

**Promoting human rights in EU-Asia relations
- Burma, China and Indonesia -**

by Dr Georg Wiessala

The growth of a human rights perspective within a changing and evolving European Union has come about in response to both internal developments and global events. It has been suggested that the development was 'incremental', if not inevitable, and that human rights concerns, from being the preserve of external international organisations, were integrated more comprehensively into contemporary EU governance. The main mechanisms of this integration have been the EU's political strategies, its ideological activism and the framework of Community Law. This process entailed the deliberate construction of a new political identity, encompassing human rights as part of a shared sense of 'European-ness' and entailing a duty to promote global human rights. This self-perception informed the growth of EU co-operation with other international organisations, member states and third countries, among them many in Asia.

Human Rights as an 'Enabling Dynamic' of EU-Asia Relations?

On the basis of this 'incremental' integration of human rights into its legislative and political frameworks, the EU developed a complex set of priorities and agendas regarding human rights promotion. The main objective of the process was the desire to enhance capacity, presence and 'profile' of the Union in foreign policy matters. Below, I examine how this agenda took its cue from EC Development Policy and impinged on the EU's emerging Asia Strategy, which surfaced in 1994. I identify EU human rights concerns in Asia and investigate their enabling and restraining aspects against the background of the so-called 'Asian Values' debate, in particular by investigating EU human rights strategies for Asia in the context of three case studies covering China, Indonesia and Burma.

Most of the impetus for EU human rights policies towards Asia arose out of development policy, which emerged in 1958 as an early expression of the EU's belief in democracy. Holtz showed how the new policy underwent successive stages of 'Europeanisation'. In this process, the history of European indifference towards Asia represented one example of an early political imbalance. However, an emerging European human rights agenda regarding Asia can also be traced to EC co-operation with the African, Caribbean and Pacific (ACP) nations. The EU-ACP framework was shaped by the two Yaoundé and four Lomé Conventions (1965-2000) and a 1996 Green Paper on EU-ACP relations. From the basis of these documents, 'human-rights clauses', or 'essential-element-clauses', were later afforded unequivocal prominence in the wider arena of EU external policies and contractual relations. Two Commission Communications from 1995, in particular, were instrumental in this process.

A new development framework agreed in Cotonou (Benin) in 2003 confirmed these trends. While the Lomé III Convention (1985) had only contained what Scappucci named 'timid references' to human rights, and particularly Cotonou, established a much firmer conditionality between Development Assistance and EU-ACP 'political dialogue'. Article 8 of the Cotonou Agreement was said to require 'co-operation in areas directly affecting the human condition beyond boundaries and beyond

governments'. A 'consultation procedure' under Articles 96 and 97 provided for a graduated system of deferral of EU-ACP co-operation. These clauses could be invoked in cases of corruption or a failure to adhere to an 'essential element' of the Convention, such as respect for human rights. The procedure was used on a number of countries in Africa. A 1998 Commission document further systematised the human rights content of the EU-ACP dialogue. It found further expression in a joint Council-Commission statement of November 2000. Article 1 of Council Regulation No. 443 from 1992, covering Asian and Latin American countries (the so-called ALA-Regulation) also confirmed this agenda. However, the legislative review of this Regulation between 2002-2004 reinforced concerns about the connections between the EU's development aims and its more overtly 'political' objectives.

