

The Failure of the EU's Human Rights Policy

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The Failure of the European Union's External Human Rights Policy

Although the European Union (EU) prides itself on being a defender of human rights (HR), its policy in this area is riddled with inconsistencies and inefficiencies (Alston and Weiler 1999). The founding Treaties of the Community make no reference to HR, although this has progressively changed so that the language of EU documents is now HR based (Koutrakou 2004). This is due to the Community originating, primarily, for economic purposes and has led to the Community having to create a retrospective institutional account of its own formation, through the assertions of subsequent Treaties. This created the concept that the Community is based on respect for fundamental HR, in order to acquire international credibility for its actions externally.

The EU has been vocal about its role in pioneering HR throughout the world; however, its policies are often deeply flawed and the disparity between internal and external policies calls its actions into question (Williams 2004). This essay explores the main areas that the Union implements in its HR objectives, and examines the inconsistencies between its internal and external HR policies to highlight why the EU's HR policies have been largely unsuccessful.

The Union's HR policies have not, however, been a complete failure. Member states can lose their rights under the Amsterdam Treaty if they seriously and persistently violate HR, and the Union has been active in a wide range of HR initiatives. The EU has the capacity and financial ability to influence the HR behaviour of outside states by insisting that states wishing to be admitted to the Union comply with strict HR requirements, and that states entering into cooperation agreements, or benefitting from aid or trade preferences, have to respect HR. It has also funded election and HR monitoring in countries, as well as a broad range of development cooperation initiatives with prominent HR elements (Alston and Weiler 1999). Despite the strengths of its external policy, however, the EU fails to lead by example as its internal policy still upholds member states as being the best guarantors of HR domestically. A double standard is therefore adopted, illustrated by the EU supporting UN measures that encourage governments to implement national HR institutes, when the EU does not have a similar institute and does not endorse one to its member states (Alston and Weiler 1999).

The Common Foreign and Security Policy (CFSP) developed by the EU contains an emphasis on mainstreaming HR, partly through using sanctions to implement change. Under Maastricht, political conditionality became mandatory in all formal agreements between the EU and outside countries, allowing agreements to be suspended if a violation of HR was believed to have occurred. In 1995, suspension clauses were included in all of these agreements (Crawford 2002). The CFSP has the advantage of protecting member states from the majority of the detrimental costs of HR diplomacy, and the Community has significantly more economic influence in applying sanctions as a whole than individual member states would (King 1999).

The EU has faced problems reconciling foreign trade and the promotion of HR abroad. These problems are particularly evident in relations with ASEAN and China, where member states are eager to improve trade relations. Asian states have placed an emphasis on the norm of non-intervention and have insisted on banning HR issues from Asia-Europe meetings (Börzel and Risse 2004), which were seen by the Asian states as disguised attempts at neo-imperialism (King 1999). The Community can use sanctions in response to HR violations and has shown an increased willingness from the 1990s to do so; however, these normally remain limited due to the disinclination of

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member states to restrict trade or investment. Policy towards China highlights this, and has been described as the “most embarrassing indication of the gulf between European rhetoric and reality” (Patten 1998 p. 303). After the Tiananmen Square massacre, China's actions were condemned by the Community in a series of resolutions. Yet once these resolutions lost the backing of several member states, including France, they lost their teeth and were eventually abandoned (King 1999). Furthermore, aside from member states' market interests, the Community has difficulty forming a coherent and effective response to HR violations for a country such as China, due to its size, its status as a permanent member of the UN Security Council, and its nuclear power. This leads to an unequal policy being adopted where rigorous measures are taken against violations in countries such as Burma, but are not applied to China (EU: HR 1997).

The CFSP contains an inherent defect in that Joint Actions and Common Positions, which aim to enable the EU to address foreign policy issues collectively through its member states, can only be adopted unanimously. This largely defeats their purpose, as they are only adopted on noncontroversial issues and where the country in question agrees to the action, as each member state retains a veto regarding their adoption. Member states, putting national interests over those of the CFSP, hinder the EU's response to HR violations. In Rwanda, for example, France pursued national interests, which delayed and limited EU action, as the Council could not adopt a Common Position until after the worst of the genocide. This was a tragic HR failure for the EU, as the Union could have had a deciding influence in Rwanda, which was dependent on EU economic aid. This failure was largely replicated in Zaire, where a Joint Action was adopted only towards the end of the massacres (King 1999).

The European Parliament takes a tougher stance towards HR than the member states (EU: HR 1997). It is critical of the inconsistencies present in EU HR policies and the fact that economic or security interests in a violating state take priority over HR. Unfortunately, the European Parliament has limited capability in the CFSP, with its ability to influence policy consisting mainly of ‘naming and shaming’ (Börzel and Risse 2004), withholding assent on agreements, insisting that HR funding increases, and deploying election monitors and parliamentary delegations (Alston and Weiler 1999).

