Promoting the Rule of Law through EU External Relations and the Principle of Non-Intervention under International Law

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Abstract
The increasing external activities of the European Union and the latter's duty to uphold and promote its values, including the rule of law principle, in relations with third states, raise the question of the international law restrains the EU may face in confronting third states with its demands. More generally, it raises the question of the limits than can or should be set in relation to EU external normative action. This contribution asks to what extent the EU is restrained by the principle of non-intervention in relation to its Treaty brief to uphold and promote the rule of law in its relations with third states.

EU external relations – rule of law – values – international law – principle of non-intervention

1. Introduction

The principle of non-intervention is an ancient but fundamental principle of international law based on the prerogatives and independence of states. While the big change in the principle of non-intervention had its momentum in the 20th century with the adoption of the United Nations Charter, the principle is not static and continues to develop on the basis of the dynamics that characterise the international legal system. It is often challenged because of the practice of states to justify interventions. These interventions may even entail the use of force, and states often aim to establish exceptions.[1] At the same time states continue to affirm the existence of the principle of non-intervention and honour it through its inclusion in international treaties.

An emerging question is to what extent the European Union (EU) is restrained by the principle of non-intervention in relation to its Treaty brief to uphold and promote the rule of law in its relations with third states. The starting point is that, in its external action, the European Union is not only bound by EU law, but also by international law. This not only counts for the well-known rules on, for instance, treaty-making, but for many other rules that are binding on the EU, either because of contractual engagements or on the basis of customary law (or even *ius cogens* arguments).[2] This does not necessarily lead to normative conflicts. Principles and values that form the foundation of the two legal systems often coincide and define the 'rule of

[1] Antonio Cassese *International Law* (OUP 2005) 654; NA Ouchakov, 'La compétence interne des états et la non-intervention dans le droit international contemporain' (1974) 141 Rec Cours12.
[2] See extensively on these questions Jed Odermatt, *International Law and the European Union* (CUP 2021).

law' that aims to provide the legal framework of both legal systems.[3] Not only the EU, but also the international legal system has been analysed in terms of a 'community'.[4] Indeed, while 'integration' has been the hallmark of the EU, literature over the past decade also pointed to elements of that integration process that are also increasingly visible at the global level (e.g. the legislative function of some international organizations, the need for judicial protection against international decisions, the involvement of non-state actors).[5]

With the increasing external activities of the EU, it is increasingly confronted with the fact that it is part and parcel of the international legal system and bound by many of its rules in its relations with third states and other international organization. 'EU exceptionalism' has hardly been accepted in relation to the application of international law.[6] This implies that, to a large extent, the EU cannot be exempted from the application of international rules and principles. Questions that come to mind in the framework of this debate include the application of the rules on the use of force and humanitarian law on EU military missions, and, indeed, the use of restrictive measures (sanctions) by the EU in view of the international rules on for instance non-intervention, retorsions and countermeasures.

While the answer in many situations will be that the EU is bound by these international rules, either on the basis of written or customary law, a clear answer on the hierarchy between the norms remains difficult, also in the light of the renewed discussion in the EU on its 'autonomy'.[7] The 'sovereignty-related' questions that have emerged in the context of that debate, also point to possible norm-conflicts that can be faced by EU Member States. Indeed, while from an EU perspective these Member States are first and foremost *Member* States, the same member States have also remained sovereign *States* under international law.[8] This dual status confronts them with possibly diverging obligations under EU and international law. The EU – positive and negative obligations – may flow from the division of competences, but also from the effects of this division which become visible for instance in the conclusion of mixed or EU-only agreements. In the case of the latter, Member States obligations flow from EU law because of obligations the EU entered into under international law.

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[3] Among the many publications, for an EU law perspective see for instance Laurent Pech, '"A Union Founded on the Rule of Law": Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law' (2010) 6 Eur Const Law Rev 359; for an international law perspective see Jeremy Waldron, 'Are Sovereigns Entitled to the Benefit of the International Rule of Law? (2011) 22 EJIL 315.

[4] See for instance the contributions to Ulrich Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer, and Christoph Vedder (eds.), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford Scholarship Online 2011); and more recently Monica Hakimi, 'Constructing an International Community' (2017) 111 AJIL 317. Obviously, the notion dates back to earlier publications such as Hersch Lauterpacht, *The Function of Law in the International Community* (OUP 1933, reprinted in 2011).

[5] See for references Joost Pauwelyn, Ramses A Wessel and Jan Wouters (Eds.), *Informal International Lawmaking* (OUP 2012).

[6] Only occasionally international multilateral frameworks acknowledge the special nature of the EU as an 'regional economic integration organisation' (REIO). Cf. Jed Odermatt and Ramses A Wessel, 'The Challenges of Engaging with International Institutions: The EU and Multilateralism under Strain', in Ramses A Wessel and Jed Odermatt (Eds.), *Research Handbook on the European Union and International Organisations* (Edward Elgar Publishing 2019), 658-672.

[7] See recently among the many publications on this topic Christina Eckes, 'The Autonomy of the EU Legal Order' (2020) 4 EWLR 1; Koen Lenaerts, José A Gutierrez-Fons, and Stanislas Adam, 'Exploring the Autonomy of the European Union Legal Order' (2021) 81 ZaöRV/HJIL 47.

[8] Federico Casolari and Ramses A Wessel 'EU Member States as States' (2023), in Kenneth Armstrong, Joanne Scott, and Anne Thies (Eds.), *EU External Relations and the Power of Law* (forthcoming).

In short, the increasing external activities of the EU and the latter's duty to uphold and promote its values, including the rule of law principle, in relations with third states,[9] raise the question of the international law restrains the EU may face in confronting third states with its demands. More generally, it raises the question of the limits than can or should be set in relation to EU external normative action. Can we depict situations where the principle of non-intervention under international law would set clear limits to EU external action, irrespective of the 'valuable' substantive content of these actions and possible international objectives the EU is faced with on the basis of its own Treaties?

The aim of this paper, thus, is to investigate possible tensions between EU and international law in relation to normative EU external action in relation to the promotion of the rule of law and the international principle of non-intervention.

