

The EU's human rights dialogues – talking to persuade or silencing the debate?

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Introduction

The European Union is today engaged in dialogues and consultations on human rights with more than sixty countries,¹ thereby making communicative engagement a central component of the Union's human rights foreign policy. It has been suggested that such dialogues use “persuasion and learning strategies” to diffuse human rights norms (Börzel & Risse, April 2009, p. 24). But is this really so? And how successful is the EU's dialogue policy in diffusing human rights to third countries? Despite the growing number of human rights dialogues conducted by the EU, and despite the resonance of the instrument with constructivist theory on argumentative action and socialization, the dialogues remain an under-studied mechanism used by the EU to manage norm diffusion and transfer processes “from the inside out”. To a large extent, this gap in research is probably linked to the lack of accessible information, given that the dialogues are conducted on a confidential basis behind closed doors and not publicly documented. Research is furthermore complicated by the fact that the dialogues are managed under different institutional setups.

Based on a review of publicly available policy documents and on background information collected through more than sixty confidential expert interviews with EU officials, officials in EU member states and in third countries, as well as with representatives from non-governmental human rights organizations, this paper provides an overview of the background of the EU's human rights dialogue policy, of its goals and the institutional set-up. It discusses the impact potential of the dialogues and seeks to explain why the use of dialogue has proliferated over the last two decades.

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¹ As per COHOM-administered overview chart on the various types of dialogues and consultations on human rights. Also see Guillet, 2007.

The paper finds that transformational changes in third countries caused by the EU's human rights dialogues can be expected to be minimal at best. It argues firstly, that the dialogues fall short of coherently institutionalizing normative persuasion on human rights in the EU's Common Foreign and Security Policy (CFSP) and, instead, downgrade and isolate the foreign policy objective of human rights norm diffusion. Secondly, the paper argues that the dialogues' impact potential is restricted by the lack of a mobilization framework. Thirdly, it is suggested that they are not only ineffective but at times even counterproductive, both because the EU uses them indiscriminately vis-à-vis a range of countries with very different human rights situations and because third countries lock the EU in its commitment to talk behind closed doors, thereby effectively limiting the EU's policy options on human rights promotion.

Origin of the EU's Policy on Human Rights Dialogues

The EU issued its first guidelines on human rights dialogues in December 2001 which announced that they were an instrument of the Union's external policy and, as such, not only “one of a range of measures which the EU may use to implement its policy on human rights” but also “an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability” (Commission of the European Communities, 2001b, p. 1). These first policy guidelines were, however, not the starting point for the EU's human rights dialogues, but rather a first attempt to bring coherence to a practice that had evolved during the previous decade. They were issued to inform international organisations, non-governmental organisations, the academic world, the European Parliament and third countries on the EU's policy of dialogue in support of human rights. They aimed at strengthening the coherence and consistency of existing EU dialogues (Commission of the European Communities, 2001b, p. 3). Furthermore, the guidelines mentioned a “prospect of increasing numbers of dialogues” (Commission of the European Communities, 2001b, p. 9), indicating that they were not only on the rise at the turn of the century but that the EU was planning with a further increase.

The concept of using political dialogue as well as dialogues among officials as a tool for norm diffusion actually originated much earlier. It first arose in the context of EU development assistance, where the relevance of human rights began to be recognized in the 1980s. The Lomé IV Convention signed in 1989 by the EU and the African, Caribbean and Pacific states (ACP countries) was the first development agreement that specified human rights protection and promotion as an essential part. In effect, it introduced human rights conditionality into the EU's development assistance. On the one hand, it was recognized at the time that such conditionality may sometimes effectively support the implementation of human rights, but because of the

inequality of contracting partners, the new conditionality was at the same time highly controversial (Nowak, 2003, p. 244). In a 1991 *Communication on Human Rights, Democracy and Development Cooperation Policy*, the Commission reacted to such criticism and for the first time highlighted the importance of a dialogue approach to human rights promotion:

"The Community will wherever possible give preference to the positive approach of support and encouragement. The Community will also seek to promote frank and trusting dialogue on human rights with developing countries, and to keep the channels for that dialogue open as far as possible, even in difficult situations, notably where the aim is to protect specific rights." (Commission of the European Communities, 1991, p. 6)

Shortly after this, in November 1991, the Council mandated the inclusion of human rights as an essential elements clause in all agreements with third countries. In this context, the Council again emphasised that a positive approach to human rights should be the rule and that the suspension of agreements or any other negative measures under the clause should only be taken as a last resort (Council of the European Union, 1991). Indeed, the emphasis on dialogue and encouragement for human rights became a permanent feature of the EU's policy on human rights *vis-à-vis* third countries. Still in the context of development assistance, the EU and the ACP countries signed the Cotonou Agreement in June 2000, a follow-up agreement to the Lomé Convention. Cotonou introduced under Article 96 a new consultation procedure for the event of a violation of one of the convention's essential characteristics, in other words: it institutionalized a stipulation to start human rights dialogues in reaction to violations. Furthermore, Article 8 provides for regular political dialogue, including on human rights. In a May 2001 *Communication on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, it is again emphasized that the EU prioritizes dialogue over punishment:

"However the EU's insistence on including essential elements clauses is not intended to signify a negative or punitive approach. They are meant to promote dialogue and positive measures, such as joint support for democracy and human rights, the accession, ratification and implementation of international human rights instruments where this is lacking, as well as the prevention of crises through the establishment of a consistent and long-term relationship. The dialogue on human rights that they enable should be a two-way one, with the EU also agreeing to discuss human rights and democratisation issues within its own borders." (Commission of the European Communities, 2001a, p. 9)

