

# CDDRL

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### *Values in the EU Constitution: the External Dimension*

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## **About the Author**

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## Values in the EU Constitution: the External Dimension

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### I. The EU as a Union of values

#### *Values and identity*

In 1995 the Commission argued that "the European Union has gradually come to define itself in terms of the promotion of [human] rights and democratic freedoms."<sup>1</sup> Over the last decade, the identification of the European Union with a set of common values - not always fully articulated but with human rights and democracy at their heart - has become an increasingly important part of EU policy-making, both internally and externally. Although it is right to see this espousal of values as in some sense replacing a more difficult debate as to the Union's identity,<sup>2</sup> the idea of common values has emerged as part of the Union's constitutional development and a representation of that collective identity.<sup>3</sup> The Commission recently asserted that "The European Union is ultimately a union of values"<sup>4</sup> and this idea is also reflected in the Laeken Declaration which launched the Convention on the Future of Europe, specifically in the context of the Union's external policy:

"What is Europe's role in this changed world? Does Europe not, now that is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilizing role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages,

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<sup>1</sup> Commission Communication, "The External Dimension of the EU's Human Rights Policy: From Rome to Maastricht and Beyond", COM(1995) 567, p.3.

<sup>2</sup> Bo Stråth, Common European Values? Critical Reflections from a Historical Perspective, [cross-ref to his chapter](#).

<sup>3</sup> J.H.H. Weiler, "A Constitution for Europe? Some Hard Choices" 40 JCMS (2002) 563 at 569.

<sup>4</sup> Commission's Second Annual Report on the Stabilization and Association Process for South East Europe, COM(2003)139 final, 26 March 2003, p.3.

cultures and traditions. The European Union's one boundary is democracy and human rights. ...<sup>5</sup>

As this passage demonstrates, values may be presented both as characteristic of the Union's identity,<sup>6</sup> and as the key to achieving specific Union objectives, especially security and stability within Europe and its neighbourhood. The "external dimension" of values, which is the subject of this chapter, reflects both these constitutive and instrumentalist aspects. It is unsurprising as the Union develops a sense of its identity as being somehow defined in terms of its values, that this should be reflected in its external projection of itself and in its external as well as internal policies. However, we can go further and see that very process of identification as a result as well as a cause of the Union's foreign policy. There are certainly other factors - the process of drawing up the Charter of Fundamental Rights being just one - which have contributed to this development; but the need to justify and to conceptualise the increasingly important role played by human rights, the rule of law and democracy (in particular) in the Union's external policy has led the Union to define itself in terms of values to the world as well as to its citizens.

The link between values and identity is visible in the Union's accession conditionality - membership being open to those European States which respect its values and are committed to promoting them - and also in the way in which the Union promotes itself as a model of its fundamental values beyond its frontiers (Sections I and II). Section III then turns to the concept of "shared values" underlying the Union's relations with third countries, an idea which is based on the Union's own identity as a Union of (common or shared) values, but which is also designed to further those values by establishing them as the foundation for future relationships, especially, but not exclusively, those with the Union's neighbours. The Draft Constitutional Treaty puts - right at the head of the Union's overall external objectives - "to uphold and promote its values and interests".<sup>7</sup> The variety of instruments and means whereby the Union seeks to promote its values is considered in Section IV, including positive and negative conditionality in its financial and technical assistance programmes and the "essential elements" clauses in its agreements with third countries. Adherence to key values is not only a requirement for third countries, however. The Union is also charged with upholding its values in its external policy, and Section V explores the implications of this obligation by taking one specific example, the value of

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<sup>5</sup> Laeken Declaration on the Future of the Union, European Council, 14-15 December 2001.

<sup>6</sup> *Europe as a continent of humane values* is "founded on values" - see Art.6(1) TEU and Art.I-2 of the Draft Constitutional Treaty (DCT).

<sup>7</sup> Art.I-3(4) of the DCT.

solidarity, and identifying some of the challenges that practising what you preach might pose. Of course, these different aspects of the ways in which values are bound up with the Union's external policy have all developed out of, and are facets of, the *existing* constitutional settlement; they reflect the face of the Union as it is in early 2004. However, in different ways they also raise questions which have been generated by the two major constitutional issues for the future of the Union: the ongoing enlargement process and the debate over the future constitutional structure of the Union. It is in seeking to articulate its values to prospective members and to its neighbours, and in finding ways to constitutionalise its values both as an objective and as an instrument of external policy, that some of the sharpest challenges to the Union's own value system are revealed.

### *Identifying values*

What, then, are these common values? And more particularly for this chapter, which values are to be promoted and upheld in the Union's external policy? Are they the same as its "internal" values? In the existing Treaty structure, the Union's values appear in two contexts. First we have what we might call the foundation values declared in Article 6 TEU, albeit as "principles"<sup>8</sup>: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These are said to be common to the Member States, the Union is "founded" on them, respect for them is a condition of membership and a serious breach of them attracts sanctions. From the point of view of external policy, these principles are important in reflecting the general principles of law which emerged as a component of external policy in the late 1980's and early 1990's: "This process emphasised the legal, political and moral values that make up the European identity, particularly the principles of representative democracy, the rule of law and respect for human rights."<sup>9</sup> Thus, not only are they conditions of membership (via the link between Articles 6 and 49 TEU), but they also form the basis of the "essential elements" clauses introduced into Community agreements as a matter of practice from 1990.<sup>10</sup>

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<sup>8</sup> Millns, Introduction, [cross-ref.](#)

<sup>9</sup> Commission Communication, "The External Dimension of the EU's Human Rights Policy: From Rome to Maastricht and Beyond", COM(1995) 567, p.1.

<sup>10</sup> Commission Communication of 23 May 1995 on The Inclusion of Respect for Democratic Principles and Human Rights in Agreements Between the Community and Third Countries, COM(1995)216. These clauses all emphasise respect for democratic principles and fundamental human rights, although they differ in the specific international and regional instruments to which reference might be made (Universal Declaration of Human Rights, Helsinki Final Act, Charter of Paris, European Convention on Human Rights) and they may

Second, since the Maastricht Treaty two external policy areas specifically include among their objectives the promotion of these foundation values. The European Community's development cooperation policy (introduced formally into the EC Treaty by the Treaty of Maastricht) provides that Community policy "shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms." (Article 177(2) EC). This general objective also appears in the same words among the objectives of the Common Foreign and Security Policy (CFSP) introduced by the Treaty of Maastricht (Article 11 TEU). Thus, in the Union's external policy the focus has been on the core values which it claims to be universal and indivisible (protection of human right and fundamental freedoms), together with democracy and the rule of law.<sup>11</sup> It has argued for the essential complementarity and interdependence of human rights and democracy, and between democracy and the rule of law.<sup>12</sup>

In addition to these references to human rights and democracy, the CFSP objectives include safeguarding the "common values" of the Union; the common values are not defined, and thus are capable of evolutionary interpretation, but would clearly include the foundational values set out in Article 6 TEU. The phrase is also significant in introducing the concept of values, and in linking the idea of *common values* to the *principles* of Article 6 and the *objectives* of Union (and Community) policy. These links, and indeed a degree of ambiguity between values, principles and objectives, are also found in the draft Constitutional Treaty.

