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# The “Arab Spring” and the EU’s “Democracy Promotion” in Egypt: A Missed Appointment?

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## Abstract

The aim of this article is to review the European partnership with Egypt under the European Neighbourhood Policy, in order to assess the effectiveness of the EU policy in the promotion of democratization and human rights, hinged on the use of positive and negative conditionality.

The empirical focus of the piece will be on the period following the Arab Uprising, coinciding with the creation of the European External Action Service, and therefore the most important testing ground for the newly created EU department.

From this analysis it will emerge that, in spite of the attempt to review the European policy vis-à-vis the Southern Mediterranean so as to meet the new aspirations of democracy and human rights unfolding on the ground, the European Union has failed to effectively pursue the principles that it solemnly proclaimed. This failure is due to a mix of factors, partly related to the way the EEAS was conceived, and partly to wrong political choices.

In my analysis, I will rely mostly on official documents and figures to give a synthetic account of the framework of the EU-Egypt relations. In the evaluation of its outcomes, I will resort to scholarly opinions, to the Assessment Reports of the European Court of Auditors, and to interviews I personally conducted with EEAS and Commission officials. As the information and opinions disclosed therein do not always correspond to the official “line”, in most cases I have been requested not to reveal the interviewee’s name.

## Key-words

European Union, European External Action Service, European neighbourhood policy, Egypt, Arab Spring, human rights, conditionality



## 1. Introduction: the EEAS response to the “Arab Spring”

On 1<sup>st</sup> December 2010, the European External Action Service was formally launched as a new department of the EU, separated from the Commission and entrusted with foreign affairs and diplomatic relations between the EU and non-member states.

Eight days later, a twenty-six-year-old Tunisian set himself on fire in a little town south of Tunis, kicking off the massive wave of uprisings in the Arab World known as “Arab Awakening”, or “Arab Spring”.

This overlapping of events in the Northern and Southern border of the Mediterranean could have represented a unique opportunity for both sides: a new partnership and economic collaboration grounded on shared values of democracy and human rights

Indeed, the newly created EU department began soon to review the “European Neighbourhood Policy” (ENP) vis-à-vis the Middle East and North Africa (MENA) region, in order to meet the democratic wind blowing from the South. To this end, firm declarations of principles expressed the determination of the EU in encouraging “deep democracy” in the Southern border of the Mediterranean, through a conditional system of incentives and disincentives linked to liberal-democratic progress.

The present article analyzes this policy of the EU in favor of human rights and the rule of law and its outcomes, with special regards to the Egyptian case. In order to evaluate successes and failures of the renewed ENP, two different aspects require examination:

- 1) As to the means, has the EU effectively implemented its vaunted process of conditionality?
- 2) As to the ends, has the EU effectively promoted its vaunted principle of “deep democracy”?

Since the answers will draw an overall negative picture, both in terms of actions and purposes, I will try to answer a third question:

- 3) What are the reasons of the EU failure?

The analysis will be conducted along the following lines.

After briefly discussing the function of the ENP, I will try to present the most significant innovations triggered by the Arab Awakening on the EU policy, i.e. a strong



stance in favor of “deep democracy” (*de facto*, a liberal-democracy) in the MENA, to be achieved through a system of incentives and disincentives.

This theoretical scheme will be subsequently put to the test in the concrete EU action in Egypt. A basic account of the financial instruments deployed by the EU in the country will be followed by a critical review of their effective leverage to promote human rights with the various Egyptian governments, before and after the Uprising. In light of the events occurred after the Uprising, which evidence serious violations of human rights and the rule of law, I will defend the hypothesis that the EU has been both unable and unwilling to use negative and positive conditionality in order to drive the various Egyptian governments to build a “deep democracy”. On the contrary, the EU action has proved to be weak and superficial.

The reasons for this failure may be ascribed to different causes, a number of factors as identified by scholars, EU officials, and the European Court of Auditors. Firstly, to the very way the EEAS was conceived and enacted, i.e., deprived of political strength and strategic view necessary to address international problems in a long-term and effective manner; this has brought about wrong political choices and lack of foresight on the part of the EEAS, reflecting the same defects of member states. Secondly, to objective difficulties, such as financial constraints, unreceptive and changeable governments, political realism contrasting with ethical principles. Thirdly, to lack of moral clarity on the object and the ends of EU’s democracy promotion. All of which has brought about a totally inadequate leverage policy whose impact in favor of democratization, human rights and the rule of law has been minimal.

In the conclusions I will maintain that the EU must develop a stronger foreign policy grounded on a considered, enduring strategy to be developed further to an in-depth analysis of the various elements at play, and taking into account a set of well-identified goals. That having been done, the EU must push for “deep democracy” through a larger and firmer employment of positive and negative conditionality.

Through these discussions, I will make a strong case against contrasting arguments, based both on pragmatic and value grounds.



## 2. The ENP and its review further to the “Arab Spring”

The ENP is a foreign relation instrument developed by the Commission in 2004 “with the objective of avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all. It is based on the values of democracy, rule of law and respect of human rights”.<sup>I</sup> Briefly, the ENP aims at establishing ties with neighbouring countries to the East and the South, offering them assistance of various kinds in exchange for commitments to reforms in various domains, ranging from the economy to governmental and human rights issues. The bases of the partnership with each state are bilaterally defined through Association Agreements and Action Plans, wherein the two parties agree on the terms of the deal and the line of action.

As the ENP was created when the MENA region was firmly held by dictators, the overthrow of the latter in the popular uprisings of 2010-2011 could not be without consequences for the European policy towards the Southern Mediterranean, and consequently for some kind of review of the ENP.

This review took place in March 2011, when the High Representative presented to the other EU institutions the renewed EEAS policies the new EEAS pipeline for the region, illustrated in the document *A Partnership for Democracy & Shared Prosperity with the Southern Mediterranean* (PDSP).<sup>II</sup>

As it has been correctly said, this represented the “first attempt to formulate a broad framework for the EU’s response to the ‘event of historic proportions’ [...] sparked by the Tunisian Revolution”.<sup>III</sup>

Given the circumstances, it will be no surprise that the realistic approach adopted pre-crisis (and especially with the Union for the Mediterranean<sup>IV</sup>) has been abandoned,<sup>V</sup> and the ethical dimension has come back to the fore of the EU policy vis-à-vis the MENA region, in the obvious necessity of marrying the ethos of the EU with the legitimate aspirations of the Spring, and with a view to using the former to foster the latter: “the EU has to take the clear and strategic option of supporting the quest for the principles and values that it cherishes. For these reasons the EU must not be a passive spectator. It needs to support wholeheartedly the wish of the people in our neighbourhood to enjoy the same freedoms that we take as our right”.<sup>VI</sup>



Hence, focus was put on three main guiding principles, in this order: democratic transformation, civil society, growth and economic development.<sup>VII</sup> This marked a departure from the previous logic of the ENP. In fact, in spite of persistent bombastic rhetoric, EU-MENA relations until then had been mainly driven by an economic logic, with the EU indicating that “economic liberalization will lead to enhanced economic and political interdependence and, thus, to security and stability”.<sup>VIII</sup> “Now, the logic of the ENP - economic cooperation leading to democracy - is reversed: the policy priorities are reordered in favor of deep democracy and the components and ingredients of deep democracy are clearly enumerated. The argumentation follows the recently promoted logic of the European Mediterranean policy that democratization leads to economic prosperity. Accordingly, the conditionality for a closer cooperation and association to the EU is clearly linked to democratization—and not to economic reforms as in the years before”.<sup>IX</sup>

The document also implicitly acknowledged some prior shortcomings of the ENP, thus highlighting the EU commitment towards a more differentiated approach to be realized through a better working system of incentives and disincentives.<sup>X</sup> In other words the call was for positive and negative conditionality, although, in the enthusiastic mood of the moment, the focus was on the latter: it was about a “more for more” approach whereby “those that go further and faster with reforms will be able to count on greater support from the EU. Support will be reallocated or refocused for those who stall or retrench on agreed reform plans”.<sup>XI</sup>

This system of incentives pivoted on the so-called “3 Ms”: money, market and mobility, that is to say offering financial assistance, easier access to EU market, and mobility partnership, to a different extent depending on partners’ compliance with the EU requirements in various fields.

