
This is the **published version** of the bachelor thesis:

Ordóñez Arrais, Ainhoa; Pi Llorens, Montserrat, dir. The EU promotion of human rights in its external action : analyzing the case of Eritrea. 2021. (1404 Grau en Relacions Internacionals)

This version is available at <https://ddd.uab.cat/record/272685>

under the terms of the  license

UNIVERSITAT AUTÒNOMA DE BARCELONA
FACULTAT DE CIÈNCIES POLÍTiques I SOCIOLOGIA



TREBALL DE FI DE GRAU

The EU promotion of human rights in its external action

Analyzing the case of Eritrea

Author: Ainhoa Ordóñez Arrais

Tutor: Montserrat Pi i Llorens

Date: 20th of May of 2022
International Relations Degree

Index

Abbreviations

- I. Introduction
- II. EU role in the promotion of Human Rights
 - a. International and European legal frameworks
 - b. European Strategy
 - c. European Instruments
- III. Case study: Eritrea
- IV. Conclusions
- V. Bibliography
- VI. Annex II: EU Guidelines

Abbreviations

ACP	African, Caribbean and Pacific countries
CFSP	Common Foreign and Security Policy
COHOM	Working Party on Human Rights
CSDP	Common Security and Defense Policy
EEAS	European External Action Service
EHRC	Ethiopian Human Rights Commission
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHL	International Humanitarian Law
MPF	Multiannual Financial Framework
OHCHR	Office of the United Nations High Commissioner for Human Rights
TEU	Treaty of the European Union
TFEU	Treaty of Functioning of the European Union
UDHR	Universal Declaration of Human Rights

I. Introduction

The European Union is one of the major promoters of Human Rights in the international scenario. Still, the human rights situation has worsened globally, aggravated by the COVID-19 pandemic and the use of emergency powers to deal with it. Thus, the European Union must continue promoting Human Rights, giving special attention to doing so effectively. It has already approved and adopted its new plan of action: the EU Action Plan on Human Rights and Democracy for the 2020-2024 period. But, can the Union effectively promote human rights in third countries?

Moreover, this pandemic has also accentuated some nationalistic practices, mostly based on Westphalian principles like sovereignty and non-intervention in domestic affairs. So, in this ongoing context, how can the EU intervene in the promotion of Human Rights? Under which legal framework does it do so, and with what instruments? Does it have any mechanisms of compliance regarding third countries? The most commonly known instruments are restrictive measures, including sanctions on the countries and/or the actors violating these rights. However, the EU has a wider range of instruments. One of them is political dialogues on human rights with third countries. As seen in the new Action Plan 2020-2024, the European Union also works on dialogues with the civil society and their support; on election missions and their follow-up; on the cooperation in multilateral institutions like the UN; on reports on the situation of basic rights; and on the trials of human rights defenders, among others (EU, 2020a).

This paper aims to identify the capacity of the EU to promote Human Rights in third countries. In doing so, I will address the legal framework that enables the European Union to promote and act in defense of Human Rights, domestically and internationally. Then, I will focus on the different instruments available. To see if they are actually used and complementary, I will see the use of these instruments in Eritrea.

For this purpose, the methodology used will be mainly the one used in law, which dwells on looking at the law and the legal basis. Hence, I will be revising the international and the European legal framework to address the European action and see how it applies. Therefore, most of the sources used are from the European Union institutions, mainly the European Council and the European Exterior Action Service, and the United Nations system.

II. EU role in the promotion of Human Rights

a. Legal framework

The European Union is committed to protecting human rights not just by adopting European legislation on the topic, but also as a member of the international community. The European Member States are part of the United Nations system (UN) and the EU, despite not being a member due to its nature, has the status of a permanent observer (United Nations, n.d.a). As

states become parties to international treaties, they are bound to respect the obligations set out by International Human Rights Law and respect and protect human rights. Hence, the Union is tied to UN declarations concerning their protection, including UN Security Council binding resolutions and the UDHR of 1948, and the ICCPR and the ICESCR of 1976 (United Nations, n.d.b), among others. The latter has established a common standard for everyone in the protection of universal fundamental rights (United Nations, n.d.a). Furthermore, human rights have reached the status of a *jus cogens* rule of international law (Enya et al., 2021). Thus, the EU is responsible for assuring the protection of human rights through its declarations and legislation, together with the international declarations and principles it is tied to.

Through ratification of international human rights treaties, Governments undertake to set up domestic measures and legislation compatible with their treaty obligations and duties. Therefore, the domestic legal system provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are respected, implemented, and enforced at the local level. (United Nations, n.d.b)

We can also find the Union's commitment to human rights at a more regional level. The Council of Europe adopted the **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)** in November 1950 and is into force since 1953 (Boland & Hart, 2021). It strived to be a regionally binding agreement (Boland & Hart, 2021). Its preamble highlights its ten fundamental rights together with the creation of two bodies: the European Commission of Human Rights and the European Court of Human Rights; both in charge of enforcing the principles in the preamble (Boland & Hart, 2021).

European legal framework

The protection of human rights is not only gathered on the international treaties principles and customary law but also on domestic law and regional treaties. In this line, the EU has also adopted its own legislation on Human Rights. In its founding treaties we find **Article 2 of the Treaty of the European Union (TEU)**, gathering the principles and founding values that must guide the Union's actions, which include the respect for human rights, and **article 3**, establishing the Union's objectives, amongst where we find the protection of human rights and the eradication of poverty, *'as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'* (Lerch, 2021).

