

**The Use of Political Conditionality in the EU's  
Relations with Third Countries: How Effective?**

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### **The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?**

Since the end of the Cold War, there has been a growing (but not fully established) consensus within the European Community (now Union) that applying political conditionality would allow it to encourage third countries to establish democracy and protect human rights. Trade agreements, cooperation and association agreements, aid, diplomatic recognition, and eventual EU membership have been made conditional on respect for human rights and democratic principles by the EU's partners. The EU has apparently been playing a highly 'normative' role, using its economic and diplomatic instruments to foster the spread of norms on human rights and democracy.

To analyze the effectiveness of the EU's use of conditionality, two questions in particular must be answered. Firstly, by using conditionality, does the EU reach its objective of encouraging respect for human rights and democratic principles? Answering this, however, is difficult, and will not be attempted here. Some states may have been implementing democratic reforms or improving their human rights performance anyway, others may be impervious to outside influence. The EU's influence would have to be isolated from that of other international or domestic actors.

Before the first question can be fully answered, another question must be addressed. To what extent does the EU actually apply conditionality? The success of the EU's attempts to encourage countries to respect human rights and democratize will, to a certain extent, depend on how consistently the EU actually follows its own pronouncements. Perceived inconsistency in the EU's application of conditionality could diminish its influence. As a "first cut" at analyzing the effectiveness of conditionality, this paper will examine how far considerations of human rights and democracy have influenced the EU's relations with third countries.

Trying to answer the second question raises two further issues. The first regards the EU's "international actor capability", or its ability to function actively and deliberately in relation to other

actors in the international system.<sup>1</sup> For the EU to exercise influence in international affairs, the member states must agree on a common approach, and there must be consistency in the activities of the EU's different decision-making frameworks (for trade and development policy, and foreign policy). This is clearly the case in applying conditionality, as it involves wielding the Community's economic instruments (trade concessions; aid; trade, cooperation, and association agreements) and diplomatic instruments (such as declarations and political dialogue) decided on in the framework of the Common Foreign and Security Policy (CFSP). Consistent use of conditionality by the EU requires that the decisions taken within the different frameworks, as well as the actions of the EU and the member states, do not contradict each other.

The other issue raised regards the role that considerations of human rights and democratic principles play in foreign policy in general. The end of the Cold War may have, as several observers have suggested, allowed Western states the opportunity to use aid and other instruments to pursue wider "milieu goals" such as fostering the spread of democracy, rather than to back authoritarian, anti-communist regimes.<sup>2</sup> But it is still evident that the application of conditionality competes with other considerations of foreign policy, such as commercial and geopolitical/strategic interests.<sup>3</sup> Expecting human rights and democracy to appear always, or even regularly, at the top of the EU's foreign policy priorities is unrealistic. But as R.J. Vincent noted:

finding its place in the empire of circumstance is more damaging to human rights policy than it might be to other items of foreign policy, because it can be argued that it is on the substance and appearance of even-handedness that a successful human

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<sup>1</sup>As "international actor" is defined by Gunnar Sjöstedt in The External Role of the European Community (Westmead: Saxon House, 1977), p. 15.

<sup>2</sup>See, for example: Olav Stokke, "Aid and Political Conditionality: Core Issues and State of the Art", in Olav Stokke, ed., Aid and Political Conditionality (London: Frank Cass, 1995), p. 9; and Joan Nelson, "Good Governance: Democracy and Conditional Economic Aid", in Paul Mosley, ed., Development Finance and Policy Reform: Essays in the Theory and Practice of Conditionality in Less Developed Countries (Houndmills: Macmillan, 1992), p. 309.

<sup>3</sup>See Peter R. Baehr, The Role of Human Rights in Foreign Policy (Houndmills: Macmillan, 1994), pp. 23-29.

rights policy depends.<sup>4</sup>

Of course, as realists would maintain, considerations of human rights may simply mask other interests.<sup>5</sup> One of the criticisms of applying conditionality in aid allocation is that donors do so in their own interests, rather than those of the people of the developing countries.<sup>6</sup> But there is also the liberal argument that democracies do not go to war with each other; thus promoting such norms will contribute to international peace and stability, which is in the interests of the EU and its member states.<sup>7</sup>

The way in which the EU applies conditionality could thus reveal the significance of norms<sup>8</sup> or "principled beliefs" and "causal beliefs"<sup>9</sup> in its foreign policy. Conditionality is itself a norm, a standard of behavior, that "competes" with other interests. If only weak states suffer from the imposition of conditionality, while more important states do not, then economic and/or strategic

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<sup>4</sup>R.J. Vincent, "Human Rights in Foreign Policy", in Dilys Hill, ed., Human Rights and Foreign Policy: Principles and Practice (Houndmills: Macmillan, 1989), p. 58.

<sup>5</sup>E.H. Carr argued that so-called universal principles are really the "unconscious reflexions of national policy based on a particular interpretation of national interest at a particular time." In The Twenty Years' Crisis 1919-1939 (London: Macmillan, 1946), p. 87. Echoing this argument, Asian and Islamic countries have claimed that "international" ideas of human rights are really Western ideas. See Mahmood Monshipouri, Democratization, Liberalization and Human Rights in the Third World (Boulder: Lynne Rienner, 1995), pp. 17-19.

<sup>6</sup>John-Jean B. Barya has argued that political conditionality is designed to replace socialism with the ideology of free enterprise worldwide, create a new source of legitimacy for hegemony, and justify the decline of resource flows to Africa. In "The New Political Conditionalities of Aid: An Independent View from Africa", IDS Bulletin, vol. 24, no. 1, 1993, p. 16.

<sup>7</sup>The June 1991 Luxembourg European Council declared: "Tensions and conflicts arising from flagrant and systematic violations of human rights and fundamental freedoms in one country or in a specific region are often a threat to international peace and security." "Declaration on Human Rights" in EC Bulletin no. 6, 1991, pt. I.45.

<sup>8</sup>Norms are "shared (thus social) understandings of standards for behavior." Audie Klotz, Norms in International Relations: The Struggle against Apartheid (Ithaca: Cornell University Press, 1995), p. 14.