Section 2 will first of all briefly revisit the duty the Union faces on the basis of its own Treaties in relation to upholding and promoting the rule of law. The focus here will be on so-called 'normative' actions by the EU, based on its Treaty brief in Article 3(5) and 21 of the Treaty on European Union (TEU). This section will also address the duty of the EU to observe international law on the basis of its own principles. Section 3 will assess the relevance of the international principle of non-intervention in relation to the EU's promotion of human rights and democracy in its external relations. Section 4 will be used to draw some conclusions.

2. Upholding and Promoting the Rule of Law in the Wider World

2.1 The substantive content to be promoted

A first question is what is meant by the rule of law in this context. EU law definitions of the rule of law are lacking in the Treaties. Article 2 TEU merely lists the rule of law among its values, without providing a definition:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

While 'the rule of law' is thus presented as a separate value that is distinct from, for instance, 'democracy' or 'human rights', the European Commission has pointed to their interlinkage as well as to the external dimension. Important for the present paper is that the Commission underlined that the rule of law 'is intrinsically linked to respect for democracy and for fundamental rights'.[10] It underlined that the rule of rule of law 'is of critical importance for the EU's external policy' as respect for this principle is 'an essential condition for peace and stability in the consolidation and *support of democracy*, and in the fight against impunity', and

[9] Compare Arts. 3(5) and 21 TEU. See further below.
[10] COM(2019) 163 final, 4.

'inextricably linked to *the protection of human rights* and fundamental freedoms and needs to be pursued both at national and international level'.[11] As we will see in Section 3 below, these are indeed the two elements of the rule of law that Union focuses on in its external relations.

Article 3(1) TEU indeed adds that the values are to be 'promoted': 'The Union's aim is to promote peace, its values and the well-being of its peoples'. And paragraph 5 underlines that this promotion is not only done internally, but is also part of the EU's external relations: '[i]n its relations with the wider world, the Union shall uphold and promote its values'. Furthermore, Article 21 TEU not only provides that the values are to be 'safeguarded' in the EU's international relations, but also links the values to a large set of principles that are to 'guide the Union's action on the international scene'.[12] These provisions indeed reveal, what has been called, the 'translation dimension' of values as enshrined in Article 2 TEU to the EU's external action.[13] Indeed, there does not seem to be disagreement among legal scholars that the values in Article 2, including the rule of law, support of democracy and the protection of human rights should guide the Union's action abroad.[14]

As held by leading experts in a recent report, in the EU, '[t]he rule of law has […] firmly established itself as an essential transnational and transversal principle of what may be referred to as "European constitutional law" […]'.[15] Yet, as is also acknowledged, a clear definition is missing, or in fact overshadowed by a proliferation of definitions. This is not to say the Treaties are completely silent on this. Some provisions do refer to the rule of law, either explicitly or implicitly,[16] and the concept has been crucial is many judgments of the Court, starting with the 1986 judgment,[17] wherein the Court of Justice of the European Union (CJEU) referred to the then European Economic Community (EEC) as a community based on the rule of law.

A description of the substantive dimensions of the rule of law has been provided by the Commission in 2014,[18] and was somewhat revised in 2019:[19]

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[11] EU Delegation to the UN, Statement on the Rule of Law at the National and International Levels, 10 October 2012, UN 6th Committee, EUUN12-091E; quoted in Laurent Pech, 'Promoting the Rule of Law Abroad: On the EU's Limited Contribution to the Shaping of an International Understanding of the Rule of Law', in Dimitry Kochenov and Fabian Amtenbrink, *The European Union's Shaping of the International Legal Order* (CUP 2013), 108. Emphasis added.

[12] Vivian Kube, 'The European Union's External Human Rights Commitment: What Is the Legal Value of Article 21 TEU?' (2016) 10 *EUI Working Papers Law* <https://papers.ssrn.com/abstract=2753155> accessed 20 January 2022; see more generally on EU principles: Katja S Ziegler, Päivi J Neuvonen and Violeta Moreno-Lax (eds), *Research Handbook on General Principles of EU Law* (Edward Elgar Publishing 2022).

[13] Joris Larik, *Foreign Policy Objectives in European Constitutional Law* (OUP 2016), 119-120.

[14] See more extensively Yuliya Kaspiarovich and Ramses A Wessel, 'The Role of Values in EU External Relations: A Legal Assessment of the EU as a Good Global Actor', in Elaine Fahey and Isabella Mancini (Eds.), *Understanding the EU as a Good Global Actor: Ambitions, Values and Metrics* (Routledge 2022), 92-106.

[15] Laurent Pech, Joelle Grogan, et al., 'Meaning and Scope of the EU Rule of Law', (2020) *RECONNECT Paper*, 5.

[16] ibid.

[17] Case 294/83 Parti écologiste 'Les Verts' v European Parliament, ECLI:EU:C:1986:166.

[18] Commission Communication, *A New EU Framework to Strengthen the Rule of Law* (2014), COM(2014) 158 final/2 (n 2) 3-4.

[19] Commission Communication, *Further Strengthening the Rule of Law Within the Union. State of Play and Possible Next Steps* (2019), COM(2019) 163 final.. Earlier descriptions could be found in European Commission, Democratisation, *The rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP States*, COM(98) 146, 24 February 1998, 4.

> Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. […] The rule of law includes, among others, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law.

Definitions have always closely followed interpretations provided by the Council of Europe and its Court of Human Rights.[20]

The rule of law (alongside respect for human dignity, freedom, democracy, equality, and respect for human rights) is thus part of the Union's 'own' values in Article 2 TEU, but through Article 3(5) is linked to what may be termed the 'international values',[21] including the strict observance of international law. This link between EU law and international law principles is important for the topic of the current chapter and has two dimensions. The first dimension relates to the question of whether respect for the rule of law principles limits the Union's ability to act as a global political actor. In sanctions cases, in particular, we have seen that the EU's focus on for instance the right to effective judicial protection may stand in the way of acting effectively externally. This question has been addressed in the post-*Kadi* literature quite extensively.[22] The second dimension concerns not the 'restrictions' flowing from EU law, but from international law. The question then is to what extent and in which manner the attainment of the Union's external rule of law objectives, and in particular support for democracy and protection of human rights, is restraint by international law rules and principles, such as in our case the principle of non-intervention.

