

## The External Dimension of EU Justice and Home Affairs: Tools, Processes, Outcomes

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### Abstract

This working document offers a conceptual framework for understanding the processes underpinning the external dimension of EU Justice and Home Affairs (ED-JHA). Practically, it defines how the export of JHA principles and norms inform the geopolitical ambitions of the EU, i.e. the use of space for political purposes, or the control and management of people, objects and movement. The author begins by investigating how the ENP reconfigures the ED-JHA, and then goes on to discuss various conceptual stances on governance, specifically institutionalism, constructivism, and policy instruments. To conclude he traces the evolution of this external dimension, emphasising, whenever possible, its continuities and bifurcations. Overall, the aim is to ascertain the extent to which conceptual designs clarify or advance our knowledge of the contents and rationales of the ED-JHA.

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# THE EXTERNAL DIMENSION OF EU JUSTICE AND HOME AFFAIRS: TOOLS, PROCESSES, OUTCOMES

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## 1. Overview

The aim of this paper is simple: to define how the export of JHA principles and norms inform the geopolitical ambitions of the EU. By geopolitical, I refer broadly to the use of space for political purposes, that is, the control and management of people, objects and movement. As such, the paper is about 'governmentality', a concept I explain below. This paper is, in many ways, programmatic as the ENP is still in its infancy. Rather than reinventing the wheel by recounting the content of Action Plans on the Mediterranean and Eastern Europe, I offer conceptual resources for understanding the content and rationales of the external dimension of EU Justice and Home Affairs (ED-JHA).<sup>1</sup> This is not an easy fix, however, because the task is complicated by the fact that there is an extraordinary variety of approaches that are assumed, or claim to bear on the ED-JHA (compare Kelley, 2006; Wolff, 2008; Schimmelfennig and Sedelmeier, 2004; Lavenex, 2004; Del Sarto and Schumacher, 2005; Friis and Murphy, 1999). Theoretically, moreover, confusion arises because ED-JHA is not always carefully distinguished from EU foreign policy (see Smith and Webber, 2008, for an exception). In fact, although the ED-JHA is often treated as an instrument of EU external policy, it is best thought of as a distinctive policy, with its own *raison d'être* and mechanisms (cf. Emerson, 2004; Christiansen et al., 2000; Balzacq, 2007; Kaunert, 2005; Smith, 2006; Guild and Van Selm, 2005; Peers, 2008; Cremona, 2004; Monar, 2000; Mounier et al., 2007). Finally, the literature in this field is growing so fast that the first challenge that confronts students is to sort out, within limits, the central features of the ED-JHA. In light of this, a framework that defines the substance and the logic of the ED-JHA is very much needed. This is what I attempt to provide here.

Perhaps problematically, how to characterise the external action in the field of JHA separates students of EU politics (Léonard, 2006; Berthelet, 2007; Trauner, 2006; Wichmann, 2007). Despite their differences, however, what they strive to understand is essentially similar: how instruments primarily crafted for domestic purposes play out in non-member states. In other words, no matter the precise content of the policies, the challenge is to keep geographical borders relevant, while restructuring its effects on the normative divide between inside and outside (Pastore, 2001). However, the main trait of the external dimension is that it is constitutive of an increasing swathe of EU policies, which is reflected by the lack of agreement about the appropriate concept to use in order to capture the practices at work. This bears directly on some of the key puzzles in the vocabulary of the ED-JHA. Sarah Léonard (2006) underlines, for instance, that there are many labels attached to the external facet of EU policy in JHA, e.g.: externalisation, internationalisation, or external governance. In various instances, these concepts are used interchangeably with little, if any, theoretical justification. My claim is that, though

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<sup>1</sup> ED-JHA and ED-FSJ (freedom, security and justice) are used interchangeably.

some of these concepts overlap considerably, each covers a set of peculiar practices and, for that matter, deserves at least brief scrutiny. Those who shy away from this task usually blur the rationale of ED-JHA, giving the impression that anything goes.

To start with, *externalisation* means, in this context, that JHA provisions become part of the EU list of external affairs (Rijpma and Cremona, 2007). This is most apparent in the Council of the European Union (2000) document that sets out the “objectives for external relations in the field of Justice and Home Affairs.” In that text, externalisation means that JHA remains an independent policy domain, but the EU can, if it deems necessary, include specific policies in its external relations in order to safeguard internal security. *Internationalisation*, on the other hand, occurs when the EU acts as a distinctive polity and negotiates with third countries in matters that are traditionally regarded as falling within the precincts of internal politics. To use the parlance of Kenneth Waltz (1979), with great trepidation, the difference between externalisation and internationalisation depends on where the level of analysis is set. In short, externalisation accounts for second-level processes, while internationalisation speaks to third-level or systemic interactions.

The last master concept used in the field is *external governance*. To my mind, external governance is but one specific outcome of internationalisation. Indeed, for the purpose of this paper, I define external governance as a cluster of processes by which an entity A regulates, manages or control the behaviour and, in certain circumstances, identities and interests of an entity B, in context C. This is why I think the term *governmentality* provides explanatory leeway in explaining what the ED-JHA does. To use Mitchell Dean’s words (1999, p. 23), governmentality covers four dimensions: “1. characteristic forms of visibility, ways of seeing and perceiving; 2. distinctive ways of thinking and questioning, relying on definite vocabularies and procedures for the production of truth...; 3. specific ways of acting, intervening and directing, made up of particular forms of practical rationality (‘expertise’ and ‘know-how’), and relying upon definite mechanisms, techniques, and technologies; and 4. characteristic ways of forming subjects, selves, persons, actors or agents.” It follows that extra-territorialisation, another concept often used in the domain of JHA, is an avatar of external governance (Rodier, 2006). *Extra-territorialisation* is best illustrated in the works of those who examine the practices of ‘remote control’, that is, EU control of border management as it is carried out far beyond hard material limits (Bigo and Guild, 2005; Guiraudon and Joppke, 2001). However, extra-territoriality need not be linked, exclusively, to policies that aim to curb threats (Wichmann, 2008). In fact, extra-territorialisation, as the other concepts discussed here, could be equally applied to the overall domain of JHA, to the extent that the level at which the EU is working – internal or external – is taken into account.

The decisive point of the above discussion is that the ED-JHA aims to step up international security by strengthening the resources and abilities of third countries, to act in the field of security, including border management. Thus, it is the central tenet of the external dimension that security is relational, and that the EU will be better off via intensive cooperation, that is, “mutual adjustment in policy that improves (its) welfare” (Lake, 1999, p. 25; Keohane, 1984). This view of cooperation differs from a neoliberal account that predicts that cooperation delivers, by any means, absolute gains to the partners involved in the process (see Baldwin, 1993). I argue that this need not be the case. On the contrary, it might even produce less security for one of the partners while increasing, somewhat paradoxically, the density of interactions among actors comprising the relationship. Therefore the results of cooperation rarely coincide with the planned objectives and might, on different occasions, yield considerable indirect effects.

It is held, for instance, that JHA provisions contained in ENP Action Plans aim to establish an inclusive security framework. In the literature, however, there is a wide recognition that the

ENP framework is set on, and inevitably reproduces, a relation that is considerably asymmetric (Tassinari, 2005; Balzacq, 2007). Following David Lake (1999, p. 24-31), asymmetric security relationships are defined as interactions in which one of the partners (of a dyad) possesses a quantum of 'residual control' over the other. The production of security in an asymmetric cooperation pattern often takes two forms, empire and informal empire models. In an empire, Lake (1999, p. 28) assumes, "two polities are melded together in a hierarchic relationship in which one party controls the other." An informal empire displays a form of hierarchy, too, but departs from an empire on one essential account: the control exerted by the dominant partner does not prevent it from building ties with third countries even though the content of those interactions might be influenced by the external authority. In other words, an informal empire produces compliance through specific mechanisms of control, management or regulation in a chosen functional area (Lake, 1999, p. 31; Zielonka, 2007).

