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# *Human Rights in European Foreign Policy: Success or Failure for Post- modern Diplomacy?*

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## **Abstract**

*The foreign policy principles proclaimed by the Member States of the European Community in European Political Cooperation were founded upon the ideas which underpinned European integration: the abandonment of Westphalian norms and respect for human rights, democracy and the rule of law. From the Copenhagen Declaration in 1970 to the Treaty on European Union in 1992, the Member States developed certain means to promote these values, such as the submission of joint démarches and the adoption of common positions in international organizations. But the political constraints of the Cold War in general prevented the Member States from implementing vigorously the values which they endorsed. The end of the Cold War, the references to human rights and democracy in the TEU and the establishment of a Common Foreign and Security Policy with improved instruments for foreign policy cooperation raised hopes that human rights might come to play a more prominent role in European foreign policy. However, economic competition and conflicting national interests continue to restrict Europe's common foreign policy on human rights issues to declarations of concern rather than action.*

When the Member States of the European Community decided in September 1970 to coordinate their foreign policies through European Political Cooperation (EPC), they faced the problem that the social and political conditions shaping foreign policy in each Member State were extremely diverse. In the absence of a clearly homogenous European identity which could form the basis for a common foreign policy, the Member States sought to identify certain common values, drawn from the process of European integration, which could serve as the basis for foreign policy coordination. The 1973 Copenhagen Declaration on the European Identity, in which the Member States first sought to define their position and responsibilities in foreign affairs, noted that the Member States were 'determined to defend the principles of representative

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democracy, of the rule of law, of social justice and of respect for human rights'.<sup>1</sup> In the following years, EPC issued innumerable reports and declarations in which the Member States reiterated the principles which guided European foreign policy: adherence to the principles of the United Nations Charter and respect for international law; a commitment to democracy and human rights; the use of diplomacy rather than coercion in international relations; the need for international cooperation to promote economic and social progress; and the need for indigenous peoples to determine their own fate.<sup>2</sup>

The Member States thus placed the principles which underpinned their communal relations at the heart of their relations with the rest of the world. The modern state system, based on sovereign equality and non-interference in domestic affairs, has often been seen as a guarantor of order in international relations as it enables coexistence between states with different values, while foreign policy which seeks to promote human rights has been stigmatized as dangerously idealistic and naive.<sup>3</sup> The Treaty of Rome, however, had transformed the nature of statehood in Western Europe. The founding Member States of the European Community had agreed to establish a post-modern state system, whereby they ceded part of their sovereign powers to international institutions and replaced the traditional distinction between domestic and foreign affairs with a system of mutual interference in each other's internal affairs in the belief that their future security and prosperity could best be ensured by transparency, openness and interdependence.<sup>4</sup> This system was underpinned by respect for human rights, ensured not only through the developing jurisprudence of the European Court of Justice but also through adherence to the European Convention on Human Rights, democracy, which was a prerequisite for membership of the Community, and the rule of law, ensured through the independence and legal supremacy of the European Court of Justice.

Until the end of the Cold War, however, the European Community remained a post-modern island in a predominantly modern world. The developing countries have often been suspicious of the concept of human rights precisely because of their European nature. For the developing countries, sovereignty represented a powerful instrument for shaping their national identities and the principal normative and ideological defence against foreign domination. They were generally hostile to any actions, including the promotion of human rights, which could be seen as interference in their domestic affairs. Moreover, countries which had achieved self-determination only after many years of colonial subjugation saw considerable irony in their former

<sup>1</sup> Bulletin of the European Communities 12/1973, at para. 2501.

<sup>2</sup> The most detailed examination of EPC documentation has shown that human rights, democracy and self-determination were mentioned in more than half of all EPC statements issued between 1970 and 1989. S Stavridis, *Foreign Policy and Democratic Principles: The Case of European Political Co-operation*, at 144. Ph.D. thesis, London School of Economics, 1991.

<sup>3</sup> H. Bull, *The Anarchical Society* (1977); H Morgenthau, *Human Rights and Foreign Policy* (1978); Kissinger, 'Continuity and Change in American Foreign Policy', in A. A. Said (ed.), *Human Rights and World Order* (1978) 154.

<sup>4</sup> This term is drawn from R. Cooper, *The Post-Modern State and the World Order* (1996).

imperial masters seeking to base foreign policy on human rights.<sup>5</sup> The Member States' decision to place human rights at the centre of the emerging European foreign policy guaranteed that they would be drawn into conflict with the developing states if they attempted to match their words with actions.

Despite the rhetoric of a common attachment to human rights in foreign policy, the weight that different Member States placed on human rights in their bilateral foreign policies has varied significantly. A state's commitment to pursuing human rights issues in its foreign policy depends both on its size and on its domestic political values. The frequency and intensity of the conflict between self-interest and promoting human rights is often proportional to a state's power. As small states have fewer and less complicated foreign policy objectives than large states, their human rights initiatives are less likely to clash with their political, strategic or economic interests abroad. On the other hand, large states have complex worldwide interests which will often conflict with an assertive human rights policy.<sup>6</sup> Moreover, the so-called 'like-minded states', Denmark, the Netherlands and Sweden,<sup>7</sup> share a social democratic tradition, a strong attachment to human rights in their own societies and a commitment to a comprehensive welfare state. These political traditions are reflected in foreign policy; the 'like-minded states' provide far more generous overseas development aid than the other Member States<sup>8</sup> and have generally spoken out vigorously on human rights issues abroad.<sup>9</sup> For the 'like-minded states', EPC represented an opportunity to vastly increase their leverage on human rights issues, a goal not always shared by other Member States with different domestic political traditions.<sup>10</sup> Historical ties, moreover, led certain Member States to nurse particular preoccupations not shared by the other Member States. Portugal, for example, has been far more concerned to censure Indonesian conduct in East Timor than the other Member States, while Greece has tried to focus attention on human rights abuses in Turkey.

Identifying human rights as a central component of both EPC and the Common Foreign and Security Policy made manifest the paradox that a common European foreign policy has to be formulated and applied in abstraction from the social and

<sup>5</sup> E.g., in June 1994, Anwar Ibrahim, the Malaysian Deputy Prime Minister, complained: 'To allow ourselves to be lectured and hectorated on freedom and human rights after one hundred years of struggle to regain our liberty and human dignity, by those who participated in or benefited from our subjugation, is willingly to suffer impudence.' *Far Eastern Economic Review* The Pacific Century, 2 June 1994, at 20.

<sup>6</sup> See J. Egeland, *Impotent Superpower — Potent Small State: Potentials and Limitations of Human Rights Objectives in the Foreign Policies of the United States and Norway* (1988).

<sup>7</sup> Norway is also included in this group.

<sup>8</sup> In 1975–1976, Denmark gave 0.53% of its GNP as overseas development assistance, the Netherlands 0.77% and Sweden 0.78%, compared to France 0.42%, Germany 0.38%, Italy 0.11% and the United Kingdom 0.39%. In 1995–1996, Denmark gave 1%, the Netherlands 0.81% and Sweden 0.80%, compared to France 0.52%, Germany 0.32%, Italy 0.18% and the United Kingdom 0.28%. Organisation for Economic Co-operation and Development, *1997 Report of the DAC*, Table 9, at A16.

<sup>9</sup> See D. Gillies, *Between Principle and Practice: Human Rights in North-South Relations* (1996), at 201–222.

<sup>10</sup> Pijpers, 'The Netherlands: How to Keep the Spirit of Fouchet in the Bottle', in C. Hill (ed.), *National Foreign Policies and European Political Co-operation* (1983) 166, at 177.

political conditions prevailing in each Member State.<sup>11</sup> Although the dynamic of European integration led the Member States to identify human rights as a central principle of European foreign policy, differences in national interests and attitudes have led each Member State to form its own view on the correct approach to human rights issues abroad. In consequence, despite the rhetoric of a common European commitment to human rights, the Member States' collective human rights diplomacy has remained extremely limited.

## 1 European Political Cooperation

### *A Diplomatic Activity*

Although since the Copenhagen Declaration the Twelve had declared repeatedly that concern for human rights was central to European foreign policy, it was not until 1986 that EPC produced a Declaration on Human Rights. Although the Declaration<sup>12</sup> was hailed by the 1987 Belgian Presidency as 'the first comprehensive public statement by the Twelve on the fundamental elements of human rights',<sup>13</sup> it was notable chiefly for its extreme vagueness. While it noted that 'respect for human rights is one of the cornerstones of European co-operation' and that the Twelve sought 'universal observance of human rights', the Declaration was silent as to what steps the Twelve intended to take to promote human rights.

The Declaration was, however, supplemented by the first of a series of annual memoranda to the European Parliament on EPC's human rights activity. The first Memorandum<sup>14</sup> sought to demonstrate that EPC had developed a mechanism to ensure that human rights issues were taken into account during the formulation of policy and that EPC was prepared to respond to abuses by coordinating the submission of joint *démarches*. According to the Memorandum, the Member States' embassies had been monitoring human rights abroad for several years by preparing either joint annual or ad hoc reports on human rights for EPC.<sup>15</sup> The Memorandum noted that human rights issues featured regularly on the agendas of the regional working groups within EPC, either as part of a general discussion of the political situation in a country or because a serious deterioration in the human rights situation warranted discussion in its own right.<sup>16</sup> Moreover, in 1987 EPC established a working group dedicated to human rights issues, which was charged with developing EPC's human rights policy and ensuring that human rights received attention at all levels of political

<sup>11</sup> Koskenniemi, 'International Law Aspects of the Common Foreign and Security Policy', in M. Koskenniemi (ed.), *International Law Aspects of the European Union* (1998) 27, at 43.

