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Between a rock and a hard place? Internal - external legitimacy tensions and EU-Central Asia relations

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Given the EU's limited capacity to compel or coerce the states in its wider periphery, it is more dependent than other international actors on the ability to persuade and co-opt neighbourhood elites to change. The effectiveness of EU external policy is therefore intrinsically entwined with external third party perceptions of EU legitimacy that are based on the extent of resonance between EU and neighbourhood state policy norms. However, this paper argues that the EU often faces a tension between need for internal legitimacy (deriving from key actors within the EU) and the external legitimacy needed for the export of effective policy (emanating from political structures in third party countries). What is seen as legitimate practice in Europe will often be met with a set of partly inimical policy preferences emanating from a different political and normative context in neighbourhood states - leaving the EU caught at times between internal legitimacy and external efficiency. These legitimacy tensions, and the antagonistic relationships which exacerbate them, help to explain how legitimacy plays an important role in both the capability-expectations (Hill, 1993) and the normativity- outcomes (Bailey & Bossuyt, 2011) gaps that are said to afflict EU foreign policy.

Introduction

This paper examines the tensions that exist between internal and external perceptions of legitimacy in the EU's relations with Central Asia and the subsequent challenges this poses for EU foreign policy. In its relations with Central Asia (as elsewhere), the EU is required to be able formulate policy that is seen as legitimate both by core (and often competing) internal and external constituencies. The seeming decline of the so-called 'permissive consensus' and perceptions of an EU 'democratic deficit' raise the importance of EU policy being seen as legitimate inside the EU, both in terms of input into policy and the eventual effectiveness of policy output. Likewise however, the EU's limited capacity (and inclination) to compel third party actors in Central Asia, and the multiple alternative opportunities for international cooperation available to these countries with Russia and China (amongst others) means that the EU has to offer a vision of policy that resonates to some degree with perceptions of legitimate practice in the eyes of Central Asian leaders for it to be accepted and effective.

This situation is exacerbated by the fact that the EU has to navigate in its external relations a number of antagonistic relationships, where certain very important EU constituencies (human rights NGOs and energy companies in the cases examined here) are located in a form of zero-sum interaction with Central Asian states. While cooperative some of the time, in general, gains for either set of these intra-EU actors comes at the expense of the Central Asian state (leaderships) and *vice-versa*. Investigation into these legitimacy tensions and the antagonistic relations that they derive from helps shed light on the role of that legitimacy can play in exacerbating the capability – expectations and normativity-outcomes gaps that are thought to afflict EU foreign policy, as outlined by Hill (1993) and Bailey and Bossuyt (2011).

In investigating these tensions and the challenges they present for the EU, this paper is divided into three broad sections. The first, section addresses the conceptual notions of the legitimacy that are discussed below. This section sets the academic terrain for analyses of multiple legitimacies in the 'wider Europe' by focusing on the distinctions between empirical and normative approaches, input and output legitimacy, procedural and substantive legitimacy and questions of legitimate authority and legitimate order in the EU periphery. The second section focuses on the differing and competing demands for internal and external legitimacy in EU external relations. This section highlights how this tension is in part created and exacerbated by the antagonistic relations that the EU has to navigate in its relations with some third party countries and how these tensions contribute to the normativity-expectations and capability-expectations gaps.

The final section presents case studies of human rights and energy governance respectively to demonstrate some examples of multiple legitimacies in the EU periphery and how this at times leaves the EU caught between internally legitimate policy and externally effective action. The case studies concentrate most on the case of Kazakhstan in Central Asia. This is because Kazakhstan and the EU have some of the deepest cooperation and engagement in the region that allows for the tensions discussed above investigated and brought to the foreground. Similar dynamics are also evident in other Central Asian countries (with the possible exception of Kyrgyzstan).

Conceptualisation: Normative, empirical and multiple legitimacies

Before discussion the tensions that are present between different forms of legitimacy in the EU periphery and the effect these tensions have on EU foreign policy, it is first necessary to prepare the intellectual terrain in terms of notions of legitimacy employed here. In contrast to normative

approaches, this paper addresses legitimacy in the EU periphery in an empirical, socially-rooted sense that focuses on the embeddedness of legitimacy within a given political order and that consequently presents the possibility of analysing multiple forms of legitimacy within the EU's wider neighbourhood[1].

To facilitate such analysis, this section breaks the notion of legitimacy down into a number of its constituent concepts that are heuristically useful in this analysis. Firstly, it seeks to outline the distinction between normative/cosmopolitan and empirical/communitarian conceptualisations of legitimacy. Secondly it discusses, how this empirical-communitarian understanding of legitimacy facilitates the analysis of multiple and potentially competing forms of legitimacy in a given geographical space. Thirdly, to set up the analytical foundations of the following section on legitimacy in the EU periphery, the third part of the section considers the distinction between substantive and procedural forms of legitimacy. Finally, the section concludes by describing how these different aspects of legitimacy play out at the international level through a brief discussion of legitimate authority and legitimate international order(s).

The study of legitimacy can be divided between normative and empirical approaches. *Normative* theories of legitimacy, "set out the general criteria in terms of which the right to rule can be appraised" (Clark, 2007, p.18). These approaches are concerned with understanding and appraising legitimacy based on abstract universal moral and ethical principles. Many of the debates surrounding the evaluation of the EU as an "ethical power" or "a force for good in the world" are concerned with the appraisal of the EU in light of certain transcendent and universalistic moral principles (Aggestam, 2008). Manners (2002, p.241) describes for example how the EU puts "universal norms and principles at the centre of its relations with its member states and the world". Likewise, Bengtsson & Elgstöm (2012, p.105) discuss how the EU's "own role conception rests on a set of central abstract [normative] elements irrespective of empirical content". The debates surrounding normative, universalistic views of legitimacy reflect a cosmopolitan (self-)perception of ethics within the EU that sees certain moral values as transcending cultural boundaries (Aggestam, 2008, p.6). Aggestam (2008, p.6) highlights that a cosmopolitan view of ethics sees values and norms as "objective and exist[ing] independently from the specific identity of an actor". Scholars concerned with the normative or ethical aspects of EU foreign policy recognise that the norms of EU external relations are conceptualised in cosmopolitan, universal terms (Eriksen, 2006;

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[1] To be clear, this paper makes no claim as to what would constitute legitimate policy in a normative sense in the EU periphery; rather it seeks to understand and analyse how contrasting legitimacies interact within the EU's external relations with Central Asia.

