



Human Rights in EU External Relations

Seminar on European Union and Human Rights after Lisbon

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by Jelena von Helldorff, Vice President IFIAS

Introduction

The issue of human rights is relatively new to the European Union. Indeed, the European Communities integration project was primarily economic project centred on the creation of the common market. The EEC Rome Treaty signed in 1957 aimed at achieving integration via trade of the signature countries, in view of spurring economic expansion. This means that until the 1970's Human rights protection was confined to the field of national competence from which the Community exercise was excluded. It is in 1970 that the EC Court of Justice for the first time made reference to the human rights in its *Case Internationale Handelgesellschaft mbH versus Einfuhr und Vorratstelle für Getreide und Futtermittel*¹, thus outlining the feature that will gradually becomes part of the subsequent EU treaties. By establishing its own jurisprudence the Court departed from the hitherto governing principle that the human rights, as part of the constitutional principle of member states are enforceable to the extent that the respective constitutions or an international treaty to which the member state has signed up to so establish.

But it was only in 1992 that the Maastricht Treaty confirmed in its preamble the attachment of the Union to the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.² By the same token the Maastricht Treaty reiterated the human rights respect as a governing principle of the then newly established Union policies in the field of Justice and Home affairs and the provisions related to the Common Foreign and Security policy.³ A formal recognition of human rights as one of the basic principles on which the Union is founded was then enacted by the changes brought up by the Amsterdam Treaty (Treaty of the European Union) which entered into force in 1999. Art 6 of the TEU established as a general principle that the European Union should respect human rights and

¹ The Court ruled that "In fact, respect of fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional tradition common to Member States, must be insured within the framework of the structure and objectives of the Community", Case 11/70(1970) ECR 1161

² In the art. F the Treaty stipulated that "That Union shall respect fundamental rights, as guaranteed by the European Convention of Human Rights and Fundamental Freedoms as they result from the constitutional traditions common to the Member States, as general principles of Community law"

³ <http://www.eurotreaties.com/maastrichteu.pdf>

fundamental freedoms (along with democracy and the rule of law), upon which the Union is founded.⁴

The Treaty in addition reinforced the existing EU commitment to European Convention on Human Rights (ECHR) and acknowledged that infringing the basic human rights principles is subject of a procedure to be followed by the Union when dealing with the Member State concerned. If the breach is serious and persistent the Council may even suspend some of the Member States rights under the Treaty. The Amsterdam treaty (Art 13) also introduced the principle of non discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and laid down the principle of equal treatment between men and women. By the same token it established the European Court of Justice's jurisdiction over fundamental rights in the area of visas, asylum and migration.⁵

Placing democracy, human rights and the rule of law at the very basis of the European integration project was indeed a huge shift. It not only represented a beginning of an EU fundamental rights order but sent a strong signal to the third countries.⁶ Whereas the Maastricht and then to a greater extent the Amsterdam treaty set a basis for the expansion of EU foreign and security policy, the hammering home of the EU human rights commitment clearly defined the basic principles by which the EU external policy will be guided.

But the recognition of human rights, democracy and the rule of law in parallel with the development of EU external relations was not a pure coincidence. Both Treaties were signed after the end of the Cold war and thus marked the beginning of a new stage in the process of development of the EU, as an actor within the new international architecture.

Soon after the fall of the Berlin wall the EU launched a big programme aimed at helping the Eastern European countries to reform their economy and lay basis for developing democratic societies, founded on the principles of democracy and human rights. Even though it was not spelled out clearly at the very beginning, the EU Phare programme ushered the idea of the EU enlargement to the former communist countries. Encouraged by the hugely successful Spain and Portugal accession in 1986 the EU was bracing towards the biggest enlargement in its history, to countries whose post WW II evolution bore little resemblance to the Western democracies, especially with regard to the respect of human rights.

This prospect of eastern enlargement prompted EU leaders to strengthen further their human rights narrative, the result of which were the 1993 Copenhagen criteria adopted at the European Council summit in Denmark. They conditioned any further EU enlargement by the stability of institutions and the guarantee for democracy, the rule of law, human rights and respect for and protection of minorities. That states wishing to join the European Union were

⁴ Available at : <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>

⁵ Article 35 (TEU). By extending the jurisdiction of the ECJ to the field of visa, asylum and migration the Treaty moved this area from the so-called "third pillar", where the rules of intergovernmental cooperation apply, to the "first pillar", subordinated to the community principle, where the decisions are initiated by the European Commission and adopted by the Council and European Parliament in the co-decision procedure.

