

MASTER THESIS EUROPEAN UNION STUDIES



Leiden 18th of December 2018

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Number of words: 14995

The European Union's prioritization of civil and political rights over economic, social and cultural rights in the Human Rights Council.

A critical analysis.

Does the EU prioritize certain human rights over others in its discourse at the Human Rights Council?

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Introduction

Since its formation, the European Union¹ (EU) has been closely related to the principles and values of the international human rights movements. Not only human rights provide moral and aspirational guidance, but they also have been a source of legally binding norms within the Union and a fundamental instrument of its external policy.² The very founding principles and core values of the EU are entrenched in the Universal Declaration of Human Rights, on which the drafting of the European Convention on Human Rights (ECHR) was based.³ Moreover, both the Declaration and the European Convention can be seen as the human rights foundation of the European project.⁴

Nowadays, the centrality of human rights within the EU is highlighted by the numerous references to these normative marks in EU's legal framework, its institutional structure, and in the key tool that human rights represent in the EU external policy.

Nevertheless, the EU human rights doctrine is characterised by uneven levels of commitment and protection of different human rights, which jeopardises the principles of universality and indivisibility⁵ - given that political, civil, economic and social rights are currently seen as “interdependent, interrelated and indivisible as each one contributes to the realisation of the others”⁶. In the EU, the interdependence and indivisibility of the different human rights are exemplified, for instance, in its adoption of the ECHR, in the EU Charter of Fundamental Rights, and most clearly in the Article 21 of the Lisbon Treaty.

Drawing from this differentiation of human rights, this thesis will try to highlight EU's uneven level of commitment and protection, showing how, despite the principles of universality and indivisibility, its external policy tends to prioritize and attach greater importance to civil and political rights – confining social and economic rights to a secondary role.

¹ This study acknowledges that the term European Union came into use with the Maastricht Treaty in 1993, yet, for the sake of simplicity, the terms “European Economic Community” and “European Community” will not be used.

² Gropas, R. (1999). *Is a Human Rights Foreign Policy Possible? The case of the European Union* (Institute on Western Europe, 16th Annual Graduate Student Conference). New York: Columbia University, p. 11-13.

³ Alston, P., Weiler, J. (1998). *An ‘Ever Closer Union’ in Need of a Human Rights Policy: The European Union and Human Rights*. Firenze: European Journal of International Law, p. 24, 658–723.

⁴ Riihela, M. (2004). *Human Rights and fundamental freedoms in the European Union from the perspective of the applicant countries*. p. 52.

⁵ Alston, P., Weiler, J. (1998), p. 25.

⁶ United Nations Population Fund (2005). Human Rights Principles. Available at: <https://www.unfpa.org/resources/human-rights-principles?fbclid=IwAR1O7N- YBqAELyaOS8wbjNYgej9Cgm64P1QVahC-JgptX-50vHGhccVbT4E>.

Considering how vast EU's external policy spectrum is, this thesis shall restring itself to analysing the EU performance in the Human Rights Council (HRC). Specifically, this study will take under consideration the statements the EU delivered under HRC's agenda item 3 for the period 2013-2014. The period-frame under consideration has been selected because it comprehends EU speeches before and after the launch of the "*Council Conclusions on EU priorities at the UN human rights fora 2014*".⁷ This document reaffirms the objectives and guiding principles set out by the "*EU Strategic Framework and Action Plan for Human Rights and Democracy*".⁸ Both papers are particularly relevant, as they make a clear and direct reference to EU's willingness and commitment to "intensify its efforts to promote and protect economic, social and cultural rights".⁹

The present study will, therefore, focus on how the EU is able to act as a unified actor in the HRC, highlighting its tendency to prioritize the civil and political rights within the HRC, contributing to the politicisation and dualism of human rights in the forum¹⁰, and perpetuating the view that some human rights are more relevant than others.

Precisely, this thesis will offer an overview of the role and impact of human rights in the building and development of the European Union legal order, paying attention to its influence in EU's external policy dimension. This overview will provide the historical and conceptual elements to recognise the "special relation" between the EU and human rights. This work will then introduce the EU as an actor in the HRC, discussing its unique role, and analysing EU's internal decision-making process. Through a discourse analysis on the statements delivered by the EU in five HRC sessions, this study will point out how the use of *reinforcing* language is employed regarding civil and political rights, as opposed to the *distilling* language used for social and economic rights. Finally, by making use of the neo-Gramscian concept of "hegemony" as a theoretical framework, this thesis will then conclude that there is, indeed, a certain level of prioritization by the EU of specific human rights in the HRC, and that such inclination is not contested, but, on the contrary, is fully projected by EU actors in the HRC.

Chapter 1.1

Literature Review

⁷ Council of the European Union. *Conclusions on the EU priorities at the UN Human Rights Fora*. (Foreign Affairs Council meeting). Brussels (2014).

⁸ Council of the European Union. *EU Strategic Framework and Action Plan on Human Rights and Democracy* (11855/12). Luxembourg, 2012.

⁹ *Ibidem*.

¹⁰ Smith, K. E. (2010). *The European Union at the Human Rights Council: speaking with one voice but having little influence*. London: Journal of European Public Policy. p. 228-230.

Studies that focus on the EU as an actor in the UN developed a comprehensive and growing body of study. These can range from broad analysis focuses on the EU role within UN's main governance topics (such as development, environment, disarmament, human rights) to more focused works regarding the relation between the EU and UN political bodies and/or specialized agencies.¹¹ However, with regards to the specific issue of the EU at the Human Rights Council (HRC), the existing literature is significantly reduced.

On one hand, from a broader perspective, a substantial part of studies focused on "the EU at the UN" as a basis to establish a more theoretical perspective to explain the type of actor the EU is at the international level.¹² This line of research has distanced itself from the conventional focus on the identification of EU's objectives in foreign policy and on its empirical analysis. In contrast, attention is given to more "ideational and/or sociological ways to determine what kind of actor the EU is internationally and its values, principles, and character".¹³

In the quest for defining the kind of power that the EU exercises abroad, one of the most significant works on the topic is held by Ian Manners. Manners describes the EU as a normative power that pursues and defends norms and values that can be seen as universal and in line with the UN founding principles.¹⁴ Using EU's campaign against the death penalty as a case study, Manners suggests that it acts in a normative way, as the external reflection of EU's hybrid system and its principle-based foundation.¹⁵ Going beyond the classic dichotomy between military and civilian power, Manners argues that the most crucial element that characterised EU's international role is "not what it does or what it says, but what it is".¹⁶ Such formulation opened a great debate on EU's nature.

As a response to Manners' claim on the EU normative foundation, other scholars have attempted to provide alternative explanations on the organ's external role and nature. Bàtora argues that the EU integration process and current position in the global context can be seen as proof of the challenges that the its power poses to diplomacy as an institution. It concludes that the EU is a post-Westphalian power as its diplomatic system breaks with the precepts of the classic conception of State-Nation and the traditional institutional principles of diplomacy.¹⁷

¹¹ Laatikainen, K. V. (2015). *The SAGE Handbook of European Foreign Policy*. "The EU and the United Nations", p. 704-705.

¹² Laatikainen, K. V. (2015). p. 705-706.

¹³ Laatikainen, K. V. (2015). p. 711.

¹⁴ Manner, I (2002). *Normative Power Europe: A Contradiction in Terms?*. *Journal of Common Market Studies*. p. 235–258, 241.

¹⁵ Manner, I (2002). p. 242.

¹⁶ Manner, I (2002). p. 252.

¹⁷ Bàtora, J. (2005). *Does the European Union transform the institution of diplomacy?*. *Journal of European Public Policy*, p. 44-66.

Another noteworthy conceptualisation of EU's identity was found by Damro, who questions Manners' normative claims arguing that the EU is fundamentally a market power with economic interests as its core foundation and primary interest. According to Damro, the EU has to be seen mainly, but not exclusively, as a market power that engages in international affairs through the use of its economic power and "social-market related policies and regulatory measures" to pursue its interest. In other words, the foundation of EU power and nature lies in its economic nature and commercial objectives.¹⁸

A realist response to Manners' normative claims is found in the work of Adrian Hyde-Price. Price argues that in contrast with the liberal-idealism and normative approach used to explain the EU as an international actor, a neorealist analysis can provide an alternative view of EU's nature.¹⁹ Through the analysis of the development of the European Security and Defence Policy (ESDP)²⁰, he affirms that the "EU is used by its Member States as a collective instrument for shaping its external milieu by a combination of hard and soft power"²¹ and concludes that even if structural realism cannot explain EU's cooperation in security and external policy, it is useful to explain the general nature of the EU as an international actor.²²

Fassbender questions EU's positive self-perception in the UN²³, concluding that over the last 50 years the EU played an overall positive role in the Organisation. Furthermore, EU's compliance with the UN Charter rules and protection of human rights demonstrates EU's support to the UN aims and principles²⁴.

From a narrower point of view, the specific literature on the issue of the EU at the HRC tends to focus on establishing and measuring EU's level of effectiveness, and/or if it is an actor within multilateral organisations, and/or trying to establish the level of coherence within the EU, and how such coherence is projected externally to international organizations.²⁵

¹⁸ Damro, C. (2012). *Market power Europe*. Journal of European Public Policy, p. 682-699.

¹⁹ Hyde-Price, A. (2006). *'Normative' power Europe: a realist critique*. Journal of European Public Policy (13:2), p. 217-234.

²⁰ The European Security and Defence Policy was changed to Common Security and Defence Policy with the Lisbon Treaty.

²¹ Hyde-Price, A. (2006). p. 217.

²² Hyde-Price, A. (2006). p. 227.

²³ Fassbender, B. (2004). *The Better Peoples of the United Nations? Europe's Practice and the United Nations*. Firenze: The European Journal of International Law, p. 857-88.

²⁴ Fassbender, B. (2004). p. 883.

²⁵ Laatikainen, K. V. (2015). *The SAGE Handbook of European Foreign Policy*. "The EU and the United Nations", p. 707.

Basu²⁶ follows the same direction, focusing on EU's participation and position in the HRC, through the application of an interdisciplinary framework²⁷ that helps identify EU's main achievements and shortcomings, as well as the reasons behind them. As a result, Basu's work highlights how in some areas of the HRC, through its statements and engagements, the EU is able to have strong and visible participation.²⁸ In contrast, in other areas such as lobbying to achieve support in certain initiatives, the EU is not able to reach its objectives in the same manner.²⁹ According to Basu, the reasons behind EU's shortcomings can be found mainly by its: 1) inability to act within the logic of the HRC (the so-called "regional bloc mentality"), 2) non-effective outreach with third countries, and 3) numerical inferiority within the HRC.³⁰

Another important academic contribution to this issue is given by Karen E. Smith.³¹ She analyses EU activities in the promotion of human rights within UN's two main human rights bodies (the Commission on Human Rights and the General Assembly's Third Committee) trying to assess to what extent the EU operates as a unified actor within the UN regarding human rights; what role it has; and its contribution to the UN in that field.³² Looking at the outputs produced by the EU at the UN, Smith concludes that there is a growing commitment from EU Member States to act cohesively within the UN; and also that, since the beginning of the 1990s, there has been an increased participation and impact of the EU in the UN human rights bodies.³³ On the other hand, differing national interests and the persistent tendency of a few Member States to act individualistically are still identified as the main obstacle to greater unity and a stronger role at the UN. The study calls on Member States for greater cohesion and support for EU's actions within the UN and the straightening of its common external policy.³⁴ Another interesting conclusion

²⁶ Sudeshna, B. (2012). *The European Union and Multilateral Governance Assessing EU Participation in United Nations Human Rights and Environmental Fora*. p. 86-101.

²⁷ The interdisciplinary framework is based on "analytical units (actor capacity, recognition and governance mode), which have been vertically linked across the respective intra disciplinary divides between the levels of analysis via the concepts of legal status". In: Schunz, Basu, Bruyninckx, Wouters, Keukeleire, (2012). *The European Union and Multilateral Governance Assessing EU Participation in United Nations Human Rights and Environmental Fora*. p. 25-45.

²⁸ Sudeshna, B. (2012). p. 88.

²⁹ Sudeshna, B. (2012). p. 91.

³⁰ Sudeshna, B. (2012). p. 95.

³¹ Smith, K. (2010). *The European Union at the Human Rights Council: speaking with one voice but having little influence*. Journal of European Public Policy, p. 154-174, 224-241.

³² The United Nations Commission on Human Rights (UNCHR) was UN's main mechanism and international forum for dealing with the promotion and protection of human rights. It was replaced by the Human Rights Council (HRC) in 2006.

³³ The "outputs" are identified as "the statements and explanations of vote or position given in debates on behalf of the EU; resolutions introduced on behalf of the EU; and voting cohesion". In: Smith, K (2010). p. 170-171.

³⁴ Smith, K. (2010). p. 172.

that arises from Smith's study is the EU inclination to maintain its "freedom of action"³⁵ in the human rights arena, in order to be able to pursue its own political agenda and policy goals - which, in turn, could have a negative effect for the UN system.