Unlike the 1991 communication, which depicted dialogue only as a precursor to isolation, the 2001 communication claims that the EU engages in human rights dialogues as a partner among equals, itself ready to accept criticism by other states. Interestingly, this position was not repeated in the 2001 guidelines (which were published a few months after the communication), but it was added to the 2008 update of the guidelines: "They are held on a reciprocal basis, which enables the third

country to raise the human rights situation in the European Union.” (Council of the European Union, 2008b, p. 6) On the one hand, the EU explicitly presents itself as an equal partner in the human rights dialogues; on the other hand, it does not hide its ambition to change other countries in accordance with the EU’s normative preferences. In fact, also in 2001 the firm commitment to dialogue remained qualified with the observation that “a prerequisite for success is that these states are genuinely ready to co-operate. The EU should pursue this approach wherever possible, while recognising that in some cases, the third country may have no genuine commitment to pursue change through dialogue and consultation, and negative measures may therefore be more appropriate”. Before resorting to sanctions, however, the EU should first explore “all avenues for progress” (Commission of the European Communities, 2001a, p. 8). Also Article 96 of the Cotonou Agreement presents consultations on human rights as a precursor to coercive measures. Clearly, the EU’s commitment to dialogue carries an implicit threat: if the EU is not satisfied with the results of a particular human rights dialogue, it will consider resorting to punitive, coercive measures.

In 2006, the Council endorsed *Conclusions on the implementation of the EU policy on human rights and democratisation in third countries* and emphasized that dialogue remained “a key tool in promoting human rights worldwide”. It also stated that the EU’s human rights dialogues were “an important channel to promote the EU’s objectives in the area of human rights, rule of law and democracy.” At the same time, however, the Council again warned third countries that the EU equally remained willing to use more confrontational measures in its efforts to promote human rights, specifically naming and shaming in international fora: “The Council, however, underlines that bilateral human rights dialogues do not exclude other action in the field of human rights such as raising human rights concerns through public declarations or in multilateral forums (Council of the European Union, 2006, § 10). This position was again reconfirmed in a December 2008 update of the EU’s guidelines on human rights dialogues (Council of the European Union, 2008b).

Although the EU’s policy on human rights dialogues is today no longer explicitly linked to the disbursement of financial resources for development cooperation projects (although this still applies to some dialogues, notably those with ACP countries), it is still not a policy that attributes an intrinsic value to dialogue. Rather, the human rights dialogues are understood as a means to an end. Dialogue is used by the EU not merely to increase mutual understanding. It is meant to tangibly promote human rights norms in third countries – and the EU continues to explicitly warn its dialogue counterparts that it is only one instrument among several. Should the desired change not be attainable through dialogue, the EU may also decide to exert reputational pressure, to withhold resources or even resort to sanctions.

Institutional Set-up of the EU's Policy on Human Rights Dialogues

The EU's Guidelines on Human Rights Dialogues state that the decision to initiate a human rights dialogue is taken "in accordance with certain criteria, while maintaining the degree of pragmatism and flexibility required for such a task." (Commission of the European Communities, 2001b, p. 3) The guidelines do not give any details on what these "certain criteria" are. The criteria are also not specified in a classified paper on human rights dialogues submitted by the Working Party on Human Rights (COHOM) to the Peace and Security Committee (PSC) on 15 February 2008, nor in the public version of this paper, which was issued by the Council as an update of the 2001 guidelines in December 2008. Just like the 2001 guidelines, also the update only identifies the procedural steps that need to be taken before a new dialogue is initiated.

The first step is an assessment of the human rights situation in the country concerned, undertaken by COHOM in cooperation with other relevant working parties, notably the relevant geographical working party. COHOM is composed of capital-based human rights directors in the member states' ministries of foreign affairs. It meets regularly to discuss information on human rights violations world-wide, to review and develop the EU's human rights policy, and to coordinate EU positions in international human rights fora. Although the guidelines do not provide clear, measurable criteria, they mention that COHOM's assessment should cover:

- the developments in the human rights situation;
- the extent to which the government is willing to improve the situation;
- the degree of commitment shown by the government in respect of international human rights conventions,
- the government's readiness to cooperate with United Nations human rights procedures and mechanisms;
- the government's attitude towards civil society (Commission of the European Communities, 2001b, p. 5)

All these points provide for considerable margins of interpretation and none of them would qualify as a specific criterion. The 2008 update does not provide any further specification but reiterates the same points (Council of the European Union, 2008b, p. 8). Both versions of the guidelines then refer to a second step in which the EU defines the practical aims of the dialogue (also called benchmarks) and, on a case-by-case basis, criteria to be used for measuring progress achieved in relation to benchmarks. After this, there will be exploratory talks led by the EU Troika, represented by capital-based human rights experts in close consultation with the Heads of Mission in the country concerned. The decision to initiate a human rights dialogue will then be taken by COHOM and finally approved by the GAERC, the General Affairs and External Relations Council

(Commission of the European Communities, 2001b, pp. 5–6); (Council of the European Union, 2008b, pp. 7–8).

Given the lack of clear-cut criteria governing the initiation of human rights dialogues, it is not surprising that the EU's practice reflects the margin of interpretation contained in the guidelines. Indeed, the EU uses human rights dialogue as a tool for dealing with human rights violations with very different countries, including from A to Z: Algeria, Belarus, China, Democratic Republic of Congo and Egypt, through Russia and South Africa all the way to Uzbekistan, Vietnam and Zimbabwe. The picture becomes even more incoherent when looking at the different institutional set-ups used for dialogue implementation. The four main categories used by the EU are:

- agreement-based dialogues;
- human rights dialogues with like-minded states;
- human rights-related discussions in regular political dialogue;
- structured human rights dialogues under the CFSP (Commission of the European Communities, 2001b, p. 2); (Council of the European Union, 2008b, pp. 2–4).