<sup>9</sup>Principled beliefs are "normative ideas that specify criteria for distinguishing right from wrong and just from unjust." Causal beliefs "provide guides for individuals on how to achieve their objectives." Judith Goldstein and Robert Keohane, "Ideas and Foreign Policy: An Analytical Framework", in Judith Goldstein and Robert Keohane, eds., Ideas and Foreign policy: Beliefs, Institutions, and Political Change (Ithaca: Cornell University Press, 1993), pp. 9-10.

interests "trump" the norm of conditionality. If conditionality serves as an excuse to break ties, then perhaps the realists are right (though proving this would be very difficult). However, it is nonetheless significant that human rights and democratic principles have been accorded such a prominent position in the EU's foreign policy objectives. The norm of conditionality has made "new types of action possible, while neither guaranteeing action nor determining its results".<sup>10</sup>

The first section of this paper will further define political conditionality and discuss some of the problems that arise with its use. The second section will review how conditionality came to be adopted by the Union. The way in which the EU has implemented conditionality will be discussed in the third section.

### **I. What is political conditionality?**

Political conditionality entails the linking, by a state or international organization, of perceived benefits to another state (such as aid, trade concessions, cooperation agreements, political contacts, or international organization membership), to the fulfillment of conditions relating to the protection of human rights and the advancement of democratic principles.<sup>11</sup> Positive conditionality can be loosely defined as promising the benefit(s) to a state if it fulfills the conditions; negative conditionality involves reducing, suspending, or terminating those benefits if the state in question violates the conditions.<sup>12</sup>

Conditionality has been criticized as illegitimate interference in the domestic affairs of other states, as a challenge to state sovereignty. Counter to this is the conviction that human rights are

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<sup>10</sup>Ronald Jepperson, Alexander Wendt, and Peter Katzenstein, "Norms, Identity, and Culture in National Security", in Peter Katzenstein, ed., The Culture of National Security: Norms and Identity in World Politics (New York: Columbia University Press, 1996), p. 56.

<sup>11</sup>Economic conditionality links benefits to the fulfillment of economic conditions, usually involving the introduction of a market economy or specific economic policies (e.g. structural adjustment). In the interests of brevity, conditionality will be used in this paper to indicate political conditionality.

<sup>12</sup>For definitions, see: Hugo Storey, "Human Rights and the New Europe: Experience and Experiment", in David Beetham, ed., Politics and Human Rights (Oxford: Blackwell, 1995), p. 134; Joan Nelson, Encouraging Democracy: What Role for Conditioned Aid?, Policy Essay no. 4 (Washington, DC: Overseas Development Council, 1992), p. 9; and Stokke 1995, pp. 11-13.

universal principles and that the spread of democracy makes manifest its universal appeal. Well over 100 states have ratified the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. Therefore, as the European Council has declared, "expressing concern about violations of human rights, as well as requests designed to secure those rights, cannot be considered as interference in the internal affairs of a State".<sup>13</sup>

That the EU is applying "multilateral" conditionality (in that fifteen member states have to agree to do so) may be considered more acceptable and legitimate than conditionality applied by a single state. Member states can also thus escape responsibility for reducing or suspending aid, for example. However, conditionality applied by the EU could be criticized on other grounds, because the EU itself suffers from a lack of democracy and does not have its own "bill of rights".

Apart from gross violations of human rights or clear reversals in the democratization process, judging whether a country has met the criteria is bound to be highly subjective. Which human rights and democratic principles are to be considered the most important? As Peter Uvin has asked: What is the minimum degree of democratization required to fulfill the set conditions? Which human rights are to be respected as a matter of priority?<sup>14</sup> What should happen if a country makes improvements in one area, but relapses in another? Setting specific guidelines, however, means that the same standards are to be applied to all of the EU's partners, even though different factors might need to be taken into account in different cases.

A similar problem arises from grouping together human rights and democratic principles. One observer has charged that frequently "human rights" are reduced to "democracy", which is further reduced to multi-party elections. But new democracies may not be able to guarantee human rights; majority rule can also result in the denial of equal rights to minorities.<sup>15</sup>

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<sup>13</sup>Luxembourg European Council, "Declaration on Human Rights".

<sup>14</sup>Peter Uvin, "Do As I Say, Not As I Do: The Limits of Political Conditionality", in Georg Sorensen, ed., Political Conditionality (London: Frank Cass, 1993), p. 70.

<sup>15</sup>Katarina Tomasevski, Development Aid and Human Rights Revisited (London: Pinter, 1993), pp. 13-14. See also Monshipouri 1995, pp. 167-174.

Even if agreement exists that human rights and democratic principles are legitimate considerations for foreign policy (a principled belief), there could still be debate as to how best to promote those principles (a causal belief).<sup>16</sup> Conditionality may not be the best way to promote democracy and protection of human rights: it could be more effective to strengthen economic and political links with the country concerned, thus engendering a process of internal change. Cutting off development aid or trade links to poor countries in particular might only worsen the situation (it could punish the population "for the sins of their rulers"<sup>17</sup>). This is essentially what has been called the dilemma between strategies of "asphyxiation" (blocking economic flows inhibits or halts bad behavior) and "oxygen" (economic activity leads to positive political consequences).<sup>18</sup> As will be discussed in section III, this dilemma appears frequently in the EU's application of conditionality.

## II. Building an EU Consensus on Conditionality

The Community/Union really began to use conditionality in its relations with third countries only with the end of the Cold War in Europe. Human rights and democracy, though, had been a major consideration in the Community's relations with Greece, Portugal and Spain, not yet liberal democracies but still part of the "West": the three were not eligible for Community membership until after they launched democratization.<sup>19</sup> But the Community and its member states generally considered it more important to maintain trade ties and detente with their neighbors in eastern Europe, as a way of encouraging liberalization, than to threaten to cut off those links if improvements in human rights and political freedoms were not made (which was, broadly speaking, the US approach).

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<sup>16</sup>See Kathryn Sikkink, "The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe", in Goldstein and Keohane, eds. 1993, pp. 141-142.

<sup>17</sup>As Tomasevski 1993 argues.

<sup>18</sup>Franklin L. Lavin, "Asphyxiation or Oxygen? The Sanctions Dilemma", *Foreign Policy* no. 104, Fall 1996.

