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THE SHADOW OF ENLARGEMENT: CAN THE EUROPEAN NEIGHBOURHOOD POLICY ACHIEVE COMPLIANCE?

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This Article conducts a theoretically informed critical analysis of the European Neighbourhood Policy (ENP). Using primary data—including interviews with the chief architects of the new policy—and drawing upon compliance theory in both international law and international relations scholarship, it seeks to conceptualize and evaluate what is arguably the European Union’s (EU) most ambitious plan of “governance export” to date. As such, the Article develops the nascent literature on the EU’s growing attempts to project its values, rules, and institutions beyond the enlargement process. Part I of the Article positions this literature within the broader historical development of European integration studies, distinguishing between “bottom up,” “top down,” and “top out” academic perspectives. Part II outlines the legal and institutional features of the ENP. Looking beyond the confines of formal EU documents, Part III seeks to account for the motivations and conceptual building blocks of the new policy. Part IV then turns to critically address some of the key issues posed by the ENP. Using comparative methods, the first section of Part IV argues that the ENP closely mimics concepts and instruments first developed by the Commission in the pre-accession process of the Central and Eastern European countries, and subsequently replicated in the Stabilization and Association Process used by the EU in the Balkans. The design of the ENP so far, therefore, suffers from almost reflexive reliance on prior models which may not be suitable to the challenges the ENP attempts to address. Finally, the second section of Part IV addresses the critical question of the likely effectiveness of the ENP in encouraging political and economic liberalization in targeted countries. Where the incentive of membership is absent, can the EU solicit compliance with its rules?

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I. INTRODUCTION

Is the European Union (EU) legally and institutionally equipped to achieve its declared goal of promoting a ring of well-governed countries in its eastern and southern peripheries through the new European Neighbourhood Policy (ENP)? The question represents one of the most pressing challenges facing the EU-25, yet until very recently its mere posing would have been unthinkable. Since the inception of modern European integration, international law (IL) and international relations (IR) theorists have been chiefly concerned with accounting for and conceptualizing the evolving European polity itself. During the first decades of the integration process, the debate was dominated by neofunctionalists and liberal intergovernmentalists, but attracted little attention from the American-led, realist-dominated theories of international affairs. The revamping of the European project, beginning with the Single European Act in 1986 and the drive towards the Maastricht Treaty in 1992, drew in mainstream liberals, realists, and constructivists, who brought more generalizable theoretical perspectives to bear on a previously “boutique” subject of study. In a now classic exposé, for instance, J.H.H. Weiler demonstrated how the

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European Community had incrementally transformed relations among its Member States from a system governed by general principles of public international law to a “specified interstate governmental structure defined by a constitutional charter and constitutional principles.” At the same time, a parallel research agenda began to shift the analysis of European law and institutions to a post-ontological phase—away from the dynamics of integration per se and towards the examination of the EU as a new type of international regime.

What united these disparate literatures for decades was a “bottom up” perspective in which explaining the evolution of a supranational European legal-institutional order constituted the focal point of inquiry.

By the mid-1990s, the reinvigoration of European integration resulted in the emergence of a second generation of scholarship: a “top down” perspective where European-level institutions and processes are no longer viewed solely as the dependent variable in the analysis, but become the independent variable which shapes domestic institutions, rules, and policies. Theorizing across the IL–IR divide, for example, lawyers and political scientists argued that the European Court of Justice (ECJ) has been able to secure compliance with its judgments in Member State systems by adroitly shaping the conduct of national courts and litigants. More broadly, in the last decade scholars have increasingly explored the effects of “Europeanization” (or “EU-ization”)—the diffusion of formal and informal rules, procedures, practices, and beliefs that are first defined in EU policy-processes and then incorporated into the domestic (national and sub-national) structures, policies, and identities of Member States.

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5 The terms “bottom up” and “top down” were originally used by Tanja Börzel & Thomas Risse to describe this shift in European integration literature. Tanja Börzel & Thomas Risse, *When Europe Hits Home: Europeanization and Domestic Change*, 4 European Integration Online Papers (EioP) (2000), available at http://eio.p.or.at/eiop/texte/2000-015a.htm.
7 On legal and institutional aspects of Europeanization, see generally THE EUROPEANIZATION OF LAW: THE LEGAL EFFECTS OF EUROPEAN INTEGRATION (Francis Snyder ed., 2000); EUROPEAN ECONOMIC LAW (Hans Micklitz & Stephen Weatherill eds., 1997); MAKING POLICY IN EUROPE: THE EUROPEIFICATION OF NATIONAL POLICY-MAKING (Svein Andersen & Kjell Eliassen eds., 1993); TRANSFORMING EUROPE: EUROPEANIZATION AND DOMESTIC CHANGE (Maria Green Cowles et al. eds., 2001); THE POLITICS OF EUROPEANIZATION (Kevin Featherstone & Claudio Radaelli eds., 2003); EU LAW AND THE WELFARE STATE: IN SEARCH OF SOLIDARITY (Gráinne de Búrca ed., 2005).
Most recently, a third generation of inquiry has begun to emerge—a “top out” perspective that seeks to conceptualize, explain, and evaluate the impact of EU policies and rules on the domestic structures, laws, and behavior of non-member countries. Evidence of what may be termed “external Europeanization”—the extension of EU rules (laws, institutions, and practices) beyond Member State borders and the adoption of EU rules by non-member countries—can be found globally, but the phenomenon is most pronounced in the European peripheries.8 Surrounding regions “attract attention from policy-making institutions of the EU and, over time, become targets of significant ‘policy export’ from the Union.”9

Not surprisingly, the conduit through which the study of Europeanization has traveled beyond EU boundaries has been the enlargement process itself. In the decade-long pre-accession process, which culminated in the “Big Bang” round of expansion in May 2004, the Central and Eastern European candidates (CEECs) have undergone a massive process of external Europeanization—as exemplified by the oft-cited requirement that they comply with and effectively implement over 80,000 pages of the acquis communautaire. Through association agreements and preparations for accession—with their legal alignment requirements, political conditionality, reform-oriented technical and financial assistance, and partial inclusion in EU programs and agencies—the CEECs became part of the EU governance system well before their formal accession. Indeed, in many respects, the domestic consequences of rule transfer to the CEECs not only mirrored the effects of the EU on the “old” Member States, but have been even more radical in their scope and, arguably, in their transformative depth.10 External Europeanization is also qualitatively different from intra-EU processes in that, unlike Member States who participate in the creation of the rules they are expected to comply with, the extraterritorialization of EU rules involves one-sided alignment by third countries that are excluded from the Union’s rule-making institutions. For the New Member States (NMS), post-accession legal and institutional adaptation now occurs, ceteris paribus, within the framework of an expanded Union, yet the phenomenon of external Europeanization continues in the remaining candidate countries—Bulgaria, Romania, Turkey, and Croatia—and the “potential candidates” in the Western

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8 Beyond Europe’s neighbourhood this phenomenon is evident in EU bilateral relations with third countries. See, e.g., Marcela Szymanski & Michael Smith, Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement, 43 J. COMMON MARKET STUD. 171 (2005). It is also evident in relations with other regions in the world, notably Mercosur, ASEAN, and the African, Caribbean and Pacific (ACP) group of countries. See, e.g., Der-Chin Horng, The Human Rights Clause in the European Union’s External Trade and Development Agreements, 9 EUR. L. REV. 677 (2003); Jean Grugel, New Regionalism and Modes of Governance—Comparing US and EU Strategies in Latin America, 10 EUR. INT’L REL. 603 (2004). Finally, the phenomenon is apparent in thematic areas of policy, such as Justice and Home Affairs and the Environment. See, e.g., Jorg Monar, The EU as an International Actor in the Domain of Justice and Home Affairs, 9 EUR. FOREIGN AFF. REV. 395 (2004).


Balkans—Albania, Bosnia & Herzegovina, Macedonia, Serbia & Montenegro (including Kosovo)—as well as the broader European peripheries, including Ukraine, the Southern Caucasus, North Africa, and parts of the Middle East.

The mechanisms by which EU rules are projected beyond its territorial borders and transposed into the systems of adjacent countries, therefore, remain central to accession negotiations and the EU’s wider strategies of regional engagement. Still, these large-scale processes of rule export and adoption have only lately drawn significant scholarly attention, and the literature on the subject remains seriously underdeveloped. In reality, while the EU has extended its policies of legal alignment, political conditionality, and socialization methods to the Balkans and the wider European peripheries, the study of “Europeanization East” (or “governance by enlargement”) has remained almost entirely confined to the CEECs and other candidates for full membership.

Moreover, the extraterritorial projection of EU rules and their impact on third country systems remains under-theorized. Lawyers and IR scholars pursue parallel but largely separate interests in this area of research, making it a subject where

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11 Studies on eastern enlargement in the mid and late 1990s were largely either descriptive or sought to account for Member States’ enlargement preferences and the EU’s decision to assume the risks and costs of expansion. Prominent examples of this work include ENLARGING THE EUROPEAN UNION: RELATIONS BETWEEN THE EU AND CENTRAL AND EASTERN EUROPE (Marc Maresceau ed., 1997); RECREATING EUROPE: THE EU’S POLICY TOWARDS CENTRAL AND EASTERN EUROPE (Alan Mayhew ed., 1998); BACK TO EUROPE: CENTRAL AND EASTERN EUROPE AND THE EU (Karen Henderson ed., 1999); and HANDBOOK ON EUROPEAN ENLARGEMENT: A COMMENTARY ON THE ENLARGEMENT PROCESS (Andrea Ott & Kirstyn Inglis eds., 2002). For an excellent critical review of the state of the literature on enlargement until 2002, see Frank Schimmelfennig & Ulrich Sedelmeier, Theorizing EU Enlargement: Research Focus, Hypotheses, and the State of Research, 9 J. EUR. PUB’L. POL’Y 500 (2002).

12 This is partially due to the novelty of the research agenda on the legal and institutional effects of the EU on the candidate countries. In the summer of 2000 the first workshop on “Governance by Enlargement” was held at Darmstadt University of Technology, The Robert Schuman Centre for Advanced Studies at the European University Institute in Florence held a series of meetings on “Europe in the World: the External Dimensions of Europeanization” through 2001 and 2002, and the European Consortium for Political Research (ECPR) organized a workshop on “Enlargement and European Governance” at Turin in March 2002. The group of scholars associated with these activities has so far produced the lion’s share of scholarship on the subject. See, e.g., the various chapters in the collected volumes NORMS AND NANNIES: THE IMPACT OF INTERNATIONAL ORGANIZATIONS ON THE CENTRAL AND EASTERN EUROPEAN STATES (Ronald Linden ed., 2002); THE EUROPEANIZATION OF CENTRAL AND EASTERN EUROPE (Franck Schimmelfennig & Ulrich Sedelmeier eds., 2005); see also Heather Grabbe, How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity, 8 J. EUR. PUB. POL’Y 1013 (2001); Franck Schimmelfennig et al., Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia, and Turkey, 41 J. COMMON MARKET STUD. 495 (2003) (covering Turkey as well as several CEECs in the analysis); James Hughes et al., Conditionality and Compliance in the EU’s Eastward Enlargement: Regional Policy and the Reform of Sub-national Government, 42 J. COMMON MARKET STUD. 523 (2004); Dimitris Papadimitriou & David Phinnemore, Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania, 42 J. COMMON MARKET STUD. 619 (2004). Democratization literature also began to address this subject systematically in the last several years. See, e.g., GEOFFREY PREDHAM, DESIGNING DEMOCRACY: EU ENLARGEMENT AND REGIME CHANGE IN POST-COMMUNIST EUROPE (2005); MILADA ANNA VACHUDOVA, EUROPE UNDIVIDED: DEMOCRACY, LEVERAGE AND INTEGRATION AFTER COMMUNISM (2005).
rapprochement between IL and IR scholarship has yet to occur. On one side, scholars such as Cremona, Hillion, Maresceau, and Sadurski comment on the evolution of EU influence mechanisms—rules and policies designed to empower the Union to impact governance in adjacent non-member countries in accordance with EU values, notably democracy, the rule of law, human rights, and the market economy. In practice, each enlargement round has afforded the Member States and the institutions with an opportunity to reflect upon and elaborate the EU's mechanisms of influence, first as conditions of accession per se and increasingly as conditions for closer integration into the internal market that fall short of full membership status. Over the last decade the EU not only articulated a set of criteria for membership (the “Copenhagen criteria”) but has expanded the corpus of accession conditions, elaborated firmer, more determinate benchmarks, and established an increasingly institutionalized and intrusive system for aiding rule adoption and monitoring compliance. In the process, the EU has been able to transform its influence from “passive” to “active” leverage—exercising deliberate conditionality and socialization techniques, particularly after the launching of the Agenda 2000 program in July 1997. The critical examination of these policies allows scholars and practitioners to conceptualize and evaluate “supply side” mechanisms of influence by exogenous actors, and at the same time help define the EU’s external relations identity and international “actorness.”

