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From the EMP to the ENP: New European pressure for democratisation?

Elena Baracani

1. Introduction

The European Union (EU) is based on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which should be developed and consolidated in the framework of the Union's external relations. Indeed, at the beginning of the 21st century the EU is one of the most important international actors in the field of democracy promotion toward third states, and it is widely recognised that it succeeded in facilitating a fast democratisation of Greece, Spain and Portugal in the middle 1970s and early 1980s, and more recently in Central and Eastern European countries, through the main instrument of conditionality and the incentive of membership. Nowadays, the EU continues to adopt this strategy of democracy promotion, based on conditionality and the incentive of membership, towards the candidate (Croatia and Turkey) and potential candidate (Albania, Bosnia-Herzegovina, FYROM and Serbia-Montenegro) countries.

This study compares the EU strategy of democracy promotion in the framework of the Barcelona process, with the same strategy in the context of the new European Neighbourhood Policy (ENP), to delineate the main similarities and differences. In both cases, and in contrast to pre-accession policy, the incentive of membership cannot be offered, so the strategy will vary according to the different instruments (e.g. socialisation and conditionality) used to promote democratic reforms. Then, focusing on the case study of Morocco, I assess whether it is possible to talk of new European pressure for democratisation in the Southern Mediterranean. The analysis is based on the political priorities listed in the December 2004 Action Plan that the EU agreed with Morocco in the framework of the ENP. In particular, I compare the political priorities listed in this document dealing with democracy, the rule of law, human rights and fundamental freedoms, with the political problems underlined by international monitors.

Morocco offers an opportunity to study the evolution of the EU democracy promotion strategy in this geographical area and its impact on the process of political change. In contrast to other North African countries, at the domestic level there are some positive signals that the political system is breaking with the practices of the past. And at the international level, and notwithstanding its small chance of ever joining the Union, the country has always sought a closer relation with the EU.

In the first part of the paper I discuss the main features of democracy promotion in the framework of the Euro-Mediterranean Partnership (EMP) and its limits in fostering political change in the authoritarian regimes of the Southern Mediterranean region. Then, I describe the new features of the ENP, through which democracy could be promoted. The second part focuses on the case

of Morocco, in particular on its relationship with the EU, after having briefly summarized the country's political liberalisation and challenges in order to make progress in the democratisation process.

2. The EU and democracy promotion in the Southern Mediterranean

In 1972 the European Economic Community (EEC) started its Global Mediterranean Policy (GMP), under which cooperation was limited to economic and financial aid in the form of bilateral financial protocols. In the 1980s, EU members devised a Renovated Mediterranean Policy (RMP), continuing with the policy of development assistance and increasing the aid package associated with the fourth generation of financial protocols. It is worth mentioning that the RMP started to emphasise the importance of human rights, with a new provision enabling the European Parliament to freeze the budget of a financial protocol when faced with serious human rights violations (Haddadi 2002: 152). Then, the Lisbon summit of 26–27 June 1992 approved the proposals for a Euro–Maghreb Partnership, shifting the emphasis from development co-operation to partnership. In comparison to the RMP, the Euro–Maghreb Partnership's political dialogue became more explicit, with greater reference made to democracy and respect for human rights, even if it was limited to a 'regular exchange of information and greater mutual consultation on political and security matters'.

The Euro-Mediterranean Partnership (EMP)

The EMP, inaugurated at the Barcelona conference of 27–28 November 1995, may be seen as the evolution of the Euro–Maghreb Partnership. Indeed, the Barcelona declaration reiterates with more emphasis the tone of the political dialogue initiated with the Euro–Maghreb Partnership. In the Barcelona Declaration, the fullest reference to compliance with democracy, the rule of law and human rights is made in the Political and Security Chapter. Here, the parties undertake to develop the rule of law and democracy in their political systems – even if recognising their right to choose their own political, socio-cultural, economic and judicial system – and to respect and guarantee the exercise of human rights and fundamental freedoms without any discrimination. Although the Barcelona Declaration is not a legally binding document, it may be used to interpret the human rights clauses in the association agreements. Indeed, in conformity with the European Council decision of May 1995, a 'human rights' or 'conditionality' clause has been included in all Euro-Mediterranean Association Agreements signed with the Mediterranean partner countries. In addition, Article 3 of the MEDA Regulation, governing the Euro Mediterranean Partnership, has added a suspension clause to EU cooperation with Mediterranean partner countries. This article stipulates that the violation of the democratic principles, the rule of law and human rights and fundamental freedoms will justify the adoption of 'appropriate measures'.

The conditionality clause entitles either party to the agreement to take appropriate measures, including suspending the agreement, in the event that the other party fails to comply with specified human rights norms. This clause has been designed to provide a legal basis for the application of sanctions against a country that violates human rights and democratic principles. It was intended to avoid situations in which the European Community might find itself unable to suspend agreements with countries responsible for human rights atrocities (Fierro 2003). Although reference to the clause has been raised on a number of occasions since the Barcelona Declaration was adopted, coercive measures have not, to date, been used to sanction abusive behaviours. Thus, the Barcelona framework seems to be less severe than the previous Euro-Mediterranean regime (RMP), which allowed the European parliament to block aid on several occasions of violation of human rights. Bartels observes that the EU has been less reluctant to take action under the human rights clause in the Cotonou Agreement with the African, Caribbean and Pacific countries, than with its Mediterranean neighbours. It seems that in the framework of the Euro-Mediterranean Agreements, the human rights clause has evolved, being now invoked as the basis for more positive approaches to human rights issues, including political dialogue, monitoring and funding (Bartels 2004: 369).