The rest of the paper is organised as follows. I begin by investigating how the ENP reconfigures the ED-JHA, through a peculiar approach to borders/identities and borders/orders articulations. This helps me to identify and separate out the major elements of the ED-JHA, which call up a distinctive mode of management, termed governance. We will then be in a position to discuss conceptual stances on the governance of the ED-JHA. Specifically, I argue that among the many ways of analysing governance, three intellectual traditions – institutionalism, constructivism, and policy instruments – are best suited for understanding the processes at work in the ED-JHA. Finally, I trace the evolution of the ED-JHA, emphasising, whenever possible, continuities and bifurcations. Overall, the aim is to ascertain the extent to which conceptual designs clarify or advances our knowledge of the contents and rationales of the ED-JHA.

## **2. Borders, Security Externalities, Governance**

In May 2004, the Commission presented its project on the ENP. Cut to the bone, the ENP has three main objectives: enhancing co-operation in the political field as well as in security matters and social-economic development in a way that is distinct from EU membership (Commission of the European Union, 2004). There are 16 countries involved – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine – which suggests that rather than being a policy stripped of any ambition, as claimed by some sceptics, the ENP aims to design new relationships with countries of different political cultures, on a wide range of topics. It is not, by any means, an easy task to define such a policy particularly when one needs to reconcile the aims of external relations with those of JHA. On the one hand, openness – including a degree of liberalisation of movement of persons from the neighbouring countries in view of reinforcing good neighbourly relations – is called for, while on the other hand, the need to strictly implement the Schengen acquis on border controls and visa regimes is emphasised. One major, and persistent, challenge for eastern and southern neighbours is how to convince the EU that they can be good partners in complying with the objectives of Schengen by cooperating with the EU in controls on who crosses the EU external borders (Andreas, 2003, pp. 102-07).

If we are interested in the ED-JHA as it relates to ENP, then we have to take stock of border processes. Borders naturally have material (i.e., they separate inside from outside) and cognitive (i.e., they distinguish us and them) functions (cf. Agnew, 1998; Agnew and Corbridge, 1995; O'Tuathail, 1996; Walker, 1993; Dalby, 1991; Anderson, 1996; Berg and Ehin 2006). Most ENP scholarship, proponents and critics alike, concur that border management is a fundamental policy at which EU concerns with identity and order intersect (compare Smith, 2006; Tassinari, 2005; Raik, 2006). Under this heading, I briefly discuss what is called, in Yosef Lapid's (1996, pp. 10-5) words, "borders-to-identities" and "borders-to-orders" sequences. I do not take up opposite sequences (i.e., identities-to-borders and orders-to-borders) as I believe they do not

quite exemplify what is at stake in ED-JHA. To my mind, the design of EU borders seems to predate the emergence of a specific EU identity, as order presupposes a reliable ‘dispositif’ of border management (e.g., surveillance technologies, police training, operational cooperation, joint patrols, data sharing).<sup>2</sup>

## 2.1 Borders and identities

Although debates on identity are rarely explicit in EU policies, a closer scrutiny of discursive practices seem to reveal that identity, in the sense of a constitutive ‘we’, matters more than often thought (Rieker, 2004). For instance, asked by the European Parliament’s Foreign Affairs Committee whether Ukraine could qualify for EU membership, Gunther Verheugen (1999) retorted “I think that anybody who thinks that Ukraine should be taken in the EU...should perhaps come along with the argument that Mexico should be taken into the US” (cited in Primatarova, 2005, p.33). This is probably overstated and history might, sooner or later, contradict the former Commissioner. Nonetheless, the analogy with the US-Mexico relationship has the virtue of tabling questions of identities in the EU-neighbours’ relationships, despite a strong geographic contiguity. Yet the ultimate aim of the ENP, as Romano Prodi (2002) points out, is to “extend to this neighbouring region a set of principles, values and standards which define the *very essence* of the European Union” (emphasis added). In other words, the constitutive identity of the EU is decisively normative. Yet, the fact that neighbours think and behave according to the EU templates, does not license them to membership.

This position might sound inconsistent, but for the EU it is not. It is argued, indeed, that the ENP pursues distinctive objectives, but uses the same tools as those of enlargement, including learning and socialisation, conditionality, and benchmarking (Kelley, 2006). Even though neighbours could develop a form of complex learning of EU norms and standards, which affects their identities and interests, they remain different. Thus, the challenge for the ENP is to accommodate “the extension of the legal boundaries of authority” to the relatively static material limits of the EU (Lavenex, 2004, p. 686). This is a tall order, and sceptics would argue that EU borders are not at all static; they would claim, instead, that EU borders are flexible, and in constant flux. Point taken; but my purpose is not to question the fact that EU borders might move, or that the regime of EU borders might vary, from one point of entry to another. Far from it. For a neighbourhood policy to exist there needs to be two separate polities. This necessarily raises, in turn, problems of identities and differences that students of EU politics should grapple with seriously, not dismiss out of hand.

## 2.2 Borders and orders

To paraphrase Michel Foucault (1967), the greatest anxiety of the EU is with space. In this context, the EU policy is to establish common standards with regard to border management at the Union's external borders to enable thus an area of freedom, security and justice without control at internal borders for persons, whatever their nationality, within the EU (Higashino, 2004; Kirchner and Sperling, 2000). This needs to be seen in a wider context and it covers aspects of international cooperation as this is indispensable to ensure the smooth running of the system, particularly concerning activities in and arrangements with countries of origin and transit, whereby the focus is first on the issuing of visa and other consular issues as well as readmission/return matters (dialogue on migration and asylum). There is, moreover, the technical border cooperation with neighbouring countries (e.g. new neighbours in the East) as well as traditional trading and political partnerships (e.g. the US and Canada), the intention of

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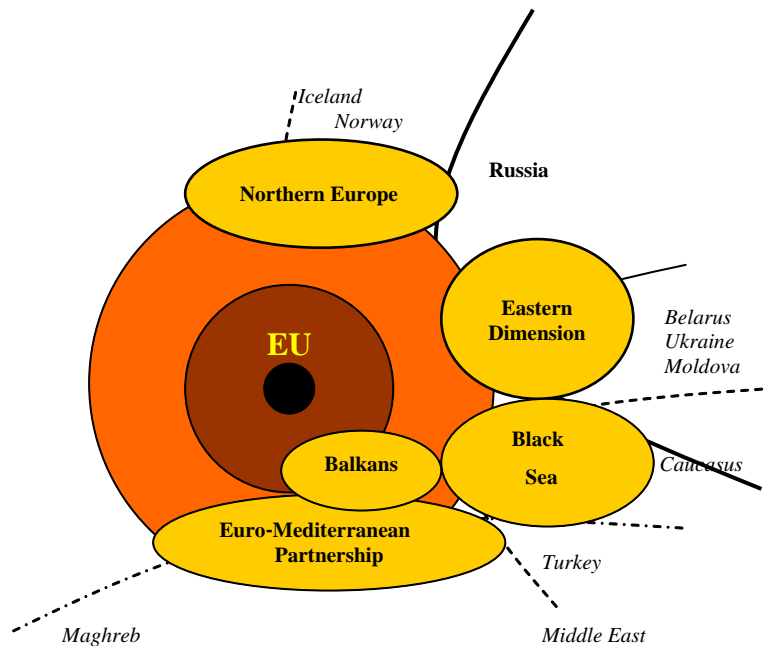
<sup>2</sup> The concept is Foucault’s (1980). See also Pløger (2008).



which is to enhance security but also to create a smoother system of managing borders and anticipating problems (Smith, 1996).

However, EU territoriality – “the attempt to...affect, influence, or control people, phenomena, and relationships by delineating and asserting control over a geographic area” – is as mutable as its boundaries (Sack, 1986, p.19). In fact, rather than simply broadening the limits of EU, as it is often assumed, each round of enlargement reactivates, or redistributes, border management priorities. Thus, the 2004 enlargement brought into sharp focus EU relations with its neighbours. As Christopher Patten and Javier Solana (2002) put it, “decisions on enlargement...will bring the duel challenge of avoiding new dividing lines in Europe while responding to needs arising from the newly created borders of the Union.” It is therefore urgent, so the argument goes, that “we...fully exploit the new opportunities created by enlargement to develop relations with our neighbours.” In this approach, “stability, prosperity, shared values and rule of law along (EU) borders are all fundamental for (its) security. Failure in any of these areas will lead to increased risks of negative spillover on the Union.” In other words, the ENP strives, primarily, to curb “negative externalities” stemming from the 2004 enlargement (Grant, 2006).<sup>3</sup> The figure below might be useful in understanding the challenge confronting the Union.