Outside the ACP network, new provisions (Articles 177-181) inserted into the Treaty of the European Union (TEU) through the Treaty of Maastricht (Article F.2) tied Development Aid to human rights, facilitating new EU budget lines targeting their promotion. The Commission also launched a new Human Rights and Democratisation Unit, and instigated a European Initiative for Democracy and Human Rights (EIDHR) programme, a funding-mechanism worth approximately €100 million annually. These activities were legally grounded in two Council Regulations from 1999. Developments were further aided by the establishment of the new EuropeAid Co-operation Office as a distribution agent and by the articulation of the UN Millennium Development Goals of 2000, which referred to 'good governance'. In general, a more forceful implementation of human rights was widely seen to contribute to a more 'politically mature' EU-ACP relationship. The EU-ACP dialogue was further sensitised to human rights contents when systems of contractual tendering relating to ACP countries were 'untied' from national providers and thus opened to Europe-wide scrutiny and competition. The enactment of the Cotonou Agreement on 1st April 2003 and the Proposed Guidelines for ACP-EU Political Dialogue adopted by the ACP-EC Council of Ministers in May 2003 can be seen to represent a formal sanctioning of these developments. The stricter conditionality was both accompanied by, and itself a symptom of, a wider 'paradigmatic shift' in EC Development Policy, namely, the transition from non-reciprocity to comprehensive trade liberalisation in a 'harsher', more globalised, environment. In this area, human rights clauses set an important precedent, illustrating the potential for dissent as regards future EU policies. The clauses also foreshadowed another round in the 'Asian-Values' dispute. Furthermore, some analysts pointed out that, 'the EU's self-appointed role as sole adjudicator of human rights standards in the context of Development Aid was never without its critics, as much of the EU human rights agenda in Development Policy tended to reflect euro-centric political and social concerns, rather than those of the developing world'.

Apart from these roots in EC Development Policy, the EU Declaration on Human Rights by the Luxembourg European Council in June 1991 was significant for a common EU human rights approach towards Asia. However, the greater 'catalyst' for a more coherent policy arose in the early to mid 1990s. Soon after the Single Market had been achieved in 1992 and in parallel with enlargement negotiations with former Eastern European, Baltic and Mediterranean countries, the Commission deliberately made considerable efforts to 'export' its model of democracy and its view of human rights. Initially, this was limited to the 'near-abroad' of the EU. However, the extension of human rights policies to Asia became both a natural continuation of the

logic regarding a 'value-added' model of external relations, and a policy prerogative of its own.

New geo-strategic realities and the threat of being outmanoeuvred by the US and Japanese presence in Asia were the catalysts for the Commission's 1994 paper, *Towards a New Asia Strategy*. The document, which was portrayed as an EU 'Go-East-Statement', directed many specific human rights policies at the region. In addition to this, from 1996 to 1999, the EU signed third-generation co-operation agreements with countries in South-East Asia (Cambodia, Laos, Vietnam) which included 'essential-element' clauses. But the Asian Financial Crisis of 1997-98 and the Asia-Europe Meetings (ASEM) held since 1996, necessitated upgrading these initiatives, through a number of measures regarding 'focus countries' in Asia from 1994 to 2003. These blueprints provided selected regional or country-specific foci, but emerged primarily in response to specific events, such as the reversion in 1997 of Hong Kong and Macao in 1999 to China, or the emergence of political change in Indonesia in 2000. From 2000 onwards, a more streamlined EU Asia human rights policy emerged, partly through a Commission report "On the Implementation of Measures Intended to Promote Observance of Human Rights and Democratic Principles in External Relations 1996-1999" and, also, a paper on "The European Union's Role in Promoting Human Rights and Democratisation in Third Countries", of May 2001. These 'policy landmarks' re-asserted the 'indivisibility' and 'universality' of human rights.

The US-led attacks on Afghanistan, the invasion of Iraq and a higher level of concern for 'shared values' in Europe and Asia rendered EU human rights policies in Asia subject to a certain strategic re-focusing, for instance towards Iran or Pakistan. As commonly agreed, the meetings of the EU General Affairs Council in 2001 and 2002 and, in particular, the summits of heads of State and government at Ghent and Laeken presaged a change in Europe's Asia policy: the EU was now actually 'making waves' in this field, rather than just 'drifting along'. Thus, the Commission's 2001 'roadmap', *Europe and Asia: A Strategic Framework For Enhanced Partnerships*, elevated human rights to one of six 'key priorities' in future Asia policy. Specific Country Strategy Papers on Asian countries and the Commission's latest paper on South-East Asia from July 2003, *A New Partnership with South-East Asia*, further cemented the pivotal position of human rights in EU Asia diplomacy.