Additionally, The European Union has gone further than those provisions in its founding treaties and has drafted a European document on human rights of its own: the **Charter of Fundamental Rights of the European Union (the Charter)** (December 2000). Moreover, in **article 6 of the TEU**, since the Treaty of Lisbon (2009), the EU established that the Charter has the same legal value as the treaties, despite not being part of them (EU, 2012). Furthermore, the Charter

explicitly refers to the implementation of Union law (article 51) as applicable to European institutions and bodies, and the European Member States when applying the European law (Lerch, 2021).

However, these previous articles concern the respect of human rights in the internal dimension of the European Union. Nevertheless, the objective of this paper is to analyze their promotion in its external action. Hence, our interest is in **article 21 of the TEU**. Article 21 establishes the European principles in its external action in relation to the Union's principles of article 2. These include *'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter of 1945 and international law'* (Lerch, 2021). Hence, the protection and promotion of human rights and democracy is a priority of the European external action and one of the founding values of the European Union (article 21 of the TEU).

Additionally, **Article 205 of the TFEU** presents the general provisions of its external action and establishes that the principles mentioned in article 21 of the TEU must guide its international relations (Lerch, 2021). And **article 351**, *"preserves for EUMS those obligations incumbent upon them before acceding to the EU - where the -member States have transferred powers to the EU necessary for performing the obligations incurred under prior treaties, the CJEU has accepted that the EU may de facto succeed to their obligations"* (Lerch, 2021). Furthermore, Article 351 of the TFEU establishes that UN Charter obligations operate over European law as long as they are consistent with fundamental law (Lerch, 2021).

Hence, as appointed in **Article 21**, the protection and promotion of human rights is a priority of the European external action and the founding values of the Union. To achieve an efficient human rights policy, the EU is working through: political dialogues and economic diplomacy, human rights and democracy dialogues and strategies with third countries, human rights guidelines, and a human rights-based approach to development cooperation (European Commission, 2022).

b. European Strategy

Since the Copenhagen Declaration of 1973, the European Member States recognized their commitment to respect the principles of human rights, democracy, rule of law, and social justice. Since then, in the framework of the European Political Community, the Member States were issuing declarations reiterating those principles and their alignment with international law and the UN principles. Later in 1993, with the entrance into force of the Maastricht Treaty (1992), and the creation of the CFSP, the respect for human rights, democracy and the rule of law were also recognized as a central element of this external policy. From the beginning, the EU has been monitoring human rights situation. They used to publish *démarches*, both private and public ones, and statements to condemn violations (King, 1999).

More recently, the EU has been adopting different policies and strategic frameworks to deploy an external human rights policy in third countries. Amongst these, we find the EU Strategic Framework and Action Plan on Human Rights and Democracy, the EU Action Plan on Human Rights and Democracy (2015-2019), and the Human Rights and Democracy Action Plan (2020-2024).

1. EU Strategic Framework and Action Plan on Human Rights and Democracy

Within the principles guiding the European external action we find the respect for human rights, democracy, and the rule of law (Consilium, 2012). Not only are human rights an *ius cogens* norm, but the EU also links it to the existence of sustainable peace and development (Consilium, 2012).

As we have seen above, the European Union is committed to promoting human rights in its internal and external policies, respecting its fundamental principles (article 2, TEU) (Consilium, 2015). In its external action, it is doing so through the integration of human rights in its trade, investment, environmental, and development policies, and in its Common Security and Defense Policy (CSDP), among others. In that line, it planned to adopt a human rights-based approach in development cooperation with third countries (Consilium, 2015, p. 11). The EU Strategic Framework intends to provide flexibility to adapt and respond to new emerging challenges (Consilium, 2015, p. 16). It was built upon existing European guidelines and external financing instruments, like the EIDHR (Consilium, 2015). The guidelines offer us some strategies and objectives pursued by the Union, hinting at some of its priorities. Among these guidelines, we find Human Rights Dialogues with Third Countries (2009); compliance with IHL (2009); freedom of expression (2014) and religion (2013); against gender-based violence (2008) and torture (2019); or on Human Rights defenders (2008) (EEAS, 2021).

2. EU Action Plan on Human Rights and Democracy (2015-2019)

The objective of the Action Plan is to implement the European Strategic Framework (Consilium, 2012, p. 5). One of the instruments adopted to implement it was the European Instrument for Democracy and Human Rights (EIDHR), a financial instrument (Consilium, 2012, p. 5). Moreover, the 2015 Action Plan stressed that the High Representative was the one in charge of implementing this plan, along with the European External Action Service (EEAS), the Commission, the Council, and the Member States (Consilium, 2012, p. 5). Plus, it distributes the responsibility for the different actions among these institutions and the member states.

The EU aimed to do so by targeting five lines of action: (1) boosting ownership of local actors; (2) addressing human rights challenges; (3) ensuring a comprehensive human rights approach to conflicts and crises; (4) fostering better coherence and consistency between the European policies; and (5) a more effective EU human rights and democracy support policy (Consilium, 2015).

Despite these lines of action, the idea was for this European policy to adapt to the particular circumstances of its different partnering countries. Hence, it seeks an active engagement with these third countries by deepening dialogues on human rights. When it has to face a violation of human rights, the Union has available a wide range of instruments like sanctions or condemnation (Consilium, 2015).

In that same line, the European Neighbourhood Policies has committed to adopting a comprehensive agenda of locally-led political reforms ((a) boosting ownership of local actors), having democracy and human rights at the center of its agenda (Consilium, 2015).