<sup>12</sup> Bulletin 7/8/1986, para. 2.4.4.

<sup>13</sup> Memorandum on action taken in the field of Human Rights, para. 2. 25 May 1987. 3/1 *EPC Documentation Bulletin* (1987) 187.

<sup>14</sup> Memorandum on EPC and Human Rights 7 May 1986. 2/1 *EPC Documentation Bulletin* (1986) 137.

<sup>15</sup> *Ibid.*, at para. 12.

<sup>16</sup> *Ibid.*, at para. 7.

cooperation.<sup>17</sup> Discussion within the Working Group enabled Member States to exchange information, which was especially useful to those states without diplomatic representation in the country in question, to harmonize their bilateral policies, to prepare common declarations and, in some cases, to recommend a *démarche*.

EPC coordinated three types of joint protest at human rights abuses: public statements, public *démarches* and confidential *démarches*. Public statements were used to condemn violations of, or more rarely to praise improvements in, the human rights situation in a particular country. The number of public statements increased sharply between 1988 and 1992. In 1988 EPC issued 15 declarations,<sup>18</sup> 25 in 1989,<sup>19</sup> 60 in 1990,<sup>20</sup> 110 in 1991<sup>21</sup> and over 60 in 1992.<sup>22</sup>

A *démarche* rather than a public statement was used either when the situation in a particular country had grown especially grave or when the Member States wished to plead in favour of persons facing arbitrary detention, sequestration, torture, expulsion or the death penalty. *Démarches* were submitted by the Ambassador of the Presidency, the Troika of heads of mission or by the embassies of all the Member States collectively. Joint *démarches* were an especially successful feature of EPC's human rights activity, as their collective nature both encouraged the Member States to effect them and imbued them with greater force; Philippe de Schoutheete has noted that:

*Il est probable que le fait de pouvoir intervenir collectivement a permis des démarches que les Neuf auraient hésité à effectuer isolément. D'autre part, il est évident que l'efficacité éventuelle d'une démarche de se genre dépend du poids moral de celui qui l'effectue, et, de ce point de vue, l'impact d'une démarche collective de neuf pays est sensiblement plus élevé que celui de démarches isolées.*<sup>23</sup>

As with public statements, the number of *démarches* rose gradually. There were 50 in 1988,<sup>24</sup> 70 in 1989,<sup>25</sup> about 100 in 1990,<sup>26</sup> 75 in 1991,<sup>27</sup> over 100 in 1992<sup>28</sup> and over 70 in 1993.<sup>29</sup> While a few *démarches* were made public, most remained confidential. The European Parliament has repeatedly called for greater openness

<sup>17</sup> Rapport annuel sur les actions des Douze dans le domaine des droits de l'homme, introduction. 8 May 1989. 5/1 *EPC Documentation Bulletin* (1989) 141.

<sup>18</sup> *Ibid.*, at para. 1.

<sup>19</sup> Memorandum on the activities of the Twelve in the field of human rights, para. 10. 15 May 1990. 6 *EPC Documentation Bulletin* (1990) 190.

<sup>20</sup> Annual Memorandum on the activities of the Twelve in the field of human rights, para. 12. 15 May 1991. 7 *EPC Documentation Bulletin* (1991) 132.

<sup>21</sup> Annual Memorandum to the European Parliament on the activities of the European Community and its Member States in the field of human rights, para. 17. 8 May 1992. 8 *EPC Documentation Bulletin* (1992) 166.

<sup>22</sup> Annual Memorandum to the European Parliament on the activities of the Community and its Member States in the field of human rights, para. 15. 11 June 1993. 9 *EPC Documentation Bulletin* (1993) 237.

<sup>23</sup> P. de Schoutheete, *La coopération politique européenne* (1986), at 141.

<sup>24</sup> Memorandum, *supra* note 17, at para. 1.

<sup>25</sup> Memorandum, *supra* note 19, at para. 10.

<sup>26</sup> Memorandum, *supra* note 20, at para. 12.

<sup>27</sup> Memorandum, *supra* note 21, at para. 17.

<sup>28</sup> European Commission, *XXVIth General Report on the Activities of the European Communities*, at para. 1080.

<sup>29</sup> European Commission, *XXVIIth General Report on the Activities of the European Communities*, at para. 990.

when submitting *démarches*, as, in its view, it is only public condemnation and concerted international criticism which will bring the necessary degree of pressure to bear on oppressive governments. Moreover, while *démarches* remained secret, it was impossible for Parliament to judge how vigorously EPC had pursued particular issues. EPC responded that public statements were employed to heighten public awareness of particular situations or when EPC believed that publicity would bring useful pressure to bear on a government, while confidential *démarches* were used whenever publicity might endanger the victims of violations or provoke a hostile reaction from the government concerned.<sup>30</sup>

EPC's claims are hard to assess as, by definition, the successes and failures of quiet diplomacy are unknown and unknowable. The well-known case of the Jackson–Vanik Amendment illustrates that legislative insistence on the replacement of quiet diplomacy with overt pressure can lead to a significant setback for human rights.<sup>31</sup> However, at the heart of Parliament's criticism of quiet diplomacy lay distrust of the Member States' commitment to human rights, which would have been dispelled had it been clear from the Member States' activity in other areas of foreign policy that they were determined to pursue human rights diplomacy with vigour.

## B *International Organizations*

From the start of the EPC process, achieving a common position at the forthcoming Conference on Security and Cooperation in Europe (CSCE) was seen by the Member States as essential, for a united front would not only help to promote the emerging sense of European identity in foreign affairs but would also increase the Member States' influence in the negotiations.<sup>32</sup> With the United States showing little interest in the negotiations, the Nine emerged as the most coherent and influential actor; their intensive preparation and their tabling of a series of proposals had largely determined the Conference's agenda by the time it opened in July 1973.<sup>33</sup> However, the deliberate

<sup>30</sup> Memorandum, *supra* note 19, at para. 4.

<sup>31</sup> Between 1968 and 1973, discreet pressure from the Nixon Administration had led to a huge increase in the number of Jews granted emigrant visas from the Soviet Union, from 400 in 1968 to 35,000 in 1973. In 1973, however, Congress rejected as insufficient Soviet assurances that 55,000 visas would be granted each year to Jews and adopted the Jackson–Vanik Amendment to the Trade Act which prevented the grant of Most Favoured Nation status to any country which restricted emigration; the USSR reacted by virtually eliminating Jewish emigration. See H. Kissinger, *Diplomacy* (1994), at 752–757; C. Nolan, *Principled Diplomacy* (1993), 130–137.

<sup>32</sup> S. Nuttall, *European Political Co-operation* (1992), at 56–58.

<sup>33</sup> For a full analysis of EPC's role at the CSCE, see von Groll, 'The Nine at the Conference on Security and Co-operation in Europe', in D. Allen, R. Rummel and W. Wessels (eds), *EPC: Towards a Foreign Policy for Western Europe* (1988) 60; Clarke, 'Britain and EPC in the CSCE', in K. Dyson (ed.), *European Détente* (1986) 237.

vagueness of the Helsinki Final Act ensured, as the Presidency later acknowledged,<sup>34</sup> that the real test of the Nine's commitment to human rights would be the implementation of the human rights provisions. At the 1977 Belgrade conference, the Nine presented a number of proposals, such as the recognition of a right for individuals to monitor the performance of their governments, designed to strengthen implementation of the human rights aspects of the Final Act, but the intransigence of the Eastern bloc ensured that all of these proposals were rejected. At the 1980 Madrid meeting, EPC demanded an end to human rights violations in Eastern Europe 'too numerous and serious to pass unobserved' and drew particular attention to the imposition of martial law in Poland, which the Member States complained put the entire future of the CSCE at risk.<sup>35</sup>

Despite EPC's hope that the 1985 Ottawa conference on human rights would lead to 'concrete developments in respect for and promotion of human rights and fundamental freedoms',<sup>36</sup> Eastern bloc obstruction again prevented any meeting of minds and no concluding document could be agreed. At the 1986 Vienna CSCE meeting, the Member States campaigned for the creation of a standing committee to monitor the application of the human rights provisions of the Helsinki Final Act and the establishment of a mechanism for the examination of individual complaints;<sup>37</sup> this initiative led to the implementation of the Human Dimension Mechanism. As EPC noted, 'It can be said with confidence that one of the major causes contributing to the success of the Vienna Meeting was the determination of the Twelve to advance and explain their own political values concerning the rights of individual citizens'.<sup>38</sup> The Twelve subsequently made active use of the Human Dimension Mechanism to intervene in Bulgaria, Czechoslovakia, East Germany, Romania and the Soviet Union during 1989.<sup>39</sup> When faced with refusal to operate the Human Dimension Mechanism, the Twelve were able to exert economic pressure through the Community. In March 1989, the Presidency submitted a *démarche* expressing concern at the treatment of Romanian citizens who had protested at the systematic destruction of

<sup>34</sup> 'It was clear from the beginning that success in attempting to give firm substance to that act of rapprochement between our countries and peoples would depend less on the content of the Final Act than on how it was implemented by each of the thirty-five signatory states both in respect of their own citizens and in their relations with each other.' Speech by Gaston Thorn on behalf of the Nine at the opening of the Madrid conference. Bulletin 11/1980, at para. 1.1.4.

<sup>35</sup> However, EPC's position was undermined by the Greek government's refusal to accept that the Soviet Union was responsible for the Polish situation and its insistence on entering reservations to the Presidency's statements on Poland. *Agence Europe*, no. 3305, 8/9 February 1982, at 3.

