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**EUROPEAN NEIGHBORHOOD POLICY AND
ASSOCIATION AGREEMENTS – THE CASE OF
MOROCCO**

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ΜΑΡΟΚΟΥ

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ΥΠΕΥΘΥΝΗ ΔΗΛΩΣΗ

Με την παρούσα δήλωση:

1. Δηλώνω ρητά και ανεπιφύλακτα ότι η διπλωματική εργασία που σας καταθέτω αποτελεί προϊόν δικής μου πνευματικής προσπάθειας, δεν παραβιάζει τα δικαιώματα τρίτων μερών και ακολουθεί τα διεθνώς αναγνωρισμένα πρότυπα επιστημονικής συγγραφής, τηρώντας πιστά την ακαδημαϊκή δεοντολογία.
2. Οι απόψεις που εκφράζονται αποτελούν αποκλειστικά ευθύνη της συγγραφέως και ο επιβλέπων, οι εξεταστές, το Τμήμα και το Πανεπιστήμιο Πελοποννήσου δεν υιοθετούν κατ' ανάγκη τις εκφραζόμενες απόψεις ούτε φέρουν οποιαδήποτε ευθύνη για τυχόν λάθη και παραλείψεις.

Η δηλούσα

Φουτσιτζή Θεοδώρα

“EUROPEAN NEIGHBORHOOD POLICY AND ASSOCIATION AGREEMENTS – THE CASE OF MOROCCO”

Abstract

ENP was established in 2004 as an instrument of EU’s foreign policy towards bordering states, continuing the approach of Barcelona Process towards the Southern Mediterranean countries and alongside as the framework, on which EU established bilateral agreements with these countries individually. Its declared targets were: the more peace, democracy and economic development can be prevailed, the largest of stability and security can be achieved.

But during the 2000’s ENP resulted to failure since EU avoided to be a reliable international player. Despite its ineffectiveness, ENP is still alive today, since it is the framework, upon which association agreements with the Mediterranean countries are based. The next decade the approach of EU is still based on ENP but now it prefers to promote security and political stability rather than democratic reforms, continuing to provide to the authoritarian regimes in the MENA countries either association agreements or financial assistance.

This is exactly the case of Morocco. EU prefers to be blindfold about the “democratic reforms” and the real political conditions in Morocco. The point of this thesis, are the constitutional amendments in 2011, which maintained the over-authorities of the king and the illegal annexation of Western Sahara.

“Η ΕΥΡΩΠΑΙΚΗ ΠΟΛΙΤΙΚΗ ΓΕΙΤΟΝΙΑΣ ΚΑΙ ΟΙ ΣΥΜΦΩΝΙΕΣ ΣΥΝΕΡΓΑΣΙΑΣ – Η ΠΕΡΙΠΤΩΣΗ ΤΟΥ ΜΑΡΟΚΟΥ”

Περίληψη

Η ΕΠΓ διαμορφώθηκε το 2004 ως ένα εργαλείο εξωτερικής πολιτικής της ΕΕ προς τα συνορεύοντα κράτη, συνεχίζοντας την προσέγγιση προς τις χώρες της Νότιας Μεσογείου που είχε ξεκινήσει με τη Διακήρυξη της Βαρκελώνης και παράλληλα ως το πλαίσιο, εντός του οποίου η ΕΕ διαμορφώνει διμερείς συμφωνίες με κάθε μία από αυτές τις χώρες. Οι διακηρυγμένοι στόχοι της ήταν : όση περισσότερη ειρήνη, δημοκρατία και οικονομική ανάπτυξη εξασφαλιστεί τόση περισσότερη σταθερότητα και ασφάλεια μπορεί να επιτευχθεί.

Αλλά κατά τη δεκαετία του 2000, η ΕΠΓ οδηγήθηκε σε αποτυχία αφού η ΕΕ απέφυγε να γίνει ένας αξιόπιστος παίκτης στο διεθνές πεδίο. Παρά την αναποτελεσματικότητά της, η ΕΠΓ εξακολουθεί και διατηρείται εν ζωή μια και αποτελεί το πλαίσιο, επί του οποίου βασίζονται οι συμφωνίες συνεργασίας με τις Μεσογειακές χώρες. Την επόμενη δεκαετία η προσέγγιση της ΕΕ εξακολουθεί να στηρίζεται στην ΕΠΓ αλλά πλέον προτιμάται η προώθηση της ασφάλειας και της πολιτικής σταθερότητας από τις δημοκρατικές μεταρρυθμίσεις, συνεχίζοντας να παρέχει στα αυταρχικά καθεστώτα της MENA είτε συμφωνίες συνεργασίας είτε οικονομική βοήθεια.

Αυτή ακριβώς είναι η περίπτωση του Μαρόκου. Η ΕΕ προτιμάει να εθελουφλεί σχετικά με τις δημοκρατικές μεταρρυθμίσεις και τις πραγματικές πολιτικές συνθήκες στο Μαρόκο. Το θέμα αυτής της εργασίας είναι οι τροποποιήσεις στο Σύνταγμα το 2011, που διατηρούν τις υπερεξουσίες του βασιλιά και η παράνομη προσάρτηση της Δυτικής Σαχάρα.

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Introduction

EU's foreign policy had been transformed during its evolution from bilateral and multilateral agreements. In the 1990's, EU established Barcelona Process, as an instrument of foreign policy towards Mediterranean countries. Later, in the aftermath of its biggest enlargement in 2004, EU, recognizing the prosperity gap between its member states and its neighbors, established European Neighborhood Policy (ENP) as an instrument of its foreign policy towards bordering states, continuing the Barcelona Process as far as it concerns the countries in the South Mediterranean.

ENP was based on the fundamental principles of democracy, law of order and human rights and its declared targets were: the more peace, democracy and economic development can be prevailed; the largest of stability and security can be achieved. Furthermore, ENP was at the same time the framework, on which EU established bilateral agreements with the countries of North Africa individually.

But during the 2000's the international conditions had been changed dramatically, mainly because of the terroristic attacks and the USA's invasion in Afghanistan and Iraq. In addition the unequal behavior of EU towards Arabs and Israelis made clear that EU was not a reliable player since it was reluctant to find solutions. Consequently, ENP resulted to failure.

Paradoxically, despite its ineffectiveness, ENP has been still keeping alive till today, since it is still the framework, on which association agreements (EMAA's) with the Mediterranean countries has been established. These agreements are based on the principle of differentiation and concerned, apart from merely trade, regular political dialogue, democracy, justice, human rights and democracy clauses. Moreover, after the turmoil of Arab Spring, which resulted either to the collapse of the authoritarian regimes or to civil wars, alongside with the increasing of the extremist Muslim movements, the approach of EU still has been based on ENP but now it has been

formed upon a “more for more” basis, which means, more money, more market access for more mobility, stability and security.

In reality, despite the provisions and the clauses, not even one association agreement has been postponed, cancelled or inhibited and EU set as its first priority its own security and stability, continuing to provide, once again, to the authoritarian regimes in the countries of North Africa either association agreements for their products or financial assistance.

This is exactly the case of Morocco. EU-Morocco’s bilateral relationship started in 1969 but it had been shaping inside the framework of Barcelona Process and ENP. Typically, Morocco, since 1995, adopted many democratic reforms claimed by EU and in turn it took enormous amounts of money and association agreements for its products. More than that, it is considered as the most moderate state of MENA and EU rewarded it with the “advanced status”. The truth is that EU prefers to be blindfold about these “democratic reforms” and the real political conditions in Morocco.

There are many fields where there is no adaptation at all in the democratic principles. Two of them, which are the point of this thesis, are the constitutional amendments in 2011 and the illegal annexation of Western Sahara. As far as it is concerned the constitutional amendments, they took place because of the Arab Spring and not because of the EU’s demands. It was an attempt of the regime – the king and the Makhzen – to avoid the collapse and maintain at the same time the king’s over-authorities, since the over-concentration of the powers on the monarch still remains. Blindfolding, EU avoided dealing with these undemocratic changes, concerning so far mainly about the organic laws and not for the constitution itself.

Furthermore, for 45 years EU has been disregarding of the international law and tolerating of the Western Sahara’s illegal annexation by Morocco. Worse than that, EU has been participated in the pillage of Western Sahara’s natural resources, having signed association agreements with Morocco, concerning products, some of which are originated in the occupied territory. Paradoxically, and despite of the EU’s claimed targets about the respect in the international law, the Saharawi’s right of self-

determination, finally recognized by a court's decision and not by the EU's political institutions.

PART I.

Evolution of the EU's relations with the Mediterranean countries - The European Neighborhood Policy

1. Foreign affairs – bilateral relations

From the early beginning the issue about the EEC's foreign relations had been arisen. During the 1960's, EEC faced up with the effort of some neighbor countries to participate in the Community, since they quickly realized the significance and the potential effectiveness of the EEC's customs union and common market¹.

At the same time (the 1960's), the EEC established bilateral relations with many countries in Europe, either they were neighbourhods with its member states or not, as well as with many Mediterranean countries. Especially, the relations with the Mediterranean countries – bilateral or multipartite - were being pursued by both sides, and they were mainly based upon trade agreements, predicting free access in these countries' markets for the industrial European products and specific concessions for some of the agricultural products of the Mediterranean countries.