On the other side, IR theorists are chiefly focused on the question of the likely effectiveness of EU influence mechanisms. Drawing on enlargement, democratization, and international institutions literatures, scholars have posited two main explanatory models that specify different logics by which the transposition of EU rules and institutions into non-member domestic systems may have occurred in the CEECs as a result of active EU engagement and the conditions under which non-members are likely to comply with EU pressures to adopt such rules or modify their practices in accordance with EU standards. The “external incentives” model articulated by Schimmelfennig and Sedelmeier captures the dynamics underpinning conditionality. According to this bargaining based model, the main determinant of


compliance is cost-benefit calculation on the part of the targeted country. Since domestic decision-makers follow a “logic of consequentialism,” the cost-benefit balance depends on the size and speed of the rewards offered by the EU, the credibility of threats and promises, the determinacy of the rules which the EU seeks to advance, and the size of domestic costs of rule adoption.\textsuperscript{16} A second approach, touted by IR scholars as a competing explanation, is the “socialization” (or “social-learning”) model. In accordance with this rationale, domestic decision makers respond to a “logic of appropriateness” rather than material incentives.\textsuperscript{17} Hence, processes of genuine rule internalization are facilitated by interaction of political and epistemic communities, argumentation, persuasion, and complex learning.\textsuperscript{18} In their heuristics, the external incentives and social learning models correspond closely to rationalist-liberal and norm-based theories of compliance in IL, yet these insights have developed almost entirely in isolation from one another with no interdisciplinary framework to guide a common discourse.\textsuperscript{19}

This Article employs insights from both disciplines, IL and IR, to conceptualize and critically evaluate the ENP—EU’s broadest and arguably most ambitious plan of external Europeanization to date. It extends the nascent literature on the extraterritorialization of EU rules, going beyond enlargement, and does so within a theoretically informed analytical framework. Part II outlines the legal and institutional features of the new policy, tracing their development from the time when the idea for a major new initiative entered the Council’s agenda in 2002, to the growing institutionalization of the ENP both internally and in the EU’s external relations with targeted countries. Looking beyond the confines of formal EU

\textsuperscript{16} See Franck Schimmelfennig & Ulrich Sedelmeier, Governance by Conditionality: EU rule transfer to the Candidate Countries of Central and Eastern Europe, 11 J. EUR. PUB. POL’Y 661 (2004); Franck Schimmelfennig & Ulrich Sedelmeier, Introduction: Conceptualizing the Europeanization of Central and Eastern Europe, in THE EUROPEANIZATION OF CENTRAL AND EASTERN EUROPE, supra note 12; see also JUDITH KELLEY, ETHNIC POLITICS IN EUROPE: THE POWER OF NORMS AND INCENTIVES (2004); VACHUDOVA, supra note 12.

\textsuperscript{17} The terms “logic of consequence” and “logic of appropriateness” were articulated by James March and Johan Olsen to differentiate between two theoretical frameworks for explaining decision-making dynamics in institutions. See JAMES MARCH & JOHAN OLSEN, DISCOVERING INSTITUTIONS (1989); James March & Johan Olsen, The Institutional Dynamics of International Political Orders 52 INT’L ORG. 943 (1998). For a critique of the two concepts, see Kjell Goldmann, Appropriateness and Consequences: The Logic of Institutionalism, 18 GOVERNANCE 35 (2005).


\textsuperscript{19} Certain aspects of this relationship are developed in Part III of this Article, but the voluminous subject of compliance in international law, and the relationship between rationalist-liberal and norm-based theories of compliance in IL and IR, cannot be exhaustively addressed here. For a good overview of IL theories of compliance, and the insights generated by lawyers and international relations theorists on the subject, see OONA HATHAWAY & HAROLD HONGU KOH, FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS (2005); Raustiala & Slaughter, supra note 13; see also Ronald Mitchell, Compliance Theory: An Overview, in IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW 2 (James Cameron et al. eds., 1996); Kal Raustiala, Compliance and Effectiveness in International Regulatory Cooperation, 32 CASE W. RES. J. INT’L L. 387 (2000).
documents, Part III provides a contextual analysis of the emergence and evolution of the ENP. Drawing on primary data, including interviews with the chief architects of the new policy, Part III seeks to account for the motivations and conceptual building blocks of the ENP. It is submitted that the inception of the ENP represents an attempt on the part of the Commission to expand its foreign policy role at a time when the conclusions of enlargement negotiations threatened to narrow its domain. The ability of the Commission to shape a new foreign policy agenda has been undergirded by two powerful motivating factors—first, the desire of EU elites to replicate the perceived success of enlargement methodologies, and second, the identification by the first European Security Strategy (ESS) of neighboring countries as a threat to European stability and well-being.\(^2\) Part IV turns to critically address some of the key legal and institutional issues posed by the new policy. Using comparative analysis, the first section of Part IV argues that the ENP, as currently formulated, closely mimics concepts and instruments originally developed by the Commission in the pre-accession process of the CEECs and subsequently replicated in the Stabilization and Association Process (SAP) for the Balkans. The design of the ENP mechanisms displays prominent path dependency, therefore, but also a degree of policy adaptation. The resulting template is a “shadow of enlargement,” containing diluted versions of enlargement methodologies applied reflexively by the Commission to the new policy context, with little evidence of regard for their appropriateness. It is also argued that the ENP suffers from substantial internal tensions and that the Commission’s bold original vision for the ENP has been diluted by competing Council priorities. Finally, the second section of Part IV addresses the key question of the likely effectiveness of the ENP in facilitating domestic transformation in ENP countries in line with EU rules. Where the incentive of a membership perspective is effectively absent, can the ENP achieve compliance? Applying the external incentives and socialization explanatory models, as well as additional insights from IL and IR theories, Part IV identifies key factors that are likely to strengthen and undermine effectiveness.\(^2\)

II. THE EUROPEAN NEIGHBOURHOOD POLICY

The ENP, formally launched by the EU in March 2003, represents the EU’s institutionalized response towards its post-enlargement frontiers. Reacting to a cluster of suggestions generated by Commission leaders in the run up to eastern enlargement, the idea for a major new neighborhood initiative entered EU political discourse in early 2002. In April, the General Affairs and External Relations
(GAER) Council requested that the then External Relations Commissioner, Chris Patten, and the High Representative for the CFSP, Javier Solana, “work up ideas on the EU’s relations with its neighbours.” Their five-page letter, presented at an informal meeting of foreign ministers in September 2002, focused mainly on the EU’s eastern neighbors—Russia, Ukraine, Moldova, and Belarus—and was discussed only briefly by national leaders. Still, since April 2002 the neighbourhood initiative has become a regular item on the Council’s agenda.

In November, the Council acknowledged the need for a new institutionalized relationship with neighboring countries, stressing that these must be “based on shared political and economic values.” Preoccupied with the delicate tasks of concluding accession negotiations with ten prospective members—as well as with the unresolved division of Cyprus and its implication for Turkish candidacy—the December 2002 Copenhagen European Council vested little attention in the broader issue of relations with the new neighbors. Nonetheless, the European Council took the opportunity to affirm that “[t]he Union remains determined to avoid new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union.”

Acting on the invitation of the Council, the Commission published its first comprehensive proposal on the ENP in March 2003. The Wider Europe Communication articulated the rationales for the new policy, outlined eleven “incentives” on which the EU’s approach could be based, and set out the contours of a methodology that is explicitly modeled on the enlargement process—including progressive implementation of country-specific benchmarks agreed to in Action Plans.

The overall objective of the ENP, as expressed by the Commission, is “to prevent the emergence of new dividing lines between the enlarged Union and its neighbours” by sharing “the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being.” Recognizing the powerful interdependencies created between an expanded Union and its neighbors, the ENP is meant “to develop an area of prosperity and friendly

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23 Id. at 2.
24 Prior to the Thessaloniki European Council, which first endorsed the Commission proposals regarding the new initiative, the GAER held several debates and made a number of decisions on what it called the “New Neighbours Initiative.” Council Conclusions on the Implementation of the Wider Europe—New Neighbourhood Initiative (Nov. 18, 2002), available at http://europa.eu.int/comm/world/emp/news/16062003_en.htm#we181102.
25 Id.
26 Copenhagen European Council, Presidency Conclusions (Dec. 12–13 2002), at ¶ 22, 24–25. The council also emphasized the need to enhance cross-border and regional cooperation schemes on these borders.
neighbourhood—a ‘ring of friends’—with whom the EU enjoys close peaceful and co-operative relations.” While participation in the initiative is said to be distinct from the question of possible membership, the ENP offers an enhanced contractual relationship in all major areas of European cooperation without the formal rights associated with full accession—“everything but the institutions, which means very close economic and political integration.” The extent of deepened links is said to depend on the degree of commitment to “shared values,” notably democracy, respect for human rights, and the rule of law, as set out within the EU by the Charter of Fundamental Rights.

The Wider Europe Communication provoked a range of responses from Member State governments. The Swedish and Finnish delegations, for example, voiced concerns over the potentially negative impact of enlargement on Russia, Ukraine, Belarus, and Moldova and called for a new “proximity instrument” that would strengthen the Tacis, INTERREG, and PHARE financial and technical assistance programs to these countries. In contrast, southern European members, particularly Spain and Italy, stressed that the Mediterranean states of the Barcelona Process must not be excluded from the initiative and that the new policy provided an opportunity to strengthen the Euro-Mediterranean Partnership and the aims of the Common Strategy on the Mediterranean agreed to in June 2000.

Drawing on the Commission’s proposals and Member State priorities, the Committee of Permanent Representatives (the “COREPER”) prepared draft conclusions for the Council to adopt, asserting that the Commission’s proposals provided a good basis for developing a new range of policies towards Ukraine, Moldova, Belarus, Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, and Syria, while at the same time for “reinforcing EU-Russia strategic partnership.” In reality, this special reference to Russia marks its exclusion from the ENP—so far the only formal attrition from the initiative. Given its objections to European interference in its own “near abroad” and reluctance to be grouped together with other ENP countries, EU-Russia relations are now defined by the conclusions of the May 2003 St. Petersburg summit. At the same time, the Committee invited the Council to examine whether the countries of the Southern

29 Wider Europe Communication, supra note 27, at 4.
31 Wider Europe Communication, supra note 27, at 4.
32 Proposals from the Finnish Delegation to the Council, 8998/03 (May 6, 2003); Proposals from the Swedish Delegation to the Council, 8999/03 (May 6, 2003).
34 COREPER “A” Item Note, 10447/03 (June 12, 2003).
35 The summit concluded with an agreement to develop four “common spaces” in the EU-Russia “strategic partnership”: a common economic space, a common space of freedom, security and justice, a common space of cooperation in external security, and a common space in education and research. Conclusions, available at http://europa.eu.int/comm/external_relations/russia/sum05_03/ip03_768.htm.
Caucasus could also be included in the initiative. Furthermore, it set out an extensive list of areas of cooperation and stressed that Action Plans “will become key policy instruments of the EU for relations with the neighboring countries over the medium term.”

The Committee further proposed that “new or enhanced agreements” could form part of the ENP package and that such agreements would “supplement existing contractual relations where the EU and the neighbouring country have moved beyond the existing framework.”

The Thessaloniki European Council endorsed these proposals in June 2003 and asked that the Commission present a second proposal, outlining a new Neighbourhood Instrument, which would govern technical and financial assistance to the ENP countries from the 2007–2013 financial perspective. Taking as its starting point the coordination efforts already undertaken by the EU since 2000 between INTERREG, the PHARE Cross-Border Cooperation Programme, and Tacis, the Commission proposed a two-stage approach for reorganizing EU external assistance to the countries covered by the ENP. In the first phase, until the end of the current financial perspective mechanism in December 2006, the emphasis will be to coordinate between existing financing instruments (not only INTERREG, PHARE and Tacis, but also MEDA and CARDS) to support the key objectives of the ENP. In phase two, the 2007–2013 financial perspective, a new legal instrument—the European Neighbourhood and Partnership Instrument (ENPI)—will replace existing geographic and thematic programs covering the countries concerned. A notable feature of the proposed ENPI is the financing of “joint programmes,” modeled on Structural Fund principles such as multi-annual programming and co-financing. In fact, the proposed reform of the financial provisions applied to the ENP countries

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36 COREPER, supra note 34, at 4.
37 Id. at 5.
38 Thessaloniki European Council, Presidency Conclusions ¶ 44 (June 19–20, 2003).
40 The MEDA program is the principal financial instrument of the EU for the implementation of the Euro-Mediterranean Partnership, launched in 1995. The program offers technical and financial support measures to accompany the reform of economic and social structures in the Mediterranean partners. For a critical analysis of the Euro-Mediterranean Partnership, see THE EURO-MEDITERRANEAN PARTNERSHIP: ASSESSING THE FIRST DECADE (Haizam Amrha Fernandez & Richard Youngs eds., 2005). Since 2000, aid to the Western Balkan countries is administered through CARDS (Community Assistance for Reconstruction, Development and Stabilisation). CARDS objective is to support the participation of the countries of the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Serbia, Montenegro, and the former Yugoslav Republic of Macedonia) in the Stabilization and Association Process.
41 ENPI Proposal, supra note 39, at 2.
constitutes one of the components in the Commission’s wider plans to restructure EU external assistance beginning in 2007.\(^{42}\) Whereas for the financial perspective 2000–2006 the EU allocated €8.4 billion for countries that are now covered by the ENP (€3.1 billion for Tacis and €5.3 billion for MEDA), the Commission has requested an almost doubling of funds for ENPI, €14.9 billion, in the next financial perspective.

In October 2003, the Council further mandated that the Commission prepare proposals for country-specific Action Plans to be implemented by June 2004.\(^{43}\) Following broad discussions within the Commission and among Council working groups and some neighboring countries, the Commission published a European Neighbourhood Policy Strategy Paper in May 2004, as well as a series of Country Reports on Israel, Jordan, Moldova, Morocco, Tunisia, Ukraine, and the Palestinian Authority.\(^{44}\) Encouraged by the Georgian “Rose Revolution” of November 2003 and a February 2004 report by the European Parliament, which recommended that the ENP be extended to the Southern Caucasus,\(^{45}\) the Strategy Paper also brought Armenia, Azerbaijan, and Georgia into the initiative. Although formally included in the initiative, the Strategy Paper states that the participation of Belarus and Libya will be conditioned on fundamental political and economic reforms in these authoritarian regimes.