3. Human Rights and Democracy Action Plan (2020-2024)

In the Human Rights and Democracy Action Plan, 2020-2024, we find the new European priorities and ambitions in its external actions for the following 5-years term (European Commission, 2022). The 2020-2024 Action Plan establishes five central and interlinked lines of action, expected to be implemented at different levels. These lines of action include (a) the protection of individuals; (b) working on the democracy, resilience, and inclusiveness of societies; (c) the promotion of human rights and democracy all over the world; (d) addressing the opportunities and challenges of new technologies; and (e) partnerships (European Commission, 2022). Additionally, it has committed to adopting gender-inclusive and women empowerment as a cross-cut priority (EU, 2020a).

Linking human rights and democracy strengthens the importance of addressing "the pushback against the universality and indivisibility of human rights, the closing of civic space and the backsliding on democracy" (EU, 2020a). Moreover, it emphasizes the new risks and opportunities of technology and environmental challenges and the impact of the COVID-19 pandemic. Furthermore, it links the 2020-2024 Action Plan to the compromise with implementing the 2030 Agenda and achieving the Sustainable Development Goals (2030) (EU, 2020a).

Additionally, the Action Plan highlights the importance of coordinated action between the European institutions and its member states for achieving these goals (Consilium, 2015). Hence, we can see the involvement of different European actors.

- The **European Council** defines the strategic interests and the guidelines guiding the CFSP. In this framework, the Foreign Affairs Council, chaired by the High Representative, deals with human rights issues in European foreign policy (Lerch, 2021). The High Representative (HR) has to ensure the implementation of these decisions, and he shall be assisted by the EEAS, the European Commission, the Council, and the Member States (Consilium, 2015). However, the COHOM group, formed by human rights experts and EEAS and Commission representatives, is in charge of the preparatory work (Lerch, 2021).

- The **Commission** negotiates international agreements and, in cooperation with the EEAS, manages development programs and financing instruments (Lerch, 2021).
- The **European Parliament's** consent is required in most international agreements to enter into force (Articles 207 and 218 of the TFEU). Furthermore, according to article 36 of the TEU, the High Representative must consult the Parliament over basic elements of the CFSP and inform about the evolution of such policies. Its resolutions can shape the European human rights policy by making proposals and raising awareness of abuses. This would be illustrated with the adoption of the new sanctions regime of 2020, also targeting individuals. Additionally, the Parliament has annual resolutions on the achievements and challenges of the Union's policy on the topic. The DROI Subcommittee deals with human rights, democracy, and the rule of law in third countries, assuring their coherence with the Union's external policies. Furthermore, article 14 of the TEU and Article 310(1) of the TFEU gives the Parliament budgetary powers, so it can influence the allocation of NDICI and other instruments' funds to promote human rights. It also deploys pre-, post-, and election observations, mediation, and dialogues (Lerch, 2021).

We should also note the role of EU delegations in developing and implementing human rights strategies and dialogues with third countries; and the role of the EU Special Representative for Human Rights in supervising the effectiveness of such policies (Lerch, 2021). Concerning the latter, the **EU Special Representative for Human Rights**, currently Eamon Gilmore, has also an essential role to play. He is in charge of giving visibility and assuring the effectiveness of the European policies on human rights, while closely collaborating with the EEAS (Strategic Communications, 2021).

c. European Instruments

Concerning the European instruments available for promoting Human Rights in its external action, the EU **Action Plan on Human Rights and Democracy (2020-2024)** gathers a list of mechanisms that can be classified into four categories:

1. **Political instruments:** dialogues with third countries and regional or international organizations, diplomacy, Council Conclusions, election missions, and their follow-up, or the Human rights and democracy country strategies. We could also include the 13 EU human rights guidelines, which are instruments and tools for EU Delegations and Member States Embassies to advance EU human rights policies (EU, 2020a).
2. **Juridical instruments:** human rights treaties, including international conventions to more regional ones, and the democratic clause.
3. **Economic instruments:** sanctions and other restrictive measures like embargoes or bans
4. **Financial instruments:** the NDICI, especially the thematic and geographical programs

However, for the purpose of this paper, we will focus on one instrument of each category, namely: dialogues, the democratic clause, financial instruments, and restrictive measures (sanctions). By studying the mechanism of each class we get to see their different natures and

purposes. Moreover, they are the most commonly used ones, even if some are not that known by the public.

a. Dialogues

The European Union has been promoting dialogues on human rights since December 2001, when it adopted guidelines on Human Right Dialogues (Kinzelbach, 2009). Since then, they have become an external policy instrument on their own (EU, 2001). However, previous to this guideline, the Union already conducted dialogues in the 80s, under development assistance. The Lomé IV Convention of 1989 with the ACP introduced the protection and promotion of human rights in the development agreement. Later, the Commission expressed, in a Communication of 1991, the importance of dialogues on the topic and its preferential use before adopting a negative approach. Since then, the European Union has emphasized adopting a positive response, including dialogues as the rule, before adopting restrictive measures. Likewise, in May 2001, the EU issued a Communication emphasizing the prevailing human rights dialogues over the punishment of their violation (Kinzelbach, 2009, pp. 2-3).

Human rights dialogues pretend to promote sustainable development, peace and stability, and human rights in non-EU countries (EU guidelines). Their objective is to be able to influence a third country, making sure it is in line with the international human rights law and with the European interests (Kinzelbach, 2009).

As stated in the European Union Guidelines on Human Rights Dialogues, although the objectives vary case by case, the common ones include:

(a) discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations; (b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering, and endeavoring to improve the human rights situation in that country. (EU, 2001).

According to Kinzelbach (2009), we can classify dialogues on human rights in four different categories: agreement-based dialogues, human rights dialogues with like-minded states, human rights-related discussions in regular political dialogue, and structured human rights dialogues under the CFSP.

