

NORMATIVE OR HYPOCRITICAL?

-Contradictions Between the EU's External Promotion of Human Rights and Member States' Policies-

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Abstract

The European Union sees itself as a global force for human rights, but there is the perception that its international statements are not always matched by internal policies. This paper seeks to provide a partial explanation of the gap between the EU's self-perception and its external image, by comparing, from a legal perspective, the EU's external promotion of human rights and the internal policies of its members. The analysis suggests that EU states' practice sometimes contradicts the values promoted throughout the rest of the world by the Union. This inconsistency may call into question the EU's image as a distinctive international actor and jeopardise its effectiveness on the global scene.

1. Introduction

The European Union has gradually come to define itself in terms of the promotion of fundamental rights and democratic freedoms.¹ It even labels itself a 'global force for human rights'.² Academics also depict the EU as a 'distinctive' entity and as a 'normative power': it is often argued that the EU has caused its external relations to be informed by a catalogue of norms which come closer to international human rights instruments than most other actors in world politics.³

However, the literature on the external perception of the Union suggests that the EU's image is not one of great distinctiveness: foreign citizens, media and the elite seldom acknowledge the Union's normative character.⁴ The perception of the EU as less of a normative power depends in part on the inconsistency of its own policies. For example, the EU seeks to eradicate poverty via development cooperation but has a less than development-friendly stance in its agricultural policy.⁵ Moreover, the EU's action appears not to qualify as normative because it is affected by 'double

¹ Commission Communication, *The External Dimension of the EU's Human Rights Policy: From Rome to Maastricht and Beyond*, COM, (1995) 567 final, paragraph 12.

² European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament and the Council: Human Rights And Democracy at the Heart of EU External Action – Towards a More Effective Approach*, Brussels, COM (2011) 886 final, p. 5.

³ *Manners*, 'Normative Power Europe: A Contradiction in Terms?', *Journal of Common Market Studies*, 40, 2002, pp. 235-258, on p. 241. See also, *inter alia*, *De Witte*, 'The EU and the International Legal Order: The Case of Human Rights', in: *Evans and Koutrakos* (eds), *Beyond the Established Legal Orders – Policy Interconnections between the EU and the Rest of the World*, Hart, 2011, pp. 127-147, on p. 142.

⁴ *Larsen*, 'The EU as a Normative Power and the Research on External Perceptions: the Missing Link', *Journal of Common Market Studies*, 2013, pp. 1-15, on pp. 8-11. See also *Macaj and Koops*, 'Inconvenient Multilateralism: The Challenges of the EU as a Player in the United Nations Human Rights Council', in: *Wetzel* (ed), *The EU as a 'Global Player' in Human Rights*, Routledge, 2011, pp. 66-81, on p. 78.

⁵ *Baroncelli* 'Aid, Trade and Development: World Bank Views on the EU's Role in the Global Political Economy', in: *Lucarelli and Fioramonti* (eds), *External Perceptions of the European Union as a Global Actor*, Routledge, 2010, pp. 159-160.

standards'; for instance, the image of the EU as a democracy and human rights promoter in the Middle East is weakened by the observation of the EU's soft response to Israel's violations of human rights.⁶

The discrepancy between internal depictions and external perceptions of the EU's identity may also depend on a third inconsistency, which is often overlooked: the contradiction between the principles of the EU foreign affairs and member states' actions. Since knowledge of the EU remains rather low outside of Europe,⁷ the actions of EU members are likely to influence the image of the whole Union. It is fair to assume, therefore, that whenever member states do not respect the norms supported by the Union, the entire EU may appear inconsistent and scarcely credible.

This kind of inconsistency is very problematic in the field of human rights. The external promotion of human rights is one of the elements that define the EU's international identity, yet the Union lacks the power to promote those rights *internally*: the EU does not have, in general terms, the power to protect fundamental rights from the action of its own member states. In other words, the EU can contribute to defining what passes for 'normal' at the international level but does not have the power to do so within Europe. Therefore, one may wonder whether the EU affirms, in its external relations, that certain restrictions to human rights are unwarranted, even if the same restrictions may be lawful when applied by its members.

