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# **Why we should care about LATAM:**

On the EU's Protection and Promotion of Human Rights  
in Chile, Cuba, and Colombia

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## **Abstract**

The purpose of this paper is to examine whether the European Union (EU) has been successful in protecting and promoting human rights in Latin America, what could be improved, and why. The analysis begins with an examination of the general legal framework of EU foreign policy, including a brief explanation of the various instruments at the EU's disposal and their limitations. This is followed by a discussion of the EU's role in the international context, including in relation to Europe's colonial past and the notion of European values. The importance of the relationship between the two regions is then briefly analyzed. Next, three extensive case analyses are presented, discussing the EU's involvement in Chile, Cuba, and Colombia, all in the specific context of major human rights issues in these countries.

The paper concludes that there is much to criticize in the various activities of the EU in Latin America, especially from a decolonial perspective and regarding the discrepancy between ethical and realist objectives. However, the diversity of the efforts made can be positively acknowledged and there is reason to believe that in the future there will be improvements and that the relationship between the two regions will be strengthened towards one of equal partners.

## **Acknowledgment**

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## Glossary of Acronyms

AA	Association Agreement
ACP	Countries of Africa, the Caribbean and the Pacific
AI	Amnesty International
BVerfGE	Bundesverfassungsgericht (German Constitutional Court)
CARICOM	Caribbean Community
CCP	Common Commercial Policy
CELAC	Comunidad de Estados Latinoamericanos y del Caribe (Community Of Latin American and Caribbean States)
CFR	The Charter of Fundamental Rights of the European Union
CFSP	Common Foreign and Security Policy
Chile-EU MoU	Memorandum of Understanding between the European Union and the Republic of Chile on a Strategic Partnership on Sustainable Raw Materials Value Chains
CIDH	Comisión Interamericana de los Derechos Humanos (Inter-American Commission on Human Rights)
CIL	Customary International Law
Colombia-EU MoU	The Republic of Colombia-European Union Memorandum of Understanding on an Agenda of enhanced political and sectoral dialogue and cooperation for the next decade
COM	European Commission
CONADI	Corporación Nacional de Desarrollo Indígena (National Corporation for Indigenous Development)
Council	Council of the European Union
CSO	Civil Society Organization
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
ELN	Ejército de Liberación Nacional (National Liberation Army)
ENAL	Empresa Nacional del Litio (National Lithium Company)
EP	European Parliament
EPL	Ejército Popular de Liberación (Popular Liberation Army)
EPRS	European Parliamentary Research Service
EU	European Union
EuroLat	Euro-Latin American Parliamentary Assembly
EUSR	EU Special Representative
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia)
fidh	International Federation for Human Rights
FTA	Free Trade Agreement
GRULAC	Group of Latin American and Caribbean Countries
HR/VP	High Representative for Foreign Affairs / Vice-President of the European Commission
HRW	Human Rights Watch
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IL	International Law
ILO	International Labour Organization

Indigenous and Tribal Peoples Convention	ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5 September 1991) UNTS 1650
IOM	International Organization for Migration
LAC	Latin America and the Caribbean
LATAM	Latin America
LP	Laboratorios de Paz (Peace Laboratories)
MERCOSUR	Mercado Común del Sur (The Southern Common Market)
MP	Member of the European Parliament
MS	Member State
New Agenda	New Agenda for Relations between the EU and Latin America and the Caribbean
NTP	Nuevos Territorios de Paz (New Peace Territories Project)
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
PDCA	Political Dialogue and Cooperation Agreement
SQM	Sociedad Química y Minera de Chile
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TJ	Transitional Justice
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Charter	Charter of the United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
US	United States of America
WOLA	Washington Office on Latin America

## A. Introduction

In recent years, there has been an important discussion in the art world about representation. Who is allowed to represent? For example, even if it is for a good cause - storytelling, raising awareness, expressing solidarity - can a white person use the suffering of Black people in their art?<sup>1</sup>

At an event in Athens, at the National Museum of Contemporary Art,<sup>2</sup> this question was posed to the well-known photographer Susan Meiselas, who has worked extensively in Latin America (LATAM), where she also took the famous picture of the ‘Molotov Man’ in Nicaragua.<sup>3</sup> Meiselas answered that ‘when you come to a place as an outsider, you have to see where you can contribute.’ Eventually, her statement illustrates very well what the purpose of this thesis is. Leaving the art scene and entering the world of politics and law, I want to analyze the European Union’s (EU) role in LATAM as an outsider, but an outsider who, for several reasons, cannot ignore what is occurring in that region.

In its program for this year's elections of the European Parliament (EP), the right-wing VOX party in Spain devoted an entire chapter to the country's particular relationship with LATAM, claiming a special responsibility due to the shared history of Spain's, wrongly called, ‘discovery’ of America.<sup>4</sup> In this paper, I will argue that Europe, not just Spain, does indeed have a special responsibility towards the region because of the black chapter in our shared history as colonial powers<sup>5</sup> - but contrary to what right-wing voices say, this history should lead to a deep reflection on our role in contributing to the injustices that occur in the world and, consequently, in fighting against them.

My argument will include a description of the instruments that can be used under the legal framework to protect and promote human rights in LATAM. It will also include three case studies asking whether the EU’s approach has been successful or what needs to be changed. I have chosen to focus on three countries in the region, with very different histories, political systems, and relationships with the EU. In doing so, I hope to provide a comprehensive overview of the EU's possible influence that can serve as an example for other countries in the

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<sup>1</sup> JJ Charlesworth, ‘Violence and representation’ (*Art Review*, 4 April 2017) <<https://artreview.com/opinion-24-march-2017-violence-and-representation/>> accessed 14 June 2024.

<sup>2</sup> ‘Paper Graveyards. A Conversation between Susan Meiselas and Eduardo Cadava’ (*EMST Athens* 13 June 2024).

<sup>3</sup> Susan Meiselas, ‘Nicaragua - Molotov Man’ (*Susan Meiselas*, 2024) <<https://www.susanmeiselas.com/nicaragua-molotov>> accessed 14 June 2024.

<sup>4</sup> VOX, ‘Programa electoral de VOX Elecciones Europeas 2024’ <<https://www.voxespana.es/programa/otras-propuestas-de-vox/programa-electoral-de-vox-elecciones-europeas>> accessed 14 June 2024, ch 9.

<sup>5</sup> Of course, not every country in the EU has a colonial history. Nevertheless, I believe we are dealing with a collective responsibility of all MSs. I will explain why in later chapters.

region, as well as other parts of the world while trying to avoid an oversimplification of Latin American countries,<sup>6</sup> - the region is not as homogeneous as it is often understood.<sup>7</sup>

The countries whose relations with the EU I will analyze are Chile, Cuba, and Colombia. Within these analyses, I have focused on specific issues of particular relevance to each country. I will thus provide a broad picture, touching on the rights of indigenous peoples, freedom of speech and its relevance for democracy as well as peace and security policies, all under the question of what the EU can and should do, as well as when Europe should not get involved.

## I. Methodology

It is often said that LATAM is not a priority for Europe because it does not affect its core interests,<sup>8</sup> especially not in comparison to other regions.<sup>9</sup> While it is true that the EU puts more emphasis on its relationship with other states,<sup>10</sup> this does not mean that the Americas are irrelevant to European foreign policy. On the contrary, when it is not economic interests that are the main driving force behind the establishment of diplomatic relations,<sup>11</sup> one can thoroughly analyze how the EU strives to be a global human rights actor and whether it succeeds. This is important not only because of the general question of what role we play in international politics, but especially because of a changing dynamic that should make us question where we stand when countries like Russia, China, and Iran are powerful actors despite their poor human rights records. In this complex global order, it seems logical for the EU to form alliances with others because doing so is essential for achieving many of its objectives.<sup>12</sup>

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<sup>6</sup> Stephan Keukeleire, Sharon Lecocq and Frédéric Volpi, 'Decentring Norms in EU Relations with the Southern Neighbourhood' (2020) 59 *Journal of Common Market Studies* 891, 892.

<sup>7</sup> Anna Ayuso and Gian Luca Gardini, 'EU-Latin American Relations as a Template for Interregionalism' in Frank Mattheis and Andréas Litsegard (eds), *Interregionalism across the Atlantic Space* (Springer International Publishing 2017) 3.

<sup>8</sup> See also: Karlos Pérez de Armiño, 'Introduction: EU Support for Peace in Colombia. Territorial Approach, Strengthening Civil Society and Human Rights' in Karlos Pérez de Armiño (ed), *European Union Support for Colombia's Peace Process* (Palgrave Macmillan 2023) 11.

<sup>9</sup> Mario E. Carranza, 'Leaving the Backyard: Latin America's European Option' (2004) 2 *Internationale Politik und Gesellschaft* 54, 79.

<sup>10</sup> For example, cooperation with countries on the African continent often seems to be more in focus, given the EU's externalization policies that aim at preventing people on the move from arriving in Europe. See also: Chris Jones, Romain Lanneau, and Yasha Maccanico, 'Access Denied: Secrecy and the Externalisation of EU Migration Control' (Heinrich-Böll-Stiftung European Union December 2022) <[https://eu.boell.org/sites/default/files/2023-03/secrecy\\_externalisation\\_migration\\_web.pdf](https://eu.boell.org/sites/default/files/2023-03/secrecy_externalisation_migration_web.pdf)> accessed 13 June 2024, 7.

<sup>11</sup> Detlef Nolte, 'The European Union and Latin America: Renewing the Partnership after Drifting Apart' (2023) Working Paper GIGA Focus Lateinamerika 2 <<https://nbn-resolving.org/urn:nbn:de:0168-ssoar-85384-1>> accessed 14 June 2024.

<sup>12</sup> Lucía Dammert and José Ignacio Torreblanca, 'Critical Material: The EU's and Chile's New Relationship in the Multipolar World' (*European Council on Foreign Relations*, 14 December 2023) <<https://ecfr.eu/article/critical-material-the-eus-and-chiles-new-relationship-in-the-multipolar-world/>> accessed 13 May 2024.

Therefore, I will analyze the legal documents that shape the EU's foreign policy from a general point of view and then explore the EU's external activities in relation to the countries I have chosen for my case studies. As the title of this thesis suggests, I will focus primarily on the protection and promotion of human rights. Aware of the traditional categorization of human rights obligations into respect, protect, and fulfill,<sup>13</sup> protection in this thesis is understood as the prevention of human rights violations by private actors as well as national governments and state authorities, and promotion is understood as any action aimed at improving the human rights situation of a country. Moreover, the analysis will be conducted using a multidisciplinary approach - law is dynamic and shaped by culture and history, so I cannot ignore the contexts from which relevant international, regional, and national documents originate. In addition, a multidisciplinary approach is necessary for a full understanding of the complex field of EU foreign policy.<sup>14</sup> In this regard, I also want to emphasize the sovereignty of states and the role of Europe in a world often described as post-colonial. In my academic career, I have often thought that our continent does not put enough emphasis on its colonial past, even though it has had an enormous impact on how our world looks today, who is wealthy and powerful, and who is not. When it comes to foreign policy and legal analysis, this is something that needs to be considered more often and to a degree that will help us achieve a more just and equitable world order.

In addition to the EU legal framework, international legal documents, and national legislation of the countries in question, I have studied scientific research to support my argumentation with the work of several scholars. Since I touch on many current and evolving issues, I have also had to rely on several media outlets to keep this work as updated as possible. In addition, I have studied the findings of relevant civil society organizations (CSOs) to examine what problems might arise from certain external actions of the EU, which was particularly relevant for the case studies. In this regard, it must be said that this thesis cannot examine every activity that the EU has undertaken concerning the specific country, as this would exceed the scope of this work by far. For this reason, I have intentionally focused on certain issues and activities. I have made sure that they are distinct from each other, which allows for a broad understanding while leaving the space to go into depth on the specific topic. Furthermore, while sometimes singular member

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<sup>13</sup> Lorand Bartels, *A model human rights clause for the EU's international trade agreements* (Deutsches Institut für Menschenrechte 2014) 17.

<sup>14</sup> Ramses A. Wessel, 'The Legal Dimension of European Foreign Policy' (draft) in Åasne Kalland Aarstad and others (eds), *Handbook of European Foreign Policy* (Sage 2015) <<https://ris.utwente.nl/ws/portalfiles/portal/5598731/wessel103.pdf>> accessed 21 May 2023, 14.

states (MSs) and their activities will be mentioned, I have focused on the EU as a single actor instead of discussing the policies of particular MSs.

With my thesis, I hope to contribute to a stronger human rights policy of the EU, one that takes into account not only our economic power but also our responsibilities as a wealthy region of the Global North.

## II. LATAM, LAC or Abya Yala?

My thesis revolves around LATAM - while in common parlance it seems obvious what this means, when one wants to be precise and define this construct, one quickly realizes that a definition is not as obvious as initially thought.

‘Latin America’ is commonly understood as an attempt to distinguish the region from the northern part of the continent, especially the United States of America (US).<sup>15</sup> However, the origins of the term are much more complicated. As Michel Gobat has put it, the invention of ‘Latin America’ is based on a ‘transnational history of anti-imperialism, democracy, and race’. European colonial tendencies to dominate other parts of the world already underlie the whole concept of continents, and the invention of ‘Latin America’ was no exception. The term seems to have originated from the French idea of a ‘Latin race’, but unlike ‘Latin Africa’, it has survived because of its later use to oppose US imperialism.<sup>16</sup> Generally, ‘Latin America’ is said to include the states of the region that speak a Romanic language.<sup>17</sup>

In its policies, the EU usually refers to the region as ‘LAC’, which includes both LATAM and the Anglophone parts of the Caribbean.<sup>18</sup> While this combination makes sense in certain contexts, it does not sufficiently take into account the different experiences of the regions concerned - in general, relations with the Caribbean have a stronger colonial flavor compared to LATAM, one that is even more asymmetrical.<sup>19</sup> For my work, therefore, I have chosen to focus on LATAM and, to make it more comparable, on the Hispanic parts of the region.

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<sup>15</sup> Rubén Torres Martínez R, ‘Sobre el concepto de América Latina ¿Invencción francesa?’ (2016) 32 Cahiers d’études romanes 89, para 1-6.

<sup>16</sup> For an extensive explanation of the term’s origins see: Michel Gobat, ‘The Invention of Latin America: A Transnational History of Anti-Imperialism, Democracy, and Race’ (2013) 118 American Journal of Ophthalmology 1345.

<sup>17</sup> *ibid* 1360.

<sup>18</sup> EU-LAC Foundation, ‘Members’ (*EU-LAC Foundation*) <<https://eulacfoundation.org/en/members>> accessed 1 July 2024.

<sup>19</sup> Lorena Ruano Gómez, ‘The institutional architecture of the EU-LAC relationship’ in Lorena Ruano Gómez, *Dealing with Diversity, The EU and Latin America Today* (European Union Institute for Security Studies, Paris 2018) 37.

While I will use the term ‘Latin America’ throughout this work, I would like to invite the reader to think critically about the implications of this term. Throughout history, part of the population of LATAM has been described as ‘too Black’<sup>20</sup> to be Latin American. At the same time, the Indigenous population is colonially forced to fit into the concept of ‘Latinidad’.<sup>21</sup> For these reasons, it has already been suggested that it may be necessary to stop using the term to achieve proper decolonization. Instead, we should consider referring to ‘Abya Yala’,<sup>22</sup> a name used by a variety of indigenous communities to refer to the continent of the Americas. It comes from the Guna people of the Darién Gap, which lies between present-day Colombia and Panama.<sup>23</sup>

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<sup>20</sup> Gobat (n 16) 1370/1371.

<sup>21</sup> Mónica G. Moreno Figueroa, ‘Mestizaje: When the shades dissimulate whiteness’ (2023) 48 *The Funambulist*. See also: Floridalma Boj Lopez F, ‘Naming, A coming home: Latinidad and Indigeneity in the Settler Colony’ (2022) 41 *The Funambulist*.

<sup>22</sup> Gobat (n 16) 1375.

<sup>23</sup> Sergio Calderón Harker, ‘Decolonial: Abya Yala’s insurgent epistemologies’ (2023) 50 *The Funambulist*.

## **B. Human Rights in the EU's External Action**

### **I. The EU as a global Human Rights Actor**

As we will see throughout this analysis, human rights play a crucial role in EU policies. However, the EU has not always been seen as a human rights actor. Instead, free trade and the single market have long been at the forefront of its activities - while the protection of fundamental rights has been 'imposed', for example, by the German Constitutional Court, which threatened to ignore the primacy of EU law if the EU wouldn't include a framework for the protection of fundamental rights.<sup>24</sup> In the end, the Charter of Fundamental Rights (CFR) was adopted and has become binding since the Treaty of Lisbon, establishing a human rights standard to be protected in EU activities.<sup>25</sup>

#### **1. Historical Context and Legal Framework**

The EU was created in the aftermath of World War II. Its purpose was to prevent Western European nations from engaging in violent conflict with each other by binding them to legal obligations, and thereby putting an end to an 'anarchic' system in the region.<sup>26</sup> Other fields of competence later expanded the idea of achieving peace within Europe through common trade - and the eventual expansion to include common external activities can be seen both critically in terms of why the EU needs to interfere in other countries, but also as a logical and positive step forward from promoting peace in Europe to promoting human rights and democracy elsewhere.

The relevant provisions are constitutionally located in two different areas: Title V of the Treaty on European Union (TEU) and Part V of the Treaty on the Functioning of the European Union (TFEU). While almost all matters relating to external relations are contained in the TFEU, matters concerning the Common Foreign and Security Policy (CFSP) are found in the TEU.<sup>27</sup> The EU began operating under a CFSP in 1993 with the entry into force of the TEU. Several developments followed until the Treaty of Lisbon entered into force in 2009, which established the legal framework as it exists today.<sup>28</sup>

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<sup>24</sup> BVerfGE 37, 271 - Solange I, Beschluss vom 29. Mai 1974.

<sup>25</sup> Sionaidh Douglas-Scott, 'The European Union and Human Rights after the Treaty of Lisbon' (2011) 11 Human Rights Law Review 645, 646.

<sup>26</sup> Karen E Smith, 'Beyond the Civilian Power EU Debate' (2005) 3 (17) *Politique européenne* 63, 70.

<sup>27</sup> Graham Butler, *Constitutional law of the EU's Common Foreign and Security Policy: Competence and Institutions in External Relations* (Modern Studies in European Law series, Hart Publishing/Bloomsbury 2019) 40.

<sup>28</sup> EP, '5. The EU's External Relations' in *Fact Sheets on the European Union* (2024) <<https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf-chapter/en/en-chapter-5.pdf>> accessed 31 May 2024, 4.

The legal basis for the EU's external action can be found in Art. 21 ff TEU. According to Art. 24 I TEU, the CFSP (Art. 23 ff TEU) is subject to special rules and procedures.<sup>29</sup> In the absence of a comprehensive list of competencies, it has been debated how to distinguish this field from other policies<sup>30</sup> that are specified in Art. 205 ff TFEU. According to these provisions, the EU's external actions include a Common Commercial Policy (CCP), development cooperation and humanitarian aid, restrictive measures, international agreements, as well as Union delegations, and cooperation with international organizations.<sup>31</sup> In some cases, they establish an extensive exclusive competence for the EU, as in the case of the CCP.<sup>32</sup>

The promotion of regional cooperation, the protection of human rights, the promotion of democracy and good governance, the prevention of conflicts, and the fight against international crimes are the objectives laid down in the legal framework. While these aims are not unique to the EU but common to many actors on the international stage, the EU's use of mostly soft instruments is a distinguishing element.<sup>33</sup>

## 2. The external Human Rights Commitment

Art. 21 (1), (2)(b) TEU states that in its external action, the EU is *guided* by human rights, democracy, and other principles that were the inspiration for its own creation. This commitment has subsequently been operationalized, first through the EU Strategic Framework in 2012 and later through the subsequent Human Rights and Democracy Action Plans (2012-2014, 2015-2019, and 2020-2024) adopted by the Council.<sup>34</sup> Art. 21 TEU clarifies that the promotion of human rights is no longer just a matter of development policy, but a factor in all external actions. Especially Art. 21 (2)(b) TEU can be seen as a shift towards not only wanting to improve the situation in a third country but also to evaluate the EU's own actions based on their orientation towards human rights. Moreover, the provision makes clear that the promotion of human rights is not subordinate to the specific primary objective of a particular policy.<sup>35</sup> In the end, the obligation of Art. 21 TEU is not a legal basis in itself but can be viewed as the foundation of

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<sup>29</sup> Consolidated Version of the Treaty on European Union [2016] OJ /1 C 202/13/03 (TEU).

<sup>30</sup> Butler (n 27) 40/41.

<sup>31</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ 1 C 326/47 (TFEU).

<sup>32</sup> Allan Rosas, 'EU External Relations: Exclusive Competence Revisited' (2015) 38 *Fordham International Law Journal* 1073, 1094.

<sup>33</sup> Jérónimo L. S. Barbin, 'Fünf Jahre nach Lissabon: Das Auswärtige Handeln der EU auf dem Prüfstand' (2015) 38 *Integration* 343, 343/344.

<sup>34</sup> Michael Krennerich, *Human Rights Politics* (Springer 2024) 98.

<sup>35</sup> Vivian Kube, 'The European Union's External Human Rights Commitment : What Is the Legal Value of Article 21 TEU?' (2016) 10 *European University Institute, Working Paper, EUI LAW* <<https://cadmus.eui.eu/handle/1814/40426>> accessed 30 June 2024, 13.

the EU's human rights-based approach in all policies affecting its external action. It makes human rights an objective in its own right.<sup>36</sup>

The commitment to human rights is further enshrined in Art. 3 (5) TEU, which entails the obligation to *uphold* and *promote* the values of the EU, established in Art. 2 TEU, as well as the commitment to *contribute* to the protection of human rights and the development of international law (IL). The specific foreign policies then refer to the general objectives of the EU's external action, as can be seen from the example of Art. 207 (1) 2 TFEU for the CCP that shall be *conducted* in the contexts of these objectives. In addition, the fundamental rights enshrined in the CFR form a general principle of EU action, as do the obligations arising from international human rights commitments.<sup>37</sup>

Overall, the human rights commitment is enshrined in several overlapping provisions, which use different terms to describe the commitment and whose scope therefore requires further examination.<sup>38</sup>

### 3. Competences and the Requirement of Coherence

The Treaty of Lisbon has led to a fundamental change in the way the EU's external action is structured<sup>39</sup> and has eventually given the EU a political dimension. An undertaking that would take time and require a change of mindset on the part of the MSs, as they would be required to think as a whole instead of acting only in their national interests.<sup>40</sup> The somewhat shared competence between the EU and its MSs often leads to complications. However, with the High Representative for Foreign Affairs / Vice-President of the European Commission (HR/VP) and the European External Action Service (EEAS), two bodies have been created that can facilitate cooperation to a certain extent.<sup>41</sup> The issue is best described by the term 'vertical coherence', which is not explicitly mentioned in the treaties but can be derived from Art. 4 III TEU, which contains the principle of loyal cooperation.<sup>42</sup>

The principle of coherence is important at different levels: The just mentioned vertical coherence, which refers to coherence between the Union and the MSs; but also horizontal coherence (Art. 21 (3) 2 TEU), which refers to the different policy areas in which the EU

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<sup>36</sup> *ibid* 14.

<sup>37</sup> Kube (n 35) 2/3.

<sup>38</sup> See also: Bartels (n 13) 16.

<sup>39</sup> *ibid*, abstract.

<sup>40</sup> Veit Bachmann, *European External Action: The Making of EU Diplomacy in Kenya* (Routledge 2017) 171.

<sup>41</sup> Wessel (n 14) 11.

<sup>42</sup> Lena Freigang, *EU-Demokratie- und Menschenrechtsförderung im auswärtigen Handeln nach dem Vertrag von Lissabon* (Nomos 2015) 170.

operates; as well as institutional coherence (Art. 13 (1) TEU).<sup>43</sup> ‘Coherence’ itself can be defined in different ways. However, a common thread is that it requires the absence of contradictions between the policies of different actors.<sup>44</sup> This is necessary to be able to act effectively.<sup>45</sup>

On the institutional level, the part played by the EP, which has already been accused of acting more like an NGO than an institution defending the interests of the EU, is especially interesting.<sup>46</sup> As we will see later in the case studies, the role of the EP should not be underestimated also for LATAM. The creation of the Euro-Latin American Parliamentary Assembly (EuroLat) in 2006,<sup>47</sup> for example, is particularly noteworthy.<sup>48</sup>

Concerning the horizontal aspect of the coherence principle, it is necessary to address the collision rules. While human rights and democracy are general objectives of the EU's external action, the specific policy areas also have specific objectives. The question of which objective takes precedence over the other general ones and the specific objectives can only be determined on a case-by-case basis. The treaties do not imply a general priority for any of the objectives, which is why the principle of ‘practical concordance’ or the ‘balancing’<sup>49</sup> of different objectives ultimately gives temporary priority only for the specific case.<sup>50</sup> It is interesting to note that the general objectives of the EU's external action thus support the principle of coherence by creating common objectives, but at the same time require that the principle is followed appropriately since they are normatively on an equal footing.<sup>51</sup>

#### 4. Instruments

In the next step, I will discuss the different instruments at the EU's disposal to achieve its goal of functioning as a human rights actor. The treaties do not list such instruments, neither Art. 21

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<sup>43</sup> Lisa Müller, *Das Kohärenzgebot im Entwicklungsrecht der Europäischen Union* (Nomos 2015) 141.