<sup>36</sup> Bulletin 4/1985, at para. 2.4.1.

<sup>37</sup> Bulletin 5/1987, at para. 2.2.46; Memorandum, *supra* note 13, at para. 5.

<sup>38</sup> Memorandum, *supra* note 13, at para. 3.

<sup>39</sup> Memorandum, *supra* note 19, at para. 16. Individual Member States continued to make interventions concerning the violations of the rights of certain individuals (such as the intervention by the United Kingdom in 1989 in respect of the Soviet mathematician George Samoilovich who had been refused an exit visa), while collective interventions were reserved for large scale, systematic violations. Coomans and Lijnzaad, 'Initiating the CSCE Supervisory Procedure', in A. Bloed and P. van Dijk (eds), *The Human Dimension of the Helsinki Process* (1991) 109, at 121.

villages; when Romania rejected the *démarche* on the ground that it constituted an interference in internal affairs, the Council announced the suspension of negotiations between the Community and Romania for a trade and economic cooperation agreement.<sup>40</sup>

Although the Member States had little difficulty in achieving consensus on human rights issues within the CSCE, they experienced far greater problems at the United Nations, where they were forced to adopt positions almost daily on a much broader range of issues. In an effort to establish the Member States as a credible bloc, a United Nations Working Group was formed to coordinate national positions. The 1986 Dutch Presidency noted that the Presidency's speech to the Plenary Session of the General Assembly on behalf of the Member States had addressed human rights issues, while in the Third Committee, the principal General Assembly forum for human rights questions, the Member States were issuing an average of three joint declarations and explanations of vote each session.<sup>41</sup> In 1986, the Presidency delivered a statement to the Third Committee setting out the overall approach of the Twelve to human rights, and in plenary spoke for the Twelve on the occasion of the 20th anniversary of the adoption of the UN Covenants on human rights.<sup>42</sup> Until 1989, coordination of national positions in the UN Commission on Human Rights was poor as not all Member States were members of the Commission and there was already an established procedure of coordination within the Western European and Others Group (WEOG). In 1989, however, as a result of a recommendation from the Human Rights Working Group, the Spanish Presidency delivered a speech on behalf of the Twelve for the first time.<sup>43</sup>

During the early 1990s, cohesion improved still further. In 1991, for example, the Member States made nine common statements in the Third Committee, eight common explanations of vote and co-sponsored nine resolutions, four more than the year before.<sup>44</sup> At the 48th session of the Commission, the Member States co-sponsored 12 resolutions, compared to only six the year before. By 1992, cooperation between the Member States had become sufficiently routine for EPC to claim that at the United Nations the 'Member States were seen as the only group to adopt common positions throughout the session [which] had a great influence on the course of events'.<sup>45</sup>

However, although EPC was able to establish a procedure for consultation and coordination between the Member States, it was unable to overcome fundamental differences between the Member States on certain issues. In the Third Committee, the

<sup>40</sup> Bulletin 4/1989, at para. 2.2.16.

<sup>41</sup> Memorandum, *supra* note 14, at para. 22.

<sup>42</sup> Memorandum, *supra* note 13, at para. 6.

<sup>43</sup> The drafting was bedevilled by wrangling between the Member States; Portugal sought condemnation of Indonesian activity in East Timor and Greece argued for harsher wording on Cyprus but both were overruled. General Secretariat of the Council. 45th Session of the Commission on Human Rights — Statement made on 22 February 1989 by the Spanish Foreign Minister on behalf of the European Community and its Member States, DOC EN/CM/72600.TO.

<sup>44</sup> Memorandum, *supra* note 21, at para. 18.

<sup>45</sup> Memorandum, *supra* note 22, at para. 20.



Member States split their votes on seven resolutions in 1987,<sup>46</sup> on six resolutions in 1988,<sup>47</sup> on two resolutions in 1989,<sup>48</sup> on four resolutions in 1990,<sup>49</sup> on three resolutions in 1991,<sup>50</sup> on three resolutions in 1992<sup>51</sup> and on two resolutions in 1993.<sup>52</sup> In the Commission on Human Rights, the Member States split their votes on nine resolutions in 1987,<sup>53</sup> on nine resolutions in 1988,<sup>54</sup> on seven resolutions in 1989,<sup>55</sup> on eight resolutions in 1990,<sup>56</sup> on two in 1991,<sup>57</sup> on two in 1992<sup>58</sup> and on two in 1993.<sup>59</sup> The sharp reduction in split votes after 1990 was due not to increased willingness to cooperate among the Member States but to political developments in South Africa, which had always represented a particular bone of contention for the Twelve and usually accounted for the majority of split votes. With the release of Nelson Mandela in February 1990 and the new willingness of the *apartheid* regime to adopt reforms, not only did the Member States find it easier to agree on their position but South Africa gradually came to feature less frequently on the UN agenda.

<sup>46</sup> Resolutions 42/50 (social progress), 42/95 (self-determination), 42/96 (mercenaries), 42/99 (human rights and scientific developments), 42/134 (the family), 42/140 (migrant workers) and 42/145 (improvement of social life). 19 votes were taken and 100 resolutions adopted.

<sup>47</sup> Resolutions 43/92 (South Africa), 43/106 (self-determination), 43/107 (mercenaries), 43/126 (approaches within the UN to improve the enjoyment of human rights), 43/146 (migrant workers) and 43/156 (improvement of social life). 13 votes were taken and 68 resolutions adopted.

<sup>48</sup> Resolutions 44/79 (self-determination) and 44/81 (mercenaries). 10 votes were taken and 116 resolutions adopted.

<sup>49</sup> Resolutions 45/84 (South Africa), 45/87 (world social situation), 45/130 (self-determination) and 45/132 (mercenaries). 10 votes were taken and 96 resolutions adopted.

<sup>50</sup> Resolutions 46/87 (self-determination), 46/89 (mercenaries) and 46/95 (world social situation). 10 votes were taken and 70 resolutions adopted.

<sup>51</sup> Resolutions 47/82 (self-determination), 47/84 (mercenaries) and 47/138 (elections). 11 votes were taken and 70 resolutions adopted.

<sup>52</sup> Resolutions 48/92 (mercenaries) and 48/94 (self-determination). 11 votes were taken and 74 resolutions adopted.

<sup>53</sup> Resolutions 1987/2 (Palestine), 1987/4 (Palestine), 1987/7 (Southern Africa), 1987/8 (Namibia), 1987/9 (Southern Africa), 1987/10 (South Africa), 1987/14 (South Africa), 1987/44 (youth) and 1987/49 (Palestinian refugee camps). 28 votes were taken and 61 resolutions adopted.

<sup>54</sup> Resolutions 1988/3 (Palestine), 1988/5 (Western Sahara), 1988/8 (Southern Africa), 1988/9 (South Africa), 1988/10 (Namibia), 1988/12 (South Africa), 1988/13 (South Africa), 1988/22 (realization of economic and social rights) and 1988/60 (human rights and technological development). 23 votes were taken and 78 resolutions adopted.

<sup>55</sup> Resolutions 1989/2 (Palestine), 1989/5 (South Africa), 1989/6 (South Africa), 1989/7 (Southern Africa), 1989/12 (realization of economic and social rights), 1989/15 (foreign debt), 1989/18 (Western Sahara) and 1989/22 (Southern Africa). 19 votes were taken and 75 resolutions adopted.

<sup>56</sup> Resolutions 1990/8 (Southern Africa), 1990/9 (Cambodia), 1990/10 (Panama), 1990/12 (Convention on the suppression and punishment of apartheid), 1990/22 (Southern Africa), 1990/23 (South Africa), 1990/24 (economic adjustment policies) and 1990/26 (South Africa). 19 votes were taken and 81 resolutions adopted.

<sup>57</sup> Resolutions 1991/15 (right to development) and 1991/13 (economic adjustment policies). 16 votes were taken and 82 resolutions adopted.

<sup>58</sup> Resolutions 1992/9 (economic adjustment policies) and 1992/13 (right to development). 16 votes were taken and 83 resolutions adopted.

<sup>59</sup> Resolutions 1993/12 (economic adjustment policies) and 1993/22 (right to development). 16 votes were taken and 98 resolutions adopted.

### C Sanctions

In a handful of cases between 1970 and 1993, the Twelve were able to agree that a violation of human rights was so serious that it called for a response going beyond the submission of a *démarche* or condemnation at the United Nations. However, the Twelve agreed on sanctions only in response to a handful of atypical cases; the vast majority of human rights abuses, no matter how egregious, attracted no more than criticism.

The imposition of martial law in Poland in December 1981 found the Member States at odds over the appropriate response. While the German government in particular was eager to preserve as far as possible the gains of *détente*, the Twelve came under pressure from the United States to support the sanctions it had implemented against the Soviet Union. EPC sought to coordinate a response which would adequately answer the Draconian suspension of civil liberties, while not irreparably damaging relations with the USSR. Following an EPC statement condemning the violation of ‘the most elementary human rights’ and noting that the Member States would examine their commercial relations with the Soviet Union in the light of events in Poland,<sup>60</sup> the Council announced that all Member States, except Greece, were in favour of a reduction in the Community’s imports from the Soviet Union. The Council subsequently adopted Regulation 596/82 which reduced import quotas for 60 types of Soviet products.<sup>61</sup> This was the first occasion on which a consensus reached in EPC on the need for sanctions had been implemented by the use of a Community instrument, and formed a precedent which was followed when implementing sanctions against South Africa, Serbia and Haiti.