It is also worth mentioning that to sustain the objectives of promoting democratisation, the rule of law and the protection of human rights in the framework of the Barcelona process, the EU has developed, within the framework of the European Initiative for Democracy and Human Rights of 1994,¹ the MEDA Democracy Programme (MDP). This programme grants financial support to civil society members and public bodies that engage in the promotion of democracy and democratic institutions. However, as will be shown in the case of Morocco, the MDP funding has been minuscule (Haddadi 2002).

All this means that, even if the Barcelona process, at both bilateral and multilateral level, attaches great importance to progress on democracy and human rights, in practice the EU has not shown any determination to see that such undertakings are respected. Youngs also states that the potential of the EMP as regards democracy promotion 'was manifestly far from being realized' (Youngs 2002: 59). Gillespie and Whitehead explain that EU policy towards the Mediterranean region tends to lead to the accommodation of authoritarian regimes rather than efforts to undermine them, as it is primarily driven by security motives (Gillespie and Whitehead 2002: 198). In his negative evaluation of the EU approach to democracy and human rights in the framework of the EMP, Ortega has warned the EU that 'laxness in this respect may be a policy that gives results in the short term but will in the longer term be a recipe for instability or even terrorism in some cases' (Ortega 2003: 92). More recently Youngs has called the Barcelona approach to democracy promotion 'democracy by osmosis'. In particular he states that '... the Barcelona Process's approach to supporting political reform in the Arab world has been based primarily on the notion of democratic dynamics flowing from Europe to the Southern Mediterranean through demonstration and example. Policies aimed directly at identifiable democratic progress have been weaker than those aimed more generally at facilitating the osmotic drift of societal and political values. The development of a wide range of social, cultural and economic cooperation has been deemed to provide for the self-enlightenment of Arab actors exposed to European norms' (Youngs 2005: 2).

The European Neighbourhood Policy (ENP)

In 2003 the need to make progress on democracy and human rights with Mediterranean countries was emphasised both in the Commission Communication on human rights and democracy (European Commission 2003b), and in the framework of the ENP. This new policy was initiated in March 2003 by the Commission to provide a framework for new relationships with the countries of Eastern Europe (Belarus, Moldova and Ukraine) and the Southern Mediterranean (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia),² that do not have the prospective membership of the EU. On 12th May 2004 the Commission presented an ENP Strategy Paper and seven Country Reports. According to the Strategy Paper, the ENP has two main objectives: strengthening stability, security and well-being for EU member states and neighbouring countries, and preventing the emergence of new dividing lines between the enlarged Union and its neighbours (European Commission 2004a: 3). These goals are in accordance with those of the European Security Strategy endorsed by the European Council of December 2003.

However, ENP partners will not be offered the incentive of membership to the EU. In the short term, neighbouring countries will have relations reinforced through the possibility of participation in various EU activities, and through greater political, security, economic and cultural co-operation. In particular, eleven incentives have been indicated (see table 1). Then, in the long term, the EU will offer neighbouring countries a closer relationship, 'going beyond co-operation to involve a significant measure of economic and political integration' (European Commission 2004a: 3 and 5). In exchange for the above mentioned offer, the EU asks neighbours for their commitment to common values, principally within the fields of democracy, rule of law, respect for human rights, including minority rights, promotion of good neighbourly relations, and the principles of market economy and sustainable development. Commitments will also be sought regarding certain essential aspects of the EU's external action, 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. Thus, the emerging question is whether the ENP incentives will prompt these neighbours to accept the EU's requests (Baracani 2004).

The Commission has also made explicit the positive conditionality attached to shared values: increased political, security, economic and cultural cooperation is offered in return for political and economic reform (European Commission 2004a: 13). In addition, some academic literature on the ENP has noted that this stronger emphasis on positive conditionality, if implemented, could encourage reform-willing states to further pursue their reform agenda while conversely, reform-reluctant states would at least not benefit from increased cooperation aid or trade concessions (Emerson 2004: 15; Schmid 2004: 416; Del Sarto and Schumacher 2005: 22). It should be observed that, although less explicit, positive conditionality in the EMP was also supposed to play a role through more aid for reformers. However, in the framework of the Barcelona Process, the progress of some Mediterranean partner states in the reform process did not translate into any additional funding.

The main instrument to realize the ENP are Action Plans, while in the long term European Neighbourhood Agreements should be signed. Guiding principles concerning the drafting of Action Plans are joint ownership and differentiation. The first one means that priorities will be defined together with partner countries, and will thus vary from country to country; while differentiation refers to the fact that priorities will reflect the existing state of relations with each country and its needs and capacities. Action Plans cover two broad areas: first, commitments to specific actions, which confirm or reinforce adherence to shared values and to certain objectives in the area of foreign and security policy; and secondly, commitments to actions which will bring partner countries closer to the EU in a number of priority fields. In particular, these documents incorporate a set of priorities in the following key areas for specific action: political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU's Internal Market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts. These priorities for action constitute benchmarks, which should then be monitored in the bodies established by the Partnership and Cooperation Agreements or Association Agreements, and the Commission should report periodically on progress accomplished. A first set of draft Action Plans agreed with the first signatory partner countries has been transmitted, in December 2004, by the Commission to the Council. According to the Commission the priorities of these Action Plans have been identified on the basis of the 2004 ENP Commission staff Country Reports and of consultations with the partners.

