

The Human Rights and Democracy Clause in EU agreements

European Parliament resolution on the human rights and democracy clause in European Union agreements (2005/2057(INI))

The European Parliament,

- having regard to Articles 3, 6, 11 and 19 of the Treaty on European Union and Articles 177, 300 and 310 of the EC Treaty,
- having regard to its resolution of 12 February 2004 on reinvigorating EU actions on human rights and democratisation with Mediterranean partners¹,
- having regard to its resolution of 25 April 2002 on the Commission communication to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in third countries (COM(2001)0252)²,
- having regard to its resolution of 20 September 1996 on the Commission communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries (COM(1995)0216)³,
- having regard to its previous resolutions on human rights in the world of 28 April 2005⁴, 22 April 2004⁵, 4 September 2003⁶, 25 April 2002⁷, 5 July 2001⁸, 16 March 2000⁹, 17 December 1998¹⁰, 12 December 1996¹¹, 26 April 1995¹², 12 March 1993¹³, 12 September 1991¹⁴, 18 January 1989¹⁵, 12 March 1987¹⁶, 22 October 1985¹⁷, 22 May 1984¹⁸ and 17 May 1983¹⁹,
- having regard to the partnership agreement (the Cotonou Agreement) between the members of the African, Caribbean and Pacific (ACP) Group of States and the European

¹ OJ C 97 E, 22.4.2004, p. 656.

² OJ C 131 E, 5.6.2003, p. 147.

³ OJ C 320, 28.10.1996, p. 261.

⁴ *Texts Adopted*, P6_TA(2005)0150.

⁵ OJ C 104 E, 30.4.2004, p. 1048.

⁶ OJ C 76 E, 25.3.2004, p. 386.

⁷ OJ C 131 E, 5.6.2003, p. 138.

⁸ OJ C 65 E, 14.3.2002, p. 336.

⁹ OJ C 377, 29.12.2000, p. 336.

¹⁰ OJ C 98, 9.4.1999, p. 267.

¹¹ OJ C 20, 20.1.1997, p. 161.

¹² OJ C 126, 22.5.1995, p. 15.

¹³ OJ C 115, 26.4.1993, p. 214.

¹⁴ OJ C 267, 14.10.1991, p. 165.

¹⁵ OJ C 47, 27.2.1989, p. 61.

¹⁶ OJ C 99, 13.4.1987, p. 157.

¹⁷ OJ C 343, 31.12.1985, p. 29.

¹⁸ OJ C 172, 2.7.1984, p. 36.

¹⁹ OJ C 161, 10.6.1983, p. 58.

Union, signed in Cotonou on 23 June 2000¹ and amended in Luxembourg on 25 June 2005²,

- having regard to the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000³,
 - having regard to the proposal for a Council regulation establishing a European Union Agency for Fundamental Rights (COM(2005)0280),
 - having regard to the Universal Declaration of Human Rights (1948) and other United Nations (UN) human rights instruments, notably the International Covenants on Civil and Political Rights (1966) and on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993) and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998),
 - having regard to the conventions drawn up under the International Labour Organisation (ILO),
 - having regard to the 2003 UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, which relate those standards to specific human rights responsibilities of business,
 - having regard to all the agreements between the European Union and third countries,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on International Trade and the Committee on Development (A6-0004/2006),
- A. whereas the universality, individuality and indivisibility of human rights, meaning not only civil and political rights, but also economic, social and cultural rights, must be upheld and promoted, and whereas the European Union must continue to establish meaningful instruments to that end,
- B. whereas developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms, constitute a global objective of the Common Foreign and Security Policy and must be an integral part of the European Union's external policy,
- C. whereas efforts to promote respect for human rights and democracy as fundamental objectives of EU external relations policies will fail if the inherent principles are not

¹ OJ L 317, 15.12.2000, p. 3.

² OJ L 287, 28.10.2005, p. 1.

