

“Conditionality and the EU–ACP Partnership: A Misguided Approach to Development?” by Andris Zimelis

Introduction

In the last few decades, the promotion of democracy and human rights has become one of the key debates shaping relations between the European Union (EU) and the countries of Africa, the Caribbean and Pacific (ACP). The EU-ACP partnership reflects the existing global norms and has been molded by the changing conceptions of development within the international community. The last forty years have demonstrated a progression from a principally economic and commercial partnership to cooperation that addresses political issues and the EU was the first entity to explicitly mention human rights, democracy, and rule of law into its agreements with external partners. The Lomé IV agreement signed in 1989 between the EU and the ACP countries was the first ever multilateral agreement that included political conditionality. The successor to the Lomé conventions, Cotonou Partnership Agreement, signed on 23 June 2000, defines as the “essential elements”¹ of the ACP-EU partnership respect for human rights, adherence to democratic principles and the rule of law. The political dimension of the Cotonou Partnership Agreement aims at fostering a continuous political dialogue on these issues, as stipulated in Article 8 of Title II of the Agreement. When flagrant violations of the essential elements occur, a consultation procedure under Articles 96 and 97 of the Cotonou Agreement can be initiated, aimed at finding a common

¹ The concept of an “essential element” is legally a binding commitment whose non-observance affects the validity of the agreement signed between the parties to it and can ultimately lead to its suspension.

solution to the political difficulties encountered by one of the parties. In practice, Articles 96 and 97 provide a mechanism for a consultation procedure and possible aid suspension if serious breaches of human rights and democratic principles occur.

As human rights and democratic principles are becoming a norm in international development, the EU has fully embraced these normative instruments to foster the growth of democracy, human rights and good governance. However, the conditionality mechanism will be effective only when it is applied consistently and objectively by the EU. The question is whether the EU been applying the conditionality clause consistently.

The reliance on the essential elements, especially democracy, remains the key elements of the partnership. By stating that these elements underpinned relations between ACP States and the EU and all provisions of the Cotonou Agreement, the EU made clear that they were an integral part of the development concept. However, the potential problem is the lack of a consensus on the definitions of the essential and fundamental elements included in Cotonou Agreement. For example, no single constitutional framework of democracy exists; legitimate democracies can and do take many forms. What concept of democracy should the EU promote and defend via political conditionality in the ACP countries? Moreover, human rights and democracy principles should ideally align with the EU's and individual member states' foreign policies. In reality, it is possible that the essential principles compete with other national and EU-wide goals thus rendering the conditionality clause less effective.

The purpose of this article is to assess the effectiveness of the political conditionality by looking at the European Union's suspension of development cooperation with the ACP countries perceived to have violated the principles of

human rights, respect for the rule of law, democratic principles and good governance as laid out in the ACP-EU Partnership Agreement. Given the reliance on the ambiguous concepts and the diverging interests, I expect that the EU's application of conditionality clause will be inconsistent and the potential for the EU's conditionality policies will remain limited. This research will help to discover how effectively the aid suspension works in changing the processes considered in violation of the essential or fundamental elements in the recipient country. As an ancillary benefit of this research, we will observe what factors have contributed to the EU suspension of development cooperation, which may help us discern some patterns in the organization's decisions to invoke Article 96 or 97.

This article fills the gap in the development literature by studying the consistency and effectiveness of conditionality aid from. This research also has straightforward policy implications because the successful development of a large segment of the world depends on the effectiveness of the new approach. Research up to date has been scant on the practical application and effects of conditionality. Therefore, a better understanding of the application and implications of suspension clause (Articles 96, 97) is needed for both policy makers as well as social scientists.

The next sections will review the history of EU development policy before Cotonou agreement and the political conditionality in the context of Cotonou agreement before moving on to the case studies. The final section summarizes the findings and offers concluding remarks.

Historical Overview of the EU Development Policy

The concept of development has undergone a profound change. What today may appear as a totally antiquated model may in the past have been an approach

fully responsive to the highest demands of the field. One has to be prudent therefore, in assessing whether the whole process has been efficient in achieving the ultimate goal since this goal has shifted continuously and is subject to ongoing redefinition (Hilpold 2002, 54). For decades development has been seen mainly as economic growth. The assumption was that growth induced by industrialisation and investment in the centres of developing states would trickle down to the poor. Development is now understood more as sustainable human development, addressing people in relation to resource management and participation.

The beginning of the EU–ACP partnership can be found in a speech on 9 May 1950, when Robert Schuman declared that ‘Europe would, with increased resources, be able to pursue one of its essential tasks – the development of the African continent’ (Europa, Gateway to European Union 2003), and the Treaty of Rome signed on 25 March 1957 set up a provision for the association of the overseas countries and territories with the embryonic European Economic Community (EEC). Since then, through two Yaoundé Conventions and four Lomé Conventions, a new EU–ACP partnership has been negotiated in Cotonou. The previous partnerships between the EU and ACP states did not seem to function well, which is why the Cotonou Agreement became necessary. By looking at what Cotonou does differently and why, we can ascertain why the old partnerships failed and how the new approach is rectifying the ‘old’ shortcomings.