Meanwhile, in September 2004, the Commission proposed a regulation laying down the general provisions establishing a new financial instrument, the European Neighbourhood and Partnership Instrument (ENPI), which will replace existing geographical and thematic programmes (European Commission 2004c). Article 1(3) of this regulation states that the Union seeks to promote commitment to the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights in partner countries through dialogue and cooperation. Then, according to article 2(2) point (c) the Community assistance will also be used to support measures which pursue the objective of 'promoting and protecting human rights and fundamental freedoms and supporting the democratisation process, including through electoral observation and assistance'. Finally, article 7(5) contains a suspension clause, as it states that '[i]n the event of crises or threats to democracy, the rule of law, human rights or fundamental freedoms, an emergency procedure may be used to conduct an ad hoc review of strategy papers'. Thus, the positive conditionality does not substitute but complements the principle of negative conditionality enshrined in this suspension clause.

It is clear that in devising this new policy, the Commission has drawn from the experience gained in supporting the process of political transition in the new member states and in candidate countries. Indeed, while for candidate countries political priorities are listed in the Accession Partnerships, in the framework of the ENP, political priorities are listed in Action Plans. Both Action Plans and Accession Partnerships should respect the principles of joint ownership and differentiation. The Commission will then report annually on progress accomplished by the ENP partners and will review the content of the Action Plans, and every year the Commission reports on progress accomplished by candidates and may update the priorities contained in the Acces-

sion Partnerships.

See Table 1 (separate Annex)

3. The case of Morocco

Four phases of political liberalisation

Moroccan political liberalisation, after its independence in 1956, can be divided into four different phases. The first period (1962-1975) was characterized by the adoption of Morocco's first constitutions, and the struggle between the monarchy and the two major parties that had emerged from the independence movement: the conservative-nationalist Istiqlal and the left-leaning National Union of Popular Forces (UNFP). According to the 1962 Constitution, the National Assembly, composed of a directly elected House of Representatives and an indirectly elected House of Councillors, had regulatory powers, however these powers were delegated at the king's pleasure. Furthermore, the king appointed and dismissed the prime minister and the cabinet, could dissolve the parliament, and could assume residual powers under emergency laws. The new constitution of 1970 formalised the weakness of the legislature and executive government, establishing emergency legislation. Then, although the new constitution of 1972 enhanced the powers of the legislature and the executive, in article 19 it established that national sovereignty resides in the monarchy, claiming divine legitimacy. Following Morocco's first elections of 1963, some legislators from Istiqlal and UNFP started to question the king's prerogatives, and asked the king to 'reign but not rule', however, in the end, the king managed to strengthen his control. During the second phase (1975-1992) Hassan II forged national consensus mainly through the Western Sahara campaign, which increased the king's legitimacy as defender of the country's territorial integrity. Then, once political unanimity around the monarchy was secured, it was possible for the king to make some conciliatory gestures. For example in May 1990, Hassan II established the Royal Consultative Council on Human Rights (CCDH) to resolve cases of forcible disappearances and compensate victims of human rights violations. Subsequently, in June 1991, 300 political prisoners were released.

The third period (1992-1999) starts with the constitutional revision of 1992 and ends with the death of Hassan II, on 23 July 1999. The 1992 and later 1996 constitutional revisions expanded the powers of the two-chamber parliament and made Moroccan law conform to international human rights conventions. Nevertheless, the 1993 elections were fraudulent and resulted in the victory of the centre-right. The opposition demanded the King cancel the elections, but Hassan II refused and appointed a technocratic government headed by Mohamed Karim Lamrani. In the following months, the king created a cabinet-level Ministry of Human Rights in the newly formed government, invited Amnesty International to visit the country, promoted the efforts of the CCDH, and at the World conference on Human Rights Morocco signed the major conventions, which were subsequently ratified. In 1996 the code of penal procedures was revised to state officially that torture is forbidden, to establish legal provisions for arrest and due process, and to set limits on preventive detention. Political alternance was reached in 1998, when the socialist opposition won the elections and formed a coalition government headed by its leader Abderrahmane Yousoufi. It was a symbolic event, as he had previously been imprisoned by the regime and had spent periods of self-imposed exile in protest at the lack of democracy in the kingdom. However, it was not a real transfer of power from government to opposition, as real political power lies outside the realm of political party competition, in the monarch (Haddadi 2002: 159).

It seems possible to affirm that a new phase has started with the assumption of the throne of Mohammed VI on 23 July 1999 (Willis 1999). From the beginning he showed a willingness to change the situation of the country. However, at the same time, Mohammed VI made clear that he does not intend to follow any European models of democratisation and that he favours a 'strong, democratic executive monarchy'.³ For the media, the political parties and the population, an important sign of change was the dismissal of Basri as minister of the interior on 9 November 1999. Then, in July 2002 the king expanded the mandate and autonomy of the Royal Consul-

tative council on Human Rights and in October of the same year Mohammed VI established the publicly funded Royal Institute for Amazigh Culture (IRCAM) to promote this culture in schools, the media, and local government. In the meantime, the legislative elections on September 27, 2002 were considered the most transparent in Morocco since 1963, even if the rate of participation was very low: only 51 percent of registered voters turned out, and in urban areas this was only 30 per cent. These elections brought to power a coalition of the USFP and the Istiqlal. However, the king decided to appoint as prime minister Driss Jettou, a technocrat with no party affiliation, rather than one from USFP or Istiqlal. Moreover, and even if it decided not to become part of the governing coalition, the Party of Justice and Development (PJD) was the real winner. Indeed, it was the only Islamist party allowed to participate, it tripled its presence, and became the largest opposition party in the Parliament, while presenting candidates in only 56 of the 91 legislative districts (Willis 2004). This limited participation seems to have been negotiated with the ministry of the interior to avoid the prospect that Islamists could establish an Islamic state after winning elections, as in Algeria. It seems also that the leadership of the PJD acquiesced to a royal plan to reduce the number of seats officially won by the party, as its victory could have had destabilizing effect on Morocco (Willis 2004: 69). On May 16, 2003, five synchronized suicide bombings in Casablanca killed forty-five people. Ten days after the terrorist attacks, the parliament passed a new antiterrorist law. According to this law police and security forces have the right to hold suspects without access to a lawyer, to intercept telephone calls internet communications and mail, and to search domiciles and businesses without a warrant. The bill defines terrorism in very broad term, and extends the time limit for detention 'incommunicado' from 3 to 12 days, a provision that makes mistreatment and torture of detainees most likely to occur. Recent political developments include the abolition in June 2004 of the Ministry of Human Rights, created ten years previously, folding human rights responsibilities into the Ministry of Justice. Then, in January 2005 a new code of family law was approved by the Parliament to improve the status of women and children. In commenting on the new political era starting with Mohammed VI, Gillespie believes that, notwithstanding some expansion of freedom of expression and public debate, there has been no clear sign of regime change (Gillespie 2005: 1).

