The study of the EU promotion of human rights: the importance of international and internal factors[1]
Giuseppe Balducci, University of Warwick and College of Europe
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ABSTRACT

This paper discusses the emergence and affirmation of the EU promotion of human rights against the wider context provided by the international human rights regime as well as against the internal context provided by the evolution of human rights protection within the EU. In so doing this paper provides three analytical tools to study the EU promotion of human rights, which serve to understand its distinctiveness and to explain its behavior as an international human rights promoter. It first shows that the EU promotion of human rights worldwide cannot be analyzed in isolation from the international context. Secondly, it demonstrates that the EU promotion of human rights shall be analyzed in the context of the developments in the EU internal protection of human rights. Third, this paper maintains that the analysis and explanation of the actual EU promotion of human rights requires considering the complexity of the internal architecture of the EU and taking into consideration the role of member states in the formulation and implementation of human rights policies.

Keywords: EU, Human Rights, Regimes, Member States.

Address for correspondence:

Giuseppe Balducci
College of Europe
Department of EU International Relations and Diplomacy
Dijver 11
B-8000, Bruges, Belgium
Tel: +32.5047.7257
Fax: +32.5047.7250
Email: Giuseppe.Balducci@coleruope.eu
        Gm_Balducci@hotmail.com

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1   Introduction

This paper discusses the emergence and affirmation of the EU promotion of human rights against the wider context provided by the international human rights regime as well as against the internal context provided by the evolution of human rights protection within the EU. In so doing this paper provides three analytical tools to study the EU promotion of human rights, which serve to understand its distinctiveness and to explain its behavior as an international human rights promoter.

It first shows that the EU promotion of human rights worldwide cannot be analyzed in isolation from the international context, which has partly influenced the evolution of the EU normative basis centered on the protection of human rights and it has offered new opportunities for the development of EU international actorness in the field of human rights.[2]

Secondly, it demonstrates that the EU promotion of human rights shall be analyzed in the context of the developments in the EU internal protection of human rights, which represents the legal and institutional basis as well as the normative background on which the EU promotion of human rights worldwide has evolved and has acquired distinctive features.[3]

Third, this paper maintains that the analysis and explanation of the actual EU promotion of human rights requires considering the complexity of the internal architecture of the EU, thus avoiding reifying the EU, and taking into consideration the role of member states in the formulation and implementation of human rights policies.

The paper is structured as follows. The first section highlights *the main features of the international human rights regime and analyses its influence on the internal EU human rights regime*, showing the EU normative commonality and distinctiveness vis-à-vis it and the consequent EU identity that they originate. In discussing the development of the EU

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[2] For Lisbeth Aggestam, for example, it is necessary to analyse how "the context of normative globalisation after the end of the cold war enabled the EU to assume a more proactive international role by drawing on an international ethics." Lisbeth Aggestam, 'Introduction: Ethical Power Europe?', *International Affairs*, Vol. 84, No. 1, 2008, p.4.
[3] For a commentator the recent EU Charter of Fundamental Rights has the objective to guide the EU Commission's action in the field of external relations, thus promoting coherence between the EU internal and external approaches. Wolfgang Heinz, "The EU External Relations and Human Rights", in Malte Brosig (ed.), *Human Rights in Europe. A fragmented regime?*, Frankfurt, Peter Lang, 2006, pp. 184-207.

identity against the evolution of the international human rights regime this paper does not want to establish whether such an identity is merely a reflection of member states' evolving identities or it is the product of the EU as a center for the creation and articulation of a collective EU identity. Both perspectives are considered valuable and able to offer important insights for the study of EU promotion of human rights because intergovernmental and supranational dynamics have both been at work.

The second section analyses the opportunities offered by the international human rights regime for the development of the EU identity as a human rights promoter against the normative background provided by the evolution of the internal EU human rights regime. The emergence of the international human rights regime and the consequent legitimization of human rights promotion have offered new opportunities for the EU and its member states enabling them to "assume a more proactive international role by drawing on an international ethics".[4] The opportunities offered by the emergence of the international human rights regime and the constraints imposed by the development of an EU identity have an impact on the interests of EU member states, which are at the basis of the EU promotion of human rights. EU member states' interests are broadly defined in their material as well as ideational forms and are discussed both in their specificity and in their inspiration from international norms. The section eventually discusses how the EU international identity and the interests of member states impact on the typical issues of human rights promotion such as double standards and instrumentality.

To sum up this paper first demonstrates that *the emergence and affirmation of the EU promotion of human rights should be analyzed on the basis of the evolution of the international human rights regime as well as the development of an EU normative basis for the protection of human rights*. Secondly, this paper shows that *the explanation of EU policies for the promotion of human rights should be based on an analysis of the interaction between the EU identity and the member states' interests and policy preferences*.

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[4] Lisbeth Aggestam, 'Introduction: Ethical Power Europe?', op.cit., p. 4.

2   The internal and external factors in the evolution of EU identity

The emergence and affirmation of the international human rights regime is part of what has been referred to as the phenomenon of "normative globalization"[5], characterized by "the increased normative ambitions of international society"[6], where principles of democracy, human rights and good governance have increasingly acquired prominence. Although states have remained central in the construction of an international normative regime, their sovereignty "has increasingly been redefined as legitimate authority, [that is] authority based on the maintenance of human rights and democracy".[7] This has led to the partial erosion of the concept of state sovereignty, which is becoming increasingly conditional to the state respect and implementation of human rights and democratic principles as a source of international legitimacy.[8]

Simultaneously, the end of the Cold War has allowed the spread of multilateralism, through which Western states have tried to secure the affirmation of international normative objectives by binding themselves and other states to international organizations, of which the United Nations (UN) has become the most representative in the field of human rights.[9] Against this backdrop the protection and promotion of human rights have increasingly become legitimate principles and objectives for domestic and foreign policy and human rights have been placed "as a regular and well established part of international relations".[10]

The international human rights regime represents the backdrop against which the EU internal protection of human rights has evolved showing both typical and peculiar characteristics vis-à-vis it. The presence of the international human rights regime has inspired the main agent behind the inclusion of the protection of human rights in the EC/EU, i.e. the European Court

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[5] Ibid.

[6] Andrew Hurrell, "Power, principles, and prudence: protecting human rights in a deeply divided world", in Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 2000, p. 277.

[7] David Held, *Global Covenant. The Social Democratic Alternative to the Washington Consensus*, Cambridge, Polity Press, 2004, p. 119.

[8] Karen Smith, "The EU, human rights and relations with third countries: a foreign policy with an ethical dimension?", in Karen Smith and Margot Light (eds.), *Ethics and Foreign Policy*, Cambridge: Cambridge University Press, 2001, p. 203.

[9] Jack Donnelly, "International Human Rights: a Regime Study", *International Organizations*, Vol. 40, No. 3, 1986 and more recently Jack Donnelly, *International Human Rights*, Second Edition, Oxford, Westview Press, 1998.