In a different study, Karen E. Smith tries to assess which are EU's constraints in the HRC. Through analysing its actions in the Council, she evaluates EU's internal and external effectiveness, concluding that, despite EU's greater internal unity (compared to the former CHR), its influence in the HRC is still limited.³⁶ The article highlights that the EU internal coordination mechanism can limit its capacity to outreach³⁷ to other countries, but emphasised how the main obstacles to a more incisive participation are mainly represented by external factors.³⁸ In particular, the HRC is characterised by regional and political blocs and specific countries that actively oppose to EU positions.³⁹ Additionally, EU's main priority at the HRC is of "keeping the institution of the HRC going", creating a tendency to work through consensus and lowering standards for the sake of achieving common ground.⁴⁰

Many of the obstacles faced by the EU within HRC are represented by the bloc divisions that seem to characterise HRC's dynamics. EU's action in the HRC has been marked by its incapacity to outreach third countries effectively. Drawing from these conclusions, Macaj addresses the tension between EU's actions to overcome bloc divisions and its efforts to act as a bloc itself.⁴¹ According to Macaj, in the effort to act as a unifying player, the EU further reinforces the HRC bloc divisions. Instead, the EU should try to engage in a more flexible and open manner, trying to build up "human rights-based coalitions" rather than reinforce the existing political bloc formations.⁴² In other words, more unity within the EU does not automatically translate into more influence in the HRC – on the contrary, it could further exacerbate the division and politicisation of the HRC.⁴³

Macaj and Nicolaidis further question the assumption of correlations between EU's unity and influence.⁴⁴ The study, through the elaboration of a predictive model, outlines what kind of factor combinations affect the relationship between cohesion and

³⁵ Smith, K. (2010). p. 171.

³⁶ Smith, K. (2010). p. 236.

³⁷ Outreach can be defined as the capacity to engage effectively with third countries to promote EU values and objectives in the international arena.

³⁸ Smith, K. (2010). p. 229-230.

³⁹ Smith, K. (2010). p. 235.

⁴⁰ Smith, K. (2010). p. 236-237.

⁴¹ Macaj, G. (2012). *Squaring the circle? EU outreach and bloc politics in the UN Human Rights Council*. p. 11.

⁴² Macaj, G. (2012). p. 17.

⁴³ Macaj, G. (2012). p. 11-12.

⁴⁴ Macaj, G., Nicolaïdis, K. (2014). *Beyond 'one voice'? Global Europe's engagement with its own diversity*. Journal of European Public Policy. p. 1067–1083.

effectiveness.⁴⁵ It concludes that unity is not always a synonym of effectiveness, but on the contrary, under some circumstances, it could have counterproductive results.⁴⁶

As outlined above, the specific literature on the EU at the HRC tends to focus on evaluating EU's capacity to act as a unified actor and the use EU performances to assess its capacity to play a relevant role within the HRC institutional limitations. The main conclusions from these studies highlight the key internal and external challenges for the EU at the HRC, consolidating the correlation between internal unity and external influence.⁴⁷ As a response, Macaj and Nicolaidis challenge this assumption, demonstrating the need to create different non-conventional centres of power to increase EU's impact and overcome the politicisation of the HRC.⁴⁸

Nevertheless, the differentiation that the EU makes between different human rights at the HRC is not sufficiently discussed, and when touched it is mainly seen as a consequence of the persistent politicization of human rights in the HRC.⁴⁹ The issue of EU's use of 'double standards' in the matter of human rights goes in a similar direction, perceiving it as a result of the HRC polarisation.⁵⁰ Hence, such differentiation is accepted as consequence of the external context or as a need to protect "what the EU considers as core human rights".⁵¹ Even though part of the literature acknowledges EU's uneven attention to the different human rights in the HRC, it does not engage with it from a critical political perspective.⁵²

In this sense, a critical analysis to EU's differentiation of human rights could provide a more encompassing vision of the concrete importance that the EU attaches to different types of human rights, and unveil the predominance of a civil and political-rights based discourse. Finally, the use of a critical theoretical framework could shed light on the perpetuation of the hegemonic position of the Western liberal perspective in the international scenario.

Overall, from one side, the highlighted literature explores the EU behaviour within the UN, or its foreign policy instruments in attempts of defining its own nature. Both Manners' perspective, in his formulation of a benign normative power, and also many scholars' different responses regarding the nature of the EU, relate to a more general debate on exploring EU's international identity.

⁴⁵ Macaj, G., Nicolaïdis, K. (2014). p. 1074-1077.

⁴⁶ Macaj, G., Nicolaïdis, K. (2014). p. 1081-1082.

⁴⁷ Macaj, G., Nicolaïdis, K. (2014). p. 4.

⁴⁸ Macaj, G., Nicolaïdis, K. (2014). p. 1080.

⁴⁹ Macaj, G. (2012). p. 3.

⁵⁰ Macaj, G., Koops, J. A. (2012). *The EU as a global player in human rights*. (Chapter 5: Inconvenient Multilateralism: The challenges of the EU as a player in the United Nations Human Rights Council). p. 66-81.

⁵¹ Macaj, G., Koops, J. A. (2012). p. 76.

⁵² Laatikainen, K. V. (2015). p. 707.

On the other side, the specific literature on the EU at the HRC focuses mainly in defining whether the EU is or not an actor and its level of participation and relevance in that specific fora. Nevertheless, the literature seems to lack a critical perspective that unveils alternative reasons for the EU rhetoric. In this sense, the analysis of EU discourses in the HRC, flanked by an innovative critical framework, could shed a light on the reasons behind its approach to human rights, and, more in general, regarding its nature as an international actor.

In trying to answer the question on whether there is a differentiation of human rights by the EU at the HRC, this work will try to expose an alternative explanation on which concepts and values are projected and perpetuated by EU discourses on human rights. This thesis will therefore provide a wider perspective on the theme, which includes internal aspects of EU's relationship with human rights, as well as a critical explanation to EU's projection in the HRC, exploring the ideas behind the primacy of civil and political rights in the Union's external practice.

Chapter 1.2

Theoretical Framework

The research question guiding this study derives from the assumption that discrepancies in EU's 'human rights discourse' may have impactful consequences. To comprehend how this is possible, the Gramscian concept of hegemony can be particularly useful. As will be further delineated, this author's considerations on the topic can shed light on how normative discourses can be relevant tools for the consolidation and strengthening of a certain hegemonic order, including in the international sphere.

In this regard, Cox's outtake on international relations specifically explores the Gramscian theory to explain the workings of power in the global order and the legitimization of dominant structures. This will serve as a conceptual ground for this study's objective in exploring how the predominance of a civil and political-rights based discourse by a prominent normative actor such as the EU can play a role in perpetuating and strengthening a Western liberal perspective in the international scenario.

To achieve this aim, this theoretical framework will first outline the Gramscian concept of hegemony and how it can be translated to international relations studies. Subsequently, it will delve deeper into the liberal roots of civil and political rights, and how they can be used as a powerful tool to consolidate Western liberal hegemonic ideals.

Gramsci's concept of hegemony and international relations

Considered one of the most relevant *oeuvres* in modern political philosophy, Antonio Gramsci's *The Prison Notebooks* projected a far-reaching influence across multiple disciplines.⁵³ Written during a period of 6 years – when the author was held in prison by the fascist government of Mussolini between 1929 and 1932 –, the *Notebooks* consist of a series of reflections regarding a wide variety of topics, among them history, politics, philosophy, and culture.⁵⁴

Perhaps one of the strongest conceptualizations deriving from the aforementioned texts is the Gramscian notion of 'hegemony'. This concept's innovation lies in its emphasis on historical contexts and the role played by normative and ideological actors and structures to explain power dynamics.⁵⁵ It can be said that the concept of 'hegemony' as devised by the author relates to how power is exercised beyond coercion or economic structures⁵⁶. Nonetheless, it also encompasses how dominant classes are able to 'manufacture consent' and legitimacy through 'soft' mechanisms – *i.e.*, 'social democracy' concessions through the bourgeois state; the spread of ideas and beliefs in the media, universities, and religious institutions; the construction of a cultural and social identity entrenched in values that allow the ruling class to exercise its dominance over others.⁵⁷ As a result, Gramsci's idea of hegemony revolves around the ways through which a dominant class attempts to pervade civil society and cement their power through a consensual approach.⁵⁸

In order to explain how this consensual aspect of power is built, Gramsci places great emphasis on a historical analysis to unravel social dynamics of dominance.⁵⁹ In this regard, Gramsci's analysis on the *Risorgimento* in Italy provides thought-provoking insights on how a social group can subordinate others.⁶⁰ Within this context, the author explains the control held by the 'Moderates' movement over the Italian unification, and

⁵³ Schwarzmantel, J. (2015). *The Routledge Guidebook to Gramsci's Prison Notebooks* (Routledge Guides to the Great Books). New York: Routledge, p. 3-4.

⁵⁴ *Ibid.*

⁵⁵ Cox, R. W. (1983). Gramsci, hegemony and international relations: an essay in method. *Millennium*, 12(2), p. 162-164; Schwarzmantel, J. (2015), p. 97; Gramsci, A. (1975). *Quaderni del carcere* (Vol. III, Edizione critica dell'Istituto Gramsci) (V. Gerratana, Ed.). Turin: Einaudi, p.1983-84.

⁵⁶ *Ibid.*

⁵⁷ Heywood, A. (1994). *Political Ideas and Concepts: An Introduction*. London, Macmillan, p. 100-101.

⁵⁸ Cox, R. W. (1983), p. 164; Moolakkattu, J. S. (2009). Robert W. Cox and critical theory of international relations. *International Studies* 46(4), p. 441.

⁵⁹ Cox, R. W. (1983), p. 163.

⁶⁰ Schwarzmantel, J. (2015), p. 98-99; Gramsci, A. (1971). *Selections from the Prison Notebooks* (Q. Hoare & G.N. Smith, Eds. and Trans.). London: Lawrence & Wishart., p. 52-120; Gramsci, A. (1975). p. 2010-2012.

how this was particularly due to the fact they were able to attract power and support not through mere 'dominance', but rather through 'intellectual and moral leadership'.⁶¹

According to the author, what allowed the Moderates to hold sway upon the unification process relied heavily on how they were "a real, organic vanguard of the upper classes, to which economically they belonged. They were intellectuals and political organisers, and at the same time company bosses, rich farmers or estate managers, commercial and industrial entrepreneurs, etc".⁶² Within this context, the Moderates not only were part of the ruling class, but also intellectuals that were able to articulate ideas, advocate for support, spread their ideology throughout different sectors of societies, as well as neutralize and co-opt oppositional stances into their ranks.⁶³ Because of such historical examination, Gramsci allowed for an overview of the importance of intellectual leadership and pressure for the exercise of social and political power.

This historical approach also allowed the author to examine how the exercise of power is dependent on compromises and mechanisms that go beyond brute force or coercion.⁶⁴ When analyzing the rise of fascism in Italy, Gramsci highlights how fascist rule had more complex roots than just a repressive control enabled by armed forces.⁶⁵ Rather, it also relied on the nature of civil society, the mass organizations of modern politics, coalitions between parties and unions, and concessions to subordinate classes in order to secure dominance.⁶⁶

In view of this, the author emphasizes that the 'forces of order' that enabled the power of the bourgeois class through fascism included, then, not only repressive organs of state power, but also "the totality of forces organized by the State and by private individuals to safeguard the political and economic domination of the ruling classes".⁶⁷ As a result, the text evokes Machiavelli's centaur to elucidate that power involves both consent and coercion, but that the two play differentiated roles. Whereas the first is necessary in a wider scale to manufacture consent and guarantee overall obedient behaviour with the ruling class, coercion is employed only in deviant cases to achieve this goal.⁶⁸

Although primarily considering the Italian national context, Cox elucidates that Gramsci's hegemony concept can also be particularly relevant for the understanding of the

⁶¹ Gramsci, A. (1975). p. 2010; Gramsci, A. (1971), p. 57.

⁶² Gramsci, A. (1971), p. 60; Gramsci, A. (1975). p. 2012.

⁶³ Gramsci, A. (1971), p. 59; Gramsci, A. (1975), p. 2011; Schwarzmantel, J. (2015), p. 100.

⁶⁴ Schwarzmantel, J. (2015), p. 186-189.

⁶⁵ *Ibid*, Gramsci, A. (1971), p. 219-221; Gramsci, A. (1975), p. 1619-1620.

⁶⁶ Cox, R. W. (1983), p. 163; Schwarzmantel, J. (2015), p. 186-189; Gramsci, A. (1971), p. 219-221; Gramsci, A. (1975), p. 1619-1620.

⁶⁷ Gramsci, A. (1971), p. 221; Gramsci, A. (1975), p. 1620.

⁶⁸ Gramsci, A. (1971), p. 169-170.

international order.⁶⁹ The author uses a Gramscian outtake on international relations to explore how power dynamics in the global sphere are actually a reflection of dominant classes that have successfully achieved a strong 'consensual' basis of dominance (hegemony) in the national level and, as a consequence, were able to expand their models abroad.⁷⁰ This hegemonic strength in the domestic sphere, according to the author, is the product of a profound social and economic revolution, where the workings of intellectual and ideological leadership, connected to the dominant class, play a key-role in consolidating a social and cultural identity that allows the people to take the ruling socio-economic order for granted.⁷¹

To illustrate, Cox uses the example of Britain's hegemonic period in the global order, where the economic power of Britain was propelled forward as a world hegemon specially through "economic doctrines consistent with British supremacy but universal in form – comparative advantage, free trade, and the gold standard".⁷² Within this context, the author emphasizes that, for a country to become hegemonic, history tells that the state in question needs to be able to consolidate and 'translate' its national hegemony context universally, in a manner that the dominant classes abroad can view it as a model that benefits their interests.⁷³ In his words, the 'hegemonic-to-be' state needs to:

"Found and protect a world order which [is] universal in conception, *i.e.*, not an order in which one state directly exploits others but an order which most other states (or at least those within reach of the hegemony) could find compatible with their interests". Moreover, "the hegemonic concept of world order is founded not only upon the regulation of inter-state conflict but also upon a globally-conceived civil society, *i.e.*, a mode of production of global extent which brings about links among social classes of the countries encompassed by it".⁷⁴

Just as Gramsci's approach to national hegemony, Cox's adaptation of the Italian author's theory to international relations emphasizes the hard work of 'consent manufacturing' to consolidate a hegemonic project, which is heavily contingent on persuasive efforts that enable a 'global civil society' to accept the hegemon's model. Simply put, neo-Gramscian adaptations to international relations highlight how the 'ebb and flow' of hegemony in the global order should not be explored only through an inter-state perspective, but also include the increasing role of global civil society in leading hegemonic formations.⁷⁵ Moreover, this application of Gramsci's concepts to IR allows to

⁶⁹ Cox, R. W. (1983), p. 162-175.