The draft Constitutional Treaty represents a further evolutionary stage. First, we have an articulation of the list of common values in Article I-2 and its extension (as compared with Article 6 TEU) to include respect for human dignity, liberty and equality in addition to democracy, the rule of law and respect for human rights. These values are stated to be common to the Member States in a society of pluralism,

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also include other essential elements, such as minority rights and the principles of a market economy. See further Section IV.

<sup>11</sup> In addition to these Treaty provisions, see also Regulation 976/99/EC on the requirements for implementation of Community operations, other than those of development cooperation, which within the framework of Community cooperation policy contribute to the general objective of developing and consolidating democracy and the rule of law and respect for human rights and fundamental freedoms in third countries OJ 1999 L 120/1. See further Section IV.

<sup>12</sup> Commission Communication, "The External Dimension of the EU's Human Rights Policy: From Rome to Maastricht and Beyond", COM(1995) 567, p.6.

tolerance, justice, solidarity and non-discrimination.<sup>13</sup> They are to be upheld and promoted by the Union "in its relations with the wider world" (Article I-3(4), setting out the Union's objectives), and are thus directly linked to external policy. Other Union objectives in its external action are also linked to Union values, including peace, solidarity and mutual respect among peoples.

Second, the draft Constitutional Treaty provides that the Union's action "on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement" (Article III-193(1)). These *principles* reflect the values and objectives set out in Articles I-2 and I-3: democracy, the rule of law, universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity and respect for the principles of the UN Charter and international law. The common set of objectives for the Union's external action, set out in the following paragraph (Article III-193(2)) includes those which currently govern the CFSP and development cooperation policy, viz., safeguarding the Union's common values, and consolidating and supporting democracy, the rule of law, human rights and international law. As well as expanding the list of Union values beyond those hitherto associated with external policy, the draft Constitutional Treaty thus makes more explicit than is at present the case, that the *whole* of the Union's external action (not just certain policy areas) is to be guided by its common values.

As we have seen, the draft Treaty also represents a shift from the language of principles, found in Article 6 TEU, to values, as defined in Article I-2 DCT. This shift may represent a certain "added value", as well as the identity-constitutive dimension of common values already mentioned. However, even within the DCT itself there is a confusion or conflation of values and principles. The list of *values* in Article I-2 is repeated in Article III-193(1) as *principles*,<sup>14</sup> and the

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<sup>13</sup> A revised version of Art.I-2 put forward by the Presidency in November 2003 as part of the IGC negotiations would, as well as making some alterations to the order, add references to the rights of minorities and the principle of equality between men and women; see CIG 52/03 ADD 1.

<sup>14</sup> Art. III-193(1) of the draft Constitutional Treaty presented by the Convention to the European Council on 18 July 2003, having listed the "principles" which have inspired the creation and development of the Union, then goes on to refer to "these values" being shared by third countries. This inconsistency is perhaps explained by the fact that the version of what became Art.III-193(1) contained in the Final Report of the Working Group on External Action (CONV 459/02) refers to the "values which have inspired its own creation ...", although headed "Principles and Objectives of EU External Action". The version of the draft Treaty presented to the IGC following editorial and legal adjustments by the Working Party of IGC Legal Experts (CIG 50/03) has altered "these values" to "these principles", thus

Preamble to Part II (the Charter of Fundamental Rights) distinguishes between the indivisible universal *values* ("human dignity, freedom, equality and solidarity") and the *principles* of democracy and the rule of law. Does this matter? The OED defines a *value* as something which has intrinsic worth, which is esteemed for its own sake. They can be seen as part of the cultural patrimony or common heritage of Europe, and thus creative of a sense of belonging.<sup>15</sup> A *principle* is defined as a fundamental truth, a fundamental motive or reason for action, in particular one that is consciously recognised and followed. In fact, both terms have been used, within the EU, in multiple senses: as a foundation for Union identity, as a basis for policy, as guiding practice or implementation of policy, and as a goal or objective for action. Perhaps the shift from values in Article I-2 to principles in Article III-193 signifies the shift from defining the Union's identity in Part I to setting out its policies and the actions in Part III. More specifically, the reference to "principles" in Article III-193 of the DCT is significant in terms of the potential of the provision in the hands of the Court of Justice. Principles, as we have seen from the Court's case law on general principles of law, are at least potentially justiciable, as well as offering a degree of flexibility and a recognition that different competing principles may need to be reconciled when engaging in concrete actions.<sup>16</sup>

#### *A condition of membership*

The perception of values as constitutive of a European identity is - not coincidentally - reflected in the Commission's highly influential paper on The Challenge of Enlargement prepared for the Lisbon European Council in 1992. The Commission reflects on what it means to be European, and develops its ideas on conditions for membership which were to evolve into the Copenhagen criteria of June 1993. Starting from the (then) simple statement in both the EEC and Maastricht Treaties that "any European state" may apply for membership, the Commission recognises that the term "European" has not been officially defined:

"It combines geographical, historical and cultural elements which all contribute to European identity. The shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation."

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preserving internal consistency within the Article; the shift from values in Part I to principles in Part III remains.

<sup>15</sup> Millns Introduction and Stråth [cross reference](#).

<sup>16</sup> [Cross reference - de Witte?](#) [Or was this point made by Ziller in his concluding remarks?](#)



The Commission turns to the references to democracy and respect for fundamental human rights in Article F of the Maastricht Treaty (now Article 6 TEU) as essential characteristics of the Union (although not at the time formally linked to Union membership) and comes up with a three-fold set of conditions for membership: European identity (encompassing shared values), democratic status and respect for human rights.