[10] Jack Donnelly, "Social Construction of International Human Rights", in Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 1999, p. 78.

of Justice (ECJ), which has often based its rulings on the human rights covenants and conventions signed by the EU member states. Similarly the actions of the European Parliament (EP) for the institutionalization of human rights protection in the EC/EU have been increasingly justified in terms of universal human rights discourse. Finally, the evolution of the international human rights regime has also served EC member states to define, through the EPC activities, the EU identity in international affairs. The EU internal reforms, which such activities have promoted, though, have had to keep into account not just the international human rights regime but also, and perhaps more importantly, the constitutional traditions of the EU member states as well as the presence of the European Convention on Human Rights (ECHR) on the continent.

This section details *the main features of the international human rights regime* and it then proceeds to explain the evolution of the internal human rights protection within the EC/EU showing how *it is derived both from the international human rights regime and from some characteristically EU features*, represented by the ECHR and the member states' constitutional norms. It finally concludes by discussing *EU normative commonality and distinctiveness vis-à-vis the international human rights regime and the EU identity that such normative basis has originated.*

2.1   Sources of EU internal protection of human rights

The emergence of the international human rights regime is a recent phenomenon that can be traced back to the end of World War II.[11] Confronted with one of the most vicious crime against humanity, the holocaust, Western countries decided 'to do something' in order to prevent similar events in the future.[12] Hence they posed the respect for human rights and for fundamental freedoms for all as the cornerstone of the newly established United Nations.[13] Subsequently, in 1948, the UN drafted and approved the UDHR, which has been defined as a

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[11] For example Charles Leben argues that "it is only since 1945 that the philosophy of human rights and its translation into law have known their present success". Charles Leben, "An EU Approach to Human Rights?", in Philip Alston (ed.), *The EU Union and Human Rights*, Oxford, Oxford University Press, 1999, p. 83.

[12] On 9 December 1948 the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. For a thorough account of the negotiation process, main actors, the drafting and eventual adoption of the Convention see Samantha Power, *A Problem from Hell: America and the Age of Genocide*, New York, Basic Books, 2002.

[13] See the Preamble of the Charter of the United Nations.

"decisive step in codifying the emerging view that the way in which states treat their own citizens is not only a legitimate international concern but subject to international standards".[14]

Since the early days of the UN Charter and the UN Universal Declaration of Human Rights (UDHR) numerous conventions have been signed and ratified, two major international covenants have entered into force, and international advocacy groups have grown in strength and scope.[15] Yet, human rights norms had a very marginal role during the Cold War. First, they were often undermined by ideological and strategic interests. Second, the concept of human rights clashed with an even more fundamental concept in international relations – sovereignty. Despite having adopted human rights norms in its Charter, the United Nations reiterated the importance of sovereignty in international relations.

The human rights-sovereignty dichotomy was also instrumental in securing that the UDHR and the two subsequent International Human Rights Covenants remained non-binding throughout most of the Cold War and "little more than a strong statement of norms", with weak monitoring mechanisms, and inexistent implementation or enforcement powers.[16] However, the importance of the Declaration and of the two Covenants rested on the fact that they presented "an authoritative statement of internationally recognized human rights" and marked the internationalization of human rights norms.[17] Their existence played an important role in the *de facto* introduction of human rights protection in the European continent where state sovereignty was being redefined by the activities of the Council of Europe and the evolution of the European Communities.

On the European continent, in 1950, the Council of Europe inspired by the UDHR, established the European Convention of Human Rights (also referred to as the Rome Convention), which all the EC founding members, with the exclusion of France, had signed

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[14] Jack Donnelly, 'Social Construction of International Human Rights', op. cit., p. 73.
[15] The main conventions were: Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989). The two main covenants were: International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966).
[16] Jack Donnelly, 'Social Construction of International Human Rights', op. cit., p. 73.
[17] Ibid., p. 75.

and ratified by the early 1950s.[18] The ECHR created the European Court of Human Rights, which was attributed the task of judging on member states' compliance to the mostly civil and political rights that the Convention covered.[19] The ECHR had the purpose of operationalizing the UDHR and making it enforceable on the European continent, giving the rights to the citizens of the signatory member states to act against their own state before an international court. The binding character of the ECHR and of the judgments of its relevant Court made it, and still holds true, one of the strongest human rights regimes in the world.[20]

Despite the presence of the ECHR, until the 1992 Maastricht Treaty human rights protection and promotion within the EC/EU had not officially been included in the treaties and "neither fundamental rights nor the concept of EC citizenship had been recognized".[21] At the inception of the process of European integration, the three Communities were mainly conceived as economic organizations, whose main task was the welfare of their six member states to be reached through an ever-growing economic cooperation. In their provisions the treaties establishing the three communities only contained guarantees for the member states' citizens considered as economic actors in line with the four freedoms established by the Treaties.[22]

Although it is widely maintained that the construction of the European communities was informed by the democratic peace proposition, according to which democracies do not fight each other, the introduction of specific and binding provisions to democratic principles and human rights in the European founding treaties was hindered by three main factors: (i) the intergovernmental nature and procedures of the nascent EC, (ii) the diffidence of the major

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[18] For an intergovernmental account of the creation of the ECHR see Andrew Morawcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe", *International Organization* 54, 2, Spring 2000, pp. 217-252.

[19] In 1965 the EU Social Charter, also negotiated within the Council of Europe, entered into force. It includes socio-economic rights in line with those established in the International Covenant on Economic Social and Cultural Rights, such as rights to work, collective bargaining, and social security. However, compared to the ECHR, its ability to enforce those rights is weaker as complaints can only results in general recommendations by the Council on improvements.

[20] In Charles Leben's words "the Convention, which was intended by its authors to be the first embodiment in actual law of the Universal Declaration, established a system for monitoring compliance with its provisions that is to this day unequalled, either at the regional level or at the universal." Charles Leben, op. cit., p. 88.

[21] Philip Alston and James Weiler, "An 'Ever Closer Union' in Need of a Human Rights Policy: the EU Union and Human Rights" in Philip Alston (ed.), *The EU Union and Human Rights*, Oxford, Oxford University Press, 1999, p. 9.

[22] The four freedoms included: free movement of goods, free movement of services and freedom of establishment, free movement of persons (and citizenship), including free movement of workers, free movement of capital.

member states towards including political provisions, which would reduce their sovereign prerogatives and, (iii) the mostly economic nature of the then three European communities. In the 1950s, notwithstanding the importance attributed to democracy and human rights principles by EC member states, little, if any, efforts could therefore be spent in including them in the European treaties.

The presence of the ECHR and the growing powers that the European Court of Justice (ECJ) accrued through its case law, favored the "creeping constitutionalism"[23] of human rights protection and promotion within the EC in the 1960s and 1970s.[24] After having established EC law supremacy over member states' law in 1964, in 1970 the ECJ affirmed that fundamental rights were general principles of Community law.[25] In so doing the ECJ cut for itself the role of exercising its jurisdiction on the "Community provisions and actions for conformity with human rights".[26] Although tensions with national courts, in particular the German and Italian constitutional courts, characterized these first steps of the ECJ jurisprudence, throughout the 1980s, its evolving activities, supported by the activism of the European Parliament[27], which began to accrue legislative and control powers after its first suffrage election in 1979, led to the development within the EC of a policy for the protection of human rights in the absence of a formal legal basis.[28]

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[23] James Weiler (ed.), *Constitutionalism in Transformation: EU and Theoretical Perspectives*, Oxford: Blackwell, 1996.