This paper seeks to investigate the consistency of EU and member states' human rights policies by comparing their interpretation of human rights in external and internal actions, respectively. Since it would be impossible to provide for a holistic account of the EU's promotion of human rights, this paper focuses on some areas that may be representative of trends in European human rights policies. Considering that the objective of this analysis is to verify whether EU and member states' policies *contradict* one another, this paper refers to external action 'consistency' in its literal sense, that is, the ability of several propositional contents to be asserted together without logical contradiction.⁸

This study consists of three sections. The first one presents the analytical framework of the analysis, i.e. the requirement of consistency between internal and external human rights policies. The second addresses the main contradiction between EU and member states' human rights policies: the external promotion of rights that are not recognised as valid within all of Europe. The third section studies another form of inconsistency: the different interpretation of human rights in EU foreign affairs and member states' internal policies. The results of the investigation are summarised in the conclusion, which also suggests a solution for the contradiction between EU and member states' policies.

2. On the Requirement of Consistency Between Internal and External Human Rights Policies

The evaluation of the consistency between EU external values and member states' actions can be performed by assessing whether the Union and its members conceive of human rights in the same manner. It is necessary, therefore, to identify the main sources of human rights in EU and member states' laws, and subsequently compare them.

Human rights rules applicable in the member states are contained mainly in internal laws and case-law, as well as in the European Convention for the Protection of Human Rights and

⁶ Lucarelli, 'Seen from the Outside: The State of the Art on the External Image of the EU', *Journal of European Integration*, 36, 2013, pp. 1-16, on p. 10.

⁷ Lucarelli, 'International Perception of the EU', in: *Jorgensen and Laatikainen* (eds), *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power*, Routledge, 2013, pp. 429-444, on p. 435.

⁸ It is customary to distinguish between external action 'consistency', i.e. the absence of contradictions, and 'coherence', i.e. synergy among policies. See, e.g., Gatti, 'Coherence vs Conferred Powers? The Case of the European External Action Service', in: *Rossi and Casolari* (eds), *The EU After Lisbon: Amending or Coping with the Existing Treaties?*, Springer, 2014, pp. 241-266, on p. 245. Since the present paper seeks to verify whether external human rights standards contradict the internal ones, only the issue of 'consistency' is taken into consideration.

Fundamental Freedoms (ECHR or Convention), which has been ratified by all EU member states. In some cases, the exact content and limits of human rights may be controversial, since EU states have different approaches to this issue. This paper uses the case-law of the European Court of Human Rights (ECtHR or Court) to clarify the meaning of the ECHR and, thus, the limits of the member states' discretion in regulating human rights. It is worth noting that certain non-EU states (e.g. Turkey) are part of the ECHR. The analysis also takes into consideration the ECtHR judgements concerning non-EU states, since they provide an interpretation of ECHR rules applicable to EU members.

The sources of human rights in EU law are varied. According to Article 6 of the Treaty on the European Union (TEU), the Union respects human rights, as enumerated by: *i*) the Charter of Fundamental Rights of the European Union (hereinafter: Charter), which has the same legal value as the Treaties and *ii*) the general principles of the Union's law, which contain rights resulting from the ECHR and the constitutional traditions common to the member states.

Although the EU must respect fundamental rights, it has almost no *internal* human rights policy. The requirement to respect fundamental rights – as provided for in Union law – is binding on the member states only when they act within the scope of EU law.⁹ In other circumstances, there is little the Union can do, at the moment, to make sure that its members respect human rights.¹⁰

At the same time, human rights are crucial for EU *foreign affairs*. According to Article 3(5) of the TEU, in its relations with the wider world, the Union must uphold and promote 'its values' and must contribute to 'the protection of human rights.' Similarly, Article 21 of the TEU stipulates that 'the Union's action on the international scene shall be guided by the principles which have inspired its own creation,' including 'the universality and indivisibility of human rights.'