2.2 The Application of International Law and EU External Normative Instruments

The focus of the present contribution is on the application of the international principle of non-intervention on EU external action aimed at promoting the rule of law. First of all, the EU treaties are quite clear on the applicability of international law in general on any engagement of the EU with third countries and international organisations. It is well known that Article 3(5) TEU calls for 'the strict observance and the development of international law, including respect for the principles of the United Nations Charter' and that Article 21 TEU repeats this is slightly different terms as 'respect for the principles of the United Nations Charter and international

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[20] Laurent Pech, 'Promoting the Rule of Law Abroad: On the EU's Limited Contribution to the Shaping of an International Understanding of the Rule of Law', in Kochenov and Amtenbrink (n 11), 123.

[21] Enzo Cannizzaro, 'The Value of International Values', in Wybe T Douma, Christina Eckes, Peter Van Elsuwege, Eva Kassoti, Andrea Ott and Ramses A Wessel (eds.), *The Evolving Nature of EU External Relations Law* (T.M.C. Asser Press 2021), 3-18.

[22] See recently on exactly this topic also Luís M Hinojosa Martínez, 'La Relevancia de la Conducta Individual en la Tutela Judicial de las Sanciones Políticas en la UE: Una Compleja Construcción Jurisprudencial', 21 *Anuario de los Cursos de Derechos Humanos de Donostia-San Sebastián: Donostiako Giza Eskubideei Buruzko Ikastaroen Urtekaria*, 2021.

law'. In an earlier study, it was argued that both provisions have a 'binding' nature and that their 'normative force' should be read in those terms.[23] The Treaty language is quite clear in that respect. The objectives in Article 3 TEU use 'committing' terms and provide that 'the Union shall' do something. Thus, paragraph 5 states that '[i]n its relations with the wider world, the Union *shall* uphold and promote its values', but at the same time, '*shall* contribute to […] the strict observance and the development of international law'.[24] Similar phrasing returns in Article 21(1) TEU, albeit that here the somewhat softer terms 'guided' and 'respect for' are used: 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation […] and respect for the principles of the United Nations Charter and international law'. There is, thus, a clear legal obligation for the Union not to act contrary to the mentioned values and principles in *all* its external relations and to interpret its objectives along those lines: 'The Union *shall respect* the principles […] in the development and implementation of the different areas of the Union's external action […] and of the external aspects of its other policies' (Article 21(3) TEU).[25] In short, promotion of the rule of law and respect for international law go hand in hand.

Despite the infrequent references to Article 3(5) TEU (and Article 21 TEU) as such, the objective of 'the strict observance of international law' is indeed acknowledged in several internal and external acts of the Union.[26] The Court of Justice has also been clear on this point and it has been found that the Court has used the provision at hand: as a standard for judicial review (1); as an interpretative tool in different contexts (2); and finally, as a 'brake to autonomy' (3) –in other words as a way of mediating the tension between the need to preserve the autonomy of the EU's legal order and the need to facilitate the participation of the EU in the international scene as an effective global actor.[27] In terms of the values in Article 2 TEU, recent research found that in total, Article 2 TEU, in its post-Lisbon phrasing, is mentioned in 168 cases relating to any type of policy in internal and external settings. Limiting the search to 'external relations', there are 27 cases in total, which are largely relating to the Union's Common Foreign and Security Policy (CFSP).[28] It appears from the – admittedly scarce – case law that values are mostly used by the Court as 'the essential presumption' informing the exercise of external competences.[29] Thus even if the EU does not act to enforce EU values and

[23] Eva Kassoti and Ramses A Wessel, 'The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union', in Paula García Andrade (Ed.), *Interacciones entre el Derecho de la Unión Europea y el Derecho Internacional Público* (Tirant lo Blanch 2022). Parts of these sections are based in that publication.
[24] Emphasis added.
[25] Emphasis added.
[26] Kassoti and Wessel (n 23).
[27] ibid.
[28] See Yuliya Kaspiarovich and Ramses A Wessel, 'Unmixing Mixed Agreements: Challenges and Solutions for Separating the EU and its Member States in Existing International Agreements', in Nicolas Levrat, Yuliya Kaspiarovich, Christine Kaddous and Ramses A Wessel (Eds.), *The EU and Its Member States' Joint Participation in International Agreements* (Hart Publishing 2022), 287-304. Adding 'accession' to the search adds one extra case.
[29] Dimitry Kochenov, 'The Issue of Values', in Peter Van Elsuwege and Roman Petrov (Eds.), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* (Routledge 2014).

principles, it uses them as an essential tool to transform its external actions into 'good' actions, partly with the aim to influence the internal situation in third states.[30]

EU external relations law is thus characterised by a combination of EU and international law rules and principles and, as we have seen, the promotion of the rule of law is part of the Union's treaty brief and has been part and parcel of its external policies for decades. By definition, EU external relations law draws from the rules and principles defining the EU and its Member States' competences on the basis of EU Treaties and case law,[31] but given the fact that it is meant to regulate relations with third states and other international organisations, it also operates outside the EU where it is confronted with the rules of public international law. The possible tension between EU and international rules and principles is part and parcel of the EU's external relations law acquis. It emerges in debates on the EU's autonomy,[32] on the effects of international law in the EU's legal order,[33] or on the extra-territorial effects of EU law[34] (including its Charter of Fundamental Rights[35]). In fact, this topic has been on the agenda of legal scholars from the outset and can be seen as one of the key dimensions of EU external relations law studies.[36]

There is no lack of instruments at the disposal of the EU to uphold and promote the rule of law in its external relations. Over the years, we have seen the Union using, unilateral instruments (e.g on trade, standard-setting or restrictive measures) as well as bi- and multilateral instruments (international agreements) in both formal and informal modalities.[37] In November 2020 the EU took an additional step with the adoption of the EU Action Plan on Human Rights and Democracy 2020–2024.[38] This established a new global EU sanctions regime for human rights violations and also contains a list of EU instruments for promoting human rights and democracy. Within this framework, the EU has also adopted restrictive measures against third

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[30] Cf. Fahey and Mancini (n 14).