Figure 1. Europe’s neighbourhood and its regions



Source: Tassinari, 2005.

Our interest in borders-to-orders and borders-to-identities sequences should not preclude equally decisive intersections, namely order-to-identity, and vice-versa. In security studies, these intersections have been examined by students of societal security (Buzan et al., 1990; McSweeney, 1999). Identities/orders intersections are important for the ENP partly because a sustainable political order requires some kind of collective identity, and partly because change

<sup>3</sup> David Lake (1997, p. 49) defines externalities as “costs (negative externalities) and benefits (positive externalities) that do not accrue only to the actors that create them. They are also known as spillover or neighbourhood affects.”

in the latter often alters political order. The converse is true (Deudney and Ikenberry, 1999; Hall, 1999; Neumann, 1999). But there are degrees in collective identity formation. It takes two important forms, a pluralistic security community, on the one hand, and integration, on the other. Barry Buzan (1983, p.190) captures this in one generic term, security complexes, i.e., “a group of states whose primary security concerns link together sufficiently closely that their national securities cannot realistically be considered apart from one another.” At base, pluralist security communities and integration enjoy quite the same level of security as their collective identity commits members to the non-use of military force, inviolability of borders, as well as an increase in transboundary interactions (Morgan, 1997, p.37).

However, integration goes a step further. It happens when a group of states pool their efforts together, across different sectors, and create a new internal political sphere. In this light, the level of practice shifts too; in fact, while pluralist security communities operate at the systemic level, integration works at the domestic level (Morgan, 1997, p.38). Inevitably, therefore, this leads us to the view that the ENP aims to set up a regional pluralist security community. That system is called regional because it refers to a “set of states affected by at least one transborder but local externality that emanates from a particular geographic area” (Lake, 1997, p. 49). Thus, the ED-JHA is regarded as an attempt by the EU to “expand its sphere of governance in particular in areas which have become securitized inside and where vulnerability is attributed to developments in the third countries in question” (Lavenex, 2004, p. 686). It is this concept of governance and the intellectual resources it triggers, that inform the next section.

### **3. Theoretical Approaches to Governance and their Limits**

The concept of governance is elastic (cf. Rhodes, 2007; Evans, 1995; Peters, 1996; Pierre and Peters, 2000; Pierre, 2000). In fact, either as a theory or a framework, governance is used in different settings, for various purposes and as such generally triggers distinctive understandings of issues on which it is brought to bear (Self, 1996; Weiss, 1998). Typically, contributions to the literature on governance can be articulated around two classes of studies. While the first examines ways of marking out governance from government, the second class turns the arrows of explanation in another direction, to focus on different theoretical approaches to governance. However, most studies now do both, by linking critical analysis on the transformation of modes of government to conceptual discussions about governance as an alternative to, or an instantiation of changes in government functioning (see Webber, 2007).

Thus, my task in this section is straightforward: I define the concept of governance and delineate its features as they relate to the issue of security. To do this, I document important approaches to governance and compare, or better contrast them to the cognate, but radical concept, of governmentality. Three theories of governance often regarded as essential in grasping the external processes of EU internal security are institutionalism, constructivism and policy instrument analysis. Each explores governance through a distinctive lens, highlighting some facets, while ignoring others. The aim is to arrive at a coherent, complex but tractable concept of governance, one which could help students come to terms with the rationales and functions of the external dimension of EU-JHA.

#### **3.1 What is governance?**

This question preoccupies those who examine the substantive aspect of governance; the thrust being to glean the defining features of governance. For instance, Andrew Gamble (2000, p.110) defines governance as: “the steering capacities of a political system without making any assumption as to which institution or agents make the steering”. In the same vein, Elke Krahmhann (2003, p.11), in an attempt to capture the emerging architecture of transatlantic

security, postulates that: “governance denotes the structure and processes which enable a set of public and private actors to coordinate their independent needs and interests through the making and implementation of binding policy decisions in the absence of a central political authority.” Further, Alan Hunt and Gary Wickham (1994, p.78), in a way that echoes Michel Foucault, describe governance as really a combination of three things: “1) ‘government’, as in the rule of a nation-state, a region, or municipal area; 2) ‘self-government’, as in control of own emotions and behaviour; and 3) ‘governor’, as in devices fitted to machines to regulate their energy intake and hence control or manage their performance.”<sup>4</sup> Finally, Emil J. Kirchner (2006) reaches a similar conclusion, but draws on different sources. In this context, government is pitted against governance. While the former concentrates on the Weberian view of a centralised authority able to impose its will on the society to achieve planned objectives, the latter emphasises, by contrast: “how the regulation of societies or the international system has come to involve political actors aside from governments.” In any case, governance is not a closed theoretical system, but rather designates a wide set of methods to regulate, control or manage ‘known’ entities (Hunt and Wickham, 1994, p.79).

### 3.2 Theories of governance

Conceptual approaches to governance differ in the status they accord to specific actors, factors or processes. This is not to claim, however, that theories of governance are incompatible, though some will be relevant to understanding certain types of phenomena, and not others. In fact, constructivism has been mostly used by students of EU integration, whereas institutionalism has been taken up by those who examine how different EU bodies operate. By contrast, policy tools remain largely unexplored – theoretically, though not in substance. In this section, however, I argue that governance is conceptually agnostic and that each approach has something to tell us about the ED-JHA.

#### 3.2.1 Institutionalism

Generally, approaches that fall under this heading combine, though in various guises, rationalist and constructivist premises. In particular, they raise two kinds of difficult questions, what counts as an institution and, more importantly, what impact, if any, do institutions have on the structure and outcome of political action? Those who study institutions argue that “through the development of specific competencies, organisations can potentially transform agendas and goals” and that “these entities can function as creators of meaning and identities” (Simmons and Martin, 2002, p.193). In short, institutions are “political actors in their own right” (March and Olsen, 1984, p.738).

The problem with this perspective, however, is that students of institutionalism rarely agree about the adequate definition of institutions. In fact, any new definition of institutions, it is held, will very likely suffer from the same defects as those that are said to cripple previous attempts. To a certain extent, notwithstanding, it is now admitted, but for a few exceptions (Keohane, 1983), that institutions are: “sets of rules meant to govern international behaviour” (Simmons and Martin, 2002, p.194; see also Mearsheimer, 1994/95). Beth Simmons and Lisa Martin observe that this definition presents three advantages, at least. To start with, in contrast to definitions of regime that dominated IR’s understanding of institutions in the 1980s, this definition is parsimonious, and only includes the constitutive features of institutions. Moreover, it does not conflate institutions and organisations, as some informal institutions are not embodied by a visible organisation. Finally, this definition clearly delineates what an institution

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<sup>4</sup> Emphases added.

is from what it *does*. In sum, Simmons and Martin (2002, p. 194) conclude, that this specification “allows for the systematic evaluation of a broad range of theoretical claims using a single definition of institutions.”

According to Peters (1999, p. 149), institutionalism is a “broad, if variegated, approach”. In this light, it would be preposterous to attempt to discuss all the families of institutionalisms on offer. I focus therefore on what has come to be regarded as a classical typology. Peter Hall and Rosemary Taylor (1996) propose three broad views of institutional analysis: rational choice, sociological and historical institutionalisms. The first, rational choice institutionalism, insists on material incentives as constraints for action. In this light, it is held that actors are but susceptible to simple learning, that which transforms their behaviours, not their identities or interests (see Shepsle and Weingast, 1995). Contrary to constructivism, which assumes that organisation “can become autonomous sites of authority”, rational choice institutionalism claims that organisations are instruments purposefully used by actors for their own best interests and, “unless a net gain resulted from membership”, so the argument goes, “members would not join (or remain in the club)” (Barnett and Finnemore, 1999, p. 707). In this approach, governance primarily consists of manipulating incentives in order to increase the net values or pursuing cooperation in a given form, within a specific context.