Tonra, 2011). Eriksen (2006), for example, avers (with some caveats) that the EU pursues a foreign policy based on the promotion of "human rights, democracy and the rule of law ... hence underscoring the *cosmopolitan* law of the people" [emphasis added] (p.253 & p.260-4).

By contrast, empirical approaches to legitimacy seek to root their analysis in the social (rather than philosophical) world and are thus concerned with understanding "the belief systems of those subject to government" and the extent to which those "subject to government" see those who rule them as legitimate (Clark, 2003, p.79). This empirical approach is much associated with work of Max Weber (Clark, 2003, p.79-80). Within the empirical approach, Weber drew attention to legitimacy as both belief in the rightfulness of a given social order and belief in the rightfulness of the social action which is regulated by a given order (Clark, 2003, p.79). Such an empirical approach to legitimacy is consistent with a communitarian understanding of ethics that focuses on which norms and values are held as just or rightful within a given community and how a given population views the actions of its leaders in relation to these values. Important in this form of understanding then is an evaluation of who are the key ruling-actors in a given societal community, the nature of the relationship with those over whom they rule and how the rules that emanate from these ruling-actors are perceived by the general population (Clark, 2003, p.80).

Understanding legitimacy as being rooted in and specific to individual communities gives rise to the prospect of multiple legitimacies. As Clark, quoting Ferrero, notes "principles of legitimacy are born, grow up, age, and die; sometimes they come into collision and clash. Their life cycles and their clashes are the invisible foundations of history" (2003, p.75). The norms prevalent within divergent communities when transposed onto the international level become the "basic values in accordance with which legitimacy can be said to exist [between communities] at all" (Clark, 2003, p.75). These views of legitimate values however are not historically fixed and change over time and across geographical spaces (Clark, 2007, p.13). This in turn raises the possibility that different conceptions of legitimacy can be found at different times within different communities, and thus also between different communities. Regardless of whether one ascribes ultimately to a cosmopolitan view of universal values in a normative sense, in practice it is highly likely that multiple perceptions of legitimate practice can be present in and between communities or states at any given time. Indeed, it can be argued that the turning points of history rest on the clashes between groups espousing and promoting different forms of legitimacy (Clark, 2007, p.13).

An additional important distinction within conceptualisations of legitimacy concerns the distinction between procedural and substantive legitimacy (Clark, 2007, p.18). While both of these distinctions can be located with the empirical approach discussed above, each views the legitimacy of a given action as being derived from a different source. Procedural legitimacy refers to actions that are deemed to be legitimate when they are seen to derive from a rightful source of authority (Clark, 2007, p.18). In this sense, rules are seen to be just when they originate from an authority that is seen as legitimate, such as democratically elected parliament in a country where the generally accepted legitimate form of government is seen to come via popular elections. Substantive legitimacy by contrast, sees rules as legitimate when they are perceived to embody "proper ends and standards" (Clark, 2007, p.18). By this standard, a rule is not legitimate on the basis of the authority that sanctions and enforces it, but rather it is seen as legitimate when it attests to a set of normative principles held to be just and right within a community. In reality, domestically within most states legitimacy is normally attributed to an action or policy through a mix of both procedural and substantive legitimacy, although the *substance* of policies is of course often highly contested. These questions of procedural and substantive values highlight well the co-constituting relationship between legality and morality in legitimacy (Clark, 2007, p.19).

It is also important to highlight the concepts of *input* and *output* legitimacy that relate to the substantive/procedural distinction above. Input legitimacy, as Lindgren and Person (2010, p.451) note refers to the "participatory character of policy making" is is thus concerned with the processes and possibility for relevant actors to have input into policymaking. In this sense is relates strongly to the procedural notion discussed earlier, although input legitimacy is at times thought to increase the effectiveness and justness of policy so in that sense also corresponds to substantive legitimacy. However, output legitimacy is concerned with the effectiveness and efficiency of the rules established by the policy making process, and thus corresponds perhaps closer to the substantive understanding above (Lindgren & Person 2010, p.451). Debate exists concerning the compatibility between input and output legitimacies (Lindgren & Person 2010, p.45; Krapohl; n.d. p.3). While it is often contended that there is a synergistic and positive relationship between input and output legitimacy, some argue that the relationship is rather characterised by a trade off between the two.

Internal and External Legitimacy in International Relations and EU Foreign Policy

Moving to the international realm however, poses a number of challenges for the application of the concept of legitimacy. The complexity of the conceptual notions discussed above is augmented in

the international level as there are a minimum of two (and possibly many more) actors whose legitimacy claims can be represented in any given instance of international politics. As such one needs to consider these aspects of legitimacy (such as input and output legitimacy) as having both internal and external dimensions.

In an *idealised* legitimate order in the EU periphery, all actors (both inside and outside the EU) would imbue such an order with both input and output legitimacies. That is to say that they would feel sufficiently content with the formulation and input into the construction of that order and the justness and effectiveness of the rules that are its output. It is quite possible however to conceive of an international order that enjoyed a relatively high degree of legitimacy without meeting such a strict criteria.

Clark argues that legitimacy in international relations can be related to either the *legitimacy of authority* or the *legitimacy of global order* or a mixture of the two (Clark, 2003, p.89). The legitimacy of authority is based on the acceptance of commands issued by a certain actor as binding. This relies on a certain conception of rules. When seeing an action or policy as legitimate based on the authority that sanctions it, one is consciously or sub-consciously acquiescing to hierarchical rules, based on commands (Burch, 2000, p.190). Examples include the legal acquiescence to European law of EU member and accession states.

The legitimacy of a given *global order*, however, does not follow such a logic of command and is not based on command-based rules but is rather based on a common and mutual acceptance of the norms and rules of given order (Clark, 2003, p.89). Within what is perceived to be a legitimate *order*, actors accept and orientate their behaviour to a particular set of shared rules (Clark, 2003, p.89). The rules on which a legitimate order rests are often thought to be based on heteronomy, that is the reciprocal exchange of obligations to one another (Burch, 2000, p.190-1). Heteronomy is characterised by multiple differing fragmented authority, where actors interact not through coercion or co-option but rather when "rights and duties dominate social relations" (Burch, 2000, p.191). Examples include (formal) Westphalian relations between states or (idealised) relations between participants in a market (Burch, 2000, p.191).