⁶ The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice

asked to respect these principles, was later translated in the Article 49 of TEU (Amsterdam Treaty).

In this way not only the EU transformed former communist states but the prospect of their accession reinforced the EU's own commitment to democracy and human rights. The current EU policy on enlargement to Turkey and Western Balkans is even more demanding on human rights, which is understandable given that the minority issues was one of the causes of conflicts in the Balkans.

In parallel to the enlargement policy where the human rights are the condition for EU accession, the EU has developed a rich foreign and security policy, built on a panoply of treaties and agreements with third countries and regions. In doing so, the EU has gradually promoted human rights issues in the agreements with third countries. Since 1995, human rights have been systematically included as an "essential element" of EU external agreements.

All agreements on trade or cooperation contain a clause stipulating that human rights are essential in relations between two parties. As stated by the TFEU "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law."⁷ Mainstreaming human rights and democracy into the all EU third countries agreements is confirmed to be one of the defining features of EU external action.

Moreover, the respect and the observance of human rights is an essential part of the European Security Strategy, adopted in 2003 with the aim to establish principles and set clear objectives for advancing EU security interests based on core values in a globalised world.⁸ Having said that the EU Security and defence policy which includes conflict prevention and post conflict stabilisation and peace building recognises human rights as a fundamental part of the overall EU strategy for promoting sustainable development, peace and security in the world.

1. Lisbon Treaty - building the EU rule of law

The entering into force of the Lisbon Treaty is a milestone in the process of European construction.

New legislative provisions brought about by the Treaty of Lisbon are likely to transform the internal EU human rights landscape as well as the relations with third countries. In contrast to the previous treaties, the Lisbon Treaty clearly distinguishes human rights field from the

⁷ Title V, Chapter 1, Art 21 of the Treaty on the European Union

⁸ As noted in the The European Security Strategy, adopted in 2003 and reviewed in 2008: "Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order" see <http://www.consilium.europa.eu/>

democracy and the rule of law, giving it a separate place in the EU legal order. Although often conflated democracy and human rights are quite distinct categories. Whereas it would be difficult to imagine the respect and implementation of human rights without democracy, not all democratic states respect human rights. The advancement of human rights, as a separate category by the Lisbon Treaty is therefore providing a clear political signal to the world that the European Union intends to create the unique European legal system based on the rule of law.

*European Charter of Fundamental Rights*⁹

To accomplish the EU based on the rule of law the Lisbon Treaty points to the three main avenues: the binding character of the European Charter of Fundamental Rights, the EU accession to the European Convention Human Rights (ECHR) and the recognition that the EU fundamental rights constitute general principles of the Union's law as guaranteed by ECHR and as they result from the constitutional tradition common to the Member States.¹⁰

By conferring a binding character to the Charter of Fundamental Rights. "The European Union Charter sets out in a *single text*, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European Citizens and all persons resident in the EU"¹¹

Not only does the Charter lead to the establishment of a more legalistic conception of human rights, but it is one of the most modern legal texts of the 21 century. Although the Charter does not introduce any new right as such and binds only the EU within its scope of competence it provides greater legal certainty as both EU citizen and institutions are able to know what the EU's human rights *acquis* is¹².

In addition, whereas the ECHR is mainly limited to more classic civil and political rights (such as freedom of expression, prohibition of slavery and torture), the Charter is more progressive legal document reflecting the condition of modern societies and thus covering areas such as the right of disabled, the social rights of workers, the right of clean environment, the protection of personal data or prohibition of trafficking in human beings. By giving the Charter the same legal status as the EU Treaty the European Court of Justice (ECJ) will be able to ensure that its provisions are correctly implemented. Flanked with the recently established Fundamental Rights Agency in Vienna, the Charter is reaffirming one of the EU

⁹ In December 2000 the Nice European Council proclaimed a non-binding Charter of Fundamental Rights which includes rights guaranteed in the ECHR and the European Social Convention. The Charter would apply to the actions of the EU institutions. Member States are concerned only when they are implementing EU law.