The first comprehensive agreement between the EU and ACP states – Lomé Convention I – was signed in 1975, providing for the association of 46 ACP states with nine European Union member-states. In its summary review of past development policy, the European Commission (EC) concluded that the principles of partnership, contractuality, predictability and security outlined by Lomé

produced an innovative and unrivalled development framework. Under this agreement, each state had the right to determine its own policies and non-reciprocal trade preferences were established. Agricultural preferences were limited to exports from the ACP to the EU because of the Common Agricultural Policy's protection for European producers.

When Lomé I was negotiated in the 1970s, conditionality was not included in the scheme. In 1975, member-states did not see the need to provide for the possibility of termination or suspension of financial flows. Furthermore, ACP states were unwilling to endow the EEC with the right to unilaterally revoke aid at their discretion, considering it a violation of their sovereignty. The Uganda crisis in 1977, notorious for its human rights abuses, proved that such a position was untenable. The gross human rights violations committed by Idi Amin were certainly grounds for the suspension of EEC aid, but Lomé I was ill-equipped to deal with this type of situation (Hilpold 2002, 57).

The Uganda situation demonstrated that the EEC needed a formalised structure for dealing with humanitarian crises, but Lomé II was unable to rectify the problem. The attempt to protect human rights through conditionality was met with strong resistance from ACP states. The pledge to protect Western-style human rights was perceived as too costly, and in opposition to the political priorities of ruling elites.

Several other factors precluded EEC member-states from placing pressure on the ACP states about this issue. A stark ideological divide over the definition of human rights existed between East and West. Western criticisms of human rights situations often sparked retorts from the opposing ideological camp. It was clear to the EEC members that pushing this issue would jeopardise strategic and economic

ties (Hilpold 2002, 58). In addition, the relationship between development, democracy, and human rights had not yet been explored (Hamm 2001, 1009). Both sides were somewhat relieved that the issue of conditionality had been abandoned, but it became clear that this was only temporary.

As a result, the issue of human rights was inevitably raised at the Lomé III Convention (from 1985-1990). However, this issue was approached in an apprehensive manner, and it was apparent that differing opinions existed on how conditionality should be shaped. Human rights were only mentioned explicitly in Annex I, attributing a high priority to human rights issues. In effect, this demonstrates that human rights were not a high priority issue at the time. The second paragraph of this Annex identifies the full enjoyment of economic, social, and cultural rights through development as essential to the dignity of people.² The discussion of human rights in Lomé III was far too vague to have an immediate impact on the human rights situation in ACP states, but the member-states obviously acknowledged the evolving nature of the arrangement. The EU–ACP relationship was not simply an economic partnership; instead, Lomé III established the need for member-states to achieve a consensus on the role of non-economic issues such as human rights and good governance.

Lomé IV marked an important transition from the previous three arrangements. The Agreement was signed in 1989 between 68 ACP states and 12

² Annex I, paragraph 2 of Lomé III reads as follows:

The Contracting Parties proclaim that ACP-EU co-operation must help eliminate the obstacles preventing individuals and peoples from actually enjoying in full their economic, social, and cultural rights and that this must be achieved through the development which is essential to their dignity, their well-being and their self-fulfillment.

European states. For the first time Lomé policy became genuinely political, with the inclusion of human rights as one of the fundamental clauses of the Agreement. Not only did Lomé IV provide preferential trade access for ACP products, it also established the commitment to human rights, democracy and the rule of law as one of the major objectives of ACP–EC development cooperation (Martenczuk 2000, 463). Many small adjustments were agreed upon, essentially refining the provisions mentioned in the previous Lomé agreements. Two substantial changes, however, differentiated Lomé IV from the predecessor agreements.

First, a suspension clause was introduced to remedy the problems of human rights violations discussed earlier. Procedures were established to deal with cases of violation of Lomé’s “essential elements.” Under the “Mid-Term Review” (MTR) of Lomé IV, these three essential elements were incorporated in Article 5, paragraph 1:

Respect for human rights, democratic principles and the rule of law, which underpins relations between the ACP States and the Community and all provisions of the Convention, and governs the domestic and international policies of the Contracting Parties, shall constitute an essential element of this convention (Arts, 1997, 77).

The MTR also included a consultation clause to deal with violations of these three essential elements, which was a concession to the ACP states. If one party determined that another failed to fulfil the obligations referred to in Article 5, Article 366 a(2) created a consultation period that lasted no longer than 45 days after the initial complaint. If following consultation no solution was found, the party concerned was subject to full or partial suspension of the benefits established by the Convention (Arts 2000, 192). Article 366 a(2) established a specific timeframe to deal with consultations before cooperation or suspension, but it did not address which measures should be taken to resume cooperation. In the

framework established by Lomé IV, the European Community had complete discretion over when measures were lifted (Arts 2000, 193). This left ACP states powerless, and endowed Europe with a considerable amount of room for manoeuvre.