The development policy of the EU demonstrates the evolution of HR policy in an international arena, and the relationship between HR and notions such as democracy and the rule of law. The EU's development policy grew through the Treaty of Rome to accommodate member states' interests in their overseas territories. Its growth satisfies EU moral obligations and historical legacies due to colonialism and economic interests. Respect for HR is explicitly stated in its development policy, through Article 130u of the Maastricht Treaty, which places a strong obligation on states (Marsh and Reese 2011). Initially, development initiatives were conducted on a case-by-case basis, and they had minimal impact (Alston and Weiler 1999) as the focus was primarily economic and served the desire of the member states to maintain a strong influence in colonies and former colonies. The Community has done little to move away from a dictatorial, colonial relationship with these countries, although it has used legal discourse to combat the criticism of neo-colonialism (Williams 2004).

Subsequent treaties and agreements, such as the Lomé Agreements, gradually shifted the focus to HR. The concept of ‘good governance’ emerged, which included the promotion of democracy as well as respect for HR and the rule of law. The Community undertook an incentive based approach to achieve this. The Cotonou Agreement reiterated much of Lomé IV's emphasis on respect and promotion of HR, which included civil and political rights, as well as economic and social rights. However, the conflict between the Community's economic interests and its HR based rhetoric remained prevalent. The 2000 Joint Statement on European Community development policy underlined HR as an integral part of development cooperation (Crawford 2002). The Cotonou Agreement took a cooperative approach to developing goals and principles, and sought to ensure compliance through allocating EU funds to programs that met certain criteria, thus giving the EU leverage over the outside state (Börzel and Risse 2004).

HR in the EU's development policy are said to be universal, indivisible and interrelated, and are interpreted in an extremely flexible manner, allowing them to evolve. There is also recognition of collective rights. The Cotonou Agreement recognised the importance of a continuous assessment of HR conditions in developing countries and the Community has a wide range of enforcement initiatives available. Initially, the Community can exert pressure through deciding not to provide aid at all, or by attaching conditions to aid to improve HR situations, giving it great influence.

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A multi-annual program is then developed, with the Commission having the right to review the programs operation. As the developing state is in a position of dependence, it is vulnerable and so sanctions can be very influential in pressuring it into compliance. The Community has also shown that it is willing to employ sanctions, which strengthen its position (Williams 2004).

However, the Community's motivation behind its development policy can be called into question, particularly if it is using HR rhetoric as a screen for furthering political interests and hiding neo-colonial tendencies. It has been accused of applying its policies to states inconsistently, and there are many developing states with which the EU is not involved (Williams 2004). Amnesty International (1996) has criticised the CFSP as lacking accountability to the European Parliament, of not being effectively monitored by national Parliaments, and of not providing enough public information. Additionally, it has been criticised due to there being competing competences with the member states and the EU, and within the EU's institutions. This has led to a "credibility crisis" (Clapham, 1999, p.630) regarding HR and the CFSP. The inconsistencies in the CFSP are exacerbated by the rotating 6-month Presidency of the Union, which makes a consistent approach and monitoring of initiatives practically impossible.

Traditionally, international law strongly upholds the doctrine of sovereignty and non-intervention, so that any interference by the Community into a member state could be declared illegitimate. Until the end of the Cold War, democracy was a sufficient guarantee of respect for HR in states acceding to the Community, but there was no system in place to deal with HR abuses within member states. The end of the Cold War changed this drastically, with membership being used as a powerful incentive for candidate states to change internal practices. Candidate countries were required to implement the *acquis communautaire* and in 1993 the Copenhagen Criteria was established to achieve this. The criteria served as a benchmark for negotiations, provided a more transparent policy, and ensured that the applicant's HR situation was assessed and monitored through dialogue (Williams 2004). The European Commission and European Parliament publish progress reports to review countries' progress and create awareness of measures needing to be undertaken. The Union can delay accession to induce compliance, and can also withhold or increase financial assistance depending on the state's progress (Börzel and Risse 2004).

The EU's accession policy has significantly improved HR situations within the associated countries; however, once membership is granted, member states are subjected to a completely different, less stringent regime. There are significantly fewer measures and controls in place to ensure good HR practice within the EU (Williams 2004). The situation with the West Balkans under the Stability and Association Agreement exemplifies the problems that arise when membership of the Union is not found to be a compelling incentive for HR compliance (Börzel and Risse 2004).

The EU HR policy has been criticised as lacking a recognisable institutional program with coherent aims and objectives (Alston and Weiler 1999). As well as having no institutional force or direction, due to their being no single Commissioner or Director-General with responsibility for HR, there is also no separate budget to finance HR initiatives (Weiler 2000). Additionally, there exists a deeply rooted suspicion in developing countries towards the EU's HR policies. Sovereignty is seen to be powerful protection against foreign influence and vital for determining national interests, especially after years of colonial domination, causing developing countries to be hostile towards any foreign interference (King 1999). The EU's overall HR policy is not sensitive to different cultures or the needs of states; rather it often appears that the EU is trying to impose European values on developing countries (Börzel and Risse 2004).

