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The Externalization of JHA Policies in Georgia: Partner or Hotbed of Threats?

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ABSTRACT This paper argues that the European Union's attempts to externalize JHA policies and turn neighbouring countries into partners contributing to its internal security are hampered by numerous factors, including its obvious ambivalence towards these countries. The limitations of pursuing internal security objectives through a 'soft' partnership approach are particularly visible in the South Caucasus. The paper examines the EU's policies in Georgia and finds that they lack strategic vision and coherence. EU activity in Georgia illustrates three major challenges to the export of JHA policies in the neighbourhood: (1) the form of relations between the EU and its supposed partners ('modes of governance'); (2) the EU's policies vs. local expectations; and (3) the contradictions in the EU's objectives (democracy vs. efficiency).

KEY WORDS: Externalization of JHA, EU–Georgia relations, European Neighbourhood Policy

Introduction

In its neighbourhood, the European Union is attempting to promote long-term democratic and market-based reforms with the aim of sustainably changing its environment. At the same time, it is addressing short-term 'soft' security threats through cooperation with neighbouring countries. A number of these threats (e.g. organized crime, terrorism, trafficking) fall under the domain of Justice and Home Affairs (JHA). JHA-related issues have gained a prominent place in the cooperation agreements signed under the European Neighbourhood Policy (ENP) framework. The South Caucasus is an area

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that represents some of the new types of security threats identified by the EU in its 2003 security strategy.

Using Georgia as an example, I want to illustrate the difficulty of externalizing JHA policies in the EU's neighbourhood. It is argued that both the form and content of the EU's JHA policies in Georgia are incoherent and thus fail to produce a strategic vision. The incoherence stems from the EU's attempt to deploy a partnership approach within the context of a securitization strategy. EU–Georgia relations, in turn, reflect a more fundamental dilemma between security and integration in the neighbourhood policies.¹ I will analyse three different aspects of the EU's JHA policies in my discussion of the dilemmas faced by the EU: (1) ambiguity in the form of relations; (2) diverging views regarding the contents of the EU's policies; and (3) contradictory EU objectives. The first challenge is concerned with the form of relations the EU wants to establish with neighbouring countries. The EU's position with respect to the South Caucasus countries is clearly ambivalent. On the one hand, these nations are viewed as failing states that potentially represent a source of threats. At the same time, they are being wooed as partners in the EU's endeavour to address 'common threats'. Secondly, the EU tends to define threats in its neighbourhood from its own perspective, and the EU's vision of security does not necessarily correspond to local security needs. Georgia is preoccupied with state building and regaining its territorial integrity. In the absence of a consensus on what constitutes threats, the EU might find it difficult to convince neighbouring countries of the benefits of contributing to its security. The EU wants to intervene in Georgia's domestic affairs, while nevertheless 'keeping it at arm's length' (Lynch 2006, 69). Finally, the EU's JHA policies in Georgia try to reconcile normative and strategic goals, with ambiguous results. To show this, various examples of JHA policies in Georgia, such as the EU's 2004 'rule-of-law mission' (EUJUST Themis), as well as the attempts to reform the criminal justice and penitentiary system in post-revolutionary Georgia, will be analysed in detail.

Rational choice institutionalism assumes that an actor's behaviour is constrained by its institutional environment. The institutional setting determines the incentive structure and the cost–benefit calculus of the rational actor. The EU's JHA activities in Georgia are driven by the pursuit of internal security objectives within an ENP framework. The EU has not defined clear foreign policy goals in the South Caucasus.

The evolution of the JHA or Area of Justice, Freedom and Liberty (AJFL) domains has been influenced by the increasing fuzziness in the boundary between internal and external security in the EU's strategic thinking. JHA issues have become a major aspect of the EU's relations with third countries, as reflected in their prominence in cooperation agreements, in particular the recent ENP Action Plans. Literature on external governance provides a conceptual framework to analyse how JHA, a policy designed to address internal policy goals, is increasingly being externalized. Lavenex (2004, 682) defined external governance as the extension of the regulatory scope of parts of the *acquis communautaire* to the EU's neighbourhood through the inclusion of third countries in the pursuit of EU's internal policy goals. In this

process, internal and foreign policy goals come together. Lavenex referred to M. Smith's (1996) distinction between different EU boundaries: geopolitical, institutional/legal, transactional and cultural. External governance shifts the EU's 'legal boundary' to include neighbouring countries, but the opening of the 'institutional boundary' is limited. Prodi has characterized the ENP as 'everything but institutions'; it does not offer membership, yet does not entirely preclude it, either. Lavenex (2004, 681) distinguished two goals in the EU's neighbourhood policies: increasing the efficiency and the problem-solving capacity of internal policies (functional needs) and stabilizing the neighbourhood (foreign policy goals).