Even when it is established that the EU must promote human rights, a problem remains: *which* rights should the Union promote? In theory, rules governing external action should be read together with the provisions on the protection of human rights applicable within the Union, since the EU should promote 'its' values, including fundamental rights.¹¹ This means that the EU should promote the same rights it respects. These rights are, generally speaking, the same rights that are protected by the member states. As noted above, the fundamental rights contained in the general principles of EU law stem from the constitutional traditions common to the member states and an international agreement binding EU countries (the ECHR). Even the rights contained in the Charter of Fundamental rights generally originate at the member states' level: most rights contained in this instrument stem from the ECHR or the constitutional traditions common to the member states¹² and

⁹ Cf. Article 51 of the Charter. See also Case C-617/10 *Åklagaren* [2013] not yet published, para 19; Case C-27/11 *Vinkov* [2012] not yet published, para 58; Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 72; Case C-349/07 *Sopropé* [2008] ECR I-10369, paragraph 34; Case C-309/96 *Annibaldi* [2007] ECR I-7493, paragraph 13; Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraph 25; Case C-299/95 *Kremzow* [1997] ECR I-2629, para 15; Case C-260/89 *ERT* [1991] I-2925, paragraph 42.

¹⁰ See Opinion 2/94 [1996] ECR I-1759, paragraph 27. Nonetheless, the EU can use a few instruments to promote human rights within its borders, notably the procedure contained in Article 7 TEU, which may lead to the suspension of the voting rights of EU members but which has never been used in practice. The EU may also use soft law instruments, such as the Justice Scoreboard, to monitor respect for human rights in Europe. See Commission communication COM (2014) 155 final, 17 March 2014, through which the Commission may indirectly monitor the enjoyment of the right to an effective remedy on the part of EU citizens, see Article 47 of the Charter. On the (insufficient) use of the human rights instruments available to the Union, see *Williams*, EU Human Rights Policies: A Study in Irony, Oxford University Press, 2004; *Casolari*, 'Respect for the Rule of Law in a Time of Economic and Financial Crisis: the Role of Regional International Organizations in the Hungarian Affaire', Italian Yearbook of International Law, 23, 2014, pp. 219-242.

¹¹ To be sure, affirming the TEU requires the Union to promote 'its values', from a legal perspective, does not equal endorsing, from a philosophical or political viewpoint, the EU's promotion of a particularistic view of human rights.

¹² It is true that the Charter introduces some *new* fundamental rights and that the Union's human rights standards may be higher than that of the ECHR, but the EU is unlikely to promote such rights and standards abroad, since it seeks to foster *universal* human rights, and the rights and standards that are not protected in EU countries are not, by definition, universal. Cf. Article 21(1) TEU and Council, EU Strategic Framework and Action Plan on Human Rights and Democracy, 25 June 2012, doc. 11855/12.

should be interpreted accordingly, pursuant to Article 52 of the Charter. Therefore, the human rights the EU respects and promotes abroad are, generally speaking, the same rights the member states must protect in Europe.

It might be argued that the link between EU and member states' obligations in the field of human rights should foster consistency among their respective policies. However, given the absence of a uniform concept of human rights in European societies, one may wonder whether EU external action can truly mirror values that are common to all the member states. The following sections seek to demonstrate that the EU affirms, in its external relations, that certain restrictions to human rights are unwarranted, while the same restrictions are lawful when applied by the member states. The next section intends to verify whether the EU promotes rights that are not protected in Europe; then the analysis turns to the consistency between the interpretation of rights in EU external action and in member states' policies.

3. External Promotion of Rights that Are Not Protected in Europe

The most evident form of contradiction between EU external promotion of human rights and member states' policies takes place when the Union supports certain rights that are not recognised as such within Europe.