Relating to the discussions above, the legitimacy of formal *authority* is based on both procedural and most probably also on substantive perceptions of legitimacy, whereas a legitimate *order* is based primarily on a substantive understanding of legitimacy. This legitimacy of order, Clark argues, refers to a process by which actors have reached agreement on the basic values of an order.

"Actors within the international sphere are constantly searching for and competing about the principles of legitimacy that deserve respect" (Clark, 2003, p.94). However, Clark forwards a pessimistic note of warning, "to the extent that international relations rests on the values embodied in a particular order, it rests on shifting sands" (Clark, 2003, p.93). By this he means that the historical processes of defining what constitutes legitimate values of order are not fixed and the prospects for multiple legitimacies are always present.

In situations of enlargement for example, the EU demonstrates formal hierarchy and a form of legitimate authority based certainly on procedural, and most likely also on substantive forms of legitimacy. In the absence of the formal hierarchy of enlargement however, relations between the actors in the EU periphery fit the description of a formally heteronomous order as highlighted above where conceptions of legitimacy, to the extent that they exist, are predicated on shared rules and norms and thus approximating most closely to substantive notions of legitimacy international order. Situations of formal hierarchy rarely apply in relations with neighbouring countries as these countries are not subject to the stipulations of EU accession and are free to refuse EU cooperation. As such, legitimacy of authority, based on formal hierarchy and rules of command does not apply in this case. Rather EU relations with its neighbours are based on formal legal equality, meaning that the form of legitimacy at play is the legitimacy of order and the basis of perceptions of legitimacy lie in shared understandings of substantive values.

Of course forms of power, both ideational and material, come into play and states in the EU periphery may not have as much room for manoeuvre as discussion of the formal nature of the relationship would suggest. Nevertheless, it should be noted at this juncture that EU-periphery country relations do not operate in a vacuum and the EU is by no means the only regional power, especially in Central Asia. While the EU can be perceived of as legitimate when its particular rules are held to be substantively legitimate and while it can in some cases offer a form of moral or technical authority, in the EU's neighbourhood there are a number of other actors with which Central Asian actors are interdependent and that also offer counterpoised rules to those promoted by the EU (Dimitrova & Dragneva, 2009). Just as it is possible for multiple conceptualisations of legitimacy to co-exist within a given space (be it the EU periphery or wider global political economy), it is also the case that there can be multiple potential authorities and norm providers, i.e. those major actors who seek to shape the common *milieu* based on their own perceptions of legitimacy. In Central Asia, the United States, Russia, China, Turkey and to a lesser extent Iran, all seek and partially succeed in promoting political practices congruent with their own

conceptualisations of legitimate practice and interests. In doing so, they weaken EU influence and provide additional opportunities for Central Asian states to circumvent EU sources of power.

Between internal legitimacy and external efficiency? The EU's (competing) needs for internal and external legitimacy

This section argues that EU faces competing pressures for internal and external legitimacy in its external relations. Highlighting both the EU's so-called internal democratic/legitimacy deficit and the simultaneous need to for policies that are seen as legitimate in the eyes of foreign leaders, the first section below outlines why both internal and external legitimacy are so important to the EU. The second section suggests that this is particularly a problem when the EU seeks to manage what are described here as antagonistic relationships outside of the EU (such as those discussed in the case study section below). Finally the third part of this section draws attention to how these tensions between legitimacies and the EU's position in between them, contributes to both the capability-expectations and normativity-outcomes gaps in EU foreign relations.

The need for internal and external legitimacy

The perceived legitimacy deficit within the EU and within EU foreign policy more specifically, is much discussed in the EU studies literature (Tonra, 2011, Laïdi, 2008a&b; Greenwood, 2007). This literature focuses on how the EU is seen by many to suffer from a form of legitimacy deficit, (particularly in terms of input legitimacy) deriving primarily from the fact that "the EU's institutional arrangements and practices fail to conform to any one conception of democracy" (Greenwood, 2007). Emmanouilidis (2011, p.3) notes that "frustration with the EU's standards and performance in terms of representation and accountability [has] accompanied debates on European integration since at least the early 1990s". These perceived legitimacy deficits are exacerbated by the seeming breakdown of the 'permissive consensus' based on output effectiveness that was thought by some, until relatively recently, to be an adequate basis for legitimacy in the EU (Føllesdal, 2006, p.442).

A major part of reducing this internal deficit in legitimacy has involved the European Commission (and now the External Action Service) turning to the participation of interest groups from civil society in the policy formulation process. The involvement of organised interests such as business associations, NGOs and individual companies in the making of EU policy is seen to decrease

perceived deficiencies in the EU's models of democratic representation and thus as a means to improve the (input) legitimacy of EU action. Interest groups representation is thought to increase legitimacy in at least two ways. Firstly, such groups are seen as a way to offset the structural deficiencies of the EU models of representation (Greenwood, 2007, p.340). The focus on interest group representation as a form of input legitimacy in the EU developed at a time when the European Parliament was without extensive powers and where the strengths of interests groups as checks and balances both on institutions and each other provided "another contributory avenue of popular legitimation" (Greenwood, 2007, p.340). As Føllesdal (2006, p.448) argues, "the legitimacy of the EU is said to increase by including citizens, interest groups and experts in the decision process: Interest group and expert democracy may be regarded as direct participation, hence legitimate". As Bouwen (2002, p.4) notes some scholars see this form of interest group-EU interaction as a substitute for more conventional form of legitimisation whereas others see it as complementary. This view of input as playing a complementary role, Bouwen (2002, p.4) notes, is also taken up by and promoted by the EU, most notably the Commission.

Føllesdal's mentioning of experts above also draws attention to another important, second aspect of EU internal legitimacy - the provision of expert information into the policy making process. As Bouwen notes (2002, p.369), the institutions of the European Union are dependent on civil society actors and private business interests for information that is crucial in the formulation of policy. The provision of this expert information (amongst other forms of information - see Bouwen, 2002) has a number of effects in terms of legitimacy. Firstly, it increases the EU's input legitimacy internally by allowing the EU institutions to claim their policy making is based on the best available expertise. Bouwen (2002, p.371) argues that the provision of crucial policy relevant information by civil society organisations provides "input legitimacy to the EU institutions because [it gives] information about encompassing and representative interests". Secondly, the provision of expert information from important interest groups (and individual organisations) is also thought improves the output legitimacy of the EU (internally). Bouwen argues that expert information is seen to increase output legitimacy as it "provides the EU institutions with the necessary expertise to deal with their problems in an efficient way" (Bouwen, 2002, p.371). It should be noted that the ongoing provision of this information increases the reliance of EU institutions on these civil society actors, both for their role in legitimising EU action (input legitimacy) and for the information itself (output legitimacy). Bouwen (2002, p.368) alludes to this form of dependence on information and input when he notes that "organisations become interdependent with those organisations with which they interact".