South Africa represented an especially difficult problem for EPC, as opinion on the best course to adopt was sharply divided between the ‘moralists’, Denmark, Ireland and the Netherlands, and the ‘realists’, Germany, Portugal and the United Kingdom, which had substantial commercial links with South Africa.<sup>62</sup> Although these disagreements did not prevent the formation of, and adherence to, a consensus position,<sup>63</sup> the need to achieve compromise ensured that sanctions were minimal. The imposition of a state of emergency in 1985 led the Member States to agree to an arms embargo, the cessation of military cooperation, the recall of military attachés, the discouragement of cultural, scientific and sporting contacts and a ban on the export of oil and nuclear equipment.<sup>64</sup> Although the Commission had proposed that the economic measures should be implemented using Community instruments, opposition from Denmark, Germany and the United Kingdom ensured that the measures were put into effect at the national level. The reimposition of the state of emergency in

<sup>60</sup> Bulletin 12/1981, at para. 1.4.2.

<sup>61</sup> OJ L 72/1982. The application of this Regulation to Greece was suspended by Regulation 597/82, OJ L 72/1982.

<sup>62</sup> For a full analysis of EPC’s policy towards South Africa, see M. Holland, *The European Community and South Africa: European Political Co-operation under Strain* (1988).

<sup>63</sup> The single exception was that following the release of Nelson Mandela in February 1990, the United Kingdom unilaterally revoked its ban on new investment in South Africa.

<sup>64</sup> Bulletin 9/1985, at para. 2.5.1.

June 1986 led to a softening of British opposition to sanctions and in September 1986 EPC agreed to ban new investment in South Africa and the import of Krugerrands, iron and steel from South Africa.<sup>65</sup>

The next human rights violation to force itself onto the EPC agenda was the 1989 Tiananmen Square massacre. The Madrid European Council announced sanctions even more minimal than those imposed against South Africa: the Member States would raise the issue of human rights in China in international forums; the Member States would cease military cooperation and impose an arms embargo; bilateral ministerial contacts would be halted; cultural, scientific and technical cooperation programmes would be suspended; the Member States would prolong the visas of Chinese students who did not want to return to China; and the Member States would recommend postponement of new World Bank credits.<sup>66</sup> As all these measures fell within the competence of the Member States, there was no need for any Community instrument. Even these symbolic sanctions did not last long; in October 1990, EPC announced that the Member States had decided that relations with China would be 'progressively normalised'.<sup>67</sup>

Until 1990, the Member States had applied sanctions only in the face of human rights abuses which were impossible to ignore. Sanctions were used when the violations occurred in a European state in which the Member States had a keen interest (Poland), where the violating state was an international pariah (South Africa), and where the violations had attracted immense public attention and the Member States would have brought universal opprobrium on themselves if they had done nothing (China).<sup>68</sup> The global political changes flowing from the end of the Cold War raised hopes that the developed countries might begin to promote human rights more assertively in their foreign relations and in the early 1990s EPC did show signs of increased willingness to adopt sanctions in response to human rights violations. The refusal of the State Law and Order Council (SLORC) in Burma to give effect to the results of the May 1990 general election and the house arrest of Aung San Suu Kyi led the Member States to agree on the imposition of an arms embargo.<sup>69</sup> EPC reacted to the suspension in December 1990 of the Zairian National Conference by President Mobutu by announcing that the Community and Member States had decided to suspend technical and economic assistance to Zaire; following the appointment of a Prime Minister by Presidential decree in March 1993, EPC announced the introduction of an arms embargo and restrictions on the grant of visas to Zairian nationals.<sup>70</sup> After the cancellation of the Nigerian presidential elections of 12 June 1993, EPC announced that the Member States had decided to suspend military cooperation with

<sup>65</sup> Bulletin 9/1986, at para. 2.4.2; OJ L 305/1986.

<sup>66</sup> Bulletin 6/1989, at para. 1.1.24.

<sup>67</sup> European Commission, *General Report on the activities of the European Communities in 1990*, at para. 745.

<sup>68</sup> EPC's reaction to the war in Yugoslavia raised issues going well beyond human rights policy and is beyond the scope of this paper.

<sup>69</sup> Bulletin 1/2/1991, at para. 1.4.3.

<sup>70</sup> Bulletin 4/1993, at para. 1.4.5.

Nigeria and to restrict the grant of visas to members of the armed forces.<sup>71</sup> These statements were notable for suggesting that the Member States were willing to react to interruptions to the democratic process as well as to human rights violations. Nevertheless, although the Member States made use of a new sanction, the denial of visas, the sanctions remained very limited; there was no attempt to restrict trade or investment.

## 2 The Treaty on European Union

The triumph of liberal democracy at the end of the Cold War appeared to set the stage for a new international order in which human rights would play a central role. The transformation of the Eastern bloc states from modern states insistent on their sovereignty and the importance of peaceful coexistence to post-modern states eager to accept international supervision of human rights and democracy suggested that the post-modern approach to statehood was spreading beyond western Europe. Moreover, as the European Commission noted in its Communication on human rights policy for the 1990s, the collapse of the Soviet Union ‘reduced the importance of the alliance factor which had long determined relations between industrialised and developing countries and made reactions to a given situation a function of geo-political considerations’.<sup>72</sup> The collapse of the centrally-planned economies seemed to set the seal on the growing international consensus that free markets, underpinned by human rights and democracy, were essential to economic development. Finally, popular pressure in the developing world for an end to authoritarian government was matched by growing reluctance among European citizens to carry on supporting dictatorial or corrupt foreign regimes. It was thus unsurprising that the Treaty on European Union (TEU), which represented the Member States’ response to the international situation arising at the end of the Cold War, should place human rights at the centre of the new Common Foreign and Security Policy (CFSP), which replaced EPC. Article J.1(2) of the TEU provided that one of the objectives of the CFSP should be ‘to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms’.

The TEU replaced the Member States’ obligation under Article 30(2)(d) Single European Act (SEA) to avoid actions impairing their effectiveness as a cohesive force in international relations with a more onerous obligation under Article J.1(4) to ‘support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity’. Two new instruments for foreign policy cooperation were established; the Common Position and Joint Action. While Article 30(2)(c) SEA had merely provided that common positions should ‘constitute a point of reference for the policies’ of the Member States, under Article J.2 TEU the Member States shall ensure their national policies conform to Common Positions and shall coordinate their action in international organizations and conferences in order to uphold the Common Position. Article J.3 TEU provides that the Council of Ministers may adopt,

<sup>71</sup> Bulletin 7/8/1993, at para. 1.4.6.

<sup>72</sup> European Commission, *Human Rights, Democracy and Development Policy*, 25 March 1991 SEC (91)61.

on the basis of general guidelines from the European Council,<sup>73</sup> Joint Actions which shall commit the Member States in the positions they adopt and in the conduct of their activity. Joint Actions were intended to enable the Member States to display greater cohesion and political authority in their response to major foreign policy issues. The effectiveness of these innovations, however, was undermined as each Member State retained a veto concerning the adoption of Joint Actions and Common Positions.

### ***A Diplomatic Activity***

The introduction of the CFSP made little difference to the number of statements and *démarches* concerning human rights made by the Member States. The Annual Memoranda to Parliament record that the Union published more than 80 declarations and made 50 *démarches* concerning human rights in 1994,<sup>74</sup> 69 declarations and statements and 70 *démarches* in 1995,<sup>75</sup> and almost 40 declarations and nearly 80 *démarches* in 1996.<sup>76</sup>

The European Parliament has continued to complain of the secrecy surrounding many *démarches*<sup>77</sup> and to express concern about the vagueness of the Memoranda.<sup>78</sup> The Memorandum for 1996 is characteristically uninformative. Some countries with serious human rights problems, such as Algeria, Ethiopia, Saudi Arabia and Syria are omitted from the Memorandum altogether. The Memorandum refers to the adoption of political initiatives concerning Afghanistan, Burma, China and Indonesia but reveals nothing about the effectiveness of these initiatives. Many other countries with grave human rights problems, such as Nigeria, Sierra Leone and Sudan, are mentioned only briefly.<sup>79</sup>

A recent review of the European Union's human rights policy suggested that an Annual Report on human rights, based on reports from the Commission's overseas delegations, should be drawn up to ensure that human rights formed a 'constant and stable feature of the Union's foreign policy posture'.<sup>80</sup> In its Declaration on the 50th anniversary of the Universal Declaration of Human Rights in December 1998, the European Council agreed to consider the possible publication of an annual human

<sup>73</sup> The Lisbon European Council decided that among the objectives of joint actions were to be the strengthening of democratic principles and institutions and respect for human and minority rights and the promotion of good government. Bulletin 6/1992, at para. I.31.

<sup>74</sup> CFSP Unit, General Secretariat of the Council, Memorandum to the European Parliament on the activities of the European Union in the field of human rights, DOC 5644/2/94, at para. 19.

<sup>75</sup> CFSP Unit, General Secretariat of the Council, Annual memorandum to the European Parliament on the activities of the European Union in the field of Human Rights 1995, DOC 5468/96, at 5.

<sup>76</sup> CFSP Unit, General Secretariat of the Council, Annual Memorandum on the activities of the European Union in the field of human rights 1996, DOC 11446/97, at 5.

<sup>77</sup> European Parliament (Committee on Foreign Affairs), Report on the role of the European Union in the world: Implementation of the Common Foreign and Security Policy in 1997 (Rapporteur: T. Spencer), DOC A4-169/98, 30 April 1998.

<sup>78</sup> OJ C 126/1995; OJ C 20/1996.

<sup>79</sup> For further analysis, see van der Klaauw, 'European Union: Council Memorandum of EU Activities in the Field of Human Rights during 1996', 16 (1998) *NQHR* 230.

