

Beyond the Posture, Beyond the Pale – Assessing the EU’s Real Record as An International Human Rights Actor

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Abstract

The recent portrayal of legal evolutions in the last 70-odd years by the Legal Service of the European Commission paints a remarkably rosy picture of the European Union’s (EU) role as a promotor of the universality and indivisibility of human rights. With all due respect, an educated reader may easily come under the impression that it was conjured up in a lawyerly cloud-cuckoo land. The positivistic vantage point that the study relies upon comes across as particularly limited, overestimating the actual success of the policy, while neglecting to pay evidence-based attention to the status quo.

The present paper unpacks the premises of the analysis to offer a radically opposite view, highlighting defects in both the theory and the practice of the Union’s human rights protection. Thereby, in order to pierce through the Commission’s bubble, it illustrates how the construction shaped up as a patchwork, rather than a continuum that emanated from a single coherent vision, flagging moreover its mostly limited impact vis-à-vis the facts on the ground.

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In addition, the paper rehearses a series of blind spots and organisational path dependencies that have given rise to largely siloed initiatives, referring inter alia to the treatment of the Roma, rule of law backsliding, the functioning of the European Border and Coast Guard Agency (FRONTEX), and the establishment of the Human Rights Sanctions Regime.

Finally, it seeks to explain why the Legal Service ostensibly neglected to proffer a more moderate account, owing up to fallibility. The upshot is a considerably less panegyric exposé of the Union's accomplishments, questioning why the powers-that-be appear to take greater comfort in talking the talk, instead of walking the walk.

Keywords

EU Law – EU External Relations Law – EU Human Rights Law – Public International Law – International Human Rights Law – Compliance

I. Overture

In his masterful work *Exercices de style*, the French writer Raymond Queneau demonstrated how one and the same story may be recounted 99 times in 99 different ways.¹ Whilst there would not seem to exist a single way to canvass the evolution of human rights in the EU either, myriad authors have embarked on that mission in the past decades, producing fine accounts that ultimately do not differ a giant lot from one another.² The volume *70 Years of EU Law – A Union for Its Citizens* (hereinafter: *70 Years of EU Law*) contains yet another essay on the theme to add to the burgeoning pile.³ The chapter, not unlike the book as a whole, offers a rosy, optimistic portrayal of the European integration process. In the same vein, in the position paper that gave rise to the Heidelberg workshop that sowed the seeds for this

¹ Raymond Queneau, *Exercices de style* (Gallimard 1947).

² In English, see only Philip Alston and Joseph H. H. Weiler (eds), *The EU and Human Rights* (Oxford University Press 1999); Andrew Williams, *EU Human Rights Policies: A Study in Irony* (Oxford University Press 2004); Gráinne de Búrca, 'The Evolution of EU Human Rights Law', in: Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (Oxford University Press 2021), 480-505.

³ Margherita Bruti Liberati, Thomas Ramopoulos and Daniele Bianchi, 'The European Union as a Worldwide Promoter of the Universality and Indivisibility of Human Rights' in: European Commission Legal Service (ed.), *70 Years of EU Law – A Union for Its Citizens* (2nd edn, Publications Office of the European Union 2023).

special issue, the organisers allege that the Legal Service of the European Commission has managed to deliver a ‘robust and persuasive perspective’. Of course, the treatise is consciously limited from the outset, making clear that it focuses on the development of the law, which *ratione personae auctorum* makes perfect sense. By proceeding as it does though, it unwittingly throws up a quintessential query as to the general meaning of that notion. May exposés on the law limit themselves to engaging with the rules alone, staying strictly within that abstract and autopoietic universe?⁴ Or rather, should law properly so-called comprise per definition an empirical element, i. e. what (if anything) actually comes of the rules as formulated, and what (if anything) do legal subjects turn out to do with them in reality?⁵ Not for nothing, Oliver Wendell Holmes famously opined that ‘the life of the law has not been logic, it has been experience’.⁶ One must perhaps also consider here the traditional view on defining customary international law: To be done not just on the basis of an ideational normative component, the *opinio juris*, but equally by tracing the real-life behaviour, ordinarily labelled the *usus*. From this vantage point at least, the Commission’s presentation is clearly incomplete.

The *70 Years of EU Law* chapter, indeed, strongly resembles previous assessments ubiquitously found in the common textbook repertoire. In chiefly descriptive fashion, it spells out the intricacies of Article 6 TEU, the main features of the Charter, the Union’s international efforts, and the interactions with the European Court of Human Rights EC(t)HR. Notwithstanding the relative importance of the topic, the chapter spans but a modest 18 pages (of a grand total of almost 400 – less than 5 %). Apart from highlighting the internal emancipation trajectory, it claims that the Union ‘vigorously exports [human rights] around the world’, and that this ‘has multiple positive effects’.⁷ For sure, on paper, the commitments in this sphere are bold, ambitious and uncompromising, sincerely deserving our admiration. Precisely these qualities, however, have rendered their execution perennially difficult.