Since 1961, the relations between the Community and the Mediterranean countries, especially the ones in North Africa, have been gradually evolved and formed alongside with the gradual enlargement of the EC to the north side of the Mediterranean ,followed by the changing in its south borders (Greece became a full

¹ In 1961, Denmark, Ireland, Norway and the United Kingdom (then Great Britain) applied to participate in the three Communities, but their applications were rejected. In the same year (1961), Greece became the first associate member in the EEC. Turkey also signed an associate agreement with the Community in 1964¹. In addition, the community signed association agreements with Malta in 1970 and Cyprus in 1971. Greece's request for membership was rejected in 1967 after the coup d'état. The country re-applied to participate in the community on June 1975 (after the collapse of the dictatorship) and finally became a member state on 1 January 1981.

member state in 1981, Spain and Portugal in 1986, Cyprus, Malta and Slovenia in 2004 and Croatia in 2013) and the North Africa countries' political and socio/economic needs.

Specifically, the bilateral relations between the EC and the countries in the South Mediterranean – especially with Morocco - can be classified in six periods, taking as criteria the EEC's perception of itself and the international conditions.

1.a. 1st period : 1961 – 1972 (Bilateral Agreements)

During the first period the EC, acting as an organization by itself and not the founding members separately, had preferred to take its first steps in foreign policy, especially in the field of trade and economic relations, rather than accept new members in its entity. Under this approach, the Community preconceived to establish **bilateral agreements** with third countries, mainly based upon mutual interests about “trade, providing primarily for free market access for industrial products with some concessions for specific agricultural products”².

Furthermore and beyond its (then) geographic borders of Europe, the Community extended its foreign policy to the South Mediterranean countries and established bilateral agreements with Tunisia and Morocco in 1969 (Morocco had requested the opening of the negotiations in 1963) based upon trade.

These agreements, had been considered by many scholars as the continuing of colonialism, taking into consideration that an agreement must be signed between equal parts and in this case these agreements were the result of negotiations between six strong European countries, acting as a whole, on the one side and two North African countries, acting individually, on the other.³ Let alone that Morocco and Tunisia had been liberated from France about ten years ago and the connections with France were still vivid.

² European Commission, Press Release Database, Last update: 25-07-2019, https://Europa.eu/rapid/press-release_MEMO-94-63_en.htm

³ Peter Schäfer , “*Free Trade Agreements – Colonial Agreements against the people*”, page 6, Rosa Luxemburg Stiftung, 21.12.2006, <https://www.rosalux.eu/publications/free-trade-agreements-colonial-agreements-against-the-people/>

1.b. 2nd period : 1972 – 1990 - Global Mediterranean Policy (MGP) – association and cooperation agreements

In 1972 the European Community established a new approach in its foreign policy, especially towards the countries in the Mediterranean, also known as the **“Global Mediterranean Policy” (MGP)**. This new approach was substantially an umbrella, under which imposed all the previous bilateral trade agreements and set the framework for the future ones. It was different since it was not based only in trade and economic relations. According to this framework the EC established **“association agreements”** with a plan for future gradual membership with Turkey, Malta and Cyprus and **“cooperation agreements”** with Mashreq and Maghreb countries and Jordan (not Libya neither Albania)⁴.

In particular, concerning the countries in Maghreb (and Mashreq) the framework of these cooperation agreements was consisted of **two elements/directions**. The first one was the prediction of signing **financial protocols**, which means financial support and loans from the European Investment Bank. And the second one was **preferential trade arrangements**, since the initial target was still the same · increasing European trade in the Mediterranean region and at same time access to the European common Market, through strict standards, for some of the industrial and agricultural products from the Mediterranean countries.

None of these agreements referred to the issue of Human Rights as a factor for “democratic conditionality”. The main target remained the establishment of “close diplomatic and commercial ties”, since the interest of the European member states, especially France, was focused on “a privileged relation in terms of trade, investment, public procurement and energy”⁵.

⁴ The MPG approach hadn't contained the Palestinian territories - the EC provided a kind of limited financial assistance to the Palestinians.

⁵ Michael Leigh : « *European response to the Arab Spring* », Policy Brief, The German Marshall Fund of the United States, October 2011, page 2

These cooperation agreements included also conditions for managing and controlling migration flows, since migration from the Mediterranean countries, especially after 1973, became gradually a big concern in Europe.

In 1973, the Community had been enlarged for the first time when Denmark, Ireland and United Kingdom became full member-states of the EEC, followed by the second enlargement, when Greece in 1981 and Spain and Portugal in 1986 had been incorporated. Since 1986 the south borders of the Community sat on the whole north side of the Mediterranean.

The results of MGP towards the countries in the Southern Mediterranean cannot be considered successful, since these agreements were focused mainly on increasing the trade rather than promoting investments⁶ and abstaining from any action to bridge the prosperity gap between the European countries and the ones of south Mediterranean – let alone the Human Rights issues. To this lack of success took part in, also, the Arab Mediterranean countries by themselves, since they kept in abeyance these cooperation agreements⁷.

1.c. 3d period : 1990 – 1995 : The Redirected (or New) Mediterranean Policy (RMP)

In the 1990's, right after the collapse of the Soviet Block and the end of the bipolar world, EEC had to confront the consequences of the Iraqi's invasion in Kuwait and the muscular reaction of USA and their allies, alongside with the consequences of the new Intifada in the Palestinian Territories.

⁶ Only 1 % of the total European amounts for foreign investments was canalized to the Southern Mediterranean countries

⁷ KHADER Bichara “*The European Union and the Arab World : from the Rome Treaty to the Arab Spring*”, Mediterranean Academy of Diplomatic Studies (MEDAC), Malta, March 2013, also in 17 Papers IEMed, European Institute of the Mediterranean (IEMed), March 2013
<https://www.iemed.org/publicacions-en/historic-de-publicacions/papersiemed-euromesco/the-european-union-and-the-arab-world-from-the-rome-treaty-to-the-arab-spring>

In an attempt to take a step forward, concerning the relations with the Mediterranean countries, the EC, in 1990, established the **Redirected (or New) Mediterranean Policy (RMP)**. This new approach had not to do only with grants and loans, which had been included again anyway, reaching to an amount of 5 billion euros for the period 1991 – 1996⁸. This time the approach aimed to support economic and structural reforms, as well as to encourage liberalization process⁹, by planning regional projects, inside the framework of RMP, including training courses, support for regional/local institutes, feasibility studies and cooperation for the environmental issues. Unfortunately, despite these new characteristics in the “new” policy, there was not any significant difference from the previous ones¹⁰.

Additionally, inside the framework of the RMP, after a proposal of Spain and Italy in order to promote the regional cooperation, there were established in 1990 the **“Conference on Security and Cooperation in the Mediterranean” (CSCM)**, which was short-lived and the **“5+5 Formula”** (Western Mediterranean Group) or “5+5 Group”, which, in reality, was a smaller plan among the four big Mediterranean countries¹¹ and the five Maghreb states, which also collapsed, in 1992, due to Algeria crisis, the suspicion of Northern European countries and the fact that Egypt, the most important Arab Mediterranean country had been left out of it.

Two years later, it was Egypt which took the initiative and convinced France to establish a new plan **“the Forum of the Mediterranean” (FOROMED)**. This time five European countries were included (France, Italy, Spain, Portugal and Greece) and six Mediterranean countries (Egypt, Turkey, Tunisia, Algeria, Morocco and Malta). The states participated in this forum had committed themselves for a comprehensive

⁸ Khader Bichara, *ibid*

⁹ “*The European Union’s Mediterranean Policy*”, European Commission, Press Release Data Base, https://europa.eu/rapid/press-release_MEMO-94-63_en.htm

¹⁰ Michael Ovadek and Jan Wouters “*Differentiation in Disguise? EU instruments of Bilateral Cooperation in the Southern Neighbourhood*”, Leuven Centre for Global Governance Studies, Institute for International Law, Working Paper No 187 – June 2017, page 6 with reference to Ricardo Gomez “*The EU’s Mediterranean Policy: common foreign policy by the back door?*”

¹¹ Initially, the five European countries were Italy, France, Spain and Portugal. After a few months Malta participated as a full member joined the European Group.

and effectual cooperation, in fields with common interest, such as security, prosperity, mutual understanding etc for “promotion of the rule of law and multi-party democracy”¹².

And this was the first time, **the expressions “rule of law” and “multi-party democracy” were set in a multilateral agreement as a target and a commitment at the same time** – even though it was an informal intergovernmental forum – among European States and South Mediterranean countries, given their authoritarian regimes and their cultural specificities.

The Treaty on European Union (Maastricht Treaty)

In 1992, almost 30 years after the Treaty of Rome and the reliance about the supremacy of the liberal economy, it was signed in Maastricht **“The Treaty on European Union”**, also known as **“Maastricht Treaty”**, according to which the three European Communities had been transformed-integrated in one, **the European Union**, consisted of three pillars : the European Communities (first pillar), the Common Foreign and Security Policy (CSFP) (second) and Justice and Home Affairs (JHA) (third)¹³.

According to the article B of the Treaty “The Union shall set itself the following objectives: - to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy” and according to the article C “The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies”¹⁴

In 1958 the European Community had implemented a kind of common foreign policy, mainly inside the framework of common commercial policy towards third countries

¹² KHADER Bichara, *ibid*

¹³ “*Treaty on European Union (TEU) / Maastricht Treaty*”, European Parliament, <http://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/maastricht-treaty>

¹⁴ “*Treaty on European Union*”, Council of the European Communities, https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf

through bilateral or multilateral agreements. In 1992, the common foreign policy was set as an independent pillar of the European Union, acting as an entity.