<sup>44</sup> Clara Portela and Kolja Raube, ‘The EU Polity and Foreign Policy Coherence’ (2012) 8 *Journal of Contemporary European Research* 3, 4.

<sup>45</sup> Clara Portela and Kolja Raube, ‘(In-)Coherence in EU Foreign Policy: Exploring Sources and Remedies’ (European Studies Association Bi-annual Convention, Los Angeles, April 2009) <[https://aei.pitt.edu/33122/1/portela.\\_clara\\_\(2\).pdf](https://aei.pitt.edu/33122/1/portela._clara_(2).pdf)> accessed 3 June 2024, 2.

<sup>46</sup> Paul Taylor, ‘Between Two Stools: The EU’s Foreign Policy’ (*Friends of Europe*, 20 October 2023) <<https://www.friendsofeurope.org/insights/critical-thinking-between-two-stools-the-eus-foreign-policy/>> accessed 30 May 2024.

<sup>47</sup> Council, ‘IV EU-LAC Summit (Vienna, Austria, 12 May 2006) Declaration of Vienna’ (Press Release, 12 May 2006) 9335/06 Presse 137, 3 [8].

<sup>48</sup> Isabelle Ioannides, *Peace and Security in 2019: Evaluating EU efforts to support peace in Colombia* (EPRS 2019) 33.

<sup>49</sup> Freigang (n 42) 130/131: The idea of both approaches is similar, the only difference being that ‘practical concordance’ is even more concerned with finding a solution that allows all the objectives in question to be met as much as possible.

<sup>50</sup> *ibid* 134/135.

<sup>51</sup> *ibid* 171/172.

TEU nor Art. 3 are of help, the latter only refers to ‘appropriate means’ (Art. 3 (6) TEU).<sup>52</sup> However, it is an option to classify possible instruments into three groups: political, trade, and military. Using this as a starting point, a wide palette of tools can be identified,<sup>53</sup> which one might even criticize as being too extensive and thus non-transparent.<sup>54</sup> In its interregional cooperation with LATAM, the EU has traditionally tried not to act purely commercially, but rather to play a regulatory role that covers three dimensions: politics, economics, and development.<sup>55</sup> To an extent, also cooperation in the area of defense plays a role.<sup>56</sup> I will focus on the most important instruments for the topics covered by this thesis.

#### a. Diplomacy

Article 47 TEU explicitly recognizes the EU’s legal personality, making it an independent entity that is therefore able to act under diplomatic law.<sup>57</sup> Diplomatic action includes not only the classic instruments such as *démarches* and human rights dialogues but also public<sup>58</sup> as well as quiet diplomacy.<sup>59</sup> It is also possible to cut off diplomatic relations in response to serious human rights violations, a situation in which the instruments of diplomacy and sanctions overlap.<sup>60</sup>

Diplomacy tools are often used when, for various reasons, other tools would not have the desired effect. For example, in the case of rather difficult relations with a country, they offer the possibility of continuing cooperation rather than having the other country become alienated. However, human rights dialogues with countries that are known for committing grave violations of human rights have already been criticized for their ineffectiveness. For example, several CSOs have called on the EU to end its human rights dialogue with China and to use more effective tools at its disposal to improve the situation, suggesting, among other measures, to be

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<sup>52</sup> *ibid* 241/242.

<sup>53</sup> *ibid* 245.

<sup>54</sup> Manfred Nowak and Karolina Podstawa, ‘The EU’s (strategic) use of human rights tools and instruments’ in Jan Wouters J and others (eds), *The European Union and Human Rights: Law and Policy* (Oxford University Press 2020) 542.

<sup>55</sup> Gian Luca Gardini and Anna Ayuso, ‘EU-Latin America and Caribbean Inter-regional relations: complexity and change’ (Working Paper, Atlantic Future Seminar, Lisbon, January 2015) <[https://eulacfoundation.org/system/files/digital\\_library/202307/1530laeu\\_5to\\_incluir\\_aqui\\_quede.pdf](https://eulacfoundation.org/system/files/digital_library/202307/1530laeu_5to_incluir_aqui_quede.pdf)> accessed 20 June 2024, 11.

<sup>56</sup> Ruano (n 19) 27.

<sup>57</sup> Freigang (n 42) 249/250.

Diplomatic law includes, for example, the Vienna Convention on Diplomatic Relations (VCDR), whose Art. 3 lists the functions of a diplomatic mission. The role of the EU in this framework has been analyzed in Ramses A. Wessel and Bart van Vooren, ‘The EEAS’s diplomatic dreams and the reality of European and international law’ (2013) 20 *Journal of European Public Policy* 1350.

<sup>58</sup> Freigang (n 42) ch 6.1.

<sup>59</sup> Katrin Kinzelbach *The EU’s Human Rights Dialogue with China: Quiet Diplomacy and its Limits* (Routledge 2016) 1.

<sup>60</sup> Freigang (n 42) 267/268.

more active at the UN level, but also to explore the possibilities of universal jurisdiction.<sup>61</sup> That said, there are also successful examples, such as the cooperation between the EU and the Group of Latin American and Caribbean Countries (GRULAC) in their resolutions on children's rights,<sup>62</sup> which are consistent and also attract a growing number of states.<sup>63</sup>

#### b. Enforcement

While the EU sometimes prefers unconditional instruments, such as the human rights dialogues discussed above, conditionality is a tool that is commonly used in its external relations and can cut across several policy areas.<sup>64</sup> Enforcement in that sense is used when it seems especially necessary to ensure compliance with human rights standards. However, enforcement tools are subject to political and institutional considerations and are therefore sometimes criticized for being applied inconsistently.<sup>65</sup>

##### aa. Positive Conditionality: Human Rights Clauses

The inclusion of human rights provisions especially in trade agreements makes sense when one considers the potential impact of such agreements: They can promote prosperity and reduce poverty, but at the same time create a risk of causing problems such as displacement and environmental degradation. In addition, the inclusion of democratic principles, such as respect for the rule of law, helps to ensure a stable legal environment that is necessary for functioning trade relations.<sup>66</sup> Therefore, it is not only human rights that are included in the agreements through positive conditionality, but also other components.<sup>67</sup> Together, they form the 'essential elements' of an agreement, which is why such provisions are also called 'essential elements clauses'.<sup>68</sup>

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<sup>61</sup> Human Rights Watch (HRW), 'Joint CSO letter calling for suspension of EU-China human rights dialogue' (*HRW*, 12 June 2024) <<https://www.hrw.org/news/2024/06/12/joint-cso-letter-calling-suspension-eu-china-human-rights-dialogue>> accessed 2 July 2024; HRW, 'Joint Public Letter: EU Should Prioritize Rights in Relations with China after Findings of Potential Crimes Against Humanity' (*HRW*, 16 February 2023) <<https://www.hrw.org/news/2023/02/16/joint-public-letter-eu-should-prioritize-rights-relations-china-after-findings>> accessed 2 July 2024.

<sup>62</sup> Most recently: UNGA Third Committee (78<sup>th</sup> Session) 'Promotion and protection of the rights of children' (8 November 2023) UN Doc A/C.3/78/L.19/Rev.1.

<sup>63</sup> Nowak and Podstawa (n 54) 554/555.

<sup>64</sup> Kinzelbach (n 59) 194.

<sup>65</sup> Nowak and Podstawa (n 54) 550-552.

<sup>66</sup> Isabelle Ioannides, *The Effects of Human Rights Related Clauses in the EU-Mexico Global Agreement and the EU-Chile Association Agreement: Ex-Post Impact Assessment* (EPRS 2017) 17.

<sup>67</sup> Nicolas Hachez, 'Essential Elements' Clauses in EU Trade Agreements Making Trade Work in a Way that Helps Human Rights?' (2015) 53 *Cuadernos Europeos de Deusto* 81, 87.

<sup>68</sup> Bartels (n 13) 10.

The purpose of those clauses is the creation of a clear legal basis for the raising of human rights issues, and ultimately their inclusion as part of the dialogue with a third country.<sup>69</sup> Human rights clauses are found to be particularly effective *ex-ante*.<sup>70</sup> Rather than leading to improvements after the agreement comes into force, governments improve their policies in anticipation of an agreement,<sup>71</sup> after weighing the political costs of change against the political and financial benefits.<sup>72</sup> The EU's use of the 'power of the purse'<sup>73</sup> can be described as a relatively hard instrument compared to other soft instruments commonly used by the EU.<sup>74</sup>

The first time such a clause was used in the body of an agreement, and not just in the preamble, was in 1989 in the fourth Lomé Convention. Then, in 1995, the EU decided to include an essential elements clause in all of its agreements with third countries.<sup>75</sup> They have undoubtedly had an impact on the negotiation of agreements, as can be seen in the case of negotiations with Australia - the EU insists on the clauses even in agreements with countries not necessarily known for poor human rights records.<sup>76</sup>

The essential elements clauses are also subject to criticism. For example, it is often the case that agreements do not only concern the CCP, which falls under the exclusive competence of the EU - as a consequence, such mixed agreements are provisionally applied pending ratification by the MSs, which in some cases leads to uncertainty as to whether the essential elements clause is part of the provisional application. In addition, the scope of the clauses is not consistent in the different agreements that the EU concludes and has concluded, which adds to the complexity. I will not discuss this issue in detail, as human rights are always included, which is why the issue is not of great importance for the question of this paper. However, the issue does have an impact on the EU's credibility and ultimately on the confidence of partner states - something that should perhaps lead to the consideration of a standard clause so that states are treated equally. Nevertheless, slight differences may be justified by the different contexts and

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<sup>69</sup> ECORYS, CASE and Directorate-General for Trade (COM), *Ex-ante Study of a Possible Modernisation of the EU-Chile Association Agreement Final Report* (COM 2017) 276.

<sup>70</sup> Peter Becker 'Conditionality as an Instrument of European Governance – Cases, Characteristics and Types.' [2024] *Journal of Common Market Studies* (forthcoming) <<https://doi.org/10.1111/jcms.13580>> accessed 28 June 2024, 1/2.

<sup>71</sup> ECORYS, CASE and Directorate-General for Trade (COM) (n 69) 277.

<sup>72</sup> Becker (n 70) 2.

<sup>73</sup> Willem Molle, 'EU Membership and Budget Allocation Conditionality' (2018) 4 *Studies in European Affairs* 167, 174.

<sup>74</sup> Becker (n 70) 2.

<sup>75</sup> Communication from the Commission on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries [1995] COM(95) 216 final.

<sup>76</sup> Young Lo Ko, 'A Common Institutional Framework for EU–Korea Relations' in James Harrison (ed), *The European Union and South Korea* (Edinburgh University Press 2013) 163.

objectives of the agreements.<sup>77</sup> Also, the discrepancy between different clauses is relevant to the following thesis regarding the different formulations that determine the scope of what is meant by ‘human rights’. Third-country agreements generally refer to the Universal Declaration of Human Rights (UDHR), which seems to function as a minimum standard. More recently, the EU has begun to include references to other relevant human rights instruments to which the state concerned has acceded.<sup>78</sup> Whether the relevant instruments are implemented in the same way, i.e. universally understood in the same way, is of course ultimately an open question.

Finally, there has been considerable criticism from developing countries who see such clauses as coercion, leading to the question of whether Europe, as a ‘post-colonial’ entity, should not rely on voluntary transformations instead.<sup>79</sup>

A very important point of criticism concerns the implementation - it is said that the EU often allows human rights violations to go unpunished. Regarding this, a point of criticism is that when the EU activates conditionality, it does so selectively.<sup>80</sup> In particular, the EU is reluctant to engage with powerful states, while being stricter with less potentially harmful partners.<sup>81</sup> Moreover, unless there is a serious and sudden deterioration in the political situation, conditionality will not normally be activated even if human rights violations are routinely taking place in a country.<sup>82</sup> When it comes to those issues, the EP plays a particularly important role in monitoring the implementation of human rights clauses by using its resolutions.<sup>83</sup> In 2008, it stressed that the issue undermines the EU’s credibility.<sup>84</sup> What exactly happens when conditionality is finally activated will be discussed in the next paragraph.

#### bb. Negative Conditionality: Sanctions

In essential elements clauses, conditionality is triggered by an accompanying non-execution clause,<sup>85</sup> included for cases in which a state party commits serious human rights violations. The clause then allows for ‘appropriate measures’ that must be proportionate to the violation(s) and

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<sup>77</sup> Peter van Elsuwege and Joyce de Coninck, ‘The Effectiveness of Human Rights Clauses in EU Trade Agreements: Challenges and Opportunities’ (Policy report, Ghent European Law Institute 2022) 18.

<sup>78</sup> *ibid* 19.

<sup>79</sup> Kalypso Nicolaïdis and Sophie Meunier, ‘The European Union as a conflicted trade power’ (2006) 13 *Journal of European Public Policy* 906, 920.

<sup>80</sup> Hachez (n 67) 99.

<sup>81</sup> Fabienne Zwagemakers, ‘The EU’s Conditionality Policy: A New Strategy to Achieve Compliance’ (2012) 3 *IAI Working Papers* <<https://www.iai.it/sites/default/files/iaiw1203.pdf>> accessed 17 June 2024, 5.

<sup>82</sup> Hachez (n 67) 101.

<sup>83</sup> Ioannides (n 66) 29.

<sup>84</sup> EP Resolution (2008/2031(INI)) of 4 September 2008 on the evaluation of EU sanctions as part of the EU’s actions and policies in the area of human rights [2008] OJ C 295E/49 [21].

<sup>85</sup> Hachez (n 67) 89/90.

can be implemented only after consultation or even an arbitration procedure has taken place.<sup>86</sup> One problem is that there is no mechanism to measure when such a situation has occurred,<sup>87</sup> which leads to the possibility of double standards. While essential elements clauses have already been criticized as potentially becoming disguised protectionism and being of imperialist character, such criticism has also been directed at the accompanying non-execution clauses. So far the instrument in question has only been activated when targeting countries of Africa, the Caribbean, and the Pacific (ACP), i.e. essentially former EU colonies.<sup>88</sup> Concerning this, the EU needs to recognize that its policies have a significant impact on these regions, for example, they affect the livelihoods and economic well-being of local farmers by making it more difficult for them to compete in the global marketplace. The disparity in trading power can thus be a matter of life and death, which highlights the complex dynamics of international trade.<sup>89</sup>

Apart from conditionality in the form of the two clauses outlined above - international actors generally have a wide range of sanctioning tools, including arms embargoes or financial and travel restrictions, among others. Consequently, there is a distinction between targeted sanctions and broad embargoes,<sup>90</sup> which can furthermore cover several EU policy areas: The CCP, development assistance, or CFSP, making a distinction sometimes difficult.<sup>91</sup> The EU is an interesting case in that regard because its policies usually focus on positive rather than negative incentives.<sup>92</sup> For instance, trade is one of its most used foreign policy instruments – but mainly through free trade agreements (FTAs), which have the exact opposite goal compared to sanctions. The reluctance can be explained by the negative impact of sanctions also on the implementing state<sup>93</sup> and because of the need to obtain a unanimous decision for coercive measures, which is rather difficult and therefore usually not considered.<sup>94</sup>

Eventually, it is interesting to ask under what conditions the EU seems to be implementing sanctions despite these concerns. Of course, we need a situation in which human rights are being violated. In addition to that, public opinion plays a role and has the power to put pressure on an institution to impose sanctions – it determines the ‘cost of inaction’, as Omer Zarpli

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<sup>86</sup> Ionel Zamfir, ‘Human rights in EU trade agreements The human rights clause and its application’ (Briefing, EPRS 2019) 8/9.

<sup>87</sup> Ioannides (n 66) 32.

<sup>88</sup> Hachez (n 67) 105.

<sup>89</sup> Nicolaidis and Meunier (n 79) 915.

<sup>90</sup> Katharina Meissner, ‘How to sanction international wrongdoing? The design of EU restrictive measures.’ (2023) 18 *The Review of International Organizations* 61, 62.

<sup>91</sup> *ibid* 66.

<sup>92</sup> Ioannides (n 66) 28.

<sup>93</sup> *ibid* 63.

<sup>94</sup> L. S. Barbin (n 33) 344.

describes it.<sup>95</sup> Moreover, immediate security threats to the EU are also taken into account.<sup>96</sup> Another important factor is whether or not the US has imposed sanctions -<sup>97</sup> US influence may also have been a factor in the sanctions against a country in the region under discussion in this paper, namely those against the Maduro regime in Venezuela.<sup>98</sup>

### c. Development Assistance

The EU is collectively the world's largest donor of international aid. It provides more than €50 billion annually to help eradicate poverty and promote global development.<sup>99</sup> A highly visible instrument is the European Instrument for Democracy and Human Rights (EIDHR), which is characterized by its support to civil society and thus allows bypassing national authorities.<sup>100</sup> Another interesting project is the 'Global Gateway' investment program, which aims to support infrastructure projects and thus provide an alternative to China's involvement in this sector, namely its Belt and Road Initiative. The scheme has already been criticized as possibly falling into the general risk of instrumentalizing development aid for the EU's interests.<sup>101</sup> However, while there are of course always legitimate concerns when it comes to development cooperation, the EU's demonstrated willingness to act and the variety of different programs is positive.

## 5. Limitations

### a. EU Law

The Lisbon Treaty has shaped the role of the EU as a global actor - but of course, it can still only act based on legal competence, in line with the principle of conferral (Art. 4, 5 TEU).<sup>102</sup> In that regard, the EU's promotion of human rights is limited to the several areas in which the EU is active.<sup>103</sup> Therefore, the consequences of the principle have led to criticism, as it leads the EU to promote HR standards that it might be unable to uphold internally due to a lack of competence. In added concern, it is not even the organization that is regionally associated with

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<sup>95</sup> Omer Zarpli, 'To sanction or not to sanction: Public attitudes on sanctioning human rights violations.' (2024) 41 Conflict Management and Peace Science 238, 239.

<sup>96</sup> Meissner (n 90) 68/69.

<sup>97</sup> *ibid* 70.

<sup>98</sup> *ibid* 80.

<sup>99</sup> COM, 'Recipients and results of EU aid' <[https://commission.europa.eu/aid-development-cooperation-fundamental-rights/human-rights-non-eu-countries/recipients-and-results-eu-aid\\_en](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/human-rights-non-eu-countries/recipients-and-results-eu-aid_en)> accessed 15 June 2024.

<sup>100</sup> Alina Dobreva, 'European Instrument for Democracy and Human Rights' (Briefing, EPRS September 2015) 5.

<sup>101</sup> Mark Furness and Niels Keijzer, 'Europe's Global Gateway: A New Geostrategic Framework for Development Policy?' (Briefing Paper, German Development Institute January 2022).

<sup>102</sup> Wessel (n 14) 9/10.

<sup>103</sup> Jan Wouters and Gustavo Müller, 'The European Union's Promotion of Human Rights abroad: The Case of Latin America and the Caribbean' in Ernesto Jeger, Diego Durán Cruz and Bruno Theodoro Luciano (coords), *Multilateralism and Regionalism in Challenging Times: Relations between Europe and Latin America and the Caribbean* (EU-LAC Foundation 2022) 90/91.

human rights, as that would be the Council of Europe and the European Convention on Human Rights.<sup>104</sup>

Furthermore, Art. 3 (1) and (5) TEU are crucial<sup>105</sup> for the external relations policy since they contain the objectives of promoting the values of the EU, first in general and then specifically concerning external policies.<sup>106</sup> Art. 21 (2) TEU then builds on these provisions. While many of the EU's objectives align with the intention to promote human rights, the possibility remains that value-based objectives may conflict with other interests of the EU or its citizens, raising the question of how to resolve this. In this respect, we're asking questions about the limits of the EU as a normative power.<sup>107</sup> This limitation is all the more apparent because, as mentioned above, the various objectives are of equal rank. And despite the special status of human rights as EU values under Art. 2 TEU, this is not enough to explain a legal primacy for them.<sup>108</sup>

#### b. International Law

This paper focuses primarily on EU law. However, in the context of the EU's external relations policy, IL is of course not irrelevant - the EU is an actor in IL and responsible for its actions within this framework.<sup>109</sup> Therefore, I would like to briefly discuss two issues. First, I will discuss the question of whether the promotion of human rights in third countries conflicts with the principle of non-intervention and the prohibition of the use of force. Second, I will analyze whether there might even be certain obligations under IL to act when human rights are at stake in other nations.<sup>110</sup>

##### aa. Non-Intervention Principle and Prohibition of the Use of Force

The UN Charter states that there is equal sovereignty among its MSs (Art. 2 (1)) and that they should avoid the use of force or the threat thereof in their international relations (Art. 2 (4)). These principles are fundamental to international relations and serve to limit the foreign policy actions of states.<sup>111</sup> For the EU's actions in LATAM, the use of force is unlikely to be an issue. The principle of non-intervention on the other hand is relevant – also, because due to the experience of European colonialism and later US imperialism, the countries of LATAM have

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<sup>104</sup> *ibid* 95.

<sup>105</sup> Freigang (n 42) 122.

<sup>106</sup> TEU [2016] OJ 1 C 202/13/03, Art. 3.

<sup>107</sup> Freigang (n 42) 125/126.

<sup>108</sup> *ibid* 128/129.

<sup>109</sup> David Sehnalek, 'The Responsibility of the European Union under International Law' in Alexander J. Bělohávek and Naděžda Rozehnalová (eds), *Czech Yearbook of International Law Vol IX* (Lex Lata 2018) 295.

<sup>110</sup> Freigang (n 42) ch 2.

<sup>111</sup> *ibid* 40.

traditionally been strong advocates of the principle and thereby contributed to the development of IL.<sup>112</sup>

The principle of non-intervention is one of the most fundamental rules of IL, although it is not explicitly stated in the UN Charter. Art. 2 (7) only provides that the United Nations (UN) shall not interfere in the internal affairs of its MSs. The inter-state principle of non-intervention is a norm of customary international law (CIL). Its validity is undisputed because the object protected is the sovereignty and independence of states, which remain the cornerstones of IL.<sup>113</sup>

For the following analysis, it is of particular interest that the principle was created close to the situation in the Americas. It was developed, like the prohibition of the use of force, based on the Monroe Doctrine of 1823, which aimed to prevent the re-colonization of South American states, and later the Calvo and Drago Doctrines of 1868 and 1902, which opposed intervention by Europe, but also by the US. The creation of Art. 2 (4) UN Charter standardized this prohibition and was then extended by the principle of non-intervention to, for example, economic or political means.<sup>114</sup> Important in this respect is also the Charter of the Organization of American States (OAS), which contains the principle in extensive form<sup>115</sup> and on which the UN Declaration on Friendly Relations<sup>116</sup> is based. In essence, the principle can be defined as the prohibition of interference in the competencies of a sovereign state.<sup>117</sup> However, assessing when an action crosses the line from legitimate pressure to prohibited coercion is difficult.<sup>118</sup>

Finally, while there is debate about whether the EU is bound by the UN Charter, it is widely accepted that it is bound by CIL and thus by the principle of non-intervention.<sup>119</sup> The question is to what extent this leads to a restriction of the EU's promotional activities. This thesis is built around the promotion of human rights. However, democratic principles are related, which is why I also touch on democracy promotion. To avoid confusion, this section will address the

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<sup>112</sup> Andrés Serbin and Andrei Serbin Pont, 'Latin America and the Responsibility to Protect: Divergent Views from the South?' in Andrés Serbin and Andrei Serbin Pont (eds), *Latin America and the Responsibility to Protect: Divergent Views from the South?* (Pensamiento Propio 2015) 20.

<sup>113</sup> Hans-Joachim Heintze, 'Interventionsverbot, Interventionsrecht Und Interventionspflicht Im Völkerrecht' (Büro für Sicherheitspolitik 1998) <[https://www.bmlv.gv.at/pdf\\_pool/publikationen/14\\_sr3\\_heinze.pdf](https://www.bmlv.gv.at/pdf_pool/publikationen/14_sr3_heinze.pdf)> accessed 2 June 2024, 1.

<sup>114</sup> *ibid.*

<sup>115</sup> Charter of the Organization of American States (adopted 1948, entered into force 13 December 1951) OAS Treaty Series NOS. 1-C AND 61 (OAS Charter) Art. 19.

<sup>116</sup> UNGA (25<sup>th</sup> Session) 'Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations' (24 October 1970) A/RES/2625(XXV).

<sup>117</sup> Heintze (n 113) 1.

<sup>118</sup> Gisela Reicherter, 'Rechtsgrundlagen der humanitären Intervention unter besonderer Berücksichtigung des Kosovo-Konflikts' (Dissertation, Universität der Bundeswehr München 2005) 54.

