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**Is a Human Rights Foreign Policy Possible?
The case of the European Union**

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Abstract

Nineteen Ninety Eight marked the fiftieth anniversary of the Universal Declaration of Human Rights. During the latter part of this century human rights made their way in international law and in international relations. John Vincent explains, however, that there exists an ‘inescapable tension’ between human rights and foreign policy. By briefly tracing through the relationship between human rights and international relations, this article highlights certain tensions which exist when a human rights foreign policy is pursued. It also attempts to show that foreign policy-making has been challenged into a new era where human rights considerations need to be addressed. This challenge has been dynamically undertaken by the European Union and, in particular, by the EU institutions. Indeed, the European Union has declared the protection and promotion of human rights a guiding principle of its common foreign policy. This article offers a comprehensive review of the objectives of the EU’ s human rights policy, of the approach that the EU institutions and the Member States have developed in order to promote the respect for fundamental rights and freedoms in third countries, and of the instruments which have been developed for this purpose in the context of CFSP, of the Union’ s external economic relations and of its development co-operation policies.

Introduction

Nineteen ninety eight marked the fiftieth anniversary of the Universal Declaration of Human Rights, a declaration which set a new standard of civilization. During these past fifty years, human rights have entered international law with an unprecedented level of standard-setting and development of monitoring and reporting mechanisms, in particular within the United Nations. In spite of the tension which persists between the protection of human rights and non-intervention in a state’ s internal affairs, human rights violations have now become a legitimate concern of the international community. Hence, human rights have also entered into the realm of foreign policy making.

During the Cold War, human rights and fundamental freedoms were subsumed by the geopolitics and national security constraints of the bipolar world. In the post Cold War era, though, protection for individual liberties is broadening and has become more than ever before

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a factor determining the legitimacy of a regime as well as the foreign policy objectives of many states.

Respect for the triptych “human rights, democracy and the rule of law” has become one of the guiding principles of the European Union (EU) and its Member States’ foreign policies. The states of western Europe have been very active in the field of human rights - whether in the context of the CSCE/OSCE, or in their links with the Third World through their development co-operation policies. The challenges of the end of the Cold War, however, provided the EU with the opportunity to make its foreign policy, its external economic relations, and its development co-operation conditional upon respect for human rights. The European Commission and the European Parliament have been particularly instrumental in the advancement of these principles and by developing an approach combining proactive and reactive measures in order to encourage the improvement of human rights situations in third countries, or to sanction their abuse.

Securing a place for human rights on the foreign policy agenda, first through a political base and gradually through a legal one, has not been an easy task. John Vincent has stressed the tension which exists between human rights considerations and other national objectives. Indeed, there has been a long debate between scholars of international relations concerning the relationship between human rights and foreign policy. The realist view in international theory is that human rights, or other such ethical considerations, should not be determinants of foreign policy-making. R. J. Vincent, on the contrary, supported the view that human rights considerations had a legitimate position on the foreign policy agenda and could indeed be successfully integrated in a country’s foreign policy. This paper wishes to present the development of a human rights foreign policy by the European Union and its Member States. This policy has been particularly evident since 1989 because of the global changes and the Treaty of the European Union which set the provisions for the development of a Common and Foreign Security Policy (CFSP) where human rights have a central position. Finally, EU institutions have persisted in initiating and implementing programs and policies in third countries aiming to improve the protection of human rights and fundamental freedoms.

Human Rights and Tensions in International Relations

1. Identifying a place for human rights in International Relations

Until the end of the Second World War, human rights had no distinctive place in international relations, as the principle of non-intervention in international law epitomized (Lillich, 1993, p.559).¹ Individuals were considered *qua* citizens of a given State in international law. After 1945, however, individuals were protected by international law *qua* single human beings (Cassese, 1994, pp.288-289). This resulted from the shock of the gross human rights violations which had occurred during the two World Wars and the belief that international peace required the promotion and protection of fundamental human rights and freedoms.

In effect, through the creation of the United Nations, human rights made their way into international relations. The UN Charter provided the basis for the improvement of the international protection of human rights. Both the Preamble and Article I in particular, affirm that the UN members will co-operate in order to promote respect for fundamental freedoms without distinction as to sex, race, language, or religion.² The 1948 Universal Declaration on Human Rights set new standards in international relations and provided a dynamic platform for the development of international human rights law. Although it is not a legally-binding instrument, it represents a 'common standard of achievement for all people and all nations', and the General Assembly proclaimed it a *de facto* code of human rights (Martenson, 1990, p.1). The UDHR has an unquestionable political significance and the major world conferences of the 1990s reinforced its position as a declaration of the existing general international law - whether it is regarded as customary international law or as principles of law recognized by civilized nations (Brandtner & Rosas, 1998, p.475). Certain provisions have been described as representing elementary considerations of humanity³, and in effect, in the latter part of the twentieth century, human rights have been referred to as 'a new standard of civilization' and respect for fundamental human freedoms has become a factor determining the international legitimacy of regimes (Donnelly, 1998, p.23).

The UN system gradually consolidated the international protection of fundamental rights and freedoms through standard-setting and creating international instruments with monitoring responsibilities. Internationally binding treaties include the 1948 Genocide Convention; the 1952 Convention on the Political Rights of Women; the 1957 Standard Minimum Rules for the

¹ Traditional international law accepted intervention only if a state mistreated its own nationals in a way 'so far below international minimum standards as to shock the conscience of mankind.'

² Article 55 states that the UN shall promote higher standards of living and conditions of economic and social progress and development, and Article 56 states that all Members pledge 'to take joint and separate action in co-operation with the Organization' for the achievement of the principles of Article 55. The provisions of Article 56 have been interpreted as constituting legal obligations. Even though this legal obligation is general in provenance, the Charter explicitly places responsibility on the Members in cases of gross violations of these provisions (Brownlie, 1998, p.574).

³ 'Considerations of humanity' may be related to human values already protected by positive legal principles and are connected with general principles of law and equity. They are part of preambles, UN General Assembly resolutions and diplomatic practice (Brownlie, 1998, pp.27-28, 575).

Treatment of Prisoners; the 1965 Convention on the Elimination of All Forms of Racial Discrimination; the two 1966 International Covenants⁴; the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1989 Convention on the Rights of the Child. The UN has a number of committees and working groups involved with monitoring compliance with specific treaties, examining States' reports and in certain cases individual communications (i.e. the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Working Group on Indigenous Populations, etc.). The successive adoption of these numerous instruments and treaty-bodies has suggested that human rights have acquired their own dynamic (Hannum, 1992, p.17).⁵ Also, at the regional level, growing concern for human rights led to the 1953 European Convention of Human Rights (ECHR), the Inter-American Commission on Human Rights in 1960, the American Convention on Human Rights in 1978, and the entry into force of the African Charter on Human and Peoples' Rights in 1986.

The principle of *human rights* implies that every individual has rights. However, the issue of determining the location of the duties which correlate to human rights has led to attempts for various group rights within different categories which have ended up being antagonistic to one another. *First generation* rights define certain limits to state powers and are known as '*freedoms from*' since *non-intervention* on behalf of the state is required for their fulfillment (Haarscher, 1991, p.38).⁶ The West supported the supremacy of civil and political rights as the essential protections for an individual or a group to lead a dignified life protected from state, or other arbitrary violations, and of the western democratic and liberal system. The *second generation* of human rights -- economic, cultural and social rights, also referred to as '*freedoms to*' (Haarscher, 1991, pp.11-12, 39-41)⁷ -- conversely require state involvement and state action.⁸ This category of rights, advanced by the Soviet Union and the Third World, gave precedence to socio-economic and cultural rights, the right to self-determination, the right of equality, and consequently, the prohibition of discrimination, especially racial discrimination

⁴ In 1966, the Third Committee of the General Assembly adopted the International Covenant on Economic, Social, and Cultural Rights (135 parties in 1998), the International Covenant on Civil and Political Rights (136 parties in 1998) and the Optional Protocol to the ICCPR (89 parties in 1998). These Covenants, which consist of a detailed codification of human rights, came into force in 1976 and have legal force as treaties for the parties to them (Brownlie, 1998, pp.576-578).

