

HUMAN RIGHTS AND THE EUROPEAN NEIGHBORHOOD POLICY: EUROPE RETREATS, SOUTHERN MEDITERRANEAN STATES HOSTILE TO HUMAN RIGHTS IN THE ASCENDANT

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The European Neighborhood Policy (ENP) and the Euro-Mediterranean Association Agreements continue to function as the principal institutional framework through which Europe addresses issues of human rights and democracy in many Arab countries and Israel. European states and institutions employ the instruments available within this framework, primarily periodic bilateral talks between the EU and each partner state conducted in meetings of the partner councils, which include high-level political representation, and the special subsidiary committees focused on diverse topics such as human rights, which include experts from both the European and Mediterranean partner states. The EU also urges the implementation of ENP action plans, seeing these as a political declaration reached voluntarily with partner countries to guide the process of political, economic, and social reform and human development. Indeed, the level of relations between the EU and partner states is determined based on these plans.

Despite the ambitious objectives pursued by the ENP since 2003—the achievement of development and stability in the Euro-Mediterranean region within a framework governed by human rights values, democracy, and civil society—the results thus far have been very modest relative to the total financial and human resources invested by the EU with its Mediterranean partners. This is not solely due to the lack of political will on the part of most Arab partner states to implement the promised reforms. The tools available in the ENP framework are too weak to effectively pressure or encourage Arab partner states, and politically influential European states within the EU have often disregarded issues of human rights and democracy in the southern rim of the Mediterranean. This has allowed many authoritarian Arab partner states to successfully reconstitute their relations with Europe on

¹ This paper reflects the personal views of the author.

foundations diametrically opposed to their peoples' aspirations for democracy, human rights, and human development.

Partner states' resistance to fulfilling pledges on human rights and democracy

Countries of the southern Mediterranean have failed, to varying degrees, to achieve the reforms promised in their ENP action plans, as recognized by European institutions themselves. In May 2009, the European Commission issued a series of local reports to evaluate the implementation of action plans in Egypt, Tunisia, Morocco, Palestine, Lebanon, Israel, and Jordan. The reports noted that limited progress was made in the fields of human rights and democracy and concluded that most Arab partner states had failed to take tangible steps to improve the state of human rights and democratic practices, having instituted only some reforms in the area of women and children. Despite partner states' eagerness to join international human rights conventions, the reports stated, they have failed to apply these conventions on the ground. The reports did highlight several positive developments in the field of women's rights, praising the criminalization of female circumcision in Egypt, advances made toward better political representation for women in Morocco and Jordan, and measures taken to combat violence against women in Lebanon and Jordan. Nevertheless, the reports explicitly pointed to partner states' failure to fulfill their vows to combat torture; uphold freedom of opinion and expression and the right to peaceful assembly and association; and guarantee the safety of human rights defenders, the independence of the judiciary, and refugee rights. On elections and political participation, the reports praised only Lebanon, Morocco, and Palestine. The reports also criticized the poverty of social policies in the southern Mediterranean countries. Significantly, civil society in the southern and northern Mediterranean has repeatedly criticized the tepidness and superficiality of progress reports issued by the European Commission compared to reports issued by other international bodies, such as UN committees and experts. What is worrying is that the conclusions of these reports are supposed to guide European governments in their relations with partner states. Refining these reports is thus vital to develop the ENP and avoid giving an inaccurate picture of the situation on the ground in partner states.

Weak tools at the disposal of the ENP

The ENP is based on the assumption that partner states wish to deepen their relations with the EU in order to strengthen their economic and social status. It assumes that partner countries will apply reforms in human rights and good governance to take advantage of European incentives in the form of financial aid and commercial and economic privileges. Yet, after more than five years of the ENP, it is undeniably clear that many partner nations seek to maximize the economic and financial benefits without making any real progress toward democracy, respect for human rights, and human development. Unfortunately, the ENP lacks effective tools to influence the ruling elite in partner states and thus achieve the goals to which the policy aspires. Its tools are limited to talks between Europe and partner states, and there is no linkage between, on one hand, commercial and economic ties and political cooperation and, on the other, partner states' commitment to political and social reform. European policy tools work in isolation from one another; political decisions of EU member nations towards relations with partner states are governed by diplomatic and security considerations and are wholly divorced from tools such as the periodic assessments of action plans carried out by the European Commission or discussions in subcommittees. At the same time, financial aid programs are not used with the required effectiveness by the EU to ensure the achievement of the primary political objectives of the ENP as elaborated in action plans. Partner states receive aid regardless of assessments of their progress toward the goals for which the funds were established. Despite the importance of dialogue between Europe and partner states in the human rights subcommittees, with time dialogue has become an end in itself without producing specific outcomes that can be monitored or ramifications for political ties between the partners. Moreover, this dialogue takes place behind closed doors, and civil society is given no information about its priorities or results.