⁷⁰ *Ibid.*

⁷¹ Cox, R. W. (1983), p. 169-170.

⁷² Cox, R. W. (1983), p. 170.

⁷³ Cox, R. W. (1983), p. 171.

⁷⁴ *Ibid.*

⁷⁵ Germain, R. & Kenny, M. (1998). Engaging Gramsci: International Relations Theory and the New Gramscians. *Review of International Studies* 24(1), p. 7; Sinclair, T. J. (1996). Beyond International

challenge the Realist view where power is mostly seen as a result of coercive force to explore it as a consequence of the construction of consensus and legitimation through intellectual and moral leadership.⁷⁶

Another point brought by these Gramscian outtakes to the global order regards the explanation of why hegemonic order and values are stronger in so-called 'central states' than in 'peripheral' ones. This is because, 'central states' – that is, those that have projected their national models of hegemony abroad – were only able to do so because they have undergone a so thorough social and economic revolution that profoundly modified the internal economic and political structures that is unleashed 'hegemonic' energies abroad.⁷⁷ On the other hand, 'peripheral' states are the ones who were merely 'attracted' by the hegemonic model, attempting to incorporate some of its economic and cultural aspects without profoundly changing their structures accordingly. Because of this, 'central' states are more consistently and strongly linked to the hegemonic core, whilst peripheries tend to present more contradictions and tensions with it.⁷⁸

However, what exactly would all these conceptualizations add to the discussion of the dichotomy between human rights dimensions? Which considerations can be drawn from Gramsci's perspective on hegemony applied to the global order and the prominence of certain human rights dimensions in the discourses propelled by normative actors in the international sphere? In the next section of this chapter, this study will attempt to bridge how a 'civil and political rights-dominant' discourse can actually be considered as a special intellectual and ideological endeavor to consolidate and persuade the adoption of a Western and liberal hegemonic order.

The interrelation between hegemony and civil and political rights

In the previous section, the idea of hegemony was discussed, highlighting specifically how it relates to power being exercised through the 'manufacturing of consent' by means of moral and intellectual leadership. These concepts are particularly relevant for the examination of how human rights have been an important part of the legitimation of a Western and liberal order in world politics. At this point, it is necessary to underscore that this study does not intend to affirm that human rights have not had a significant impact to promote and protect human dignity in several spheres.⁷⁹ However, as valuable as human

Relations Theory: Robert W. Cox and Approaches to World Order. In R. W. Cox & T. Sinclair (Eds.), *Approaches to World Order*. Cambridge: Cambridge University Press, p. 9, 68.

⁷⁶ Evans, T. (2005). *The Politics of Human Rights: A Global Perspective*. Pluto Press: London, p. 5.

⁷⁷ Cox, R. W. (1983), p. 171.

⁷⁸ *Ibid.*

⁷⁹ To illustrate the transformative impact of human rights in world affairs, scholars such as Theodor Meron, Doswald-Beck and Vité have emphasized, for instance, how human rights discourses and instruments have furthered the 'humanization' of areas such as the laws of war. In: Doswald-Beck, L. & Vité, S. (1993). International Humanitarian Law and Human Rights Law, *International Review of the Red Cross* 33(293), p. 94-119; Meron, T. (2006). *The Humanization of International Law*. Leiden: Nijhoff, p. 45.

rights have been for this purpose, it is also necessary to have a critical perspective of the ways through which they have been used as a discourse to legitimize hegemonic views.

To comprehend the relationship between HR – especially the civil and political dimension, or ‘natural rights’ – with the Western and liberal hegemonic order, there is a need to first look into their historical development. Just as underscored in Gramscian theory, a historical examination of human rights allows to observe how the emergence of the civil and political dimension of these rights is deeply interconnected with the rise of the modern Western capitalist order.⁸⁰ Their birth is deeply entrenched with the developments of humanism during the European Renaissance, and further expanded through the eighteenth-century Enlightenment and the French and American revolutions that drew heavily from this ideology.⁸¹ As a result, civil and political rights – also known as ‘natural rights’ – were developed in these ‘core’ countries against the background of a blooming bourgeoisie, which sought to break with the old absolutist order and consolidate its capitalist project.⁸²

This project included goals such as the development of a freer market, the construction of the nation State, the growing process of urbanization and secularization, and the advancement of egalitarian and individualist values⁸³ – all of which can be closely reflected in the CP dimension of HR. For example, the underlying egalitarianism of CP rights is markedly aligned with the effort of giving room for a “society in which the claims of property balanced those of birth”, in contrast to the ‘old’ social structure based on a monarchy justified by state religion.⁸⁴ Moreover, CP rights are particularly focused on making a distinction between public and private matters⁸⁵ – by, for instance, establishing freedom of religion, freedom of conscience, and freedom of expression. These liberties are fundamentally grounded in an endeavor to refrain the unfettered power of the state as seen in absolutist orders, as well as to diminish state interventions on the private lives of individuals.⁸⁶ By establishing such division, CP rights were then crucial to the crescent capitalist market, as they allowed a less-interventionist state in the economic sphere.⁸⁷

In this sense, natural rights were also a powerful tool in consolidating the growing power of the bourgeois class through legitimation and consent. As explained by Evans, this dimension of liberties was constructed as a “moral imperative in the interests of all

⁸⁰ De Senarclens, P. (2003). The Politics of Human Rights. In J. Coicaud, M. W. Doyle, & A. Gardner (Eds.), *The Globalization of Human Rights*. Tokyo, New York, Paris: United Nations University Press, p. 138-139; Evans, T. (2005), p. 4

⁸¹ *Ibid.*

⁸² De Senarclens, P. (2003), p. 138-139.

⁸³ *Ibid.*

⁸⁴ Donnelly, J. (2007). The relative universality of human rights. *Human Rights Quarterly* 29(2), p. 287.

⁸⁵ Evans, T. (2005), p. 4.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

citizens”, which furnished the “moral high ground that justified overturning the old order while simultaneously legitimating the interests of the dominant group in the new”.⁸⁸ In view of this, civil and political rights are particularly related to the Gramscian perspective of an ideological ‘force of order’ that mobilized civil society to identify and accept the capitalist project in the making.

Not only CP rights aided in the establishment of the capitalist order in Europe and North America, but they also have been continuously championed as ‘primary rights’ by Western intellectuals and nations.⁸⁹ Within this context, several scholars explain that a ‘hierarchy’ was constructed between civil and political rights and other dimensions of HR, especially social, economic and cultural ones.⁹⁰ The prominence given to CP rights by Western states have been explained as a result of the political and ideological East-West divide during the Cold War, whereby several states aligned with the capitalist bloc considered ESCR as ‘socialist’ propaganda.⁹¹ For this reason, during the Cold War period various ‘core’ Western countries – sometimes also accompanied by ‘peripheral’ ones – frequently relegated ESCR rights to a secondary role. To justify ‘eschewing’ ESCR, the discourse from the Western bloc primarily focused on the ‘absolute’ character of the CP

⁸⁸ *Ibid.*

⁸⁹ Scholars such as Donnelly and Whelan, however, disagree with this view, delineating that Western states have been key-players in the development and furtherance of ESC rights (See: Donnelly, J. & Whelan, D.J. (2007). *The West, Economic and Social rights, and the Global Human Rights Regime: Setting the Record Straight. Human Rights Quarterly* 4, p. 908-949). Evans and Kirkup largely refute the former critique, delineating the positivist method used by Donnelly and Whelan, and how it does not account for an adequate analysis of the topic at hand. (Kirkup, A., & Evans, T. (2009). *The Myth of Western Opposition to Economic, Social, and Cultural Rights-A Reply to Whelan and Donnelly. Human Rights Quarterly* 31, p. 221-237).

⁹⁰ Gavison, R. (2003). On the relationships between civil and political rights, and social and economic rights. In J. Coicaud, M. W. Doyle, & A. Gardner (Eds.), *The Globalization of Human Rights*. Tokyo, New York, Paris: United Nations University Press, p. 39-40; Felice, W. F. (2010). *The Global New Deal: Economic and Social Human Rights in World Politics*. Rowman & Littlefield Publishers: Lanham, Boulder, New York, Toronto, p. 20, 206, 237-238; Ssenyonjo, M. (2009). *Economic, social and cultural rights in international law*. Hart Publishing: Oxford and Portland, p. 12; Cismas, I. (2014). The Intersection of Economic, Social and Cultural Rights. In E. Riedel, G. Giacca, & C. Golay (Eds.), *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges*. Oxford: Oxford University Press, p. 453. On the same note, an interesting analysis on this topic is done by Felice and Hunt, where the authors add a ‘gendered’ layer to this hierarchy. Drawing from the ‘public-private’ dichotomy that has been central to feminist theory, these authors explain how civil and political rights are often associated with the ‘public’ arena – as they deal with the “administration of justice and the conduct of public political life” – they are frequently linked to the ‘male’ domain. On the other hand, economic, social and cultural rights are commonly connected with the ‘private’ (female) sphere of individual’s lives, given their focus on dealing more closely to private affairs, such as “family, healthcare, food, shelter, clothing, and education”. (See: Felice, W. F. (2010), p. 183-184; Hunt, P. (1996). *Reclaiming Social Rights: International and Comparative Perspectives*. Aldershot: Dartmouth, p. 87-88).

⁹¹ Felice, W. F. (2010), p. 20; Arambulo gives a more detailed account on how the Eastern bloc of states draw heavily on Marxist theory to take the lead in the promotion of ESC rights during the Cold War (Arambulo, K. (1999). *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects*. Antwerp: Intersentia, p. 10-11; 17.

dimension, arguing that the former was rather programmatic and not 'immediately applicable'.⁹²

Moreover, there was also a visible attempt to limit the concept of 'human rights' and 'liberty' to CP rights. A stark illustration of this can be seen in the foreign policy of the leading Western superpower during the period, the United States (US). Not only did the US not ratify the International Covenant on Economic, Social and Cultural Rights, but some of its administrations concentrated significant efforts in promoting a CP-focused conceptualization of HR.⁹³ In this regard, the Reagan Administration in the 1980s placed a great emphasis in distancing its 'human rights discourse' from the ESCR dimension. It frequently avoided more encompassing terms to speak only of 'individual rights', 'political rights' and 'civil liberties'.⁹⁴ It also advanced the argument that ESCR created a 'confusion' with regard to the 'adequate' priorities in the human rights sphere, and that they were frequently used as an excuse for violations against CP liberties.⁹⁵

What is more, this particular US administration strove for the construction of the idea that economic, social and cultural rights were incompatible to 'American' liberal principles.⁹⁶ This can be illustrated by when, in 1988, US Ambassador to the UN spoke to the Third Committee of the UN General Assembly that individuals had to select their own careers, acquire their own housing, and securing their own healthcare.⁹⁷ The country's representative added as well that the UN structure constantly departed from "the traditional concern for civil and political rights" and "from time to time (...) decreed the existence of so-called social and economic rights".⁹⁸

The prioritization of CP rights by 'core' Western countries was not discontinued after the Cold War, though. As explained by De Senarclens, although the debate on the dichotomy between the two dimensions of rights have distanced itself from the East-West divide, it has been presented in 'new clothing' in accordance to the 'novel concerns' of the global order.⁹⁹ In this sense, the author highlights how the 'humanitarian' agenda propelled

⁹² This can be seen, for example, in the *Annotations on the Text of the Draft International Covenants on Human Rights*, where the document explains that the Western bloc (joined by Egypt, India, Mexico and Uruguay) justified the need for two separate treaties on the aforementioned basis. (United Nations, General Assembly, *Annotations on the Text of the Draft International Covenants on Human Rights*, A/2929, (1 July 1955), available from undocs.org/A/2929). On the States that defended this view, see: Cismas, I. (2014), p. 453.

⁹³ De Senarclens, P. (2003), p. 141-142; Felice, W. F. (2010), p. 238.

⁹⁴ Felice, W. F. (2010), p. 238.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Alston, P. (1990). U.S. Ratification of the Covenant on Economic, Social, and Cultural Rights: The Need for an Entirely New Strategy, *American Journal of International Law* 84(2), p. 374 (citing Press Release, Dep't of State (Nov. 9, 1988) (statement by Ambassador Patricia M. Byrne to the Third Committee of the U.N. General Assembly).

⁹⁸ *Ibid.*

⁹⁹ De Senarclens, p. (2003), p. 142-143.

forward by states members of the Organization for Economic Co-operation and Development (OECD) has contributed to the furtherance of this prioritization over CP liberties, and often supported by NGOs in the HR field.