⁵ Keohane and Goldstein ((eds.),1993, p.20) have defended the view that: "Once ideas have influenced organizational design, their influence will be reflected in the incentives of those in the organization and whose interests are served by it." Respect for human rights and fundamental freedoms were among the basic principles upon which the UN Charter was based (Preamble, Chp.1: Art.1§3); therefore, it may be assumed that the idea of human rights influenced the organizational design of the UN and its institutions which have subsequently promoted respect for human rights in their initiatives and in their policies.

⁶ This includes the right to life; freedom from torture, inhuman or degrading treatment or punishment; right to respect for private life, family home, correspondence; and freedom of expression.

⁷ Second generation rights include education, employment, social security, form and join trade unions, work for just pay, periodic holidays with pay. They have led to the development of the Welfare State.

⁸ Human rights have also been categorized as *negative* rights (i.e., the subject may pursue certain activities within a secured space without any outside interference) or *positive* rights (i.e., outside interference is expected and must be fulfilled).

(Cassese, 1994, p.301). *Third generation* rights include the right to peace and security, the right to development, the right to a fair and just international order, and to a healthy environment (Cassese, 1994, pp.310-311).

States have become parties to international human rights agreements (UN declarations, international covenants, regional conventions) and to supervision under these agreements (such as for example, the UN Commission on Human Rights and the Commission of Human Rights of the Council of Europe). The protection of fundamental rights and freedoms has become anchored in international customary law, and in international and regional treaties and conventions (Vincent, 1986(a), p.130). Although governments are the main violators of human rights, they also remain the best placed for guaranteeing their respect since sovereign nation-states still constitute the basis of international relations and remain the principal actors of international law (Mahoney & Mahoney (eds.), 1993, p.50; Cassese, 1994, p.9). The 1993 Vienna Declaration adopted by the UN World Conference on Human Rights stated that the protection and promotion of human rights is the primary responsibility of governments and a legitimate concern of the international community (Beetham (ed.), 1995, pp.62-75). Thus, while state sovereignty remains protected, state authorities are held internationally accountable for human rights violations. Antonio Cassese underlined the impact that human rights law has had on the international community (1990, pp.161-162).⁹ Expecting every state to respect certain fundamental standards relating to the dignity of the human being requires every state periodically to furnish proof to other nations and international institutions of how it treats its citizens. Today, in principle, each state is expected to make itself transparent in this domain, and has thereby accepted external interference in this aspect of its internal affairs.

Although human rights may render diplomatic relations difficult, it appears that since the Second World War they have made their way on the foreign policy agenda. Furthermore, there has been a proliferation of democracy and respect for human rights. In the last three decades, dictatorships collapsed in Europe (Greece, Spain and Portugal); Communist rule fell in Eastern Europe and in the Soviet Union; apartheid ended in South Africa; and some states in Asia are moving towards democracy (Taiwan, South Korea). Realists preoccupied with the risks of human rights in foreign policy should consider the cases of Vaclav Havel and Nelson Mandela, where political prisoners became state presidents. "In such a climate, faith in the spread of human rights and willingness to give it a helping hand may not be a liberal illusion - it may be realistic." (*The Economist*, 12.04.1997, p.25)

2. Tensions: Theory and Practice

Regardless of the ideological context within which debates on human rights take place, and in spite of the categorization of human rights and fundamental freedoms, humans are entitled to the entire scope of these rights because 'they are not members of this or that society, but of the

⁹ The right to self-determination weakened the principle of non-interference: 'states have had to look beyond the narrow confines of their own frontiers and national interests (...) People can now intrude on the cosy, bilateral relations of states.'

community of humankind.’ (Vincent, 1986(a), p.9) Although respect for human rights is a declared concern of the international community and an international system of protection of human rights has been set up, its implementation and enforcement is far from being effective. Human rights, however, have substance when the holders of these rights are able to enjoy their protection and this still remains within the realm of the state and its policies. Progress toward the full enjoyment and enforcement of human rights is not possible without the compliance of the states to the internationally agreed human rights standards and without the promotion of these rights and freedoms in their policy-making, whether this involves their internal jurisdiction or their foreign policy making.

There has been a long standing debate about whether ethical considerations, such as respect for human rights, can be integrated in foreign policy-making. Foreign policy involves a state’s activity towards its external environment and is formulated by domestic and external conditions (Beetham (ed.), 1995, p.89). What place do human rights have in foreign policy? The inclusion of ideals, moral considerations and principles in inter-state affairs is frequently seen as a constraint on otherwise profitable relations.¹⁰ Nevertheless, human rights, justice, and fairness have a part in the conduct of relations within the international community R. J. Vincent in particular, noted the importance of including human rights despite potential security tensions or trade concerns:

“...international law of human rights suggests that foreign ministers no longer have a choice about the inclusion of human rights. They cannot escape the tension between human rights and foreign policy simply by declaring that the former have no place in the latter. They are obliged to pay attention to human rights whether they like it or not.” (Vincent, 1986(a), p.130)

Non-interventionism, friendly relations, and the maintenance of peace and stability are principles enshrined in the UN Charter -- as is the protection of fundamental human rights and freedoms. Since the state remains the principle actor on the international scene, it follows that it is the duty of the state to ensure the protection of these rights.¹¹ At the same time, human

¹⁰ Realists in particular oppose the inclusion of human rights considerations in foreign policy because this would ‘risk interference’, it would ‘disrupt international order’ and ‘hinder the pursuit of other national interests’. Furthermore, inconsistencies in the application of human rights considerations risk to question the credibility of a government’s policies. Finally, according to cultural relativists, the promotion of human rights or sanctions of their abuses assume the universal superiority of these moral values, and are, therefore, criticized of imperialistic tendencies. For further reading on the realist position see Morgenthau, 1993; and on cultural relativism see Steiner & Alston, 1996; Pollis & Schwab (eds.), 1979; Beetham (ed.), 1995.

¹¹ John Locke’s theory on the *social contract* argues that humankind surrendered to the state only the right to enforce these natural rights, and not the rights themselves. (See Steiner & Alston, 1996, p.167-168). According to the Western view, if a state is violating its people’s rights, then it is disassociating itself from the basis from which it received its powers; this disassociation would lead to a loss of legitimacy on behalf of the government since it would no longer represent its people nor express their will. Since the end of the Cold War, there has been increased acceptance that when a state severely infringes human rights, then the UN has a right and duty to intervene to protect these freedoms. (See Lillich, 1993, p.558.) However, reference to ‘the will of the people’ presumes a democratic government, yet international law does not require a government to be democratic (Crawford, 1993, p.7-8). Nevertheless, Western democracies render aid and assistance conditional to respect for

rights remain subject to the state-centric international structure: international human rights law is drafted by the states; then the state authorities must expressly consent to the obligations of the drafted treaties by ratifying them, and opt in or out of international monitoring mechanisms or the jurisdiction of international courts; and finally, for the protection of human rights to be effective, each state is required to make these rules part of its domestic legal system, and then implement them (Hannum, 1992, pp.3-14). Consequently, the inclusion of human rights in foreign policy is an aspect of a government's duties, and a necessary consideration in inter-state relations.

