EU EXTERNAL RELATIONS: FROM NON-INTERVENTION TO POLITICAL CONDITIONALITY

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Abstract: *The international system developed after the Peace of Westphalia placed at its core the idea that nation-states are equal units that cannot intervene in the internal affairs of other states, an idea which ultimately led to the conclusion that international anarchy is a reality of international affairs. Is political conditionality, as developed over the past decades, compatible with the Westphalian philosophy? If not, how has political conditionality succeeded in challenging the legitimacy of the old paradigm? This article answers these questions by placing them into the framework of the external relations of the European Union (EU), using a historical perspective and following a constructivist research agenda. Challenging realism, this article suggests that the context of the 1990s in the immediate aftermath of the Cold War cannot completely explain the importance political conditionality has gained in the conduct of foreign policy in general and of EU external affairs in particular. Indeed, the EU practiced political conditionality long before the end of the Cold War and therefore before this conditionality was regarded as a "mechanism" and formalised into a "policy." This has opened the door to the normative discourse practiced by the EU in its foreign affairs during the 1990s.*

Keywords: political conditionality, EU external relations, EU enlargement, post-cold war, sovereignty

Introduction

For much of modern history nation-states have been regarded as the ultimate bearers of political power for the conduct of external affairs. In International Relations (IR), as an academic discipline, the state was also regarded as being the most important element in analysing world politics. The international system developed mainly after the Peace of Westphalia (1648) placed, at its core, the idea that nation-states are equal units and cannot intervene in the

internal affairs of other states, an idea which ultimately led to the conclusion that the state of anarchy is a reality of international affairs. So, is political conditionality compatible with the Westphalian philosophy? If not, how has political conditionality succeeded in challenging the legitimacy of the old paradigm? This article answers these questions by placing them into the framework of the external relations of the European Union (EU),[1] using a historical perspective and following a constructivist research agenda.[2]

This article does not analyse the consistency of political conditionality throughout all forms of EU external relations and neither does it question the effectiveness of this strategy. Instead, the main focus of this research gravitates around the way in which the EU has deployed this mechanism in its external dimensions despite strong opposition to the very idea that one state could have the right to question what happens inside another state. Two distinguishable issues are strikingly visible: the first one refers to the development of political conditionality as a legitimate discourse in international relations, while the second tries to explain the EU's recognition as the most important international actor using political conditionality in its external relations. Challenging both realism and liberalism,[3] this article suggests that the context of the 1990s in the immediate aftermath of the Cold War cannot explain the importance political conditionality has gained in the conduct of foreign policy. This article argues that the EU practiced political conditionality long before the end of the Cold War and therefore before this conditionality was regarded as a "mechanism" and formalised into a "policy." This has opened the door to – and made more credible – the normative discourse practiced by the EU in its foreign affairs throughout the 1990s. Despite that the European states started from a critical position at the end of the Second World War, owing to the lengthy period of European colonisation in Africa and Asia, they succeeded in making political conditionality a cornerstone in foreign affairs by offering the model of the European Community (EC) political project and by practicing, in a persuasive manner, the same policy regardless of the interests at stake. In doing so, the EU delegitimised discourses that accused normative discourse in European foreign affairs as a new form of 'standard of civilisation.'[4]

This article is divided into four parts. Firstly, it identify and implicit references to democracy, democratisation, and human rights

protection in the relations of European Communities with Greece from the signing of the Association Agreement and through the "freezing" period, until democracy was reinstalled and negotiations for EC accession reopened. In doing so, it highlights the origins of what developed later in the 1990s namely the doctrine of political conditionality as used in the process of European integration of former Communist states. This is followed by a shift to capturing the relation between the EU and the countries which belonged to EU member states as colonies. Also known as African, Caribbean and Pacific (ACP) countries, this group is diverse in cultural heritage and economic potential. Nevertheless, they share recent histories of gaining independence from European powers and the difficulties encountered in building up their own economic and political systems. The development of EU-ACP relations serves the purpose of this argument by showing how the EU position starts from the denial of interference in the internal affairs of the new independent states and arrives at the recognition of the principles of democracy and human rights protection as essential conditions in the official agreements between the parts. Thirdly, this article presents the main changes to both the vocabulary and context of international relations; changes that have gradually softened the doctrine of sovereignty and non-interference by introducing the concept of international protection of human rights. The Helsinki Final Act introduced divided Europe in the 1970s to the idea that human rights could be the object of international concern. At the same time, the dynamics inside EU institutions and the increasing role of the European Parliament (EP) provided the basis for a post-national European arena and a model supra-national system of human rights protection. Moreover, after several situations of human rights violations, corruption, and authoritarian regimes in third countries with which the EU had different types of agreements, a revision of the doctrine of absolute sovereignty became, more than ever, necessary. However, only through the evolution of international law and the entering into force of the important Law of Treaties, has the idea to suspend a treaty because of gross human rights violations become possible. Finally, this work follows the implications of such evolutions by presenting political conditionality and the evolution towards a systematic approach in the EU's external relations.