³ OJ C 364, 18.12.2000, p. 1.

given sufficient priority with regard to security-related, economic and political interests,

- D. stressing that the European Union must be able to respond rapidly and effectively in the event of serious and persistent violations of human rights and of democratic principles, and that on many occasions this has not happened, regardless of objective assessments of the state of human rights and democracy in third countries,
- E. whereas the legally binding character of the human rights and democracy clause should make it an important instrument in European policy on promoting fundamental rights, and whereas, 10 years after it was first drafted, it is now time to evaluate how it has been implemented and how it can be improved,
- F. whereas the clause has now been introduced into more than 50 agreements and applies to more than 120 countries; whereas, furthermore, the clause is not the only means that the EU has for promoting fundamental rights, and whereas the whole of European external policy, in its political, economic and trade dimension, should be based on the promotion of fundamental democratic principles,
- G. stressing the importance, in this connection, of the Cotonou Agreement, which has enhanced the human rights and democracy clause included by the European Community as an 'essential element' of all its agreements with third countries and which is now based on respect for human rights, democratic principles and the rule of law, as well as on good governance and sound management of public affairs,
- H. whereas the ACP-EU Joint Parliamentary Assembly is a unique forum for dialogue between ACP and EU parliamentarians, particularly on human rights and democracy issues,
- I. whereas many agreements with developed countries and sectoral agreements, such as agreements on textiles, agriculture and fisheries, still lack this clause,
- J. whereas human rights should be an important element in the negotiating mandate that the Council confers on the Commission for external agreements, and whereas the procedure for defining that negotiating mandate should be more transparent,
- K. whereas the European Parliament must give its assent before an agreement comes into force, but not for initiating consultation or partly suspending an agreement, and whereas this diminishes its political and institutional role,
- L. stressing that civil society and the international system of human rights NGOs have much to contribute to the whole procedure of drafting, implementing and assessing the human rights and democracy clause in agreements between the EU and third countries,
- M. convinced that the European Union must draw up new procedures and new criteria for applying the human rights and democracy clause, which must apply without discrimination between States or between their levels of development,
- N. whereas the human rights and democracy clause applies both to the European Union and to the third country in question, but whereas the reciprocal dimension of the clause has not been fully exploited,

- O. reiterating that emergency humanitarian aid must none the less continue to be excluded from any potential 'negative' application of the human rights and democracy clause, in the name of the fundamental principle of solidarity between peoples,
1. Welcomes the European Community's general practice of incorporating human rights and democracy clauses – the so-called 'essential elements' and 'non-execution' clauses – into its international agreements since 1992;
2. Calls for greater transparency when implementing the human rights and democracy clause, a keystone in the EU's external policy, and for greater involvement of the European Parliament; points out that penalties cannot be imposed in relation to the countries where human rights violations have been recorded but in relation to the violation itself;
3. Considers that it is the responsibility of the Union to ensure, when signing an international agreement with a third country that includes a clause on human rights, that the third country in question respects international human rights standards when the agreement is signed;
4. Stresses that one of the factors which have compromised the application of the clause is the generic nature of its wording, since this does not spell out detailed procedures for 'positive' and 'negative' interventions under EU/third country cooperation, leaving the Council and Member States' national imperatives to hold sway over the more general requirements of human rights;
5. Applauds, none the less, the experiment conducted to date with the human rights and democracy clause in Articles 9 and 96 of the Cotonou Agreement, which has even led to the temporary suspension of economic and trade cooperation with some ACP States on the grounds of serious human rights violations, thus enhancing the European Union's determination and credibility; advocates the development of this experiment and its inclusion as a standard feature in EU/third country agreements;
6. Stresses that the political and legal content of the human rights and democracy clause is spelled out effectively in the Cotonou Agreement, and that the mechanisms for consultation and for the exchange of information, prior to the temporary suspension of bilateral cooperation, are described in detail;
7. Advocates the drafting of a new 'model clause' to correct the current wording of what is known as 'Article 2', to ensure a more coherent, effective and transparent approach to European policy on human rights in agreements with third countries; the text should take the following principles into account:
 - (a) the promotion of democracy, human rights, including minority rights, the rule of law and good governance form a basic pillar of multilateral cooperation; this applies to agreements with both developing countries and industrialised countries;
 - (b) where the legal formulation of those rights is concerned, the parties should refer, in particular, to their international obligations and undertakings which have already been ratified, and it must be made clear that the parties are required to comply with the norms which constitute an 'essential element' of the agreement; in particular, the parties should undertake to promote those fundamental rights set out in the UN