In general, there are two main interpretations of Moroccan political liberalisation. While some scholars believe that Morocco is making unprecedented political moves towards democracy, even if under the shadow of the monarch, most of them think that involvement of the king in these moves is disruptive of any democratic development. Cavatorta affirms that '[i]n reality, political liberalisation has been used to allow the crown to regain a firm hold on power and rebuild its legitimacy' (Cavatorta 2001: 189). According to Gillespie and Whitehead, Morocco is the only North African country whose authorities have come to make positive statements on democracy and human rights and it has gone furthest down the road of expanding political pluralism, however power has remained lodged largely in the monarchy (Gillespie and Whitehead 2002: 194). Haddadi also explains that the democratic openings in Morocco should be read in the light of the perennial struggle for control over the political system between the monarch and the opposition (Haddadi 2002: 158). In a similar way, according to Maghraoui most of the reforms are initiated and guided by a governing monarchy bent on preserving its political powers and economic interests (Maghraoui 2004), and he asks the Moroccan regime to go beyond this strategy of political control through liberal reform and to embark decisively on the path of genuine democracy (Maghraoui 2003a: 74).

Next democratic challenges

Notwithstanding its history of political liberalisation, and according to international observers and the academic literature (Maghraoui 2004), Morocco still has to address various challenges if it wants to progress in the process of democratisation (see table 2).

First of all, Morocco should guarantee respect for the principle of the separation of powers. Indeed, even if the Moroccan constitution creates an elected bicameral parliament independent of the executive and judiciary branches, in practice authority rests with the king, who is head of state, religious leader and head of the military. Consequently the parliament's powers are limited,

and although since the 1960s Morocco has held regular, relatively open and competitive local and legislative elections, they have been criticised as a mechanism to co-opt the elite through a process of reward and exclusion, rather than as a means of political representation. Then, the main problem of Moroccan political parties is their inability to fulfil the function of political representation, because of their willingness to play the game of patronage politics with the interior ministry. In the same way, even if the constitution stipulates the independence, universal accessibility, and legal accountability of the judiciary, in practice the courts are subject to governmental pressure, and in civil and criminal cases, judicial discretion is a source of abuse and corruption. Most judicial irregularities in non political cases take place in Islamic courts, which handle family matters, and in the communal and district courts, and the courts of first instance where only minor or uncontested infractions are dealt with. These courts are characterized by corruption and inefficiency mainly because of legal ambiguities or vacuity, resource constraints and non reliable investigations. In politically charged cases such as terrorism, corruption of public servants, and offences against the monarchy, Islam, or territorial integrity, judges of higher courts may co-operate with the executive. In particular, the minister of justice—a political office—commands not only wide administrative authority to run the justice department, but also extensive judiciary powers, which allow him to interfere in the judicial process.

Different international monitors have also stressed problems dealing with the protection of human rights, fundamental freedoms, and discrimination against women and the Berbers.

Although the Moroccan constitution proclaims adherence to international principles regarding human rights protection, it does not stipulate that Moroccan citizens are entitled to inalienable human rights. Indeed, according to article 19 of the constitution, it is the king who protects 'the rights and liberties of the citizens, social groups and organizations', thus, making the enforcement of these rights dependent on the king. Another matter is the new terrorist law, adopted after the Casablanca terrorist attacks which calls into question Morocco's commitment to international human rights conventions (Maghraoui 2003b). The use of torture and mistreatment is also widespread in Morocco, in particular with detained persons,⁴ and the Sahrawi militants in Western Sahara territory.⁵ Also, another problem is the trafficking of human beings.

Even if the Moroccan constitution provides for freedom of expression, assembly, association and religion, some problems have been reported as regards the real guarantee of these freedoms. Hundreds of publications circulate freely in the country; access to international media, newspapers, television and Internet is unrestricted; and the government tolerates critical editorials and articles. However, journalists observe a general self-censorship on sensitive political issues and freedom of expression can be suspended at short notice. Moreover, the antiterrorist law and the press code permit prison sentences for journalists and publishers whose publications are considered offensive to Islam or the monarchy or regarded as a danger to state security. Meetings and marches take place peacefully without police intervention. However, the law permits the Ministry of Interior to suppress peaceful demonstrations and mass gatherings and throughout 2004 the Government dispersed some peaceful demonstrations led by leftist movement, Islamist activists or unemployed persons. Then, even if the Constitution provides for freedom of association, a decree states that persons who want to create an organization must obtain the approval of the Ministry of Interior before holding meetings. The Constitution establishes that Islam is the official state religion, but it also provides for freedom of religion. However, the protection of religious freedom is not always consistent and the government imposes certain restrictions. E.g., Jewish and Christian communities can openly practice their faith, but proselytising is not tolerated. The Government also continues to forbid the importation of Bibles in Arabic.

