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European Human Rights Foreign Policy:
Identifying crucial variables

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Summary:

Since the end of 1970s there has been a tendency towards Europeanization of human rights foreign policy. Nowadays human rights foreign policy at the level of the EU shall help Europe to deal with sensitive human rights issues worldwide. However, it is necessary to ask whether it is really able to fulfill the goal, eventually to what extent. The aim of the paper is to identify a set of criteria enabling a systematic study and evaluation of human rights foreign policy of the EU as well as of the differing approaches of its member states, comparisons and generalizing the features of contemporary European human right foreign policy making. In particular it summarizes and slightly extends the set of variables used for the analysis and it explores their applicability to the EU.

Keywords: human rights, human rights foreign policy, Common Foreign and Security Policy of the EU.

Evropská zahraniční politika v oblasti lidských práv:
určení klíčových proměnných

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Abstrakt:

Od konce 70. let minulého století jsou patrné tendence k evropeizaci zahraniční politiky v oblasti lidských práv. V současné době má tato politika na úrovni EU napomáhat při řešení citlivých problémů v celosvětovém měřítku. Je však otázkou, zda skutečně může plnit takové cíle, případně v jakém rozsahu. Cílem příspěvku je identifikovat kritéria, která by umožnila její systematické studium a hodnocení a byla využitelná i při sledování přístupů členských států, komparací a zobecnění zákonitostí současné tvorby zahraniční politiky v oblasti lidských práv v EU. Proto shrnuje a mírně doplňuje existující okruh veličin využívaných k analyze a zároveň zkoumá jejich využitelnost pro specifický případ EU.

Klíčová slova: lidská práva, zahraniční politika v oblasti lidských práv, společná zahraniční a bezpečnostní politika EU.

JEL: F59

Content

Introduction

Since the end of 1970s there have been affords towards Europeanization of human rights foreign policy. However, till the end of the Cold War there was little progress within this field despite numerous initiatives of the European Parliament and other European institutions, some of the member states as well as of non-governmental organizations and European public. The tendency towards Europeanization strengthened first in a changing international climate at the beginning of 1990s which is obvious from the Treaty of Maastricht, especially from the construction of the second pillar of the EU.

Nowadays, being further developed in primary and secondary community law and in political acts of the EU, it is expected that human rights foreign policy at the EU level will help Europe to deal with sensitive human rights issues worldwide. Yet, is it really an effective tool of promotion of various human rights protection objectives? Does it extend the capacity of particular member states, especially the small ones, to solve problems connected with human rights breaking or does it limit their more effective individual activities? In order to answer these questions it is necessary to examine the nature and options both of the EU's human rights policy and the ones of the member states and different modalities of their interactions.

However, the scope of the paper does not allow demonstrating the use of the identified criteria in concrete case studies. Therefore it remains purely at the theoretical level. As there have been already several works (f. e. Mower 1984, Egeland 1988, Forsythe 2000, Hasenkamp 2004) devoted to human rights foreign policy of particular states it summarizes and slightly extends the set of variables used for its analysis and above all it explores its applicability to human rights foreign policy of the EU.

1   European human rights foreign policy

1.1   Historical background

The necessity to combine the analysis of human right foreign policy of member states and of the EU derives primarily from the specific character of European foreign policy both in the historical and contemporary perspective. Human rights foreign policy as such is an example of a relatively new phenomenon with ancient roots. Almost during all historical periods there were moments when states protected individuals out of their territory trying to improve their

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complicated position. In modern times its development started with particular international regimes creation such as the ones for preventing slavery, for prisoners of war and the victims of armed conflicts protection, for laborers' status improvement or for guaranteeing rights of minorities.

In the aftermath of World War II. a number of states focused on standard setting. During the period of the three postwar decades International Bill of Rights consisting of Universal Declaration of Human Rights (1948) and two international covenants on human rights[1] (1966) were formulated. As a part of international public law it became binding for major part of the international society (Paul 1996, Ishay 2004, Sudre 1997).