A well-known example in this sense is the protection of national minorities. The EU has long been committed to promoting the rights of persons belonging to minorities in the rest of the world, and mainly in its neighbourhood. Since the 90s this protection has been considered one of the requirements for accession to the EU. Pursuant to the Copenhagen conclusions of 1993, EU 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*'.¹³ Compliance with this requirement is evaluated with reference to various parameters, including the ratification and implementation of the Framework Convention for the Protection of National Minorities, which was concluded in the context of the Council of Europe.¹⁴ For instance, Decision 2006/145/EC on the principles, priorities and conditions contained in the Accession Partnership with Croatia affirms that this country should promote 'respect for and protection of minorities in accordance with the European Convention on Human Rights and the principles laid down in the Council of Europe's Framework Convention for the Protection of National Minorities.'¹⁵

However, three member states (Belgium, Greece and Luxembourg) have not ratified this latter Convention, and France has not even signed it.¹⁶ One may hypothesise that these states probably do not protect all the rights contained in the Framework Convention, since they do not always recognise the existence of national minorities within their territories.¹⁷ The EU's promotion of minorities' rights, therefore, appears problematic: while the Union preaches respect for the rights of national minorities, some EU member states are likely to limit the enjoyment of such rights, whose existence they deny.

Something similar happens with respect to the right to international assistance in case of disaster. The International Law Commission (ILC) has been working on the protection of persons in

¹³ See the European Council Conclusion, Copenhagen, 21-22 June 2013, paragraph 78(a[iii]), available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf, italics by the author. Accessed 12 June 2014.

¹⁴ Framework Convention for the Protection of National Minorities, 1 February 1995, European Treaty Series no. 157.

¹⁵ OJ 2006 L 55/30, repealed by Council Decision 2008/119/EC, OJ 2008 L 42/51, stipulating that Croatia should have promoted 'respect for and protection of minorities in accordance with international law and best practice in EU Member States'. For a broader appraisal of this issue, see Hillion, *The Framework Convention for the Protection of National Minorities and the European Union*, Council of Europe Report, 2008, pp. 5-10.

¹⁶ For the status of ratifications, see the map available on the Council of Europe website, http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf. Accessed 12 June 2014.

¹⁷ See inter alia, *De Witte*, 'Minorités nationales: reconnaissance et protection', *Pouvoirs* vol. 57, 1991: 113-127.

the event of disasters since 2007.¹⁸ One of the most controversial issues dealt with by the ILC is the right to receive international assistance after disasters. Since the right of a person must correspond to the obligation of another, the recognition of a human right to international assistance would imply corresponding obligations on the part of international subjects. At the very least, the state affected by the disaster should seek international assistance whenever the catastrophe exceeds its national response capacity.¹⁹ During the debate on this topic, the EU affirmed that any state affected by a disaster is indeed required to seek international assistance if it cannot cope with the disaster.²⁰ A similar position had already been supported by the EU in its external action, as testified by the preamble of the EU Instrument for Humanitarian Aid, which affirms that ‘people in distress, victims of natural disasters’ have ‘a right to international humanitarian assistance where their own authorities prove unable to provide effective relief’.²¹

Nonetheless, some EU members explicitly contradicted the EU’s position during the discussion at the international level. Austria, France, Greece, Portugal and the UK affirmed that there can be no duty to seek external assistance, which would entail an interference with state sovereignty and which is not supported by any custom or practice.²² It would seem, in fact, that EU member states’ laws do not take into consideration either a right to international assistance or obligations to seek external aid. Similarly, the international agreements entered into by EU members normally do not require state parties to seek international assistance.²³

In summary, the EU affirms that third states’ refusal to seek external assistance may entail, under certain conditions, an unwarranted restriction of human rights. At the same time, the member states do not consider themselves as required to seek international help, and might consequently apply restrictions to the ‘right’ to international assistance. It is worth noting that European states have refused international help in the past: for instance, after the L’Aquila earthquake (2009) the Italian Prime Minister affirmed: ‘We thank everyone, but we do not need help from abroad. We are a proud people and we will manage alone.’²⁴

4. External Promotion of a Different Interpretation of Human Rights

The inconsistency between EU and member states’ policies on human rights is not limited to the promotion of rights that do not exist in Europe. In some cases, the Union promotes abroad rights that are protected in Europe, but which are interpreted in a different way. This implies that the EU affirms that certain restrictions to human rights are unwarranted when enforced by third states, even if they can be applied by its own members.