In addition to the suspension clause, Lomé IV also delivered important procedural changes regarding the distribution of aid. Under the first three agreements, the EC allocated a certain amount of aid to each ACP state at the beginning of each new Lomé Convention. This money was spent on the implementation of the National Indicative Programme (NIP), which established the important sectors for Lomé support in a particular state. Until Lomé IV, the financial aid was initially determined regardless of the program's effect on performance. Following the MRT, the amount of money needed to implement the NIP was split into two allocations. Seventy per cent of the funds were distributed initially, and the remaining 30 per cent were only distributed following a three-year evaluation of the program (Arts 2000, 131). These types of adjustments clearly demonstrate the nature of the ACP–EU relationship was changing fundamentally. Unlike the initial focus on unilateral aid giving, Lomé IV marked the transition towards a development scheme that incorporated political factors and an increased adoption of political conditionality and the decline of preferential trade relations.

EU Development Policy: Toward Political and Economic Conditionality

The Lomé Conventions symbolically acknowledged the importance of human rights in development policy, but the actual performance of ACP states in terms of economic, social and political development did not improve significantly. As a result, the status of Lomé was challenged. The European Commission's 1997 Green Paper on the future of Lomé identified supply-side inadequacies including

the absence of sound microeconomic and macroeconomic policies and good governance as the main factors precluding ACP economic and political development (European Commission 1997). Signed in June 2000, the new Cotonou Partnership Agreement reflected the transition from purely economic cooperation to more inclusive political agreements in development policy. The broad objectives of this Agreement were defined in Article 1: ‘To promote and expedite the economic, cultural, social, and social development of ACP states, with a view to contributing to peace and security and to promoting a stable and democratic political environment’ (in Holland 2003, 164). Table 1 demonstrates the EU's transition toward economic and political conditionality in EU Development Policy.

Table one about here

In order to dismiss the idea that ACP-EU relations are merely a relic of colonialism, Article 2 of the Agreement outlines four “fundamental principles” to govern relations.

1. Stressing the equality of the partnership and local ownership of the development attempts to avoid the criticisms of paternalism that were waged against Lomé. The text states, “the ACP states shall determine the development strategies for their economies and societies in all sovereignty.”
2. “Dialogue” between the ACP countries and the EU is a crucial aspect of the relationship.
3. The new partnership also tries to broaden involvement in economic and political life by explicitly incorporating civil society and the private sector.
4. In order to acknowledge varying levels of development, the concept of “differentiation” distinguishes between the least-developed countries and more competitive economies in the ACP region (European Commission, 2000, 2).

Most importantly, however, Article 9 of the Agreement also incorporated the three “essential elements” that were previously outlined in Lomé IV: respect for human rights, democratic principles, and the rule of law. Breaches of these three essential

elements could lead to suspension of the Agreement, and we see that Cotonou firmly entrenched conditionality.

Holland (2003) notes that the new Agreement also addressed supply-side constraints by incorporating ‘good governance’ as a ‘fundamental element’. Unlike the three essential elements, good governance was not simply duplicated from the previous Lomé agreement. The ACP states and EU members had difficulty in defining good governance, but the text defines it as, ‘the transparent and accountable management of human, natural, economic, and financial resources for the purpose of equitable and sustainable development’ (European Commission 2000, Article 9.3). Serious cases of corruption, including bribery, were grounds for suspending cooperation, according to Article 97. The Cotonou Agreement included good governance because democratic institutions guarantee stable and continuous participation in civil society, while simultaneously discouraging dependence on paternalistic goodwill. The Commission's concern over supply-side constraints in the 1997 Green Paper (European Commission 1997) mirrored the concerns of the World Bank about the lack of strong and accountable government agencies in developing states. The Agreement aimed to reduce corruption, increase political freedom, promote free and fair elections, and eradicate human rights abuses. In the words of Der-Chin Horng (2003, 695), the ‘EU has successfully extended its European Idea of human rights to international agreements and has developed its external relations based on human rights’. The conditionality clause purported to help achieve these goals.

The Cotonou Agreement contains a revision clause (Article 95) that foresees that the Agreement can be adapted every five years (with the exception of the economic and trade provisions, for which there is a special review procedure).

In accordance with Article 95, at the end of February 2004, the EC and ACP partners noted the provisions of the Agreement they wished to amend. Negotiations began at the ACP–EC Council of Ministers in Gaborone in May 2004 and were concluded at a ministerial meeting in Brussels on 23 February 2005. The revised Agreement was signed in Luxembourg on 25 June 2005. The revision process did not question the fundamental axis of the Agreement. The main objectives were to enhance the effectiveness and quality of the ACP–EC partnership, to ensure its consistency with the new international agenda for development, to deepen the political dimension of the partnership and to broaden the cooperation framework in order to include new important security and anti-terrorism issues. Similarly, the ongoing 2010 review of the Agreement emphasised the same aspects and made minor changes in the Agreement's language (EU Development Agency 2011).