<sup>19</sup>The April 1978 European Council declared that "respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities." In "Declaration on Democracy", Copenhagen European Council, 7-8 April 1978, *EC Bulletin* no. 3, 1978, p. 6.

Still less did conditionality affect the Community's relations with developing countries (most notably, in the framework of the Lomé convention, which now links the Community with 70 African, Caribbean, and Pacific, or ACP, countries).<sup>20</sup> The Community's development aid was supposed to be non-political, its relations with the 'Third World' free of vestiges of colonialism and distinct from the superpowers.<sup>21</sup> The first two Lomé conventions (1975-1980 and 1980-1985) did not refer at all to human rights, partly because the ACP countries opposed any attempt to provide aid with political conditions attached. Following the atrocities of Idi Amin in Uganda in the mid-1970s, the Community did agree that measures should be taken if an ACP state systematically violated fundamental human rights.<sup>22</sup> And at the Community's insistence, the Lomé III agreement (1985-1990) contains a joint declaration reiterating that human dignity is an essential objective of development.<sup>23</sup>

The Community's approach to human rights was criticized by the European Parliament (EP). Since 1983, the EP has adopted an annual report and resolution on human rights in the world, in which it reviews Community activities. The EP repeatedly requested that the Commission consider how to link EC aid with minimum conditions of human rights protection, and to build human rights considerations into development programs and external agreements.<sup>24</sup> But the Commission initially

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<sup>20</sup>The Community did impose limited negative measures on South Africa in 1985 and 1986, and an arms embargo and some diplomatic and economic sanctions on China following the Tianenmen Square events of June 1989.

<sup>21</sup>Enzo Grilli, The European Community and the Developing Countries (Cambridge: Cambridge University Press, 1993), p. 102.

<sup>22</sup>On 21 June 1977, the Council stated that EC development aid to Uganda would not reinforce or prolong the deprivation of fundamental rights there. EC Bulletin no. 6, 1977, pt. 2.2.59. In November 1979, the Council agreed that if a party to the Lomé convention systematically violated human dignity and basic human rights, it would examine the measures to be taken as a result. Agence Europe no. 2793, 21 November 1979.

<sup>23</sup>Michael K. Addo, "Some Issues in European Community Aid Policy and Human Rights", Legal Issues of European Integration, no. 1, 1988, pp. 79-80.

<sup>24</sup>As in EP Resolution for the year 1983/1984 on human rights in the world and Community policy on human rights, in OJ C 172, 2 July 1984, p. 38. Each year the EP also approves over a hundred resolutions on human rights violations all over the world. See Group of the European People's Party of the European Parliament, Dossier: European Parliament and Human Rights (Luxembourg: European Centre, Kirchberg, 1989), and European Parliament Directorate General for Research and the Human



rebuffed the EP's proposal to draft agreements so that sanctions could be imposed if human rights were violated, preferring to emphasize the promotion of human rights.<sup>25</sup> With the entry into force of the Single European Act in 1987, the EP gained the power to approve association agreements and membership applications. It then used this power to press for consideration of human rights. In 1987 and 1988, it refused to give its assent to financial protocols with Turkey and Israel, over human rights concerns.

The EP's pressure generated some response. In May 1986, the Dutch presidency submitted a memorandum to the EP on action taken in EPC in the field of human rights, since the last Dutch presidency in 1981.<sup>26</sup> The EPC Presidency has since submitted an annual written report to the EP. On 21 July 1986, a declaration of the foreign ministers (meeting in the EPC and Council frameworks) reaffirmed "their commitment to promote and protect human rights and fundamental freedoms".<sup>27</sup> But the ministers did not declare how they would carry out that commitment, beyond declaratory diplomacy.<sup>28</sup>

Conditionality developed first and furthest with respect to **Central and Eastern Europe**, with the end of the Cold War. By wielding its economic and political instruments on a conditional basis, the Community hoped to encourage its eastern neighbors to carry out reforms. The success of the

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Rights Unit, The European Parliament and Human Rights (Luxembourg: OOPEC, 1994).

<sup>25</sup>Andrew Clapham, Human Rights and the European Community: A Critical Overview (Baden-Baden: Nomos Verlagsgesellschaft, 1991), p. 74, and Marcel Zwamborn, "Human Rights Promotion and Protection through the External Relations of the European Community and the Twelve", Netherlands Quarterly of Human Rights, vol. 7, no. 1, 1989, p. 19.

<sup>26</sup>"Letter to the President of the European Parliament: Memorandum on EPC and Human Rights", Document no. 86/137, in European Political Cooperation Documentation Bulletin, vol. 2, no. 1, 1986. The Netherlands had, in 1979, already incorporated human rights considerations into its foreign policy. Baehr 1994, chapter 11. Denmark and other Scandinavian states had also adopted an external human rights policy.

<sup>27</sup>"Declaration on Human Rights", EPC Documentation Bulletin, vol. 2, no. 2, 1986.

<sup>28</sup>The Dutch Presidency's memorandum to the European Parliament noted that between 1981 and 1986, between 90 and 100 démarches on human rights matters were delivered, and about 20 declarations were made.

economic and political transformation in Central and Eastern Europe has been considered crucial for ensuring long-term stability and security in Europe.