1.d. 4th period : 1995 - 2003 : Euro-Mediterranean Partnership (EMP) or Barcelona Process

In compliance with the Redirected (New) Mediterranean Policy, the European Commission with the “Communication of April 29, 1992” offered separate proposals for “the future of relations between the Community and the Maghreb”¹⁵ and established the **“Euro-Maghreb Partnership”** aiming to closer economic relations with these countries, with four directions : political dialogue, economic, technical and cultural cooperation, trade and financial cooperation¹⁶.

But the changing situation in the Middle East (Oslo Agreement in 1993, between Israel and Palestinians) urged European Commission to transform the “Euro-Maghreb Partnership” into the **“Euro-Mediterranean Partnership”(EMP)** with the “Communication of October 19, 1994”. On November 1995, in Barcelona, the EU and 12 Mediterranean countries (Morocco, Algeria, Tunisia, Egypt, Jordan, Palestinian Territories, Lebanon, Syria, Israel, Malta, Cyprus and Turkey¹⁷) set in motion this partnership.

“The Barcelona Declaration” or **“the Barcelona Process”** as it is also known, was set up on the basis of reinforcing the relations among EU and the countries in the Mediterranean, as well as the countries in the region of Mashreq and Maghreb¹⁸. Apart from Libya and Syria, in the previous years the EU and each one of these countries had already reached and signed bilaterally “Association Agreements”, which provided a framework for further cooperation on various sections.

¹⁵ Communication de la Commission sur l’avenir des relations entre la Communauté et le Maghreb, Brussels, EuropeanCommission (Sec/92/401)

¹⁶ “*Commission Adopts Draft Negotiating Directions*”, European Commission, Press Release Database, https://europa.eu/rapid/press-release_IP-93-1038_en.htm

¹⁷ Libya was excluded because of the embargo imposed on it.

¹⁸ A further impulse was provided to it, through the **“Union for the Mediterranean” (UfM)**, established in 2008, including this time and the Balkan States.

Furthermore, during the Barcelona conference, EU acting inside the framework of “the Barcelona Process” succeeded to bring together Arabs and Israelis, providing from now on its new image as **“peace facilitator”**.

With the Barcelona Process the EU adopted a new, multidimensional approach in its relations with the Mediterranean countries, consisted of three, equally significant, **“baskets”** : the political and security basket, the social, cultural and human affairs basket and an economic and financial basket¹⁹. Inside that framework, the EU and the Mediterranean countries established the “third generation” association agreements, also known as **“Euro-Mediterranean Association Agreements”** (EMAA’s), most of which are still in force²⁰.

Prima facie, the main target of this new approach in the Mediterranean policy was to set in a free trade zone among EU and the Mediterranean countries, through economic liberalization, up to 2010. But, having in mind the Algeria crisis (1992 – 1999) and its consequences inside European states, including the increasing migration mobility mostly from the Maghreb and Sub-Saharan countries, **the real purpose of the Europeans was the security** sector by ensuring political stability in these countries²¹.

During the first four years after the Barcelona Declaration just a few actions took place (tariff barriers were decreased or vanished, some association agreements were established and some civil society organizations and research institutes were set in motion) without an observable change in other “baskets”.

But the situation had been changed dramatically after 2000. The failure of the Camp David negotiations between Palestinians and Israelis, the 11th of September 2001 terrorist attacks in New York and the following invasions of USA and their Western allies in Afghanistan (2001) and, especially, in Iraq (2003), the support of the three major Mediterranean countries - Spain, Italy and Portugal - to the invasion in Iraq, unsettled the relations among EU and the Mediterranean countries and made the parts suspicious, revealing at the same time the ambiguity and the uncertainty of the

¹⁹ Ivan Martin, “*The Euro-Mediterranean Partnership and inward FDI in Maghreb Countries*”, New York University in Spain, 2003, page 4, http://sem-wes.org/sites/default/files/revistas/rem4_8_0.pdf

²⁰ Michael Ovadek, Jan Wouters, *ibid*

²¹ KHADER Bichara, *ibid*

Barcelona Declaration and having - as a parameter loss – the increasing of migration flows to Europe²².

After all these facts, it was more than obvious that for the Europeans the initial purpose of the “Barcelona Process” had to be differentiated by supporting political and socio-economic “stability” in the southern Mediterranean countries, in order to protect themselves from the eventually increasing migration flows and the spreading of the radical movements inside the European territory, especially inside the states with Muslim minorities.

Order and Stability

In other words, the Europeans left aside the three baskets and their pursuit for political and socio-economic reforms in the southern Mediterranean countries and preferred to brace the political “**order and stability**” in these countries through modernization and liberalization. That means that modernization and liberalization was not any more “an objective per se” but an instrument²³ to maintain the political stability in these countries.

Under this differentiated approach, the third “basket” for social and cultural relations had not been carried out²⁴. Neither the security “basket”, since the planned “Euro-Mediterranean Charter for Peace and Security” was never signed. Furthermore the European Security Strategy (ESS) in 2003 established a completely different approach, according to which “the best protection of our security is a world of well-governed democratic states”. This approach means that good governance will bring regional stability, which will be more effective, as a factor, in resolving regional problems/crisis and consequently this will contribute to the European stability²⁵.

²² KHADER Bichara, *ibid*

²³ KHADER Bichara, *ibid*

²⁴ The only exception was the creation of the “Anna Lindh Euro-Mediterranean Foundation for the Dialogue between Cultures” after an initiative of Romano Prodi, which led to the Group of Wise Men for the Dialogue of Cultures in the Mediterranean, in 2003, aiming to promote mutual understanding, KHADER Bichara, *ibid*

²⁵ Roberto Aliboni and Abdallah Saaf, “*Human Security : a New Perspective for Euro-Mediterranean Cooperation*”, 10 Papers for Barcelona 2010, February 2010, page 12, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Human_security-Euro-Med_cooperation_3_0.pdf

From the first moment, it was clear that this new approach also wouldn't be successful. The Mediterranean countries had never been really committed to promote political reforms or security cooperation. And the Europeans continued to pursue political conditionality only, as a presumption for the trade association agreements²⁶. Moreover, the Europeans established good relations with the authoritarian governments in the Mediterranean countries, even getting to the point of recognizing the progress achieved in Tunisia by the government of Ben Ali.

The explanation for this inconsequent European policy is rooted to the augmentation of the Islamist parties and the spreading islamophobia inside the European territory. The authoritarian regimes in the Med-countries presented themselves as reliable interlocutors towards the Europeans, convincing them that they are the ones who fight against international terrorism and at the same time they can control irregular migration flows.

Consequently, the EMP distracted and, in reality, was restricted in readmission agreements and border controls. The main purpose “of region-building in the Mediterranean has been replaced by control-building or order-building. The EU's ideals of “well-governed partners” had simply been challenged by the necessity of having stable and well controlled partners”²⁷.

1.e. 5th period : 2004 - 2017 : The European Neighborhood Policy

On November 2002 the Council of General Affairs and External Relations Council (GAERC) predicted the future need for an establishment of a suitable policy for the states, which were going to be neighbors, as well as for the ones, which were already, reciprocating to letter from High Representative Javier Solana and Commissioner Chris Patten, in August 2002, and had been set as an objective in December 2002 during the Copenhagen European Council²⁸.

²⁶ The trade agreements between EU and the Mediterranean states had still been in force

²⁷ KHADER Bichara, *ibid*

²⁸ Richard G. Whitman and Stefan Wolff, “*Much Ado About Nothing? The European Neighbourhood Policy in Context*”, included in *The European Neighbourhood Policy in Perspective Context, Implementation and Impact*, Palgrave Studies in European Union Politics, 2010, <https://www.researchgate.net/publication/254252116> The European Neighbourhood Policy in Perspective Context Implementation and Impact

On March 2003, in the Communication “Wider Europe – Neighborhood: A new Framework for relations with our Eastern and Southern Neighbors” the European Commission set the principles and the scope of work, giving the definition of what would be the new policy for the neighborhood and at the same time the geographic area, within the new policy would have been imposed²⁹.

In this Communication it was imported **the principle of differentiation**, by clarifying that the new policy weren’t concerned the countries with a perspective for membership³⁰. With this strict differentiation, all the other states, in Eastern Europe (Moldova, Ukraine and Belarus) and the ones in the Southern and Eastern Mediterranean, as well as Russia, were considered as potential parts of **flexible bilateral relations**, varied from Partnership and Cooperation Agreements (with Armenia and Moldova) to Association Agreements (with Egypt, Morocco and Tunisia) based on different criteria every time³¹.

In 2003 the **European Neighborhood Policy (ENP)** was established as one more instrument of the European Union’s foreign policy but it mainly developed during 2004. It was founded in the aftermath of the EU’s enlargement, when the new member states from Central and Eastern Europe were incorporated into EU, and afterwards its borders had changed. Under these new conditions, EU set as a target to avoid creating new separating lines with its new neighbors. So its purpose was to minimize the distance and contribute to the stimulation of their prosperity, stability and security³².

²⁹ Commission of the European Communities (2004), “*Communication from the Commission, European Neighbourhood Policy: Strategy Paper*” COM(2004) 373 final, Brussels, 12 May 2004, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2004_communication_from_the_commission_-_european_neighbourhood_policy_-_strategy_paper.pdf

³⁰ Turkey, Romania, Bulgaria and the countries of the Western Balkans

³¹ KHADER Bichara, *ibid*

³² European Union External Action “*European Neighborhood Policy (ENP)*” February 14, 2019 https://eeas.europa.eu/diplomatic-network/european-neighbourhood-policy-enp_en

2. **European Neighborhood Policy (ENP)**

ENP, as an instrument of foreign policy, theoretically, is based on the fundamental principles of **democracy, law of order and human rights** and its purpose is the same with the EU's prospect of expansion, which means that, the more peace, democracy and economic development is prevailed, the largest of stability and security can be achieved. In that sense, ENP constitutes the EU's new approach to the wider community of bordering states and simultaneously it is a new kind of foreign policy, since it aims to the stability and integration of its neighbors.