Conditionality and Cotonou Agreement

Conditionality is commonly defined as ‘a mutual arrangement by which a government takes, or promises to take, certain policy actions, in support of which an international financial institution or other agency will provide specified amounts of financial assistance’ (Killick 1998, 6). Thus, aid conditionality represents an attempt to use aid as an incentive for developing states to reform their policies and institutions. Generally, conditionality has been deemed inefficient in attaining its desired objectives and favourably changing economic and political developments. Craig Burnside and David Dollar (1997) discovered no relationship between aid flows and policy reform. This conclusion is complemented by a similar study that demonstrates that aid does not promote positive reforms and that the conditionality attached to international loans does not produce policy change (Devarajan, Dollar and Holgren 2001).

Since the beginning of 1990s, the European Union began including the human rights clause in all agreements with the third world countries (Holland, 2002). As mentioned before, Article 9 of the Cotonou Agreement incorporates the three “essential elements” that were previously outlined in Lomé IV: respect for human rights, democratic principles, and the rule of law and a new “fundamental” element- good governance. Breaches of these three essential and the fundamental elements may ultimately lead to suspension of the agreement under the Article 96 and 97 provisions. Article 9(1) of Cotonou Agreement lists democratic principles based on the rule of law together with a regard for human rights and accountable governance.³ If any of the ACP countries fails to fulfill an obligation based on the definition of democratic principles, the EU can begin the process of inquiry and suspension.⁴ The convention provides for a consultation mechanism in the event of a serious breach of the terms of the agreement. This constitutes an important instrument through which the EU can respond to regressions or interruptions of the democratization process, persistent violations of human rights, and endemic corruption. The party accused of violating the founding principles of the convention is invited to hold consultation with the Commission.⁵

Article 96 also attempts to define what constitutes a special urgency, which it refers to as ‘exceptional cases of particularly serious and flagrant violation of one

³ According to Article 9(2) of the Agreement, “Democratic principles are universally recognized principles underpinning the organization of the Country to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognized principles, each country develops its democratic culture.”

⁴ According to Article 96(2)(a), consultations are to begin no later than 15 days after the request is made by either party, shall continue for a period of time established by mutual agreement and shall not last longer than 60 days. Revised Cotonou agreement added that consultation would begin no later than 30 days after the invitation to discuss the breach.

⁵ If the consultation does not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures are to be revoked as soon as the reasons for taking them have disappeared.

of the essential' political conditions. It also attempts to define 'appropriate measures' which must be taken in accordance with the principles of international law and proportional to the violation. Parties according to Article 96(2)(c) are also expected to notify the party against whom the measures are being taken, and the Council of Ministers. It appears, however, as if the language of the Agreement remains ambiguous, giving some leeway to the EU. After all, parties will have different definitions of what constitutes a situation of special measures and are likely to disagree over matters such as what constitutes 'special measures'. The principle reasons for consultations under Article 96 are coups d'état, flawed or non-transparent electoral processes, and violations of democratic principles, the rule of law, respect for human rights and fundamental freedoms. The principal reason for consultations under Article 97 (good governance) is corruption. These articles are designed to be invoked after political dialogue and other measures have failed.

Martin Holland (2002) lists 15 cases when the EU imposed sanctions based on violations of democracy, human rights, the rule of law and good governance. His list covers only the time period from 1990 to 1999 and includes countries outside of the EU-ACP agreement. The highlighted states are the cases that occurred after 1999 that are added to Holland's table. Table II on the next page displays the cases when the EU has been involved in consultations under Article 96 and where the consultation and suspension mechanisms of the Cotonou Agreement have been utilized. It also illustrates the reasons for consultations/sanctions. According to the European Center for Development Policy Management, since 1996, the ACP States listed in Table II have been involved in consultations with the European Union (EU) under Article 366 of the Lomé Convention and Article 96 of the Cotonou Agreement. In some cases the EU suspended aid during

consultations (e.g. Fiji), in some the ACP country promised to remedy the situation to avoid sanctions (e.g. Guinea-Bissau). EU sanctions currently apply to the following ACP States: Republic of Togo, Republic of Zimbabwe, Republic of Guinea, Madagascar, Niger, and Fiji.

Table two about here

Research Cases

As mentioned earlier, the primary goal of conditionality is to provide incentives for reforms and rectify certain violations in the recipient country. The case selection is crucial in this study because we need to control for various extraneous factors that may have an effect on the outcome of aid suspension in the ACP countries. For a complete analysis we need to look at all cases of invocation of Article 96 or 97 regardless of whether the aid was suspended or only negotiations occurred in order to be able to assess the effect of conditionality. What made those countries comply with the EU demands? Or perhaps EU has other motives not to impose sanctions? Why do some consultations have positive outcomes and some negative?