In the late 1970s, drawing from International Bill of Rights and several other documents devoted to particular human rights issues, some states such as Norway, the Netherlands, France or the USA started a new type of human rights foreign policy aimed at influencing situation in other countries, like interrupting and preventing human rights abuses in authoritative and totalitarian regimes. Nowadays, this (later) type of human rights foreign policy forms a standard agenda of many countries. In numerous cases it is thought to be of special importance when states try to extend their activities in the international arena and to play a more visible role in the world.

Moreover, hand in hand with the emergence of the later type of human rights protection, in particular states' foreign activities, first considerations that human rights protection should become a part of the European Economic Community's external policy and thus should extend the capacity of particular member states occurred. It happened despite the fact that human rights protection either in its internal or external form did not belong among the objectives of the European integration included in the Treaty of Rome of March 1957[2], as it omitted political questions and was basically of economic substance[3].

The need to consider human rights in common activities was given primarily with the interconnection of human rights and economic issues already transferred at community level. In the EEC's internal agenda human rights started to be taken into account thanks to the decisions of the Court of Justice of the European Communities (ECJ) already at the end of 1960s. In its external practice the same happened ten years later, in the late 1970s. However, unlike

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[1]   International Covenant on Civic and Political Rights and International Covenant on Economic, Social and Cultural Rights, both signed in 1966, entered into force in 1976.

[2]   either the Treaty of Paris establishing the European Coal and Steel Community (1951) or the Treaty of Rome establishing the European Atomic Energy Community (1957)

[3]   On the other hand there was probably no need to include human rights into the Treaties, as each of the six founder members belonged to the signatories of the Convention for the Protection of Human Rights and Fundamental Freedoms, a document signed in the Council of Europe in November 1950.

internal affairs the Member states of the EEC, its institutions, the European Political Cooperation and the European Council, that became the most important actors when incorporating human rights into external policies of the Community, were not forced to deal with human rights by judicial body. There was a strong pressure for doing so from general public and in addition there were external incentives from the Carter administration and its emphasis on human rights in the US foreign policy. This means that the issue was Europeanized without prior integration (like transfer of competencies). Since then ensuring that Community's external action corresponds with general principles of Community law has been one of the main tasks of the Community human rights foreign policy. (Napoli 1995: 299-300, Bulterman 2005: 253)

In 1986 human rights were mentioned in the primary legislation for the first time thanks to the preamble of the Single European Act. Next to a reference on human rights in the internal policy the Preamble included also a reference to the external dimension: "… *to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interest and independence, in particular to display the principles of democracy and compliance with the law and to human rights to which they are attached, so that together they may make their own contribution to the preservation of the international peace and security in accordance with the undertaken entered by them within the framework of the United Nations Charter."* (Single European Act, OJ L 169/2, preamble, recital 5) According to the European Parliament, the EEC now had a part of political responsibility for the situation in the world including respect to human rights, although without any legal consequences.

1.2 Human rights foreign policy in the second pillar of the EU

The external authority of the EU, established by the Treaty of Maastricht signed in the late 1991 (TEU), was elaborated in provisions creating the Second Pillar of the EU – the Common Foreign and Security Policy (CFSP). The provisions mentioned respect for human rights as one of the objectives of the Union together with developing and consolidating democracy and the rule of law. (Article J.1(2) TEU, fifth ident) Within this field the European Union was allowed to issue additional acts – common positions and common actions[4], binding for particular member states, which define the approach of the EU to various matters of thematic or geographic nature[5]. For the Union member countries it opened a new possibility to draw attention to several human rights

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[4] According to the the Treaty of Amsterdam common strategies adopted by the European Council extended this set of instruments.

[5] Simultaneously, as confirmed later by the ECJ, article 130(u) of the Treaty on the European Union provided legal basis for human rights clauses in the external agreements when it stated that Community in its development co-operation shall "*contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.*"

problems outside the Union's frontiers especially as they were allowed to propose decisions what is in the fields of common activities is a sole domain of the European Commission (articles J.2.-J.3 TEU).

However, similarly as foreign (external) policy of the EU is not limited by the scope of CFSP, the human rights foreign policy as its integral part in several aspects extends its borders. On the one hand some of its parts are implemented by European institutions within the framework of other pillars, the European Communities and the Justice and Home Affairs. On the other hand, some of its goals formulated at European level either by the Council of the EU or by the European Commission must be promoted by particular member states within their own foreign policies (see figure 1).