In 1988-1989, the Community began to apply conditionality in its relations with the Central and East European countries (CEECs), but conditionality was not yet set out in legal instruments. It first used trade and cooperation agreements to encourage political reforms. Countries that were further ahead in the reform process (Hungary, Poland) were accorded more beneficial treatment. If a country did not respect human rights (Bulgaria, Romania), the EC withheld the prospect of an agreement. Aid was provided only if the countries were committed to political and economic reforms. But conditionality was not mentioned in the regulations setting up the Community's aid program (PHARE).<sup>29</sup>

In 1990, the Community agreed to conclude association agreements (known as "Europe" agreements) with CEECs that met five conditions: the rule of law, human rights, a multi-party system, free and fair elections, and a market economy. The first three Europe agreements signed, with Czechoslovakia, Hungary, and Poland (in December 1991), do not contain any reference to conditionality. But on 11 May 1992, the Council decided that all cooperation and association agreements concluded with CSCE member states should contain a clause permitting the suspension of the agreements if human rights and democratic principles are not respected.<sup>30</sup> The trade and cooperation agreements concluded with Albania (1992), the Baltic states (1993), and Slovenia (1993) contain such a clause, as do the Europe agreements concluded after that date (with Bulgaria, Romania, the Czech Republic, Slovakia, the three Baltic states, and Slovenia).<sup>31</sup> Likewise, the partnership and

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<sup>29</sup>Regulations no. 3906/89 in OJ L 375, 23 December 1989, and no. 2698/90 in OJ L 257, 21 September 1990. The same is true for the EC's program to assist reforms in the former Soviet Union (TACIS): only the most recent regulation (1996) specifically states that action can be taken if human rights and democratic principles are not respected. Regulations no. 2157/91 in OJ L 201, 24 July 1991, no. 2053/93 in OJ L 187, 29 July 1993, and no. 1279/96 in OJ L 165, 4 July 1996.

<sup>30</sup>EC Bulletin no. 5, 1992, pt. 1.2.12.

<sup>31</sup>The trade and cooperation agreements with Albania, Estonia, Latvia, and Lithuania contained a clause which allowed for the immediate suspension of the agreement. This was replaced in later agreements by a clause which allows for measures to be taken only after consultations take place, and

cooperation agreements (signed since 1994) with former Soviet republics contain the clause.

The May 1992 decision on the human rights clause follows two declarations, by the European Council in June 1991 and the Development Council in November 1991, in which the intention to include clauses on human rights in Community agreements with third countries is stated (see below).<sup>32</sup> But the decision also needs to be seen in another context. It was taken when the Council approved the negotiating mandates for Europe agreements with Bulgaria and Romania: this in turn followed the decision in August 1991 (in the wake of the attempted Soviet coup) to expand cooperation with those two countries, Albania, and the newly recognized Baltic republics. Geopolitical concerns rather than a positive appraisal of the political situation in those countries led to the development of relations. The decision on the human rights clause could indicate that Bulgaria and Romania did not fully meet the established criteria for Europe agreements and thus the Community had to retain some leverage to encourage political and economic reforms. Nonetheless, it also set a precedent that agreements could be suspended for violations of human rights and democratic principles.

The recognition of new states emerging with the disintegration of communist federations was also supposed to depend on the fulfillment of certain conditions. In December 1991, the Community and the member states adopted criteria for recognizing new states in Eastern Europe and the Soviet Union, which included respect for CSCE principles of the rule of law, democracy, and human rights, and guarantees for the rights of ethnic and national groups and minorities.<sup>33</sup> Finally, the June 1993 Copenhagen European Council agreed that the CEECs could join the Union once they satisfied certain conditions, including stability of institutions guaranteeing democracy, the rule of law, human rights

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priority is to be given to keeping the agreement operational wherever possible. European Commission, "On the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries", COM (95) 216 final, 23 May 1995.

<sup>32</sup>And it follows the inclusion in Lomé IV of a reference to human rights (see below).

<sup>33</sup>"Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union'", EPC Press Release P.128/91, 16 December 1991.

and respect for and protection of minorities.<sup>34</sup>

Conditionality has been extended to the Community/Union's relations with **other third countries**. By the late 1980s, the Community could press more successfully for the inclusion of references to human rights in Lomé: democratic movements were spreading throughout the developing world (often because of popular resistance to structural adjustment programs) and economic conditions in the ACP states were worsening (which made them more dependent on foreign aid).<sup>35</sup> Lomé IV, signed in 1989, was the first external agreement to have a reference to human rights inserted into the text, rather than the preamble. Article 5 states that development entails respect for and promotion of human rights, and that the parties reiterate their attachment to human dignity and human rights. But there was no legal basis for responding to human rights violations.

In June 1991, the Luxembourg European Council issued a declaration on human rights, which contained the usual affirmation that "[t]he Community and its Member States undertake to pursue their policy of promoting and safeguarding human rights and fundamental freedoms throughout the world." But how human rights could be promoted was also indicated: clauses on human rights could be included in economic and cooperation agreements with third countries.<sup>36</sup>

The Maastricht Treaty (agreed in December 1991) reflects the extent to which considerations of human rights and democracy are supposed to influence the EU's foreign relations. One of the CFSP's objectives is to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms (article J.1). The provisions on development cooperation state that Community policy shall help develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms (article 130u).

On 28 November 1991, the Development Council agreed that considerations of human rights

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<sup>34</sup>European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, SN 180/93, p. 13.

<sup>35</sup>Demetrios James Marantis, "Human Rights, Democracy, and Development: The European Community Model", in Harvard Human Rights Journal, vol. 7, spring 1994, p. 8.

<sup>36</sup>Luxembourg European Council, "Declaration on Human Rights".

and democracy should be important elements in the Community's relations with developing countries.<sup>37</sup> The Community "will give high priority to a positive approach that stimulates respect for human rights and encourages democracy", but "in the event of grave and persistent human rights violations or serious interruption of democratic processes, the Community and its Member States will consider appropriate responses in the light of the circumstances, guided by objective and equitable criteria." Human rights clauses were to be included in future cooperation agreements with developing countries.

Following this declaration, cooperation agreements concluded with Latin American and Asian states included a clause which states that respect for human rights and democratic principles are "essential elements" of the agreements. But none of these agreements provide for suspension or denunciation in case of violations of these principles.<sup>38</sup>

On 29 May 1995, the Council agreed that **all** agreements with third countries would contain a suspension mechanism in addition to the essential elements clause, enabling the Community to react in the event of violation of essential elements of the agreements, particularly human rights and democratic principles.<sup>39</sup> Lomé IV, amended in November 1995 following a mid-term review, states that respect for human rights and democratic principles are essential elements of the convention and includes a suspension clause (article 366a) which envisages the partial or full suspension of the convention to a state party that fails to fulfill obligations in respect of the essential elements. The

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<sup>37</sup>Resolution of the Council and of the Member States meeting in the Council on Human Rights, Democracy and Development, EC Bulletin no. 11, 1991, pt. 2.3.1.