[24] The important role played by the ECJ in the de facto affirmation of human rights protection has been analysed by several authors. Two texts that exemplify the main literature are Anne-Marie Burley and Walter Mattli, "Europe Before the Court: A Political Theory of Legal Integration", *International Organization* 47, 1, Winter 1993, pp. 41-76; and Frank Schimmelfenning, "Competition and community: constitutional courts, rhetorical action, and the institutionalization of human rights in the EU Union", *Journal of EU Public Policy*, 13, 8, December 2006, pp. 1247-1264.

[25] The Court's ruling that is generally considered at the basis of this new approach is *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, ECJ case 11/70, [1970] ECR 1125.

[26] In 1969 the Court argued that fundamental human rights should be included in the general principles of Community law that the Court has to protect. Stauder v. Ulm (Case 29/69), 1969 ECR 419, ECJ. Andrew Clapham, *Human Rights and the EU Community: A Critical Overview*, Baden-Baden, Nomos, 1991, p. 29, quoted in Karen Smith, *EU Union Foreign Policy in a Changing World*, op. cit., 2003, p. 99.

[27] In the 1984 Spinelli Draft for an EU Constitution proposed by the Parliament and then rejected by the Council a catalogue of fundamental rights was included. In 1989 the Parliament drafted a human rights declaration, which yet was not endorsed by the Council.

[28] According to Charles Leben the Court has had recourse to two methods: (i) "it has elevated the constitutional traditions common to the Member States concerning the protection of fundamental rights to the Community level by transforming them into general principles of the Community law" and (ii) "[it has turned] to the EU Convention of Human Rights, which has been ratified by all the Member States and consequently is of particular significance". Charles Leben, op. cit., pp. 88-89.

The actions of the ECJ and the EP were justified not only on the basis of the ECHR but perhaps even more importantly on the basis of the constitutional traditions of the member states and to a lesser extent to the agreements that they had signed at international level.[29] Therefore the *de facto* inclusion of human rights protection within the EC presented three main dimensions: the international (Universal Declaration, International Covenants, and International Conventions), the regional (EU Convention on Human Rights and rulings of the EU Court for Human Rights), and the national (constitutional traditions of the member states). All three dimensions coexist in the EU human right regime, define its peculiarity and, as it will be shown, have been made explicit in the main treaties of the EU, thus creating the normative basis on which the EU identity has been constructed.

2.2   *Formalization of EU internal protection of human rights*

The activism of the ECJ was partially recognized by the three EC political institutions, the Council, the Commission and the Parliament in their joint declaration of 1977, which stated their support for the basic principle of non-violation contained in the jurisprudence of the ECJ.[30] However, until the signing of the Maastricht Treaty, the resistance of some member states led to the result that integration in the field of human rights protection remained only of a negative type. Rather than establishing positive measures and pro-active policies, this meant that human rights were protected through the prohibition of violations of the principles identified by the ECJ. All attempts carried out by the Parliament and by the Commission to propose positive measures were rejected by the Council. Therefore up to 1992, and less frequently but still significantly in the following years, there has been a tendency to rely excessively upon judicial remedies, such as pursuit of legal remedies at national and ECJ

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[29] In the case C-44/79 Hauer v. Land Rheinland Pfalz, [1979] ECR 3727 at 3744 the Court stated that "fundamental rights form an integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the member states, so that measures which are incompatible with fundamental rights recognised by the Constitutions of those states are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the member states have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of the Community law".

[30] The Joint Declaration referred to the ECJ case law in establishing that human rights principles within the EC shall be drawn from the rights guaranteed by the Constitutions of the member states and from the European Convention on Human Rights signed in 1950. This posed the groundwork for the formalization of human rights protection in the successive Treaties of the Union, which drew inspiration from the Court's rulings in its case law, as exemplified in their references to the ECHR and to the constitutional traditions of the member states. Joint Declaration by the Parliament, the Council, and the Commission, *Official Journal*, C103/1, 1977.

level, which in turn has led to inadequate institutional arrangements to give effect to human rights policies in internal matters.

At the same time the external interaction of the EC through the then newly-established mechanism of European Political Cooperation (EPC) provided a further push to specify not just the economic but also the internal normative character and thus the identity of the EC in world affairs. In the early 1960s and even more so in the 1970s, following talks concerning the accession of new members, the EC put forward clear and binding political conditions for admission. In 1962, the EP adopted the Birkelbach Report, which stated that "only states which guarantee on their territories truly democratic practice and respect for human rights and freedoms can become members of our community".[31]

In the early '70s this concept was reiterated in the Luxemburg Report (1970), which began to make reference to a distinctive European identity in the field of international relations, and even more so in the Copenhagen Declaration on European Identity (1973), where the principles of democracy, rule of law, social justice and respect of human rights were made a cornerstone of European international identity. Similarly, respect for human rights and maintenance of democracy were declared to be the political basis of EC membership. In 1978, the Council solemnly declared that "respect for and maintenance of representative democracy and human rights in each member state are essential elements of membership of the European communities".[32]

In those years these declarations and reports precluded the accession of Franco's Spain, Salazar's Portugal and Greece under the rule of the Colonels. Simultaneously they also helped to spread the idea of the EC as something more than just an international economic organization. After the collapse of the dictatorial regimes in Spain, Portugal and Greece, these countries began progressive reforms towards democracy and entered into the EC accession process, which lasted for almost ten years for all three countries.[33] Although at that time the EC was still an inherently economic organization, an infant type of political conditionality was imposed on the three acceding countries in the form of procedural

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[31] Birkelbach Report quoted in Lawrence Whitehead, *The International Dimensions of Democratization: Europe and the Americas*, Second Edition, Oxford, Oxford University Press, 2001, p. 267.
[32] Declaration on Democracy, Copenhagen European Council, 8 April 1978, Bulletin EC3-1978, pp. 5-6.
[33] Greece became a member of the EU in 1981, while Spain and Portugal became members in 1986.

democracy criteria such as a liberal democratic constitution in place, free elections and predominance of pro-democratic parties.

More substantive conditions were imposed for the entry of Central and Eastern European Countries (CEECs) in the 1990s. This was made conditional to the respect of the 1993 Copenhagen Criteria, whose political criteria included: stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities. These political criteria were later to include more detailed provisions such as the strengthening of state capacity and the independence of the judiciaries, the pursuit of anticorruption measures and the maintenance and strengthening of a whole range of both human and minority rights.[34]

The Maastricht Treaty (TEU) and the Treaty of Amsterdam formalized the importance of human rights within the EU that the ECJ and EP activities on one side and the EPC interaction with the international stage and applicant countries on the other had *de facto* established. At the EU constitutional level, in 1992, for the first time, the TEU stated that the EU shall respect fundamental rights. Similarly, it formalized the sources of human rights as those that are guaranteed by the ECHR and as they result from the constitutional traditions common to the member states, as general principles of Community law. However it has been argued that the TEU still contained "weak provisions in the pursuit of a human rights policy in the internal sphere [while] it provided a solid legal basis for the inclusion of human rights clauses in the external sphere".[35]

The Treaty of Amsterdam went a step forward as it gave the EU a stronger role to promote human rights in the internal sphere by stating that the Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms and the rule of law.[36] This entailed that membership rights may be thus suspended in case of breach of human rights by a member country although no specific procedure was specified at that time.