Freedom of expression provides for an example in this sense. This freedom is protected in Europe by Article 10 of the ECHR, whereby: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.’ The exercise of freedom of expression may, however, ‘be subject to such formalities, conditions, restrictions or penalties’ as are prescribed by law and are necessary in a democratic society, in the interests of public safety, ‘for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others’.

¹⁸ See the works of the ILC at http://legal.un.org/ilc/guide/6_3.htm. Accessed 12 June 2014.

¹⁹ See Article 10 of the Draft Articles approved by the ILC, UN doc. A/68/10.

²⁰ See the summary record of the UN General Assembly, 2 December 2011, A/C.6/66/SR.21, paragraphs 55-56.

²¹ Council regulation 1257/96/EC, OJ 1996 L 163/1.

²² See the report of the special rapporteur *Valencia-Ospina*, 9 April 2012, A/CN.4/652, par. 24 and 28.

²³ See e.g. *Gatti*, IDRL in Italy: A Study on Strengthening Legal Preparedness for International Disaster Response, International Federation of Red Cross and Red Crescent Societies, 2015, available at www.ifrc.org, at 45.

²⁴ See ‘Terremoto Abruzzo, Berlusconi: niente aiuti dall'estero’, SkyTG24, 7 April 2009, http://tg24.sky.it/tg24/politica/2009/04/07/Terremoto_Abruzzo_Berlusconi_niente_aiuti_dallestero.html. Translation by the author. Accessed 14 June 2014.

A typical justification for restrictions on freedom of expression is the protection of believers' sensitivities: to the extent that religious beliefs concern a person's relationship with the metaphysical, they can affect the most intimate feelings and may be so complex that an attack on them might allegedly cause a disproportionately severe shock.²⁵ In order to protect believers – as well as religions – many states have laws prohibiting the disparaging of beliefs. Such laws fall into two main categories: *i)* the laws against 'religious insult', i.e. insult based on belonging to a particular religion and insult to religious feelings; and *ii)* the laws against blasphemy, which is insulting or showing contempt or lack of reverence for something sacred (including gods).²⁶

Since freedom of expression is a fundamental value for democratic societies, one may wonder whether these laws are warranted. The EU has adopted a very clear, and negative, position in this respect. During the first decade of the 2000s, several Muslim-majority countries promoted, under the umbrella of the Organisation of Islamic Cooperation (OIC), a campaign meant to convince United Nations members to stipulate an international instrument against what they termed as 'defamation of religion'.²⁷ Their argument was that following the theories on the clash of civilisations and the attacks of September 11, 2001, there were strong reasons to increase religious dialogue and tolerance, and agreed that the defamation of religions measure was a necessary step forward.²⁸ The EU and its members opposed this campaign, essentially because they considered that acknowledging and practicing religious pluralism should include the right of all people to criticize the beliefs of others, to discuss and challenge them.²⁹ The opposition of the EU, as well as of the US and several other states and non-governmental organisations, eventually led the OIC to set aside its initiative in 2012.³⁰

The EU Council recently confirmed the EU's position through the adoption – by unanimity – of the Guidelines on the Promotion and Protection of Freedom of Religion or Belief³¹ and the Guidelines on Freedom of Expression Online and Offline.³² These Guidelines are non-binding but contain a useful indication as to the interpretation of human rights that is favoured by the Union,³³ since they explain 'international human rights standards' and give 'political lines to officials of EU institutions and EU member states, to be used in contacts with third countries and with international and civil society organisations'.³⁴ According to the Guidelines, freedom of religion does *not* include the right to have a belief 'that is free from criticism or ridicule': human rights law protects only

²⁵ *Alivizatos*, 'Art and Religious Beliefs: The Limits of Liberalism', in Venice Commission, *Blasphemy, Insult and Hatred: Finding Answers in a Democratic Society* (Council of Europe, 2008), pp. 73-76, on p. 73.