The states are chosen based on the general idea of the positive method of agreement proposed by John Stuart Mill. That is, the states all have a common outcome or dependent variable – invocation of Article 96 or 97. The strength of this method is that: ‘Its true value is in its function to eliminate alternative explanations ... no factor can explain an outcome satisfactorily that is not common to all occurrences of that outcome’ (Savolainen 1994, 1218). This method helps us discover the common independent variables across all cases. An underlying hypothesis is that the EU initiates consultation procedures in cases of flagrant

violations of at least one of the essential or fundamental elements, particularly in cases of a coup d'état. Thus, we expect to find that the chosen states have breached at least one essential or fundamental element. For analytical purposes we also look at states that have in common the invocation of Article 96 or 97 and aid suspension. This helps us isolate the factors that are present in the cases that led to aid suspension and the ones that did not. Finally, to obtain a more complete comparative analysis of the efficacy of conditionality, further research should also explore the states of Eastern and Central Europe (for example Croatia and Turkey) in order to see how these states implemented the changes stipulated by the EU.

The sources of the research predominantly come from official EU information sources such as the EU Directorate General for Development, *EU-ACP Courier*, European Parliament, European Council, and European Commission. This information is likely to have an EU bias, which is why information gathered from the sources offered by the ACP states' secretariat will be useful as well.

Case Studies: Applications

The success or failure of a consultation procedure under Article 96 or 97 of the Cotonou Agreement is difficult to evaluate. Each case is judged on its own merits, according to the conditions of the state and the circumstances of the consultation procedure. We can, however, tentatively assess the effectiveness of EU conditionality by analysing the invocation of Articles 96 and 97 and the ensuing implications. For the current purposes, a brief look at three coterminous West African states against which the EU invoked Articles 96 and 97 will suffice to provide an idea as to how effective conditionality is. The states are chosen because of their geographic proximity and history of aid suspension.

Republic of Cote d'Ivoire (Ivory Coast)

In December 1999, long-time President Kona Bedie was deposed by a military coup led by General Robert Guéi; the suspension of the constitution followed. A National Committee of Public Safety was established to restore the authority of the state and the new 'leader' officially stated that: 'Democracy and the rules of democracy will be scrupulously respected and I will personally ensure that they are respected' (BBC News 2002). In response, the EU Parliament called on the Council and the Commission to review cooperation with Ivory Coast and, 'at all events, to open immediate consultations with its government, according to the procedure pursuant to Article 96 of the Cotonou Partnership Agreement, in order to agree a timetable for the return to democracy' (*EU Bulletin* 2000).

Because the Ivorian de facto authorities pledged to restore democracy and agreed to a timetable to presidential, legislative and local elections by 31 October 2000, the EU decided not to suspend cooperation but to adopt 'appropriate' steps. The Commission would monitor compliance with the electoral timetable and the adoption of measures to guarantee the impartiality and credibility of the elections. Both parties emphasised the role of consultations as a means to remedy the problems and the new government seemed to be interested in cooperating with the EU.

Consequently, the EU continued giving aid for existing programs but adopted a conditional approach for new projects, on the basis of support for the restoration of constitutional democracy. The EU demanded a national, multi-party dialogue, national reconciliation and legal proceedings against those accused of

human rights abuses, and stipulated that the resumption of full cooperation would depend on progress achieved in these areas. The EU normalised cooperation and discontinued the consultation process in February 2002 following what it deemed free and fair elections.

In 2004, however, the Commission expressed its discontent with the processes occurring in Ivory Coast and again instigated consultations with the main concern being human rights. Thereafter, progress in the consultation process has been negligible but the EU has not imposed sanctions on Ivory Coast. In September 2002 a troop mutiny escalated into a full-scale rebellion, voicing the ongoing discontent of northern Muslims who felt they were discriminated against in Ivorian politics. The situation did not improve much and remained extremely tense as the EU recognised that ‘the persistent situation of conflict makes it impossible to implement a traditional program of co-operation’ (*ACP–EU Courier* 2000, 17). A period of French bilateral aid activity followed, while EU assistance remained de facto suspended and other EU states steadily reduced their bilateral programs. The volatile political situation and bloody fighting between the forces of internationally recognised President Ouattara and the incumbent president Gbagbo in April 2011 prompted the EU to reaffirm its decision to authorise the countermeasures on the grounds that Ivory Coast has violated its obligations under the Article 96 of the Cotonou Agreement.

Guinea

In July 2004, the European Commission opened consultations under Article 96 with Guinea due to its worries about the process of democratization in the country: “Commission considers that the gradual deterioration in the democratic environment in Guinea, notably the dubious referendum of November 2001, the

undemocratic parliamentary elections in June 2002, and the lack of positive signs of imminent change in the situation amount to non-respect of the essential elements set out in Article 9 of the Cotonou Agreement” (Eur-Lex, EC COM/2003/0517). In response, the government of Guinea pledged to:

- return to democracy through resumption of dialogue with the traditional opposition and civil society, including revision of the electoral arrangements;
- hold parliamentary elections based on the new electoral arrangements in June 2007;
- uphold the Constitution and the law, so guaranteeing respect for human rights and fundamental freedoms, including the rights of political parties to organise, meet, demonstrate and speak in public; launching discussion on a legal framework for liberalisation of the airwaves;
- enhance macroeconomic management and implementing sectoral reforms promoting decentralisation.

