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

Committee on Foreign Affairs

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CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT	10
OPINION OF THE COMMITTEE ON DEVELOPMENT	20
OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE.....	24
PROCEDURE.....	27

MOTION FOR A 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 between the members of the African, Caribbean and Pacific Group of States and the European Union, signed in Cotonou on 23 June 2000 and amended in Luxembourg on 25 June 2005,

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 C 161, 10.6.1983, p. 58.

- having regard to the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000,
 - 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 UN human rights instruments, notably the 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 Discrimination against Women (1979), the Convention against Torture (1985), 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 Human Rights Defenders (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 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, further, 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 signed in June 2000 with the ACP countries, which has enhanced the 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 many agreements with developed countries and sectoral agreements, such as agreements on textiles, agriculture and fisheries, still lack this clause,
- I. 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,
- J. 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,
- K. 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 EU – third country democracy clause,
- L. 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,
- M. whereas the human rights clause applies both to the European Union and to the third country, but whereas the reciprocal dimension of the clause has not been fully exploited,
- N. reiterating that emergency humanitarian aid must nonetheless continue to be excluded from any potential 'negative' application of the human rights 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 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, nonetheless, the experiment conducted to date with the democracy clause in Articles 9 and 96 of the Cotonou Agreements with the ACP States, 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 democracy clause is spelled out effectively in the Cotonou Agreements, 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 UN Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights, as well as 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 'democracy clause', the European Union is called upon to pay special attention to implementing policies for gender equality and women's rights;

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 '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, with regard both to the territory of the European Union and that of the third country;
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 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 implementation of the agreement as regards the enjoyment of human rights and 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 necessity 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; considers the systematic inclusion of human rights issues on the Association Council's agendas as being 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 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 invokes the democracy clause to call for the suspension of a bilateral agreement or the implementation of 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 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 subcommittees on human rights under association agreements, with a mandate to review compliance with, and the application and implementation of, the democracy clause, and to propose specific positive actions to improve democracy and human rights; 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 subcommittees;

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 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 '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 agreements;
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 Commission to further encourage the countries concerned to admit international observers at the time of their elections, in the interest of transparency;
21. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

1. The structure and content of the human rights clause

Since the early 1990s the European Community includes a so called 'human rights clause' in all framework agreements signed with third countries, from trade and cooperation accords and association agreements such as the Europe Agreements, Mediterranean Agreements to the Cotonou Agreement. Exceptions are agreements on agriculture, textile and fisheries. More than 50 such agreements have already been signed and the human rights clause now applies to over 120 countries.

The clause has evolved over the years, and is not identical in all the agreements. In the version launched by a Commission communication in 1995, it is divided into two parts. **The first part** contains an **essential element clause** enshrined in the first provisions of the agreement, providing

"Respect for the democratic principles and fundamental human rights established by (the Universal Declaration of Human Rights)/(the Helsinki Final Act and Charter of Paris for a New Europe) inspires the domestic and external policies of the Community and of (the country or group of countries concerned) and constitutes an essential element of this agreement"¹

The second part is included in the final dispositions of the agreement and creates the possibility of taking "appropriate measures" in the case of violation of an essential element. This provision, which is called a "non-execution clause", refers again to the essential elements of the agreement. This reference allows the contracting parties to suspend the agreement in line with the relevant provisions of the Vienna Convention on the Law of Treaties (VCLT)². The so called '**non-execution**' clause reads as follows:

"If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if

¹ 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)216 final of 23 May 1995.

² Article 60(1) and (3) of the Vienna Convention on the Law of Treaties provide that a 'material breach' of a bilateral treaty by one of the parties allows the other party to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. A 'material breach' is defined as a repudiation of the treaty not sanctioned by the Vienna Convention or the violation of a provision 'essential to the accomplishment of the object or purpose of the Treaty'.

the other Party so requests."¹

Often an interpretative declaration is added at the end of the agreement. It provides that "cases of special urgency" means "cases of material breach of the agreement by one of the parties", and that a material breach consists of a violation of the essential elements of the agreement.

The inclusion of a clause in the main body of the agreements, and not just in the preamble or as a specific reference, making it a legally binding instrument, is a novelty. According to the Commission in its 1995 communication it "places the European Community in the vanguard of the international community's endeavours in this field." Unfortunately, ten years of practice, does not really generate the same optimism.