Increasingly, internal JHA policy objectives are being pursued with foreign policy instruments, such as European Security and Defence Policy (ESDP) missions. JHA is not only a first (asylum and immigration) or third (police and judicial cooperation in criminal matters) pillar issue, but has been integrated into the second pillar as an element of the Common Foreign and Security Policy (CFSP). New ESDP missions targeting the reform of the police and justice systems in third countries, such as a police mission in Bosnia-Herzegovina and rule of law missions in Georgia and Iraq, illustrate this trend. ESDP missions are civilian crisis management operations aimed at security sector reform in failed states. The security sector encompasses various institutions, including the armed forces, police, border guards and the judiciary, whose function is to guarantee public safety and order. Institution building and the strengthening of the rule of law are viewed by the EU as tools to create a safe environment, which it feels the military alone cannot provide. This combination of JHA objectives with foreign policy instruments results in the merging of different agendas, i.e. a development agenda with a security agenda. However, this combination can easily lead to incoherence in the EU's external policies and raise confusion about the EU's role as an external actor. As Berenskoetter (2006, 13) remarked, 'Turning instruments and strategies of domestic law enforcement ... into instruments of foreign policy involves significant adjustments'. In the following, I aim to demonstrate how this lack of coherence reveals itself in different dimensions of EU–Georgia relations.

Threat Perceptions in the South Caucasus: Partners or Sources of Threats?

In its attempts to project JHA policies into its neighbourhood, the EU is confronted with the challenge of how to shape its relations with bordering countries. The clash between the two different logics the EU deploys in its relations with neighbouring countries, i.e. 'the politics of inclusion' and the 'politics of exclusion' (Smith 1996), is particularly evident in the South Caucasus. The South Caucasus countries are identified as 'outsiders', 'others' and 'threats' in the form of failing states, but they are also viewed as partners in the pursuit of the EU's policy goals, countries that could potentially benefit from the construction of an area of stability.

Security considerations inform the EU's relations with neighbouring countries. As Lavenex (2004, 685) remarked, the externalization of the EU's

internal policies in its neighbourhood is driven by the EU's perceptions of interdependence and vulnerability. The EU tends to look at the South Caucasus through a security lens. As a major transit region between Central Asia and Europe, the South Caucasus is an area replete with the new security threats that are identified in the EU's security strategy: state failure, organized crime, terrorism, money laundering and illegal migration. According to Lynch (2006, 8), Georgia embodies the main challenges that the EU faces as a security actor at the start of the twenty-first century. The South Caucasus first entered the EU's 'radar' as a security threat in a footnote in the 2003 Communication on a Wider Europe, illustrating how the EU is constantly redrawing its boundaries as a result of its security perceptions.²

The concept of security interdependence forms the core of the EU's security strategy and implies that the EU's security begins beyond its borders. As the EU's security strategy states, 'The first line of defense will often be abroad' (European Security Strategy 2003). Internal security is linked to the exercise of national sovereignty on a defined territory. Its main instruments are policing, prosecution, the administration of justice and border control (Monar 2006, 497). Policing and the administration of justice are traditionally the prerogatives of a domestic authority, however, and do not belong to the domain of foreign policy. In its 2003 security strategy, the EU formulated a new concept of internal security, which is defined neither territorially nor militarily. The strategy cites new security threats, such as energy security, migration flows, demography, failing states and organized crime. Although these threats originate in territories outside the EU's borders, particularly in weak or failed states in the EU's neighbourhood, they have an impact on the EU's internal security. As a consequence, the problems these states have with policing and ensuring domestic order are seen as directly affecting the EU's security. The reform of the neighbouring countries' security apparatus is thus an EU concern. The EU tries to consolidate cooperation with neighbouring countries in combating these threats through agreements. To this end, it has developed a range of instruments in recent years to intervene in issues of domestic order in third countries, with the ultimate objective of transforming neighbouring countries into partners in security.

However, the EU faces certain challenges when trying to incorporate neighbouring countries into its security planning in that it also considers these nations to be potential exporters of instability. While the blurring between 'inside' and 'outside' is a central tenet of the EU's security thinking, these two categories still appear to determine relations with neighbouring countries. The EU tends to project a threat image onto its neighbourhood (Berenskoetter 2006, 14). The EU's security strategy states that 'Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe' (European Security Strategy 2003, 7). The image of weak or failing states as territories nurturing organized crime, terrorism and other threats guides the EU's security thinking. Its citizens, meanwhile, are also viewed as security threats, as potential illegal migrants

or victims of trafficking. While in EU declarations neighbouring countries are also referred to as 'borderlands' that can help to contain the threats emerging from unstable areas, the Southern Caucasus has been mentioned as a zone of instability in the EU's security strategy.