Since then, of course, the "Copenhagen criteria" have formalised these conditions (and added to them) and the membership clause (Article 49 TEU) has been revised to include an express cross-reference to the Article 6 principles. Article I-1(2) and I-57(1) of the DCT preserve the link between Union membership and respect for certain values. As the European Council declared at Helsinki in December 1999, "The candidate States ... must share the values and objectives of the European Union as set out in the Treaties."<sup>17</sup>

Common values as constitutive of identity (as a "European" State, and as the European Union) in this way enable accession criteria to be applied which can be characterised as open (the Union is not a closed club) and which do not foreclose membership or establish immutable frontiers.<sup>18</sup> As the European Council claimed in the Laeken Declaration, "The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law." The aim is to create - or maybe rather to assert - a Union identity which is based on inclusion (sharing common values) rather than exclusion. It is in this sense that Article III-193 DCT declares that the Union's foundational principles have inspired its enlargement as well as its creation.

## **II. The EU as a model for values**

"... how to develop the Union into a stabilizing factor and a model in the new, multipolar world." (Laeken Declaration)

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<sup>17</sup> Conclusions of the European Council, Helsinki, 10-11 December 1999, para 4. The Millennium Declaration adopted at Helsinki also claimed that "The Union's citizens are bound together by common values such as freedom, tolerance, equality, solidarity and cultural diversity."

<sup>18</sup> On the problematic issue of the link between values and identity in the context of enlargement, see Leino, "Rights, Rules and Democracy in the EU Enlargement Process: Between Universalism and Identity" (2002) 7 *Austrian Review of International and European Law* xxx.

If values are part of the Union's own identity, that characteristic is seen in Union external policy as providing a model, particularly a model of stability and conflict resolution, but also a model of "unity in diversity". Thus in addition to being seen as a model for a certain kind of regional economic integration, a regulatory model, or a model of multi-level governance, the Union models its values of respect for human rights, democracy, equality and the rule of law. Certain values have a particular resonance in this context: peace, respect for international law and peaceful settlement of disputes,<sup>19</sup> and the value of cultural diversity.<sup>20</sup> Thus in 1999, launching the Stabilization and Association Process for the Western Balkans, the Commission claimed that "The EU is itself a model for overcoming conflict and promoting reconciliation through close co-operation to achieve common goals, while respecting national sovereignty and territorial integrity."<sup>21</sup> In implementing the SAP, the Commission said, the countries of the Western Balkans would be expected to align themselves towards "European Union values and models of democracy, respect for human and minority rights, the rule of law and the market economy."<sup>22</sup> In June 2003 the Council commended the Commission's annual Report on the SAP as assisting the countries concerned in "adopting European values and standards."<sup>23</sup> Although the SAP is based on the stated "vocation" of the Western Balkan States as potential candidates for EU membership, this promotion of the EU as a model of particular values is not only presented as part of the package of membership conditionality, but as a means to the end of securing peace, stability and prosperity in the region. The presentation of the EU as a model for its common values is thus one mechanism whereby the Union seeks to achieve its external objectives of preserving peace, preventing conflict and strengthening international security.<sup>24</sup> The particularity of the EU as a model derives from its emphasis on what Manners characterises as structural peace,<sup>25</sup> developed out of its own history and incorporating sustainable economic and social development and the rule of law. Its emerging role in peace building and crisis management draws upon these aspects of the Union as a global civil power.

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<sup>19</sup> See Manners, [cross ref to chapter](#).

<sup>20</sup> See de Witte, [cross ref to chapter](#).

<sup>21</sup> Commission Communication of 26 May 1999 on the Stabilisation and Association Process, Com (1999) 235.

<sup>22</sup> Proposal for a Council Regulation on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, Com (2000) 281 final.

<sup>23</sup> External Relations Council, 16 June 2003.

<sup>24</sup> Art.III-193(2) (c) DCT.

<sup>25</sup> See Manners, [cross ref to chapter](#).

### **III. Shared values as the basis for relations with third countries**

Shared values are not only a basis for Union membership. They are expressed as the basis for relations with non-member countries. In Article III-193(1) the DCT requires the Union to "seek to develop relations and build partnerships with third countries and international, regional or global organisations which share [its] values."<sup>26</sup>

In discussing the need to develop strategic partnerships in order to achieve its objectives, Javier Solana has proclaimed the Union's readiness to work "with any country which shares our goals and values and is prepared to act in their support."<sup>27</sup> The strategic objectives identified by Solana in this context are stability and good governance in the Union's immediate neighbourhood, strengthening the international order through effective multilateralism, and tackling the "new threats" of terrorism, WMD, failed states and organised crime. It is in the first of these that the emphasis on shared values has been particularly visible over the last year or so.

At Copenhagen in December 2002 the European Council stated that the "new dynamic" created by enlargement "presents an important opportunity to take forward relations with neighbouring countries based on *shared political and economic values*." This was in the context of attempting to reassure the "new neighbours" that enlargement should not become an instrument for creating new dividing lines within Europe. Shared values, then, may provide a starting point for bridging the divide between members and non-members, in the interest of promoting stability and prosperity within and beyond the new borders of the Union.<sup>28</sup>

The Statement issued by the EU-Western Balkans Summit held in Thessaloniki in June 2003 starts with a declaration of commitment to shared values:

"We all<sup>29</sup> share the values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy, fully aware that they constitute the very

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<sup>26</sup> For the values referred to here, see above at p.5.

<sup>27</sup> Solana, paper for Thessaloniki European Council, June 2003, 'A Secure Europe in a Better World' SO 138/03, p.15.

<sup>28</sup> Copenhagen Conclusions, para 22.

<sup>29</sup> "We" are "... the Heads of State or Government of the member States of the European Union, the acceding and candidate states, Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, as potential candidates, and the President of the European Commission".

foundations of the European Union. Respect of [sic] international law, inviolability of international borders, peaceful resolution of conflicts and regional co-operation are principles of the highest importance, to which we are all committed. ..."