In conclusion, it can be said that a more wide-ranging human rights dialogue strongly informed the EU's policies in general and its relationship with Asia in particular. Through its origins in legal debate and development policy, EU views on human rights closely mirrored the new Treaty provisions and their emphasis on individual freedom and liberty. The EU's views became the ideological pivot, or 'enabling-dynamic', of the Union's strategies for Asia. EU-Asia inter-regional linkages were thus shaped by more intense human rights debates, with both the European and the Asian sides acting and reacting, in equal measure, to a renewed exchange about politics, culture, values, identities or power.

Human Rights as 'Inhibitors' of true EU-Asia Dialogue?

The preceding arguments showed how the EU commitment to the 'tritych' of human rights, good governance and the rule of law thus found its way into the Treaties and

agreements the Union concluded with third countries and how human rights became a catalyst, often an indispensable element, of the EU-Asia partnership. This section will illustrate that, while these policies accelerated EU foreign policy interaction with Asia in a number of areas, they also constituted impediments to a further expansion of the EU-Asia dialogue. Human rights became, arguably, the most significant field of intellectual debate and contention within EU-Asia relations. The analytical framework for this part of the investigation derives from an analysis of the Asia-Europe Meetings (ASEM) and of the relations between the EU and the Association of South-East Asian Nations (ASEAN). Both these 'group-to-group dialogues' can serve as examples of the constraints inherent in a progressive 'institutionalisation' of EU-Asia dialogue.

The Asia-Europe Meeting (ASEM), the 'inter-regional' summit linking 15 EU and 10 countries in Asia was at times seen as a 'journey of re-discovery'. The idea originated in the Commission's 1994 New Asia Policy, in a 1995 Council Report and in the Presidency Conclusions to the 1995 Madrid European Council. In Asia, Singapore was instrumental in proposing the format, whilst, on the European side, the Commission promoted ASEM between 1996 and 2002. To a lesser degree, ASEM was influenced by the European Parliament and by non-governmental agencies, such as the Asia-Europe Foundation (ASEF). These alternative scenarios often played an important part in calling for a stronger emphasis on human rights commitments. The more general ideological underpinning of ASEM was defined in the context of a 'triangular', or 'trilateral', model of international relations, comprising the 'global economic engines' of North America, Western Europe and Eastern Asia, in which the Asia-Europe leg was perceived as the 'Cinderella', or 'weakest link'. This format was routinely referred to in terms of thematic 'pillars' or 'clusters', which included the area of 'political relations'.

In spite of a variety of inputs, however, ASEM was regarded as an 'Asian Way with Western agenda' which frequently resulted in a 'dialogue of difference' within the framework of a 'self-other-discourse'. Holland pointed out that 'implied moral hierarchies were explicitly eschewed in favour of equality of partnership'. In spite of a series of ASEM Informal Seminars on Human Rights, a more noteworthy human rights 'pillar', akin to the ACP context, was 'only conspicuous by its absence', and the EU appeared to show Asia 'two faces'.

Consequentially, ASEM relied heavily on dialogue about new markets, regional integration and cultural links. Human rights remained increasingly *hors de combat*. On the one hand, the compartmentalisation of ASEM into 'pillars' was significant in the context of exchange and learning. On the other hand the concomitant 'marginalisation of issues by consignment to the cultural category', where the 'light refreshments of inter-regional exchange' were served, exacerbated the neglect of human rights. This was a risk some observers had predicted. Moreover, politics, trade and, above all, security in South and South-East Asia, were in the ascendancy from 11th September 2001 onwards and came to dominate the ASEM agenda.

The resulting paucity of a human rights dimension in the ASEM process was conditioned by a number of other issues. ASEM was meant to rely on the design-principles of 'equality', 'evolution', 'informality', 'multi-dimensionality' and 'high-level leadership'. Gilson coined the phrase of 'armchair-dialogue' for this phenomenon; it denoted the idea of an ASEM that was to be agenda- (and pressure-)

free. And Paribatra encapsulated the 'ASEM-informality' in his characterisation of ASEM as 'triple-non: non-exclusive, non-country-specific and non-confrontational'. However, contrary to this deliberately 'informal' ethos, ASEM evolved into a specialised, institutionalised, format comprising a sprawling range of structures. This phenomenon, which was described as 'institutional overload', may be held primarily responsible in promoting 'forum-fatigue', to the detriment of a more profound human rights agenda. ASEM was degenerating into a trans-continental 'talking-shop', excelling in what was aptly termed as *pirouettes sémantiques* on human rights.