2. Origin and development of the human rights clause

The human rights clause was first included in the 1989 Lomé IV Agreement and was followed by the cooperation agreement with Argentina, which entered into force in 1990.

Flagrant human rights violations in countries bound to the EEC by virtue of an agreement had been of serious concern since the late 1970s. For example, aid to Uganda was suspended in response to the human rights violations committed by the government of Idi Amin, after the Council had issued a statement which came to be termed the *Uganda Guidelines*.

Characterised by a public condemnation of the situation and by the threat that steps could be taken within the framework of the agreement, they lacked any reference to a legal basis for taking these steps.

After a decade of attempts by the EEC, the ACP countries accepted to include a human rights clause in the body of the Lomé Convention. A precedent had been set.

From the early 1990s, the need for consolidation of democracy in the Central and Eastern European states, as well as the perspectives of democratisation of a large part of the Latin American and the African continent, created a new political momentum, which provided the Commission with the opportunity for a major initiative on this matter. On March 25 1991 it adopted a "Communication on Human rights, Democracy and Development Co-operation"², soon followed by two Council resolutions, the first welcoming the communication and then, in November 1991, the Council gave a specific mandate for the inclusion of a human rights clause in agreement with third countries.³

The resolution emphasised that a positive approach to human rights should receive high priority, systematic dialogue should be held and suspension and negative measures under the clause should be taken only as a last resort.

One year later, on 11 May 1992, the Council declared that respect for democratic principles

¹ COM(95)216 final, 23 May 1995.

² SEC (61)0091

³ Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, 28 November 1991, Bull. EC 11/1991, p. 122-3

formed an essential part of agreements between EC and the Conference on Security and Cooperation in Europe countries. After this declaration EC agreements concluded in 1992 with the Baltic States and Albania did have a clause, the so called "Baltic clause", which allowed for immediate suspension in the case of violation of human rights. It was soon replaced by the "Bulgarian clause", which widened the scope of application and options for actions, providing for a political dialogue to be maintained and for a conciliation mechanism, rather than immediate suspension of the agreement.

By issuing the Communication "on the inclusion of respect for human rights in agreements between the community and third countries" mentioned above on 23 of May 1995, and the Council taking note of this on 29 May, the inclusion of the clauses for new agreements became systematic.

The communication also listed a range of measures to be considered in case of a breach, in Annex 2, such as:

- alteration of the contents of cooperation programmes or channels used
- reduction of cultural, scientific and technical cooperation programmes
- postponement of a Joint Committee meeting
- suspension of high-level bilateral contacts
- postponement of new projects
- refusal to follow up partners' initiatives
- trade embargoes
- suspension of arms sales
- suspension of military cooperation
- suspension of cooperation.

The model launched in the communication has then been the model for the clause introduced to agreements negotiated after 1995, but has been further developed in the Cotonou Agreement, signed with the ACP countries in 2000.

The human rights clause has been invoked in 12 cases since 1995 as the basis for consultations, suspension of aid or other measures, involving 10 ACP countries: Niger, Guinea Bissau, Central African Republic, Togo, Haiti, Comoros, Ivory Coast, Fiji, Liberia and Zimbabwe.¹

The human rights clause has also prevented the conclusion of bilateral agreements with Australia and New Zealand, where, instead, less binding Joint Declarations were agreed upon in 1997 and 1999, respectively. The PCA with Belarus negotiated in 1995 never came into force, as it was not ratified due to Lukashenko's moves towards authoritarian rule.

3. The views of the European Parliament on the human rights clause

The European Parliament has been very active over the years concerning the human rights clause, with a special focus on the monitoring and implementation of the clause, as well as on the role of Parliament and civil society.

¹ Commission Communication on Governance and Development, 20 October 2003, COM (2003) 615 final

On 20 September 1996, the Parliament adopted the **report by Mr Carlos Carnero Gonzalez**¹ on the 1995 Commission communication, in which it asked the commission to draw up an objective method of application in cases of flagrant violations of human and social rights, and to formulate "criteria, procedures, forms of sanctions and their method of application".

One of the main points in **the report by Mrs Rosa Díez Gonzalez** on the European Unions role in promoting human rights and democratisation in third countries² is the demand for a clear code of conduct for the application of the human rights clause.