²⁶ Venice Commission, *Report on the Relationship between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, Adopted by the Venice Commission at its 76th Plenary Session, 17-18 October 2008, paras 68-69.

²⁷ See *Rehman and Berry*, 'Is 'Defamation of Religions' Passé? The United Nations, Organisation of Islamic Cooperation, and Islamic State Practices: Lessons from Pakistan', *George Washington International Law Review*, 44, 2012, p. 431.

²⁸ *Haynes*, *Faith-based Organisations at the United Nations* (EUI, 2013), on p. 21.

²⁹ Statement on behalf of the European union delivered by Mr *Philippe Delacroix*, Coordinator for the French presidency of the European Union in New York, 22 October 2008, <http://www.franceonu.org/france-at-the-united-nations/press-room/statements-at-open-meetings/general-assembly/archives-1034/july-december-2008-french-850/third-committee/article/22-october-2008-item-64-b-human>. Accessed 6 March 2014.

³⁰ *Heneghan*, 'West's Free Speech Stand Bars Blasphemy Ban: OIC', *Reuters*, 15 October 2012, <http://www.reuters.com/article/2012/10/15/us-islam-blasphemy-idUSBRE89E18U20121015>. Accessed 6 March 2014.

³¹ Council, *EU Guidelines on the promotion and protection of freedom of religion or belief*, 24 June 2013, available on the website of the European External Action Service, http://eeas.europa.eu/human_rights/guidelines/index_en.htm. Accessed 14 March 2014.

³² Council, 12 May 2014, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf. Accessed 12 July 2014.

³³ On the use of soft law as an interpretation aid in EU law, see *Senden*, *Soft Law in European Community Law*, Hart, 2004, particularly on pp. 239-240, 366-374. See also, by analogy, *Case C-403/05, Parliament v Commission*, ECR 2007 I-9045, paragraph 57.

³⁴ Guidelines on freedom of religion, cit. supra, paragraph 8.

‘individuals, not religion or belief *per se*’.³⁵ Therefore, the EU opposes the criminalisation of both blasphemy and religious insult. It ‘forcefully’ advocates, in particular, against the use of the death penalty, physical punishment, or deprivation of liberty as penalties for blasphemy and religious insult.³⁶

Notwithstanding the straightforward position of the Union in respect of blasphemy laws, EU members limit freedom of expression to protect religious sensitivity. Blasphemy is an offence in six EU countries (Austria, Denmark, Finland, Greece, Ireland, Italy), and in some cases, it is a crime. An even larger number of Union members (Cyprus, Croatia, the Czech Republic, Denmark, Finland, Germany, Greece, Lithuania, Malta, Poland, Portugal, Slovakia and Spain) punish religious insult.³⁷ It is true that the application of these laws has become increasingly rare,³⁸ but in some cases they are still enforced. In Malta, for instance, there were about 100 convictions for religious insult solely in the period of January to September 2012.³⁹ A conviction for these crimes may lead to the deprivation of liberty for a period up to six months.⁴⁰ Poland also enforces laws on religious insult, which may lead to serious consequences, including deprivation of liberty for two years.⁴¹ Greece is in a similar situation, since it punishes any public and malicious blasphemy against God with a maximum of two years in prison. During the last few years, several individuals have been criminally punished in Greece for their ‘offensive’ works.⁴²

It is important to note that the laws on religious insult and blasphemy are compatible with European human rights law. According to the ECtHR, if a religion is criticised or insulted, believers may ‘legitimately feel themselves to be the object of unwarranted and offensive attacks’.⁴³ European states can therefore limit freedom of expression to protect the feelings of believers. States enjoy a broad margin of appreciation in this ambit, since it is not possible to discern throughout Europe a uniform conception of the significance of religion in society and it is also not possible ‘to arrive at a comprehensive definition of what constitutes a permissible interference with the exercise of the right to freedom of expression where such expression is directed against the religious feelings of others’.⁴⁴ Since there is as yet not sufficient common ground in the legal and social orders of the member states to conclude that blasphemy laws are incompatible with the Convention,⁴⁵ European states can criminalise religious insult and blasphemy.

