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**The EU as a Global Actor: Peace,
Security and Conflict**

‘Mutually Accepted’ by whom? Imperial
practices in the EU-Morocco Association
Agreement

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Introduction

Both in academic literature and in the news media, the “forgotten conflict” for the non- self-governing territory of Western Sahara continues to be one of the least covered subjects. The “last African colony”, as it is often designated, deserved only a brief moment under the limelight recently, when the Spanish government announced its decision of supporting a “mutually accepted” solution for the territory. Essentially, the solution upholds the long-standing Moroccan desire to annex the territory under a special regime of autonomy, which has always been opposed to by the Polisario Front, the only internationally recognised representative of Western Sahara and its people. This move by the territory’s former coloniser and an influential Member State goes in line with what has been the European Union’s (EU) *de facto* position over the last decades, even though it was never formally stated as so.

Taking the Normative Empire Europe (NEE) framework developed by Raffaella Del Sarto (2016) as its main lens, this paper aims to shine a light on the utility of conceptualising the EU as an empire when it comes to its relations with the surrounding regions. We will start by clarifying concepts such as “practices” and “empire, which constitute the foundation of the framework, before spelling out the theory itself. Afterwards, attention will be drawn to practices which may be classified as imperial within the scope of the referred framework. For this particular case, we will highlight two of them: the Commission and the Council’s resolve to circumvent rulings by the European Court of Justice, which considered illegal the extension of tariff preferences to the Western Saharan territory conceded to the Kingdom of Morocco; and the ongoing EU discourse on the socioeconomic benefits of said extension to the people of Western Sahara. Lastly, the paper concludes that Del Sarto’s framework shines a light on the significant process of *imperialisation*, which has gained traction within EU foreign policy in recent decades. This process manifests itself mostly through territorial expansion, achieved by enlargement, or policy instruments such as the European Neighbourhood Policy, which directly affects our case study.

2. Theoretical Framework

2.1 The Practice Approach

This paper will make use of a post-structural practice- based approach that reaches beyond institutional arrangements. Adler & Pouliot (2011: 4) define practices as “socially meaningful patterns of action, which [...] simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world”. The authors then construe the notion

of practice according to five main characteristics. Firstly, practice is conceptualised as a performance, drawing inspiration from sociological thought (Goffman 1959; Butler 1990). Unlike entities or substances, practices exist solely as processes and are void of meaning if they remain stale. Secondly, practices require a pattern, and thereby an exhibition of a certain regularity over time and space, for it is “repetition and dissemination that give representations their power, not an inherent stability and closure” (Doty 1996: 72). Thirdly, a practice can be more or less competent in its performance depending on how socially meaningful and recognisable it turns out to be. This particular aspect stands out when talking about contested states such as Western Sahara (Bouris & Fernández-Molina 2018). Fourthly, practices are simultaneously the embodiment, enactment, and reification of some kind of background knowledge possessed by the agent that engages in them. At last, they constitute a missing link between discourse and the material world. It is the type of communication that accompanies them that allows the spectator to apprehend their meaning and distinguish them from isolated behaviour (Adler & Pouliot 2011). Through their conveyance, practices make a claim of “how things are” and hence may change both the physical and ideational environment in which they emerge.

2.2 The Concept of Empire

Del Sarto (2016) recognises a number of advantages that come with qualifying the EU as an empire. The first advantage is that, from a geographic standpoint, the Union consists of a large territory that comprises a variety of unevenly distributed constitutive elements in the form of its Member States, nations, regions, and the like. Its “fuzzy” external borders and permanent state of expansion through integration policies along with its – often-incongruent – functional borders confer it with a variable geometry worthy of the imperial realms of the past. Despite these incongruencies, the concept of empire implies the existence of a polity. That alone differentiates such entities from mere supranational economic networks, to which the EU is often compared (Gravier 2009). In the end, we are ultimately dealing with a matter of social and political recognition regarding the SADR as represented by the Polisario Front (Bouris & Fernández-Molina 2018). Seeing the Union as a polity, rather than simply as an economic actor, does more justice to its significance among the international community and the role it plays in the process of recognition – despite lacking the legal power to do so, which remains exclusive to nation-states.