Figure 1: European human rights foreign policy
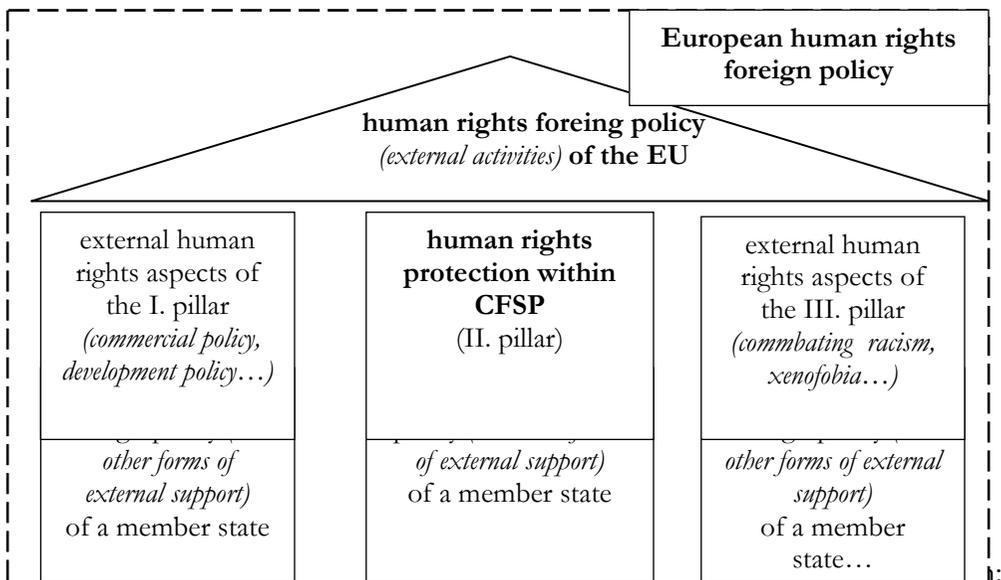
CARLSNAES, W.; SJURSEN, H.; WHITE, B., eds. (2004): *Contemporary European Foreign Policy.* London: SAGE Publications, p. 11-16; JØRGENSEN, K. E. (2004): *European Foreign Policy: Conceptualising the Domain.* Ibid, p. 34, figure. 2-2 (adopted).

Proceeding from a glance at the current shape of European human rights foreign policy one could conclude that its character resembles to that of the member states as it reflects member states´ requirements and must rest on their will and capacities at least partially. But still, does it mean that the basic characteristic of human rights foreign policy making will be fully applicable to the EU?

2 Human rights foreign policy analysis– crucial variables

2.1 Basic outputs of human rights foreign policy decisions

Human rights protection foreign policy of a state represents, as an unbendable activity developed in an international context, a constant process of accepting and realisation of resolutions. This process is a sequence of several iterant steps. It usually goes on under the conditions of time pressure due to the lack of or imperfection in information (Peterková 2008, Drulák; Druláková 2007).

At the beginning of the resolution process the requirement to solve a problem is identified. It is followed by the analysis of the initial situation. Within this analysis the country's internal environment and external conditions are evaluated. As a part of the analysis of the initial situation possible resolution variants are being found, such as goals that can be pursued in a given situation, and ways of behaviour providing for attainment of the goals. The realisation of the conduct chosen is the final phase of the human rights foreign policy making. In the ideal case it ends by accomplishing the appointed goal. However, a goal might be accomplished only partially or it may happen that a goal is not in the given situation and with the use of selected tools accomplished at all.

If one has a general look at human rights foreign policy, the first stage – problem identification – usually represents the finding that human rights should become a part of the state's foreign policy. The finding is reached on the basis of the society demand and is influenced by identity of individual countries, like identity of societies that live there. At the same time it often intimately relates to the overall conception (more preciously to foreign policy orientation) or to proceedings that are being chosen for its fulfilment.

After the problem has been identified and with the awareness of possibilities and restrictions that are essential to be considered[6] it is necessary to make, within a formulation of possible variants and a choice of the most appropriate ones, several fundamental decisions that will imprint a certain nature[7] to human rights foreign policy. It should be specified what position human rights are supposed to take in the foreign policy making. At the same time it is necessary to place the human rights foreign policy to the context of various foreign policy priorities. Such a decision leads to specification of its rank within the national interests scale. Furthermore, it influences to which agendas it will be preferred and which it will possibly yield (Mower 1987: 2, Baehr 2000: 74).