The guidelines on human rights dialogues mean to identify the role of dialogues in the CFSP and the European policy on human rights; strengthen their coherence and consistency; facilitate its use by defining the conditions for dialogue; improve effectiveness; and make it known to third parties (EU, 2001). Moreover, it establishes that they may be conducted by COHOM and may regularly discuss human rights violations worldwide and review the Union policy, granting its coordination with the international human rights framework (EU, 2001).

b. Democratic clause

As mentioned above, the protection and promotion of human rights were introduced in the Lomé IV Convention of 1989 (Kinzelbach, 2009, pp. 2-3). However, it was not yet an essential part of the treaty. This clause was first introduced as an essential element of the treaty in an agreement signed with Argentina in 1990. And in 1991, the Commission issued a Communication stating that there could be either a positive¹ or a negative² response to serious violations, always prioritizing the positive response (Bartels, 2005).

Later, through different treaties with third countries, the EU introduced new elements to that clause. The agreements of 1992 with Latvia, Lithuania, Estonia, and Albania, introduced the wording of 'essential element' instead of 'basic element'. And later, with the Baltic countries, it used this new conceptualization as a trigger for the 'Baltic' suspension clause. Later, this clause would be modified into the 'non-execution' clause, and would establish consultations prior to the suspension. This non-execution clause allowed one of the parties to unilaterally suspend, in whole or in part, its obligations under the agreement if there was a grave violation of an essential element (Bartels, 2005; European Parliament, 2014), as it could consider it a material breach of especial urgency or a repudiation of the treaty under Article 60 (3) (a) of the Vienna Convention (Bartels, 2005).

The Council Communication of 1995 appointed the introduction of the essential elements clause and the non-execution clause. Following this, the Council approved a suspension mechanism to enable the fast reaction of the EU in front of the violation of an essential element (human rights and democracy) (Bartels, 2005). Since then on, the European Union has pressed to introduce this human rights essential element in all its agreements with third countries, ranging from trade agreements to financial and/or technical cooperation or development aid agreements (European Parliament, 2014; Kinzelbach, 2009).

Human Rights clauses tend to follow the same structure. First, there's an **'essential elements' clause**, creating the obligation to comply with respecting human rights. Secondly, we find a **'non-execution' or 'non-fulfillment' clause**. This allows the EU to take measures if the other state party infringed the previous clause. Nevertheless, there are technical differences in the adoption of measures and the mechanisms of implementation monitoring. Moreover, these commitments shall be complied with in the domestic and international policies (European Parliament, 2014).

¹ A **positive response** provides support and encourages cooperation and initiatives. For instance, dialogue.

² **Negative responses** are those 'sanctioning' measures adopted in the face of a grave or persistent violation of human rights or democracy, including the modification of cooperation programs or funds, sanctions, or the (temporal) suspension of cooperation.

c. Restrictive measures (sanctions)

Restrictive measures are a set of policies used by a wide range of actors as an economic and political means to modify another's behavior. They are one of the main tools used by the Common Foreign and Security Policy (CFSP). It is not exclusive but rather complementary, as it can be applied with other instruments, like dialogues (Consilium, 2022). As stated by the European Council, the objective of sanctions is to modify harmful conduct by third states that could hinder the protection of European values and security, preserve peace, and reinforce democracy, the rule of law, and human rights. They can be imposed on third countries' governments, companies, individuals, and or groups or organizations (Consilium, 2022; Hernández, 2021, pp. 7-8). Hence, according to Ana Hernández, they do not pursue a punitive end but aim at influencing a 'wrongful' behavior, as opposed to international law (Hernández, 2021, p. 8).

In December 2020, the Council adopted a new Global Human Rights Sanctions Regime, defined in the Council Decision 2020/1999 and the Council Regulation 2020/1918 (European Commission, 2020; Portela, 2021). They sought to adopt a horizontal sanction regime to tackle serious human rights violations, irrespective of where they were committed. As Human Rights is a wide dimension and not all of the rights are agreed on in the international order, the EU specified in article 1 of the Decision and article 2 of the Regulation that the acts that constitute a grave violation of human rights and hence can be subject of sanctions are: genocide, crimes against humanity, a set of other human rights violations like torture or arbitrary disappearances and executions, sexual violence, or the prohibition of reunion or freedom of expression, among others (Consilium, 2020; Hernández, 2021, pp. 10-11). Moreover, the second category of violations can be subject to these sanctions as far as they are widespread or systematic, or a violation of serious concern affecting the objectives of the CFSP noted in article 21 of the TEU (European Commission, 2020; Portela, 2021).

The European restrictive measures include arms embargoes, restrictions on admissions (travel bans), asset freezes, and restrictions on imports and exports, as well as the freeze of funds to individuals and/or entities and the prohibition from accessing available funds or payments by individuals and/or entities, either directly or indirectly (Consilium, 2020).

d. NDICI - Global Europe

Last but not least, the European Union has merged its different financial and foreign cooperation instruments from the MFF, including the EIDHR, into one: the NDICI - Global Europe. It is the new multi-annual budgetary instrument for the external cooperation policies of the EU in the period 2021-2027. It includes the Development Cooperation Instrument (DCI), European Development Fund (EDF), which used to be outside the Union budget, the European Neighbourhood Instrument (ENI), European Instrument for Democracy and Human Rights

(EIDHR), and the Partnership Instrument for cooperation with third countries (PI), among others (European Commission, 2021).

By creating the NDICI, the Union meant to simplify the budget management and administrative procedures by removing the barriers between the previous instruments and cooperation funds. Therefore, it expects to increase its effectiveness, efficiency, and coherence while allowing more flexibility and a faster response to new crises and challenges (European Commission, 2021).