¹⁰ Art 6 of the Consolidated version of the Treaty on European Union and the Treaty on the functioning of the European Union, OJ C115, 9.5.2008

¹¹ http://www.europarl.europa.eu/charter/default_en.htm

¹² For an analysis of the implications of the Lisbon Treaty on HR see Frederic van den Berghe, The EU and Issues of Human Rights Protection : Same Solutions to More Acute Problems ? in European Law Journal, Vol16, N°2 March 2010, pp 112-157

basic existing principles, this is to say, the aim of creating a society based on democracy and the respect for human rights.¹³

In addition to bringing forth fundamental rights to the citizens of the EU, the Charter also gives signal to the third countries that the protection of human rights is one of the central objectives of the Union's external policy. In this respect it reinforces the EU legitimacy towards third countries and strengthens argument of human rights clauses in agreements with third countries.

However, it should be noted that the Charter does not extend the EC jurisdiction (the ECJ competence) to situations falling outside the Community law, nor to the former Second Pillar (Common Foreign and Security Policy). Nevertheless, the Charter is an important leap forward. Its binding character will provide better balance between the EU internal and external aspects of the EU space of liberty, security and justice and raise credibility of the EU in negotiating external agreements. An important part of the third country agreements regarding migration, refugees and visas which are subject to the community, co-decision procedure will be also influenced by the provisions stipulated by the Charter.¹⁴

Closing the internal –external human rights policy gap will thus certainly produce beneficial effects on the legitimacy and effectiveness of human rights promotion externally.

EU accession to the ECHR

Unlike the European Community in the past, the European Union did not have so far a distinguished legal personality. Only the European Community could act alone (e.i. in the framework of WTO or the UN Food and Agricultural Organisation or as a party to the UN Convention against Corruption) or in conjunction with the Member States. The newly acquired legal personality of the EU will henceforth provide more legal certainty and will allow the EU to assert its positions within the international organisations.

Moreover, this important development allows the EU to accede the European Convention on Human Rights¹⁵. That new possibility is certainly one of the groundbreaking features of the new Treaty, because it attributes the EU the capacity to conclude conventions in the field of human rights. Because the ECHR provides a common standard for both EU and non EU European countries, including Russia, the EU accession can make ground for further enlargements of the EU by creating common high human rights standards for both EU and non EU- European countries.¹⁶

This also implies the possibility for individuals of EU Member States to bring complains about the EU to Strasbourg, after exhausting the EU's own existing system of remedies. The EU accession to the ECHR will further strengthen the protection of human rights in Europe by

¹³ It should be stressed that the Charter does not seek to replace the already existing ECJ jurisprudence in the field of HR. Its purpose is not to establish anything new but merely to strengthen already existing rights by making them more visible.

¹⁴ However, it should be noted that the Charter does not extend the prohibition of discrimination on the ground of nationality to third country nationals, which is a serious disadvantage

¹⁵ New Article 188N(3) and (8) of the Treaty on Functioning of the European Union

¹⁶ Frederic van den Berghe, *The EU and Issues of Human Rights Protection*, page 149

submitting the Union's legal system to independent external control. It will help soothing the critics, particularly from the NGO sector that the EU is requiring high human rights standards from the third countries (particularly those aspiring to accession) but have little control over its own human rights record.¹⁷

As stated in the EU Stockholm programme, the case law of the Court of Justice of the European Union and the European Court of Human Rights will be able to develop in step, reinforcing the creation of a uniform European fundamental and human rights system, based on the European Convention and set out in the Charter of Fundamental Rights".¹⁸

2.1. Post –Lisbon EU Institutional changes - impact on policies on human rights

In January 2009 the long overdue institutional changes have started to take place at the European Commission and the Council level. The reshuffling of the European Commission portfolios and the hearing of potential candidates before the European Parliament were the first signs of the EU after Lisbon.

According to the Treaty provisions the EU is now endowed with the President of the Council, appointed by EU Member States for 2 ½ years and the High representative of Foreign Common and Security Policy (who is at the same time the European Commission Vice-President). Although the Treaty does not provide details for a clear-cut of their respective functions both new posts are aimed at increasing the EU visibility in world affairs and strengthening consistency of the Union external action. The setting up of the European External Action Service (EEAS), the embryo of what should become a European Diplomatic service is aimed at assisting the High Representative in fulfilling her mandate and coordinating and effectively projecting European interests and values abroad.

In practice, however, it seems as the carrying out of EU's external responsibilities will be shared between the President of the European Council, the President of the European Commission and the respective commissioners endowed with the external dimension of internal EU policies such as climate, energy, migration , trade and enlargement. For the beginning at least, this portends a more complicated instead of a simplified way of decision making and action.