So, by recognizing that “there is a gap between the EU's economic weight and its political clout”, ENP, on the one hand, pursues the stability, security and prosperity outside its borders, through regional partnerships and on the other hand it offers privileged relations in return of their commitment to the common values. The basic motive behind these partnerships is to achieve further cohesion and harmonization in the bordering region as well as to maintain EU's stability and security and at the same time to expand its political and economic influence³³.

The ENP concerns most of the countries close to the eastern borders of Europe and South Caucasus as well as the countries in the Mediterranean. These countries are mostly Azerbaijan, Egypt, Algeria, Armenia, Georgia, Israel, Jordan, Belarus, Lebanon, Libya, Moldova, Morocco, Ukraine, Syria, Tunisia and Palestine. It does not include neither the countries of EFTA (European Free Trade Association³⁴) nor the ones of EEA (European Economic Area³⁵) as well as nor the candidate states for membership, as it is mentioned above.

2.a ENP's directions : Eastern Partnership and Euro-Mediterranean Partnership

³³ EUR-Lex, “52004DC0626 Communication from the Commission to the Council and the European Parliament On the Instruments for External Assistance under the Future Financial Perspective 2007-2013/*COM/2004/0626 final*/” <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52004DC0626&from=en>

³⁴ Switzerland, Island, Liechtenstein and Norway

³⁵ Iceland, Liechtenstein and Norway

ENP is planned towards two directions by taking proportionate initiatives. One of these is the agreement of the **Eastern Partnership**³⁶, which was commenced in 2009 by EU, EU member states individually and six Eastern European and South Caucasus countries³⁷. The approaching among EU and these countries is lean on the **Partnership and Cooperation Agreements**, which provide the basis for constructive relations on a bilateral level.

The other one is the **Euro-Mediterranean Partnership** (EMP), which was already set up in 1995, on the basis of reinforcing the relations among EU and the countries in the Mediterranean, as well as the countries in the region of Mashreq and Maghreb³⁸. Apart from Libya and Syria, EU and each one of these countries have already reached and signed bilaterally many **Association Agreements**, which provide a framework for further cooperation on various sections.

But the dramatic changes in the Middle East, the terroristic attacks in Madrid (2004) and in London (2005), the rejection and the refusal of having relations with the elected Hama's in Gaza in Palestine (2006), the war between Israelis and Hezbollah in South Lebanon (2006), alongside with the unresolved issues in Cyprus, which, if anything, is a member-state of EU and the Western Sahara, highlighted that EU, as an entity, did not have the will, neither the means, nor the capacity to be a crucial factor in diplomacy by finding solutions. Consequently, the ENP, in spite of its declared purposes, resulted to a failure.

Furthermore, EU tried to separate its attitude from the “muscular American diplomacy” and the USA’s “war against terror” and “crusade of good against evil” keeping towards its neighbor Arab countries a more gentle approach. But, this gentleness transformed very fast to unequal behavior towards its Arab neighbors, making EU an unreliable player, since it blamed Syria for the occupation of Lebanon

³⁶ European Council - Council of the European Union “*Eastern Partnership – What is the Eastern Partnership*”, last reviewed 21.11.2018, <https://www.consilium.europa.eu/en/policies/eastern-partnership/>

³⁷ Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine

³⁸ The EU’s neighbor relations with Russia are not a section of ENP, although this country is neighbored with Finland. The approaching and the relationship with Russia are based on an agreement, so called **Partnership and Cooperation Agreement** (PCA), which now is on ice.

until 2005 but not Israel for the occupation of Palestinian territories, it rejected the democratically elected Hamas in Gaza (2006) and had no real reaction for the war of Hezbollah against Israel (2006)³⁹.

2.b. Union for the Mediterranean (UfM)

In 2008 French President Nicolas Sarkozy, during the French Presidency of the EU, presented the initiative for establishing the **Union for the Mediterranean**, which finally resulted to the practically erosion of ENP. This approach concerned mainly priorities on technical and economic issues, such as energy, infrastructures, transportation and enterprises development, rather than political ones, downgrading in this way the importance of EU's foreign policy, from political integration to technical transactions⁴⁰.

2.c. Continuing of ENP - Euro-Mediterranean Association Agreements (EMAA's)

Despite ENP's failure the Euro-Mediterranean Association Agreements" (EMAA's), which were bilateral agreements, having been established initially on the framework of Barcelona Declaration and after that, on the framework of EMP, are still in force.

The EMAA's, substantially, are comprehensive bilateral treaties, preserving the purposes of EMP and apart from trade between EU and the contacted states, they deal with many other issues, like regular political dialogue, justice and home affairs, social and cultural cooperation, human rights and democracy clauses. Their main purpose is the trade of the industrial goods and at the same time the connected fields (intellectual property rights, public procurement, etc.) are established through additional protocols⁴¹.

³⁹KHADER Bichara, *ibid*

⁴⁰ Serida L. Catalano & Paolo R. Graziano, "Europeanization as a Democratization Tool? The Case of Morocco", *Mediterranean Politics*, October 2016, VOL . 21, NO . 3, 364–386, <http://dx.doi.org/10.1080/13629395.2015.1129778> with references to Federicka Bicchi, F. (2011) "The union for the Mediterranean, or the changing context of Euro-Mediterranean relations", *Mediterranean Politics*, 16(1), pp. 3–19.

⁴¹ Michael Ovadek, Jan Wouters, *ibid*, with references to Lorand Bartels, *Human Rights Conditionality in the EU's International Agreements* (Oxford University Press 2005); Barbara Brandtner and Allan Rosas, 'Trade preferences and human rights' in Philip Alston, Mara Bustelo and James Heenan (eds), *The EU and Human Rights* (Oxford University Press 1999).

Furthermore, the differentiation in bilateral cooperation with the Southern Mediterranean countries is imposed on the Association Agreements and by this point of view the ENP has been kept alive through them. In reality, the “Agreements on Conformity Assessment and Acceptance of Industrial Products” (‘ACAAs’), the Agreements on technology and science, aviation, fisheries, readmission and visa facilitation, agriculture and fisheries protocols, are often based on the legal framework of the EMAA’s despite the fact that most of them are separate treaties⁴².

Many EMAA’s are currently in force and they are very important since they are considered as the backbone of the bilateral relations between EU and southern Mediterranean countries. All of them predict the foundation of association councils and committees, which, in reality, are the base for the institutionalization of political dialogue, which, in its turn, is not limited to the meetings of the association councils – between the EU and third countries. Furthermore these councils and committees can reach to crucial decisions about the objectives of EMAA’s⁴³.

But the most important element in these Agreements is not only the prediction for respect for democratic principles and human rights, but mainly the **imposing at the same time clauses, as a basis for suspension of the agreements**. This inclusion of these clauses is very crucial, since it imposes the respect for democracy and human rights as an integral part of the agreements.

Additionally, the degree and the level of differentiation varies among the EMAA’s since every such an Agreement is the result of bilateral negotiations between the EU and every country individually and moreover they reflect the particularities and the sensitivities of this country’s political and socio – economic conditions. But these differences are usually retreated or vanished in front of the objectives and the purposes of EMAA’s.

2.d. 2011 Arab Spring

⁴² Michael Ovadek, Jan Wouters, *ibid*,

⁴³ Michael Ovadek, Jan Wouters, *ibid*,

With the term of Arab Spring it is defined the phenomenon of the political turbulences and uprisings in the countries of MENA. It started all of a sudden during the last days of December 2010 in Tunisia, it had been transmitted and propagated in the other countries within a few weeks and resulted either to collapse of the regimes (Tunisia), or to changing the regimes (Egypt), or to political reforms (Jordan and Morocco) or to civil wars (Syria and Libya).

Getting over its initial surprise and despite its diffidence, the European Commission, in an attempt to deal with the new conditions in the region, on March 2011 proposed the **“Communication on the Southern Mediterranean : A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean” (PDSP)**⁴⁴, and two months later the Joint Communication **“A New Response to a Changing Neighbourhood”**⁴⁵, on the basis that “now is the time for a qualitative step forward in the relations between EU and its Southern neighbors. This new approach should be rooted unambiguously in a joint commitment to common values. The demand for political participation, dignity, freedom and employment opportunities expressed in recent weeks can only be addressed through faster and more ambitious political and economic reforms”⁴⁶. By these communications it is declared **that EU “must not be a passive spectator**. It needs to support wholeheartedly the wish of the people in our neighborhood to enjoy the same freedoms that we take as our right”⁴⁷

⁴⁴ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions “ *A PARTNERSHIP FOR DEMOCRACY AND SHARED PROSPERITY WITH THE SOUTHERN MEDITERRANEAN*”, Brussels, 8.3.2011 COM(2011) 200 final, ile:///C:/Users/user/Downloads/com2011_200_en.pdf

⁴⁵ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions “*A new response to a changing Neighbourhood*”, Brussels, 25/05/2011 COM(2011) 303, https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_9_komsuluk_politikolari/A_review_of_Europe_an_Neighbourhood_Policy.pdf

⁴⁶ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions “ *A PARTNERSHIP FOR DEMOCRACY AND SHARED PROSPERITY WITH THE SOUTHERN MEDITERRANEAN*”, page 2, Brussels, 8.3.2011 COM(2011) 200 final, ile:///C:/Users/user/Downloads/com2011_200_en.pdf

⁴⁷ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions “*A new response to a changing Neighbourhood*”, Brussels, 25/05/2011 COM(2011) 303, https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_9_komsuluk_politikolari/A_review_of_Europe_an_Neighbourhood_Policy.pdf

Although ENP Action Plans remain the framework for the general cooperation⁴⁸, the PDSP is based on three pillars: “democratic transformation and institution building, a stronger partnership with the people, with specific emphasis on support to civil society and inclusive growth and economic development”, providing a differentiated approach on ““more for more” basis, that is : more money, more market access and more mobility⁴⁹ .