Shared values are also said to be foundational to the new neighbourhood, or Wider Europe, policy of the Union, directed not at the potential candidate States of the Western Balkans, but at those neighbours without a current perspective of membership: Russia, the Western NIS and the Mediterranean states.<sup>30</sup> In June 2003 the Council stated that the overall goal of the new policy would be to create an "area of shared prosperity and values":

"The EU wishes to define an ambitious new range of policies towards its neighbours based on shared values such as liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law."<sup>31</sup>

The Commission's policy paper, endorsed in June 2003 by the European Council, develops this idea further. The area of shared prosperity and values will be manifested in concrete terms by "deeper economic integration, intensified political and cultural relations, enhanced cross-border cooperation and shared responsibility for conflict prevention between the EU and its neighbours." There is an element of pre-condition built into this process, so that each of these aspects of the neighbourhood relationship is linked in turn into possession of the shared values that makes the relationship possible. Thus, closer economic integration with the EU is to depend on demonstration of shared values and effective political, economic and institutional reform, including alignment to the Community acquis.<sup>32</sup> Closer dialogue on CFSP and ESDP issues, as well as greater Union involvement in crisis management and conflict resolution, will be made possible by "shared values, strong democratic institutions and a common understanding of the need to institutionalise respect for human rights"<sup>33</sup> Likewise, "Shared values and mutual understanding provide

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<sup>30</sup> Commission Communication on relations with Russia, 9 February 2004, COM(2004)106; Commission Communication, "Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", 11 March 2003, COM(2003)104. The Western NIS (WNIS) covers Ukraine, Moldova, Belarus. The Southern Mediterranean covers those countries that participate in the Barcelona Process, apart from the candidate States Cyprus, Malta and Turkey (viz. Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria and Tunisia). Libya has also been included by the Council although not yet a formal member of the Barcelona Process.

<sup>31</sup> Council Conclusions, 16 June 2003 on Wider Europe - New Neighbourhood, para 2.

<sup>32</sup> Commission Communication, "Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", 11 March 2003, COM(2003)104, p.10.

<sup>33</sup> Ibid., p.12.

the foundations for, *inter alia*, deeper political relations, enhanced cooperation on justice and security issues, environmental improvement and governance." The language of shared values, while very much in evidence in the recent policy papers on the new neighbourhood policy, is not an innovation in EU policy towards these regions. The Common Strategies adopted by the European Council in relation to Russia, Ukraine and the Mediterranean make explicit references to a strategic partnership based on shared values and common interests,<sup>34</sup> and "foundations of shared values enshrined in the common heritage of European civilisation".<sup>35</sup> In the case of the Mediterranean, the promotion of "core values" embraced by the EU and its Member States is made a key goal of Union policy towards the region.<sup>36</sup>

The Wider Europe policy is based firmly on principles of conditionality supported by Action Plans and benchmarks. As far as values are concerned, standards are referenced to international instruments rather than to specifically EU values:

"key benchmarks should include the ratification and implementation of international commitments which demonstrate respect for shared values, in particular the values codified in the UN Human Rights Declaration, the OSCE and Council of Europe standards."<sup>37</sup>

These references to international values reflect the existing reference points in agreements between the EC and the neighbourhood states. Both the existing Partnership and Cooperation Agreements with the Western NIS and the Euro-Mediterranean Association Agreements contain in their Preambles a reference to "the common values that they share".<sup>38</sup> These are not defined explicitly, but the "essential elements" clause in the PCAs indicates their scope:

"Respect for the democratic principles and human rights as defined in particular in the Helsinki Final Act and

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<sup>34</sup> Common Strategy of the EU on Ukraine, adopted by the European Council at Helsinki, 11 December 1999, at para 1.

<sup>35</sup> Common Strategy of the EU on Russia, adopted by the European Council at Cologne, 4 June 1999, Part I.

<sup>36</sup> Common Strategy of the EU on the Mediterranean Region, adopted by the European Council at Feira 19-20 June 2000, at para 7; the core values include "human rights, democracy, good governance, transparency and the rule of law".

<sup>37</sup> *Ibid.*, p.16.

<sup>38</sup> See for example Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine OJ 1999 L49, 19/02/1998 p.3; Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, and the Republic of Tunisia OJ 1998 L97, 30/03/1998 p.2.

the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of partnership and of this Agreement.”<sup>39</sup>

A new type of neighbourhood agreement, if developed, is likely to emphasise shared values. The draft Constitutional Treaty in Title VIII “The Union and its immediate environment” (placed immediately before Title IX on Union Membership and accession procedures) contains a new Article I-56 which envisages the development of “a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation”. It is noticeable that the emphasis here is on the values of the Union, rather than references to international instruments. This emphasis reflects the DCT position that Union external action should have as one of its objectives to promote and uphold its values (Article I-3(4) DCT, discussed further in Sections IV and V below). A recent Commission Communication on relations with Russia brings together these two ways of perceiving shared values in references to “core universal and European values”, as well as to the values that Russia shares with the EU as a member of the OSCE and the Council of Europe. The nature and quality of the future partnership will depend, the Commission says, on Russian “convergence” with universal and European values. Putting forward shared values as the basis of a relationship, if it is to be more than a merely rhetorical gesture, will incorporate into that relationship an element of conditionality.

#### **IV. Active promotion of values**

The promotion of Union values, which becomes an explicit objective of the Union in Article I-3(4) DCT, has formed an important element of Union external policy for some time.<sup>40</sup> What follows is an outline of some aspects of that policy, and

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<sup>39</sup> PCA with Ukraine, note 30, Art.2. On these essential elements clauses, see further Section IV below. The Preamble additionally includes “the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy”.

<sup>40</sup> See generally, Fierro, *The EU’s Approach to Human Rights Conditionality in Practice* (Martinus Nijhoff 2003); Brandtner and Rosas, ‘Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice’ (1998) 9 EJIL 468; Clapham, ‘Where is the EU’s Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?’ in Alston (ed.) *The EU and Human Rights* (OUP 1999) and other contributions to that volume; Smith [add complete reference](#).

the use of conditionality as a characteristic mechanism for the promotion of values and in particular fundamental human rights. In this context the concept of Union values is largely focused on the core values of democracy, respect for fundamental human rights and the rule of law, promoted not only as Union values, but as universal.<sup>41</sup> The claim of universality, and its use to justify conditionality, is itself contested at a number of levels,<sup>42</sup> but within the context of this chapter we can only note that the claim forms the basis for a wider promotion of values beyond the Union's neighbours and candidate states and for the use of conditionality as a instrument of policy.

### *Values and conditionality in financial and technical assistance programmes*

The EU's financial and technical assistance programmes have since 1990 increasingly developed an element of conditionality based on respect for human rights and democracy.<sup>43</sup> Some form of explicit conditionality is now found in the legal instruments that provide the basis for assistance to Asia, Latin America, the Mediterranean, the former Soviet Union, the Central and Eastern European candidate States and the Western Balkans.

In November 1991 the EC Council of Ministers, together with the Member States, adopted an influential Resolution on Democracy and Development which stated that the Community and Member States would in their development policies give a high priority to a "positive approach that stimulates respect for human rights and encourages democracy".<sup>44</sup> The positive approach would include the possibility of increased assistance to countries in which positive changes had taken place; however the Resolution also envisaged "appropriate responses" in cases of grave and persistent violations of human rights or serious interruption of democratic processes. These graduated responses include confidential or public *démarches*, changes in content of cooperation programmes, deferment of decisions, through to suspension of cooperation.