According to the author, “most OECD countries have increasingly blurred human rights with humanitarian ideals, the defence of the free market and abstract appeals in favour of the defence of good governance, while steadily reducing their economic assistance to developing countries, which is necessary for the promotion and implementation of [ESC] rights”. Moreover, “generally from the Western world, they have committed themselves to the realization of specific individual rights, in particular freedom of opinion and expression, the prohibition of torture or slavery, but they have often failed to address the root cause of the violation of these rights and abstained from actively participating in the realization of economic, social, and cultural rights”.¹⁰⁰

Merging these examples with the adaptation of Gramscian theory to international relations, it is possible to consider the effort of Western countries in prioritizing CP rights in their foreign policy as an attempt to make use of the human rights discourse to universalize their liberal hegemonic projects abroad. This relates specifically to the Gramscian notion of the need for hegemonic states to ‘universalize’ its domestic hegemony externally, in order to consolidate the power of their dominant classes internationally.

Furthermore, it also serves as an interesting illustration of how ‘core’ states – that is, those whose dominant classes have secured their power through a profound revolution in the nation’s social and political structures – are those that most pushed for the hegemonic model abroad. As delineated in the previous paragraphs, Western capitalist states have been the ones more actively engaged with the prioritization of CP rights, attracting the support of developing (‘peripheral’) countries and exporting a liberal capitalist model of society across the globe through discourses in international *fora* and ‘humanitarian projects’. Because of such strategy, the role of the diplomatic corps and the platforms of international organizations have been crucial for the spread of such ideas.

In view of all these considerations, what this study will propose is a current analysis of the performance of the European Union in the Human Rights Council, and how the prioritization of CP rights still lingers in the foreign policy of ‘core’ Western countries. For this purpose, it will carry out a discourse analysis of selected texts regarding the speeches done by EU representatives in the aforementioned body, in order to zoom in on the current stance of such actor on the topic and how this represents a continuous effort to perpetuate a liberal capitalist hegemony in the global order.

¹⁰⁰ De Senarclens, p. (2003), p. 142.

Chapter 1.3

Methodology and Research design

The previous section has situated the nature of the present work as an analysis on the role of the European Union in the Human Rights Council, and how their speeches in that arena can reinforce the supremacy of civil and political rights over economic and social rights, which were thought to be overcome. The methodology used to highlight those features is the discourse analysis, as a valuable post-modernist approach to demonstrate the reinforcing role that political speeches have in relation to underlying power structures that are made seem self-evident. More specifically, critical discourse analysis tools (CDA) will be implemented to study EU's political discourses, taking into account its scholarship and debates on the kind of actor it represents.¹⁰¹

In that sense, political discourses are seen as one of the most important ways of communication in multilateral organizations that deal with human rights, such as the Human Rights Council. CDA, then, shall be able to unveil different perspectives and question established notions of EU's self-perception and their role as an actor in the international fora.¹⁰²

This will be done with the objective of disclosing how political messages are created and assimilated among key international actors such as the EU and its country members, as a way to find different meanings and interpretations to its manifestations. Such analysis will be based on the understandings that communications relate to drawing from shared assumptions to produce arguments that will engage others intellectually, challenging or reinforcing such assumptions; and that discourses can be narrowly defined as uses of language or signs, or, more broadly, as social constructions over time.¹⁰³

Hence, discourse can be seen as a tool to shape objects and also subjects, if considered that language has the power to determine thought and behaviour. On the other hand, discourses can form social pressures and norms that can provide the basis for social institutions. In a cognitive dimension, it can shape human interactions with the environment and their expressions. Such cognitive foundation relates to discourse's power to represent thought, and its susceptibility to manipulations. Through exposing the mechanisms used in the construction of a discourse, it is possible to stress the political strings and tools which impregnate communication.¹⁰⁴ Chilton offers arguments that

¹⁰¹ Milliken, J. (1999). *The Study of Discourse in International Relations: A Critique of Research and Methods*. Geneva: Graduate Institute of International Studies, p. 3.

¹⁰² Chilton, P. (2004). *Analysing Political Discourse - Theory and Practice*. London and New York: Routledge, p. 16.

¹⁰³ Jäger, Siegfried (2004). *Kritische Diskursanalyse. Eine Einführung. (Discourse Analysis. An Introduction)*. 4th ed., Münster: UNRAST-Verlag. p. 129.

¹⁰⁴ Chilton, P. (2004). *Analysing Political Discourse - Theory and Practice*. London and New York: Routledge, p. 21.

challenge this assumption, proclaiming that, in principle, language can be used apart from social and political constraints.¹⁰⁵

Political discourse specifically brings political language as a vocabulary connected to such arena, which is often seen in multi-state environments such as the Human Rights Council. These discourses are also a result of policies, being limited by internal and external constraints.¹⁰⁶

Discourse analysis draws from the premise that knowledge is constructed through human interactions instead of being extrinsic to the human experience – as a reaction to realist and positivist scientific constructions, where the observation of the natural world is focused. It has also the capacity of shaping such shared knowledge, reinforcing or challenging determinate views - in flows influenced by discourses of dominance or resistance.¹⁰⁷

This methodological tool is associated with postmodernist ideas, being skeptical about the 'natural' state of observational findings in positivist lines of thought and questioning the objectivity of these disciplines. Foucault's ideas are associated with the benchmark of this discipline, in theories where knowledge is directly related to power structures. In his views, those holding positions of power promoted and reinforced specific ideas that in time became intertwined in the social fabric and considered unquestioned truths, pushing forward a world order that is more conducive to the maintenance of the same power structures.¹⁰⁸

Foucault demonstrates the interaction of power and knowledge through analysis of political discourses on how to deal with crime in a specific time frame; whose products were crystalized in political decisions to create and sustain institutions that have a deep effect in society and perceived as self-evident (such as the existence of police forces to deal with crime). Hence, he sought to expose the mechanisms that built and sustained those theories as truths, in a structuralist approach. Foucault later expanded his views in regard to the power of agency, once the established truths (objects of the social world) were firstly upheld by powerful subjects, advancing towards what was known as post-structuralism.¹⁰⁹

Governmentality was then conceived as the influence of discourse in individual's mentality and actions, measured by Foucault to explain why some opinions are held by power structures and dominate social behavior, or why hegemonic discourses are so powerful. Discourse analysis, then, seeks to demonstrate the reasons and manners of social processes of communication, and can even be expanded to visual and symbolic communications. This can be reached by exploring the rhetorical tools evoked by the

¹⁰⁵ Chilton, P. (2004). *Analysing Political Discourse - Theory and Practice*. London and New York: Routledge, p. 27.

¹⁰⁶ Schäffner, C. (1996). *Political Speeches and Discourse Analysis*. (Current Issues in Language & Society). p. 203.

¹⁰⁷ *Idem*.

¹⁰⁸ Dreyfus, H. L., Rabinow, P. (1982). *Michel Foucault : Beyond Structuralism and Hermeneutics*. Brighton: Harvester. p. 118-119.

¹⁰⁹ Dreyfus, H. L., Rabinow, P. (1982). p. 199.

language of arguments and the context which they addressed; which would point to the intentions and views of the agents of communication.¹¹⁰

During its evolution as a methodological approach in human sciences, discourse analysis has faced internal criticism towards its views on the nature of discourse, how it works and how to measure its impacts. Critical discourse analysis is mostly based in written discourses and their language¹¹¹, while political discourse analysis is based on overall critical analysis but sees political discourse “as a form of political action, and as part of the political process”.¹¹²

Among distinct theories’ ontological stances, it is important to situate constructivists’ views that all human experiences is socially constructed (where reality exists within discourse) with critical realists (to whom reality can be interacted with physically and is only represented through discourse)¹¹³ and those in marxist critical theories, who deal with the shaping of socioeconomic realities through discourse (to which they distinguish values and ideologies as false knowledge and true forms of knowledge, which shall emancipate by revealing ideological harms resulting of class systems).¹¹⁴

In accordance with the aforementioned methodology, this study will engage in a diachronic analysis, focusing on a time span of five sessions of the HRC. This will show the continuity of discourse strands over a considerable time period, when most members have held elections and come up with strategies that can influence the group’s decision-making processes.

The relevance of a discourse analysis on this project lies on the possibility of achieving a different perspective on the constructed structures that guide EU’s actions and arguments in the international arena. Furthermore, most explanations justifying the EU preference for civil political are focused or drawn as a reaction to external factors (block mentality and low political revenue undermining the consolidation of CPR).

In light of that, 30 speeches shall be analysed according to their context. All texts were collected in the English language, given that it is the main working language of the EU and of the EEAS in Geneva. The present research will entail both quantitative and qualitative scrutiny. Quantitative data in the form of key words that align with the content of civil and political or economic and social rights will be used as a starting point. In sequence, a qualitative analysis will be held over the reinforcing or distilling language used in the speeches that contain them, to assess the form in which the European Union engages with such matters in the Human Rights Council.

¹¹⁰ Chilton, P. (2004). *Analysing Political Discourse - Theory and Practice*. London and New York: Routledge, p. 3.

¹¹¹ Greg Philo has called them “text only” analysis. In: Philo, G. (2007). *Can discourse analysis successfully explain the content of media and journalistic practice?* Journalism Studies, 8(2). p. 185.

¹¹² van Dijk, T. (1997). *What is political discourse analysis?* (Key-note address Congress Political Linguistics). Amsterdam: Benjamins, p. 20.

¹¹³ Kress, Gunther & Van Leeuwen, Theo (2001). *Multimodal Discourse – The Modes and Media of Contemporary Communication*. London: Arnold.

¹¹⁴ Fairclough, N. (2012). *Critical discourse analysis. International Advances in Engineering and Technology*. p. 454.

Chapter 2.1

Human Rights and the EU legal framework

After the end of the Second World War, the immediate focus of the EU integration process was on the economic integration of its members, with the final aim of creating a common market that would increase the living standards of the European war-torn populations.¹¹⁵ In the establishment of the Treaty of Paris¹¹⁶ and subsequently the Treaty of Rome (ECC Treaty)¹¹⁷, the concept and protection of human rights was not included and barely discussed.¹¹⁸ In contrast, even not under the formulation of human rights, the ECC Treaty contains a so-called “Social Chapter”, which emphasizes the protection of workers and anti-discrimination, which nowadays would be understood as economic and social rights.

However, from the ECC Treaty, it is possible to see how EU leaders were not indifferent to the growing role of human rights and the centrality of the United Nations in the architecture of the new international system.¹¹⁹ The increasing relevance of human rights found its confirmation in the approval of the Universal Declaration of Human Rights in 1948, the most significant international definition of the inalienable rights of individuals.¹²⁰ It is not a coincidence that two years later, in 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹²¹ was signed and ratified by each of the founders States of the EU.¹²²

¹¹⁵ Dedman, M. (2006). *The Origins and Development of the European Union 1945-1995: A History of European Integration*. p. 13.

¹¹⁶ *Treaty establishing the European Coal and Steel Community*. 18 April 1951.

¹¹⁷ *Treaty establishing the European Economic Community*. 25 March 1957.

¹¹⁸ Defeis Fordham, E. F. (2007). *Human Rights and the European Court of Justice: An Appraisal*. *International Law Journal*. 31(5). p. 1105.

¹¹⁹ The preamble of the Treaty of Rome refers to the “solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations”. More specifically, Article 299 instructs the Commission to “the maintenance of all appropriate relations with the organs of the United Nations, of its specialised agencies (...)”.

¹²⁰ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

¹²¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 220. The Convention established the European Court of Human Rights not to be confused with the Court of Justice of the European Union (CJEU).

¹²² Alston, P., Weiler, J. (1998). *An ‘Ever Closer Union’ in Need of a Human Rights Policy: The European Union and Human Rights*. *European Journal of International Law*. p. 659.

The Treaty of Rome and the ECHR contain a mandate for the establishment of a Court, which was implemented through the creation of the Court of Justice of the European Union¹²³ (CJEU) and the European Court of Human Rights (ECtHR).¹²⁴ These two Courts were invested with different objectives; the CJEU was primarily established to ensure uniformity and unity of the EU law among its Member States¹²⁵, whereas the ECtHR aimed at ensuring a minimum level of protection of human rights among its Members¹²⁶. However, despite being part of two different legal orders and having a clear scope of action, the CJEU and ECtHR started to refer to each other's systems regarding their founding instruments. The CJEU rulings established a connection between EU's new legal order, the already existing national constitutional systems, and the international treaties ratified by Member States.¹²⁷

This became a reality around the end of the 1960's, when the CJEU, through a series of rulings¹²⁸, declared that the respect for human rights was part of EU's legal heritage.¹²⁹ In addition, the case-by-case recognition of human rights did not allow for the development of a comprehensive system of human rights protection, and, due to the absence of a specific mention of human rights in the EU legislation, its citizens could not be sure whether certain of their rights had been violated or not.¹³⁰ However, the consolidation of the principle that individual human rights were protected in the general principles of EU's legal order and that they were an essential part of its legal heritage was achieved through "an exercise of bold judicial activism"¹³¹ that integrated human rights into the *acquis communautaire* of the EU.¹³²

¹²³ The Court of Justice of the European Union, also known as Court of Justice, was established in 1952. For the sake of coherence, this study will refer to the Court only as CJEU.

¹²⁴ The CJEU was established in 1952 by Article 4 of the Treaty of Rome, whereas the ECtHR was created in 1959 based on Article 19 of the ECHR.

¹²⁵ van Bok Rossem, J. W. (2013). *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations*. (Chapter 2: The Autonomy of EU Law: More is Less?) p. 13-15.