<sup>119</sup> Freigang (n 42) 42.

differences and, consequently, the additional problems when it comes to promoting democracy in the global context.

Concerning human rights, the question is relatively easy to answer. In addition to the fact that the vast majority of states have ratified the major international human rights treaties, the most fundamental human rights are also CIL. Therefore, human rights are not the sole responsibility of states (*domaine réservé*) and their promotion does not violate the principle of non-intervention.<sup>120</sup>

For democracy, finding an answer to the question is much more difficult. When the UN Charter was adopted, many participating states were not democratic. Also, binding treaties usually do not use the word democracy,<sup>121</sup> nor is there an international consensus on what defines it.<sup>122</sup> In addition, the famous *ICJ Nicaragua Case* developed the customary right of each state to determine its own political system.<sup>123</sup> At the same time, rights such as freedom of expression and assembly must be considered in this context, as they constitute the democratic system. Furthermore, free elections are also mentioned in the Covenant of Civil and Political Rights (ICCPR).<sup>124</sup> Therefore, some elements of democracy are part of human rights treaties, leading to the assumption that democracy could be characterized as a ‘human right in the making’.<sup>125</sup> That is reasonable, especially considering that the state is supposed to protect the human rights of its citizens, but sometimes represents the very threat to them.<sup>126</sup>

However, it is not possible to place this assumption on a secure basis in IL. Consequently, it cannot be seen as one of its principles that could regulate the relationship between different IL subjects. Instruments implemented without a state's consent - such as the EIDHR - thus remain problematic since they have the potential for illegal intervention and make it necessary to conduct an assessment on a case-by-case basis. Such an assessment is not necessary where there is a link to a human right, such as freedom of expression. As a link can often be

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<sup>120</sup> *ibid* 46/47.

<sup>121</sup> *ibid* 49-53.

<sup>122</sup> Roland Rich, ‘Bringing Democracy into International Law’ (2001) 12 *Journal of Democracy* 20, 33.

<sup>123</sup> *Nicaragua v United States of America* (Merits) [1986] ICJ Rep 1986/14 [263].

<sup>124</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art. 25 (b).

<sup>125</sup> Freigang (n 42) 49-56.

<sup>126</sup> Benjamin Gregg, ‘The Local Construction of a Human Right to Democracy’ (Conference Paper, XVIII ISA World Congress of Sociology, Yokohama, July 2014) <[https://www.researchgate.net/publication/268139067\\_The\\_Local\\_Construction\\_Of\\_a\\_Human\\_Right\\_To\\_Democracy](https://www.researchgate.net/publication/268139067_The_Local_Construction_Of_a_Human_Right_To_Democracy)> accessed 10 July 2024, 5.

established, it is ultimately rather unlikely that an EU support instrument amounts to an illegal intervention.<sup>127</sup>

#### bb. Obligation to protect Human Rights

Going a step further, we could also ask whether there is a possible obligation to act when human rights are at stake. The UN Charter enshrines human rights as both a goal and an instrument.<sup>128</sup> However, the relevant provisions are not specific enough to establish a legal obligation to protect human rights vis-à-vis other states. It can therefore be concluded that the Charter does not create such an obligation outside of activities undertaken in cooperation with the UN, such as when the Security Council has decided to impose sanctions.<sup>129</sup> According to Lena Freigang, there may be an opportunity to act on an *erga omnes* commitment to human rights.<sup>130</sup> The ICJ Barcelona Traction case for instance established such an obligation for a very limited scope of human rights<sup>131</sup> which seems like a logical step in cases where all states have a common interest that could otherwise not be addressed. It is important, however, firstly that *erga omnes* commitments are individual cases, often motivated by political implications, and secondly that concerning human rights they should establish a right and not an obligation, following the laws of state responsibility.<sup>132</sup> Ultimately, this also aligns better with the perception of states as entities that act mostly in their self-interest, as opposed to a legal interest to act solely for the good of humanity.<sup>133</sup> In conclusion, it must be said that there is no general *erga omnes* obligation concerning human rights.<sup>134</sup>

## II. European Values

When we talk about the EU's role in global politics, we cannot avoid asking what are the values the EU is trying to promote and why. In this respect, it is even more interesting to analyze how the EU has created 'its values' because it has been able to define itself mainly through its own citizens - in contrast to other parts of the world, which have been strongly defined by imperialistic external ideas about them. Different starting points are usually considered - the idea of Europe as built on the mountains of the Acropolis, the Capitol, and Golgotha; on the

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<sup>127</sup> Freigang (n 42) 49-56.

<sup>128</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) XV UNCIO 335 (UN Charter) Art. 1 (3) and Art. 55 (c).

<sup>129</sup> Freigang (n 42) 58.

<sup>130</sup> *ibid.*

<sup>131</sup> *Belgium v Spain* [1970] ICJ Rep 1970/3 (Barcelona Traction) [33/34].

<sup>132</sup> Freigang (n 42) 56- 61.

<sup>133</sup> Pok Yin S Chow, 'On Obligations Erga Omnes Partes' (2021) 52 *Georgetown Journal of International Law* 469, 482/483.

<sup>134</sup> Freigang (n 42) 61.

ideas of the Enlightenment or as a remembrance and rejection of the Shoa and fascism.<sup>135</sup> In politics, such symbolism is important. This can be illustrated by incidents such as the ‘sofa gate’ that developed around von der Leyen after a meeting in 2021, overshadowing the actual reason for her visit to Ankara.<sup>136</sup> Nevertheless, leading philosophers such as Robert Spaemann have already questioned the extent to which values should be used to explain political action, due to the imminent danger this might entail.<sup>137</sup> This may be different, however, when we are dealing with values that are enshrined in legal documents, such as the constitutional treaties of the EU.<sup>138</sup>

There is also criticism that the EU is subject to what Kalypso Nicolaïdis has described as a form of amnesia. The EU's self-understanding is based primarily on the experience of two world wars; Europe's other past, which took place rather in relation to the other regions of the world, beginning with their colonization and ending with the creation of the European project itself, is not part of European narratives.<sup>139</sup> Of course, the rest of the world has not forgotten, and the EU's amnesia hurts its credibility as a global actor.<sup>140</sup>

### 1. Identity and possible Deception

Characterizing the EU's identity and values helps us to answer questions about what is expected of us Europeans, but also what is the morally correct way to act. What does it mean to be perceived as a Western, liberal power in world politics?<sup>141</sup> What effect does it have that the EU tries to present itself in a good light? Does it lead to a negative perception of ‘the other’, i.e. states with different values and norms?<sup>142</sup> It has already been argued that the EU does indeed construct its identity through 'othering', not only in relation to other regions but also in relation to a possible threat in light of its own history.<sup>143</sup> Following a constructivist approach, the identity

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<sup>135</sup> Gabriel N Toggenburg, 'The Debate on European Values and the Case of Cultural Diversity' (European Diversity and Autonomy Papers, eurac research 2004) 8.

<sup>136</sup> Dilara Aslan, 'EU protocol responsible for von der Leyen 'Sofa Gate,' sources say' *Daily Sabah* (Istanbul, 08 April 2021) <<https://www.dailysabah.com/politics/eu-affairs/eu-protocol-responsible-for-von-der-leyen-sofa-gate-sources-say>> accessed 05 June 2024.

<sup>137</sup> Robert Spaemann, "'The Dictatorship of Values'" (*Project Syndicate*, 17 August 2001) <<https://www.project-syndicate.org/commentary/-the-dictatorship-of-values>> accessed 05 June 2024.

<sup>138</sup> Toggenburg (n 135) 10.

<sup>139</sup> Kalypso Nicolaïdis, 'Southern Barbarians? A post-colonial critique of EU universalism' in Kalypso Nicolaïdis, Berny Sèbe, Gabrielle Maas (eds), *Echoes of Empire: Memory, Identity and Colonial Legacies* (Bloomsbury Publishing 2015).

<sup>140</sup> Sarah M H Nouwen, 'Exporting peace? The EU mediator's normative backpack' (2022) 1 *European Law Open* 26, 54.

<sup>141</sup> Aliaa Khalil, 'The Evolution of EU's "Self – Presentation": 1992-2016' (2019) 7 *Review of Economics and Political Science* 217, 222.

<sup>142</sup> *ibid* 217.

<sup>143</sup> Henrik Larsen, 'Discourse Analysis in the Study of European Foreign Policy' in Ben Tonra and Thomas Christiansen (eds), *Rethinking European Union Foreign Policy* (Manchester University Press 2004) 74.

of the EU is important for the analysis of its foreign policy, also in order to achieve some kind of foreseeability.<sup>144</sup>

The preamble to the TEU explicitly states that the establishment of the EU is accompanied by a commitment to ‘the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’. It even comes close to providing an answer to the question of the reason for this commitment - namely, inspiration from ‘the cultural, religious and humanist inheritance of Europe’.<sup>145</sup> This is interesting when one considers that Europe is ultimately a geographical, political, and historical construct - an entity with multiple layers.<sup>146</sup> As a result, it is not so simple to classify human rights as European values. The wording must be seen more as an ideological aspiration than as a fact with factual or historical evidence.<sup>147</sup>

Nonetheless, the EU likes being seen as a 'force for good in the world'.<sup>148</sup> When the Strategic Framework for Human Rights and Democracy was adopted, Catherine Ashton, the former HR/VP, declared that human rights were one of her ‘top priorities and a thread that runs through everything we do in external relations’.<sup>149</sup> Eamon Gilmore, the EU’s former Special Representative (EUSR) for Human Rights has previously stated that there is ‘no country or region’ that ‘does more to promote human rights and democracy around the world’.<sup>150</sup> At the same time, the International Organization for Migration's (IOM) Missing Migrants Project has concluded that the Mediterranean route is the deadliest for migrants;<sup>151</sup> furthermore, Europe is responsible for about one-third of the world's arms exports;<sup>152</sup> and ultimately, the reason why Europe is where it is today is also based on our history, which has not been marked primarily by respect for human rights, but by racism, exploitation, and colonialism.<sup>153</sup> In the end, what we see is a contradiction between what the EU is and what it wants to be. This is important

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<sup>144</sup> Ted Hopf, ‘The Promise of Constructivism in International Relations Theory’ (1998) 23 *International Security* 171, 174.

<sup>145</sup> TEU [2016] OJ L 31/03, Preamble.

<sup>146</sup> Göran Hermerén, ‘European Values, Ethics and Law.’ (2006) 11 *Jahrbuch für Wissenschaft und Ethik* 5, 5.

<sup>147</sup> Khalil (n 141) 224.

<sup>148</sup> Raja Nouredine, ‘Normative Power Europe and in Field of Human Rights: Is the EU a Force for Good in the World?’ (2021) 8 (2) *Australian and New Zealand Journal of European Studies* 111, 111.

<sup>149</sup> Council, ‘EU Adopts Strategic Framework on Human Rights and Democracy’ (Press Release, 25 June 2012) 11737/12 *Presse* 285, 1.

<sup>150</sup> Council, *EU Action Plan on Human Rights and Democracy 2020-2024* (2020) 5.

<sup>151</sup> IOM, ‘Data’ (*Missing Migrants Project*, 2024) <<https://missingmigrants.iom.int/data>> accessed 15 April 2024.

<sup>152</sup> Stockholm International Peace Research Institute, ‘European Arms Imports Nearly Double, US and French Exports Rise, and Russian Exports Fall Sharply’ (*SIPRI for the media*, 11 March 2024) <<https://www.sipri.org/media/press-release/2024/european-arms-imports-nearly-double-us-and-french-exports-rise-and-russian-exports-fall-sharply>> accessed 15 April 2024.

<sup>153</sup> Green European Journal, Interview with Françoise Vergès, ‘Fighting for a Decolonial Europe’ *Green European Journal* (30 October 2023) <<https://www.greeneuropeanjournal.eu/fighting-for-a-decolonial-europe/>> accessed 15 April 2024.

because it influences the role of the EU in international politics,<sup>154</sup> with whom it can cooperate, how strict it is in its criteria, and when it is necessary to end cooperation. It is fair to say that human rights violations are ignored as soon as the EU sees its core interests at stake,<sup>155</sup> despite its function as the ‘poster child for global human rights progress’.<sup>156</sup> Something that undoubtedly compromises our strength as an international human rights actor.<sup>157</sup>

Scholars have developed different ideas about the EU's role in the global order. François Duchêne has coined the concept of ‘Civilian Power Europe’,<sup>158</sup> which ultimately sees the EU as a power that acts through ‘civilian means’, such as international cooperation, rather than military force, and focuses on values such as equality and justice.<sup>159</sup> The perception of the EU as a ‘Normative Power’ emerged after the end of the Cold War.<sup>160</sup> It is a concept that comes back to the image the EU has of itself and the values it considers desirable - accordingly, its actions would be based on shared ideas and conscience rather than military or economic interests and are ultimately aimed at setting standards.<sup>161</sup> The main problem here stems from the notion that European values are both inherently European and, at the same time, universally applicable to the rest of the world.<sup>162</sup> And of course – from the discrepancy between the EU's self-expectation to act normatively, while in reality many of its interests favor acting as a realist.

## 2. ‘Postcolonial’ New World Order: Are Human Rights a form of Neo-Colonialism?

Neo-colonialism is a term first used by Kwame Nkrumah, who also referred to it as functioning as a Trojan horse.<sup>163</sup> While colonization refers to the direct domination of other regions by countries, often through the establishment of colonies and control over their resources and politics, neo-colonization refers to the indirect domination of nations - through economic,

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<sup>154</sup> Thomas Diez and Michelle Pace, ‘Normative Power Europe and Conflict Transformation’ (Working Paper, Presentation at the 2007 EUSA Conference, Montreal, May 2007) <[https://www.researchgate.net/publication/29997518\\_Normative\\_Power\\_Europe\\_and\\_Conflict\\_Transformation](https://www.researchgate.net/publication/29997518_Normative_Power_Europe_and_Conflict_Transformation)> accessed 19 June 2024.

<sup>155</sup> Hatice Yazgan, ‘European Union’s Human Rights Policy’ (2017) 7 (1) Çankırı Karatekin University, ADAM AKADEMİ 51, 52.

<sup>156</sup> Gráinne de Búrca, ‘The Road Not Taken: The European Union as a Global Human Rights Actor’ (2011) 105 *American Journal of International Law* 649, 651.

<sup>157</sup> *ibid* 693.

<sup>158</sup> Smith (n 26) 66.

<sup>159</sup> François Duchêne, ‘The European Community and the Uncertainties of Interdependence’ in Max Kohnstamm and Wolfgang Hager (eds), *A Nation Writ Large? Foreign-Policy Problems before the European Community* (Palgrave Macmillan 1973) 20.

<sup>160</sup> Ian Manners and Thomas Diez, ‘Reflecting on Normative Power Europe’ in Felix Berenskoetter, and M. J. Williams (eds.), *Power in World Politics* (Routledge 2007) 173.

<sup>161</sup> *ibid* 175.

<sup>162</sup> Nouwen (n 140) 47.

<sup>163</sup> Kwame Nkrumah, *Consciencism, Philosophy and Ideology for Decolonisation* (Panaf 1970) 99.

political, or cultural influence rather than direct control.<sup>164</sup> This can take various forms, such as economic exploitation, unfair trade relations, or political involvement.<sup>165</sup> Especially in today's globalized world,<sup>166</sup> it is important to recognize and work against injustices that derive from such practices.

In this context, it is useful to recall the theory of dependency in the LATAM of the 1960s. The idea was to negate the perception that underdevelopment equals the absence of development and, instead, to link it to capitalist development, especially in the Global North. The result is that we can analyze the consequences of the fact that Latin American countries had gained political independence but were still dependent through economic relations.<sup>167</sup> Similar to today's situation - one example is the export profile of the majority of LATAM, which is mainly based on extractive industries and primary production, such as oil and mining. The issue is that such sectors generate little employment and value and are ultimately destined for foreign markets.<sup>168</sup>

Furthermore, it is also necessary to review the implementation of human rights policies in order to examine whether they have neo-colonial tendencies. Criticism in this regard comes from scholars such as Makau Mutua, who sees the cradle of the current human rights regime in Europe and therefore rejects the perception of it as a universal creed that is above politics.<sup>169</sup> According to Mutua, the lack of multiculturalism is one of the greatest criticisms that can be leveled at human rights law and institutions in their current form - perhaps even amounting to a 'historical continuum of the civilizing mission of Eurocentrism'.<sup>170</sup> However, while it is true that there is much to criticize about the dominance of the West in the creation and implementation of human rights, it is far from correct to see human rights themselves as a form of neo-colonialism.<sup>171</sup> It is correct though that the European perception of human rights is not universal and that a more multicultural approach is needed - ideas concerning their protection

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<sup>164</sup> Raj Kumar Sharma, 'Globalization as Politics of Neo-Colonization: Teaching English Language in Higher Education in Nepal' (2018) 5 Journal of NELTA Surkhet 106, 107/109.

<sup>165</sup> Monica Bruckmann, *El Pacto Verde Europeo y las perspectivas de América Latina* (Fundação Rosa Luxemburgo. Brasil e Paraguay May 2021) 18.

<sup>166</sup> Kumar Sharma (n 164) 112.

<sup>167</sup> Mariano Treacy, 'Dependency Theory and the Critique of Neodevelopmentalism in Latin America' (2022) 49 Latin American Perspectives 218, 219/220.

<sup>168</sup> *ibid* 230.

<sup>169</sup> Makau Mutua, *Human Rights Standards: Hegemony, Law, and Politics* (State University of New York Press 2016) ch 7 Human Rights, Ideology, and Politics.

<sup>170</sup> *ibid* ch 7 Conclusion.

<sup>171</sup> Vishal Sharma, 'Human rights are a form of neo-colonialism and cannot, therefore, address the neo-colonial injustices of the neoliberal global order' (Coventry University, 5 February 2021) <[https://d197for5662m48.cloudfront.net/documents/publicationstatus/185288/preprint\\_pdf/53ce7f490dbd44ae393693b5b77fe.pdf](https://d197for5662m48.cloudfront.net/documents/publicationstatus/185288/preprint_pdf/53ce7f490dbd44ae393693b5b77fe.pdf)> accessed 1 July 2024, 13.

are certainly not unique to our region. Therefore, the criticism mentioned should be at the forefront of the EU's thinking in the conduct of its foreign policy.<sup>172</sup>

This can be seen as a general responsibility of Europe, not only in foreign policy activities directly aimed at promoting human rights. The main argument supporting this assumption is that of the 'colonial continuum'. A term that tries to emphasize that it is not entirely correct to talk about postcoloniality when the present is still very much intertwined with the past because injustices and colonial racialization continue.<sup>173</sup>

Moreover, as I said at the beginning of this thesis, I believe this issue affects the EU as a whole, not only the MSs that were colonial powers. First, because of the very presence of colonialism at the beginning of the European integration process - when the Treaty of Rome was signed, four out of six founding states were still colonial powers,<sup>174</sup> and five had a colonial past, with Luxembourg being also at least a co-operator.<sup>175</sup> This is only in addition to the fact that the European integration included, for instance, the idea of 'Eurafrica' - the attempt to jointly exploit the African continent.<sup>176</sup> Second, the wealth and power that our continent has gained based on this period has also benefited the MSs that were not themselves colonial powers - 'Failed' states can still only be the others, European states on the other hand continue to enjoy a favored role in the global order.<sup>177</sup> And finally, colonialism was very much based on the idea of white supremacy, an idea that not only privileges the predominantly white populations of all MSs, but at the same, still persists throughout the EU, in all its MSs and institutions, where racism and structural inequality are still issues regardless of direct involvement in Europe's colonial history or a lack thereof.<sup>178</sup>

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<sup>172</sup> Nora Fisher-Onar, 'Postcolonial Theory and EU–Middle East Relations' in Dimitris Bouris, Daniela Huber and Michelle Pace (eds) *Routledge Handbook in EU-Middle East Relations* (Routledge 2022) 119.

<sup>173</sup> Léopold Lambert, 'Colonial Continuums: Introduction' (2024) 54 *The Funambulist* 22, 22.

<sup>174</sup> Hanna Eklund, 'Peoples, Inhabitants and Workers: Colonialism in the Treaty of Rome' (2023) 34 *The European Journal of International Law* 831, 831.

<sup>175</sup> 'Luxembourg's colonial past' (*Musée national d'histoire et d'art*, 2022) <<https://www.nationalmusee.lu/en/exhibitions/luxembourgs-colonial-past>> accessed 4 July 2024.

<sup>176</sup> Nicolaïdis (n 139) 4.

<sup>177</sup> *ibid* 15.

<sup>178</sup> Johanna Kantola and others, "'It's Like Shouting to a Brick Wall': Normative Whiteness and Racism in the European Parliament' (2023) 117 *American Political Science Review* 184.

## **D. The Relationship between LATAM and Europe – Missed Opportunities?**

In recent years, we have seen the rise of protectionist and illiberal tendencies among global players.<sup>179</sup> In terms of cooperation between LATAM and the EU, the two regions are seeking to take their relationship in a different direction. Borrell called strengthening the partnership a ‘strategic imperative’. Von der Leyen said the relationship is ‘more important than ever’. Just last year in June, a ‘New Agenda for Relations between the EU and Latin America and the Caribbean’ (New Agenda) was adopted.<sup>180</sup> And indeed, if we make a generalization about the two regions and leave aside exceptions for a bit, then we can describe both as liberal regions that share respect for human rights and democratic values. This is very important when discussing why the EU should invest more in its relationship with LATAM - if both regions start to put more emphasis on global positions concerning issues such as climate change, it could have a real impact. After all, LAC and the EU comprise 61 countries. That is one-third of the UN.<sup>181</sup>

The role of LATAM in this regard is particularly interesting in the context of two recent developments. The first is the slow transition from a system of nation-states to a system of so-called regionalism, which has far-reaching implications for the broader international system and has been used by developing countries in particular to advance their goals.<sup>182</sup> In LATAM, this process is characterized by a wide range of different agreements and projects, which can be explained by very different political-ideological and geographical factors and can eventually also lead to competition:<sup>183</sup> There are contradictions within projects, but also between different cooperations - as in the case of CELAC for example, which was created to counter the US and the OAS.<sup>184</sup> However, on the bi-regional level, CELAC is the most significant partner, coming closest to being a direct counterpart to the EU that seeks to represent unity between LATAM

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<sup>179</sup> Anna Ayuso, Susanne Gratius, and Andrés Serbin, ‘Latin America and the Caribbean and the European Union in the face of Globalisation and Global Governance’ in Andrés Serbin and Andrei Serbin Pont (eds), *Why Should the European Union Have Any Relevance for Latin America and the Caribbean?* (EU-LAC Foundation and Cries 2018) 1.

<sup>180</sup> COM, ‘New Agenda for Strengthening the EU's Partnership with Latin America and the Caribbean’ (Press Release, 7 June 2023) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3045](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3045)> accessed 18 June 2024.

<sup>181</sup> Jordi Bacaria and Stephan Sberro, ‘An economic and financial focus on the relevance of the European Union to Latin America and the Caribbean’ in Andrés Serbin and Andrei Serbin Pont (eds), *Why Should the European Union Have Any Relevance for Latin America and the Caribbean?* (EU-LAC Foundation and Cries 2018) 15.

<sup>182</sup> See also: Bhim Nath Baral, ‘Shifting Trends in Regionalism’ (2024) 24 *Journal of Political Science* 170.

<sup>183</sup> Gardini and Ayuso (n 55) 6.

<sup>184</sup> *ibid* 17.

and the Caribbean.<sup>185</sup> Furthermore, the relationship with the EU is taking place also on the sub-regional level (e.g. Mercado Común del Sur (MERCOSUR), Caribbean Community and Common Market (CARICOM)), which so far has been the most difficult one, complicated by the regional integration in LATAM that took inspiration from the European project but was not able yet to result in coherent entities.<sup>186</sup> Therefore, direct cooperation with singular states has proven to be more successful.<sup>187</sup>

The second development that we are witnessing is a return to geopolitical blocs, which are evolving around the question of who will achieve global primacy in the 21st century or how to find ways to ‘share’ power. This competition is particularly evident between the US and China, but also between the so-called West and Russia, which may be reminiscent of the ‘logic of the Cold War’. In this setting, it is a realistic scenario that the blocs will compete for a primary status in the Global South. Of course, it has to be said that the Global South is by no means monolithic. In addition, it will most likely have many swing states, which will seek convenient partnerships from both sides.<sup>188</sup> Nevertheless, this is the overall context in which EU-LATAM cooperation takes place. It is important to remember that the EU is competing with other external powers to be seen as having a privileged position in the region. The US has traditionally been present, but China is also an important trading partner, and Japan, India, and Russia are also involved.<sup>189</sup> Reports that Russia has recruited Cuban nationals to fight in its invasion of Ukraine are an example of the possible consequences.<sup>190</sup> Apart from Cuba, the invasion has generally shown the EU’s need to diversify its international allies.<sup>191</sup>

Overall, it can be said that there has been a relationship between the two regions that dates back around three decades – it was with the end of the Cold War, that the global dynamic changed and the EU began to become more influential, but still overshadowed by the US. In this context, LATAM became important as a new commercial opportunity and as a region where the EU could promote its cooperation objectives.<sup>192</sup> What always played a role were the historical ties

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<sup>185</sup> Adrián Bonilla and José Antonio Sanahuja, ‘Association Agreements between the European Union and Latin America and the Caribbean: Assessment And Outlook For Bi-Regional Relations’ in Adrián Bonilla and José Antonio Sanahuja (eds), *The European Union, Latin America and the Caribbean, Cartography of the Association Agreements* (EU-LAC Foundation and Carolina Foundation 2022) 253/254.