The second advantage relies on the fact that such a conceptualisation is better suited to grasp the unequal power relations between the EU and its borderlands, that is, “hybrid areas in close

geographic proximity to the border, which are directly affected by the latter” (Del Sarto 2016: 221). Indeed, European expansion occurs by mutual agreement, however, the transference of practices to the peripheries secures the existence of the same norms, standards, and customs within a buffer zone. There is little contest in academia regarding the idea that, throughout history, empires have aimed at stabilizing their respective peripheries in order to obtain economic gains from them by engaging in a “civilizing mission” (Galtung 1971; Motyl 2001; Zielonka 2006). At its margins, the European project constitutes a political tool meant to diffuse a political culture (Gravier 2009). Both the enlargement policy as well as the ENP contribute to this goal, by providing the EU with instruments to incentivise economic and political transformation in its peripheries through the promise of further integration. The diffusion of European interests in Western Sahara is therefore dependent on the territory’s insertion within Morocco.

A third point would be that the EU perceives itself as a benevolent normative power, whose normative purposes rank above its own interests. In the past, EU institutions themselves have made use of the term to characterise the Union. José Manuel Barroso did not hesitate before referring to the EU as an “empire” (EUObserver 2007). This ascription embodies a view of the European project which is prevalent in the institutions: that of a “non-imperial empire” or of a benevolent one, whose inwards and outwards governance ultimately benefits its targets.

Finally, applying an empire-based approach to the EU helps to unravel why civil society and democracy promotion initiatives in its borderlands end up not turning into productive results. In brief, imperialism is a system that “splits up collectivities and relates some of the parts to each other in relations of *harmony of interest*, and other parts in relations of *disharmony of interest*, or *conflict of interest*” (Galtung 1971: 81). Considering this, the EU makes use of the dualist dynamic between imposition and cooperation, particularly visible in the case of Morocco as it will be exposed further down, in order to cement its own imperial order.

Thus, although the Union might not resemble exactly the European powers of the 19th century, it shares a plethora of core characteristics and practices with them. That leads us to why the Normative Empire Europe theory may be helpful to analyse not only the EU’s relationship with its neighbourhood, but most importantly, its policies towards Morocco and the implications to Western Sahara that derive from it.

2.3 Normative Empire Europe

Normative Empire Europe attempts to solve the apparent dichotomy between constructivist perspectives on one hand, and realist-rationalist outlooks on the other. It combines both schools of thought by conceptualising Europe as an “empire of sorts” (DelSarto 2016). This is relevant since the EU’s exporting of rules and practices to neighbouring states combines the *modus operandi* of empires when pursuing their own interests with the promotion of a certain identity in their borderlands.

Analysing the EU’s practices towards the neighbourhood more closely, we understand how they have contradicted the original concept of normative power (Manners 2002). These contradictions derive from the Union’s constant unwillingness to foster institutional reforms regarding rule-of-law, human rights, or democratic governance. Instead, it sponsors authoritarian rulers in exchange for security and prevention of unwanted migration, as Del Sarto (2016) herself mentions when it comes to the case of Tunisia, for instance. The same took place in the economic sphere, since the previous generation of trade agreements explicitly demanded that partner states harmonised their legislation to fit within the *Acquis Communautaire* (European Commission 2012).

When it comes to Morocco, this practice has manifested itself in various forms. Between 2004 and 2012, the ENP countries engaged in more than a hundred twinning projects whose overall budget was around €160 million. Out of those, €30 million – around 19% – were dedicated to Morocco. These consist of sending resident advisors from the Member States’ public administrations to beneficiary states so as to assist them in the implementation of ENP plans. Besides, Brussels contributes to the salaries of dozens of foreign government officials in ENP states – 13 for Morocco – who are responsible for coordinating the EU’s training activities (Del Sarto 2016). Although these figures might not be impressive as such, they illustrate the ongoing process of *imperialisation* of the Union’s policymaking via spreading its own “way of doing things”. Such process goes against the ruling accession that polities should govern solely within its borders. Consequently, the active participation in another state’s domestic affairs through asymmetric relationship falls under the imperial umbrella, despite discursive efforts that these practices constitute a joint ownership of policymaking (European Parliament 2022; Gravier 2015). Therefore, conceptualising the EU as an empire of sorts can overcome the classic dichotomy “by providing an example of how, in practice, an actor’s utility-maximizing strategies, and norm-based behaviour interlock, reinforce and constitute each other” (Del Sarto 2016: 217).