Agreement-based dialogues can have different types of setups, depending on the applicable agreement such as the Cotonou Agreement; the Trade, Development and Cooperation Agreement with South Africa; Association Agreements signed under the Stabilisation and Association Process as well under European Neighbourhood Policy. In most cases, a human rights subcommittee will be set up and the label “human rights dialogue” refers to meetings of that subcommittee. In such cases, it is the Commission, specifically the Human Rights Unit in DG RELEX, which leads the preparations of the agenda and of the line-to-take in the dialogue. The proposal is then passed through the respective geographical working party of the Council for input from member states. During the dialogue, the EU will be represented by the Commission and by the Presidency. Some subcommittee dialogues take place as local dialogues at the level of Heads of EU missions, for example the one with Vietnam. Others take place at COHOM Troika level, for example the one with Uzbekistan. The Uzbekistan dialogue has another peculiarity: there is no human rights subcommittee. Rather, and at the request of Uzbekistan, the human rights dialogue takes place as part of the Subcommittee on Justice and Home Affairs, which was formally renamed Subcommittee on Justice, Home Affairs, Human Rights and Related Issues when the EU-Uzbek human rights dialogue was initiated in 2007. Agreement-based dialogues have been criticized for a lack of consistency as regards structure, format, interval, method and chairmanship, as well as for a lack of transparency on agendas, objectives and progress made (Guillet, 2007, pp. 8–9).

Human rights dialogues with like-minded states typically entail negotiations on issues tabled before multilateral human rights bodies and can result in co-sponsorship of resolutions at the UN or in agreements regarding the EU's and the third state's voting behaviour on resolutions not formally

co-sponsored. As such, they represent a very different form of dialogue. These dialogues are clearly not used for “persuasion and learning”, they are used for coordination. They are not a mechanism to directly diffuse human rights norms, although they aim at strategizing diffusion.

Human rights discussions during regular political dialogue are part of the Union’s declared effort to mainstream human rights across all aspects and processes of its foreign policy (Commission of the European Communities, 2001b, p. 3). Prior to the formal commitment to mainstreaming in 2001, human rights experts had raised doubts concerning the EU’s commitment to human rights in its foreign policy. For example Clapham warned in 1999:

“CFSP is subject only to weak accountability. There is insufficient information available publicly to make a full assessment of the application of human rights principles in this pillar. From the information which is available a picture of inconsistency and incoherence emerges.” (Clapham, 1999, p. 630)

Ten years later, there is little evidence that would indicate the contrary. Due to a lack of records publicly available, it is impossible to verify exactly which human rights concerns do get addressed, when and by whom. The lack of institutional safeguards for norm consistency in EU foreign policy points to continued incoherence (Kinzelbach & Kozma, 2009). COHOM does systematically raise human rights concerns to the GAERC and thus chiefly contributes to the Union’s commitment on a normative foreign policy. However, COHOM’s ability to influence GAERC decisions is limited where other political priorities, or preferences of individual Member States, challenge a principled approach. Several interviewees from member states, the Council Secretariat and the Commission have independently confirmed to the author that human rights concerns are only exceptionally taken up in regular political dialogue. These officials also reported that much depends on the foreign policy traditions in the country holding the Presidency as well as on the personal preferences of the delegation head.² If human rights issues get addressed in political dialogue, then the EU delegation typically raises specific concerns. In many cases, these concerns are merely noted by the counterpart – but not argued about. EU delegations do point out that an improved human rights protection is in the interest of the third country. At the same time, particularly at the highest political level, the EU delegation may also stress that European citizens demand attention to human rights and that European politicians therefore need concessions from the third country in order to continue unobstructed cooperation.³ That is, rather than only making normative arguments, the EU clearly engages in instrumental arguments during its talks with third parties on human rights. What is more: the chances that human rights issues get discussed in any great detail at the political level

² Non-attributable interviews with current and former members of COHOM and EU officials: 20/02/2008; 16/04/2008; 17/04/2008; 09/06/2008; 25/06/2008; 12/09/2008; 14/11/2008; 09/02/2009.

³ Non-attributable interview with EU official: 14/11/2008.

seem to shrink, rather than to grow, once a dedicated human rights dialogue is set up.⁴ Although a dedicated human rights dialogue indicates pronounced concern by the EU regarding the human rights situation in a particular country, it is easy to drop them from the agenda once a dedicated mechanism is set up at technical level.

In the case of **structured human rights dialogues**, the EU is represented by the Troika, with the acting Presidency taking on a major role in preparing for the dialogue and by acting as the chair of the European delegation. The talking points are prepared by the Troika on the basis of a Heads of Mission report submitted ahead of each dialogue round. In comparison to the agreement-based human rights dialogues, the power asymmetry between the EU and its counterparts in the structured dialogues is less evident, but it would be wrong to say that the setup of the structured human rights dialogues ensures equality of partners. Due to the rotating presidency, the EU is factually always represented by someone new. Although the Commission, the Council Secretariat and the Troika arrangement can ensure a minimum level of continuity, there is an undeniable lack of stability at the level of the chair, making the dialogues more a series of separate conversations rather than a dialogue over time. The Commission and Council Secretariat desk officers as well as the Personal Representative attend the dialogue process over several sessions, but apart from ensuring sound preparations for the talks, they have little influence over how the discussions evolve between the heads of delegation.⁵ The appointment of the Personal Representative was seen “as a contribution to the coherence and continuity of the EU Human Rights policy, with due regard to the responsibilities of the Commission” and entailed, among other tasks, to focus on the implementation of human rights dialogues (Council of the European Union, 2005, p. 14). But the role assumed by the Personal Representative during the talks is comparatively minor in comparison to that of the Presidency. While the Personal Representative typically raises some specific points, s/he is not the chair of the European delegation and, therefore, not the primary interlocutor of the third country. Member states have reportedly resisted granting the Personal Representative a greater role in the structured dialogues, a measure which may have led to more consistency.⁶

All of the EU’s human rights dialogues are conducted behind closed doors and public information on the issues discussed is very limited. Only the EU’s annual reports on human rights include very basic information. Brief references to the structured dialogues are also periodically included in Council conclusions or in joint communiqués released after bilateral summits. In recent years, the Presidency started to issue press releases on the structured dialogues, notably on those with China,

⁴ Ibid. Also confirmed in non-attributable interviews with other EU officials: 20/02/2008; 21/02/2008; 15/05/2008.