¹²⁶ Margaritis, K. (2013). *The evolution on the protection of fundamental rights protection within the EU legal order*. (AGORA International Journal of Juridical Sciences) p. 94.

¹²⁷ Spielmann, D. (2017). *The Judicial Dialogue between the European Court of Justice and the European Court of Human Rights Or how to remain good neighbors after the Opinion 2/13*. p. 7-8.

¹²⁸ See, for example, C-2/69, *Stauder v City of Ulm* [1969] ECR 419, C-11/70, *Internationale Handelsgesellschaft mbH v Einfuhr*.

¹²⁹ Besson, S. (2006). *The European Union and Human Rights: Towards A Post-National Human Rights Institution?* (Human Rights Law Review, 6(2)). p. 343-344.

¹³⁰ Spielmann, D. (2017). p. 7.

¹³¹ H.H. Weiler, J. (1986). *Eurocracy and Distrust: Some Questions Concerning the Role of the European Court of Justice in the Protection of Fundamental Rights Within the Legal Order of the European Communities*. p. 1105.

¹³² DeFeis Fordham, E. F. (2007). p. 1110.

The growing importance of human rights in the EU legal order found its first written confirmation with the inclusion of a reference to the protection and promotion of human rights in the Single European Act (SEA).¹³³ Even though such reference was already present in the document's preamble, its inclusion was significant as the first explicit citation of human rights in a EU constituting treaty.¹³⁴ It is worth noting that the preamble refers not only to the ECHR but also to the European Social Charter, which can be interpreted as an expression of the equal footing of both economic and social rights and the political and civil rights.¹³⁵ Nevertheless, the crystallization of the importance of human rights in the constitutional treaties as articulated by the rulings of the CJEU had to wait until the adoption of the Maastricht Treaty of 1992.¹³⁶

The Treaty of Maastricht¹³⁷ (TEU) was a fundamental step towards the recognition of the relevance of human rights in the EU legal order, once it reaffirmed the importance of the respect for human rights by its Members and “converted the obligation to respect human rights previously articulated by the CJEU, into a treaty obligation of the Union and of Member States by virtue of their membership in the European Union”¹³⁸.¹³⁹ Furthermore, the introduction of the concept of “European citizenship”¹⁴⁰ and the establishment of the “pillar structure” delineated EU's concrete steps towards becoming a political union.¹⁴¹ Consequently, the TEU became CJEU's main instrument when dealing with human rights.¹⁴² However, in contrast with the SEU, the Treaty of Maastricht refers only to the ECHR and not to other international treaties – in particular, the European Social Charter was not included in the TEU.¹⁴³ Nevertheless, TEU's Protocol on Social

¹³³ The Single European Act Treaty, Feb 17/23, 1986.

¹³⁴ Watson, P., Woods, L. (2014). *EU Law*, p. 5.

¹³⁵ The European Social Charter is a treaty of the Council of Europe which was opened for signature on Oct 18, 1961. The Charter “guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights” European Commission website: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en?fbclid=IwAR2SKHA_uhiwUnmkl4LpfuWO1zvegOXXkGcOI5QgfKYt2YBS7iwMJ6SutHA.

¹³⁶ Alston, P., Weiler, J. (1998). p. 7.

¹³⁷ Formally the Treaty on European Union, Feb. 7, 1992.

¹³⁸ Defeis Fordham, E. F. (2017). *Human Rights, the European Union, and the Treaty Route: From Maastricht to Lisbon*, p. 127.

¹³⁹ Tenorio Sánchez, P. J. (2016). *Convergence of the Protection of Fundamental Rights Between the Spanish Constitutional Court and the European Court of Human Rights*, p. 19.

¹⁴⁰ Treaty on European Union, Article 8.

¹⁴¹ Runcheva, H. (2012). *Protection of Fundamental Rights in the European Union: The Binding EU Charter*. Vrodiog: Magazine for European Affairs. p. 223-237.

¹⁴² Bazzocchi, V. (2010). *EU Charter of Fundamental Rights - Chapter 3: The European Charter of Fundamental Rights and the Courts, From Declaration to Binding Instrument*. p. 55-75.

¹⁴³ Riitelä, M. (2004). *Human Rights and Fundamental Freedoms in the European Union from the perspective of the applicant countries*. p. 41. Available at:

Policy¹⁴⁴ refers to the Community Charter on the Fundamental Social Rights of Workers¹⁴⁵, demonstrating that a social dimension was still considered a relevant subject within the EU.

The centrality of human rights was further strengthened by the Amsterdam Treaty¹⁴⁶, which converted the protection of human rights in an obligation¹⁴⁷, and, in article 8, declared the respect for human rights as one of its founding principles. Additionally, the Amsterdam Treaty established a specific mechanism to suspend the voting rights of a Member State in case of severe and persistent violations of human rights¹⁴⁸; included the specific requirement to apply human rights standards to the acts of EU institutions¹⁴⁹; and linked the accession of a new Member State to a level of respect for human rights that was compatible to the premises of the ECHR¹⁵⁰. Moreover, the Amsterdam Treaty also contained a remarkable number of provisions related to economic and social rights, reinforcing the importance of this dimension in the construction of the EU¹⁵¹; however, it did not align “the status of the rights and freedoms of the European Social Charter with that of those listed in the European Convention on Human Rights”¹⁵². Overall, the Amsterdam Treaty was a significant step in fostering core human rights principles and placing them as an integral part of the EU legal order.¹⁵³ As a result, a series of provisions related to human rights were brought into the EU primary law, increasing the legitimacy and coherence of the entire EU legal order and establishing monitoring systems for the respect of human rights among the Union.¹⁵⁴

However, the real turning point for the EU human rights regime derived from the Cologne European Council of 1999, which declared the need to “establish a Charter of

file:///C:/Users/Beltran/Desktop/Leiden%202018/thesis%20material/Chapter%201-%20EU+HR/chapter%201%20eu%20law%20and%20human%20rights/eu%20and%20human%20rights.pdf.

¹⁴⁴ The Protocol was adopted as a legal mechanism to overcome the impasse on the social policy provisions of the TEU following the opposition of the United Kingdom (Eurofound, 2018).

¹⁴⁵ The Community Charter of the Fundamental Social Rights of Workers, Dec.9,1989. It was adopted a declaration of all Member States, with the exception of the United Kingdom (Eurofound, 2018).

¹⁴⁶ Officially the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct.2,1997.

¹⁴⁷ Defeis Fordham, E. F. (2007). p. 1113.

¹⁴⁸ Treaty on European Union, Article 7.

¹⁴⁹ Alston, P., Weiler, J. (1998). p. 26.

¹⁵⁰ Treaty on European Union, Article 49.

¹⁵¹ Runcheva, H. (2012). p. 223-237.

¹⁵² de Schutter, O. (2016). *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights*. p. 14. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU\(2016\)536488_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf).

¹⁵³ Defeis Fordham, E. F. (2007). p. 1209-1210.

¹⁵⁴ Bazzocchi, V. (2010). p. 55-75.

Fundamental Rights in order to make their overriding importance and relevance more visible to the Union's citizens"¹⁵⁵, decreeing the "victory" of those arguments in favour of consolidating human rights at the EU level.¹⁵⁶ The European Council established an *ad hoc* body¹⁵⁷ in charge of drafting the Charter, which was then proclaimed by the three main EU institutions (Council, Commission and Parliament) during the Nice Summit of 2000; and became legally binding with the entry into force of the Lisbon Treaty¹⁵⁸ in 2009.

The Charter of Fundamental Rights of the European Union (the Charter) catalogued the fundamental rights and freedoms recognised and applicable by the EU, bringing together civil, political, economic and social rights into a single text.¹⁵⁹ It reiterates the role of human rights for EU values, reinforcing the indivisibility of human dignity, freedom, equality, solidarity and justice.¹⁶⁰ Moreover, the Charter covers all the rights established in the case law of the CJEU, the rights and freedoms delineated by the ECHR, and the principles and rights deriving from the Member States' common constitutional traditions.¹⁶¹ It is worth noting that, whereas political and civil rights enshrined in the ECHR are maintained and reinforced, the list of social rights and economic rights in the text were significantly more restricted in scope and wording.¹⁶²

In this sense, the Charter established some hierarchy among these rights by creating a distinction between rights and principles, where the former could be judicially enforced, while the latter "may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality".¹⁶³ In other words, certain social and economic rights are conceptualized as principles that cannot be invoked by individuals, but have the function of binding principles for the authorities in the exercise of their functions.¹⁶⁴

¹⁵⁵ Cologne European Council, 1999. Conclusions of the presidency. Annex IV.

¹⁵⁶ Runcheva, H. (2012). p. 223-237.

¹⁵⁷ The special body was composed by representatives of Member States, members of the national parliaments, members of the European Parliament and the President of the EU's Commission. More information at: http://www.europarl.europa.eu/charter/composition_en.htm.

¹⁵⁸ Also known as Reform Treaty, Dec.13, 2007.

¹⁵⁹ Charter of Fundamental Rights of the European Union, 2 October 2000.

¹⁶⁰ Charter of Fundamental Rights of the European Union, 2 October 2000.

¹⁶¹ European Commission. Available at: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en?fbclid=IwAR3ctOibQOJ0xuQinIrlK15gD0nMOFVUSW9drMEhbl1lgYa6uAqSkvYAetU.

¹⁶² de Schutter, O. (2016). p. 15.

¹⁶³ Charter of Fundamental Rights of the European Union, Article 52.

¹⁶⁴ de Schutter, O. (2016). p. 16-17.

As previously mentioned, the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009, solving the issue of the Charter's legal status; placing it at the core of the EU's legal order; and giving it the same legal status as the Treaties.¹⁶⁵ Moreover, the Lisbon Treaty also places the ECHR as a core element for the EU and its Member States. It stipulates that the EU shall accede to the ECHR, reinforcing the primacy of the rights enshrined by it. Furthermore, the Treaty also brought significant changes to the EU institutional architecture, which abolished the "pillar structure" and created a new structure for the Union's foreign policy, transforming it into a new type of human rights actor.¹⁶⁶ The following section will approach the establishment of the European External Action Service (EEAS), which has greatly increased EU's capacity to act as an unifying actor in the human rights field.

In conclusion, human rights were steadily incorporated into EU's *acquis communautaire*, first through CJEU's judicial activism; and subsequently with the EU Treaties' placing of human rights, internally, at the centre of its legal order and spiritual foundation; as well as externally projecting to the world its commitment to the support of human rights.¹⁶⁷ Nevertheless, during this process, a differentiation and hierarchization of human rights occurred, which influenced the nature of EU institutions and its foreign policy.¹⁶⁸ This matter will be further analysed in the following sections of this chapter.

Chapter 2.2 Human Rights and EU institutions (EEAS)

The protection of human rights within the EU is a shared responsibility that encompasses all its institutions.¹⁶⁹ For a long time, national courts and the EUCJ were the main guardians of human rights within the Union. However, with the consolidation of human rights in EU's legal order and its increasing role brought by human rights treaties, EU institutions started to incorporate the principles of human rights protection and developed functions and mechanisms based on the obligations derived from a human rights aspect of its policy domain and their institutional responsibilities.¹⁷⁰

Since 1990, the EU followed the example of some of its Member States and started to include the respect and protection of human rights and democracy as a key element of its bilateral relations with third countries, through the establishment of political

¹⁶⁵ Runcheva, H. (2012). p. 223-237.

¹⁶⁶ Craig, P. (2013). *The Lisbon Treaty, Revised Edition: Law, Politics, and Treaty Reform*. p. 284.

¹⁶⁷ Sudeshna, B. (2012). p. 86-87.

¹⁶⁸ de Schutter, O. (2016). p. 22-23.

¹⁶⁹ Preamble of the TFEU, Renamed it to Treaty on the functioning of the European Union by the Lisbon Treaty.

¹⁷⁰ Dawson, M. (2017). *In the Governance of EU Fundamental Rights*. p. 86-90.

conditionality in bilateral agreements.¹⁷¹ In line with the international consensus on attaching political conditionality to aid¹⁷², the EU perceived the increasing efficiency of using economic instruments to promote and disseminate “EU norms” in third countries.¹⁷³ This is the case of the Lomé IV agreement with ACP¹⁷⁴ countries, which marked the beginning of the use of conditionality in EU’s development policy¹⁷⁵. In relation to ACP countries, it is possible to perceive how the focus of conditionality initially laid exclusively on the respect of certain political and civil rights. It is only with the Cotonou Agreement in 2000¹⁷⁶ that a brief inclusion of labour standards is used as a political conditionality, in Article 50.¹⁷⁷

On the other hand, following the collapse of the communist bloc and the desire of Central and East European countries (CEEC) to be integrated into “Europe”, the EU shifted its attention from the ACP countries to the CEEC. During this process of integration, the emphasis on human rights and democracy was strong, and led to an increasing process of focusing on human rights and democracy.¹⁷⁸ As a result, after the growth of eastern countries, human rights assumed a core position in EU external policies.¹⁷⁹

In 1993, with the establishment of the TEU, the promotion of human rights had an even stronger role, becoming a primary objective of the newly created Common Foreign

¹⁷¹ Fierro, E. (2003). *European Union's Approach to Human Rights Conditionality in Practice*. p. 176-78.

¹⁷² For a more comprehensive introduction to the EU’s practice of human rights conditionality, see: Bartels, L. (2005). *Human Rights Conditionality on the EU’s International Agreements*.

¹⁷³ Tuominen, H. (2016). *The Role of the European Union at the United Nations Human Rights Council*. p. 50.