Sociological institutionalism focuses on the production of meaning by institutions. In the literature today, this view is associated with cognitive approaches to institutions, whereby “what a creature does is, in large part, a function of the creator’s representation of its environment” (d’Andrade, 1984, p. 88). To reduce uncertainty actors set up a common framework that helps them to assign meaning to situations and to new actors they encounter. Finally, historical institutionalism builds a synthetic argument on the relation between action and institutions, by putting together rational choice and sociological insights. In brief, it is premised upon the idea that current decisions and actions are affected by the initial conditions under which institutions were crafted.

There is nothing in this section to suggest that any of the institutionalist strands ‘takes it all’. In fact, it seems obvious today that students of institutionalism are question-driven rather than school-driven. What determines whether one strand is emphasised over another is at base empirical relevance. In a compelling paper, Fearon and Wendt (2002) show that assumptions upon which various kinds of institutionalism dwell – i.e. rationalism and constructivism – are not as incompatible as often held. Perhaps, in this light, the most promising route for students of the ED-JHA is to determine the extent to which *a priori* emphasis on any of the approaches to institutionalism affects the questions they ask and inevitably the results they reach.

### **3.2.2 Constructivism**

While rational choice institutionalism begins with exogenous identities and interests that govern the use of institutions, constructivism starts, by contrast, from endogenous identities and interests that emerge, evolve and change through interactions among actors, on the one hand, and between actors and institutions, on the other (cf. Onuf, 1989; Kratochwil, 1989; Finnemore, 1993, 1996; Legro, 1997). When applied to the study of norms, institutions appear as “chief socializing agents” that constrain “targeted actors to adopt new policies and laws, and to ratify treaties...” (Finnemore and Sikkink, 1998, p.902). Taking a different tack, Alexander Wendt explores the ontological form of institutions. This leads him to argue that institutions are “a structure of identity and interest” (Wendt 1992, p.399). This definition is simple, but potentially strong. Taking this position on institutions implies, first, that they are essentially stable entities, material or not. In this view, moreover, institutions that embody characteristic identities and interests are contextual in the sense that they reflect specific ways of being, and distinctive

preferences about what deserves to be pursued. The ultimate question, therefore, is whose interests and identities do institutions exemplify or promote?

The answer, of course, is not as simple as one might think, as it goes deep into the intentionality of institutions, which is beyond the scope of this paper. Whatever the posture one adopts, notwithstanding, the purposes of institutions in terms of governance is to create the conditions for a viable collective security, by transforming the meaning of interactions, from individualism to a security community of sorts. These insights find considerable support in the ENP, the aim of which is to set out a cooperative system of security, through new intersubjective meanings. Before it does anything else security governance aims to create the processes conducive to a system of cooperative security. This carries us into Wendt's continuum of security. Crucially, the most general proposition is that collective identity formation depends, at least in principle, as much on structural contexts as it does on systemic and strategic practices.

*Structural contexts.* Interaction dynamics are the basis of the construction of intersubjective structures in international relations. For constructivists, systemic structures are built from common social knowledge and shared understandings. Moreover, the nature of anarchy is determined by the nature of the intersubjective structure that actors build. In turn, collective identity created by these intersubjective understandings can either be exclusive in the sense that actors forsake previous social structures and carve out new ones, or inclusive, when a powerful state coerces weaker states to adopt its identity (see Prodi, 2002). In this case, actors find themselves in a collective hegemonic identity *à la* Gramsci (Wendt, 1994, p.389).

*Systemic processes.* Wendt (ibid.) defines systemic processes as “dynamic in the external context of state action.” Two systemic processes are discussed: interdependence and the transnational convergence of domestic values. The first can take two forms, the “dilemma of common interest” created by an increase in the “dynamic density” and the “dilemma of common aversion” produced by the emergence of a threatening ‘common other’. Whatever the form taken by interdependence, it pursues the same aim, i.e. to render actors less inclined to unilateral activities and increase the “incentive to identify with others” (Ibid.). The second systemic process highlighted by Wendt is called societal or transnational convergence. It has at least two different sources, interdependence and demonstration effects (e.g., diffusion and lesson-drawing). The core effect of the transnational convergence of domestic values (cultural, economical, political, etc.) is to reduce the heterogeneity among actors who, as a consequence, gradually develop the consciousness that others are neither so different, nor as threatening as they might be. In this light, a constructivist reading would argue that one of the decisive objectives of the ENP is to arrive at a desecuritized relationship between neighbours and the EU (see Tassinari, 2005).

*Strategic practice.* This refers to a form of interaction in which: “others are assumed to be purposive agents with whom one is interdependent.” (Wendt, 1994, p. 390). Here, Wendt tries to depart from rationalist propositions on cooperation. The analytical bite of rationalism, it can be argued, is that strategic interactions are able to change patterns of behaviour, but identities and interests remain fixed during interactions. Thus, Wendt draws a distinction between *behavioural* and *rhetorical* interaction. One kind of behavioural practice is that of *altercasting*, that is, a: “technique of interactor control in which ego uses tactics of self-presentation and stage management in an attempt to frame alter's definitions of social situations in ways that create the role which ego desires alter to play.” (Wendt, 1992, p.421; 1999, p.346). In short, cooperative interactions enable actors to present themselves in a new light while internalising new beliefs about others and selves.

In the second sense, constructivism assumes, interactions are rhetorical (Balzacq, forthcoming). How should we understand this? Rhetorical practices are conscious symbolic practices discursively mediated, contrived to alter the image and the conception of the self within a

strategic environment. They can take different forms, including multilateral dialogues, symbolic actions or signals. The content of rhetorical practices can vary, too. It could either be a securitising move (as in the case of illegal migration), or a de-securitisation move (as in the case of integration). However, rhetorical and behavioural practices are very close. For instance, altercasting can be implemented both through discursive mediations and symbolic works. What stands out here is that, in any account, the outcome of strategic practices depends on the meaning ascribed to the linguistic categorisation of *pedagogic codes* (Bernstein, 1971). Specifically, codes can be either restricted or extended. They are restricted if language is contextualised in a dyadic relationship that presupposes a tacit shared background knowledge. On the other hand, codes are extended if actors linguistically interact without having a significant degree of tacit background assumptions shared with others. The first case is more open to genuine symbolic exchange than the second. Thus, the construction of Action Plans, which are negotiated between the EU and its partners, aims to design a common knowledge of issues at hand in order to carve out convergent policies.

The above discussion – on causal factors offered by Wendt in order to understand the internal process of collective identity formation amongst states – structural contexts, systemic processes, and strategic practice, can be summarised as follows:

*Table 1. A summary of Wendt's model of collective identity formation*

CAUSAL FACTORS	FORMS	SOURCES	EFFECTS
STRATEGIC PRACTICES	Behavioural	<ul style="list-style-type: none"> <li>• Self-presentation</li> <li>• Altercasting</li> </ul>	Change the image of the self and the other within a strategic environment
	Rhetorical	<ul style="list-style-type: none"> <li>• Discursive symbols</li> </ul>	
SYSTEMIC PROCESSES	Interdependence	<ul style="list-style-type: none"> <li>• Density of interaction</li> <li>• Common Other</li> </ul>	Reduce the egoistic attitude
	Societal convergence	<ul style="list-style-type: none"> <li>• Interdependence</li> <li>• Demonstration effort, diffusion, lesson drawing</li> </ul>	Reduce the heterogeneity amongst actors
STRUCTURAL CONTEXT	Intersubjective structures	<ul style="list-style-type: none"> <li>• Social knowledge,</li> <li>• Shared meanings and expectations</li> </ul>	Gives meaning to material structures

### 3.2.3 Policy instruments

A third set of general approaches to the question of governance emphasises the ‘life cycle’ of policy instruments – choice, function, and effects (Balzacq, 2008). One tension within the literature concerns the relative focus on the ‘neutral’ efficiency of instruments. To put my cards on the table, my view of tools is compatible with the precepts of critical theory (Wyn Jones, 1999). In fact, a tool approach to governance should not be equated with an instrumental view of a policy, which holds that policy tools are: “subservient to values established in other social spheres – political and cultural” (Feenberg, 1991, p.5).