<sup>38</sup>Some agreements (concluded between 1990 and early 1992) contain a clause stating that relations of cooperation are founded on respect for democratic principles and human rights, but this is not the same as the "essential elements" clause. For a list of the references to human rights in the Community's agreements with third countries, see Annex 3, COM (95) 216 final.

<sup>39</sup>EU Bulletin no. 5, 1995, pt. 1.2.3. The EP has called for including social rights in the clause (EP Resolution on the introduction of a social clause in the unilateral and multilateral trading system, in OJ C 61, 28 February 1994). Under the new rules on the Generalised System of Preferences (Regulation no. 3281/94, in OJ L 348, 31 December 1994), additional preferences will be provided to countries that apply ILO conventions on freedom of association and child labor, from 1 January 1998. Preferences can be withdrawn if a state practices forced labor or exports goods made by prison labor.

suspension clause institutionalizes a practice already established, as European Development Fund (EDF) aid had already been suspended in several ACP countries (see section III).<sup>40</sup> The clause will also allow, however, the suspension of trade preferences.<sup>41</sup>

Conditionality has been extended to aid to non-ACP countries. A February 1992 regulation on assistance to developing countries in Asia and Latin America states that the Community could amend or suspend cooperation with states that violate human rights and democratic principles. Increased support could be given to countries most committed to the respect for human rights and democratic principles.<sup>42</sup> The 1996 MEDA regulation (on financial measures for the Mediterranean countries) states that respect for democratic principles and human rights is an essential element of the relationship, and violation of it would justify adoption of appropriate measures.<sup>43</sup>

### III. Conditionality in Practice

Within the EU, then, there does seem to be widespread agreement that promotion of human rights and democratic principles are a legitimate objective of foreign policy, and that conditionality is one way of achieving that objective. How and to what extent is conditionality applied?

In the EU's application of conditionality, positive measures are preferred, and negative measures de-emphasized. Sanctions, including the suspension of agreements, are to be imposed only as a last resort.

The Community approach is geared to the principle that international cooperation must focus especially on positive measures providing incentives for the promotion of democracy and human rights; the use of sanctions should be considered only if all

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<sup>40</sup>EDF is outside the EU budget and provides the bulk of EU assistance to ACP countries.

<sup>41</sup>Karin Arts, "Implementing the Right to Development? An Analysis of European Community Development and Human Rights Policies", in Peter Baehr, Lalaine Sadiwa, and Jacqueline Smith, eds., Human Rights in Developing Countries Yearbook 1996 (The Hague: Kluwer Law International, 1996), pp. 60-61.

<sup>42</sup>Council Regulation no. 443/92, in OJ L 52, 27 February 1992. It should be noted that at the time, the PHARE and TACIS regulations did not contain such a clause.

<sup>43</sup>Earlier regulations on aid to the Mediterranean countries did not contain this clause. See Regulations no. 1762/92 and 1763/92 in OJ L181, 1 July 1992, and Regulation no. 1488/96 (the MEDA regulation), in OJ L 189, 30 July 1996.

other means have failed.<sup>44</sup>

Positive measures are preferable to sanctions for several reasons. They help to establish the conditions under which democratic principles and human rights can be protected. Such measures seem to challenge sovereignty less than sanctions do. Donors are less likely to be inconsistent in applying positive measures than negative ones.<sup>45</sup>

The EU's positive measures include granting increased aid to countries that are making progress in promoting human rights and democratic reforms. The November 1991 resolution on human rights, democracy, and development, for example, envisaged "the possibility of increased assistance to developing countries in which substantive positive changes in human rights and democracy have taken place."

The top 20 recipients of official Community development assistance are listed in table 1. While only a superficial analysis can be attempted here, the table does suggest several interesting developments.<sup>46</sup> The decline of Kenya, Malawi, Sudan, Togo and Zaire corresponds to decisions in the early 1990s to suspend aid to those countries because of human rights violations and problems in democratization (see below). Likewise, the rise of South Africa, Burkina Faso, and Zambia coincides with positive evaluations of the political situation in those countries.<sup>47</sup>

Part of the problem with relying on positive conditionality is that the EU's resources are necessarily limited: it is unlikely that aid allocations would increase substantially in any event. But

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<sup>44</sup>European Commission, "On the Implementation in 1993 of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991", COM (94) 42 final, 23 February 1992, p. 11.

<sup>45</sup>Marantis 1994, pp. 14-16.

<sup>46</sup>A list of the major recipients in itself, though, does not provide much information about the application of conditionality. For example, humanitarian reasons (delivery of aid) account for the primary position of the former Yugoslavia in 1993/1994. As I have not yet seen decisions taken on the allocation of the 8th EDF, it is too early to tell the extent to which aid has been re-allocated to countries implementing political reforms.

<sup>47</sup>See the CFSP joint action on support for the transition in South Africa, in OJ L 316, 17 December 1993. For the positive evaluations, see European Commission, Directorate General for Development, EU-ACP Cooperation in 1994 (Special Issue of The ACP-EU Courier), 1995.

if positive conditionality is really to be applied, then we should expect to see further significant changes in the amounts allocated to states, based on their human rights and democracy situation.

**Table 1: 20 major recipients of Community aid disbursements**

1983/1984	1988/1989	1993/1994
India	Côte d'Ivoire	Sts of ex-Yugoslavia
Ethiopia	India	Morocco
Bangladesh	Ethiopia	Ethiopia
<b>Zaire</b>	Cameroon	Egypt
Egypt	Bangladesh	<b>Zambia</b>
<b>Sudan</b>	Mozambique	Mozambique
Ghana	<b>Kenya</b>	Côte d'Ivoire
Tanzania	Egypt	Tanzania
Turkey	<b>Sudan</b>	<b>South Africa</b>
Morocco	<b>Zaire</b>	Nigeria
Madagascar	China	Zimbabwe
Mali	Tanzania	Palestinian Adm. Areas
Uganda	Senegal	<b>Burkina Faso</b>
Somalia	Chad	Bangladesh
Chad	<b>Malawi</b>	Cameroon
<b>Togo</b>	Tunisia	Senegal
Senegal	Madagascar	Mali
Zimbabwe	Uganda	Tunisia
Mozambique	Rwanda	Ghana
Papua New Guinea	Mali	Angola

Source: Organisation for Economic Co-operation and Development, Development Assistance Committee, "The European Community", Development Co-operation Review Series, no. 12, 1996, p. 56.