[31] For a recent overview of all relevant cases, see Graham Butler and Ramses A Wessel (Eds.), *EU External Relations Law: The Cases in Context* (Hart Publishing 2022).

[32] See references above.

[33] Odermatt (n 2); and earlier the various contributions to Enzo Cannizzaro, Paolo Palchetti and Ramses A Wessel (Eds.), *International Law as Law of the European Union* (Martinus Nijhoff Publishers 2011).

[34] Elaine Fahey, *The Global Reach of EU Law* (Routledge 2018); Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020). And, see recently Eva Kassoti and Ramses A Wessel, 'The Conclusion of Trade Agreements and the EU's Duty to Respect Human Rights Abroad: Extraterritorial and Territorial Considerations', in Nuno Cunha Rodrigues (Ed.), *Extraterritoriality of EU Economic Law* (Springer 2021), 229-249; and Eva Kassoti and Ramses A Wessel, 'The EU's Duty to Respect Human Rights Abroad: The Extraterritorial Applicability of the EU Charter and Due Diligence Considerations' (2020) *CLEER Papers*.

[35] Violeta Moreno-Lax, 'The Extraterritorial Application of the EU Charter of Fundamental Rights: From Territoriality to Facticity, the Effectiveness Model' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (Eds), *The EU Charter of Fundamental Rights* (Nomos Verlagsgesellschaft mbH & Co KG 2014); Jan Wouters, 'The EU Charter of Fundamental Rights – Some Reflections on Its External Dimension' (2001) 8 MJECL 3; also Gráinne de Búrca, 'After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator?' (2013) 20 MJECL 168; as well as for instance Kassoti and Wessel, 'The Conclusion of Trade Agreements (n 34)

[36] Among the many publications, see for recent analyses and references Odermatt (n 2), Tamás Molnár, *The Interplay between the EU's Return Acquis and International Law* (Edward Elgar Publishing 2021); Levrat, Kaspiarovich, Kaddous and Wessel (n 28).

[37] Cf. Pech (n 20) 112; Kaspiarovich and Wessel (n 14).; Kassoti and Wessel (n 23)

[38] General Secretariat of the Council, EU Action Plan on Human Rights and Democracy 2020-2024, Brussels, 18 November 2020, <www.consilium.europa.eu/media/46838/st12848-en20.pdf> accessed 20 January 2022. Since 2012, when the EU adopted the Strategic Framework on Human Rights and Democracy, there have been two plans (2012-2014 and 2015-2019).

states and individuals because of human rights violations, the more recent controversies involving Russia and China. In March 2021, the EU adopted sanctions against Chinese officials because of human rights violations against the Uyghur Muslim minority in the Xinjiang region;[39] the Chinese government's response was to consider these sanctions a gross interference in China's internal affairs.[40] In the same vein, the EU adopted targeted sanctions against Russian senior officials because of their participation in the persecution of the opposition leader Alexei Navalny and because of human rights violations.[41] Russia had already declared that previous restrictive measures adopted against Russian nationals accused of participating in Navalny's poisoning violated the Helsinki principles of non-intervention in internal affairs.[42] Together with these measures, the EU has also adopted restrictive measures against Libyan, North Korean, Burmese, South Sudanese or Chechen nationals because of human rights violations, in the latter case, for example, because of the repression of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons,[43] increasing therefore the rights to be protected by the EU through these measures.

In addition, the instrument of 'conditionality' in international agreements has been part and parcel of the Union's toolbox. Regarding the latter, in the 1990s, the EU started a policy that consisted on introducing a provision in its international agreements, whether they be on trade or development, that allowed for the agreement to be suspended, or for other negative actions to be adopted, in the case of human rights violations by the parties. These provisions have been included in multiple agreements, but one of the most significant is the Cotonou Agreement[44] and its replacement, the Partnership Agreement between the European Union and members of the Organisation of African, Caribbean and Pacific States. Here, Article 101 establishes a consultation process followed by a procedure based on the adoption of 'appropriate measures' in cases where one of the parties has failed to fulfil its obligations

[39] Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses [2021] OJ L 991/1.

[40] Foreign Ministry Spokesperson Announces Sanctions on Relevant EU Entities and Personnel 2021/03/22. <www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1863106.shtmly> accessed 20 January 2022. It must be noted the reluctance position of the ASEAN states to analyse human rights violations among its member states. See Hitoshi Nasu, 'Revisiting the Principle of Non-Intervention: A Structural Principle of International Law or a Political Obstacle to Regional Security in Asia?' (2012) 3 Asian J. Int. Law. 25

[41] Council Decision (CFSP) 2021/372 of 2 March 2021 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses [2021] *OJ L711/6.* Previously the EU had adopted sanctions against six official suspected of been participated in the poisoning of Navalny. These restrictive measures were adopted on the framework of the actions of the EU against the proliferation of chemical weapons. Council Implementing Regulation (EU) 2020/1480 of 14 October 2020 implementing Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons [2020] OJ L 341/1.

[42] Statement by the Ministry of Foreign Affairs of the Russian Federation in response to EU sanctions. 22 December 20202.
<www.mid.ru/en/evropejskij-souz-es/-/asset_publisher/6OiYovt2s4Yc/content/id/4510703> accessed 20 January 2022.

[43] Council Implementing Regulation concerning restrictive measures against serious human rights violations and abuses.

[44] 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000) [2000] OJ L317/3.

regarding human rights, democracy and rule of law.[45] This provision has led the EU to adopt 'appropriate measures' against several countries, as in the case of Burundi, when the EU decided in 2016 to suspend financial support or disbursements of funds directly benefiting the Burundian administration or institutions[46] with the purpose of forcing the state to comply with human rights.