To demonstrate the utility of a tool approach to governance, I proceed in two steps. First, I delineate the boundaries of a policy tool and discuss its central features. Second, I examine types of tools that embody these traits, by stressing how each shapes our understanding of governance.

### 3.2.4 *Of instruments: definition and key features*

What, then, is an instrument or a tool of public action? Given the range of definitions, connotations and degrees of abstraction, a useful first step may be to outline more precisely what an instrument *is not*. First, an instrument is not a programme. In general, a programme comprises one or more tools that it mobilises in specific circumstances. This means that a single tool can be brought to bear on particular fields or problems by different programmes. If this perspective is credible, one could perhaps argue that a tool is more general than a programme. Second, and more significantly, a tool is not a policy. Typically, policies are more general than tools as they are primarily: “collections of programmes operating on a similar field or aimed at some general objective” (Salamon, 2002, p.20).

The confusion between these elements – i.e. programme and policy – has long obstructed concrete definition. This accords with the extant variety and somewhat multifaceted aspects of artefacts labelled tools within the governance literature. Generally, definitions reproduce a neutral approach to policy tools. For instance, Hoogerwerf (1989, p.4) codes instruments as: “everything that an actor uses or could potentially use to aid in the attainment of one or more goals” (Hoogerwerf, 1989, p.4). This is not always so. In fact, more nuanced approaches postulate that instruments can be grasped either as *objects* or as *activities* (de Bruijn and Hufen, 1998, pp. 13-4). In the first sense, instruments are tangible, that is, mostly material phenomena. By contrast, as practices, instruments are: “a collection of policy activities that show similar characteristics focused on influencing and governing social purposes” (Ringeling, 1983, p.1).

This distinction is coherent and useful, but it is incomplete. For instance, it does not allow for a synthetic understanding of instruments. Thus, the precise meaning of instruments remains underspecified. The reason for this is not hard to find. Indeed, certain instruments that are traditionally regarded as objects have, on closer scrutiny, the main endogenous features of activities (Hood, 1983). FRONTEX, the body set up to coordinate member states’ operational cooperation to secure the EU’s external borders is, for example, not so much an object as a set of activities and processes. Given this caveat, I define a tool or an instrument of governance as *an identifiable social and technical ‘dispositif’ or device embodying a specific image of ‘social reality’ through which public action is configured in order to address a issue* (Lascoumes and Le Galès, 2004, p.13; Linder and Peters, 1984; Salamon, 2002, p.19). This definition, imperfect as it may be, offers three basic characteristics of instruments of governance.

First, each instrument has *defining features* that align it with others, and *design traits* that make it unique or, at least, differentiate it from others. For instance, all JHA databases require the collection, storage and exchange of information, but they differ significantly in the nature of information they hold, the duration of the storage, and the conditions under which their data can be retrieved. Second, tools configure actions, in the sense that each instrument “has its own operating procedures, skills requirements, and delivering mechanisms, indeed its own ‘political economy’” (Salamon, 2002, p.2). What is involved here, moreover, is the idea that tools are institutions of sorts. According to this view, they are a routine set of rules and procedures that structure the interactions among individuals and organisations. In short, policy tools can configure social relations in decisive ways. In this respect, by their very nature, tools “define who is involved in the operation of public programmes, what their roles are, and how they relate to each other” (Salamon, 2002, p.19). In other words, governance instruments reconfigure what is called public action, the aim of which is to address issues identified as targets of public action. Third, and finally, policy tools embody a specific image of the partners and, to a large extent, what ought to be done about them. In this respect, the ENP categorises partners and commands a particular method of dealing with them (through control, management, benchmarking, etc.)

Thus, the policy instruments of governance do not represent a purely technical solution to a public problem. Of course, the operational – i.e. technical – character of a governance instrument has to be adequately linked to a specific issue that it intends to address. However, a narrow focus on the operational aspect of governance tools neglects two crucial features of instruments, namely the political and symbolic elements. On the one hand, they are fundamentally political. Both the selection and use, as well as the effects of governance instruments depend on political factors and, in turn, require political mobilisation (Peters, 1998, p.552). It should thus be kept in mind that while governance tools might have technical attributes, the reason they are chosen, how they operate, evolve, and what their consequences are cannot simply be reduced to the technical particulars of the instruments. On the other hand, there are symbolic attributes built into policy instruments: “that (tell) the population what the (EU) is thinking...and what its collective perception of problems (is)” (Peters and van Nispen, 1998, p.3). In other words, the focus on the political and symbolic aspects of governance instruments will lend an imaginative leap into a more robust conceptualisation of how “the intention of policy could be translated into operational activities” (de Bruijn and Hufen, 1998, p. 12). Seen from this perspective, the most important implication is that governance policy tools relate to complex attributes of instruments. To use Salamon’s words (2002, p.20), a tool is a ‘package’ that is made up of four different elements:

- A type of good or activity (e.g. the provision of information, training, surveillance).
- A delivery vehicle for this good or activity (e.g. media, electronic devices).
- A delivery system, that is, a set of organisations that are engaged in providing the good, service, or activity (e.g. an agency, air carriers, a Directorate General).
- A set of rules, whether formal or informal, defining the relationship among the entities that comprise the delivery system (e.g. the EU Directive on the retention of telecommunication data).

It follows therefore that knowledge of governance instruments and their attributes reflects something of the problem to which public action is meant to respond. Further, it reveals policy preferences and the direction of action. In spite of basic similar attributes, each governance tool has different effects. To be sure, different tools are not equally effective in all cases. Indeed, securitisation instruments can sometimes have limited consequences or indirect effects. It becomes obvious therefore that the function of an instrument has a major impact on governance. That function depends, itself, on the nature of the tool.

### **3.2.5 Types of instruments**

Attempts to classify policy instruments are quite common in public policy literature (Hood, 1983; Lascoumes and Le Galès, 2004, pp. 357-63; Schneider and Ingram, 1990; van Nispen and Ringeling, 1998, pp. 204-17). There is no shortage of typologies. This is mainly due to the fact that students of public action use distinct dimensions in order to compare and contrast tools. Christopher Hood (1983), for example, focuses on two key dimensions: (1) the role of the government by whom they are used; and (2) the government resources they enlist (such as organisation, authority). From a different theoretical perspective, Lorraine McDonnell and Richard Elmore (1987) sort instruments in terms of the strategy of intervention that governments use, leading to four types of tool: mandates, capacity-building, system changing, and inducements. Still based essentially on the kind of government intervention, Frans van Doelen (1989) divides tools into three distinct families: the legal, the communication, and the economic families. Finally, Anne Schneider and Helen Ingram (1990) produce a fivefold classification emphasising behaviours that tools seek to change: authority, incentive, capacity, symbolic and learning tools. In the extreme, of course, this diversity may sound enigmatic. It



should not be. To be sure, each classification tries to capture different facets of policy instruments.

*Regulatory Instruments.* Those who choose to capture governance in terms of tools will find that regulatory instruments are among the most common techniques used by the EU to achieve its security objectives (e.g. Action Plans, Commission Communication, Council Declaration, Directives, Framework Decisions). The starting-point here is that regulatory tools seek to ‘normalise’ the behaviour of target partners. Policy instruments thus aim to influence the behaviours of social actors by permitting certain practices to reduce the threat; by prohibiting some types of political activities; by promoting learning to impart perceptions. Moreover, that which makes regulatory instruments so attractive is that they often provide the framework within which both incentive and capacity tools operate. The main problem with regulatory tools, however, is that they require monitoring and enforcement, which provokes high management costs that the EU is unable, at this stage, to handle. For instance, the European Evidence Warrant foreseen by the Hague Programme (2004) in order to improve judicial cooperation for obtaining objects, documents and data for use in proceedings in criminal matters has produced, mainly due to an incapacitating lack of trust, a deceptively trivial agreement that satisfies neither the EU Commission, nor the majority of member states.