2.e. Results of ENP

Since 2003, when the ENP was established as an instrument of EU’s foreign policy – and as far as it concerns the Southern Mediterranean countries continued the Barcelona Process - its objectives had obviously two parallel targets, defining from then and after the EU’s future relations with its neighbors: the “ring of friends” and “all but the institutions”⁵⁰ .

By “the ring of friends” it was meant the creation of an embankment, consisted of prosperous, democratic and well-governed countries, neighboring with EU. To the materialization of this target, EU was willing to provide financial, technical and political assistance, as well as unlimited access to the European Market for their products. The substance of this approach was that the neighbor countries would have all the privileges of the member states but not participating in the “decision process”. In fact, it was an “inside-out policy” intending to protect EU by keeping away from its borders political or socio-economic instabilities and risks. And the mean to fulfill this purpose was commitments and pressure.

But the core of ENP was the common consensus that the authoritarian regimes in the countries of MENA were the problem and not the solution to instability⁵¹ . So it was to

⁴⁸ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions “*A new response to a changing Neighbourhood*”, Brussels, 25/05/2011 COM(2011) 303, page 18, https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_9_komsuluk_politikalari/A_review_of_Europe_an_Neighbourhood_Policy.pdf

⁴⁹ Serida L. Catalano & Paolo R. Graziano, *ibid*

⁵⁰ KHADER Bichara, *ibid*

⁵¹ KHADER Bichara, *ibid*

the European interests to press the regimes of these countries for democratic reforms and to impose civil society organizations as social factors · disregarding at the same time the consequences upon the attitude of the wider region populations against the USA and their European allies' invasion in Iraq.

Alongside, it is completely irrational to expect from the authoritarian regimes to give up or to limit their powers so easily by “democratizing” their countries. That would mean their political suicide⁵². Nevertheless, some of the regimes, with the prospect of the financial assistance from EU and the trade agreements for their products, imposed their own “organizations for democracy and human rights” or “labor unions”, which superficially had a kind of power, but under the surface they were manipulated by the regimes, proving at the same time to the Europeans that they had fulfilled the target for “institutions. The supporters of real reforms, Islamists, liberalists, secularists, leftists, were in prison⁵³.

Despite this obvious dissimulation EU continued to establish trade agreements with the regimes in these countries, providing to them at the same time financial support, disregarding their authoritarian policies and underestimating the increasing of the Islamic movements. It is paradox but despite the lack of progress in the democratic reforms, not even one trade agreement had been cancelled, postponed or inhibited.

This is exactly the case of Morocco.

⁵² KHADER Bichara, *ibid*, with references to R. Youngs, “*Europe’s Uncertain Pursuit of Middle East Reform?*”, Carnegie Papers, No. 45, June 2004.

⁵³ KHADER Bichara, *ibid*

PART II

EU-Morocco Bilateral Relationship

1. Evolution of EU-Morocco relationship

As far as it is concerned the bilateral relations, Morocco is considered as the most integrated of the MENA countries, with a “strong desire” to participate in the European structures. The first trade agreement between Morocco and (then) EC was established in 1969. And, in 1987, Morocco applied for full membership, but its request was rejected since it was not a “European State”,⁵⁴.

Moreover, these bilateral relations had been deepened after the establishing of the Euro-Mediterranean Partnership (EMP) in 1995, since the approach in the EU’s bilateral relations was based on the consensus that socio-political and economic issues should be confronted together in order to attained economic and human development.

⁵⁴ Michael Ovadek, Jan Wouters, *ibid*

2. EU-Morocco relations inside the framework of ENP

As it is mentioned above, the framework of EMP proved flexible enough, though all the association agreements contained the clause that states should respect the democratic principles and human rights, the EU had never activated the consequences of this clause⁵⁵. In the next 10 years (1995–2006) Morocco received more than €1.6 billion without making any substantial steps towards democracy and without activating any clause against it⁵⁶.

2.a. EU–Morocco Association Agreement,

In 1996, it was signed the **EU–Morocco Association Agreement**, which entered into force in 2000, substituting the previous Co-operation Agreement (signed in 1976). The significant point in this agreement, apart from the prediction about the liberalization of trade, there was also referred, as an “*essential element*” the “Respect for the democratic principles and fundamental human rights”

2.b EU–Morocco Action Plan (EMAP)

Under the ENP, Morocco had been transformed into a privileged partner. On July 2005 it was established the **EU–Morocco Action Plan (EMAP)**, deepening the association agreement and aiming to collimate Morocco’s economy and its social structures, as well as legislation, regulations and standards with the ones of EU “offering a stake in the EU’s internal market”⁵⁷.

To this Action Plan nine “priority actions” were established, which “reflected the Moroccan Governments priorities”, among which were “pursuing legislative reform and applying international human rights provisions, cooperation on social policy with the aim of reducing poverty and vulnerability and creating jobs” alongside with the “enhanced political dialogue on the Common Foreign and Security Policy and

⁵⁵ Furthermore, on this framework there were based the Accompanying Measures Regulation (MEDA, MEDA I in 1996 and MEDA II in 2000)

⁵⁶ Serida L. Catalano & Paolo R. Graziano, *ibid*

⁵⁷ EU/MOROCCO ACTION PLAN, <https://library.euneighbours.eu/content/eu-morocco-enp-action-plan>

enhanced cooperation on combating terrorism” and additionally “effective management of migration flows, including the signing of a readmission agreement”.

2.c. Advanced status

In 2007 Morocco and EU decided to reinforce their bilateral relationship and Morocco asked in return an **“advanced status”**. Despite the fact that in 2008 EU Commission’s report about reforms concerned “democracy and human rights are not ambitious”⁵⁸, Morocco finally took in the same year⁵⁹ the “advanced status” and became the first Mediterranean country with this kind of status.

Through this, EU rewarded Morocco for its reforms in the previous ten years, which in reality were nonexistent but hypothetically harmonized to the framework of ENP and at the same time it passed the message to the other Mediterranean countries that conformation with the framework of ENP is paid back with deeper integration into European political and economic space⁶⁰.

In fact the “advanced status” was a kind of pointless gift, since the ENP, continuing the Barcelona Process was almost an empty shell, having been already at that time eroded by the Union for the Mediterranean (UfM), the approach of which was more pragmatic⁶¹. In that point, it didn’t add much, repeating once again the main objectives of the previous agreements. But through it, several tools were introduced to reinforce convergence, such as twinning between European and Moroccan authorities and financial supporting of €180 million for the development of a “National Plan of Convergence” to help Morocco to obtain access to the EU internal market⁶².

2.d. 2011 – After the Arab Spring – Mobility Partnership

⁵⁸ European Commission, “*Morocco: Progress Report on the Implementation of the ENP (2008)*” (= Si les réformes en matière de démocratie et des droits de l’homme restent relativement peu ambitieuses”) Bruxelles, le 23/04/2009 SEC(2009) 520/2, page 2, https://library.euneighbours.eu/sites/default/files/sec09_520_fr.pdf

⁵⁹ Jordan took the “advanced status” in 2010.

⁶⁰ Ivan Martin, *ibid*

⁶¹ Serida L. Catalano & Paolo R. Graziano, *ibid*

⁶² Serida L. Catalano & Paolo R. Graziano, *ibid*

In 2011, as it was mentioned above, after the turmoil of the Arab Spring, EU in an attempt to deal with the new conditions in the region, published the two communications (The Partnership for Democracy and Shared Prosperity with the Southern Mediterranean (PDSP) and the “New Response to a Changing Neighborhood”) within the remaining and revival ENP’s framework.

Morocco, confronted the uprisings by imposing a new Constitution, which superficially incorporated the democratic principles and at the same time continued to enjoy support of EU · between 2011-2013 this support is fulfilled into over €580 million, plus an additional amount of €128 million under the spring program.

But the most important evolution in relations with Morocco is the **Mobility Partnership**, which was agreed on June 2013, being the basis for negotiations on a visa facilitation agreement, alongside with a readmission agreement, both which are concluded in the security objectives of EU.

Additionally, a new fisheries agreement was signed on November 2013 and in parallel there were negotiations for a **Deep and Comprehensive Free Trade Agreement (DCFTA)**⁶³.

2.e. New Action Plan (2013 – 2017)

The next month (December 2013) it was established the EU-Morocco (new) Action Plan (2013-2017) which extended for one year the decision for the “implementing of the advanced status”⁶⁴. It put emphasis on the priority objectives of the EU-Morocco special partnership, by putting “the advanced status on an operational footing” and “bringing Moroccan legislation into line with the Community acquis”⁶⁵ underlined one more time the need for respect to the democratic principles and human rights, as far as it concerned the 2011 Moroccan constitution.

⁶³ “Accord de libre-échange complet et approfondi” - ALECA.