In terms of legitimacy, these interest group actors (or coalitions of actors) are also important in a third sense. Whereas the two factors of participation and expertise mentioned above attest to the ways civil society involvement can boost the EU's internal legitimacy, these actors can also damage the EU's legitimacy standing if they so desire. Many of the EU's interest group and civil society interlocutors are highly prominent actors in their own right, sometimes holding a certain degree of veto-power over certain issues and frequently holding considerable influence over veto-playing member states (major international energy companies provide such an example). Even in areas where these actors do not hold veto power *per se* (such as human rights NGOs), they are very prominent, well-funded, vocal and media-savvy players who can do considerable damage to the EU's reputation if their interests are not thought to be reflected in EU policy (both in terms of input and output). Indeed, criticism form these groups can be directed at both the input processes of EU policy if they feel they are not being represented adequately in the policy-making cycle and at the output and effectiveness of EU policy if they feel their interests are not actually reflected in the product and application of EU policy-making, or if they feel that others' interests are better represented.

External dynamics

In addition to internal legitimacy as discussed above, the external dynamics of legitimacy are also of fundamental importance to the conduct of EU foreign policy. There are at least two broad reasons why this is the case. Firstly, the character of the EU as (some form of) a 'civilian power' that relies on cooption rather than coercion means an eschewal of hard power and a greater reliance on the perceived external legitimacy of EU policy. Secondly, the EU's desire for stability in the EU periphery, one of the EU's core foreign policy objectives, is predicated on the establishment of a legitimate order, which in turn requires acceptance by the states in the EU periphery.

The first reason why legitimacy is of such significant import to the EU in its external relations lies in the nature of European power. While different conceptualisations of European power abound (soft, ethical, normative etc) the vast majority settle on conceptualising Europe as *some form* of civilian power, if only in the sense that the foreign policy tools ordinarily employed by the EU are civilian in nature (Orbie, 2006; Bull, 1982). While a deeply contested notion, one broadly accepted axiom of EU foreign policy that relates to the civilian power concept is the limited European use of force in international relations. Unlike its intellectual and political 'others' (those major international actors such as the United States, Russia and China to whom the EU is most often compared and who are also most active in the Central Asian region under consideration here) the European Union has a

limited capacity and willingness to exert influence through the use of hard sanctions. Rather, while Europe does have certain non-military 'hard' power tools[2] at its disposal, such as the withholding of aid, the termination of agreements or economic sanctions, the EU tends to demonstrate positive conditionality, rewarding policy convergence rather than overtly sanctioning third party states (Youngs, 2007, p.897; Schimmelfennig, 2012, p.8).

Consequently, as Schimmelfennig, (2012, p.8), Barbé *et al*, (2009, p.836) and Youngs (2009, p.895) have argued, the EU's ability to drive policy convergence in third party states is predicated on a mixture of the resonance of EU norms with third party states and the relative strength of the EU's bargaining position. This EU bargaining power is itself also related to the multiple interdependencies that other actors exhibit with other major powers such as Russia, China and the USA (Dimitrova & Dragneva, 2009). Even when punitive EU measures can be employed, such as trade sanctions, many actors in the EU periphery (and in Central Asia in particular), are able to turn to alternative regional powers for support and cooperation (at least in the medium term) – reducing significantly the EU's power in the region.

Indeed, in an area where the EU has restricted bargaining position, such as Central Asia, the role played by EU periphery states themselves in shaping the acceptance of policy should not be underestimated. As Barbé *et al* argue (2007, p.836), "either directly or indirectly, neighbouring countries play a critical role in determining which externally promoted rules [by the EU] may be adopted and how". Whether the EU's external governance will be accepted by third party countries rests, according to Barbé *et al* (2007, p.837), on "mutual perceptions of legitimacy". Barbé *et al* (2007, p.837), place significant stress on the "inter-subjective character of legitimacy" and assert that "the resonance between the rules that can shape policy convergence and the normative context in the neighbouring country is of critical importance". This reluctance/inability to use hard sanctions, the reliance on positive conditionality and the ability of third party countries to shape or limit the normative character of cooperation with the EU, means that the effectiveness of EU foreign policy is more intrinsically entwined with external third party perceptions of EU legitimacy than may be the case with other regional powers such as China, Russia or the USA that have a greater capacity to use harder forms of power (and whose perceptions of legitimacy in the case of China and Russia are not that dissimilar to Central Asian perspectives in the first place).

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[2] Of course, since the late 1990s, Europe does have military tools as well as its disposal but the prospect of these being brought into play to influence central Asian countries is extremely unlikely.

Secondly, ensuring a stable ring of countries in the EU periphery is one of the key challenges of European foreign policy (EC, 2003; 2012, p.2). The 2008 implementation report of the European Security Strategy argues for example that "the world around us [the EU] is changing fast, with evolving threats and shifting powers" and that Europe "must do more to shape events" (2008, p.12.). In the same implementation report, the EU's eastern periphery is presented as being a source of instability that threatens European security (2008, p.10). Likewise, the Southern Mediterranean is considered to pose risks of instability deriving from insufficient political reform and illegal immigration (2008, p.7).

International orders that enjoy a high degree of perceived legitimacy are often thought to exhibit higher levels of stability than those that do not (Clark, 2005, p.15-17). Indeed, Clark (2005, p.16) asserts that the stability of international orders is often held to stem from consensual understandings of legitimate action and authority between international actors (2005, p.16). Likewise, Nau avers that "when legitimacy standards converge, [in international orders] all other things being equal, the level of threat among states is reduced" (Nau, 2002, p180). Under such conditions states are able to "establish a legitimate international order comparable, though not identical, to legitimate domestic order (Nau, 2002, p180). Such stability is possible because, as Nau contends, convergence of legitimacy standards produces a form of "constitutional order" between adherents that mimics to some degree the kind of legitimate order and common understanding seen within domestic settings (2002, p180). In the context of the EU therefore, a commonly-held legitimate international order in the EU periphery, accepted by the EU and third party states, should lead to a more stable EU periphery.