The EC-Greece Relationship: Association, Freezing, Integration

The history of EC-Greece economic cooperation begins in 1962, by the entry into force of the Association Agreement, usually called the Athens Agreement, on 9 July 1961. The Athens Agreement was the first Association agreement signed by the EC and its legal basis was Article 238 of the Treaty of Rome, which states that the Community may conclude with third country agreements creating an association. The Athens Agreement covers several policies, from customs and agricultural policies to transport and competition. The development of the economy of Greece was also included in the Agreement and, consequently, Greece could obtain loans of up to $125 million from the European Investment Bank during the first five years of the association.

There was no provision in the main text of the Agreement or in the preamble, which might have resembled the future mechanism of political conditionality: there was no reference to democracy or human rights. But there was another gate through which references to democracy and human rights entered the scene. The Athens Agreement was not only an economic document but also the first legal document of the EC which speaks of the possibility of EC enlargement. Indeed, recognising the aspiration of Greece to become a member of the Community the legal reference is no longer Article 238, but Article 237, which holds that any European State may apply to become a member of the Community. The EC, as a *common* project, was founded on certain values and the Preamble of the Agreement clearly refers to them: peace and liberty are common European ideals and the document once again calls any European country to join this initiative. Concluding, the Athens Agreement had an implicit political dimension beyond the overall economic goal. Indeed, speaking on the Council side about the Association Agreements of Greece and of those of the other first associated states, Harmel acknowledged their future full membership in the Community in terms of a voluntary association of peoples sharing the same democratic values and a long parliamentary tradition, an idea reaffirmed several years later, in 1976, by Van der Stoele, President in office of the Council,[5] upon the occasion of Greece restarting the process of negotiating admission to the EC.

The two parties agreed to establish a number of common bodies to supervise and coordinate the agreement, but also to solve disputes arising from its enforcement: a Joint Council of Association and a Mixed Parliamentary Committee. The Committee had to be formed by an equal number of Greek and European MPs and its main task was to supervise the implementation of the agreement. Precisely because of its mixed membership the functioning of the Committee was questioned during the military regime in Greece as demonstrated below.

The Athens Agreement evolved normally in the first years. For example, a document of the Directorate General for Agriculture of the EC Commission from June 1965 makes a brief summary of Greece-EEC relations in this policy area. It notes that, although a final agreement on harmonisation for certain products had not yet been reached, the Council of Association had finalised negotiations on other products and continued to work through the manifold problems involved. Furthermore, another paragraph in the document refers to the generally optimistic atmosphere concerning political development: 'The Community (...) takes the view that direct participation in the institutional machinery of the common agricultural policy must be considered in the terms of subsequent Greek membership of the Community (...).'[6]

However, five years later, an event changed the development of the agreement. Indeed, the 21 April 1967 *coup d'état* of the Greek army officers and the military regime installed in the aftermath of the *coup* radically transformed Greece-EEC relations. The seven years of the junta regime was marked by the suspension of democratic political life and by a number of human rights violations: arbitrary arrest and detention, political purges and torture etc.[7] The first institution that reacted to the new political situation in Greece was European Parliament, in contrast to the rather slow and vague reaction of the European Commission. In the beginning of May, the EP adopted a resolution in which it expressed concern over the suspension of democratic life in Greece and its hope that democracy would soon be re-established. Moreover, the resolution expressed its view on the future application of the Association Agreement considering that the process should be delayed. The reasoning behind this was that no step in the framework of the Agreement could be taken until the mixed Parliamentary Association Commission

would meet again. The condition for the Commission to function would have been the existence of a Greek democratic Parliament, which was at that time suppressed by the authoritarian regime.

For the EC, responding to non-democratic developments in Greece presented a challenge and an opportunity to clarify its own fundamental values. In terms of international law, the Commission insisted that there is no ground for suspending or terminating the Athens Agreement as a commercial treaty between two independent parts. In fact, in the area of trade and tariffs, the Agreement continued to produce effects. Only those areas where the parts had to continue negotiating in view of harmonisation, for example in the field of agricultural policy, were subject to "freezing." As far as political justification is concerned, a series of oral and written questions addressed by the members of the EP helped clarify the matter and created a precedent future enlargements would be based upon: acknowledging the intention of Greece to become a member of the Community, the Agreement ceased to be a mere economic treaty and became a political document.[8]

Therefore, following intense pressure by the EP, the Commission started a unilateral "freezing" of the Agreement. Indeed, even though certain commercial provisions continued to produce effects, all agricultural negotiations were interrupted and discussions about accession were suspended for an indefinite period.[9] The "freezing" period ended immediately after the conclusion of the military regime in Greece and the country's accession to the EC was accompanied by democratic transformation.[10] Can the success story of the democratisation of Greece and its European integration in terms of political conditionality be explained? From a legal perspective, of course not, because there was no such conditionality policy expressed in legal terms in the official documents between the EC and Greece. However, the economic consequences of the "freezing" and the political isolation of the regime definitely played a role in the gradual erosion and final overthrow of the junta.