Declaration on Human Rights of 1948, the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the internationally recognised UN covenants and legal norms of the "jus cogens";

points out that, in its relations with third countries and in the context of promoting democratic principles and human rights through the human rights and democracy clause, the European Union is called upon to pay special attention to implementing policies for gender equality and women's rights, whilst satisfying itself that the third-country authorities uphold the fundamental rights not to be arbitrarily arrested, tortured or executed and that their citizens have access to an impartial court of law as a priority;

points out that, in accordance with the European treaties, in its relations with third countries and in the context of promoting democratic principles and human rights through the human rights and democracy clause, the EU also undertakes to oppose any discrimination based on sexual orientation or concerning the rights of disabled people;

- (c) the parties should refer to the UN conventions binding them and to the conventions of its specialist agencies in defining the sectoral rights that cooperation should promote, in particular those of the ILO, which has created an internationally accepted legal corpus on fundamental rights;
 - (d) the clause should include a procedure for consultation between the parties, detailing the political and legal mechanisms to be used in the event of a request for bilateral cooperation to be suspended on the grounds of repeated and/or systematic human rights violations in breach of international law; suspension is obviously an extreme measure in EU/third country relations, and therefore a clear system of sanctions should be developed so as to offer an alternative course of action, but the accepted, essential positive approach on human rights should not exclude the possibility of a temporary suspension of cooperation having to be invoked on the grounds of a breach of the human rights and democracy clause;
 - (e) the clause should also include details of a mechanism to allow for the temporary suspension of a cooperation agreement as well as a "warning mechanism" in response to a breach of the human rights and democracy clause;
 - (f) the clause should be based on reciprocity and thus should constitute a legal basis which enables the parties to discuss and act together, with regard both to the territory of the European Union and that of the third country; it should be a bi-directional instrument making the European Union and the third country accountable to each other for all their policies related to human rights and fundamental freedoms;
8. Calls for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and including sectoral agreements, trade and technical or financial aid, along the lines of what has been done with the ACP States;
 9. Calls for the expansion of the positive dimension of the human rights and democracy clause, which entails the need to take effective measures to contribute to the enjoyment of human rights within and by the respective parties, to include an ongoing assessment and

monitoring of the impact of the agreement itself on the enjoyment of human rights, as well as to adopt a human rights approach when implementing all aspects of the agreement;

10. Emphasises that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause;
11. Considers that it must play a part in defining the negotiating mandate for new agreements with third countries, and especially in drafting their political objectives and the promotion of human rights; to that end, considers that the Commission and the Council should involve the European Parliament, through its relevant parliamentary committees, to a greater extent in drawing up the negotiating mandate for EU/third country agreements; stresses, in this regard, the need to improve the inter-institutional exchange of information and to access the data-base of the Commission and the Council;
12. With regard to the need to ensure an effective mechanism for monitoring respect for human rights and democratic principles by the partners:
 - (a) calls on the Council and the Commission to set in motion structured dialogue procedures as part of this regular assessment of the partners' compliance with their human rights obligations; regards the systematic inclusion of human rights issues on the Association Council's agendas as part of this dialogue;
 - (b) recommends an enhanced role for the heads of the Commission's external delegations in third countries; calls for 'country-by-country multiannual strategy documents' to be drawn up under the responsibility of delegation heads, and for the Country Strategy Papers to pay greater attention to the human rights situation, identify the priorities and spell out the means and instruments deployed by the EU to ensure respect for the human rights and democracy clause and raise the level of respect for basic rights; also calls for the wording of such strategies to be reviewed on a regular basis, particularly with the European Parliament, and to be the subject of debates in the latter's relevant delegations and in plenary, particularly with regard to their implementation; recommends that the Commission's Country Strategy Papers and Action Plans should contain clear benchmarks for progress on human rights and a timeframe within which changes should be accomplished;
 - (c) if one of the governments concerned, the European Parliament or the national parliaments concerned or, in the case of ACP countries, the ACP-EU Joint Parliamentary Assembly, calls for the human rights and democracy clause to be invoked, through the suspension of a bilateral agreement or the implementation of dialogue or other appropriate measures, the Association Council should automatically include that debate on its agenda; notes that the European Parliament has formally expressed its view to that effect in several cases, but that the Association Council has simply ignored those requests;
 - (d) recommends the establishment of a "structured dialogue" between the Association Council and/or its Sub-Committee on Human Rights, the European Parliament, the ACP-EU Joint Parliamentary Assembly when appropriate, and NGOs and/or independent and democratic non-State actors in discussions relating to breaches of human rights and democracy clauses in European Union Agreements, including proposals for improving implementation of the clause (excluding none);