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[34] More specific requirements were elaborated and specified in the Agenda 2000. According to them, the EU Commission monitored the progresses of candidate countries through official visits, fact- findings and reports, which were publicly exposed and discussed. In the reports particular attention was paid to the assessment of the political Copenhagen criteria. This process of benchmarking, naming and shaming has certainly had an influence in raising the awareness of candidate countries on the importance of adhering, including and adapting to them.

[35] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, The Hague: Martinus Nijhoff Publishers, 2004, p. 82. Even with the Treaty of Maastricht the ECJ has not been attributed jurisdiction over member states acts that are independent from the implementation of Community directives and regulations. Therefore the ECJ still remains a weaker court vis-à-vis the European Court of Human Rights.

[36] Article 6 of the Treaty of Amsterdam.

Similarly, the Treaty empowered the ECJ to apply human rights standards to acts of Community institutions. Finally, the Treaty of Amsterdam incorporated the Social Chapter, which gave to the Community the responsibility to decide in areas such as improvement of working conditions, freedom of association and consultation of workers.[37]

More recently, in 1999, an intergovernmental Convention was gathered with the strong support of Germany to produce a non-binding Charter of Human Rights and Fundamental Freedoms (Charter), which was proclaimed in Nice on 7 November 2000. The Charter heavily draws from the ECHR, the constitutional traditions of member states and the international conventions to which member states belong. Despite the reluctance of the United Kingdom and Poland, it also includes socio-economic rights such as right to collective bargaining and action (art. 28), the recognition of social security and social assistance (art. 34) and health care (art. 35) and the right to access to services of general economic interest (art. 36). The Charter has further contributed to formalize the human rights principles and provisions already existent and enforceable in the EU, making them visible to all EU citizens and providing further internal and external legitimacy for the EU. Similarly, the Charter has been included within the 2007 Lisbon Constitutional Treaty, which is presently under ratification.[38]

Despite these developments, though, it is still true what Alston and Weiler maintained in 1999 that "the member states are, and will remain, the principal guardians of human rights within their own territories".[39] The ECJ has not yet assumed similar prerogatives in human rights protection as those of the European Court of Human Rights. The provisions of the Charter only concern the institutions of the Union and apply to member states only when they are implementing Union law.

2.3   *The normative basis of EU identity*

The two sub-sections above have shown the important role played by the international human rights regime in defining the internal EU human rights regime through the activities of the

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[37] Karen Smith, op. cit., p. 100.
[38] This will also give the possibility to the Union to enter the ECHR and other international instruments for human rights protection.
[39] Philip Alston and James Weiler, "'An Ever Closer Union' in Need of a Human Rights Policy: the EU Union and Human Rights", op. cit., p. 7.

ECJ and EP. At the same time their frequent reference to the ECHR and member states' constitutions has provided the peculiar character of the EU internal human rights regime. The presence of the international human rights regime has also served EC member states to define, through the EPC activities, the EU identity in international affairs and set stringent requirements for the accession of Southern EU countries in the 1980s and Eastern EU countries in the 1990s.

Although some member states have appeared reluctant towards the formalization of human rights protection within the EC/EU, the activities of national (Germany), intra-national (Italian and German constitutional courts), supranational (ECJ, Parliament and Commission) and international actors have all contributed to the creation of an EU internal human rights regime, which has been formalized in the successive treaties of Maastricht, Amsterdam, and Nice. This internal development has provided the normative basis on which an EU international identity has been built, where respect and promotion of human rights have become one of the distinctive features of the EU and its member states.

In analyzing the development of the EU internal protection of human rights it has been evidenced that the main actors behind its evolution have been inspired in their activities by the international human rights regime as well as by the internal human rights practice of the ECHR and the constitutional traditions of the member states. What appears is a mixed internal regime with typical as well as peculiar characteristics. As it has been proposed by Charles Leben, in order to clarify the commonality and distinctiveness of the EU human rights regime vis-à-vis the international one it is necessary to consider two dimensions: the one provided by the universal *jus commune* and the one provided by the European *jus commune*.[40] The former refers to the main international practices in human rights protection while the latter concerns those traditions that are common to all EU member states.[41]

As far as the universal *jus commune* is concerned the first obligatory reference is to the UDHR that inspired the ECHR to which all EU member states are now subject. Although as of yet the EU has not become a party to the ECHR and only reference to it have been included in the successive EU Treaties, the ECHR and the international agreements to which

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[40] Charles Leben, "A EU Approach to Human Rights?", op. cit.
[41] The national *jus proprium* of each member state is not considered as that has not been included in the EU *acquis*.

all EU member states are parties have been instrumentally utilized by the ECJ in its case law. Similarly, in its campaigns for the affirmation of human rights protection within the EC/EU the EP has often made reference to the international human rights regime.

Therefore it is fair to argue that the EU and its member states subscribe to the universal "rights called sacrosanct from which no derogation is permitted", such as, for example, the right to life, liberty and security, the prohibition of torture, slavery and other degrading treatment or punishment, the equality before the law and the legality of punishment.[42] These rights are to be found almost identically in the UDHR and in the Charter. At the same time the EU makes it explicit that it subscribes to the 1993 Vienna Convention stressing the universality, indivisibility and interdependence of all human rights. In this respect the EU and its member states can be described as helping to "harden international human rights law".[43]

As far as the EU *jus commune* is concerned this is directly derived from the EU member states and then translated at EC and EU level. Certainly the first aspect that should be underlined is the member states' social democratic traditions that have led to the EU paying greater attention to social matters, which in terms of human rights can be related to the second-generation of human rights.[44] This peculiarity has been underlined in the literature. Mario Telò's has argued that the social traditions of EU member states make the EU a civilian actor.[45] Similarly, Ian Manners has noted that the EU interpretation of human rights shall be categorized as promoting "associative human rights" where not just individual but also collective rights are protected.[46]

A second important aspect that does not find its origin in the international human rights regime is the member states and EU prohibition of death penalty. This principle was enshrined already in the ECHR, which has played an important role in the elimination of death penalty among all EU member states. While death penalty is widely practiced worldwide, on the EU continent it has been banned and the Charter affirms at art. 2, "no one

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[42] Charles Leben, "Is there a EU Approach to Human Rights?", op. cit., p. 77.
[43] Karen Smith, *EU Union Foreign Policy in a Changing World*, op. cit., p. 107.
[44] In the Charter the EU Union has expressly included the Chapter IV, Solidarity, that enshrines the social rights of EU Union citizens, such as, for example, right of collective bargaining and action (art. 28), right to social security and assistance (art. 34), right to health care (art. 35).
[45] Mario Telò, *Europe a Civilian Power? EU, Global Governance, and World Order*, London, Palgrave Macmillan, 2006.
[46] Ian Manners, "The Constitutive nature of values, images and principles in the EU Union", in Sonia Lucarelli and Ian Manners (eds.) , *Values and Principles in EU Union Foreign Policy*, London, Routledge, 2006.

shall be condemned to death penalty, or executed". This is one of the issues where the EU and its member states have been most active in the international human rights regime.