As regards discrimination against women, although the constitution declares political equality between men and women, there is no reference in Moroccan law to equality in civil matters or with respect to education, work and health.⁶ According to the personal status code (Mudawana) – as of September 2003 – women are legal minors, they are denied sovereignty to settle a marriage contract, and their right to divorce is restricted. In addition, the Statutes of Public Services discriminate against women in matters of family benefits and civil allowances and exclude women from public responsibility in sensitive sectors such as defence, security, intelligence, and telecommunications. Furthermore, the penal code does not adequately protect women against

domestic rape, violence and murder, and provisions to protect women in police custody and prisons are routinely ignored.

Concerning discrimination against the Berbers, since independence in 1956, the three Berber dialects (Tarefit, Tamazicht, and Tachlhit) have been marginalized through forced Arabization policies, as the sole official language is modern standard Arabic, which is different from the Moroccan Arabic dialect. A 1997 law outlaws birth registration of children with traditional Berber names. The government also represses the public display of Tifinagh – a modern alphabet of ancient Berber script – monitors Berbers' associations and limits their publications, and bans the meetings and conferences of the most militant groups.

Finally, corruption in Morocco is reported to be pervasive and systematic, it is an integral part of the political, economic, judicial, and administrative systems that have been normalized and institutionalised during decades of authoritarian rule under Hassan II. Although the government claims an improved commitment to transparency in public affairs and new anti-corruption laws have been enacted, the problem of major corruption remains untouched as it has deep political roots and involves powerful entrenched interests such as the armed forces, big business, and the monarchy.

See Table 2 (separte Annex)

EU – Moroccan relations

Relations between Morocco and the EU date back to the late 1960s. A bilateral association agreement was signed in July 1969 for a period of five years, to be superseded in 1976 by a cooperation agreement within the framework of the EEC Global Mediterranean Policy (GMP) initiated in 1972. Encouraged by the Community's Mediterranean enlargement which included Greece (1981) and later Spain and Portugal (1986), in July 1987 Hassan II decided to submit a formal application to join the EEC. Haddadi notes that the Hassan II's letter to the Danish president of the Council of Ministers requesting EEC membership contained three arguments: Morocco's commitment to develop a liberal economy; its close economic ties with the European Community; and the democratisation of domestic political life. The author stresses that the discourse on democratisation was presented only in terms of the development and consolidation of a multiparty system and the circulation of a local and international press, not referring to issues of human rights. However, the application was rejected on the grounds that Morocco was not a European country (Haddadi 2002: 151).⁷

In January 1992 Morocco was affected by the content of a new provision, drafted in the framework of the Renovated Mediterranean Policy (RMP), enabling the European Parliament to freeze the budget of a financial protocol, when faced with serious human rights violations. Indeed, the European Parliament decided to freeze Morocco's fourth financial protocol on the grounds of human rights abuses, making reference to the United Nations Resolution (660) on the Western Sahara (Mohsen-Finan 2002) and the shocking conditions endured by political prisoners. This decision was followed by the strong reaction of both Morocco and certain EU governments, in particular Spain. According to Haddadi this event shows that applying 'negative' conditionality can have an adverse effect on relations with third partners, as well as on EU governments that have special ties with them (Haddadi 2002: 161).

Since November 1995 Moroccan relations with Europe have been embedded within the EMP. Under this framework Morocco and the EU signed a bilateral association agreement in February 1996 as an endorsement of the Barcelona Declaration, thus expressing the will to work together towards achieving its economic, political and socio-cultural objectives. The Euro Mediterranean Association Agreement (EMAA) with Morocco entered into force on 1 March 2000, making relations between the EU and Morocco more structured. Even if it has never been applied, the EMAA with Morocco contains – as do all other EMAAs – the conditionality clause (article 2) which reads as follows: 'Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the domestic and external policies of the

Community and of Morocco and shall constitute an essential element of this Agreement'. Within the MEDA Democracy Program (MDP) framework, Moroccan governmental and non-governmental bodies can apply to the EU to fund projects intended to promote human rights and democratic principles,⁸ and Morocco has emerged as one of the principal beneficiaries of MDP funds. However, excluding regional programmes, the MDP for Morocco represents only a minute amount, just 0.3 per cent of the total amount it received from the MEDA I programme for 1996–99.

See Table 3 (separte Annex)

Evaluating the impact of the EU on democratic reforms in Morocco, in the framework of the Barcelona process, Dillman affirms that while Europe has consistently promoted the goals of democratisation since the early 1990s, its actual policies have been tenuous regarding political change in Morocco, and it is not clear whether the EU and individual member states want to promote democracy in Morocco, given their interest in stability and fear of Islam (Dillman 2003: 175 and 193). In a similar vein, according to Haddadi the EU approach to human rights and democracy in Morocco is still too cautious, worried about upsetting the government and persistent in its attitude of change within continuity (Haddadi 2004: 87). In the following paragraphs I will discuss whether, in the framework of the new Neighbourhood policy, this European approach to democracy promotion in Morocco has changed.

According to the Commission, Morocco has given the new ENP a 'very warm reception and has been very cooperative regarding its implementation' (European Commission 2004b: 5). In the ENP Report on Morocco, of 12 May 2004, the Commission staff describes and assesses the current situation as regards the development of the political institutions based on the values of democracy, the rule of law, human rights and fundamental freedoms. It is important to focus on the shortcomings underlined by the Commission staff in this report, to analyse whether and how they have been translated into political priorities in the Action Plan of December 2004.