- (e) regrets the fact that the European Parliament is not involved in the decision-making process for initiating consultation or suspending an agreement; strongly insists, therefore, on the need for it to be a joint decision-maker with the Commission and the Council in this respect, and likewise with regard to the decision to suspend any appropriate negative measures already imposed on a country ('suspension of the suspension');
 - (f) proposes that an annual report be drawn up by the Commission, together with subcommittees on human rights, and debated in the European Parliament, on the application of the human rights and democracy clauses in international agreements in force, containing a case-by-case analysis of each consultation process and other appropriate measures initiated or refused by the Council that year and accompanied by detailed recommendations and an evaluation dealing with the effectiveness and coherence of the action taken;
13. Pointing out that the Association Councils generally govern EU/third country relations, calls for the general establishment of sub-committees on human rights under association agreements, with a mandate to:
- (a) review compliance with, and the application and implementation of the human rights and democracy clause;
 - (b) propose specific positive actions to improve democracy and human rights; and
 - (c) assess and monitor the direct and indirect impact of the implementation of the Agreement on the full enjoyment of fundamental rights in the States parties and elaborate specific recommendations in that connection;

considers that such subcommittees should meet regularly (and in any case whenever the Association Council meets), and should include and consult representatives of parliaments and of organisations representing civil society; considers, in this regard, that a case-by-case policy is not the most adequate approach to be adopted with partner countries with regard to the setting-up of subcommittees on human rights and the definition of their mandate; stresses once again the need to deal with individual cases within those sub-committees;

14. Calls for the European Parliament to be associated with the Association Councils and with the subcommittees on human rights, and for the European Parliament's interparliamentary delegations to have an enhanced role in this connection and to invariably provide in the agendas for their visits for discussions on the clause;
15. Emphasises that the criteria for initiating a consultation procedure or applying appropriate measures must be objective and transparent;
16. Stresses that no measure may be lifted until the reasons for its application have ceased to exist, and calls for the introduction of additional measures if existing measures have not yielded results after a considerable period;
17. Recognising that the need for unanimity within the Council in order to initiate a consultation procedure has made it more difficult to apply the clause, calls for the abolition of unanimity for initiating a consultation procedure, and for the revision of

Article 300(2) of the EC Treaty, which limits the role of the European Parliament in such cases;

18. Points to the importance of drawing the attention of the public at large to the fact that the human rights and democracy clause is provided for in agreements between the EU and third countries;
19. Considers that for the special case of countries with which the EU shares fundamental values and common policies for the long term, such as the countries concerned by the 'new neighbourhood policy', one might consider signing agreements that go beyond the human rights and democracy clause, based on the sharing of common institutions for promoting democratic principles and human rights, on the example of the Council of Europe and/or other regional institutions;
20. With particular regard to the countries covered by the European Neighbourhood Policy, with which the European Union maintains particularly close links through association agreements, the clause should specify that the signatories of such agreements should grant each other – on a mutual basis – the right to observe their legislative and presidential elections; calls on the Council and the Commission to further encourage the countries concerned to admit international observers at the time of their elections, in the interests of transparency;
21. Stresses that, for elections to be considered democratic, free and fair, certain preconditions must be met, including, inter alia, respect for political and civic rights, respect for freedom of expression and information, equal access to the media and respect for political pluralism, so as to offer electors a real choice;
22. Instructs its President to forward this resolution to the Council and the Commission.