<sup>80</sup> Alston and Weiler, 'An "Ever Closer Union" in Need of a Human Rights Policy', 9 *EJIL* (1998) 658, at 707.

rights report and the following month the Council invited COREPER to work out the general structure of the report.<sup>81</sup> Although much will depend on the form the report takes, it seems to represent a significant commitment by the Member States, as it is likely both to generate annual friction with the countries criticized and to draw public attention in Europe to human rights abuses, so stimulating greater public pressure for action.

## **B International Organizations**

Following the end of the Cold War, the Eastern European states in the OSCE have in general been eager to follow the EU Member States' lead on issues of human rights and democracy, not least because they must embrace the Union's norms in these areas in order to accede to the Union. The Member States have continued to participate actively in the OSCE by, for example, presenting joint papers on all agenda items at review meetings and adopting a Joint Action to provide election monitors for operations in Bosnia carried out under the aegis of OSCE.<sup>82</sup> Perhaps the most notable success for the Member States, however, has been to set in motion the negotiations which led to the adoption of the 1995 Pact on Stability under the auspices of the OSCE, whereby the Central and Eastern European states undertook to settle by negotiation and agreement questions concerning, *inter alia*, trans-border cooperation, the rights of ethnic minorities and environmental problems and accepted OSCE monitoring of their obligations.<sup>83</sup>

Although some diplomats at the United Nations have noted improved coordination between the Member States in recent years, split votes have continued to occur.<sup>84</sup> In the Third Committee, the Member States split their votes on four resolutions in 1994,<sup>85</sup> on three resolutions in 1995,<sup>86</sup> on one resolution in 1996<sup>87</sup> and on two in 1997.<sup>88</sup> In the Commission on Human Rights, the Member States split their votes on four resolutions in 1994,<sup>89</sup> on two resolutions in 1995<sup>90</sup> and achieved unanimity in

<sup>81</sup> CFSP Statement 14128/98 10 December 1998; EIS European Report No 2368, 6 March 1999, Section V, at 5.

<sup>82</sup> Decision 94/406/CFSP, OJ L 168/1996.

<sup>83</sup> Decision 93/728/CFSP, OJ L 339/1993. For a full analysis of the Stability Pact, see Ueta, 'The Stability Pact: From the Balladur Initiative to the EU Joint Action', in M. Holland (ed.), *Common Foreign and Security Policy: The Record and Reforms* (1997) 92.

<sup>84</sup> Crook, 'The 51st Session of the United Nations Commission on Human Rights', 90 *AJIL* (1996) 126, at 137.

<sup>85</sup> Resolutions 49/150 (mercenaries), 49/151 (self-determination), 49/182 (freedom of travel and family reunification) and 49/182 (Kosovo). 12 votes were taken and 70 resolutions adopted.

<sup>86</sup> Resolutions 50/138 (mercenaries), 50/190 (Kosovo) and 50/193 (Bosnia, Croatia and Serbia). 12 votes were taken and 68 resolutions adopted.

<sup>87</sup> Resolution 51/83 (mercenaries). 12 votes were taken and 62 resolutions adopted.

<sup>88</sup> Resolutions 52/112 (mercenaries) and 52/136 (right to development). 16 votes were taken and 68 resolutions adopted.

<sup>89</sup> Resolutions 1994/11 (economic adjustment policies), 1994/21 (right to development), 1994/48 (Asia and the Pacific) and 1994/75 (Bosnia and Herzegovina). 19 votes were taken and 112 resolutions adopted.

<sup>90</sup> Resolutions 1995/62 (freedom of travel and family reunification) and 1995/78 (Optional Protocol to the Convention on the Rights of the Child). 19 votes were taken and 93 resolutions adopted.

1996<sup>91</sup> for the first time before splitting their votes on three resolutions in both 1997<sup>92</sup> and 1998.<sup>93</sup> While the Member States adhered to Common Positions in which they had agreed on UN voting, they clearly did not interpret Article J.1(4) as restricting their voting behaviour on issues where the Council had not adopted a Common Position.<sup>94</sup> For example, even though the Council had issued a series of statements defining its position on human rights violations in Yugoslavia, the Member States split their votes three times at the United Nations. In the Third Committee, Greece, which has persistently been more sympathetic to the Serbian position than the other Member States, abstained on two resolutions strongly condemnatory of Serbian atrocities, while the other 14 voted in favour.<sup>95</sup>

It is policy towards China which has proved, in the words of Chris Patten, 'the most embarrassing indication of the gulf between European rhetoric and reality'.<sup>96</sup> In response to the Tiananmen Square massacre, in 1990 the Member States first co-sponsored a resolution before the Human Rights Commission condemning China's human rights record and subsequently co-sponsored similar resolutions each year. These resolutions represented a notable success for EPC and the CFSP, as alone each Member State might have hesitated to sponsor a critical resolution for fear of commercial retaliation from one of Europe's most important export markets. In 1997, however, France, Germany, Italy and Spain withdrew their backing for the resolution;<sup>97</sup> the alteration in French policy, which was seen as crucial, was attributed to French reluctance to upset China shortly before President Chirac paid a state visit to Beijing during which he was to sign an export contract for Airbus.<sup>98</sup> As the Dutch Presidency noted, the French decision put 'the essence of the human rights policy of the European Union ... at stake'.<sup>99</sup> Denmark, with the support of nine Member States, subsequently sponsored the resolution; China retaliated by cancelling a visit by Zhu Rongji, the Vice-Premier, to Denmark and some of its co-sponsors.<sup>100</sup> In February 1998 the Member States put an end to discussion by agreeing not to sponsor Resolutions on China before future sessions of the Human Rights Commission.<sup>101</sup>

In a Communication on relations with China in early 1998, the European Commission argued that resumption of dialogue with China would be more

<sup>91</sup> 12 votes were taken and 114 resolutions adopted.

<sup>92</sup> Resolutions 1997/7 (unilateral coercive measures), 1997/9 (dumping of toxic waste) and 1997/12 (death penalty). 15 votes were taken and 78 resolutions adopted.

<sup>93</sup> Resolutions 1998/6 (mercenaries), 1998/11 (unilateral coercive measures) and 1998/75 (abduction of children from northern Uganda). 21 votes were taken and 84 resolutions adopted.

<sup>94</sup> E.g., the Member States have adhered to the Common Position on Nigeria requiring them to pursue the adoption of condemnatory resolutions before the General Assembly and the Human Rights Commission. Decision 95/544/CFSP OJ L 309/1995.

<sup>95</sup> Resolutions 50/190 (Situation of Human Rights in Kosovo) and 50/193 (Situation of Human Rights in Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia).

<sup>96</sup> C. Patten, *East and West* (1998), at 303.

<sup>97</sup> *Ibid.*, at 304.

<sup>98</sup> 'EU Divided on China Policy', *The Guardian*, 5 April 1997, at 15.

<sup>99</sup> The Commission noted that the EU's human rights policy was 'in complete disarray'. *Ibid.*

<sup>100</sup> 'China Punishes EU Small Fry', *The Guardian*, 19 April 1997, at 16.

<sup>101</sup> Bulletin 1/2/1998, at para. 1.4.126.

productive than condemnation which China would inevitably reject; an ‘EU-China human rights dialogue without any preconditions gives the EU a real opportunity to pursue intense discussions which, coupled with specific cooperation projects, remains at present the most appropriate means of contributing to human rights in China’.<sup>102</sup> Agreeing with the Commission’s analysis, the Member States announced that the Union would support China’s transition to an open society based on the rule of law and human rights by funding a number of projects, including a programme of human rights training and exchange visits for Chinese lawyers, judges, civil servants and village governors, a legal aid programme to improve access to justice by the population and a joint seminar in Beijing to study human rights and the administration of justice.<sup>103</sup> In early 1998, the British Presidency drew attention to China’s agreement to sign the UN Covenant on Civil and Political Rights, the release of several well-known dissidents and cooperation for the first time with UN human rights mechanisms as evidence that the new policy has produced change for the better.<sup>104</sup> The European Parliament remained sceptical, calling on the Member States to co-sponsor a Resolution on China before future sessions of the Human Rights Commission and calling on the Presidency to submit regular reports on the Union’s activities concerning human rights in China, an invitation which the Council has shown no sign of accepting.<sup>105</sup> Moreover, in hearings before the European Parliament, the prominent dissident Wei Jingsheng criticized the new policy as a ‘big step backwards’ which had disheartened human rights activists in China; in his view, only strong external pressure would produce change.<sup>106</sup> Further doubt was thrown on the effectiveness of the Union’s policy of dialogue in autumn 1998, when the earlier loosening of restrictions on political debate ended abruptly, with the detention of numerous political activists, the banning of several political organizations and the closure of certain newspapers.<sup>107</sup> Other than submitting a *démarche* in December 1998 protesting at the imposition of long prison sentences on three leading dissidents, the Member States have not responded publicly to the new wave of authoritarian measures.<sup>108</sup> China now represents an especially delicate test of the Union’s commitment to human rights; while it may become impossible to hold a human rights dialogue with a government which is firmly suppressing political dissent, the Member States are likely to be most reluctant to resume annual confrontation with China over human rights.

<sup>102</sup> European Commission, *Building a Comprehensive Partnership with China*, 25 March 1998 COM (1998) 181.

<sup>103</sup> Bulletin 6/1998, at para. 1.4.132.

<sup>104</sup> Foreign and Commonwealth Office, *Annual Report on Human Rights 1998*, at 40.

<sup>105</sup> OJ C 339/1997.