Further clarification is needed to understand the democratic evolution of Greece after 1974. As argued by some authors, there were other factors in the post-junta political system that aided the process of democratisation in a more direct manner than the European institutions. In Spourdalakis´s analysis, the key factors of democratic consolidation were related mostly to the internal

characteristics of Greek society: 'the "format" and the "mechanics"' of the new party system, 'as well as the system's relation to society and the role of the newly formed democratic institutions, articulated by the leading political elites of the forces who controlled the transition process.'[11] The strategic aim of Greece for European integration can also be understood not in economic terms, but as a logical choice in the aftermath of the highly traumatic experience during the 1974 Cyprus crisis. The invasion of Cyprus by Turkey – an allied partner under the NATO umbrella – reoriented Greek foreign policy and 'the adoption of a more sophisticated "external balancing" strategy became, in the minds of Greek policy-makers, the only way to enhance Greek deterrence.'[12] The EC appeared, in this context, as the most important actor capable of counterbalancing NATO support for Turkish policies and that reason alone would be powerful enough to explain the European choice of the Greece.

It is outside the scope of this article to analyse the efficiency of political conditionality or to explain the democratisation of Greece in terms of external pressure, i.e. from the EC. However, by delineating the attempts of European institutions to introduce explicit political conditions in the dialogue with an Associate country before 1989, this part of the article supports the idea that developments in the 1990s were anticipated and made possible through previous experience gained during the Cold War.

Introducing Implicit Conditionality in the EC Relations with the ACP Countries

Relations between the EC and the former colonies of its Member States are regulated in a special part of the 1957 Treaty of Rome. The fourth part of the Treaty establishes the 'association' status of the colonies, called, in the Treaty, 'overseas countries and territories' or, more exactly, 'non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands.' The Treaty asserts that the purpose of the association is 'to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.'[13] The phrase "special relations" meant to cover a large range of unresolved issues that were on the way to transformation in each European state and, therefore, even

more difficult to negotiate within the Community framework. In France, for instance, the legal framework concerning its *territoires* was everything but clear during negotiations over the Rome Treaty. This situation is captured by Bouvier: 'Le stade de l'Union française était dépassé, celui de la Communauté française n'était pas encore atteint et l'on se trouvait en pleine mise en oeuvre de la 'Loi cadre'.'[14]

It was for a period of five years that the Treaty of Rome created the Association Agreement between the two parts, with the EC on one hand, and 'overseas countries and territories' on the other hand. A series of events during the period around 1960 which resulted in the vast majority of African countries declaring independence. The main questions in this new context circled around how to continue economic cooperation with the new independent states and whether the association could continue. If a new framework of association were required, what legal basis could be used as its foundation: the special fourth part of the Treaty of Rome speaking about "special relations" or the general Article 238[15] which provides the framework for association with EC of any independent state in the world?

Moreover, it was not only on the African side that things had changed following the signing of the Treaty of Rome. Once the EC was established after 1958, the newly created institutions (notably the Commission) could claim a leading role in negotiating Association Agreements with third countries. Indeed, this was one of the first tensions between the new European supranational institutions and the Member States. After compromise was reached, a common team of the Commission and Member States representatives conducted the negotiations for reaching the new Convention between the "Six" and the eighteen associated African States and Madagascar (AASM). The document, signed on 20 July 1963 in Yaoundé, reconfirms the Association Agreement resulted from the Treaty of Rome. In order to understand the complex historical situation in which Yaoundé I was signed, it must be mentioned that the USSR had already pressured the recently independent African states to interrupt the new framework of economic relations with the EC. The Association Agreement was denounced as a mask for old colonialism and (then) First Secretary of the Communist Party of the Soviet Union, Nikita Khrushchev, described the EC as a 'state-monopoly agreement of the Western European financial oligarchy that

threatened the vital interests of all peoples and the cause of peace in the entire world.'[16] After another period of five years, a second Yaoundé convention was signed on the basis of the same principles.

During the existence of the Yaoundé II convention, important international events unfolded; among them the first enlargement of the EC, which added three new members to the six founding states: Ireland, Denmark, and the United Kingdom. For the purpose of this article, the accession of the UK to the EC is of central importance since it adds a long list of new "overseas" entities with whom the EC had to establish "special relations." In fact, during enlargement negotiations, three options were envisioned for the 20 independent states of the Commonwealth once the UK would join the EC: (a) to join the Convention replacing the Yaoundé II convention, (b) to sign an Association Agreement under Article 238 of the Treaty of Rome or (c) to conclude simple trade agreements with the EC.[17] Furthermore, the UK's membership in the EC created new conditions for a more "global" approach for European assistance and cooperation with developing countries, counterbalancing the French "regional" approach, which favoured former African colonies.

The task of reaching agreement was so difficult that negotiations took 18 months. Finally, the document was signed in the capital of Togo, Loma, on 28 February 1975 and entered into force on 1 April 1976. The Convention comprised 46 African, Caribbean and Pacific (ACP) states and 9 EC states, proving its ambition to embrace a comprehensive policy of the EC regarding development cooperation with third countries. Among the many innovations of Loma I, is the replacement of the Yaoundé I&II principle of reciprocity by a unilateral system of trade advantages.[18] This means that while almost all goods originating in the ACP states could enter the Community's market in unlimited quantities, the products coming from the EC could be subject to unilateral limitation and taxation by ACP countries.