In fact, a 'legislative mainstreaming' seems to have taken place and 'the rule of law together with fundamental rights and democratization objectives have been progressively integrated into all aspects of the EU's external policies and actions'.[47] And, as also noted by Pech, 'the EU is not "exporting" a vague or incoherent ideal. Indeed, EU instruments always seek to increase compliance with a number of sub-components of the rule of law'.[48] In other words, rule of law requirements have often been turned into legal obligations for third states. This leads us to the question addressed in the next section: to what extent does the principle of non-intervention set limits to the EU's ambition, or perhaps even self-defined obligation, to promote human rights and democracy abroad?

3. The Principle of Non-Intervention and the EU Promotion of Human Rights and Democracy

3.1 The Principle of Non-Intervention in Internal Affairs at Present

States' erratic practice regarding the principle of non-intervention is the consequence of the international community having evolved, whereby international law has come to regulate more areas, with a special impact on human rights.[49] Also, the role of international organisations has increased, with the European Union in this case taking a prominent position. In this new community, states face a dilemma between their old and well-internalised concept of independence and the necessity of limiting their prerogatives in order to achieve the common interests, sometimes even through the intervention of a third. It is here the problem arises: in which cases should the intervention of a third state or organisation be justified?

An additional problem can be added in this regard: the ambiguous or 'elastic'[50] definition of the non-intervention concept. Taking into account that there is no express definition of the principle in the United Nations Charter, a first common approach to the concept

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[45] Partnership Agreement Between the European Union and its member States, of the one part, and the members of the Organisation of African, Caribbean and Pacific States, other part (not in force yet). <https://ec.europa.eu/international-partnerships/system/files/negotiated-agreement-text-initialled-by-eu-oacps-chief-negotiators-20210415_en.pdf> accessed 20 January 2022.

[46] Council Decision (EU) 2016/394 of 14 March 2016 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part) [2016] OJ L73/90.

[47] Pech (n 20) 114.

[48] ibid. 115.

[49] Cassese (n 1) 54; Christian Tomuschat, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century' (1999) 281 Rec Cours 237.

[50] Russell Buchan and Nicholas Tsagourias, 'The Crisis in Crimea and the Principle of Non-Intervention' (2017) 19 Int Community Law Rev 173.

of non-intervention, both after and before the 2625 (XXV) Resolution,[51] actually corresponds with the first paragraph of that resolution: 'No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State'.

In addition, the General Assembly has adopted an important number of resolutions on this principle.[52] These, together with the international treaties that proclaim this principle[53] and states' practice, have led to an affirmation of the existence of a customary principle of non-intervention, recognised by the International Court of Justice (ICJ) in the *Nicaragua* case[54] and confirmed in the *Armed Activities* case.[55] However, considering that the definitions in the General Assembly resolutions are not sufficient enough to clearly determine the content of the principle of non-intervention, scholars have considered the ICJ's definition in the *Nicaragua* case as highly authoritative, establishing the decisive elements of any act of intervention. According to the Court:

> the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force[56].

Coercion is, therefore, the element that can help to identify an intervention, which is clear in cases of the use of force, but which can also have other manifestations, as Resolution 2625 (XXV) established when referring to the use of economic, political or other measures to coerce a state.

Nevertheless, while the concept of coercion can help to identify acts of intervention, it can also be the object of diverse interpretations for cases that are different from those involving the use of force: What does economic coercion mean? What does political coercion mean?[57] In addition, that which the Court calls 'matters in which each State is permitted (…) decide freely',

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[51] UN General Assembly, *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)

[52] According to Jamnejad and Wood there are more than 35 resolutions that make reference to the principle of non-intervention. Maziar Jamnejad and Michael Wood, 'The Principle of Non-intervention' (2009) 22 LJIL 350. Mainly Resolutions 36/103 (1981), resolution 21/31 XX (1965) and 2625 (xxv).

[53] Jamnejad and Wood (n 52) 362-367.

[54] ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, para. 209.

[55] ICJ, *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, para. 162.

[56] *Military and Paramilitary Activities* (n 55) para. 205.

[57] Cassese (n 1) 55; Eduardo Jiménez de Aréchaga, 'International Law in the Past Third of a Century' (1978) 159 Rec. Cours 115; Tomuschat (n 49) 234-236; Jamnejad and Wood (n 52) 348 and 370; Buchan and Tsagourias (n 50), 171.

also called '*domain reserve'*, can also have different interpretations and content depending on the epoch.[58] In the latter case, for example, the Permanent Court of International Justice established in 1923 that what constitutes domestic jurisdiction is a relative question that depends on the development of international relations.[59]

In this respect, the EU recently adopted a draft regulation to protect the EU and its Member States from economic coercion by third countries,[60] which will be taken into account when analysing the legality of the EU's actions for democracy and human rights promotion, since it represents the EU's position regarding coercion. According to this draft regulation, coercion has been defined in Article 2.1 as cases in which a third state:

> interferes in the legitimate sovereign choices of the Union or a Member State:
> – by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State
> – by applying or threatening to apply measures affecting trade or investment.

This general definition has been put into context with references in Article 2.2. to a list of elements and circumstances that must be considered when determining the existence of an act of coercion, among which is included: 'whether the third country is acting based on a legitimate concern that is internationally recognised.'

This element may be considered significant when analysing the EU's promotion of human rights and democracy through the adoption of sanctions and other measures of pressure, since it states that those measures could be justified if human rights and democracy are considered subjects that are recognised as of international concern.

In addition, in the preamble to the draft regulation it is established that 'Coercion is prohibited under international law when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to perform and which falls within its sovereignty'. In this context, are human rights and democracy international obligations binding states and allowing the EU to adopt coercive measures to promote or impose them?

3.2 Human Rights as an Issue of International Concern

Today, human rights have come to limit states' domestic jurisdiction which, according to Tomuschat, has produced 'an incisive amputation *ratione materiae'*[61] of the principle of non-

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[58] Philip Kunig, 'Intervention, Prohibition of', *Max Planck Encyclopedias of International Law* (2008)1; Marcelo Kohen, 'The Principle of Non-Intervention 25 Years after the Nicaragua Judgment' (2012) 25 LJIL160; Ouchakov (n 1) 45- 55.