The confrontational system of the Cold War period brought human rights into the political debate. In fact, the disagreements between East and West concerning the foundations of human rights, which rights have priority over others, and whom these rights belong to conditioned and shaped the human rights policy of each side and influenced their respective human rights policies during the Cold War years.¹² The tension between human rights and policy-making in East-West relations existed between the principle of promoting human rights and the principle of non intervention, as well as between the pursuit of human rights considerations and other *realpolitik* foreign policy objectives.

The East-West human rights tensions can be best represented with the Helsinki Final Act and the follow-up conferences in Madrid (1980-1983) and Ottawa (1985). Within the CSCE/OSCE, context the European states expressed their support for the view that the principles of sovereignty and non-intervention do not constitute a barrier to international concern for the respect of human rights and fundamental freedoms. This was materialized in the Helsinki Final Act in 1975 where Principle VI on non-intervention in internal affairs, enjoyed equal status with Principle VII on respect for human rights, including the right to freedom of thought, conscience, religion or belief (UN, ST/HR/1/Rev.5, Vol. II, 1997, pp.371-374). Thus, in the Western European view, non-intervention did not hinder monitoring and reporting on human rights, or using influence to 'improve' them. This was supported by a two-fold reasoning: first, that human rights were a matter of international concern based on the existing conventional and customary law on human rights referred to in the Final Act; second, that in the classical interpretation of international law, 'intervention' refers to 'dictatorial interference' which sought to coercively subordinate the exercise of sovereign rights to foreign interests, and thus, concern for human rights violations does not constitute an act of illegitimate interference (Vincent, 1986(a), pp.66-67). The western governments indeed concentrated on the human rights provisions of the Final Act, and in particular those relating to civil and political rights, since they assumed that the spirit of détente consisted of a new style of international relations where human rights could be connected to trade and security concerns. This was perceived by the Soviet Union as an illegitimate and hostile interference by the West in its sovereign jurisdiction, as well as an exploitation of détente for the purposes of psychological warfare, and it thus opposed any form of western interference with the process

human rights and democracy. Democracy implies a range of rights (freedom of speech, participation in public life, free, fair and periodic elections) which are not always enforced by these third countries, due to political, religious, or ideological reasons; in this case, it has been argued that conditionality on these rights is an unlawful intervention in internal affairs (Crawford, 1993.).

¹² For more on human rights and East-West relations, see Vincent, 1986(a), pp.61-75.

of implementing human rights in the USSR or Eastern Europe (Vincent, 1986(a), pp.66-69). Hence, human rights in East-West relations have been described as a 'minefield' and, therefore, hesitations were raised as to whether pursuing a human rights foreign policy was desirable. In fact, there were concerns that such a policy could either lead to the opposite of what was intended (i.e. increase a régime's oppression of a minority which is seen as a 'stooge' of foreign interests), or could complicate the achievement of other foreign policy goals (such as the maintenance of stability). R. J. Vincent refutes these arguments by explaining that although prominence given to human rights in foreign policy may lead to the intensification of oppression, in the longer run this may give place to reform, and that in any case it is the cause which merits support, not the likelihood of its success (1986(a), p.74). Vincent also argued that concerns for stability were an excuse rather than a reason to not include human rights considerations as objectives of foreign policy, since the capability of mutually assured nuclear destruction had stabilized the strategic relationship between East and West. Finally, concerning the ideological disagreement between the two sides, Vincent had suggested detaching the issue of human rights from the ideological debate and concentrating instead on the even-handed support of human rights cases (1986(a), p.88).

The process of decolonization and the arrival of the South in international relations also made the human rights debate prominent both within the UN and in the content of North-South relations. The Third World condemned colonialism and all forms of discrimination, emphasized the right to self-determination, to social, economic and cultural development and accorded primacy to basic collective needs rather than to individual rights (Vincent, 1986(a), p.88). The human rights concerns of the South, relating to the right to subsistence and along with the debate on universalism versus cultural relativism, introduced a new challenge in international relations. Thus, economic development and its relation with human rights and fundamental freedoms became a basic preoccupation of the North's development co-operation policies and development assistance policies (Bossuyt, 1990, pp.27-33; Boutros Ghali, 1990, pp.35-46). This led to an additional tension in foreign policy-making. Whereas an efficient development co-operation policy is conducive to the realization of economic and social rights, the use of development assistance as a sanction against human rights violations has been opposed as being a moralistic and selective policy which further penalizes a population already suffering an oppressive régime (Beetham (ed.), 1995, pp.86-87).

The process of including human rights considerations in government policy-making was provided with added impetus with the end of the bipolar system, and human rights have today been recognized as a major element influencing international relations and the evolution of international law (Mahoney & Mahoney, 1993, pp.51-53; Robertson & Merrills, 1996, pp.1-2). For example, UN intervention in Iraq (1991-1993), Somalia (1992), Liberia (1991-1992), and the former Yugoslavia (1992), exemplified the trend in international law to consider human rights violations as a threat to international peace and security, thus justifying humanitarian intervention to protect the fundamental rights of the people (Greenwood, 1993, p.4). At the same time, the dismantling of the antagonistic bipolar system was welcomed in Europe and within the CSCE process as an opportunity to overcome the economic, social and political instabilities and build democratic and pluralistic societies. The European Community and its

Member States undertook a leading role in Europe to further strengthen and implement this objective (Regelsberger, de Schoutheete de Tervarent & Wessels (eds.), 1993, pp.723-727).

Before examining the human rights aspect of the European Union's foreign policy, whether in the context of its external economic relations, its CFSP or its development co-operation policies, it is important to understand why human rights received an increasingly privileged position in the documents, declarations and actions of the Union and its Member States with the end of the Cold War.

The EU' s Human Rights Foreign Policy

1. The causes

The strengthening of the EU' s and its Member States' foreign policy, and in particular of its human rights aspect, can be attributed to a series of exogenous and endogenous factors. First, the end of the Cold War, and the ideological opposition between the two blocs, marked a change in values within international relations. The transformed nature of international power relations allowed for Europe to pursue a more independent position, distanced from the previous superpower nuclear logic obligations. Second, with the East-West divide gone, the EC/EU could pursue conditional development co-operation policies toward Third World countries with greater ease. It has indeed been argued that the international changes in the post-Cold War years allowed the West to identify respect for human rights, democracy and the rule of law as essential preconditions to economic advancement, and to render assistance to the Third World conditional upon these (Mahoney & Mahoney (eds.), 1993, pp.723-727). Third, the end of the Cold War posed a unique opportunity for the Community to help the countries of Eastern and Central Europe to develop economically and democratically and to foster 'a genuinely all European integration' (Dinan, 1994, p.466). Following these changes in Europe, the re-unification of Germany was another endogenous cause which pushed for greater integration. European leaders, including the Germans themselves, wanted to 'tie' Germany further into Europe and, hence, greater economic and political integration was perceived as necessary (Nugent, 1994, p.393). The fourth element which encouraged the EU Member States to move closer towards a common approach in their foreign policies and external relations is related to immigration. With the coming into force of the Single European Market, the free movement of people between the EU Member States became an important issue. This awakened awareness in the need to co-ordinate immigration and asylum policies, but also to attempt to address the root causes of immigration and refugee waves from outside the EU by promoting human rights, democracy, and the rule of law, and creating conditions conducive to sustainable development and market economies, thereby decreasing the potential number of people wishing to enter the EU from any of its external borders.¹³ This appears to confirm R. J. Vincent's explanations in support of including human rights considerations in policy-making:

"one of the reasons for states to be interested in the human rights record, not merely of a neighbor but of another state across the globe, is the interest it has