The EU needs, the report says, to establish new and parallel monitoring mechanisms designed to back up those already available, so that it can check on compliance with human rights and democratisation by any of its political and economic partners.

The requests from the Parliament for an objective method and a clear code of conduct for the application of the human rights clause remain without a satisfactory answer, and need therefore to be reiterated.

The annual reports on human rights in the world have also on numerous occasions put forward Parliament's view on the human rights clauses, as in the report 2002 annual report of **Mr Bob van den Bos**, where the lack of an implementation mechanism was a major concern:

*"9. Calls on the Commission to make the necessary proposal for an implementation mechanism for the human rights clause in order to maintain explicit pressures for significant improvements of the human rights situation in the countries concerned and to encourage sections of the society that are in favour of promoting democracy and respect for human rights;"*³

In the report, the Parliament also asks for clear benchmarks for incentive and restrictive measures, structured dialogue procedures, specific sub-committees on human rights in the Association and Cooperation Councils, and deplores the fact that Parliament is not involved in the decision-making process for initiating consultations or suspending an agreement.

In the 2003 annual report by **Mrs Véronique de Keyser**, the Parliament welcomes the entry into force of the Cotonou agreement and sees its implementation mechanism with the establishment of dialogue between government and civil society as a model for further negotiations.

¹ A4-0212/1996 - T4-0499/1996 - 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)

² A5-0084/2002 - Report on the European Union's role in promoting human rights and democratisation in third countries (COM(2001)252 - C5-0653/2001 - 2001/2276(COS))

³ A5-0274/2003 - T5-375/2003 - Annual report on human rights in the world in 2002 and European Union's human rights policy

The 2004 report by Simon Coveney calls for the setting up of sub-committees on human rights within the framework of the Association Agreements and for the Commission to draw up a progress report on the human rights situation in the ENP countries.

Apart from this, the human rights clause and the human rights situation in general, has been an important element in the procedure of the European Parliament giving its assent to different agreements with third countries, as was the case with the association agreement with Egypt, Pakistan or the ongoing procedure concerning a proposed agreement with Syria.

4. The future of the human rights clause

Ten years after the communication which formally mandated and structured the human rights clause, it is time to evaluate how it is implemented and how it can be improved, from the negotiation phase of an agreement and the specific wording of the clause, to the monitoring and implementation, taking into consideration positive as well as negative measures.

4.1 How can the negotiation phase be improved?

1. A more open procedure with a role given to the EP and civil society.

The mandate of negotiation for a new agreement with a third country is exclusively, so far, a responsibility of the Council. However, it is not really clear or transparent what this mandate is based on, and much could be achieved by a more open procedure. By making the negotiating procedure more transparent and associating the European Parliament as well as the national Parliaments, and civil society with the procedure for defining the human rights clause, would also facilitate dialogue and implementation once the agreement is in force.

In fact, the European Parliament has a role in giving its assent before an agreement comes into force, but not in the procedure initiating consultation or partly suspending an agreement. The role of civil society is very weak in the whole procedure of the human rights clause.

In comparison, it is worth mentioning the Cotonou Agreement, where the non-State actors are explicitly defined as actors of the partnership and where in Article 8(7), on the regular political dialogue, the role of civil society is clearly stated, as it says that regional and sub-regional organisations as well as representatives of civil society organisations shall be associated with the dialogue.

This political dialogue is also undergoing further development, as guidelines have been adopted and an annex to the agreement specifying the modalities and mechanisms for the dialogue is under compilation.

2. Extend the clause to all sectors and countries

Even if the policy of including human rights clauses in agreements has been pursued with great consistency, there are still various areas where it is missing, most importantly in sectoral agreements and agreements with developed countries. Sometimes the latter is because cooperation treaties with these countries predate the Union's policy, but this is not the case for

the EEA Agreement. As a matter of consequence, the clause should be extended to all agreements, developed as well as developing countries.

The same applies for sectoral agreements on trade, textile and fisheries agreements. These agreements most often cover substantial financial envelopes and policy coherence requires that also they include a clause on respect of human rights and democratic principles.