This, and other provisions favouring the ACP countries, cannot be understood outside the logic of the Cold War. Although the ACP countries proved striking unity during negotiations – in sharp contrast with the different voices expressed in the EC – the power of achieving their political ends through diplomatic negotiations would have been much weaker without the constant pressure exercised by the USSR and its effective support for anti-capitalist

regimes around the world as events in Korea, Vietnam or Cambodia demonstrated. It would have been even more difficult to introduce any political considerations in the Convention, an attempt in this direction constituting evidence that the former colonial powers were still attempting to interfere in the internal affairs of the newly independent states. It is also true that the international framework regarding the protection of human rights was still in a nascent phase and that the political situation, especially in African countries, was so unclear that it was difficult to point out who should be blamed for human rights violations. Furthermore, US foreign policy, centred on the doctrine of containment, supported undemocratic regimes in different countries which were considered to be of strategic importance in the battle against the spread of communism, rendering discourses about democracy and human rights in international relations all-the-more difficult.

Therefore, the negotiations of the first conventions between the EC and the ACP countries were marked by opposing constraints. On one hand, from an economic perspective, the EC market was important for the exports of ACP countries and thus for their development as were the financial mechanisms and the development funds directed to them by the EC. On the other hand, from a political perspective, the EC countries had limited negotiation power due to the internal disagreements, the colonial past of some Member States, and the logic of the Cold War. As a result, the general doctrine of the times, regarding international relations, was encapsulated in the principle of sovereignty, non-interference in the internal affairs of a state, and diplomatic dialogue between equal parts.

In 1979, in a memorandum to be discussed with the ACP countries during negotiations for the Loma II,[19] the Commission expressed the idea of an explicit reference to human rights in the Preamble of the future convention.[20] Even though the EC succeeded in this attempt only five years later by introducing such a reference in the Lomé III convention, it is significant that the first attempt took place at the end of the 1970s, clearly demonstrating a correlation with what was happening in the case of Greece´s accession to EEC. Still, the reference is not a legal provision in the main text of the Lomé III convention, but only part of a symbolic declaration in the Preamble stating that the parts adhere to the principles of the

UN Charter and 'their faith in fundamental human rights, in the dignity and worth of the human person.'[21] This kind of policy was called "implicit conditionality" because it is the result of combining a non-binding provision in an international document with *de facto* consequences in situations in which systematic human rights violations occurred in third countries.

In the fourth Lomé convention of 1989, Article 5 represents a first formulation of what became, from then on, a common practice in the EC external relations. The article underlines that at the core of the development policy lies in the idea that man is 'the main protagonist and beneficiary of development, which thus entails respect for and promotion of all human rights.' Even further, the document stresses that 'cooperation operations shall thus be conceived in accordance with the positive approach, where respect for human rights is recognised as a basic factor of real development and where cooperation is conceived as a contribution to the promotion of these rights.'[22] This legally binding provision allowed the Community to pressure third countries in cases of human rights violations, given the legal basis for the suspension or termination of the treaty. As the next part will show, international law has codified this idea in the doctrine of the 'material breach of a bilateral treaty,' in which case the other parties are entitled to 'invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.'[23]

A New Vocabulary of International Relations in a Changing World

In order to understand the history of European integration and the subsequent process of institutionalisation of the EC external dimension, the entire process should be placed in the general framework of international relations. The beginning of the Cold War, the creation of the United Nations (UN) and the beginning of the decolonisation process, all shaped the setting in which European politicians had to decide for their states. It is not by chance that at the beginning of the UN Charter of 1945, Article 2 indicates the 'sovereign equality' of all Member States as a principle the Organisation is found upon: 'The Organisation is based on the principle of the sovereign equality of all its Members.' The same Article 2

explains also the principle of non-intervention in the internal affairs of a country:

> Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.[24]

Underlying both the principle of sovereignty and that of non-intervention was a normal solution in historical context.[25] Because of the rivalry between the US and the USSR, these principles played the role of guaranteeing each state the freedom to choose the ideology underpinning their form of government. Additionally, the USSR rejected any discussion related to a possible international monitoring in the field of atomic research. The refusal has to be understood against the background of US technological supremacy in the field and the fear of the USSR that international monitoring of their atomic research programme would prevent them catching up to the US. Therefore, the USSR worked hard to strengthen the principle of sovereignty and denounced any attempt to establish international mechanisms of control as an intervention in the internal affairs of a state.

The so-called *détente* in East-West relations during the 1970s also represented a turning point in the approach of the Community towards the ACP countries and, in a broader sense, to the rest of the world. For the understanding of the changing nature of the international system in the last two decades of the Cold War, it is important to consider the evolution of a new vocabulary of international relations, which has developed alongside a series of international events.

The Helsinki Final Act and International Concern for the Protection of Human Rights

There was growing concern for human rights and a consequent development of international legal instruments for their protection and enforcement, mostly within the UN, but not exclusively. Of special importance was the Conference on Security and Cooperation in Europe (CSCE) and the signing of the Final Act (Helsinki Act)[26] in 1975. The Conference and the Final Act were presented

by Soviet propaganda as a great success of the Communist bloc, especially for the recognition of borders as established after the Second World War. However, as the history of the Cold War later showed, another provision in the Final Act played a crucial role in the aftermath of the CSCE, although it was not in the first positions on the so-called "Decalogue" of the Final Act, officially named the "Declaration on Principles Guiding Relations between Participating States."