This document was integrated two months later with a further one: *A new response to the changing Neighbourhood* (NRCN),<sup>XII</sup> which more explicitly took note of the past failures of the EU in trying to support political reforms in neighbouring countries. The new approach was to provide for “greater flexibility and more tailored responses in dealing with rapidly evolving partners”.<sup>XIII</sup> This differentiation was to be mainly achieved via positive conditionality: “Increased EU support to its neighbours is conditional. It will depend on progress in building and consolidating democracy and respect for the rule of law. The more



and the faster a country progresses in its internal reforms, the more support it will get from the EU. This enhanced support will come in various forms, including increased funding for social and economic development, larger programmes for comprehensive institution-building (CIB), greater market access, increased EIB financing in support of investments; and greater facilitation of mobility”.<sup>XIV</sup>

A key concept made explicit in the document was that democracy is more than ballots: it is about building “deep democracy” - which we could easily call “liberal-democracy”-, i.e. “the kind that lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and army forces, access to a competent and non-corrupt civil service — and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion”.<sup>XV</sup>

Also the High Representative stressed that the EU commitment was not towards a loosely interpreted “democracy”, but for “deep democracy”, entailing “respect for the rule of law, freedom of speech, respect for human rights, an independent judiciary and impartial administration. It requires enforceable property rights and free trade unions. It is not just about changing governments, but about building the right institutions and the right attitudes”.<sup>XVI</sup> In comparing “deep democracy” with “surface democracy”, she further remarked that the latter, in the long run, is doomed.<sup>XVII</sup>

In order to reinforce the image of a “global force for human rights”, as the EU defined itself,<sup>XVIII</sup> it took two other important steps. In June 2012 it established the “European Endowment for Democracy”<sup>XIX</sup> (on the model of the U.S. National Endowment for Democracy), an autonomous International Trust Fund, separated from the already existing European Instrument for Democracy and Human Rights, working as an “independent grant giving institution that supports local actors of democratic change in the EU Neighbourhood”.<sup>XX</sup> Furthermore, in July 2012 a “Special Representative on Human Rights” was appointed, in the person of Stavros Lambrinidis.<sup>XXI</sup>

In sum, the Arab Awakening ought to have represented the opportunity for the EU to guide a process, in the developing priorities of the newly created EEAS, of authentic



democratization based on human rights and the rule of law, not shying away from promoting such universal values through a system of punishments and rewards.

However, conditionality has been correctly defined as “a complex set of issues including the ability to attach strings to demands, the linkages between political demands and economic incentives, the attraction and credibility of these incentives for them to be effective, the ability of the EU system, including its member states, to coordinate and deliver such incentives”:<sup>xxii</sup> just in terms of credibility and delivery, the new policy, which in reality reiterated old concepts, was impaired from the very beginning by the radical flaws of past hypocrisies and failures, when the EU, although not sparing declarations of principles, was close to the dictatorial regimes and therefore partly unable and partly unwilling to pursue the proclaimed values, its focus being essentially on economy and security.

On top of that, any ethical policy, sooner or later, inevitably ends up by clashing with the economic and political reasons of *realpolitik*, and finding a balance is not an easy task.

These problematical issues, along with others, invariably arose in the Egyptian case, negatively impacting on the European democratic agenda.

### 3. EU-Egypt Relations and Democracy (non)Promotion

#### 3.1. EU-Egypt relations under the ENP: an overview

Egypt, the most populous Arab country and one of the most important from a geo-strategic point of view, has always been central in Euro-Mediterranean relations.

Under the ENP, European assistance to Egypt has been delivered via two main different systems: the first, and most conspicuous, is directed to the state as such, while the second is directed to civil society organizations.

In the first case, for the period 2007-2013 Egypt received an allocation of approximately €1,000 million (MN) in the framework of the European Neighbourhood and Partnership Instrument<sup>xxiii</sup> - which has currently been replaced by the European Neighbourhood Instrument (both implementing instruments of the ENP)<sup>xxiv</sup> -: within this sum, €449 MN was committed after the Uprising, for the period 2011-2013.<sup>xxv</sup>

This assistance has been devoted to supporting reforms in three main areas: 1) democracy, human rights and justice (€50 MN for the biennium 2011-2013, i.e.,



approximately 11 per cent of the total<sup>xxvi</sup>); 2) economic productivity and competitiveness (transports, energy, and trade); 3) development programs and management of natural resources (e.g., education, public health, water, etc.).<sup>xxvii</sup>

The most part has been provided in the form of sector budget support to the state,<sup>xxviii</sup> i.e. the “transfer of financial resources from an external financing agency to the National Treasury of a partner country in support of a sector programme, following the respect by the latter of agreed conditions for payment”.<sup>xxix</sup> As Egypt has failed to meet the required conditions, sector budget support in the various fields has been frozen, with no disbursement since 2012.<sup>xxx</sup> It is worth mentioning that the Commission was the only donor providing budget support to Egypt.<sup>xxxi</sup>

On the other hand, in consideration of the cycle of failures in promoting human rights through the government, a trademark of the renewed ENP has been the increased interest towards civil society and its direct empowerment, by directly financing non-state organizations.

In the case of Egypt, EU support to civil society has increased from an annual allocation of €1.9 MN in 2010, reaching €3.3 MN per year on average, delivered through specific instruments such as the European Instrument for Democracy and Human Rights, the Civil Society Facility and the Development Cooperation Instrument.<sup>xxxii</sup> These are outside the ENPI, and do not require the Commission to enter into financial agreements with the national authorities. In addition, the Delegation is currently managing 56 grants worth €26.7 MN to support civil society, among which 23 are on human rights.<sup>xxxiii</sup> Recipients are NGOs working on different human rights issues.<sup>xxxiv</sup>

When analyzing these innovations, whilst indeed positive, it must be noted that the framework of the cooperation between the EU and Egypt has remained the same during the rapid succession of uprisings and change of governments.

Indeed, the basis of such cooperation<sup>xxxv</sup> is still the Association Agreement the two parties signed in 2001, entered into force in 2004.<sup>xxxv</sup> On that basis, the two partners in 2007 signed an Action Plan where they set out a common range of short term and medium term priorities.<sup>xxxvi</sup> This was due to expire in 2012, but has been extended several times until 2015.<sup>xxxvii</sup>

The fact that nothing has changed in the framework of the EU-Egypt cooperation may



mean two things: either this proved to be a particularly effective model, whose pressure for reforms can produce its beneficial effects no matter which government is in power; or these documents are so vaguely drafted that they may be adapted to any political season, insofar as they lack any concrete input and effect.

Unfortunately, the second seems to be the most likely answer. Indeed, when Mubarak was deposed, “Brussels reacted to the overthrow of one of the Middle East’s longest standing authoritarian regimes in a self-effacing manner at best. No one even hinted that the EU’s ‘neo-functionalist’ approach towards the Mediterranean, in place since 1995, should be congratulated for having aided in Egypt’s democratization. In contrast, High Representative Catherine Ashton suggested that the time has come yet again for a re-evaluation of EU policy, less than three years following its latest incarnation under the auspices of the Union for the Mediterranean”.<sup>XXXVIII</sup>

Theoretically, both the Association Agreement and the Action Plan include several key points concerning human rights and the rule of law. The problem is that these are too many, not concrete enough and lacking a system of prioritization, as authoritatively certified by the European Court of Auditors (ECA) in its report assessing the EU cooperation with Egypt.<sup>XXXIX</sup>

The consequence was that, during Mubarak’s era, “[the EU] was unable to achieve progress either in the framework of its ENP dialogue or through the main ENPI project if funded in this area”.<sup>XI</sup>

What is even worse, no type of conditionality was attempted to correct this path: “Notwithstanding these difficulties the commission continued to provide significant financial assistance to the Egyptian government, notably through budget support”.<sup>XLI</sup> In other words, “the Commission made no link between its criticisms of human rights violations made in the progress reports and the option of reducing or suspending EU assistance. This is despite the fact that human rights clauses are included in the association agreement, the ENPI regulation [...] and the financing agreements for individual programmes. While the reduction or suspension of budget support, given that it was directly financing the national budget, could have been a particularly potent way of backing up human rights concerns, this was not done before the Uprising”.<sup>XLII</sup>

It must be said that this is not peculiar to the case of Egypt, but characteristic of the EU attitude towards the Southern Mediterranean: “Notwithstanding this new methodology



introduced by the ENP, conditionality was rarely exercised in the case of the southern Mediterranean countries and, if it was, the criteria (both positive and negative) were by no means clear. While some countries (but not all) were occasionally criticized through diplomatic and Common Foreign and Security Policy (CFSP) tools, negative measures were never contemplated”.<sup>XLIII</sup>

### 3.2. The Islamist dictatorial turn meets EU inaction

If this was the picture before the Uprising, one could expect a decisive improvement afterwards, (given the much vaunted “new deal” pivoted on “deep democracy”) through an extensive employment of negative and positive conditionality, the only possible instrument to achieve some kind of result.<sup>XLIV</sup>

Yet no relevant change became apparent, even when events would have required a vigorous response from the EU; indeed, the political road of Egypt took very soon a direction which could not be farther away from “deep democracy”.

In January 2012, when Egyptians were called to vote for the first authentically democratic parliamentary elections, Islamists obtained an astonishing victory, gaining 70% of seats between Muslim Brothers and Salafists.<sup>XLV</sup> In June 2012 Muhammed Morsi, a member of the Muslim Brotherhood, won the presidential elections.

In spite of great expectations, Islamists in power proved to be anything but “moderate” or “democratic”, whether in the Constituent Assembly, in the Government, or in the larger society. They exploited democracy and abused the rule of law on several occasions,<sup>XLVI</sup> and in a blatant way with the notorious “constitutional decree” of 22 November 2012. In this declaration, patently unlawful as *ultra vires*, president Morsi ruled that:

- 1) the public prosecutor would be dismissed, with the President appointing a new one;
- 2) all trials against officials of the former regime, including those concluded, would be re-celebrated, with an ad hoc prosecutor endowed with broader powers;
- 3) No judicial authority could dissolve the Constituent Assembly or the Shura Council;
- 4) No judicial authority could cancel any declarations, laws and decrees made since Morsi assumed power on 30 June 2012, all pending lawsuits against them being void.