Thus, the Commission perceived violations of the essential elements of Article 9 of Cotonou Agreement in Guinea and opened a dialogue with the Guinean government. According to the European Commission’s report, the Guinean authorities “showed great willingness both to continue and step up talks and to facilitate the EU mission” (Eur-Lex, EC COM/2004/0804). However, in April 2005, the Commission found that “Important measures concerning essential elements of the Cotonou Agreement have not yet been taken [by the government of Guinea] and the Commission concludes the dialogue with guinea and adopts specific measures adopted as appropriate measures within the meaning of Article 96(2)(c) of the Cotonou Agreement” (Ibid). The appropriate measures include:

- Programmes to strengthen civil society (including non-organised forms), respect for and reinforcement of democracy, human rights and good governance and the emergence or consolidation of free media may be supported
- Humanitarian operations, trade cooperation and trade-linked preferences will be continued
- Support will be provided for preparation of the elections once electoral arrangements guaranteeing a transparent and democratic electoral process based on the Declaration on the Principles Governing Democratic Elections in Africa have been established
- The European Union will base its future assessment on the following criteria:
 - (a) whether free and transparent local elections have been held and duly elected local authority executives have taken office;

- (b) whether electoral arrangements and operational requirements for parliamentary elections (including the date of the elections), based on the Declaration on the Principles Governing Democratic Elections in Africa have been established within the framework of political dialogue with the opposition forces.

These measures expired on 14 April 2008. On 16 March 2009 the EU opened consultations with Guinea under Article 96 of the revised Cotonou Agreement. This decision was taken following the military coup d'état of 23 December 2008 and the seizure of power by a military junta. The EU adopted 'appropriate measures under Article 96(2)(c) of the Cotonou Agreement for the gradual resumption of cooperation' (*EUR-Lex* 2009, emphasis in original). The decision called for monitoring the situation over a period of 24 months, and the EU retained the right to amend the 'appropriate measures' in light of progress in the implementation of commitments, particularly those relating to human rights, the rule of law and governance.

Liberia

Recently, Liberia surprised the world as a "progressive" state when the US-educated economist and former finance minister Ellen Johnson-Sirleaf won the second round of presidential elections in November 2005 as Africa's first elected woman head of state. However, in September 2001, the European Commission began negotiations with Liberia because of its violations of the essential and fundamental aspects of the Cotonou Agreement. The Commission explains the reasons for the negotiations:

This decision was based on the fact that on a number of occasions, since its arrival on power in 1997, the Government had acted in ways that amounted to a failure to fulfill its obligations stemming from the essential elements of Article 9 of the Agreement; that it had also acted in violation of good governance requirements as serious corruption is made possible by the lack of transparency of the management of public utilities and resources (*Eur-Lex*, EC COM/2002/0103)

The exact demands for Liberia were as spelled out by the Commission:

- to ensure the independence of an efficient and effective judiciary;
- to conduct an external independent audit of Government financial institutions and parastatal agencies;
- to effectively guarantee the personal security and freedom of movement of opposition leaders in Liberia;
- to establish an independent and efficient human rights commission;
- to establish an independent and efficient reconciliation commission, in charge of organising and supervising a reconciliation forum;
- to implement decisions taken to enlarge access to short-wave broadcasting;
- to establish an independent and efficient election commission;
- to dismantle the monopoly on fuel import;
- the constant promotion and guarantee of freedom of press;
- enhanced transparency in the way public concessions and licences are run and on the fiscal revenue derived therefrom.

In practice, the situation was to be reviewed every six months, the continuation of implementation of the humanitarian projects, contributions to regional projects, operations of a humanitarian nature, trade co-operation and trade related preferences were not affected, and electoral assistance was to be offered. On the other hand, the 8th European Development Fund (EDF) National indicative program was divided into two installments: a first installment would cover institution building and direct support to populations, and a second one more structured aid (Ibid). The implementation of the first installment was to be linked to actual progress made in restoring efficient democratic structures and in improving public financial management. The implementation of the second installment was conditional upon the holding of elections to international standards in 2003 in a wider context of improvement of the political and governance situation. Also, the EU agreed on an arms embargo and prohibited the provision of technical training connected with armaments, a visa ban as well as the ban on importing of rough diamonds from Liberia.