⁵ Non-attributable interviews with EU officials: 21/02/2008; 16/04/2008; 13/11/2008b; 14/11/2008; 20/02/2008.

⁶ Non-attributable interviews with COHOM members and EU officials: 14/11/2008; 06/12/2008; 02/04/2009b.

Georgia, Belarus and Russia⁷ as well as on those which were set up under the framework of the EU Strategy for Central Asia adopted in June 2007. As regular encounters between diplomats and other government officials which are not documented in detail, the EU's human rights dialogues can be classified as quiet diplomacy *sui generis*. As such, it is important to understand the relation to the EU's public diplomacy (including for example Presidency declarations, Council statements and conclusions as well as joint positions in multilateral fora). Although public diplomacy sometimes also involves messages of approval, most of it consists of so-called naming and shaming, an approach that can be seen as the opposite of quiet diplomacy. Naming and shaming strategies typically maximize publicity, while human rights dialogues limit publicity.

According to the EU's official guidelines, however, public and quiet forms of human rights diplomacy are not mutually exclusive alternatives. Regarding EU action in multilateral fora, notably in the UN General Assembly as well as in the Commission on Human Rights and its successor organ the Human Rights Council, the guidelines of 2001 and the update of 2008 state that UN resolutions supported by the EU constitute an "entirely separate forms of action" from the EU's human rights dialogues (Commission of the European Communities, 2001b, p. 8); (Council of the European Union, 2008b, p. 12). Apart from denying a linkage between human rights dialogues and UN resolutions, the guidelines do not elaborate on the important policy question of how public and quiet human rights diplomacy should relate to each other. The guidelines simply reiterate that the EU can use public and multilateral human rights diplomacy, but they do not specify any criteria that would trigger either action. Rather than being of operational relevance, the reference to resolutions at the United Nations is a political message to third countries, underlining that the EU's human rights diplomacy is not restricted to human rights dialogues.

COHOM regularly reviews progress made in the various human rights dialogues, thereby fulfilling a certain steering function. However given that COHOM is not a permanent body, it only has very limited resources and capability to provide detailed guidance on each dialogue. Its steering function is also affected by a conflict of interest because those members of COHOM that, at any given point, represent the Troika are simultaneously responsible for implementation on the one hand - and review on the other. Reportedly, there reigns certain reluctance among COHOM members to critically review the Troika's approach to any particular dialogue. In the words of one official "nobody would want to spoil the moment of glory of any particular presidency"; and in the words of another: "nobody would want to throw rocks in the way of the Troika, because we know that we will all once sit in the same seat".⁸

⁷ The one with Russia is officially not called a human rights dialogue but, as per Russia's request, rather referred to as a human rights consultation.

⁸ Non-attributable interview with EU official and COHOM member: 02/04/2009a; 26/06/2008.

Despite the existence of official guidelines, there are no clear standards governing the EU's human rights dialogues, not to speak of any binding criteria. It is left to COHOM, the PSC and the GAERC, that is ultimately to the EU's member states, to decide on a case-by-case basis on when the EU should engage in confidential human rights talks and what the Union should try to achieve with the talks. Furthermore, the link to communicative pressure (naming and shaming) is not clarified, nor is it clarified for other forms of pressure, such as economical pressure.

Goals of the EU Human Rights Dialogues

At a very abstract level, and as already quoted above, the EU uses human rights dialogues as a foreign policy tool to affect change in another country - change that is in line with international human rights norms. This overarching, and rather unspecific, desired impact is only elaborated on at a much lower level, namely at the level of actionable objectives. The guidelines list two specific objectives for the EU's human rights dialogues, which both relate to what the EU aims to talk about during the dialogues, namely:

- (a) discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations;
- (b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country (Commission of the European Communities, 2001b, p. 4).

Under the heading "issues covered in the dialogues", the substantive agenda of the EU is sketched out in more detail. Although the agendas for each dialogue are decided upon on a case-by-case basis, each dialogue is meant to cover:

- the signing, ratification and implementation of international human rights instruments;
- cooperation with international human rights procedures and mechanisms;
- combating the death penalty;
- combating torture;
- combating all forms of discrimination;
- children's rights, and in particular those of children in armed conflicts;
- women's rights;
- freedom of expression;
- the role of civil society and the protection of human rights defenders;
- international cooperation in the field of justice, in particular with the International Criminal Court;
- promotion of the processes of democratisation and good governance, the rule of law and the prevention of conflict (Council of the European Union, 2008b, p. 6).

This list contains more detail than the overarching goal of promoting change and highlights that the purpose of the dialogues is not to discuss the validity of human rights norms, but the implementation of human rights norms. Furthermore, it shows that the EU is principally concerned about civil and political rights. It also indicates that the EU's dialogues intend to strengthen international human rights instruments, rather than replacing them with the bilateral dialogue mechanism. In terms of specific themes, the list overlaps to a large extent with the EU's human rights guidelines, which do not only exist on human rights dialogues. Additional ones have also been published on the death penalty, torture, children in armed conflict, human rights defenders, the rights of the child as well as on violence against women and girls and all forms of discrimination against them. That the above list remains fairly general is not surprising, because a more focused substantive agenda can only be set at a country-specific level.

As already mentioned, the guidelines spell out that the practical aims of each dialogue (also called benchmarks) are defined by the EU. This is an important point – the practical aims of each dialogue are not defined in consultation with the dialogue counterpart but unilaterally by the EU. Interestingly, the 2001 May Communication still foresaw a joint definition of goals: “Successful dialogues should include the joint establishment of certain goals depending on local circumstances. These are necessary for both the EU and the partner country to measure progress over time” (Commission of the European Communities, 2001a, pp. 9–10). Such a procedure is in line with the philosophy prevalent in development cooperation processes, where ownership by the partner country is considered a *sine-qua-non* for the success of an intervention. Given that the human rights dialogues first appeared in the context of development cooperation, this procedure is not surprising. The dialogue guidelines, on the other hand, appear to be less inspired by development cooperation processes; they do not provide for a joint definition of goals. In some cases, the EU has published the benchmarks it pursues, for example on the human rights dialogue with China (Council of the European Union, 22-23 January 2001). Nonetheless, these goals were not agreed upon with China and, indeed, it is the EU's general practice not to inform its dialogue counterparts about the aims it works towards in the dialogue. In recent years, the EU has started to inform some of its dialogue counterparts about more short-term “deliverables”, i.e. those results that it hopes to achieve from one dialogue round, rather than the more long-term goals that guide the EU's approach to a dialogue over time.⁹ Both short-term and long-term goal-setting for the human rights dialogues is a unilateral and confidential process.