Being a cross cutting issue which impact internal and external EU policies , human rights are and will in future be dealt with by a number of Commission departments, including: DG Employment and Social affairs DG Enlargement and EU Neighbourhood policy, DG International Cooperation, Humanitarian aid and crises response, DG Development and the European External Action Service. If the coordination between departments remain weak, it may undermine the EU efforts to promote coherent policy and raise its human rights profile as a global world actor.

¹⁷ The NGO's have been critical over the EU policies with respect to terrorism, the treatment of illegal migrants and refugee seekers and discrimination of minorities, particularly towards Roma. The EU is equally criticised of the absence of follow up and monitoring of human rights record in Central and Eastern European countries that have join the EU in 2004 and 2007.

¹⁸ The Stockholm Programme- an open and secure Europe serving and protecting the citizens, Doc N° 17024/09, page 11

Another important change is the reinforced role of the European Parliament.¹⁹ It will not only have a co-decision role in the most of policy making fields, but is now endowed with a power for approving the overall EU budget (including the approval of the multiannual financial framework and the expenditure planned for the external action and relations with third countries). Moreover, the Parliament will be henceforth asked to give its full consent to the international agreements negotiated by the Commission with third countries.

It is true that the Lisbon Treaty does not provide the European Parliament with a shared responsibility in deciding the matters related to the Common Foreign and Security policy, but the fact that the EP now possesses full budgetary power allows it to exert considerable influence in deciding the amount allocated for external aid. Also, in accordance with the Treaty of Lisbon the European Parliament must be fully informed on the negotiations between the EU and third countries. Even before its entering into force an important element of EP's activities consisted of the resolutions on human rights violations in specific countries and, in particular, of individual cases of concern, which are dealt with in the monthly plenary sessions on urgent subjects. The reaction of governments suggest that they are often quite sensitive to criticism by the European Parliament.²⁰

Also, it is already established practice (and even more so as of beginning of 2010) that the EU High Representative for CFSP participate in the meetings of the EP subcommittees on human rights and appears in the EP plenary in Strasbourg on a regular basis.

Traditionally more sensitive to the human rights protection, the European Parliament, now endowed with these stronger prerogatives will continue to be instrumental in maintaining and promoting human rights in all EU external policies.

3. EU Human Rights policy as part of the external relations

The Maastricht Treaty stipulated that "the development and consolidation of human rights and fundamental freedoms is an objective for both the European Common Foreign and Security Policy and EC Development cooperation²¹.

As a result, ever since 1995 the EU has systematically inserted a standardised human-rights-democracy clause in all agreements other than sectoral agreements, concluded with non industrialised countries²². By giving a legally binding character to the human rights clauses in partnership, association and cooperation agreements with third countries, the EU has sent an important signal to its partners that the human rights question is of its prime concern and

¹⁹ Issues concerning human rights within the EU fall within the remit of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) which deals with the status of respect for fundamental rights in the EU. The Foreign Affairs Committee and its Sub-Committee on Human Rights deal with the HR issues in EU CFSP and cooperate closely with LIBE committee to monitor the external effect of internal policies, especially concerning the issues of asylum and migration

²⁰ See Council Doc N° 8363/10 Rev 1, Human Rights and Democracy in the World: report on EU action-July 2008-to December 2009, p.51

²¹ Title XVII, Art 130 u of the Maastricht Treaty

²² Council Doc N° 7255/95 Human Rights in Community agreements with non Member countries

not merely technical or accessory element of other policies. The aim of the clause is to tie human rights to other key parts of each third country agreement, by leaving open the possibility of re-examining the agreement in the event of serious breaches of human rights.

The clause, now part of more 120 agreements, including the Cotonou agreement can be complemented by suspension mechanism providing for the possibility of suspending the agreement or the parts of thereof, including without prior consultation, in a case of serious breach of human rights.