In the part on 'democracy and the rule of law' the Commission reports six shortcomings (see table 4). First of all, it is observed that the principle of the separation of powers - enshrined in the 1962 constitution - is not respected in practice, as the sovereign retains a significant number of executive prerogatives and exerts a certain amount of legislative power. Then, it is pointed out that Parliament powers are still limited, despite the new ones conferred on it by constitutional amendments of 1992 and 1996. Third, political parties are reported to be highly centralised, and institutionally weak. Fourth, it notes the necessity to ensure the impartiality of judges and improve access to justice, even if some steps have already been taken (i.e. in October 2003 a new code of criminal procedure has entered into force). Fifth, Morocco's administrative capacity is defined as poor, despite a wage bill amounting to 12.5% of GDP and, according to the Commission, this is due to the centralised and hierarchical civil service in which the system of pay is based on seniority with no relation to skills. Finally, it is remarked that corruption is a serious problem and one of the main causes of the country's economic backwardness, in particular the Commission quotes 'Transparency International', which ranks Morocco 70th out of 133 countries in its corruption perceptions index in 2003.

See Table 4 (separte Annex)

In the part on 'human rights and fundamental freedoms' the Commission reports several shortcomings: the unequal implementation of human rights legislation; the lack of ratification of some international human rights protection instruments; partial implementation of the two new (October 2002) laws concerning the right of association and public assembly; the legislative limits to the freedom of the press; the definition of torture in criminal law which does not conform with that required by the UN Convention to which Morocco is party; discrimination against women; non-compliance with child labour laws; limits to the rights to form and join trade unions for certain categories of workers (agricultural labourers and magistrates); and non-recognition of the Berber speaking community's cultural and linguistic rights (see table 5).

See Table 5 (separte Annex)

Before analysing the political priorities listed in the agreed Action Plan of December 2004, which should have been drafted on the basis of this Commission report, it is important to notice the differences between this document and international observers' reports on the political situation in Morocco. In particular, the Commission does not report the fact that elections are a mechanism to co-opt elite, rather than a sincere means of political representation. Furthermore, the report talks of the weakness of political parties, but it does not mention the issue of patronage politics with the interior ministry. Moreover, the Commission does not speak about the necessity to guarantee judicial independence and legal accountability, preferring to write about the necessity to ensure impartiality and to improve access to justice. Finally and concerning corruption, the Commission does not report that this involves powerful entrenched interests such as the armed forces, big business, and the monarchy, preferring to talk of government initiatives to fight corruption, even if these initiatives have still to be implemented. In contrast with this part on 'democracy and rule of law', the part on 'human rights and fundamental freedoms' in the Commission report complies much more with international monitors' assessments, even if the tone of the Commission's requests are very soft. For example, it asks the country to 'examine the possibility to withdraw the reservation to the international conventions on human rights' or to 'take into consideration the possibility to sign the optional protocols to the international conventions on human rights'. Thus, as regards the evaluation of the political situation in Morocco, the Commission report has been much more moderate and soft in comparison with international observers.

In the Action Plan for Morocco, in the section on democracy and rule of law, the Commission does not develop priorities regarding the absence of a real guarantee for the principle of separation of powers and the limit on parliamentary powers. It only gives as priorities the necessity to improve access to justice and administrative capacity, and to fight corruption (see table 6).

See Table 6 (separte Annex)

Concerning the human rights section, the Action Plan lists several priorities in order to comply with the international conventions on human rights protection, to guarantee the freedom of association and expression, and to strengthen the protection for women, children and other social rights. However, it does not contain any priorities to resolve the problem of the unequal implementation of human rights legislation (see table 7).

See Table 7 (separte Annex)

Comparing these Action Plan priorities with the Commission staff report on Morocco and the international monitoring of democratic and human rights practices in Morocco, it seems that the Commission has decided to continue with its traditional policy towards this area, which is limited to achieving partial political reform rather than full political pluralism. This evaluation is based on the fact that the Commission has not translated into political priorities the necessity to respect the principle of the separation of powers, to increase parliament powers, to strengthen the role of political parties, to guarantee judicial independence and legal accountability, and to guarantee the equal implementation of human rights.

However, it is important to notice that the Action Plan priority dealing with the necessity to reform the penal legislation in order to introduce a definition of torture (in line with the UN Convention Against Torture (UNCAT)) has already been accomplished. Indeed, on December 28 2004, the Moroccan cabinet endorsed a bill that amends the existing criminal code to prohibit torture as defined by UNCAT (Arab Reform Bulletin 2005: 14). Notwithstanding this positive development, it is not possible on the basis of this analysis to assess whether or not it was influenced by EU pressure.

4. Conclusion

In the first part of this paper I described the main features of democracy promotion in the framework of the EMP, together with its limits in fostering political change in the authoritarian regimes of the southern Mediterranean. It was shown that even if the Barcelona process formally attaches great importance to progress on democracy and human rights, in practice the EU has never used the conditionality clause to apply sanctions against a country that violates human rights and democratic principles. I then described the new features of the ENP, through which democracy could be promoted for ENP partners. In particular, while the Barcelona Process (theoretically) introduced the principle of negative conditionality, the ENP has added to this principle an explicit reference to positive conditionality, which could encourage reform-willing states to further pursue their political reform agenda. It was also observed that, in devising this new policy, the Commission has drawn on the experience gained in supporting the process of political transition in the new member states and accession and candidate countries. However, like the Barcelona process, the ENP does not foresee the prospect of full EU membership, and it is still not possible to evaluate whether the ENP incentives will make neighbours accept this conditionality.