⁶⁴ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Proposal for a Council Decision, Brussels, 22.6.2018 JOIN(2018) 19 final, <https://eur-lex.europa.eu/resource.html> and <https://eur-lex.europa.eu/legal-content/EN/TXT/>

⁶⁵ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Proposal for a Council Decision, Brussels, 17.4.2013 JOIN(2013) 6 final, Annex, page 9, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/>

BUT, despite the provisions, the commitments and the clauses for respect for democratic principles and human rights, Morocco, made no substantial progress in these fields, which is very clear as far as it concerns the Constitution of 2011 and the issue of Western Sahara.

3. Constitutional reforms of 2011

3.a. Constitutional Monarchy

Morocco declared its independence from France on March 1956 and from Spanish, later in the same year. The established system of government typically was **constitutional monarchy** BUT it predicted over-authorities to the King. Between 1961 and 1992⁶⁶ the constitutions imposed by the king recognized the central executive role of the monarch and at the same time it provided for a parliament, prime minister and independence for the judiciary⁶⁷.

In 1996 the king imposed constitutional amendments, which provided the re-founding of the bicameral legislature and extended the power of the parliament on issues about the budget, bills and investigations about ministers. Moreover they provided the creation of ad hoc commissions for questioning about the government's activities. It is obvious that these amendments were imposed under the influence of the Barcelona Process and the desire of the regime to earn financial and political support from EU.

3.b. Amir Al-Mouminine

It must be also referred that the monarch in Morocco, apart from the leader of the State, he is also the Commander of the Faithful (Amir Al Mouminine)⁶⁸ at the same time. That means that he is the guardian of the religion⁶⁹, since "Islam is the religious of the state"⁷⁰. Moreover, the king presides over the Superior Council of Ulemas⁷¹,

⁶⁶ The King imposed constitutions in 1961, 1969, 1972 and constitutional amendments in 1992.

⁶⁷ Mohamed Madani, Driss Maghraoui, Saloua Zerhouni, "*The 2011 Moroccan Constitution: A Critical Analysis*", IDEA, <https://www.idea.int/sites/default/files/publications/the-2011-moroccan-constitution-critical-analysis.pdf>

And Constitutional History of Morocco, IDEA, Constitutionnet, <http://constitutionnet.org/country/morocco>

⁶⁸ article 41 of the Morocco's Constitution of 2011, Translated by Jefri J. Ruchti, English Translation 2012 by William S. Hein & Co., https://www.constituteproject.org/constitution/Morocco_2011.pdf

⁶⁹ The title of Amir Al-Muminine (the Commander of the Faithful) was introduced for the first time in the constitution of 1962 by King Hassan II, establishing an official and controlled Moroccan Islamic Model.

⁷⁰ In general terms Moroccans support Sufism, Maraboutism and Samaa (=Happy Islam, an Islam of Joy). Furthermore Moroccan Islam is considered as modern, which rejects clearly extreme Salafism and Jihadism - Abdellatif Hissouf, "*The Moroccan Monarchy and the Islam orientated PJD : Pragmatic Cohabitation and the Need for Islamic Political Secularism*", All AzimuthV5, N1, January

which studies questions and gives answers related to Islamic law (Fatwas). The King also “guarantees the free exercise” of all religions, not just Islam⁷².

3.c. Constitution of 2011

On February 2011, during the Arab Spring, political protests had been spread in 53 cities and towns all over the country (20th February movement), demanding political, economic, constitutional reforms and better social services, having been encouraged by the collapse of the regimes in Tunisia and Egypt.

The King, in an attempt to deal with the dissatisfaction of the people, deputed a commission of experts, which would have cooperated with political parties, unions and organizations for human rights, in order to redact a (new) constitution. BUT the role of these social factors had been limited in recommendations without substantial participation. Finally the new constitution had been approved by a referendum on July 2011⁷³.

With the new constitution the king maintains all his over-authorities, predicted in the previous constitutions. The only substantial reforms are a) that the polity is defined also as “parliamentary monarchy” apart from constitutional and b) that the prime minister is not any more appointed by the king, who decided by himself with his own discretionary⁷⁴ but he has to announce as prime minister the leader of the political party which won the most seats in the Parliament through elections.

3.d. Head of Government - Disagreements

The most questionable issue in the previous constitutions of Morocco, which still produce disagreements, since substantially hadn't been changed, is the role of the king as the Head of the Government. That means that all the powers (executive, legislative and judiciary) are concentrated in the monarch and exercised by him. He is the leader

2016, 43-56 <https://dergipark.org.tr/tr/download/article-file/147476> with references to Mohammed Tozy “La restructuration du champ religieux marocain, entretien avec Mohamed Tozy” Infos Sesame January 2007.

⁷¹ article 41 of the Morocco's Constitution of 2011, ibid

⁷² article 3 of the Morocco's Constitution of 2011, ibid

⁷³ Constitutional History of Morocco, ibid

⁷⁴ The same prediction was in the Greek Constitution of 1952 and in the 1960's it was said (as political joke) that the king could appoint as prime minister even his own gardener

of every branch of power. And he is not a typical one but his role is substantial since he presides over all the corps with decisive / significant opinion or approval.

Specifically, in the Constitution of 2011, are still predicted without any change from the previous constitutions:

I) As for the executive branch

The monarch is the head of all the governmental bodies with decisive, uncontrolled competence. He is in charge of the section of domestic and international relations. He is the one who presides over the Council of Ministers (not the Prime Minister), which is a governmental body with powers of declaring war, giving amnesty, and imposing a state of emergency, meeting at the request of the king. The King appoints the Prime Minister (who is the leader of political party which won the most seats in the Parliament) and the other ministers, and he has the power to dismiss the government as a whole or any of its members. He is also the Commander-in-Chief of the Armed Forces of Morocco and he presides over the Superior Security Council. The King has also the power to seal treaties, accept ambassadors and approve nominations for government posts submitted by the Government.

II) As for the Legislative branch

The Parliament is divided into two bodies: the Chamber of Representatives and the Chamber of Councilors⁷⁵. The Members of the Chamber of Representatives are elected by direct vote but the ones of the Chamber of Advisors may not. The authorities of each body are strictly defined.

The role of the king is very crucial since he “can dissolve, by Dahir (=royal decree), both Chambers of the Parliament or one of them, within the conditions” provided the constitution⁷⁶. Practically, this means that the monarch has the authority to dissolve the Parliament if one of the bodies vote for a law he doesn’t approve. This potentiality is completely uncontrolled since the monarch is only obliged to accept advice by the President of the Constitutional Court and there are no safety valves against his possible malpractice.

⁷⁵ article 60 of the Morocco’s Constitution of 2011, *ibid*

⁷⁶ article 51 of the Morocco’s Constitution of 2011, *ibid*

III) As for the Judicial branch

The king presides over the Superior Council of the Judicial Power⁷⁷, whose independence is guaranteed by the monarch himself⁷⁸, five members of which appointed by the king⁷⁹.

Furthermore, it is predicted the Constitutional Court⁸⁰ which has the competence to answer about constitutionality matters, interpreting the articles of the constitution⁸¹, whose half of the members are appointed by the King. The other half are elected by the two bodies of Parliament⁸².

In addition, every organic law must be presented to the Court – practically to the king - before promulgation.

3.e. Constitutional Autocracy

The constitution of 2011 repeats, once again, the predictions of the previous constitutions about the role of the monarch. The king is still everything, since he has unlimited and uncontrolled over-authorities, he presides over the Cabinet, he controls judiciary and military, he can dissolve the Parliament any time he wants, he is the commander of the faith and he has decisive authority about religious matters. In article 4, is repeated “the motto of the Kingdom is Dieu, La Patrie, Le Roi”. The Moroccan people are absent.

It is obvious that in the constitution of 2011 – with the exception of the amendment, according to which the king appoint as Prime Minister the leader of the political party, which won the most seats in Parliament through elections – have not been incorporated any kind of democratic principles. The over-concentration of powers - executive, legislative and judicial - on the monarch hadn't been abolished and the division of the powers is very superficial and very limited. In that sense Moroccan polity, as it was established by the previous constitutions and still is, by this one, can be defined only as **constitutional autocracy** without democratic principles at all.

⁷⁷ article 56, of the Morocco's Constitution of 2011, *ibid*

⁷⁸ article 107 of the Morocco's Constitution of 2011, *ibid*

⁷⁹ article 115 of the Morocco's Constitution of 2011, *ibid*

⁸⁰ article 129 of the Morocco's Constitution of 2011, *ibid*

⁸¹ article 132 of the Morocco's Constitution of 2011, *ibid*

⁸² article 130 of the Morocco's Constitution of 2011, *ibid*

3.f EU's reaction

It is obvious that the democratic principles and the rule of law – as an essential element of ENP's framework - had been totally ignored by Morocco - or to be more accurate – had been distorted. The fact that all the powers – executive, legislative and judicial - are controlled by the king, who has unlimited and decisive authority – has not common field with the European democratic acquis. The exercise of the powers by the three branches, as organizational basis/structure of the state⁸³, is provided only superficially, since the monarch has full and decisive control upon every branch, which can get to the point to dissolve the Parliament if one of the bodies vote for a law he doesn't approve.

But, on behalf of EU, there was not any kind of reaction, concerning these constitutional amendments. It was obvious, that they took place under the pressure of the turmoil of the Arab Spring and the consequent regime's fear for a potential collapse (like Tunisia and Egypt). And they were that kind of reforms, which were necessary in order the king to maintain his powers and satisfy – only superficially – the demands for democratic changes⁸⁴. In any case, they can't be considered as the result of the (any by chance) pressure of EU, neither the consequence of negotiations inside the framework of ENP, since up to 2011 there were not any penalties and not even one association agreement had been postponed or cancelled.