Although the dialogues are consensus-oriented rather than confrontational, this consensus is predefined by the EU. The dialogues are not conceived as an instrument used for arriving at a

⁹ Non-attributable interview with EU official 20/02/2008.

consensus but, rather, as an instrument to influence third countries in line with the EU's preferences, particularly on civil and political rights.

Impact Potential of the EU Human Rights Dialogues

A principle question is, of course, whether this kind of communicative engagement implemented by the EU can and does have the desired impact of promoting human rights compliance. The 2001 communication argued that dialogue was “the most effective way of achieving change”. The assumption over the effectiveness of dialogue was not further elaborated, apart from a brief reference to the responsibility of governments to uphold human rights (Commission of the European Communities, 2001a, p. 8). The argument presented in favour of dialogue by the EU is, therefore, very simple, namely: since governments are responsible for human rights protection, it is best to talk directly to them. To ensure that the policy has the desired effect, the guidelines stress the importance of regular assessments. Such assessments, which are not published, involve:

“assessing the situation in relation to the objectives which the Union set itself before the start of the dialogue, and will examine how much added value has been provided by the dialogue. The examination will look particularly closely at the progress made on the priority areas of the dialogue. If progress has indeed been made, the assessment should, if possible, analyse how far the European Union's activities have contributed to that progress.” (Council of the European Union, 2008b, p. 13).

This paragraph is remarkably vague on two principle questions. The first one relates to attribution: the guidelines mention a desired “added value” but fail to identify how to measure the specific contribution made by the EU's communicative engagement on human rights to any changes observed. It is even insinuated that such attribution might not be possible. Secondly, the policy lacks conceptual clarity on how changes with respect to individual issues (such as for example the ratification status of international covenants or international cooperation in the field of justice) would lead to the overall change desired. That is, the guidelines fail to identify what can be observed and measured when analyzing whether the policy is having its intended effect. All officials interviewed for this study stressed that the dialogues were only one initiative among many others that impacted on the human rights policies of third countries. Firstly, it was stressed that the EU was not the only actor promoting human rights, but that other governments, the UN's human rights mechanisms and non-governmental organizations played important roles. Amongst all the different actors, national change agents were commonly seen as principle drivers of political reforms. Secondly, it was stressed that the dialogues were but one component of a larger

engagement strategy pursued by the EU. Engagement is a much used term but rarely stringently defined. According to Fouquet and Lim,

"Constructive engagement could be defined as the opposite of confrontation, sanctions or hostility in international relations, or, alternatively, as the opposite of refusing to deal with a country or regime; the presumption is that, through engagement, the other party can be drawn into more internationally accepted norms of behaviour." (Fouquet & Lim, 2007, p. 129)

Also this definition is somewhat vague, but it highlights that the term 'constructive engagement' is not limited to the EU's communicative engagement and that it rather denotes the total sum of the EU's interaction with a third country. In practice, much of this engagement is economical in nature, which is why some human rights experts have noted that the term 'constructive engagement' was a polite way of saying "I'd like to increase my trade with you" (Lempinen, 2005, pp. 323, FN 1524). A decision to increase trade despite concerns over human rights violations is often criticized by human rights activists as trade trumping values. A focus on trade does not necessarily represent the sell out of human rights principles. Modernization theory associates economic prosperity with political liberalization and from this perspective, trade can positively affect not only economic and social rights but also civil and political rights. But even from this perspective, which would reject the criticism that human rights dialogues are merely window-dressing for burgeoning trade relationships with countries that do not subscribe to the EU's political values, the dialogues' specific purpose, that is their "added value", remains to be clarified.

Interviews conducted with officials in the Commission, Council Secretariat and COHOM confirmed that the EU lacks a detailed conceptual framework on the causal mechanism by which the dialogues diffuse human rights and promote change in third countries. There is also no standard methodology for impact measurement. The most prevalent claim raised about the dialogues' impact potential is that they could support change by "exposing officials in third countries to our way of thinking", thereby helping to foster a constituency for reform. In 2004, in the context of conclusions on the EU's human rights dialogue with China, also the Council made a claim about the causal mechanism at work in the dialogue. In these conclusions, the Council stated it was convinced that the dialogue had the "potential to impact positively on the human rights situation in China", "notably by providing a channel of communication and a forum for the candid expression of concerns, by exposing Chinese decision-makers to international human rights standards and practices, and by generating concrete human rights cooperation projects." (Council of the European Union, 2004). Given that all of the EU's human rights dialogues take place among officials behind closed doors, it is clear that they can practically only aim at elite-level reform constituencies.

Although there is no unequivocal clarity about the specific factors that the dialogues aim to change, it transpires that the dialogues are not only meant to change values and attitudes held by government officials and to encourage the adoption of a human rights discourse, but that they rather aim at ending repressive policies. Concrete legal reforms and institutional transformations are to be supported through the dialogue and, as applicable, through cooperation projects generated through the dialogues. Without doubt, both legal and institutional reforms are highly contingent. The success of such a strategy would require detailed awareness among EU officials regarding the ebb and flow of internal debates, so that they may seize promising windows of opportunity for any of the specific reforms favoured by the EU. To achieve this with the rotating presidency and within rigid dialogue schedules (usually annual or biannual) appears highly improbable. Reforms are, furthermore, typically caused and affected by a multiplicity of factors and are rarely the direct result of elite-level decisions. They also tend to be hotly contested within the elite, as they entail changes in the distribution of economical resources and political power, thereby producing winners and losers. A successful EU human rights dialogue would, therefore, have to influence not only the beliefs of the dialogue counterparts but indirectly also the outcome of the domestic political process. Clearly, therefore, the likelihood of a dialogue's success depends to a great extent on the nature of the domestic political process in the respective country and on the political influence of the EU's dialogue counterparts. Given that most dialogues take place among technocrats, such influential dialogue counterparts will be rare.