Lack of consistent European support for human rights and democracy versus the rising support in southern Mediterranean states for an agenda inimical to human rights

Some European states—including those with substantial political weight within the EU, such as France, Britain, Spain, Germany, Italy, and Greece—show no desire to support human rights and democracy in the southern Mediterranean rim and avoid embarrassing southern Mediterranean governments with this issue. In contrast, the authoritarian or anti-human rights states of the southern Mediterranean are increasingly able to reconstitute Euro-Mediterranean relations on foundations that are inimical to regional peoples' aspirations for

democracy and human development. At the same time, this situation has created an environment conducive to southern Mediterranean governments' push to weaken the human rights content in ENP instruments and marginalize the role of civil society.

For example, Egyptian diplomacy over the last two years has routinely pressured European allies and European institutions in Brussels to moderate the human rights language used by Europe in the closing statements issued after meetings of bilateral partnership councils. This was the case with the closing statement issued by the Council of the European Union following the convening of the partnership council in April 2010: it was reworded under pressure from the Spanish government, which headed the EU at the time, in response to Egypt. At the same time, over the past two years the Egyptian Foreign Ministry has exercised pressure on numerous occasions on European institutions in Brussels to prevent European officials or European MPs from meeting with human rights activists or representatives of the Egyptian political opposition. The most prominent case was an attempt to thwart a visit by prominent Egyptian opposition figure Ayman Nour in Brussels in April 2009. Although some officials from EU member states responded to Egyptian pressure and refrained from meeting with Nour, the Egyptian pressure sparked severe displeasure from officials with the European Commission and the European Parliament, who were keen to meet Nour and discuss political developments in Egypt with him. Neither the Egyptian nor the Tunisian government has any qualms about harassing NGOs who receive funding from the EU through European democracy and human rights instruments. In Egypt, the state has refused to grant the security or administrative approvals necessary to carry out European-funded projects, while in Tunisia, the state continues its policy of police harassment of independent human rights activists and NGOs.

The Union for the Mediterranean, the newest framework for multilateral European-Mediterranean relations, is also a source of concern for the future of human rights within Euro-Mediterranean relations. The Union is taking a pragmatic approach by focusing on joint projects in areas such as security, energy, migration, and the environment while marginalizing human rights and good governance. States of the southern Mediterranean also exercise more influence in the Union; Egypt occupies the co-presidency with Spain, (which succeeded France), and the Union's secretariat has representation from both European and southern Mediterranean countries. The concern is less the fact of joint administration of the

Union than the absence of human rights and democracy as a major factor in the objectives, purview, and projects of the Union. This allows the Arab parties, led by the Egyptian government, to marginalize the participation of civil society and human rights groups in multilateral forums, in violation of traditions upheld in the Barcelona Process since 1995.

Inconsistent European policies towards Israel

The perpetuation of the Arab-Israeli conflict is one of the most significant factors shaping divisions that prevent broader European-Mediterranean social, economic, and political engagement, particularly multilateral engagement. Yet, the tepid EU stance on grave international crimes and violations of international humanitarian law committed by Israel in occupied Arab territory has opened it up to criticism by civil society and intellectual elite in the South. It also gave an opportunity for authoritarian regimes in the South to use Israel as a model to escape their human rights commitments under the Euro Mediterranean instruments. Like other Arab countries, Israel is linked to the EU through bilateral agreements in which human rights are a principal component. Moreover, Israel voluntarily committed to respect human rights and international humanitarian law in its ENP action plan. Like Morocco, Israel was a candidate for negotiations for advanced status ties with the EU, but these negotiations were postponed in a decision from the European Council in December 2009. Although the council reiterated the EU commitment to developing its ties with Israel within the ENP, it noted that circumstances on the ground were not propitious for such development at the current time. The European Council was compelled to issue the decision following the Israeli attack on the Gaza Strip, judging that it would be inappropriate to deepen European ties with Israel when Israel was coming under heavy international criticism for its crimes in the Palestinian territories, particularly following Operation Cast Lead. Although positive, this step was very small in light of the EU's acquiescent stance on Israeli criminality in occupied Arab territories. According to a report issued by the Euro-Mediterranean Human Rights Network, the EU limited itself to condemning crimes and abuses of civilians and calling for a ceasefire, but it failed to exercise effective diplomatic pressure on Israel to end its aggression in the Gaza Strip or form an international fact-finding mission to investigate the serious crimes committed during the assault. The EU also did not

