, showing that the ENP remains in the shadow of enlargement. According to the Ukrainian political leadership, the ENP is unsatisfactory, but it is taken pragmatically as a "second best", a way to strengthen the European profile of their country: "*We do not support the idea that the ENP should be distinct from the policy of the EU enlargement. On the contrary, we believe that by enhancing cooperation and encouraging reforms it could be of great help in supporting Ukraine's European aspirations. It should become a short-term model of relations, designed to prepare the ground for a Ukraine's progressive integration into the EU.*"[63] However, it is well understood in Kiev that the EU enlargement is a very long prospect, with many traps. That is why the Ukrainian political leadership favours an adhesion to NATO before trying to join the EU, following the Baltic path of the 1990s. It is however doubtful that this path is still an indicated way for an EU accession, given the lack of enthusiasm for a

[62] Oleh Protsyk, "Moldova's Dilemmas in Democratizing and Reintegrating Transnistria", *Problems of Post-Communism*, Vol. 53, n°4, p. July-August 2006, p. 29-41.
[63] Oleg Ryabchuk, (then) Deputy Prime Minister of Ukraine, "Ukraine and the EU: How Close? How Soon?", *CEPS Neighbourhood watch*, Issue 3, April 2005, p. 6

new enlargement in many European countries, more cautions about the public opinion mood after the failure of the referenda in France and the Netherlands.

If the Orange Revolution has paved the way for deeper European integration and a pluralisation of the political development in Ukraine, it is still not clear if a 'sustainable Revolution' heading toward a more substantive conception on democracy is going to take place in Ukraine in the coming years. The rise of corruption may show that the road is not straightaway[64].

Conclusion

This article has favoured the expression of "process of democratic norms diffusion", emphasizing the endogenous component of democracy, rather than "normative power Europe". The concepts are largely compatible, since they equally presuppose the will of the EU to export or diffuse its own principles, particularly with democratic norms in its European neighbourhood, a constitutive part of its internal model. They equally presuppose the diffusion of norms, such as free-and-fair elections (as in a procedural democracy), but also of values that constitutes the European model of democracy (in accordance with a more substantive definition of democracy). After all, democracy cannot be reduced to a "project" and civil society to "international NGOs", the social engineering from outside should be correctly ingrained for a sustainable democratization. If the EU is not the only promoter of democratic procedures – the OSCE has played a great role in that sense during the Orange Revolution –, it nevertheless tries to encourage the democratization of Ukraine in the long run through the Action plan.

In a word, there can be no democratic promotion without will of importation expressed by the target countries. The enlarged Europe puts much more emphasis on the democratic values, thanks to the new members, but it does not necessarily mean that the EU should be more successful than in the past. The proxy for enlargement in the ENP – access to the internal market and visa facilities – may very well have a positive impact on democratization, on the condition that the neighbours' elites are involved and supported in their effort by a large part of their population.

[64] Anders Aslund, « Ukraine: La démocratie progresse, la corruption aussi », 30 November 2006, available at http://www.telos-eu.com/2006/11/ukraine_la_democratie_progress.php.

Finally, the precedent development led us to two concluding remarks.

The first remains that if conditionality is always linked to the enlargement policy in order to prove its efficiency, it is equally true that the current countries of the Balkans have European perspectives, but with much less result. It is due to the fact that the literature concerning political conditionality is centred on enlargement and on the "supply-side" part of the problem. The domestic forces driving the internal change and the state capacity of the target country have sometimes been largely underestimated in that equation.

The second highlights the fact that conditionality has been considered as the only way through which democracy has progressed in the target countries. It is true that it has been an accelerator of democratization, but other means, as the study of the 'EU factor' suggests, should not be turned a blind eye.