¹³ Four million people emigrated to Western Europe from the Balkans and Eastern Europe during the first half of the 1990s. The massive migration from the CEECs and the dismemberment of the Soviet Union and Yugoslavia, along with the subsequent civil and ethnic wars which broke out in the early 1990s led to one of the largest mass movements of people since the end of the Second World War. The Schengen Agreement between certain EU Member States, intended to co-ordinate immigration control and police procedures between the signatory countries. Unfortunately, this also meant a 'putting up of shutters' and led to the EU' s "Fortress Europe" policy. EU immigration policies have failed to halt the influx of illegal immigrants, and have led to the increase of temporary leave to remain and temporary asylum status. This has raised concern among human rights NGOs who are concerned with the erosion of the protections and guarantees of the permanent refugee status (*The Guardian*, 20.10.1998). The human rights implications of this restrictive European refugee policy do not fall within the scope of this paper, but for further reading, refer to Hill(ed.), 1989, pp.131-181; and van der Klaauw J., (September 1997, pp.365-375).

in not suddenly being made a receiver of numbers of unmanageable refugees.”(Vincent, 1986(a), p.106)

Finally, the institutional input must be considered as a significant factor encouraging the extension of Community competence into external relations. The Treaty on European Union's (TEU) enlargement of the scope of the European Parliament's (EP) and the Commission's powers led to greater assertiveness on behalf of these institutions and to their increased commitment to the development of an integrated human rights policy, combining proactive and reactive measures, in the Union's external economic relations, its CFSP, and its development co-operation policies (Nugent, 1994, pp.395, 403).

2. The foundations and objectives

The process of European integration immediately following the Second World War was primarily concerned with economic reconstruction and co-operation. The founding treaties (Treaty of Paris of 1951, and Treaty of Rome of 1957) made no reference to a common foreign policy, nor to a 'human dimension' in their external relations.¹⁴ Gradually, however, the EU Member States recognized that they shared a common values system and that respect for human rights was a fundamental element of the European identity.¹⁵ Nevertheless, there was no legal basis within the EC Founding Treaties upon which to develop an external human rights policy.

From the initial stages of the EC/EU's political co-operation to the creation of the provisions for a common foreign policy, human rights have increasingly influenced policy-making of the EU and its Member States. Considerations for respect for human rights and democracy developed gradually as a repercussion to the growing economic and commercial powers of EC institutions, and to the increasing presence of the EC/EU in international affairs (Fouwels, September 1997, p.291). Throughout this development, the EU gradually adhered to the definition of human rights which supports their universal, indivisible and inter-dependent character (COM(95)567final, 22.11.1995, pp.7-8, 10):

“universality, which implies that no provision of a national, cultural or religious nature can override the principles enshrined in the Universal Declaration of Human Rights”,

“indivisibility, which precludes discrimination between civil and political rights, and economic, social and cultural rights”,¹⁶

¹⁴ For details on the evolution towards EPC see Dinan, 1994; and *European Political Co-operation (EPC)*, 1988, p.14.

¹⁵ A series of declarations affirmed the importance of democracy, human rights, and the rule of law. For example the *Declaration on European Identity* (Copenhagen 14/15.12.1973); the European Council's declaration on democracy (08.04.1978); the Solemn Declaration on European Union (19.06.1983); the EP's resolution on human rights and fundamental freedoms (12.04.1989).

¹⁶ Indivisibility does not allow the hierarchization of human rights. However, it has been suggested that it is easier to hold authorities accountable for violations of political and civil rights -- this is harder to achieve with economic rights, where international factors necessarily influence the internal situations of employment, standard of living, etc. (PE 222.307, 29.04.1997, p.14).

“interdependence between human rights, democracy and development, which is linked to a new definition of development focused on man as a holder of human rights and the beneficiary of the development process.”

According to the Council, the human rights foreign policy which has been pursued by the EC/EU throughout EPC and CFSP has attempted to be consistent, sensitive to the particularities of the third countries and that suspension of co-operation or adoption of sanctions have only taken place as a last resort (PESC51, 5468/96, 19.06.1996, p.14).

Throughout the history of European Political Cooperation (EPC) and despite the lack of a concrete legal basis, the EU repeatedly confirmed its commitment to the improvement of human rights. Especially in the context of the CSCE, EPC -- with significant input from the Commission -- forged a united position which influenced the Conference's development and ensured that the Final Act included both a trade policy agreement and a human rights aspect (Regelsberger, de Schouttheete de Tervarent & Wessels (eds.), 1997, pp.20, 24). With the exception of a short interlude of a period of inaction in EPC, as in the case of the invasion of Afghanistan in 1979, the beginning of the 1980's saw greater EPC activity and willingness of the Member States to use Community instruments to enforce common foreign policy decisions. For instance, economic sanctions were applied to the Soviet Union (following the Martial Law in Poland in 1981) based on a Council Regulation, and to Argentina (following its invasion of the Falkland Islands) based on Article 113 of the EC Treaty and subsequent to the Commission's proposal to apply the instruments of the EC's common commercial policy (Regelsberger, de Schouttheete de Tervarent & Wessels (eds.), 1997, pp.21,32). Hence, the rigid separation which had existed between Community matters and EPC affairs was toned down. Finally, the EPC's combination of economic sanctions and positive measures (managed by the Commission and aimed to assist the victims of apartheid) in South Africa in the mid-1980's, marked the beginning of 'conditionality' and the willingness on behalf of the EC Member States to include human rights considerations in EPC (Regelsberger, de Schouttheete de Tervarent & Wessels (eds.), 1997, pp.36-37).

With the 1986 Single European Act, the possibility of a future political union started taking shape,¹⁷ yet reference to the protection and promotion of human rights and democratic principles was more of a political than of a legal nature -- it was limited to the declaration of the Member States' awareness of their responsibilities to increasingly speak with one voice on these matters in the Preamble of the SEA (Fouwels, September 1997, p.293). On 21 July 1986, the Twelve Foreign Ministers declared their commitment to the universal observance of human rights and highlighted the duty of the international community to ensure their protection. As a result, institutional improvements were made to begin the co-ordination of the Member States' foreign policies which would promote human rights (EPC, 1988, pp.263-265). For instance, human rights matters increasingly appeared on the EPC Ministers' agenda and a Special Working Group on Human Rights was established after 1987 to assist the Political Committee with these issues.

¹⁷ The SEA, provided political co-operation with a legal basis and officially linked it with the Community institutions in its Titles I and III; however, the EPC remained an intergovernmental decision-making body.

The Luxembourg European Council of 28-29 June 1991,¹⁸ and the Development Council of Ministers of 28 November 1991,¹⁹ may be considered amongst the most crucial moments in the establishment of the EC's external policy on human rights. These two Councils set the guidelines, priorities and criteria for such a policy. They identified the possible instruments and distinguished short, medium, and long term objectives -- in short they outlined the principles of conditionality in economic co-operation agreements and established the principles for a consistent human right strategy that the EC should follow in the international community. The significance of the 28 November Resolution, in particular, is in that it 'confirms the relationship' between human rights, accountable government, and development, and in that it 'comprehensively defines the relationship' to include both proactive and reactive measures in order to address the problems associated with development co-operation. Thus, this Resolution ended the traditional tendency to marginalise human rights considerations from development co-operation (Marantis, Spring 1994, p.2).