5) The president could take any measures he saw fit in order to preserve and safeguard the revolution, national unity or national security.<sup>XI.VII</sup>

This happened just before the Islamist-dominated Constituent Assembly, whose boycotting secularist members had been replaced with other Islamists,<sup>XI.VIII</sup> rashly approved in one-night session a draft constitution permeated by *sharia* law in key aspects, in striking contrast with human rights and the rule of law.<sup>XI.IX</sup> To prevent the Constitutional Court from ruling on the legitimacy of the Assembly, Muslim Brothers even besieged the Court,<sup>L</sup> while all protests were violently repressed, with demonstrators tortured even inside the Presidential palace.<sup>LI</sup>

*That* would have been the moment, for the EU, to vigorously show that democracy is more than ballots, and “deep democracy” not an empty slogan. Instead, in front of this blatant move towards a new autocracy, the EU response was very weak, not to say almost inexistent.

It must be said that nobody could accuse the EEAS of not having paid attention to Egypt after Morsi’s election: Lady Ashton and the Special Representative for the Southern Mediterranean, Bernardino Leon, were undoubtedly involved with Morsi’s government, and Brussels was the first Western capital Morsi visited after his election. However, this only makes the lack of European influence even more glaring.

Tangible proof of that lacuna is given by the launch of the “Task Force” for Egypt. The Task Force was the “largest-ever meeting between the European Union and Egypt”,<sup>LII</sup> “committed to launching a new EU-Egypt relationship”<sup>LIII</sup> through “the mobilization of all EU assets and working with both public and private sectors”.<sup>LIV</sup> In that occasion, nearly €5,000 MN were pledged by the EU, the European Investment Bank and the European Bank for Reconstruction and Development, in form of grants and loans. The amount committed by the Commission was “on top of the 449 million already provided by the EU to Egypt for the period 2011-2013”.<sup>LIV</sup>

The Task Force took place in Cairo on 14 November 2012: i.e. just a week before the infamous Morsi’s constitutional declaration. In other words, the European engagement and commitments, and the potential risk of losing them, could by no means influence the most radically authoritarian drift of the Muslim Brothers’ government, in polar opposition with the much vaunted “European values”. It is quite ironic, from this point of view, to read in the Co-Chairs Conclusions that “The Task Force was the occasion for the EU to send a



strong political message in support of the democratic reform process Egypt has embarked on following the 25th January 2011 revolution”:<sup>LVI</sup> in consideration of what happened right after, the “strength” of such a message is questionable to say the least...

Faced with the substantial restoration of a dictatorship, and this time moreover an Islamist one, which even in terms of mere *realpolitik* promised nothing good, the EU response was “pathetic”, to cite an EEAS officer dealing with Egypt.<sup>LVII</sup>

Not even one word was uttered by the High Representative against the constitutional declaration. A statement was released only two weeks later, merely expressing concern at the “clashes between demonstrators” and asking for “calm and restraint on all sides” and an “inclusive dialogue”. No clear side was taken, and the cause of those clashes and demonstrations, which should have been vocally addressed right after the constitutional declaration by the self-proclaimed guarantor of the Arab “Spring” and its democratic wave, was completely omitted, as if the clashes were part of a normal dialectic between government and opposition. Nor was a word spoken on the constitutional process, although the statement came six days after the rushed approval of the draft by the Islamist Assembly, and only a couple of days after the violent siege of the Constitutional Court. Rather - as if this were not enough - the statement concluded by recalling the close partnership of the EU and Egypt, “based [on] the overarching values of ‘respect for social justice, socio-economic development, rule of law, human rights and good governance’”, and confirming that “[t]he EU stands by its support to Egypt’s democratic transition and urges it to continue along this path”.<sup>LVIII</sup>

Paradoxically, this almost non-existent response can be interpreted as an extraordinarily steadfast reaction if compared to the Council’s deafening silence: the absolute absence of any reaction whatsoever from member states, in the name of “silent diplomacy”,<sup>LIX</sup> disguised an ill-concealed impotence, and created a grave vacuum.

To see the first, somewhat timid stance against Morsi’s adventurous politics, one must await the 2012 Review of the ENP in Egypt. Therein it was stated that “President Morsi’s constitutional declaration of 22 November *giving him near absolute power*, the rushed adoption of a draft Constitution by the Constituent Assembly, the abrupt interruption of the dialogue on its provisions, and the President’s subsequent call for a constitutional referendum have pitched the nation into a deeply divisive political crisis between supporters of the President, on the one hand and the secular liberal opposition”.<sup>LX</sup>



Furthermore, an entire chapter on human rights listed the numerous drawbacks in key issues: minority rights, women rights, freedom of religion and expression, the poor way the new constitution addresses them, the clashes with the judiciary.<sup>LXI</sup>

Yet, in the recommendations any specific reference was abandoned, and the EU limited itself to “invite” Egypt “to ensure an inclusive dialogue with all political parties and other actors including religious leaders to ensure that the Constitution is co-owned by all Egyptians and enshrines respect for human rights and fundamental freedoms, notably preserving the freedom of religion and protecting minorities”.<sup>LXII</sup> It is not by chance that the Court of Auditors has found the EU action to be particularly lacking just in the domain of minority protection and women rights, where, far from improving, the situation was visibly deteriorating in comparison with Mubarak’s era.<sup>LXIII</sup>

What *de facto* happened is that the formal dialogue under the ENP between the EU and Egypt, suspended in 2011, was resumed in February 2013, less than 3 months after the infamous decree, following the program laid down in the Task Force as if nothing had changed.<sup>LXIV</sup>

A senior advisor to Lady Ashton, although admitting that the constitutional decree took the EU by surprise, defended the European conduct as the High Representative’s deliberate choice not to interfere with Egypt’s internal affairs.<sup>LXV</sup>

Yet this deliberate inaction seems to violate EU regulations themselves, first of all the Treaty of Lisbon,<sup>LXVI</sup> as well as the ENPI<sup>LXVII</sup> and the ENI<sup>LXVIII</sup> general regulations, which submit EU assistance to the respect of democracy and human rights, and visibly contradicts the bases of the reviewed ENP. It denotes in fact the absolute irrelevance and the blatant denial of the tons of documents which, for decades, and more emphatically after 2011, have shaped European “normative power” based on the promotion of the universal values of democracy, human rights and the rule of law.

It is undeniable, as the senior advisor made clear, that “politics is not about straight lines”; that the EU is first of all driven by interests - as it is natural for any political organization - and that member states themselves did not know how to take strong positions. However, one cannot help but wonder what, in this case, have been the goals scored by *realpolitik*: “business as usual” would be perhaps a sufficient explanation for a medium-scale factory, but denotes a black hole, in terms of political vision, if applied to a would-be world power such as the EU.



Furthermore, the ethical failure is also a strategic one: as the abovementioned EEAS official stressed,<sup>LXIX</sup> lack of moral clarity, and lack of steadiness in promoting and enforcing our values, also damages our interests; the EU would be more credible and influential if it actually implemented through negative and positive conditionality its solemnly proclaimed principles.

In the words of Karel Pinxten - ECA member responsible for the report on Egypt – “the ‘softly softly’ approach has not worked, and the time has come for a more focused approach which will produce meaningful results and guarantee better value for the European taxpayers’ money”.<sup>LXX</sup>

### 3.3. The EU and the new regime: nothing new under the sun

In July 2013, Egypt’s regime changed again; Egyptians rebelled against the Muslim Brotherhood’s rapid path towards an Islamist dictatorship, and took to the streets once again, in massive demonstrations of tens of millions of people. Following Morsi’s renewed refusal to compromise with the opposition, the Supreme Council of the Armed Forces deposed the president.

Lady Ashton’s prophecy about the short life of “surface-democracy” (*v. supra*) thus came true, although she seemed oblivious of the prophetic nature, and impact, of her own words.

Once again the EU limited itself to attempts to mediate and to demands for reconciliation; being internally split between those states that talked about “revolution” and “popular impeachment”, those which cried against the “coup d’état” and those in the middle (*v. infra*), it was not able to take any side.