<sup>106</sup> EIS European Report No. 2327, 22 June 1998, at V.1.

<sup>107</sup> US Department of State, *Country Reports on Human Rights Practices for 1998 — China*, 26 February 1999.

<sup>108</sup> EIS European Report, No. 2371, 6 January 1999, Section V, at 6.



### C Joint Actions and Common Positions

The central weakness of the CFSP is that Joint Actions and Common Positions can only be adopted unanimously. Joint Actions, which were intended to allow the Union to deal with important foreign policy issues, have in practice been adopted only on uncontroversial issues where the interests of all Member States can be accommodated and when the country which is the target of the Joint Action is happy with the proposed action.<sup>109</sup> In the field of human rights, Joint Actions have been used to allow the Union to provide support and monitoring for elections in Russia,<sup>110</sup> South Africa,<sup>111</sup> Palestine<sup>112</sup> and Nigeria.<sup>113</sup> These Joint Actions represent a success for the CFSP, as before the TEU the Member States had made no attempt to become involved collectively in election monitoring but had instead contributed to monitoring through the United Nations.<sup>114</sup> Moreover, having deeper pockets than the United Nations, the Union has been able to make a more substantial contribution; in South Africa, for example, the Union observers were deployed for between one to three months, compared to one week for the United Nations' observers, and largely supplanted the United Nations as the main organization responsible for ensuring transparency and confidence in the elections.<sup>115</sup> The Union's political authority also enabled it to play an active role, going well beyond monitoring, in ensuring the success of the elections; for example, pressure from the Union was instrumental in persuading Chief Buthelezi, who had threatened to boycott the elections, to participate.<sup>116</sup>

The CFSP has had much less success in producing a vigorous Union response to violations of human rights. Following the execution in November 1995 of Ken Saro-Wiwa and eight other members of the Ogoni tribe in Nigeria, the Council adopted two Common Positions imposing a number of minor sanctions: the restriction of the grant of visas to members of the Nigerian government and security forces, the imposition of an arms embargo, the expulsion of all military personnel at Nigerian embassies and the withdrawal of the equivalent personnel from Nigeria and the denial of visas to Nigerian sports teams.<sup>117</sup> Although the European Parliament called unanimously for the Council to introduce an oil embargo,<sup>118</sup> the Council, motivated by fears of an increase in oil prices, concerns about European banks' exposure to Nigerian debt and worried about the effect on European companies such as Shell and

<sup>109</sup> Winn, 'The Proof of the Pudding is in the Eating: The EU Joint Action as an Effective Foreign Policy Instrument?', 13 *International Relations* (1997) 19.

<sup>110</sup> Decision 93/604/CFSP OJ L 286/1993.

<sup>111</sup> Decision 93/678/CFSP OJ L 316/1993.

<sup>112</sup> Decision 94/276/CFSP OJ L; Decision 95/205/CFSP OJ L 130/95.

<sup>113</sup> Decision 98/735/CFSP OJ L 354/98.

<sup>114</sup> In other cases, such as in Cambodia and Togo during 1998, the Union has provided substantial electoral support and monitoring without adopting a Joint Action. European Commission, *General Report on the Activities of the European Union 1998*, at paras 34 and 904.

<sup>115</sup> Holland, 'The Joint Action on South Africa: A Successful Experiment?', in Holland, *supra* note 83, at 174.

<sup>116</sup> Statement of the Presidency to the European Parliament during the debate on Union human rights policy. 10 *European Foreign Policy Bulletin* (1994) 143.

<sup>117</sup> Decision 95/515/CFSP OJ L 298/1995; Decision 95/544/CFSP OJ L 309/1995.

<sup>118</sup> OJ C 323/1995.

Agip with substantial investments in the Nigerian oil industry, refused to go beyond these limited sanctions.

During the early 1990s, Belgium and France, the two Member States with the closest ties with Rwanda, enjoyed significant potential leverage in view of the very substantial and increasing levels of economic assistance which they provided. However, although France had declared that its economic aid to Africa was conditional upon the observation of human rights, in practice French policy towards Rwanda was driven not by concern for human rights but by a determination to fight Anglo-Saxon encroachment, in the shape of Tutsi rebels supported by Uganda, on its traditional sphere of influence in Africa.<sup>119</sup> Neither Belgium nor France reduced development aid in response to increasingly severe human rights violations in Rwanda, so sending a clear message to the Habyarimana government that support would continue regardless of human rights abuses.<sup>120</sup> France, moreover, continued to supply and service much of the *materiel* used by the Rwandan army, even after the imposition of the United Nations arms embargo in May 1994.<sup>121</sup> France's determination to pursue its own agenda in the Great Lakes region prevented the Union from reacting promptly to the genocide in 1994 and limited the Union's response to declarations and belated gestures of concern. The Council was unable to adopt a Common Position until after the main period of genocide had finished in October 1994, which belatedly called for the provision of humanitarian aid, the deployment of human rights observers and UN forces and the establishment of an international war crimes tribunal.<sup>122</sup> Although the UN High Commissioner for Human Rights called for governments to provide \$2.1 million to allow the deployment of 147 human rights observers in Rwanda in August 1994, the Union did not dispatch human rights observers until March 1995.<sup>123</sup> Moreover, although the Union was in a position on the adoption of the Common Position to offer Rwanda a credit of almost \$200 million for urgent reconstruction, French hostility to the Bizimungu government led France to veto this until November.<sup>124</sup> The Union's failure to act more quickly and forcefully was especially tragic as, given Rwanda's dependence on economic aid, the Union's influence was huge; as Gerard Prunier has noted, the Habyarimana regime 'would not have gone off the deep end if they had been sure that total international isolation would result. Thus France was the unwitting catalyst of ultimate Rwandese descent into the bloodbath'.<sup>125</sup>

<sup>119</sup> G. Prunier, *The Rwanda Crisis: History of a Genocide 1959–1994* (1995), at 104–106; Huliaras, 'The "Anglo-Saxon" Conspiracy: French Perceptions of the Great Lakes Crisis', 36 *Journal of Modern African Studies* (1998) 593.

<sup>120</sup> Joint Evaluation of Emergency Assistance to Rwanda, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience — Historical Perspective*, vol. 1 (1996), at 39; *Idem*, *Early Warning and Conflict Management*, vol. 2 (1996), at 31–33.

<sup>121</sup> Human Rights Watch Arms Project, *Arming Rwanda: The Arms Trade and Human Rights Abuses in the Rwandan War* (1994); *Idem*, *Rwanda/Zaire — Rearming with Impunity* (1995).

<sup>122</sup> Common Position 94/697/CFSP OJ L 283/1994.

<sup>123</sup> Prunier, *supra* note 119, at 343; EIS European Report No. 2023, 10 March 1995.

<sup>124</sup> *Ibid.*, at 336.

<sup>125</sup> *Ibid.*, at 352.

As violence grew in Burundi, the President of the Burundi National Assembly, Leonce Ngendakumana, appealed at the ACP-EU Joint Assembly in February 1995 for the Union to send a human rights observer mission, military officers to train and discipline the army, to impose military sanctions against Burundi if the violence continued and to embargo arms sales, especially from Belgium.<sup>126</sup> The Common Position of March 1995 was far more restricted in scope; the Union undertook to support a national debate on restoring democracy, to provide human rights experts, and to support the training of magistrates and the resettlement of refugees.<sup>127</sup> EU ministerial troikas made a number of visits to the region in an effort to encourage the warring parties to come to terms and in March 1996 the Council appointed a special envoy to the Great Lakes region to assist in negotiations and to organize a conference on peace and security in the region.<sup>128</sup> These measures were, however, too late and too limited to have significant effect; as Glynne Evans has noted 'The European Union took a declaratory stand; it in turn condemned and encouraged, and sent ministerial troikas on visits ... the impact, internationally or on the ground, was negligible'.<sup>129</sup>

The Union's response to the massacres of refugees in Zaire in late 1996 was much the same as its response to the Rwandan genocide; the Council adopted an ineffectual Joint Action only after much of the killing was over. Although it was apparent from September 1996 that massacres were occurring among Rwandan refugees,<sup>130</sup> it was not until 22 November 1996 that the Council adopted a Joint Action pledging humanitarian aid for the refugees and support for a multinational force to implement Security Council Resolutions.<sup>131</sup> As implementation of this decision could have required the use of military force, the Council asked the Western European Union to examine how it could contribute to implementation;<sup>132</sup> the use of the WEU outside Europe to prevent attacks on refugees would have been a remarkable innovation. In the event, once the refugees had started to move home in large numbers, the political will to intervene evaporated; although it was clear that the refugees were being harried viciously during their flight, the Member States were content to let events unfold. The Council subsequently adopted two Joint Actions pledging support for democratic transition in Zaire through the establishment of a European electoral unit and a contribution to the United Nations Special Fund.<sup>133</sup> The most difficult human rights issue which faced the Union, however, was whether to resume aid to the government of Laurent Kabila while it continued to obstruct the work of the United Nations investigation into the refugee massacres; resuming economic aid might well encourage stability and economic activity, thereby moving the country towards the

<sup>126</sup> EIS European Report No. 2032, 11 April 1995.

<sup>127</sup> Decision 95/91/CFSP OJ L 72/1995; Decision 95/206/CFSP OJ L 130/1995.

<sup>128</sup> Decision 96/250/CFSP OJ L 87/1996.

<sup>129</sup> Evans, 'Responding to Crises in the African Great Lakes', *Adelphi Paper* 311 (1997), at 32.

<sup>130</sup> Human Rights Watch/Africa, *Democratic Republic of the Congo — What Kabila is Hiding: Civilian Killings and Impunity in Congo* (1997).