The successes of the Union's external HR policy, particularly those of its development and accession policies, are fundamentally undermined by the incoherence with its internal HR policy. There is a noticeable lack of scrutiny and enforcement internally in the EU as well as in its definition of HR. Externally, HR are broadly defined, including collective rights, such as development and the protection of minorities. The EU is able to effectively monitor these rights, and has the ability and authority to enforce them through a wide range of extensive measures. This is not the case internally, as there are only a few, largely ineffective, mechanisms for holding member states accountable for HR. The measures that are available, such as those outlined in Article 7 of the Treaty of Amsterdam, require a high threshold to come into effect. Another example of double standards is evident in the accession policy, where candidate countries' HR conditions are constantly scrutinised and assessed to a greater degree than if they are granted membership (Williams 2004). This 'skewed' HR policy focuses on the behaviour of non-EU states and fails to address internal policy, and so lacks coherence in the world's eyes (Clapham 1999 p.641). This incoherence

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between its external and internal policies is already calling the Community's credibility into question (Williams 2004). This is the case in multilateral fora, such as the UN, where the Community's participation was seen to be 'incredible' due to its inconstant policy. This causes increased scepticism over whether the Community's policies are based on ethical grounds or merely political objectives, which could undermine its competence in these areas (Clapham 1999 p.642-643). Furthermore, the Community constantly stresses the universality and indivisibility of HR in its external policy discourse, which will become questionable if it acts as though these universal principles do not apply internally (Williams 2004).

Even when the Union takes action to enforce HR compliance within its member states, it is inconsistent, as demonstrated by the cases of Austria and Hungary. When Haider and his party formed a centre-right coalition government, the EU responded with a number of sanctions and boycotts against Austria. These sanctions were in response to Haider's xenophobic rhetoric and racist populism, which raised alarm in the EU, although the government had been formed democratically and no HR violations were evident. As the Union stressed the importance of HR in its accession policy, the EU sought to bring its own member states in order and the sanctions, in some respects, were considered to have achieved this. They demonstrated that populism and racism were not acceptable, and HR was placed above non-intervention and democratic legitimacy. Despite this apparent success, the boycott on Austria was poorly thought out diplomatically, as there was no exit strategy or clear aim for what they hoped to achieve. Furthermore, no HR breaches were found to have occurred, and the coalition government appeared to be more successful at tackling long-standing issues than its predecessor (Matlár 2002).

In Austria, the EU took a firm stand for HR, sending a clear message to its member states of what was deemed unacceptable. This is in sharp contrast to the EU's inaction over the new Hungarian constitution. Human Rights Watch, Amnesty International and various other organisations have raised concerns over the discriminatory potential of the new constitution, with Amnesty calling for the EU to take action to ensure Hungary complies with European HR standards (2011). The European Parliament has also expressed its alarm, calling on the European Commission to analyse and examine the Hungarian constitution and generic laws in light of the ECHR and the *acquis*, as well as calling on the Hungarian authorities to make a number of changes to ensure respect for HR (2011). Despite this, the EU has yet to take action against Hungary to ensure it complies with its HR obligations, highlighting the inconsistencies present in the EU's HR policy. The Community's failure in its ability or willingness to adopt a strong internal HR policy threatens its long term ability to partake in a fully fledged, effective, external HR policy, as its global credibility is compromised (Williams 2004).

The Treaty of Lisbon, entering into force in 2009, committed the EU to accession to the European Convention on Human Rights (ECHR). Currently the EU is not subject to the ECHR or the European Court of HR, although its member states are, which has created confusion and conflict. The aim of accession will be to resolve this issue and to strengthen HR protection through the EU's submission to external control. It is hoped that a coherent HR system across Europe will be established and will help reinstate the EU's credibility through being subject to the same obligations and controls as its member states (Council of Europe 2011). It will also help improve the EU's credibility in negotiations with outside countries. If the EU is bound to the ECHR, it also increases the likelihood of states that have not signed up to the Convention complying with the ECHR and the decisions of the European Court of Human Rights, preventing double standards (Shore 2010). That being said, although promising, the EU's accession to the ECHR could prove problematic. The European Court of Human Rights is already overwhelmed with cases and may not be able to cope with the addition of the EU. Cases also take an extremely long time to be decided. The Court's structure, therefore, needs to be revamped to support this increase in workload and improve its efficiency; otherwise, the system could collapse (Shore 2010).

The EU has had some notable HR achievements, for which it should be applauded. It has, however, not done enough to realise its full potential. Its failure to have centralised and coherent institutions, and the inconsistencies present with its internal and external HR policies have served to fundamentally undermine its policies. This has resulted in a loss of international credibility, as the EU is perceived to operate with double standards. Aside from this, the EU has allowed HR violations to be overlooked in preference of economic and trade interests, and has acted with delay and ineptitude in cases of gross violations, such as in Rwanda. On an issue as fundamental as HR, the EU needs to have a strong and cohesive policy in place; it must practice what it preaches.

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