

Convention on the Future of Europe

Third OMCT contribution¹

The EU and the Human Rights in the World

Preliminary remarks

OMCT welcomes the pro-active approach to human rights as defined in the report of the Working Group VII on External Action, defined not only as a legitimate parameter, but also implying an active promotion of human rights².

Nevertheless, OMCT is much worried about the overall approach followed by the Convention in dealing with such an important aspect of the EU external policy. OMCT notably very much regrets that both the Working group and the Presidium have been focusing their reflection mainly on the aspect of institutional reforms, that is the so-called "*engineering*" of the EU external action.

Until now, **only a limited debate has been launched on contents**, that is not only the values and the objectives on which the EU intends to base its external action, but also a critical assessment of the concrete impact of the EU external action on the international arena. And yet it is obvious that **both levels are closely interrelated**: it is not possible to make an efficient reform of the functioning of the institutions without having clearly defined the values, objectives and concrete policies they must reach and serve.

¹ The first and second OMCT contributions are available on the Convention website

² Cf. *Preliminary draft report*, **WD 21**, 8-11-2002, Annex p.15.

1. Principles and objectives

OMCT considers the definition of the principles and objectives of the EU external action of an utmost importance since it contributes to better define the identity of the EU and its role on the international arena. Moreover, this definition should be clear enough in order to improve the European citizens understanding of the functioning of the EU.

Nevertheless, if on the one hand the EU has already shown a strong commitment to a human rights-centred foreign policy, on the other hand, **we cannot but assess that until now declarations and commitments are often not followed by acts in practice**. There is consequently a risk that if the respect for human rights is not formally included among the objectives of the EU external action, this could lead to a higher risk of marginalisation of human rights vis-à-vis security-related, economic or political priorities.

In this respect, OMCT very much welcomes the new proposal on “principle and objectives” of the EU external action that has been integrated in the Revised Draft Report, while the previous draft report seemed largely incomplete and lacked some key-aspects of the EU external action already listed in the Amsterdam Treaty³. In particular, two fundamental objectives which were missing in this respect -the respect for human rights and the ensuring of sustainable development- have been included following the contributions of some members of the Convention⁴ and the meeting between President Dehaene and a delegation from the Civil Society Contact Group⁵.

☞ Moreover OMCT wishes to call for a further improvement of the text, as the **legal bases of the European Union external action need to be set up in a clearer way:**

- The current Chapter B of Part Two of the draft Constitutional Treaty **should therefore also include the human rights policy of the EU towards third countries**, in addition to the already mentioned Trade Policy, Development Policy, the CFSP and the Crisis Management Policy.

2. Coherence and efficiency

Coherence

It does not come as a surprise to acknowledge that the EU external action is often contradictory in both the means used and the ends pursued. The EU human rights policy often suffers from this inconsistency. In order to ensure a **coherent EU external action** however, it is first necessary to agree upon a common understanding of the concept of coherence, which covers indeed different aspects.

³ The respect for human rights was notably mentioned only among the values of the EU (art.2), but not among the objectives (art. 3), while sustainable development was completely left aside. This would have implied the lack of a legal basis for the EU to develop an external action centred on both human rights and sustainable development. Cf. The European Environmental Bureau, *Call for Immediate Action*, 11-2002.

⁴ Cf. B. Mc. Donagh, *Comments on the paper "Principles and Objectives of the EU External Action"*, **WD 25**, 11-11-2002; M. Barnier, *Groupe de travail "Action Extérieure"*, **WD 13**, 28-10-2002; A. Lamassoure, *Déclaration des principes des relations extérieures de l'Union*, **WD 104**, 3-10-2002; E. Brok, R. van der Linden, J. Cushnahan, A. Lamassoure, *Working group VII "External Action"*, **WD 46**, 19-11-2002.

⁵ This meeting took place in Brussels on the 21th November 2002.