Commander-in-chief, and Minister of Defence, Abd al-Fattah al-Sisi, led the interim process until he obtained a resounding victory in the presidential elections of May 2014. These were observed by the European Union through an Electoral Observation Mission,<sup>LXXI</sup> amidst obstacles interposed by the Egyptian government (the very same one which had invited Europe to supervise the election),<sup>LXXII</sup> which in any case did not prevent the EOM from denouncing a climate of intimidation and infringement of fundamental freedoms.<sup>LXXIII</sup>

Notwithstanding numerous and severe human rights violations perpetrated by the new government<sup>LXXIV</sup> in its fight against an opposition which in its turn has shown at occasions



a violent and even terroristic attitude, the EU has not changed much of its policy; indeed, when the EU has enacted a sort of negative conditionality consisting of suspending budget support (*v. supra*), this was not due to human rights issues, but to lack of compliance with technical sector reforms. On human rights, the EU has, thus far, not gone beyond verbal remonstrations.<sup>LXXV</sup> That is why the Court of Auditors has recommended that the EEAS and the Commission identify a limited number of benchmarked human rights and apply conditionality rigorously in relation to them and to “Deep Democracy”, possibly by reallocating resources from the ENPI (now ENI) assistance to civil society programs in case authorities do not cooperate.<sup>LXXVI</sup>

Only recently did Europe apparently attempt to enact a form of conditionality, in the framework of the former Support to Partnership, Reform and Inclusive Growth –SPRING Programme,<sup>LXXVII</sup> now Umbrella Programme. Indeed, while €90 MN was allocated to Egypt for the biennium 2012-2013, this financing has not been renewed for 2013 and 2014.<sup>LXXVIII</sup>

It must be remarked, though, that the impact on human rights improvements is likely to be minimal, insofar as reward-programs of this kind, albeit progress-based, are neither systematic nor specifically linked to a single issue: not only are they based on a range of criteria which is wide and not univocal (progress in reforms, governance, transparency, transition, etc.), but they are also driven by completely different issues, such as financial needs for other countries of the region (Syria crisis, Ukraine, etc.).<sup>LXXIX</sup>

The result is that there is no *conditionality* in the literal sense of the term, i.e. a clear bargain where something is offered upon the respect of certain conditions, but only a unilateral decision based on a range of contingent necessities. Moreover, the amounts offered are absolutely inadequate to make a difference (*v. infra*).

#### 4. Reasons for failure

To summarize, the EU has been thus far partly unwilling, partly unable, to promote and enforce deep democracy in Egypt, in a mix of deliberate choices for inaction and objective difficulties.



Conditionality has only been exerted to a limited extent, and has never been able to credibly impact on the human rights situation, either before and after the Uprising, or with successive governments.

The overall impression is that the EU and its member states, far from having at least attempted to develop a coherent and long-lasting policy vis-à-vis Egypt and the broader Southern Mediterranean, are constantly lagging behind events and hardly trying to keep up with them.

Which are the causes of that, and how can this course be corrected?

#### **4.1. Inability to overcome structural difficulties created by the “majority stakeholders”, i.e. contentious Member States**

According to several sources, this weakness is the inevitable outcome of the EU structure: the European Union represents 28 Member States, and Council Conclusions adopted by the 28 drive the European foreign policy; the EU’s ability to take strong decisions is thus limited by the very way it is conceived.

Member states undoubtedly bear their share of responsibility for the failure of the EU policy vis-à-vis Egypt. Indeed, “member states maintained strong national control over such dossiers, and when acting collectively would do so under the umbrella of the CFSP, where the relevance of the EU’s external relations and its tools were limited. One fallacy of the ENP was to assume that conditionality, developed in the context of the donor-beneficiary relations of development cooperation and of EU enlargement, could be exported to policies which fall into the more traditional foreign policy domain”.<sup>LXXX</sup>

At the same time, not even member states have ever attempted to define a common strategy that would be something more than a short-term, watered-down compromise between irreconcilable positions. In the aftermath of the Arab Uprisings, member states were unable or unwilling to discuss a comprehensive and rational line of action to respond to the unexpected events unfolding in the Southern border of the Mediterranean. As Maya Bozovic -<sup>LXXXI</sup> from the Maghreb/Mashreq Working Party -<sup>LXXXII</sup> recalls, right after the first Egyptian uprising in 2011 it was struggling to decide whether to reaffirm or to withdraw support to Mubarak, although this division was quite soon substantially overtaken by the events. But a serious drift between states has been caused by Morsi’s deposition, with long-lasting consequences in the Council that still persist. In fact, a northern group, led by



Sweden, has assumed since July 2013 a very sharp position against the military's intervention, which they wanted to downright define as a "coup d'état".<sup>LXXXIII</sup> The same harsh criticism has been shown in the subsequent phases, al Sisi's election included. On the opposite side, one can find a southern group, mainly composed by Greece and Cyprus that is favorable to the "new course", and opposes strong stances against it.<sup>LXXXIV</sup>

Furthermore, the states' very interest in the region, and consequently the amount of discussions within the Council, started drastically to decrease already in 2012 (with the relevant exception of Syria), which denotes a dramatic lack of attention toward the Middle East.<sup>LXXXV</sup>

At the same time, member states have continued to want to firmly hold the reins of foreign politics, not allowing the EEAS and the High Representative, whom they consider just like their "spokesperson",<sup>LXXXVI</sup> to autonomously fill the void left by their disagreements and lack of strategy.

All this considered, it would be unfair to put the blame for the political deficit solely on the EEAS. But since this is *not* one of those cases where "fellowship in woe doth woe assuage",<sup>LXXXVII</sup> deficiencies of the EU combined with deficiencies of its member states just make the problem worse, and overall contribute to the irrelevant and/or wrong policies of Europe in foreign politics.

#### 4.2. Inability to develop a strategy and to express a political vision

Apart from the problematic issues related to member states, the EEAS was created with a view to implementing a progressively autonomous European foreign policy. This means that it was on the High Representative herself to demonstrate she was more than a "spokesperson", and on the EEAS offices to distance themselves from the Commission, showing that the change from DG Relex<sup>LXXXVIII</sup> to the External Action Service was not just a nominal one.

As a high-level EEAS official<sup>LXXXIX</sup> put it, this was supposed to be the major difference from DG Relex: the EEAS is for diplomats, and diplomats are supposed to bring political vision. Political vision implies decisions, sometimes strong ones: the EU must simply accept that it cannot always be the "nice cop" and the "soft power", for credible politics involves taking sides and sometimes using hard power to be "unpleasant".<sup>XC</sup> This should be implicit in the very use of conditionality, whose aims "are exquisitely political."<sup>XCI</sup>



All internal sources with whom I spoke, irrespective of hierarchical level, were in agreement that the EEAS has failed in building up that political vision which was supposed to constitute the distinctive element and added value in the creation of a diplomatic service separated from the Commission, and the *raison d'être* of its leadership in foreign politics within the EU system. The EEAS, in other words, should understand that its role is no longer to be another DG, and should consequently take a leading role.

But how could this happen, given that EEAS offices have been created as carbon-copies of DG Relex,<sup>XCII</sup> further to a Council Decision which, in establishing the Service, did not state objectives, but only tasks, in the absence of “an overarching EU foreign policy strategy”?<sup>XCIII</sup> An assessment of the Court of Auditors on the creation of the EEAS is explicit in denouncing the deficiencies accompanying its creation and its following actions, in particular an ad-hoc approach deprived of a strategic guidance whatsoever,<sup>XCIV</sup> and the lack of a system of prioritizations and results assessment.<sup>XCv</sup>

Since such political vision was lacking, the EEAS was unable to assume its role fully, and this weakness caused problems and ambiguities both in its relations with the Council and with the Commission.<sup>XCvI</sup> As might be expected, the analysis is quite different according to whether one speaks with either EEAS or Commission officials; for most of the former, the EEAS has failed to take its natural leading role: they argue that EU foreign policy should be structured on the model of national Ministries of Foreign Affairs, i.e. with a Minister and his Cabinet taking decisions, and with various implementing offices.<sup>XCvII</sup> On the contrary, for the latter,<sup>XCvIII</sup> the EEAS is a sort of mere *chef de fil*, deprived of real preeminence and political power, and its separation from the Commission only brings about unnecessary duplications of duties, where, before the EEAS, relations between Relex and the other DGs were clearer.<sup>XCIX</sup> Nowadays, it is not evident what the role of the EEAS should be, given that important political decisions are still referred to the Council, while the implementation of concrete programs is for the Commission, and this in turns implies political decisions to be taken by the implementing DG.<sup>C</sup>

However, the conclusion is always the same: an unclear division of duties and consequent duplications, lack of cooperation and faulty, or sometimes even totally absent, inter-service consultation,<sup>CI</sup> have brought about poorly coordinated decisions, to the detriment of strength and effectiveness.



### 4.3. Inability to commit sufficient resources for a decisive impact

If these are general flaws of EU foreign politics, more specific issues must be addressed when it comes to Egypt in the framework of the European Neighbourhood Policy.

A widespread view inside the offices of Rond-Point Schuman is that the EU, for the resources it commits - or is allowed to commit by member states<sup>CII</sup> - simply cannot play the game of sticks and carrots.

An EEAS official dealing with the Mashreq region explains that, of the so-called “3 Ms”, none was particularly appealing to Egypt.<sup>CIII</sup>

As we have touched on above, money was absolutely irrelevant when compared to Gulf States’ donations or US support to the army.<sup>CIV</sup> Furthermore, an important part of European financial assistance comes in the form of loans to finance specific projects, from the European Investment Bank and the European Bank for Reconstruction and Development, and their attractiveness is, of course, not as much as hard cash at the complete disposal of Egyptian authorities. From this point of view, the decision to halt budget support, focusing more or less exclusively on civil society, has further diminished the leverage we can use with the government. This opinion is shared within DG Devco: one of the positive aspects of budget support programmes is the political dialogue between governments that this entails, which is absent in the case of small projects which support individual NGOs. Support to civil society is undoubtedly positive and useful, but it is possible only in the framework of a wider political dialogue with the government; supporting NGOs outside of this framework leads to a reduction in communication channels and a loss of leverage.<sup>CV</sup>

The second “M”, mobility, is a “two-leg deal”: it does not include only Schengen visas for Egyptian students and entrepreneurs, but also repatriation agreements to help combat illegal immigration to Europe.<sup>CVI</sup> Egypt, clearly, is interested only in the first part.