Apparently, the document summarises the fundamentals of the post-Westphalian order: it outlines the first principle as being sovereign equality and respect for the rights inherent in sovereignty, later on supplemented by the sixth principle of non-intervention in internal affairs. Moreover, these principles are consistent with those related to the duty of states to refrain from threatening or using force and to recognise the territorial integrity and the inviolability of the frontiers of other states. Together they fuelled the Soviets' enthusiasm at the end of the Conference and seemed to seal the post-war partition of Europe and the USSR's domination of the Eastern part of the continent. Compared to the aforementioned principles, little attention was paid, at that time, to the principle calling for the respect of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; it was actually Title VII of the Helsinki Final Act that provided the basis for various dissident movements in the Communist states fighting for fundamental civil and political rights. Additionally, the fact that human rights entered the vocabulary of international relations is a cornerstone in the evolution towards later developments of political conditionality. The USSR's acknowledgment of the legitimate concerns of the international community regarding the situation of human rights in a particular state represented an implicit recognition of the idea that there are certain limits of the sovereignty principle. In other words, what is challenged here is the idea that states are absolute sovereigns and there is no superior framework in which they can be questioned about what happens within their frontiers.

The Dynamics Inside European Institutions and the Role of European Parliament

In the late 1970s and early 1980s the idea of further European integration received new stimuli. The first direct elections in 1979 provided the EP with new and reinforced legitimacy and its members tried to make this visible to Europeans and the rest of the world. Although less powerful when compared to other EC institutions, the EP succeeded in playing a significant role in certain issues related to the external relations of the EC. Among others, the EP could adopt common declarations on issues considered relevant for the Community, a role with non-binding consequences which holds, nonetheless, symbolic power. Indeed, the EP adopted of a series of declarations on human rights violations reported in certain countries with which the EC had agreements of association or simple trade agreements.

IN contrast, the Commission exercised a more technical role and could not adopt a political position. Additionally, it was less likely to be directly influenced by public opinion. The importance of the Commission in making the policy of conditionality effective during direct negotiations or implementation processes is obvious, as much as it's significant work on clarifying and introducing a systematic approach in this regard. However, even in such situations the impetus came from the EP which usually asked the Commission to write a Communication on certain issues or to undertake particular measures in relation to negative developments in third countries. Similar to the Commission, the Council was more of a space for negotiating and accommodating divergent national interests than a coherent framework for common external action.

In this context, the EP played a significant role both in stimulating the *prise de conscience* in Europe regarding human rights abuses in partner countries and in delineating the profile of the Community globally. By gaining new decision-making powers after the enforcement of the Single European Act (SEA), the EP was able to more actively shape EC foreign action. Apart from the interventions previously referred to regarding Greece and the ACP countries, the EP was active in promoting democracy and human rights in many other situations. For instance, after several steps undertaken by the EC regarding the repression of Palestinian riots in Israel after 1982,

the EP blocked the protocols accompanying technical and financial instruments directed to Israel, by adopting a resolution on 09 March 1988.[27] In line with the European Parliament, the EU Court of Justice ruled in several occasions on issues related to the promotion of human rights. The decisions were important milestones for furthering the agenda of human rights, as much as the reasoning beyond them helped advancing the vocabulary of conditionality.[28] In a manner similar to that in which it has moved forward the EU agenda towards a deeper integration, the Court of Justice also played an important role in supporting the political conditionality in all foreign relations of the EU.

The Challenges of Human Rights Violations, Corruption, and Authoritarian Regimes

As reports on human rights violations reached public opinion in Europe, increasing voices asked: 'what types of governments should be refused what types of aid?'[29] Events such as the atrocities under the despotic regime of Idi Amin Dada in Uganda in the 1970s shook both public opinion and decision-makers. In other words, should the EC stop or suspend development aid, cooperation or even trade relations with a country, as a reaction to this kind of events? In the case of development cooperation, is it legitimate to question the final destination of European money inside a target country in which there are allegations of corruption or human rights abuses against people or is this kind of inquiry an "interference in the internal affairs" of a sovereign state? In fact, after several decades of experience in the field of development aid and cooperation, a sound conclusion started to take shape beyond ideological disputes: it is not enough to transfer development funds to a government of a country in order to improve a situation if the money will not reach the people in need. In other words, a mechanism of control has to be in place to prevent authoritarian governments using money for their own prosperity or, worse, to fight their own people. Otherwise, development aid is nothing more than a way of transferring money from poor people in rich countries to rich people in poor countries.[30]

It is important here to mention the 1989 report of the World Bank entitled *Sub Saharan Africa: From Crisis to Sustainable Growth:*

A Long Term Perspective. The report is a milestone for the evolution of development aid and it has particular significance for this article as it was published before the end of the Cold War and is therefore more difficult to contest as being the result of "neo-liberal" economic philosophies of the 1990s. It is also important because it provides another argument for the claim that, rather than a consequence of the post-Cold War neo-liberal optimism, political conditionality is the result of the accumulation of experience in various international frameworks. The main claim of the report, that Africa 'needs not just less government but better government,' should be thus understood in its original context: a root cause of weak economic performance in the past has been the failure of public institutions. Private sector initiative and market mechanisms are important, but they must go hand-in-hand with good governance; a public service that is efficient, a judicial system that is reliable, and an administration that is accountable to its public. And a better balance is needed between the government and the governed.'[31]

Obviously it is difficult to introduce "good governance" as a policy-making concept against the backdrop of an international system based on the principles of sovereignty and non-intervention. Nevertheless, it seems that at the end of the 1980s international institutions, such as the World Bank, were moving towards rendering sovereignty subservient to respect for human rights.