1. First and foremost, there is a lack of coherence between the EU action undertaken in the framework of the first pillar, that is mainly the so-called "structural foreign policy" more centred on the respect for human rights, and the Common Foreign and Security Policy within the second pillar that responds more to realpolitik priorities, often neglecting the human rights dimension. This is what is generally understood when speaking about the lack of coherence of the EU external action, but this is far from being the only aspect.
2. Secondly, some policies carried out within the first pillar do not seem coherent with each other, such as the Development Policy and the Human rights Policy on the one hand and the Trade Policy on the other hand, and it seems that what the EU is giving with one hand, it is taking back with the other hand⁶. For example, first, one can fear that the ongoing process of liberalisation of trade and services might have an impact on the enjoyment of human rights; secondly, the ongoing economic and financial globalisation process might have a direct impact on economic and social marginalisation and contribute to the growing violence amongst the poorest strata of the society, therefore risking to put into danger the efforts undertaken by the European Initiative on Democracy and Human Rights to fight against torture and other forms of violence.
3. Moreover, there is sometimes a lack of coherence between the internal policies and the external action. The very much protected EC Common Agricultural Policy making the EU producers more competitive on the international market can have a negative impact on the competitiveness of the Least Developed Countries and on the economic, social and cultural rights of their rural population, which could be in contradiction with the EC Development Policy and the promotion of human rights.
4. Finally, the actions carried out by the Member States within their own national foreign policies can also be in contradiction with the EU external action and the European Foreign Policy.

☞ OMCT appreciate the efforts within the Working Group as far as the need to ensure an overall coherence in the EU external action is concerned, and urges the Convention to take into account all of its aspects. In order to better guarantee an EU coherent external action implying a mainstreamed and coherent EU human rights policy, OMCT suggests that:

- The current Chapter B of Part Two of the draft Constitutional Treaty includes a crosscutting clause foreseeing that **"The EU ensures an overall coherent external action. In order to reach this aim, consistency shall be guaranteed between:**
 - the EC Development Policy, the Human Rights Policy, the Trade Policy and the European Common Foreign and Security Policy
 - the different policies carried out within the community method
 - the EU internal and external action**Member States shall act in consistence with the EU external action"**
- The objectives of the EC Development Policy in terms of promotion of human rights should be made clearer. As Mr. Peter Hain has pointed out, "The EC programmes involved should therefore be refocused [...] by pursuing **internationally agreed targets and promoting good governance, economic reform, respect for human rights and conflict reduction"**"

⁶ As the Belgian Prime Minister Verhofstadt has pointed out, while the EC Development Policy aims at tackling the roots of poverty, providing the poorest countries with the necessary means and financing, on the other hand high import-tariffs are kept within the EC Trade Policy, preventing the same countries to export their products to the EU market. G. Verhofstadt, *Open Letter 2002 to the alternative globalists: From Doha to Cancun: the hypocrisy behind western compassion.*

⁷ Cf. Peter Hain, *Reform of EC Development Policy*, WD 27, 12-11-2002.

- In order to eradicate the main structural cause of the inconsistency of the EU external action, the **full incorporation of the CFSP into the Community pillar** in the long run would be the most appropriate solution⁸.

Efficiency

As to the lack of **efficiency in the EU external action**, concerning in particular the human rights dimension, this phenomenon is partially the result of this lack of coherence, and partially it stems from the lack of political will of Member States to thoroughly engage in such "soft issues", as human rights are considered.

☞ In order to guarantee **efficiency in the EU external action**, especially by overcoming the lack of political will of Member States, OMCT urges the Convention to set up the following measures:

- The settlement of **an interinstitutional debate on the Guidelines of the External Action of the Union**, to be held at the beginning of every year in the European Parliament in order to evaluate **the priorities of the EU** set up by the European Council in the fields considered⁹
- A systematic and formalised **assessment of the impact of the EC and the EU policies on human rights, including the economic, social and cultural rights, and sustainable development**
- An effective and systematic implementation of the recommendations and procedures mentioned in the **EU guidelines on human rights dialogues**¹⁰
- An effective and systematic implementation of the recommendations and procedures mentioned in the **Guidelines for the EU policy towards Third Countries on torture and other cruel, inhuman or degrading treatments or punishments**¹¹, concerning in particular:
 1. The evaluation and follow-up of cases of torture in third countries
 2. A policy of encouragement to third countries to quit such practices, including the settlement of a mechanism of sanctions, if necessary
 3. The intensification of the fight against impunity and the strengthening of support to the victims of torture and other inhuman or degrading treatments.

3. An effective implementation of the Human Rights Clause

Considered today as the main tool in order to foster the respect for human rights in third countries, the human rights clause has so far represented the core of the EU Association and Cooperation agreements with third countries, being presented as a *condicio sine qua non* for the implementation of these agreements, at least formally. In reality, however, it does not seem that this EU "human rights conditionality" exists as such.

⁸ Cf. E. Brok, R. van der Linden, J. Cushman, A. Lamassoure, *Working group VII "External Action"*, **WD 46**, 19-11-2002.

⁹ *Ibidem*.

¹⁰ Cf. *EU Guidelines on Human Rights Dialogue*, Council of the EU, 3-12-2001.