<sup>186</sup> Ruano (n 19) 27/28 and 39.

<sup>187</sup> *ibid* 27.

<sup>188</sup> Zeno Leoni and Sarah Tzinieris, ‘The Return of Geopolitical Blocs’ (2024) 66 (2) *Survival* 37.

<sup>189</sup> Wouters and Müller (n 103) 95.

<sup>190</sup> Vitaly Shevchenko, ‘Cubans Lured to Russian Army by High Pay and Passports’ *BBC News* (London, 4 May 2024) <<https://www.bbc.com/news/world-europe-68949298>> accessed 9 June 2024.

<sup>191</sup> Bonilla and Sanahuja (n 185) 257.

<sup>192</sup> Juana García Duque, ‘European Union Cooperation in Colombia: A Commitment to Peacebuilding in Historical Perspective’ in Karlos Pérez de Armiño (ed), *European Union Support for Colombia's Peace Process* (Palgrave Macmillan 2023) 132.

concerning Spain and Portugal, while those to Italy and Germany must also not be forgotten.<sup>193</sup> Nevertheless, the outcomes of the cooperation are often less palpable than necessary and lack visibility and impact.<sup>194</sup>

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<sup>193</sup> Marcello Di Filippo, *The EU's Engagement with Latin America: The Case of Colombia* (IAI PAPERS 22/10, Istituto Affari Internazionali May 2022) 3.

<sup>194</sup> Ayuso, Gratius and Serbin (n 179) 11.

## E. Case studies

### I. Chile

The relationship between Chile and the EU is of interest also because Chile was the first South American country that had a local representation of the COM. The country is a long-standing partner of the EU that is said to share its values.<sup>195</sup>

*Moreover, Chile was the first country in LATAM to sign an Association Agreement (AA) with the EU<sup>196</sup> and thus played a pioneering role in subsequent agreements with other countries in the region.<sup>197</sup>*

#### 1. Political and Historical Context: Shared Values but Troubled Past

According to the latest available data from the Organization for Economic Co-operation and Development (OECD), Chile is the third most unequal country based on the Gini coefficient, right after two other countries in the region - Costa Rica and Brazil.<sup>198</sup> For this reason, despite the country's strong macroeconomic performance - including in comparison to other countries in LATAM - that has led to an overall reduction in poverty; dissatisfaction with social challenges had culminated in mass demonstrations as of October 2019.<sup>199</sup> The so-called *Estallido Social* (Social Outburst) was accompanied by massive police violence. Four years later, Amnesty International (AI) criticized the continued impunity, the fact that survivors of human rights violations have still not received reparations, and the lack of a structural reform of the Carabineros.<sup>200</sup> Nevertheless, the protests led to an agreement to begin a process to replace the current constitution established by the Pinochet dictatorship. Since indigenous and feminist

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<sup>195</sup> EEAS, 'The EU and Chile Commit to a Forward-Looking Association' (13 December 2023) <[https://www.eeas.europa.eu/eeas/eu-and-chile-commit-forward-looking-association\\_en#:~:text=%C2%A9%20EU,Association%20agreement,political%20dialogue%20and%20boosted%20trade.>](https://www.eeas.europa.eu/eeas/eu-and-chile-commit-forward-looking-association_en#:~:text=%C2%A9%20EU,Association%20agreement,political%20dialogue%20and%20boosted%20trade.>) accessed 14 May 2024.

<sup>196</sup> EEAS, 'EU-Chile Partnership' (13 December 2023) <[https://www.eeas.europa.eu/sites/default/files/documents/2023/Factsheet%20EU\\_Chile\\_en\\_2023.pdf](https://www.eeas.europa.eu/sites/default/files/documents/2023/Factsheet%20EU_Chile_en_2023.pdf)> accessed 14 May 2024.

<sup>197</sup> Beatriz Hernández, 'Modernising the EU-Chile Association Agreement: Strengthening an Alliance for Social Inclusion and Environmental Sustainability' in Adrián Bonilla and José Antonio Sanahuja (eds), *The European Union, Latin America and the Caribbean, Cartography of the Association Agreements* (EU-LAC Foundation and Carolina Foundation 2022) 78.

<sup>198</sup> OECD, 'Inequality - Income Inequality (Indicator)' (*OECD Data*, 2024) <<https://data.oecd.org/inequality/income-inequality.htm>> accessed 14 May 2024.

<sup>199</sup> Hadzi-Vaskov M and Ricci L A, 'Understanding Chile's Social Unrest in an International Perspective' (2021) 174 IMF Working Paper <<https://www.elibrary.imf.org/view/journals/001/2021/174/article-A001-en.xml>> accessed 14 May 2024, 5.

<sup>200</sup> AI, 'Four Years on from the Social Unrest in Chile, Impunity Persists' (*AI News*, 17 October 2023) <<https://www.amnesty.org/en/latest/news/2023/10/chile-four-years-social-unrest-impunity/>> accessed 14 May 2024.

demands played a major role in the protests, it is also interesting to see what impact their voices will have in the future. So far, Chile has been the only state in LATAM that does not recognize its indigenous peoples on the constitutional level.<sup>201</sup> Finally, the country has undergone many changes influenced by a vibrant and active civil society, which is an important context when analyzing the relationship with the EU.

## 2. The EU-Chile Association Agreement

The EU-Chile AA was concluded in 2002 and entered into full force in 2005. However, parts of the agreement, such as the provisions on trade, also referred to as the FTA, have been provisionally applied since February 2003.<sup>202</sup> In retrospect, the AA was successful in achieving two important goals: The doubling of trade between the two parties and the diversification of their export products.<sup>203</sup> The latter was particularly important for Chile because it allowed the country to reduce its dependence on copper products. Agricultural and fishery products, for example, were among the sectors that benefited from the agreement.<sup>204</sup>

When it comes to the issue of discussing the agreement's human rights impact, one problem stems from the fact that there has been no empirical study to assess this.<sup>205</sup> Nevertheless, there is no doubt that certain provisions of the agreement have had an impact on some human rights issues in the country and an analysis of the AA's trade provisions is particularly interesting because trade is one of the EU's most used policy areas for the promotion of human rights in the region.<sup>206</sup> While many of Chile's issues, such as police violence, are primarily national concerns that are not affected by trade agreements, the latter can have an impact on questions of gender equality and indigenous rights for instance. I will focus on the last as an example of the potential impact of trade agreements with Latin American countries.<sup>207</sup>

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<sup>201</sup> Ciaran O'Faircheallaigh and Sally Babidge, 'Negotiated agreements, indigenous peoples and extractive industry in the Salar de Atacama, Chile: when is an agreement more than a contract?' (2023) 54 *Development and change* 641, 651.

<sup>202</sup> Sébastien Jean, Nanno Mulder, and Maria Priscilla Ramos, 'A general equilibrium, ex-post evaluation of the EU-Chile Free Trade Agreement' (April 2012) <[https://www.cepal.org/sites/default/files/events/files/documento\\_maria\\_priscila\\_ramos\\_uade\\_argentina.pdf](https://www.cepal.org/sites/default/files/events/files/documento_maria_priscila_ramos_uade_argentina.pdf)> accessed 15 May 2024, 2.

<sup>203</sup> Hernández (n 197) 82.

<sup>204</sup> *ibid* 79.

<sup>205</sup> ECORYS, CASE and Directorate-General for Trade (COM) (n 69) 278.

<sup>206</sup> Wouters and Müller (n 103) 92.

<sup>207</sup> ECORYS, CASE and Directorate-General for Trade (European Commission) (n 69) 280.

### a. The Mapuche conflict

Many Latin American countries have ongoing dialogues about and with indigenous peoples regarding inclusion, rights recognition, and cultural preservation.<sup>208</sup> In Chile, however, the conflict seems to be particularly violent. Violence takes place mainly in Chile's southern macrozone - a region that has been in a state of emergency since 2022, due to violent attacks, such as the murder of three police officers in April this year.<sup>209</sup> Since the 1990s, the Mapuche struggle has increasingly been characterized by a conflict over land use, caused by the environmental impact of the country's economic model, which is based primarily on the extraction of natural resources, which requires large amounts of land and water.<sup>210</sup> Some voices therefore describe the conflict as being influenced by colonial continuities and the ecological limits of capitalist expansion, and ultimately as being against (neo-) colonial dispossession and in favor of re-appropriation and self-determination.<sup>211</sup> The conflict is also seen as a direct consequence of the damaging policies during the Pinochet dictatorship.<sup>212</sup>

One sector that directly affects the rights of Chile's indigenous peoples is forestry, because of the plantations that are located in the region that the Mapuche historically claim as their ancestral homeland.<sup>213</sup> The Sustainable Impact Assessment noted that the AA risked exacerbating existing inequalities for forest-dwelling Mapuche, in part because it did not challenge their limited access to social and economic opportunities.<sup>214</sup> In addition, the sector is a source of environmental problems such as water scarcity, drought, and forest fires.<sup>215</sup> Another important sector has been fishery – only last year, in 2023, the EU imported fishery products with a value of 698 Mio. Euros from Chile.<sup>216</sup> However, there is a lack of protection on the national level concerning the situation of the affected *Mapuche Huilliche*, the community that

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<sup>208</sup> Carol Guerrero, Interview with Roberto Garrido, ‘“Hablar de Conflicto Mapuche No Se Ajusta a La Realidad”’ *Deutsche Welle* (Bonn, 12 May 2024) [02:00] <<https://www.dw.com/es/la-entrevista-hablar-de-conflicto-mapuche-no-se-ajusta-a-la-realidad/video-69047175>> accessed 17 May 2024.

<sup>209</sup> BBC News Mundo, ‘Carabineros - Chile: Tres Carabineros Muertos En Una Brutal Emboscada a Una Patrulla - BBC News Mundo’ *BBC News Mundo* (London, 27 April 2024) <<https://www.bbc.com/mundo/articles/cnl4xvd7d51o>> accessed 17 May 2024.

<sup>210</sup> Stefan Schmalz and others, ‘Challenging the Three Faces of Extractivism: The Mapuche Struggle and the Forestry Industry in Chile’ (2022) 20 *Globalizations* 365, 365.

<sup>211</sup> *ibid* 366.

<sup>212</sup> fidh, ‘The Mapuche People: Between Oblivion and Exclusion’ (Report, fidh August 2003) 41.

<sup>213</sup> ECORYS, CASE and Directorate-General for Trade (COM) (n 69) 280.

<sup>214</sup> PLANISTAT-Luxembourg and CESO-CI, ‘Sustainable Impact Assessment (SIA) of the trade aspects of negotiations for an Association Agreement between the European Communities and Chile (Specific agreement No 11)’ (Final Report, 2022) 13.

<sup>215</sup> Schmalz and others (n 210) 366.

<sup>216</sup> Directorate-General for Trade (COM), ‘Trade in goods with Chile’ (16 May 2024) <[https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/details\\_chile\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_chile_en.pdf)> accessed 20 June 2024, 2.

lives in the region of Aysén and is therefore called ‘People of the South’ in Mapudungún.<sup>217</sup> They insist that their ancestral knowledge is the best way to combat the current difficulties caused by overfishing and salmon aquaculture.<sup>218</sup>

b. What could the EU have done?

The political economy of LATAM and Chile has often been described by scholars as being characterized by the dependent role it plays within the global capitalist system. This includes serving primarily as producers of raw materials for Western Europe, the US, and East Asia – a status quo that developed alongside Western colonization, which resulted not only in the conquest of territory, cultures, and local economies but also in the establishment of a racialized hegemonic order.<sup>219</sup> In this context, it is interesting to look at the possible instruments within the AA that could have contributed to improving the situation of the Mapuche people. Already from the very beginning, organizations such as the fidh had asked for human rights to be sufficiently acknowledged in the agreement.<sup>220</sup>

aa. The general Human Rights Clause in Art. 1 AA

The general human rights clause of the AA can be found in Art. 1 (1). It asks for democratic principles and human rights as enshrined in the UDHR to be the essential elements of the agreement. Moreover, through Art.1 (2), (3) the promotion of sustainable economic and social development as well as the equitable distribution of benefits deriving from the association are qualified as guiding principles for the AA’s implementation, and good governance is also mentioned as a principle of the parties.<sup>221</sup> The non-execution clause can be found in Art. 200 (3) (b) and provides for the implementation of immediate measures when the essential elements are violated.

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<sup>217</sup> Patricio Melillanca, ‘Pueblo Mapuche y Su Identidad Territorial Huilliche’ (*Mapuexpress*, 17 July 2020) <<https://www.mapuexpress.org/2020/07/16/pueblo-mapuche-y-su-identidad-territorial-huilliche/>> accessed 21 June 2024.

<sup>218</sup> Asociación de Comunidades Territorio Williche-Chono, ‘Chile: Indigenous Mapuche Williche and Artisanal Fishing Communities Join Forces to Govern and Take Care of Coastal and Marine Territories of Life’ (*ICCA Consortium Updates*, 19 April 2023) <<https://www.iccaconsortium.org/2022/10/11/chile-indigenous-mapuche-williche-artisanal-fishing-communities-govern-coastal-marine/>> accessed 20 June 2024.

<sup>219</sup> Schmalz and others (n 210) 368.

<sup>220</sup> Sidiki Kaba, ‘Open Letter Regarding the First EU-Chile Association Council : The Association Agreement Must Also Benefit the Mapuche Minority’ (Report, fidh, 21 March 2003) <<https://www.fidh.org/en/region/americas/chile/EU-Chile/Open-letter-regarding-the-first-EU>> accessed 15 May 2024.

<sup>221</sup> Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part [2002] OJ L 352/3 (EU-Chile AA).

#### bb. Provisions for Vulnerable Groups

The AA does not specifically mention the rights of indigenous peoples but provides for the support of vulnerable people, including ethnic minorities.<sup>222</sup> For instance, Art. 38 (1) deals with education strategies in this regard and Art. 44 addresses human development, poverty reduction, land management programs for areas of particular environmental vulnerability, as well as social dialogue.

#### cc. Article 28 on Economic Cooperation on the Environment

Furthermore, regarding the protection of the Mapuche's rights, Art. 28 also plays a relevant role.<sup>223</sup> The provision concerns the rational use of ecosystems in the interest of sustainable development.

#### dd. Conclusion: Ineffectiveness of the Provisions

As mentioned above, the EP is particularly active in the protection of human rights. In 2011, for example, it raised the situation of the Mapuche people in a written question to the VC/HR, including concerning mining and energy projects in their territory.<sup>224</sup> The VC/HR replied that he did not believe that the EU-Chile AA had been violated. He stated, however, that the EU will continue to engage with Chilean authorities and civil society in that matter.<sup>225</sup> In the following years the situation has not improved, as I explained in the introductory section, and as can be seen in a subsequent parliamentary question on the repression of the Mapuche people in 2021.<sup>226</sup> In his reply, the current VC/HR has emphasized the monitoring activities by the EU Delegation in Chile and the positive expectations towards the then-new government under President Boric.<sup>227</sup> To conclude, the EU has done little to improve the Mapuche's rights.

### 3. Modernization and Advanced Framework Agreement

In 2017, the EU and Chile opened negotiations to modernize the AA. The Advanced Framework Agreement (AFA) and the Interim Trade Agreement (ITA) were signed in December 2023. The latter was endorsed by the Council in March this year<sup>228</sup> and will only remain in force until the

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<sup>222</sup> Ioannides (n 66) 150.

<sup>223</sup> VP/HR — Rights of the Mapuche, Parliamentary question - E-012492/2011 [2011] OJ C285 E, 21/09/2012.

<sup>224</sup> *ibid.*

<sup>225</sup> Answer given by High Representative/Vice-President Ashton on behalf of the Commission, Parliamentary question - E-012492/2011(ASW) [2012] OJ C285 E, 21/09/2012.

<sup>226</sup> Repression of the Mapuche people in Chile, Parliamentary question - E-005299/2021 [2021], 26/11/2021.

<sup>227</sup> Answer given by High Representative/Vice-President Borrell i Fontelles on behalf of the European Commission, Parliamentary question - E-005299/2021(ASW) [2022] 10/03/2022.

<sup>228</sup> Council, 'EU-Chile: Council gives final endorsement to bilateral trade agreement' (Press Release, 18 March 2024) <<https://www.consilium.europa.eu/en/press/press-releases/2024/03/18/eu-chile-council-gives-final-endorsement-to-bilateral-trade-agreement/>> accessed 20 June 2024.

full ratification of the AFA, which consists of two pillars: the political and cooperation pillar and the trade and investment pillar.<sup>229</sup> The reason for the extraction of the FTA lies within the shared competence of the EU for certain parts of the agreement, which makes a ratification process on the level of the MS necessary for the complete AFA, while the ITA only needed to undergo an EU ratification process.<sup>230</sup>

The agreement is described as being of ‘key geopolitical importance’.<sup>231</sup> Such statements can be seen in the context of the consequences that the EU has faced as a result of the Russian invasion of Ukraine. Issues such as the energy crisis and the disruption of supply chains have demonstrated the need for cooperation among like-minded states.<sup>232</sup> With the agreement, an emphasis is put on sustainable development, including the transition to renewable energy, which requires certain raw materials such as lithium or copper.<sup>233</sup> A major concern stemming from this is that increased trade in the mining sector could eventually affect several human rights of Chile's indigenous population if national protection mechanisms are not sufficient.<sup>234</sup> The relevance of this topic goes beyond Chile and its salt flats since the whole region exports primary minerals to the Global North.<sup>235</sup>

#### a. Tackling the Climate Crisis

When it comes to fighting the climate crisis, the EU and LATAM share common goals. However, the obligations of the two regions differ based on their challenges and responsibilities. After all, Europe is the world's third-largest emitter after China and the US.<sup>236</sup> LATAM, on the other hand, is one of the regions most affected by the consequences of climate change. Nevertheless, it is also important to keep in mind that while the region's economic growth over

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<sup>229</sup> COM, ‘EU-Chile: Text of the Agreement’ <[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement_en)> accessed 25 May 2024.

<sup>230</sup> Gisela Grieger, ‘Modernisation of the trade pillar of the EU-Chile Association Agreement’ (Briefing, EPRS February 2024) 1.

<sup>231</sup> EEAS, ‘EU-Chile - Advanced Framework Agreement, Factsheet’ (13 December 2023) <[https://www.eeas.europa.eu/eeas/eu-chile-advanced-framework-agreement\\_en](https://www.eeas.europa.eu/eeas/eu-chile-advanced-framework-agreement_en)> accessed 25 May 2024, 1.

<sup>232</sup> Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Advanced Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Chile, of the other part [2023] COM(2023) 432 final (EU-Chile AFA) 1.

<sup>233</sup> COM, ‘EU-Chile - Advanced Framework Agreement - Trade and Sustainable Development’ (13 December 2023) <<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/eecec1dd-9cff-4cd9-b3b4-a245f70fc7b7/details?download=true>> accessed 25 May 2024, 1.

<sup>234</sup> BKP Development Research & Consulting, *Sustainability Impact Assessment in Support of the Negotiations for the Modernisation of the Trade Part of the Association Agreement with Chile* (COM 2019) 124.

<sup>235</sup> Camilo Godoy, ‘Minería del litio en Chile y conflictividad social: una mirada sobre los aspectos político-comercial, geopolítico y socioambiental desde una perspectiva interméstica’ (2022) 36 *Estudios Avanzados* 97, 98.

<sup>236</sup> Paulo Esteves and Anna Ayuso, ‘The Issue of Sustainable Development and Climate Change’ in Andrés Serbin and Andrei Serbin Pont (eds), *Why Should the European Union Have Any Relevance for Latin America and the Caribbean?* (EU-LAC Foundation and Cries 2018) 44.

the past decade has helped to reduce poverty, it has also increased environmental costs and ultimately led to an unsustainable form of development.<sup>237</sup>

The EU, of course, has recognized the importance of the region, which contains 50% of the world's biodiversity. This is not only emphasized in the New Agenda,<sup>238</sup> but also in initiatives such as 'Euroclima' which seeks to contribute to climate action in LAC while supporting ecosystems and vulnerable communities to make the transition not only green but also just.<sup>239</sup>

## b. Negative impact on Indigenous Communities in Chile

### aa. The Importance of Lithium

The energy transition calls for decarbonization through the use of clean technologies, such as wind and solar photovoltaics, as well as technologies for the convenient storage of this energy, such as lithium-ion batteries.<sup>240</sup> Since more than a quarter of global CO<sup>2</sup> emissions come from transportation, a green transition in this sector is particularly crucial for combating the climate crisis. Consequently, it is said that the number of electric vehicles needs to increase, which further explains the growing demand for lithium.<sup>241</sup> Nevertheless, while this is the main reason for the increased demand, there are also other applications - for example, lithium is used for lubricating grease or in ceramics.<sup>242</sup>

The largest reserves of lithium are found in Bolivia, mainly due to its Salar de Uyuni, followed by Argentina and Chile. However, Bolivia has not yet managed to commercialize its national resources - unlike Chile,<sup>243</sup> the second largest lithium producer after Australia.<sup>244</sup> There are 63 saline environments in Chile, but 90% of the national lithium reserves are found in the Salar de Atacama.<sup>245</sup> With the decree N° 70 (*Ley Indígena* N° 19.253), which can be found in the Chilean legal framework for the protection of indigenous people, the region is acknowledged as the

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<sup>237</sup> *ibid* 45.

<sup>238</sup> COM, 'Joint Communication to the European Parliament and the Council, A New Agenda for Relations between the EU and Latin America and the Caribbean' JOIN(2023) 17 final, 7 June 2023, 7.

<sup>239</sup> COM, 'Euroclima' <[https://international-partnerships.ec.europa.eu/policies/global-gateway/euroclima\\_en](https://international-partnerships.ec.europa.eu/policies/global-gateway/euroclima_en)> accessed 13 May 2024.

<sup>240</sup> Manuel Olivera Andrade and Mauricio Lorca, 'La Cara Oculta de La Descarbonización. Salares, Litio y Desigualdades En Argentina, Bolivia y Chile' (2023) 40 *Revista Umbrales* 71, 75.

<sup>241</sup> SQM, 'The Importance of Lithium in the Transition to a Carbon-Free World' *POLITICO* (Arlington, 4 October 2022) <<https://www.politico.eu/sponsored-content/the-importance-of-lithium-in-the-transition-to-a-carbon-free-world/>> accessed 13 May 2024.

<sup>242</sup> Government of Chile, *Estrategia Nacional del Litio, por Chile y su Gente* (2023) 9.

<sup>243</sup> Andrew Fawthrop, 'Top Six Countries with the Largest Lithium Reserves in the World' (*NS Energy*, 19 November 2020) <<https://www.nsenenergybusiness.com/features/six-largest-lithium-reserves-world/>> accessed 13 May 2024.

<sup>244</sup> Cecilia Jamasmie, 'Chile Opens 26 Lithium Salt Flats to Private Companies' (*mining.com*, 27 March 2024) <<https://www.mining.com/chile-opens-26-lithium-salt-flats-to-private-companies/>> accessed 13 May 2024.

<sup>245</sup> Government of Chile (n 242) 10.

ancestral land of the indigenous communities that inhabit the region.<sup>246</sup> However, it is important to note that the National Corporation for Indigenous Development (CONADI), has only registered areas with direct livelihood activities in the name of indigenous communities. Traditional pasture areas, ritual sites, and the paths between them were not taken into account.<sup>247</sup>

The EU currently imports 80% of its lithium from Chile, illustrating a critical dependency in the rapidly evolving global economy. It was partly in response to this that the EU and Chile agreed to modernize their AA.<sup>248</sup> The idea is that implementing the AFA will help the EU achieve its Green Deal goals, including by contributing to fair and inclusive green transitions.<sup>249</sup>

## bb. Impact

### (1) Negative Consequences for Indigenous Communities

The Salar de Atacama is the driest desert in the world and is sometimes thought to be uninhabited - which is a misconception. In reality, there is a population in the Atacama Desert that is believed to date back to 13,000 years ago.<sup>250</sup> The people of the Atacama are called *Atacameños* or *Lickanantay*, a population of around 30.000 people, that has a strong historical relationship not only to the territory they inhabit but also to the water resources of the area, whose cycle is said to be directly related to the life and customs of the people.<sup>251</sup> Unfortunately, the exploitation of the area for the extraction of lithium and other minerals has led to water shortages and damage to the ecosystems. The situation is further aggravated by the general effects of climate change, leading to longer periods of drought.<sup>252</sup> The extraction of lithium has also negative effects on the microbial ecology.<sup>253</sup> Furthermore, what has been happening in Chile also influences how communities of other states, such as Bolivia, view the developments, leading to fears of water scarcity and community conflicts. The impression that is made in other states in the region should be considered by the EU during their activities in Chile since they might influence future cooperation opportunities.<sup>254</sup>

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<sup>246</sup> *Ley Indígena* N° 19.253 1993, 62.

