



FPC Briefing: The EU on human rights- Turning words into action

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Summary

Three years after the EU's foreign ministers loftily declared that they would 'promote human rights, democracy, the rule of law and international justice in all areas of the EU's external actions without exception' the EU is reviewing its approach in a changed – and more hostile – context. The hope surrounding the Arab Spring has turned to despair, and human rights under threat, both abroad and closer to home. As a peace project and community of norms the EU has human rights in its DNA. Yet in practice it consistently underperforms on human rights, and its own values project is frequently undermined amid growing internal and external challenges. Against a backdrop of a failed neighbourhood policy, deepening tensions with Russia, a 'migration crisis', rising xenophobia and efforts to undermine human rights by member states' governments ranging from Hungary to the UK, will the EU be able to learn the lessons of past failures, and address the growing gap between rousing words on paper and lack of political will to act on the rhetoric? This article examines the recently revised human rights action plan in light of the EU's mixed record so far and argues that this time round, the EU has every interest in producing a human rights policy with teeth.

Introduction

When the EU launched its global human rights policy in June 2012 there was much optimism and fanfare.¹ Nearly two decades on from the democratic flourishing of the 1990s, the enlarged EU 27 was finally putting pen to paper to underscore its position as a value-based actor on the world stage. The EU proclaimed loftily that it would put its 'full weight behind advocates of liberty, democracy, and human rights throughout the world' and for human rights, democracy, the rule of law and international justice to be promoted 'in all areas of the EU's external actions without exception'. And in case there were any doubt that this would include the likes of China, Russia or Saudi Arabia, the EU clarified that it would 'place human rights at the centre of its relations with all third countries including strategic partners.'

Three years later, the EU has agreed a second generation of strategic objectives for its action on human rights and democratisation. Yet as analysts, civil society activists and EU officials start our discussions on how we will implement version 2.0, there are continuing concerns that the flaws of the first generation Action Plan remain. Not least the growing gap between rousing words on paper and lacklustre implementation, due to lack of buy-in from the EU member states and at the highest level of the European External Action Service (EEAS). Meanwhile, human rights violations and impunity are continuing overseas and there is increasing evidence that human rights – in principle and practice – are very much under threat closer to home, within the EU. This policy brief examines the EU's record so far and finds that the failure is not on paper, but in the level of political will and top-level buy-in for the human rights strategy. It analyses what the new policy means for future EU action on human rights as well as the extent to which human rights are reflected in the current institutional set-up. It concludes that this time round the EU has every interest in producing a human rights policy with teeth.

Context

The first review of the EU's approach to human rights and democratisation takes place amid changed realities. The world around looks different from three years ago: The Arab Spring, a favourable backdrop for the EU's first human rights policy framework, has since turned to a gloomy autumn. Few if any of the countries have reformed and the Syria conflict now embroils the region and beyond. The EU's neighbourhood looks far from the arc of security and stability envisaged by

¹ The Council of the European Union, EU Strategic Framework on Human Rights and Democracy, June 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf



the EU's neighbourhood policy – also currently under review. Deepening tensions with Russia continue to stymie the EU's values project to the East – both via Russian hard power in Ukraine and its attempts to coerce partners into a competing Eurasian Economic Union. Globally, there is a shrinking space for civil society as governments use a multitude of repressive tools to silence critics. New foes from within the EU's borders are also challenging the EU's agenda on human rights and democratisation. Xenophobic political parties reject the premise of human rights of migrants entering the Union. Europeans recruit fellow Europeans to service the oppression of the Islamic State in Syria and Iraq. Meanwhile EU countries have taken aim at human rights through the lens of Euroscepticism. The UK's threatened withdrawal from the European Court of Human Rights (disregarding the fact that the Council of Europe is not an EU institution) is a disavowal of the UK's heritage as a key backer, led by none more notable than Winston Churchill, of the first post-war Europe-wide covenant on human rights. The response to the current so-called 'refugee crisis' has exacerbated pre-existing trends, whereby EU Member States such as Hungary openly attack values ranging from free speech to free movement. In this context the new team of European Commissioners charged with taking forward EU policymaking proceed timidly, eschewing new policies and reluctant to defend values enshrined in the EU Treaties, cognizant of the fact there is growing scepticism of the EU project. Fear of the foreigner – fellow European or otherwise – is back on the agenda 60 years after solidarity was celebrated as the new norm. This bodes ill for the EU's ability to defend rights abroad credibly.