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<sup>41</sup> See for example, Commission Communication, "The External Dimension of the EU's Human Rights Policy: From Rome to Maastricht and Beyond", COM(1995) 567, p.3.

<sup>42</sup> Leino, *add title*, unpublished paper.

<sup>43</sup> This section draws on material in Cremona, "Variable Geometry and Setting Membership Conditionalities: An EU Perspective" in Mills (ed.) *A Review of Regional Integration in Southern Africa: Comparative International Experiences* (South African Institute of International Affairs 2001), pp xx.

<sup>44</sup> Resolution of the Council and of the Member States meeting in Council on human rights, democracy and development, Bull. EC 11-1991 p.122.

Since 1992 this approach has been underpinned by the express provision on development cooperation in the EC Treaty:

"Community policy in this area [development cooperation] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms."<sup>45</sup>

With the coming into force of the Treaty of Nice, the new Article 181a(1), which provides a basis for economic, financial and technical cooperation with third countries outside the development context, refers in identical terms to the consolidation of democracy and the rule of law and respect for human rights as a general policy objective. There is thus now an explicit legal base for the promotion of these core values in all technical assistance programmes.<sup>46</sup>

In this context, then, the standards of political conditionality (based on respect for human rights and democratic principles) will inform the objectives and purposes of financial assistance programmes, and breaches of political conditionality may stimulate - rather than complete withdrawal of assistance - positive measures such as the targeting of assistance to support democratic initiatives, the work of NGO's, or the independent media. The November 1991 Resolution on Democracy and Development also makes it clear that humanitarian assistance and emergency aid will not be subject to conditionality, and this is reflected in Article III-223(2) DCT.

The 1992 Regulation on financial and technical assistance to Asia and Latin America illustrates these characteristics of Community development policy:

"The aim of Community development and cooperation policies shall be human development. Aware that respect for, and the exercise of, human rights and fundamental freedoms and democratic principles are preconditions for real and lasting economic and social development, the Community shall give increased support to the countries most committed to those principles, particularly for positive initiatives to put them into practice. In the case of fundamental and persistent violations of human rights and democratic principles, the Community could amend or even suspend the implementation of cooperation with the States concerned by confining

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<sup>45</sup> Art.177(2) EC Treaty.

<sup>46</sup> For discussion of the problematic legal basis for EU human rights policies, see Weiler and Fries, "A Human Rights Policy for the European Community and Union: The Question of Competences" in Alston (ed.) *The EU and Human Rights* (OUP 1999).



cooperation to activities of direct benefit to those sections of the population in need."<sup>47</sup>

The current TACIS Regulation providing for assistance to the States of the former Soviet Union contains similar provisions.<sup>48</sup> There is also an "essential element" clause equivalent to those found in the Community's agreements with these States:

"When an essential element for the continuation of cooperation through assistance is missing, in particular in cases of violation of democratic principles and human rights, the Council may, on a proposal from the Commission, acting by a qualified majority, decide upon appropriate measures concerning assistance to a partner State ..."<sup>49</sup>

In 1997, for example, the EU Council of Ministers reacted to the constitutional situation in Belarus by delaying the ratification of the Partnership and Cooperation Agreement, suspending implementation of Community technical assistance programmes under TACIS, "except in the case of humanitarian or regional projects or those which directly support the democratisation process", and the adoption of a TACIS programme for the development of civil society in Belarus.<sup>50</sup> Since 1997 relations have not improved and, for example, Belarus was not included in the EIDHR programme (European Initiative for Democracy and Human Rights) for 2002-2004 as a result of government obstruction of the work of the OSCE Assistance and Monitoring Group. The EU attitude to Belarus illustrates the dilemma posed by the attempt to use conditionality as an instrument for the promotion of values. As the Commission has recently put it,

"The EU faces a choice in Belarus: either to leave things to drift - a policy for which the people of Belarus may pay dear and one which prevents the EU from pursuing increased cooperation on issues of mutual interest - or

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<sup>47</sup> Council Regulation 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America OJ 1992 L 52/1, Art.2.

<sup>48</sup> Council Regulation 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia OJ 2000 L12/1 (TACIS Regulation).

<sup>49</sup> TACIS Regulation, Article 16.

<sup>50</sup> General Affairs Council 15 Sept 1997, Council Conclusions on Belarus; Council Decision 98/1/EC of 18 Dec 1997 on a TACIS Civil Society Development Programme for Belarus for 1997 OJ 1998 L 1/6.

to engage, and risk sending a signal of support for policies which do not conform to EU values."<sup>51</sup>

The Commission argues for a policy of engagement which would aim to integrate Belarus into the neighbourhood policy but "without compromising the EU's commitment to common and democratic values". However without a willingness on the part of Belarus to at least accept the concept of common values, it is difficult to see how much progress can be made.

The CARDS financial assistance programme designed for the Western Balkans contains as one might expect a substantial element of conditionality. In its initial Communication on the new scheme, the Commission indicated that there will be three aspects to conditionality, covering initial eligibility for the programme, the level of assistance and project-specific conditions:

"A partnership can be established and a country may be eligible to benefit from the new programme of Community assistance only if it respects the basic principles of democracy, the rule of law and human rights. ... The nature and scale of the assistance will depend on the level of commitment to reform by the authorities concerned. ... Specific conditions might be adopted for projects to ensure that beneficiary countries participate actively and constructively in carrying them out."<sup>52</sup>

The Regulation itself contains a conditionality clause which includes not only the general formula referring to human rights and democracy, but also a specific reference to the April 1997 Council Conclusions on conditionality in relation to South-East Europe, "in particular as regards the recipients' undertaking to carry out democratic, economic and institutional reforms".<sup>53</sup> The Commission emphasises that where a State does not fulfil the conditionality criteria, "assistance may be granted direct to local or regional authorities or federal or other entities", as was the case until October 2000 with respect to the Federal Republic of Yugoslavia.

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<sup>51</sup> Commission Communication, "Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", 11 March 2003, COM(2003)104, p.15.

<sup>52</sup> Communication from the Commission to the Council and the European Parliament on Community Assistance for the Stabilisation and Association Process for certain countries of South-East Europe, COM(1999)661.

<sup>53</sup> Council Regulation 2666/2000/EC of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, OJ 2000 L 306/1, Art. 5.