In 2003, the EU decided to provide financial support to a peace-keeping operation in Liberia and to make funds available for other measures accompanying

the peace process. At the same time, the EU announced that ‘the balances remaining for Liberia from the 8th EDF shall be available forthwith for implementation and notification of the 9th EDF allocation will be made once the comprehensive peace agreement is in force and the signatory parties to the agreement have shown commitment to implement the agreement as foreseen’ (*EUR-Lex* 2006a). In 2004, the EU announced: ‘The current conditions in Liberia do not yet ensure respect for democratic principles, governance and the rule of law’ and, therefore, the decision was made to extend the validity period of the measures provided for in 2003 (*EUR-Lex* 2004). These measures expired in 2006 and the EU lifted the ‘appropriate measures’ adopted under Article 96 because of the commitment of the Liberian government to ‘bring about social, economic and political reconstruction in the country’ (*EUR-Lex* 2006b). Some restrictions on military assistance and weapons transfers to Liberia were imposed in 2006, 2008 and 2010 but they were not part of Article 96 or 97.

Conclusion

On the basis of these case studies, we draw several tentative conclusions about the effectiveness of EU conditionality. The main finding is that the suspension of aid is not an effective tool for promoting or restoring breaches of the ‘essential’ or ‘fundamental’ elements in ACP states. What may hinder positive change in ACP states experiencing EU aid suspension is the inflexibility of the approach. The suspension of aid to Guinea was to expire only in 2008 despite the cyclical review periods. The reviews did not appear to be as useful as the EU claims given that the decision to suspend aid until 2008 remained in place. Likewise, the suspension of aid to Liberia expired only in the summer of 2006, despite the situation in Liberia improving dramatically. This is probably a time

when the EU's aid could have been used to rebuild Liberia. Instead, the aid suspension adversely affected ordinary Liberians. The suspension of aid denied funds to development projects such as road construction and water treatment plants which, in the end, affect ordinary citizens (*ACP–EU Courier* 2000).

One could postulate that success or failure of suspending aid depends on whether some ACP states are more dependent on aid than others. For example, the EU is likely to have more leverage over a state that does not possess national resources. A state like Nigeria or Botswana that has a great amount of natural resources might resist EU demands more fiercely. Moreover, authoritarian or semi-authoritarian regimes such as Guinea may resist any stipulations given by outsiders. The EU admits that no breakthroughs have been detected in Guinea (*EUR-Lex* 2011). The aid suspension and pressure from the EU have not induced noticeable positive changes in this state and can be regarded as ineffective.

Table 2 shows that most states had two common independent variables – a breach of the rule of law and democratic principles – that led to the initiation of dialogue and aid suspension by the EU. The inherent ambiguity in defining ‘democratic principles’ can contribute to the confusion and inconsistent application of the conditionality clause. The EU's emphasis on democratic elections as a manifestation of democratic progress is also problematic. Elections do not necessarily lead to democratic principles in practice. Does the EU count every election as a sign of progress? If not, what are the defining characteristics of ‘democratic’ elections? It seems that vague definitions of what constitutes ‘democracy and human rights’ allow for the selective application of Articles 96 and 97. Clear measures of democratic progress would help ensure a more coherent application of the suspension clause of the Cotonou Agreement.

Besides democratic principles and the rule of law, each state had different ‘problems’ in the eyes of the EU. Interestingly, Liberia is the only state against which the breach of the ‘fundamental’ element – good governance – has been invoked.

Coups are the most egregious basis for aid suspension, but other criteria for initiating negotiations remain opaque. One cannot help but notice that consultation procedures are initiated for rather vague reasons and, in some cases, may not reflect the real situation. Thus, aid suspension via Articles 96 and 97 officially still applies to Guinea but not to Ivory Coast and Liberia. Ivory Coast is not subject to official sanctions, but its situation can hardly be described as optimistic, and the unfavourable situation in that state even precludes a coherent dialogue with the EU. How exactly and why a state is considered as having breached the ‘essential’ or ‘fundamental’ elements remains to be specified. Why suspend aid to Guinea and Liberia (until 2006) and not to Ivory Coast given that human rights, democratic principles and the rule of law are not better observed in the latter? According to Amnesty International (2010), the human rights situation is worse in Ivory Coast than in Guinea, but only Guinea is subject to the appropriate measures.

According to Transparency International (2010), Ivory Coast is more corrupt than Liberia. Again, what motivated the EU to suspend aid to Liberia on the grounds of corruption but not Ivory Coast? The usefulness of conditionality is also unclear because the process is slow due to ‘the EU undertaking rounds of formal consultations with the offending regime and they [sanctions] have generally been removed before anything resembling genuine democracy is (re-)installed’ (Youngs 2010, 6).