<sup>247</sup> O’Faircheallaigh and Babidge (n 201) 652.

<sup>248</sup> Dammert and Torreblanca (n 12).

<sup>249</sup> EU-Chile AFA (n 232) 3.

<sup>250</sup> Amanda Romero, José Aylwin and Marcel Didier, ‘Globalización de las empresas de energía renovable: Extracción de litio y derechos de los pueblos indígenas en Argentina, Bolivia y Chile (Triángulo del Litio)’ (Observatorio Ciudadano 2019) 12/13.

<sup>251</sup> *ibid* 18.

<sup>252</sup> *ibid* 20.

<sup>253</sup> Consejo de Pueblos Atacameños, ‘No Más Minería de Agua.’ (*Facebook*, 6 January 2022) <<https://www.facebook.com/photo/?fbid=3233856336835773&set=a.2920394414848635>> accessed 26 May 2024.

<sup>254</sup> Rocío Lloret Céspedes and Javier Lewkowicz, ‘Latin America Eyes the Lithium Boom, but Opposition Endures’ (*Dialogue Earth*, 26 October 2023) <<https://dialogue.earth/en/business/382327-latin-america-eyes-the-lithium-boom-but-opposition-endures/>> accessed 13 May 2024.

Eventually, lithium mining threatens several rights of indigenous peoples, such as the right to information, the right to prior consultation and consent, the right to share benefits, the right to their territories, the right to self-determination and to set their development priorities, and the right to water.<sup>255</sup> In this respect, Art. 15 ILO Convention No. 169 (Indigenous and Tribal Peoples Convention) explicitly recognizes the right of indigenous people to participate in ‘the use, management and conservation of the natural resources of their lands’.<sup>256</sup> The convention is important when it comes to lithium policies since it includes the most detailed treaty obligations concerning the rights of indigenous peoples to natural resources on the level of IL.<sup>257</sup>

In conclusion, it must be said that lithium mining is a serious threat to the existence of the *Atacameños*.<sup>258</sup> The *Consejo de Pueblos Atacameños*, an association that fosters cooperation between 18 indigenous communities in the region, has previously warned of a possible *ecocide* in the Salar de Atacama.<sup>259</sup>

## (2) The new Lithium Strategy by the Chilean Government

In April 2023, Chile announced its national strategy for lithium, one that shifts the focus from private entities to the state, as was previously promised by Boric in his electoral campaign.<sup>260</sup> The step is highly understandable since the revenues of the sector can be well spent in other policy areas, such as health and education.<sup>261</sup>

Key elements of the new strategy will be the creation of a national lithium company (*Empresa Nacional del Litio*, ENAL), the development of public-private partnerships,<sup>262</sup> and the goal of adding value to the production cycle through the promotion of innovation, business, and scientific development.<sup>263</sup> So far, the lithium industry has been controlled by two private

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<sup>255</sup> José Aylwin, Marcel Didier, and Oriana Mora, ‘Evaluación de Impacto En Derechos Humanos de Sqm en los Derechos del Pueblo Indígena Lickanantay’ (Observatorio Ciudadano February 2021) ch 4.

<sup>256</sup> ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5 September 1991) UNTS 1650 (Indigenous and Tribal Peoples Convention) Art. 15.

<sup>257</sup> Pia Marchegiani, Elisa Morgera and Louisa Parks, ‘Indigenous Peoples’ Rights to Natural Resources in Argentina: The Challenges of Impact Assessment, Consent and Fair and Equitable Benefit-Sharing in Cases of Lithium Mining’ (2019) 24 *The International Journal of Human Rights* 1, 12.

<sup>258</sup> Romero, Aylwin and Didier (n 250) 27.

<sup>259</sup> Consejo de Pueblos Atacameños (n 253).

<sup>260</sup> Shawn Sarsfield Doyle, ‘Chile Announces Its New National Lithium Strategy’ (*Lexology*, 24 April 2023) <<https://www.lexology.com/library/detail.aspx?g=550a4644-38c4-4120-9d87-0652b9c7e25a>> accessed 26 May 2024.

<sup>261</sup> José Aylwin Oyarzún, ‘La Estrategia Nacional de Litio y Los Derechos Humanos’ (*Observatorio Ciudadano Opinión*, 28 April 2023) <<https://observatorio.cl/la-estrategia-nacional-de-litio-y-los-derechos-humanos/>> accessed 27 May 2024.

<sup>262</sup> Government of Chile (n 242) 4.

<sup>263</sup> *ibid* 5.

companies, the ‘*Sociedad Química y Minera de Chile*’ (SQM) and the US-American Albemarle, whose actions have been criticized and therefore also be used as an argument for more state control in the sector.<sup>264</sup>

The document makes clear reference to the indigenous communities living in the region of the salt flats, stating that while there is a need to act urgently, it is also necessary to act with respect for the communities and the complex ecosystems affected.<sup>265</sup> Consequently, while lithium mining is seen as an opportunity to increase the country's wealth and support global decarbonization efforts, according to the strategy, this can only be done sustainably.<sup>266</sup> Therefore, it is said that it is necessary to develop new extraction technologies with minimal environmental impact.<sup>267</sup> In conclusion, Chile's goal is to maximize the benefits of lithium mining while minimizing the impact on the environment, including the use of fresh water. For that, the need for dialogue and participation of the indigenous communities are acknowledged.<sup>268</sup> Besides, the importance of developing this area for *future generations* is highlighted.<sup>269</sup>

### (3) Reactions and Developments

Despite the efforts of the Chilean government to emphasize the importance of dealing with the country's lithium resources sustainably, the strategy was not free of criticism. For instance, the government named the companies Codelco and Enami as state representatives until the ENAL is established.<sup>270</sup> The *Consejo de Pueblos Atacameños* has criticized Codelco as not being the appropriate choice for such negotiations, since it was the same company that in the past has acted disrespectfully towards the indigenous communities in the region, for instance concerning the contamination of the Calama community.<sup>271</sup> Moreover, the Chilean government's lack of consultation with the indigenous population is a serious problem.<sup>272</sup> And while the new strategy aims to change this, unfortunately, the reality looks different. Last December, Codelco and

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<sup>264</sup> Godoy (n 235) 103/104.

<sup>265</sup> Government of Chile (n 242) 4.

<sup>266</sup> *ibid* 5.

<sup>267</sup> *ibid* 10.

<sup>268</sup> *ibid* 13.

<sup>269</sup> *ibid* 14.

<sup>270</sup> *ibid* 4.

<sup>271</sup> Diario UChile, ‘Consejo de Pueblos Atacameños rechazó Estrategia Nacional del Litio’ *Diario UChile* (Santiago de Chile, 5 May 2023) <<https://radio.uchile.cl/2023/05/05/consejo-de-pueblos-atacamenos-rechazo-estrategia-nacional-del-litio/>> accessed 26 May 2024.

<sup>272</sup> Victor Guillou, ‘Consejo de Pueblos Atacameños Acusa “Incumplimiento” A Mesa Tripartita Tras Acuerdo Entre Codelco y Sqm’ *La Tercera* (Santiago de Chile, 28 December 2023) <<https://www.latercera.com/pulso/noticia/consejo-de-pueblos-atacamenos-acusa-incumplimiento-a-mesa-tripartita-tras-acuerdo-entre-codelco-y-sqm/IP3PBWCFBZHSTKZJQVKA EVEARI/>> accessed 13 May 2024.

SQM signed a voluntary agreement that included respect for the communities and the promotion of a transparent and inclusive dialogue. During the negotiations, the communities were invited - however, shortly afterward, a memorandum was signed without any further consultation.<sup>273</sup> The final agreement created a public-private partnership between the two companies which will start working together in January 2025.<sup>274</sup>

#### cc. Conclusion: Responsibility of the Global North

Finally, the problem I see is this: The EU has a responsibility to address the challenges of climate change, and Chile has a legitimate goal to increase its prosperity. However, both countries should not achieve their goals by means that are done on the backs of indigenous communities as a necessary evil. Especially as a continent that has shaped the subordinate role of indigenous peoples through colonization and has also contributed significantly to the climate crisis, it is unacceptable that Chile's indigenous peoples have to bear the consequences. Therefore, the focus should be on a concerted effort to develop a form of extraction that is scientifically proven to be environmentally responsible and thus not harmful to indigenous communities.<sup>275</sup> One possibility might be that the EU cooperates with indigenous communities, and thus empowers them to use their historical knowledge,<sup>276</sup> which can be an important addition to the academic-scientific work in that field.<sup>277</sup>

At the moment, the Global North seeks to ensure its own survival through externalization policies that ultimately harm the region's salt flats, communities, and biodiversity – it seems the salt flats are seen as a ‘zone of sacrifice’.<sup>278</sup> This is an approach to the fight against the climate crisis that is not acceptable and it is important to recognize that an honest approach is not possible without changing the consumption patterns of the Global North. Technological innovation and international cooperation are necessary and desirable, but not if they don't

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<sup>273</sup> FRANCE 24 Español, Interview with Sergio Chamorro, ‘¿Cómo Afecta La Explotación de Litio En Chile a Los Indígenas Del Salar de Atacama?’ *France 24 Español* (Paris, 15 February 2024) [06:30] <<https://www.youtube.com/watch?v=gGeicoN96iM>> accessed 27 May 2024.

<sup>274</sup> Sophia Boddenberg, ‘Indígenas se oponen a un acuerdo sobre el litio en Chile.’ *Deutsche Welle* (Bonn, 8 February 2024) <<https://www.dw.com/es/ind%C3%ADgenas-se-oponen-a-un-acuerdo-sobre-el-litio-en-chile/a-68209671>> accessed 28 May 2024.

<sup>275</sup> FRANCE 24 Español (n 273) [04:00].

<sup>276</sup> *En el nombre del litio* (Directed by Tian Cartier and Martin Longo , Calma Cine ) <<https://vimeo.com/579971152>> accessed 2024 [53:00].

<sup>277</sup> Martín Obaya, Diego Murguía, Carlos Freytes, Tomás Allan, ‘Una cadena de valor de baterías de litio justa y sostenible’ (Results Report, Green Dealings Project, Centre for International Studies, Geneva Graduate Institute (IHEID) 2023) 50.

<sup>278</sup> *En el nombre del litio* (n 276) [50:00].

respect boundaries and put extensive pressure on the resources of the Global South.<sup>279</sup> Ultimately, the fight for climate justice should promote equality, but current initiatives seem to perpetuate power asymmetries and inequalities.<sup>280</sup> In this regard, also the AFA risks maintaining an asymmetry in trade relations - Chile will likely continue to primarily export raw materials while importing manufactured goods from Europe, ultimately leading to an unbalanced economic model.<sup>281</sup>

dd. Implications for the Future: Is the AFA an improvement?

Commenting on the trade pillar of the new agreement, Samira Rafaela, MEP and permanent rapporteur for Chile in the EP's International Trade Committee, highlighted the new binding commitments on environmental standards as well as the explicit references to the rights of indigenous peoples.<sup>282</sup> And indeed, unlike the AA, the ITA contains provisions that refer to indigenous communities. Art. 26. 13 for example states that the parties recognize the importance of respecting and preserving their knowledge and practices. The ITA also provides for the implementation of the essential elements clause before the implementation of the AFA itself (Art. 1.6.2). Concerning cooperation on energy and natural resources, Art. 8.14 (3a) calls for responsible mining practices and sustainable commodity value chains. The provision is part of the chapter on Energy and Raw Materials whose Art. 8.8. also entails an obligation to assess environmental impacts.<sup>283</sup> Regarding the AFA's human rights clause, it is positive that the clause is more comprehensive than its predecessor. Not only does Art. 1.2 (2) refer to 'other relevant international human rights instruments', but Art. 1.2 (6) explicitly provides for the support of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>284</sup>

Concerns have already been raised that the environmental provisions of the raw materials chapter in the ITA alone are not enough. The EU should ensure that proper due diligence is in place to make sure that imports of lithium have been obtained following EU environmental standards. Moreover, it is of utmost importance that the inclusion of indigenous communities

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<sup>279</sup> Pamela Poo, 'Opinion: Chile's Lithium Deals Are Another Example of "Bad Development"' (*Dialogue Earth*, 16 February 2024) <<https://dialogue.earth/en/business/389401-opinion-chile-lithium-deals-bad-development-2/>> accessed 13 May 2024.

<sup>280</sup> Olivera Andrade and Lorca (n 240) 74.

<sup>281</sup> Mathías Montenegro Koenig, 'EU-Chile Pact Puts Profit before People' (*The Left*, 29 February 2024) <<https://left.eu/eu-chile-pact-puts-profit-before-people/>> accessed 15 May 2024.

<sup>282</sup> Rafaela S, Samira Rafaela Explains EU-Chile Trade Agreement' (29 February 2024) <<https://www.youtube.com/watch?v=j3Unh80q-Y0>> accessed 21 June 2024 [00:15].

<sup>283</sup> Interim Agreement on Trade between the European Union and the Republic of Chile (ITA) (17 November 2023) 2023/0259 (NLE).

<sup>284</sup> EU-Chile AFA (n 232).

in impact assessments will be ensured.<sup>285</sup> In addition, the EU should support negotiations that ultimately result in secure benefits for indigenous communities, enabling them to improve basic infrastructure.<sup>286</sup>

Besides the new agreement, the EU and Chile have also signed a Memorandum of Understanding, aiming at establishing a strategic partnership on sustainable raw materials value chains. However, the Chile-EU MoU does not create legally binding obligations nor does it specifically mention the rights of indigenous peoples.<sup>287</sup>

#### 4. Influence on the Constitutional Process after the ‘Estallido Social’ in 2019/2020

For the sake of completeness, I would like to mention another relatively recent EU engagement in Chile, the influence on the constitutional process after the protests of 2019/2020. Constitutional processes are an interesting field of analysis in themselves, and the European influence on constitutions in LATAM, in general, cannot be denied.<sup>288</sup> In Chile, the first and second attempts to adopt a new constitution were ultimately unsuccessful.<sup>289</sup> The process however is still interesting and there remains hope that the country eventually will be able to approve a constitutional document that contributes to solving some of its issues.

The first attempt to adopt a new constitution was particularly noteworthy because of the diverse Constitutional Convention that also included indigenous representatives. It was strongly influenced by the prominent demands of the social uprising, which ultimately led to a constitutional project that has already been described as utopian.<sup>290</sup> Nevertheless, the recognition of the demands of the people and the need to come to terms with the country’s past deserve respect and could even serve as an example for European states.

During the process, the EU Delegation to Chile in cooperation with the Chilean Agency for International Cooperation, and supported by EUROsociAL+, launched the ‘Chile-EU Forum’ to exchange experiences on constitutional processes, social cohesion, welfare systems, and fundamental rights. The idea was to share lessons learned from European constitutions to help

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<sup>285</sup> Eline Blot and Susanna Li, “Post-FTA-Briefing, EU-Chile’, Institute for European Environmental Policy’ (*Institute for European Environmental Policy*, March 2023) <<https://ieep.eu/wp-content/uploads/2023/03/EU-Chile-Post-Briefing.pdf>> accessed 28 May 2024, 7/8.

<sup>286</sup> O’Faircheallaigh and Babidge (n 201) 665.

<sup>287</sup> Memorandum of Understanding between the European Union and the Republic of Chile on a Strategic Partnership on Sustainable Raw Materials Value Chains (Chile-EU MoU) (signed 18 July 2023).

<sup>288</sup> Rodrigo Uprimny, ‘The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges’ (2011) 89 *Texas Law Review* 1587, 1592.

<sup>289</sup> Deutsche Welle, ‘Chile rejects second attempt to renew constitution’ *Deutsche Welle* (Bonn, 17 December 2023) <<https://www.dw.com/en/chile-rejects-second-attempt-to-renew-constitution/a-67749225>> accessed 6 July 2024.

<sup>290</sup> David Landau Rosalind Dixon, ‘Utopian constitutionalism in Chile’ (2024) 13 *Global Constitutionalism* 228.

Chile look beyond its borders. The initiative included ‘Chile-EU Dialogues’, which consisted of webinars; ‘EU-Chile Counterpoints’, which were public debates at universities as well as cooperation with Chilean government institutions.<sup>291</sup> The Constitutional Convention had also invited many European experts, such as Boaventura de Sousa Santos,<sup>292</sup> who stated in this context that the Global South should consider having legal systems distinct from European approaches since those regions have experienced an imposed patriarchal culture and follow a colonial model that subverts ancestral knowledge.<sup>293</sup> Furthermore, in 2021, a delegation of MEPs visited Chile to offer possible assistance in the constitutional process. The visit was criticized by some members of the Constitutional Convention as interference - criticism that also stemmed from the fact that the EU delegation was seen as coming from a continent that has traditionally exploited Chile's national resources to the detriment of the country's inhabitants.<sup>294</sup> After the visit, the MEPs stressed that the modernization of the AA should be temporarily postponed because a new constitution could change Chile's approach to crucial issues such as natural resources and energy, a request that was ultimately not heeded.<sup>295</sup> Also, it may be interesting to note that Spain stood out in its participation in the process for obvious reasons, such as historical ties and a common language.<sup>296</sup>

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<sup>291</sup> EUROsocial, ‘Chile-European Union Forum. Constituent process’ (15 April 2021) <<https://eurosocial.eu/en/eurosocial-tv/chile-european-union-forum/>> accessed 7 July 2024.

<sup>292</sup> Sousa Santos was not long ago accused of sexual assault, which is something to keep in mind: Mariama Correia, ‘Brazilian state deputy says she was sexually assaulted by Boaventura de Sousa Santos’ *Agência Pública* (São Paulo, 14 April 2023) <[https://apublica.org/2023/04/brazilian-state-deputy-says-she-was-sexually-assaulted-by-boaventura-de-sousa-santos/#\\_](https://apublica.org/2023/04/brazilian-state-deputy-says-she-was-sexually-assaulted-by-boaventura-de-sousa-santos/#_)> accessed 7 July 2024.

<sup>293</sup> Beatrice Ester Larraín Martínez, ‘Europe in Chile: Its Influence on the New Constitutional Design’ in Gian Luca Gardini (ed), *The Redefinition of the EU Presence in Latin America and the Caribbean* (Peter Lang 2023) 289/290.

<sup>294</sup> *ibid* 290/291.

<sup>295</sup> *ibid* 291.

<sup>296</sup> *ibid* 292.

## II. Cuba

In many ways, Cuba is a particularly interesting case when analyzing the human rights situation in LATAM. The Caribbean island is one of the few remaining socialist states in the world, leading to an often romanticized view of the country and its revolution, like a modern David against Goliath story. And of course, there are victories - medical education in Cuba is exceptional, Cuban doctors help worldwide,<sup>297</sup> equality is high compared to other countries in the region,<sup>298</sup> and every child can attend school. But even good doctors cannot work without the necessary equipment and medicine,<sup>299</sup> schools cannot function properly when paper is scarce,<sup>300</sup> and now, in 2024, the Cuban people are suffering from food and electricity shortages due to the severe economic crisis.<sup>301</sup>

*In the following paragraphs, I will explain, why the Cuban case is perhaps one of the easiest examples to explain how a state cannot be understood without its historical context, and that what works well in Europe does not necessarily mean it will work elsewhere.*<sup>302</sup>

### 1. Political and Historical Context: Between Colonialism, US Imperialism and Communism

#### a. Cuba's History<sup>303</sup>

The recent history of Cuba is best explained by dividing it into three parts: Cuba under Spanish colonial rule, the creation and development of the independent Cuban Republic, and the (post-) revolutionary Cuba of today.<sup>304</sup>

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<sup>297</sup> Sean Jacob, 'If Africa is a country, then Fidel Castro is one of our national heroes' (*Africa is a country*, 27 November 2024) <<https://africasacountry.com/2016/11/viva-fidel>> accessed 07 June 2024.

<sup>298</sup> It should be noted, however, that Cuba hasn't had a Gini coefficient for many years, and the situation suggests that inequality has worsened. See also: World Bank Group, 'Gini Index - Cuba' (*World Bank Group Data*) <<https://data.worldbank.org/indicator/SI.POV.GINI?end=2011&locations=CU&start=2000>> accessed 7 June 2024.

<sup>299</sup> Alberto Martínez, 'Cuba's Health Crisis Spawns a Surge in the Black Market for Medicines' *DIARIO DE CUBA* (Madrid, 23 February 2024) <[https://diariodecuba.com/cuba/1708728936\\_53078.html](https://diariodecuba.com/cuba/1708728936_53078.html)> accessed 9 May 2024.

<sup>300</sup> Sarah Marsh, 'Cuba cuts newspaper size due to paper scarcity as shortages bite' *Reuters* (London, 5 April 2019) <<https://www.reuters.com/article/idUSKCN1RG2WI/>> accessed 07 June 2024.

<sup>301</sup> Bashkar Sunkara, 'Obama Opened a Door between Cuba and the US. Why Is Biden Closing It Again?' *The Guardian* (London, 26 March 2024) <<https://www.theguardian.com/commentisfree/2024/mar/26/joe-biden-cuba-policy>> accessed 9 May 2024.

<sup>302</sup> Tanja Ernst, 'Jenseits altbekannter Pfade: Liberale Demokratie unter Druck. Das Beispiel Bolivien' (2011) 40 (2) *Österreichische Zeitschrift für Politikwissenschaft* 183, 186.

<sup>303</sup> The structure of this part is inspired by a seminar paper I wrote for my law degree: Chryssa-Danae Geranastassis, 'Der Verfassungsbegriff der kubanischen Revolution und die Verfassungsreform aus dem Jahr 2019' (2021) Seminar zu den Methoden der vergleichenden Verfassungsgeschichte [Unpublished] Goethe University Frankfurt.

<sup>304</sup> Carlos Manuel Villabella Armengol, 'El derecho constitucional cubano de 1812 al 2009: cánones, ciclos y modelos políticos' (2019) 20 *Revista de Historia Constitucional* 877, 877.

After some 400 years as a Spanish colony,<sup>305</sup> the country's first constitution as an independent state was drafted in 1901.<sup>306</sup> Cuba gained its independence after two failed attempts, the Ten Year's War that began in 1868 and the following 'Little War',<sup>307</sup> during which it received international solidarity from other Latin American states that saw the struggle as the final defeat of the Spanish in the region. This changed in the last war of independence against Spain in which Cuba was supported by the US, which sought to exert its influence.<sup>308</sup> The US eventually succeeded in its endeavor, as can be seen in the 1901 constitution that was influenced by liberal ideas,<sup>309</sup> and the coercion of the Cuban Constituent Assembly to accept the Platt Amendment, which included an intervention right.<sup>310</sup> The North American neighbor ultimately continued to control much of the Cuban economy and government<sup>311</sup> and it would be 1959 before the country finally achieved true independence.<sup>312</sup>

The political landscape became even weaker under the presidency of Gerardo Machado who was followed by several presidents, who sometimes held power for only a few days or even hours.<sup>313</sup> However, in 1940 a progressive constitution was adopted including the right of women to vote and 'racial' equality, as well as the establishment of legal tools to take action against violations of the constitution.<sup>314</sup> Unfortunately, the once democratically elected Fulgencio Batista threatened the 1940 constitution, regained power in a coup, and secured it through a repressive system.<sup>315</sup> He was a president who acted mostly in his interests<sup>316</sup> and governed at a time when Cuba was a divided country including a poor rural area inhabited mostly by Afro-

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<sup>305</sup> Ernesto Domínguez López and Helen Yaffe, 'The Deep, Historical Roots of Cuban Anti-Imperialism' (2017) 38 *Third World Quarterly* 2517, 2517.

<sup>306</sup> *Constitución de la República de Cuba de 1901*.

<sup>307</sup> Alexis Heraclides and Ada Dialla, 'The US and Cuba, 1895–98.' in Alexis Heraclides and Ada Dialla, *Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent* (Manchester University Press 2015) 198.

<sup>308</sup> Dalia Antonia Muller, 'Latin America and the question of Cuban independence' (2011) 68 *The Americas* 209, 213.

<sup>309</sup> Carlos Manuel Villabella Armengol, 'El Control de Constitucionalidad En Cuba: Recuento Histórico y Valoraciones de La Nueva Propuesta En La Constitución de 2019' (2019) 23 *Anuario Iberoamericano de Justicia Constitucional* 87, 91.

<sup>310</sup> *ibid.*

<sup>311</sup> Jafari Sinclair Allen, 'Looking Black at Revolutionary Cuba' (2009) 36 (1) *Latin American Perspectives* 53, 57.

<sup>312</sup> Heraclides and Dialla (n 307) 211.