However, in practice the EU is rarely opting for such a negative conditionality. As stated on several occasions in the EC Communication on “The EU’s role in promoting human rights and democratisation in third countries”, positive measure are clearly favoured to achieve the objective of strengthening respect for human rights . Sanctions are said to be considered only if all other means have failed to produce results.²³ Usually, negative measures are used in case of countries to which the EU has extended unilateral trading privileges (General System of Preferences (GSP). Sanctions were thus applied to Burma in 1997 over the use of forced labour and Belarus in 2007 over violation of trade unions rights.²⁴

In special (and usually rare) cases, where the EU observes serious violations of international law, human rights or democratic principles, it may however apply restrictive measures. These may be targeted at governments, non-state entities or individuals, and may involve embargo, trade restrictions, financial restrictions, restrictions on admission visa or travel bans) or other appropriate measures.

This actually happened when a ban on new investments and on import of gold coins, iron and steel was placed on South Africa in 1985 and 1986 following a Declaration of state of urgency there. Some sanctions and embargo were also imposed on China in 1989 in the event of Tiananmen unrest.

But as stated earlier, however, positive measures are clearly preferred and are implemented through a variety of policy tools and instruments which have been developed over the years. They include dialogue, consultation and above all financial incentives to either governments of non-governmental organisations.

Modalities of implementation

The level of enforcement of human rights clauses in the EU agreements with third countries depends primarily of the place the specific country or region occupies in the EU external policy. Broadly speaking, there are four main categories which define the EU relationship and the level of commitment vis-à-vis third countries: 1. Candidate or potential candidate countries of enlargement, 2.countries belonging to the European neighbourhood, 3.other countries and regions (Africa, South East Asia, Latin America) and 4.EU strategic partners (among others the US, Russia, Japan and China).

In regard to the countries that are negotiating accession partnership or are potential candidates for membership, the conditionality of human rights clauses and the respective monitoring mechanisms are particularly stringent. Through its annual Country Progress Reports the European Commission evaluate the achievement of previously defined benchmarks on human rights record and identify insufficiencies and areas needing

²³ COM (2001) 252, final of 8 May 2001

²⁴ Karen E. Smith, *European Union Foreign Policy in a changing world*, Polity Press 2008, Oxford

improvement. The scope of scrutinised rights sometimes exceed EU prerogatives, which has led to criticism that the EU is applying “double standards”.²⁵

Yet, the power of EU membership perspective is highly effective. It is often said that the enlargement is the most powerful foreign policy instrument, as the sole objective to accede the Union can spur in -depth reforms in all sectors of the society, including in the field of human rights.²⁶

With the objective to avoid the emergence of new dividing lines between the enlarged EU and the countries in the near neighbourhood, the EU has set a specifically designed policy instrument, European Neighbourhood Policy (ENP) aimed at support reforms in 16 countries at the Eastern and Southern flank of the EU.²⁷ The objective of the European Neighbourhood policy is to develop a “ring of friends”, offering, instead of full membership, political association and deeper economic integration. Using mutually agreed Action Plans and Country Strategy papers the EU provides financial aid and technical support in order to create stable environment on its borders and thus increase its own internal security. The level of reform enforcement and human rights respect depends on the extent to which these countries share EU values and are ready to undertake reforms. Sanctions for non – compliance of human rights are deployed only when the EU perceives grave security threats and no strong contrasting interest pressing in favour of cooperation, as it was the case with Syria, following accusations of the state-sponsored terrorism. In 2006 a pilot MEDA democracy facility (aimed at Mediterranean countries) was introduced in order to give extra assistance to countries that have made headway with democracy and human rights. This is now part of a new “Government Facility” 43 € worth programme introduced in 2007 for all ENP partners, provided they accomplish progress in reforms agreed in their action plans.

The last EC 2009 ENP Progress report note progress in accession to human rights and fundamental freedoms conventions, but also points out to concerns regarding the level of implementation.²⁸

The EU relations to Africa are framed within the Cotonou agreement, which is perhaps the most comprehensive external policy document regarding the human rights respect. The agreement is a trade and aid pact which links the Union with 78 developing countries in

²⁵ See Anneli Albi, Ironies in Human Rights Protection in the EU :Pre-Accession Conditionality and Post-Accession Conundrums, European Law Journal Vol. 15, January 2009

²⁶ Critics have often noted that the EU requirements towards accession countries extends not only to civil and political rights but also o economic, social and cultural rights, while the Member States are bound only in the areas of EU competence.