Diez (2005, 613) argued that the discursive construction of a European identity as a normative power has an 'othering' quality, as it has the effect of turning third parties into 'others'.³ The EU constructs its identity against an image of others in the 'outside world' (Diez 2005, 614). The ENP's discourse tends to present the EU as a 'civilized island' surrounded by a disorderly and dangerous neighbourhood. Smith (1996, 14) referred to this particular representation of the EU as an 'island of stability' as the construction of a 'geopolitical boundary'. In the neighbourhood, the EU applies two different forms of 'othering': the representation of the 'other' as an existential threat ('securitization') and the representation of the 'other' as 'violating universal principles' (Diez 2005, 628, 629). While the second form of othering was applied during the enlargement process, in which the Copenhagen criteria set the standards for EU membership, the securitization strategy is applied to the neighbourhood within the discourse on values. At the same time, the EU is constantly redrawing boundaries in the post-Cold War context, oscillating between 'the politics of inclusion' and 'the politics of exclusion'. A fixed set of boundaries can no longer contain disturbances in the EU's environment, however, and the EU must thus develop new methods to contain new threats (Smith 1996, 23). Neighbouring countries are not clear 'outsiders' in that the EU wants to transform them into partners who can help further the EU's objectives abroad. The ENP aims at creating a 'ring of well-governed countries' and 'friends'; there is eagerness to avoid the emergence of 'new dividing lines in Europe', and it is implied that neighbouring countries can also benefit from the construction of an area of stability. Referring to boundaries, Smith (1996, 23) said, 'In relation to the changing European order, they uncover the tension between the notion of the EU as an island and an example, and the impression that the EU's benefits can be multilateralized and disseminated'.

The EU's ambivalence towards its neighbouring countries, such as Georgia, has consequences on the form of relations that it tries to establish with them. The EU oscillates between two different approaches, soft partnership and a securitization strategy, both of which are problematic. In the 'partnership approach', the EU defines the threats to its security as 'common threats', with the promise of including neighbouring countries in an 'area of stability and prosperity'. Viewing Europe as a 'civilian power', Duchêne (1973, quoted in Lavenex 2004, 684) described how the 'domestication' of inter-state relations brings to international problems a sense of common responsibility and introduces structures of contractual politics, mechanisms that had previously been reserved for domestic affairs. However, exporting the civilian approach outside the EU is questionable in the absence of membership prospects for the ENP countries, and the use of conditionality departs from the voluntarism implicit in the concept of civilian power (Lavenex 2004, 684). Furthermore, in order for a soft approach to be effective, the EU needs to offer substantial

incentives to convince neighbouring countries of the benefits of cooperating in tackling threats to the EU's security. The use of conditionality — both positive and negative — evidently has a limited impact within the ENP framework. While the concept of a single 'area of freedom, security and justice' (AFSJ) is an attempt at transcending the territoriality principle inherent in the concept of internal security, the neighbourhood is also presented as a future coherent 'area of stability and prosperity'. Nevertheless, the creation of a single area with the EU remains a vague prospect in the absence of clear membership commitments. Moreover, this inclusion of partner countries in an 'area of stability and prosperity' is not benevolent, but motivated by strategic interests. As noted by Lavenex (2004, 695), there is a strategic aspect in the EU's projection of values, '[e]specially when applied towards third countries which lack the prospect of membership, the attempt to extend the EU's legal boundary is not only a benevolent projection of acquired civilian virtues but also a more strategic attempt to gain control over policy developments through external governance'. The EU's relations with its neighbourhood tend to be rather asymmetrical, as it is the EU that sets the terms and conditions of the relations and defines to what extent neighbouring countries have made progress or not towards 'common values'. The EU defines what these 'common values' are, as well as the nature of 'common security threats'. The two forms of logic that shape the EU's relations with its neighbours are visible in the Council's declaration on a strategy for the external dimension of JHA. As stated in the declaration, 'The development of the area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues' and 'EU action is most effective where it is based on a partnership with third countries to tackle common problems and meet shared policy objectives' (European Council 2005, 2, 5). However, the declaration states in the next sentence,

The EU should use its significant relationship with third countries as an incentive for them to adopt and implement relevant international standards and obligations on JHA issues. Countries should be aware that the nature of their relationship with the EU will be positively affected by their level of co-operation, given the central importance of these issues for the EU and its Member States (European Council 2005, 5).

The declaration thus tries to have it both ways: after defining JHA issues as 'common problems' and 'shared policy objectives' for EU member states and ENP countries alike, it goes on to suggest that the neighbouring countries will be rewarded for their cooperation. The 'borderlands' are hence cast as both equals and subordinates or 'others'. This mixed message shows the ambiguity in the EU's relations with third countries in the pursuit of JHA objectives.