This fund pretends to contribute to eradicating poverty and promoting sustainable development, prosperity, peace, and stability in third countries. Its total budget is distributed among three big pillars: the geographic, the thematic, and the rapid-response pillars. The **geographic pillar** pretends to foster dialogue and cooperation between the EU and third countries. It is destined to programs adapted to the needs and priorities of the recipient countries while reflecting the European priorities. Contrastingly, the **thematic pillar** is destined for more specific programs, complementing the first pillar. It intends to fund the support and promotion of human rights and democracy, civil society, stability, and peace. It distributes its budget among different programs, including Human Rights and Democracy, with €1.36 billion. Lastly, the **rapid-response action** facilitates a rapid and effective early action – namely, conflict prevention - and its response to crises or periods of instability by also increasing third countries' resilience to these situations (European Commission, 2021).

III. CASE STUDY: ERITREA

Eritrea is a dictatorship country that hasn't had elections since its independence in 1993. Its government is highly repressive and does not allow independent civil society organizations or independent judicial power. Civil rights are not protected. On one hand, there's forced labor and military enrollment. People have been subject to torture and other inhuman punishments. Students finishing secondary school are forced to attend compulsory military training, where they undergo harsh punishments and discipline. Moreover, female students have conveyed sexual harassment and exploitation there. On the other, there are tight restrictions on the freedom of opinion, expression, and religion. There's no freedom of religion apart from the religions recognized by the government. Whoever practices another one may be indefinitely imprisoned or tortured as a way to force them to renounce their beliefs. These lead to another concern: unlawful detentions. Thousands of people are detained in overcrowded detention centers with inadequate or a lack of access to legal services, water or food, and medical services (Soteras, 2021).

At the international level, there's the intervention of the EDF (Eritrean Defense Forces) in the Ethiopian conflict. A Joint Investigation Report by the EHRC-OHCHR (2022) shows the offenses and human rights violations committed, especially in Tigray. According to their report, parties have committed grave infringements of international human rights and humanitarian and refugee laws. They conducted attacks against the civilian population and destructed private and public properties, including those under IHL special protection like health centers, schools, or

houses, violating IHL. Moreover, there are accusations on unlawful killings, torture, arbitrary detentions and enforced disappearances, sexual and gender-based violence, restrictions on movement and access to essential goods, and the denial of access to humanitarian relief. According to the EHRC and the OHCHR, these acts can amount to a transgression of the **International Human Rights and Humanitarian laws** (EHRC-OHCHR, 2022).

The EDF is also accused of attacking refugee camps holding Eritrean refugees. It is estimated that about 20,000 Eritrean refugees were in Shimelba and Hitsats camps in Tigray, fleeing torture and repression in their country (EHRC-OHCHR, 2022; Mersie et al., 2021). The report found that the EDF attacked these camps, destructing them and forcing the displacement of refugees. Plus, they violated the principle of non-refoulment, forcing Eritrea refugees to return to Eritrea (EHRC-OHCHR, 2022). According to a Shimelba refugee leader, the EDF was looking for the opposition forces and that they had a list of names (Reuters, 2022).

Eritrea has denied the violation of human rights, namely sexual abuses and the killing of Tigray civilians, and forcibly returning Eritrean refugees to Eritrea. Nevertheless, a former Eritrean military officer claimed to see the government documents showing that over 9000 refugees were returned to the country (Mersie et al., 2021). It also denied, along with Ethiopia, the intervention of Eritrean troops in Ethiopia despite the witnesses, diplomats, and the declaration of an Eritrean general (Reuters, 2022).

The EU has decided to intervene regarding the actions carried out by the Eritrean government in Ethiopia and the violations of human rights in its own country. It has accused the National Security Office of serious human rights violations in the country, including arbitrary arrests, extrajudicial killings, enforced disappearances, and torture. In light of these events, the EU has, so far, adopted the following sanctions on Eritrea: an asset freeze and the freeze of funds to those individuals or entities listed directly or indirectly (Reuters, 2022).

a. Dialogues

Concerning this situation, the EU and Eritrea held political dialogues. Article 96 of the Cotonou Agreements, of which the EU and Eritrea are part, established dialogues as an instrument to approach human rights violations. Additionally, article 8 establishes regular political dialogues also on the topic of human rights between the parties (Kinzelbach, 2009, pp. 2-3).

In July 2021, the EU and Eritrea started a political dialogue under article 8 on the situation of human rights. Most of the dialogue was on the situation lived in Tigray and its implications. They also addressed the expectations and concerns in the region, as well as the state of the EU-Eritrea relationship (EU, 2021a).

Certainly, the establishment of dialogues is a first step in the protection of rights in third countries. But if regular dialogues are held and there's no evolution, something may not be working properly. According to article 8, there are regular dialogues. But the situation in Eritrea

has not worsened overnight. This means that, despite the previous dialogues, the EU has not addressed the worsening of human rights until this year with the EDF intervention in Tigray.

b. Democratic clause

The EU and Eritrea are both parties to the Cotonou Agreements (2000-2020) signed in 2000 and into force since 2003. In December 2020, the EU and the ACP states reached a new agreement, following Cotonou, which is into force since April 2021. This new partnership also establishes democracy and human rights as one of the key dimensions of the treaty (Consilium, 2021).

As we have previously addressed, the Democratic clause is formed by two main clauses: the ‘essential elements’ clause and the ‘non-fulfillment’ clause. The first can be found in Article 9 (7) of the newly agreed Partnership, while the second is found in article 101 of the same agreement (EU and OACPS, 2021).