*Incentive Instruments.* In contrast to regulatory tools, incentives are typically non-coercive. Much contemporary incentive approaches to instruments premises upon the simple rationalist assumption that social actors are utility maximizers: put simply, they will only purposively select policy-relevant actions that are in their own best interests. The view taken by Ingram and Schneider identifies the main categories of incentives tools. They posit: “the incentive category includes tools that rely on tangible payoffs, positive or negatives to induce compliance....” This formulation is robust, not least because it assumes that social actors “will not be positively motivated to take policy-relevant action unless they are influenced, encouraged, or coerced by manipulation of money, liberty, life, or other tangible payoffs” (Ingram and Schneider, 1990, pp. 513-15). The EU uses, in particular, two types of incentive tools. The first of these is the inducement tools, that is, a set of positive payoffs to stimulate participation in policy-relevant activities. On the other hand, the EU is increasingly imposing penalties on actors who refuse to cooperate, or rather comply. Both tools are strongly associated with the ENP, whereby partners that meet standards of cooperation set in the Action Plans are offered rewards. In fact, the EU uses incentives (e.g. trade agreements, development aid) that aim to reduce resistances and encourage partners to respond positively (e.g. tighten border control, sign readmission agreements with the EU, host Europol liaison officers). Surely, inducement and sanctions are, obviously, substitute means. However, they do not produce the same net utility for the EU. In this situation, the main challenge for the EU is to calibrate inducements so that sanctions are no longer applicable as the inducement is strong enough.

*Capacity Tools.* These are the most contentious tools of the EU neighbourhood strategy; yet they are the most preferred. In simple terms, capacity tools often call for enablement skills, that is, skills that allow individuals, groups and agencies to make decisions and carry out activities, which have a reasonable probability of success (Ingram and Schneider 1990, p.517). In this sense, capacity tools include, *inter alia*, information, training, force, and other resources necessary to the attainment of policy purposes (e.g. the budget). Thus, Abdelkrim Belguendouz (2005) observes that there has been an increase in the budget allocated to border management, thereby shifting the original priorities of the MEDA programme. In other words, capacity tools are useful devices if one is to trace the endogenous transformations of a policy, some of which evade linguistic articulation. It is important to highlight, moreover, that I am hereby concerned with ‘external’ tools, that is, tools that are mobilised to affect social actors. These tools are

naturally opposed to internal ones, which aim to lubricate the internal working of the EU.<sup>5</sup> Finally, capacity instruments are hardly stable. EU databases, for example, are always under pressure to adopt new protocols and practices, to extend their functions, and to mobilise new resources to attend to the transformations of what is perceived as a precarious environment.

To summarise, I have shown that there are various ways of understanding governance, and that each underlines distinctive characteristics of the latter. I did not, however, mean to argue that these positions were incommensurable; nor are they reducible, one to another. Instead, the richness of the theoretical traditions on governance testifies to the incredible diversity of practices at play, which constitutes, in my view, the ultimate focus of analysis.

The next section is not, therefore, committed to a particular ‘school’ of governance. Instead, it draws freely on different currents of thought reviewed above. In doing so, I am more concerned with the empirical relevance of conceptual frameworks than with their aesthetic theoretical designs. This, I think, has often been very distracting to students of social sciences of various theoretical persuasions. Thus, the section traces, briefly, the genealogy of the external dimension, outlining, whenever possible, the competing rationales that shape it. The thrust is to underline the institutionalisation of the external dimension, discuss its logics, and examine its effects on the evolution of EU relations with its neighbours.

#### **4. The Formation of ED-JHA**

Telling the story of the field can take a variety of forms, but the most common is temporal and linear (see Berthelet, 2007; Léonard, 2006). This strategy presents both a strength and a weakness. The strength is that one has to compile the most important dates and discuss the content of documents produced thereof. The weakness is that students of JHA very rarely agree on whether a given moment is important or not, leaving it to the sheer judgement of the analyst. Yet, even the weakness offers me a window, as I draw the lesson that listing a catalogue of dates is less important than tracing the stakes at work within the developments of the ED-JHA. Thus, in what follows I examine the genealogy of the ED-JHA, but I insist on the competing rationales that shape it. Specifically, I build the genealogy of the external dimension upon the assumption that it has evolved from a loosely connected series of intentions, focusing on migration issues, to a highly embroidered policy that enlists ambitious programmes (e.g., the ENP) and instruments (e.g., the exchange of information, benchmarking, European Neighbourhood Policy instrument).

##### **4.1 Going external: from Edinburgh to The Hague**

The ED-JHA epitomises cooperative undertakings that aim to govern joint efforts between the EU and its partners, in order to alleviate threats that are ostensibly relevant to EU internal security. In recent years, the ENP has become the main forum within which the EU pools its efforts and resources with partners in order to maintain or increase social order. Yet, the ED-JHA cannot be reduced to the ENP, however compelling this framework might be. In fact, securing EU internal order by working with third countries is a relatively old project, going back to the end of the 1980s, and has taken different forms since then. This is not to suggest that the EC/EU had formal competence of any kind in this domain. Indeed, the first steps in drawing attention to the ED-JHA were to a great extent the preserve of a community institution, without much ambition to enlist the aims in a coherent policy.

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<sup>5</sup> On the difference between internal and external tools, see Salamon (1983).

A caveat: to try and tease out all the policy initiatives having an external dimension might lead to a patchwork approach, an approach which, while giving the impression of comprehensiveness, would be dispersed and probably miss more than it claims to integrate. I believe such a comprehensive approach is possible, but must be focused on one sector (e.g. crime, drug trafficking, etc.), through which the logic of externalisation will thus be examined. Finally, I am confident that those who might be interested in doing just that would still find useful what is proposed below.

I discuss five main developments: one, the Edinburgh European Council (1992); two, the High Level Working Group on Asylum and Migration – HLWG (1998); three, the Tampere European Council (1999); four, the Seville European Council (1999); five, the Hague Programme (2004). I am not claiming that these moments have the same status, nor that their insights are of equal interest. Instead, I argue that despite their relative importance, they merit significant attention, either for what they achieve or for what they make possible in the construction of the ED-JHA.

#### **4.1.1 *The Edinburgh European Council: 1992***

Two circumstances paved the way for the Edinburgh European Council, both emphasising the mounting necessity to address the root causes of irregular migration. The first is the 1987 Resolution of the European Parliament on the Right of Asylum, which calls for economic and political cooperation with third countries as a means to safeguard human rights and social order. The second is the 1991 Commission Communication on immigration. This text represents perhaps the first clear articulation of the EU ambition to engage external aspects of JHA, though limited to alleviating migration pressures. While only the 1991 Communication was taken up by the 1992 Edinburgh European Council, the 1987 European Parliament Resolution contributed, I think, to establishing an intellectual climate conducive to more focused policies.

Most of the measures of the Edinburgh European Council are not, however, included in the Presidency Conclusions, as it is often the case. Instead, these are gathered in a “Declaration on Principles Governing External Aspects of Migration Policy”, which is appended to the Conclusions. In its intrinsic properties, the Edinburgh European Council is not only institutionally, but substantially important. The European Council met the first time since the Maastricht Treaty, which allowed it to intervene in the domain of foreign policy and in the context of JHA (Léonard, 2006, p.4). Institutionally, within the new context of a pillar structure, the Declaration acknowledges that EU external action in the domain of illegal migration depends on strong coordination among different sectors – foreign affairs, economic cooperation, and of course, asylum and migration – involving different actors.

Substantially, the Edinburgh European Council combines two approaches to curb irregular migration, the root cause and the control approaches. The first intends to establish readmission agreements, i.e., a policy by which two or more states agree to readmit their own nationals or a third country national who transited through their country, and who do not or no longer fulfil the conditions for entry or stay in the territory of the requesting state. In effect, the Treaty establishing the European Community (TEC) provides, since its Amsterdam revision (TEC, Article 63.3.b), for the Community competence in adopting measures concerning the repatriation of illegal residents. The second aims to develop conditions which might help to address ‘push factors’ in the countries of origin: “the preservation of peace and the termination of armed conflicts; full respects for human rights; the creation of democratic societies and adequate social conditions; a liberal trade policy” (European Council, 1992, p.46).