The major problem that the EU encounters in shaping relations with neighbouring countries, such as Georgia, is that the countries in question do not share the EU's conception of what constitutes a threat. The rather weak incentives to enlist as partners contributing to the EU's security are

compounded by the presence of differing priorities. Ambiguities in the form of the transfer of norms and standards are thus coupled with scepticism towards the content of the EU's policies.

EU and Georgia: Diverging Expectations?

In its attempts to mould domestic areas linked to public order and security through ESDP missions in the neighbourhood, the EU provides technical assistance and cooperation based on its own notions of security and order. These notions, of course, derive from its own experiences and needs, and do not necessarily reflect the concerns of the recipients of its aid. The EU thus projects European standards of internal security and imposes its own solutions to the problems it identifies. Law enforcement institutions must not only be made more effective, but these institutions must also be 'Europeanized' and their reform guided by EU standards. The Commission communication on a strategy on the external dimension of AJFL states, 'The projection of the values underpinning the area of freedom, security and justice is essential in order to safeguard the internal security of the EU' (European Commission 2005, 3). The question is whether the EU is successful in exporting its vision of the problems affecting the neighbourhood. Its perceptions might not necessarily be in line with local demands and expectations. Following a short overview of the EU's engagement in Georgia, I will explain how the EU's threat perception diverges from Georgia's own security needs.

The EU's policies towards the South Caucasus have been the object of a continuous debate between different EU member states over the last fifteen years. The EU views the resolution of conflicts as a precondition for increased EU involvement in the region. The EU's perception of its own role in the settlement of conflicts is rather uncertain; it has limited itself to supporting the Organisation for Security and Cooperation in Europe's (OSCE) conflict resolution efforts. The EU has traditionally had a cautious attitude with a weak presence in conflict negotiating mechanisms and no involvement in mediation, but it has upgraded its profile in recent years. The EU is engaged in 'conflict management' rather than in 'conflict resolution' in the South Caucasus (Tchanturia 2007). It has supported the rehabilitation of the conflict zones and confidence-building measures and has become the largest donor in the secessionist territories of Abkhazia and South Ossetia. The first phase of the EU's assistance to Georgia consisted of technical assistance in specific areas. The Partnership and Cooperation Agreement (PCA) signed in 1999 between the EU and Georgia provides the legal framework for EU-Georgia relations. The Commission has focused traditionally on four main areas: governance and rule of law with support for institution building, support for market reforms, addressing the social consequences of transition, and conflict resolution. Until recently, the TACIS programme was the instrument for financing projects in these areas. Starting in 2007, financial assistance took the form of budgetary support with the introduction of the European Neighbourhood Partnership Instrument (ENPI). No emphasis was

put on the political dimension of the EU–Georgia relations within the PCA framework; the focus was on technical and economic assistance. The EU’s assistance to Georgia amounted to 420 million between 1992 and 2004. Despite substantial EU assistance, Georgia did not achieve any visible results during former president Eduard Shevardnadze’s terms in office (1995–2003). Along with the kidnapping of an EU expert in Tbilisi in 2002, this lack of results led to the revision of the Country Strategy Paper. New priorities were thus defined for 2003–2006, with a stronger emphasis on rule of law, support for civil society, poverty reduction and conflict resolution. The Council has become more involved in the region since the appointment of an EU Special Representative (EUSR) for the South Caucasus in 2003, whose task is to develop recommendations for the peaceful resolution of conflicts. The 2004 Rose Revolution was a determining factor behind the decision to include the Southern Caucasus in the ENP, whereby a rule of law mission to Georgia was launched in 2004 and the EUSR’s mandate was extended in 2005. In the 2003 Communication on Wider Europe, the South Caucasus initially was excluded from the ENP due to its geographical location (European Commission 2003, 4). The South Caucasus was mentioned in the EU’s security strategy published the same year, however: ‘We should take a stronger interest in the problems of the Southern Caucasus, which in due course will also be a neighbouring region’ (European Security Strategy 2003, 8). Since 2004, the Commission has provided advice to the Georgian Ministry of Justice, which focuses on penitentiary reform (e.g. the establishment of a probation service, the strengthening of the penitentiary administration and the rehabilitation of the penitentiary infrastructure). It has also provided assistance to the Prosecutor’s office and to the Ministry of Internal Affairs; the aim is to reform the Ministry into a civilian institution (Helly 2006, 89).