The ‘**essential elements**’ clause, Article 9 (7), states that:

*7. The Parties agree that the **respect for human rights, democratic principles, and the rule of law** shall underpin their **domestic and international policies** and constitute an **essential element of this Agreement**.*

(EU and OACPS, 2021)

This article is establishing human rights, democracy, and the rule of law as essential elements of the agreement. Hence, according to the Vienna Convention, if one of these elements is violated by one party [Eritrea], the other party [EU] can adopt the measures it deems necessary and even unilaterally suspend the agreement. Moreover, the clause also establishes that these principles must be applied both at the domestic and international levels.

Concerning the ‘**non-fulfillment**’ clause, article 101 deals with the dispute settlement and the fulfillment of obligations. Article 101 (4) establishes the precedence of dialogue to solve any divergences between the parties.-Article 101 paragraph 6 deals with the violation of an essential element of the agreement. It states that if one of the parties considers there has been a violation of an essential element [article 9], the party must notify the other party (except in case of urgency), providing information. It establishes a deadline for reaching a mutually agreed solution on the 60th day after the notification. If no agreement is reached, the parties may continue to hold bilateral consultations. If the parties agree so, a special joint committee could participate, providing advice and assistance. Yet, if 90 days after the start of consultations, the parties don't reach an agreement, then the notifying party can take the proportionate measures it deems convenient (EU and OACPS, 2021, pp. 70-71).

Paragraph 7 states that if there's a violation of special urgency of an essential element, then the party can directly adopt the appropriate measures without prior notification. A case of special

urgency can be constituted by the grave violation of articles 9 or 28 on essential elements (EU and OACPS, 2021, p. 71).

Furthermore, paragraph 8 develops the concept of ‘appropriate measures’. These have to comply with international law and be proportionate to the non-compliance with obligations. The measures adopted shall consider their effect on the functioning of the treaty, prioritizing those with a less negative impact. These measures can include the partial or full suspension of the treaty.

Nevertheless, despite the violation of the human rights clause, I have found no evidence of the activation of the non-fulfilment clause. So, personally, although by introducing this clause you recognize the importance of respecting human rights in your relationship, I find it somehow useless to if you are not willing to take any actions against their violation under the agreement. In other words, what’s the use of introducing human rights as an essential element along a non-fulfilment clause if you are not going to activate it in case of its violation?

c. Sanctions

Eritrea has been sanctioned under the new European Human Rights Sanctions Regime. This regime is directed at sanctioning individuals and entities. The Union has targeted the Eritrean National Security Agency as the main responsible for the violations of human rights and, hence, the entity to be sanctioned. Under this regime, the EU has adopted an asset freeze and the prohibition of making funds available. Moreover, those listed are subject to travel bans (Council of the EU, 2021; EU, 2021a).

In the EU Sanctions Map, we find that these measures were adopted based on two legal acts: Council Decision (CFSP) 2020/1999 and Council Regulation 2020/1998. In both acts, the EU hints at the National Security Office as responsible for the grave human rights violation in Eritrea, including arbitrary arrests, unlawful executions, enforced disappearances, and torture (EU, 2021a). Moreover, they are based on three European guidelines: the Guidance on implementation of certain provisions of Council Regulation (EU) 2020/1998; the EU Best Practices for the effective implementation of restrictive measures; and the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (EU, 2021a).

d. Financial instruments

The NDICI - Global Europe financial instrument provides funds through two main programs: a geographical one and a thematic one. Concerning the first one, around €29.18 billion is allocated to Sub-Saharan Africa, where we find Eritrea as an eligible country (Central Desk, 2021).

Moreover, the EU has been offering financial aid to Africa through the European Union's Emergency Trust Fund for Africa. The countries targeted by these funds suffer from demographic pressure, high levels of poverty, weak infrastructures, internal tensions, and food and/or environmental crisis. It aims to address four strategic priorities: working opportunities, strengthening resilience, improving migration management, and improving governance and conflict prevention (EU, 2020a). With a total budget of €4.9 billion, it has allocated €1808 billion to the Horn of Africa, where Eritrea is one of the eligible countries to access these funds (EU, 2020b)

In Eritrea, the core goal of the EU is to improve the economic and working opportunities. Under this fund, the EU and Eritrea have some ongoing projects on improved governance and conflict prevention, strengthening resilience, and greater economic and employment opportunities (European Commission, n.d.). However, out of the 9 projects approved by Eritrea under the Trust Fund - worth around €141.3 million - just one is underway (Chadwick, 2021).

Already in 2021, the European Commission debated on the 'de-commitment' of around €100 million in funds originally allocated to Eritrea as a response to the situation in the country and the human rights violations in Tigray, along with political dialogues (Chadwick, 2021; HRCE, 2021). Yet, I have found no evidence of whether the Union has finally decided to re-allocate those funds or not.

IV. CONCLUSIONS

The European Union does have a wide range of instruments available to promote and ensure the protection of human rights in third countries. Moreover, it has proved to be able to promote both human rights and democracy globally, integrating this element into the politics of other states through dialogues and the human rights clause. Although it has shown its capability to introduce them in the policies of thirds, has it proved to protect them and implement them? From what we have seen with the case of Eritrea, despite introducing human rights as an essential element, Eritrea has not protected those rights, but instead infringed them.