#### **4.1.2 *The High Level Working Group on Asylum and Migration (1998)***

The HLWG is the second constitutive moment, probably one of the most dynamics in the development of ED-JHA. The HLWG is a task force set up on 7 December 1998 by the Council

of the European Union, on a Dutch proposal. It is composed of officials from the Commission and representatives from member states. Ultimately, the role of the HLWG is to map transit points and countries of origin of irregular migrants and asylum seekers, in order to “establish a common, integrated, cross-pillar approach” (Bulletin EU 12-1998, JHA cooperation 5/18). The HLWG did not have a proper geographic focus as it aims to target any country from which, or through which, asylum seekers and migrants proceed to reach the territory of the EU. Thus, Action Plans were drawn up as regards a composite group of countries, including Afghanistan, Albania, Morocco, Pakistan, Somalia, and Sri Lanka. These were then discussed at the Tampere European Council (1999).

The HLWG is associated with three contextual factors that brought enormous changes to the ways of addressing external challenges to EU internal security. The first is the 1994 Commission Communication on the need to establish a comprehensive approach to migration. The second is the mandate granted to the EU by the Treaty of Amsterdam (1997) to work at the international (i.e. systemic) level in the field of JHA. The third is consistent with the comprehensive approach, but sets up a ‘concentric circle’ model of migration policy. The Strategy Paper on Migration and Asylum Policy (1998, p.19), discussed at the Vienna European Council in December 1998 put it in the following terms:

the Schengen States currently lay down the most intensive control measures. Their neighbours (essentially the associated States and perhaps also the Mediterranean area) should gradually be linked into a similar system which should be brought increasingly into line with the first circle’s standard (Schengen) particularly with regard to visa, border control and readmission policies. A third circle of States (CIS area, Turkey and North Africa) will then concentrate primarily on transit checks and combating facilitator networks, and a fourth circle (Middle East, China, black Africa) on eliminating push factors.

Fabrizio Tassinari (2005, p. 3) maps it thus:

*Table 2. Distribution of Europe’s concentric circles*

	<b>Countries in the Wider Europe</b>
Circle No. 1. EU core	Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain
Circle No. 2. ‘Opt-out’ EU member states	Denmark, Ireland, Sweden, UK
Circle No. 3. New EU member states	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta Poland, Slovakia, Slovenia
Circle No. 4. EEA countries	Iceland, Norway, Switzerland
Circle No. 5. Negotiating, non-negotiating and prospective EU candidate countries	Bulgaria and Romania; Croatia and Turkey; Macedonia (FYROM), Serbia-Montenegro, Bosnia-Herzegovina, Albania
Circle No. 6. European neighbours	Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, Ukraine
Circle No. 7. Non-European neighbours	Algeria, Egypt, Israel, Jordan, Libya, Morocco, Palestinian Authority, Syria, Tunisia.

Thus, the key policy orientations of the HLWG are a direct product of these contextual factors. Léonard (2006, p.10) argues that the concentric circle approach promotes, in fact, two different strategies towards EU’s partners, as if they were incompatible, or were more effective in one

region and not in the other, which is difficult to uphold given the strong commonalities of issues that the EU has to face up to. On the one hand, a root cause model is geared towards Middle East and sub-Saharan Africa, while a control approach is crafted for neighbourhood countries. Thus, although not all ideas set out previously are amplified therein, projects to conclude readmission agreements with third countries and to link EU international relations to migration issues suggest that the HLWG is not opening up new avenues, but reinforces old policy orientations.

However, the HLWG brings a radical policy shift, by proposing that substantial parts of the budget allocated to development aid be used to tackle migration and asylum issues. This constitutes one of the major vulnerabilities of proposals made by the HLWG. In fact, officials from the Directorate General for external relations found it ticklish to divert diplomatic means aimed at fostering good relationships with third countries, to different projects, whatever their centrality might be (e.g. the fight against illegal migration or human trafficking). Another vulnerability of the HLWG Action Plans is that they were not negotiated with the third countries concerned, which led to resistances. Thus, while the HLWG managed to set an integrated approach to migration, human trafficking and asylum, as a master strategy, it failed to muster enough support both internally and externally, leading to wobbly results.

#### **4.1.3 The Tampere European Council (1999)**

It is often argued that the Tampere European Council offers the first clear articulation of the connection between EU foreign and interior policies. We have shown that this is not entirely true. What is neglected, moreover, is the fact that the linkage between the two policies is established through the use of specific tools. The Presidency Conclusions put it thus: “The European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice” (Council of the European Union, 1999, point 59). But the relation between foreign and interior policies is not, as this quote might suggest, unidirectional, i.e. outside-in. It is also inside-out: “Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities” (Ibid.)

To a certain extent, Tampere renews and consolidates the mandate conceded to the HLWG, in crafting Action Plans in order to build a more comprehensive system and increase the efficiency of EU policy, in the management of migration flows. Moreover, the conclusions of the European Council meeting insist on readmission agreements, or at least the inclusion of “readmission clauses in other agreements between the European Community and relevant third countries or group of countries.” Finally, the Tampere European Council sets out the road to follow:

clear priorities, policy objectives and measures for the Union’s external action in Justice and Home Affairs should be defined. Specific recommendations should be drawn up by the Council in close co-operation with the Commission on policy objectives and measures for the Union’s external action in Justice and Home Affairs...prior to the European Council in June 2000.

Thus, in order to put the recommendation into concrete terms, the European Council of Santa Maria de Feira (2000, pp. 7-8) structures the priorities in the ED-JHA around five axes:

- Migration policy: foster partnership with countries of origin, develop a cross-pillar approach to the issue...strengthen the external borders and conclude Community readmission agreements;
- The fight against organised crime and terrorism: give a key role to Europol and better involve third countries in the action;

- The fight against specific forms of crime (e.g. financial crime, money laundering, corruption, trafficking in human beings, high-tech crime, and environmental crime);
- The fight against drug trafficking;
- The development and consolidation of the rule of law in countries on the path to democracy.

Thus, the approach laid out by the Feira European Council considerably widens the scope of the ED-JHA. In fact, although migration seems to remain on top of the list, other policy items are firmly set on the agenda (e.g. terrorism, drug trafficking, corruption, money laundering). The ability of the ED-JHA to generate a certain outcome, therefore, presupposes clear and frequent interactions among the different fields, in effect calling for a coordination mechanism between EU institutions. The challenge of students of EU politics is to, first, disaggregate these different sectors in order to explicate their inherent features and, second, to amalgamate them back in order to attend to the practices they generate or not.

#### **4.1.4 The Seville European Council (2002)**

While the debates at Feira and Tampere were more consensual, which does not by any means suggest that they did not raise serious practical problems, the Seville European Council was permeated with controversies sparked by an initiative of the Spanish Presidency and supported by the UK (Peers, 2004). The ambition was clear: to substantially reorganise the external domain of EU asylum and migration policies. Two issues drew attention, both of which had the ambition to alleviate the push factors underlying migration. First, the requirement made by the Spanish Presidency that third countries entering into relationship with the EU fulfil a predefined list of criteria (e.g., ratify the UN Convention on organised crime and relevant Protocols, run awareness campaigns, step up border controls and police operations against smugglers and traffickers and readmit, whenever possible, its own nationals and third country nationals having transited through its territory). Second, the possibility for the EU, to impose sanctions upon states that refuse to comply or are found to make insufficient efforts to live up to EU expectations. However, after long discussions, the Presidency conclusions became less demanding than the Spanish and British governments had wished for. They state:

After full use has been made of existing Community mechanisms without success, the Council may unanimously find that a third country has shown an unjustified lack of cooperation in joint management of migration flows. In that event the Council may, in accordance with the rules laid down in the Treaties, adopt measures or positions under the Common Foreign and Security Policy and other European Union policies, while honouring the Union's contractual commitments and not jeopardising development cooperation objectives (European Council, 2002, p.11).