Geographically, therefore, the ENP now covers sixteen countries: the three “Western NIS” states (Ukraine, Moldova, and Belarus); ten Southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, Syria, and Tunisia); and the Southern Caucasus (Armenia, Azerbaijan, and Georgia). Hence, the ENP covers all countries bordering the EU—with the important exception of Russia—that have been excluded from existing or planned rounds of enlargement. As such, Bulgaria and Romania, which have signed accession treaties, are excluded from the initiative, as are the remaining candidates Turkey and Croatia. Also falling outside the ambit of the ENP are the four “potential candidates” in the Western Balkans (Albania, Bosnia-Herzegovina,


Macedonia, and Serbia-Montenegro) with whom the EU manages contractual relations through the SAP\textsuperscript{46} and the members of the European Economic Area (EEA).\textsuperscript{47}

In December 2004, country-specific Action Plans were proposed for six ENP states plus the Palestinian Authority. The Action Plans are political documents, negotiated on behalf of the EU by the Commission bilaterally with each ENP partner country. Action Plans are not legally binding on either the EU or the partner countries. They contain a projected timeline of between three and five years and are renewable by mutual agreement. A further five Action Plans—with Armenia, Azerbaijan, Egypt, Georgia, and Lebanon—are in the process of negotiation. Country Reports on these five countries were presented by the Commission to the Council and published in March 2005.\textsuperscript{48} The Council endorsed the Commission’s five reports in April 2005, announcing that preparation of Action Plans with Egypt and Lebanon are underway and that the Commission has begun work on Action Plans for the three Southern Caucasus countries. The Council decided that the timetable for consultations with Lebanon will be determined by the development of the internal political situation in the country.\textsuperscript{49} How did this broad and ambitious external policy initiative emerge, and what has led to its particular conceptualization and institutional development?

III. ORIGINS, EVOLUTION, AND MOTIVATIONS

\textit{A. Looking Beyond Enlargement}

As the vision of enlargement to Central and Eastern Europe crystallized into reality at the turn of the millennium, minds began to turn to the implications of enlargement for the substantial number of countries that found themselves on the outer perimeters of the expanded EU. The assimilation of ten new Member States placed the EU in an unprecedented position vis-à-vis its immediate external environment:

Although not a state or a federation, the EU has hitherto operated within a relatively stable territory, delimited by its Member States and the contiguity of geopolitical, institutional, legal, cultural and transactional boundaries in post-war Europe. Notwithstanding earlier expansions, the

\textsuperscript{46} EU relations with the Western Balkans have since 1999 been conducted within the framework of the Stabilization and Association Process (SAP). Since the June 2000 Santa Maria da Feira European Council, the Western Balkan countries have been explicitly recognized as “potential candidates” for EU membership. See European Council at Feira, Presidency Conclusions, (June 19–20, 2000), ¶ 67. On EU relations with the Western Balkans in the context of EU enlargement, see HANDBOOK ON EUROPEAN ENLARGEMENT, supra note 11, at 165.

\textsuperscript{47} On EU relations with the EEA countries—Norway, Iceland, and Liechtenstein—in the context of EU enlargement, see HANDBOOK ON EUROPEAN ENLARGEMENT, supra note 11, at 155.


\textsuperscript{49} Press Release, GAER 2656 Council Meeting (Apr. 25 2005).
necessity to define its future borders is a new challenge for the Union, and has only emerged with the current eastern enlargement.50 In its seminal Agenda 2000 proposal of July 1997, the Commission first alerted European leaders that enlargement would require the EU to intensify its economic and political relations with its new neighbors to the east and south and to “step up its policy of providing support for democracy, and [to assist] the reform process and the transition to the market economy system, which constitute long-term guarantees for security and stability.”51 From 1999 onwards, Commission progress reports on the CEECs incorporated recommendations on relations with neighboring countries, and the Commission’s 2001 and 2002 Strategy Papers on preparations for enlargement referred to a new “proximity policy” that would bring benefits to the expanded EU’s neighbors.52 These early official documents were careful to portray enlargement as an opportunity for closer regional ties while remaining vague about the substance and geographical scope of any new relationship. In contrast, European think tanks voiced concern about the possibility of new regional fault lines emerging as the result of enlargement, particularly in the border regions with Russia, Ukraine, Belarus, and Moldova.53

At this juncture, Commission leaders began to consider not only how enlargement would impact neighboring countries, but also how the EU might utilize the enlargement experience itself to actively influence their governmental structures, norms, and conduct. The decade-long pre-accession process that transformed the CEECs, the Commission reasoned, could be strategically adapted to shape a new regional policy framework. By doing so, the Commission would also extend the substantial foreign policy role it gained for itself as the strategic and tactical implementer of the enlargement process at a time when the conclusion of accession negotiations threatened to narrow its domain and so undermine its relative institutional strength.54

54 The analysis in this section draws extensively on sixteen interviews conducted with senior officials in DG Enlargement and DG External Relations in May and June 2005, as well as discussions with officials, diplomatic representatives in Brussels and policy analysts that took part in the conference “American and European Approaches to Democratization in the European Neighbourhood”, held at the Centre for European Policy Studies (CEPS) in Brussels (June 20–21, 2005). Whilst preserving their anonymity, the author wishes to thank all interviewees and commentators for their valuable contribution to this research.
This form of organizational adaptation is consistent with general theories of bureaucratic domain expansion and historical institutionalism scholarship.\textsuperscript{55} Past experience shapes the role perception of institutional actors and creates vested interests and expectations of continued activity.\textsuperscript{56} In this sense, as Sedelmeier argues, enlargement should not only be considered the dependent variable in an analysis of EU external relations, but also an independent variable that has molded the identity of EU institutional actors conducting foreign policy.\textsuperscript{57} The Commission’s prolonged engagement in the pre-accession process of the CEECs—including its formulation of the pre-accession strategy and its dominant role in negotiating, funding, and monitoring interactions with candidates for accession—has generated a cadre of professional expertise and a cohesive group identity with a concretized foreign policy agenda that seeks to further shape European external relations. Enlargement has helped define both foreign policy options, particularly the promotion of democratization and market reform abroad, and methodologies, including political conditionality, institutional engagement, monitoring, and financial and technical aid provision.

Significantly, the ENP has been conceived within the Directorate General (“DG”) of enlargement. In July 2003, the Commission established a Wider Europe Task Force charged with developing the political concepts and methodologies of the ENP.\textsuperscript{58} The task force was placed under the direction of Enlargement Commissioner Günter Verheugen, and it was only with the appointment of the Barroso Commission, in November 2004 that its functions have been fully transferred to a newly named “External Relations and Neighbourhood Policy” DG led by Commissioner Benita Ferrero-Waldner. Moreover, at the bureaucratic level, the Wider Europe Task Force was originally staffed by officials from both the enlargement and external relations DG’s, and practically all of the senior professionals responsible for the ENP’s development—including Deputy Director General, Michael Leigh, and Director for ENP Coordination, Rutger Wissels—have transitioned to the new policy domain from work on enlargement or the SAP in the Balkans. As one Commission official who made this transition explained, “[t]he enlargement chapter is coming to a successful end. The neighbourhood policy is the new agenda . . . it is where the new focus of action is.”\textsuperscript{59}

\textsuperscript{55} See MARCH & OLESEN, supra note 17; DOUGLAS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990); STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN COMPARATIVE ANALYSIS (Sven Steinmo et al. eds., 1992).

\textsuperscript{56} Pierson, supra note 2.


\textsuperscript{58} Press Release, Commission decides on further steps to develop its “Wider Europe” policy, IP/03/963 (July 9, 2003).

\textsuperscript{59} Interview with senior Commission official in DG External Relations and European Neighbourhood Policy (June, 7, 2005).
B. Triumph and Trepidation in Brussels

Two major motivating factors undergirded the Commission’s drive to define a new foreign policy sphere for itself in the post-enlargement era: first, the desire to replicate the perceived success of enlargement; and second, growing security fears associated with neighboring regions, especially the southern Mediterranean. While enlargement per se has long been thought of in utilitarian terms—as one way in which the EU might achieve key foreign policy goals, including security, stability, and promotion of democratization and socio-economic development in transitional countries—throughout the 1990s, the mammoth task of absorbing the CEECs was reasonably viewed as a precarious undertaking whose success was far from guaranteed. By 2002, however, European policy elites came to perceive enlargement not only as a tremendous success story, but also as a proven instrument of EU foreign policy whose methodologies could be adapted and used again. Evidence that the competition for EU membership had produced powerful incentives for domestic change in the CEECs was gathering, and the areas of reform were precisely those identified by Commission officials to be wanting in the wider neighborhood, namely enhanced economic and political liberalization, socio-economic development, and improved state capacities in public services and security. For example, in his December 2002 speech outlining a new proximity policy, then-president of the Commission, Romano Prodi, declared, “The current enlargement is the greatest contribution to sustainable stability and security on the European continent that the EU could make. It is one of the most successful and impressive political transformations of the twentieth century. And all this has been achieved in a single decade.” Similarly, in his report to the Commission on the achievements and challenges of eastern enlargement, former Dutch premier Wim Kok reiterated this instrumentalist conception and argued that the success of enlargement creates a momentum that should be continued: “[e]nlargement is, in fact, the EU’s most successful act of foreign policy, and as it expands, its relations with the new neighbours will be important.” Such confidence in the ability of the “enlargement method” to internally transform adjacent countries is deeply embedded in the Commission’s ENP documents. The Wider Europe Communication, for instance, explicitly asserts, “The incentive for reform created by the prospect of

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61 Romano Prodi, The Wider Europe—A Proximity Policy as the key to stability, Address in Brussels (Dec. 5, 2002). Similarly buoyant was External Relations Commissioner, Chris Patten, who in a March 2003 statement to the European Parliament asserted that: “Over the past decade, the Union’s most successful foreign policy instrument has undoubtedly been the promise of EU membership.” See External Relations Commissioner, Chris Patten, Statement on the Neighbours of an Enlarged Union: A New Framework for Relations with the EU’s Neighbours to the East and the South, European Parliament (Mar. 11, 2003).

membership has proven to be strong—enlargement has unarguably been the Union’s most successful foreign policy instrument.”

Yet, with the very success of enlargement came the fear that the EU’s absorptive capacity was being stretched to a breaking point and that the entire process of European integration was being put at risk of dangerous dilution. As Prodi explained, “I do not deny that [enlargement] has worked very well. But we cannot go on forever extending the area of security, stability and prosperity with just the enlargement instrument.” The EU, in other words, had become a victim of its own success and was facing an existential dilemma—it could continue to expand, risking fragmentation and loss of internal cohesion and effectiveness, or it could abandon its most successful foreign policy mechanism, risking instability on its borders. The attempt to resolve the dilemma through replication of enlargement methodologies, but without commitment to further membership perspectives, represents a core motivation and an organizing principle for the ENP.

The September 11th attacks on the United States and the ensuing transatlantic debates on the linkages between security, economic development, and political reforms in the Greater Middle East indelibly shaped the formulation of the nascent ENP. Since the late 1990s, the EU has explicitly proposed itself as a model for peaceful conflict resolution, not only among its original Member States but between the CEECs (notably Hungary and Romania) and in the Balkans. In a Strategy Paper published on November 13, 2001, for example, the Commission asserts that the EU’s external policies “foresee the creation of a free trade area encompassing the EU and its neighbours in which democracy and respect for human rights and the rule of law prevail.” In a speech before the College of Europe in Bruges on November 12, 2001, Romano Prodi similarly declared that an enlarged EU will have the responsibility and the capacity to help project security and peace beyond its borders. “An enlarged Europe . . . [with its] . . . history, its experience of political integration under democracy . . . [will be important] . . . in the dialogue with countries in search of more stable structures capable of stimulating development.” Expressing disappointment with the achievements of the Barcelona Process and the Euro-Mediterranean Partnership, Prodi called on the EU to embark “on a new phase for the Mediterranean,” one that will create “an arc of stability at Europe’s gates.” In its scope, rationale, and discursive character, the rudimentary contours of the ENP initiative, as it would emerge in the Commission’s communication sixteen months later, are already evident in this statement:

The new Euro-Mediterranean policy will have to be part of a broader coherent and active policy aimed at all our neighbours, in an arc stretching through Russia and the Ukraine to the Mediterranean. A good-neighbour

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63 Wider Europe Communication, supra note 27, at 5.
64 Prodi, supra note 61.
67 Romano Prodi, An Enlarged and More United Europe, a Global Player—Challenges and Opportunities in the New Century, Address Before the College of Europe, Bruges (Nov. 12, 2001).
68 Id.
policy consisting in objectives, institutions and resources which, whilst not involving accession to the Union, allows Europe to establish a special relationship with those countries.\(^69\)

A month later, in his 2002 State of the Union address before the European Parliament, Prodi again emphasized the link between preparations for enlargement and the need for a new “arc of stability” covering Russia, Ukraine, and the Mediterranean. In a section entitled “From enlargement to the greater Europe,” Prodi warned that the EU cannot be satisfied with enlargement alone but that it must “continue on the path of gradual rapprochement with the Balkans and promote an arc of stability at its own gates, towards Russia and the Ukraine and towards the Mediterranean.”\(^70\)

Days before the Copenhagen European Council in December 2002, Prodi laid out, in the most comprehensive manner up until then, the rationale for the new initiative. Two fundamental objectives for European foreign policy in the post-enlargement era were highlighted: projecting security and stability beyond the expanded EU borders and making the EU “a real global player.” “The Community method,” democratic, multilateral, inclusive, and integrative, Prodi argued, “will be valuable in the field of foreign relations too.” By creating a new “proximity policy” which will bring new political perspectives and provide incentives for the EU’s southern and eastern neighbors, the EU will make “a substantial contribution . . . [to] . . . global governance.”\(^71\)

The security rationale for the ENP is further mirrored in the ESS. The strategy was presented to the Thessaloniki European Council in June 2003 by the High Representative for the CFSP and was approved by the Council in December.\(^72\) In reality, the ESS and the ENP were developed concurrently and should be read as interrelated initiatives. The ESS recognizes the contribution of civilian initiatives to European security, asserting, for example, that “trade and development policies can be powerful tools for promoting reform” and that “contributing to better governance through assistance programmes, conditionality and targeted trade measures should be an important element in a European security strategy.”\(^73\) In parallel, the Wider Europe Communication acknowledges, “Over the coming decade and beyond, the Union’s capacity to provide security, stability and sustainable development to its citizens will no longer be distinguishable from its interest in close cooperation with the neighbours.”\(^74\) Similarly, the Strategy Paper explicitly provides that the new policy “will also support efforts to realize the objectives of the European Security

\(^{69}\) Id.


