

The Constitutional Treaty: the Answer to the European Union's Quest for a Consistent Human Rights Policy?

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1. Challenge of Consistency

The European Union is often accused of a patchy and inconsistent approach to human rights. The commitment has long been there, albeit vaguely: the Rome Treaty of 1957 commits to “preserve and strengthen peace and liberty”. But critics charge that the EU applies double standards when it responds to ‘internal’ human rights violations differently in some Member States than in others. The most notable case is perhaps ‘The reaction against Austria’ in 2000 against the inclusion of the xenophobic Freedom Party in government. The protests included various diplomatic protests, ending bilateral political contacts, and rejection of Austrian candidates for international offices. The EU was not formally involved in the interventions, but the Portuguese Presidency of the Council was crucial: he coordinated the responses, and helped resolve the crisis by an invitation to the President of the European Court of Human Rights to appoint a committee of experts – ‘the Wise Men’. Their report recommended that the reactions come to an end. Critics of the responses claimed that small Austria was being singled out: larger Member States would never be subject to such reactions.

Similarly, the EU is criticized for wavering in its ‘external’ human rights policies. All agreements on trade or cooperation with third countries since 1992 stipulate that human rights are essential to the relationship. In particular, the trade and aid pact with developing countries (in Africa, the Caribbean and the Pacific, the ACP group), holds that trade concessions and aid programs can be altered if human rights are violated. Yet the EU sometimes intervenes in non-Member States while other times not.¹ Thirdly, critics denounce the EU because of differences between the internal and external human rights policies – how the human rights of EU residents are secured, and how human rights affect EU foreign policies in a broad sense.² Professors Alston

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¹ The Cotonou agreement <www.acpsec.org/fiji/cotonou/accord1e.htm> and the European Initiative for Democracy and Human Right. Cf. <http://europa.eu.int/comm/external_relations/human_rights/doc/com95_216_en.pdf>, accessed 10 May 2005.

² Opinion of the Economic and Social Committee on ‘The European Union and the External Dimensions of Human Rights Policy’, 97/C206/21 of 24 April 1997, OJ C 206/117. I owe this reference

and Weiler have recently argued that “only a unified approach embracing both dimensions of the Union’s approach to human rights is viable”. I shall suggest that a unified approach is more difficult than might appear. Some double standards – even ten-fold standards – should remain.

The new Constitutional Treaty addresses some of the blatant inconsistencies.³ Article I-9 on fundamental rights states that:

- “1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

Part II of the Constitutional Treaty incorporates the EU Charter on Fundamental Rights.⁴ While hitherto not legally binding, it provided much needed clarification of the legal human rights obligations of Member States. The Charter and hence this part of the Constitutional Treaty draws from the various ‘constitutional traditions’ and international obligations, the Treaty on European Union, Community treaties, the ECHR, the Social Charters of the Community and the Council of Europe, and case-law of the ECJ and of the European Court of Human Rights.

A concrete result of the protests against Austria was Article I-59, a procedure when a Member State is suspected of systematic violations of the Union’s values:

“Article I-2

The Union’s values

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

I shall argue that, while important contributions, the Charter and the procedures in the Constitutional Treaty are not sufficient for alleviating all alleged inconsistencies in human rights policies. Indeed, some apparent inconsistencies should remain.

To be sure, some of the inconsistencies appear obviously problematic. The European Union cannot credibly urge non-Member States to ratify UN conventions

to P. Alston and J. H. H. Weiler, ‘An ‘Ever closer Union’ in need of a human rights policy: the European Union and Human Rights’, *Harvard Jean Monnet Working Paper* (1999), who argue the same point.

³ European Council – Treaty establishing a Constitution for Europe – Official Journal of the European Union C 310 vol 47 16 December 2004 2004/C 310/01 <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/c_310/c_31020041216en00110040.pdf> accessed 14 May 2005.

⁴ <http://europa.eu.int/comm/justice_home/unit/charte/index_en.html>, accessed 10 May 2005.