The programmes mentioned above such as TACIS, MEDA and CARDS use negative conditionality as well as positively supporting programmes designed to enhance the values of democracy, the rule of law or respect for fundamental human rights. A more specific legal base for such positive measures has existed since 1999, with the adoption of two Regulations providing for action designed to contribute (both within and beyond the scope of the Community's development cooperation policy) to developing and consolidating democracy and the rule of law and respect for human rights and fundamental freedoms in third countries.<sup>54</sup> These Regulations outline in some detail the areas of activity that may be supported under these heads, including, for example, action to monitor human rights, including the training of observers; promoting and strengthening the rule of law, in particular upholding the independence of the judiciary and strengthening it; support for constitutional and legislative reform; support for initiatives to abolish the death penalty; promotion of pluralism both at political level and at the level of civil society by (inter alia) promoting an independent and responsible media and supporting a free press.<sup>55</sup>

#### *Essential elements clauses*

Since 1992 the EC's development cooperation, association, trade and cooperation and partnership agreements have included a clause stating that the respect for human rights and democratic principles is an "essential element" of the agreement.<sup>56</sup> These clauses have gone through a number of variations, and despite some standardisation their substantive elements also differ according to the partner country in question.<sup>57</sup> For example, agreements with the central and

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<sup>54</sup> Council Regulation 975/99/EC of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms OJ 1999 L 120/1. Regulation 976/99/EC on the requirements for implementation of Community operations, other than those of development cooperation, which within the framework of Community cooperation policy contribute to the general objective of developing and consolidating democracy and the rule of law and respect for human rights and fundamental freedoms in third countries OJ 1999 L 120/1.

<sup>55</sup> Regulation 976/99/EC OJ 1999 L 120/1, Art.3.

<sup>56</sup> Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, 23 May 1995, COM(95)216 final; approved by Council 29 May 1995.

<sup>57</sup> For a discussion of their evolution, see Cremona, "Human Rights and Democracy Clauses in the EC's Trade Agreements" in Emiliou & O'Keefe (eds.) *The European Union and World Trade Law after the GATT Uruguay Round* (Wiley 1996); Reidel & Will, "Human Rights Clauses in

eastern European countries and the Western Balkans contain references to the principles of the OSCE (Organisation for Security and Cooperation in Europe); agreements with countries outside Europe contain references to the Universal Declaration of Human Rights. The following two examples illustrate this point. The first is Article 2 of the Agreement on Trade, Development and Cooperation between the EC and South Africa:

“Respect for democratic principles and fundamental human rights as laid down in the Universal Declaration on Human Rights, as well as for the principles of the rule of law underpins the internal and international policies of the Community and of South Africa and constitutes an essential element of this Agreement. The Parties also reaffirm their attachment to the principles of good governance.”

The second is Article 2 of the Stabilisation and Association Agreement between the EC and Croatia:

“Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for international law principles and the rule of law as well as the principles of market economy as reflected in the Document of the CSCE Bonn Conference on Economic Cooperation, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement.”

These examples also illustrate that alongside references to human rights and democracy, other values such as the rule of law may appear, as well as principles whose status as values at all are questionable (the principles of a market economy).

As the European Court of Justice has pointed out, the stipulation that the clause constitutes an essential element of the agreement is significant in legal terms, as it may justify the suspension or termination of an agreement in case of a serious violation.<sup>58</sup> In most current agreements there is

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External Agreements of the EC” in Alston (ed.) *The EU and Human Rights* (OUP 1999).

<sup>58</sup> Case C-268/94 *Portugal v Council* [1996] ECR I-6177. For a discussion, see Cremona, ‘The EU and the External Dimension of Human Rights Policy’ in Konstadinidis (ed.) *EC - International Law Forum III* (Dartmouth Press 1998). See also case C-162/96 *A. Racke GmbH & Co. v. Hauptzollamt Mainz* [1998] ECR I-3655, where the Court of Justice held that suspension by the EC of the Cooperation Agreement with Yugoslavia was in conformity with international law under the principle of *rebus sic stantibus*, in spite of the absence of an “essential element” clause, on the grounds that “the maintenance of a situation of peace in Yugoslavia, indispensable for neighbourly relations, and the existence of institutions capable of ensuring implementation of the cooperation envisaged by the Agreement

explicit provision for cases of breach: typically, a "material breach" of the Agreement, justifying the taking of "appropriate measures" without prior consultation, is defined in terms *inter alia* of a violation of an essential element of the Agreement. However, in spite of their legal status and high political profile, the real effectiveness of these clauses may be questioned.<sup>59</sup> They are applied somewhat selectively,<sup>60</sup> and there is no doubt that it is easier for the EU actually to use conditionality in the positive sense, as a condition of deepening relations and of financial assistance. In its recent Communication on Russia, for example, the Commission expresses concern at Russia's record in respect of "universal and European values", taking the view that the EU should pursue a policy of engagement, being prepared to take up difficult issues in a clear and forthright manner, raising concerns "vigorously and coherently". Its conclusion is that:

"such a partnership must be founded on shared values and common interests. This implies discussing frankly Russian practices that run counter to universal and European values, such as democracy, human rights in Chechnya, media freedom and some environmental issues."<sup>61</sup>

At no point, however, does the Commission mention the possibility of invoking the essential element clause in the Partnership and Cooperation Agreement with Russia.<sup>62</sup>

#### *Promotion of EU values in the draft Constitutional Treaty*

The absence of a human rights policy for the Union as a whole<sup>63</sup> is perhaps one reason why the promotion of EU values has hitherto operated in a variety of ways and on a somewhat ad hoc basis. The DCT would change that, by generalising the requirement to promote its values to all aspects of EU

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throughout the territory of Yugoslavia constituted an essential condition for initiating and pursuing that cooperation." (at para 55)

<sup>59</sup> Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *EFA Rev* 253.

<sup>60</sup> Ward, 'Frameworks for Cooperation between the European Union and Third States: a Viable Matrix for Uniform Human Rights Standards?' (1998) 3 *EFA Rev* 505.

<sup>61</sup> Commission Communication on relations with Russia, 9 February 2004, COM(2004)106, p.6.

<sup>62</sup> Most if not all cases in which the EU has initiated consultation procedures under the essential elements clause have involved either the Lomé or Cotonou Conventions; for an example see Council Decision 2002/148/EC of 18 February 2002 concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement, OJ 2002 L50/64.

