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Differentiation through bargaining power in EU-Azerbaijan relations: Baku as a tough negotiator

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Abstract

Using the case of democracy and human rights promotion, this paper examines the concept of 'differentiation' in relations between Azerbaijan and the European Union. Post-independence, Azerbaijan increasingly positions itself as a strong and influential actor in the EU-Azerbaijan relations, demanding more discretion from the EU, based on perceivably equal input and interest representation. This paper argues that the EU policy-making machinery struggles to recognise and adjust to these demands. The EU approach, even under the 2015 ENP revision, remains too unilateral, causing the Azerbaijani government to resist and gain influence through different routes, including lobby activities. The paper concludes that EU policies and policy-making mechanisms could become more differentiated, to reflect the political reality of changing power dynamics between the EU and Azerbaijan.

Keywords: Azerbaijan; bargaining power; democracy promotion; differentiation; Eastern Partnership; European Union

Introduction: The challenges of Democracy and Human Rights promotion

The relations between the European Union (EU) and the countries on its eastern border – Belarus, Ukraine, Moldova, Armenia, Georgia and Azerbaijan – are presently conducted under the Eastern Partnership (EaP) framework (EC 2010a). While each partnership has its own features, the relations between the EU and Azerbaijan present a particularly interesting case: they capture a changing power dynamic in the power balance between the EU and neighbouring countries.

Being part of the European Neighbourhood Policy (ENP), the objective of the EaP is to have a 'transformative effect' on non-EU countries in the region (interview with EEAS official

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4, July 2014¹), and it is often assumed that the EU *has* a significant transformative influence on the outside (Whitman, 2013). In the case of the EU and Azerbaijan, this transformative effect however appears to be rather limited, as is demonstrated by the fact that the democracy and human right situation in Azerbaijan has been worsening in recent years, despite the EU's values promotion efforts. This paper will shed light on the hitherto understudied relations between Brussels and Baku, to unpack the process of EU norms promotion and to identify what limits there are to EU transformative power in Azerbaijan.

One possible explanation for the limited effect of the EU, scrutinised in this paper, is that both parties have their own and as a rule *divergent* views on how the relations should be shaped, as well as on the principal objectives of their relationship. European norms and values cannot be unilaterally transferred externally without their subsequent contextualisation. This paper will examine a policy area in which these dynamics are particularly visible specifically in EU-Azerbaijan relations - namely democracy and human rights promotion (DHR).

DHR promotion has been chosen as a case study for two main reasons. First, it displays stark incongruence between the interests of the EU and Azerbaijan, being of salience for the former on the EaP agenda, and of limited relevance and priority for the latter. It would be instructive to examine the effort of both parties to reconcile the differences. Second, this case is also important in terms of the study of negotiation processes and bargaining power, since Azerbaijan appears to be an outlier compared to the other countries in the region: the EU has arguably had an impact on DHR reform in a number of neighbourhood countries (Ukraine, Armenia, Georgia but also the Western Balkans and until recently Turkey); whereas its impact in Azerbaijan in this area still appears to be much more limited.

The aims of this article therefore are (i) to analyse what are the exact friction points between the EU and the government of Azerbaijan regarding DHR promotion; (ii) to identify how DHR could possibly be made a more effective policy area in bilateral relations between Brussels and Baku. Here, the paper will conclude that 'differentiation' could be an important step in improving relations.

This paper makes both conceptual and empirical contributions to this Special Issue, focusing on concrete diplomatic relations and strategic interactions between the government of Azerbaijan and the EU institutions. The article critiques, on the one hand, the common Eurocentric approaches to study EU relations with neighbouring states and values promotion in particular; and on the other hand, it reveals some clear limitations to the EU's current

values promotion policies. The framework used in this paper is informed by the poststructuralist discussion of 'politics' and 'the political'.² It acknowledges that the analysis and framework presented are only a modest start to explore alternative approaches to studying EU relations with its neighbourhood. It by no means attempts to provide a full framework, and should be seen as innovative contribution to the debate.

A further disclaimer should be made at this point: the author is aware that the topic under discussion is controversial, in policy circles as well as in scholarly literature on values promotion. Examining and re-considering views on values promotion (DHR being considered universal values that many within Azerbaijan also aspire) is a normative exercise. This article however does not wish to dispute the value of DHR. Yet, it aims to find out how the issue has been addressed in diplomatic relations between the EU and Azerbaijan, and why it has been problematic, especially in recent years. In that regard, it also hopes to contribute to the scholarly debate on values versus strategic interests in EU policies more broadly (cf. Gahramanova 2009; Kavalski 2012; Kotzian et al. 2011; Lucarelli and Manners 2006; Wetzel 2011; Youngs 2010).

The paper will now turn to a brief overview of the political context in Azerbaijan; and assess what are the views of the EU and the Azerbaijani government on DHR promotion policies. Subsequently, the conceptual framework will be introduced, discussing the notion of 'differentiation'. The framework will then be applied to the analysis of official, non-governmental and unofficial channels of communication in EU-Azerbaijan relations. Lastly, the article will interpret the findings from the analysis in light of the concepts of 'othering', 'differentiation' and 'the political', and point out significant conclusions as well as aspects for further discussion.