4.2 How can monitoring and implementation be improved?

3. Better monitoring is needed with an emphasized human rights dimension

The need for an effective and transparent monitoring and implementation process has been of a great concern for the Parliament since the beginning. Even if it is certain that some has been achieved, there is still room for improvement.

The recent obligation (since 2004) of an elaboration of human rights fact sheets, a task that lies with each Head of Mission in the delegations of the EU Commission, and the follow-up of adopted guide-lines, such as the guidelines on torture (adopted 2001), certainly contributes to a better knowledge of the human rights situation in each country. However, these human rights fact sheets are not public. Some kind of annual report should therefore be considered, as has been asked for within the framework of the European Neighbourhood Policy, although it should not necessarily be restricted just to these countries, but include all countries with which an agreement containing a clause has been concluded. There is still a need for more clear bench-marks for incentive and restrictive measures to be applied.

The accession procedure, with the clearly defined Copenhagen criteria, could serve as an example for such bench-marking. In this sense, the new Action Plans within the European Neighbourhood Policy might give a new opportunity for more operational targets to be set up. There is also a need for the Country Strategy Papers to be more focused and strategic when it comes to the human rights situation.

Systematic inclusion of human rights issues on the Association Council's agendas, need to be complemented by subcommittees on human rights, another important tool for monitoring the situation in the countries concerned. Such working groups have been set up with Bangladesh, Vietnam, as well as with Morocco and Jordan.

In this context, it is also important to stress civil society's monitoring role, and to find ways for non-state actors and experts to monitor and report on the implementation of human rights and democratic principles under the agreement, i.e. through working groups linked to the Association Council, or through their participation in named subcommittees.

The proposal for a Council regulation establishing a European Union Agency for Fundamental Rights, suggests in Article 3(4), that :

"4. Without prejudice to Article 27, the Agency shall, at the request of the Commission, provide information and analysis on fundamental rights issues identified in the request as regards third countries with which the Community has concluded association agreements or agreements containing provisions on respect of human rights, or has opened or is planning to

open negotiations for such agreements, in particular countries covered by the European Neighbourhood Policy."

Even if the discussion in the Parliament on the scope for the Agency's action is not finished, there might be a role in the monitoring process of third country agreements for the Agency.

4. The need for a clear implementation mechanism for all agreements with a clause is still one of the most urgent matters to solve.

The Commission is keen to stress that the "essential element" clauses, or the human rights clauses, do not necessarily suggest a negative or punitive approach, but that they are rather a positive instrument that can be used to promote dialogue and co-operation between partners through encouraging joint actions for democratisation and Human Rights, including the effective implementation of international Human Rights instruments and the prevention of crises through the establishment of a consistent and long-term co-operative relationship. This is a view shared by the Parliament which has been the source of many of the ideas now being put into practice. Even in the wording of the clause it is said that suspension is a last resort. The fact that the clause has very rarely been invoked does not automatically mean that it is not efficient. However, it is also clear that the lack of a clear implementation mechanism hinders the effectiveness of the clause. Even if different reasons can explain why the clause has been most widely used under the Cotonou Agreement, and not in all the other agreements that also contains the clause, a more elaborate procedure for consultation, suspension and participation has most probably contributed to this situation.

The Commission has said it does not want to have a "mechanistic application". However, the Council has adopted guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, but they do not include suspension or termination of bilateral agreements and suspension or termination of cooperation with third countries. This should in some way be rectified.

The way the clause has been used, or not used, over the years, also leaves room to ask if criteria for initiating a consultation procedure, or applying restrictive measures, are objective, or rather dependant on political or commercial interests. A better defined procedure would hopefully facilitate an objective application.

This procedure should of course also involve the European Parliament in the decision-making process for initiating consultation or suspending an agreement, and give a role to civil society.

The possibility for independent non-state actors, or even individuals to invoke the clause, should also be considered, for example by a mechanism leading the Commission to request the Fundamental Rights Agency to present a report on allegations of violations in the EU countries or EU policy contributing to violations in a third country.

At the same time as a more detailed consultation procedure is elaborated, it is important to strive for all agreements to have a more streamlined procedure. This includes introduction of non-execution clauses where they do not exist, definitions of "special urgency" and provisions

for binding dispute settlement, where, if resolution is not found within the administrative body, binding arbitration will be a last resort.