A point that might deserve a more careful examination, however, is how Del Sarto's framework departs from the study of processes, i.e., practices, to reach a conclusion in terms of results: that the EU constitutes a (Normative) Empire. When we think in terms of processes, the evolution of the European project in recent decades through its successive enlargements unveils some defining traces of *imperialisation*, which is to say a "transformation process that introduces in the europolity features, which are considered characteristic of empires" (Gravier 2009: 628).

Staying within the realm of practice-based definitions prevents us from making excessive generalisations regarding the *imperialisation* process. It is easily noticeable when we speak of territorial expansion or the relationship between the EU and its borderlands. However, the same cannot be said of the single market, for instance, which defies a key characteristic of *imperialisation*: the disappearance of relations between peripheries. In fact, the strengthening of said relations is indicative of a process of de-imperialisation (Gravier 2011; Motyl 2001).

Taking this factor into account, the following sections of the paper will address specific elements of the Normative Empire Europe theoretical framework that can be applied to the case study in question. These will include, firstly, the EU's export of practices as a way of ensuring the spread of its imperial order, which constitutes the realist element of Del Sarto's approach. Secondly, the EU's self-perception as a benevolent normative power, which plays into the constructivist side of the framework and can be observed both in institutional practices and in how the Union justifies them. Third and finally, the lack of any serious effort for democratisation once it may hurt the pursuit of core interests in the region, something that is seen mainly in the lack of recognition towards Sahrawi representatives and in the denial of their international agency.

3. EU-Morocco Association Agreement

Morocco has benefited for a long time from a special status in its relationship with the EU, mostly due to the positions held by its two former colonisers: Spain and France. Adding up to the EU-Morocco Association Agreement (AA) established in 2000, an additional liberalisation package on agriculture and fisheries came into effect in 2012. This becomes more significant when we think of the EU's usually cautious policy regarding opening up trade in the agri-food sector. Said agreement paved the way for negotiations which started in 2013 with the goal of establishing a Deep and Comprehensive Free Trade Area (DCFTA), but that were put on hold at Morocco's request.

Relations then deteriorated after the 2016 ruling (C-104/16) by the European Court of Justice

(ECJ) which determined that the AA solely applied to the territory of the Kingdom of Morocco, excluding the non-self-governing Western Sahara by virtue of the principle of self-determination (European Court of Justice 2016). After the ruling, the EU effectively stopped applying the same tariff preferences to both territories. The aforementioned principle was yet again upheld by the Court in its 2018 judgement (C- 216/16) regarding the EU-Morocco Fisheries agreement in which the ECJ explicitly stated that “the waters adjacent to the territory of Western Sahara [were] not part of the Moroccan fishing zone” (ibid 2018: 2).

The relationship recovered its former harmony in 2019, once an amendment to the protocols of the AA decided for the extension of tariff preferences on products originating from Western Sahara. Ultimately, it conferred a formal garment to a practice that had been already in place for the past decade. The most significant document, however, came later in 2020. In the shape of a staff working document, the Commission reported on the implementation of the amendment as well as on the benefits of the tariff extension for the Sahrawi economy and its population. A new cooperation mechanism for the period 2021-27 emerged under the banner: Neighbourhood, Development and International Cooperation Instrument (NDICI) (European Commission 2021). Finally, the last Court decision regarding the case came out in 2021, when the ECJ cancelled two agriculture and fishing agreements between the bloc and Morocco and reaffirmed the Polisario Front’s status as a legal person and as the legitimate international representative of the Sahrawi people. Nonetheless, Brussels and Rabat swiftly made sure to calm the waters by stating they would take the necessary measures to assure the stability of trade between the two actors (Euronews, 2021).