Differing DHR agendas of Brussels and Baku

The Republic of Azerbaijan gained independence in 1991 with the implosion of the USSR (Hunter in Bremmer and Taras 1993: 231). The first two years after independence the country was in chaos due to continued losses in the Nagorno-Karabakh conflict with Armenia; economic downturn; and in-fighting in the ruling, democratically elected Popular Front (Cornell 2011: 72, 75; Aliyev 2008: 170-171). Azerbaijan's experiment with democracy was

short-lived and after severe disputes among the political elites, President Elçibey asked Heydar Aliyev to intervene, and his position was soon consolidated (Cornell 2011: 77, 78). Aliyev had formerly been head of the Azerbaijani SSR between 1969 and 1982 (Herzig 1999: 28).

Once Heydar Aliyev established his power, the nature of the regime changed was considered 'hybrid' – nor democratic neither clearly authoritarian (Beichelt in Stewart *et al.* 2012: 17). Yet after his son Ilham Aliyev was appointed as successor, in 2003, the regime obtained an "authoritarian (...) character" (Beichelt in Stewart *et al.* 2012: 22). The incumbent regime in Azerbaijan, still led by President Ilham Aliyev, is therefore considered undemocratic according to international standards (Freedom House 2015). Opposition parties have been marginalised by the government (Bedford 2015) and civil society's capacity has been severely limited (expert interview 3, July 2014; interview with EEAS official 2, May 2014).

Moreover, especially in recent years, there has been a worsening situation regarding human rights (HRW 2016). In 2015, there were over a 100 political prisoners, comprising of both journalists, opposition activists, as well as religious prisoners (Freedom House 2015). With an expanding middle class, the fear of unrest grows and it is said that the government fears the possibility of a revolution (expert interview 3, July 2014). The ensuing result is a crackdown and harassment of any critical voices.

The EU's DHR promotion efforts – two decades without results

Democracy and human rights (DHR) promotion is a recurring transformative objective of the EU in relations with Azerbaijan (see e.g. EC 2001, 2004, 2011). DHR promotion has taken place ever since 1991, across a range of policy frameworks and instruments. These included the Partnership and Cooperation Agreement (PCA) in 1997 (EC 1996a); the NIP/CSP (EC 2001); the European Neighbourhood Policy (ENP) (EC 2004) and the Eastern Partnership (EaP) (EU Council 2009). Yet the matter has become one of the most problematic issues in bilateral relations, especially in recent years. The PCA framework focused less on values and political affairs, and more on economic and technical co-operation (EC 1996b); and hence there was not such strong demand for differentiation coming from the Azerbaijani side. But values promotion has received much more attention especially since 2010, when the EU and

Azerbaijan began negotiations over the heavily politicised Association Agreement (AA) as a follow-up to the PCA (EC 2010b). This is when the Azerbaijani government also started to voice its wish for a more tailor-made policy *without* such values dimension, more strongly. During these years, frictions between the two sides over DHR promotion have become more visible, with the DHR situation deteriorating and the EU placing more emphasis on the matter; and with a stronger use of diplomatic strategies by the regime in Baku, to enforce a more differentiated policy. Therefore, the analysis in this paper will focus on this period after 2010, mostly.

Remarkably, while democracy and human rights are usually mentioned in one breath, there has been a separation of the two areas in practice. **Democracy promotion** is a relevant element for the EU in its relations with Baku, although at the same time there seems to be an acceptance that while the regime of President Aliyev is not democratic, at least it preserves stability, and there may be no credible alternative at this moment (expert interview 3, July 2014). This does not mean that the EU accepts the current form of governance in Azerbaijan; however, the democracy promotion efforts are probably not as strong as they could be.

Human rights promotion, however, has been the main issue of values promotion for the EU, particularly in recent years, since the Azerbaijani government is targeting political opposition and youth activists as well as journalists to an increasing extent (HRW 2015; interview with Member State official 1, May 2014). In 2016, several prominent and well-known prisoners of conscience were released by the government, but many remained imprisoned. Some argue that these successes were due to external pressure, among others from the EU and EU Member States (interview with Member State official 1, May 2014; IWPR 2016)³.

Recent events however, demonstrate the EU's lack of influence over the DHR situation in Azerbaijan. In September 2015 the European Parliament submitted a resolution that condemned the human rights violations in Azerbaijan (EP 2015). A few days later, the Azerbaijani authorities again arrested a number of journalists (CPJ 2015) and the government announced it would re-consider several aspects of co-operation with the EU (interview with EEAS official 6, October 2015; APA 2015). Similar events have occurred in previous years. The EU's current approach is evidently unsuccessful: while the EU's approach reflects 'disciplinary policies', the government in Baku continues the repression of democratisation and human rights activists. This seems to reflect a broader problem of the EU's reactivity as opposed to

the Azerbaijani regime's pro-activity. This paper's analysis of diplomatic communication between the two sides will try to clarify how exactly these dynamics work out.