A third aspect, this time on the negative side, is the protection of minorities. The protection of minorities has never explicitly been included in the EC and EU treaties and even the Charter does not contain specific provisions. This has often been attributed to the EU refusal to accept any classification of citizens either on the basis of race, sex, or ethnicity. While this concept is upheld in international covenants and in the American tradition, in the latter permitting affirmative action, the EU and its member states have been slow in accepting it. A strong stimulus came from the Balkan wars and the accession of the CEECs. Considering that ethnicity was one of the main causes of the wars and of the instability in the region, the EU established in the Copenhagen criteria the protection of minority as a prerequisite for entry.[47] Interestingly though this has not yet been included as a duty of the EU member states. The Commission has issued various directives against discrimination and similarly the Organization for Security and Cooperation in Europe (OSCE) and the European Council have elaborated various non-binding documents on the topic. The most significant is the EU Framework Convention for the Protection of National Minorities of 1 February 1995, which however has not yet been ratified by all EU member states.

Against this backdrop it is undeniable that the EU and its member states have developed a collective identity, which includes commonalities and distinctive characteristics vis-à-vis the international human rights regime. Being human rights universal the EU and its member states have internalized the prescriptions of the main normative declarations, agreements and conventions to which they have subscribed in the field of human rights. At the same time some distinctive EU characteristics have been evidenced in the insistence on social and economic rights, the prohibition of death penalty and the limited protection of minorities.

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[47] For Rosa Balfur "one of the EU's political priorities that clearly emerged in the enlargement was respect for and protection of minorities". Rosa Balfur, "Principles of Democracy and Human Rights. A review of the EU Union's Strategies towards its neighbours", in Sonia Lucarelli and Ian Manners (eds.) , *Values and Principles in EU Union Foreign Policy*, London, Routledge, 2006, p. 120.

3   Internal and external factors in the EU promotion of human rights

The presence of the international human rights regime has influenced states' foreign and domestic policies. This is true both for the actions of Western governments in favor of human rights as well as for the actions/reactions of countries violating such norms. To this regard it has been amply demonstrated that states have been both instrumental in the creation of and subject to the international human rights regime.

Bilateral activism began in the mid 1970s with the Carter Administration, which placed human rights as a priority for American foreign policy. Simultaneously the Netherlands and Scandinavian countries began to include concerns on human rights in their foreign and development policies. Finally, the rise of transnational human rights networks and their campaigns redirected liberal Western democracies' attitudes in important cases, among which South Africa's was the most relevant.

As far as countries charged with the violation of human rights regime are concerned, the combination of a human rights regime and of the foreign policies of Western states in support of human rights has been crucial in their internal changes. The theory goes that states, or better governments, in their pursuit of international recognition and legitimacy have to allow some 'instrumental' and 'strategic adaptation'. However, this sets into motion a process of 'identity transformation', so that norms adopted for instrumental reasons and only formally institutionalized, are later maintained for reasons of belief and identity, i.e. are internalized.[48]

Influenced by and contributing to the international human rights regime the EU and its member states have actively participated in the promotion of human rights worldwide. However, the peculiarity of the EU as an international actor, the evolution of its internal human rights regime and the coexistence of member states with different ethical and material concerns have contributed to the development of a complex structure for the EU promotion of human rights. This section evidences how the EU identity based on the mixed set of norms shown above has supported the affirmation of the EU international identity as a human rights promoter, which in turn has influenced, and still does, member states' interests and

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[48] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights. International Norms and Domestic Change*, Cambridge University Press, 2001, pp. 7-10.

preferences that are at the basis of the elaboration and implementation of the EU human rights promotion.

3.1   EU international identity in human rights promotion

During the Cold War one of the main confrontations over human rights opposed Western countries in favour of political and civil rights and developing ones, supported by the Soviet Union, in favour of social and economic rights. This tension explains the necessity to recur to two distinct International Human Rights Covenants. Similarly human rights and development were seen as two ontologically different concepts, when not at variance with one another. Development, it was argued in the West, was about economic growth, which human rights could neither promote nor facilitate. Therefore, human rights, when promoted, were allegedly pursued for their own inherent value, although this rhetoric often masked strategic and political objectives.

This situation partially changed with the rapprochement of development and human rights policy in the so-called human rights approach to development. A human rights approach to development highlights the role played by all human rights in creating a fertile ground for growth. The linkage has been favored by the workings of the United Nations and its ancillary institutions. In particular, the United Nations Development Programme (UNDP) has been among the first international entities to link human rights and development in its cooperation with third countries through the elaboration of the concept of 'human development'. This is defined as "the process of enlarging people's choices – increasing their opportunities for education, health care, income and employment, and covering the full range of human choices from a sound physical environment to economic and political freedoms."

The human rights approach to development has thus twisted the previous belief in economic development and in the trickle down effect that links economic growth with modernization. Human rights, and in particular economic and social human rights, have become the means and not just the results of development. However, contemporary analyses still show that today the promotion of civil and political human rights, often connected to discourses of

democracy promotion, is still prioritized over the promotion of economic and social rights.[49] Nonetheless the increasing concern over the second-generation of human rights, i.e. social and economic rights, has become the core feature of the human rights approach to development, which is one of the main channels to pursue human rights promotion and undertake political conditionality.[50] The evolution of EC/EU policies for the promotion of human rights followed the international changes in Western development thinking.

Human rights promotion was not included in the early EC treaties reflecting the mostly economic nature of the EC. Not even among the tasks attributed to the Commission in its dealings with developing countries was there any mention of human rights principles. Although inspired by the Charter of the United Nations, it has been noticed that "the economic aspects of association provided the focus, avoiding any direct suggestion of a wider ethical dimension that might have incorporated a human rights element".[51] Thus as argued by Elena Fierro "until the late 1970s, human rights were not, neither *de jure* nor *de facto*, part of the then European Economic Community's (EEC) external policy".[52]

While in the case of the internal protection of human rights it was the ECJ that played a key role in its *de facto* affirmation through its case law, in the case of the promotion of human rights it was the intergovernmental European Political Cooperation (EPC) that kick-started the momentum on which, starting from the early 1980s, the EP built its significant influence. This coincided with its first election by direct suffrage in 1979 and its increasing legislative and veto powers.