¹¹ Cf. *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatments or punishments*, Council "General Affairs", Luxemburg, 09/04.

The main problem concerning the human rights clause is today the lack of an effective mechanism to make it operational and therefore to ensure that States comply with their human rights obligations. Indeed, we cannot but acknowledge that no concrete and effective substance has been given to the human rights clause until now, as the situation of human rights in many of the third countries concerned is still very worrying¹². This proves that in order to ensure its effectiveness, the human rights clause requires concrete mechanisms and procedures, which shall go far beyond the usual dialogue on human rights that is taking place at the Joint Councils and Committees meetings¹³. In this task, human rights shall not be considered as a disguised form of protectionism or additional conditionality, but rather as essential safeguards guaranteeing social justice and sustainable development. Furthermore, more transparent and formalised mechanisms should also help in avoiding an approach based on double standards according to economic and national interests. Finally, it is too often forgotten that the human rights clause is based on the principle of **reciprocity**, as it applies for all the countries involved in the agreement, including the EU Member States.

☞ **According to this analysis and in order to improve the respect and implementation of the human rights clause, OMCT urges the Convention to integrate in the draft the following proposals:**

- The human rights clause should be included in all EU external agreements, that is not only in the "economic and cooperation agreements", but also in the "**sectoral agreements**"
- According to the principle of **reciprocity** and in order to guarantee **transparency**, a regular and formalised dialogue should be established between the EU, the third countries authorities and their respective civil societies, according to the experience of the first "European Union-Mexico Civil Society Dialogue" Forum¹⁴
- **An Annual Report on the human rights clause** should be foreseen in order to better assess its **practical implementation**, which could be partly based on the follow-up work of the EP (see below)
- The **monitoring of the implementation of the recommendation made by relevant international human rights bodies**, including UN treaty bodies, UN Special Rapporteurs, the international Labour Organisation, etc., should be included in the mandate of The Joint Council and the Committee, as well as:
 - The monitoring of ratification and reservation made to human rights covenants and conventions
 - The monitoring of the freedom of action of human rights defenders to act and speak freely, while implementing their task of defending human rights
 - The monitoring of **individual cases of human rights violations.**

¹² So far, only twice the EU has taken measures in the framework of a Cooperation Agreement with third countries on the base of the human rights clause, that being the cases of Liberia and more recently Zimbabwe.

¹³ Cf. OMCT Position Paper to the Euro-Mediterranean Ministerial Meeting in Valencia/Spain, 22-23 April 2002, *The Human Rights Dimension of the Barcelona Process: The Fundamental Prerequisite for a Sustainable Peace, Security and Area of Prosperity in the Euro-Mediterranean Region*, April 2002; OMCT, FIDH, HRW, Amnesty International Whitebook presented to the Euro-Mediterranean Ministerial Meeting, Marseille, *Barcelona +5: What Results for Human Rights?*, 15 -11- 2000.

¹⁴ This Forum took place in Brussels on November 26th. Although some improvements are needed in terms of more transparency and dialogue, such an initiative could be seen as a precedent.

4. Enhancing accountability and transparency in the EU external action

Due to the pillar structure, the EU external action carried out in the framework of the CFSP/ESDP is deprived of any accountability system, having the Court of Luxembourg no competence in this field and the European Parliament virtually no room of manoeuvre to influencing and controlling it. In this respect, we believe that even though an all-encompassing system of protection of human rights is established on the paper, if there is an accountability shortfall the whole system is not efficient on the one hand and on the other hand it will suffer from a democratic deficit.

☞ For these reasons OMCT believes that the most appropriate solution to eliminate the accountability deficit as far as the CFSP/ESDP is concerned is **the extension of the Community method to the third pillar in the long run**¹⁵.

In the short run, **it is very important that the Convention establishes a procedure to involve more the European Parliament in the decision-making process of the CFSP/ESDP**. The EP is particularly committed to the respect for human rights, and to this extent, it seems to be the most appropriate body to control that coherence and efficiency in the EU external action are ensured. Such a control is more and more needed in order to counterbalance the rapidly growing influence of global organisations and non-state actors, such as international financial institutions and transnational corporations, whose decisions are not subdued to any control¹⁶.

Nevertheless, the parliamentary control of the CFSP seems to be quite a neglected issue in both the discussions and the outcome of the revised draft report¹⁷. The current art. 2 TUE is considered satisfactory as it is and the only improvement consists of proposing that the person holding the function of High Representative should be answerable in writing to the European Parliament.