4. Western Sahara: Imperial Practices and Denial of Agency

4.1 Commission vs. Court: Bypassing the Rule of Law

Considering this chronological background, we can indeed identify elements that fit within the scope of the NEE theory. Primarily, there is the constant attempt at circumventing ECJ rulings with respect to the extension of the AA to Western Sahara. The amendment of Protocols 1 and 4 of the agreement in 2019 was done consciously while recognising explicitly that there were “Court cases pending in the EU” (European Commission 2021: 52). As proposed by Del Sarto, these are actions that contradict the concept of normative power. The promotion of values contained in the Charter of Fundamental Rights of the European Union (CFR) – in particular self-determination, democracy, and the rule of law – was set aside while there was an increase in cooperation with Middle Eastern and Northern African regimes which violated human rights and

presented autocratic leanings. Behind such policies is the motivation to guarantee security and stability in the borderlands, through the formal normative guise of the ENP, and the prevention of unwanted migration from the south. In the latter, Morocco plays a fundamental role since it is part of the most frequently used passage into Europe, the Western Mediterranean. A peak of migrant flows by sea and land in 2018 was tackled due to increased efforts by Morocco in close cooperation with Member States (Council of the EU/European Council 2023).

Another point that must be raised is that of accountability sabotage – horizontal accountability in this case – between distinct institutions (Glasius forthcoming 2023). It is frequently mentioned how empires lay their foundations through a process of impositions from the centre to the peripheries. This would constitute a form of vertical accountability sabotage as it discusses the relationship between powerholders and power-addressees (idem). The case of EU-Morocco relations presents us with something different: in a showcase of disrespect for the rule of law and separation of powers, the legislative and executive bodies actively neglected decisions by the judicial branch. Referring back to the definition by Adler & Pouliot (2011), it becomes possible to conclude that, despite the Union not being an authoritarian actor per se, it engages in authoritarian practices in violation of the treaties. Said violations go hand-in-hand with the view of the EU as a realist actor in normative clothes (Seeberg 2009). By employing this kind of practices, the EU sets aside the values embedded in its own Charter (CFR). Suppressing judicial decisions does not aid in the goal of reifying a type of background knowledge based on multilateral governance and liberal institutionalism, namely separation between the executive and judiciary branches.

4.2 Economic Welfare as a justification for Imperial Practices

The 2018 “Report on the benefits for the people of Western Sahara and public consultation on extending tariff preferences to products from Western Sahara” by the Commission lead to the prominence of one specific practice: the discursive insistence on the mutual nature of the amendment to the AA. Such insistence combines both the allure that it represents for the empire to have access to the promised resources of its peripheries and the ever-present and engrained background knowledge of a “non-imperialistic empire”, whose benevolence is not only advantageous to the people over which it imposes its rules, but that also acts accordingly to their will.

In an attempt to demonstrate an effort in engaging with the people affected by the ongoing agreement, the Commission and the European External Action Service (EEAS) made sure to

consult a vast array of socioeconomic and political actors. These included civil society organisations, Western Saharan elected officials, economic operators, and the Polisario Front. A large majority showed themselves favourable to the tariff extensions, claiming it would increase private investment, notwithstanding having variable positions with respect to the status of the territory. Regarding the latter, the consensus remained that it should be settled through an UN-led process. Political and economic positions did not necessarily always overlap, so ideological cleavages were complex and less deterministic. Being pro-independence, or at least pro-referendum, did not imply that an individual was completely against the idea of the tariff extension. The remaining exception seemed to be the Polisario Front, which opposed the agreement on principle according to the Front's broader position irrevocably in favour of independence, unrelated to the economic impacts of the amendment itself (European Commission 2018).