Finally, when it comes to market, while it is true that in 2012 the EU was ready to open a Deep and Comprehensive Free Trade Agreement with Egypt,<sup>CVII</sup> this does not bring many advantages to the country: Egypt not only lacks competitiveness, but would also be required to implement reforms to comply with EU norms; this implies a lot of work, which Egypt has been, so far, both unable and unwilling to undertake.<sup>CVIII</sup>

From this point of view it is therefore not surprising that Egypt rejected both the DCFTA offer and the Dialogue on Mobility, Migration and Security.<sup>CIX</sup>



In sum, nothing the EU gave or offered or promised was truly appealing, and therefore capable of making the difference for the purposes of conditionality. One, indeed, must bear in mind that the logic of positive conditionality has been largely imported from the negotiations with Eastern European countries after the fall of the Soviet Union, but with a crucial difference - the absence of the “big carrot”, i.e., “the ultimate incentive of accession”.<sup>CX</sup> Given the circumstances, “if the EU had really wanted to efficaciously play sticks and carrots, it should have been ready to commit a large amount of cash, in the framework of a ‘Marshal Plan’ for the Middle East”.<sup>CXI</sup>

#### 4.4. Unwillingness to take a clear moral stance indispensable to follow words with deeds

Whereas all the above is undoubtedly true, and the EU commitment has been totally inadequate for an effective leverage policy, this is not sufficient to explain the cycle of repeated failures in the domain of democratization and human rights. After all, as a DEVCO official correctly recalls,<sup>CXII</sup> the perspective may also be reversed: it does not matter how limited is your aid when you give it: when you take it back it means *lost* money for the country, and this has always a strong political impact, especially now that the US are politically withdrawing from the region.<sup>CXIII</sup>

A deeper issue exists, which lies at the very foundation of European weakness: how serious are we in promoting, or even enforcing, our values? Reams of paper repeating well-worn clichés cannot conceal the inertia of a weak will.

“While Brussels claims that ‘human rights, democracy and the rule of law are core values of the European Union,’ promoting and defending them ‘both within its borders and when engaging in relations with non-EU countries’ the Egyptian case suggests that the EU does not hesitate to maintain the negotiation process even at a time of a country’s serious internal political de-liberalization”.<sup>CXIV</sup> This conclusion, whilst referring specifically to the Mubarak era, could be equally applied to Morsi’s, Mansour’s and Sisi’s governments.

It is thus evident that a mixture of political calculations and moral weakness undermine conditionality *ab origine*.

Under the first aspect, a top-level EEAS official admitted that conditionality was inevitably doomed from the beginning: what is the point of promising “more for more” or



threatening “less for less” if we already know that we are not strong enough to pilot a substantial change, and we cannot afford to lose our political and economic relations?<sup>CXV</sup>

Another EEAS official<sup>CXVI</sup> suggested a radical change in strategy: a more concrete and effective approach - to better serve both the material and ethical interests of the EU - should not consist of all-encompassing agreements and pompous declarations of principles, but be conducted at a level of “quiet diplomacy” under the guideline of *quid pro quo* and *do ut des*. In other words, it is useless to boast the threat of negative conditionality which we lack the political and economic strength to implement. It would be better to develop a politics of closed-door, high-level meetings to concretely bargain specific exchanges, in limited and defined domains, seeking a “win-win” accord. This approach would be in the first place more effective, and would overcome the issue of “national pride against Western interference”, a common obsession of partner states which constitutes a major obstacle to effective agreements. This way, each party could concretely obtain something and “exhibit the prize” for internal consumption, without the public embarrassment of a perceived “capitulation” in front of public opinion.<sup>CXVII</sup>

The problem with this solution lies again in the hybrid structure of the European foreign policy, partly autonomous and partly driven by member states: any concession on the European side has to be previously agreed with them or approved *ex post*.<sup>CXVIII</sup> Even the European Parliament, under the ENI regulation, claims a prerogative in the suspension of aid for human rights reasons.<sup>CXIX</sup>

Another issue is that any cooperation program should address the broader picture and be long-term; small agreements of limited scope would lack this fundamental dimension.<sup>CXX</sup>

As to the second aspect, i.e. the ethical dimension, a necessary precondition of conditionality would be reaching, first of all in our own house, crystal clarity on *what* we want to promote and *what for*. In other words, what do we mean with democratization, human rights and the rule of law, and how do we want to achieve this goal?

The EU can no longer afford to pretend to ignore the sad paradox of the Middle East, whereby more democratization often means less liberalism, so that, at the end of the day, more democratization means less human rights.<sup>CXXI</sup> As the previously cited EEAS official<sup>CXXII</sup> provocatively put it, is it possible or advisable to promote democracy in a world



where “democratization” equates to “Islamism”? What does the “ethical” dimension of the EU consist of, at this point?

We should dare to say aloud that the end is *liberty*, to which democracy is a mere means, however important.

A clear moral stance would definitely bring about important strategic consequences: in the words of the EEAS official dealing with Mashreq, the EU ought to vocally oppose state deeds when these are in contrast with its principles,<sup>CXXIII</sup> and also to take political sides in favor of those who better represent, in the meantime, its values and interests.<sup>CXXIV</sup>

In the Egyptian case this means that the EU cannot find itself caught between the devil of the Muslim Brotherhood and the deep blue sea of the *ancien régime*, in its original or restored version: our support must go to the liberals, and we need to do whatever we can to empower them.

Again, the defects of the EU reflect those of its member states: in the Council strategic discussions never took place on the distinction between liberals and Islamists, and how to empower the former against the latter.<sup>CXXV</sup> This was especially critical during the Arab Uprisings, when a comprehensive assessment was more than ever necessary, yet the Council on Maghreb-Mashreq became a mere “sanctions and conclusions machine”,<sup>CXXVI</sup> lacking a serious strategic discussion on the line of action.

## 5. Conclusions

The creation of the EEAS represented a very positive turn for European foreign policy, and while its potential has still to be fully deployed, in principle it may be a useful instrument that, without taking the place of member states’ foreign services, can positively contribute to harmonize their positions, fill their gaps, and overall express the general interests of the Union in foreign politics.

As far as the Arab Awakening is concerned, the department, albeit newborn, reacted readily and with the right approach, from a theoretical point of view: the EU holds and cherishes universal values of human rights, democracy and the rule of law, which are not rhetorically, but concretely enacted on its soil, and which it is in its political and ethical interest to promote abroad. In this sense, the potentiality of the Uprisings was not underestimated, nor was the importance of a quantitatively and qualitatively increased



partnership between the two shores of the Mediterranean; a partnership that the High Representative and the Special Representative for the Mediterranean did not fail to promote, sometimes in the lack of due attention on the part of member states.

Yet, many questions remain unaddressed, both as to the EEAS *per se* and as to its “democratic agenda” for Egypt.

The EU as a whole has appeared to be merely able to develop tactics to cope with specific necessities, but never a strategy for a long-term assessment of the broader picture. As long as these questions remain unaddressed, and the EU continues to launch random programs to patch up short-term issues, without making it clear, *in primis* within its own offices, what is the final goal, it will be unlikely to be able to develop a credible and effective policy of human rights promotion.

The EEAS must therefore develop first of all a comprehensive strategy towards the Middle East, based on a reasoned assessment of the various factors at play. To this end, a more intense engagement with the world of academia and think tanks of different political views would be crucial, considered that the typically diplomatic practice of periodical mobility prevents officials from becoming experts on a certain regions and dossiers.

In other words, as underlined by the top-level EEAS official mentioned above<sup>CXXVII</sup>, time employed for superficial (and sometimes useless) daily briefings ought to be more profitably spent in examining in depth the various elements on the ground - political, economic, religious, etc. -, in order to put them in a broader and diachronic picture. That would help to create that awareness which constitutes the minimal basis for any coherently considered strategy.

At the same time, the EU should make it clear what its own priorities are in the various fields – ethics, politics and security, economics - so as to identify points of intersection and points of contrast between them, and to define a balanced strategy.

In the Egyptian case, in effect, the EU has seemed to disregard both its political and ethical interests by its largely uncritical support for the Islamists in power, while economic interests do not seem sufficiently relevant to justify this policy.<sup>CXXVIII</sup> What is left is merely dialogue for the sake of dialogue, the importance of which in international relations is undeniable, but which *per se* does not suffice in building a constructive policy. And perhaps political wisdom and security issues might support the adoption of a cautious approach



with the new regime, as we were with Mubarak; but once again this would be at the detriment of human rights.<sup>CXXIX</sup>

It is therefore necessary to find a balance that does not destroy the European “normative” power, bearing in mind that it is in our interest, and in the best interest of human rights, to empower the liberal voices within the state.