One of the immediate outputs of the Seville European Council was the 2002(703) Commission Communication on the integration of migration issues in the EU relations with third countries. Emphasis was put on the root causes of migration and the impact of migration processes on the EU and the countries of origin. Thus, through a surprising policy curve, we are somewhat brought back to the view expressed by the European Parliament Resolution in 1987. This surfaces in the treatment of migration, not exclusively through the control lens, as was a tendency in the 1990s, but also via the root cause approach which has the benefit of connecting migration to a wide spectrum of distinct and previously unrelated factors (e.g. development, conflict, state collapse and infectious disease). This view was amplified by the Hague Programme in November 2004, to which I now turn.

#### **4.1.5 The Hague Programme (2004)**

The Hague programme draws a five-year policy agenda in order to develop an EU area of freedom, security, and justice. The programme aims to address three kinds of threat; the fight against terrorism, cross-border crime (e.g. human trafficking, drug smuggling) and irregular migration (Balzacq and Carrera, 2006, p.19). However, only irregular migration has received much attention within the framework of the ED-JHA. Other policies are left to the latter (Council of the European Union, 2004, p.30). The Hague programme organises JHA external activities around two pillars. On the one hand, partnerships with countries and regions of origin or transit help to carve out instruments that could uproot the causes and factors of irregular migration (e.g., capacity-building, joint resettlement programmes, poverty alleviation). On the other hand, return and readmission policies are regarded as necessary for the establishment of a credible EU area of FSJ. These policies involve not only cooperation between member states in the domain of expulsion of third country nationals and the development of common standards to implement such expulsions, but also the increasing institutionalisation of all the components of the ED-JHA.

The Commission strategy (2005) on the external dimension of freedom, security and justice, fits the Hague programme mold. It sets out issues, principles, and instruments necessary for the design of an effective ED-FSJ. It is important to note that topics identified are actually a distillation of a number of priorities outlined by other documents (e.g. the strategic concept on organised crime and the EU Action Plan against terrorism). Thus, the problems that confront the ED-JHA include the promotion of human rights, strengthening institutions and good governance, border management as it relates to the control of asylum and migration, the fight against terrorism and organised crime. Many studies naturally focus on how these threats emerge (i.e. securitisation) and attempt to understand the consequences such constructions have on policies. By contrast, students tend not to attach much significance to the principles and instruments of the ED-FSJ. In my view, this is just where more work needs to be done, because principles and instruments are powerful indicators of both the content and rationales of a policy.

The construction, implementation and evaluation of the ED-JHA follow a catalogue of principles which are meant to ensure that the policy bears fruit, with little if any indirect effect. Thus principles aim, primarily, to structure the development of the ED-JHA. But, contrary to what is often claimed, there is no explicit reference to conditionality here; instead, the Commission Communication emphasises socialisation, as it holds that lasting results could only be achieved if, at the end, partners 'own' EU norms and values. In addition to ownership, the other principles comprise geographic focus, differentiation, flexibility, cross-pillar coordination, relevance of external action, added value and benchmarking. At a crude level, principles condition the kind of instruments that are mobilised, or at least how selected instruments function. However, the Communication conflates instruments, policies and programmes. For instance, development policy is called an instrument, as well as regional cooperation. Be that as it may, the Communication proposes the following gamut of 'instruments': bilateral agreements, enlargement and pre-accession processes; ENP Action Plans, regional cooperation, individual arrangements, operational cooperation, institutional building and twinning, development policy, external aid programmes, international organisations and monitoring.

In sum, the EU strategy on the ED-FSJ, despite its conceptual weakness, offers a tractable approach as to how the ED-FSJ should develop, in order to strengthen EU internal security and promote its objectives abroad. Moreover, it institutionalises the view that internal and external securities are intertwined. Finally, it proposes distinctive instruments that are meant to inform the ED-JHA. In many ways, the spirit of the Commission Communication is like that of the ENP. In fact, the ENP offers a coherent framework for integrating the different wings of the

ED-JHA. By the same token, the ENP is an attempt to substitute a comprehensive and coordinated scheme for a fragmented approach to the ED-JHA.

## 4.2 ENP Action Plans: the JHA dimension

The relationships between the EU and its neighbours are structured by Action Plans. I define an Action Plan as a commonly agreed framework (i.e., a programme) containing the list of policies upon which the EU and ENP partners decide to cooperate. More decisively, however, Action Plans condition not only *what to do*, but *how to do it*. In other words, they are both descriptive and prescriptive documents. The development of Action Plans follows the principle of differentiation, meaning that each agreement is carved out in order to meet the demands and expectations of each partner. This explains, if only in part, why countries belonging to the same region, neither enjoy the same kind of relationship with the EU nor, as a consequence, necessarily have the same substantive type of Action Plan. Generally, however, the fields around which cooperation on JHA matters is organised are similar across Action Plans, though they naturally vary in the level of detail aspired to. For instance, EU-Ukraine relations in the domain of JHA is embodied by a specific Action Plan, signed on 12<sup>th</sup> December 2001, subsequently revised in 2005. It covers all the main items of EU-JHA and brings with it a scoreboard, which monitors the progress achieved. It could therefore be said that Ukraine has, as it stands, one of – if not the most – advanced programmes of cooperation with the EU in the field of JFS.

In defining cooperation in the field of JHA, the ENP Action Plans usually differentiate six areas of action: 1. migration (legal and illegal, re-admission, visas, asylum); 2. border management; 3. cooperation in combating organised crime; 4. the fight against drug trafficking; 5. the fight against money laundering, economic and financial crimes; and 6. judicial and police cooperation. A closer look at Action Plans provisions on JHA suggests that cooperation is premised upon an effective mechanism of border management and control. In recent years, it has become evident that one of the lines of contention between the EU and its neighbours was mobility and the thorny issue of visa. Clearly, then, the challenge of the ENP is, primarily, to alleviate the concerns of its neighbours that the new policy will not affect their relationships with former allies nor lead to a stringent approach as regards free movement of persons. The other challenge, equally important for the EU, is to ensure that the flexibility introduced in border management, for instance, is fair and balanced enough to contain and deter illegal migration. Few, of course, will disagree that this is a tricky position to uphold. The 2006 Commission Communication on Strengthening the ENP highlights, indeed, that: “Mobility of persons is of the utmost importance also for all ENP partners.” It continues by warning that:

the Union cannot fully deliver on many aspects of the ENP if the ability to undertake legitimate short term travel is as constrained as it is currently. Yet our existing visa policies and practices often impose real difficulties and obstacles to legitimate travel (Commission Communication 2006/726, p. 5).

Finally, it goes on to propose:

this can only be addressed in the context of broader packages to address related issues such as cooperation on illegal immigration, in particular by sea, combating trafficking and smuggling in human beings, efficient border management, readmissions agreements and effective return of illegal migrants.... (Ibid.).

These policies are not without problem, however. For instance, to “stem the flow of illegal migrants”, readmission agreements have become the main tool of EC policy (Document UE-MA 2702/1 REV 1, 27<sup>th</sup> July 2005). Yet, based on strong and reliable empirical works, different reports and academic research highlight that readmission agreements consistently raise



important issues as regards the respect of human rights and dignity (see Roig and Huddleston, 2007). Specifically, this happens in two ways, at least. On the one hand, many of the countries with which the EC has established readmission agreements, have notorious negative human rights records (e.g. Russia). Second, some states that have readmission agreements with the EC have set up additional agreements of the same kind, probably not of similar content or safeguards, with other third countries (Balzacq, 2008). For example, Ukraine has signed readmission agreements with various states, some of which have specific covenants with the EC, as diverse as Turkmenistan, Georgia, Turkey, Moldova or Vietnam. This makes the issue of readmission agreements particularly complex, by diluting the responsibility of the partners with regard to the safety of those transferred. In other words, the credibility of the ED-JHA will probably depend on the extent to which it complies with, and enforces, the values it claims to export abroad.

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