However, this is more complicated than it first appears. While common understandings of legitimacy and stable orders would suggest that intersubjective understandings of legitimacy between the EU and 'partner' countries should increase stability, some of the most significant instability seen recently in North Africa and the Middle East stems directly from political structures and elites in the MENA countries that were/are seen as illegitimate by their populations. Consequently, when considering that international orders (such as those the EU tries to establish in its periphery) need to be seen as legitimate to be stable, the EU faces a dilemma between balancing between forms of legitimacy of as understood by state elites with whom they must cooperate and those understood by populations. In authoritarian countries, this is more likely to be the case on issues such as human rights and democracy than on energy policy for example, where distinctions between elite and public perceptions of legitimacy are likely to be less divergent.

To summarise, the EU faces strong pressures to foster both internal and external legitimacies in its relations with countries in the EU periphery. Internally, the EU faces a perceived legitimacy deficit and turns to civil society organisations to both offset the seeming failings in its models of representation and also to boost input legitimacy by obtaining expert knowledge. However, many of these groups also present legitimacy risks for the EU in that they can very easily damage the EU's standing if they do not feel the EU lives up to their standards. External legitimacy is also very important to EU foreign policy firstly as a necessary basis for the export of EU policy (given Europe's limited ability to coerce) and secondly because the core EU foreign policy objective of ensuring regional stability in the EU periphery is predicated on the establishment of a regional orders that is perceived to be broadly legitimate by external third party states (and, sometimes conflictingly, their populations).

Antagonistic relationships: governance promotion and possession/milieu goals

The presence of multiple legitimacies and the tensions between internal and external legitimacies in the EU periphery are exacerbated, and in part created, by the fact that the EU is tasked with managing a number of zero-sum, antagonistic relationships. As the cases below in human rights/democracy and energy will demonstrate, the EU occupies a place between (and receives competing pressures from) actors that are locked together in forms of antagonistic and zero-sum relationships. The notions of milieu and possession goals help to explain this situation (Wolfers, 1962, p74). The intermediary position occupied by the EU derives from the fact that the EU seeks to export governance norms, i.e. common milieu ('adverbial') goals to third party countries (Laïdi, 2008, p.??). However, the behaviours in the EU periphery that the EU seeks to regulate are conducted by a number of actors who seek objectives that are best defined in terms of possession goals (or as milieu-come possession goals).

An actor pursuing a possession goal is aiming at the "enhancement or the preservation of one or more things to which it attaches value" (Wolfers, 1962, p74). Because states will often value the same things, in doing so an actor will often find itself competing with others for something that is in short supply or that comes as the expense of another actor (Wolfers, 1962, p74.). While cooperation in these instances is not impossible, finding agreement in these circumstances between a numbers of actors can be difficult as possession goals are often zero-sum, leading to some actors achieving their objectives at the expense of others (Wolfers, 1962, p.73).

However, when an actor pursues milieu goals they are "not out to defend or increase possessions they hold at the exclusion of others, but aim instead at shaping the conditions beyond their national boundaries" (Wolfers, 1962, p.74). While milieu goals are almost certainly to be in the interest of the actors that promote them, unlike possession goals, they can also match the interests of a number of other actors as well because the principles milieu goals are based on do not themselves represent a scarce resource, and require only agreement (Wolfers, 1962, p.76). However, as Wolfers (1962, p.74) and Smith (2004, p.80) note, milieu goals are not necessarily universal. Rather their acceptance depends on the degree of agreement around the core principles on which they are formed, itself dependent on the legitimacy that these principles are imbued with by different actors.

Indeed, possession and milieu goals are not always as distinct as they may at first appear. Seemingly universal milieu governance principles can be, at times, a means of shaping the external environment so as to permit a more effective pursuit of possession goals (Smith, 2004, p.80). This translation from milieu goal to possession goal is subjective, in that the extent to which a milieu goal becomes a possession goal depends on whether an actor agrees with the principle of the milieu goal or not. Likewise, the adoption of international, macro-level milieu-goals, such as those promoted by the EU, may merely shift the competition from the international level to competition for possession goals at the transnational level (from between states to between energy companies, for example). Therefore, when analysing the politics of legitimacy around milieu goals, it is important to address whose behaviour such policies are intended to modify or regulate and the effect that the imposition of these rules is likely to have (Smith, 2004, p.82).

The two key relationships at the heart of the policy areas discussed below concern the interaction between Central Asian leaders on the one hand and Western/European energy companies in the energy governance case and the Western/European human rights NGOs in the human rights/democracy case. While these relationships are not always acrimonious and sometimes present strong cooperation (much more common in the energy than the human rights case), these interactions are nonetheless antagonistic and zero-sum. That is to say that they are characterised structurally by the fact that the gains of one side come often at the expense of the other. In promoting certain forms of governance, on which it is lobbied by all sides (especially from those within Europe), the EU faces a situation of being pulled between these divergent poles and thus between legitimacy in the eyes of powerful lobbies inside the EU and efficiency in terms of presenting policy externally to actors over whom the EU has little power to compel and to whom the legitimacy of EU policy is all important in deciding on cooperation. These dynamics can leave

the EU torn between internal legitimacy and external efficiency and its view of itself as a legitimate authority and its desire to establish a legitimate order in its periphery.

In terms of policy impact, the greater the antagonistic character of the underlying relationship and the higher the degree of influence of relative lobbies, the greater the likelihood of a divergence between EU internal legitimacy and external efficiency. Furthermore in these circumstances, the greater the importance of managing that particular policy area for the EU's security and prosperity the bigger of a problem this tension creates for the overall effectiveness of EU foreign policy and the greater risk it presents to the EU's general legitimacy as an effective foreign policy actor.

Capability, Normativity, expectations and outcomes

In 1993, Christopher Hill (p.305-6) identified a "capability-expectations gap" between perspectives of the EU's (EC's at the time) role in the world and the EU's actual ability to affect policy outcomes in line with these expectations. He argued that this presented the EU with "difficult choices and experiences that are all the more painful for not being fully comprehended" (Hill, 1993, p.306). More recently, Bailey and Bossuyt (2011, p.3) have reformulated this notion to conceptualise a "normativity-outcomes gap" that exists between the EU's stated normative objectives (specifically in EU trade policy in their case) and the EUs perceived failure to live up to these normative goals.