demand that Israel pay compensation for the destruction of Palestinian facilities and infrastructure built with funding from the EU.²

Prospects for Civil Society

The Arab spring reform from 2003 to 2005 has waned. Since 2006, Arab reformers have been faced with a tough counter-attack campaign led by Arab governments. This campaign coincided with the changing agenda of international actors who are less interested in generating pressures on Arab governments. However, multiple forms of civil and political resistance still exist in the region and bring some hope for the future. In a country like Egypt the tense political atmosphere has not prevented the increasing popular unrest against the economic and social performance of the government. Over the last three years, social protest has become a reality in the Egyptian daily life. An emerging labor and professional movement has been able to capture the interest of a growing number of ordinary citizens in Egypt. Youth activism has become a driving force for this social dynamism. This wave of social unrest has not yet transformed into an organized political movement. However, the current intensive debate on political succession in Egypt and the scheduled parliamentary and presidential elections in 2010-2011 have motivated the political opposition to renew their demand for democracy, electoral reform and power circulation. This coincided with the appearance of Mohamed El Baradei, the ex-director of the International Atomic Agency in the Egyptian political sphere. He expressed his readiness to run the presidential elections under certain safeguards including the international observation on elections and the modification of the constitution to lift the existing arbitrary restrictions before presidential candidates. The National Association for Change has been established as a broad umbrella gathering the main political and social movements in Egypt. The Association has started a large campaign to press the government for political reforms and safeguard public liberties.

Despite the legal and political restrictions, the human rights movement has acquired more legitimacy in their region. Its social and political alliances have become more diverse. In Egypt, human rights defenders have maintained a dynamic relationship with the political reform movement and provided political activists with protection and solidarity. Over the

² See "Active But Acquiescent: the EU Response to the Israeli Military Offensive in the Gaza Strip", the Euro-Mediterranean Human Rights Network, available at www.emhrn.net

last decades, some issues such as minority rights and religious freedom dominated the agenda of the human rights movement. Much interest has been also given to the economic and social rights in response to the growing social protest movement. However, the biggest number of NGOs are still occupied by political and civil rights.

Human rights groups have recently started to work much more together. A coalition of Egyptian NGOs formed in 2008 to oppose the government's plans to make the association law more restrictive. The same coalition developed a strategy to engage with the UN's Universal Periodic Review on Egypt this year. Political and civil society have improved their capacity to interact with the international community for the cause of human rights and democracy. Political actors themselves are now more eager than before to expose the poor human rights records of the government in international and regional forums. For the first time, the political opposition and civil society agree on the demand of having international observation on elections.

Policy alternatives and strategic priorities

The revival of the ENP requires a combination of attractive incentives and conditionality based on a time bound system of benchmarking and accountability. Attractive incentives are needed to change the political calculations of the ruling elites in the Mediterranean region. In this direction, the EU should draw on its long experience in pushing reforms in other states which have had the horizon of being members in the EU.

The current negotiations between the EU and its partners notably Tunisia and Egypt concerning the enhancement of the bilateral relations should be clearly conditioned on certain human rights and good governance priorities that are necessary to open up the political space in both countries. The first priority that should be given a considerable interest is freedom of association for political parties, NGOs and professional and trade unions. The current political circumstances in both countries indicate that human rights defenders bloggers and political activists face increasing threats and intimidation by the authorities. An effective system of international protection and moral support is direly needed for those persons. Freedom of association is a strategic entry to develop a vibrant political society and electoral competition. Secondly, securities and anti-terrorism measures should not be used by both political regimes to justify the severe violations of political and