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[6]   I.e. after step 1, 2 have been accomplished according to Figure 2 bellow
[7]   Steps 3 and 4 – Figure 2 bellow

2.2 Possible extensions of the Mower's criteria

In a monograph devoted to human rights foreign policy making in the USA Alfred Glenn Mower describes basic outputs of the above described decision making process with the use of five crucial variables:

reason – Why is a human rights foreign policy pursued?

priority – What is its relation to other foreign policy agendas?

definition – Which human rights does it focus on, what international instruments (treaties, declarations etc.) are considered to form the base of human rights foreign policy?

goals – Does the policy aim only to improve the international standard of human rights protection and to help the most needy people or does it try to influence the situation in human rights breaking countries as well?

(geographical) scope – If the policy is oriented towards improvement in countries with severe human rights atrocities which countries is the attention paid especially to? Is the human rights foreign policy global in its nature or is it limited only to a group of countries? Which criteria do influence the selection of particular states? (Mower 1987: 2)

Using the set of the Mower's criteria one may enjoy the advantage of their wide applicability to almost every country implementing human rights foreign policy and every time period and simple ascertain ability in foreign policy statements and declarations. However, sometimes it may be useful to make up a more detailed picture of human rights policy with additional information. For this purpose it is desirable to extend the basic model of human rights foreign policy making with several other criteria.

As far as these criteria are concerned, Jack Donnelly suggests distinguishing between nationalist and internationalist attitudes to international human rights protection. The attitudes manifest themselves in two aspects – in the integration of human rights to the system of values and in a state's reluctance or preparedness to accept international human rights pressures and to open itself to international scrutiny. States tending to nationalist attitudes are characterized by subordinating human rights under the principle of non-interference into domestic affairs and associated with refusing criticism and control executed by other states or international bodies. Simultaneously, they closely connect human rights with their national culture which usually leads to prioritizing relativist accounts. In contrast, internationalist attitudes are characterized by readiness to cooperate, primacy of human rights over state sovereignty at least in certain aspects and embedding universal human rights in ethic and values of particular society (Donnely 2000: 315-320).

When studying the nature of human rights foreign policy Miao-ling Hasenkamp and Kathryn Sikkink emphasis the tools prevailing in its realization. They

examine congruently whether a state prefers the level of bilateral relations with the target country instead of multilateral arenas represented especially by international organizations or it acts more likely at multilateral level or whether both levels are nearly well-balanced (Hasenkamp 2004: 283-284, Sikkink 2004: 10-12). Furthermore, it may be useful to distinguish between political and financial forms of human rights support. They differ as for their visibility, flexibility and intensity of the unfolded pressure. At the same time they are usually called into action with the use of different procedures and different institutions, such as ministries of foreign relations in the first case and ministries of development or economic cooperation, eventually humanitarian funds and development agencies in the later one.

2.3   Observing human rights foreign policy effectiveness

The analysis of human rights foreign policy would not be complete without making provision for including results achieved after the realization of particular activities and their comparisons with original intentions and expectations. But still, for the time being, the development of analytical tools which would cover this area is at the very beginning. To explain, while examining the formation and implementation of human rights foreign policy has many attributes identical to other foreign policy measures formation and implementation analysis, evaluation of results shows numerous specifics and require application of specific methods.

Just a bare comparison of expenses connected with implementation of human rights foreign policy protection with profits achieved needs to cope with a range of problems. The profits cannot be monitored only from the point of view of the country making the policy but (above all) from the point of view of the target countries. On the other hand, the expenses are usually clearly quantifiable, possible to be expressed by means of a specific amount of money. The profits have an immaterial character. The efforts to find their exact financial value have not been successful. They are also difficult to describe in words. It is quite impossible to adhere to the principle of *ceteris paribus* principle and the danger of *post hoc, ergo propter hoc* logical mistake arises.