Azerbaijan's position and national interests

While naturally every country has their own preferences in bilateral relations with the EU, Azerbaijan differs from most of these partner countries for two main reasons. First, the Azerbaijani government demands a more equal relationship based on partnership and reciprocity. While the EU traditionally is confronted with neighbouring countries who wish to obtain closer co-operation and even integration with the EU, in the case of Azerbaijan it almost seems to be the opposite. Azerbaijan is unsatisfied with the current, rather undifferentiated, framework that is offered by the EU, because Azerbaijan feels that the relations now represent the EU's interests but not those of its own. It therefore asks for **differentiation in the form of a tailor-made policy** rather than one uniform approach to all six EaP countries (Paul in Chiragov et al. 2015, 83; Pashayeva in Chiragov et al. 2015, 39). Baku does want co-operation with the EU, but predominantly in technical and economic areas rather than political partnership. It considers value promotion to be 'interference in domestic affairs' (interview with EEAS official 2, May 2014; Cornell 2011, 395).

Furthermore, Azerbaijan differs from the other EaP states in that the government **openly challenges the current lack of equality**, and insists on resetting the dialogue on an equal footing, rather than simply conforming to the EU's set of demands⁴. Azerbaijan, slowly overcoming much of the difficulties of the transition period after independence, is positioning itself as an increasingly strong actor in international politics through for instance enrichment of its diplomatic corps, a pro-active stance towards Brussels and other European capitals, the organisation of large international events, and an explicit political discourse. The country's disinterest in the current format inevitably destabilises the balance of power in the bilateral relations between Azerbaijan and the EU, nudging their relations to a more symmetrical model of communication and exchange. However, this is not yet reflected in the policy-making mechanisms, as will be shown in the sections below.

Conceptual framework: DHR promotion and the value of 'differentiation'

Much of the existing scholarship focuses on the EU's side of the story to explain the phenomenon of the EU's limited DHR promotion success in Azerbaijan. One of the main arguments put forward is that the EU cannot afford to have a strong normative agenda in Azerbaijan because of its dependence on Azerbaijani oil, as well as other strategic interests, including trade in other areas and Azerbaijan being a 'strategic ally' in the region (see e.g. Wetzel 2011; MacFarlane in Dannreuther 2004; Warkotsch 2006; Hale 2012). The importance of energy trade cannot be denied when assessing the EU's policy-making in regards to Azerbaijan, and some of the differences of the DHR approach in comparison to EU relations with other countries can possibly be explained by the significance of these strategic interests. One obvious comparison is Belarus – where the EU takes a much tougher stance regarding the undemocratic regime (see also Franke *et al.* 2010: 173). At the same time, in comparison to other partner states with strategic interests (e.g. Russia, China, or the Central Asian republics), there is relatively much attention for DHR in Azerbaijan. Crucially, and regardless of comparisons with other states, while the EU's pressure for DHR reform hinders the partnership with Azerbaijan, the EU nevertheless continues its DHR promotion efforts. This suggests that the dynamics are more complex than merely reflecting strategic interests. Possibly, energy plays an indirect role, by providing the Azerbaijani government with the economic independence and the bargaining chips to enforce a stronger position in negotiations with the EU – as will be shown later on in the analysis.

Yet this paper argues that it is *not the absence* of the EU transformative pressure, but rather Azerbaijan's resistance to it that actually changes the power dynamics, whereby the latter succeeds at *harnessing* the EU's pressure and this way, side-lining DHR from the agenda. The assumption of this paper is then that Azerbaijan resists the EU's policy, by way of demanding its equal-footing participation in the decision-making process, and by appealing for a differentiated policy. It can do so because of its relatively strong leverage that the government manages to apply in a strategic manner.

Differentiation is a process which allows designing policies in bilateral relations on the basis of common interests of both parties. Since every country has their own specific national policy priorities and interests, bilateral relations between the EU and each EaP partner could also be conducted on an individual basis. This interpretation of differentiation is therefore

different from the one the EU currently employs itself. As was described in the Introduction to this volume, Brussels interprets differentiation as a form of 'deviation' from the EU standard, by way of selective participation in policy initiatives; rather than seeking to accommodate actors' common ground with space for input from both sides (Balfour 2014, 2). The EU's differentiation therefore appears to be within the sphere of 'politics' – that is, set to promote the EU's set of rule to enforce its authority (Edkins 1999) – and technocratised, suggesting a prescriptive technical list of policy elements from which partner states cannot 'opt out'. As will be shown later in this paper, this approach to differentiation has not hitherto been successful and requires a new understanding, as the case of Azerbaijan demonstrates. As said, Azerbaijan seeks a differentiated, tailor-made policy approach, in which both Baku and Brussels' priorities and interests are included.

The analysis will examine how interaction between the EU and Azerbaijan has worked out regarding DHR since 2010, and to what extent differentiation has been achieved by the Azerbaijani government. What the analysis will find is that Azerbaijan has relatively much bargaining power in comparison to other EaP countries. Bargaining power is a concept borrowed from negotiation and mediation literature, and can be defined as the stronger or weaker position that an actor manages to obtain in the policy-making process. The assumption is that bargaining power allows actors to curb pressure from other actors (defensive power) and/or to influence relations with the other (offensive power) (Goldmann and Sjöstedt 1979, 13-4). This bargaining power would allow Baku to enforce a more differentiated agenda that includes its own interests as well as those of Brussels. The other EaP states may also have bargaining power, but to a lesser extent and/or in more indirect ways compared to Azerbaijan.