The EU's dialogue policy undoubtedly resonates with a constructivist perspective on the importance of communication, persuasion and socialization as causal mechanisms explaining state compliance with international norms (Finnemore & Sikkink, 4), not least with scholarship specifically concerned with human rights (Risse, 1999); (Risse, Ropp, & Sikkink, 1999); (Thomas, 2001); (Hawkins, 2004). This resonance may at first sight ascribe a high impact potential to the EU's policy on human rights dialogues but a closer look points to considerable gaps between constructivist theory on the one hand and the EU's dialogue practice on the other. The three most important considerations that indicate a limited impact potential of the EU's dialogue policy are 1) that the same tool is applied to very different situations; 2) that the EU predetermines the goals it aims to achieve; and 3) that the dialogues lack a mobilization framework.

Regarding the first point it is to be noted that the EU's implementation of the policy on human rights dialogue has led to an ever increasing number of such talks, in a myriad of different situations. According to the spiral model on human rights norms transfer, dialogue can only be expected to work at a later stage of the socialization process, when communicative and argumentative processes dominate the dynamic of interaction (Risse & Ropp, 1999, p. 278). In

situations where that is not yet the case, the EU's commitment to dialogue on human rights concerns may indeed be counterproductive to the goal of promoting and protecting human rights, as this commitment can be interpreted by norm-violating governments as a sign for weakness and indecisiveness (Risse & Ropp, 1999, p. 278). But rather than carefully selecting when to engage in a dialogue on human rights with third countries, the EU's use of the mechanism has proliferated over the last decade. While this does not preclude the success of individual dialogues, it points to a lack of strategic orientation in the policy as a whole.

Secondly, the above elaboration on the set-up and goals of the EU's human rights dialogue policy indicates that they do not qualify as forums for a "truth seeking discourse" of argumentative rationality. The latter would imply that actors are not fixed on attaining their prefixed preferences. But the EU is very clear about the fact that it does not intend to change its own position in the dialogue and rather aims at getting the other actor to accept the EU's view and, indeed, to act on the EU's expectations. EU officials confidentially acknowledge that this only rarely happens in practice. One example of a dialogue that reportedly lives up to this expectation is the dialogue with Moldova.¹⁰ Arguably, however, this example does not confirm the success of the EU's communicative engagement on human rights but rather points towards the impact of this country's accession aspirations. Moldovan diplomats who try to increase the odds of their country's accession to the EU must be expected to comply even with those EU demands whose validity does not persuade them, provided of course that the costs of the demands are not unreasonably high. Particularly in those cases where the power asymmetry is less pronounced than in the case of Moldova, diplomats of the third country are said to focus primarily on rebutting the EU's concerns and, increasingly, on criticizing the EU (Council of the European Union, 2007a). It appears that at least some of the dialogues remain stuck in rhetorical action, with little opportunity for normative argumentation. As Risse points out:

"actors engaging in rhetoric are not prepared to change their own beliefs or to be persuaded themselves by the 'better argument'. If everybody in a communicative situation engages in rhetoric - the speaker, the target, and the audience - they can argue strategically until they are all blue in the face and still not change anyone's mind."
(Risse, 2000, p. 8)

In a recent turn of the constructivist debate about the role of arguments in international politics, Krebs and Jackson have called for a shift from constructivism focused on the transformation of values toward constructivism with coercive characteristics (Krebs & Jackson, 2007, p. 37). In their model of rhetorical coercion, neither the motives nor the sincerity of the parties is particularly relevant and they do not focus on whether either of the dialogue counterparts is persuaded by the

¹⁰ Non-attributable interview with EU official 18/10/2007.

other. While a political actor may ideally prefer to persuade another actor, rhetorical coercion is focused on attaining the desired end even if persuasion proves impossible. It “consists of parties attempting to maneuver each other onto more favourable rhetorical terrain and thereby to close off routes of acceptable rebuttal” (Krebs & Jackson, 2007, pp. 44–45). The model presupposes “a political community that shares at least some understandings of the boundaries of acceptable discourse” (Krebs & Jackson, 2007, p. 55). Although such a “human rights community” could be said to exist, the EU’s human rights dialogues cannot function as a tool for rhetorical coercion given that they lack a public dimension.

This also leads to the third point: the EU’s human rights dialogues lack a mobilization framework. This is again particularly problematic *vis-à-vis* countries that repress or deny allegations of human rights violations and even *vis-à-vis* those that offer tactical concessions but that have not reached the prescriptive status; because in these stages the mobilization of a transnational advocacy network has been found to be a key factor promoting norms (Risse & Sikkink, 1999). Given that the EU’s human rights dialogues are not publicly documented, civil society cannot relate to the dialogue discussions on its own initiative. The EU would have to facilitate mobilization through strategic cooperation with civil society. The guidelines foresee that civil society could become involved “as far as possible” and “under the most suitable arrangement” in: “the preliminary assessment of the human rights situation, in the conduct of the dialogue itself (particularly by organising meetings with civil society at local level in parallel with the formal dialogue), and in following up and assessing the dialogue.” (Commission of the European Communities, 2001b, p. 7); (Council of the European Union, 2008b, p. 11). The guidelines further stress that: “The EU will as far as possible give the human rights dialogues a degree of genuine transparency *vis-à-vis* civil society” (ibid). These formulations are quite vague, indicating that the involvement of civil society organizations lacks institutionalization.