The Evolution of International Law: How to Suspend a Treaty?

The evolution of international law after WWII, under the auspices of the UN, is largely indebted to the works of the International Law Commission established in 1948 by the General Assembly. One of the main tasks of the commission was to help codify existing practices in relations between states. After twenty years of working on different drafts, the final text was adopted during the UN Conference on the Law of Treaties (22 May 1969), and, after a due process of ratification, it entered into force on 27 January 1980.

Only from this date could a state, or an international organisation, invoke a legal basis in the framework of the UN for suspending or terminating a treaty with a third country. The Law of Treaty clarifies this aspect in Article 60, which starts by noting that '(a)

material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part' and continues by explaining '(a) material breach of a treaty, for the purposes of this article, consists in [...] the violation of a provision essential to the accomplishment of the object or purpose of the treaty.'[32]

Indeed, as the case of EC-ACP relations showed, in the aftermath of the entering into force of the Law of Treaties one can find the innovation of inserting binding references in the first agreement to be negotiated between the two parts. From then on, this practice has been refined and gained different forms, while developing throughout the 1990s as a general principle in almost all aspects of external relations of the EU.

Conclusion: Towards a Systematic Approach to EU External Relations

For Europe, 1989 meant the fall of the Iron Curtain and the beginning of European reunification more than the end of the Cold War between the US and the USSR. Indeed, once Communist parties lost power, the Central and East European countries reoriented their foreign policy towards the West claiming their legitimate place in European political structures.[33] It is difficult to measure the capacity of their leaders to persuade EU politicians to include enlargement towards the East as a priority on the post-Maastricht agenda. However, it is certain that both Eastern and Western politicians have employed rhetorical discourses based on such ideas as the historic chance of reunification of the continent and the obligation of a values-oriented EU to act in accordance with its principles.[34] If it is true that by doing so, the "drivers" of the enlargement process have succeeded in moving on the agenda, then success was based on the previous democracy and human rights engagement of the EC during the 1970s and 1980s as captured above.

At the end of the 1990s, almost all Central and East European countries officially requested accession to NATO and the EU. Confronted with the idea of eastern enlargement, the 1991 Intergovernmental Conference prepared the initial form of the text adopted in 1992 and known as the Treaty of Maastricht. For the purpose of this work, the original Article F deserves special attention because it is

the first time democracy and human rights are explicitly mentioned in an EU Treaty. The article states that the system of government of the Member States is founded on the principles of democracy and that the Union shall respect the fundamental rights of its citizens. The provision was further developed with the revision operated by the Amsterdam Treaty (1997), which provided that in case of serious and persistent breach of human rights principles the Council may decide to suspend certain of the rights deriving from the application of the Treaty to the Member State in question. For such a procedure to be real, the rule could not allow the state in question to use its veto, so that the Treaty provides that the rule to be used is that of qualified majority that not unanimity.

The human rights and democracy provisions in the EU Treaty are important for at least two reasons. Firstly, the EU is, from that moment on, more credible in its external promotion of human rights once it internalised its fundamental principles. Secondly, it is important as an example of how the concept of absolute sovereignty in international relations changed over time. It is true that the EU is more than an international organisation, but at the same time, it is less than a federal state.[35] Therefore, in the name of absolute sovereignty, one could denounce the idea of defending human rights of the citizens under the jurisdiction of a Member State in terms of "external intervention in the internal affairs of a state."

As a community of values, the EU defined the main lines of enlargement policy in accordance with the Maastricht Treaty, in a set of requirements adopted in the Concluding document of the European Council on 21-22 June 1993, usually referred to as the "Copenhagen Criteria." The explicit political conditionality regarding enlargement is based, in fact, upon this document and, more precisely, upon this phrase: 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.'[36] However, the EU already employed many of these ideas previously, in the Association Agreements concluded with the Central and East European countries. Based on this experience, the European Commission summarised and developed the mechanism of conditionality two years later, in a Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and Third Countries.[37] More

than anything else the document provided a necessary systematic approach regarding the matter of human rights and democracy clauses. The Communication also recommended concrete ways of improving future agreements with third countries and explained the difference of vision between the two kinds of clauses, namely the "Baltic Clause" and the "Bulgarian Clause;" both of them related to Article 65 of the Vienna Convention but at the same time diverging from it. They are actually a form of an "additional clause" to the "essential element clause," providing for an immediate response in case of human rights violations.