The analysis is predominantly based on interviews conducted in Baku and Brussels in 2014 and 2015, as well as policy documents, literature on the topic, and media accounts when it concerned on-going affairs. By aggregating data, the negotiation process has been reconstructed, and developments have been interpreted on the basis of these narratives. While this method is not ideal due to issues of interviewee bias and selectivity, it was found that there is limited alternative data available on EU-Azerbaijan relations, and access to several relevant EU policy documents was either denied or granted, subject to heavy censorship, on grounds that DHR promotion is a sensitive and on-going policy issue.

To clarify: the 'EU' here refers to those EU institutions and actors which are directly involved in diplomatic contact and negotiations on a bilateral level, namely the EEAS, the EU Delegation in Baku, and the EU Member States⁵. 'Azerbaijan' in this context refers to the Azerbaijani government, which, considering its centralised structure, denotes the President, the Presidential Administration, and the Ministry of Foreign Affairs. As will be shown in the section on EU cooperation with civil society, the EU does not exploit opportunities to work together with non-government actors, to the full. Naturally, both EU and Azerbaijani decision-making structures are more complex and involve more actors. However, for the sake of clarity, this analysis will focus on these core actors. The level of analysis is diplomatic relations between the Azerbaijani government and EU institutions: these actors will express the official line, which can be presumed to be the end result of complex decision-making on a domestic level. That final outcome will serve as the starting point for this analysis.

The policy-making process: Azerbaijan as a tough negotiator

The following analysis assesses interaction between EU institutions and the Azerbaijani government concerning DHR promotion policies. It will approach policy-making in bilateral relations as a negotiation process between two partners. The three formats of negotiation that will be discussed are (i) official channels of interaction between the EU and the Azerbaijani government; (ii) non-governmental channels: the EU and Azerbaijani civil society; and lastly (iii) unofficial channels: lobbying activities in Brussels. Due to the limited scope of this paper, the discussion of all three channels of communication is not all-encompassing. Rather, the section below serves as an illustration of the three forms of communication, and will provide selective evidence rather than a full overview.

Official channels of communication

The main channel of communication is *official visits* of high EU and Member State officials to Baku and of Azerbaijani representatives to Brussels (interview with EEAS official 5, July 2014; interview with Azerbaijani government representative 3, May 2015). Meetings take place on both a bilateral and multilateral level (expert interview 2, May 2014; interview with Member State official 1, May 2014).

Official visits are a good occasion for the Azerbaijani government to communicate its own interests and desired strategy (expert interview 2, May 2014; interviews with Azerbaijani government representatives, 2 and 3, July 2014 and May 2015). Yet while bilateral meetings could be an opportunity for negotiation, it has been suggested that the chances for a true dialogue between the two are minimised because of different negotiation cultures (interview with EEAS official 2, May 2014). Generally, there may not always be the same level of understanding between the two sides. For example, Jose Manuel Barroso's visit to Baku in June 2014 for instance revealed two weak spots in the relations. First, the Strategic Modernisation Partnership was supposed to be signed during this visit, but Azerbaijan decided not to (interview with EEAS official 4, July 2014). Second, within the two weeks after Barroso's trip, Russia has made official visits to Baku five times, on all levels of the political hierarchy (interview with Azerbaijani government representative 2, July 2014; see also Paul in Chiragov et al. 2015, 81). The government is pressurised to conduct a foreign policy of balancing and it needs to make a trade-off between certain policy areas to secure its relations with all key partners (the EU, Russia, and Turkey). This makes it difficult for Baku to sign agreements with a strong political dimension with the EU,⁶ yet Brussels does not seem to acknowledge this, by for a long time having retained its emphasis on the Association Agreement (interview with EEAS official 6, October 2015) and the highly 'depoliticised' – that is rigidly shaped by the EU standards alone (Edkins 1999) – DHR promotion policy.

It should be noted that in 2015 Azerbaijan proposed a new format - the Strategic Partnership Agreement - and this time the EU did not reject it outright (interview with EEAS official 6, October 2015). In principle, this could offer an opportunity to develop a more differentiated approach. In May 2016, the EEAS was given a mandate by the EU Council to commence negotiations with the Azerbaijani government on this agreement (Trend/Idayatova 2016); at the time of writing, it remains to be seen how differentiation is being brought into practice.

A second key area indicating who decides the rules of the game is that of **Progress Reports**. For each of the ENP countries, an Action Plan with the main policy points is established for a period of several years. Action Plan results are evaluated in Progress Reports annually (EEAS 2015). Apart from areas where actual 'progress' took place, the reports mainly seem to highlight perceived shortcomings on behalf of the partner states, including DHR, which suggests that there is a gap between the expectations set out in the Action Plans, and

developments in reality. In the case of Azerbaijan, for one, Progress Reports have become more critical over time, and Azerbaijan has in turn expressed its reluctance about these Reports.

The EU's Progress Report is a subject of discussion in the Azerbaijani media (interviews with EEAS official 1, April 2014 and 12, July 2014). The government often expresses its indignation about the EU's viewpoints, and the Azerbaijani authorities usually write a formal report in response to the Progress Report, based on information collected from all its Ministries (interview with EEAS official 1, April, 2014). The government is becoming increasingly vocal in other areas, and no longer takes EU criticism or disagreement for granted (expert interview 2, May 2014). Azerbaijani civil society produces a report for the EU as well (interview with EEAS official 5, July 2014).