Inspired by the EPC reference to human rights principles as the basis of European international identity shown in the previous section and reinforced by the development of a European discourse based on its distinctiveness as an organization whose members had to respect human rights, the EP began as early as the mid-1970s to request the EC to include human rights conditionality in its development aid.[53] In the late 1970s and early 1980s this

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[49] Lin Chun, "Human Rights and Democracy: The Case for Decoupling", *The International Journal of Human Rights*, Vol. 5, No. 3, Autumn 2001.
[50] See on this aspect Brigitte I. Hamm, "A Human Rights Approach to Development", *Human Rights Quarterly*, Vol. 23, 2001, p. 1006.
[51] Andrew Williams, *EU Human Rights Policies: A Study in Irony*, Oxford, Oxford University Press, 2006, p. 19.
[52] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, The Hague, Martinus Nijhoff Publishers, 2004, p. 41.
[53] Significant were the cases of Uganda under Amin in 1977 and the Central African Empire under Bokassa in 1978. In both cases the EC attempted to answer to the request of the Parliament and to sanction the grave

was hindered by the internal division of the member states and the sensitivity of the associate developing countries governments that would see such conditionality as a form of masked neocolonialism. Therefore the first two Lomé Conventions (1975-1980 and 1980-1985) did not include reference to human rights nor suspension clauses. Despite these failures in 1983 the EP began to issue reports on the situation of human rights in the world. According to Fierro these early reports represented the first critical instance of EP pressure on the Commission to establish a comprehensive human rights policy.[54]

The fruits of EP pressure were reaped in the 1980s, as a more dynamic EPC reaffirmed the importance of the principles of democracy and human rights for European foreign policy. This is exemplified by subsequent declarations of the European Council, of which the 1986 joint declaration on human rights by the foreign ministers is the most important. Similarly the EPC took steps to affirm human rights with measures against South Africa in 1985 and 1986 and China in 1989.[55] In 1989 another significant step was undertaken by the twelve: at multilateral level they made for the first time a joint intervention in the United Nations Commission for Human Rights (UNCHR) and "declared before the UN General Assembly that their commitment to human rights in the world emerged from the values on which the EC was founded".[56]

Influenced by the evolution of a human rights approach to development at international level, the Lomé IV Convention of 1989 between the EC and the African-Caribbean-Pacific Countries (ACP) became the first multilateral development agreement ever to include political conditionality. However, it should be noted that it did not include an automatic suspension clause, although the EC/EU would reserve the right to interpret it in this way. Only in 1995 the Commission proposed and the Council enacted a regulation for which all association agreements and economic cooperation agreements should contain an essential

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violations of human rights that were perpetrated through a declaratory policy, while not breaking the agreements with these two countries that were parties to the Lomé I Convention. Some projects were suspended when they could be connected to possible grave violations.

[54] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, op. cit., p. 61. In particular the EP referred to the EU public opinion as the source of legitimacy of these new responsibilities to which it hoped the EU institutions could respond. The early reports on human rights in the world were also important for two other reasons: first, they demonstrated that the Parliament's focus was mostly concerned with political and civil rights; and secondly, the Parliament urged the initiation of dialogue on human rights, which, together with suspension clauses will become a characteristic feature of EU instruments to promote human rights abroad.

[55] Martin Holland, "Bridging the Capability-Expectations Gap: A Case Study of the CFSP Action on South Africa", *Journal of Common Market Studies*, Vol. 33, No. 44, 1995 and Philip Baker, "Human Rights, Europe and the People's Republic of China", *The China Quarterly*, 2002.

[56] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, op. cit., p. 79.

standard provision for the protection of human rights, which would enable the EU to suspend cooperation activities in the case of violations. This was included in the Cotonou Convention in 1995. Similarly a political dialogue was set up. As argued by Martin Holland "political dialogue – or perhaps more accurately political conditionality – was no longer taboo but became an essential element of a new approach to development issues".[57]

At the same time, in 1991, the Council issued a resolution on Human Rights, Democracy and Development, which affirmed that "human rights and democracy form part of a larger set of requirements in order to achieve balanced and sustainable development", thus pointing to the need to include human rights concerns in development cooperation policy.[58] The resolution called for a common, coherent and consistent approach of the EC and its member states aimed at promoting human rights and democracy in their cooperation with developing countries.[59]

Similarly, thanks to the contribution of some EU member states, such as Scandinavian countries, the Netherlands, Germany and the United Kingdom, which had been among the first to introduce the principles of democracy promotion and human rights in their foreign policy and development strategies in 1990 and 1991, the Maastricht Treaty listed those same principles among the main aims of the Union's CFSP and development policy. In a sense it is possible to argue that given the previously mostly economic character of the EC, it would have been premature and even a breach of the treaties to attribute to the EC the legal responsibility for creating a human rights policy outside its competences in development assistance. This became only possible with the politicization of the EC into the European Union.

In the Treaty the promotion of human rights, along with democracy and good governance promotion, were weaved together through the concept of conditionality. The Treaty,

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[57] Martin Holland, *The EU Union and the Third World*, Basingstoke, Palgrave, 2002, p. 197.
[58] Council Resolution of November 1991 on 'Human Rights, Democracy and Development'.
[59] It is interesting to note that the resolution made a specific reference to its validity and application for both the EU Community and the member states' development programs Although it was not in the form of a binding decision or regulation its importance rested on the fact that it represented the first formalization of the duty of the Community and its member states to include human rights principles in their external actions. It affirms that "the Community and its Member States will explicitly introduce the consideration of human rights as an element of their relations with developing countries; human rights clauses will be inserted in future cooperation agreements. Regular discussions on human rights and democracy will be held, within the framework of development cooperation, with the aim of seeking improvements". Council Resolution of November 1991 on 'Human Rights, Democracy and Development'.

however, did not set up instruments to translate these principles in actual policies and this legislative void has been filled by Commission's communications and Council resolutions, which have subsequently pushed for the inclusion of these principles over three distinct policy areas: the enlargement process, external relations and trade relations. The first of the three policy areas proved the most significant road test for the newly institutionalized principles of democracy promotion and their relevant instruments. Emboldened by the positive results of the enlargement process in the 1990s, but still under strong criticism for the lack of a strategic approach to the issue, eventually in 2001 the Commission issued a communication on *EU Role in Promoting Human Rights and Democratization in Third Countries.*[60] This proposed a strategic approach to these principles in EU external relations, keeping into consideration the coherence of EU institutions action, their consistency and the coordination with member states.[61]

The necessity to define its identity in international affairs, the new opportunities created by the changes in the international system, the legal, institutional and normative basis provided by the evolution of the internal regime of human rights protection and the activism of key national and supranational actors have led to the definition and solidification of the EU international identity as a human rights promoter. For Alston and Weiler "a strong commitment to human rights is one of the principal characteristics of the EU".[62] This implies as well that member states' identities as promoters of human rights have been strengthened because they are now bound both by the requirements of the international human rights regime and by the requirements deriving from their membership of the EU.