A mixed record on human rights – quiet diplomacy and technocracy

The EU created its human rights policy in 2012 as a response to the normative failings of its neighbourhood policy. The popular uprisings labelled the Arab Spring and subsequent events occurred without the EU's engagement or support for civic actors and social movements. Tunisia transformed from within, in spite of the EU, whose cosy relationship with the Ben Ali regime leading up to the revolution did not leave it in a strong position to shape a post-revolutionary agenda. Elsewhere in the neighbourhood, despite an elaborate neighbourhood policy premised on 'more [rewards] for more [reforms]', the EU has consistently allowed geopolitics to crowd out its normative policy line: On Azerbaijan the EU has remained quiet as the situation for human rights defenders in the country has consistently deteriorated, whilst senior Commissioners go to Baku to talk energy deals.

The human rights strategic framework was designed to address some of the issues arising from the lack of values-based 'red lines', namely the false premise of values-versus-interests, policy incoherence, the failure to follow through on normative policies, and the unwillingness to raise concerns robustly and publicly. But it has had mixed results at best: Part of the problem is the EU's technocratic approach to human rights and democratisation. The policy is executed as a paper exercise relegated to mid-level bureaucrats who receive little real political backing from their hierarchy. Some good efforts have resulted in the review of human rights guidelines, development of country-level human rights strategies, and recognition of the need to pursue internal-external coherence (through joint working party meetings at EU level). But the reach of these initiatives is limited without the political engagement of the EU high representative and foreign ministers. In the case of democracy promotion – which is still recovering from the backlash engendered by its misuse by US neo-Conservatives to pursue broader foreign policy objectives – the technical-level institution-building narrative and project-led approach of activities during the last few years has made some sense. Yet the EU's reticence to defend and promote the universal human rights agenda at the political level is less clear: For example, during the more than 40 human rights dialogues with third countries, mid-level officials from the European External Action Service (EEAS) frequently face more experienced and higher level political actors across the table. The recent removal of the dedicated Human Rights Director post within the EEAS opens this representation (and credibility) gap still further.



In institutional terms the restriction of the policy to the EEAS human rights directorate has been a great failing, and the opposite of the 'silver thread' promised by the former High Representative, Catherine Ashton. In practice the policy has been developed on paper by the EEAS; signed off at Foreign Ministerial level with barely a discussion of its strategic importance; and then delivered by the EEAS human rights directorate, often in isolation from the rest of the EU's External Action Service, let alone relevant EU Commission departments. The recent demotion of the human rights directorate within a new organigram structure², if not accompanied by serious staffing of a mainstreaming approach, bodes ill for the policy under High Representative Federica Mogherini. The picture at the field level is depressingly similar: the EU's human rights work is left to junior diplomats and human rights focal points in delegation to execute, often unsupported by their Heads of Delegation. Without a clear instruction from the High Representative to EU Heads of Delegation about the need to prioritise and deliver on this work, we risk a continued failure of ownership and political ambition at country level, leaving the policy operating in a vacuum – as human rights focal points are little empowered to innovate beyond working on projects with familiar trusted NGOs.

The EU has also disappointed in its preference for backroom diplomatic pressure over public diplomacy. When Human Rights Defenders look to the EU it is political support as much as funding that they are seeking. The work the EU has been doing well – funding organisations, now including via the more flexible European Endowment for Democracy, offering trainings and penning guidelines – could be enhanced by more robust, vocal and transparent position-taking for human rights at the country level. The equivalent of the US embassy statement is particularly prized, but comes more rarely in places like Russia, China, Bahrain and Azerbaijan than is needed. This extends to lack of transparency. Civil society organisations have long bemoaned the EU's reticence to reveal the priorities in its country-level human rights strategies. The inability to 'sell' its own work, witnessed by the failure under the previous High Representative to agree a communications strategy to publish its human rights annual report, was particularly striking. Even now, the EU is reluctant to speak out publicly on individual cases and call for the release of those imprisoned for their human rights work. Work (rumoured to be valuable) by the EU's Special Representative for human rights remains behind closed doors, without clear and transparent follow-up lines.

Without clear political backing for its normative agenda the EU has faltered badly. On Egypt it failed to show the courage of its convictions as the election victory and mandate of the reformist Muslim Brotherhood was trampled on by the army, and Egypt returned to business-as-usual under a military leader. Further afield, the EU has proved less than robust when confronted by governments willing to deploy allegations of imperialism to deflect criticism of their human rights record. On the rare cases the EU presses the case (Pierre Claver, Burundi) there is a result. But all too often the EU takes issues ranging from NGO laws to LGBT rights off the table in line with local sensitivities.