According to one EEAS official, the Progress Reports have become especially critical since 2011 (interview with EEAS official 1, April 2014); according to the EU the policies in general have become more 'differentiated' towards the individual countries, giving more room for targeted criticism (interview with EEAS official 5, July 2014). The question is whether the EU's apparent differentiation regarding criticism on DHR matters is a result of contextual factors (see also Wetzel and Orbie 2011), or instead an active, intentional decision to treat countries in the ENP differently according to their specific needs and context of relations. In fact, by adhering to the DHR promotion policy as in other EaP states while Azerbaijan has made clear that it is not interested in such co-operation, the EU seems to have a uniform rather than a differentiated approach in this policy area.

The EU and Azerbaijan also communicate through the **Cooperation Council (CC)**, which brings together representatives from the European Council and the Azerbaijani MFA (expert interview 2, July 2014). Bilateral meetings of the EU-Azerbaijan Cooperation Council have taken place ever since the PCA came into force in 1999 (EU Council 2004, 1). What can be seen from an analysis of the agenda items and issues discussed in the EU-Azerbaijan CC meetings over time is that DHR seem to have gained a more prominent role on the agenda since 2009. This possibly reflects an increase of importance attached to political matters in general; and once again illustrates the normative nature of the current policy. The CC's parliamentary counterpart, the **Parliamentary Cooperation Committee (PCC)**, brings together representatives of the Azerbaijani Parliament, and the European Parliament Delegation for the South Caucasus. Generally, the PCC tends to take more consideration of

the priorities and views of Azerbaijan; whereas the CC clearly reflects the EU's line. At the same time, however, no PCC meeting took place in 2013, on the request from Azerbaijan, owing to the EU's criticism of the worsening human rights situation in the country (interviews with EEAS official 4, July 2014, and 6, October 2015).

A last point to note here is that the Azerbaijani government increasingly makes use of the strategy of '*linkage*' in these official channels of communication, whereby seemingly unrelated policy issues are connected and progress in certain areas is made conditional on negotiations in other fields. Azerbaijan has critiqued DHR promotion in discussions over the Nagorno-Karabakh conflict resolution process (expert interview 4, May 2015), as well as in negotiations over the Association Agreement and Strategic Partnership Agreement (interview with EEAS official 6, October 2015), thus adding pressure to the EU to reconsider its values promotion policies and to allow a more differentiated policy.

This assessment of official channels of communication shows that Azerbaijan successfully avoids cooperation in the field of values, in particular democracy and human rights and freedoms, and only wants their relations to focus on domains correspondent with its own interests (interview with EEAS official 2, May 2014; interview with Member State official 2, May 2014). The term 'cherry picking' has been mentioned several times in interviews with representatives from the EU or EU member states, in this respect. While the EU maintains that 'cherry picking' is undesirable, and that they cannot agree with it taking place (interview with Member State official 1, May 2014), it *is* happening nonetheless. Through such selectivity, the government can also meet one of its own priorities, namely securing domestic stability and maintaining legitimacy.

Non-governmental channels: the EU and Azerbaijani civil society

If there is no or limited socialisation on the level of the government, international actors can try to cooperate with the opposition and (parts of) civil society to attempt to bring about democratisation (Flockhart 2005, 58). Apart from the Azerbaijani authorities, the EU therefore also cooperates with civil society organisations and human rights defenders in Azerbaijan (interview with EEAS official 5, July 2014; EU Council 2011, 7; EC 2012, 3). Domestic expectations may lay on the basis of this, in particular the EU's self-perceived role as a

normative power – this is reflected in the discourse of spreading 'universal values' (interview with EEAS official 5, July 2014). Efforts here seem to focus mostly on democracy, rather than human rights promotion (see e.g. EC 2004, 2011).

Yet some critical notes can be detected too: CSOs themselves feel that they are not being heard by Brussels, even though they feel they could contribute more towards disseminating their knowledge to the EU (expert interview 1, May 2014). Civil society also tries to make recommendations to the EU as well as to the Azerbaijani government through joint policy papers, but the main problem indicated is that there is no bridge between the CSOs and the government. Civil society would like to see the EU Delegation in Baku taking a greater role in that process (*idem*). Another key issue is that while co-operation between civil society and the EU Delegation is good (expert interview 3, May 2014; interview with EEAS official 2, May 2014), there are almost no connections between civil society and the actual policy-makers in Brussels (expert interview 1, May 2014). This way, their influence on policy-making is even further diminished.

Azerbaijani CSOs are found to be the most active within the Eastern Partnership (interview with EEAS official 2, May 2014). But civil society seems to have an impact only in so far as it can cooperate with the EU independently.⁷ The EU's budget for CSOs however, is established in co-operation with the government only; CSOs themselves have no say in the allocation of money,⁸ which does not help the effectiveness of the EU's programme (expert interview 1, May 2014). It can be assumed that this provides the government with another form of power to circumvent value promotion, through input over the budget. Another source of influence is the government's initiative to provide significant amounts of financial support to NGOs, and thus allure them away from EU programmes (interview with EEAS official 2, May 2014). Moreover, as it is very difficult for truly independent NGOs to register in Azerbaijan, the result is that mainly government-operated NGOs (GONGOs) are involved and supported by the EU instruments (*idem*). Azerbaijani civil society seems disappointed in the support they receive from the EU, and in the EU's efforts for democracy promotion (expert interview 1, May 2014).