<sup>313</sup> Villabella Armengol (n 304) 895/896.

<sup>314</sup> *Constitución de la República de Cuba de 1940*, Art. 10 a), b), Art. 20, Art. 40.

<sup>315</sup> Aviva Chomsky, *A History of the Cuban Revolution* (2<sup>nd</sup> edn Wiley-Blackwell 2015) 27.

<sup>316</sup> Hans-Joachim König, 'Kuba: Vom Objekt zum Subjekt im historischen Prozess? Ein historischer Überblick' in Landeszentrale für politische Bildung Baden-Württemberg (ed), *Kuba* (2008) 58 (1) *Der Bürger im Staat*, 102.

Cubans.<sup>317</sup> The US, however, accepted him - for example, because he banned the Communist Party in 1953 and due to his general orientation toward the US during the Cold War.<sup>318</sup>

Eventually, a young lawyer named Fidel Castro tried to take legal action against Batista<sup>319</sup> but was ultimately forced to start what became known as the Cuban Revolution. Castro began the revolution with an attack on the Moncada barracks, which led to his imprisonment until 1955. A general amnesty freed him and the other rebels, who reorganized in Mexico and returned to Cuba a year later, joined by Argentinean Che Guevara, to continue their struggle. They won in 1958 and Batista left the country.<sup>320</sup>

The revolution itself was not communist per se - on the contrary, the various rebels followed different political tendencies. But after the Batista regime, the Socialist Party of Cuba was the only one left more or less intact, and so Castro decided that it would be the best option for rebuilding the country. As time went on, the newly established regime began to follow socialist-communist ideas.<sup>321</sup> In retrospect, it was especially the US that made Cuba the socialist country it is today. Fidel was not considered a communist but the US feared his influence and possible destabilization of other countries in the region.<sup>322</sup> An agrarian reform in 1959,<sup>323</sup> which mainly affected the property of US citizens, also damaged their relationship and eventually led to US support for contra-revolutionary movements, culminating in the Bay of Pigs invasion in 1961. At the same time, relations between the Soviet Union and Cuba were growing closer. Shortly after the invasion, Castro for the first time declared the socialist nature of the revolution.<sup>324</sup>

#### b. Bilateral Relations between Cuba and the EU in the past

The relationship between the two parties in the past can be described as rather inconsistent. It has been one of coming together and then moving apart.<sup>325</sup> Factors include ideological shifts within European MSs, the EU's relationship with the US, and reforms in the island nation.<sup>326</sup>

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<sup>317</sup> Chomsky (n 315) 27/28.

<sup>318</sup> Chomsky (n 315) 27.

<sup>319</sup> Ernst Eisenbichler, 'Staatstrauer in Kuba' *Bayrischer Rundfunk* (Munich, 26 November 2016) <<https://www.br.de/nachricht/fidel-castro-tot-104.html>> accessed 06 June 2024.

<sup>320</sup> König (n 316) 102.

<sup>321</sup> Robert Furtak, 'Die kubanische Revolution und der Weltkommunismus' (1962) 12 *Osteuropa* 735, 735-737.

<sup>322</sup> Bevan Sewell, 'The pragmatic face of the covert idealist: the role of Allen Dulles in US policy discussions on Latin America, 1953-61' (2011) 26 *Intelligence and National Security* 269, 282/283.

<sup>323</sup> *Ley de Reforma Agraria de Cuba del 17 de Mayo 1959*.

<sup>324</sup> König (n 316) 103.

<sup>325</sup> Antonio F. Romero G., 'El Acuerdo de Diálogo Político y Cooperación y las relaciones entre la Unión Europea y Cuba (Documentos de Trabajo, EU-LAC Foundation and Carolina Foundation 2022) 5.

<sup>326</sup> Susanne Gratius, 'The Role of the European Union in the Cuba-United States-Venezuela Triangle' (2017) 10 *IdeAs* <<https://doi.org/10.4000/ideas.2154>> accessed 29 April 2024, para 5.

## aa. Cold War and US Embargo

In 1962, under President John F. Kennedy, a comprehensive embargo was enacted, influenced by earlier policies under President Eisenhower. The authorization came from the Foreign Assistance Act of 1961, a Cold War law. The embargo includes several different pieces of legislation, such as the well-known Helmut Burton Act of 1996, which ultimately harms foreign companies doing business in Cuba by preventing them from doing business in the US. The stated purpose of the embargo was to force the Cuban government to move toward greater democratization and respect for human rights - until that would happen, the sanctions would remain in place.<sup>327</sup>

It is often stated that the embargo is not beneficial for any sites,<sup>328</sup> for instance, because it complicates humanitarian assistance.<sup>329</sup> According to the Cuban foreign ministry, it is clear that the US embargo against Cuba is a violation of the human rights of its citizens. It even goes so far as to say that the actions taken under the embargo constitute acts of genocide under the 1948 Genocide Convention.<sup>330</sup> In any case, it is interesting to see the different approach compared to the EU, which has focused on cooperation instead of force<sup>331</sup> and which already in 1988, as the European Community, established diplomatic relations with the Cuban regime.<sup>332</sup> The EU has emphasized on several occasions that it does not believe in the positive effects of the embargo. On the contrary, in addition to the negative impact on the Cuban people, Spain last year explained once again why the EU continues to vote in favor of a UN resolution to end the

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<sup>327</sup> Isabella Oliver and Mariakarla Nodarse Venancio, 'Understanding the Failure of the U.S. Embargo on Cuba' (*WOLA*, 4 February 2022) <<https://www.wola.org/analysis/understanding-failure-of-us-cuba-embargo/>> accessed 9 May 2024.

<sup>328</sup> WOLA, '114 Members of Congress Urge the Biden Administration to Prioritize Cuba' (*WOLA*, 16 December 2021) <<https://www.wola.org/2021/12/members-of-congress-urge-biden-to-prioritize-cuba/>> accessed 9 May 2024.

<sup>329</sup> Oliver and Nodarse Venancio (n 327).

<sup>330</sup> Ministry of Foreign Affairs, *Informe de Cuba: En virtud de la resolución 77/7 de la Asamblea General de las Naciones Unidas, titulada "Necesidad de poner fin al bloqueo económico, comercial y financiero impuesto por los Estados Unidos de América contra Cuba"* (2023) 9.

<sup>331</sup> Elizabeth Wise, 'Europe Chances Clash with US over Cuba Talks' *POLITICO* (Arlington, 11 April 2014) <<https://www.politico.eu/article/europe-chances-clash-with-us-over-cuba-talks/>> accessed 9 May 2024.

<sup>332</sup> Susanne Gratius, 'Europa y Estados Unidos ante los Derechos Humanos en Cuba' (2008) 10 (20) *Auracaria, Revista Iberoamericana de Filosofía, Política y Humanidades* 175, 179.

embargo, namely - also - because it feels that its own economic interests are negatively affected,<sup>333</sup> due to the extraterritorial effect of the sanctions.<sup>334</sup>

Currently, the Cuban government seems to be pursuing a double game, trying to maintain diplomatic relations with both Russia and the US.<sup>335</sup> Nevertheless, the embargo is likely to remain in place for many years, simply because the US can afford it and because of its internal electoral influence, especially in Florida, where a large Cuban diaspora lives. To some extent, this is beneficial for the government in Havana, which can blame the embargo and thus justify its own economic and political system.<sup>336</sup>

#### bb. The Common Position of the EU

For two decades, relations between Cuba and the EU were based on the so-called Common Position of the EU, a unilateral agreement influenced by the Spanish position of the time, which supported the international isolation of the Caribbean state.<sup>337</sup> Cuba strongly opposed the document as selective, discriminatory, and based on inequality and lack of respect due to its unilateral nature.<sup>338</sup>

The Common Position was adopted on December 6, 1996,<sup>339</sup> and focused on promoting democracy and the fundamental rights that are constitutive in a democratic system. The document is quite strong in its language, and while it emphasizes that the EU is not considering the use of coercive measures by putting economic pressure on the island state (Nr. 1), it does speak of a ‘peaceful transition’ which, while well-intentioned, undoubtedly goes beyond the scope of how the EU should act toward another sovereign state. The same can be said of the emphasis on ‘economic opening’ (Nr. 2) or ‘pluralist democracy’ (Nr. 3a), considering the

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<sup>333</sup> Press and Information Team of the Delegation to the UN in New York, ‘EU Explanation of Vote – UN General Assembly: Embargo Imposed by the USA against Cuba’ (2 November 2023) <[https://www.eeas.europa.eu/delegations/un-new-york/eu-explanation-vote-%E2%80%93-un-general-assembly-embargo-imposed-usa-against-cuba\\_en?s=63](https://www.eeas.europa.eu/delegations/un-new-york/eu-explanation-vote-%E2%80%93-un-general-assembly-embargo-imposed-usa-against-cuba_en?s=63)> accessed 9 April 2024.

<sup>334</sup> Clara Portela and Kim B. Olsen, *Implementation and monitoring of the EU sanctions’ regimes, including recommendations to reinforce the EU’s capacities to implement and monitor sanctions* (Directorate General for External Policies of the Union 2023) 47.

<sup>335</sup> Cubalex, ‘Informe Mensual Sobre La Situación de Los Derechos Humanos En Cuba (Febrero 2024)’ (Monthly Report) (11 March 2024) <<https://cubalex.org/report/informe-mensual-sobre-la-situacion-de-los-derechos-humanos-en-cuba-febrero-2024/>> accessed 9 April 2024, 6.

<sup>336</sup> WOLA, ‘Cuba: The U.S. Embargo after Sixty Years’ (28 January 2022) <[https://www.youtube.com/watch?v=me\\_SwEBuv\\_A](https://www.youtube.com/watch?v=me_SwEBuv_A)> accessed 8 June 2024 [28 min].

<sup>337</sup> Romero G. (n 325) 3.

<sup>338</sup> Abelardo Moreno, ‘Cuba Acoge Con Satisfacción Las Decisiones Adoptadas Por La Unión Europea (+ Declaración)’ (*Representaciones Diplomáticas de Cuba en el Exterior*; 7 December 2016) <<https://misiones.cubaminrex.cu/es/articulo/cuba-acoge-con-satisfaccion-las-decisiones-adoptadas-por-la-union-europea-declaracion>> accessed 12 April 2024.

<sup>339</sup> Council, ‘Common Position of 2 December 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Cuba (96/6 97/CFSP)’ [1996] L 322/1.

specific context of the relationship with Cuba during that time. Therefore, while it is positive that the EU was so strongly committed to the implementation of civil and political rights in the country (Nr. 3c), and humanitarian aid (Nr. 3e), among other aspects, at the same time, it is understandable that the Cuban government did not receive those efforts well.

Furthermore, it is also interesting that the adoption of the Common Position did not result in a common position of the MSs, as can be seen from the more than 20 bilateral agreements with Cuba – while on the European level, there was a strong focus on making democratic progress a condition, the same could not be said for the national level.<sup>340</sup> Also, while there were several different actors with different interests<sup>341</sup> and human rights were mentioned often, ultimately the overall Cuba policy was highly politicized, and human rights played a more secondary role while the primary driver was the objective of Cuba's transition towards democracy.<sup>342</sup> Moreover, contrary to the current policy that I will soon discuss, the focus was on a top-to-bottom approach, making the Cuban government the possible actor for change, and not civil society.<sup>343</sup>

Nonetheless, EU-Cuban relations have occasionally moved, and in 2000, even Cuba's accession to the Fourth Lomé Convention was discussed.<sup>344</sup>

## 2. Cuba-EU Agreement on Enhanced Political Dialogue and Cooperation

For a long time, the country's one-party system hampered relations between Cuba and the EU. However, in 2016, the normalization of relations was decided, Cuba was eventually integrated into the EU's Latin American policy,<sup>345</sup> and the Common Position was repealed.<sup>346</sup> In the same year, as part of this normalization, the Political Dialogue and Cooperation Agreement between Cuba and the EU<sup>347</sup> was signed in December, and following its Art. 86.3, has been provisionally applied since November 1, 2017.<sup>348</sup>

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<sup>340</sup> Gratius (n 332) 179.

<sup>341</sup> *ibid* 179.

<sup>342</sup> *ibid* 191.

<sup>343</sup> *ibid* 181.

<sup>344</sup> Susanne Gratius, 'Cuba y Europa: diez años de encuentros y desencuentros' (2009) 18 *América Latina Hoy* 91, 91.

<sup>345</sup> Susanne Gratius, 'The European Union and Cuba: A Low Profile Strategic Partnership' (*Cuba Capacity Building Project*, 8 April 2023) <<https://horizontecubano.law.columbia.edu/news/european-union-and-cuba-low-profile-strategic-partnership>> accessed 9 April 2024.

<sup>346</sup> Council, 'Council Decision (CFSP) 2016/2233 of 6 December 2016 repealing Common Position 96/697/CFSP on Cuba' [2016] L 337 I/41.

<sup>347</sup> Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part [2016] LI 337/3.

<sup>348</sup> Notice concerning the provisional application of the Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part [2017] OJ L 259/1, 1.

It is interesting, but by no means surprising, that right at the beginning (p. 2) of the document, respect for the ‘sovereignty, territorial integrity, and political independence’ of the Cuban state is mentioned. But also the respect for universal human rights, as set out in the UDHR and other international treaties, and for ‘democracy, good governance and the rule of law’ was included. This is to be achieved by involving relevant stakeholders, including civil society.

Art. 1, which lays down general principles, emphasizes mutual respect (Art. 1 (2)) and the right of peoples to freely determine their political systems (Art. 1 (6)). One of the objectives, according to Art. 2, is still the modernization of the Cuban economy (Art. 2 (b)) - but the language is different and more respectful compared to the previous Common Position. Art. 5 is specifically devoted to the protection of human rights through the establishment of a human rights dialogue between the parties. Interesting is the emphasis on the objective to address economic, social, and cultural rights and civil and political rights in a ‘balanced fashion’, taking into account the traditional priority of Cuba as a socialist state.<sup>349</sup> Art. 10 (1) refers to unilateral coercive measures, most likely in reference to the US embargo. Art. 11 is about Human Trafficking.

Title II of the third part of the agreement is devoted to democracy, human rights, and good governance. Art. 22 (1) emphasizes cultural particularities while stating that universal human rights are to be protected regardless of the system in place. Art. 22 (2) states that democracy ‘is based on the freely expressed will of the people’. Art. 24 concerns the rule of law and thus refers to the right to a fair trial.

Article 36 reiterates the importance of civil society.

If a Party considers that another Party has failed to fulfill an obligation under the agreement, it may take appropriate measures. However, this must be done in consultation with the Joint Council, and priority will be given to measures that least disturb the agreement as a whole (Art. 85(2)). The Joint Council is not required to be informed in cases of ‘special urgency’ (Art. 85 (3)). Such cases are defined in the same provision and include, for example, violation of essential elements of the agreement as defined in Art. 1(5) and Art. 7. Suspension is a last resort.

a. Emphasis on Sovereignty and the EU’s New Approach to Cuba

The agreement with Cuba marks a major change in the EU's relationship and approach to the country. In contrast to the previous position, it leaves behind a strategy of conditional

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<sup>349</sup> Gratius (332) 176.

commitment that was ultimately unsuccessful.<sup>350</sup> Simultaneously, the agreement still allowed the EU to show its support for structural change and to gain more visibility in LATAM, given Cuba's symbolic importance in the region.<sup>351</sup> However, this time without threatening the country's sovereignty or exerting pressure to change the political system,<sup>352</sup> which is important and more promising in light of the country's history, as explained above.

b. Developments since the Signing of the Agreement

While there have been several dialogues between the EU and Cuba since the creation of the agreement, it remains interesting to analyze whether Cuba is truly open to change, or whether it only allows cooperation to the extent that it does not threaten the power of the current regime, as was the case when the country adopted its new constitution in 2019.<sup>353</sup>

aa. Prisoners of Conscience

The Cuban political system is said to rely heavily on ideology and propaganda, but also on international diplomacy, illicit revenues, and repressive military capabilities.<sup>354</sup> The repressive system and the overall difficult living conditions have led to large protests in July 2021, on a scale not seen in Cuba for decades. Unfortunately, the Cuban government has a history of repressing dissent, and the reaction to the protests was no different. According to AI, the authorities used arbitrary detentions, unfair trials, intimidation, and surveillance, as well as disrupted Internet service to combat the movement.<sup>355</sup> HRW reports about people being regularly held incommunicado, some of them mistreated or subjected to torture. In addition, the prison sentences are disproportionate to the charges and even children are being held in prison.<sup>356</sup> In the aftermath of the protests, the organization *Justicia 11J* was created to provide information about public protests in Cuba. According to their data, 1905 people have been arrested since the social outburst, 800 of whom are still in prison.<sup>357</sup>

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<sup>350</sup> Romero G. (n 325) 3.

<sup>351</sup> Alexis Berg-Rodríguez, 'La diplomacia directa como prisma de análisis de la relación UE-Cuba' (2020) 52 (195) *Estudios Internacionales* 9, 19/20.

<sup>352</sup> *ibid.*

<sup>353</sup> Armando Chaguaceda and Eloy Viera Cañive, 'El destino de Sísifo. Régimen político y nueva Constitución en Cuba' (2021) 20 (58) *Polis Revista Latinoamericana* 58, para 64.

<sup>354</sup> Julieta Pelcastre, 'The Political Prisoners of Cuba, Nicaragua, and Venezuela' *Diálogo Américas* (6 February 2023) <<https://dialogo-americas.com/articles/the-political-prisoners-of-cuba-nicaragua-and-venezuela/>> accessed 9 May 2024.

<sup>355</sup> AI, 'Five Things You Should Know a Year on from Cuba's 11 July Protests' (*AI News*, 12 July 2022) <<https://www.amnesty.org/en/latest/news/2022/07/five-things-you-should-know-cubas-11-july-protests/>> accessed 9 May 2024.

<sup>356</sup> HRW, 'Rights Trends in Cuba' (World Report 2024, HRW 11 January 2024).

<sup>357</sup> Justicia 11J, 'Bases de Datos, Detenciones Políticas' (*Justicia 11J*, 24 April 2024) <<https://justicia11j.org/>> accessed 9 May 2024.

Unfortunately, the repression continues to this day - just recently, a young woman was sentenced to 15 years in jail for posting a video showing police violence during a protest.<sup>358</sup> In addition, many articles in the Cuban penal code still contain the death penalty, especially for crimes against state security.<sup>359</sup> A death sentence has not been applied in 20 years,<sup>360</sup> however, in 2012 democracy activists died in a car crash and last year the Inter-American Commission on Human Rights (Comisión Interamericana de los Derechos Humanos, CIDH) concluded in a report that there is reason to believe that state agents were involved in the incident.<sup>361</sup>

In March this year, the largest protests since 2021 took place due to growing discontent over food shortages and power cuts.<sup>362</sup> Nonetheless, in a recent interview, the Cuban president emphasized that the demonstrations were not calling for a break with the revolution and that they had been met not with repression but with a judicial response that was not based on ideology.<sup>363</sup>

This is consistent with the statements made by the Cuban delegation during the Universal Periodic Review (UPR) on November 15, 2023.<sup>364</sup> The delegation stated that there were no political prisoners in the country and that the protests in July 2021 could not be classified as peaceful protests, as they included riots and vandalism.<sup>365</sup> The recommendations made by other states focused in particular on the lack of ratification of the ICCPR, while Germany, for example, also specifically called for the release of all political prisoners. Furthermore, Cuba was urged to establish an independent human rights institution.<sup>366</sup>

#### bb. Cuban Medical Missions – a form of Modern Slavery?

As mentioned at the beginning, one of the main achievements of the Cuban Revolution has been the island's exceptionally well-trained doctors. They are part of the Cuban socialist ideology,

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<sup>358</sup> Clara Gloria Colomé, 'Cuba Sentences 22-Year-Old Mother to 15 Years in Prison for Publishing Videos of Protests' *EL PAÍS English* (Madrid, 2 May 2024) <<https://english.elpais.com/international/2024-05-02/cuba-sentences-22-year-old-mother-to-15-years-in-prison-for-publishing-videos-of-protests.html>> accessed 8 June 2024.

<sup>359</sup> *Ley 151/2022 'Código Penal' 2022*, e.g. Art. 121 a) *Sedición*.

<sup>360</sup> UNHRC, 'Report of the Working Group on the Universal Periodic Review Cuba' (20 December 2023) A/HRC/55/17 [12].

<sup>361</sup> CIDH, 'Report No. 83/23. Case 14.196. Admissibility and Merits (Publication). Oswaldo José Payá Sardiña et al. Cuba' (June 9, 2023) OEA/Ser.L/V/II Doc. 92, 18 [73].

<sup>362</sup> Clara Gloria Colomé, 'Food, Electricity and Freedom: Citizen Protest Is Reactivated in Cuba' *EL PAÍS English* (Madrid, 26 March 2024) <<https://english.elpais.com/international/2024-03-26/food-electricity-and-freedom-citizen-protest-is-reactivated-in-cuba.html#?rel=mas>> accessed 9 June 2024.

<sup>363</sup> Clara Gloria Colomé, 'Díaz-Canel: Cuba Protests "Are Not Demands for a Break with the Revolution"' *EL PAÍS English* (Madrid, 21 May 2024) <<https://english.elpais.com/international/2024-05-21/diaz-canel-cuba-protests-are-not-demands-for-a-break-with-the-revolution.html>> accessed 9 June 2024.

<sup>364</sup> UNHRC (n 360).

<sup>365</sup> *ibid* [13], [37].

<sup>366</sup> *ibid* [6], [11], [9].

which tries to present itself as humanistic - one of the reasons for the country's medical missions, in which doctors are sent to states in need of medical services due to a situation of crisis, financial shortages, or other reasons, especially in countries of the Global South.<sup>367</sup> The export of medical services ultimately serves two purposes: to legitimize Cuba's revolutionary ideals by demonstrating international solidarity and to finance its economy.<sup>368</sup> In 2019, the Special Rapporteur on Contemporary Forms of Slavery sent a communication to the Cuban government, including concerns about the situation of medical personnel who are part of the missions, to which the Cuban government responded with complete negation. In November 2023, a second communication was sent, which began with a note of appreciation for the value of the Cuban missions.<sup>369</sup> However, it was noted that concerns remain, also in relation to the services of artists, architects, and other professionals.<sup>370</sup> Allegations include inadequate salaries, restrictions on freedom of movement, Art. 176 of the Cuban Penal Code, which imposes an eight-year prison sentence on people who do not return to Cuba or who want to change their profession - making them traitors under the Cuban Migration Law<sup>371</sup> 1312 (Art. 24.1).<sup>372</sup> In addition, reference is made to the salaries that were received in Italy, most of which went to the Cuban authorities, while the medical personnel were left in Italy without enough money to live in dignity.<sup>373</sup> With regard to the mission in Qatar, it was also stated that the average working week was 64 hours.<sup>374</sup>

The Permanent Mission of Cuba to the UN, in its reply from January 2024, stated that it has already responded to the accusations made, reaffirming the humanitarian objectives of the mission, denying the allegations, and expressing concern that the Special Procedures of the Human Rights Council are being used for campaigns organized by the US.<sup>375</sup>

Regarding the situation of Cuban workers in the EU, a petition was presented to the EP last year condemning the fact that medical personnel were allowed to work in Italy despite the knowledge of human rights violations by the Cuban government. However, the Committee on

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<sup>367</sup> Sasha Gillies-Lekakis, 'Cuban Medical Internationalism in the Fight against COVID-19' (*Australian Institute of International Affairs*, 12 October 2021) <<https://www.internationalaffairs.org.au/australianoutlook/cuban-medical-internationalism-in-the-fight-against-covid-19/>> accessed 9 May 2024.

<sup>368</sup> Sarah A. Blue, 'Cuban Medical Internationalism: Domestic and International Impacts' (2011) 9 (1) *Journal of Latin American Geography* 31, 33.

<sup>369</sup> Special Rapporteur on Contemporary Forms of Slavery 'AL CUB 2/2023' (2 November 2023) 1.

<sup>370</sup> *ibid* 1.

<sup>371</sup> *Ley No. 1312 'Ley de Migración' (Edición Actualizada) 2015.*

<sup>372</sup> Special Rapporteur on Contemporary Forms of Slavery (n 369) 1/2.

<sup>373</sup> *ibid* 3.

<sup>374</sup> *ibid.* 3.

<sup>375</sup> Permanent Mission of Cuba to the United Nations Office at Geneva, *No. 39/2024* (19 January 2024) 2.