The so-called "Baltic Clause," employed only in the first agreements with the Baltic States and Albania and Slovenia, allows for a unilateral suspension of the application of the agreement 'with immediate effect' in cases of serious breaches of essential provisions (related to respecting human rights) without consultation of any kind. This is a very severe formula and this is why it was substituted by a more flexible one, called the "Bulgarian Clause," used in agreements with Romania, Bulgaria, Russia, Ukraine, Kyrgyzstan, Moldavia, the Czech Republic, Slovakia, Kazakhstan and Belarus. Except for cases of special urgency, this clause provides a conciliation procedure, allowing the parties to exchange opinions. Therefore, another difference between the two is that the second 'is also designed to keep the agreement operational wherever possible.'[38]

Considering the positive impact of this initiative, the EU has gradually extended the use of the additional clause to other geographical areas, a practice initially intended only for OSCE countries. For example, a similar provision has been introduced in the reviewed version of the Lomé IV convention in 1995 confirming human rights as an 'essential element.' In this way, the EU arrived at a mature form of the conditionality mechanism in cooperation development relations with third countries in accordance with the provisions of the Article 130/U of the Maastricht Treaty. The latest development in the field took place with the Lisbon Treaty or the Reform Treaty of the EU. Besides being 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,' the EU now explicitly bases its external actions on the same principles and therefore develops relations and builds 'partnerships with third countries, and international,

regional or global organisations *which share the principles* referred to in the first subparagraph.'[39]

In practice, the consistency of political conditionality may be limited by political and economic considerations of the EU as a whole or by divergent interests of its Member States. Nevertheless, the remarkable advancement of the EU's doctrine of democracy and human rights over the past two decades is undeniable. As this article argued, the recent advancement would not have been possible without earlier implicit political conditionality developed in relations with Greece and the ACP countries. Furthermore, the evolution of political conditionality was possible in a particular context in which the principles of sovereignty and non-interference became more flexible and suffered serious limitations. Important steps of this development cannot be explained in terms of the interests of states or by rational calculation of political actors. It is thus plausible to admit that once accepted in the realm of international relations, some ideas have gained a force on their own. Therefore, it is not a surprise that the EU, as 'a community of values,' raised expectations to act internationally in accordance to its principles and, consequently, these expectations influence the behaviour of the EU as a global player.

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1 During this study, the term "European Union" (EU) not only refers to the entity existing after the Maastricht Treaty (1992), but also to the organisation in general, including its predecessors. However, in those parts where attention is focused on a narrower period of time before 1992, the term "European Community" (EC) is deployed. As a generic term covering all three initial Communities, EC will be used also for the situations in which the economic relations with

a third country did not involve but one of the three, the Economic European Community.

2 The constructivist approach in both IR and EU studies continues to be an umbrella for a variety of schools and authors. See: Stefano Guzzini and Anna Leander (2006), *Constructivism and International Relations: Alexander Wendt and His Critics*, London: Routledge. For an account of the main references shaping the research agenda see Thomas Christiansen, Knud Erik Jorgensen and Antje Wiener (1999), 'The Social Construction of Europe,' *Journal of European Public Policy*, 6:4, Special Issue, pp. 528-544.

3 Liberal intergovernmentalism is a form liberal theory in European integration studies and Andrew Moravcsik its most important promoter, see: Andrew Moravcsik (1993), 'Preferences and Power in the European Community: A Liberal Intergovernmentalists Approach,' *Journal of Common Market Studies*, 31:4, pp. 473-524; and Andrew Moravcsik (1998), *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, London: UCL Press. For a critical perspective on the EU democracy promotion in Africa, see Gorm Rye Olsen (1998), 'Europe and the Promotion of Democracy in Post Cold War Africa: How Serious Is Europe and for What Reason?' *African Affairs*, 97, pp. 343-367.

4 Jack Donnelly (1998), 'Human Rights: A New Standard of Civilization?' *International Affairs*, 74:1, pp. 1-23.

5 Max van der Stoel (1976), 'Conference between the European Communities and Greece,' *Statement*, 27 July 1976, Brussels. This speech is available at: <http://aei.pitt.edu/id/eprint/10847> (accessed 15 April 2010). He cites his predecessor, Mr. Harmel, and adopts his remarks 'as his owns.'

6 'The European Economic Community and Greece, (1965)' *Newsletter on the Common Agricultural Policy*, No. 36, June 1965, Brussels. This is available at: <http://aei.pitt.edu/id/eprint/6428> (accessed 15 April 2010), p. 5.

7 Van Coufoudakis (1977), 'The EEC and the "Freezing" of the Greek Association 1967-1974,' *Journal of Common Market Studies*, 16: 2, p. 114.

8 The idea was expressed by President of the Commission, Schiller, on 28 November 1967. For a detailed account of the views on the matter, see Coufoudakis (1977), pp. 116-118.

9 Ibid. p. 119. The pressure exercised by the EP continued throughout the entire seven years; see for example: Henk Vredeling (1973), 'Question écrite No 700/72 de M. Vredeling à la Commission des Communautés Européennes: Violation de droits de l'homme en

Grèce,' *Journal officiel*, C 045, p. 0024 and GLINNE, E. (1972), 'Question écrite No 416/72 de M. Glinne à la Commission des Communautés Européennes: Violation de droits de l'homme en Grèce et application de l'Accord d'association CEE-Grèce,' *Journal officiel*, C 138, p. 0084.