²⁷ Armenia, Azerbaijan, Georgia, Belarus, Ukraine, Egypt, Israel, Jordan, Syria, Lebanon, Moldova, Algeria, Morocco , Tunisia, Libya Palestinian Authority of the West bank and Gaza Strip,

²⁸ For example, the Report acknowledges progress on the protection of the rights of women, with the criminalisation of female genital mutilation in Egypt, increased participation of women in political life in Morocco and some first actions in relation to honour crimes notably in Lebanon and Jordan, but raises concerns regarding the death penalty in almost all ENP countries as well as problems with respect to the freedom of expression, freedom of association and independence of media in many countries. For more details see EC Communication Taking Stock of European Neighbourhood Policy, COM(2010), of 12 May 2010

Africa, the Caribbean and Pacific (the ACP group). Democracy, human rights and the rule of law constitute the essential, contractual elements of the Cotonou agreement, enshrined in art. 9. If any country fails to respect human rights, EU trade concessions can be suspended and aid reduced or curtailed.²⁹

Over recent years the EU has entered into “Strategic Partnership” as the expression of some of its most important relationships, including those with the US, Canada, China, Russia, India and Japan. These have provided platform for addressing human rights, although security, energy and important trade interests have sometimes provided tacit excuse for the lax approach towards respect of human rights. In relation to China and Russia the EC and particularly the European Parliament have raised voice against violations of human rights but beyond some formal expressions of criticism, the EU has only pledged to continue to monitor the situation and work for positive changes.

This shows that in cases where the agreement reflects a relationship of asymmetric inequality the EU is in a stronger position to enforce the respect of human rights clauses. There where is an equal footing relationship between the parties, and particularly if there are other interested involved it is much more difficult to ensure consistency in implementation of the human rights clause.

4. EU instruments and tools for promoting Human Rights in the world

The instruments and tools at the EU’s disposal for external human rights promotion are very diverse. In addition to the Human rights clauses, which are beyond any doubt the most powerful instrument for promoting human rights, the EU has several other operational instruments on its disposal.

One of the most useful tools is the series of Human Rights Guidelines, on issues that are of great importance to the EU and its Member States. Although not legally binding, the guidelines form the backbone of EU human rights policy and express clearly the EU political priorities. Adopted unanimously by the Council, they are practical and pragmatic tool for EU representatives that are entrusted with the task to promote human rights in the world. At present, there are eight EU guidelines adopted in the last decade: on the Death penalty (1998 updated 2008), Torture (2001, updated 2008), Dialogue with third countries (2001), Children affected by armed conflicts (2003, updated 2008), Human Rights defenders (2004), the promotion and protection of the human rights of the child (2007), Violence against Women and girls and combating all forms of discrimination against them (2008) and Guidelines on promoting compliance with the international Humanitarian Law (2005, updated 2009). The guidelines are the most effective when local strategies have been established and are implemented by EU delegations and diplomatic missions of EU Member States in

²⁹ Although as in other human rights agreements the EU prefers dialogue instead to press for changes, Nigeria suffered economic and diplomatic sanctions between 1993-1999 following the military coup d’état

third countries. The EU actors in Member States capitals, in Brussels and in the field implement the guidelines through specific actions such as demarches and statements.

Human rights dialogue is other human rights implementing tool which constitutes an important element of the overall EU common foreign and security policy. The dialogue enables the EU to share information and discuss human rights with parties at a greater level of detail than would otherwise be possible. Its scope goes beyond ordinary diplomatic talks. The goal is to catalyse tangible improvement in respect to human rights across the world. At the meetings which can be either expert or ministerial meetings,³⁰ the EU and third countries discuss exclusively human rights issues including the signing, ratification and implementation of international human rights instruments, cooperation between the EU and the respective country within international human rights fora³¹ as well as the topics revolving around human rights guidelines. The confidential setting enables frank and constructive discussion and exchange of views, even when more visible means are not viable.

A particular feature of the human rights dialogue is the involvement of civil society representatives. Human rights dialogue take place once or twice a year, either in the capital of the concerned country or in Brussels. There are also consultations held on cooperation on human rights issues in the UN framework, in New York and Geneva.

An additional tool in promoting human rights are the EU Council joint actions, positions and crises management situations. Joint actions are binding legal instruments adopted unanimously by the Council where operational action by the Union (such as crises-management in a third country) is required. They lay down the actions objective and scope, the means available and the conditions for the implementation. Common positions define the approach of the Union to a particular geographic or thematic topic, and the member states must ensure that their national policy is conform to the EU, after they are unanimously adopted by the Council of the EU. The Lisbon treaty has replaced “Common positions” and “Joint actions” with “decisions”.