Petitions responded with a rather general statement, mainly referring to the competence and responsibility of the MSs concerned.<sup>376</sup>

### c. Consequences

Ultimately, the human rights situation seems to remain an issue and the most contentious topic in the bilateral relationship.<sup>377</sup>

#### aa. Human Rights Dialogues

The human rights dialogues under the PDCA have already been described as forming the center of the agreement.<sup>378</sup> In November last year, the fourth session took place, together with the former EUSR for Human Rights, Gilmore. The visit was described as forming a part of the EU's wider policy of 'constructive but critical engagement' towards Cuba. In that context, the dialogues provide a structural framework for discussions, including about further cooperation on the global stage – for instance regarding women's rights, the rights of the child or LGBTI, which – however – are issues that do not touch upon the power distribution within the country and therefore seem to be easier to handle. Therefore, the EU mentioned the concerns regarding the prisoners of conscience, but the results focused on less controversial points such as possible cooperation in the field of housing and food.<sup>379</sup>

#### bb. Statements by VC/HR

In a speech in June 2021, Borrell defended the agreement despite the ongoing issues in Cuba. He emphasized that it enabled a stable dialogue with the national authorities that was not possible before.<sup>380</sup> He also compared the approach towards Cuba with the approach the EU pursues toward other states with a distinct political system. According to his statement, the EU will continue to express the importance of the implementation of rights that it considers important.<sup>381</sup>

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<sup>376</sup> EP Committee on Petitions, 'Petition No 0038/2023 by J. A. R. P. (Spanish), on behalf of 'Association Cubans For Democracy', signed by two other persons, on alleged breach of EU law by the region of Calabria (Italy) regarding the employment of Cuban doctors' (18 December 2023).

<sup>377</sup> Romero G. (n 325) 9.

<sup>378</sup> Josep Borrel Fontelles, 'Human rights and political situation in Cuba: opening statement' (*Multimedia Centre EP*, 8 June 2021) <[https://multimedia.europarl.europa.eu/en/video/human-rights-and-political-situation-in-cuba-opening-statement-by-josep-borrell-fontelles-vice-president-of-the-commission-high-representative-of-the-union-for-foreign-affairs-and-security-policy\\_I206997](https://multimedia.europarl.europa.eu/en/video/human-rights-and-political-situation-in-cuba-opening-statement-by-josep-borrell-fontelles-vice-president-of-the-commission-high-representative-of-the-union-for-foreign-affairs-and-security-policy_I206997)> accessed 9 June 2024 [03:55].

<sup>379</sup> EEAS, 'EAAS, 'Cuba: Visit of EU Special Representative for Human Rights and 4th EU-Cuba Human Rights Dialogue'' (24 November 2024) <[https://www.eeas.europa.eu/eeas/cuba-visit-eu-special-representative-human-rights-and-4th-eu-cuba-human-rights-dialogue\\_en?s=136](https://www.eeas.europa.eu/eeas/cuba-visit-eu-special-representative-human-rights-and-4th-eu-cuba-human-rights-dialogue_en?s=136)> accessed 9 June 2024.

<sup>380</sup> Borrell Fontelles (n 378) [06:15].

<sup>381</sup> *ibid* [08:00].

Borrell traveled to Cuba for the first time in May last year as VP/HC. The visit was said to be seen from a multilateral point of view – it happened shortly before the EU-CELAC summit and during a time in which Cuba held the position as temporary chairman of the G-77+ China<sup>382</sup> making it an important representative of developing countries.<sup>383</sup>

#### cc. EP Resolutions

In several resolutions, the EP has repeatedly criticized the Cuban authorities and the ‘failure’ of the PDCA.

The most recent resolution, from February this year, is very clear in its condemnation of the situation of human rights in Cuba. It explicitly states that the PDCA has failed in its core objective of improving the situation of fundamental rights of the Cuban people. It describes Cuba as ‘the biggest prison for political activists and dissidents in Latin America’. It also declares unacceptable that the EEAS and the EU Delegation in Cuba excluded the Cuban opposition and civil society from political dialogues because the Cuban authorities did not consent. The EP also calls for the application of the global human rights sanctions regime (EU Magnitsky Act) and thus the sanctioning of those responsible, including President Díaz-Canel. Finally, it stated that in view of the lack of change despite the EP's demands, the agreement should be suspended.<sup>384</sup> In a previous resolution from July 2023, it also stated that economic reforms are more necessary than ever. However, the EP also mentions that VP/HR Borrell publicly had stated during his visit that the EU has ‘neither the capacity nor the will’ to impose political changes on the island. The latter is further criticized for having said that there would be consequences for supporting Russia in its aggression against Ukraine, without having pursued any actions following this statement.<sup>385</sup>

In the June 2021 resolution, made shortly before the July protests, under point ‘E’, the EP explicitly states that since the entry into force of the PDCA, Cuba has made no progress in improving the human rights situation in the country. On the contrary, according to the EP, the violations and the repression have become worse. The EP also states that the rights of Cubans

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<sup>382</sup> The Group of 77 at the United Nations, ‘Chairmanship of the Group of 77 in New York’ (*The Group of 77*) <<https://www.g77.org/doc/presiding.html>> accessed 10 June 2024.

<sup>383</sup> Mauricio Vicent, ‘EU’s Foreign Policy representative Borrell begins his trip to Cuba with support for the island’s private sector’ *El País* (Madrid, 26 May 2023) <<https://english.elpais.com/international/2023-05-26/eus-foreign-policy-representative-borrell-begins-his-trip-to-cuba-with-support-for-the-islands-private-sector.html>> accessed 9 June 2024.

<sup>384</sup> EP Resolution (2024/2584(RSP)) of 29 February 2024 on the critical situation in Cuba [2024] P9\_TA(2024)0122.

<sup>385</sup> EP Resolution (2023/2744(RSP)) of 12 July 2023 on the state of the EU-Cuba PDCA in the light of the recent visit of the High Representative to the island [2023] P9\_TA(2023)0280.

would be best protected in a state of pluralist democracy (C). Of particular interest is also 'L', which mentions the criticized behavior of the former EU ambassador to Cuba, who signed a controversial letter to the US president - something that, according to the resolution, exceeded his functions and 'illustrates the highly politicized role played by the EU embassy in Havana'. The ambassador had also made public statements that Cuba is not a dictatorship. The resolution furthermore mentions the particularly difficult relationship of the institution with the Cuban government - according to 'N', the latter has refused invitations from the EP and - in addition - responded with letters containing insults and unfounded accusations. Moreover, the EP is said to be the only EU institution that has not been allowed to visit the country since the provisional entry into force of the PDCA. Overall, the resolution condemns the human rights situation in Cuba, going so far as to call for legal reforms and expressing regret at the Cuban government's unwillingness to work towards even 'minimal progress'. It therefore called on the VC/HR to recognize the opposition in Cuba by including it in political dialogues, as foreseen by the PDCA. It emphasizes that civil society must be adequately represented in political dialogues and calls for refusal to participate in dialogues if this is not the case. There is also criticism that cooperation funds or participation in the agreement have only been available to companies in which the state has a stake or control.<sup>386</sup> In September 2021, shortly after the major protests throughout the country, the EP even went as far as to describe the actions by the Cuban authorities as 'systematically violating the fundamental provisions of this agreement'.<sup>387</sup> It called for the EU to trigger Art. 85 (3b) of the agreement and to call an immediate meeting of the Joint Committee. Another resolution was published in December of the same year, stating that the Cuban government is maintaining a *culture of fear* in the country.<sup>388</sup>

### 3. Conclusion and Implications for the Future

Undoubtedly, the situation of the Cuban people is dire, human rights violations continue, and therefore the PDCA has not had the desired effect. However, I have a positive attitude towards the future and strongly believe that the EU's changed approach was a step in the right direction. It has taken a step back from its sense of superiority, an attitude that ultimately limited the EU's chances of having a real positive impact.<sup>389</sup> Eventually, the EU seems to have understood that

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<sup>386</sup> EP Resolution (2021/2745(RSP)) of 10 June 2021 on the human rights and political situation in Cuba [2021] P9\_TA(2021)0292.

<sup>387</sup> EP Resolution (2021/2872(RSP)) of 16 September 2021 on the government crackdown on protests and citizens in Cuba [2021] P9\_TA(2021)0389 [10].

<sup>388</sup> EP Resolution (2021/3019(RSP)) of 16 December 2021 on the situation in Cuba, namely the cases of José Daniel Ferrer, Lady in White Aymara Nieto, Maykel Castillo, Luis Robles, Félix Navarro, Luis Manuel Otero, Reverend Lorenzo Rosales Fajardo, Andy Dunier García and Yúnior García Aguilera [2021] P9\_TA(2021)0510 [5].

<sup>389</sup> Nouwen (n 140) 54.

Cuban foreign policy is highly influenced by anti-imperialist ideas, based on the legacy of national hero Jose Martí and the revolution.<sup>390</sup>

Nevertheless, while the achievements of the revolution cannot be denied, it is forbidden to romanticize a regime that oppresses its people.<sup>391</sup> However, Cuba has an incredible sympathy value that should not be underestimated when discussing relations with the island state. This can be seen in the statements made by the State of Palestine during the UPR, which encouraged Cuba to continue its rejection of unilateral coercive measures, as well as its internationalist and solidarity work.<sup>392</sup> For many, especially people from the Global South and marginalized people in general, Cuba is a symbol of rejection of the capitalist system we live in today, which continues to oppress historically disempowered people. And while the Cuban system has certainly not been entirely successful in meeting the needs of Cubans, there may be aspects of it that the EU can learn from. And vice versa - Cuba must realize that the oppression of its people must stop immediately.

For these reasons, I do not believe that the suspension of the agreement should be considered. I am sure that this would have a negative effect and would push the country in a further wrong direction, allying itself with states that are not in favor of human rights.

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<sup>390</sup> Domínguez López and Yaffe (n 305) 2536.

<sup>391</sup> Carmen Morán Breña, Interview with Carlos Manuel Álvarez, 'Carlos Manuel Álvarez, writer: 'There won't be a democratic solution for Cuba, unless it's led by women' *El País* (Madrid, 6 May 2023) <<https://english.elpais.com/international/2023-05-06/carlos-manuel-alvarez-writer-there-wont-be-a-democratic-solution-for-cuba-unless-its-led-by-women.html#?rel=mas>> accessed 9 June 2024.

<sup>392</sup> UNHRC (n 360) [44.111], [44.271].

### III. Columbia

Colombia's history is one of recurrent cycles of violence. The long-lasting conflict is primarily rooted in socioeconomic inequalities, political violence, and the unequal distribution of land. As a consequence, disputes between guerrilla groups and the government have led to widespread aggression and displacement, further complicated by the rise of paramilitary organizations and illegal businesses. Despite ongoing efforts through negotiations and peace agreements, the country continues to strive for a more peaceful and harmonious coexistence.<sup>393</sup>

*In light of the internal conflict, the cooperation between the EU and Colombia has been highly characterized by the promotion of human rights and democracy<sup>394</sup> and is therefore important for the question of this thesis.*

#### 1. Historical and Political Context: Violent Conflict and Systemic Inequality

Colombia is a country of great geopolitical interest, considering its location between the northern and southern parts of LATAM. It is also a country with a particularly multicultural population, the result of different historical developments around dispossessed indigenous peoples, Afro-Colombians - descendants of people brought to the Americas as slaves, and migrants from the Middle East. At the same time, the construction of the Colombian state was strongly influenced by liberal ideas, which led to economic and political structures that benefited the interests of a minority elite class, mainly European descendants. Therefore, it was especially indigenous people and Afro-Colombians, who were marginalized and forgotten, that formed the opposition during the civil wars.<sup>395</sup>

It was as early as the 1930s, that peasant groups mobilized to demand greater social justice. However, the situation worsened with the election of Mariano Ospina Pérez as president in 1946. The highly conservative politician brought a difficult social conflict to the country, including clashes between the forces of public order and citizens.<sup>396</sup> The climax was 'El Bogotazo', a riot in Bogota that was the consequence of the assassination of the liberal leader

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<sup>393</sup> Carlos Madridejos Ornilla, 'The EU Trust Fund for Colombia: Valuable Lessons for Hybrid Peacebuilding' (2024) 42 (2) Development Policy Review, 3.

<sup>394</sup> Denisse Amara Grandas Estepa and Miguel Barreto Henriques, 'La estrategia de cooperación para la paz de la Unión Europea en Colombia: retos y desafíos para el posacuerdo' in Denisse Amara Grandas Estepa and Claudia Marisol Moreno Ojeda (eds), *Cooperación internacional en América Latina en clave de paz y desarrollo* (Editorial Neogranadina 2020) 200.

<sup>395</sup> Edna Martínez, 'Yearning for Real Democracy in Colombia' (2021) 36 *The Funambulist*.

<sup>396</sup> Jerónimo Ríos, 'The Recent Context in Colombia in Historical and Territorial Perspective: Armed Conflict, the Havana Agreement and Its Implementation' in Karlos Pérez de Armiño (ed), *European Union Support for Colombia's Peace Process* (Palgrave Macmillan 2023) 51.

Jorge Eliécer Gaitán in April 1948, followed by the period of ‘La Violencia’,<sup>397</sup> which resulted in 180,000 deaths by 1953. The military dictatorship that followed imposed a system of alternation between the two main parties,<sup>398</sup> one liberal and one conservative, which limited democracy in Colombia for two decades<sup>399</sup> and ultimately created a dictatorship of civil nature.<sup>400</sup>

Colombia's conflict, like many others in the region, had its roots also in the political landscape of the 1960s, the Cold War, and the Cuban Revolution.<sup>401</sup> The failure of politicians to address the needs of rural citizens ultimately had the emergence of small insurgent groups as a consequence, such as the *Ejército de Liberación Nacional* (National Liberation Army, ELN), the *Ejército Popular de Liberación* (Popular Liberation Army, EPL),<sup>402</sup> and, of course, the Guevarist *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (Revolutionary Armed Forces of Colombia, FARC-EP).<sup>403</sup> In the 1970s and 80s, the situation then got new actors: Paramilitary groups involved in drug trafficking, as well as groups like the M-19, which joined the guerrillas and engaged in kidnapping, extortion, and the cocaine trade.<sup>404</sup> Eventually, Colombia became a so-called ‘narco-state’ with a high rate of drug trafficking and homicides due to the inability of the authorities to tackle the violence. The country was seen as the paradigm of the failed state in LATAM.<sup>405</sup> The failure of state institutions was particularly evident in the judicial system, which targeted only the most vulnerable in the crime chain due to high levels of corruption.<sup>406</sup> Nevertheless, a certain improvement was made with the 1991 Constitution, which finally included marginalized communities and their rights.<sup>407</sup> The constitution was drafted in cooperation with guerrilla groups such as the M-19, to which also the current president, Gustavo Petro, belonged. It

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<sup>397</sup> Alejandro Rodríguez Pabón, ‘Prison Revolts in Colombia’ (2024) 52 *The Funambulist*.

<sup>398</sup> The National Front Agreement established the division of legislative and bureaucratic positions and the rotation of the presidency every four years. See also: J. Mark Ruhl, ‘Civil-Military Relations in Colombia: A Societal Explanation’ (1981) 23 (2) *Journal of Interamerican Studies and World Affairs* 123, 129.

<sup>399</sup> Ríos (n 396) 51.

<sup>400</sup> Janiel Melamed and Carlos Pérez Espitia, ‘Political Background of the Armed Conflict in Colombia: A History for Not Repetition’ (2017) 12 *Ciencia y Poder Aéreo* 136.

<sup>401</sup> Ríos (n 396) 51.

<sup>402</sup> Norman Offstein, ‘An Historical Review and Analysis of Colombian Guerrilla Movements: FARC, ELN and EPL’ (2003) 52 *Revista Desarrollo Y Sociedad* 99.

<sup>403</sup> Renata Segura and Delphine Mechoulan, ‘Made in Havana: How Colombia and the FARC Decided to End the War’ (International Peace Institute 2017).

<sup>404</sup> Ríos (n 396) 52.

<sup>405</sup> *ibid* 53.

<sup>406</sup> Rodríguez Pabón (n 397).

<sup>407</sup> Martínez (n 395).

introduced, among other relevant tools, the ‘tutela action’, a legal remedy that any citizen can use in case of a state violation of fundamental rights.<sup>408</sup>

With the election of Álvaro Uribe in 2002, the perception of the conflict shifted to narcoterrorism being seen as the main problem. There was a strong militarization, including a reduction in freedoms, and a focus on security instead. Eventually, this was successful to a certain extent, as the guerilla groups became weaker.<sup>409</sup> Juan Carlos Santos, elected in 2010, then began the process of dialogue. By this time, the conflict had already become strongly internationalized. Talks were held in Oslo and Havana, with Chile and Norway supporting the Colombian government and Venezuela and Cuba supporting the FARC-EP. In 2016, a peace agreement was finally reached, with a strong focus on territorial peace and rural reforms.<sup>410</sup> However, the implementation remains difficult, mainly due to the limited commitment of relevant actors such as former President Iván Duque.<sup>411</sup>

## 2. The EU’s involvement

The EU has a long history of engagement in Colombia,<sup>412</sup> with the most important developments dating back to the late 1990s. An analysis is particularly interesting because the EU’s presence coincided with the first developments in its foreign policy and, from the Colombian perspective, with the conflict’s internationalization,<sup>413</sup> a process that started through the ‘Diplomacy for Peace’ policy by Pastrana,<sup>414</sup> who, during that time, sought the legitimatization for his government to be the country’s only representative.<sup>415</sup> Before, the internal conflict had occurred in a relatively isolated context.<sup>416</sup> Another relevant factor for the increased interest of international actors was that the conflict began to have a possibly destabilizing effect on the region - due to movements of displaced people to neighboring countries, violent activities in the border regions, and the issue of drug trafficking.<sup>417</sup> The latter was one of the driving factors that triggered the EU’s involvement – most cocaine ended up in

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<sup>408</sup> Rodríguez Pabón (n 397).

<sup>409</sup> Ríos (n 396) 54/55.

<sup>410</sup> *ibid* 58.

<sup>411</sup> *ibid* 71.

<sup>412</sup> Grandas Estepa and Barreto Henriques (n 394) 212.

<sup>413</sup> Ioannides (n 48) I.

<sup>414</sup> Duque (n 192) 130.

<sup>415</sup> *ibid* 137.

<sup>416</sup> Ximena Andrea Cujabante Villamil, ‘La Comunidad Internacional y Su Participación En Los Procesos de Paz En Colombia’ (2016) 26 *Equidad y Desarrollo* 207, 213 <<http://dx.doi.org/10.19052/ed.3479>> accessed 28 June 2024.

<sup>417</sup> Juan David Gómez-Quintero, ‘La cooperación internacional en Colombia: el papel de la Unión Europea en el contexto del conflicto armado’ (*Católica del Norte*, 2007) <[https://www.researchgate.net/publication/231168260\\_La\\_cooperacion\\_internacional\\_en\\_Colombia\\_el\\_papel\\_de\\_la\\_Union\\_Europea\\_en\\_el\\_contexto\\_del\\_conflicto\\_armado](https://www.researchgate.net/publication/231168260_La_cooperacion_internacional_en_Colombia_el_papel_de_la_Union_Europea_en_el_contexto_del_conflicto_armado)> accessed 11 June 2024, 5.

the US, but Europe was also a destination and the activities of cartels were seen in association with other criminal activities such as human trafficking.<sup>418</sup>

Following the conclusion of the Peace Agreement, the peace process remains the focus of the EU's engagement in Colombia, which now includes support for its implementation.<sup>419</sup> As mentioned before, peace is yet to be achieved - although the agreement was signed in 2016.<sup>420</sup>

#### a. International Cooperation and Development

Colombia is a middle-income country but one of the main recipients of official development assistance in LATAM.<sup>421</sup> The EU's development activities in Colombia were the ones with the most potential and relevance, especially in trying to achieve sustainable and lasting peace.<sup>422</sup>

##### aa. The Laboratorios de Paz

One of the EU's most important peace-building activities developed around the so-called *Laboratorios de Paz* (Peace Laboratories, LP). Located in highly conflictual and violence-affected regions, they ran from 2002 to 2012. The LP were a joint attempt by the EU, the Colombian government, and Colombian CSOs to address the structural causes of the conflict at the local and regional levels<sup>423</sup> - the idea was to achieve peace through a bottom-up approach.<sup>424</sup> Therefore, the goal was to create social, economic, and cultural conditions conducive to peace and to decentralize the determination to resolve the conflict,<sup>425</sup> ultimately by building zones where peaceful coexistence was possible.<sup>426</sup> This included a strong focus on the inclusion of traditionally marginalized groups, such as indigenous peoples, youth, women, and farmers.<sup>427</sup> Despite the active role played by the EU, it is important that it was never the protagonist in the LP – the main actor was always the Colombian civil society organized

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<sup>418</sup> Pérez de Armiño (n 8) 12.

<sup>419</sup> The Republic of Colombia-European Union Memorandum of Understanding on an Agenda of enhanced political and sectoral dialogue and cooperation for the next decade (Colombia-EU MoU) (signed 21 September 2021) 2.

<sup>420</sup> César Niño, 'Why Has Peace Not Come to Colombia? Between Total Peace and Armed Peace' (2024) 17 *Journal of Strategic Security* 77.

<sup>421</sup> Duque (n 192) 148.

<sup>422</sup> Miguel Barreto Henriques, 'La Participación de La UE En La Resolución Del Conflicto Armado En Colombia' in Giovanni Molano Cruz (ed), *La Unión Europea en América Latina y el Caribe (1945-2012). Lógicas y políticas de un actor global* (Universidad Sergio Arboleda 2015) 177.

<sup>423</sup> Miguel Barreto Henriques, 'The European Union's Peace Laboratories in Colombia: On the Road to Peace or "On the Road to Nowhere"?' in Robert C. Hudson, Wolfgang Benedek and Francisco Ferrándiz (dirs), *Peace, Conflict and Identity: Multidisciplinary Approaches to Research (Humanitarian Net)* (Universidad de Deusto 2009) 137.

<sup>424</sup> Barreto Henriques (n 422) 176.

<sup>425</sup> Barreto Henriques (n 422) 181.

<sup>426</sup> Duque (n 192) 141.

<sup>427</sup> Barreto Henriques (n 422) 181.

through the *Programas de Desarrollo y Paz* (Development and Peace Programs).<sup>428</sup> However, while Colombian in origin, the LP had the advantage of being fully in line with EU values.

Furthermore, they were created at a time when the EU was trying to distance itself from Plan Colombia, to which the EU did not want to contribute due to the military focus<sup>429</sup> that contrasted with 'European values'.<sup>430</sup> Previously peace talks between the government and the FARC-EP had failed, leading to concerns of a possible violent escalation under the Plan Colombia framework. Therefore the EU got involved in the LP that were supposed to make valuable contributions even during periods of armed conflict.<sup>431</sup> The EU became the main political and financial supporter of the initiatives,<sup>432</sup> contributing also by introducing a new dynamic.<sup>433</sup> Eventually, the success of the first LP led to the creation of two more Laboratorios in different regions. Each adapted to new contexts but was based on the philosophy of the first<sup>434</sup> while trying to learn from previously made mistakes and difficulties.<sup>435</sup>

The great support for the project can also be seen in the light of 9/11 and the emergence of an intensified motivation to fight terrorism, which included Colombian guerilla groups that later were added to the lists of terrorist groups.<sup>436</sup> Moreover, the LP even developed in a positive direction during Uribe's presidency, despite his government's security policy that contrasted with the EU's approach.<sup>437</sup> All in all, the LP were a success and later functioned as a good practice inspiration for peace projects in other regions.<sup>438</sup>

When they came to an end the EU continued its strategy with the *Desarrollo Regional, Paz y Estabilidad* (Regional Development, Peace and Stability) programs (2009-2016) that aimed at ensuring the continuity of initiatives that had previously started under the LP.<sup>439</sup> The difference was that they had greater involvement of state authorities and took place in the context of a formalization of the EU's peacebuilding strategies.<sup>440</sup> Later, from 2011 to 2016, the initiative of the *Nuevos Territorios de Paz* (New Peace Territories Project, NTP) was introduced, marking

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<sup>428</sup> *ibid* 182.

<sup>429</sup> Duque (n 192) 140.

<sup>430</sup> Grandas Estepa and Barreto Henriques (n 394) 213.

<sup>431</sup> Duque (n 192) 141.

<sup>432</sup> *ibid* 133.

<sup>433</sup> Grandas Estepa and Barreto Henriques (n 394) 224.

<sup>434</sup> *ibid* 215.

<sup>435</sup> Dorly Castañeda, '¿Qué significan los laboratorios de paz para la unión europea?' (2009) 69 *Colombia Internacional* 162, 174.

<sup>436</sup> Duque (n 192) 142.

<sup>437</sup> *ibid* 143.

<sup>438</sup> *ibid* 145.

<sup>439</sup> *ibid* 135.