\(^{71}\) Id.

\(^{72}\) ESS, supra note 20.

\(^{73}\) See Robert Kissack, The European Security Strategy: A First Appraisal 19–20 (vol. 2, no. 1 CFSP Forum, 2004). The statement that the goal of the ESS should be “contributing to better governance through assistance programmes, conditionality and targeted trade measures” is found in the ESS, supra note 20, at 10.

\(^{74}\) Wider Europe Communication, supra note 27, at 3.
Strategy.” While acknowledging the need to build a multilateral international order and tackle global security threats, the ESS’s primary strategic objective is to make a particular contribution to stability and good governance in the immediate neighborhood:

Even in an era of globalization, geography is still important. It is the European interest that countries on our borders are well-governed. Neighbours who are engaged in violent conflict, weak states where organized crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe. The reunification of Europe and the integration of acceding states will increase our security but they also bring Europe closer to troubled areas. Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations.

The ENP and ESS, therefore, share an amalgam of assumptions about the nature of a desirable international order and the sources of security and stability. Conceptually, these are seen to flow first and foremost from good government grounded in liberal values. Moreover, unlike the U.S. National Security Strategy, which takes the end of the Cold War as its point of departure, the ENP and ESS hold European integration itself to be the source of regional security. The gradual spread of democracy, the rule of law, and prosperity in progressively wider circles from the Western European core, is credited with the attainment of stability, security, and peace.

IV. LEGAL AND INSTITUTIONAL ISSUES OF THE ENP

A. Path Dependency and Policy Adaptation

In times of crisis, according to Peterson, “almost instinctively, the EU becomes highly conservative and tends to fall back on some type of past policy, even if it is clearly no longer appropriate.” This observation, made in the broader context of the EU’s external relations, is strongly corroborated by EU policy choices vis-à-vis the SAP in the Balkans, and now in the ENP. While the two strategies contain a degree of adaptation and institutional learning, in its core legal-institutional template

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77 ESS, supra note 20, at 7.
79 Duke, supra note 20, at 463.
and methodologies the ENP follows the footsteps of the SAP—displaying heavy conservatism and close reliance on the “classic enlargement model” originally developed by the pre-accession strategy for the CEECs.\textsuperscript{81}

In the case of the SAP, as Friis and Murphy have aptly argued, path dependency on the part of EU leaders led them to model their offer of a Stability Pact for the Balkans in 1999 on the 1993 Balladur Stability Pact for Central and Eastern Europe.\textsuperscript{82} Moreover, “[t]he idea of opening a membership perspective as a stabilizing tool for the region was directly taken from the EU’s enlargement process with Central and Eastern Europe.”\textsuperscript{83} Like the pre-accession strategy, the SAP establishes a formal cooperative framework designed to progressively integrate third countries into the EU regional governance system using conditionality and socialization methodologies. It offers a category of countries unilaterally defined by the EU (the Western Balkans) a conditional prospect of a “privileged relationship” based on a “shared agenda” grounded in the “values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy . . . the very foundations of the European Union.”\textsuperscript{84} The Copenhagen criteria, first articulated with only the CEECs in mind, are extended as the gold standard for closer contractual relations with the EU—although, in light of the low economic and political starting points of the Balkan countries (with the exception of Croatia), their attainment is drawn out and subdivided into more gradual phases.\textsuperscript{85}

SAP documents stress that the policy is intended to build on the foundations of preexisting agreements rather than replace them. Yet, a central element of the policy is the prospect of an enhanced contractual relationship, a Stabilization and Association Agreement (“SAA”), with the EU, offering economic and political incentives on the road to full membership in return for alignment with EU rules, norms, and standards. In addition, progress towards reform is supported by the EU through technical and financial assistance (CARDS), regularized monitoring, reporting procedures, and selective participation of SAP countries in EU programs and agencies. For monitoring mechanisms, the SAP utilizes annual Stabilization and Association Reports (“Annual Reports”) that closely mirror the Opinions (avis) and yearly Progress Reports used by the EU since 1998 to assess progress among the

\textsuperscript{81} A detailed account of the pre-accession strategy for the CEECs is beyond the scope of this Article. The pre-accession strategy is not only broad and complex but also went through a number of evolutionary stages. A number of authors offer a good overview and analysis of the pre-accession strategy. See Marc Maresceau, supra note 14; Christophe Hillion, The Copenhagen Criteria and their Progeny, in EU ENLARGEMENT, supra note 14, at 1; Heather Grabbe, A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants (Robert Schuman Centre Working Paper 12/99, European University Institute, 1999).

\textsuperscript{82} Lykke Friis & Anna Murphy, ‘Turbo-charged negotiations’: the EU and the Stability Pact for South Eastern Europe, 7 J. EUR. PUB. POL’Y 767 (2000).

\textsuperscript{83} Auswärtiges Amt, cited in Friis & Murphy, supra note 82, at 778.

\textsuperscript{84} See EU-Western Balkans Summit, Thessaloniki Declaration (June 21, 2003).

\textsuperscript{85} For a discussion of the Stabilization and Association Process, see Christian Pippan, The Rocky Road to Europe: The EU’s Stabilization and Association Process for the Western Balkans and the Principle of Conditionality, 9 EUR. FOREIGN AFF. REV. 219 (2004); HANDBOOK ON EUROPEAN ENLARGEMENT, supra note 11, at 165–75.
CEECs in attaining EU legal and institutional standards. More broadly, like the Europe Agreements with the CEECs, the SAAs are based on Article 310 of the EC Treaty, and the SAAs concluded so far draw heavily on the earlier Europe Agreements in both their form and content—notably in establishing committees for structured dialogue at political and bureaucratic levels and providing for progressive legal alignment with sectors of the *acquis*.87

At the same time, the 1999 Kosovo crisis eventually spurred the architects of the SAP, particularly the Commission, to adapt the design of new contractual links to the promotion of the EU’s primary concerns in the region: the restoration of stability, development of good neighborly relations between the Balkan countries, and combating organized crime and illegal immigration.88 The SAAs, unlike the Europe Agreements, for example, highlight the importance of fostering stability through regional cooperation and respect for international law, especially compliance with the International Criminal Tribunal for Yugoslavia (the “ICTY”). This emphasis on stability and security reflects policy adaptation in light of the domestic and regional characteristics of the Balkan countries, concerns that were not as prominent in the EU’s relationship with the CEECs.

Imitation of enlargement methodologies in the SAP is also evident in the EU’s periodic efforts to further enhance the policy. In March 2003, for instance, the Brussels European Council invited “the Council and the Commission to examine ways and means, based also on the experience of the enlargement process, to further strengthen the Union’s policy towards the region.”89 The Commission, seeking to “enrich the policy,” proposed the adoption of European Integration Partnerships for each Western Balkan country, which explicitly mimicked the Accession Partnership instruments deployed by the EU in relations with the CEECs.90 The partnerships are political documents negotiated between the Commission and each Western Balkan country within the SAP framework. A key feature of the partnerships is differentiation. Each partnership is meant to “reflect the particular stage of development of each country and be tailored to its specific needs.”91 The first European Integration Partnerships were submitted by the Commission with its

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86 Annual Reports have been published on each of the Western Balkan countries since 2001.

87 A detailed comparison between the Europe Agreements and the SAAs is provided by Phinnemore. David Phinnemore, *Stabilization and Association Agreements: Europe Agreements for the Western Balkans?*, 8 EUR. FOREIGN AFF. REV. 77 (2003).

88 See Pippan, supra note 85.

89 Brussels European Council, Presidency Conclusions ¶ 84 (Mar. 20–21, 2003).

90 Commission Communication, The Western Balkans and European Integration, COM(2003)285 final. The communication provides: consideration should be given to introducing European Integration Partnerships for the countries of the Western Balkans. Inspired by the pre-accession process, the partnerships would identify priorities for action in supporting efforts to move closer to the European Union. The purpose of the partnerships would be to identify short and medium-term reforms which the countries need to carry out, to serve as a checklist against which to measure progress, and to provide guidance for assistance under the CARDS programme. They would reflect the particular stage of development of each country and be tailored to its specific needs.

91 Id. at 3.
March 2004 Annual Reports. Like the pre-accession partnerships, they set out short and medium-term “priorities for action in supporting efforts to move closer to the European Union.”\textsuperscript{92}

As part of its effort to further intensify the SAP, the Commission’s May 2003 Communication proposed that “Twinning” and the Technical Assistance Information Exchange Office (TAIEX) be extended to the Western Balkans. According to the Commission, Twinning—programs involving long-term secondment of experts from the administrations of Member States to targeted countries in order to assist in the implementation of EU rules and standards into national and local government of the targeted countries—“has proved to be an effective tool for institution building in the candidate countries and could be equally effective for the SAA countries.”\textsuperscript{93} TAIEX, which was set up as part of the pre-accession strategy to provide technical assistance to the CEECs on the internalization of the \textit{acquis}, has also been transposed \textit{en masse} with the justification that it is “suited to the needs of the countries of the Western Balkans.”\textsuperscript{94}

This reflexive, almost mechanical replication of the enlargement model to the Balkan countries has attracted potent criticism. Rupnik, for instance, argues that the “classic mode of enlargement that worked for southern Europe . . . and the often-successful inclusion of Central and Eastern European countries is not likely to fit the situation in the Western Balkans.”\textsuperscript{95} Instead, the EU should avoid knee-jerk reversion to its existing toolkit and invest considerable thought in the “invention of a different pattern of EU integration.”\textsuperscript{96} This may entail more explicit involvement in state-building and new forms of international trusteeships.\textsuperscript{97} Commensurate with Rupnik’s prognosis are the findings of the International Commission on the Balkans Report, published in April 2005.\textsuperscript{98} The International Commission, composed of eighteen leading figures from the EU, Western Balkans, and U.S., lamented that a decade after the Dayton Agreement and five years after the collapse of the Milosevic regime in Belgrade, the EU has failed to offer a convincing model to facilitate the transformation of the region:

\begin{quote}
The classical enlargement model that worked for Central and Eastern Europe in the 1990s simply does not fit the conditions prevailing in the Balkans. If this region is to become part of the EU, it needs to undergo significant changes. But success also requires a concomitant shift in policy thinking towards the region in Brussels.\textsuperscript{99}
\end{quote}

The International Commission defined the choice facing the EU in its Balkan policy as “Enlargement or Empire” and called for the EU to project a “member-state

\textsuperscript{92} Id.
\textsuperscript{93} Id. at 4.
\textsuperscript{94} Id. at 4.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
\textsuperscript{99} Id. at 9.
building strategy” to the Balkans, one that would differ substantially from the “classic enlargement” model applied to the CEECs.\textsuperscript{100}

Despite these objections, the development of the ENP points to a continued, evolving pattern of direct borrowing from the enlargement template. Indeed, whereas the SAP’s reliance on enlargement-like strategies and instruments can arguably be justified with reference to the potential candidate status of the Western Balkan countries and the fact that the SAP framework was hastily negotiated under conditions of crisis created by the Kosovo conflict, such mitigating circumstances are completely absent in the ENP context, making the extent of path dependency all the more striking.