In practice, civil society organizations are to some extent involved in the dialogues, but primarily as information providers rather than in a spirit of partnership. For most dialogues, the EU and its member states lack dedicated research capabilities. Accordingly, the EU greatly depends on NGO reports for an up-to-date preparation on key issues. This involves not only a review of relevant NGO reports but also dedicated consultations with select NGO representatives.¹¹ In turn, the EU provides feedback on issues discussed, be it to Brussels-based representatives of international human rights NGOs or to local NGO representatives. But such briefings take place informally and also behind closed doors, with the EU retaining full control over the type of information released on the actual discussion at the dialogue. While the EU accepts detailed information from the NGOs,

¹¹ Non-attributable interviews with EU officials: 13/11/2008a; 14/11/2008a; 07/05/2009; 02/04/2009b; Interview 18/05/2009.

NGO representatives criticize that the EU only returns brief summaries on the discussions during the dialogues, keeping more detailed records classified.¹² NGOs do play a role in the dialogues as information providers. Through their lobby work, they can also shape the agendas of individual dialogue sessions. Particularly the international NGOs that have representative offices in Brussels actively lobby the EU to raise their cause in its human rights dialogues. In an ideal scenario, NGOs can increase their own leverage by attracting EU support for their priority concerns (on information politics and leverage politics of international human rights advocacy networks see Keck & Sikkink, 1998, pp. 18–24). But instead of a mutual information exchange, the cooperation on the human rights dialogues is oftentimes a one way street.

The level of information shared with NGOs greatly depends on the officials occupying relevant posts in the Commission, the Council Secretariat as well as in the MFA of the country holding the presidency.¹³ As is also pointed out by Keck and Sikkink, network interactions with government bureaucracies on human rights issues can sometimes be mutually reinforcing but are seldom congenial. If not institutionalized through clear procedures and formal NGO advisory committees, personnel changes easily dismantle productive relationships (Keck & Sikkink, 1998, pp. 18-24: 103). Given the lack of institutionalization for NGO participation in the EU's human rights dialogues, it can be concluded that network pressures have the potential to effect the deliberations in the dialogues when officials in the relevant posts are receptive. Given the lack of clear feedback mechanisms, however, the human rights dialogues only serve to directly reinforce non-governmental human rights networks on a very exceptional basis. The guidelines' promise of opening the dialogues to the extent possible and of involving civil society under the appropriate mechanisms means, in practice, that the curtain of secrecy surrounding the talks is only lifted when a benevolent guard is in charge. For the most part, civil society is excluded. This also applies to members of the European Parliament. In May 2008, the Council stating that MEPs could neither participate in ENP subcommittees on human rights nor in the structured human rights dialogues. It promised briefings on the dialogues to the parliament but rejected the request for participation made by the parliament (Council of the European Union, 2008a, p. 3).

Do the dialogues serve their intended purpose, that is do they succeed in exporting human rights norms to third countries? Research results on other non-coercive instruments, such as ratification of human rights treaties (Hafner-Burton & Tsutsui Kiyoteru, 2007) and technical assistance programmes on the rule of law (Carothers, 2006) suggest that non-coercive measures fail where authorities resist compliance with human rights norms. Certainly, there is so far less academic consensus on the positive impact of technical assistance or of the accession to international human

¹² Interviews with NGO representatives: 20/02/2008; 21/02/2008; 13/11/2008b; 09/02/2009; 12/05/2009.

¹³ Ibid.

rights regimes on human rights protection than on the positive impact of democracy, economic development and the absence of war (Landman, 2005). To some extent, the dialogues can be seen as a precursor to technical assistance and accession to international human rights treaties, because they aim at facilitating both. Given the lack of clarity on the impact of these intended dialogue results, and given the above mentioned inhibiting factors (indiscriminate use; rhetorical action; lack of mobilization framework), the impact potential of the EU's human rights dialogues can only be viewed as minimal. The EU for its part has failed to identify the causal mechanisms at work in a successful human rights dialogue. Without doubt, the question about the dialogues' impact requires a more detailed analysis, broken down to the level of every individual dialogue. Yet the points discussed in this section suggest that the EU's policy on human rights dialogues is prone to failure.

Explanations for the EU's Increased Reliance on Human Rights Dialogues

The EU's policy on human rights dialogues and its implementation presents a mixed picture. On the one hand, the EU defined the impact potential and actual effectiveness of talks as a key prerequisite for the initiation and continuation of human rights dialogues. On the other hand, the EU failed to specify clear criteria for when to engage in such dialogues and when to use other instruments to promote human rights. Since the beginning of the 1990s, human rights dialogues have become an increasingly important element of the EU's human rights foreign policy, and the number of human rights dialogues continues to grow. In the absence of any clear measure that would point to the policy's success – what explains this rise? There are several possibilities:

1. Building on Thomas Diez, who viewed the EU's commitment to a normative foreign policy, as well as the scholarly debate about the concept "normative power Europe", as a practice of European identity construction (Diez, 2005), it could be argued that the dialogues proliferate because Europe's identity construction is fostered by an increasing number of communicative forums in which Europe can turn third parties into others, thereby representing the EU as a positive force in world politics. However in the case of the human rights dialogues, this explanation is not very compelling, mainly because the dialogues take place behind closed doors. Identity construction requires publicity.

2. Although the EU can so far not point to any great success of its communicative engagement on human rights (particularly in situations where it is not accompanied by significant political and economic sticks or carrots), EU leaders and officials may genuinely be convinced of the possibility to effectively promote human rights through dialogue – in a variety of different country situations. European leaders and officials could be self-assured of the EU's normative superiority and,

accordingly, view human rights promotion primarily as a matter of cognitive learning. In such case, outstanding success could simply be seen as a question of time and good argument. This conviction is also laid down in treaties and policies: According to the Lisbon Treaty Chapter 1, Article 10A(1), the EU seeks to advance what the EU already enjoys, including human rights. And the EU's security policy ambitiously aims not only at building a more secure Europe – but also at building a better world (Council of the European Union, 2003). The EU's foreign policy overall has been criticized for a Eurocentric outlook, oftentimes in connection with warnings that the EU's self-illusionary notions of grandeur stand in the way of sober realizations that Europe is failing as a sender of norms, and that it will soon be forced to react on discourses imposed on Europe (Mayer, 2008, p. 23). If the above were true, the EU's human rights policy could simply be misguided by a self-perceived and paternalistic European grandeur. However, interviews conducted with officials involved in the human rights dialogues, rather point to a lack of interest (and knowledge) among political leaders to talk and argue about human rights norms, as well as to a wide-spread disillusion with the instrument at the technical level. Human rights dialogues seem to proliferate for the lack of a better alternative.