Aid is also specifically earmarked for helping countries carry out democratic reforms and protect human rights, although such funds are relatively quite small. Between 1992 and 1994, there were separate lines in the EC budget for financing activities in several regions. In 1994, at the EP's request, all the headings were gathered in one budget chapter, the European Initiative for Democracy and Protection of Human Rights. In 1994, ECU 59.1 million was allocated for the initiative



(compared with ECU 45.1 million for aid in 1993).<sup>48</sup> In addition, the EDF can finance activities to promote human rights and democracy that are initiated by the ACP countries.<sup>49</sup>

EU aid for democracy and protection of human rights is to be spent on three priority areas: 1) operations linked with the exercise of public authority, which includes operations to strengthen the rule of law (such as support for parliaments and the judiciary) and to support consultation of population (referenda, elections); 2) operations to strengthen civil society (support for non-governmental organizations); and 3) support for vulnerable groups (such as torture victims and minorities).<sup>50</sup>

Positive conditionality can also entail holding out the promise of benefits if the country concerned meets certain conditions. This is already a well-established practice. In December 1996, for example, the EU promised to negotiate a cooperation agreement with Cuba if the Cuban authorities make progress towards democracy.<sup>51</sup> In May 1997, the Council stated that the development of relations with the former Yugoslavia is linked to conditions on democracy, human rights and regional cooperation. Negotiation and conclusion of agreements can then be delayed, if need be, as happened when the negotiations on trade and cooperation agreements with Romania and Bulgaria were suspended in 1989 because of concerns about human rights abuses there.<sup>52</sup>

Positive conditionality, though, is not always applied consistently. The recognition of the Yugoslav republics as independent states was also promised if certain conditions were met. But

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<sup>48</sup>European Commission, "Report on the Implementation of Measures Intended to Promote Observance of Human Rights and Democratic Principles (for 1994)", COM (95) 191 final, 12 July 1995, p. 3. Compare these figures with the general aid allocations: almost ECU 13 billion for the 8th EDF (1996-2000); and for 1995-1999, ECU 6.7 billion for PHARE, ECU 2.7 billion for TACIS, and ECU 4.7 billion for the Mediterranean non-member countries.

<sup>49</sup>EU-ACP Cooperation in 1994, p. 7. Funds can also be taken from other allocations for technical assistance and cooperation. Com (95) 191 final, p. 4.

<sup>50</sup>COM (94) 42 final, p. 4.

<sup>51</sup>CFSP Common Position on Cuba, in OJ L 322, 12 December 1996.

<sup>52</sup>The delay can be instigated by the Commission, Council, or the European Parliament (which, for example, delayed the recent customs union with Turkey because of human rights concerns).

Croatia was recognized anyway (even though a specially-instituted commission had decided that it did not meet the conditions), and the Former Yugoslav Republic of Macedonia was not (even though the commission had ruled that it did meet the conditions). Clearly, the concerns of separate member states (Germany in the first case and Greece in the second) prevented the Community from following its own agreed guidelines. Algeria and the EU are currently engaged in discussions about concluding an association agreement, although human rights violations are still being committed there.

Positive measures are an inadequate response to gross violations of human rights or clear reversals in the democratic process. But negative measures are controversial for several reasons. They do not address the causes of violations of human rights, and can even worsen the situation. The assumption is that governments can and are able to respond to outside pressure, but they may not be able to. Sanctions can antagonize states and hurt the population, or cause it to rally to the government's support.<sup>53</sup>

In response to violations of human rights and democratic principles, the EU can:

- deliver confidential or public demarches;
- change the content of cooperation programs or channels used;
- defer signatures or decisions needed to implement cooperation;
- reduce cultural, scientific, technical cooperation programs;
- defer holding a joint committee meeting;
- suspend high-level bilateral contact;
- postpone new projects;
- refuse to act on a partner's initiative;
- impose trade embargoes (sanctions);
- suspend arms sales and military cooperation; or
- suspend cooperation with states concerned.<sup>54</sup>

Negative measures are to be decided according to three principles: they should be guided by objective and equitable criteria; they must be appropriate to the circumstances and proportional to the gravity of the case; and they must not penalize the population, and particularly the poorest people (therefore official cooperation could be interrupted with the government, but aid would continue to

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<sup>53</sup>Marantis 1994, pp. 12-14.

<sup>54</sup>See the lists of negative measures in COM (94) 42 final and COM (95) 216 final.

be channeled to the population).<sup>55</sup> There are, however, no hard and fast guidelines on what the appropriate level of response is to be to a given situation. It is clear that the EU treats different partners differently, for reasons that are not always related to considerations of human rights and democracy.

In 1994, the EU delivered approximately 50 démarches and published over eighty declarations on human rights situations.<sup>56</sup> In addition, the EU has introduced resolutions on human rights in specific situations to the Third Committee of the UN General Assembly and the UN Commission on Human Rights. But while CFSP démarches and declarations condemn the behavior of a state, trade concessions and aid flows can remain unaffected. The EU delivered two démarches to Slovakia in 1994 and 1995, reiterating that Slovakia's relations with the EU depended on progress in implementing democratic reforms, but Slovakia still receives PHARE aid, its Europe agreement has not been altered, and it participates in the pre-accession strategy, which is to help prepare it for EU membership. Aid can even serve as an alternative to negative measures: in June 1996, the Council supported aid to improve the human rights situation in East Timor, but has not imposed negative measures on Indonesia over the issue.<sup>57</sup>

Human rights issues are raised in political dialogue meetings (in the context of association or cooperation agreements). In addition, conducting a "critical dialogue" on human rights is a way for the EU to express its displeasure with a particular situation. From the Edinburgh European Council in December 1992 until April 1997, for example, the Union was engaged in a critical dialogue with

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<sup>55</sup>Commission Communication, "Rapport sur la mise en oeuvre de la resolution du conseil et de ses etats membres sur les droits de l'homme, la democratie et le developpement du 28 novembre 1991", SEC (92) 1915 final, 21 October 1992.