Put simply, the EU must learn that the “softly-softly approach”<sup>CXXX</sup> is not always applicable, and that must be combined with the employment of “hard power”, at occasions showing an “unpleasant” face.<sup>CXXXI</sup>

The instrument to do that is clear: a greater resort to positive and negative conditionality.

As to the “more for more”, positive approach, effective conditionality requires a decisive “asymmetry of leverage and influence in favour of the EU”:<sup>CXXXII</sup> hence, once goals have been made clear, the EU should make them appear more attractive through a larger deployment of resources (after all, Europe as a whole is still the first economic power in the world), provided that these are really used to implement “deep democracy”, not Islamist or military “tyrannies of the majority”.

As to the “less for less”, negative approach, whilst this is a more debated instrument, the arguments against are not really convincing.

One of them refers to the risk that a “less for less” approach would merely push MENA countries farther away from the EU, to embrace Gulf or Far East countries.<sup>CXXXIII</sup>

It is evident that the EU is only one among many donors in the region, its means are limited and so its leverage (*v. supra*); yet, even with the current (relatively) limited resources, it is not so easy for countries like Egypt to do rapidly breach ties with Europe. Not only because lost aid, however little, is still lost, as said above, but mainly because Egypt, for a number of reasons, cannot afford to lose its relations with Europe. First, there is a certain kind of specialized, highly-qualified technical assistance and know-how which only the West can deliver. Second, Egypt is economically tied to the EU, in a way which sees the former much more dependent on the latter than vice-versa: “The EU is Egypt’s main trading partner. The imports from the EU to Egypt account for around one third of the total import to the Egyptian market and in 2010 the EU absorbed around one third of the Egyptian export. For the EU the export and import to and from Egypt represent 0.9% and



0.6%, respectively. The figures are indicative in the sense that obviously the economic relationship is extremely asymmetrical in the favour of the EU”.<sup>CXXXIV</sup> Third, political interests go both ways; Egypt simply cannot disregard its Northern neighbour, and it does not want to (otherwise, for instance, why to invite Europe to observe the presidential elections?). After all, Saudi Arabia and China are not philanthropists, and any offer from them still comes at a price. Not to mention that post-Mubarak governments have not seemed to be waiting for Europe’s withdrawal before welcoming economic assistance from elsewhere.

Another critique holds that the “less for less” approach “would push the Euro-Mediterranean relations more in the politicized corner, hence reversing the overall strategy of the ENP (bilateral, project-based, non politicized) which has been widely perceived as the more successful way”.<sup>CXXXV</sup> My argument, as I have tried to show throughout this analysis, is exactly the opposite: we *do* need more politics in the European foreign policy. A mere tactic of projects here and there, outside a strategic, political framework of well determined goals, leads nowhere.

Finally, the EU, if it really believes in its universal values, must enforce conditionality without shying away for fear of appearing “neo-colonialist” or of hurting “national dignity”:<sup>CXXXVI</sup> human rights are universal, and rhetorical arguments appealing to cultural specificities are the typical instrument of tyrannies, be they of one man or of the majority, to suppress dissenting opinions and ways of life. These arguments, in a word, are the worst enemies of human beings’ equal right to freedom.

The EU must not only proclaim the universality of human rights, but be convinced of that, and act accordingly. Here lays the essence of its “normative power”. Either it’s this, or it is nothing, and in this case a radical review of the paradigm itself, reduced to a sterile rhetorical exercise, should be envisaged.

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<sup>I</sup> “What is the European Neighbourhood Policy?” European External Action Service. [http://eeas.europa.eu/enp/about-us/index\\_en.htm](http://eeas.europa.eu/enp/about-us/index_en.htm) (accessed 11/9/2014).

<sup>II</sup> European Commission and High Representative of the EU for Foreign Affairs and Security Policy, *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*, COM(2011) 200 final; 8 March 2011.

<sup>III</sup> Teti 2012: 266.

<sup>IV</sup> A multilateral partnership between the EU member states and 15 partner countries from North Africa, Middle East and South East Europe, as a revitalized version of the Euro-Mediterranean Partnership. For further information: <http://ufmsecretariat.org/>

<sup>V</sup> “The EU’s oscillation between democratization wishes and security needs was also reflected in the



conceptual change from the EMP to the ENP, and later the UfM, which ‘was assumed to imply a reorientation of EU foreign policy goals from a normative long-term oriented democratization to a strategic short-term stabilization of authoritarian systems on the Southern shore of the Mediterranean Sea’. Also, with the creation of the UfM: political conditionality seems to have been given up. Not only is the principle of conditionality unknown in the UfM proper, but also policy contents have been technicized to the extent that political reform no longer seems to be part of Europe’s ambitions in its relations with the MPCs”. Völkel 2014: 267.

<sup>VI</sup> PDSP 2011: 2.

<sup>VII</sup> *Ibid.*: 3.

<sup>VIII</sup> Völkel 2014: 270.

<sup>IX</sup> Bauer 2013: 7.

<sup>X</sup> “The EU response to the changes taking place in the region needs to be more focused, innovative and ambitious, addressing the needs of the people and the realities on the ground. Political and economic reforms must go hand-in-hand and help deliver political rights and freedoms, accountability and participation. The EU should be ready to offer greater support to those countries ready to work on such a common agenda, but also reconsider support when countries depart from this track”. PDSP 2011: 9.

<sup>XI</sup> *Ibid.* It must be noted that, in reality, the concept of rewarding the “best performers” is not a new one. See Völkel 2011: 264 and 271.

<sup>XII</sup> European Commission and High Representative of the EU for Foreign Affairs and Security Policy, *A New Response to a Changing Neighbourhood*, COM (2011), 303, 25 May 2011

<sup>XIII</sup> NRCN 2011: 1.

<sup>XIV</sup> *Ibid.*: 3.

<sup>XV</sup> *Ibid.*: 2.

<sup>XVI</sup> Annicchino 2014.

<sup>XVII</sup> *Ibid.*

<sup>XVIII</sup> *Ibid.*

<sup>XIX</sup> *Ibid.*

<sup>XX</sup> <https://democracyendowment.eu/>, accessed 31/8/2014.

<sup>XXI</sup> Annicchino 2014.

<sup>XXII</sup> Balfour 2012: 7.

<sup>XXIII</sup> European Court of Auditors (ECA) 2013: 15.

<sup>XXIV</sup> For further details, see <http://www.enpi-info.eu/ENI>, accessed 6/9/2014.

<sup>XXV</sup> European Neighbourhood and Partnership Instrument Arab Republic of Egypt National Indicative Programme 2011-2013, available at <http://www.enpi-info.eu/library/content/egypt-national-indicative-programme-2011-2013> (accessed 25/9/2014): 30.

<sup>XXVI</sup> *Ibid.*

<sup>XXVII</sup> For detailed figures, *ibid.* and ECA 2013: 33 foll.

<sup>XXVIII</sup> ECA 2013: 7.

<sup>XXIX</sup> European Commission, “Programming Guide for Strategy Paper. Sector Budget Support”, 2008. Available at [https://ec.europa.eu/europeaid/sites/devco/files/programming-guide-strategy-papers-sector-budget-support-200811\\_en\\_2.pdf](https://ec.europa.eu/europeaid/sites/devco/files/programming-guide-strategy-papers-sector-budget-support-200811_en_2.pdf), accessed 11/9/2014.

<sup>XXX</sup> European Commission, MEMO/13/751, 21/08/2013, available at [http://europa.eu/rapid/press-release-MEMO-13-751\\_en.htm](http://europa.eu/rapid/press-release-MEMO-13-751_en.htm), accessed, 6/9/2014. For more detailed information, see European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *Implementation of the European Neighbourhood Policy in Egypt. Progress in 2013 and recommendations for action*, 27 March 2014: “no payment was made under the Energy Budget Support operation in 2013”, p. 15. “No payment was made under the EU’s Water Budget Support operation in 2013”: 16. On education, “The final payment of EU budget support funds (expected in May) to support the implementation of the 2007-2012 strategy was not released in 2013 due to non-compliance with general conditions placed on budget support operations relating to macroeconomic stability and improvements in public financial management”: 17.

<sup>XXXI</sup> ECA 2013: 22.

<sup>XXXII</sup> DEVCO country fiche, available at [http://ec.europa.eu/europeaid/countries/egypt\\_en](http://ec.europa.eu/europeaid/countries/egypt_en), accessed 6/9/2014.

<sup>XXXIII</sup> *Ibid.*

<sup>XXXIV</sup> ECA 2013: 35.



XXXV *Euro-Mediterranean Agreement Establishing an Association between the European Communities and their Member States, of the One Part, and the Arab Republic of Egypt, on the Other Part*, available at [http://eeas.europa.eu/egypt/aa/06\\_aaa\\_en.pdf](http://eeas.europa.eu/egypt/aa/06_aaa_en.pdf), accessed 6/9/2011.

XXXVI *EU-Egypt Action Plan*, available at [http://eeas.europa.eu/enp/pdf/pdf/action\\_plans/egypt\\_enp\\_ap\\_final\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/action_plans/egypt_enp_ap_final_en.pdf), accessed 6/9/2011.