In summary, the EU affirms that third states cannot restrict freedom of expression for the purpose of protecting religious sensitivities, while its members can, and actually do, limit freedom of speech to protect the sensitivity of believers. It may be argued that the European contradictions on blasphemy laws call into question the legitimacy of the Union as an exporter of norms. As noted

³⁵ Ibid., paragraphs 32(a) and (b).

³⁶ Ibid., paragraphs 32(a) and (b). Admittedly, the Guidelines refer only to the decriminalisation of ‘blasphemy’, but such reference should be read extensively, since – according to the Guidelines – any expression that does not constitute speech is a legitimate expression. Similar arguments are put forward, in brief, in the Guidelines on freedom of expression, cit. supra, at p. 17.

³⁷ Venice Commission, op. cit. See further Gatti, ‘Blasphemy in European Law’, in: Díez Bosch and Sánchez Torrents (eds), *On Blasphemy*, Blanquerna, 2015, pp. 49-64.

³⁸ *Wingrove v. the United Kingdom*, no. 41719/90, 25 November 1996, Reports 1996-V, para 57.

³⁹ US Department of State, Country Reports on Human Rights Practices for 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport>. Accessed 6 March 2014.

⁴⁰ See Articles 163 and 342 of the Maltese Penal Code, available at <http://www.justiceservices.gov.mt/LOM.aspx>. Accessed 6 March 2014.

⁴¹ For instance, the heavy metal musician Adam ‘Nergal’ Darski may face up to two years in prison for having ripped a Bible and called the Roman Church ‘the most murderous cult on the planet’ during a concert, see Rettman, ‘EU to Poland: artists should be free to “shock”’, *EUObserver*, 1 December 2012.

⁴² A man who created a Facebook page poking fun at a revered monk was recently arrested and sentenced to 10 months in prison after being found guilty of blasphemy, see Tagaris, ‘Man Sentenced to Jail in Greece for Mocking Monk’, *Reuters*, 17 January 2014.

⁴³ *I.A. v Turkey*, no. 42571/98, 13 December 2005, paragraph 29.

⁴⁴ *Wingrove v. the United Kingdom*, cit. supra, paragraph 58. *Otto-Preminger-Institut v. Austria*, 20 September 1994, Series A no. 295-A, paragraph 50.

⁴⁵ *Wingrove v. United Kingdom*, cit. supra, paragraph 57.

by Reporters Without Borders, ‘It is not very coherent to ask another country to carry out a thorough review of its blasphemy laws while continuing to accept the existence of a law in Ireland that criminalises blasphemy.’⁴⁶ The European contradictions may also threaten the EU’s credibility: ‘When internal policies contradict external guidelines, who’s going to take the latter seriously?’⁴⁷

Finally, European contradictions may jeopardise the EU’s effectiveness on the international scene. In 2009, Pakistan submitted a proposal to the UN Ad hoc Committee on the Elaboration of Complementary Standards, according to which state parties should have prohibited by law ‘the uttering of matters that are grossly abusive or insulting in relation to matters held sacred by any religion thereby causing outrage among a substantial number of the adherents to that religion’.⁴⁸ The EU was quite embarrassed by this proposal, since it reproduced almost to the letter part of the ‘Defamation Act 2009’, which the Irish Parliament had approved only a few months earlier.⁴⁹ In other words, a third state took advantage of European contradictions to unmask the EU’s ‘hypocrisy’,⁵⁰ to legitimise its own position and to further its agenda.⁵¹

5. Conclusion

The European Union sees itself as a ‘global force for human rights’, but there is the perception that the EU’s international statements are not always matched by internal policies. This paper sought to provide a partial explanation of the gap between the EU’s self perception and its external image, by focussing on human rights promotion and protection.