<sup>56</sup>According to the General Secretariat of the Council of the EU, "1994 Memorandum to the European Parliament on the Activities of the European Union in the Field of Human Rights", document no. 4404/95, 24 January 1995, p. 6. In 1992-1993, the figures were over 140 approaches and démarches, and 60 declarations. "Annual Memorandum to the European Parliament on the Activities of the Community and its Member States in the field of Human Rights", Document no. 93/237 in European Political Cooperation Documentation Bulletin vol. 9, 1993, p. 295.

<sup>57</sup>CFSP Common Position on East Timor, in OJ L 168, 6 July 1996.

Iran.<sup>58</sup> The dialogue with Iran, however did not succeed in persuading Iran to respect human rights and behave more responsibly in international affairs.<sup>59</sup> In 1995, the EU entered into a human rights dialogue with China (at China's request).<sup>60</sup>

Arms embargoes have been imposed on third countries because of violations of human rights and democratic principles. Following the execution of writer Ken Saro-Wiwa, the EU imposed an arms embargo on Nigeria (in November 1995). The failure to respect the results of the 1990 democratic elections in Burma also resulted in an arms embargo on that country.

Breaking off relations that have already been established, however, seems to be quite difficult for the EU. Sanctions have, of course, been imposed on third states, often in accordance with UN decisions. But unilateral negative measures with respect to human rights and democracy seem harder to take. No external agreement has been suspended explicitly on the basis of the human rights clause.<sup>61</sup> Even in the case of Haiti in 1991-1992, the Council felt that denouncing the Lomé convention was too abrupt a sanction, although a military coup had taken place.<sup>62</sup> The human rights

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<sup>58</sup>In April 1997, the EU suspended the critical dialogue, after a German court found that the Iranian regime had ordered the 1992 assassination of four opposition members in Berlin.

<sup>59</sup>Mouna Naïm, "La dialogue avec l'Europe n'a pas amélioré la situation des droits de l'homme en Iran", Le Monde, 10-11 November 1996. The EU did manage to get Iran to promise not to encourage anyone to murder writer Salman Rushdie, but the promise is not in writing and there is still a bounty on Rushdie's head. "Taking on the Mullahs", The Economist, 18 January 1997. It should be noted that the US policy of isolating Iran has not worked either. Fawaz A. Gerges, "Washington's Misguided Iran Policy", Survival, vol. 38, no. 4, Winter 1996-1997.

<sup>60</sup>"1994 Memorandum to the European Parliament on the Activities of the European Union in the Field of Human Rights", p. 9.

<sup>61</sup>European Parliament, Committee on Foreign Affairs, Security and Defence Policy, "Report on the Communication from the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries (COM (95) 0216 - C4-0197/95)", A4-0212/96, 26 June 1996, p. 9. The first time a Community agreement was denounced was on 25 November 1991, when the Council denounced the EC's cooperation agreement with Yugoslavia, as part of a sanctions package in relation to the war there. Marc Vaucher, "L'Evolution Récente de la Pratique des Sanctions Communautaires à l'Encontre des Etats Tiers", Revue Trimestrielle de Droit Européen, vol. 29, no. 1, January-March 1993, p. 47. To my knowledge, this is the only Community agreement that has been denounced thus far.

<sup>62</sup>Vaucher 1993, pp. 48-49.

clauses state that the priority is to keep agreements operational wherever possible, and a consultation procedure is to be followed before taking action.

Table 2 lists the decisions on aid suspension and interruption, taken by the Council, because of violations of human rights and democratic principles in the 1990s.<sup>63</sup> Frequently, the Community/Union decides to examine each project and decide whether it can be financed because it meets basic needs, or to suspend new programs but allow ongoing programs to continue. Complete suspension of ongoing projects is rare. In any event, humanitarian aid, and often aid for non-governmental projects, is still provided.

As can be seen from the table, development cooperation tends to be interrupted with weak states, such as Sudan and Haiti. With respect to more important third states, such as Algeria and Indonesia, the EU relies only on démarches and declarations. Even though elections were canceled in Algeria in January 1992, the Community and member states only expressed concern about the developments, and took no punitive action.<sup>64</sup>

Why does the EU seem to be reluctant to impose tough negative measures? Commercial interests are certainly part of the reason why sanctions against China have not been reconsidered since 1990.<sup>65</sup> In fact, in April 1997, several EU member states refused to support a resolution condemning China in the UN Commission on Human Rights, which had been jointly supported by the member

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<sup>63</sup>Development cooperation with other countries (such as Liberia, Rwanda, and Somalia) has been suspended because of the internal security situation there. In October 1996, the EP vetoed new financial assistance to Turkey (to have been provided under the MEDA regulation and the customs union) because of the deteriorating human rights situation there. The EP does not have the power to suspend aid that has already been granted.

<sup>64</sup>Of course, this could be a particular case, because a victory for the Islamic Salvation Front was widely considered the worst of two evils.

<sup>65</sup>See Steven Weber, "European Union Conditionality", in Barry Eichengreen, Jeffrey Frieden, and Jürgen von Hagen, eds., Politics and Institutions in an Integrated Europe (Berlin: Springer, 1995), pp.208-209.

**Table 2: Cases of Aid Suspension/Interruption**

Country	Action Taken	Reason
Comores	1995: cooperation slowed until elections	coup d'état
Equatorial Guinea	since 1992: no significant cooperation operation implemented	serious violations of human rights
Gambia	since 1994: cooperation activities maintained if meet basic needs	coup d'état
Guatemala	1993: no further decisions on aid to be taken	suspension of constitutional regime
Haiti	1991: cooperation suspended (resumed in 1994 with elections)	coup d'état
Kenya	1991: aid suspended (resumed in 1993, but no aid for structural adjustment)	lack of progress in political field
Malawi	1992: almost total aid freeze (aid resumed after 1993 referendum)	no progress in political field
Niger	Jan. 1996: aid suspended for six months	coup d'état
Nigeria	1993: review new aid programs on case-by-case basis; November 1995: cooperation suspended	lack of democracy; execution of Ken Saro-Wiwa
Sudan	since 1990: new aid projects suspended	civil war; human rights violations
Togo	1992: new programs frozen (1995: aid gradually resumed)	interruption of democratization process
Zaire	since 1992: cooperation suspended (aid in 1994 for Rwandan refugees)	setbacks in democratization process