Resisting the temptation to identify a new potential "legitimacy-effectiveness" gap, it is argued here the character of the legitimacy tensions described above and the antagonistic relationships that they are based around, present an additional dynamic within both the capability-expectations and normativity-outcomes gaps. The EU's need for internally legitimate policies, and the powerful legitimacy ascribing (or denying) power of core constituencies such as energy companies and human rights organisations in their respective areas, play up the EU's rhetorical role in its external policies and increase both expectations (and normative expectations in the human rights case) but at the same time, the presence of antagonistic relations spread across multiple legitimacies hinders the effective realisation of these objectives.

Legitimacy in the EU and Central Asia/Kazakhstan

It is not possible in the space of this paper to highlight all the factors that contribute to perceptions of legitimacy in Central Asia and Europe. Rather the two case study sections below, which focus most closely on Kazakhstan, seek to demonstrate how different conceptions of legitimate policy

action exist in the case of human rights/democracy and energy governance respectively, to emphasize how these different conceptions are structured around a series of antagonistic relationships and consequently to highlight the challenges this poses for the EU in formulating policy that is both internally legitimate and externally effective.

Human Rights and Democracy in Kazakhstan

Human rights and democracy present one of the key pillars of EU cooperation with the states of Central Asia (see EC, 2009, p.15). The Central Asia Strategy asserts that "the development of a stable political framework and of functioning economic structures [in Central Asia] are dependent on respect for the rule of law, human rights, good governance and the development of transparent, democratic political structures" (2009, p.15). However this area also presents one of the most contentious and difficult areas of EU cooperation and a key area where the Commission and External Action Service have to manage particularly fierce competing views of legitimate practice – with human rights NGO's and the governments of these countries structurally located in a form of antagonistic relationship, as described above. Kazakhstan certainly faces on-going difficulties in the areas of human rights and democracy. Recent parliamentary elections in 2012 were characterised by the OSCE as not meeting "the fundamental principles of democratic elections" (OSCE, 2012). Likewise, the country still exhibits substantial deficiencies in human rights standards (US State Department, 2005), but it should be noted that it does fare much better than its regional energy-producer counterparts, Uzbekistan and Turkmenistan (Hug, 2010, p3).

NGO's assert that leaderships in the region are driven by the self-preservation of the elite and that elite structures operate "like mafias", promoting private interests over those of the populations – suggesting a view of these leaders as illegitimate[3]. There is some notice made however to the fact that Kazakhstan presents a more benign regime than other regional players. Nonetheless, there is a general perception amongst such groups that Central Asian countries, such as Kazakhstan, fall significantly below international standards and should make immediate and wide-ranging democratic and human rights reforms (Szente Goldston, 2012).

Different perspectives are offered however by Central Asian government officials. For example, one former Kazakh government official notes that, while desirable, implanting democracy on the Kazak political system is both risky and difficult in the short term[4]. Like all the political systems in Central

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[3] Interview –Human Rights and Democracy Advocacy Officer, 2012
[4] Interview - Former Kazakh Government Official (a), 2012

Asia, the Kazakh political system is characterised by competing elite groups vying for power. It is argued that there is a strong conviction among the majority of the Kazakh population that a strong presidential figure is needed to manage these competing interests[5]. Checks and balances within the political system are not provided by different institutional positions as is the case in the West, but rather influential people are placed in institutional positions so that formal checks work through individuals' informal power in elite groups. Some in Kazakhstan perceive that, while democracy is highly desirable, the slow process of eliminating these factors is necessary before it can be replaced with a democratic system – to do otherwise risks instability[6].

For many Central Asian populations, including those in Kazakhstan, stability is placed at a premium. While people do want changes, they are extremely keen to avoid extreme changes and this factor impacts on the approval rating for incumbent Presidents who, such as Nazarbayev, are seen by their populations to have delivered stability and growing prosperity. Stability and prosperity are key factors of legitimacy amongst Central Asian populations. People have experienced "real upheaval" in one generation since the end of the Soviet Union and they feel that progress made must be maintained[7]. One former Kazakh government official argued that President Nazarbayev has even talked about promoting stability and prosperity before democracy in the past – arguing for the need to ensure stable growth before democratic structures can be put in place[8]. This is not to say that Central Asian populations do not want greater political freedom – they do. Rather it is argued that they do not want, at the moment, to risk current levels of stability and prosperity to achieve it. People in Kazakhstan are starting to become more concerned about democracy, but their concern echoes a form of Maslov's pyramid of needs, in that they currently have stability and a prosperous economy and so are starting to think about democracy. However, for the majority, their interests run from stability first, to the economy and then to political rights. Officials note that if you risk stability in Kazakhstan, you risk the support of the both the elite and the wider population[9]. Indeed, despite the problems surrounding democratic elections in Kazakhstan, Nazarbayev remains popular, regularly polling approval ratings of 80% plus amongst the Kazakh population (Hug, 2009, p.2).

In terms of human rights, the work of NGOs is most focused on questions of 'freedom from fear' rather than 'freedom from want'. These organisations are driven by a focus on the 'Helsinki values'

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[5] *Ibid*
[6] *Ibid*
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*

of the 1990's, values they see as absolute, universally applicable and not open to discussion. Because the Soviet Union provided sustenance and at least basic living standards for most of the population, issues such as education, employment workers' rights and health play a smaller part of the work of NGOs on the countries of the Former Soviet Union[10]. In general the approach of these groups is direct and confrontational. They embody a 'watchdog approach' and a number, as a matter of principle, do not enter into discussions on policy or propose policy solutions. Many human rights groups engage in what they see as "negative messaging" based on the notion that as governments are perceived not to listen to their populations, it is important that they are present the message loud and clearly to Western populations, governments and the populations and governments of the countries they are concerned with. In terms of responses to lack of reform, some of these groups advocate restricting interaction with the EU (Szente Goldston, 2012) and sometimes a complete cut in relations.