¹⁷⁴ “It is composed of 79 African, Caribbean and Pacific states, with all of them, save Cuba, signatories to the Cotonou Agreement, also known as the “ACP-EC Partnership Agreement” which binds them to the European Union. There are 48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific.” ACP Secretariat; available at: <http://www.acp.int/content/secretariat-acp>).

¹⁷⁵ Brown, W. (2007). *Restructuring north-south relations: ACP-EU development co-operation in a liberal international order*. p. 368.

¹⁷⁶ “The ACP-EU Partnership Agreement, signed in Cotonou on 23 June 2000, was concluded for a 20-year period from 2000 to 2020. It is the most comprehensive partnership agreement between developing countries and the EU. Since 2000, it has been the framework for EU’s relations with 79 countries from Africa, the Caribbean and the Pacific (ACP)”. European Commission. Available at: https://ec.europa.eu/europeaid/regions/african-caribbean-and-pacific-acp-region/cotonou-agreement_en?fbclid=IwAR3b3qMXOCEQZFySfdZaBLyMRtdwz1Lct-UsaCttpHd2FPTWePchIZhKBI.

¹⁷⁷ For more detailed discussion on political conditionality and the EU-ACP countries relation, see: Smith, K. E. (1998). *The use of political conditionality in the EU’s Relations with Third Countries: How effective?*

¹⁷⁸ Tuominen, H. (2016). p. 50-51.

¹⁷⁹ Sedelmeier, U. (2006). *EU’s role as a promoter of human rights and democracy: enlargement policy practice and role formation*. p. 122-124.

and Security Policy (CSFP). The EU then expanded its emphasis on human rights from its bilateral agreements to the broader regional and multilateral fora of the UN System.¹⁸⁰

The emphasis on the participation of the EU at multilateral forums was further stressed in the Lisbon Treaty, which abolished the pillar system and created a more comprehensive approach to EU external affairs.¹⁸¹ In such effort to create more coordination and alignment with EU foreign policies, the Lisbon Treaty envisaged the creation of the High Representative of the Union for Foreign Affairs and Security Policy (HR)¹⁸² and the creation of the European External Action Service (EEAS). These two branches removed the division between different EU external actions and converged the coordination of its external affairs in a single figure, aided by a diplomatic service charged with the mandate of promoting unity and consistency among the Union.¹⁸³

In 2011, the “Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the heart of EU action – towards a more effective approach” called for a greater organisation of EU external instruments, based on a joined approach to policy designs and a strong focus on the building of partnerships; seeking to increase the institution’s participation and impact in multilateral fora.¹⁸⁴ As a result, the EU revised its methods of work and began to “deliver lists of human rights priorities at the UN”.¹⁸⁵

The EU commitment to universal human rights was further underlined in the “**Action Plan for Human Rights and Democracy 2015-2019**” of its Council, which states that the organisation “will continue to promote and defend the universality and indivisibility of all human rights in partnership with countries from all regions”.¹⁸⁶ The document also places special attention to the existence of a “human rights dimension in areas such as social policy, health, education, access to food and water, or standard of living”¹⁸⁷.

¹⁸⁰ Macaj, G., Nicolaïdis, K. (2012). *The European Union as a Diplomatic Actor*. p. 67-68.

¹⁸¹ European Parliament. More information at: http://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon?fbclid=IwAR01HEvAstrn_CZwbdO6w3xl9E0MTIPOpf-M7wQMr0xrYY2rPR1V4l6xTvw0.

¹⁸² “The High Representative is charged with coordinating and carrying out the EU’s foreign and security policy – known as the ‘Common Foreign and Security Policy’ (CFSP) and the ‘Common Security and Defence Policy’ (CSDP). Furthermore as Vice-President of the Commission (s)he ensures the consistency of the Union’s external action” EEAS. More information at: https://eeas.europa.eu/headquarters/headquarters-homepage/3598/high-representativevice-president_en?fbclid=IwAR1cCrosxNv2ZAMBKjebVXdoHeckxRRL6PDTCJxkRJe6YaMA6IbXiNcamvg.

¹⁸³ Macaj, G., Nicolaïdis, K. (2012). *The European Union as a Diplomatic Actor*. p. 24-25.

¹⁸⁴ Council of the European Union, 2011. More information at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>.

¹⁸⁵ Tuominen, H. (2016). p. 88.

¹⁸⁶ More information at: https://eeas.europa.eu/sites/eeas/files/eu_action_plan_on_human_rights_and_democracy_en_2.pdf. Note 197.

¹⁸⁷ *Idem*.

In the development of EU's institutional self-image as a promoter and defender of human rights, two elements are worth mentioning. First, the organisation perceives its principles and values as universal, and actors who represent threats to those principles are not only endangering EU standards, but they enact "anti-normative" actions that are seen and framed as violations to universal principles.¹⁸⁸ As a result, those who counter "European/Universal standards" are perceived as devoid of moral legitimacy.¹⁸⁹

The above-mentioned Action Plan¹⁹⁰ and other official documents, contain specific mention of protection and protection of ESCR that seems to highlight a greater attention of the EU to these issues ¹⁹¹.

Moreover, the EU appears to identify the Human Rights Council (HRC) as the most important forum to shape its human rights agenda.¹⁹² In the "Council Conclusions on EU priorities at the UN human rights fora 2014"¹⁹³, the organisation affirms its intention to "intensify its efforts to promote and protect economic, social and cultural rights"¹⁹⁴, "as a firm advocate of the universal, indivisible, interdependent and interrelated nature of all human rights"¹⁹⁵. Such motivation derives from a need to be perceived as an active player in the HRC from its own axiological basis, and as so these declarations reaffirm a commitment to ESCR and their promotion within the HRC.¹⁹⁶

In the promotion of human rights in multilateral forums, the EEAS has a central role as the EU diplomatic service, gathering "European civil servants, diplomats from the foreign services of the EU Member States and local staff in countries around the world".¹⁹⁷ The EEAS was created to aid the EU foreign affairs chief (the HR), whose mandate include the shaping and delivering of EU's foreign, security and defence policies.¹⁹⁸ The EEAS sees its public diplomatic role as an essential function of any of its delegations,

¹⁸⁸ Tuominen, H. (2016). p. 40.

¹⁸⁹ Tuominen, H. (2016). p. 42.

¹⁹⁰ Objective 17.

¹⁹¹ European Commission Annual report, 2014. Available at: https://ec.europa.eu/europeaid/sites/devco/files/annual-report-2014-eu-development-external-assistance-policies-implementation-in-2013_en.pdf.

¹⁹² Council of the EU (2011). More information at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>.

¹⁹³ Council of the EU, 2013. More information at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135514.pdf.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Tuominen, H. (2016). p. 125.

¹⁹⁷ More information at: https://eeas.europa.eu/regions/western-balkans/3601/who-we-are_en.

¹⁹⁸ More information at: http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/background/high-representative/index_en.htm.

which are responsible for increasing cohesion and “making sure that voice of the European Union and its people are heard in the world”.¹⁹⁹

The European Union Delegation to the UN Office and other international organisations in Geneva are part of the EEAS, seeking to 1) “promote EU actions, policies and interests in all UN bodies”²⁰⁰; to 2) “ensure the representation of the EU and its active participation in the UN and its related bodies in particular the Human Rights Council...”²⁰¹; 3) “foster EU co-ordination and common EU positions in these fora and promote co-operation with Member States in the UN framework”²⁰²; as well as to 4) “enhance visibility and understanding of the European Union role and policies in the many areas related to the UN bodies and other International Organisations in Geneva”²⁰³.

The EEAS can be seen as the EU voice in multilateral international arenas, and its behaviour and statements are a concrete element of the EU external and internal self-image and self-projection. Therefore, it appears a constructive exercise to analyse its actions as a way of unveiling its nature, applying a critical vision to the EU statements and posture in the HRC in regard to the different human rights.

Human Rights Council

The HRC was established in 2005, replacing the Commission on Human Rights (CHR), which existed since 1946. The CHR was substituted as a result of the poor results and fierce critics it received from both developing and developed countries. The formers criticized its political aspect, whereas the latter countries were critical to the organ’s election of countries with a record of human rights violations, delegitimizing it’s whole mandate basis.²⁰⁴

The HRC is an intergovernmental body of the United Nations (UN), composed by 47 elected States that are responsible for “the promotion and protection of all human rights around the globe”.²⁰⁵ It is the most important body of the UN institutional human rights framework, with members elected by simple majority by the General Assembly, whose seats are divided among five regional groups.²⁰⁶

¹⁹⁹ More information at: https://eeas.europa.eu/topics/sanctions-policy/2725/what-we-do_en.

²⁰⁰ More information at: https://eeas.europa.eu/delegations/un-geneva/659/about-eu-delegation-geneva_en

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Laatikainen, K. V. (2015). p. 712.

²⁰⁵ More information at: <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx>.

²⁰⁶ *Ibid.*

The HRC has three regular sessions per year, in which non-Member States, inter-governmental organizations and civil society may participate with the status of observers.²⁰⁷ Special sessions can be conveyed at the request of a Council member with the support of one-third of its Council peers.²⁰⁸

The organ's activities and resolutions are placed under 'agenda items', whose work methods were established by Resolution 5/1.²⁰⁹ This study will only consider statements related to agenda Item 3 "Promotion and Protection of all human rights, civil, political, economic, social and cultural rights, including the rights to development", as under this agenda item all human rights are tackled and addressed, without entering in specific cases of human rights violations and therefore, independent from specific cases that might be entangled with excessive political and strategic considerations.²¹⁰

Only UN Member States can participate fully in the HRC. In this sense, at the UN, the EU is classified as an intergovernmental organisation, and therefore it has the right to intervene and make statements, but it does not possess voting rights.²¹¹ As a result, the EU representation is held by its Member States and EU agencies, in particular, the EEAS.²¹² Nevertheless, the EU tends to work as a bloc in the HRC, to which the EEAS has a key role in coordinating Member States in the pursuance of a common EU position.²¹³ Additionally, the EU may also deliver statements that involve an explanation of

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ HRC/5/1 (18th of June 2007). HRC Manual: <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx>.

²¹⁰ "The majority of HRC resolutions are handled under agenda item 3. This covers thematic issues relating to economic, social and cultural rights (e.g. right to drinking water and sanitation) A/HRC/RES/24/18), civil and political rights (e.g. peaceful protests, A/HRC/ RES/25/38), as well as to the rights of particular peoples, groups and individuals (e.g. minorities, A/HRC/RES/16/6; LGBT, A/HRC/RES/17/19). It also encompasses the right to development (cf. A/HRC/RES/21/32) and the issues of interdependence and the promotion of human rights (e.g. regional arrangements for the promotion and protection of human rights, A/HRC/ RES/24/19). Lastly, it is under this agenda item that special procedures thematic mandates are created or extended (e.g. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/RES/18/7)". Source: HRC a practical guide: https://www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisationen/Uno/Human-rights-Council-practical-guide_en?fbclid=IwAR2O0QzSgBeWHzficyBRCsVsNPornfD-N99QnSv-BqQal-QvQXa07KBmRfs.

²¹¹ HRC, a practical guide: https://www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisationen/Uno/Human-rights-Council-practical-guide_en?fbclid=IwAR2O0QzSgBeWHzficyBRCsVsNPornfD-N99QnSv-BqQal-QvQXa07KBmRfs.

²¹² Schunz, S., Basu, S., Bruyninckx, H. Wouters, J. Keukeleire, S. (2012). *The European Union and Multilateral Governance - Assessing EU Participation in United Nations Human Rights and Environmental Fora*. p. 258-259.

²¹³ *Ibid.*

vote or an explanation of position, which tend to focus on explaining EU's position as a bloc or the vote of its members in a determined resolution.²¹⁴

From 2005 on, EU Member States agreed on delivering "one message with many voices" in the HRC²¹⁵, which in practical terms meant that EU States frequently complemented statements made on behalf of the EU. However, the EU and its Member States are not always able to sustain one single position, and, in those cases, the EU States tend to abstain during the voting.

This section has shown how the EU has increased its emphasis on supporting multilateralism process at the UN, and how it has managed to increase its coherence by overcoming some internal limitations. Regardless of that, the EU is still limited by its observer status, which creates obvious obstacles to its actions. Notwithstanding such constraint, the analysis of the EU at the HRC provides an interesting case study from a critical perspective, given that EU discourses in the HRC that involve human rights and its advocacy are forced to confront a global audience and actors that may have different conceptions and perceptions on the application of such human rights.

The following chapter will study key statements and explanations of vote and position on key human rights issues, juxtaposing the different languages used by the EU regarding CPR and ESCR, providing an alternative viewpoint on the values that are indeed promoted by the EU at the HRC.

Chapter 3.

Critical discourse analysis of EU speeches at the HRC

According to the objectives of this work, the present chapter will hold a discourse analysis on all the 30 speeches delivered by the EU under Agenda item 3, during the 5 regular sessions of the HRC that were held within the 2013-2014 period.

First, it is important to stress the importance of the time period taken under consideration. The 2013-2014 timeline is particularly relevant, as it reflects EU discourses before and after the "*Council Conclusions on EU priorities at the UN human rights fora 2014*", which, as shown in the previous section, gave great emphasis on the promotion of ESCR, and reiterates the principles set forward by the "*Action Plan on Human Rights and Democracy (2015-2019)*". Both documents highlight and promote EU's pledge to the promotion of ESCR and its commitment to "(...) intensify its efforts to promote and protect

²¹⁴ HRC, a practical guide:
https://www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisationen/Uno/Human-rights-Council-practical-guide_en?fbclid=IwAR2O0QzSgBeWHzfIcyBRCsVsNPornfD-N99QnSv-BqQal-QvQXa07KBmRfs.