At the same time, more attention must be given to violations of social rights, such as core labour standards. When the clause has been invoked, the reason has generally been violations of political rights, as flawed election process or a coup d'état.

4.3 What about the reciprocity of the clause?

4. There is a need to find ways and tools to improve the reciprocity of the clause.

The specific human rights dialogues such as the dialogue with China, Iran or Russia clearly imply a two-way communication, where EU, as well as the country with which a dialogue is held, can raise issues of concern. The clause has also a reciprocal dimension which has not yet been fully exploited. It is said that "*respect for the democratic principles and fundamental human rights inspires the domestic and external policies of the Community and of (the country concerned)*". However, the clause has never been used to question the way the EU, or its member states, are complying with its human rights obligations. The rights of minorities, immigration and asylum law are areas where discussions might be valuable.

4.4 Is there a need for a new model clause?

Even a model clause permits variation, and of course a clause must be possible to adapt to different situations. But if the clause makes a reference to a text that has no place within the legal architecture of the signing country, there will be no concrete consequence, just by signing the agreement, to ensure protection of human rights complies with the conditions set out in the reference text. Such mechanisms must be introduced in advance of the signing of agreements.

Better definition of the clause in future negotiation does not in itself mean there is a need for new clause, but that more attention should be given to the negotiating phase of the agreement.

An improved use of the clause might not be sufficient, though, even if a new model would mainly concern new agreements, and subsequently, would take long time before it will have any general implications. As the Cotonou Agreement has shown, it would be useful to further elaborate the existing model, especially when it comes to the involvement of civil society, an explicit role hard to achieve without a rewording of the clause.

A more explicit consultation procedure would furthermore enhance the clause' effectiveness.

A new wording of the clause should therefore be considered, respecting following principles:

- a) promotion and protection of human rights should be amongst the objectives of the agreement,

- b) it must be clear that parties are under an obligation to comply with the norms made an "essential element" of the clause,
- c) there should be a clarity on applicable standards, which could be done by a more general reference to human rights or by mentioning specific basic human rights instrument that the parties have adhered to,
- d) the clause should provide for a political dialogue with involvement of the parliaments and representatives of civil society,
- e) it should provide a detailed procedure for consultation, with a specific role for the parliaments,
- f) it should contain a compulsory revision of appropriate measures taken, a "suspension of the suspension"-clause
- g) it should support the notion of recourse to binding third party dispute settlement procedures in cases involving appropriate measures,

A proposed wording of the clause could then be:

(A) The aims of this [agreement/association] are: [...] the promotion and protection of respect for democratic principles and human rights, be they civil and political, or economic, social and cultural.

(B) The parties shall respect legally binding democratic principles and human rights [as set out in [legal instrument]] in their internal and external policies.

(C) Political dialogue shall cover all issues of common interest to the Parties, in particular [...] and the obligations of the parties set out in Article B.

The European Parliament, the [national] parliament, and representatives from regional and sub-regional organizations and representatives of civil society shall be associated with this dialogue.

(D) If either party considers that the other party has failed to comply with Article B, it shall, except in a case of special urgency, supply the [Joint Council] with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the parties. To this end, it shall invite the other party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation.

The European Parliament, the [national] parliament, and representatives of civil society shall be associated with these consultations.

The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than [X] days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and

gravity of the violation. In any case, the consultations shall last no longer than [Y] days.

During consultations, the parties shall develop and agree specific benchmarks or targets with regard to the obligations of the parties in Article B, taking into account special circumstances of the party concerned. Benchmarks are mechanisms for reaching targets through the setting of intermediate objectives and timeframes for compliance.

If the consultations do not lead to a solution acceptable to both parties, if consultation is refused or in cases of special urgency, appropriate measures may be taken. Appropriate measures must be proportional to the violation and comply with international law.

Appropriate measures must be reviewed in the [Joint Council] every [X] months. They shall be revoked as soon as the reasons for taking them no longer prevail.

The term ‘cases of special urgency’ shall refer to exceptional cases of particularly serious and flagrant violation of Article B that require an immediate reaction. If measures are taken in cases of special urgency, they shall be immediately notified to the [Joint Council]. At the request of the party concerned, consultations may then be called in accordance with this Article.