As in the case of the CEECs and Western Balkan countries, the EU’s own values—“[n]otably democracy, respect for human rights and the rule of law, as set out within the EU in the Charter of Fundamental Rights\textsuperscript{101}—are given as the essential normative standard for future relations. The notion of shared political and economic values as the basis for EU-neighbor links is consistently stressed in Council pronouncements from the December 2002 Copenhagen European Council onwards and the June 2003 Council summit’s promise to create “ever deeper ties and bridges of cooperation with our neighbours and to share the future of this community of values with others beyond our shores.”\textsuperscript{102} The Strategy Paper also states, “[t]he level of the EU’s ambition in developing links with each partner through the ENP will take into account the extent to which common values are effectively shared.”\textsuperscript{103}

While sharing the “values discourse” with the pre-accession and SAP strategies, the ENP also suggests firmer emphasis on instrumentalist power interests, notably in the realm of security. After articulating a list of shared values, for instance, the Strategy Paper stresses, “[c]ommitments will also be sought to certain essential aspects of the EU’s external action, including, in particular, the fight against terrorism and the proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution.”\textsuperscript{104}

The “back to Europe” rhetoric that characterized much of EU-CEECs interactions in the late 1990s (conceptual framing that is also evident in the context of the Balkans, albeit more hesitantly) is markedly absent from ENP documents. Instead, the new initiative appears to represent an adaptation of external policy in which the EU is more comfortable articulating interests rather than values alone. The shift is certainly reflective of heightened security fears among EU policy chiefs, but the emphasis on security can also be explained with reference to Council priorities diluting the Commission’s more idealistic original vision. As Balfour and Rotta observe, whereas the Commission’s ENP proposals stress market access, preferential trade relations, and perspectives for lawful migration and free movement of workers as strong incentives for neighboring countries to comply with EU reform

\textsuperscript{100} Id. at 14.
\textsuperscript{101} Wider Europe Communication, supra note 27, at 4.
\textsuperscript{103} The Strategy Paper, supra note 28, at 13.
\textsuperscript{104} Id. at 13.
demands, the Council’s input has shifted the tone of the ENP, intensifying emphasis on the need for security, anti-terror, and conflict-prevention cooperation.105

Still, at the lower operational levels of the ENP, imitation of enlargement concepts and instruments is prominent. Early ENP pronouncements, in particular, make conscious references to the Copenhagen criteria and the *acquis communautaire* as appropriate guidelines for the ENP countries. In December 2002, for instance, Romano Prodi asserted, “[w]e need to set benchmarks to measure what we expect our neighbours to do in order to advance from one stage to another. We might even consider some kind of ‘Copenhagen proximity criteria.’ Progress cannot be made unless the countries concerned take adequate measures to adopt the relevant acquis.”106 Similarly, the Wider Europe Communication provides that “the acquis offers a well established model,” and it conditions the granting of economic and political ties to compliance with the *acquis*: “[i]n return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the acquis, the EU’s neighbours should benefit from the prospect of closer economic integration with the EU.”107

Later ENP documents suggest partial backtracking, adopting a more gradualist, functionalist stance on legal alignment. The Strategy Paper, for example, stresses that legislative and regulatory approximation will be pursued: “on the basis of commonly agreed priorities, focusing on the most relevant elements of the acquis for stimulation of trade and economic integration, taking into account the economic structure of the partner country, and the current level of harmonization with EU legislation.”108 Initial phases of approximation, therefore, envisage a focus on specific aspects of the internal market *acquis*.109 This approach is reminiscent of the phased strategy of legal and institutional reform found in the SAP.110 In practice, the already-negotiated Action Plans vary greatly in their reference to expected alignment with the *acquis*. Jordan’s Action Plan, for instance, provides for alignment in a range areas, notably visa issuing and control of migration flow, industrial and consumer products, public procurement, protection of intellectual property rights, and tax legislation. In contrast, the Action Plans for Israel and Ukraine make no explicit mention of the *acquis*.

While Commission and Council documents repeatedly stress that the purpose of the ENP is not to replace existing legal structures but to give them added dimensions,111 the ENP, like the pre-accession strategy and SAP frameworks before

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109 Both the Partnership and Cooperation Agreements (PCAs) concluded with the Western NIS states, and the Association Agreements with the Southern Mediterranean countries contain provisions on legislative approximation that go well beyond free trade issues. If initial approximation progresses, these may be used as a legal basis for intensification of alignment in the future.
110 Phinnemore, *supra* note 87; HANDBOOK ON EUROPEAN ENLARGEMENT, *supra* note 11.
111 See Benita Ferrero-Waldner, Commissioner for External Relations and the European Neighbourhood Policy, Address Before the Brussels Economic Forum: Europe’s Neighbours: Towards
it, lays the groundwork for progressive development of bilateral relations, including the possibility of new contractual links. The Strategy Paper, for example, asserts that 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.”112 A new legal basis for such agreements was included in the draft Constitutional Treaty, envisaging EU-neighbor contractual relations that go well beyond the most advanced existing structures—Article 310 (association agreements) and Article 181a (economic, financial and technical cooperation).113

The adaptation of concepts and tools formerly deployed by the EU to influence the CEECs and Balkan countries is also evident in the design of the conditionality and socialization instruments of the ENP. Though not as detailed as their more mature cousins, the ENP’s Country Reports are modeled on the Opinions and Progress Reports on the CEECs and Annual Reports on the Western Balkans countries. The Reports are country-specific documents produced by the Commission following a standard three-part template. An introductory section outlines the purpose of the ENP and summarizes the state of relations between the EU and the “partner country,” including the legal framework governing the relationship. Under the heading of “political issues,” a second section conducts a brief assessment of four broad categories, in the following order: democracy and the rule of law; human rights and fundamental freedoms; regional and global stability; and Justice and Home Affairs. Within each category, the Country Reports comment on a set of topics, which again mirror reporting on the CEECs and Western Balkans. The democracy and rule of law sub-section, for instance, assesses the functioning of the main branches of government (divided into the legislature, executive, and judiciary), political parties, central and local government, the civil service, and corruption. Similarly, the human rights and fundamental freedoms section covers a broadly standardized list of issues, including freedom of expression, association, press, religion, the death penalty, torture and ill-treatment, equal opportunities, civil society, children, and social rights. Section three of the Country Reports then addresses a plethora of “economic and social” matters—macroeconomic and social outlook, fiscal and monetary policies, human development, structural reforms in public and private sectors, trade, regulatory reform, transport, energy, information, environment, and education. As with the CEECs and the SAP before, political

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113 Treaty Establishing a Constitution for Europe, OJ 2004/C 310/01. Article I-57, Title VIII provides:

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.
principles defined as EU values are prioritized at the head of the reform agenda, and the classification of the sections follows the broad structure of the Copenhagen criteria.

The same pattern of imitation is evident in the ENP Action Plans. Like the European Integration Partnerships for the SAP countries, these are modeled on the Accession Partnerships originally designed with the CEECs solely in mind. Together with the Country Reports, the Action Plans constitute the main instruments of the ENP’s system of inducing and monitoring compliance. The precise agenda of each Action Plan varies somewhat—in line with the principle of differentiation that takes into consideration the different states of political and economic development of ENP countries—yet the general template is standardized and reflects the structure of the Country Reports.

Each proposed Action Plan sets out a “New partnership Perspective,” listing a number of incentives offered by the EU in return for political and economic reforms. These are followed by “priorities for action” and an extensive list of bulleted “action” points arranged under between thirty and forty chapters. Both are intended to be achieved within a three to five year period. The set of priorities are said to be either “within the scope” or “within and beyond the scope” of existing agreements (the Association Agreements with the southern Mediterranean countries, and the Partnership and Cooperation Agreements with the Western NIS states). Priorities for action articulate broad political and economic objectives while “actions” items vary greatly in specificity. The proposed EU-Jordan Action Plan, for example, lists twelve priorities for action, including “[t]ake steps to develop further the freedom of the media and freedom of expression” and “[t]ake steps to prepare for a progressive liberalization of trade in services,” and no less than 260 bulleted action items under thirty-eight chapter headings. Moreover, like the Accession Partnerships and European Integration Partnerships, Action Plans divide the period of expected implementation of different priorities into two terms, with “medium term” targets constituting more ambitious reform goals.

ENP political dialogue and monitoring mechanisms are also adapted from enlargement and SAP templates. Copying the institutional design of the Europe Agreements, for instance, the Strategy Paper provides, “[p]rogress in meeting the agreed priorities will be monitored in the bodies established by the Partnership and Cooperation Agreements or Association Agreements.”

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114 In the case of Jordan, for example, the reference is “within the scope of the Association Agreement,” whereas in the case of Israel it is “within the scope of the Association Agreement and beyond.” This may reflect the principle of differentiation and the fact that EU-Israel relations based on the Association Agreement between them are already very advanced, compared with the rest of the southern Mediterranean countries. See Alfred Tovias & Amichai Magen, Reflections from the New Near Outside: An Israeli Perspective on the Economic and Legal Impact of EU Enlargement, 10 EUR. FOREIGN AFF. REV. 399 (2005).


Implementation of Action Plan targets will be pursued through two types of monitoring processes based on pre-accession and Western Balkan experience. Quarterly joint assessment involving EU and partner country officials will seek to ensure “an atmosphere of regular follow-up, which while not as intense as the interaction with candidates . . . is intended to problem solve with [partner country officials] so as to encourage implementation of priorities.” In addition, the Commission will prepare its own critical reports, broadly modeled on the Progress and Annual Reports. As with the Progress Reports on the CEECs—that from the late 1990s became a reform agenda around which other international actors (notably the United Nations, World Bank, International Monetary Fund, and a plethora of NGO’s) rallied—the Commission is currently engaged in discussions with World Bank and UN officials designed to galvanize international reform pressures around the Action Plan priorities, thus increasing their clout.

Like the SAP before it, the ENP framework envisages extending Twinning and technical assistance “along the lines provided by [TAIEX]” to neighboring countries. In this context, Commissioner Ferrero-Waldner declared, “[w]e will use tried and tested methodology such as twinning and support for institution and capacity-building. And I am pleased to say we are preparing the ground for TAIEX assistance to become available.”

The ENP framework similarly provides for limited participation of partner countries in Community programs and agencies, reflecting enlargement methodology of habituating candidates and potential candidates to the workings of the EU system through regular involvement in professional, technical, and cultural networks, including health, education, energy, transport, environment, information, research, and education. The Commission is now “conducting a survey of EU programmes and agencies where the participation of neighboring countries may be in the interest of the enlarged EU and of neighboring countries.” Areas explored for gradual opening include education, training and youth, research, environment, culture, and audio-visual programs. An innovation of the ENP in this context is the suggestion of the Commission that “dedicated programmes geared specifically to meeting partner countries’ needs should also be explored.” In March 2004, for

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117 Id. at 7. The notion of enhancing multi-level interaction between EU and ENP country officials through creation of sub-committees and encouraging regular dialogue on democracy and human rights has also been proposed by the Commission. Communication from the Commission to the Council and the European Parliament, Reinvigorating EU Actions on Human Rights and Democratization with Mediterranean Partners: Strategic Guidelines, COM(2003)294 final.

118 Interview with senior Commission official in DG External Relations and European Neighbourhood Policy (June 7, 2005).

119 Id.; Interview with senior World Bank official, responsible for North African and Middle Eastern countries (May 5 2005).


123 Id. at 19.
example, the Commission proposed the creation of a “Tempus Plus” program, covering the whole spectrum of education and training, to encourage cooperation between Member States and ENP countries.\textsuperscript{124}

In sum, the ENP represents an effort to emulate the influence mechanisms template employed by the EU in the pre-accession process of the CEECs and subsequently in the Balkans. Like the SAP before it, the new initiative displays heavy path dependency, but also a degree of adaptation to the absence of a membership perspective for the ENP countries and heightened security concerns in the EU’s relations with its neighbors. Path dependency and policy adaptation are clearly evident both in the ENP’s overall conceptual and institutional approach and in the design of its methodologies. This continued pattern of replication, coupled with modest adaptation that does not deviate fundamentally from the enlargement methodology, is consistent with the Commission’s drive to expand its foreign policy domain through framing policy options and methodologies—most prominently the use of conditionality and socialization. Can we expect these to be effective?

B. Conditionality and Compliance

The ENP—like enlargement and the SAP—constitutes what legal scholars term a “solution structure”—the institutional and legal design of an international framework meant to achieve domestic change through rules and policies.\textsuperscript{125} A given solution structure would normally articulate the rules which the framework expects states to fulfill (e.g. environmental protection, non-proliferation, the acceptance of democracy, good governance or economic reforms) and may provide for the use of punitive measures, positive incentives, capacity-building efforts, monitoring, and dispute resolution. In seeking to explain when and how solution structures generated by international actors, such as the EU, are likely to influence state behavior, rationalist and liberal strands in IR and IL theory emphasize instrumentalist calculation. The theories link domestic decision-making to the costs and benefits of compliance. According to this logic of consequentialism, states bargain for advantage, responding to incentives and punishments in a utilitarian manner. Exogenously driven incentives may also work indirectly through weakening “veto players” opposed to reforms and the differentiated empowerment of domestic “change agents.”\textsuperscript{126}

A key feature of the ENP solution structure, at least formally, is political and economic conditionality. The EU links the award of perceived goods (institutional ties, market access, technical and financial assistance) to the acceptance of its rules regarding political, legal, and economic domestic conduct. Unlike certain


\textsuperscript{125} Raustiala & Slaughter, supra note 13, at 545.

\textsuperscript{126} Schimmelfennig & Sedelmeier, supra note 12, at 16. On “veto players” and their role in domestic legal, economic and political reform, see generally GEORGE TSEBELIS, VETO PLAYERS: HOW POLITICAL INSTITUTIONS WORK (2002).
international solution structures, the external Europeanization structures pursued by
the EU (enlargement, SAP, ENP) follow mainly a strategy of “reinforcement by
reward,” providing the reward *ex post* where the targeted government complies with
the conditions and withholding the benefit where it does not.\(^{127}\) This form of
conditionality is distinguished from punitive conditionality, where the international
actor intervenes coercively by inflicting some form of sanction on non-compliant
states, as well as from *ex ante* conditionality, where benefits are provided prior to
compliance or as a simple matter of reinforcement.

Whereas legal and IR scholars have drawn attention to EU conditionality, the
body of theory on the use of political conditionality by international actors is sparse,
and until recently the term was not subjected to careful analysis.\(^{128}\) According to the
“external incentives” model developed by Schimmelfennig and Sedelmeier to
explain the impact of the enlargement strategy on the CEECs, however, the
effectiveness of EU conditionality depends on four sets of factors: the size and
speed of the rewards, the determinacy of the conditions, the credibility of EU
conditionality, and the size of adoption costs for domestic decision makers. Unlike
realist theorists that view the state as a unitary actor and are reluctant to examine the
role of domestic conditions, therefore, the external incentives model also reflects
liberal theories on compliance in IL literature, which take into account domestic
regime attributes and stress the role of domestic-level actors in determining whether
compliance with exogenously promoted rules is more or less likely. Applying these
rationalist-liberal insights to the ENP, what degree of leverage can we expect from
the new policy?