[59] *PCIJ, Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 1923 P.C.I.J. Series B-No. 4, p. 24.* In 1949 the Institute of International Law asked its members if it was possible to identify in advance the *domain reserve* of the sates. The majority of them considered that it was not possible, but Kaekenbeck also considered that its content was not only indeterminate but legally indeterminable. Ouchakov (n 1) 49.

[60] Commission 'Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries'. COM (2021) 775 final

[61] Tomuschat (n 49) 236.

intervention. In this regard, even if during the third quarter of the 20th century some states were reluctant to admit an international role in the protection of human rights, especially the USSR, Asian states[62] and developing countries,[63] it is widely admitted today that not only do international human rights institutions have a role in their protection, but so does the international community as a whole. Therefore, since criticisms regarding human rights violations cannot be considered an intervention in internal affairs, pressure to comply with human rights obligations that constitute acts of intervention are currently accepted.[64]

Therefore, human rights have come to modify the limits and concept of non-intervention, in that not only is the use of force to implement respect for human rights[65] taken into consideration, but also, the areas that were considered a *domain reserve* at the beginning of the 20th century have now become areas of international concern.

On the other hand, if we take into consideration the definition of non-intervention included in Resolution 2625 (XXV), we must admit its link to the some of the above-mentioned measures taken by the EU, in particular on restrictive measures and conditionality in international agreements mentioned in Section 2 above. Resolution 2625 (XXV) refers expressly to the prohibition of the use of economic measures to coerce another state, but in this regard, it must be noted that in the *Nicaragua* judgement, the ICJ did not consider the economic measures adopted by the United States, among which was included the cessation of economic aid, as a violation of the principle of non-intervention.[66] This position of the Court did not have its bases on the acceptance of human rights as a subject of international concern, but, according to Raju, on the Court distinction between measures that are inherently lawful and used to influence the behaviour of a state, and unlawful measures, such as a trade embargo.[67] Consequently, to adopt 'negative measures' included in an international agreement could be among those measures considered inherently lawful, and therefore would not constitute coercion nor the violation of the principle of non-intervention. In addition, it has been said that there is an international acceptance and recognition of the legitimacy of coercive measures in order to make states comply with human rights[68]. Therefore, we can refer to two options in order to justify sanctions or restrictive measures that could be considered at first sight as an

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[62] Nasu (n 40) 33-44; Tomuschat (n 49) 237. Recently ASEAN changed its statement on the situation in Myanmar after the *coup d'état*, in order to eliminate references to 'political prisoners'. Reuters, 'ASEAN changed Myanmar statement on release of political detainees – sources', 25 April 2021; The Diplomat, Assessing the Outcome of ASEAN's Special Meeting on Myanmar, 27 April, 2021 <https://thediplomat.com/2021/04/assessing-the-outcome-of-aseans-special-meeting-on-myanmar/> accessed 20 January 2022.

[63] Jamnejad and Wood (n 52) 37; In the Jakarta Conference in 1992, the Heads of State or government of the non-aligned countries recognized that 'No country, however, should use its power to dictate its concept of democracy and human rights or to impose conditionalities on others'. 10th Summit Conference of Heads of State or Government of the Non-Aligned Movement, Jakarta, Indonesia, 1 – 6 September 1992.

<http://cns.miis.edu/nam/documents/Official_Document/10th_Summit_FD_Jakarta_Declaration_1992_Whole.pdf > accessed 20 January 2022.

[64] Jiménez de Aréchaga (n 57) 114; Lori F Damrosch, 'Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs' (1989) 83 AJIL 1, 38-42. In any case Damrosch goes further trying to establish a link between democratic governments, the right of the people to choose freely and human rights, in order to justify interventions.

[65] Doctrine of humanitarian intervention or responsibility to protect.

[66] *Military and Paramilitary Activities* (n 55) para. 244.

[67] Raju Deepak, 'Proposed EU regulation to Address Third Country Coercion-What is coercion?' (2022) EJIL Talk! January 6.

[68] Damrosch (n 64) 42 *et seq*.

intervention in internal and external affairs of states: 1) the area affected by the measures is a subject of international concern, like human rights, and 2) the measures adopted are inherently lawful.

With regard to the lawfulness of the restrictive measures adopted by the EU, it is possible to affirm that the asset freezing and the restriction of entrance and transit do not entail a violation of any international obligations. In this regard, the right to property, which has been considered a human right, can be limited in public interest and provided by law, as can be the case of asset freezing; and regarding the restriction of entrance and transit, the CFSP Council Decision 2020/1998 establishes in Article 2, as an exception to this measure, the cases in which a Member State is bound by an obligation under international law. Therefore, the sanctions the EU adopted against nationals of third states in order to make states comply with human rights could be considered as inherently lawful, not entailing an act of coercion according to the interpretation given by the ICJ in the *Nicaragua* case.

Finally, regarding embargos, cases where they are established by the UN Security Council, as in the case of North Korea, Afghanistan, Yemen, Somalia, Libya, Sudan, South Sudan, Central African Republic or Democratic Republic of Congo, must also be considered legal. On the other hand, regarding embargos not adopted within the framework of a Security Council Resolution, as in the case of Iran, Burma, Zimbabwe or Venezuela, it is noteworthy that the embargos refer to goods or materials used for human rights violations; for example, arms. It could therefore be justified in this case based on the aforementioned statement: the respect of human rights can no longer be considered *domain reserve*, and actions to make states comply with it are no longer an intervention in internal affairs.

3.3 The link between the EU's Promotion of Democracy and Protection of Human Rights

As stated above, human rights can be considered *erga omnes* obligations,[69] no longer pertaining to the domestic affairs of states, and allowing measures to make states comply with international obligations. The same cannot, however, be said regarding democracy.