The TEU formally set the framework for the protection of democracy and fundamental rights and freedoms, by stating that their respect was a condition for membership and a basic aim of Community integration (EP, 1994, p.7). The Member States committed themselves to undertake common actions and decisions to consolidate the Union's identity in the international arena, to safeguard its common values and independence, and to preserve international peace and security (TEU, 1993, Art.F(2), J.1, 130u(2)). Furthermore, Title V of the TEU, article J1(2) in particular, provided a strong legal base for the promotion and respect of human rights by stating that the EU would elaborate a CFSP, whose objectives would be to develop and consolidate democracy, the rule of law, and respect for human rights and fundamental freedoms.

The nature of the human rights and fundamental freedoms referred to in Art.J1(2) of the TEU is, however, not specified. It is in Article F2 of the Common Provisions that further explanation is provided on the rights and freedoms which the Union respects and promotes and allows for the ECHR to serve as a source of guidance for the CFSP.²⁰

The defense and promotion of human rights in the EU's external relations fall within the content of the principles enshrined in the UN Charter and the Universal Declaration of Human Rights (UDHR), supplemented by the two additional international covenants - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on

¹⁸ *The Declaration on Human Rights* (29.06.1991) framed the policy of human rights conditionality on economic and trade agreements.

¹⁹ *The Resolution on Human Rights, Democracy and Development* (28.11.1991), included guidelines, procedures, and methods of action for the EC's human rights and development policies.

²⁰ The Common Provisions apply to all three pillars. However, Article L of the TEU's Final Provisions specifies that the ECJ's jurisdiction is excluded from all articles in the Common Provisions and of Title V. The exclusion of a supervisory role of the ECJ in CFSP limits the human rights aspect of the Union's foreign policy. The role of the ECJ is nonetheless not completely excluded from the Union's external relations since it could be asked to pronounce itself on the legitimacy of the use of trade instruments and of the use of the Community budget for foreign policy and human rights purposes (Fouwels, September 1997, pp.294-295).

Economic, Social, and Cultural Rights (ICESCR).²¹ Under these principles, states have an *erga omnes* obligation (Cassese, 1994, p.314),²² and are expected, in principle, to strive to secure universal and effective recognition and observance of human rights. The integration of these principles into concrete policies, however, requires the acceptance by either side of the same basic notions and principles (van der Klaauw, March 1996, p.97), and is based on good faith, *good governance requirements* and the observance of the rules of partnership.²³ Hence, the inclusion of human rights in agreements between countries, requires the existence of mutually acceptable standards.

A policy which includes human rights clauses in external agreements creates political and legal commitments on both sides (van der Klaauw, March 1996, p.100). In principle, the EU's human rights foreign policy is designed to show the advantages of developing a society where human rights, democracy and the rule of law are respected; it aims to encourage the countries recipient of EU aid to undertake these changes on their own initiative.

3. The policies

In 1995, the Commission declared that:

“the different ways of expressing concern about violations of rights, as well as requests designed to secure those rights, cannot be considered as interference in the internal affairs of a State, and constitute an important and legitimate part of their dialogue with third countries.” (COM(95)567final, 22.11.1995, p.10)

The strengthened, more assertive human rights policy that the Union was declaring manifested itself both in the actions and positions supported by the EU Member States in international fora and organizations, and in the Union's external economic relations, development co-operation policies, and CFSP.

Throughout the 1990s, the EU Member States have increasingly co-ordinated their positions and the implementation of their actions within international organizations and conferences.²⁴ If under EPC, the Member States had attempted to co-ordinate their positions within international organizations involved in human rights, this attempt was further facilitated by the mechanisms created in the TEU. Indeed, the Union, under the representation of the Presidency of the Council, has contributed to UN conferences seeking to reaffirm the principles of

²¹ COM(96)672 final, 17.01.1997, p.5. (i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

²² Human rights rules 'are not only binding on all States belonging to the international community, whether they have ratified conventions on the subject or not, but they also impose *erga omnes* obligations, as has been stressed by the ICJ. Moreover, some of them have also acquired the status of *jus cogens*.' For the ICJ ruling, see the *Barcelona Traction case*, and for *jus cogens* §96, pp.175-179.

²³ Council Resolution on Human Rights, Democracy and Development, 28.11.1991, (§ 4)

²⁴ For example: June 1993 Vienna Conference on human rights; September 1994 Cairo Conference on population; March 1995 Copenhagen Conference on social development; and September 1995 Beijing Conference on women.

universality and indivisibility of human rights. In particular, the Commission has emphasized the EU's input in the 1993 UN World Conference on Human Rights, in the appointment of the UN Commission on Human Rights, and in the establishment of the International Tribunals for the former Yugoslavia and Rwanda in The Hague (van der Klaauw, March 1996, p.73). The Union's activities have extended to operations such as the dispatching of human rights monitors to assist the UN High Commissioner for Human Rights in Rwanda (COM(95)567final, 22.11.1995, p.9). The EU has also been in the forefront of developments at the regional level; its participation in the OSCE and the Council of Europe has supported their work and initiatives. For example, Council of Europe membership is an implicit prerequisite for EU membership (COM(95)567final, 22.11.1995, p.8).

In the context of the Union's external economic relations, the instruments of the EC's common commercial policy (trade agreements negotiated on the basis of Article 113 of the EC Treaty) have been used to sanction human rights violations, and trade and economic co-operation agreements (based on Article 228 of the EC Treaty) have been based on 'political conditionality' since the 1980s. Human rights references have been inserted in all EC contractual relations with third countries; the TACIS (with the former USSR and Mongolia) and MEDA Regulations are illustrative. Finally, association agreements (negotiated on Article 238 of the EC Treaty) have been increasingly used since the early 1990s as the central mechanism for forging closer relations between the EU and the CEECs, and for promoting political democratization, pluralism and economic liberalism (Nugent, 1994, pp.385-386).

In the sphere of EU development co-operation policies²⁵, such as the Lomé Conventions, human rights have had a particularly significant role since the late 1980s. Prior to that, democratic principles and fundamental rights and freedoms were marginal concerns of the Community's development co-operation policies. Indeed, the most institutionalized form of development co-operation can be found in the successive Lomé Conventions.

Lomé I and II included no reference to human rights, but the disappointing results of the Community's development policies in the ACP states led the European policy-makers to redefine Lomé in order to address the root causes of underdevelopment. A number of reasons have been put forth to explain the lack of human rights references in Lomé I and II: first, the EEC was an economic association and its relations with the ACP countries were based on contractual obligations where political or human rights considerations were marginal; second, there was reluctance on behalf of the Europeans to criticize newly de-colonized nations; third, economic conditions favored the ACP's bargaining position in the late 1970s and they strongly opposed conditionality on economic agreements as neo-colonialist attempts (Marantis, Spring 1994, pp.3-4). Hence, the EC failed to respond effectively to continuing human rights abuses as for instance, in Uganda and later in Ethiopia (Marantis, Spring 1994, p.7).

²⁵ General assistance toward the Third World concerning economic development, the strengthening of the civil society and humanitarian aid has principally taken the form of the Generalised System of Preferences (GSP), food aid, emergency aid, and aid to NGOs.

Reference to fundamental rights was first included in a declaration attached to Lomé III in 1982, whereby the EEC and ACP countries affirmed their 'deep attachment to human integrity' (PE222.307, 29.04.1997, p.12). Even though both the Preamble and Article 4 of Lomé III explicitly included the promotion of human rights as an objective of development co-operation, the Community and its Member States failed to successfully implement these objectives in practice. In the early 1980s, the return of international relations to a highly confrontational Cold War spirit, led to increased Western support for 'friendly' anti-Soviet régimes irrespective of their human rights records. However, the international changes of the late 1980s, with the return to East-West détente, the economic collapse of many ACP states, their growing dependence on foreign aid and consequent loss of their bargaining power, and the spread of democratic movements throughout the developing world, coincided with an increased European concern for the respect and advancement of the triptych 'democracy, rule of law and fundamental freedoms' and, hence, led Lomé IV to support decentralized aid distribution as a means of strengthening the role of grassroots organizations in the preparation and implementation of development programs and to the adoption of a human rights clause (Marantis, Spring 1994, p.9).