civil rights. The state of emergency in Egypt has become a systematic technique to suppress political competitors and ensure the stability of the ruling elite. In 2007, the Egyptian government amended the constitution to pave the way for a new anti-terrorism law without being restricted by the constitutional human rights guarantees. The state of emergency is likely to be normalized under the planned anti-terrorism law which is expected to be adopted soon. Thirdly, media independence and pluralism should also be a priority to ensure free public debate and the fair representation of all political currents. The new media and internet freedoms provide activists and human rights defenders with a viable space for discussion and recruitment. However, authorities have transformed internet into a space for suppression. As for traditional media, although authorities in Egypt has shown a remarkable tolerance with the critical tone of private media outlets over the last 5 years, this tolerance is not legally protected. A lot of journalists still face serious criminal accusations and lawsuits because of their critical views. The media landscape in Tunisia is gloomy. The state shows strict control over all channels of expression. Fourthly, the legal prerequisites for judiciary independence should be promoted in accordance with the international standards. Most of the financial support for this sector has been allocated to promote the judicial body by physical and technical equipment and training. These programs will bring about nothing if the constitutional and legal framework subordinate the judiciary to the executive.

As for elections and particularly in Egypt and Tunisia, the politics of political exclusion should be resisted by the EU. In both countries political opposition is not able to compete on a level playing field with the ruling elites. Parliamentary elections are marred by forgery and manipulation which have been documented by credible local and international monitoring groups. The presidential election is cosmetic in both countries. Serious political opposition and candidates face serious constitutional and legal restrictions to run the elections. The political competition in a country like Egypt or Tunisia should not be simplified to a dispute between ruling elites and Islamic opposition. There are other emerging liberal and leftist alternatives who are constantly suppressed and excluded from the political sphere.

We should not underestimate Europe's fear from the power of political Islam in the South but this fear should not be transformed into unlimited support for corrupted regimes. The European officials and civil society should engage in an open dialogue with moderate Islamists to integrate them in the democratic process. At the same time, the moral and

political support of other growing liberal voices can counter-balance the influence of Islamists.

Concerning Morocco, the country has provided an exception of positive engagement with the ENP, which made it one of the first states to begin negotiations for advanced status, in October 2008, a status which will afford it enhanced financial, commercial, economic, and diplomatic privileges from the EU. This was the primary topic at the Moroccan-European summit held in Granada in March 2010, and the new Moroccan-European action plan is currently under negotiation. Advanced status will undoubtedly foster a more profound debate on human rights between Morocco and the EU, and Morocco will gradually join European human rights conventions, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, it is worrying that advanced status negotiations have not yet been effectively employed by Europe to improve the human rights situation and democracy in Morocco within the framework of specific, time-bound commitments.³ This does not mean that progress has not been made on human rights in Morocco when compared to other EU partner states in the southern Mediterranean, particularly in the realm of transitional justice, women's rights, and political participation, but there are still several areas of concern undermining human rights and good governance in Morocco, primarily the Western Sahara issue and the systematic human rights abuses endured by Sahrawis who demand the right to the self-determination, as well as independence of the judiciary, the balance of powers, freedom of opinion and expression, the right to association and peaceful assembly, and human rights violations in the war on terrorism. It is worth noting that these issues were adopted in the Moroccan-European action plan reached in July 2005; although that plan expires in July 2010, these provisions have not yet been implemented by Morocco according to reports issued by the European Commission.

In conclusion, the current policies of the EU towards the Mediterranean region are not likely to foster democratic change or a significant progress in human rights. This is due not only to the unwillingness of most southern Mediterranean states to make tangible reforms in these

³ See "Recommendations on Human Rights for the New Morocco/EU Action Plan in the Framework of the Advanced Status," the Euro-Mediterranean Human Rights Network, available at <www.emhrn.net>.

areas, but also to the fact that influential European states with political weight inside the EU have not made human rights a priority. In addition, the tools at the disposal of the ENP are insufficiently strong to change the political calculations of the ruling elite in the southern Mediterranean. Moreover, there are fears that deepening ties between the EU and partner states will not be effectively used to achieve real reforms in the areas of democracy and human rights in southern Mediterranean states. To breakthrough this uncertain path, the EU should revisit its approach in the region to combine both attractive incentives and conditionality. Finally, A joint vision among European states towards the priority of democracy and human rights in the Mediterranean region is crucial to develop an efficient and consistent policies in the region.