<sup>131</sup> Decision 96/669/CFSP, OJ L 312/1996.

<sup>132</sup> Decision 96/670/CFSP, OJ L 312/1996.

<sup>133</sup> OJ L 357/1997; OJ L 158/1998.

establishment of democracy and the rule of law, yet simultaneously implied indifference to the slaughter and a failure to break the culture of impunity central to human rights abuses. The Council was clearly unwilling publicly to tie its hands on this issue and the Joint Actions omit any reference to the United Nations investigation.

Although the end of the Cold War made the weak states of Africa far more vulnerable to external pressure, it did little to undermine the legitimacy of the East Asian states, whose continuing economic success seemed to demonstrate that authoritarian government could, when combined with certain cultural factors, produce dynamic growth.<sup>134</sup> During the 1993 Vienna World Conference on Human Rights and subsequently, these states reiterated their commitment to the principle of non-intervention and castigated European attempts to raise human rights issues not only as thinly disguised neo-imperialism but as an irrelevance given the evident success of ‘Asian values’ in reducing poverty and promoting development.<sup>135</sup> At the same time, the more global market arising after the end of the Cold War greatly stimulated international economic competition. Faced with economic recession, the Member States were extremely keen to increase exports to the Asian ‘tiger economies’,<sup>136</sup> a goal which was unlikely to be realized if relations were poisoned by wrangling over human rights. Relations with ASEAN have thus provided the sternest test of the Member States’ commitment to human rights as, despite the Member States’ eagerness to improve trade with the region, it is impossible to ignore the flagrant abuses in Burma and East Timor.

Portugal’s accession to the Community in 1986 first put East Timor on the EPC agenda, even though other Member States, especially Germany and the United Kingdom, were reluctant to draw attention to this issue; between 1975 and 1982 the Twelve, with the exception of Greece and Ireland, had abstained on all UN General Assembly votes concerning East Timor.<sup>137</sup> After 1986, East Timor began to feature in EPC declarations on human rights, but it was not until the 1991 Dili massacre that EPC condemned Indonesian behaviour in East Timor.<sup>138</sup> Moreover, British, Dutch and German pressure ensured that the texts were milder than Portugal had demanded;

<sup>134</sup> E.g., a 1993 World Bank Report attributed rapid economic growth in East Asia to a politically stable environment brought about by authoritarian but competent governments committed to a developmentalist strategy. *The East Asian Miracle — Economic Growth and Public Policy* (1993).

<sup>135</sup> For discussion of the role of ‘Asian values’ in East Asia’s international relations, see J. T. H. Tang, *Human Rights and International Relations in the Asia-Pacific Region* (1995); Kausikan, ‘Governance that Works’, 8 *Journal of Democracy* (1997) 24; Palmujoki, ‘EU-ASEAN Relations: Reconciling Two Different Agendas’ 19 *Contemporary Southeast Asia* (1997) 269.

<sup>136</sup> E.g., in 1993, Chancellor Helmut Kohl embarked on the first of a series of annual tours of Asian capitals intended to increase trade. A 1995 German Foreign Ministry Report noted that if Germany could attain the level of foreign investment in Asia which Japan had in Europe, 400,000 jobs would be created in Germany. Federal Foreign Office, *The Federal Government’s Concept on Asia* (1995). In 1994, President Chirac called for French exporters to try to increase France’s market share of exports to Asia from 2% to 6%. Quoted in Camroux and Lechervy, ‘“Close Encounter of a Third Kind?” The Inaugural Asia-Europe Meeting of March 1996’, 9 *Pacific Review* (1996) 442.

<sup>137</sup> de Vasconcelos, ‘Portugal: Pressing for an Open Europe’, in C. Hill, *The Actors in Europe’s Foreign Policy* (1996) 268.

<sup>138</sup> Bulletin 11/1991, at para. 1.4.10; Bulletin 12/1991, para. 1.4.4; Bulletin 1/2/1992, at para. 1.5.18.

while criticizing the armed forces, the statements largely accepted the findings of the Indonesian commission of inquiry.<sup>139</sup> In July 1992, the Council discussed negotiating a new cooperation agreement with ASEAN to replace the existing 1980 agreement<sup>140</sup> between the Community and ASEAN but Portugal vetoed the start of negotiations because of its concern over East Timor.<sup>141</sup> In an effort to persuade Portugal to withdraw its veto, in June 1996 the Council adopted a Common Position on East Timor, which expressed support for the talks taking place under the aegis of the UN Secretary-General and called upon the Indonesian government to adopt effective measures leading to a significant improvement in the human rights situation in East Timor.<sup>142</sup> Even such muted criticism drew a sharp reaction, with the Indonesian Foreign Minister denouncing the Common Position as 'tantamount to a declaration of war',<sup>143</sup> and led ASEAN to consider whether the Union should continue to participate in the ASEAN Regional Forum.<sup>144</sup>

Asian foreign ministers made clear before the first Asia-Europe summit meeting (ASEM) in March 1996 that 'sensitive, controversial and irrelevant issues' should be avoided and the Indonesian Foreign Minister sought to extract a guarantee that the issue of East Timor would not be raised.<sup>145</sup> Although human rights issues were discussed in bilateral meetings between heads of government at the summit, the Chairman's Statement noted blandly that while the parties affirmed their strong commitment to the Universal Declaration of Human Rights, political dialogue between the two regions would take place in conformity with the norm of non-intervention in the internal affairs of the partners.

Following the death in police custody of its honorary consul in Rangoon in June 1996, Denmark pressed for the symbolic sanctions already implemented against Burma by EPC to be strengthened. The Union's response was minimal; in October 1996, the Council adopted a Common Position which condemned continuing human rights abuses in Burma, confirmed the existing sanctions, introduced a ban on entry visas for senior members of the SLORC and the military and suspended high-level bilateral government contacts with Burma.<sup>146</sup> Despite this condemnation of the SLORC, several Member States continued vigorously to promote trade with Burma.<sup>147</sup> The Union's reaction to the admission of Burma to ASEAN in July 1997 was muted;

<sup>139</sup> Gillies, *supra* note 9, at 193.

<sup>140</sup> OJ L 144/1980.

<sup>141</sup> 'Spanner in the Works', *Far Eastern Economic Review*, 19 December 1996, at 26.

<sup>142</sup> Common Position 96/407/CFSP, OJ L 168/1996.

<sup>143</sup> 'Spring to Raise EU Concerns on Rights and East Timor', *Irish Times*, 22 July 1996, at 8.

<sup>144</sup> Reuters European Community Report, *Europe-Asia Courtship Strained over Human Rights*, 22 July 1996.

<sup>145</sup> Serradell, 'The Asia-Europe Meeting (ASEM): A Historical Turning point in Relations Between the Two Regions', 1 *European Foreign Affairs Review* (1996) 185, at 200.

<sup>146</sup> Common Position 96/635/CFSP OJ L 287/1996.

<sup>147</sup> Pilger, 'The Betrayal of Burma', 52 *The World Today* (1996) 277. The European Commission demonstrated its determination to protect European trading interests in Burma when in June 1997 it submitted a complaint to the World Trade Organization concerning a Massachusetts state law which barred the state government from entering into contracts with American or foreign companies doing business in Burma. WTO complaint number WT/DS88/1.

the Council made no criticism of the decision, although it did note that the human rights situation in Burma precluded Burma's accession to the EC-ASEAN Cooperation Agreement.<sup>148</sup> The Member States have subsequently encountered some difficulty in maintaining their dialogue with ASEAN while refusing to deal with Burma. A specialist ASEAN-EU cooperation conference in November 1997 was postponed because the Union refused to attend if Burma was allowed to participate.<sup>149</sup> The Union also refused to invite Burma to the second ASEM summit in April 1998, arguing that membership of ASEAN did not automatically entitle a state to participate in ASEM. Although this decision drew sharp criticism from Malaysia,<sup>150</sup> it did not make good its threat to boycott the meeting. The *quid pro quo* for accepting Burma's exclusion appears to have been the complete exclusion of human rights issues from the summit itself; the Chairman's closing statement made no reference whatever to civil and political rights.<sup>151</sup> The Union's desire to avoid conflict with ASEAN countries was further demonstrated by the British Presidency's vigorous lobbying at the 1998 UN Human Rights Commission against the adoption of a strong resolution on East Timor.<sup>152</sup>

In May 1998, the Council adopted a Common Position which provided that the Union would support the ongoing establishment of democracy in Africa by encouraging: respect for civil and political and social, economic and cultural human rights; respect for basic democratic principles, including the right to choose leaders in free elections, the separation of powers and freedom of expression, association and political organization; the rule of law, including a legislative and judicial system giving full effect to human rights and a fair, accessible and independent judicial system; and good governance, including the transparent and accountable management of a country's resources.<sup>153</sup> The Union would increase support for African countries where positive changes had occurred and consider 'appropriate responses' to negative changes. The Common Position thus repeated the stance set out in the human rights, democracy and development Resolution adopted by the Council in 1991,<sup>154</sup> which has since formed the basis for Community development policy.<sup>155</sup> The Common Position is more modest than the 1991 Resolution, which made reductions in military expenditure a condition of further Community aid<sup>156</sup> and which applied to all developing countries; it appears that the Common Position has been limited to Africa to avoid further irritating China and the ASEAN states. The Common Position

<sup>148</sup> Bulletin 6/1997, at paras 1.4.10, 1.4.112.

<sup>149</sup> 'Myanmar's Seat at the Back', *The Economist*, 15 November 1997, at 69.