Although it has shown its capability of influence, it cannot pressure their respect and implementation, despite having some instruments at its disposal to pressure states to comply with these obligations. On one hand, we have the primacy of positive responses like the promotion of dialogues. On the other, we find negative responses. As human rights are introduced into agreements as an essential element, an instrument available is the suspension, in whole or in part, of the treaty as a response to their non-compliance. With the case study of Eritrea, I have not found evidence of this clause being activated. Why? A likely reason is that it may be more costly for the EU to activate that clause and suspend the agreement than to adopt sanctions. So, it makes no sense to introduce human rights as an essential element if their violation does not trigger the adoption of measures condemning it. In most cases, the Union has been rather adopting sanctions to target these violations and pressure states to improve the situation. It is still

too early to assess whether the sanctions the Union has imposed on Eritrea are effective or not, but for what we have seen so far, the Eritrean forces have not yet left Ethiopia. This makes me question if the effectiveness of the restrictive measures adopted. However, we may need to wait for a little longer until we can properly assess their weight.

All in all, we can say that the European Union is capable of influencing third states' policies on human rights, and it does promote their respect. However, what seems to slip away from the Union's control is their effective implementation and protection. However, we should remind that this has been the study of the Eritrean case, but to extrapolate this to the rest of the countries a further study should be conducted.

V. BIBLIOGRAPHY

a. Legal and official sources

Consilium (2012). *EU Strategic Framework and Action Plan on Human Rights and Democracy*. Retrieved from: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf [last accessed on March 13th 2022]

Consilium (2015). *EU Action Plan on Human Rights and Democracy 2015-2019*. Retrieved from: https://www.consilium.europa.eu/media/30003/web_en__actionplanhumanrights.pdf [last accessed on February 20th 2022]

Consilium (2020). *EU adopts a global human rights sanctions regime*. Retrieved from: <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/> [last accessed on April 25th 2022]

Consilium (2021). *Cotonou Agreement*. Retrieved from: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/> [last accessed on April 20th 2022]

Consilium (2022). *Sanciones: cómo y cuándo adopta la UE medidas restrictivas*. Retrieved from: Sanciones: cómo y cuándo adopta la UE medidas restrictivas - Consilium (europa.eu) [last accessed on April 23rd 2022]

Council of the EU (2021). *EU imposes further sanctions over serious violations of human rights around the world*, Press release [online]. Retrieved from: <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/> [last accessed on April 23rd 2022]

EEAS (2021). *EU Human Rights Guidelines*, External Action, EU [online]. Retrieved from: https://www.eeas.europa.eu/eeas/eu-human-rights-guidelines_en [last accessed on April 23th 2022]

European Commission (n.d.). *Eritrea*, in the EU Emergency Trust Fund for Africa. Retrieved from: <https://ec.europa.eu/trustfundforafrica/region/horn-africa/eritrea> [last accessed on May 5th 2022]

European Commission (2021). *Neighbourhood, Development and International Cooperation Instrument (NDICI) – “Global Europe”*. Retrieved from: https://ec.europa.eu/international-partnerships/system/files/factsheet-global-europe-ndici-june-2021_en.pdf [last accessed on April 23rd 2022]

EU (2001). *European Union Guidelines on Human Rights Dialogues*, 13 December 2001. Retrieved from: <https://www.refworld.org/docid/4705f4c52.html> [last accessed on April 23rd 2022]

EU (2012). *Consolidated version of the Treaty of the European Union*, Official Journal of the European Union, 26th October 2012. Retrieved from: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF [last accessed on March 15th 2022]

EU (2020a). *EU Action Plan on Human Rights and Democracy 2020-2024*, European External Action Service (EEAS), EU. Retrieved from: https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf [last accessed on April 23rd 2022]

EU (2020b). *EUTF For Africa: The EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa*, in the European Commission [online]. Retrieved from: https://ec.europa.eu/trustfundforafrica/sites/default/files/factsheet_eutf-for-africa_january_2021_0.pdf [last accessed on May 2nd 2022]

EU (2021a). *EU-Eritrea: article 8 political dialogue in Asmara*, by the Delegation of the EU to the State of Eritrea in the European External Action Service [online]. Retrieved from: https://www.eeas.europa.eu/delegations/eritrea/eu-eritrea-article-8-political-dialogue-asmara-2_en [last accessed on April 25th 2022]

EU (2021b). *EU Sanctions Map: EU Sanctions Whistleblower Tool* [online]. Retrieved from: <https://www.sanctionsmap.eu/#/main/details/50/?search=%7B%22value%22:%22Eritrea%22,%22searchType%22:%22id%22:1,%22title%22:%22regimes,%20persons,%20entities%22%7D%7D&checked=50> [last accessed on April 8th 2022]

EU and OACPS (2021). *Partnership Agreement between [the European Union/the European Union and its member states], of the one part, and members of the organization of African, Caribbean and Pacific states, of the other part*, in the European Commission, by the 5th April 2021 [online]. Retrieved from: https://ec.europa.eu/international-partnerships/system/files/negotiated-agreement-text-initialled-by-eu-oacps-chief-negotiators-20210415_en.pdf [last accessed on April 25th 2022]

European Commission (2020). *Commission publishes guidance on key provisions of EU Global Human Rights Sanctions Regime*. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_2419 [last accessed on April 8th 2022]

European Commission (2022). *Human Rights* [online]. Retrieved from: https://ec.europa.eu/international-partnerships/topics/human-rights_en [last accessed on April 8th 2022]

European Parliament (2014). *The European Parliament's role in relation to human rights in trade and investment agreements*. Retrieved from: <https://www.europarl.europa.eu/cmsdata/86031/Study.pdf> [last accessed on April 25th 2022]

Strategic Communications (2021). *EU Special Representatives*, the diplomatic Service of the European Union, EEAS. Retrieved from: https://www.eeas.europa.eu/eeas/eu-special-representatives_en#10852 [last accessed on May 18th 2022]

United Nations (n.d.a). *Universal Declaration of Human Rights* [online]. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [last accessed on February 20th 2022]