Lomé IV included a human rights clause (Article 5) which explicitly linked the promotion of human rights to development. Despite the importance of Article 5, it had two shortcomings. First, it paid little attention to political and civil rights, and second, it provided no legal base for sanctions in the case of human rights violations. Nevertheless, since respect for human rights and democratic principles became an 'essential element' of EU relations after 1990, the Commission suspended Lomé programs based on the 'spirit' of article 5 (PE222.307, 29.04.1997, p.20). This was the case for Sudan in March 1990, Somalia in January 1991, and Togo and Zaire in January 1992.

The 28 November Resolution took the objectives of Article 5 a step further and transformed the Community's development policy. This Resolution endorsed both a positive (proactive measures) and a negative (graduated reactive responses) approach to linking human rights and democracy to the development process. It restated the indivisible nature of fundamental rights and freedoms, and recognized the importance of fostering 'democracy' and 'good governance' in development, and of decentralized funding. Finally, it applied political conditionality to its worldwide development co-operation policy (i.e., not just limited to EC-ACP relations), and represented an agreement in principle of the Member States to co-ordinate aspects of their individual development policies (Marantis, Spring 1994, pp.10-11).

The mid-term review of Lomé IV provided the opportunity for the EU to introduce a suspension element to the human rights clause (Article 336a) in order to ensure a legal basis for its actions and to enable a consistent policy on conditionality (PE222.307, 29.04.1997, p.13). According to this suspension clause, if certain conditions relating to human rights standards are not upheld by the contracting parties, then the agreements or parts of the agreements can be suspended - in particular aspects relating to financial and technical

assistance.²⁶ EU development policies no longer attempted to be neutral, and the concept of development was not limited to economic growth, but connected it to respect for equality, satisfaction of basic needs, and self-reliance, the attainment of all human rights, and ultimately the fulfillment of human potential (Forsythe, 1989, pp.213-215). This approach to development was again confirmed in the Treaty of Maastricht. Paragraph 2 of Art.130U in Title XVII (TEU) stressed that development co-operation policy should “contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.”

Under CFSP, the EU and its Member States have a variety of instruments at their disposal to implement the promotion of human rights. These range from unilateral instruments such as declarations, confidential or public *démarches*, to the more recently created autonomous instruments such as common positions and joint actions, although the use of the latter two still remains limited (Fouwels, September 1997, pp.298-300).²⁷ In addition, economic sanctions have been explicitly referred to as instruments of foreign policy in the TEU (on the basis of Article J2 combined with Article 228). Since the TEU, the Union has initiated sanctions under CFSP for human rights motivations either independently (for example, the arms embargo against Sudan in March 1994 and the reinforcement of sanctions against Nigeria in November 1995), or pursuant to a UN Security Council Resolution (for example, economic sanctions on Haiti in June 1994 and on Yugoslavia also in June 1994). Finally, political dialogue conducted between the EU institutions and representatives of individual third countries or groups of countries is another significant instrument through which human rights concerns are promoted (Fouwels, September 1997, p.301). Indeed, the EU institutions have a number of instruments through which they can express their concern for human rights situations, or through which they can actively encourage their improvement. For instance, the EP has a network of delegations and joint committees (for example, the EU-Turkish Parliamentary Committee) through which MEPs can raise human rights concerns directly with MPs of third countries (Fouwels, September 1997, p.314). MEPs also conduct research and produce reports on individual human rights cases. In this context, the EP’s Sakharov prize for freedom of thought is an additional method of encouragement for the struggle of human rights activists and for

²⁶ This is in accordance with the 1969 Vienna Convention on the Law of Treaties, whereby a treaty may be terminated by one of the parties if the other party has not respected certain essential conditions. Since respect for human rights is an essential condition, if one of the parties were to commit serious human rights violations, the other party would be able to terminate or suspend the agreement because they would be released from their treaty obligations (Cassese, 1994, pp.187-191).

²⁷ A number of common positions with human rights as a principle objective have been adopted since this instrument was created in the 1993 TEU (Article J2). Examples include the common positions concerning the objectives and priorities of the EU towards Rwanda (24.10.1994: Decision 94/69/CFSP), Ukraine (28.11.1994: Decision 94/779/CFSP), or the human rights situation in East Timor (06.07.1996: Decision 96/407/CFSP), and define the Union’s strategy towards a specific country; joint actions such as the support for the conveying of humanitarian aid to Bosnia and Herzegovina (08.11.1993: Decision 93/603/CFSP), or the dispatching of a team of electoral observers for the parliamentary elections in Russia (09.11.1993: Decision 93/604/CFSP), or the support for the Middle East Peace Process (06.10.1995: Decision 95/205/CFSP) have enabled the Union to undertake concrete actions.

their international recognition.²⁸ The EP has provided the forum for public hearings on human rights. Amongst the most notable examples are the public hearings on East Timor where Nobel Prize winner Dr. Ramos Horta was heard alongside Indonesian government representatives, on Tibet where the Dalai Lama was heard, and more recently on human rights in Romania, Algeria and Kosovo. In addition, the EP produces general reports on human rights throughout the world (PE218.638/fin, 28.11.1996, p.52). These reports are important for providing information on continuing violations, for restating EU commitment to universal human rights principles, for encouraging firmer action to be adopted by the Union, and for generally raising public awareness and consequently public concern for these situations. The success EP resolutions have achieved in specific cases²⁹ such as the release of H el ene Passtoors by South African authorities in May 1988³⁰ merits particular attention. This can be an indication of the success of EU institutions' actions, in particular in areas in where UN instruments or regional mechanisms have proved less successful or appropriate.

Finally, the use of CFSP instruments in the framework of international fora such as the UN and the OSCE, is a central avenue for the promotion of protection and promotion of human rights due to the greater visibility, more enlarged support and potentially stronger impact that resolutions can benefit from in these international organizations.

4. The approach

Political conditionality:

“entails the linking, by a state or international organization, of perceived benefits to another state (such as aid), to the fulfillment of conditions relating to the protection of human rights and the advancement of democratic principles.”
(Smith, Summer 1998, p.256) ³¹

While conditionality clauses may be regarded as the materialization of the developing concern for human rights throughout the world, human rights clauses, at the same time, encourage and allow for a stronger and firmer stance for the respect of human rights both within the EU states and towards states with which the EU has preferential relations. In this way political

²⁸ The 1995 Sakharov Prize was granted the Turk Leyla Zana; the 1996 Prize was granted to the Chinese dissident Wei Jingsheng. Chinese authorities expressed their indignation with this incident, and described it as 'an interference in Chinese internal affairs.' This prize has also been awarded to Nelson Mandela and Anatoli Marchenko (1988), Alewander Dubcek (1989), Aung San Suu Kyi (1990), Adem Demaci (1991), the mothers of the Plaza de Mayo (1992), Oslobodjenje (1993), Taslima Nasreen (1994), Salima Ghezali (1997) and Ibrahim Rugova in 1998.

²⁹ For example, the liberation of Turkish members of Parliament in 1995 after strong EP pressure.

³⁰ Clapham, 1991, p.82: Reference to EP Resolution Doc B2-88/89 passed in April 1989.