The EU’s tendency to define threats and solutions in its neighbourhood from its own perspective is visible in Georgian reactions to the deployment of an EU rule of law mission in 2004. This mission to Georgia, also known as EUJUST Themis, operated from June 2004 to July 2005. The first of its kind, it built to a certain extent on the previous Commission work in the justice sector, but this time under an ESDP framework. The mission was viewed as a contribution to political stability in Georgia in its post-transition phase. It was also considered to be a solution to potential security problems in Georgia, as well as a way to defuse the risk of regional instability (European Council 2004). The mission’s stated objectives were to provide guidance to the Georgian government in implementing the new criminal justice reform strategy; to support the overall coordinating role of the relevant Georgian authorities in the field of judicial reform and anti-corruption; to aid in the planning of new legislation as necessary; and, as an additional point, to assist in the development of international as well as regional cooperation in the area of criminal justice (European Council 2004). The mission was also an attempt to conciliate short-term security measures with long-term assistance for institutional reform (Helly 2006, 92).

The rule of law mission was not exactly the type of support that the Georgian government had envisioned from the EU after the Rose Revolution.⁴

The Georgian government, instead, wished for more direct EU assistance with short-term national security issues, including help in resolving conflicts and training for border guards. In fact, it wanted conflict resolution to be the first priority in the ENP Action Plan (Popescu 2007, 9). As it turns out, Georgia appears more interested in promoting a traditional concept of domestic security, i.e. one based on the classical categories of territorial sovereignty and the state monopoly on violence, than in embracing the protection of the EU's internal security against transnational threats. The Georgian government would like to see the EU use traditional diplomatic overtures rather than soft instruments and become more engaged in conflict resolution. Until now, however, the EU has been rather reluctant to engage directly in conflict resolution, preferring to defer to the OSCE's efforts. Compared to other players in the region, the EU favours the use of soft instruments and rejects zero-sum approaches. As Lynch (2006, 72) observed, '[t]he EU does not act in the same geopolitical game with the US and Russia'. After Russia vetoed the continuation of the OSCE border monitoring mission at the Russo-Georgian border in 2004, Georgia invited the EU to take over the border mission from the OSCE. The EU refused to assume control of the mission under the EU flag, offering instead the more modest option of deploying a small team of experts under the EUSR. This decision showed that the EU's policy in the South Caucasus is constrained by the reluctance of certain EU member states to irritate Russia. The EU preferred to engage in low profile missions. The Georgian-Russian conflict of August 2008 has forced the EU to upgrade its involvement in Georgia. EU member states agreed in September 2008 on the deployment an EU observer mission.

The Georgian government's post-Rose Revolution priorities are obvious: the defence budget reached almost 1.5 billion Georgian laris in 2007 and 1.1 billion Georgian laris in 2008 (about \$US850 million for 2007 and \$US623 million for 2008) (Civil Georgia 2008). The fight against corruption and organized crime is one of its top priorities. These objectives are integrated into a more ambitious state-building and modernization project that also aims at the restoration of the state's legitimacy and normative influence. The Georgian government is also trying to combat organized crime networks, as well as the traditional tolerance towards criminal groups in Georgian society; in other words, the state is determined to eradicate parallel monopolies of violence. As a result of this repressive logic, the prison's population has increased dramatically (nearly doubling since the Rose Revolution) and new prison facilities are being built. The Georgian government's objective is more to inspire respect for the state than for the rule of law. It follows a 'law and order' logic relying on 'efficient' and loyal law enforcement agencies. Major government efforts have targeted the reform of security structures, and have apparently succeeded in improving the police's image among the population and inspiring confidence in it.⁵ At the same time, human rights associations and opposition parties are increasingly critical of the government's repressive approach. The government defends its heavy-handed style as necessary for restoring respect for the state, which has long been associated with foreign rule. Fear of punishment by the state is seen as a means of ensuring that laws

are respected, even if the government itself is increasingly perceived as violating them. In a country where parallel justice systems and sources of violence previously were allowed to flourish, the state must now be seen as the sole player. The EU and the Georgian government thus have very different understandings of the rule of law. The former places emphasis on predictability and legal certainty for business and investments, as well as a judiciary that is both modelled on the EU's standards and capable of implementing them. The latter's vision of 'law and order' is based on the restoration of state control via the destruction of parallel sources of legitimacy and violence.⁶

Another example of how the EU tries to define threats and solutions in the South Caucasus in the JHA domain is the Integrated Border Management project. The EU hopes to develop a single border management system for the whole South Caucasus region (Armenia, Azerbaijan and Georgia), entailing cooperation between the three countries' law-enforcement agencies. The project's objectives are to increase efficiency in the fight against drugs and human trafficking as well as to prevent conflicts.⁷ Similar EU projects include the Border Management Programme for Central Asia (BOMCA), plus a border management project between Ukraine and Moldova. However, seen from a South Caucasus perspective, the project appears to be difficult to implement, especially given Azerbaijan's reluctance to engage in regional projects with Armenia.⁸ Georgia, for its part, has expressed its interest in being included in a Black Sea dimension with Ukraine, rather than as part of the South Caucasus region. In the document 'Priorities of the Georgian government for the ENP Action Plan', the Georgian government claims to want 'to promote regional cooperation with respect to Integrated Border Management within the framework of the Black Sea region as well as the South Caucasus'.⁹ Furthermore, the Georgian government's desire to secure borders has more to do with addressing the 'frozen conflicts' with Abkhazia and South Ossetia than with hindering the flow of drugs and human trafficking from Central Asia to Europe. The UNDP project Southern Caucasus Anti-Drug Programme (SCAD), funded by the EU, was refocused on narcotics prevention after an internal evaluation revealed that the equipping and training of Georgian law enforcement agencies in combating drugs from 2001 to 2006 had not been particularly effective. Given the weak incentives contained in the ENP Action Plan, however, the Georgian government's readiness to cooperate with the EU on JHA issues, such as border management, migration and money laundering, is far from certain.¹⁰