This seems a contradictory finding: one would expect the EU to make full use of its potential to promote DHR through non-governmental channels. One possible explanation could be a simple lack of human resources in the EEAS – in particular since 2013 the EU is indeed occupied with Ukraine more than with other EaP states (expert interview 3, July 2014).

Unofficial channels: Azerbaijan's public diplomacy

Azerbaijan is much concerned about its image in the international community (interview with Member State official 1, May 2014). The government invests heavily in public diplomacy to promote Azerbaijan abroad; but also domestically one can see how large infrastructure and big events are meant to impress visitors as well as citizens. Public diplomacy and lobby activities are two of the political instruments used in Azerbaijan's DHR strategy vis-à-vis the EU. In recent years, Azerbaijan has become famous (or notorious) for its use of these unconventional policy tools to influence EU decision-making in Brussels (see e.g. ESI 2012). The government has even hired PR agencies to polish the country's image regarding democracy and human rights in Brussels (expert interview 3, July 2014).

Azerbaijan's actions can be explained by the country's self-perception as a growing economic and political power. Azerbaijan feels that at the end of the 1990s, when the country was weak because of the state of its economy and the war over Nagorno-Karabakh, it had to make concessions to be allowed into the Council of Europe in 2001 (expert interview 3, July 2014). The current economic strength would give Baku the courage to show Europe that it can do things its own way (expert interview 3, July 2014; interview with EEAS official 5, July 2014). The nature of the economy, Azerbaijan being an energy producer, would also facilitate the government's behaviour (interview with EEAS official 4, July 2014).

And Brussels appears to be affected by the lobby. The Observation Mission of the EP Delegation to the Presidential elections in October 2013 led to a scandal when their report clashed with the findings of the OSCE (interview with EEAS official 4, July 2014; expert interview 3, July 2014). The Mission was overly positive of the elections, whereas other international organisations assessed that the elections were neither free nor fair (interview with EEAS official 4, July 2014). Eight members of the Delegation initially refused to declare who financed their trip, and later appeared to have been funded by the Azerbaijani government (*idem*). This *caviar diplomacy* (Knaus 2015) is not limited to the Observation Mission. Several sources have claimed that Azerbaijan generally 'buys' supporters in the Parliament (expert interview 3, July 2014; ESI 2012). Following the EP elections in May 2014 a new Delegation to the Parliamentary Cooperation Committee was established. A number of members of the previous Delegation are no longer in Parliament.

DHR promotion and 'othering', 'differentiation', and 'the political'

The previous section discussed three different channels of communication in the policy-making process in which the power of the EU and Azerbaijan differed. It was found that the EU's stance regarding DHR promotion leaves no room for a differentiated policy in which Azerbaijan's views and interests are taken into account. However, Azerbaijan seems to have found mechanisms and pathways to circumvent EU pressure for DHR reform through these channels: firstly, as mentioned earlier in this paper, via official channels Azerbaijan can ignore EU pressure due to its relatively independent position as an actor; second, the Azerbaijani government has its own mechanisms to weaken and close down domestic opposition; third, the government makes use of unofficial channels of communication to undermine the effect of the EU's value promotion policy. Azerbaijan might not succeed in altering the EU's values promotion policy, but can hinder the *implementation* of it, when it considers the policies insufficiently differentiated and not tailored to its own national interests.

From these findings, it can be concluded that the EU's DHR promotion approach to-date has been unsuccessful because it has not taken into consideration or has not been able to respond appropriately to the (re)action of the Azerbaijani government. In other words, the EU's tools and strategies do not seem right for Brussels' aims. As this volume argues, the EU needs a better understanding and engagement with the *othering* process, including its core element – *differentiation*.⁹

Notably, the process of 'othering' is often considered in a negative way, whereby the Self (in this case, the EU) constructs its own identity by reflecting negatively on the identity of the Other (here Azerbaijan) (Diez 2005; Prozorov 2011). The function of negative 'othering' often provides the EU with internal legitimacy justifying its values promotion policies in relations with the less developed states (Diez 2005). This approach of 'naming and shaming' has however not been effective in Azerbaijan. One possibility worth exploring would be for the EU to engage instead with a positive form of 'othering'.¹⁰ In this case, the Other is seen as a legitimate partner, rather than an inferior or violating universal principles, which allows, for instance, to resume official channels of communication such as the PCC or CC meetings; and this way, to overcome the deadlock in existing relations.