³¹ Smith also differentiated between *positive conditionality* (promising benefits to a state if it fulfils the conditions), and *negative conditionality* (reducing, suspending, or terminating benefits if a state violates the conditions). In addition, 'political conditionality' differs from the Cold War system of 'linkage' because it is not limited to communist states and its objectives consist of promoting a broader political and, in certain cases, economic reform.

conditionality can be regarded as both the effect and the cause of human rights considerations applied to foreign policy-making.

The Union and its Member States' approach to the application of political conditionality is a combination of positive measures and negative responses.³² However, positive measures fostering conditions for democracy, civil society, and sustainable development are favored. This approach involves providing incentives for the promotion and protection of fundamental rights and freedoms, and attempts to reform or address the deficiencies in the systems of the recipient countries which lead to human rights abuses.

In 1995, the Union listed areas in which it wished to pursue 'a positive, practical and constructive approach,' in order to promote fundamental rights and democratic principles (COM(95)567final, 22.11.1995, p.10). In effect, the Commission has identified the following priorities: support the transition to democracy through free and fair elections; promote and consolidate the rule of law by supporting parliamentary activities, the independence of the judiciary, as well as institutional and legislative reform; promote a pluralist civil society by strengthening NGOs, an independent media, educational activities, and protection of the vulnerable groups such as children, women, national minorities, victims of torture (COM(95)567final, 22.11.1995, pp.10-11).

The Commission³³ and the EP³⁴ have been the driving forces within the Union and have contributed significantly to the external dimension of the Union's human rights policy. Based on the Treaties and within the first pillar competences, the Community has the power to conclude international agreements in the framework of external trade and development co-operation ranging from association agreements, trade co-operation agreements, European economic area agreements, to custom unions, or preference agreements. The Commission and the EP have been involved in financing and in defining proactive and reactive measures through the *European initiative for democracy and the protection of human rights* (chapter B 7-52 of the Community budget) which in 1995 alone totaled 76 MECUs. The proactive approach is generally preferred by the Commission which is the main actor in the disbursement of humanitarian aid through ECHO, and is also involved in offering electoral assistance. It has provided support to electoral processes in Russia (December 1993), South Africa (May 1994) and Palestine (1995), and its projects have ranged from assisting the independent media, to

³² 28 November 1991 Resolution.

³³ The Commission's role in external policy is a significant one. Under the SEA, the Commission was formally linked to EPC and the TEU encouraged a more assertive role by granting the Commission a non-exclusive right of initiation in CFSP matters, and participation in the Presidency troika. The TEU improvements led to organizational restructuring within the Commission. The post of Commissioner of External Political Relations and a new DG (DG1A), with a Human Rights Unit, to handle External Political Relations were created motivated by the prospect of a potentially greater foreign policy role for the Commission (Nugent, 1994, p.403).

³⁴ Most of the EP's work in the area of human rights and foreign affairs is undertaken by the Political Affairs Committee and by the Subcommittee on Human Rights. The latter has strongly advocated the inclusion of human rights and the promotion of democracy among the declared objectives of the Union's external policies (Clapham, 1991, p.72).

supporting the judiciary and the parliamentary institutions, to ensuring the active participation of all actors, especially women, in a civil society (COM(95)567final, 22.11.1995, pp.20-21).

Proactive measures alone are, however, insufficient responses to gross human rights abuses and interruptions of the democratic process. The EU disposes of a number of instruments, from both the first and second pillars, which can be used as negative responses to violations. These range from delivering confidential or public *démarches*; modifying the content of co-operation programs, deferring signature or decisions needed to implement co-operation, reducing cultural, scientific and technical co-operation agreements, deferring a joint committee meeting, postponement of new projects, imposing trade embargoes, arms embargoes or suspension of military co-operation or any other forms of co-operation with the third country concerned (Smith, Summer 1998, p.269). Other negative measures, which fall within the CFSP field, are diplomatic sanctions, public *démarches*, and since the TEU, common positions, joint actions, and economic sanctions. One of the principal problems associated with negative measures is that they are usually in response to violations of political or civil rights, thus leading to a narrow interpretation of human rights and disregarding the equally important economic, social and economic rights (Marantis, Spring 1994, p.14). Nevertheless, they may be instrumental in pressuring a violator to rectify situations which have transgressed respect for human rights norms.

Under Article 228 of the TEU, the Commission is responsible for putting forward the proposal on the basis of which economic sanctions are applied and thus has the power to apply a negative human rights policy. At the same time, the EP can use its budgetary powers to sanction human rights abuses in third countries. The blocking of MEDA funds by the EP in the case of Turkey in 1997 is a successful illustration of the EP's negative use of its budgetary powers. However, this option is undertaken in 'extreme' situations due to the concern of the Commission and the EP to avoid further suffering of the said country's population, which is probably already affected by an oppressive régime (COM(95)567final, 22.11.1995, p.16). In particular, the Commission's preference for the proactive approach has also been explained from the point of view that bureaucratic structures tend to continue the execution and implementation of programs and projects once they have been established (Fouwels, September 1997, p.315).

The motivations and consequences of conditionality have been under severe criticism by a number of scholars (ex. Tomasevski), and indeed there exists much concern within the EU with regards to the effectiveness of negative measures. It has been argued that unilateral punitive or corrective action is incompatible with the EU's commitment to enter into dialogue and consultation. If the EU and its Member States have no ties with countries with poor human rights records, then they cannot apply their constructive policies nor use their instruments to influence human rights and democracy progress within them. Imposing sanctions, or cutting off relations would penalize the populations, and would be viewed by these countries as an 'imperialistic' or 'moralistic' policy on behalf of the EU. Furthermore, isolating countries which may need aid and support to achieve their transition towards democracy and respect for human rights may lead to greater instability within these countries, and therefore, general regional instability. This would be contrary to the declared objective of the Union and the

Member States of promoting peace and stability worldwide. The application of negative measures would also result in a deterioration of relations between the EU and the concerned countries; moreover, this would negatively affect the bilateral relations that Member States hold with these countries. Such a development would lead to an unstable and even unfriendly environment, which would again defeat one of the goals of the EU and of the UN, and would be detrimental to other national interests. Nevertheless, there have been cases such as the executions of Ken Saro-Wiwa and his associates in Nigeria in 1995, which triggered the imposition of sanctions on the part of the Community (van der Klaauw, March 1996, pp.100-101). Finally, the criticisms which are formulated in response to negative measures question the objectivity, efficiency, and even-handedness of the EU's human rights policy. Such criticisms are believed to be detrimental to the promotion of respect and protection for fundamental rights and freedoms since selectivity damages the credibility and, hence, the success of a human rights policy (Hill(ed.), 1989, p.58).

Despite these obstacles, conditionality, through the combination of proactive and reactive measures, has been applied by the European Union in its external affairs. Foreign policy in the EU still remains principally intergovernmental and the Council is the main decision-making institution. Although common actions and joint positions affirming the primacy of respect for human rights have been adopted since the TEU, and the same principles are adhered to by the Fifteen in the formulation of the CFSP, Member States are sometimes eager to pursue other national interests and do not always wish to be hindered by human rights constraints.

Nevertheless, negative measures such as diplomatic sanctions have been imposed on Nigeria for instance since 1993, and again in 1995 following the execution of Ken Saro-Wiwa, as well as on Burma/Myanmar since 1996. The Council, composed of the Ministers of Foreign Affairs, has in certain cases been more inclined in preferring the more visible, negative approach when responding to human rights violations in order to satisfy public opinion.³⁵ It should, however, be noted that diplomatic sanctions are implemented nationally and therefore, there may be some discrepancies between the applications of the various Member States (Smith, Summer 1998, p.271), and that the interruption of development corporations has tended to take place against weak states such as Sudan, Zaire, Malawi, and Haiti. In cases of geopolitically or commercially important countries such as Algeria, China and Indonesia, the EU Council has limited its action to declarations and démarches criticizing or expressing concern about human rights abuses (Marantis, Spring 1994, pp.22-24).