Since Franck's 1992 paper on the emerging right to democratic governance,[70] many studies have considered this right as well as the practice of states and international organizations,[71] but without confirming any the existence of an enforcement entitlement. In this regard, Franck's enthusiasm seems to have been gradually abandoned by scholars after the turn of the century and the evolution of a state's practice, which has become contradictory or at least inconsistent.[72]

The right to a democratic governance poses different problems, as could be the content of the right or its nature. Regarding its content, it seems to have evolved from free and fair elections to a concept of good governance, therefore setting aside the origin of the power and

[69] See Institut de Droit International, 'La protection des droits de l'homme et le principe de non-intervention dans les affaires intérieures des Etats', Session de Saint-Jacques-de-Compostelle, 1989
[70] Thomas M. Franck, 'The Emerging Right to Democratic Governance' (1992) 86 AJIL 46.
[71] See Hilary Charlesworth, 'International Legal Encounters with Democracy' (2017) 8 Global Policy 34
[72] See Susan Marks, 'What has Become of the Emerging Right to Democractic Governance?' (2011) 22 EJIL 507; Jean d'Aspremont 'The Rise and Fall of Democracy Governance in International Law: A Replay to Susan Marks' (2011) 22 EJIL 549.

focusing on how the power is exercised.[73] Regarding the nature of the right to democratic governance, some authors consider the emerging of this right as an autonomous right, while having as its basis diverse human rights such as self-determination, freedom of expression or the right to vote.[74] Others consider that democracy is emerging as a human right itself. In this latter case, previous considerations regarding human rights would be therefore applicable.

Nevertheless, none of the latter options has wide support in order to consider the existence of the right to democracy, neither the existence of an international obligation for the states, which would allow to consider that the political system of the states is no longer a domestic affair[75]. Actually, Declaration 2625(XXV) clearly established that 'every state has the inalienable right to choose its political (…) system'.[76]

In any case, the situation seems different in Europe, since the practice of states and international organizations, as well as of multiple international treaties and declarations,[77] seems to have created a regional customary law regarding democracy, whose content would be not only fair and free elections, but also good governance and rule of law. According to this regional obligation, which is part of the EU's principles, the EU has decided to promote this political system abroad.[78] In addition, in the Document of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE),[79] held in Moscow in 1991, the states declared that, together with human rights and fundamental freedoms, democracy and rule of law were issues of international concern, and therefore no longer a domestic affair.

Three main methods of action the EU follows to promote democracy can be outlined (as mentioned above, the EU action plan contains a full list of instruments). Two were already mentioned when referring to the promotion of human rights – conditionality and sanctions – and the third focuses on support for civil society.

Regarding conditionality and cooperation agreements, the European Union and African, Caribbean and Pacific States (ACP) cooperation agreement has been cited as an example regarding adopting measures to force states parties to comply with human rights obligations. In the framework of these agreements, 'appropriate measures' have also been adopted in order to

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[73] D'Aspremont (n 72) 559.
[74] Franck (n 70) 90.
[75] The ICJ in Nicaragua stated that the choice of political system is among the matters 'in which state is permitted, by the principle of State sovereignty, to decide freely'. *Military and Paramilitary Activities* (n 55) para. 205. Also para 263: 'the Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system'.
[76] General Assembly, '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)
[77] Franck (n 70) 61-69
[78]The EU Action Plan on Human Rights and Democracy defines democratic societies as societies build 'transparent and accountable institutions, representative parliaments and engaged citizens, and provide a safe and enabling environment for civil society, and independent media to voice concerns, influence policies, monitor decision-makers and hold them to account. Human rights and democracy are interdependent and mutually reinforcing'. EU Action Plan on Human Rights and Democracy (n 78) 18.
[79]CSCE, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE' (1990) <www.cvce.eu/en/obj/document_of_the_conference_on_the_human_dimension_of_the_csce_moscow_3_october_1991-en-f577ddc1-6160-4a20-82a0-811b0cf3f58e.html#:~:text=Meeting%20in%20Moscow%20from%2010,of%20the%20Vienna%20Concluding%20Document.> accessed 20 January 2022.

force states to respect democratic principles. After the *coup d'etat* in Central African Republic in 2003, the EU decided on a partial suspension of cooperation with regard to roads and macroeconomic support[80] based on Article 96 of the Cotonou Agreement. In any case, this policy has become controversial and subject to criticism from non-western states, which has led to its abandonment in some areas.[81] In addition, these kinds of 'essential elements' clauses in cooperation agreements seem to be also linked with the level of dependency of the third state on its relationship with the EU,[82] therefore, only included in agreements and implemented regarding weak countries. In any case, these measures could be considered, as in the previous section, as inherently lawful since they were included in the treaty agreed by the parties, and therefore not breaching the principle of non-intervention.

Sanctions are not common instruments used by the EU to guarantee or promote democratic principles.[83] In fact, it must be highlighted that the EU has not adopted sanctions just for democracy promotion, since any references to the violation of democratic principles are linked with human rights violations. In this regard, the recent restrictive measures against Nicaragua have been adopted because of 'human rights violations or abuses or for the repression of civil society and democratic opposition in Nicaragua'.[84] In the case of Venezuela, restrictive measures were imposed against 'natural and legal persons responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition and persons, entities and bodies whose actions, policies or activities undermine democracy or the rule of law'.[85] In the same vein, the arms embargo in Venezuela was adopted because of the 'excessive use of force and violations or abuses of human rights'.[86] Lastly, in the case of Myanmar, the EU decided to yet again implement restrictive measures because of 'ongoing activities undermining democracy and the rule of law in Myanmar/Burma, as well as the brutal repression and serious human rights violations in the country'.[87] Therefore, it seems that one of the reasons why the EU decides to adopt restrictive measures against non-democratic regimes rests in situations in which governments' activities regarding opposition and civil demonstrations cross over into grave violations of human rights. In fact, there are no sanctions against Cambodia, Cuba, Azerbaijan or Saudi Arabia. Besides, even if those measures were not linked to the violation of human rights, those relating to asset freezing or travel bans could be considered, as already mentioned, inherently lawful and therefore used to promote democracy.