In addition, ASEM overlapped with other Euro-Asian fora, for instance, EU-China relations, the EU-ASEAN dialogue or Asia-Pacific Economic Co-operation (APEC). As a consequence, the diversity, which should have become part of ASEM was largely lost: the potential to conduct 'summits of differentiation' frequently resulted in 'summary duplication'. The debate about Burma, which became a member of ASEAN in 1997 but, as of 2003, remained outside the ASEM framework, exemplified these shortcomings. Last, but not least, it has been observed that 'preoccupations have varied from summit to summit'. Rather than embracing a human rights policy, successive ASEM summits were 'hijacked', by the need to get to know one another in ASEM 1, 1996; the Asian Financial Crisis for ASEM 2, 1998; the war against the Taliban in ASEM 3, 2000; or '9/11' for ASEM 4, 2002. It became clear, however, that the issue emerged as a major inhibiting agent. A statement of Danish Foreign Minister Per Stig Møller in 2002 summed up the EU's basic dilemma: 'we have no choice but to accept deeper involvement with governments having less than perfect records on human rights and democracy, but willing to progress in the right direction'.

The relationship between the EU and the Association of South-East Asian Nations (ASEAN), was also symptomatic of the inhibitory potential of human rights in EU-Asia relations. For at least three reasons, an integration of the 'human challenge' into EU-ASEAN co-operation proved difficult. Firstly, EU-ASEAN dialogue highlighted the difference between a supranational, integrationist, 'value-driven' EU and a much looser, less legalistic, non-committal, inter-governmental ASEAN. ASEAN, as a 'heterogeneous grouping', was based not on binding treaties, but on the 1967 Bangkok Declaration (Annex IV), on voluntary co-operation and a weaker ambition towards integration. Muntarbhorn's paradigm of the Union as 'maximalist institutionalism', ASEAN as 'gradual incrementalism' was a succinct description of EU-ASEAN divergencies. Secondly, there was little in the way of precedent for human rights concerns in ASEAN or concerning EU-ASEAN relations. The EU-ASEAN Co-operation Agreement of 1980 ignored human rights. Intergovernmental dialogue mechanisms did not come to any fruition until after the financial crisis of 1997-98 and intensive lobbying by a number of NGOs. Initiatives such as the ASEAN Programme on the Rights of Children or the ASEAN Human Rights Commission were nascent, post-crisis products, which suffered from problems of definition. Finally, on the strength of the economic exchange involved, EU-ASEAN dialogue was routinely promoted as the 'backbone' of EU-Asia dialogue. But relations developed their 'dark side' throughout the 1990s as regards Burma and the issue of 'engagement' with the affairs of individual ASEAN member states. EU-Asia relations may not quite have become 'hostage to a [Burmese] junta', but in terms of 'values' and political cultures, ambiguity proved to be the handmaid of the ASEAN consensus.

The ASEAN key 'political formula' - enshrined in the Treaty of Amity and Co-operation in South-East Asia - promoted 'non-interference', 'restraint shown in tolerance' and 'accommodation of one another's needs'. Solidum summarised this as follows: 'ASEAN leaders seem to share some invisible ground rules, which is an element of the Asian Way. Officials instinctively know when not to get involved in [one] another's problems, even when invited to do so'. It has been argued that this 'ASEAN spirit' afforded preference to collective (Asian) values over individual rights and to economic development over political freedoms. Against this background, the ASEAN statement criticising Burma in June 2003 represented the exception, rather than the rule. The EU, on the other hand, has eschewed any ASEAN 'accommodation-agenda', aiming instead for a worldwide promotion of human rights. As a result of this discrepancy, the active furtherance of human rights remained largely excluded from the official EU-ASEAN agenda. ■

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