<sup>63</sup> Alston and Weiler, "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights", in Alston (ed.) *The EU and Human Rights* (OUP 1999).

external policy. Article III-193(1) states that Union action on the international scene shall be "guided by and *designed to advance in the wider world*" the values set out in Part I (although here called principles).<sup>64</sup> Thus not only development policy but also trade policy and associations with third countries would all have as one of their objectives the promotion of Union values. This change is part of a more general attempt in the DCT to unify Union external action under a single set of principles and objectives, which include the safeguarding of the Union's common values (currently a CFSP objective under Art.11 TEU) and which was a key recommendation of the Convention Working Group on External Action.<sup>65</sup> As well as the element of coherence encouraged by a single set of principles and objectives guiding all aspects of external action (and internal policies with external implications), the DCT would also have the effect of widening the scope of the values to be promoted by Union external policy. At present the focus, in the Treaty provisions and secondary legislation, is on democratic principles and respect for human rights and these are the primary values promoted by the financial instruments and the "essential elements" clauses. Under Article III-193, the list of values to be promoted is wider:

"democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter."

One should also add the values of liberty, pluralism, tolerance and justice, affirmed in Article I-2 DCT and also to be promoted and safeguarded by the Union's external action (Articles I-3(4) and III-193(2) (a)). Indeed the values of pluralism and tolerance might be said to be of central importance in defining just how the Union should promote its own "common values" to the outside world, especially as the duty to respect cultural diversity is presented in an internal context.<sup>66</sup>

## **V. The Duty of the Union to Uphold its Values: Solidarity**

Under the draft Constitutional Treaty, the Union is not only to safeguard and advance its values in its external action, it is also under a duty to uphold them (Article I-3(4) DCT). In other words, it is to practice what it preaches. Here, it is only possible to examine briefly one of these values, one

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<sup>64</sup> Emphasis added.

<sup>65</sup> Final Report of Working Group VII on External Action, CONV 459/02, 16 December 2002.

<sup>66</sup> Art. I-3(3), providing that the Union "shall respect its rich cultural and linguistic diversity".

which has a particular importance for the role of values in developing Union external policy: solidarity.

Solidarity appears in a variety of guises in the draft Constitutional Treaty. It is proclaimed as a value in Article I-2, as an objective in Article I-3, as a principle in Article III-193, and as the basis for a series of rights in Part II, incorporating the Charter of fundamental rights.<sup>67</sup> It also has distinctive meanings in the internal and the external spheres of Union policy and action, although the two are linked in the sense that the Union sees itself as exporting, or projecting, the value of solidarity to the wider world. In its internal policies, solidarity is linked primarily to the "European social model" emphasised in Article I-3(3) in the context of sustainable development, combating social exclusion, the promotion of social justice and social protection and cohesion policies.<sup>68</sup>

What of the external aspect of solidarity? Again it is possible to discern a number of different dimensions to the concept. In the first place is solidarity between the Member States themselves and to the Union, the commitment to support Union policy found in Article 11(2) TEU and expressed as "loyalty and mutual solidarity", echoing the duty of loyalty found in Article 10 EC.<sup>69</sup> The Final Report of Working Group VII on External Action draws out this dimension to solidarity in discussing the need for "mechanisms that foster convergence of views and a sense of solidarity", among them a clearer identification of the Union's principles and objectives. As the Report points out, "acting collectively on the global stage depends to a large extent on political will and solidarity among Member States".<sup>70</sup> Upholding solidarity thus reflects the need not only for loyalty to Union policy once it has been formulated, but also a willingness to engage and develop a collective view which can be supported by all Member States, facilitating policy formation. This type of solidarity is particularly important in the external sphere, where the Union's credibility is easily compromised by its absence, in failing to formulate coherent policies or to carry them through once agreed.

Second, the Union may make a distinctive contribution to the governance of world trade by demonstrating solidarity in the sense of social justice, solidarity between generations and sustainable development. This goes beyond simply exporting or

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<sup>67</sup> Rhodes, [cross ref to chapter](#).

<sup>68</sup> See further Rhodes, [cross ref to chapter](#).

<sup>69</sup> Cremona, "EU Enlargement: Solidarity and Conditionality", inaugural lecture delivered at Queen Mary, University of London, 12 March 2003.

<sup>70</sup> Final Report of Working Group VII on External Action, CONV 459/02, para 6.

promoting these values within third countries, for example in its own development policy. It implies that in seeking to influence the direction of global trade and trade-related policies the Union will support what Pascal Lamy has called "harnessed globalisation" or "mondialisation maîtrisée".<sup>71</sup> The solidarity represented by the European social model, and governance built on the development of common values, requires support at the global level, since "the challenges of combining competition and cooperation, autonomy and solidarity are no longer confined to the national or even regional level, but present themselves on a global scale."<sup>72</sup> The Laeken Declaration makes this vision plain: calling upon the EU to "shoulder its responsibilities in the governance of globalisation" the European Council characterises the Union's role as that of "a power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development". Solana too has called for the Union to share the responsibility for global security by supporting and building up a rule-based international order based on effective multilateralism.<sup>73</sup> Among the objectives of the Union's external policy, enumerated in Article III-193(2), are the promotion of "an international system based on stronger multilateral cooperation and good global governance." By way of such statements, which can be seen as part of what Nicolaidis and Howse have called the EU's "narratives of projection", Europe asserts its normative power.<sup>74</sup>

The third dimension of solidarity has implications for the way in which this normative power might be exercised. Solidarity implies a certain approach to the EU's relations with third countries, one which is based on equality and the recognition of diversity. In one sense this derives from the colonial legacy of many Member States; the Preamble to the EC Treaty confirms "the solidarity which binds Europe and the overseas countries", a reference to Part IV of the Treaty on the overseas countries and territories. A Working Document prepared by Alain Lamassoure for Convention Working Group VII on the adoption of guiding principles for the Union's external relations suggests three key principles: peace, independence and solidarity. The latter, he argues, is based on Europe's responsibility as the home of many of the world's colonial powers:

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<sup>71</sup> Lamy, "Les politiques communes et l'Europe dans la mondialisation", speech to the Institut de France, Académie des Sciences morales et politiques, Paris, 29 March 2004.

<sup>72</sup> Lamy, "Europe's Role in Global Governance: The Way Ahead", Humboldt University, Berlin, 6 May 2002.

<sup>73</sup> Solana, "A Secure Europe in a Better World", paper for the European Council, Thessaloniki, June 2003, SO 138/03.

<sup>74</sup> Nicolaidis and Howse, "'This is my Eutopia ...': Narrative as Power" (2002) 40 JCMS 767.