Georgia is interested in the 'positive' aspects inherent in the concept of the AFSJ, namely the freedom of movement and preferential trade agreements. However, the freedom of movement and visa provision presuppose Georgia's readiness to cooperate with the EU on readmission agreements. As noted by Monar (2006, 498), among the public goods associated with the concept of AFSJ, security is placed above freedom, as the 'effective exercise of freedom is made dependent upon the guarantee of security'. Freedom is not primarily associated with the freedom of movement, but with freedom from insecurity and crime and the right to live in a safe and law-abiding environment (Monar 2006, 498). When it comes to public security, the EU aims primarily at

designing instruments that protect its own citizens. The Council's 2005 declaration on a strategy for the external dimension of JHA stated that 'it is no longer useful to distinguish between the security of citizens inside the European Union and those outside' (European Council 2005, 2). However, the protection of EU citizens appears to be what matters when trafficking, organized crime and migration problems are addressed through readmission agreements. Citizens in neighbouring countries are themselves included in the threat construction as trafficked victims or labour migrants. The Council's declaration on a strategy for the externalization of JHA also states its agenda in unequivocal terms: 'The EU's objective in engaging with third countries on JHA issues is to respond to the needs of its citizens' (European Council 2005, 5). In the case of Georgia, the building of institutions modelled on European standards appears more geared towards exporting the EU's vision of how a local judiciary can contribute to the EU's security than responding to the needs of Georgian society. This logic has consequences for the EU's ambition of exporting democratic values to neighbouring countries, especially if we consider that democratizing law enforcement institutions depends primarily on reinforcing their accountability towards nationals.

JHA Policies in Georgia: Normative and Strategic Goals

Not only do the EU's policies not necessarily correspond with the Georgian government's expectations and its own concept of security, but the EU's various goals are often contradictory. The concept of 'civilian power' in Europe refers to the EU's use of soft instruments (economic incentives and values) in its external relations that differ from traditional foreign policy instruments (military and diplomatic) and power politics. These two modes of influence and logics were described by Smith (2003) as possession and milieu goals.¹¹ Milieu goals refer to the processes by which the EU shapes its environment through the combination of socialization instruments (e.g. the export of democracy and rule of law standards) and positive conditionality (economic incentives). Possession goals correspond to a more traditional concept of foreign policy aimed at promoting and protecting national interests abroad. According to Youngs (2004), the normative and strategic aspects of the EU's external policies complement rather than oppose each other. They coexist in one policy, or strategic objectives can be integrated into a broader normative framework. As Diez (2005, 625) argued, the spread of particular norms and values to third countries necessarily implies strategic interests and the two cannot be distinguished easily. With the externalization of JHA policies, the EU is trying to combine internal goals with foreign policy objectives. However, these two sets of goals are not necessarily compatible. The traditional dilemma between the promotion of rule of law and 'efficiency', or between 'democracy' and 'security', is visible in the EU's JHA policies in Georgia. The transformation of institutions of domestic order in neighbouring countries is aimed primarily at ensuring the security of EU citizens. Hence, the EU contradicts its own objective of promoting democratic and rule of law standards abroad. Indeed, domestic

law enforcement institutions derive their legitimacy from their role as providers of security and order for nationals.