The analysis shows that EU member states adopt human rights standards that are different from those the Union claims to promote abroad. Although the EU preaches that third states should protect the rights of minorities, some member states do not recognise the existence of those rights. The Union similarly claims that states affected by disasters should seek external assistance whenever they cannot cope with emergencies, while EU members are not bound by any obligation in this sense. Finally, while the Union considers that freedom of expression implies a right to criticise religion, several Union members prohibit ‘blasphemy’ and ‘religious insult’.

Given the limited knowledge of the EU in third countries, the inconsistency between EU and member states’ policies may easily be perceived as a contradiction of the Union as such. This perception hardly promotes the EU’s credibility as a changer of norms in the international system. On the contrary, it is likely to convey the image of a hypocritical subject. Thus, the inconsistency between the EU’s foreign policy and individual member states’ internal actions may help to explain why external observers often do not perceive the Union as a ‘distinctive’ international player.

The perception of the Union as an inconsistent promoter of human rights may have serious repercussions on the EU’s effectiveness at the global level. Other countries can stigmatise the EU’s contradictions, as Pakistan did in 2009 during the debate on the defamation of religion. Not only

⁴⁶ Reporters without Borders, *Blasphemy Laws - European Parliament Asked to be Consistent about Blasphemy*, 21 May 2010, <https://en.rsfb.org/european-union-blasphemy-laws-european-parliament-21-05-2010,37545.html>. Accessed 6 March 2014.

⁴⁷ *Pellot*, ‘What the European Union’s new freedom of expression guidelines say about religion’, Religion News Service, 15 May 2014, <http://brianpellot.religionnews.com/2014/05/15/european-union-free-speech-human-rights-internet-blasphemy-greece-religious-freedom/#sthash.pEUo8TxZ.dpuf>. Accessed 6 July 2014.

⁴⁸ See Human Rights Council, Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its second session, 21 January 2010, A/HRC/13/58, paragraph 38.

⁴⁹ Defamation Act 2009 (Act. No. 31/2009), available at <http://www.irishstatutebook.ie/2009/en/act/pub/0031>.

⁵⁰ Cf. *Heiner Bielefeldt*, Special Rapporteur on freedom of religion or belief, UN Human Rights Council, quoted in Submission from Atheist Ireland to Constitutional Convention on Removing the Offence of Blasphemy, 23 July 2013, available at <https://www.constitution.ie/SubmissionDetails.aspx?sid=3500a009-d7f3-e211-a5a0-005056a32ee4>. Accessed 5 March 2014.

⁵¹ Cf. National Security Society, ‘Irish Blasphemy Law Being Used as a Lever by Islamic Countries’, 8 January 2010, <http://www.secularism.org.uk/irish-blasphemy-law-being-used-a.html>. Accessed 6 March 2010. See also *Jacob*, ‘Defending Blasphemy: Exploring Religious Expression under Ireland’s Blasphemy Law’, *Case Western Reserve Journal of International Law*, 44, pp. 803-845, on p. 804

does this reinforce the EU's image as a 'hypocritical' player but may also weaken the European stance as a whole. Europe can hardly define what passes for 'normal' in world politics when its statements and practice convey different messages as to what is 'normal'. Inconsistency may thus decrease third countries' tendencies to follow the Union.⁵² Future research may elucidate other contradictions between EU and member states' policy on human rights and it may provide further insight into the practical consequences of EU's inconsistencies for its effectiveness on the global stage.

In theory, the European inconsistency can be solved by bringing EU external policy in line with states' internal practice. Such course of action, however, may nullify the EU's efforts as a norm-setter: if the EU had followed its members during the debate on the defamation of religion it would have had to side with Pakistan or, at least, it would have had to remain silent. It may be advisable, therefore, to explore a second solution - that is, bringing the member states' policies in line with the EU's external policy. After all, the EU's position is determined by the *member states'* representatives within the Council. It is only natural that, by defining what is 'normal' in world politics, European states should also define what is 'normal' in Europe.

⁵² Cf. *Elgstrom*, 'The EU in International Trade Negotiations', *Journal of Common Market Studies*, 45, 2007, pp. 949–67, on p. 952.