10 Michalis Spourdalakis (1996), 'Securing Democracy in Post-Authoritarian Greece,' in Geoffery Pridham and Paul G. Lewis (eds), *Stabilising Fragile Democracies*, London: Routledge, p. 169.

11 Ibid. p. 167.

12 Infantis Kostas (2004), 'State Interests, External Dependency Trajectories and "Europe:" Greece,' in Wolfram Kaiser and Jurgen Elvert (2004), *European Union Enlargement: A Comparative History*, London: Routledge, p. 86.

13 EEC (1957), *Treaty of Rome*, Art. 131.

14 Paule Bouvier (1980), *L 'Europe et la coopération au développement. Un bilan: la Convention de Lomé*, Bruxelles: Editions de l'Université Libre de Bruxelles, p. 8.

15 EEC (1957) *Treaty of Rome*, Art 238: 'The Community may conclude with a third country, a union of States or an international organisation agreement creating an association embodying reciprocal rights and obligations, joint actions and special procedures.' This Article is available at: <http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm> (accessed 16 May 2010).

16 Cited in 'Mr "K," Africa and the Common Market,' *Le Monde*, 01 June 1960, available at: <http://www.ena.lu/mr_africa_common_market_le_monde_june_1960-2-1276> (accessed 21 May 2010).

17 Bouvier (1980), p. 24.

18 ACP-EEC (1975), *Convention of Lomé*, 28 February 1975, 14 I.L.M 595.

19 ACP-EEC (1980), *Second ACP-EEC Convention of Lomé*, 31 October 1979, 19 I.L.M. 327.

20 'La nouvelle convention CEE-ACP,' *Lettre d'Information du Bureau de Genève*, Bureau de Presse et d'information des Communautés Européennes, 25bis, (1979), pp. 1-4.

21 ACP-EEC (1985), *Third ACP-EEC Convention of Lomé*, 08 December 1984, 24 I.L.M. 571.

22 ACP-EEC (1990), *Fourth ACP-EEC Convention of Lomé*, 15 December 1989, 29 I.L.M. 788, art. 5.

23 United Nations (UN) (1969), *Vienna Convention on the Law of Treaties*: *Treaty Series*, 1155, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a10.html> (accessed 21 March 2010).

24 UN (1945), *Charter of the United Nations*, available at: <http://www.un.org/en/documents/charter/index.shtml> (accessed 15 December 2009).

25 For a reading into the historical context behind the UN Charter see: Stephen Ryan (2000), *United Nations and International Politics*, London: Macmillan Press.

26 CSCE (1975), *Final Act of the 1st CSCE Summit of Heads of State or Government*, Helsinki, available at: <http://www.osce.org/mc/58376> (accessed 15 December 2009).

27 Paolo di Franco (1995), 'Il rispetto dei diritti dell'uomo e le 'condizionalità' democratiche nella cooperazione comunitaria allo sviluppo,' *Rivista di diritto europeo*, 3, p. 566.

28 Case C-149/96 'Portuguese Republic v Council of the European Union' acts as an example of the Court of Justice's reasoning about human rights in EU external relations. For a larger analysis of the Court's activity related to human rights see: Jason Coppel and Aidan O'Neill (1992), 'The European Court of Justice: Taking Rights Seriously?' *Legal Studies*, 12:2, pp. 227-239.

29 Dudley Seers (1972), 'What Types of Governments Should Be Refused What Types of Aid?' *IDS Bulletin*, 4:2/3, Cited in Peter Uvin (1993), "'Do as I Say, Not as I Do": The Limits of Political Conditionality,' in Georg Sorensen (1993), *Political Conditionality*, London: Routledge, p. 65.

30 See: Craig N. Murphy (2001), 'Political Consequences of the New Inequality,' *International Studies Quarterly*, 45:3, pp. 347-356.

31 World Bank (1989), *Sub Saharan Africa: From Crisis to Sustainable Growth: A Long Term Perspective*, Washington, p. 12.

32 UN (1969), Article 60.

33 For instance see: Karin Fierke and Antje Wiener (1999), 'Constructing Institutional Interests: EU and NATO Enlargement,' *Journal of European Public Policy*, 6:5, pp. 721-742.

34 Frank Schimmelfennig (2001), 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union,' *International Organization*, 55:1, pp. 47-80.

35 Wallace (1983), 'Less Than a Federation – More Than a Regime: The Community as a Political system," in Helen Wallace and William Wallace (eds) (1983), *Policy-Making in the European Communities*, 2nd edition, Wiley: Chichester.

36 European Council (1993), *Conclusions of the Presidency, Copenhagen, 21-22 June*, Brussels: General Secretariat of the Council, available at <http://www.europarl.europa.eu/summits/copenhagen/default_en.htm> (accessed 08 April 2010)

37 European Commission (1995), *Communication from the Commission on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries*, COM, p. 216.

38 Ibid. p. 216.

39 European Union, *Treaty of Lisbon*, Article 1 and article 10A.