Sources: EU Bulletin; SEC (92) 1915 final; COM (94) 42 final; European Commission, EU-ACP Cooperation 1993 (Special Issue of the ACP-EU Courier), 1994; EU-ACP Cooperation in 1994; European Commission, "Financial Cooperation under the Lomé Conventions: Review of Aid at End of 1993", Development, no. 79, March 1995; European Commission, "La Coopération Financière dans la Cadre des Conventions de Lomé: Bilan de l'Aid à la Fin de 1995", Developpement no. 88, September 1996.

states every year since 1989. The reason apparently is that several states, including France, were interested in smoothing relations with China so that important commercial deals could be concluded.<sup>66</sup> The EU's critical dialogue with Iran left the member states free to import Iranian oil; oil was also not included in the list of sanctions imposed on Nigeria in 1995.

The need to reach a compromise among the member states can entail backing away from strong negative measures. Decision-making procedures allow plenty of opportunity for member states to block them. Under Maastricht Treaty article 228a, to impose economic sanctions, there must first be a CFSP common position, and then an implementing decision under the Community's Common Commercial Policy. Joint diplomatic sanctions (including arms embargoes) are decided on in CFSP (unanimously). The partial suspension of commercial concessions or cooperation programs can be decided by the Commission autonomously. Mixed agreements (those that are concluded by both the Council and the member states<sup>67</sup>) must be altered by decision of all the member states and the Council. To suspend a Community agreement, the Council takes a decision after receiving a Commission proposal to that effect, but does not need the EP's assent. To cancel a Community agreement, the EP's assent is usually also needed.<sup>68</sup>

The delaying of agreements can reflect the interests of one member state in impeding the development of relations with a third country. This can happen when unanimity is required to proceed with a positive measure. For example, Greece has frequently slowed the development of relations with Turkey, ostensibly over human rights abuses.<sup>69</sup> Portugal is blocking a new EU-ASEAN cooperation agreement over the East Timor issue. But such objections have not been enough to prompt the EU to break off relations, which likewise requires unanimity. The EU's "message" is thus unclear.

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<sup>66</sup>"Europa divisa sui diritti umani: nessun accordo contro la Cina", La Repubblica, 8 April 1997.

<sup>67</sup>Such agreements contain provisions that do not fall under the Community's jurisdiction, such as on political dialogue (increasingly included in external agreements).

<sup>68</sup>See EP Report A4-0212/96, p. 17.

<sup>69</sup>See "Two-faced", The Economist, 26 October 1996.

There are also more profound objections to the use of negative measures. There is some opposition within the EU to applying strict conditionality because it would isolate those states that most needed aid and ties with the EU and generate instability. For example, leaving some CEECs out of the first round of EU enlargement eastwards could potentially be destabilizing for the discouraged "outsiders".<sup>70</sup> Integration, dialogue, and trade should be used to engender democracy, economic reforms and "good behavior". In addition, the EU cannot exercise influence if it has no ties to the country concerned.

These dilemmas were evident in the debates over the response to the Russian intervention in Chechnya in December 1994. In early 1995, the EU delayed the conclusion of an interim trade agreement with Russia and insisted that Russia accept an international monitoring mission in Chechnya; by June, the EU had decided to proceed with the agreement even though fighting was still raging. The view that Russia should be integrated into Western institutions and cooperation networks prevailed over the view that it should be coerced into stopping the fighting.<sup>71</sup>

Fostering interdependence and dialogue can have a positive influence. But a preference for carrots opens the EU up to charges of complicity and appeasement.<sup>72</sup> The EP has criticized the apparent subjectivity and inconsistency in the EU's application of conditionality: "So far, there is sufficient evidence of the EU bodies applying double standards in reacting to human rights abuses in different countries depending on their economic and strategic potential. Saudi Arabia compared with Iraq might suffice as example."<sup>73</sup> Sanctions might be necessary just to express the EU's displeasure with a county's behavior.

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<sup>70</sup>Likewise, some observers charge that the ambiguity of the EU's relations with Turkey (an applicant state) has contributed to political instability in the country. Tony Barber, "The Turkish Question", The Independent, 30 July 1996.

<sup>71</sup>See Andrew Marshall, "EU Ponders the Russian Riddle", The Independent, 18 March 1996.

<sup>72</sup>A former CIA director criticizes the 'Franco-German' approach to "wink at Tehran's support for terrorism and rationalise, in effect, appeasement of it." R. James Woolsey, "Appeasement Will Only Encourage Iran", Survival, vol. 38, no. 4, Winter 1996-1997, p. 19.

<sup>73</sup>Report A4-0212/96, p. 16.



#### IV. Conclusion

Clearly, the EU's use of conditionality could be more systematic and coherent than it is now. The answer to the question, "to what extent does the EU actually apply conditionality?", is that it depends. What emerges from a cursory examination of its application of conditionality is that countries that are considered important for commercial or political purposes generally do not suffer, or suffer less, from negative measures.

But there is more to the story than that. There is a debate about what strategies are most effective to promote human rights and democracy, and there are doubts about the desirability and effectiveness of using negative conditionality. There is evidently disagreement about **how** to implement the initial agreement that human rights and democratic principles are an important element in the EU's foreign relations. Nonetheless, conditionality is applied inconsistently, even if this may be due (in some cases) to a well-founded aversion to negative measures and sanctions. And this inconsistency could reduce the potential for the EU to reach its objective of encouraging human rights and democracy.

It is, however, still significant that human rights and democracy have become such a concern for the Union, given that until the late 1980s they were not. If commercial or strategic interests were the primary concern for the Union's external relations, then there would have been no need or desire to develop such a far-reaching human rights policy. While the norm of conditionality may not always trump other considerations, the EU is nonetheless at the front of efforts to make it illegitimate to violate human rights and conduct undemocratic politics. By adopting conditionality as a norm guiding foreign policy behavior, the EU has at least agreed that now it **can** act on the basis of considerations of human rights and democratic principles.