More than that, EU considered these constitutional reforms as a front step to the modernization and democratization of Morocco⁸⁵ – as “a clear commitment to democracy”⁸⁶. So it is interested only for the procedure of the new constitution's

⁸³ Antonis Manitakis “The division of the powers as organizational basis of the state and political principle”, Club Aristovoulos Manesis, 2017, <https://www.constitutionalism.gr/2002-i-diakrisi-twn-exoysiwn-ws-organwtiki-basi-toy-kra/>

⁸⁴ Driss Maghraoui “Constitutional Reforms in Morocco : between consensus and subaltern politics”, in “The Journal of North Africa Studies”, volume 16, issue 4, December 2011, pages 679-700 and in “North Africa's Arab Spring” by George Joffé, 2013, chapter 10, page 175, <https://books.google.gr/books?h>

Francesco Biagi, “The 2011 Constitutional Reforms in Morocco : more flaws than merits”, Archive of European Integration, <https://books.google.gr/books?h> and Institute for European Studies, 2014, paper No 07/2014, page 12

⁸⁵ “On July 2011, Catherine Ashton characterized the constitutional reform as “a significant response to the legitimate aspirations of the Moroccan people” Ilyas Saliba, “Europe's Misguided Applause for Morocco's Reform Process” Open Democracy, August 18, 2016, <https://www.opendemocracy.net/en/north-africa-west-asia/europe-s-misguided-applause-for-morocco-s-reform-process/>

⁸⁶ Driss Maghraoui, *ibid*

implementation⁸⁷ and mainly on the organic laws, criticizing only the delay (during the first two years after the amendments only five organic laws were voted out of the nineteen to be adopted for the effective implementation and five were being finalized⁸⁸) alongside with the possibility of making ‘disproportionate use of force’ by the government, since the regime still has the power to prevent a demonstration, if it judges that an event is potentially going to unsettle the public security.

⁸⁷ Joana Apap, “Morocco’s New Political Landscape”, European Parliament Think Tank, updated version November 2016,
[http://www.europarl.europa.eu/RegData/etudes/ATAG/2017/599424/EPRS_ATA\(2017\)599424_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2017/599424/EPRS_ATA(2017)599424_EN.pdf)

⁸⁸ “Sur les 19 lois organiques qui doivent être adoptées pour la mise en œuvre effective de la nouvelle Constitution, au total cinq ont été votées, et cinq sont en cours de finalization” European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Proposal for a Council Decision, Brussels, Joint working document of the services. Implementation of the European Neighbourhood Policy in Morocco. Progresses realized in 2013 actions to follow, Bruxelles: SWD (2014) 94 final, 27 March 2014, page 4

4. The issue of WESTERN SAHARA

4.a. Illegal annexation by Morocco

Initially, the region of Western Sahara was a Spanish Colony until 1975. In 1963 it had been concluded in the **United Nations'** list of the non-autonomous areas⁸⁹. In 1973 it was founded the national-liberative movement of "Frente Popular de Liberacion de Saguia el-Hamra y Rio del Oro / Polisario Front", also known as Polisario. In 1974, Morocco claimed parts of the territory of Western Sahara invoking that there were "close ties" among the populations of the area⁹⁰.

At the same time, the United Nations' General Assembly asked for an Advisory Opinion from the International Court of Hague, which judged and made clear two things: a) that the principle of effectiveness is in power for the local leaders and not for Morocco, since they had historical titles for the area and it was not a terra nullius before the colonialism era, since there were local leaders of the independent tribes in the region of the coastline and the Spanish colonialism was based on an agreement with them, and b) that there was not any territorial sovereignty connection among Morocco and Mauritania on the one side and Western Sahara on the other, taking into consideration the political, military, religious and/or economic ties between the two countries (Morocco and Mauritania) and the indigenous people. So it had to be imposed the principle of self-determination⁹¹.

⁸⁹ Within the frame of the "*Declaration on the Granting of Independence to Colonial Countries and Peoples*" Adopted by General Assembly resolution 1514 (XV) of 14 December 1960, The United Nations and Decolonization, Main Documents, <https://www.un.org/en/decolonization/declaration.shtml>

⁹⁰ Stefania Nikitara "*The Controversial Area of Western Sahara: An Endless Conflict*", PowerPolitics, January 24, 2017, <https://powerpolitics.eu/η-διαφιλονικούμενη-περιοχή-της-δυτικ/> with references to New York City Bar Association "The Legal Issues Involved in the Western Sahara Dispute" 2012. <https://www2.nycbar.org/pdf/report/uploads/20072264-WesternSaharaDispute-SelfDeterminationMoroccosLegalClaims.pdf>(accessed 22 January 2017)

⁹¹ Stefania Nikitara, *ibid* with references to Emmanouel Roukounas, International Public Law, 2011

territory. During the next ten years, Morocco, despite the help from France and United States haven't managed to win the Polisario.

4.b. The Wall

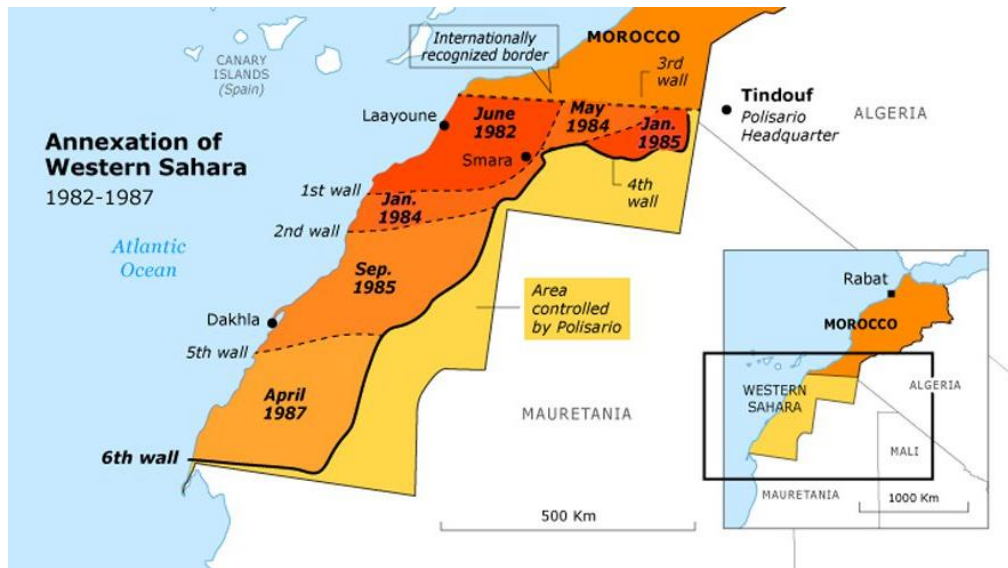
Because of the conflicts that the Moroccan army had to confront by the Polisario and because of the big loses in the battle field in men and armory, King Hassan II ordered to be built an enormous chain of defensive walls in the desert, in order to avoid the attacks by the Saharawi fighters. The building of the Berm lasted for seven years, in six phases and during each phase the Moroccan army extended its occupied territory. From August 1980 to April 1987 six walls had been built, in different sizes, reaching to 2.720 Km⁹⁴, spread from South Morocco to Southwest End of Western Sahara.



Source : wallofsand.org

This wall is now considered as the biggest active military wall in the world and is protected by forts, barbed wire fences, thousands of anti-personnel mines and 160.000 Moroccan soldiers.

⁹⁴ Anna Murphy, *ibid*



Source : Sahara Overland, <https://sahara-overland.com/western-sahara/>

The consequences of the wall are a) political, since Morocco uses it as an instrument to create an accomplished fact, b) economic, since Moroccan economy is depending more and more on the phosphates from Western Sahara, so the wall allows the pillage of the mines, and c) environmental, since the wall causes serious changes in the surface of the land, leading to its desertification⁹⁵.

4.c. MINURSO

In 1988 the United Nations suggested a plan-proposal, which had been accepted by both sides – Morocco and Polisario. According to than plan, it was predicted the cease of fire, a transition period and finally a referendum so the Sahrawi to decide either the independence or the integration in Morocco. In 1991 the Security Council of UN approved the creation of a mission, **MINURSO**, which would have supervised the process of the referendum⁹⁶.

BUT the two sides disagreed about the catalogues and the identification of the voters, so the procedure delayed about four years. In 1997, a mediator was appointed for the

⁹⁵ International Campaign Against The Wall of the Moroccan Occupation in Western Sahara “*Remove The Wall*”, <http://removethewall.org>, accessed September 2019.

⁹⁶ Daniel Samet, “*The Western Sahara Dispute Drags on after 27 years in Limbo*”, January 9, 2019, Freedom House, <https://freedomhouse.org/blog/western-sahara-dispute-drags-after-27-years-limbo>

negotiations. In 2001 the mediator prepared and suggested a Framework Agreement, which predicted a 5year period with autonomy for the Saharawi in the economy, education, local administration, public services, water supplies and electricity. After that period the Saharawi would have the opportunity to choose their regime by a referendum. In 2002 the Security Council adopted a political solution, by the 1429 Resolution. In 2003 Morocco suggested its plan “Draft Autonomy Status”, which provided that Western Sahara is Moroccan territory with a status of autonomy⁹⁷.