In pure Community agreements

[Article E] Parties to the agreement

For the purposes of this Agreement, ‘parties’ shall mean, on the one hand, the Community, in accordance with its powers, and, on the other hand, [the other party].

27.09.2005

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Foreign Affairs

on the human rights and democracy clause in EU agreements
(2005/2057(INI))

Draftsman: Fernando Fernández Martín

SUGGESTIONS

The Committee on Development calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Points out that human rights are universal and indivisible and that democracy, development and the upholding of human rights are interdependent;
2. Points out that poverty cannot be fought unless a comprehensive approach is adopted which includes the protection of human rights and the upholding of democratic values and principles;
- 3 Stresses that the Universal Declaration of Human Rights and the International Pact on Civil and Political Rights call for the holding of free and fair elections embodying the free expression of the will of the people and for the upholding of fundamental rights;
4. Considers that if elections are to be considered as democratic, free and fair, certain prior conditions must be met: respect for political and civic rights, respect for freedom of expression and information, equal access to the public media, and respect for political pluralism with voters being offered a real choice;
5. Points out that human rights are an integral part of the EU's external policy and that the democracy and human rights clause is an essential component of agreements with non-EU countries - both developing and industrialised ones; calls for the effective implementation of the clause;
6. Considers that the European people's support for public development aid financial efforts depends partly on their leaders' ability not to support political regimes which are responsible for serious, persistent human-rights violations; points out that the European

Parliament has its own procedures for reporting such abuses on an individual basis;

7. Stresses the need for a dual approach to conditionality in the case of countries which are aid recipients: affirmative conditionality involving increased support for countries which make progress in the human-rights field and negative conditionality in the event of serious, persistent violation of human rights and democratic principles;
8. Calls on the Commission and Council to adopt concrete, consistent and transparent criteria for evaluating the democratisation process in third countries, including democratic elections, from the viewpoint of respect for human rights, the rule of law and the democratisation of society in general;
9. Calls for a more open procedure in the negotiation phase of agreements, with greater participation of the European Parliament and civil society;
10. Calls for the clause to cite a text occupying an important place in the legal pyramid of the signatory country; this should be the subject of an accord before the agreements are signed;
11. Recommends that the clause should mention specific UN human rights instruments, such as the International Pact on Civil and Political Rights, the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities;
12. Points out that achieving the Millennium Development Objectives calls for a comprehensive commitment involving all the international parties; in this regard, welcomes the G-8 decision to cancel the debt owed by the world's 18 poorest and most indebted countries and the EU's recent commitment to increase Community aid to 0.56% of gross national income by 2010, with a view to achieving 0.7% in 2005 and supporting the Millennium Development Objectives;
13. Urges regional organisations and developing countries, as well as other third countries with which the EU has agreements, to commit themselves unreservedly to good governance, to transparency and to the fight against corruption, to democracy, to constitutional government, to the upholding of human rights and to economic progress, which are all essential if action taken to eradicate poverty is to be of any benefit;
14. Stresses the urgent need to support the stabilisation efforts of countries in post-conflict situations;
15. Emphasises the importance of ensuring that, in the event of sanctions, local people are penalised as little as possible by endeavouring to develop to the greatest possible degree a type of aid which directly benefits the people if necessary via the UN or NGOs; points out that, in any event, humanitarian aid is politically neutral and must be provided whenever it is needed;
16. Draws attention to the exemplary value of the Cotonou Agreement, the principal merits of which are:

- the fact that it contains an explicit reference to international human-rights commitments as essential components of the Agreement and contains a clause whereby in the event of any infringement the Agreement may be suspended following a consultation procedure (Article 96) during which each of the parties may put forward its point of view and try to reach a solution other than sanctions,
 - the fact that it is applicable to 78 countries - hence to most of the non-EU countries with which the European Union has concluded agreements,
 - the fact that it is the only agreement to have led to sanctions and to have functioned relatively well;
17. Insists that transparency is one of the principles which must govern any sanction procedure and calls for the European Parliament to be involved to a greater extent in such procedures; calls on the Commission and Council to impose transparent and consistent sanctions based on clearly-defined criteria on all third countries failing to respect the human rights clauses, in order to avoid a policy of double standards;
 18. Welcomes in this connection the amendment signed in Luxembourg on 24 June which provides for the inclusion in the Cotonou Agreement of a new Annex laying down the procedure for political dialogue concerning human rights, democratic principles and the rule of law;
 19. Calls upon the ACP-EU Joint Parliamentary Assembly to pursue its attempts to become a full participant in the political dialogue on human rights;
 20. Considers that the ACP countries must remain alert in order to detect at an early stage any cases of human-rights violation; considers, furthermore, that those countries should act on their own initiative in identifying and punishing cases of human-rights violation;
 21. Regrets the fact that sanctions are not always imposed or lifted in accordance with objective criteria, as demonstrated by the partial resumption of cooperation with Sudan in January 2005, despite the fact that human rights were still being very seriously violated in the Darfur region;
 22. Recommends the exchange of annual human rights reports between the EU and the country signatory to the agreement, including a mechanism for consulting NGOs;
 23. Calls for a member of the Commission delegation to each country with which an agreement containing the clause has been signed to be appointed to monitor compliance with it;
 24. Calls upon the Council and the Commission to liaise with other international organisations on sanctions policy in order to make sanctions more effective.

PROCEDURE

Title	Human rights and democracy clause in EU agreements
Procedure number	2005/2057(INI)
Committee responsible	AFET
Committee asked for its opinion Date announced in plenary	DEVE 12.5.05
Enhanced cooperation	No
Drafts(wo)man Date appointed	Fernando Fernández Martín 24.5.2005
Discussed in committee	29.8.2005 26.9.2005
Date suggestions adopted	26.9.2005
Result of final vote	for: 26 against: 0 abstentions: 3
Members present for the final vote	Margrete Auken, Alessandro Battilocchio, Margrietus van den Berg, Danutė Budreikaitė, Thierry Cornillet, Nirj Deva, Koenraad Dillen, Alexandra Dobolyi, Fernando Fernández Martín, Michael Gahler, Hélène Goudin, Filip Andrzej Kaczmarek, Maria Martens, Miguel Angel Martínez Martínez, Gay Mitchell, Luisa Morgantini, José Javier Pomés Ruiz, Pierre Schapira, Jürgen Schröder, Feleknas Uca, Anna Záborská, Jürgen Zimmerling
Substitutes present for the final vote	Marie-Hélène Aubert, John Bowis, Linda McAvan, Karin Scheele, Anne Van Lancker, Anders Wijkman, Gabriele Zimmer
Substitutes under Rule 178(2) present for the final vote	

12.10.2005

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on Foreign Affairs

on The Human Rights and Democracy Clause in European Union agreements
(2005/2057(INI))

Draftsperson: Glyn Ford

SUGGESTIONS

The Committee on International Trade calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the European Community's general practice of incorporating human rights and democracy clauses—the so-called 'essential element' and 'non-execution' clauses—in its international agreements since 1992, but at the same time notes the selective manner in which such clauses are implemented in some cases;
2. Calls on the Commission to incorporate a standard human rights clause in all its future international agreements, including sectoral trade agreements concluded with, and autonomous trade measures granted to, third countries; moreover, calls on the Commission, when assessing countries' compliance with the clause, to establish specific priorities for each country;
3. Recommends the establishment of specific benchmarks in the area of human rights and democracy on the basis of political dialogue and with reference to relevant international standards and international treaties;
4. Calls on the Commission to establish a monitoring mechanism that links the implementation and temporary suspension of trade agreements and autonomous trade measures to a beneficiary country's compliance with basic democratic standards and respect for human and minority rights, as set out in the European Parliament's Annual report on human rights in the world;
5. Calls, in this regard, on the Commission to involve Parliament fully in the assessment of the implementation of human rights clauses or similar requirements of compliance with basic democratic standards and respect for human and minority rights incorporated in

such agreements; and emphasises the importance of consulting civil society in this assessment process so as to improve the monitoring of the human rights situation;

6. Emphasises that the temporary suspension of trade agreements and autonomous trade measures should be undertaken according to objective and transparent criteria, which are the same for each country and clearly regulated by an expiry clause in each international agreement, so that third countries comply with respect for human rights at the latest on expiry of the suspension period;
7. Recommends that the Commission develop an objective and transparent methodology that spells out the exact relationship between third countries' compliance with human rights standards and the appropriate Community response;
8. Is of the opinion that the setting up of standing sub-groups or sub-committees on human rights within the framework of international agreements, including sectoral trade agreements, would clearly contribute to further developing a structured dialogue on human rights and democratic principles;
9. Calls on the Council and the Commission to fully engage the European Parliament in the development of such a regime;
10. Calls on the Commission to make better use of the knowledge which civil society possesses about local human rights situations, as such expertise is insufficiently used in current policy documents;
11. Calls on those members of Parliament who participate in country missions to actively assess local human rights situations and to include their findings in their final reports; calls on the Commission to incorporate such findings in its policy.