Thus, the main similarity between the strategy of democracy promotion in the framework of the Barcelona process and the strategy in the context of the ENP, is that neither offer the incentive of membership. There are four main differences. First of all, the geographical coverage of the ENP extends not only to the Southern Mediterranean region, but also to Eastern Europe and the Southern Caucasus. Second, the ENP implies a much more differentiated bilateralism or country-to-country approach. Third, in the ENP the negative conditionality has been complemented with a positive conditionality. And finally, the democracy promotion approach in the framework of the ENP seems to rely much more on the 'monitoring of compliance' and 'determinacy'. This last concept refers to the political priorities listed in the Actions plans, which tell the government precisely what it needs to do, eases the monitoring of compliance and therefore enhances the credibility of the conditionality.

The second part of the study focused on the case of Morocco. It was shown that, notwithstanding a long political liberalisation, most of the academic literature believes that involvement of the king in these moves towards democracy is disruptive of any democratic development. International monitors underline that Morocco should guarantee respect for the principle of the separations of powers, and in particular increase Parliament's powers, strengthen the role of political parties, make elections become a real instrument for political representation, guarantee judicial independence, and fight corruption. And at the same time, the country should also improve the legal and real protection of human rights and fundamental freedoms, and remove legal discrimination against women and Berbers. To conclude I concentrated on EU- Moroccan relations. It was shown that, while in the framework of the Renovated Mediterranean Policy Morocco was affected by the European Parliament decision to apply negative conditionality on the grounds of human rights violation, the same principle has never been applied in the framework of the Barcelona process. Then, on the basis of an analysis of the political priorities listed in the ENP Action Plan, which the EU agreed with Morocco in December 2004, it seems that the EU has decided to continue with its traditional policy towards this area. Such a policy is limited to achieving partial political reform, rather than a genuine democratic transition. This statement is based, in particular, on the fact that the Commission has not translated into political priorities the necessity to respect the principle of the separation of powers, to increase parliament powers, to strengthen the role of political parties, to guarantee judicial independence and legal accountability, and to guarantee the equal implementation of human rights. Thus, on the basis of the content of these political priorities for Morocco, it does not seem possible to affirm that the EU is moving towards a new and more successful strategy for democratisation in the Southern Mediterranean. The EU approach to democracy and human rights in this region seems to continue to be very cautious and it is not possible to assess its credibility until the Commission reports on the governments' accomplishment of political priorities listed in the Action plans at the end of the year.

Notes

- ¹ In 2000 the work of the MDP has been transferred to the EuropeAid and Cooperation Office (EACO).
- ² Southern Caucasus countries (Armenia, Azerbaijan and Georgia) have been added in the scope of this policy from the Brussels European Council of 17-18 June 2004.
- ³ Interview in *Le Figaro*, 4 September 2001.
- ⁴ See for example the International Federation of Human Rights investigation of July 2003, or the U.S. Department of State, *Morocco Report on Human Rights Practices*, 2004.
- ⁵ See *Morocco/Western Sahara Briefing to the Committee Against Torture* (London: Amnesty International, November 2003).
- ⁶ See the United Nations Development Program Report and the United Nations Committee on the Elimination of Discrimination against Women.
- ⁷ On the basis of article 237 of the Treaty of Rome.
- ⁸ For instance, in the period 1996–2000, the EU financed 46 projects in Morocco: 32 centred directly on Morocco, while 14 others involved Morocco indirectly at a regional level.

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Annex

From the EMP to the ENP: New European pressure for democratisation?

Elena Baracani

Table 1: The European Neighbourhood Policy (ENP)

GEOGRAPHIC COVERAGE	Eastern Europe	Belarus, Moldova and Ukraine	
	Southern Mediterranean	Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, Tunisia	
	Southern Caucasus	Armenia, Azerbaijan, Georgia	
OBJECTIVES	<ol style="list-style-type: none"> 1. strengthening stability, security and well-being for EU member states and neighbouring countries, 2. preventing the emergence of new dividing lines between the enlarged EU and its neighbours. 		
WHAT IS OFFERED	Short term: Reinforced political, security, economic and cultural cooperation (through 11 incentives)	<ol style="list-style-type: none"> 1. Extension of the internal market and regulatory structures; 2. Preferential trading relations and market opening; 3. Perspective for lawful migration and movement of persons; 4. Intensified cooperation to prevent and combat common security threats; 5. Greater EU political involvement in conflict prevention and crisis management; 6. Greater efforts to promote human rights, further cultural cooperation and enhance mutual understanding; 7. Integration into transport, energy and telecommunications networks and the European research area; 8. New instruments for investment promotion and protection; 9. Support for integration into the global trading system; 10. Enhanced assistance, better tailored to needs; 11. New sources of finance; 	
	Long term:	Some economic and political integration	
WHAT IS ASKED	Commitment to common values in the following fields:	democracy	
		rule of law	
		Good governance	
		respect for human rights (including minority rights)	
		promotion of good neighbourly relations	
		principles of market economy, free trade, sustainable development and poverty reduction	
		essential aspects of the EU' s external action (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)	
INSTRUMENTS	Short term:	Action Plans	
	Long term:	European Neighbourhood Agreements	
ACTION PLANS	Guiding principles:	Joint ownership	
		Differentiation	
	Two broad priority areas:	Commitments to shared values and to certain objectives of foreign and security policy	strengthening democracy and the rule of law, the reform of the judiciary and the fight against corruption and organised crime;
			respect of human rights and fundamental freedoms (including freedom of media and expression), rights of minorities and children, gender equality, trade union rights and other core labour standards, and fight against the practice of torture and prevention of ill-treatment;
			support for the development of civil society;
			and cooperation with the International Criminal Court;
		Commitments which will bring partner countries closer to the EU	the fight against terrorism and proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution.
			political dialogue and reform;
			trade and economic reform;
			equitable socio-economic development;
Progress monitoring	In the bodies established by the Partnership and Cooperation Agreements or Association Agreements. The Commission will report periodically on progress accomplished.	justice and home affairs;	
		connecting the neighbourhood (energy, transport, environment, information society, environment, research and development);	
		people-to people contacts	