The impossibility to adhere to the *ceteris paribus* principle[8] means that it is not possible to isolate one variable (foreign policy step of country A) and to observe the evolution of the certain phenomenon (e.g. the improvement of the situation within the human rights area in country B) in the dependence to this variable while other factors are fixed (Samuelson; Nordhaus 1991: 7, Kváča 2003: 50). The danger of the *post hoc, ergo propter hoc* lies in the possible confusion of the time sequence between two phenomena and their causality. The fact, that a certain development or event happened after adoption of a foreign policy

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8   I.e. to monitor and evaluate under the same circumstances.

decision, does not mean that it necessarily must be the consequence of this decision. A theoretical appraisal in a broad context of other factors development is required in order to find out a causal connection among the said phenomena.

Moreover, the achievements of human rights foreign policy depend on the way of particular goals formulation. This means that with the awareness of the necessity to defend an activity in different arenas, politicians may choose the goals in such a way so that they were sufficiently legible and visible for other subjects, although they know they are not optimal for handling the problems that are necessary to be solved. In addition, they may try to distort results when presented to various national and international political entities and to the public.

The just mentioned difficulties can be reduced at least partially with introducing the criterion of adequacy defined as reasonability of the pursued objectives. However, the question still remains how to determine what is and what is not reasonable in the field of human rights protection or from what position to decide about adequacy and inadequacy. The notion of adequacy varies in relation to the character, personal attitudes and values of the observer belonging to a specific cultural and civilization circle.
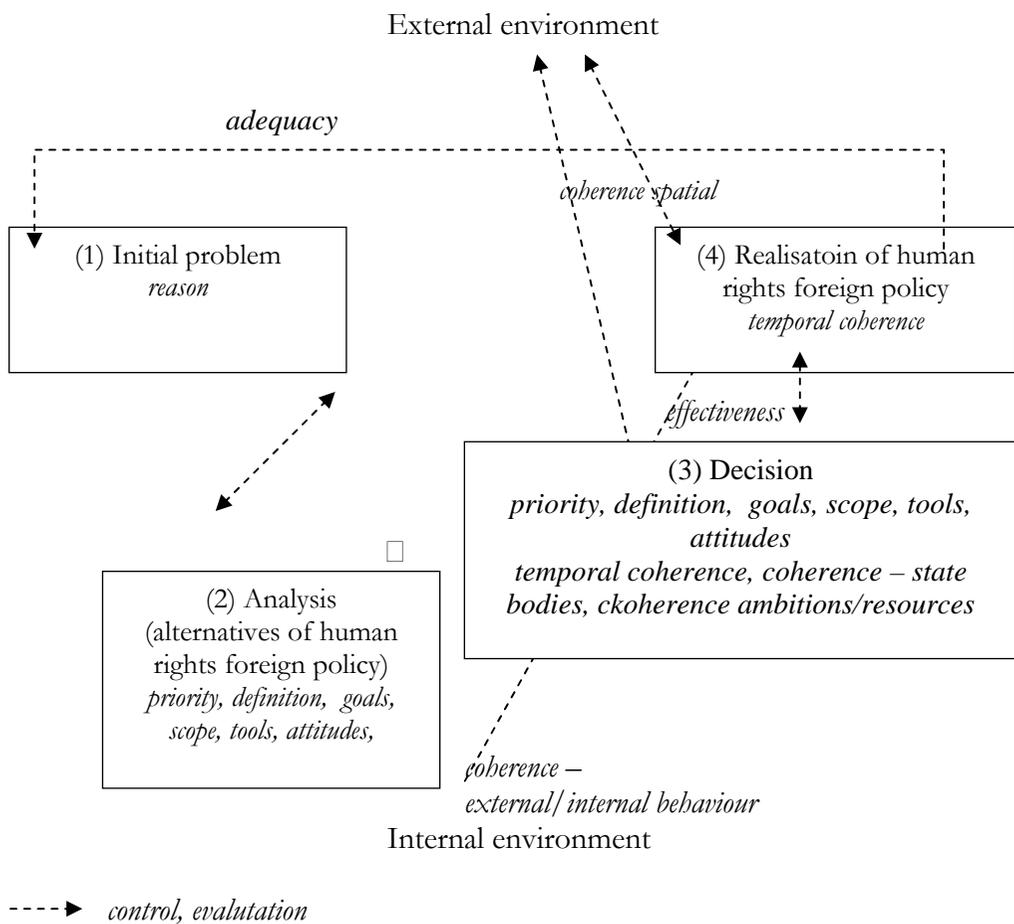
From the point of view of states and of some other subjects interested in foreign policy making effectiveness constitutes an interesting variable. Effectiveness interrelates with other criteria closely but it enables to take into account an additional aspect. Next to the fact whether the targets set at the beginning of the decision making process were achieved, it considers consequent costs or expenditures. With regard to the nature of foreign policy as a sequence of choices from a set of attainable alternatives, which cannot be fulfilled with limited resources all at once, it is suitable not to reduce the costs to the really spent amount of money. From the economic point of view the calculation should comprehend the lost opportunity costs reflecting that some foreign policy alternatives had to recede and possible losses occurring as a result of human rights foreign policy making f. e. in a case when some steps lead to disturbance of economic relations.