United Nations (n.d.b). *The Foundation of International Human Rights Law* [online]. Retrieved from: <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> [last accessed on February 20th 2022]

b. Doctrine

Bartels, L (2005). *Human Rights and Democracy Clauses in the EU's International Agreements*, at Academia.edu [online]. Retrieved from: https://www.academia.edu/6100521/Human_Rights_and_Democracy_Clauses_in_the_EU_s_International_Agreements [last accessed on March 21st 2022]

Boland, S. and Hart, J. (2021). *UPDATE: Researching International Human Rights, Global Law and Justice*, Hauser Global Law School Program [online]. Retrieved from: https://www.nyulawglobal.org/globalex/Human_Rights1.html [last accessed on March 21st 2022]

Chadwick, V. (2021). *EU pulls Eritrea funding, citing Tigray conflict, 'lack of interest'*, in the Devew World [online]. Retrieved from: <https://www.devex.com/news/eu-pulls-eritrea-funding-citing-tigray-conflict-lack-of-interest-99743> [last accessed on May 5th 2022]

Central Desk (2021). *NDICI - 'Global Europe', the European Union's brand-new comprehensive external action instrument to achieve SDGs*, Global Europe: EU external action renewed, in Development Poles <https://developmentpoles.com/en/blog/275-ndici-global-europe-external-action-instrument-european-union> [last accessed on April 8th 2022]

EHRC-OHCHR (2022). *EHRC-OHCHR Joint Investigation Report on Tigray Conflict*, in the Eritrean Human Rights Commission [online]. Retrieved from: <https://ehrc.org/download/ehrc-ohchr-joint-investigation-report-on-tigray-conflict/> [last accessed on May 8th 2022]

Enya, D. M., Ahamefula, S., & Chinweike, E. (2021). The Jurisprudence of Human Rights in a Global Context. *International Journal of Social Sciences and Humanities Invention*, 8(04), 6441–6453. Retrieved from: <https://doi.org/10.18535/ijsshi/v8i04.03> [last accessed on March 13th 2022]

Equality and Human Rights Commission (2021). *What is the Charter of Fundamental Rights of the European Union?* [online]. Retrieved from: <https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union> [last accessed on February 20th 2022]

Hernández, A (2021). El Nuevo Régimen Global de Sanciones de la Unión Europea en materia de derechos humanos - una aproximación normativa, revista General de Derecho Europeo 54. ISSN: 1696-9634, núm. 54, Mayo (2021).

HRCE (2021). *EU Removes Development Assistance Funding from Eritrea, Citing Human Rights Abuses in Tigray Conflict* [online]. Retrieved from: <https://hrc-eritrea.org/eu-removes-development-assistance-funding-from-eritrea-citing-human-rights-abuses-in-tigray-conflict/> [last accessed on May 10th 2022]

King, T (1999). *Human Rights in European Foreign Policy: Success or Failure for Post-modern diplomacy?* in EJIL, 1999 [online]. Retrieved from: <http://ejil.org/pdfs/10/2/583.pdf> [last accessed on May 10th 2022]

Kinzelbach, K (2009). *The EU's human rights dialogues: talking to persuade or silencing the debate?*, the Transformative Power of Europe, December 10-11.12.2009, Freie Universität Berlin [online]. Retrieved from: https://www.polsoz.fu-berlin.de/en/v/transformeurope/activities_alt/Content/ic2009/opening_conference/conference_papers/Kinzelbach_Human_Rights_Dialogues__KFG_Conference_Dec_2009.pdf [last accessed on April 25th 2022]

Lerch, M (2021). *Human Rights*, Fact Sheets on the European Union, European Parliament [online] Retrieved from <https://www.europarl.europa.eu/factsheets/en/sheet/165/human-rights> [last accessed on May 15th 2022]

Mersie, A. Paravicini, G. and Houreld, K (2021). *Dual Agenda: In Ethiopia's civil war, Eritrea's army exacted deadly vengeance on old foes*, a Reuters Special Report in Reuters [online]. Retrieved from: <https://www.reuters.com/investigates/special-report/ethiopia-conflict-eritrea/> [last accessed on April 25th 2022]

Portela, C (2021). The EU Human Rights sanctions Regime: Unfinished business?, revista General de Derecho Europeo 54, ISSN: 1696-9634, núm. 54, Mayo (2021).

Reuters (2022). *Update1- EU slaps sanctions on Eritrea over human rights abuses*, by Reuters [online] Retrieved from: <https://www.reuters.com/article/eritrea-politics-eu-sanctions-idAFL1N2LK1Q7> [last accessed on April 25th 2022]

Soteras, E. (2021). *Eritrea: events of 2021*, by the Human Rights Watch. Retrieved from: <https://www.hrw.org/world-report/2022/country-chapters/eritrea> [last accessed on April 10th 2022]

ANNEX: EU Guidelines

- EU Guidelines on Torture and other Cruel, Inhumane Treatment or Punishment (2019)
- EU Guidelines on Non-discrimination in External Action (2019)
- EU Guidelines for the promotion and protection of the Rights of the Child (2017)
- EU Guidelines on Freedom of Expression Online and Offline (2014)
- EU Guidelines on Death Penalty (2013)
- EU Guidelines on the promotion and protection of Freedom of Religion or Belief (2013)
- EU Guidelines to promote and protect the enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons (2013)
- EU Guidelines on Human Rights Dialogues with Third Countries (2009)
- EU Guidelines on promoting compliance with International Humanitarian Law (2009)
- EU Guidelines on Violence against Women and Girls and combating all forms of Discrimination against them (2008)
- EU Guidelines on Human Rights Defenders (2008)
- EU Guidelines on Children and Armed Conflict (2008)