What's on paper: Human Rights and Democratisation 2.0

The EU's record so far may be patchy, but its plan for the next 5 years offers opportunities to improve its record. The EU has pushed for greater focus and strategy, but also retain ambition in areas where the EU has not developed policy. The new Action Plan³ (valid until 2019) recognises the global problem of the shrinking space for civil society. Also welcome is the focus in the action plan on gender – an issue resonating at the global level, in discussions around the Sustainable Development Goals, and which offers a real opportunity for the EU, if taken seriously. The EU is also set to stand by its work on death penalty – where the Union has a historically clear line – but

² EU External Action Service, EEAS Organigram, November 2015, http://eeas.europa.eu/background/docs/organisation_en.pdf

³ Council of the European Union, Council Conclusions on the Action Plan on Human Rights and Democracy 2015 -2019, July 2015, <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>



deepening the connection to torture and ill-treatment. Some issues not fleshed out in the previous action plan will be addressed: a long promised policy on transitional justice enabling the EU to address situations of accountability in post-conflict scenarios, may see the light of day. The Action Plan also includes the timely commitment for the EU to increase its focus on Economic, Social and Cultural Rights. At a risk of lacking concrete measurable actions, the Action Plan demonstrates that the EU is also open to taking systemic approaches to issues, such as children's rights, which had suffered from a tokenistic, issue-based approach in the previous action plan.

Policy coherence will be key to delivering a more robust values-based external policy: The EU's Trade, Migration, Energy and Counter-Terrorism policies all have a bearing on human rights but the record so far in ensuring both coherence and burden-sharing has been lacklustre. Here the new Action Plan promises much. Its fourth chapter is dedicated to policy coherence across these areas (with the notable exception of Energy policy). Actions range from including human rights in EU-negotiated Bilateral Investment Treaties and conducting ex-ante impact assessments to ensuring that human rights and the rule of law 'are at the centre of all programmes, legislation, policies and mechanisms on counter terrorism in third countries'. Joint working across EU Commission services will be needed to ensure these policies are in line with the human rights activities outlined. The position of the High Representative Federica Mogherini as number three in the Commission hierarchy with new powers of oversight on Trade and Migration policy should ensure this coherence. She should match this thematic coherence within the EEAS by appointing dedicated human rights positions in its geographical departments.

The new closeness of the EEAS under Mogherini to the European Commission has brought challenges as well as opportunities: The new institutional structure has led to the EEAS being placed under pressure to work much more closely with the Commission – and by the Commission's rules. This has meant less transparency for civil society and the member states. On the other hand, the tasking of the First Vice President Timmermans with the Charter of Fundamental Rights has allowed the rhetoric on internal-external coherence to firm up – although actions need to follow, starting with safeguarding migrant rights. In the continued absence of an institutional mechanism, Timmermans and his team will need to be more robust in defending civil and political as well as economic, social and cultural rights in the EU towards the member states.

There are also key issues where the EU needs to get the balance right: A major principle of the new Action Plan is local ownership through support to institution-building and rule of law (Action areas 1-5). Given the vastly different country contexts, this will need a case-by-case approach. Strengthening a National Human Rights Institution, the judiciary, or the parliament in a partner country where there is real commitment to reform is different from supporting parliaments and judiciary in countries where they are subordinated to the executive, often to presidential command – as is the case where the EU spent considerable money supporting the strengthening of the judiciary in Uzbekistan. Human Rights Dialogues with all partner countries should be results-oriented, with resources to back proposals of cooperation, sufficiently high level representation across external and internal dimensions of EU policy and with consistent follow up. Those dialogues which do not produce results, or which are instrumentalised by partner countries to replace higher level discussion on human rights concerns, should be scrapped. The EU would not hold dialogues with North Korea in lieu of addressing human rights concerns at the highest level, so why does it continue to do so with Uzbekistan?

Taking it to the next level?

If the actions the EU has committed to undertake over the next five years are to have traction, they will need to be applied in the real world and at the appropriate level. The EU needs to be serious when takes a political line – and stick to it. This may mean offering less of a relationship for less



reforms ('less for less' as opposed to 'more for more' as the EU offered under the ENP). The EU should do so not only in 'easy' cases such as with the europhile governments of Georgia and Moldova, but also as a policy consequence of continued human rights violations in countries like Egypt and Azerbaijan. Likewise, if sanctions are threatened, there needs to be follow-through in response to violations. The EU's failure to pursue the policy consequences of its fine rhetoric undermines its credibility. Far from strengthening the Union vis-à-vis interlocutors from Riyadh to Moscow, the failure to engage in public, robust positioning on human rights weakens the EU because staying silent capitulates to the terms of the interlocutor. Like any negotiator, if the EU does not have a clear sense of what it will not accept and communicate as such, its position will be undermined.