However, some in Kazakhstan hold perception (rightly or wrongly) that Western NGO's are not out to solve problems but rather to "create scandals" that would help with the generation of funds for the NGO[11] - a criticism, it should be noted, strongly denied by human rights activists. Kazakh officials argue that problems raised by groups are not systematic and not the policy of the government, but rather can be often attributed to over-powerful and over-zealous local officials – most notably in the police[12]. Cases were cited where police officers were charged with finding a certain number of crimes a month leading to officers forcing confessions. When this became apparent, this targeting of crimes was then reversed and officers started to hide crimes as they were seen to be catching *too many* offenders[13]. In part this relates to the highly hierarchical character of many former Soviet states, where instructions and dictats are obeyed, regardless of whether they have unintended consequences or not.

Politically-motivated cases of abuse are different and, according to Kazakh contacts, falling out of favour with the elite as they create a very negative impression with the public. However, in situations where former politicians or individuals are prosecuted for crimes when they move against the President or seek to establish opposition parties, insiders suggest they are often guilty of the accused crimes. Rather, before they had political protection that made prosecuting them impossible. Whereas once they have gone against the system, prosecutors are free to seek to punish

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[10] Interview - Human Rights and Democracy Advocacy Officer, 2012
[11] Interview - Former Kazakh Government Official (a),, 2012
[12] *Ibid*
[13] *Ibid*

them for their actions[14]. Examples of this may include the cases laid against Mukhtar Ablyazov, former Minister of Energy, and Galymzhan Zhakiyanov, former Akim (Governor) of Pavlodar Oblast, who were prosecuted after establishing a rival political party (US State Department, 2005). So while these prosecutions are politically motivated, they are not so in the sense with which they are often discussed.

There is a feeling amongst Kazakh officials that local human rights NGOs (perhaps understandably) are reluctant to work through the government to try to resolve issues, but that this means that the government is then limited in its ability to tackle these issues effectively. There is also a feeling that there are many issues that human rights organisations do not focus on. Corresponding to the 'freedom from want' issues mentioned above, there is a perception that NGOs are not interested in systematic failures to ensure rights in health and education in remote areas for example[15].

Both Kazakh officials and human rights activists do seem to have some agreement on the intentions of some political oppositions, if not their treatment. Both note that political oppositions can sometimes be opportunistic, potentially more self-serving than incumbents and use human rights and democracy rhetoric instrumentally[16]. People at large are thought to perceive of many of the opposition groups as wanting power, but not really wanting change. Oppositions are sometimes thought of as not likely to deliver stability and as representing no real alternative to incumbent leaders[17].

EU Officials notice that while there are significant degrees of shared values between the EU and states in Central Asia like Kazakhstan there are also issues where shared values are lacking. One EU official noted that while EU values may be good for Central Asian countries, getting them to accept these values is an enormous step[18]. Some officials feel that the countries have completely different institutional and social cultures that mean that the vast majority of what is being discussed is seen by Central Asian countries to be coming from an outsider's perspective. They argue this leaves the EU torn between seeing issues from their perspective and "feeling like they have cheated us" [19].

In contrast to the practice of many human rights organisations, some EU officials caution against the 'negative messaging' arguing that it is not useful if you are trying to propose alternative ways of

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[14] *Ibid*
[15] *Ibid*
[16] Interview - Human Rights and Democracy Advocacy Officer, 2012
[17] Interview - Former Kazakh Government Official (a), l, 2012
[18] Interview EU Official (a), 2012
[19] *Ibid*

doing things. One argued that 'finger-pointing' can be counterproductive as it can be seen a politically motivated, thus hampering the opportunities for cooperation[20]. The same official noted that "positive feedback is a motivation for countries – critiques indicate our superiority and it is perceived that way by them"[21]. Reflecting the discussion on the need for external legitimacy above, EU officials argue that if one is concerned with cooperation "you need to understand where you are starting from … what is doable"[22].

EU External Energy in Kazakhstan: Between liberal and proprietorial models

The context of energy governance also presents a tension between views of legitimate practice structured around an antagonistic set of relationships. The EU operates a "liberal regulated-market" form of energy policy[23], that can be contrasted with the proprietorial model of energy governance promoted by Central Asian countries such as Kazakhstan (Mommer, 2000, p.??). Mommer argues (2000, p.ii) that the the conflict laden history of international energy politics has its roots in a basic conflict over the rules of the game in the management of energy production, transit and sales to consumers. The governance structures set up to manage these issues are in effect a set of political and rules that deliver different energy outcomes, primarily in the form of rent distribution amongst market participants and governments involved in the energy industry. Consequently, the strategic game at the heart of international energy policy concerns the establishment and maintenance of governance rules that reflect actors' basic interests and preferred rent distribution in energy and that deliver a set of outcomes consummate with these interests (Mommer, 2000, p.ii). While of course the interests of different actors in energy markets overlap considerably and actors thus have many reasons to cooperate (Goldthau & Witte, 2010 p.9), the competing influences on the EU in terms of the supporters of these two models (plus its own perspectives) present another form of antagonistic relationship that helps establish a tension between internal and external legitimacy as seen above.

The EU's liberal model entails market regulation by political authorities and the provision of energy supply being ensured by commercially-operating companies[24]. This entails a view of energy governance in upstream countries that is closely aligned with WTO trade rules in energy and

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[20] *Ibid*
[21] *Ibid*
[22] *Ibid*
[23] Interview - EU Official (b), 2011
[24] *Ibid*

ultimately (and ideally) the rules of the EU internal market[25]. In practice this means (*inter alia*) liberalisation, most favoured nation treatment for foreign companies, non-discrimination, non-intervention, international arbitration, strong investment protection and independent regulators – a number of which being key objectives of energy companies[26]. The ultimate goals of such an approach are maximising the flow of energy reserves to market and the maintenance of affordable energy prices[27]. Energy companies are key players in this mix and have significant influence with both member states and the EU. While it would be wrong to say that energy companies determine EU foreign energy policy, they do have a significant influence. This is due in part to their high capability for lobbying at the EU (energy company officials have access at very high levels to EU officials) and partly due to their influence with member states[28]. In a more structural sense, it also relates to their fundamental role in the actual undertaking of energy policy. It is energy companies after all who actually finance, produce and ship energy to European markets. As such the substantive legitimacy perceptions of the energy sector cannot be ignored by the EU as they are a key internal constituency – particularly in the process of the development of EU energy policy where their support is crucial.