XXXVII Internal source.

XXXVIII Lazarou, Gianniou and Tsourapas 2013: 178.

XXXIX “The action plan contained as many as 39 priority actions in the field of human rights and democracy. This represented an overly ambitious agenda which was not based on clearly spelled out priorities on the part of the Commission” ECA 2013, par. 24.

XL ECA 2013: 8.

XLI *Ibid.*

XLII *Ibid.*: 19.

XLIII Balfour 2012: 16.

XLIV “The related review of EU budget support identifies some important ways to strengthen commission management but these changes will not be effective unless the commission is more strict in applying its conditionality”. ECA 2013: 8.

XLV <http://www.nytimes.com/2012/01/22/world/middleeast/muslim-brotherhood-wins-47-of-egypt-assembly-seats.html>, accessed 25/9/2014.

XLVI An in-depth account of how they exploited democracy and abused the rule of law in any possible way during their year in government is outside the scope of this paper. For an accurate account: Gasparrini, Sabrina. “Il Medio Oriente visto dal Cairo.” *Radio Radicale*. [Radio broadcast]. Editor: Massimo Bordin. In particular July 11, 2012, September 9, 2012, November 23, 2012, December 5 (dealing especially with the notorious “Constitutional decrees”) and 12, 2012.

XLVII For an English translation of the decree, see <http://english.ahram.org.eg/News/58947.aspx>, accessed 25/9/2014.

XLVIII Gasparrini reports that, after the liberals seceded from the Assembly, Morsi simply replaced them with Islamist members, on the basis of a “Presidential decree” dating to August 12, with which the President deprived of authority the Supreme Council of the Armed Forces, and assumed the power to appoint *proprio motu* a new Assembly. The final version of the Constitution was eventually approved, in a single session lasted one day and one night without interruption, by an Assembly that the Constitutional Court would later declare illegitimate. It must be further noted that the ruling of the Constitutional Court was expected in early December, thus before the referendum, but Muslim Brothers besieged the Court, preventing the justices from access. See Gasparrini, *supra* note XLVI, Dec. 5.

XLIX Among the most controversial norms: art. 4 provided that the Islamic University of Al-Azhar was to be consulted in any matter generically “pertaining to Islamic law”, i.e. more or less everything; art. 219 broadened art. 2 (as per which the principles of *sharia* are the main source of the legislation) establishing that the principles of sharia have to be interpreted in the light of the classical Sunni doctrine, with no possible innovation; art. 44 criminalized blasphemy; art. 76 put at serious risk the principle of *nullum crimen, nulla poena sine lege*, by establishing that crime and penalty could be imposed not only on the basis of the law, but also of the Constitution itself, thus opening the door, via art. 2, to the inhumane *hudud* penalties provided in the Quran; art. 81 submitted the enjoyment of all rights and freedoms to the morals of the society.

L <http://www.bbc.com/news/world-middle-east-20571718>, accessed 10/9/2014.

L<sup>1</sup> The newspaper *Al-Masry Al-Youm* made a reportage of the “torture chambers” set up by Muslim Brothers even inside the Presidential Palace. *Egypt Independent*, Dec. 7 2012. <http://www.egyptindependent.com/news/al-masry-al-youm-goes-inside-brotherhood-s-torture-chambers>, accessed 11/9/2014.

L<sup>11</sup> European Union, Eu-Egypt Task Force Fact Sheet, 14 November 2012, available at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/133513.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133513.pdf), accessed 12/9/2014.

L<sup>111</sup> *Ibid.*

L<sup>11V</sup> *Ibid.*

L<sup>11V</sup> *Ibid.*

L<sup>11V</sup> EU-Egypt Task Force - Co-chairs conclusions, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/133511.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133511.pdf), accessed



12/9/2014.

<sup>LVII</sup> Personal interview, July 2014.

<sup>LVIII</sup> European Union, Statement by EU High Representative Catherine Ashton on the situation in Egypt, 5 December 2012, available at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/134065.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134065.pdf), accessed 12/9/2014.

<sup>LIX</sup> Maja Bozovic, European External Action Service, Middle East and Southern Neighbourhood, Chair of the Maghreb/Mashreq Working Group. Personal interview, July 2014.

<sup>LX</sup> ENP Progress in 2012: 2. Emphasis added.

<sup>LXI</sup> *Ibid.*, pp. 6-7.

<sup>LXII</sup> *Ibid.*, p. 4.

<sup>LXIII</sup> ECA 2013: 63.

<sup>LXIV</sup> ENP Progress in 2012: 2.

<sup>LXV</sup> Personal interview, July 2014.

<sup>LXVI</sup> Article 21.1 of the treaty of Lisbon states that: “The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the united nations charter and international law. The union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to”.

<sup>LXVII</sup> Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, art. 28. Available at [http://eacea.ec.europa.eu/tempus/documents/tempus\\_enpi.pdf](http://eacea.ec.europa.eu/tempus/documents/tempus_enpi.pdf), accessed 12/9/2014.

<sup>LXVIII</sup> Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries, art. 1. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0234&from=EN>, accessed 12/9/2014.

<sup>LXIX</sup> *Supra* note LVII.

<sup>LXX</sup> [http://europa.eu/rapid/press-release\\_ECA-13-18\\_en.htm](http://europa.eu/rapid/press-release_ECA-13-18_en.htm), accessed 1/9/2014.

<sup>LXXI</sup> <http://www.eucom.eu/egypt2014>, accessed 5/9/2014.

<sup>LXXII</sup> In particular, for three weeks the Egyptian authorities did not release from customs equipment essential to the observers, with the result that the long-term observers could not be deployed and do their job until Egypt, under threat of a downgrade of the mission, released the material on 21 May. It goes without saying that, elections having been held less than a week later, it would be a joke to consider them “long-term” observers. See EU EOM Preliminary Statement, [http://eeas.europa.eu/delegations/egypt/press\\_corner/all\\_news/news/2014/20140529\\_en.pdf](http://eeas.europa.eu/delegations/egypt/press_corner/all_news/news/2014/20140529_en.pdf), accessed 10/9/2014.

<sup>LXXIII</sup> See the EOM Final Report, available at [http://www.eucom.eu/files/pressreleases/english/eucom-egypt2014-final-report\\_en.pdf](http://www.eucom.eu/files/pressreleases/english/eucom-egypt2014-final-report_en.pdf), accessed 10/9/2014.

<sup>LXXIV</sup> This is often considered as a restoration of the *ancien régime*, but in fact it is even harsher; never, during Mubarak’s time, were cases observed of persecution against the opposition such as to include more than 1000 people condemned to death by the same court in less than one month, or the systematic persecution of opponents and journalists in such a large scale. For a detailed and constantly updated account of how the human rights situation is evolving in Egypt, see *Freedom House*: <http://freedomhouse.org/sites/default/files/Egypt%20Democracy%20Compass%20-%202014.pdf>, accessed 3/9/2014.

<sup>LXXV</sup> See for instance *Foreign Affairs Council Conclusions on Egypt* of 10 February 2014 (available at [http://consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/140971.pdf](http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140971.pdf), accessed 12/9/2014), expressing concern and condemnation for the deteriorating human rights situation, especially freedom of the press, expression and assembly, the use of selective justice and indiscriminate detentions, the cycle of violence. See also *Remarks by EU High Representative Catherine Ashton following the Foreign Affairs Council* of 23 June 2014 (available at [http://eeas.europa.eu/statements/docs/2014/140623\\_03\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140623_03_en.pdf), accessed 12/9/2014), which especially focus on Al-Jazeera’s journalists’ condemnation and on the mass death sentences in Minya. Specifically on the last topic, *Statement by EU High Representative Catherine Ashton on the death sentences against 529 members of the Muslim Brotherhood in Egypt* of 25 March 2014 (available at



[http://eeas.europa.eu/statements/docs/2014/140324\\_02\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140324_02_en.pdf), accessed 12/9/2014) and *Statement on the Court Rulings in Egypt*, 29 April 2014 (available at [http://eeas.europa.eu/statements/docs/2014/140429\\_03\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140429_03_en.pdf), accessed 12/9/2014).

LXXVI ECA 2013: 80.

LXXVII European Commission, *EU response to the Arab Spring: the SPRING Programme*, 27 September 2011, available at [http://europa.eu/rapid/press-release MEMO-11-636\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-636_en.htm?locale=en); accessed 30/9/2014.

LXXVIII Guillaume Fine, Team leader – Cooperation with Egypt, Israël and Palestine, DG DEVCO, Unit F2. Personal interview, September 2014.

LXXIX *Id.*

LXXX Balfour 2012: 17.

LXXXI *Supra* note LIX.

LXXXII This is a body under the EEAS which functions as a linkage between this and the Council, and tries to find a mediation between member states in order to achieve common positions.

LXXXIII In the words of Carl Bildt, Sweden's Minister of Foreign Affairs, "if it is a duck you call it a duck", Bozovic, *supra* note LIX.

LXXXIV Bozovic, *supra* note LIX, and personal experience within Council's sessions.

LXXXV Bozovic, *supra* note LIX.