"Son aide au pays tiers doit être guidée, ni par un esprit de domination, ni par des intérêts individuels, ni par la recherche d'une bonne conscience collective, mais par l'intérêt profond des peuples bénéficiaires."<sup>75</sup>

But it is not only towards developing countries, or former colonies, that the Union has demonstrated solidarity. In the current enlargement process solidarity-based concerns have emphasized the need for openness and inclusivity, towards not only the immediate candidates but towards those other states, the "potential candidates" and the Union's new neighbours.<sup>76</sup> This has affected the application of membership conditionalities. Although rightly criticised for their inevitably subjective nature and unpredictability,<sup>77</sup> with at times a difficult accommodation between the weight to be given to specific criteria and the overall policy judgement, these have in practice resulted in an inclusive approach to enlargement.<sup>78</sup> The "One Europe" Declaration, adopted at Copenhagen in December 2002 by the Member States and accession States, is a statement of solidarity between existing and new Member States and the remaining candidate States post-enlargement, significant in view of the level of competition between candidates fostered by the very existence of membership conditionality. Solidarity in this sense, of refusing to allow the current enlargement to create new dividing lines within Europe, will pose serious challenges for post-enlargement policy towards the actual and prospective candidates from south-east and eastern Europe. Its importance as a value guiding the development of that policy lies in its emphasis on equality, the importance of a common goal or project, and a rejection of the European Union project as a club open only to a selected few. It implies, therefore, a recognition of responsibility on the part of the European Union.

The draft Constitutional Treaty refers in Article I-3(4) to "solidarity and mutual respect among peoples" among the Union's external relations objectives. Solidarity in this

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<sup>75</sup> Lamassoure, "Déclaration des principes des relations extérieures de l'Union", WGVII - WD 03.

<sup>76</sup> Cremona, "EU Enlargement: Solidarity and Conditionality", inaugural lecture delivered at Queen Mary, University of London, 12 March 2003; Cremona, "Enlargement: A Successful Foreign Policy Instrument of the EU?" paper delivered at WG Hart Workshop, June 2003.

<sup>77</sup> Hillion, 'Enlargement of the European Union: A Legal Analysis' in Arnall and Wincott (eds) *Accountability and Legitimacy in the European Union* (OUP 2003).

<sup>78</sup> Cremona, "EU Enlargement: Solidarity and Conditionality", inaugural lecture delivered at Queen Mary, University of London, 12 March 2003.

sense does not only express a sense of responsibility for the needs of the developing world or the creation of stability and security within Europe; it recognises both the equality of states and their diversity. The Preamble to the TEU expresses this idea in the context of the Union itself, referring to the "solidarity between their [i.e. the Member States'] peoples while respecting their history, their culture and their diversity". The Laeken Declaration applies this view of solidarity to Europe's role in the new world order, characterizing it as "the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions." The tension between unity and diversity recognised here and represented by solidarity has been well expressed by Nicolaidis and Howse:

"Solidarity in political contexts beyond the nation-state requires a double commitment: towards a shared allegiance to (universal) values and to the mutual engagement of (diverse) political cultures, values, priorities and institutions without merging them."<sup>79</sup>

Solidarity as upheld by the Union in its relations with third states should therefore reflect a mutuality or willingness to enter into "mutual engagement" based on respect. It requires sensitivity, even when promoting its own models of governance, or its own values, to the values, culture and priorities of others. In that sense it is a value which operates on the conduct of policy as well as its substantive content.

## **VI Conclusion**

This chapter has illustrated the variety of ways values form part of and are expressed in EU external policy. Certain values have become incorporated into the Union's identity, to the extent that they are regarded as a condition of membership, and - as "shared values" - the basis for establishing close relationships, especially with neighbouring states. Respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights are the primary values asserted in Article I-2 DCT and which are thus identified with the Union in a particular way. The close self-identification of the Union with values has enabled it to present itself as a model, not only of particular forms of regional integration or governance, but also of the values which are claimed to be at its foundation. These values go beyond those accepted as conditions of membership and include (as well as democracy, the rule of law and respect for human rights) peace and stability, respect for international law and peaceful settlement of disputes, and respect for cultural diversity.

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<sup>79</sup> Nicolaidis and Howse, note 74, at 784.

Prominent among the external policy objectives set out in the draft Constitutional Treaty is the promotion of the Union's values. This reflects a developing policy, focused on the foundational values of democracy, the rule of law and respect for human rights, and which has seen their promotion placed among the explicit objectives of both the Community's development cooperation policy and the Union's CFSP. More recently a broader base for integrating Union human rights policy into external policy more generally has been created,<sup>80</sup> raising questions as to the need for a more explicit set of overall Treaty-based objectives and principles for external policy and a more coherent approach to developing a human rights policy within the EU. The draft Constitutional Treaty would not abolish the existing variety of different external policy fields (such as association agreements, commercial policy, development, foreign policy, defence) nor remove the need for specific legal bases. However it would provide a basis for integrating these different specific activities relating to the "external" promotion of values by requiring the establishment of overall policy objectives and encouraging a more strategic approach.<sup>81</sup>

Whatever the importance of these different methodologies, of the ways and means by which the Union might be said to disseminate its values by incorporating them into its external policies, the most fundamental role for the Union's values in its exercise of external powers lies in the Union's commitment (using the words of the draft Constitutional Treaty) to "uphold" and "be guided by" those values in its international action. As we have seen by looking at the example of solidarity, this has implications for the conduct of that policy, and not only for its substantive content. Policy content and priorities, even where underpinned by a particular value-system, will inevitably change. It is all the more critical that in developing that policy, and in carrying it out, the Union adheres to the value standards it professes and expects of others (including its own Members); that it acts itself according to the values of equality, of solidarity and of the rule of law. This is of course important not only for external action, but across all fields of Union activity, and the provision in the DCT of a competence-base for Union accession to the European Convention for the Protection of Human Rights<sup>82</sup> is a significant step towards fulfilling this commitment internally as well as externally. However in its external policies and actions, the Union speaks to an external constituency and unlike a State it has no inbuilt authority. It has to provide convincing evidence of its authority as a normative power, an authority which does not yet, and will not in the foreseeable future, depend on military strength. If the

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<sup>80</sup> See Article 181a EC.

<sup>81</sup> Articles III-193 and III-194 DCT.

<sup>82</sup> Article I-7(2) DCT.

Union's values are to contribute towards constructing this international identity, they must be built not only into the constitutions and traditions of its Member States, but into its own constitution, its own actions and its international relations.