This is all the more important because what the EU brings to the table in strategic terms is its values agenda. As a community of laws, and norms, this is part of the EU's DNA. It is also part of its soft power projection, and its power of attraction globally. Much is made in EU policy circles of the interest-vs-values dichotomy, inferring that values undermine the EU's interests. Yet there is still no clear evidence that the EU has gained any further traction with partners through abandoning its principles – from engaging in energy geopolitics in the Caspian to influencing Saudi Arabia.

Much will depend on the higher-level of the EEAS and the High Representative herself. A year into the job, it is time for the High Representative to show commitment to human rights both in word and in deed. This means stronger and clearer statements delivered by her services in Brussels and in country in response to human rights violations. In the case of jailed human rights activists the EU will need to desist from calling for a fair and unbiased reviews of sentencing decisions and insist systematically on their release in authoritarian contexts where the case is politically motivated and there is little prospect of a fair trial or due process. It also means human rights should stay prominent in the service – both in external representational functions, and with the staffing to ensure human rights are fully mainstreamed in the EEAS geographical departments.

The High Representative for Foreign Policy needs to defend the values agenda in forging the new EU Global Strategy for foreign and security policy, expected in June 2016. She has proved willing to be tougher on human rights violations in the context of Israel-Palestine – most recently when the EU together with the member states voted in favour of a resolution on Palestine, in light of the Gaza conflict, at the Human Rights Council. Her rhetoric on Russia has been comparatively tough, perhaps due to legacy issues regarding her perceived pro-Russia bias and to the status-quo ante that EU and Russia are facing each other off over Ukraine. Yet, it remains to be seen whether she will be willing to do so with strategic allies such as Saudi Arabia – Sweden's narrative on Saudi Arabia is clearer, bolder and more forward-thinking in that respect.

Perhaps as important as the High Representative herself, the role of EU Member States in both burden-sharing and political leadership will matter if the new Action Plan is to have impact. On relations with Saudi Arabia and Russia, they will need to pull in the same direction. The risks of Member States non-engagement in Brussels and in the field are clear: the policy risks *Brussel-isation*, thereby feeding further into the unhelpful dynamic of Brussels versus the capitals and undermining the EU's credibility. This problem risks going far beyond technical issues of division of labour among the actions the EU has committed to on paper, to the ownership (or even disowning) of a 'human rights' agenda. Put simply, the EU collectively cannot afford for human rights to be seen as a job for Brussels, while EU Member States pursue their national interests. Higher level buy-in from the foreign ministries of the member states is important because the EEAS – in the person of the High Representative – needs backing of the member states to carry forward an agenda when confronted with partner. It is hard to speak truth to power – but to do so as a body of 28 rather than a secretariat of one, is surely much easier.



As we start to put the rhetoric into practice, the Conclusions of the Foreign Ministers on 21st July this year should not be their final word on the EU's Human Rights Policy. NGOs are calling for an annual discussion about human rights at Foreign Ministerial level to ensure the policy is not kept in a bureaucratic box in Brussels. Another idea is for Heads of Delegation to report to the Political and Security Committee Ambassadors on how they are putting the policy into practice. NGOs will also have an important role in Brussels and in the Member States capitals in scrutinising political representatives to ensure the principles are not forgotten. But for the top level of the EEAS and the Ministers, let's hope the reaffirmed Human Rights Strategic Framework and its new Action Plan is the start of a shift in gear: The defence of human rights, as well as principled, is strategic. In a time of increasing norms competition, the EU has no interest in drifting away from its own script. In a market place of ideas, the strategy of the competitors is not transactional interest-politics, but increasingly normative – whether it's about 'traditional values' and the 'family' as constituted by heterosexual parents (Russia) or pushing back on multilateral commitments to good governance (Brazil). Reducing EU foreign policy to transactional, and 'interest-only' led policy making is also an impoverished strategy for a rules-based power such as the EU to bring to the table. As the High Representative considers a new Global Security Strategy, considered the EU's next big foreign policy statement, it is worth bearing in mind that a policy premised on security is also short sighted: If member states want fewer migrants landing from Syria, Eritrea and North Africa then they should ensure rights are respected everywhere, including in countries where EU member states have strategic partners, or have taken sides in conflict. And if the EU wants partners which look and act like itself, it needs to defend its values more robustly and ensure that what is on paper is meaningfully practised.

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