Central Asian countries, such as Kazakhstan, however, due to their divergent domestic political and economic structures, often demonstrate forms of energy governance that approximates closer to a proprietorial model, representing a much stronger role for the state and running counter to the liberal model pursued by Western energy companies and political authorities. The political economies of these states present quite different demands on their energy systems compared to European countries and this generates contrasting visions of what constitutes legitimate policy practice in energy. Much of this revolves around relations with foreign oil and gas companies. Indeed, while the involvement of foreign energy companies bring a great deal of benefits for oil and gas producing states such as Kazakhstan, the relationship between the two is often marred by conflicts, disputes and at times a lack of trust. All of these factors highlighting the antagonistic character of the relationship between them. The capture of rent from the oil and gas industry is most noticeable and acute in the relations between companies and the host-state.

Having recently undergone transitions from Soviet rule and despite periods of economic growth, the overarching objectives of Central Asian producer countries are to ensure political and economic

[25] Interview - EU Official (c), 2012
[26] See company responses to the 2011 public consultation on external energy policy for example.
[27] UK Government Official, 2012
[28] Interview - EU Official (d), 2011

stability, state consolidation and to achieve a degree of regional political independence[29]. As noted above these states' political systems are characterised by low levels of effective democracy and high levels of economic centralisation. Public legitimacy is ensured first and foremost by the maintenance of political stability and economic progress[30] and both of these factors are furthered by ensuring control over energy production and revenues. As one EU official noted that, unlike European countries, oil and gas are a major part of the economies of Central Asian states and control over their oil and gas reserves is (at the moment) all that they have. Consequently it remains something that these states are unlikely to relinquish control over[31]. Likewise, Kazakh officials argue that there are additional reasons for their disinclination towards liberalisation that do not relate just to maintaining control. In regards to the prospects of an open licensing regime in Kazakh oil fields one former official highlighted the risk this would pose in terms of bribery. They noted that while Western companies are less prone to bribing officials than some others, some may still bribe (as do those from other regional players) and having an open licensing regime ran the risk of access to reserves being allocated on the basis of who pays the highest bribe rather than who makes the best proposal[32]. There is, they noted, no point in liberalisation just for its own sake, "it's the outcomes that matter"[33].

Nonetheless, revenues from petroleum exports do play a crucial role in political survival and domestic political consolidation of the state elite. Regime stability across the Central Asia region is largely dependent on patronage, both in terms of the networks of influential figures around the president and to the population at large. Revenues from hydrocarbon exploitation provide state elites with resources that can be used to "buy political support, pay-off opposition and depoliticise the population" (Overland, Kendall-Taylor & Kjaernet, 2010, p.4; Kendall, Taylor, 2012). The producer states of the Central Asia region are heavily dependent on the income from oil and gas and their "political systems are formed by this dependence" (Overland, Kendall-Taylor & Kjaernet, 2010, p.3; Kendall, Taylor, 2012).

Energy is also central to the foreign policies of Central Asian producer states. In an example of what Kjaernet has called the "economicization" of foreign policy, Central Asian producer states utilise their hydrocarbon endowment to strengthen their international positions (Kjaernet, 2010;

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[29] Interview with former Kazakh Government Official (a), 2012
[30] *Ibid*
[31] Interview EU Official (a), 2012
[32] Interview with former Kazakh Government Official (b), 2012
[33] *Ibid*

Kassenova, 2010; Overland & Torjesen, 2010). The Central Asian states are located in a geo-politically contested region, surrounded by a number of major and medium-sized powers, and much instability. As such, they are very keen to maximise the foreign policy benefits that can be derived from relationships with these powers without becoming over-dependent on any one of them. For the producing states of the region, energy supplies play a crucial role in the maintenance of their multi-vectored foreign policy as energy is one of the principal tools these states use to bandwagon with and balance against the major powers in the region (Overland & Torjesen, 2010; Kjaernet, 2010). Consequently, Central Asian governments remain very keen to keep tight control over the energy sectors in their respective economies.

Consequently, in trying to formulate a common model of energy governance across the Eurasian space including in Central Asia, the EU is stuck between promoting on the one hand policy that reflects its fundamental dependence on foreign operating energy companies (without which it is unlikely to have legitimacy with companies and by extension member states) and on other hand the extension of policy that is able to accommodate the interests of Central Asian producers who have a contrasting desire to maintain tight state control over their oil and gas sectors. While the current status quo is somewhere in the middle, recent waves of resource nationalism, including in Kazakhstan (Domjan & Stone, 2010), attest to the fragility of the current governance regime and the difficulties of establishing an energy order externally that reflects both internal and external perceptions of legitimacy.

Conclusion

This paper has argued that the EU's external relations with Central Asia are in some cases characterised by legitimacy tensions that leave the EU institutions caught between the internal legitimacy needed domestically within the EU and the external legitimacy needed for external policy effectiveness with third party countries. As described above, these dynamics are exacerbated by antagonistic relationships between Central Asian leaderships and core legitimacy ascribing (and denying) constituencies within Europe.

The EU institutions, perceived to suffer from a democratic deficit, attempts to remedy this deficit in legitimacy by being open to and receiving input from key civil society organisations in the formulation of policy. These organisations are thought to deliver a degree of legitimacy for the EU through widened participation in policy making and through the expertise they bring to the

process. Nonetheless, core interest groups within civil society (such as energy companies and human rights organisations) can put significant pressure on the EU institutions and can hinder EU legitimacy in significant ways if they see that their interests are not being represented.

At the same time the EU is reliant on promoting a view of policy externally that resonates with perceptions of legitimate policy in third part countries. This is for two major reasons. Firstly, the EU has limited capacity (and inclination) to coerce actors in its periphery and the presence of other major competing powers (such as Russia and China) makes the prospect of successful coercion less likely to succeed. Secondly the EU seeks to establish a stable system of governance with the countries in its wider periphery and is thus reliant on a relative perception of this policy as legitimate for this to be successful.

As the case studies of energy governance and human rights have demonstrated, there are multiple conceptions of legitimate practice in the EU's relations with Central Asia and these perceptions are underlined and exacerbated by tensions between central Asian leaderships and human rights organisations and energy companies respectively. As such in presenting policy that is acceptable to either of these groups, there is a risk that the policy will be negatively perceived by the opposite group – resulting in either a reduction in internal legitimacy or a reduction in the likelihood of external effectiveness. As such investigation of these legitimacy tensions and the related dynamic between antagonistic groups helps to explain how perceptions of legitimacy exacerbate the wider capability-expectations and normativity-outcomes gaps that afflict EU external relations, as outlined by Hill (1993) and Bailey and Bossuyt (2011).

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