<sup>440</sup> *ibid* 146.

a new stage in the EU's engagement, but also continuing with the philosophy of the LP.<sup>441</sup> From 2016 on 'Forpaz' started, a cooperation between the EU and the German development agency 'GIZ', which was distinct from previous programs. The GIZ was perceived as a good partner because it had proved its technical capacities which were assumed to help overcome administrative difficulties of previous initiatives.<sup>442</sup> What was distinct was also that the EU reduced the amount of financial support, possibly to emphasize the formation of a new type of relationship after the conclusion of the Peace Agreement. Forpaz focused on the implementation of the agreement through the strengthening of public institutions and social organizations.<sup>443</sup>

#### bb. Criticism

The LP and the NTP programs had in common that a high level of centralization in the city of Bogotá could be noted, while it would have been better to strengthen the different regions - at all levels, including the administrative one.<sup>444</sup> Unfortunately, often external actors were hired for administrative tasks who lacked knowledge about the specific regional context.<sup>445</sup>

Another difficult factor was the question of resource allocation which created a form of dependence that - by critical voices - has been described as having neocolonial tendencies.<sup>446</sup> This is something that also had negative effects on CSOs as they lost focus on the actual issues that they were trying to tackle.<sup>447</sup> In addition to this, procedures have been criticized as slow and bureaucratic.<sup>448</sup> Furthermore, the EU still maintained its rather state-centered approach, despite working with CSOs.<sup>449</sup> A focus on analyzing the different local practices that might be useful for achieving peace would have been desirable.<sup>450</sup>

Besides, some LP-supported projects were met with controversy. For example, farmers were encouraged not to produce traditional crops but other agricultural products to create profitable and competitive economies. The economic logic that was imposed by that was problematic because it left aside considerations that focus on subsistence and solidarity which have traditionally existed in Colombia for centuries. Therefore, the EU tried to tackle poverty as one

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<sup>441</sup> Grandas Estepa and Barreto Henriques (n 394) 216.

<sup>442</sup> *ibid* 217.

<sup>443</sup> *ibid* 218.

<sup>444</sup> *ibid* 239.

<sup>445</sup> *ibid* 240.

<sup>446</sup> Diana Gómez Correal and Ainhoa Zugadi Bengoa, 'The European Union's Cooperation for Peace in Colombia: Achievements, Contributions and Limits with Respect to Guaranteeing Victims' Rights' in Karlos Pérez de Armiño (ed), *European Union Support for Colombia's Peace Process* (Palgrave Macmillan 2023) 340-342.

<sup>447</sup> *ibid* 345.

<sup>448</sup> Ioannides (n 48) 17.

<sup>449</sup> Gómez Correal and Zugadi Bengoa (n 446) 344.

<sup>450</sup> Grandas Estepa and Barreto Henriques (n 394) 240.

of the structural causes of the conflict but did not properly evaluate where it originates from, especially in LATAM very much related to colonialism and capitalism.<sup>451</sup> Also, influencing the decision of which crops would be planted had a further political level - when the EU started to work against illicit crops they eventually ended up promoting Uribe's anti-terrorist policy.<sup>452</sup> This is a point that deserves thought, despite the EU's obvious good intentions.<sup>453</sup>

#### cc. The EU Trust Fund for Colombia

Following the Peace Agreement, the European Trust Fund for Colombia was created in 2016 to support its implementation. It is the result of a request for assistance from the Colombian government.<sup>454</sup> The Fund was established based on Regulation (EU, Euratom) No 966/2012 on the Financial Regulation applicable to the budget of the EU, in particular Art. 187.<sup>455</sup> The financing is based on resources of the EU, 21 MSs as well as the United Kingdom and Chile.<sup>456</sup>

Since the purpose of the Trust Fund is to support the implementation of the Peace Agreement, following the same idea, the fund also has a strong territorial approach (Art. 2.1).<sup>457</sup> Overall, it has been well received and while it has not been able to compensate for structural problems in the Peace Agreement, the EU has demonstrated its ability to operate in difficult environments and to adapt quickly to local needs. Its efforts to move away from traditional liberal peace approaches have also been positively acknowledged in this context. Nonetheless, local actors are not always the main protagonists, partly because of a lack of local capacity and the technical-administrative complexity that comes with international collaboration.<sup>458</sup>

#### b. Diplomacy and Political Level

It can easily be said that the EU's support of the peace process was mainly based on the support of Colombian civil society – an approach was followed that focused on the construction of peace from 'the bottom'.<sup>459</sup> At the same time, there were some developments on the political level that I would also like to discuss.

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<sup>451</sup> Gómez Correal and Zugadi Bengoa (n 446) 348/349.

<sup>452</sup> *ibid* 17.

<sup>453</sup> Ioannides (n 48) 55.

<sup>454</sup> Commission implementing decision of 22.3.2016 on the establishment of a European Union Trust Fund for Colombia' [2016] C(2016) 1653 final, 2 [3].

<sup>455</sup> *ibid* 3 [4], [5].

<sup>456</sup> Technical Assistance to the European Trust Fund of the European Union in Colombia, 'Fondo Europeo Para La Paz En Colombia' <<https://www.fondoeuropeoparalapaz.eu/wp-content/uploads/2023/02/Fondo-Europeo-para-la-Paz.pdf>> accessed 22 June 2024, 1.

<sup>457</sup> *Acuerdo por el que se crea el fondo fiduciario de la Unión Europea y se establece su reglamento interno* (Constitutive Agreement - EU Trust Fund for Colombia) (EU - Donor States) (signed 12 December 2016) 8.

<sup>458</sup> Madrdejos Ornilla (n 393) 14/15.

<sup>459</sup> Grandas Estepa and Barreto Henriques (n 394) 212.

aa. Activities

Pastrana's strategy of internalization evolved around two possible outcomes: Either the inclusion of international actors would support the negotiations that eventually would succeed, or they would fail and the state must be prepared - with international support - for a violent continuation of the conflict.<sup>460</sup> While the US was more involved in the military support, especially in the aftermath of 9/11 and the proclaimed fight against terrorism, Colombia counted on the EU as one of the countries that could function as a bridge to the guerilla groups, alongside other countries such as Cuba and the so-called '*Grupo de los Países Amigos*',<sup>461</sup> Colombia's friendly countries.

Eventually, at the political level, the EU ended up playing a rather marginal role. It was mainly the Colombian government that led the processes, which was logical, but at the same time, the EU's passive role had a disadvantageous effect on the possible empowerment of civil society.<sup>462</sup>

A well-discussed issue was the question of whether to include the non-government actors of the conflict on the EU's terrorist list. It was feared that their inclusion might lead the Colombian government to stop negotiations with the groups in question. Besides, the EU was proud to distance itself from the US approach, at least until terrorism began to reach the European continent, especially with the attack in Spain on March 11, 2004. In the end, the EU included the FARC-EP, the ELN, and also the paramilitary *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia, AUC) on the list.<sup>463</sup> In addition, the security cooperation between the two countries included an agreement between the Colombian government and EUROPOL in 2004 and separate national agreements aimed at exchanging expertise and knowledge, for instance, based on Spain's experiences with the Basque separatist organization 'ETA'.<sup>464</sup> However, on the diplomacy level, the approach of the different MSs was rather incoherent, different interests were pursued, and overall not much more was achieved than verbal commitments.<sup>465</sup>

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<sup>460</sup> Cujabante Villamil (n 416) 216.

<sup>461</sup> *ibid* 217.

<sup>462</sup> Grandas Estepa and Barreto Henriques (n 394) 231.

<sup>463</sup> An Vranckx, 'European policies on Colombia' (Background Paper, International Peace Information Service 2005) 27/28.

See also: Council, 'Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism' [2010] L 178/28, Annex.

<sup>464</sup> An Vranckx (n 463) 29.

<sup>465</sup> *ibid* 35.

In 2010, Juan Manuel Santos took office as president of Colombia and he changed the narrative from being in a ‘war against terrorism’ to an ‘internal armed conflict’ – something that was of great importance for the creation of the conditions for negotiation, nationally but also on the international level.<sup>466</sup> On November 11, 2015, the EU appointed Eamon Gilmore as Special Envoy for the Peace Process in Colombia. The idea was to support the negotiation process itself, but also the implementation of the agreement in the future – a step that had symbolic value, underlining international support and solidity during the process. While the substantive contribution was limited, Gilmore laid the groundwork for the trust fund and the delisting of the FARC-EP as a terrorist group.<sup>467</sup> But still, external influence on the negotiations was kept limited, besides the central role that Cuba and Norway played.<sup>468</sup> While Cuba was favored because of its crucial role in bringing the FARC-EP to the negotiating table, Norway was chosen because of its neutrality, experience, and because it is not part of the EU - which, unlike EU states, allowed it to provide funding to the FARC-EP despite its designation as a terrorist group.<sup>469</sup> The EU was not especially active either in its possible role as mediator or as guarantor. Support was mainly limited to expressing support and the will to financially contribute to the successful implementation of the agreement.<sup>470</sup> The latter is achieved, on the political level, through the EP's monitoring activities and the Special Envoy for the Peace Process.<sup>471</sup>

bb. Conclusion: The EU – only a donor?

Eventually, it can be criticized that the EU seemed to have limited itself to being mainly an economic supporter of the peace process. On the political level, the energy invested was comparatively low.<sup>472</sup>

c. Transitional Justice

aa. The Colombian Transitional Justice Process

Colombia has a long history of violence and, based on this experience, has developed over time several mechanisms to deal with its past. Some transitional justice (TJ) mechanisms from the early years continue to this day. However, along with the 2016 Peace Accords, a new TJ system was established, consisting of three components: the Special Jurisdiction for Peace

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<sup>466</sup> Sophie Haspeslagh and William Zartman, ‘The Role of Narratives in Negotiations: The Case of the FARC and Colombia’ in Fen Osler Hampson and Amrita Narlikar (eds), *International negotiation and political narratives: A comparative study* (Routledge 2022) 147.

<sup>467</sup> Segura and Mechoulam (n 403) 24/25.

<sup>468</sup> *ibid* 33.

<sup>469</sup> *ibid* 11.

<sup>470</sup> Di Filippo (n 193) 6.

<sup>471</sup> Pérez de Armiño (n 8) 3.

<sup>472</sup> Pérez de Armiño (n 8) 17.

(*Jurisdicción Especial para la Paz*, JEP), the Truth Commission (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No-Repetición*, CEV), and the Special Unit for the Search of Disappeared Persons (*Unidad de Búsqueda de Personas dadas por Desaparecidas*, UBPD). Together they form the Integral System of Truth, Justice, Reparation and Non-Repetition (*Sistema Integral de Verdad, Justicia, Reparación y No Repetición*, SIVJRNR).<sup>473</sup>

The Colombian model of TJ is very much focused on the future. Nevertheless, a mere ‘forgive and forget’ approach, including amnesties on a large scale, was not an option, also because of the precedent set by the Inter-American Court of Human Rights (IACHR) in *Barrios Altos v Peru*.<sup>474</sup> At the same time, the FARC-EP would not have signed an agreement that would have resulted in high prison sentences for its members. Consequently, there were many difficult questions when it came to the judicial treatment of the crimes committed.<sup>475</sup> In the end, however, the JEP was created, which is responsible mainly for crimes committed by the FARC-EP and the Armed Forces before 2016.<sup>476</sup> The EU has supported this endeavor through public intervention and economic aid.<sup>477</sup>

For example, in 2020, the EU allocated 3.5 million euros to a project aimed at promoting the participation of victims in the JEP.<sup>478</sup> This support exceeded the financial aspect due to the political context during this time – in 2020 it was still Duque who governed Colombia as president, someone who cut funding for initiatives that supported the implementation of the Peace Agreement. Therefore, the continued EU support for the TJ mechanisms also gave them political legitimacy.<sup>479</sup> The EU's support in this regard even had an impact on the International Criminal Court (ICC) Prosecutor's decision<sup>480</sup> to close the preliminary examination of the situation in Colombia, which had begun in 2004.<sup>481</sup> Furthermore, the EU's financial support

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<sup>473</sup> Stefan Peters, ‘The Special Jurisdiction for Peace in Colombia: Transdisciplinary Inquiries’ in Kai Ambos and Stefan Peters (eds), *Transitional Justice in Colombia* (Nomos 2022) 232/233.

<sup>474</sup> *Barrios Altos v Peru* [2001] IACHR Series C No 75.

<sup>475</sup> Anna María Ospina-Pedraza, Farid Samir Benavides-Vanegas and Julián David Bonilla-Montenegro, ‘Keys to Interpreting the International Cooperation of the EU for the Special Jurisdiction for Peace’ in Karlos Pérez de Armiño (ed), *European Union Support for Colombia's Peace Process* (Palgrave Macmillan 2023) 276-278.

<sup>476</sup> *ibid* 279/280.

<sup>477</sup> *ibid* 293.

<sup>478</sup> EEAS, ‘Apoyo de la Unión Europea por 3,5 millones de euros a la Jurisdicción Especial para la Paz’ (27 July 2020) <[https://www.eeas.europa.eu/delegations/colombia/apoyo-de-la-uni%C3%B3n-europea-por-35-millones-de-euros-la-jurisdicci%C3%B3n-especial-para-la-paz\\_und\\_en](https://www.eeas.europa.eu/delegations/colombia/apoyo-de-la-uni%C3%B3n-europea-por-35-millones-de-euros-la-jurisdicci%C3%B3n-especial-para-la-paz_und_en)> accessed 13 June 2024.

<sup>479</sup> Correal Gómez and Zugadi Bengoa (n 446) 334.

<sup>480</sup> Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia (Karim A.A. Khan QC, Prosecutor of the ICC - Iván Duque Márquez, President of the Republic of Colombia) (28 October 2021).

<sup>481</sup> Di Filippo (n 193) 8/9.

also covers other aspects of the TJ process, such as the work of the CEV,<sup>482</sup> which presented its final report in June 2022 to European institutions in Brussels. This was important not only as an acknowledgment of the continued support of the EU but also because of the Colombian diaspora in Europe, which includes victims of the conflict. Similar to the political aspect of the financial support, the presentation gave legitimacy to the work of the CEV by publicly showing solidarity during a time in which the implementation of the agreement was being threatened.<sup>483</sup>

#### bb. The Structural Issues of the EU's Involvement

TJ is a crucial aspect for the question of this thesis because it reveals structural limitations that are important in the foreign policy context and that derive from the fact that despite the formal end of colonialism, colonial relations persist between LATAM and Europe - something that can be explained with the concepts of Eurocentrism and Coloniality of Power.<sup>484</sup> The latter was coined by Aníbal Quijano to describe the legacy of colonialism in today's power structures, especially in relation to the capitalist system and social hierarchies in general.<sup>485</sup> In that context, the discourses surrounding development, peace, and TJ can also be seen as mechanisms of global governance through which the West maintains influence by promoting a specific societal model based on the nation-state, liberalism, and capitalism. Ultimately, this approach aims to replicate the societal structure of the 'first world',<sup>486</sup> which is understood as the only correct goal toward which a state should develop.<sup>487</sup> Such discourses often overlook the diversity of perspectives within societies, leading to the invisibility of alternative viewpoints. However, it is essential to acknowledge the multitude of perspectives to create scenarios that align with the aspirations of the societies involved.<sup>488</sup>

Moreover, states such as Colombia have been mistakenly described as 'states of exception', which is not true and fails to recognize the responsibility of the Global North in the creation of certain problems. In the EU's general engagement in Colombia, structural issues may have been

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<sup>482</sup> COM, 'EU in Colombia: Healing the wounds, building the future' <[https://fpi.ec.europa.eu/document/download/0845adcc-fdec-41d2-b42a-cd2d2875ec9c\\_en?filename=FPI%20Columbia%20Justice%20-%20V9.pdf](https://fpi.ec.europa.eu/document/download/0845adcc-fdec-41d2-b42a-cd2d2875ec9c_en?filename=FPI%20Columbia%20Justice%20-%20V9.pdf)> accessed 22 June 2024, 2.

<sup>483</sup> Oidhac, 'The Colombian Commission for the Clarification of Truth (CEV) presents its Final Report to European institutions' (*Oidhac*, 28 June 2022) <<https://www.oidhaco.org/en/the-colombian-commission-for-the-clarification-of-truth-cev-presents-its-final-report-to-european-institutions/>> accessed 22 June 2024.

<sup>484</sup> Gómez Correal and Zugadi Bengoa (n 446) 346.

<sup>485</sup> Aníbal Quijano, 'Colonialidad del poder, eurocentrismo y América Latina' in Edgardo Lander (ed), *La colonialidad del saber: eurocentrismo y ciencias sociales. Perspectivas latinoamericanas* (CLASCO 2000).

<sup>486</sup> Gómez Correal and Zugadi Bengoa (n 446) 346.

<sup>487</sup> Diana Marcela Gómez Correal, 'El encantamiento de la justicia transicional en la actual coyuntura colombiana: entre disputas ontológicas en curso' in Neyla Graciela Pardo Abril and Juan Ruiz Celis (eds), *Victimas, memoria y justicia: aproximaciones latinoamericanas al caso colombiano* (ASEUC 2016) 130.

<sup>488</sup> Gómez Correal and Zugadi Bengoa (n 446) 346.

acknowledged, but there was a lack of questioning regarding the above-mentioned role of capitalism or the impact of colonialist ideologies in shaping the nation-states of former colonies. This is especially important in the context of TJ processes, which is why the EU should be more critical of its role, especially in order to respect the rights of victims to non-repetition.<sup>489</sup>

### 3. Conclusion: EU Involvement in Colombia – A Success Story?

Ultimately, it can be said that the EU has had some innovative approaches in Colombia that can serve as lessons for peace processes in other regions. The whole process and the somewhat experimental approach were probably facilitated by Colombia's distance from Europe, which made it possible to act without directly affecting European security interests.<sup>490</sup> Difficulties were often caused by the violent context and outside the EU's sphere of influence, which makes its activities all the more remarkable.<sup>491</sup> However, it is important to note that despite the impressive commitment shown by EU institutions, and the many positive effects of its engagement, there have been certain limitations that impacted the way that peace and security were promoted.

For instance, when the EU started to get involved in the resolution of the conflict, some parts of the Colombian population had doubts that Europeans would understand the national context. The concerns were also based on opinions about the function of the guerilla groups that were understood by some leftist politicians in the EP as 'the Robin Hoods of Colombia'.<sup>492</sup> Furthermore, statements were made about Colombia's role as a drug trafficking state, while at the same time, the numbers of consumption were rising in Europe, ultimately making it co-responsible for the issue.<sup>493</sup> But also within its projects, the differences between the two regions were apparent – therefore, the EU's approach has been criticized as not taking the reality of the Colombian society and political culture sufficiently into account, and instead has kept a very 'economist' mindset.<sup>494</sup>

Moreover, the EU after all is still an institution with political and economic interests that play a role in its actions which eventually can have a limiting effect, for instance in terms of how critical it can be.<sup>495</sup> The economic aspect is also a factor when it comes to the responsibility of European companies in conflict areas and the blind eye that the EU can sometimes turn when

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<sup>489</sup> *ibid* 347.

<sup>490</sup> Pérez de Armiño (n 8) 3.

<sup>491</sup> Ioannides (n 48) 17.

<sup>492</sup> Gómez-Quintero (n 417) 6/7.

<sup>493</sup> *ibid* 8.

<sup>494</sup> Barreto Henriques (n 422) 186.

<sup>495</sup> Gómez Correal and Zugadi Bengoa (n 446) 339/340.

they disregard their human rights obligations, as happened during the conflict in Colombia.<sup>496</sup> In addition, criticism of the EU's activities in Colombia also revolves around the lack of a unified and coherent approach.<sup>497</sup>

The emphasis on connecting peace and human rights with development poses another challenge to the EU's strategy. War, TJ, and international cooperation are all influenced by the specific political and economic systems in place.<sup>498</sup> And especially in LATAM, the implementation of TJ and peace processes also took place in combination with negative developments such as the shrinking of the state's social functions, which ultimately leads to a complex dynamic.<sup>499</sup> This touches on the issues behind the notion of 'Liberal Peace', the idea that peace-building functions best based on the (re)construction of the state, democratic values, as well as a free market economy.<sup>500</sup> While of course, it makes sense to stabilize the particular nation-state that needs support - in the case of Colombia, this has not been done properly, as evidenced by the increase in state violence under Uribe and Duque.<sup>501</sup> Furthermore, the values promoted by this model are not universal and activities in that context are to be seen as not taking sufficiently into account that the Global North model shouldn't be seen as the 'end goal' of historical natural progress.<sup>502</sup> For sure, 'Liberal Peace' cannot function as a standard working in all regions and contexts - also due to its promotion of a neoliberal economic system that in the global context continues to benefit the West.<sup>503</sup> In that regard, the EU has shown potential to distance itself from a mere 'Liberal Peace' approach, especially in comparison to other actors, but its actions need further improvement.<sup>504</sup> But at the end of the tunnel, there is light: To some extent, the EU's approach has already changed, including more emphasis on Latin American perspectives. A positive example is the EU-funded collaboration between the Interdisciplinary Center for Development Studies (*Centro de Estudios Interdisciplinarios del Desarrollo*) and the Network of Development Agencies 'Adelco' (*Asociación de Agencias de Desarrollo Económico Local*)

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<sup>496</sup> Andreas Björklund, 'Breathing Life Into the Colombian Peace Process? The EU's Strengths and Weaknesses as a Peacebuilder' (*A Path for Europe*, 30 November 2020) <<https://pathforeurope.eu/breathing-life-into-the-colombian-peace-process-the-eus-strengths-and-weaknesses-as-a-peacebuilder/>> accessed 9 July 2024.

<sup>497</sup> Barreto Henriques (n 422) 177.

<sup>498</sup> Gómez Correal and Zugadi Bengoa (n 446) 348.

<sup>499</sup> *ibid* 348.

<sup>500</sup> Pérez de Armiño (n 8) 25.

<sup>501</sup> Gómez Correal and Zugadi Bengoa (n 446) 347/348.

<sup>502</sup> Pérez de Armiño (n 8) 25.

<sup>503</sup> *ibid* 26.

<sup>504</sup> *ibid* 28.

<sup>505</sup> - a research project that seeks to find new approaches to territorial development in Colombia.<sup>506</sup>

Ultimately, the EU's involvement can be described as a successful learning-by-doing experience that enabled the EU to develop a different approach to conflict resolution than that of the US.<sup>507</sup>

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<sup>505</sup> Gómez Correal and Zugadi Bengoa (n 446) 348/349.

<sup>506</sup> Universidad de los Andes, 'Desarrollo Económico Local En Colombia. Alianza Cider - Red Adelco' (*Cider*, 4 May 2022) <<https://cider.uniandes.edu.co/es/proyectos-de-investigacion/planificacion-gobernanza-y-desarrollo-territorial>> accessed 9 July 2024

<sup>507</sup> Castañeda (n 435) 171/172.

## F. Conclusion

The purpose of this work is not to call for a utopian EU foreign policy that would ignore all aspects of *realpolitik* in its entirety. In our political system, such an approach would not last long either - politics needs voters, and voters are likely to be more concerned with the difficulties of their own daily lives than with the problems of LATAM. More than that, such an approach would most certainly weaken the EU, making it an actor that would be deprived of the resources necessary to achieve the human rights goals it was pursuing in the first place.<sup>508</sup>

What I wanted to do was to ask what we can achieve with a human rights-based approach within such realities. And as we have seen, the answer is that we can do a lot. The EU has undertaken several activities in LATAM to protect and promote human rights in very different contexts and policy areas. In the end, despite all the criticism, the EU continues to be one of the few actors in which the human rights community has hope.<sup>509</sup> Especially in LATAM the analysis has shown that in this context there is a large number of actors involved in a relationship that takes place on multiple levels.<sup>510</sup> Nevertheless, the assumption that both regions share the same values and principles is true only from a more general point of view, while the reality is full of nuances, also shaped by the fact that both regions are trying to strengthen their role in the geopolitical arena. In this regard, it is a positive development that the interregional relationship is evolving into one that encompasses several policy areas and takes place between two equal partners.<sup>511</sup>

From a more critical point of view, we have also seen that the EU has many tools at its disposal, and sometimes one wonders whether it could not do more, also considering its position in the global context<sup>512</sup> - often it seems that the EU makes promises it is not prepared to keep.<sup>513</sup> This harms the EU's self-proclaimed role as a human rights leader – ultimately, if the EU wants to keep up with this goal, it should be more consistent in the application of its instruments, even if this involves possible difficulties. This observation relates to one of the main conclusions of this thesis - that the EU must finally acknowledge the impact of Europe's colonial history and address it sufficiently in all areas including its foreign policy. In all three case studies, we have

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<sup>508</sup> Adrian Hyde-Price, 'A "Tragic Actor"? A Realist Perspective on "Ethical Power Europe"' (2008) 84 *International Affairs* 29, 29.

<sup>509</sup> Nowak and Podstawa (n 54) 543.

<sup>510</sup> Gardini and Ayuso (n 55) 11.

<sup>511</sup> *ibid* 19.

<sup>512</sup> Hachez (n 67) 106.

<sup>513</sup> *ibid* 105.

seen the lingering effects of colonialism and how they have been ignored by the EU. As long as the EU is unwilling to improve this, it will not be a credible human rights actor in my view.

Nevertheless, I remain positive that the EU will improve its external action and thus have a positive impact in the future. LATAM is the perfect partner to do so - the relationship is longstanding, has been successful in many aspects, and what needs to be improved has been sufficiently analyzed - it just needs to be implemented. This will allow both regions to form an international cooperation that responds to global challenges with an approach that puts human rights first.

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