The new Cotonou Agreement provides for consultation in the event of a serious breach of the terms of the Agreement, but the consultative procedure between EU and ACP states is still vague and the appropriate measures are at the discretion of the EU. It is difficult to conduct political dialogue and apply the suspension clause coherently and systematically. This can generate misunderstandings and friction between the EU and its partners and within the EU itself. For example, the United Kingdom made Sierra Leone a foreign-policy priority and requested a suspension of aid to Liberia on the grounds that the Liberian government perpetuated war in Sierra Leone (*ACP–EU Courier* 2000). Unsurprisingly, this caused friction among the EU members. It is reasonable to presume that former colonial ties between EU members and the ACP states in part determine the severity of sanctions (Crawford 2001; Youngs 2010). External factors may also hinder the effectiveness of aid suspension. For example, China's 'no strings attached' aid to some ACP states may render EU aid suspension ineffective.

Lack of consensus on essential elements can also hinder the effective application of the conditionality clause. For example, definitions of democracy are varied. Despite the waves of democratisation across the world in recent years, there are different views on the means and structures required to achieve democracy, let alone on the general applicability of such means and structures. What concept of democracy is the EU promoting via political conditionality in the ACP states? Merely having a 'democratic' constitution does not guarantee adherence to its principles.

Another example is good governance. Again, how exactly is the EU defining 'good governance'? The difficulty is in deciding how 'good' is good

enough. One could easily argue that the EU's own standard of good governance is far from perfect given the findings of corruption that led to the resignation of the Commission in 1999, or the election of extreme-right coalition governments. 'Third World' states can easily identify flaws in European 'good governance'. Unless both the 'essential' and 'fundamental' principles are unequivocally defined, respected and promoted, the quality and purpose of political dialogue will be marginalised and regarded as little more than cosmetic conditionality to be applied in a selective manner.

Finally, the EU's double standards undermine cooperation with the ACP states. The EU condemned human rights abuses in Guinea and imposed sanctions under Article 96 but still concluded a fishing agreement with that state (ACP–EU Joint Parliamentary Assembly 2004). Sectoral agreements like fishing or steel are beyond the purview of the Cotonou Agreement, and do not in theory contradict the Agreement. One must wonder why the EU chooses to contradict its own moral stance and undermine the efficacy of conditionality. Suspending aid to a state, while at the same time concluding a trade agreement with that state, will not make the aid suspension effective. The EU needs to clarify the vague concepts found (e.g. 'democratic principles') in the Cotonou Agreement and muster the political determination free of hypocrisy to successfully tackle underdevelopment and conflict in the ACP states.

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Appendix

Table I Toward Economic and Political Conditionality in EU Development Policy

Pre-1989	1990s		2000s
Lomé I-III (1975-89)	Lomé IV (1990)	Lomé IV revised (1995)	Cotonou (2000-2020)
<i>Policies</i>	<i>Policies</i>	<i>Policies</i>	<i>Policies</i>
Economic Growth	Economic Growth	Economic Growth	Economic Growth
References to human dignity, and economic, social, and cultural rights (Lomé III)	Provisions on democracy, human rights, and rule of law	Provisions on democracy, human rights, and rule of law Good governance	Provisions on democracy, human rights, and rule of law Good governance
<i>Instruments</i>	<i>Instruments</i>	<i>Instruments</i>	<i>Instruments</i>
Financial and technical assistance	Financial and technical assistance	Financial and technical assistance (economic and political conditionality)	Financial and technical assistance (economic and political conditionality)
Stabilization of export prices		Suspension clause for democracy, human	Suspension clause for democracy, human

		rights, rule of law	rights, rule of law AND good governance (corruption)
		Political dialogue	Political dialogue
Preferential trade agreements	Preferential trade agreements	Preferential trade agreements	Inter-regional free trade agreements

Source: Börzel, Risse 2004, EU DG Development (2011)

Table II EU Sanctions

	Reason for EU Action				
	Year	Human rights	Rule of law	Democracy	Good governance
<i>ACP States</i>					
Sudan	1990	x	x	x	
Haiti	1991		x	x	
Kenya	1991			x	
Zaire	1992			x	
Togo	1992			x	
Malawi	1992			x	
Equatorial Guinea	1992	x	x		
Nigeria	1993	x		x	
Gambia	1994		x	x	
Comoros	1995		x	x	
Niger	1996		x	x	
Burundi	1996		x	x	
Sierra Leone	1997		x	x	
Togo	1998			x	
Niger	1999			x	
Guinea-Bissau	1999		x	x	
Comoros	1999		x	x	
Ivory Coast	2000		x	x	
Haiti	2000			x	
Fiji	2000		x	x	
Ivory Coast	2001		x	x	
Liberia	2001	x	x	x	x
Zimbabwe	2002	x	x	x	
Central African Republic	2003		x	x	
Guinea	2004	x	x	x	
Togo	2004	x	x	x	
Guinea-Bissau	2004		x	x	

Mauritania	2005	x	x	x
Fiji	2007	x		x
Mauritania	2008	x	x	x
Guinea	2009	x	x	x
Madagascar	2009	x		x
Niger	2009	x	x	x
<i>Other Developing States</i>				
Guatemala	1993		x	x
<i>Transition Economies</i>				
Belarus	1997	x		x

Source: Holland (2002), EU DG Development (2011)