PROCEDURE

Title	The Human Rights and Democracy Clause in European Union agreements
Procedure number	2005/2057(INI)]
Committee responsible	AFET
Committee asked for its opinion Date announced in plenary	INTA DEVE 13.6.2005 24.5.2005
Enhanced cooperation	Yes
Drafts(wo)man Date appointed	Glyn Ford 30.8.2005
Discussed in committee	30.8.2005 12.9.2005
Date suggestions adopted	11.10.2005
Result of final vote	for: 20 against: 1 abstentions: 0
Members present for the final vote	Jean-Pierre Audy, Enrique Barón Crespo, Jean-Louis Bourlanges, Nigel Farage, Béla Glattfelder, Jacky Henin, Alain Lipietz, Erika Mann, Helmuth Markov, David Martin, Javier Moreno Sánchez, Georgios Papastamkos, Tokia Saïfi, Peter Šťastný, Robert Sturdy, Johan Van Hecke, Zbigniew Zaleski
Substitutes present for the final vote	Panagiotis Beglitis, Danutė Budreikaitė, Elisa Ferreira, Filip Andrzej Kaczmarek, Jörg Leichtfried, Antolín Sánchez Presedo, Mauro Zani
Substitutes under Rule 178(2) present for the final vote	Syed Kamall

PROCEDURE

Title	The Human Rights and Democracy Clause in European Union agreements		
Procedure number	2005/2057(INI)		
Basis in Rules of Procedure	Rule 45		
Committee responsible Date authorisation announced in plenary	AFET 12.5.2005		
Committee(s) asked for opinion(s) Date announced in plenary	INTA 12.5.2005	DEVE 12.5.2005	
Motion(s) for resolution(s) included in report	-		
Rapporteur(s) Date appointed	Vittorio Agnoletto 1.2.2005		
Previous rapporteur(s)	-		
Discussed in committee	10.10.2005	21.11.2005	22.11.2005
Date adopted	23.11.2005		
Result of final vote	for:	56	
	against:	1	
	absentions:	2	
Members present for the final vote	Vittorio Agnoletto, Angelika Beer, André Brie, Elmar Brok, Simon Coveney, Ryszard Czarnecki, Véronique De Keyser, Giorgos Dimitrakopoulos, Camiel Eurlings, Alfred Gomolka, Klaus Hänsch, Richard Howitt, Anna Ibrisagic, Toomas Hendrik Ilves, Jelko Kacin, Helmut Kuhne, Joost Lagendijk, Vytautas Landsbergis, Cecilia Malmström, Francisco José Millán Mon, Pierre Moscovici, Pasqualina Napoletano, Baroness Nicholson of Winterbourne, Raimon Obiols i Germà, Vural Öger, Justas Vincas Paleckis, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Paweł Bartłomiej Piskorski, Michel Rocard, Raül Romeva i Rueda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, György Schöpflin, Gitte Seeberg, István Szent-Iványi, Konrad Szymański, Antonio Tajani, Paavo Väyrynen, Inese Vaidere, Geoffrey Van Orden, Ari Vatanen, Luis Yañez-Barnuevo García, Josef Zieleniec		
Substitutes present for the final vote	Árpád Duka-Zólyomi, Kinga Gál, Marie Anne Isler Béguin, Tunne Kelam, Jaromír Kohlíček, Janusz Onyszkiewicz, Doris Pack, Aloyzas Sakalas, Csaba Sándor Tabajdi, María Elena Valenciano Martínez-Orozco, Marcello Vernola		
Substitutes under Rule 178(2) present for the final vote	Thomas Wise, Sylwester Chruszcz		
Date tabled – A6	23.1.2006	A6-0004/2006	