²¹⁵ Smith, K. E. (2010). p. 229.

economic, social and cultural rights”, especially when it comes to “shaping the agenda on economic, social and cultural rights with specific focus on the UN Human Rights Council(...)”.

Considering such engagement, the analysis of this time period could shed light on whether there is a change of discourse after the release of the Council’s conclusions document. Moreover, assessing the statements within this time-frame would allow an inquiry on the extent to which such commitments are reflected on its discourses at international fora and test the theoretical assumption that the EU still perpetuates a liberal capitalist hegemony in the global order through the promotion of CPR.

The analyzed material is composed by all the 30 statements delivered by the EU under agenda Item 3. These primary sources will be critically analysed in both quantitative and qualitative manners. The indicators to be used are the number of statements delivered on CPR in contrast to those delivered on ESCR; and the use of *reinforcing* versus *distilling* language; respectively. The statements under consideration are classified as: 1) Explanation of vote or position (EoV/P) or 2) General Comment (GC).

As mentioned earlier in this work, the explanation of vote is delivered when the EU is abstaining or voting against a resolution, and the explanation of position is usually delivered when the EU accepts the resolution but still maintains some reservation on the content. In both cases, it is possible to see how the EU tends to oppose or have reservations mostly when it comes to resolutions that regard ESCR.

On the other hand, the General Comments can be delivered to address a specific situation or to address all human rights under Item 3.²¹⁶ Hence, the GC can be seen as an all-purpose statement that addresses EU’s main views on the human rights under consideration by the agenda Item 3 of each session of the HRC.

Quantitative analysis

The first part of this study will quantitatively analyse the data gathered. In this sense, the following paragraphs shall produce an overview of the trends that can be inferred from the selected discourses. From the statements taken under consideration, 4 were delivered as GCs addressing issues that contain elements of both CPR and ESCR. On statements that only address ESCR, the EU delivered 15 EoV/P and 2 GC, for a total of 17 statements on ESCR. On the other hand, the EU gave 7 GC and 2 EoV/P on CPR, for a total of 9 statements.

At a first glance, this analysis shows a significantly higher number of EoV/P on ESCR than those delivered on CPR. During the time under consideration, the EU delivered only one EoV and one EoP on resolutions that engaged with CPR. In both

²¹⁶ *Ibid.*

cases, the reason and the motive behind the EU's statement was that, according to the EU, these resolutions were not comprehensive enough and could have had a wider scope.

The second aspect that comes to light in this quantitative analysis is the different amount of space that is reserved by the EU on the GCs that address both CPR and ESCR. In this sense, it is worth mentioning that on the 4 GCs under consideration, 265 out of 3.286 words were used to address ESCR. In a percentual amount, it means that only 1.24% of the space for addressing all human rights were used on ESCR while the rest (98.76%) addresses issues related to CPR.

From a quantitative view, the data shows that the EU tends to have a predisposition to express reservations or call for votes mainly when it comes to resolutions that deal with ESCR. In contrast, the EU rarely delivers statements on CPR, and when it does so it is to work on the resolution's improvement and strengthening. In contrast, from the statements under consideration, it seems that the EU does not express any of these concerns when it comes to ESCR resolutions.

Finally, the striking difference of space allocated by the EU to GCs under Item 3 to ESCR in detriment to CPR seems to contradict EU's claims of greater engagement on ESCR in the HRC. On the contrary to the intentions proclaimed, the EU shows no substantial difference in the number of statements on ESCR resolutions, neither a change on the amount of words used to address ESCR in the GC containing all human rights.

Qualitative analysis

Once the main trends on the attention destined to each category has been discriminated, this session will move on to analyse the quality of EU's behaviour in the HRC towards the rights hereby compared. To do so, the main outcomes of EU interventions will be juxtaposed to the arguments used to enhance or distill support to different interventions in the Council's discussions. Nonetheless, it is important to keep in mind some subject's particularities regarding the political trends at the moment and the institutionalities involved in implementing them. This work shall then seek to contextualize such trends and provide a workable overview of the discussions in place at each session of the HRC under consideration.

First, it will analyse all the statements on resolutions concerning ESCR and then on the second part it will assess all the statements on CPR resolutions.

ESCR

On the 23rd session of the HRC, the EU delivered, under Item3, 1 GC and 2 EoV on resolutions that concerned ESCR, whereas during the same session and Item, the EU did not deliver any statements on CPR.

The GC was on resolution A/HRC/23/L.06 and the 2 EoV were on resolutions A/HRC/23/L.10 REV.1 and A/HRC/23/L.23, respectively. The statements in this session unveil a pattern of language used by the EU on ESCR that is maintained even after the aforementioned “*Council Conclusions on EU priorities at the UN human rights fora 2014*”, which is possible to identify even nowadays.

Such a pattern is seen in the use of 3 main arguments that are translated in a specific linguistic construction, used by the EU to “distill” the resolutions on ESCR. The first is found within the phrase “*the EU stresses that the **primary responsibility** of protection and promotion of all human rights **lies with the States***”. The second is the phrase “*the **importance of access to medicines** has **adequately been addressed by the Council through the specific past resolution** (...) expressed our **doubts regarding the usefulness of yet another resolution** focusing on this issue*”. The third phrase is “***conceptual doubts** as to whether the principle of international solidarity can **meaningfully be translated into the language of human rights standards***”.

It is possible to group this set of arguments in three main categories²¹⁷: **1)** incompetence of the forum to address the issue and/or that States have the primary role of promoting ESCR instead of international fora; **2)** questioning the relevance of a resolution and avoiding duplication; and **3)** lack of conceptual clarity in international human rights norms (claiming that the subject is not directly related to a recognized human right).

The use of these three arguments are reiterated persistently in the rest of the statements regarding ESCR. During the 24th and 25th session, the EU delivered under Item 3: 6 EoV, 1 EoP and 2 GC on resolutions that concerned ESCR. On the other hand, the EU did not deliver any EoV/EoP on CPR under Item 3, but it had 3 GC on CPR resolutions, which were all delivered during the 25th session.

In the 24th session, argument 1 is used to refer to an EoV on resolution A/HRC/24/4; argument 1 and argument 2 are used on resolution A/HRC/24/14; and on resolution A/HRC/24/20. On resolution A/HRC/24/13 an EoV is delivered and arguments 2 and 3 are persistently brought in the EU’s statement. Additionally, on resolution A/HRC/24/13 the EU also uses another argument, namely: “*The EU fears that if this resolution is adopted, it will further **undermine the Council’s ability** to make any progress on the (...) issue*”.

In EU’s statement on A/HRC/24/4 (resolution on the right to development), the EU not only uses argument 1 but it also expresses its opposition to any form of international legal standard of a binding nature on the basis that such instrument is not appropriate to the Right of Development.

During the 25th session, the EU delivered, under Item 3, 3 EoV, 1 EoP and 1 GC on ESCR resolutions. The EoP was delivered on resolution A/HRC/RES/25/3 and argument 1 is used 3 times in the same speech.

²¹⁷ From now on the study will refer to these three groups as argument 1, argument 2 and argument 3. In the case of the use of a different argument, the study will specify the exact sentence used.

On resolution A/HRC/RES/25/9, the EU delivered an EoV that contained the use of arguments 1, 2 and 3. Moreover, a further argument is used where “*the resolution under consideration covers issues that **exceed the mandate***”. It is noteworthy how these arguments are used almost exclusively to resolutions concerning ESCR. The vote on this resolution was called by the USA and the EU Member States in the HRC abstained. The resolution was approved with 32 votes in favour and 12 against (with 2 abstentions by EU States).

On resolution A/HRC/RES/25/15, the EU used argument 1 and called for a vote on the resolution to vote against it. It is worth mentioning that the resolution was drafted by Cuba and it did not admit substantial changes to the text.

On resolution A/HRC/RES/25/16, the EU used argument 1 and further stressed the concept adding that “*The EU continues to believe that it is important for the Human Rights Council to **maintain a focused approach** in carrying out its mandate to strengthen the promotion and protection of human rights and address situations of human rights violations*”, which seems to imply that resolutions that address issues related to ESCR are neither a priority nor a set of rights to be defended. As a result, the EU delivered an EoV, called for a vote and voted against this resolution. The resolution was approved with 30 votes in favour, 14 against and 3 abstentions.

At the 26th session of the HRC, the EU delivered 1 GC, 2 EoV and 1EoP on resolutions concerning ESCR. The GC was issued to address resolution A/HRC/RES/26/22 on transnational corporation and Human Rights. The EU states the importance of a National Action Plan “*to ensure progress on prevention and access to remedies for victims*”. Furthermore, during the informal negotiations of the resolutions, the EU putted most of its focus on advocating for the introduction of language on the role of civil society and human rights defenders. In contrast, the EU did not feel the need to also address the important issue of the possible economic and social effects that transnational companies can have on the social and economic structures of States.

During this session, the EU delivered an EoV on resolution A/HRC/RES/26/6, and it used argument 1, 2 and 3; argument 2 being further supported by stating that “*(..) the resolution would be meaningless for the people on the ground*”. As a result, the EU called for a vote and voted against the resolution, which was approved with 33 votes in favour and 14 against.

The second EoV issued by the EU during this session was on resolution A/HRC/RES/26/9, which was presented by Ecuador and South Africa in opposition to resolution A/HRC/RES/26/22. This resolution gathered strong support from Civil Society, calling for the establishment of an Intergovernmental Working Group to elaborate an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to human rights. In the EoV, argument 1 and argument 2 were used. During the negotiation process of both resolutions, a polarized debate led to two different resolutions. The EoV stresses that “*We are further concerned that this resolution focuses de facto on transnational corporations, while it is a fact that many abuses are committed by enterprises at the domestic level*”. Besides the legitimate arguments used, the fact that the EU appears to oppose *a priori* to any kind of legally binding instrument to regulate and prevent human rights violations committed by Transnational Companies remains.

During the 26th session, the only EoP delivered on resolutions concerning ESCR was on resolution A/HRC/RES/26/27 on human rights and climate change. In this statement, the EU remarkably shows supportive language; in particular, the need to “recognise *that climate change is a decisive global challenge which, if not urgently managed, will put at risk not only the environment but also world economic prosperity, development and, more broadly, stability and security*”. Nonetheless, the statement is counterbalanced by the use of arguments 1 and 2.

On the 27th session, the EU delivered 5 EoV on resolutions regarding ESCR. The first EoV was issued on resolution A/HRC/RES/27/21 and the EU used argument 1. Furthermore, the EU called for a vote and voted against the resolution that was approved with 31 in favour, 14 against and 2 abstentions.

The second EoV was issued on resolution A/HRC/RES/27/9 on the mandate of the Independent Expert on the promotion of a democratic and equitable international order. This was opposed on two main grounds: 1) “*The EU (...) considers that the elements of the mandate were selected arbitrarily*”, and 2) “*The EU (...) consider that the mandate has exhausted its potential and that we do not need to retain it (...)*”. The resolution then was approved with 29 votes in favour, 15 against and 4 abstentions.

The third EoV delivered by the EU during this session was on resolution A/HRC/RES/27/2 on the right to development. This case is particularly relevant as the EU was not able to achieve a single position and its members voted separately. However, it used the same rhetoric arguments. Specifically, argument 1 was employed twice, further supported with the phrases “*the EU (...) considers the individuals as the central subject of the development process*” and “*fundamental differences in the understanding of the Right to Development remain*”. Even though during these sessions some EU members voted in favour, the Union used the same rhetoric to distill the concepts and rights related to ESCR. The resolution was nevertheless approved with 42 votes in favour, 4 abstention and only one vote against (United States of America).

The fourth EoV was issued on resolution A/HRC/RES/27/10 on the use of mercenaries, here the EU stated that the main reason why it voted against was “*the prolonged confusion between mercenaries and private military/private security companies in this Council undermines not only the work of the Working Group on the use of mercenaries*”. In this case, the language used seems to convey the message that there is a substantial difference between mercenaries and private military security companies, which seems to contradict EU’ self-vision of a peaceful and pacifist actor.

The last EoV is delivered to address resolution A/HRC/RES/27/30 on the impact of “Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights: The vulture funds”. Here the EU uses argument 1 and argument 2 as a motives to vote against the resolution.

In conclusion, the first part of this analysis highlighted rhetorical patterns used by the EU on resolutions regarding ESCR. However, it is important to underline that many external factors must be taken into account when analysing EU’s behaviour in the HRC.

First, as mentioned previously, a number of EU positions in the HRC are seen as a response to the politicisation of the forum and as a way to gain negotiation leverage within the so-called *bloc mentality* that characterises the council (Laatikainen, 2015).

Second, whereas the EU seems to pursue and advocate in a stronger way on resolutions that concern CPR, it is also clear that it adopts a more constructive approach than the United States (who can be seen as the main promoter of capitalistic hegemonic values).

Third, there are a few mentions to EU commitments in relation to ESCR. In the 24th session GC, it stated: *“The EU also attaches great importance to economic, social and cultural rights, the implementation of which must be further and substantially advanced in parallel with civil and political rights given their interdependence and complementarity”*. In the same way the sentence *“The is committed to promote and protect the universality, indivisibility interrelatedness and interdependence of all human rights”* is used in different statements through the sessions under consideration. The EU argues that its commitment to ESCR is proven by the fact that it is *“the largest donor of development aid”*²¹⁸.