When evaluating human rights foreign policy, Andrew Williams, Jan Egeland and Andrew Clapham manipulate the term coherence. Williams (2005) beholds coherence in connection with internal and external environment. He finds a policy to be coherent when it corresponds with the conception and interpretation of human rights in domestic affairs of particular states, does not reduce the internal notion of human rights significantly and does not diverge from their internal definitions. In contrast, Egeland (1988) pays attention to external affairs. Within this field he follows temporal and spatial consequences. Regarding the temporal dimension a stable conception of human rights which does not depend on such factors as the changes of governing parties is typical

for a coherent approach. Spatially coherence means application of the same criteria to all political partners. Finally, Clapham (1999) adds coherence of particular state bodies' activities and the coherence of available sources and conditions.

The attachment of Mower's criteria together with additional variables identified with Donnelly and Hasenkamp / Sikking and with tools of the analysis of effectiveness and their usage for interception of particular stages of human rights foreign policy making is showed in Figure 2.

Figure 2:   Human rights foreign policy making – analysis with the use of the extended Mower's criteria and the evaluating variables

External environment

adequacy

coherence spatial

(1) Initial problem
reason

(4) Realisatoin of human rights foreign policy
temporal coherence

effectiveness

(3) Decision
priority, definition, goals, scope, tools, attitudes
temporal coherence, coherence – state bodies, ckoherence ambitions/resources

(2) Analysis (alternatives of human rights foreign policy)
priority, definition, goals, scope, tools, attitudes,

coherence – external/internal behaviour

Internal environment

- - - - ▶   *control, evalutation*

3 Analysis of human rights foreign policy making at the level of the EU

3.1 Applying extended set of Mower's criteria

Broadening range of questions to be solved together with increasing volume of activities in the field of human rights promotion developed by the EU draw the nature of the EU's human rights foreign policy near the character of the ones of particular states. Therefore it is possible to observe the European policy making with the use of the extended Mower's apparatus, too.

Nowadays human rights foreign policy of the EU results from clear reasons including a longstanding tradition of democratic principles, respect to human rights perceived as a part of European history and cultural heritage and the need to develop and to demonstrate pan-European identity in its external affairs. In addition, the EU follows similar goals as its member countries in their national policies - standard setting, solidarity and socialization. Owing to the fact that it exerts effort to improve situation in countries that break basic human rights principles seriously, it is reasonable to observe geographical scope or more preciously the range of states where it struggles for improvement.

Furthermore, it is necessary to bring the goals in the field of human rights foreign policy into harmony with the needs of other foreign policy spheres such as security or trade. That means that it must be decided about priority as well. At the level of rhetoric European representatives have been paying much significance to human rights both in internal and external activities of the EU. As a result one could conclude that human rights protection has been regarded as a complement of other external agendas. However, the situation seems to be more prosaic in practice. Human rights protection not only supplements other foreign policy goals. In relation to these goals it also often gets in tension.

In the broader context of current international human rights protection the EU behaves predominantly as an internationalist actor. When pursuing its human rights foreign policy it uses both bilateral and multilateral tools. The tools are of political as well as of financial nature.