Furthermore, positive *othering* may also facilitate *differentiation*, a process which allows designing policies in bilateral relations on the basis of common interests of both parties. The analysis has shown how Azerbaijan insists on having its own specific national policy priorities and interests represented in relations with the EU, through management of relations on an individual, tailor-made basis rather than through a regional framework. This interpretation of differentiation is therefore different from the one the EU currently employs itself (cf. EC 2003). As was described in the Introduction to this volume, Brussels interprets differentiation as a form of 'deviation' from the EU standard, by way of selective participation in policy initiatives; rather than seeking to accommodate actors' common ground with space for input from both sides, allowing for diversity, instead. The EU does indeed not seem to be open to the idea of equal input from Azerbaijan. In the area of values, there still seems to be a notion of the EU's superiority over the values and traditions practised by the Azerbaijani government. When asked about the willingness to work together on creating shared values, one EEAS official mentioned that the EU's values should be considered as universal, and that there could not be a compromise on that (interview with EEAS official 5, July 2014).

Azerbaijan in turn feels that its own policy priorities and in particular the country's security concerns are not sufficiently considered (interviews with Azerbaijani government representatives 1, May 2014; and 2, July 2014; and 3, May 2015). Azerbaijan's perception is that Baku is not given any 'ownership' of the partnership, that Azerbaijan is not treated equally in these relations (interviews with Azerbaijani government representatives 1, May 2014; and 2, July 2014). One big issue of friction seems to be that Azerbaijan has the idea that the EU in turn is not willing to make any concessions, and that it sometimes acts inconsistently. The EU is therefore not considered a truly 'trustworthy' partner (interview with Azerbaijani government representative 2, July 2014).

Despite Azerbaijan's growing political power, the government may however not be in the position to do anything more than avoiding certain policies that are related to the promotion of EU values. When asked about the EU's view on the creation of shared values and an inclusive policy which combines EU and Azerbaijan's interests, it was answered that the EU takes into account Azerbaijan's interests by not forcing any policies upon them: Azerbaijan would be free to reject co-operation in certain areas (interview with EEAS official 3, May 2014). As such, it seems that the EU's understanding of 'equal input' in policy-making consists of the EU proposing initial policies and programmes, and Azerbaijan choosing

whether or not to engage in these. This of course contradicts earlier statements about the non-acceptance of selective behaviour by Azerbaijan.

The analysis in this paper has demonstrated that the current, undifferentiated approach has been unsuccessful and is unlikely to become so. The result of this narrow and technocratic idea of differentiation by the EU therefore is a deadlock: Azerbaijan now simply ignores the EU's DHR promotion policy all together. Rather than adhering to the EU's criticism regarding democracy or political affairs, the country will instead go in defence. While an EU-based, more standardised policy towards much of its neighbourhood is rational (because efficient) for the EU, this framework is now meeting resistance from Azerbaijan. One Azerbaijani interviewee stated that the EU cannot simply apply its own concepts 'in this part of the world', since they will not be successful (Azerbaijani government representative 1, May 2014). This is also supported by Cornell's observation that the West "has had serious problems with its delivery of the message" of values promotion (Cornell 2011, 401).

The result of this narrow and technocratic idea of differentiation by the EU is a deadlock: Azerbaijan now simply ignores the EU's DHR promotion policy all together. This suggests that the EU should perhaps consider re-politicising this debate and allowing a differentiated approach that would *include* Azerbaijan's opinion. This is where the concept of '**the political**' comes to play a key role. Edkins has described how much of politics is conducted in a *depoliticised* manner, leaving no space for contestation and genuinely 'political' interaction between actors over policies (1999, 2). We have seen this happening in EU-Azerbaijan relations, too, as was shown in the analysis on official channels of communication: there is no room for a contestation of the current DHR promotion policies, and both the EU and Azerbaijan hold their ground without wanting to make any concessions. The result has been that progress in this policy area has halted: there is almost no contact anymore at an official level, civil society cannot flourish in the way the EU says it would like to, and the Azerbaijani government can undermine the implementation of EU policies through unofficial channels of communication. Bringing 'the political' back into relations, and re-considering the DHR promotion policies, could possibly lead to a renewed dynamic.

One possible step that has been suggested is to discuss DHR at a private -i.e. behind closed doors – instead of at a public level. Currently, the EU's strategy is to publicly accuse the Azerbaijani government for breaching international DHR standards, yet it appears that this strategy is counterproductive in the case of Azerbaijan (EU interviews, 2014). Rather than

adhering to the EU's criticism regarding democracy or political reform, the country will instead go in defence. We have seen this happening even recently, when President Aliyev stated that Baku will not listen to European accusations (Azeri Report 2015). According to some, a dialogue at a private level, behind closed doors, could be much more constructive and is already applied by some member states, believing this is more effective (interview with Member State official 1, May 2014).¹¹ Another form of re-politicising the debate could be to cut the link between politics and other areas for cooperation. While moving away from a depoliticised policy towards a more politicised form of interaction seems sensible on paper, this naturally poses a serious dilemma for the EU: can Brussels afford to open up its values promotion policies to discussion with autocratic regimes? The EU considers itself a normative actor (Manners 2013) and being pragmatic on these issues for the sake of possible long-term effectiveness brings along serious challenges. First, the question is whether the EU could afford to do so on a domestic level, without losing its legitimacy. Moreover, reducing DHR pressures on Azerbaijan might set a precedent for relations with other authoritarian regimes, and it is unlikely that all Member States could reach consensus on such move - notably Poland and Sweden would likely object considering their leadership role in DHR promotion policies towards Belarus. Third, differentiating on such level would undoubtedly cause friction with the Azerbaijani opposition forces; it seems nearly impossible for the EU to make any concessions especially regarding political prisoners. Lastly, one could interpret a move to differentiation as a form of power of the Azerbaijani government, since it would achieve that international actors do not show public criticism of the regime.