☞ In order to improve the **involvement of the parliament in the accountability process of the CFSP**, OMCT addresses to the Convention the following recommendations:

- The current provision of art. 21(1) TEU shall be modified in order to provide for **EP consultation on all CFSP/ESDP instruments, that is common positions, joint actions, and also common strategies and main guidelines. This should be extended to "joint initiatives" put forward by the EU External Representative and the Commission as well, if they were to be approved as an additional instrument**¹⁸
- The EP shall be competent for **Annual Reviews on the implementation of CFSP/ESDP policies** as well as for the discussion on **Annual Programmes for future action**, and contribute to the setting up of the EU external action priorities
- The EP shall contribute to the monitoring of the concrete implementation of the human rights clause. In particular, **the EP shall be responsible for organising a system of systematic follow-up meetings with the civil society of the EU and the third countries having signed the human rights clause as well as for questioning the European Commission and Council**. The results of these meetings should be fully taken into account in the decision-making process of the EU

¹⁵ Cf. Adrian Severin, *Promoting the community method in the external actions of the EU*, **WD 11**, 28-10-2002.

¹⁶ Cf. M. Joaquim Wuermeling, *International Agreements of the EU. Proposals to reinforce parliamentary control*, **WD 125**, 23-10-2002.

¹⁷ Cf. Working group "External Action", *Revised draft final report*, **WD 21 rev 3**, 9-12-2002, p. 8, (10).

¹⁸ Cf. E. Brok, R. van der Linden, J. Cushman, A. Lamassoure, *Working group VII "External Action"*, **WD 46**, 19-11-2002, p. 13.

- Each **international treaty** concluded by the EU should be subject to the approval of the EP. Furthermore the participation of Members of the Parliament in the EU negotiations Delegation should be made possible
- ☞ Furthermore, OMCT regrets that the issue related to the **lack of transparency of the EU external action** has not been even mentioned by the Working group. We therefore urge the setting up of more transparent procedures in the field of human rights as follows:
- **Human rights shall become a systematic point of the agenda of the General Affairs Council.**
 - More transparency shall be guaranteed within the **COHOM Working group of the Council**, by ensuring the availability of agendas in due time to enable third parties, and especially human rights NGOs and the civil society, to contribute to the setting up of foreign policy objectives¹⁹.
 - **Regular and transparent consultation on a more systematic and formalised base** shall be ensured with third parties and particularly with human rights NGOs and civil society.

5. External representation of the European Union and extension of the QMV

As to the external representation of the EU, OMCT welcomes the large trend emerging in favour of the so-called “double hat” solution. By merging the current position of the High Representative of the EU and the position of the Commissioner for External Relations, in fact, a more coherent and efficient EU external action could be fostered. Moreover, the future “EU External Representative” could play a more pro-active role, being provided with a formal right of initiative in the field of human rights.

However, whatever should be the final option chosen for the external representation of the EU²⁰, the person in charge of it should also have the responsibility of representing the EU on human rights issues with third countries.

☞ OMCT, therefore, calls on the following proposals:

- **The responsibility of the EU Representative on human rights issues shall be clearly mentioned in his mandate**
- A systematic and direct **cooperation shall be set up between the EU Representative and the other EU bodies in charge of a human rights policy** (i.e. Unit B of the DG Relex, COHOM Working group, EuropeAid, the EP etc.)
- Human rights issues should be systematically inserted in the EU Representative agenda for political dialogues with third countries

More generally, the capacity of the Union to join and act in international organisations shall be recognised, particularly for those international organisations directly linked to matters covered by the CFSP/ESDP (i.e. UN bodies and agencies, OSCE, the Council of Europe).

¹⁹ We take this opportunity to thank once again the Danish Presidency for the improvements made in this respect, and especially for the proposal to enable a direct participation of NGOs in the COHOM in some circumstances. We do hope that the following Presidencies will take over these initiatives and formalise them.

²⁰ Cf. Working group VII - “External Action”, *Preliminary final draft report*, **WD 21**, 8-11-2002.

As far as a **broader use of the QMV** is concerned, OMCT agrees in extending the QMV to a broader range of issues and particularly to:

- The decision to deploy the **European Rapid Reaction Force to provide humanitarian assistance** to third countries in state of war
- The decision to adopt **restrictive measures against third countries violating the human rights clause**.

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OMCT europe

Rue de l'enseignement 91 - B-1000 Brussels
Belgium

Tel: +32 2 218 37 19 / Fax: +32 2 218 37 19

e-mail: omcteuropa@omct.org

www.omct.org