Unfortunately, in 2003, the international correlations had already changed and, Morocco was already considered as an ally to United States in their war against terror. Additionally, European Union continued to sign EMAA’s or renew the protocols with Morocco, ignoring completely the status quo of the occupation and disregarding the fact that many of the products concerning the EMAA’s, were originated in the occupied territory of Western Sahara (e.t. fishery)

TODAY the mission of MINURSO is still alive but its effectiveness is questionable.

4.d. Natural Resources of Western Sahara

The reason for this illegal occupation from Morocco is not only the “legal ties” with the territory, which claims Morocco. The area of Western Sahara is very rich in natural resources since it has a coastline of 1000 miles, the Canary Current Large Marine Ecosystem, which is the richest coastal area in Africa in fishery⁹⁸. The products of fishery from the occupied coastline are reached to a percentage of about 15% of the total Moroccan fishery products. Moreover, the area is very rich in

⁹⁷ Stefania Nikitara, *ibid*

Anna Theofilopoulou, “*The United Nations and Western Sahara - A Never-ending Affair*” United States Institute of Peace, Special Report 166, July 2006, <https://www.usip.org/sites/default/files/sr166.pdf>

⁹⁸ The Canary Current Large Marine Ecosystem on the coast of northwest Africa is the third most globally productive fishery. UNFAO, ‘*Protection of the Canary Current Large Marine Ecosystem*’ (undated), <http://www.canarycurrent.org/resources/publications> (accessed December 1, 2014).

phosphates, a mineral product necessary to the agriculture. In addition, there are attempts of drilling for searching petroleum⁹⁹.

In the table 1, it is appeared the value of Western Sahara’s natural resources during the last 40 years. It is more than obvious that the profits of the exploitation have been contributed to the Moroccan economy decisively.

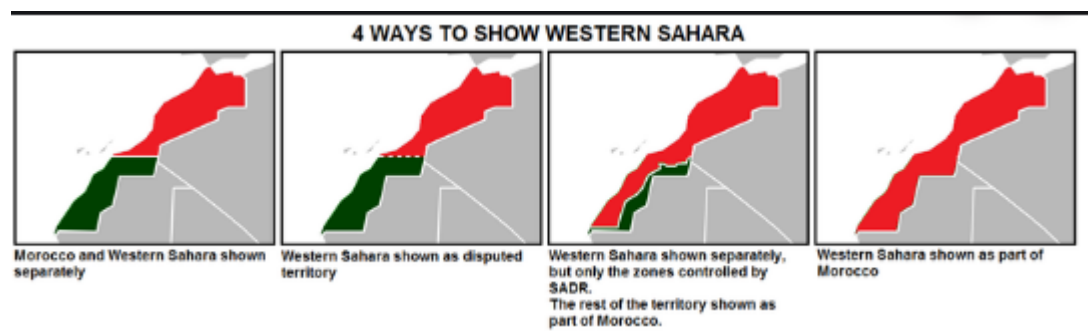
Table 1. Value of natural resources exported from Western Sahara, 1976–2015

Resource	Present value at 1 October 2015
Fishery	\$1.34 billion
Phosphate rock	\$4.27 billion
Petroleum	\$0 (single well production December 2014–March 2015)
Other	\$40 million(estimated: sand and salt, excluding agricultural products)
Total	\$5.65 billion

Source : Jeffrey J. Smith, “The taking of the Sahara: the role of natural resources in the continuing occupation of Western Sahara”, Global Change, Peace & Security,

4.e EU’s attitude towards Western Sahara

If somebody searches for the map of Morocco, he will see the map of Morocco and Western Sahara together as a whole, just divided with a dashed line. There is not any other mark to show that these are two different countries, and the first one (Morocco) has occupied the territory of the second (Western Sahara).



Source : wikiwand.com

⁹⁹ Jeffrey J. Smith, “*The taking of the Sahara: the role of natural resources in the continuing occupation of Western Sahara*”, Global Change, Peace & Security, 14 Sep 2015, Research Gate. file:///C:/Users/user/Downloads/GlobalChangePeaceSecurity-October2015-SmithWSOriginalcopy%20(1).pdf

Taking into consideration how much strong was the reaction of EU against Russia for the Crimea's annexation, it is obvious that, as far as it concerns the Western Sahara's annexation by Morocco, EU's approach is not only different but hypocritical. For 45 years EU has connived to the illegal occupation and ignored intensively the pillage of Saharawi's natural resources by Morocco. Not only this, but EU have established with Morocco many trade agreements, where the products come from the occupied territory of Western Sahara.

Against this attitude from EU, Polisario, in an attempt to claim Saharawi's rights, brought five actions against the EU Council before the Court of Justice of the European Union. The EU Court rejected the four of them for (typical) reasons¹⁰⁰, since Polisario was not a contacted part in the Agreements between EU and Morocco, but in the fifth decision it changed its point of view.

On February 27, 2018, the EU Court judged that **“the EU-Morocco Fisheries Partnership Agreement, cannot be applied to Western Sahara, as that territory does not fall under Moroccan “sovereignty or “jurisdiction”, and is not part of “Moroccan fishing zones”**¹⁰¹. It is the first time that there is an official recognition – though it is not a political one - through a Court Decision about the sovereignty of Western Sahara and furthermore its natural resources (fishing zones), since the term of “Moroccan Fishing zones” is used throughout the Agreement and its implementing Protocols, which now are indirectly delimited.

Two months later, on April 2018, the European Council authorized the Commission to start negotiations with Morocco for a new Fisheries Partnership Agreement with

¹⁰⁰ Case T-512/12 *Front Polisario* [2015] ECLI:EU:T:2015:953, Case C-104/16 P *Front Polisario* [2016] ECLI:EU:C:2016:973 and Case C-104/16 P *Front Polisario* [2016] ECLI:EU:C:2016:973, . <http://curia.europa.eu/juris/document/document.jsf>

¹⁰¹ Court of Justice of the European Union, Judgment in case C-266/16, Curia, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-02/cp180021en.pdf>

new Fisheries Protocols, with the provision of including Western Sahara. And on February 2019, the European Court reaffirmed that the "**Saharawi people are to be regarded as enjoying the right to self-determination and as being a “third party” to EU-Morocco relations**"¹⁰².

It is obvious that not only Morocco but also EU itself, until the above verdict issue, had no respect to the international law, to the democratic principles and to the sovereignty of Western Sahara¹⁰³. So, after 45 years, it was the EU Court and not the EU's political institutions which recognized the right to self-determination of the Saharawi people.

¹⁰² Western Sahara Resource Watch, Archive 2018, <https://wsrw.org/a249x4201>

¹⁰³ Vish Sakthivel, "*The EU, Morocco and the Western Sahara : a chance for justice*", June 10, 2016, European Council on Foreign Relations, https://www.ecfr.eu/article/commentary_the_eu_morocco_and_the_western_sahara_a_chance_for_justice_7041#

Conclusion

In the aftermath of its biggest enlargement in 2004, European Union established European Neighborhood Policy (ENP) as an instrument of its foreign policy towards its bordering states, founded on the principles of democracy, law of order and human rights. The declared targets of ENP were “the more peace, democracy and economic development can be prevailed the largest of stability and security can be achieved”.

ENP had two directions, the Eastern and the Euro-Mediterranean Partnership. The second one is concerning the countries of North Africa and it was substantially the continuing of the Barcelona Process – established in 1995 with the same principles – despite the fact that it was already considered a failure.

BUT, in the 2000’s the dramatic change in the international conditions (terroristic attacks, USA’s invasion in Afghanistan and Iraq), the EU’s unequal behavior towards Arabs and Israelis and the consequent suspicion of MENA countries alongside with the reluctancy to find solutions, resulted to ENP’s failure.

Nevertheless EU was continuing to establish association agreements with the countries of North Africa bilaterally, the EMAA’s, based upon the framework of ENP and at the same time on the principle of differentiation. These agreements, apart from merely trade, promoted also democracy, political dialogue, justice, human rights and predicted clauses. But not even one agreement has been cancelled, postponed or inhibited since the first priority of EU was not any more democratization process in the bordering states but its own stability and security. By this point of view, EU provided to the authoritarian regimes of the countries in North Africa either association agreements or enormous financial assistance in return of political stability and security.

This is the case of Morocco. Since 1995 EU, acting inside the framework of EMP and ENP, has supported significantly the Moroccan economy, providing to this country enormous financial assistance and establishing association agreements, concerning almost all the Moroccan products. Moreover, EU preferred to be blindfold as far as it

concerns the democratic principles, in order to be achieved political stability in its south borders, and particularly in a country, which controls the migrations flows from West Africa to Europe. In other words EU pretends that Morocco is on its way to democratization despite the failures and Morocco pretends that it is the closest partner of EU, inside the framework of ENP, deserving the “advanced status”.

In reality, the democratic principles have been ignored in many fields. Two of them, which are the point of this issue and have been analyzed above, are :

a) the constitutional amendments in 2011, which cannot be considered as democratic, since the over-concentration of powers to the king still remains and the monarch still controls every branch of them, apart from the fact that he is the head of the state and the leader of the faithful at the same time. Paradoxically, EU is interested only about the organic laws, concerning the implementation of the constitutional reforms and not for the constitution itself.

And

b) The illegal annexation of Western Sahara. For 45 years EU not only have disregarded the international law, preferring to ignore the Saharawi’s right to self-determination but mainly preferring to be blindfold in the establishing of the association agreements, which concerned products from the occupied territory. Finally, it was a judgment of the EU’s Court which recognized the Saharawi’s right to self-determination and not a decision of the EU’s political institutions.

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