Criminal justice reform is one of the EU's top priorities in Georgia, as reflected in the ENP Action Plan and the launch of a rule of law mission in 2004, with the objective of advising the Georgian government on a criminal justice strategy. The EU's engagement in criminal justice reform in Georgia revolves around normative and strategic goals. In the export of rule of law standards, the EU uses two means: approximation of legislation and administrative capacity building. The former mechanism is aimed at aligning national legislation with EU standards and filling some gaps, for example in introducing the prosecution of certain crimes. Criminals can easily exploit loopholes and differences in national criminal legislation; national criminal codes vary from one country to another and depend on national legal traditions (Monar 2006, 505). As the Council's declaration on a strategy for an external dimension of JHA states, 'The EU must tackle the underlying factors that enable organised criminality to exploit and operate across the EU's external borders, including by removing obstacles to judicial cooperation in criminal and, as appropriate, civil matters' (European Council 2005, 3). Administrative capacity building aims at making institutions more efficient and better equipped for grappling with illegal migration and other menaces. Capacity building is often not limited to equipping certain ministries, but also takes the form of training, with an emphasis on human rights and democracy standards. The reform of the criminal justice system in post-Soviet countries is linked intimately to the challenge of exporting democracy standards. Criminal justice reform and penitentiary reforms have been areas of interest for the EU in Georgia for many years, as areas in which human rights standards are particularly lagging.¹² The Georgian criminal justice system still has some characteristics of the Soviet system and changes initiated during the Shevardnadze era tended to be rather cosmetic. The criminal justice system is still characterized by an imbalance between different bodies. The prosecutorial branch is strong in the investigation and trial phases and subject to political interference, while the judiciary and the defence are weak (Helly 2006, 90). These conditions have reinforced public distrust in the justice system.

The rule of law mission in Georgia was hampered by the presence of two different approaches to fighting corruption. During the phase of justice system reform, the mission staff encountered obstacles in fulfilling their objectives when Georgian authorities attempted to take over the judiciary under the banner of stamping out corruption. While these clean-up efforts might have some genuine motivation, it is clear that the executive is trying to exert control over the courts and reinforce the prosecution office's powers. As in other ministries, the Georgian government launched a radical purge in the judiciary. A large number of judges were labelled as incompetent and corrupt and were fired. Under these conditions, the mission found it increasingly difficult to carry out its objectives. Two different ministers were in charge of the reform in the space of one year (Helly 2006, 96). The head of the mission, Sylvie Pantz, pointed to the problems of political interference in

the work of the judiciary (Lobjakas 2005). Further difficulties were caused by the hybrid nature of ESDP missions, which have the effect of creating overlapping competencies between the Council and the Commission. In the case of the rule of law mission to Georgia, cooperation between the mission and the Commission was not smooth (Helly 2006, 94). In contrast to the traditional low profile adopted by officials in the EC delegation, Pantz favoured a hands-on approach when dealing with Georgian authorities. In an interview with Radio Liberty, Pantz explained how she achieved results by seeking more direct involvement in the daily affairs of the Georgian judicial system: 'We were very anxious when we heard that three, four judges of the Supreme Court had been asked to resign', Pantz says.

So, what I initiated outside [my official] mission [was that] I put round the table the OSCE, the Council of Europe, the [European Commission] delegation, Americans — USAID and the [US] Department of Justice — and all together we went to see the president of the Supreme Court of Georgia in order, in order to [say] collectively that it was not the right way to proceed. Since then, no more judges have been asked to resign at the level of the Supreme Court (Lobjakas 2005).

The EU faces a similar dilemma in law enforcement reform, as it must answer to efficiency demands while simultaneously ensuring that these institutions comply with human rights standards. In post-Soviet countries, the challenge is to democratize policing and transform a state organ with a repressive mentality into a body accountable to citizens and aimed at guaranteeing their safety. In order to gain the society's trust, law enforcement institutions need to respect human rights and rule of law standards. Furthermore, these organs need to be perceived as protecting citizens rather than serving state interests. The Georgian government's crackdown on organized crime has resulted in overcrowded prisons, police abuses, cases of torture in prisons and harsh penalties against juvenile delinquency; all of these developments violate the EU's human rights standards. The Commission is cautious in its assistance *vis-à-vis* the reform of the Ministry of Internal Affairs, as it is wary of losing its credibility. With respect to infrastructure, the EU has supported the rehabilitation of the Rustavi prison, but has refused to provide financial support for the building of new prison facilities.¹³ As for training, the EU is engaged only in the training of the border police, a project being conducted by Finnish border guards. The dilemma between efficiency and the protection of fundamental rights can also be seen in the example of Georgia's efforts to reform the civil registry. In the absence of sufficient legal guarantees on data protection, the EU was reluctant to support the reform in its initial stages after the Rose Revolution.¹⁴

Conclusion

The EU faces a number of limits in the implementation of its foreign and internal policy goals in the South Caucasus. An important obstacle is the

limited leverage the EU has on ENP countries in the absence of membership prospects for these nations. The EU's policy in the region is also constrained by its eagerness to avoid a confrontation with Russia. It remains to be seen how the recent Georgian–Russian conflict will affect the EU's relations with Russia as well as the EU's engagement in its eastern neighbourhood.