LXXXVI This is the bitter conclusion of a EEAS top-level official, released in my presence at the end of July 2014.

LXXXVII Shakespeare, *The Rape of Lucrece*.

LXXXVIII DG for Relations Exterieures – External Relations

LXXXIX *supra* note LXXXVI

XC *Id.*

XCI Balfour 2012: 17.

XCII "[D]epartments were transferred to the EEAS not on the basis of their expected contribution to the fulfillment of EEAS objectives, but on the basis of their activities and their administrative position within the Commission or the GSC". ECA 2014: 18.

XCIII *Ibid.*, par. 15-16

XCIV *Ibid.*, par.25-26.

XCV *Ibid.*, par. 28.

XCVI *Ibid.*, par. 26

XCVII As an EEAS official told me, the same way the Italian Development Cooperation is under the Ministry of Foreign Affairs, thus DEVCO should be hierarchically under the EEAS.

XCVIII Monica Liberati, former Team Leader - Head of Sector for Egypt, Lebanon, Syria. DG DEVCO, Unit F2. Personal interview, July 2014.

XCIX For instance, DG RELEX was competent for briefings related to EU external politics and attended Council meetings, on behalf of the Commission. Now that the EEAS has inherited these duties within a separate institution, DGs have to fill the void in the framework of the Commission, *de facto* duplicating the EEAS work. See also ECA 2014 par. 32 on crisis management, and par. 56: "the establishment of the EEAS as a separate entity increased the number of EU institutions dealing with the same matters and this can make it more difficult to agree on an efficient division of labour".

<sup>c</sup> For instance, if the EU negotiates a program on justice with Egypt, DEVCO, as the implementer, has to say a word on its political feasibility.

<sup>ci</sup> Cfr. ECA 2014: 55: "The EEAS participates in the Commission's inter-service consultations, although its limited resources affect its impact on the external dimension of internal policies. In the common foreign and security policy, a field of intergovernmental competence, the HR/VP assesses whether a topic falls predominantly, or exclusively, under this category when deciding whether to consult the Commission. Sometimes, this is a matter of opinion and the proposal may nevertheless have implications for the Commission's areas of competence.

<sup>cii</sup> "In many cases, the EU cannot bring too many incentives on the table, as most of their promises are subject to approval by the Member States through the Council consent – which strongly reduces the negotiation possibilities of the EU's External Action Service", Völkel 2014: 273.

<sup>ciii</sup> Personal interview, July 2014. Similar considerations may be found in Balfour, *supra* note XXII, 21 foll.

<sup>civ</sup> "In fact, the European leverage on the new transitional regime in Egypt is minimal, especially in contrast with the huge assistance funds from the Gulf, estimated at \$12 billion. [...] Apart from that, Europe itself



promised more aid to Egypt after 2011 than it actually delivered, and Egypt was not essentially dependent on it for arms. It is worth mentioning that the EU's budgeted financial support for Egypt amounted to €1 billion between 2007 and the end of 2013, but the Commission says that the instability in Egypt reduced the flow of aid to Egypt to just €16 million in 2012. No new programs have been approved since then. Besides, the €5 billion that the EU pledged for Egypt in November 2012 — €1 billion directly from the EU, with the rest from the EIB and the EBRD — were already frozen, since they were linked to Egypt's ability to conclude a deal with the International Monetary Fund (IMF). When it comes to arms sales, the situation is not any better. According to SIPRI's Military Balance of 2013, Egypt's suppliers from 2004 to 2011 were as follows: 82.76 percent from the United States, 5.17 percent from Russia, 6.89 percent from China and 5.17 percent from all European countries." Isaac 2014: 159.

"Qatar's then Prime Minister Hamad bin Jassim al-Thani announced in early 2013 the doubling of his country's grants to post-revolutionary Egypt for stabilizing the economy, paying EUR 3.6 billion. After the fall of Morsi, Saudi Arabia, Kuwait and the UAE pledged USD 12 million as instant support to stabilize the staggering Egyptian economy. For comparison: The EU Commission's direct response to the Arab Spring comprised EUR 30 million – but for all affected MENA countries, not Egypt alone (grants of the European Investment Bank are not included in this number). Of course, the additional contributions of the EU Member States must be taken into account too; but it is clear that the EU is just one among many donors in the region. Hence, it is not surprising that in many of the current analyses of the Arab spring's geo-strategic consequences, countries like Russia, China, Iran, the US, and the UN Security Council's Permanent five plus Germany are mentioned as relevant, but not the EU." Völkel 2014: 278.

<sup>CV</sup> *Supra* note XCVIII.

<sup>CVI</sup> "In return for increased mobility, partners must be ready to undertake increasing capacity building and provide appropriate financial support for border management, preventing and fighting against irregular migration and trafficking in human beings, including through enhanced maritime surveillance; the return of irregular migrants (return arrangements and readmission agreements) and for enhancing the capacity and abilities of law enforcement authorities to effectively fight trans-border organised crime and corruption". PDSP 2011: 7.

"Cooperation on fighting irregular migration is essential to reduce the human suffering and diminished security that is generated. Such cooperation will be one of the conditions on which Mobility partnerships will be based". *A new response, supra* note XII, 12.

<sup>CVII</sup> Cfr. ENP Progress in 2011: 2. *ENP Progress in 2013*: 11.

<sup>CVIII</sup> "DCFTAs require a high degree of commitment to complex and broad-ranging reforms. This requires strong institutional capacity. The reforms can be politically challenging and require the involvement of the business community as well as other interested parties. To embark on negotiations, partner countries must be WTO members and address key recommendations enabling them to comply with the resulting commitments. They must also have made sufficient progress towards common values and principles". *A new response, supra* note XIII. **Errore. Il segnalibro non è definito.**, 8-9.

<sup>CIX</sup> *ENP Progress in 2011*: 12.

<sup>CX</sup> Balfour 2012: 16.

<sup>CXI</sup> Statement of the official dealing with Mashreq, *supra* note CIII.

<sup>CXII</sup> *V. supra* note XCVIII.

<sup>CXIII</sup> *Supra* note XCVIII.

<sup>CXIV</sup> Lazarou, Gianniou and Tsourapas: 180.

<sup>CXV</sup> *Supra* note LXXXVI.

<sup>CXVI</sup> Mentioned above, *supra* note LVII

<sup>CXVII</sup> A few concrete examples of this approach: you Egypt want X visas for business men to travel to Europe? Agreed, but we Europe want Y homosexual prisoners freed; we Europe want X journalists freed: if you Egypt agree, we give you Y million euro to finance the new line of Cairo metro; etc.

<sup>CXVIII</sup> For instance, a mobility partnership with Egypt was already authorized in the *Council Conclusion on the European Neighbourhood Policy of 20 June 2011* (available at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/122917.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/122917.pdf), accessed 29/9/2014). However, it never got off the ground, and many events took place since then: could the EEAS tomorrow autonomously decide to restart a negotiation on that? Probably not, according to many EU officials I interviewed.

<sup>CXIX</sup> "The European Parliament notes that [...] Regulation (EU) No 232/2014 of the European Parliament



and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, [...] do not contain any explicit reference to the possibility of suspending assistance in cases where a beneficiary country fails to observe the basic principles enunciated in the respective instrument and notably the principles of democracy, rule of law and the respect for human rights. The European Parliament considers that any suspension of assistance under these instruments would modify the overall financial scheme agreed under the ordinary legislative procedure. As a co-legislator and co-branch of the budgetary authority, the European Parliament is therefore entitled to fully exercise its prerogatives in that regard, if such a decision is to be taken". Regulation (EU) 232/2014, *supra* note LXVIII.

CXX Observation of Liberati, *supra* note XCVIII.

CXXI "Egypt has a dilemma: its politics are dominated by democrats who are not liberals and liberals who are not democrats". See <http://www.nytimes.com/2013/07/03/opinion/in-egypt-democrats-vs-liberals.html>, accessed 1/9/2014.

A valid explanation of this paradox, in the light of classical liberalism, can be found here: <https://www.opendemocracy.net/arab-awakening/faheem-hussain/egypt-s-liberal-coup>, accessed 1/9/2014.

CXXII *Supra* note LVII.

CXXIII For example, the new NGO law creates obstacles for civil society operators, by requiring prior Government authorization and NGO registration.

CXXIV *Supra* note CIII.

CXXV Bozovic, *supra* note LIX.

CXXVI *Id.*

CXXVII *Supra* note LXXXVI

CXXVIII While the economic relation with Europe is crucial for Egypt, it is not as much the other way around, *v. infra.*

CXXIX "Was the EU able (not to speak about 'willing') to stop the disbursement of already approved support funds, just because signs have been confusing about Ennahda's or FJP's political intentions? Rather not. And has the EU clearly condemned the military intervention in Egypt on 3 July 2013 and drawn any negative consequences? No", Völkel 2014: 271.

CXXX *V. supra*, note LXX.

CXXXI *V. supra*, note XC

CXXXII Balfour 2012: 29.

CXXXIII Völkel 2014: 280.

CXXXIV Seeberg 2013: 419.

CXXXV Völkel 2014: 280.

CXXXVI *V. supra*, Balfour 2012: 30.

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