Conclusion and further discussion: Enforcing differentiation?

This paper has examined the case of DHR in relations between the EU and Azerbaijan. By viewing policy-making in relations as a negotiation process, it has been possible to assess the interaction between Brussels and Baku in this policy area. The EU and the Azerbaijani government hold different views on the role DHR promotion policies should play in bilateral relations: while the EU adheres to a values-driven agenda, the regime led by president Aliyev would prefer co-operation without this values dimension, and aspires a more differentiated policy agenda that reflects the country's national interests better. It was found that

Azerbaijan strategically applies several policy tools and negotiation tactics to enforce differentiation of the EU's policies – which in turn undermine the DHR pressures undesired by the government in Baku. From the case study it appears that differentiation only takes place to the extent that Azerbaijan has the bargaining power to enforce this. The EU maintains control over official policy-making mechanisms as well as in relations with Azerbaijani civil society, as a result of which there is no or very limited differentiation and the EU maintains the power to keep implementing a largely unchanged policy – but to no avail. The government in Baku manages to undermine the EU's transformative effect through unofficial channels (mostly public diplomacy activities in Brussels), and is therefore able to represent its own interests in relations better, despite the lack of differentiation.

One possible option for the EU to have a transformative effect and to solve the deadlock, is the creation of shared values and positive 'othering' – to be reflected in a differentiated policy. This could result in a contestation of norms of both sides rather than mere adherence to those of the EU: what Edkins calls 'the political' (1999, 2). But given that Azerbaijan is only able to resist the EU's pressure so far, but is not yet able to actively shape the official agenda, we cannot yet speak of genuine contestation or inclusive policy-making. Currently, there appears to be a clear misperception of asymmetry: both feel the other needs them more than they do in real terms; and hence the two parties are not willing to compromise.

The current DHR promotion policies have proven unsuccessful and Azerbaijan's demands for differentiation are growing. The findings from the analysis suggest that a policy also supported by the Azerbaijani government is more likely to succeed than the current, one-sided governance of the EU, whereby its DHR promotion efforts meet resistance by Azerbaijan. Therefore, perhaps, if the EU wishes to develop a truly *equal* partnership, it could consider to leave behind its Eurocentric view (Korosteleva 2012, 130, 136) and to 'update' its self-perception of holding superior, 'universal' values in order to allow positive 'othering' taking place. Yet for the EU, viewing the Azerbaijani regime as a legitimate 'Other' to whom concessions on DHR could be made, would be very hard to defend on a domestic and international level. Hence the EU is confronted with a dilemma: neither of the two policy strategies is optimal.

To close on a positive note: both sides have expressed the view that even if there is much disagreement and progress is slow, the most important thing is that there is contact

(interview with EEAS official 4, July 2014; interview with Azerbaijani government representative 2, July 2014). Disengagement is not seen as a solution to the disagreement on policies (interview with EEAS official 4, July 2014). The future will show whether or not the EU and Azerbaijan can manage to negotiate a middle ground regarding democracy and human rights.

Notes

1. For reasons of confidentiality all references to specific interviews are anonymised.
2. See the introduction to this volume
3. Yet criticism can be heard too: those released were dubbed 'celebrity political prisoners' by opposition party members; many others do not receive such international media attention, particularly not religious political prisoners, and their cases are not being considered equally by external actors (Safarova 2016).
4. For instance, the continued dialogue under the bilateral framework makes Azerbaijan different to Belarus, which presently does not have formal bilateral relations with the EU.
5. While Member States may have an independent and divergent policy towards Azerbaijan, in this analysis they are included to the extent that they contribute to the EU common policy in relations with Baku.
6. See Kostanyan's paper in this volume.
7. For a critical analysis of the EU's support to Azerbaijani civil society, see also Böttger and Falkenheim 2011.
8. Even though the official EU policy states that civil society should be included in these discussions (expert interview 1, May 2014).
9. A more in-depth discussion of the concepts of 'othering', differentiation and normalisation can be found in the introduction and Korosteleva's contribution to this special issue.
10. Please see the introduction and Korosteleva's article in this volume for further explanation of the concept of othering and its various forms.
11. It should be noted here that generally, there appears to be a good level of understanding of Azerbaijan's interests and a more realistic view on cooperation with the government, within the EU Delegation in Baku as well as in member states' Embassies in Azerbaijan (interviews with Member State officials 2, May 2014; 7, May 2014; 3, May 2014). But this understanding does not always seem to be incorporated by the EEAS Headquarters and member states' representatives in Brussels, who eventually decide upon the policies (interview with EEAS official 1, April 2014).

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Interviews

For reasons of confidentiality, names and affiliations of interviewees remain anonymous. For this paper a total of 19 persons have been interviewed with a total of 36 hours of conversation. Among those quoted in this paper, 9 persons were representatives of or affiliated with EU institutions; 3 persons were representatives of or affiliated with the government of Azerbaijan; and 4 interviewees were independent experts.