1. Size and Speed of Rewards

A central tenet of the external incentives model is that compliance will vary
depending on the attractiveness (or “size”) and speed of conditional rewards. According to Romano Prodi, “[t]he goal of accession is certainly the most powerful
stimulus for reform we can think of. But why should a less ambitious goal not have
some effect? A substantive and workable concept of proximity *would* have a positive
effect.”\(^{129}\) This perspective on the transformative power of the EU may well prove
overly optimistic. Although detailed empirical studies are still scarce, the outcome
of research conducted so far on the deployment and effectiveness of EU
conditionality in the pre-accession process strongly indicates that a credible
membership perspective has been a necessary condition for effective impact on
domestic change. A qualitative comparative analysis conducted by Schimmelfennig,
for example, suggests that in the relations between the EU and CEECs a credible
prospect of EU accession coupled with low domestic costs of adaptation have both

\(^{127}\) Schimmelfennig et al., *supra* note 12, at 496.


\(^{129}\) Prodi, *supra* note 61.
been necessary as well as sufficient conditions for compliance. These findings are supported by a growing body of theoretical and empirical work. The absence of a membership perspective, therefore, is expected to seriously weaken the external incentives of compliance.

The approach contained in the ENP concerning the highly charged question of eligibility for membership has been one of general exclusion, mitigated by a reluctance to categorically reject the possibility of a long-term perspective for countries satisfying the “Europeanness” criteria in Article 49 of the TEU. The Wider Europe Communication, states:

Accession has been ruled out, for example, for the non-European Mediterranean partners. But other cases remain open, such as those European countries who have clearly expressed their wish to join the EU. In reality, however, any decision on further expansion awaits a debate on the ultimate geographic limits of the Union.

This position removes the incentive provided by the prospect of membership for most ENP countries (especially the southern Mediterranean states), provides Ukraine and Moldova with a vague hope of a long-term accession perspective, and leaves the southern Caucasus in a state of ambiguity. In reality, EU leaders have been careful to stress that the ENP “is distinct from enlargement” and that, unlike the Europe Agreements and the SAAs, the new policy is not meant to prepare participating countries for eventual accession. Despite strong elite and popular support for EU membership in Ukraine and Georgia, in particular, the EU offers little hope for a membership perspective, and analysts estimate that the possibility of such an opening emerging in the near future is low. The temporal distance of a membership incentive, where it exists at all, is large, a condition expected to further reduce the compliance-inducing force of the ENP.

130 Frank Schimmelfennig, The International Promotion of Political Norms in Eastern Europe: a Qualitative Comparative Analysis (Center for European Studies, Harvard University, Working Paper no. 61).
131 See, e.g., THE EUROPEANIZATION OF CENTRAL AND EASTERN EUROPE, supra note 12; EUROPE UNDIVIDED, supra note 12; Vachudova, supra note 15, at 7 (arguing that “[i]t is the substantial benefits combined with the enormous requirements of membership that set the stage for the EU’s leverage on the domestic politics of aspiring member states”); Karen Smith, Western Actors and the Promotion of Democracy, in DEMOCRATIC CONSOLIDATION IN EASTERN EUROPE—VOLUME II: INTERNATIONAL AND TRANSNATIONAL FACTORS 31, 37–38 (Jan Zielonka & Alex Pravda eds., 2001). Smith notes that:

[T]he East European countries have not all been offered the same benefits. Essentially two zones have developed. The first has been closely tied to the West and included in the queue for EU and NATO membership, while the second has been much less connected. Conditionality has more of an effect on “recalcitrant” countries in the first zone, less on those in the second.

Id. at 37–38. The effect has been particularly pronounced in the case of Slovakia and Turkey.
132 See Lavenex, supra note 50; Heather Grabbe, How the EU Should Help Its Neighbours (Centre for European Reform Policy Brief, June 2004).
133 Wider Europe Communication, supra note 27, at 5.
135 See, e.g., Kataryna Wolczuk, Ukraine’s European Choice (Centre for European Reform, Policy Brief, Dec. 1, 2004); Nino Kopaleishvili, Chances of Georgia Joining EU “Low,” THE MESSENGER, June 24, 2005.
If a membership perspective is absent for all partner countries, at least in the medium-term, what incentives does the ENP provide? The trend to-date has been one where the Commission’s original vision, bold but vague, has been somewhat diluted with the increased institutionalization of the ENP. Early formulations of the policy spoke of “everything but the institutions, which means very close economic and political integration.” Romano Prodi also raised the possibility of “developing new structures with our neighbours . . . innovative concepts such as institutions co-owned by the partners,” without elaborating what forms these may take or what incentives they may contain. The Wider Europe Communication proposed several incentives: a stake in the EU’s Internal Market and further integration and liberalization to promote the free movement of persons, goods, services, and capital (four freedoms); extension of the internal market and \textit{acquis} based regulatory structures to ENP partners; preferential trade relations and market opening; the perspective of lawful migration and softening of visa requirements; integration into transport, energy, and telecommunications networks; enhanced financial assistance from the EU; and support for integration into the World Trade Organization (WTO). While the Action Plans mirror these incentives, the scope and intensity of anticipated inclusion appears to have been toned down. In reality, ENP country officials complain that the EU continues to be reluctant to liberalize precisely those sectors in which southern Mediterranean countries possess the greatest interest, notably market access for agricultural products and greater movement of persons, including legal cross-boundary employment and immigration.

The attractiveness of ENP incentives has been compromised by two additional factors. First, the rejection of the Constitutional Treaty by French and Dutch voters in May and June 2005 has blocked \textit{inter alia} the proposed new legal basis for enhanced contractual relations with the neighbors—the “European Neighbourhood Agreements.” The possibility for a new form of contractual link, a key component in the early ENP documents, has thus been put in great uncertainty, suggesting that any reinforcement of relations with partner countries will, for the foreseeable future, have to rely on existing agreements—the Partnership and Cooperation Agreements (the “PCAs”) and the Association Agreements. Second, while the Commission has requested an almost doubling of funds to enhance financial and technical assistance to the ENP countries, from €8.4 to €14.9 billion in the 2007–2013

\begin{itemize}
  \item Prodi, \textit{supra} note 30.
  \item Prodi, \textit{supra} note 61.
  \item Wider Europe Communication, \textit{supra} note 27, at 10–14.
  \item Interview with senior Moroccan Ministry of Trade official (May 5, 2005).
  \item As the current legal arrangements stand, this places the Western NIS and southern Caucuses countries in disadvantaged position even in comparison to the southern Mediterranean countries. Whereas the Association Agreements with the Southern Mediterranean countries contain Free Trade Agreements, provisions for legal approximation and cooperation in a broad range of fields, even the most advanced PCAs in force with the Ukraine and Moldova do not establish preferential treatment in trade, lack a timetable for regulatory approximation and (unlike the Europe Agreements and Stabilization and Association Agreements) omit any reference to the prospect of integration into EU structures. On the legal features of the PCAs, see Roman Petrov, \textit{The Partnership and Co-operation Agreements with the Newly Independent States}, in \textit{HANDBOOK ON EUROPEAN ENLARGEMENT}, \textit{supra} note 12, at 175–94.
\end{itemize}
financial perspective, disagreements between leading Member States over the EU budget, centered on the subject of agricultural subsidies, have created uncertainty regarding whether and when these additional funds will become available. Moreover, southern Mediterranean country officials express concern that, with the expansion of the EU eastwards, the Union’s priorities have shifted towards the Western NIS and Caucasus, so that the bulk of any additional financial assistance will end up in Ukraine and Georgia, rather than Morocco, Jordan, or Egypt. In sum, the size and speed of rewards currently offered by the ENP framework are both vague and uncertain at best, raising legitimate questions among ENP country officials about how much added value the new initiative will deliver in practice.

2. Determinacy of Conditions

The degree of specificity (or determinacy) of norms and rules promoted by an exogenous actor like the EU affects their ability to impact domestic decision-makers. Determinacy refers to both the formality of the rule (its “legalization” status) and its substantive detail and clarity. The more legalized the rule and the clearer it is about the type and extent of domestic change expected, the higher its determinacy value. As the external incentives model asserts, determinacy affects the informational nature of the rule, with highly determinate rules providing a clear roadmap for reform. In addition, high determinacy aids the effectiveness of conditionality by enhancing its credibility, reducing the scope for reinterpretation by the targeted government of what constitutes compliance, and aiding monitoring for compliance against defined benchmarks.

In comparison to the legal status and detail of rules transposed to the CEECs in the pre-accession process, the determinacy of ENP rules is low. Unlike the pre-accession strategy, which was based on the legally binding Europe Agreements, the proposed Action Plans represent political documents with no formal legal force. In addition, the ENP framework has no standardized acquis of its own. While early ENP documents made sporadic reference to the acquis communautaire as the basis for regulatory and institutional alignment, the subsequent development of the policy has largely disassociated relations with neighboring countries from the acquis, preferring reference to the vaguer term “European standards” for some ENP countries.

141 Interviews with Commission officials and ENP country diplomatic representatives that took part in the conference “American and European Approaches to Democratization in the European neighbourhood”, held at the Centre for European Policy Studies (CEPS) in Brussels, June 20–21, 2005.


143 See Schimmelfennig & Sedelmeier, supra note 16.

144 See, e.g., the proposed EU-Moldova Action Plan, available at http://europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Moldova.pdf; see also The Proposed EU-
Commission officials explain that this is due to the low starting point of regulatory and institutional standards in most ENP countries and the sense that, in the absence of a membership perspective, extensive alignment with the acquis would be rejected by targeted governments as unreasonably onerous, thus undermining cooperative engagement. Nevertheless, the determinacy of rules with which the EU seeks compliance is undermined by the absence of a comprehensive, detailed roadmap for reform. Even in the case of the CEECs, variations in the uniformity of the acquis significantly impacted leverage. Where the detail of the acquis is “thick” on a particular area of policy, studies show stronger leverage for the Commission whereas “thin” areas display weaker compliance. In practice, the determinacy of ENP Action Plan provisions varies extensively, with most priorities and action points characterized by low specificity and the absence of language demonstrating firm commitments on the part of partner countries. The proposed EU-Ukraine Action Plan, for instance, is replete with indeterminate requirements, such as “[e]nsure that any further legislative reforms be conducted in line with international standards” and “[a]ddress reported shortcomings in the work of the law enforcement organs and prosecution.”

3. Credibility of Conditionality

The sanctioning possibilities and the reaction to occurrences of noncompliance are centrally important to rationalist compliance analyses. Similarly, the effectiveness of positive incentives for compliance depends on their credibility. As Kelley’s study of legal reform concerning protection of national minorities in Central and Eastern Europe suggests, even the linkage to membership incentives is likely to fail where conditionality is not credible, either because domestic decision-makers in the targeted state believe that the EU will admit it even if the state does not make the specified policy changes (“overconfidence”) or because they believe that the EU will withhold or delay reward even if the state makes the requisite changes (“lack of confidence”). In other words, rationalist compliance logic suggests that effective inducement requires both superior bargaining power on the part of the rule-promoting agency (conditionality works where power asymmetry enables the Commission to impose the adoption of rules) and certainty among domestic decision-makers that the benefit will be awarded, but only where they comply.

The ENP’s shift towards greater differentiation in relations with targeted countries should, to the degree actually implemented, bolster the credibility of conditionality in one important respect. By negotiating Action Plans with each ENP

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145 Several Commission officials emphasized this point. Interviews with senior Commission officials in DG External Relations and European Neighbourhood Policy (June 7–10, 2005).
146 Hughes et al., supra note 12, at 525.
147 Proposed EU-Ukraine Action Plan, supra note 144, at 3–4.
149 KELLEY, supra note 16, at 29–52.
country individually, the Commission replicates a key feature of its effective bargaining strategy vis-à-vis the CEECs. Whereas historically the EU has largely structured its external relations along regional dimensions, the Commission has insisted that pre-accession negotiations be conducted bilaterally, on the basis of individual Europe Agreements and country-specific Accession Partnerships. Similarly in the Balkans, even though in the aftermath of the Dayton Peace Agreement the EU adopted a strongly regional approach in the so-called “Royaumont Process,” when it came to the opening of a perspective of membership and the negotiation of SAAs, the EU turned to a bilateral strategy. By negotiating separately with each ENP country, the EU creates a bargaining dynamic where power asymmetries in its favor are enhanced. Unlike the Euro-Mediterranean Partnership framework, for example, bilateralism reduces the ability of ENP countries to form collective negotiation alliances among themselves, which would increase their relative bargaining power vis-à-vis the EU. Solution structures that require the cooperation of a small number of actors also tend to have a higher rate of compliance since they eliminate the public goods nature of monitoring and enforcement efforts.150 At the same time, the Commission is consciously seeking to foster an atmosphere of “competition among the ENP countries for closer ties with the Union.”151 Such mimetic competition played an important role in helping to create a “virtuous cycle of reform” among the CEECs and in Turkey.152 In the dynamic established by the ENP framework, where the possibility of a membership perspective has not been excluded for at least some partner countries, yet the question of potential eligibility has been kept deliberately ambiguous, a degree of competition among the ENP countries cannot be ruled out.