<sup>150</sup> 'Cook Stoical at Malaysian Rebuke', *The Guardian*, 3 September 1997, at 7.

<sup>151</sup> Bulletin 4/1998, at para. 2.3.1.

<sup>152</sup> 'Moral Imperatives and Foreign Policies', *New Statesman*, 15 May 1998, at 12.

<sup>153</sup> OJ L 158/1998.

<sup>154</sup> Bulletin 11/1991, at para. 2.3.1.

<sup>155</sup> For an analysis of this resolution, see King, 'Human Rights in European Community Development Policy: Towards a European World Order?' 28 *Netherlands Yearbook of International Law* (1997) 51.

<sup>156</sup> In the June 1997 Common Position on conflict prevention and resolution in Africa, the Member States undertook to exercise responsibility concerning arms exports to Africa and to encourage African states to submit annual returns to the UN Register of Conventional Arms. Decision 97/356/CFSP, OJ L 153/1997.

not only substantially expands the brief reference to human rights and democracy in Article J.1(2) TEU, but shall also serve as a framework for the actions of the Member States. It is notable that seven years elapsed before the Member States accepted that the principles contained in the 1991 Resolution should govern CFSP policy and their bilateral relations with the African states as well as Community development policy. The reason for this delay may be found in alterations in French policy. At the 1990 La Baule Franco-African summit, President Mitterrand had declared that, like most other donors, France would link its bilateral aid to democratic reforms and human rights.<sup>157</sup> However, when it became apparent that democratic reform might weaken France's hold over its African *chasse gardée*, the initial enthusiasm for reform was quickly abandoned; as Bernard Debre, French Minister for Development Co-operation noted in 1994 'Il faut savoir que démocratisation égale toujours fragilisation.'<sup>158</sup> French policy towards Africa during the 1990s remained driven by determination to preserve France's close links with the francophone states, regardless of their attitudes to human rights and democracy.<sup>159</sup> France was naturally reluctant to agree to a Common Position requiring its foreign policy to conform to criteria which it so evidently did not meet. However, the failure of French policy in Rwanda and Zaire, the evident public support in Africa for reform which the United States has skilfully — if selectively — supported and the election of the Jospin government in May 1997 produced a change in policy; France now accepts that it can no longer stand alone against the Western consensus in favour of democratic reform in Africa.<sup>160</sup> As the British Presidency noted, the Common Position represented an agreement among the former colonial powers finally to put behind them rivalry in Africa and to agree instead to advance their common interests there.<sup>161</sup>

### 3 Conclusion

Although human rights are supposed to lie at the heart of the CFSP, in practice the Union's response to grave violations of human rights in Rwanda, Zaire, Nigeria, Burma and East Timor has been minimal and ineffectual. The Union's human rights

<sup>157</sup> 'France/Afrique', *Bulletin de l'Afrique Noire*, 28 June 1990, at 2.

<sup>158</sup> Interview by Francois Soudan, 'Bernard Debre: "Chirac, Balladur, l'Afrique et moi..."', *Jeune Afrique*, No. 1768, 24–30 November 1994, at 6.

<sup>159</sup> E.g. in November 1993, the United States State Department condemned the October elections in Cameroon as 'seriously flawed' and denounced the government for resorting 'to intimidation to consolidate its position'; the US subsequently suspended its aid to Cameroon. In contrast, France, the largest aid donor, sent a letter to President Paul Biya congratulating him on his victory. Noted in Huband, 'A Flawed Victory', 38 *Africa Report* (1993) 41. See generally, Cumming, 'French Development Assistance to Africa: Towards a New Agenda?', 94 *African Affairs* (1995) 383; Martin, 'Continuity and Change in Franco-African Relations', 33 *Journal of Modern African Studies* (1995) 1; Schraeder, 'From Berlin 1884 to 1989: Foreign Assistance and French, American and Japanese Competition in Francophone Africa', 33 *Journal of Modern African Studies* (1995) 539.

<sup>160</sup> Marchal, 'France and Africa: The Emergence of Essential Reforms?', 74 *International Affairs* (1998) 355.

<sup>161</sup> Verbatim Report of Proceedings in the European Parliament Debate on the CFSP for 1997, 27 May 1998, at 23.

diplomacy has in general remained limited to issuing condemnatory declarations. Declaratory diplomacy on human rights is not futile as the Union's repeated denunciations of violations have helped to make clear that human rights abuses are no longer acceptable to the international community. Violators of human rights may not face coercive enforcement but symbolic sanctions and repeated condemnation force them to pay a modest political cost and undermine their legitimacy.<sup>162</sup> However, the full potential of the CFSP on human rights issues is far from being realized.

Although post-modern states accept that the protection of human rights is in the long term fundamental to international order and stability, in the short term states are often reluctant to raise human rights issues for fear of disrupting good diplomatic relations. Collective action through the CFSP, however, has a 'shield' effect which can reduce the costs traditionally associated with human rights diplomacy.<sup>163</sup> As the European Union gains authority as a political actor on the world stage, third states are increasingly keen to maintain a friendly dialogue with the Union and anxious to avoid economic sanctions, which are a far more punitive weapon when imposed by the Community rather than by a single Member State. Moreover, any state contemplating retaliation in response to criticism of its human rights record is evidently far less likely to retaliate against the Union than against a single Member State.

Nevertheless, not all Member States have been persuaded that the costs of human rights diplomacy have been reduced to an acceptable level. French and German refusal to support condemnation of China at the United Nations and Denmark's determination to persist in the face of Chinese intimidation demonstrate that domestic factors produce radically different assessments of the importance of human rights issues which the CFSP remains unable to resolve. While unanimity is required to adopt Joint Actions and Common Positions, any Member State concerned that action may endanger its economic or political interests can block action and the Union's human rights policy will move at the pace of the most cautious Member State. Fearful that the national interests entrenched in the Council may stymie indefinitely any effective response to human rights issues, the European Parliament called for the Intergovernmental Conference to increase its powers over the CFSP by requiring the Council to act on a resolution adopted by Parliament by a two-thirds majority in the field of human rights and democracy.<sup>164</sup> Permitting Parliamentary control of the CFSP in any field, let alone the sensitive area of human rights, was anathema to most Member States and it is not surprising that this suggestion did not find its way into the Treaty of Amsterdam.

The Asian financial crisis has been accompanied by suggestions that 'Asian values' are largely to blame for the crash and that a new era of cooperation between Europe and Asia is opening as it becomes clear that Western concepts of human rights are fundamental to stable economic development. Attachment to the family, it is

<sup>162</sup> See generally Donnelly, 'Human Rights: A New Standard of Civilization', 74 *International Affairs* (1998) 1.

<sup>163</sup> Fouwels, 'The European Union's Common Foreign and Security Policy and Human Rights', 15 *NQHR* (1997) 291, at 310.

<sup>164</sup> OJ C 126/1995.



suggested, may conceal nepotism, an emphasis on consensus and the importance of personal relationships may enable cronyism and corruption to thrive, while respect for authority may become rigidity and an inability to innovate.<sup>165</sup> Robin Cook argued in his speech to the European Parliament on the operation of the CFSP in 1997 that the Asian economies which had best withstood the crisis were those with transparent and accountable systems of government and free speech. As it was now evident that only those states which embraced openness and individual liberty would be able to succeed in a global and modernizing international economy, the Union would no longer have to choose between promoting human rights and promoting trade: 'There is no longer a tension between those objectives of promoting our values and promoting our prosperity. They go hand in hand.'<sup>166</sup> Thus, just as the end of the Cold War converted the modern states of Eastern Europe into post-modern countries keen to take on board the EU Member States' views on human rights and democracy, the Asian financial crisis may have had a similar transformative effect on the Union's relations with ASEAN.

However, even if the confidence of some East Asian governments in a distinctively Asian model of society has been shaken, the real test of the European Union's commitment to human rights is not its willingness to promote human rights in states where they are accepted but in states where they are rejected. Recent events in Burma give little grounds for optimism. During July and August 1998, international attention was focused on Burma as a result of the detention by the military junta of over 100 Burmese opposition activists as well as the arrest of foreign human rights activists, the refusal to allow Aung San Suu Kyi to travel outside Rangoon and a report by an International Labour Organisation Commission of Inquiry which found that forced labour was flagrant and widespread throughout Burma.<sup>167</sup> The Union's response to the 'untold misery and suffering, oppression and exploitation of large sectors of the population' identified by the ILO Commission was to issue statements condemning the regime, to extend slightly the existing ban on the grant of visas to persons associated with the regime, to call on tourists not to visit Burma and to accept for the first time a Burmese delegation at the next meeting of the EC-ASEAN Joint Cooperation Committee.<sup>168</sup> The gulf between the European Union's rights rhetoric and reality evidently has not yet been bridged.

<sup>165</sup> 'Asian Values Revisited', *The Economist*, 25 July 1998, at 25; Emerson, 'Americanizing Asia?', 77 *Foreign Affairs* (1998) 47.

<sup>166</sup> Verbatim report of Proceedings in the European Parliament for 27 May, *supra* note 156.

<sup>167</sup> Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the ILO to examine the observation by Myanmar of the Forced Labour Convention, *Forced Labour in Myanmar (Burma)* Geneva, 2 July 1998.

<sup>168</sup> Decision 98/612/CFSP, OJ L 291/1998; Bulletin 10/1998, at paras 1.3.11–1.3.12. The meeting of the Joint Co-operation Committee has not, however, taken place because of a dispute over seating arrangements; the Union wants Burma to be identified differently from the other ASEAN members, while ASEAN insists that all members must be identified in the same way. EIS European Report, No. 2387, 3 March 1999, Section V, at 5.