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UN Declaration of Human Rights at 60: what role for EU foreign policy?

By Rosa Balfour

Background

The United Nations' Declaration of Human Rights, which celebrates its 60th anniversary on 10 December, was the first key document to oblige states to protect individual rights. With the ensuing covenants and protocols (together known as the International Bill of Human Rights), the body of international law developed within the UN also constitutes the strongest justification for international efforts to promote and protect human rights.

However, applying the Declaration's principles in practice is another matter, because the very nature of human rights can challenge the key tenets of world power and the way it is organised and conducted.

The most fundamental of these challenges regards the legitimacy of interference as measured against the still enduringly powerful reality of state sovereignty. This in turn raises a range of both concrete and philosophical questions that make promoting human rights extremely complex in practice: are these ideas universal, or just a reflection of Western views used to dress up

the imposition of 'values' onto different societies – or indeed a mask to hide particular security or economic interests?

The fact that this kind of debate between universalism and cultural specificity, and between values and interests, is perennial (at least since the Spanish conquest of the Americas) shows how contested international human rights policies remain despite widespread acceptance of the Declaration.

For the EU, the Declaration and its related UN documents constitute the most important justification for its external human rights policies. But many of the problems it encounters in practice can be traced back to those deeper issues regarding the nature of rights and who is entitled to promote them. So what has the EU achieved in this field?

Although the Union's promotion of human rights crept up its foreign policy agenda in the late 1980s, when they were incorporated into its development cooperation activities, the most important turning-point came after the end of

the Cold War – and, most importantly, with their inclusion as one of the aims of the Common Foreign and Security Policy (CFSP) in the 1992 Maastricht Treaty.

Since then, human rights promotion has played an increasingly important role in EU foreign policy debates and declarations, with the Union portraying itself as a 'unique' champion inspired and guided by its own history and by the principles upon which its integration is based. Accordingly, it has been incorporating political, socio-economic, cultural and minority rights into its policies towards the rest of the world.

The enlargement process has played a special role in developing the tools to improve human rights standards (by defining the conditions third countries must meet to become candidates for EU membership and funding projects dedicated to achieving them). It has also provided inspiration for other region- and country-specific policies, from the Euro-Mediterranean Partnership

to relations with Eastern Europe and with the developing world.

Human rights 'dialogues' have also been established with some countries, such as China and Iran, and, at a less senior level, with Sudan and Cuba. All agreements negotiated with third countries contain a 'human rights clause' and, since 2001, include the objective that partner countries should follow the EU Member States in ratifying the International Criminal Court statute.

The EU has also been promoting global campaigns in this area: the fight against torture and the involvement of children in armed conflict, or promoting the rights of the child and protecting human rights defenders, are all

areas in which the Union has tried to develop common positions to be promoted internationally and through multilateral institutions.

Even before it sponsored the UN moratorium on the death penalty (after it was finally and definitively abolished in the last EU Member States in 1998), the Union was systematically issuing declarations against capital punishment, even when this entailed raising this highly sensitive issue with major partners such as the US.

Diplomacy is, of course, one way of conveying concerns over human rights, but over the past 15 years, the EU has refined a broad toolbox of measures to translate those concerns into action: the

suspension of cooperation with third countries; boycotts of sport or cultural events; trade, financial or diplomatic sanctions; arms embargoes; flight bans; visa restrictions; and the suspension of official visits.

However, the EU has generally remained cautious about applying trade sanctions, preferring measures targeted against individuals such as so-called 'smart' sanctions.

Aid is among the positive tools at its disposal, with the EU dedicating increasing – but still too few – resources to this both through its regional or country programmes and through specific tools such as the European Initiative for Democracy and Human Rights.

State of play

These developments have helped cultivate an image of the EU as an exceptional champion of global human rights. However, although many acknowledge its commitment, its actual record is far from immaculate, with the Union frequently accused of performing badly and inconsistently.

International NGOs, human rights' defenders and the media often point the finger at the EU's alleged 'double standards' when dealing with different countries; the discrepancy between its internal benchmarks and the treatment of non-citizens on EU territory; the sacrifice of human rights to more 'selfish' concerns, such as the fight against terrorism and combating illegal immigration; and giving priority to other interests, from access to energy, trade relations and investment to ensuring other governments' cooperation in managing international crises.