Still, the credibility of ENP conditionality is weakened by several factors. First, the lack of specificity concerning many of the perspective incentives, such as a “stake in the internal market,” and the linkages between requirements and rewards is undermining certainty among domestic decision-makers regarding what incentives are offered and which ones are in fact deliverable. Second, in documents and statements, the Commission and Council have, in practice, sent ENP partners mixed signals of their seriousness about conditionality. Whereas the Wider Europe Communication stated clearly that “[i]n return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the acquis, the EU’s neighbours should benefit from the prospect of closer economic integration with the EU,”153 the Strategy Paper emphasizes “joint ownership” and stresses that “the EU does not seek to impose priorities or conditions on its partners . . . . There can be no question of asking partners to accept a pre-determined set of priorities. These will be defined by common consent and will thus vary from country to country”.154 In practice then,

151 Interview with senior Commission official in DG External Relations and European Neighbourhood Policy (June 8, 2005).
152 Id.
153 Wider Europe Communication, supra note 27, at 10.
the language of conditionality has been toned down with the progressive institutionalization of the ENP. The dilution of conditionality rhetoric is reflective of a broader tension within the ENP between conditionality, on the one hand, and the softer “engagement” strategy which has characterized earlier EU relations with many ENP countries, especially policy towards the southern Mediterranean countries. Engagement challenges the sovereignty of ENP countries less than conditionality and, thus, is more palatable to their governments. Conditionality is further at risk of being diluted by the ENP’s competing goals of promoting short-term security and stability—stressing strong policing over fundamental rights and cooperating with existing regimes—while also pursuing democratization and respect for liberal rights, including in the Maghreb and Mashreq. Evidence from the enlargement process suggests that competing geo-strategic and economic interests undermined the credibility of EU conditionality in the CEECs as well, despite the presence of far stronger material incentives for compliance.

4. Size of Adoption Costs

Liberal theories of IL and politics—which reject the rationalist focus on the state as a unitary actor—point to the centrality of the nature of domestic actors and regime attributes in determining the likelihood of compliance with international norms. Proponents of liberal theory, for example, argue that the presence of liberal-democratic institutions at the domestic level encourages international interdependence, including integration, just as democratic states display a higher propensity to comply with international rules. The external incentives model articulates this logic in terms of domestic costs of compliance. The model postulates that the size of adoption costs and their distribution among domestic actors strongly impacts their decisions whether to accept or reject EU conditions. Since EU rules have to be accepted and implemented by state decision-makers, the effectiveness of external incentives depends on the preferences of the government and other “veto players” whose agreement is necessary to change the status quo.

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155 See Karen Smith, Engagement and Conditionality: incompatible or mutually reinforcing?, in NEW TERMS OF ENGAGEMENT 23, 23 (Richard Youngs ed., 2005). (“Engagement is a foreign policy strategy of building close ties with the government and/or civil society and/or business community of another state. The intention of this strategy is to undermine political and economic practices, and socialize government and other domestic actors into more liberal ways.”).

156 See, e.g., KELLEY, supra note 16, at 42.


158 See KOEHANE & NYE, supra note 157; Slaughter, supra note 157; Laurence Helfer & Anne-Marie Slaughter, Toward a Theory of Effective Supranational Adjudication, 107 YALE L.J. 273 (1997) (asserting that liberal-democratic states demonstrate a greater willingness to comply with the decisions of international tribunals because they hold a greater affinity to rule of law principles than illiberal states).

159 TSEBELIS, supra note 126
This does not bode well in the case of the ENP. Even where a credible membership perspective exists, evidence indicates that high domestic costs of adaptation to EU rules have undermined compliance.\footnote{See, e.g., VACHUDOVA, supra note 12; Vachudova, supra note 15; KELLEY, supra note 16; Frank Schillemfennig, supra note 130. Schimmelfennig argues that not only influence on compliance with human rights and democratic rules in the CEECs has generally not been effective before the EU developed a clear membership horizon and if it did not make compliance an explicit condition of accession (or moves towards accession, such as the beginning of accession negotiations), but that even where a credible membership perspective was present high domestic costs of adaptation to EU rules have undermined compliance. Thus, effective leverage was achieved mostly where the credibility of a membership perspective and relatively low domestic adoption costs co-existed.} Moreover, since the declared goal of the EU is to promote liberal political and economic norms, the domestic costs of compliance will be higher in non-democratic regimes and illiberal democracies, compared with consolidated democracies. Although the EU has acted as a “gravity model” for democratization, EU conditionality vis-à-vis the CEECs and, more precariously, the Western Balkans crystallized only after democratic transitions had already taken place.\footnote{See Michael Emerson & Gergana Noutcheva, Europeanization as a Gravity Model for Democratization (Center on Democracy, Development and the Rule of Law Working Paper, Oct. 2004).} In contrast, the starting point of the ENP states is discouragingly different. According to the best available empirical indicators of democracy, with the singular exception of Israel, none of the ENP countries rank as “free” states. In reality, most are either authoritarian or hybrid regimes, and unlike the CEECs and Western Balkan countries, the democratic trajectory of states covered by the new policy indicates steady deterioration, with political freedom and civil liberties worse today than a decade ago.\footnote{Freedom House produces the Freedom Index (FI) which provides aggregate ratings for “civil liberties” and “political rights”, ranging from 1 (best) to 7 (worst) for all countries of the world. The combined average of each country’s political rights and civil liberties ratings determines an overall status of Free, Partly Free, or Not Free. See Freedom Index (FI), available at http://www.freedomhouse.org/ratings/index.htm. The 2005 figures for ENP countries are as follows: Armenia 5/4 (Partly Free); Azerbaijan 6/5 (Not Free); Belarus 7/6 (Not Free); Egypt 6/5 (Not Free); Georgia 3/4 (Partly Free); Israel 1/3 (Free); Jordan 5/4 (Partly Free); Lebanon 6/5 (Not Free); Libya 7/7 (Not Free); Moldova 3/4 (Partly Free); Morocco 5/4 (Partly Free); Palestinian Authority 5/6 (Not Free); Syria 7/7 (Not Free); Tunisia 6/5 (Not Free); Ukraine 4/3 (Partly Free). A similar picture emerges from other data sources. See Polity IV, available at http://www.cidcm.umd.edu/inscr/polity/; World Bank Governance Indicators 1996–2004, available at http://www.worldbank.org/wbi/governance/pubs/govmatters4.html.} These regime attributes are likely to have three main deleterious effects on the leverage of EU conditionality.

First, lack of democracy and economic liberalization creates a large normative “misfit” with core EU values for most ENP countries, thus adversely impacting intergovernmental bargaining.\footnote{The notion of “mismatch” or “misfit” and the adaptation pressures it creates in third countries responsive to EU conditionality stems from concepts originally developed by scholars examining intra-EU processes of Europeanization. See Tanja Börzel, Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain, 37 J. COMMON MARKET STUD. 573 (1999); Tanja Börzel & Thomas Risse, supra note 5.} Since any EU rewards are outweighed by high adjustment costs on the part of domestic governments, cost-benefit calculation is likely to point against compliance. Certainly, where compliance with EU norms on democracy and human rights could lead to \textit{de facto} regime change (notably in
Azerbaijan, Belarus, Egypt, Jordan, Libya, Morocco, Tunisia, Syria, and the Palestinian Authority), ruling governments are unlikely to comply.

Second, as Smith observes, “[a] strategy of conditionality has the potential to be quite effective if the target state wants the benefits on offer or fears losing them.”\(^{164}\) However, in the case of the more authoritarian regimes in the ENP group of states, many of the “incentives” offered by the Commission—economic and regulatory liberalization, intensified political engagement and security cooperation, greater EU involvement in political conflicts, and enhanced people-to-people activity—could well be perceived as threats rather than inducements. In practice, it has been the more liberal ENP countries (Israel, Moldova, Georgia, and Ukraine) that responded to the launching of the ENP with some excitement and negotiated their Action Plans more seriously. In contrast, Morocco and Egypt have greeted the new initiative with skepticism and have shown a lesser willingness to engage with the proposed reform agenda.\(^{165}\)

Finally, the dearth of democracy in most ENP countries is likely to weaken EU conditionality indirectly. The electorate in Slovakia—a country left out of the initial wave of CEECs accession negotiations because it did not meet the Copenhagen political criteria—punished the Meciar regime in 1998, voting in a government that made EU accession its top priority.\(^{166}\) The experience of Slovakia, mirrored in broadly similar dynamics in Romania in 1997, Serbia in 2000, and, to some extent, Georgia in 2003 and Ukraine in 2004, suggests that conditionality may work indirectly through differential empowerment of domestic actors. External incentives for reform change the domestic opportunity structure in favor of reformists committed to closer relations with the EU and strengthen their bargaining power vis-à-vis their opponents at both governmental and societal levels. Whereas intergovernmental bargaining, therefore, produces “top-down” pressures for compliance, the differential empowerment of domestic actors reflects a more “bottom-up” logic.\(^{167}\) As Vachudova’s study of legal and political reform in post-Communist states suggests, in certain circumstances EU incentives were sufficient catalysts for successful democratic consolidation, producing electoral change through domestic empowerment. Yet, the EU leverage in these cases depended on both the a priori existence of real political competition in the domestic sphere and a high level of societal affinity with the goal of EU accession.\(^{168}\) In the case of Slovakia, therefore, the unequivocal threat of exclusion signaled to broad segments of Slovak society that the incumbent government was a threat to their inclusion in

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\(^{164}\) Smith, supra, note 155, at 24.

\(^{165}\) Interviews with senior Commission officials in DG External Relations and European Neighbourhood Policy, (June 7–10, 2005); Interviews with Commission officials and ENP country diplomatic representatives that took part in the conference “American and European Approaches to Democratization in the European neighbourhood”, at the Centre for European Policy Studies (CEPS) in Brussels (June 20–21, 2005).


\(^{167}\) The Europeanization of Central and Eastern Europe, supra note 12, at 11–12.

\(^{168}\) Europe Undivided, supra note 12; Vachudova, supra note 15.
the EU, thus mobilizing the electorate against the Meciar government. With the possible exception of Georgia and Ukraine, these two conditions for effective differential empowerment are absent in ENP countries.

C. Socialization and Compliance

An alternative explanatory model to account for influence of external actors on domestic rule adoption stems from norm-based theories in IL and the tenets of social constructivism in IR literature. Whereas the rationalist-liberal based external incentives model has assumed a dominant place among IR scholars evaluating EU leverage on the domestic laws and institutions of the CEECs, norm-driven theories are more prevalent in international legal scholarship and constitute the most prominent theoretical challenge to rationalist explanations. The “socialization” (or “social learning”) explanatory model provides that domestic decision-makers—who are themselves cognitive-social actors—respond to a “logic of appropriateness,” where ideas, norms, and identity shape compliance. Influences on state behavior, therefore, are not reducible to materialist cost-benefit balancing of predetermined interests. Rather, those interests themselves are best understood as the product of social structures and interactions. Since “actors who enter into a social interaction rarely emerge the same,” processes of rule adoption and internalization are at least partially driven by engagement, argumentation, persuasion, and complex learning. Socialization, in this sense, can be understood as the mechanism by which “norm leaders” persuade new members to adhere to their preferred norms. As Finnemore and Sikkink argue, international actors, such as the United Nations (UN), international financial institutions, and the EU, not only function as “norm entrepreneurs,” generating and defining standards of appropriate behavior, but they also engage in “strategic social construction,” strategizing rationally to try to reconfigure the preferences and identities of targeted states. They are, as Lessig put it, “meaning architects” and “meaning managers.” Indeed, different organizations display their own solution structures for socializing others into their preferred rules and norms. These range from the UN and OSCE’s diffuse norm-defining approach, to NATO’s mixed strategy of teaching and persuasion, to the EU’s more robust policies of structured induction into the regional community. The ENP, like enlargement and the SAP, therefore, represents a model for strategic social

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170 MARCH & OLSEN, supra note 17.


172 Norms can be understood as intersubjective beliefs about the social world, which have behavioural consequences. For an excellent discussion of international norms and socialization processes, see Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1 (Thomas Risse & Kathryn Sikkink eds., 1999).

173 Finnemore & Sikkink, supra note 18.

construction—articulating rules which it seeks to socialize partner countries into and creating “organizational platforms” to facilitate norm transfer.175

Evaluating the likely strength of the ENP as an instrument for strategic social construction involves four groups of factors. The first one complements the “size of adoption costs” dimension proposed by liberal theory. Domestic actors in ENP countries are more likely to be persuaded by the EU to adopt its rules if they consider the regional community of states represented by the EU as a valid a priori reference group whose collective values and norms they share, whose acceptance they seek, and with which they wish to be identified.176 The likelihood of compliance with EU rules by ENP countries, therefore, increases the more a given partner government and society identifies with the norms and principles of the EU. Where the EU is the “only game in town” for a neighboring country, which is arguably the case for Georgia alone, the socialization model would predict the aspiration value of the EU to be further enhanced. The remaining three factors that are likely to affect the ENP’s influence may be referred to as legitimacy, persuasion, and learning.

1. Legitimacy

The “compliance-pull” on governments, according to Franck’s international legal theory, is determined to a considerable degree by its “legitimacy.”177 A corresponding notion in norms research provides that intrinsic qualities of the norm itself (its clarity, specificity, and content) determine its influence.178 The core assertion of the thesis is that “in a community organized around rules, compliance is secured—to whatever degree it is—at least in part by the perception of a rule as legitimate by those to whom it is addressed.”179 The degree of legitimacy, in turn, depends on a number of substantive and procedural factors: “the clarity with which the rules communicate, the integrity of the process by which they were made and are applied, their venerable pedigree and conceptual coherence.”180

Just as with the notion of rule determinacy, the compliance-pull of EU rules will be reduced where they are defined ambiguously, display internal contradictions, or are inconsistently applied. In the case of the ENP, therefore, the theory would concur with the prediction made by the “determinacy of conditions” dimension of the external incentives model. If, as Franck asserts, the legitimacy of a rule partially “depends upon the clarity with which it is able to communicate its intent and to shape that intent into a specific situational command,”181 then the lack of specificity and clarity of most priorities and proposed action points contained in ENP Action Plans weaken their legitimacy and undermine their compliance-pull.