Struggling for human rights observance the EU has to specify on what rights it places emphasis. Yet, defining the set of prioritized rights seems to be more difficult than in the case of particular countries. Owing to its specific character and legal nature from the point of international law the EU does not take part in the work of international organizations as an ordinary member. Similarly it does not belong to the high contracting parties of international treaties incorporating

human rights standards[9] and other documents adopted under auspices of international organizations.[10] It would be rather difficult to achieve a full admission to these international bodies and a full-fledged accession to the just mentioned international instruments as they enable the participation only to state parties. The intricacy of this situation could be demonstrated on the case of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It has been suggested that the EU would become its party since the 1970s, but despite considerable progress during a few previous years the efforts have not been crowned with success yet.

3.2 Evaluating result of European human rights foreign policy – the question of coherence

Within the set of evaluating criteria adequacy and effectiveness seem to be applicable at European level without further modifications. However, in case of coherence the range consisting of five items must be extended again. Next to the coherence between external and internal activities, between resources and ambitions, spatial and temporal coherence and coherence in activities of various state bodies, it may be useful to focus on coherence between pillars of the EU, especially between the first and the second one.

As has been already stated above, despite the enormous significance of the steps belonging to the field of CFSP human rights protection cannot be limited to activities developed within this area. For example much has been done with the use of financial means designed for development policy funding or the instruments of common trade policy such as generalized system of preferences. Some of these may be subsumed under the coherence between pillars criterion. Yet, under certain circumstances this distinction may record a certain degree of insufficiency. To this purpose Clapham (1999) suggests observing coherence between the influence of the EU at the world market and its political authority in international relations.

Finally, when trying to comprehend the whole spectrum of multilevel human rights foreign policy making in the EU (as specified in chapter 1.2 and demonstrated in Figure 1) the interrelation between European activities and the proceedings of particular states must be resolved. In this respect Clapham introduces the last dimension of the coherence variable. However, it should also be observed in earlier stages of the decision making analysis, where one could ask whether the EU acts as an independent subject or merely exercises the requirements of its members or whether member states pursue a decision adopted at European level or proceed on their own initiative.

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[9]   Especially of the International Covenants on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms.
[10]   The UN, Council of Europe, International Labor Organization etc.

Conclusion

It is obvious that at the current stage of knowledge, the analysis of human rights foreign policy disposes of a broad range of tools to record differing approaches developed by particular foreign policy actors as well as their features. Moreover, most of the variables show broad applicability and can be used not only when examining approaches of states but also when studying other entities such as the EU which assumes many tasks executed traditionally by states and poses new requirements on its members. The only constraint consists in underdeveloped methods of evaluation, but it has been worked on their improvement intensively.

Figure 3: Accommodating the arrangement of analytic criteria

	Analytical situation		
Criterion	*Member state(s) only*	*The EU + member state(s)*	*The EU only*
Reason			
Priority			
Definition		limited use	limited
Priority			
Scope			
Attitudes			limited
Tools bilat./multilat.			
Tools political / financial			
Level of decision making and implementation	-		-
Adequacy			
Effectiveness			
Coherence internal /external environment			
Coherence – spatial			
Coherence – temporal			
Coherence ambitions / resources			
Coherence – official bodies			
Coherence – pillars	-		
Coherence – market position / political influence	-		
Coherence – activities of the EU and of its member states	-		limited

On the other hand, due to the extensiveness of key variables, it is highly recommendable to accommodate their selection to the examined situation. When focusing only on the EU member states the original scale of Mower's criteria extended with indicators of nationalist / internationalist approaches,

favored tools and evaluation appears the most appropriate. However, with the aim to display the nuances of the interrelation between the EU and its members one must add the criteria of coherence in their different approaches and distinguish levels of human rights foreign policy decision making and implementation. Figure 3 demonstrates the different configuration of the used criteria.

In cases where attention is paid solely to the EU as a whole some difficulties may occur concerning the criteria of definition, attitudes and coherence between its activities and the approaches of the member states. Nevertheless, since the EU assumes several roles belonging traditionally to the sphere of foreign policy pursued by particular countries and it evolves to a kind of a specific supra-national body arching over the functions of its members, there is no more serious inconvenience while using other variables originally developed for the states. On the contrary, the range of available variables and their predictability seems to be comparable to the above mentioned situations which simplifies the observations and further use of findings.

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