These accusations are not just partisan positions: the controversies and divisions

sparked by a few recent episodes powerfully illustrate how divided the EU sometimes is over human rights' issues and how to handle them. The Beijing Olympics, for example, sparked a public furore and led to a frantic bout of buck-passing, with the EU claiming it was up to national governments to decide whether and how to participate, and governments putting the onus on the sportsmen and women.

When it comes to China, this ambivalence does not need much explaining. Size matters: China is an economic giant, a permanent member of the UN Security Council and a key global player. The EU generally prefers to refrain from direct criticism and claims that human rights issues are discussed, but behind closed doors. Beijing's ability to retaliate by cancelling the EU-China Summit in protest at the Dalai Lama's visit to Europe shows how economic interdependence can be at odds with human rights promotion.

The conflict between human rights and security-related concerns is one area where the idealistic content of EU foreign policy is most frequently tested.

In recent years, the fight against terrorism has led some EU Member States to breach international conventions and practices. For example, the use of 'renditions' (returning terrorist suspects to their countries of origin, regardless of whether they might be subjected to torture and ill treatment) is unlikely to be halted despite criticisms from international watchdogs. On the contrary, states are trying to consolidate this practice by seeking diplomatic assurances that, according to the Council of Europe, are insufficient to guarantee suspects' basic rights.

Yet security and human rights need not clash. The EU's own experience in Central, Eastern and South-eastern Europe shows they can be mutually reinforcing. However one evaluates the

Union's overall engagement with those regions, one must acknowledge that it has been guided by conflict prevention, a broad human rights vision and democratisation objectives. Indeed, most of the documents explaining and articulating EU security policy identify the relationship between human rights and security as the crux of the matter.

The trouble with principles

The problems arise when the EU is seeking partnership and cooperation with big, strategic countries with different human rights standards, as relations with Russia, China, or many Arab states amply demonstrate.

The end result is that the EU often applies its principles with rigour – through negative measures – to small countries, where the cost to the Union of imposing sanctions is low (such as Haiti and Burma) or when public opinion is vociferous enough to force Member States to act (such as Zimbabwe, although this issue dramatically exposed EU disunity). But the Union refrains from doing so when the country in question is strategically or economically important, often claiming that dialogue is a far better approach. In many cases, the EU requires the cooperation of governments which are not abiding by the principles of the Declaration.

It is no surprise that security or economic interests often trump principles. But the question then arises of why the EU made such a fuss over the principles in the first place when its performance lags well behind the rhetoric.

This differential treatment cannot just be explained simply by 'hypocrisy' or 'double standards'. There are instances where promoting human rights may sit uneasily with another of the EU's principles: multilateralism and international cooperation as a means to address common problems. As the debates during the US presidential campaign over whether and how to talk to Iran showed, the choice between a hard-nosed position or engaging with countries which fall far short of sharing the 'common values' of the UN Declaration is not an academic question. It goes to the heart of what foreign policy is about and what we stand for.

Furthermore, negative measures such as sanctions and diplomatic ruptures do not always pay off. The *de facto* exclusion of Belarus from the array of EU external relations policies has not led to any change in the country. Indeed, after years of isolation, the release of some political prisoners there has prompted the EU to rethink how it engages with Belarus.

On the other hand, engaging with human rights abusers attracts fierce criticism, makes the Union susceptible to accusations of double standards, and undermines the principles upon which EU foreign policy is based. Its citizens expect the EU to behave 'differently: to act when political prisoners are tortured in prisons around the world and when children are forced to carry kalashnikovs instead of teddy bears.

Multilateralism versus unilateralism, sovereignty versus interference, engagement versus

conditionality, principles versus *Realpolitik* – these are some of the dilemmas that arise. They also show that it is not just a question of subscribing to declarations of principles in the 'softer' areas of foreign policy: they reach into key aspects of international relations.

Internal cleavages

One problem for the EU is that individual Member States are themselves divided over these issues, with internal disagreements compounding the divisions at EU level. Behind the many debates in the Council over how to act in specific cases lie quite different interpretations of the role that human rights should play in EU foreign policy; how to reconcile the principles of the Declaration with multilateralism, international cooperation, non-interference, and respect for cultural diversity; and the most appropriate and efficient ways to address the issue at stake.