175 On “organizational platforms,” see Finnemore & Sikkink, supra note 18, at 899.
176 Checkel, supra note 18, at 563; Johnson, supra note 171, at 499.
177 Thomas Franck, Legitimacy in the International System, 82 AM. J. INT’L L. 705. The notion of “compliance pull” is discussed by Franck at 713–59. See also FRANCK, supra note 139.
178 Finnemore & Sikkink, supra note 18, at 906.
179 Franck, supra note 177, at 706.
180 FRANCK, supra note 142, at 38.
181 Franck, supra note 177, at 725.
In addition, where the rule-making procedure is perceived by targeted governments to lack objectivity, fairness, and participation, Franck’s theory would indicate that compliance would suffer. To bolster the objectivity of its rules, the Commission has been careful to peg reform demands made of the CEECs and SAP countries to accepted international and regional standards, such as UN treaties or Council of Europe and OSCE instruments. Though not as extensive in substantive scope, the technique is also evident in the case of the ENP. The Strategy Paper, for example, surveys the state of ratification of key international conventions for each of the ENP countries, covering *inter alia* fourteen core UN human rights conventions and protocols, seven International Labour Organization conventions, and five Council of Europe “Core conventions on Human Rights.”\(^{182}\) Moreover, individual Action Plans make frequent reference to international standards, with Western NIS states encouraged to adhere to and implement non-EU European standards. The Action Plan for Ukraine provides, for example, that the country must ensure that its 2006 parliamentary elections are conducted “in accordance with OSCE standards and OSCE/ODIHR recommendations, including on the media.”\(^{183}\)

With regards to the issue of perception of fairness and participation, however, the ENP suffers serious deficiencies compared with enlargement or even SAP structures. EU reform pressures on third countries that are meant to lead to full accession, however distant, are ultimately constitutive acts that determine the future of the EU itself. In the EU’s interaction with the CEECs, Turkey, and the SAP countries, therefore, all parties are at least theoretically committed to moving towards the creation of a shared corpus politic where members must function as a community in accordance with mutually agreed rules. EU demands for pre-accession legal and institutional alignment—however onerous, one-sided, and asymmetrical they may be—are legitimized by the prospect of full inclusion and the promise of future equality of participation. This dynamic is absent from the ENP framework. Its “everything but the institutions” formula prescribes that partner countries are excluded from future, as well as present, decision-making processes, the products of which they are being asked to comply with. In this sense, the ENP resembles the EEA framework in which European Free Trade Association countries do not participate in the EU’s institutions, but are only consulted on the development of internal market rules which they are bound to follow. Yet, for the majority of EFTA countries, EEA status evolved smoothly into accession negotiations, and any exclusion from EU membership has been solely a matter of their choice.\(^{184}\) Whether ENP countries will accept as legitimate a system where they have neither present decision-making power, nor the prospect of equal participation in the future, remains an open question.


\(^{184}\) *HANDBOOK ON EUROPEAN ENLARGEMENT*, *supra* note 12, at 156.
2. Persuasion

Persuasion by the socializing agent is a core mechanism of strategic social construction. Persuasion “has to do with cognition and the active assessment of the content of a particular message.” Drawing on Habermas’s theory of communicative action, some IL and IR scholars emphasize the importance of argumentation and convincing as a means of motivating the targeted actor to behave in accordance with rules previously defined by the socializing agent. Others focus on shaming and social opprobrium as causal mechanisms of persuasion. In either case, international regimes can shape “social institutions around which actor expectations converge in international issue-areas.”

 Whereas causal links between the design of organizational platforms and domestic actor persuasion are still poorly understood, scholars have generated a number of plausible insights in this context. Haas, for instance, posits that interpersonal persuasion, communication, exchange, and reflection are strengthened in thick institutional environments where “epistemic communities”—political, technical, or societal—interact intensively. This logic corresponds with elements of the prominent “Managerialist” theory of compliance, which emphasizes non-volitional reasons for instances of compliance failure. Rejecting punitive mechanisms, managerialists stress forward-looking, non-confrontational engagement that seeks to address problems of lack of information, know-how, or administrative capacity as a means of improving cooperation towards rule adoption.

In its organizational platform, the ENP displays two main features intended to strengthen the EU’s persuasive power. First, like the Accession Partnerships and Progress Reports for the CEECs, the negotiation of Action Plans and Country Reports, as well as subsequent planned periodic reporting, mark a degree of intensification of the process of cognitive engagement, reflection, and argumentation about the content of desired norms and rules. Country Reports, monitoring processes, and Action Plans can be understood as a form of communicative action: articulating an agenda for debate, identifying areas of necessary change, proposing policy solutions, praising compliance, and “naming and shaming.” Over time, the creation of thick platforms for systematic argumentation between EU and ENP country actors may facilitate the development of a shared discursive agenda.

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185 Johnson, supra note 171, at 493.
186 See Risse, supra note 18.
189 Peter Haas, Introduction: Epistemic Communities and International Policy Coordination, 46 INT’L ORG. 1, 3 (1992) (“An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area.”).
190 See Abram Chayes & Antonia Handler Chayes, On Compliance, 47 INT’L ORG. 175 (1993); Chayes & Chayes, supra note 187.
common problem perception, and greater agreement on acceptable policy options.\textsuperscript{191} Second, although the earlier Partnership and Cooperation Agreements with the Western NIS countries and the Association Agreements with the Southern Mediterranean countries frameworks established committees for political and bureaucratic level dialogue between the EU and partner countries, the ENP provides for the institutional thickening of such interaction. All proposed Action Plans offer to upgrade the scope and intensity of political cooperation, notably through the progressive creation of a network of sub-committees. In addition, Commission officials emphasize that work in sub-committees and regularized monitoring, such as the planned quarterly meetings, will reflect managerialist concepts of collaborative, technocratic problem-solving, transfer of know-how, and efforts to create reform-oriented epistemic communities in partner countries.

In reality, however, the thickening of persuasion institutions in the ENP remains in its infancy. Sub-committees on Human Rights dialogue were established in June 2005 under the Association Agreement frameworks with Tunisia and Jordan.\textsuperscript{192} Two sub-committees, one on Human Rights and the other on Justice and Security, have been established with Morocco, and Commission-Israel negotiations on the establishment of a number of sub-committees—addressing broad economic and political issues—are still ongoing. Egypt, on the other hand, has so far resisted EU requests to establish similar sub-committees under its Association Agreement.

Moreover, the literature points to several factors that could well undermine compliance through persuasion in the ENP as currently constituted. Checkel, for example, argues that actors will be more likely to engage in deliberation and be open to persuasion where they are confronted with a novel environment or where existing domestic rules have become delegitimated as the result of a clear crisis.\textsuperscript{193} Similarly, Johnson asserts that external persuasion will be more effective where the perceived threat from the counterattitudinal group is low, where the persuadee wishes to belong to the group of the persuader, and where the issue is highly technical or of little importance to the actor whose agreement is required.\textsuperscript{194} As the preceding discussion demonstrates, however, these conditions are largely absent in the context of the goals and agents of the ENP.

3. Learning

Lastly, the strength of the ENP as an instrument for strategic social construction will be shaped by its ability to facilitate social-learning. According to Adler and Barnett, social-learning involves communication about self-understandings, perceptions of reality, and normative expectations, takes place within organizational settings where institutions and social interactions between human agents promote the

\textsuperscript{191} Risse, \textit{supra} note 18.
\textsuperscript{192} Interview with a Commission official in DG External Relations and European Neighbourhood Policy (June 9 2005).
\textsuperscript{193} Checkel, \textit{supra} note 16, at 562.
\textsuperscript{194} Johnson, \textit{supra} note 171, at 498–99.
diffusion of meaning, and results in changes in individual and collective identities. Learning is therefore related to persuasion since it involves social-cognitive processes, but is distinguished by its more diffuse, societal nature. As such, social-learning is empirically problematic, yet constructivists and “world society” theorists emphasize its importance in the development of mutual trust and shared identity. In a similar vein, legal scholars, such as Koh, argue that the “vertical internalization” of expectations, practices, and norms is a potent promoter of compliance with international rules. According to Koh’s “transnational legal process” theory, with domestic-international interaction, “a complex process occurs, whereby international legal norms seep into, are internalized, and become embedded in domestic legal and political processes.” Such internalization is facilitated through the creation and intensification of interaction between domestic and international norm entrepreneurs and transnational networks. Importantly, according to Koh, the interactive social process does not lead to compliance based on rationalist cost-benefit calculation but to “obedience” which reflects changes in perception and identity.

Apart from the intensification of official interaction through enhanced monitoring and deliberative action in committees, the ENP framework contains two features that may enhance social-learning among ENP country actors. Twinning programs embed professional and technical experts from the administrations of Member States in those of ENP counties, transferring know-how and forming interpersonal linkages across peer institutions. Whereas twinning has originally been conceived as a means of policing conditionality “on the ground,” in practice the exercise in the CEECs and Balkans has relied heavily on processes of policy learning. Individual entrepreneurship and the capacity of the dispatched experts to form effective relationships with local colleagues have been pivotal to the influence capacity of twinning projects. Drawing on the enlargement experience, Commission officials stress that twinning will be a significant instrument in the future development of ENP programs, including “joint programmes” envisaged by the proposed ENPI for the 2007–2013 financial perspective.

The second route through which the policy could facilitate learning is more diffuse but potentially far broader, involving multi-level, multi-theme societal interaction. The progressive opening of community programs (including Research & Development, public health, environment, consumer protection, small and medium size enterprises, customs, gender equality, media, culture, youth, higher education, information technology) and agencies (including the European Agency for Reconstruction, European Environmental Agency, European Training Foundation, European Foundation for the Improvement of Living and Working Conditions, and

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199 Papadimitriou & Phinnemore, supra note 12, at 623.
the European Monitoring Centre on Racism and Xenophobia) to the CEECs and SAP countries has provided the EU with a broad organizational platform for facilitating bottom-up socialization through learning. Some ENP countries already participate in community programs. Israel, for example, is an active member of the 6th Framework Programme for Research & Development, taking part on the same basis as EEA countries. The twinning, program, and agency components of the ENP are still in planning stages and, so, are difficult to assess. Nonetheless, in the absence of conditions for effective conditionality, the structured opening of extensive organizational platforms for cooperative governmental and societal interaction, coupled with robust financial and technical assistance to facilitate learning, holds some of the most promising possibilities for the development of the ENP framework.

V. CONCLUSION

As Emerson argues, a familiar organizational model of legal and institutional development in the EU follows a three-stage process. In a preliminary phase an important idea emerges for a novel EU policy. Often the child of perceptions of crisis and necessity, the idea enters the institutional political discourse of the EU and resonates with decision-makers at the highest levels. In a second phase, the Commission is invited by the Council to make proposals in the new policy area, but “inertial resistances in member states and the institutions limit the scope of these proposals to little more than gestures and wishful thinking.” However, where the need persists and the original idea proves important over time, the inadequacy of the initial proposals become sufficiently jarring to prompt the EU to gradually transform them into a major, substantive initiative in a third phase. Such was the case with the creation of the single market, European Monetary Union, and enlargement to Central and Eastern Europe. Adherence to this predictive logic would therefore view the ENP (and possibly the SAP devised for the Balkans) as presently lodged in phase two—containing the right “essence” but underdeveloped and lacking a critical mass of institutional commitment. According to this rationale, the ENP should be understood as a still nascent but promising policy, representing a bold act of organizational adaptation on the part of the Commission. By drawing on the “community method,” the promise of the ENP is the continued expansion of ideas and methodologies which have allowed the EU successfully to engage Central and Eastern Europe, achieving unprecedented stability, peace, and prosperity on a continental scale.

Yet even if this optimistic, perhaps deterministic, perspective is maintained, the origins and evolution of the ENP so far raise serious questions about its internal coherence and future potential. The initiation of the policy can be attributed as much

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to the Commission’s concern to preserve and expand its intra-EU institutional influence as it can to a proven need for a new institutional framework to govern relations with its new near abroad. At the same time, the idea foundations of the ENP were guided by possibly overconfident beliefs in the transformative power of enlargement and by the unsubstantiated notion that similar effects could somehow be created without paying the price of providing neighboring countries with a credible membership perspective. While the ENP displays a modest amount of policy adaptation it is more prominently characterized by reflexive reliance on policy instruments and methodologies that have been borrowed from the enlargement portfolio in an almost mechanical manner. This is despite well-grounded criticism that the SAP, which has been developed since 1999 and which also tries to replicate enlargement models, has not been properly tailored to the needs of the Balkan countries. Whereas the ENP sets itself ambitious goals, to date there are few signs that the drivers of the new policy have taken on board either the great limitations of the incentives offered or the challenges presented by the prevailing political, economic, and cultural characteristics of the states targeted by the policy. In the absence of a membership perspective, political conditionality and efforts at socialization are devoid of the predominant incentives that have motivated the CEECs and that are also present in the case of the Balkan countries, albeit at greater temporal distance. Confronted with a neighborhood of largely poor, illiberal regimes that are less likely to respond to familiar models of conditionality and socialization, the EU could quite possibly be close to reaching the boundaries of its regional “co-operative empire”\textsuperscript{202} and, thus, may require new legal and institutional tools to better engage with its volatile peripheries.