3.2   EU identity and states interests in the promotion of human rights

EU human rights promotion has thus assumed a more definite nature in particular after the end of the Cold War. In turn, as it has been evidenced, this has given rise to and strengthened the EU international identity as a human rights promoter. While it has been noted that the human rights values that the EU and member states uphold are both in common with and distinct from those of the international human rights regime and have shaped a complex EU

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[60] Commission Communication, *EU Role in Promoting Human Rights and Democratization in Third Countries,* COM (2001) 252 Final, Brussels, 8 May 2001.
[61] In 2004 the Commission published a review of the implementation of Commission Communication.
[62] Philip Alston and J. Weiler, "An Ever Closer Union in Need of a Human Rights Policy: the EU Union and Human Rights, op. cit., p. 6.

internal and international identity, it remains to be established how such identity and the interaction between the international context, EU main institutions and member states, influence the latter's preferences and interests, in turn determining the EU promotion of human rights. This sub-section maintains that the EU international identity has created an enabling environment for the articulation of human rights policies, although it is not the only factor that underlines social interaction at EU level.

The EU international identity has been considered a causal factor of EU external actions by some authors.[63] For Helene Sjursen, for example, while it is impossible to discard economic and security concerns, the values underlying the EU identity are an important explanatory factor behind the decision to enlarge to the CEECs because a sense of "kinship based duty" has motivated the enlargement process. This indirectly explains the EU reluctance in accepting Turkey, where similar economic and security concerns can be evidenced in comparison with the CEECs but no such historical and cultural commonality exist with EU member states.[64] A similar point is made by Karen Smith for whom the EU identity based on liberal principles can be seen as the main driver behind the normative enlargement to CEECs.[65]

The study of the mechanisms through which the EU international identity influences EU member states refers to general theories of social constructivism, which consider the role of communicative dynamics. In his study on the normative dimension of the enlargement process, Schimmelfenning has aptly pointed out that such process cannot be wholly explained by intergovernmentalism. For the author it is necessary to refer to the EU as based on a European and liberal collective identity, for which "the belief in and adherence to liberal human rights are the fundamental beliefs and practices".[66] In such an environment rhetorical action based on the justification of interests on the grounds of the community's standards of legitimacy, has changed the preferences of those member states that were initially against

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[63] For a review of such studies see Ian Manners and Richard Whitman, "The 'difference engine': constructing and representing the International identity of the EU Union", *Journal of EU Public Policy*, Vol. 10, No. 3, 2003, pp. 380-404.

[64] Helene Sjursen, "Why Expand? The question of legitimacy and justification in the EU's enlargement policy", *Journal of Common Market Studies*, Vol. 40, No. 3, 2006, pp. 491-513.

[65] Karen Smith, "The EU, Human Rights and Relations with Third Countries: Foreign Policy with an Ethical Dimension", op. cit.

[66] Frank Schimmelfenning, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the EU Union", *International Organizations*, Vol. 55, No. 1, p. 59, 2001.

enlargement, mostly Southern EU member states, which became "rhetorically entrapped".[67] This explanation points out that a logic of appropriateness rather than bargaining shall be considered when studying EU human rights promotion.

Similarly, Sedelmeier has listed a number of cases, such as military intervention in Kosovo, EU policy for the abolition of death penalty and EU criticism of Russian policy in Chechnya, where the limits of the explanatory power of intergovernmental bargaining are evident. For the author these cases require an explanation that considers the norms characterizing the EU identity and the behavioral obligations that they entail. In the presence of such norms and obligations communicative actions, such as logic of arguing and rhetorical action, can be seen as having determined the foreign policy outcome.[68]

The presence of an EU international identity as a promoter of human rights appears thus to allow some more principled member states to use the EU as a venue in which to reach politics of scale in the pursuit of human rights promotion. This has been the case in particular for the Netherlands, the Scandinavian countries and the United Kingdom. Similarly, the presence of supranational institutions, in particular the Commission, with their own bureaucratic interests, has led these institutions to use rhetorical actions and argumentations to increase their powers and competences, which in turn have led to the EU adoption of normative policies.

The importance of reaching politics of scale can also be inferred in the multilateral approach that the EU and its member states often practice vis-à-vis third countries and regions. Through the set up of the Stabilization Pact in the Balkans, the Barcelona Process in the Mediterranean, the Lomé and Cotonou Conventions with ACP countries, the ASEM process with Asian countries and the Andean Pact in Latin America, it can be evidenced the importance that the EU and its member states attach to the multilateralisation of their relations with third countries and regions in order to achieve, among other objectives, the promotion of human rights. All these agreements contain human rights provisions and dialogue, although of different degrees, and serve as platforms through which the respect of human rights can be induced. In a sense such an approach appears to replicate the EU

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[67] Ibid.

[68] Ulrich Sedelmeier, "Collective Identity", in Walter Carlsnaes, Helene Sjursen and Brian White (eds.), *Contemporary EU Foreign Policy*, London: Sage, 2004, p. 136.

experience, thus often being explained as a type of bureaucratic isomorphism, through which the EU model is exported.[69]

However, identity is an important enabling condition but it may not determine policies. In fact even in the presence of such an identity policies can be formulated that are at variance with it and this is perhaps most often the case. This is not in contradiction with a constructivist approach though. Rather it points to the fact that social interaction does not lead necessarily to outcomes in line with identity because the latter is only one of the several factors around which social interaction occurs. Material factors are certainly important. At the same time though divisions exist on the best policy options to support and promote human rights abroad. As it has been argued by Karen Smith, EU southern member states seem less keen in adopting punitive measures toward countries violating human rights than EU northern member states.[70]

This requires embracing an a-teleological approach to social constructivism for which member states' preferences and interests may be changed but their direction cannot be wholly predicted by the peculiar EU international identity. For example Michael Smith in his study of the EPC/CFSP workings has reached a balanced view showing that various foreign policy outcomes can be explained as contingent on social interaction and discursive practices, for which states may find cooperative solutions even without hegemonic leadership or *quid pro quo* negotiations.[71] This in certain cases can lead to embarking on allegedly more 'ethical' positions as in the case of South Africa but also to more neutral positions as in the case of the Palestinian-Israel conflict.

This is also evidenced in the case of EU relations with Russia, where German, French and UK positions have prevailed over and modified the critical stances proposed by Nordic member states. Similarly, in relations with African countries, the resistance of France in imposing sanctions on the Francophone countries appears to have blocked the requests of those countries that were in favor of setting stronger conditionality in the EU development policies towards ACP countries. While these policies can be explained through the prism of

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[69] Federica Bicchi, "Our size fits all: Normative Power Europe and the Mediterranean", *Journal of EU Public Policy*, Special Issue, Vol. 13, No. 2, 2006.

[70] Karen Smith, "The EU, Human Rights and Relations with Third Countries: Foreign Policy with an Ethical Dimension", op. cit.

[71] Michael E. Smith, "Institutionalization, Policy Adaptation and EU Foreign Policy Cooperation", *EU Journal of International Relations*, Vol. 10, No. 1, 2004, pp. 95-136.

rationalism, for which the material strategic and economic interests of some member states have prevailed over the ideational interests of others, it is here argued that a process of learning and adaptation is at work nonetheless. Given an EU identity the options to pursue a human rights policy are multiple and their selection depends not so much on a bargain but rather on a process of argumentative interaction.

Against this backdrop it appears necessary to analyze social interaction with an a-teleological approach that avoids interpreting identity as a mechanical causal factor. Rather, it should be considered as an enabling factor, although significant, among many others, such as material concerns like security and economic gains as well as different perceptions of the most suitable approach to promote human rights. This is the topic of the next sub-section, where the issues of double standards and instrumentality are considered.