The EU embodies different traditions, with the Scandinavian countries contributing most strongly to promoting human rights globally, while some of the Mediterranean states are most in favour of multilateralism and cooperation. The new Member States from Central Europe also brought with them a legacy of anti-totalitarianism (although their global reach and historical ties are hardly comparable to the EU's former colonial powers).

Even without comparable data on donor spending on human rights, it is also clear that the amounts earmarked for this differ significantly between Member States.

Prospects

A foreign policy based on human rights raises a number of contentious issues that cannot be relegated to the 'second division' of international

relations. On the contrary, they raise philosophical questions that regularly arise when designing specific policies and implementing them in practice.

On the one hand, the EU has built and justified its international engagement on the basis of these principles, not least with the aim of 'constructing' an identity that both

its citizens and the rest of the world can recognise. On the other hand, because of the controversies over human rights (especially as applied to foreign policy), the EU often emerges as insufficiently engaged, laden with contradictions and internally divided on how, with whom, when and why to apply those principles.

There is no easy way out of these dilemmas. Purely idealistic or strictly realist approaches are equally insufficient, and ultimately divisive. But one first step could be to promote a stronger debate on how the EU should promote human rights globally. These discussions should not be confined to abstract principles, but tied to very concrete issues: for instance, how to engage with Russia over Eastern Europe and the South Caucasus while taking human rights seriously. This could also help foster a common 'culture' of human rights within Europe that is currently lacking and is at the heart of the EU's uneven performance.

Secondly, the Union has developed common approaches on some human rights issues but is strikingly absent on others. While it managed to agree a common position on campaigning globally against the death penalty, its performance on other supposedly commonly shared objectives has been quite poor.

In combating the use of torture, for instance, it has achieved very little: there are still countries where torture and ill treatment of prisoners are standard practice even for petty crimes but which have received little in the way of EU funding for torture prevention and rehabilitation projects. There will always be a case for increasing the funds available for human

rights projects, but even without additional money, better targeting would be a good start.

The EU has improved the integration of human rights issues in the geographical portfolios of the European Commission and Council. Internal structures have been boosted to ensure that such issues are taken into account when shaping external relations policies.

The annual reports issued by the Council and the European Parliament also provide useful tools to monitor standards in internal and external policies. Although there are areas in which there is little transparency (as repeatedly highlighted by the Parliament), these reports could help to ensure the EU handles the various human rights dossiers it deals with more consistently. Comparing these reports with those of international watchdogs could also help identify the areas which the Union neglects.

The EU has also performed poorly in coordinating its efforts with those of individual Member States. The Commission has asked for more and better information on human rights-related spending from national capitals, but it could also encourage better exchanges of information with Member States on specific projects and on their respective priorities in third countries.

In particular, coordination on the ground needs to be improved: Member States' embassies do not systematically coordinate their work on certain policies, even when guidelines exist (for instance, on torture). Nor do they necessarily coordinate with Commission Delegations (except, in some cases, through informal and personal initiatives),

which should be the first port of call when deciding what actors to involve locally. The practical issues of on-the-ground coordination should be taken into account if the Lisbon Treaty eventually enters into force, paving the way for the creation of a European External Action Service.

These are all issues that lie at the heart of EU foreign policy. Addressing them in relation to human rights could prove a useful contribution, especially since even the Lisbon Treaty is a necessary but not sufficient condition for solving them.

Last but certainly not least, respect for – and the promotion of – human rights must start at home. The Charter of Fundamental Rights and giving the EU a legal personality would have a symbolic impact in the short term, but if the Union wants to develop its international identity based on the Declaration's principles, it must do its utmost to protect individuals on its territory – be they EU citizens, asylum-seekers, refugees, 'irregular' migrants or even potential terrorists.

Renditions, the way refugees and asylum-seekers are treated, and many developments in internal security and surveillance put – or risk putting – the Member States in breach of their international obligations. If powerful countries ignore international human rights principles themselves, their justification for preaching them abroad is eroded.

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