3. Positive measures are not only politically less offensive but also politically less risky than negative conditionality. From this perspective, EU member states are more likely to agree on positive measures rather than on negative measures. Furthermore, after having announced its commitment to dialogues on human rights, it has become politically difficult for the EU to reject offers made by third countries to initiate talks about human rights. In fact, the EU has only once rejected the proposal to set up regular human rights talks, namely in the case of North Korea.¹⁴ In her extensive study on the EU's human rights conditionality in practice, Fierro points out that some powerful countries may in fact trump the EU's conditionality. "More moderate views would say that the conditionality is, at the very least, symmetric." (Fierro, 2003, p. 206) In other words: if the EU were to invoke any coercive measures against powerful norm-violating countries, the EU would pay a high price. Rather than assumptions over the dialogues' effectiveness, the EU's preference for communicative engagement on human rights can likely be best explained through cost-utility calculations. With the invocation of positive measures, the EU is seen to be doing something on human rights violations while at the same time avoiding any strong retaliation from norm-violating countries. This is particularly evident in the case of the structured human rights dialogues.

Although the EU has repeatedly stressed that human rights dialogues are in no way linked to decisions on any other EU measures, it is peculiar that the structured human rights dialogues set up under the CFSP seem to be linked to political deals between the EU and the third countries

¹⁴ Non-attributable interviews with EU officials: 20/02/2008; 02/04/2009.

involved. The longest-lasting of these, the EU-China human rights dialogue, has its origin in negotiations between China and the EU regarding a China resolution at the Commission on Human Rights which the EU had repeatedly co-sponsored in the aftermath of the Tiananmen massacre (Baker, 2002). The dialogue with Iran (2002-2004) was linked to negotiations on a Trade and Cooperation Agreement. It was initiated after a reformist coalition in Iran had won the 2000 parliamentary elections but also against the background that Iran had been the subject of several UN resolutions going back to 1982 (Kjaerum, 2007, p. 5). It was called off by Iran after the EU co-sponsored a resolution critical of Iran at the Third Committee of the UN General Assembly in the fall of 2004. This *pas-de-deux* (co-sponsorship of resolution by the EU and subsequent withdrawal from dialogue by Iran) was repeated in the following years as well (Council of the European Union, 2007b, p. 39). The human rights consultations with Russia have been linked to the EU's decision not to submit a resolution on Chechnya in 2005 at the 61st session of the Commission on Human Rights in Geneva (Le Huerou, 2007, p. 12). The dialogue with Uzbekistan, initiated in 2007, led to the lifting of EU sanctions imposed in response to the Andijan massacre in 2005 (Kinzelbach & Kozma, 2009, pp. 613–617). The human rights dialogue with Belarus was initiated in 2009, that is not before but after the EU had already decided to stop submitting a resolution on Belarus to the Third Committee of the UN General Assembly. That the dialogue is part of a political deal is nonetheless likely, not least because the Council itself linked the initiation of the dialogue to the suspension of a travel ban it had issued after Belarusian President Aleksander Lukashenko was controversially elected in 2006 (Council of the European Union, 2009).

Decisions on the suspension or termination of a human rights dialogue entail another political dilemma. A human rights dialogue can only be terminated in a credible manner if the human rights situation in a third country has improved to an extent that actually justifies the decision; in the lack of such improvements, suspensions will only appear reasonable if the EU simultaneously decides to launch punitive measures. But because such measures require unanimous support from member states they are in reality very rare, thereby increasing the chances that the EU continues to engage in human rights dialogues even when participating officials as well as NGOs and other informed observers raise doubts about the efficacy of dialoguing with authorities that resist fundamental reforms.

In analogy to Youngs' analysis of normative dynamics and strategic interests in the EU's external identity (Youngs, 2004), it can be concluded that the EU, particularly the GAERC, does not necessarily lack a genuine commitment to human rights and the power of argument, but there appears to be a high degree of instrumentalism in the way in which the human rights dialogues are implemented.

Conclusion

Rather than strategically, and selectively, choosing when to engage third countries on normative arguments in favour of human rights protection, the EU's use of dialogue as a mechanism for human rights diffusion has proliferated. Despite this proliferation, and almost two decades after the strategy to use dialogue for the promotion of human rights was first announced, the EU still lacks conceptual clarity on when to initiate such dialogues, what goals to prioritize and which causal mechanisms are at work in a successful dialogue.

Although the EU's dialogue guidelines foresee regular assessments and a genuine level of transparency, the EU has yet to demonstrate the success of any individual dialogue – and of the policy as a whole. Furthermore, there is a risk that norm-violating countries use the EU's willingness to engage in human rights dialogues as a political tool to demonstrate good will, thereby gaining negotiation power over the EU's decisions regarding coercive human rights instruments, such as resolutions but also travel bans and other sanctions.

Human rights dialogues are an easy common denominator to agree upon. They also put human rights in a convenient diplomatic box. They down-grade and marginalize a sensitive issue, thereby freeing the EU's high-level political contacts with third countries from normative tension. Human rights dialogues are a lip-service to the normative commitment of the EU and, indeed, to its treaty obligations, given that human rights promotion is meant to be a general objective of the Union's Common Foreign and Security Policy. Rather than talking to persuade, the EU's human rights dialogues have become instruments to silence the debate.

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