Nevertheless, this study highlighted a consistent rhetorical pattern of the EU in the HCR. This language reinforces EU's capitalistic vision that relegates ESCR to a minor position and consolidates the view that these rights do not have the same importance as CPR. Moreover, the first part of the analysis showed how EU discourses did not substantially change after the “Council Conclusions on EU priorities at the UN human rights fora 2014”, maintaining the same rhetorical constructions as before, and thus confirming the primary role that CPR represent to the European Union.

CPR

In the 23rd and 24th sessions of the HRC, the EU did not deliver, under Item 3, any statements on CPR. This tends to denote the EU block's success on the negotiations' phases of CPR resolutions.

For the Statements on CPR the EU uses a more diverse language, not repeating itself in its formulations. Therefore, it is impossible to analyze the language in categories, as it was done with ESCR. As a result, this session will specifically highlight the reinforced language used in each statement of the EU on CPR resolutions.

During the 25th session of the HRC, the EU delivered 3 GC and 1 EoV on CPR resolutions. In the statement on resolution A/HRC/RES/25/2 on the Freedom of Opinion and Expression (FOE), the EU stated that FOE “(...) represents **“one of the EU priorities in the framework of human rights and is a fundamental right of every human being”**. Moreover, “(...FOE) constitutes an **essential foundation** for democracy, rule of law,

²¹⁸ European commission. More information at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/international-development-aid_en.

*peace, stability and participation in public affairs and **states have an obligation to respect, protect and promote the right to FOE. In addition, this right is essential for the fulfillment and enjoyment of a wide range of other human rights***".

Furthermore, the EU expressed its support to the mandate of the Special Rapporteur on FOE, considered "**one of the most important**", to which it "*lends **its full support** to this draft resolution as it is and hope that the resolution will be adopted without a vote*".

This first example juxtaposes itself ideologically with the expressions used in ESCR resolutions. Here, the States are shown to have obligations towards FOE, whereas in ESCR the States have a responsibility, which is used not to address the lack of commitment by the States but to distance the international community from any kind of direct responsibility. Furthermore, the EU states that FOE is essential for the fulfillment of other human rights. In contrast, when it comes to the right to development, "*the EU **also attaches great importance** to economic, social and cultural rights, the implementation of which must be further and substantially advanced in parallel with civil and political rights **given their interdependence and complementarity***".

At the 25th session, the EU delivered an EoV on resolution A/HRC/RES/25/4 on the integrity of the judicial system. This resolution was introduced by the Russian Federation and the EU tried to propose amendments aimed at widening its scope. According to the EU, these proposals were ignored, and, therefore, it decided to abstain from voting. The EU used strong language to reinforce debates on judicial integrity. Specifically, the EU stated that "(...)the role of a competent, independent and impartial judiciary is essential for the protection of human rights"; and, in relation to its proposals aimed at "(...)ensure the full respect of the independence of the Special Rapporteur on the independence of judges and lawyers". As these proposals were ignored the EU decided to abstain on the vote of the resolution. The resolution was eventually approved with 37 votes in favour, 19 abstentions and 1 vote against (by the USA). The EU abstained in this case because the scope was deemed too narrow.

The last statement issued under item 3 by the EU during the 25th session is on resolution A/HRC/RES/25/6 on Access to justice for children. The EU was one of its main sponsors. During the GC to introduce the resolution, the EU stated that "*children and adults must enjoy an **equal level of judicial protection***", suggesting that the "*Council extends the mandate of the Special Rapporteur (on access to justice for children) for three more years*", and that it hoped for a consensual adoption of the text.

In CPR resolutions such as this one, it is common for the EU to place itself as the main sponsor, advocating for the extension of the Special Rapporteur's mandate. In contrast, the Union does not seem to have such strong commitment on any resolutions on ESCR; and, on the contrary, it seems to be against most of the mandates or extension of mandates of Special Rapporteurs on ESCR.

Even taking in consideration the differences in the scope of the resolutions and the importance of the CPR's pursued by the EU, it is impossible to deny the difference in the approaches and language used by the EU on ESCR resolutions. This pattern of differentiation cannot be simply explained as a reaction to the dynamics of the HRC. Whereas it is true that the EU seems to have a constructive approach, it appears evident

that ESCR are seen as less important, perceived as a tool that some States use to divert the attention of the HRC from CPR and CPR violations. Without denying the validity of such arguments, such a trend seems to contradict the institution's new approaches and pledges on ESCR, showing an inherent tendency to use the space of the HRC to promote its capitalistic vision and values.

During the 26th session of the HRC, the EU was particularly active. According to a compendium on this session, this session observed a confrontational atmosphere between blocs and regional groups. As a result, the EU delivered 4 GC, 1 EoV and 1 EoP on issues related to CPR.

The first GC on CPR resolutions was delivered on resolution A/HRC/RES/26/2 on the question of death penalty. The EU has positioned itself for the abolishment of the death penalty, to which it has produced a substantial and long body of work.²¹⁹ For this reason, this study remarks the use of a language aimed at reinforcing EU's commitment on the issue. In particular, it declared that *"The abolition of the death penalty is also one of the main objectives of the EU external human rights policy"*. Furthermore, the EU also strongly advocated for the universal abolishment of the death penalty. The resolution was approved with 29 votes in favour, 8 abstentions and 10 votes against.

Other 3 GC on CPR resolutions were delivered during this session. Specifically, the EU issued a GC on resolution A/HRC/RES/26/20 on the rights of people with disabilities, on resolution A/HRC/RES/26/4 on the protection of Roma communities and on resolution A/HRC/RES/26/5 on the elimination of discrimination against women. On resolution A/HRC/RES/26/20 the EU uses a reinforcing language and underlines its complete commitment to the issue. Specifically, its discourse states that *"(...) the promotion and protection of the rights of people with disabilities is an objective that the EU fully shares"*. Furthermore, the Union not only supports the initiative, but also reinforces the importance of the issue stating that the HRC was *"lacking a permanent mandate holder on this important human rights issue. Today we are filling this gap by establishing the mandate of a new Special Rapporteur on the rights of persons with disabilities"*.

On the resolution regarding the Roma communities, the EU not only emphasises its *"(...)longstanding commitment to prevent and to fight all forms of discrimination on any ground"* but also reinforces the importance of the issue, stating that it *"reiterates the highest importance it attaches to the promotion and protection of the rights of persons belonging to Roma communities worldwide"*. The organ also advocates for the discussion to be *"addressed as a priority both at the national level and in regional organizations."* The resolution was eventually approved by consensus. Without questioning the importance of the issue and the necessity of protection of the Roma, it is possible to see the different language and emphasis deployed by the EU on CPR and ESCR resolutions. Here, the EU attaches the highest importance to the issue and calls for the protection of Roma worldwide. In contrast, in all the resolutions on ESCR, this level of commitment and strong language was absent.

²¹⁹ On which the most relevant is the already mentioned work of Ian Manner "Normative power Europe: a contradiction in terms".

On resolution A/HRC/RES/26/5 the EU reiterates its complete commitment and express its “*preference for a stronger language*”. Moreover, the EU also welcomes the resolution but regrets that it was not more specific on harmful practices such as female genital mutilation and early forced marriages. The resolution was then approved without a vote.

The EU delivered its EoV on resolution A/HRC/RES/26/11 on the protection of the family. The resolution was brought forward by countries such as China, Russia, Qatar, Bangladesh and Mauritania among others. In this case, the EU opposed firmly to this resolution, as the issue of the protection of the family is commonly used to attack family diversity and can be seen as an implicit attack on LGBTI communities and other familiar arrangements. As the resolution fails to recognize such element, the EU opposed and voted against it. The resolution was adopted with 26 votes in favour, 6 abstentions and 14 negative votes. Even though the motivations are in line with the EU current policies, it is important to remark that during the period under consideration the EU did not oppose ESCR resolutions due to the narrowness of its scope in any occasion.

The issue of a narrow approach in a resolution is highlighted again in the EoP delivered by the EU on resolution A/HRC/RES/26/14 on arbitrary deprivation of nationality. During this statement the EU expresses that “(...)the EU would have liked to see a more **comprehensive approach reflected in the resolution**”. The resolution was eventually approved by consensus.

In the last session of the HRC under consideration (27th session), the EU delivered only one GC that addressed Item 3 as a whole. This session confirmed the polarized atmosphere of the HRC both in the debates and during the negotiations.

In conclusion, this part of the analysis highlighted the different rhetoric strategies adopted by the EU when dealing with resolutions on CPR and ESCR. In particular, it was possible to see how the EU applies a completely different approach to each, using a constant reinforcing language aimed at the expansion of the resolutions’ scope and the strengthening of the principles putted forward by the CPR resolutions. Moreover, in contrast with the statements on ESCR resolutions, the EU adopts each time a more specific and concrete language on CPR issues, emphasising its commitment to the universalization of CPR and its pursuance of effectiveness. In that sense, this study highlights the different EU positions in respect to the different rights pursued by the resolutions, showing EU’s tendency to express uncertainty and reservations on ESCR debates, while pushing for stronger and wider CPR resolutions, even calling for votes when the resolution on CPR was deemed too weak or not tackling major aspects of the issues.

Finally, the discourse analysis as a whole showed how, despite its engagement with ESCR in the HRC, the EU still maintains a similar approach overall on ESCR, distilling its scope and regarding these rights as of secondary importance. This discourse analysis confirms EU’s hierarchization of human rights and the relegation of ESCR to a place where they are seen as relevant to some degree, but with its importance limited and abstract. In that sense, this study shows how the EU silently reiterates, through its practice, that the HRC is not the right place to tackle ESCR.

Conclusion

This study has highlighted the main aspects of the academic debate regarding EU's action in the United Nations System. The many studies analyzing the EU in international fora portrayed it as a model to capture the nature of its power, defining what characterized the Union and the power it projects externally, and, most importantly, identify which values it promotes and defends. In trying to answer to these questions, another aspect arises: numerous authors focus on identifying how and based on what the EU legitimized itself as an international actor, both externally and internally.

The specific literature regarding the aspect of the Union at the HRC focuses on the level of unity and coherence among the EU Members. Even though, the uneven importance attributed by the EU to the different human rights is mentioned by some authors, who tend to identify this trend almost exclusively by external factors - however, the reasons for the organ's clear differentiation of human rights is never critically and fully tackled. Moreover, in the existing literature, the position and behavior of the EU at the HRC are seen mainly as a reaction to external factors and third actors. As a result, EU's rhetoric and external projection through its discourses were not approached. As it is, the use of a critical view that tackles the EU rhetoric as a tool to promote and perpetuate a certain world view through a very specific set of values is never contested or questioned.

In this sense, the use of the Gramscian concept of hegemony can help explain how EU normative discourses can be interpreted as an instrument to consolidate and strengthen a certain international order and provide an alternative explanation to the kind of power that is projected by it in the international panorama.

This study has unveiled the relevance of discourses in shaping the reality and reinforcing a "hierarchy" of certain values and principles over others. In other words, the critical theory used in this thesis highlighted how it is possible to see the efforts of the EU in the international fora as a way for its own ruling classes (and of Western countries in general) to universalize its domestic hegemonic order, consolidating their power worldwide.

Looking at the development of the human rights doctrine within the EU, this study exposed that in principle there was a certain willingness to put CPR and ESCR in almost an equal footing; however, it also shows how at a certain point the European predominant actors managed to progressively distill the legal importance of ESCR, prioritizing CPR and delineating EU's core nature around the latter.

Given that political discourses are seen as one of the most relevant instruments of communication, especially in multilateral environments that focus on human rights, this study required the use of discourse analysis as its methodological approach. Using discourse analysis allowed this research to follow the precepts of critical theories, which focus on understanding how the political reality is shaped. In that sense, the analysis of EU speeches was particularly useful to test the hypothesis of hierarchization of CPR and ESCR in the HRC. However, it is important to underline that whereas the analysis seems to confirm the different approach and consideration of the EU towards the different human rights; it is also evident that the policies and statements of the EU are also the result of other elements and considerations, such as: a) the decline of civil and political rights around in many countries; b) the increase of authoritarianism in different regions of the

World; c) and the belief that an excessive focus on ESCR could make the respect of human rights exclusively dependent of international aid. In this sense, this study showed that whereas the Gramscian concept of hegemony is useful to unveil an alternative, less benign view of the EU's external projection, that theory seems to lack the strength to fully explain some of the actions of the EU aimed at promoting ESCR.

Nevertheless, the discourse analysis highlighted that despite its claims, at least at the rhetorical level, the commitment and absorption of the equal parity of human rights has not fully occurred in the EU. On the other hand, looking at EU's behavior in the HRC, is possible to see that to a certain degree the ESCR obtained overall relevance for the EU and its external policy, even though such relevance remains secondary.

In conclusion, this work exposed the uneven and limited commitment of the EU towards ESCR at the HRC. Despite its claims of greater focus on ESCR at the HRC, the EU still shows a certain degree of contempt and hesitancy on ESCR on its speeches. Such irregular commitment results in a strong discrepancy between what the EU declares internally and what it states in the HRC. The price of these inconsistencies is that the EU and its objectives are seen as biased and the Union is not able to be perceived by third countries as a real promoter and honest broker of human rights as universal and indivisible values.

Nonetheless, EU policymakers could benefit from the reflections herein contained, which are incorporated in a famous quote by Sandro Pertini, a former Italian president: "freedom without social justice, it is only freedom to starve". In other words, human rights are interconnected and interrelated, and the uneven pursue of its values will eventually exacerbate current social divisions.

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