Table 2: Next democratic challenges for Morocco (source: International Monitors)

1. Respect for the principle of the separation of powers:	- increase Parliament powers
	- transform elections in a sincere means of political representation instead of a mechanism to co-opt the elite
	- make political parties fulfil the function of political representation instead of playing the game of patronage politics with the interior ministry
	- real guarantee of the independence, universal accessibility, and legal accountability of the judiciary
2. Human rights and fundamental freedoms protection:	- make the constitution stipulate that Moroccan citizens are entitled to inalienable human rights
	- respect Morocco's commitment to international human rights conventions (new terrorist law, adopted after the Casablanca terrorist attacks)
	- protect from the use of torture and mistreatment (detainees and Sahrawi militants)
	- fight the trafficking of human beings
	- make reference in Moroccan law to equality between men and women in civil matters or with respect to education, work and health
	- remove discriminative provisions against women from the Statutes of Public Services
	- protect adequately - in the penal code - against domestic rape, violence and murders
	- remove legal discrimination against the Berbers
3. Corruption:	- full guarantee of freedom of expression, assembly, association and religion
	- fight against corruption

Table 3: MEDA commitments for Morocco (Euro million)

MEDA I					MEDA II							ENPI
1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
30	-	235	219	172	160.6	120	122	142.7				

Table 4: ENP Report on Morocco (2004) – Democracy and Rule of Law Shortcomings

DEMOCRACY and the RULE OF LAW
(1) Not respect for the principle of the separation of powers
(2) Limited parliament powers
(3) Weakness of political parties
(4) Ensure the impartiality of judges and improve access to justice
(5) Poor administrative capacity
(6) Corruption

Table 5: ENP Report on Morocco – Human Rights and Fundamental Freedoms Shortcomings

HUMAN RIGHTS and FUNDAMENTAL FREEDOMS
(1) Unequal implementation of human rights legislation
(2) Lack of ratification of some international human rights protection instruments
(3) Partial implementation of the October 2002 two new laws concerning the right of association
(4) Legislative limits to the freedom of the press
(5) Definition of torture in the criminal law not in conformity with the UN Convention
(6) Discrimination against women
(7) Non-compliance with child labour laws
(8) Limits to the rights to form and join trade unions for certain categories of workers
(9) Not recognition of the Berber speaking community's cultural and linguistic rights

Table 6: ENP Action Plan for Morocco (2004) – Democracy and Rule of Law Priorities

DEMOCRACY and the RULE OF LAW	
(1) Consolidate the administrative bodies controlling the democratic practice and the rule of law	<p>SHORT TERM:</p> <ul style="list-style-type: none"> - exchange of experiences and expertises in the framework of the evolution of the regulation on the political parties - strengthen the administrative capacity through the implementation of the law on the motivation of the administrative decisions - go on in the decentralisation efforts and strengthen the competences of the local entities on the basis of the new charter on territory <p>MEDIUM TERM:</p> <ul style="list-style-type: none"> - control the implementation of the reform of local entities
(2) increase the efforts to facilitate access to justice and to rights	<ul style="list-style-type: none"> - simplify judicial procedures, reduce the length of trials and execution of sentences and improving the legal aid system - support the family sections of the courts of first instance to implement the new provisions of the new family code - support for the children justice in order to implement the reforms of the new code of penal procedure - implement the national plan for the modernization of the prison system - training of judges - implement the programme Meda “modernization of the judicial system in Morocco”
(3) cooperation in fighting against corruption	<p>SHORT TERM:</p> <ul style="list-style-type: none"> - follow the conclusions of the committee “justice and security” - exchange of information on the legislations and on international instruments - support the adoption of the UN Convention measures and international cooperation <p>MEDIUM TERM:</p> <ul style="list-style-type: none"> - strengthening and support the implementation of the national anti-corruption strategy

Table 7: ENP Action Plan for Morocco – Human Rights and Fundamental Freedoms Priorities

<p>(1) Ensure a human rights and fundamental freedoms protection in line with the international norms</p>	<p>SHORT TERM:</p> <ul style="list-style-type: none"> - Start discussions in the committed on “human rights, democratization and governance” - Examine the possibility to withdraw the reservations to the international conventions on human rights - Continue to implement through legislation the international provisions on human rights - Take into consideration the possibility to sign the optional protocols to international conventions on human rights - Bring to an end the national action plan on human rights and support its implementation - Strengthen dialogue on human rights issues at all levels - Promote the cultural and linguistic rights of all Moroccan citizens. - Reform the penal legislation in order to introduce a definition of torture in conformity with the United Nations Convention Against Torture
<p>(2) Freedom of association and expression</p>	<ul style="list-style-type: none"> - Ensure the implementation of the law on the right of association and assembly, in line with the provision of the ICCPR - Exchange of experience and expertise in the framework of the evolution of the Press Code - Support the new law on the liberalization of the audio video and cooperation in this sector
<p>(3) Strengthen the promotion and protection of the rights of women and children</p>	<ul style="list-style-type: none"> - Implement the recent reforms of the family code - Fight against women discriminations and violence, in conformity with the ad hoc United Nation convention - Consolidation of the children rights in line with the ad hoc international convention - Promote the women role in the economic and social progress - Protection of pregnant women at work
<p>(4) Guarantee fundamental social rights</p>	<ul style="list-style-type: none"> - Start a dialogue on fundamental social rights in order to identify main challenges and the possible solutions

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