3.3   Double standards and instrumentality in EU promotion of human rights

The existence of conflicting policy priorities and options in human rights promotion is typical of national policies and gives rise to issues of double standards and instrumentality. In the case of the EU promotion of human rights, where the interests and preferences of multiple actors exist, it is necessary to analyze how these two issues are played out through the interaction of member states with different priorities on one side and EU institutions as well as transnational groups on the other.

Double standards have always been considered an important issue in human rights promotion. Applying double standards hinders the effectiveness of the policy itself because countries which receive different treatment recognize the inherent injustice of such behavior and often exploit it to their own interests. However, one should also be careful in considering the actual situation of each country, because often the human rights violations are not comparable and thus necessitate different approaches. Consequently, the national situation of a country may make some policies more effective than others.

Double standards have repeatedly been considered in the case of the EU promotion of human rights. For example it has been noted that while in "the Balkans human rights and democracy were perceived as integral to a strategy aiming at stabilizing the region from potential latent

conflict, in the Mediterranean the EU's security discourse left human rights and democracy relegated to the field of assistance and scarcely present in political and diplomatic relations".[72] Similarly as evidenced by Karen Smith the EU and its member states have been more prone to impose negative measures against poor and marginal states while they have adopted softer policies with other countries more strategically or economic relevant such as Nigeria and Russia.[73]

While in the case of national human rights policies the double standards can be explained with a simple reference to realist theories, for which material gains prevail over ideational motives, in the case of the EU promotion of human rights the situation appears complicated by the coexistence of the interests and policy preferences of member states, EU institutions and transnational groups. Therefore, in explaining cases of double standards in the EU promotion of human rights it is necessary to refer to the social interaction at EU level, where the principled positions of some member states sometimes are modified by the policy preferences of others. This, however, does not rule out the possibility that double standards may not only occur in relations to two distinct countries but also to a single one as well, as member states may embrace a policy at EU level and pursue an opposing one at bilateral level.

Another often repeated issue with human rights promotion is its instrumentality which has often been considered by countries confronted with their violations of human rights. Such instrumentality seems to presuppose that behind human rights promotion other agendas are hidden. For example, the neo-liberal agenda has often been considered to be behind human rights promotion, because it tends to spread market oriented policies subtly through non economic reforms, such as insistence on good governance and typical democratic institutions. At the same time a policy that promotes human rights can be used to reward or punish a government despite and not because of its human rights record.

In the first case, a good example has been provided by Hyde-Price in his application of realist theories to the enlargement process. In his realist interpretation enlargement was a type of

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[72] Rosa Balfur, "Principles of Democracy and Human Rights. A review of the EU Union's Strategies towards its neighbours", in Sonia Lucarelli and Ian Manners (eds.) , *Values and Principles in EU Union Foreign Policy*, London: Routledge, 2006.
[73] Karen Smith, "The EU, Human Rights and Relations with Third Countries: Foreign Policy with an Ethical Dimension", op. cit.

milieu shaping policy that guaranteed stability to the EU. For the author "a consensus quickly emerged that the EU should act as a collective vehicle for 'milieu shaping' in the East, focusing on the provision of soft security governance", which entailed addressing economic, social and political aspects of transformation.[74]

In the second case, Richard Youngs has argued that behind human rights promotion and in particular the specific strategies, norms and instruments promoted and utilized often lie security conditioned specificities. This is connected to the post Cold War environment, where new security doctrines have presented human rights policies as integral to attacking the roots of international stability.[75] This is clearly evidenced by the different treatment reserved by the EU and its member states to the Balkans on one side and the Mediterranean and Africa on the other. In the Balkans human rights have been promoted with in mind the importance of creating stability. In the Mediterranean a softer policy has been brought about by the necessity to deal with authoritarian regimes more prone to suffocate terrorism and control migrations. In Africa rather than the promotion of human rights as a value in itself it has been noted that such policies have been aimed at creating stability through conflict prevention.[76]

The issue of instrumentality thus highlights that member states may use the EU interaction to promote objectives which are only rhetorically linked to human rights promotion. In light of this some member states may be seen as using the EU not as a multiplier for their normative objectives but rather as a vehicle to impose collective hegemony in search for security and other more material objectives.

When it comes to the EU promotion of human rights several dynamics have been highlighted in this section. Human rights have been promoted by the EU and its member states as a consequence of the very identity that the EU has tried to establish for itself at international level. Yet identity is only one enabling condition that has to be considered along with other factors. Besides when a policy for the promotion of human rights is embraced instrumental reasons should not be overlooked. Human rights, in particular in the transition of CEECs and in the Mediterranean, have been promoted with a clear connection to security issues.

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[74] Adrian Hyde-Price, "Normative Power Europe: a realist critique", *Journal of EU Public Policy*, Vol. 13, No. 2, pp. 217-234, 2006.

[75] Richard Youngs, 'Normative Dynamics and Strategic Interests in the EU's External Identity', *Journal of Common Market Studies*, Vol. 42, No. 2, 2004, pp. 415-435.

[76] Gordon Crawford, "The EU Union and Democracy Promotion in Africa: the case of Ghana", *The EU Journal of Development Research*, Vol. 17, No. 4, pp. 571-600, 2005.

Member states' reasons behind their support for such policies can be connected to the possibility to reach politics of scale. The EU, with its internal market and its diplomatic might, is a more suitable actor to pursue policies that at national level will otherwise result weaker. This has of course empowered those member states that valued human rights promotion the most. At the same time, the instrumentality may lead some member states to use the EU as a vehicle to pursue hidden objectives behind the human rights promotion rhetoric. Finally, for those member states that are less keen to include such concerns in their bilateral relations the presence of the EU human rights policy represents a useful delegation of powers in order to avoid their national constituencies' pressures and invoke compromise as justification for their conduct.

4   Conclusion

This paper has shown that the emergence of the EU promotion of human rights was determined by the influence exerted by the evolution of the international human rights regime and by the development of an EU internal regime for the protection of human rights. The combination of the external and internal influences has contributed to create an EU identity centered on human rights principles and objectives, which are partly in common and partly distinctive from those of the international human rights regime. Therefore it has been maintained that the peculiar identity of the EU predisposes it to act both as a supporter and as a reformer of the present international human rights regime.

The EU identity thus created has been considered for the explanation of the EU promotion of human rights. However, considering the internal complexity of the EU architecture, which involves intergovernmental and supranational dynamics, it has been shown that the EU identity shall only be interpreted as creating the enabling conditions, within which member states and EU institutions can agree human rights policies. Similarly, the EU promotion of human rights has also greatly depended from the evolution of the international human rights regime and in particular it has been shown that it followed the changes in international development assistance thinking.

Through the analysis of the internal and external factors which have influenced the establishment and development of the EU promotion of human rights this paper has thus provided three analytical tools that should be considered in the study of the present EU promotion of human rights. These include: the peculiar normative basis of the EU, the changes in the international human rights regime and their complex interaction within the EU foreign policy system.

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