However, following further analysis, there are enough reasons to remain sceptical towards the sampling. It is fundamental to highlight the fact that the report "uses the term Western Sahara to refer to the territory administered de facto by Morocco" (ibid: 6). Therefore, the elected officials mentioned take part in the Kingdom of Morocco's local institutions, and a significant portion of the population samples may be comprised of Moroccan settlers. Throughout history, we have seen how Morocco has frequently attempted at forging an artificial public opinion through this kind of settlements, which have been one of the main reasons for the repeated postponing of the referendum (Benabdallah, 2009; Fernández-Molina, 2019; Fernández-Molina and Porges, 2020). In actuality, the terms "people concerned" have been up for debate ever since decolonisation. Morocco's interpretation, the one utilised by the report, refers to the people living within the territory's borders. The Polisario Front's version defines its people on an ethnicity or community basis, thus, including a multiplicity of ethnic-Sahrawi communities belonging to its diaspora.

Under international law, the Polisario Front is entitled to be involved in negotiations that concern the people of Western Sahara. The EU approach of circumventing the ECJ judgement of 2016 by adopting Morocco's 'fait accompli' policy contributes to a denial of Sahrawi agency by silencing the voices of its legitimised representatives (European Commission 2018). Despite its government being in exile, the SADR has its own elected structures which deserve recognition by a myriad of non-aligned state, as well as the African Union. Considering the EU's dubious sample and neglect of the Polisario Front's stance, we may perceive this practice as an attempt

against the legal and social recognition of the Sahrawi people.

Having defined which people should count as representative of the whole, an imperial practice of sorts by itself, the Commission and the EEAS go on to claim their trade agreement promotes the Sahrawis' right to development. The majority of the discourse bases itself on three main premises: that the economy and production in Western Sahara should enjoy the same tariffs as Morocco, as they *de facto* did until the 2016 ruling; that these same tariffs would boost Saharan economy in an unprecedented way by stimulating investment and generating jobs, particularly in the phosphates industry; and that without said preferences, Sahrawi products would be negatively impacted for being subject to normal customs tariffs (European Commission 2018). Thus, socioeconomic rights are prioritised over self-determination concerns. Yet, the EU shields itself from the claims that it is putting self-determination in jeopardy, by arguing that a boost in the territory's free market would eventually reduce dependency towards the central power, generating further growth and autonomy in the long run.

The same line of reasoning evolves into an argument which fits neatly within DelSarto's claims. The 2018 report states explicitly that "extending tariff preferences to products from Western Sahara should have a comparable effect on human rights in the territory to the effect of the EU-Morocco Association Agreement on human rights in Morocco" (European Commission 2018: 12). Here we see reflected the neoliberal creed, predominant among European epistemic communities, of a causal link between market freedoms and civil rights. The transference of the EU's "way of doing things" together with its benevolent financial support is claimed to lead irredeemably to improvements in democratic standards. We need to look no further than the Maghreb and the Arab world to realise the many issues that come with this thesis. Moreover, the document presents us with remote promises of overall development, while admitting to the uncertainty of whether indigenous communities would benefit from the impact of the extension (European Commission 2018). In a sense, the EU becomes compliant with a form of second-hand imperialism in which it actively supports the centre of another imperial actor and its settlers, while also draining resources from the same periphery.

Conclusion

The analysed reiterated actions towards Western Sahara, such as the sabotage of horizontal accountability as a breach of rule of law that serves realist interests abroad, and the *a posteriori* justification for violations of its own Charter of Fundamental Rights based on alleged

socioeconomic welfare, provide us with two solid empirical cases of imperial practices in which normative and rationalist approaches reinforced each other.

This paper aimed at drawing foundations from the Normative Empire Europe framework to contribute to a conceptualisation of imperial practices in the context of EU policymaking towards its Neighbourhood. It took issue with the Union's usual normative view of itself as an actor with a certain benevolent predisposition to act in world politics according to its own specific history and normative construction. Instead, imperial logics offer a different perspective on the EU's civilising mission, which also originated in the Union's *raison d'être* of preventing military escalation through heightened economic interdependence. Although the usage of the "empire" concept brings visible benefits to EU studies when it comes to the relationship between the Union and its peripheries, the same cannot necessarily be said of various other practices it employs. Therefore, this paper leaves open the question of whether we should stick solely to the idea of *imperialisation*, or further develop the conceptualisation of the European Union as an empire.

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