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[80] Council Decision 2003/837/EC of 24 November 2003 concluding the consultation procedure opened with the Central African Republic and adopting appropriate measures under Article 96 of the Cotonou Agreement [2003] OJ L319/115.

[81] D'Aspremont (n 72) 561.

[82] Peter Kotzian, Michèle Kndot and Sigita Urdze, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 1012.

[83] See more generally on sanctions as a CFSP instrument: Ramses A Wessel, Elias Anttila, Helena Obenheimer and Alexandru Ursu, 'The Future of EU Foreign, Security and Defence Policy: Assessing Legal Options for Improvement', (2020) 26 Eur Law J 371.

[84] Council Decision (CFSP) 2019/1720 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua [2019] OJ L262/58, Art. 1.a). In this case, the Vice-president of Nicaragua, Rosario Murillo, called for the annulment of these 'illegal' and 'coercive measures'. https://www.europapress.es/internacional/noticia-rosario-murillo-exige-anulen-sanciones-contra-gobierno-nicaragua-20211207043446.html

[85] Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela [2017] OJ L295/60.

[86] ibid.

[87] Council Decision (CFSP) 2021/1000 of 21 June 2021 amending Decision 2013/184/CFSP concerning restrictive measures in view of the situation in Myanmar/Burma [2021] OJ L219/57.

Finally, although the EU also uses this action to promote human rights, we will refer here to the action of the EU Action Plan on Human Rights and Democracy on strengthening civic and political space, and specifically supporting civil society and human rights institutions through, among other means, funding 'grassroots organisations'. For this purpose, the European Endowment Democracy can be used, which is 'an independent, grant-making organisation, established in 2013 by the European Union and EU member states as an autonomous International Trust Fund to foster democracy' and in order to support 'civil society organisations, pro-democracy movements, civic and political activists, and independent media platforms and journalists working towards a pluralistic, democratic political system'.[88]

As has been stated, through these types of instruments the EU funds organisations or individuals that do not support the government in the country, and some non-democratic governments have considered this to be a way of funding political opposition[89].

Attending to General Assembly Resolutions regarding the principle of non-intervention or propaganda, it seems that these kinds of actions are forbidden when the purpose is to 'organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State'[90]. In the same vein, the Helsinki Final Act refers to the obligation 'to refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State'.[91] In this regard, it seems that the EU had these statements in mind when creating the European Endowment Democracy since, according to the statutes, in order to be a beneficiary, it is necessary to 'adhere to core democratic values, respect international human rights standards and subscribe to principles of non-violence'.[92] In addition, the EU Action Plan is in line with those statements when it establishes that peaceful protesters will be supported.[93]

Finally, and regarding the funding of internal opposition, funding political parties is a matter that gives rise to some controversy, since according to Damsroch, the practice shows that, as long as it is not forbidden by the domestic law, it should not be considered as intervention[94]. Nevertheless, by the same token, according to Jamnejad and Wood, 'the tendency to fund parties through non-state actors may suggest that states continue to have doubts about the legality of such acts'[95]. The latter seems to be the position adopted by the European Union.

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[88] See <https://democracyendowment.eu/en/about/about-us.html.> accessed 20 January 2022.
[89] Kotzian, Knodt & Urdze (n 82) 1003.
[90] General Assembly Resolution 2131 (XX) 'Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty', 21 December 1965, A/RES/2131 (XX). See Quincy Wright, 'Subversive Intervention' (1960) 54 AJIL 521.
[91] Organization for Security and Co-operation in Europe (OSCE), Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki, 1 August 1975.
[92] Statutes: European Endowment for democracy, art. 2.
[93] EU Action Plan on Human Rights and Democracy (n 78) 14.
[94] Damrosch (n 64) 49.
[95] Jamnejad and Wood (n 52) 368.

4. Conclusion

The EU actions to enhance and promote rule of law abroad, specifically human rights and democracy, are strongly linked with the principle of non-intervention, the content of which seems to be changing according to the evolution of the international community and its interests. This paper has argued that the EU has to find a balance between the fulfilment of its mandate regarding the promotion of its values in its relations with the world and respect for one of the fundamental principles of international law. In short, the principle of non-intervention may set limits to the extent to which the EU wishes to push the export of its values.

As we have seen, the EU's use of sanctions or restrictive measures to promote the protection of human rights and democracy, indeed runs the risk of conflicting the international principle of non-intervention. This risk has led the EU to stablish a deft system that would allow it to comply both with its international law obligations and with its own treaty obligations regarding the promotion of EU values. With this system, the EU embraces the idea, that human rights are not anymore, a *domain reservé*, and therefore all international subjects can and must protect them for the sake of the international community. In this view, measures adopted by the EU are not an intervention in the internal affairs of another state.

However, the situation can be more intricate regarding the promotion of democracy, since at the present stage of the evolution of the international community, there is simply no common understanding regarding the existence of a right to democratic governance. This makes it difficult to regard this as a subject of international concern. Hence, the justification adopted to promote human rights – arguing that it is no longer a *domain reservé* – cannot be used when promoting democracy. This has not prevented the EU from adopting measures to promote this value. As we have seen, the EU has always emphasised the strong link between the two values, and has also used this argument to not distinguish between the promotion of human rights and democracy in the practice of its external action. Thus, the EU has adopted restrictive measures or sanctions when the downgrading of democratic principles also entails a gross violation of human rights.

From an EU law perspective, the EU has established a system that cannot only be legally useful to promote human rights and democracy, but that is also legitimate, since it establishes human rights at the core of the EU measures against third states. From an international law perspective, however, tensions continue to exist as unilateral EU opinions and measures may not generally be seen as legitimate corrections of the fundamental principle of non-intervention. Even when third states agree to accept the terms of a relationship with the EU (e.g. through the conclusion of comprehensive trade agreements), it will be necessary for the EU to check the agreed measures against the principle of non-intervention. While the protection of human rights may indeed be a universal value, the relationship between the EU and certain third countries is not always an equal one and a continued dialogue may be more helpful than a simple imposition of norms.