The advantages in pursuing a human rights policy 'multilaterally' are two-fold. First, conditionality appears more 'legitimate' when it is applied by a group of fifteen states rather than by one state alone. Second, the group effect of the Union is 'politically safer' since it also shields the individual Member States from the responsibility of applying negative conditionality measures alone, and from being individually targeted by the states which has been the object of these measures. Hence, the EU has presented itself as an additional level through which

³⁵ Fouwels (September 1997, p.315) also noted that the *1991 Resolution on human rights, democracy and development*, was adopted by the Ministers of Development Cooperation and not the Ministers of Foreign Affairs of the Member States.

governments can pursue the respect of human rights. It has been suggested that it is easier for a government to publicly criticize human rights abuses and especially to take action against human rights violators within multilateral fora rather than within the framework of simple bilateral diplomatic relations.³⁶ This has been described as ‘burden-sharing’, and at the European level it has been considered as an effective method of promoting human rights and democracy due to its ‘shield effect’:

“if states wish to take an active/reactive human rights policy line they may find joint action more effective, but they can use the ‘shield effect’ not only to ward off internal objections but also to reassure themselves that they will not be singled out for a ‘cooling’ in bilateral relations or even counter-measures.” (Clapham, 1991, pp.76-77)

There exist, nevertheless, obstacles which limit the application of political conditionality, and in particular the negative approach, in certain aspects of the EU’ s external relations and CFSP. It is not an easy task to devise universal criteria and it could be problematic to apply them indiscriminately to all situations of human rights abuses. First, it is difficult to identify what constitutes a human rights abuse which warrants public criticism and one economic sanctions for instance. Second, no two situations are identical to the point that they can receive identical treatment. And third, relying on an automated, unique procedure would compromise the flexibility necessary for an effective response and ignore the particularities of the targeted state (Marantis, Spring 1994, p.23). Due to these concerns, the Commission noted that negative measures should be guided by *objective* and *equitable criteria*, they must be *appropriate* to the circumstances and *proportional* to the gravity of the case, and they *must not penalize* the population (SEC(91)1915final, 21.10.1992). There are, however, no strict guidelines and the interpretation of these three principles is subjective to the case in question.

Unfortunately, responses are not always evaluated only on human rights and democracy considerations since governments have other foreign policy and national objectives which need to be accommodated as well (Smith, Summer 1998, p.270). This brings us back to Vincent’s ‘inescapable tension’ between human rights and other foreign policy objectives. Commercial interests have prevented the adoption of any sanctions against China.³⁷ Oil was not included in the list of sanctions imposed on Nigeria in 1995, nor during the EU’ s critical dialogue on human rights with Iran (Smith, Summer 1998, p.272). Strategic and geopolitical considerations are in certain cases still attributed over-riding importance in foreign policy-making by the Council and the Member States. Whether this is motivated by wanting to integrate a country into closer co-operation in order to satisfy security concerns (for example, despite the conflict in Chechnya, the EU concluded an interim agreement with Russia in June 1995) or whether Member States wish to protect countries considered within their sphere of influence (for

³⁶ Baehr (1994, p.32.) nevertheless identified the drawbacks of joint action (i.e. unanimity or qualified majority are necessary. Given the variety of national interests involved, this is not always an easy task).

³⁷The 53rd Session of the Commission on Human Rights in Geneva (10 March-18 April, 1997) is illustrative of where economics and commerce took precedence over human rights. The Dutch Presidency’s proposal for a resolution condemning Chinese human rights abuses was not supported by Spain, France, Italy, and Germany. This ‘coincided’ with the improvement of French-Chinese commercial relations and the Airbus deal was concluded. This ‘China case’ was a blow to the credibility of the EU’ s human rights policy, and indicative of the continuing tensions between human rights and economic interests.

example, France blocked sanctions against Cameroon despite disruptions in the democratic process), ‘inescapable tension’ arises. These are cases where selectivity and double standard decisions guided the EU’ s human rights policy, depending on whether the Member States refer to states they wish to confront, or states they do not want to politically marginalize. In an EP 1997 working document, it is stated that:

“Regrettably, it seems easier to achieve agreement on sanctions against a poor and small country - such as Burma or Equatorial Guinea - than against a larger and stronger country - such as China, Turkey or Nigeria, where the scale of human rights violations may be as great or greater.” (unpublished)

Within the EU institutions, policy-making is faced with the task of reaching an often difficult or fragile compromise between the interests and policies of its fifteen Member States. Frequently based on ‘package deals’, an EU policy or position is comprised of issues agreed upon in exchange for other issues. In consequence, the EU position may be an agreement at the lowest common denominator, and consistence and even-handedness are often compromised.

Nevertheless, the importance human rights and democracy both within the Union and in its relations with third countries cannot be underestimated.

“If commercial or strategic interests were the primary concern for the Union’s external relations, then there would have been no need or desire to develop such a far-reaching and innovative human rights policy. Conditionality has been a source of friction with states such as Australia and the ASEAN countries. While the norm of conditionality may not always trump other considerations, the EU is none the less at the front of efforts to make it illegitimate to violate human rights and conduct undemocratic politics.” (Smith, Summer 1998, p.274)

Conclusion

The European Union and its Member States have stated that their guiding principles are the respect and promotion of human rights, democracy and the rule of law. This is a moral and a legal duty that the EU has accepted and has committed itself to promote in its foreign policy. This paper traced, through the EU’ s evolution, its objectives and priorities, and attempted to present the extent to which human rights considerations have been pursued in the Union’s policies. The EU institutions - Commission, Council and EP - now have contacts with nearly every country in the world, with other regional organizations, and they represent the Union in multinational fora such as the United Nations. Consequently, the potential they have to promote the respect and protection of human rights through these contacts is enormous. It has been, therefore, argued that the EU has the ability, but at times lacks the necessary political will, to promote its human rights policy through pressure and dialogue within these frameworks and with the instruments it has at its disposal. Although unity is lacking concerning the approach to certain cases, and national interests sometimes take precedence, the potential impact of EU action should not be underestimated.

This leads to the question of whether certain EU institutions are more prone to promoting human rights consideration in the Union's external relations, and whether others are more likely to compromise human rights objectives, or apply them selectively according to other foreign policy goals. Two attitudes seem to exist within the Union's human rights foreign policy making. On the one hand, the EP and the Commission have used the powers granted to them by the treaties to expand their input in the Union's external relations. They have focused a significant part of their activities on promoting the respect of human rights and fundamental freedoms in the Union's external affairs and integrating human rights objectives with other policy goals, and on implementing proactive, and when necessary reactive, conditionality in the EU's agreements and projects with third states. On the other hand, the Member States, through the Council, though committed to the respect and international protection of human liberties, remain largely preoccupied with realpolitik considerations. And, frequently, in cases of EU relations with strategically important or commercially strong countries, human rights concerns have tended to be limited to rhetorical declarations rather than concrete action.

The inescapable tension between human rights and foreign policy continues to persist at the level of nations, and is transposed to the European level of policy-making, in particular through the intergovernmental nature of CFSP. However, the international developments in the latter part of this century, and the internal process of European integration has allowed EU institutions to support the development of a consistent and even-handed human rights foreign policy which in certain cases, especially those falling within Community competence, they have succeeded in achieving it.

To conclude, the European Union with its Member States have been the initiators of a foreign policy which attempts to include and promote ethical considerations, to integrate human rights in international relations, and to unite the European continent under the guiding principles of respect for human rights, democracy, and the rule of law.

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