As to the EU security interventions the Common Security and Defence policy takes full account of human rights, gender issues and the effects of armed conflict on children. These are considered at every stage in planning and conducting military missions and operations as well as during subsequent process of results review and further planning. For example, EULEX mission in Kosovo has a Human Rights and Gender Unit, the EUFOR Chad/RCA mission had a gender advisor and regular gender training organised with NGO's and local women's groups. The EUPOL RD Congo, which has a mandate to carry out security reform and ensure promotion of policies compatible with HR standards and international humanitarian law has also a gender advisor as well as an expert on human rights and issues relating to children and armed conflict. The EU Afghanistan policy mission has a gender advisor who provides advice to the Afghan authorities on gender policy in the Afghan National police³².

³⁰ there are now about 40 countries in the world having human rights dialogue and consultation

³¹ such as the UN General Assembly, UN Human Rights Council , Council of Europe, OSCE and other regional organisations,

³² “Human Rights and Democracy in the World: Report on Action July 2008-December 2009”, Council Doc N° 8363/1/10 of 11 May 2010

However effective the EU may be in promoting the peaceful, diplomatic methods of dialogue and persuasion, it would be hard to imagine any concrete results without financial assistance destined to underpin concrete reforms.

Beyond regular country budgetary allocations decided in the framework of seven years Financial Perspectives planning, the EU has a few special programmes designed to promote human rights and democracy in the world. One of them is the European Initiative for Democracy and Human Rights, the objective of which is among others to contribute to the development and consolidation of all human rights and fundamental freedoms. Global in scope, the programme provided over 235 million € for human rights and democracy in 2008-2009, of which 101,7 million went to local civil society initiatives and strategic cooperation with international organisations. The main feature of the programme is that it is able to operate without the consent of the host government, and is thus able to reach out directly to the local civil society organisations. It is a very useful instrument in countries where the cooperation with official authorities is difficult and where fundamental freedoms are most at risk.

5. The way forward after Lisbon

The EU is the biggest donor in the world and for a number of countries the biggest exporting market. This fact alone is enough to justify a number of countries that are interested to develop closer relations with the EU.

The promoter of the so called “soft power” the EU is perceived as a transformative force, helping countries to achieve stability, prosperity, freedom and democracy. This power of transformation, which is a driving force behind third countries’ reforms, is often dependant on geographical proximity and the willingness to adhere to EU values.

Both the nature of the EU external human rights policy and the instruments used to achieve the results confirm the notion of the EU being an agent of “soft power”.

The principal features of this approach is promoting multilateralism and international law as methods of international diplomacy and respect for human rights, the rule of law and democracy as methods of governance. By using the power of persuasion rather than the coercive power and pressure, while projecting its own socio-economic and cultural values the EU is enhancing its legitimacy and exercising transformative power in a number of countries in and beyond its neighbourhood.

The changes introduced by the Lisbon Treaty have potential to further increase the effectiveness and visibility of EU as the promoter of democracy and human rights in the world. The reinforced legal and institutional human rights framework presents an opportunity for the EU to take the lead at a global level³³.

³³ Complementary to the strengthened human rights aspect is the fact that the new Treaty formally enshrines reduction and eradication of poverty as the primary objective of development cooperation. This is particularly welcoming, as the current financial crises portends a risk of raising inequalities, poverty, social exclusion and discrimination and with that heighten risk of human rights violations, not least in relations to labour and social standards.

If the Lisbon Treaty alone provides no automatic guarantee for strengthening European Union's role in a globalised world, it certainly offers opportunities which have a power to raise the EU human rights profile on the international scene. Among others it can:

1. Narrow the gap between internal and external aspects of human rights and thus reduce discrepancy between the rhetoric and practice
2. Sooth criticism the human rights requirements imposed on EU candidate countries exceed EU competences and promote a "double standards"
3. Strengthen the EU potential of a marriage between policy and law
4. Bring clarification to the protracted debate about the EU narrative by reinforcing the argument about human rights as its defining feature
5. Substantiate the EU claims as a site of legitimate governance which can serve as possible global model for future regional integration projects
6. Give the EU with the newly acquired legal personality the potential to hammer home the human rights standards in major international fora such as the UN, OSCE, G 20 and NATO

The way forward will however much depend on the political will of the Member States to use the potential offered by the Lisbon treaty.