This paper has argued, however, that another major stumbling block to the effective implementation of EU policies in Georgia is the EU's ambivalent perception of Georgia. The EU tries to address threats in its neighbourhood through a partnership approach, but at the same time applies a securitization and 'othering' strategy to neighbouring countries that has the effect of including them in its threat perception. As a result of this ambiguity, there is a lack of strategic vision in the region. The EU's attempt to export JHA policies to Georgia showcases several of the complex issues it faces in its endeavours to externalize its policies: it is concerned with the issues of security and integration on the one hand and with efficiency and the promotion of human rights and democracy standards on the other. Beyond this conundrum, the EU faces two additional major problems in the South Caucasus: first, it is difficult to transplant its own security vision in an environment where classical notions of security as territorial defence prevail. The Georgian–Russian conflict has illustrated the gap between the EU's soft security policies and Georgia's security needs. It has shown that military power is still a relevant category in the post-Cold War context. Secondly, the EU is having difficulty addressing pressing security issues on the ground with soft instruments and assistance for long-term reforms. The EU's efforts to externalize JHA policies as well as enlist third countries to help it realize its internal goals are impeded further by its unilateral imposition of priorities and solutions. If there is no consensus among the EU and Georgia on the threat analysis and the instruments needed, the implementation of JHA policies in Georgia will prove difficult.¹⁵ Regarding JHA issues, the emphasis put on drug trafficking and illegal migration appears to be out of synch with Georgia's needs and what it expects from an increased EU presence. Furthermore, the externalization of JHA policies is driven by the EU's perceptions of interdependence and vulnerability, along with its desire to protect its own citizens. Citizens in neighbouring countries are not necessarily seen as the victims, but to some extent as threats in themselves. It is not clear how the EU can turn domestic law enforcement institutions, whose primary function is to ensure domestic security, into instruments aimed at protecting the EU's internal security and countering transnational threats. This objective is especially challenging if these institutions are supposed to comply with human rights and democracy standards.

The EU's vision of the South Caucasus region as a coherent entity is self-serving and does not reflect local perceptions. As the head of the EC delegation to Georgia and Armenia, Per Eklund, declared in an interview, '[f]rom the EU's perspective, the need to find alternative energy providers is one key issue that can bind Georgia, Armenia and Azerbaijan together in the future, in their role as transit countries' (Di Puppò 2007). These three countries do not perceive themselves as a regional unit, however. Finally, by insisting on

long-term institutional reform and the export of EU standards, the EU is perhaps misjudging the environment that it is trying to shape. The countries of the region are still closer to a state building than a transition phase. The ENP's approach, which shares similarities with the enlargement policy and utilizes the same instruments, is perhaps better tailored to states that are slated to join the EU than to countries like Georgia. Georgia is still in a state-building phase and coping with its own security challenges. Popescu (2007, 22) remarked, '[i]n a constantly degenerating security environment around Abkhazia and South Ossetia and increasing tensions between Russia and Georgia, the long-term focus of the ENP has been increasingly out of touch with the pressing realities on the ground'. The Georgian–Russian conflict has confirmed that long-term reforms cannot answer appropriately Georgia's immediate security needs. Lynch (2006, 74) viewed the strengthening of the state as Georgia's top priority, thinking that

[t]he first objective (of the EU) should be to strengthen the Georgian state in terms of its ability to enjoy full sovereignty. Here, the EU should support first-order reforms now being undertaken by the Georgian government. Georgia must become a fully-fledged state before it can undertake the integration reforms that will draw it closer to the EU as a political, economic and social model.

Notes

1. See Tassinari (2005, 6) on the integration/security dilemma.
2. The EU's security strategy states, 'We should now take a stronger and more active interest in the problems of the Southern Caucasus, which will in due course also be a neighbouring region' (European Security Strategy 2003, 8).
3. See Manners (2002) on the concept of 'normative power Europe'.
4. Interview with the Georgian–European Policy and Legal Advice Centre (GEPLAC), Tbilisi, 13 July 2007.
5. Public confidence in the police has increased after the Rose Revolution. See International Republican Institute et al. (2007, 95–6).
6. Kleinfeld Belton (2005) distinguished between five different ends-based definitions of the rule of law, including 'law and order' and 'predictable, efficient justice'.
7. Interview with the EC delegation to Georgia and Armenia, Tbilisi, 24 August 2007.
8. *Ibid.*
9. Georgian government: Priorities of the Georgian government for the ENP Action Plan, http://www.parliament.ge/files/292_901_909756_priority_en.pdf.
10. Interview with the EC delegation to Georgia and Armenia, Tbilisi, 24 August 2007.
11. Smith (2005), drawing from A. Wolfers (1962, 73–6).
12. Interview with the EC delegation to Georgia and Armenia, Tbilisi, 20 July 2007.
13. *Ibid.*
14. *Ibid.*
15. See Berenskoetter (2006) on the problem of the agreement on the threat image in the case of the EU police mission in Bosnia Herzegovina (EUPM).

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