Without explicitly putting a finger on it, the *70 Years of EU Law* chapter lambasts other global players for their lack of dedication, but does not bother to seriously compare the Union’s own record. Elsewhere, scholars have

⁴ The classic reference is Nathan Roscoe Pound, ‘Law in Books and Law in Action’, *American Law Review* 44 (1910), 12-36.

⁵ Merely one random example is Armin von Bogdandy, Flávia Piovesan, Eduardo Ferrer Mac-Gregor and Mariela Morales Antoniazzi (eds), *The Impact of the Inter-American Human Rights System – Transformations on the Ground* (Oxford University Press 2024).

⁶ Oliver Wendell Holmes, *The Common Law* (Harvard University Press 1881), 1.

⁷ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 72.

observed that the EU seems to possess a unique potential to hold firm, as well as to induce partners to hold firm, albeit that it is unlikely to turn the tide single-handedly.⁸ The *70 Years of EU Law* chapter radiates indifference to the implementation dimension. Absolutely, there is no denying that in terms of official policy, we are dealing with a zealous promotor of the universality and indivisibility of human rights. Simultaneously, the underlying contention appears to be that the Union *makes good* on its promises – a thesis that not so easily survives evidence-based scrutiny. Worse still, in lieu of acting up to challenge negative tendencies across the globe, one may argue that due to its conduct, the EU itself *contributes* to the present unfavourable state of affairs – yet, the *70 Years of EU Law* chapter does not take any second to flag that dynamic either. Finally and contestably, it seems to set off from the idea that the policy developed in an agreeable path-dependent fashion, coalescing eventually into a coherent protection regime.

Unpacking the premises and not shying away from calling a spade a spade, the Commission could be gently reprimanded for painting an intrinsically distorted picture, based on select information, compounded by selective interpretation. It basically gives the impression of having been designed in a juridical vacuum or lawyerly cloud-cuckoo land. As it stands, the chapter deserves a more searching normative response that, in order to convey a holistic portrait of the status quo, is grounded on the supplementary facts that were curiously and unhelpfully left out (sections II and III). No less importantly, an answer is needed to the question why the authors involved, even when professionally constrained by their employment at the Legal Service, ostensibly neglected to come up with a more complete account, daring to own up to its own fallibility (section IV). Drawing the lines together, we will reflect on the decay that might ensue whenever powers-that-be remain confined to talking the talk, instead of readily admitting deficiencies in how they walk the walk, with which predictable criticisms could have been obviated (section V).

Methodologically, to avoid misunderstanding, the current paper does not pretend to carry out a meticulous counter-analysis rooted in empirical data. One should be mindful nonetheless that the EU, in its quest for universal respect of indivisible rights, is in the game to convince, stimulate and improve. Obviously, any success or progress in the attainment of the Union objectives would just as much require verification – an exercise for

⁸ Nicholas Hachez, ‘Conclusion: Delivering on the EU’s Commitment to Human Rights – Implementation, Effectiveness and Coherence’ in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 589-611 (591).

which it has so far shown little or no appetite. Moreover, in spite of a grand array of suitable indicators, the institutions have not deigned to apply these comprehensively and systematically.⁹ While this may not immediately vindicate a kindred neglect when grilling the EU, it does underscore the difficulty of measuring any policy outcomes in exact detail, inviting follow-up research.

II. (Un)Original Sins

Let us begin at the beginning. On its opening page, the *70 Years of EU Law* chapter briefly asserts the Union started its life as an economic project, but that its nature ‘was quickly reshaped’.¹⁰ It goes on to outline how the ‘constitutionalisation of human rights’ took root.¹¹ Thereby, in a somewhat peculiar non-chronological order, the usual *loci classici* are addressed (*Stauder*, *Solange*, *Les Verts*, etc). In one terse paragraph, the chapter jumps from the 1960s to the end of the last century, touching on a swathe of newer landmarks (*Kadi*, *Åkerberg Fransson*, *Siragusa*).¹² It naturally describes how in 2009, the waxing momentum culminated in the entry into force of the Treaty of Lisbon, its cardinal amendments to Articles 2 and 6 Treaty on European Union (TEU), besides the binding nature assigned to the Charter. Further down the line, the role of international treaties is highlighted, the Union’s zeal for ensuring the compliance with human rights in accession countries, alongside the export of values and extraterritorial protection, evident from inter alia *Schrems* and *Google Spain*.¹³

Substantively, throughout the chapter, the discussion is clear and straightforward. Hereby, as noted before, it remains consistently positivistic, taking its cue from the law in force. For instance, mention is made of Article 207 Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 21 TEU to underline that the Common Commercial Policy is officially expected to be conducted in a wider context wherein human rights are duly lived up to – full stop, without explaining how this subsequently pans out through the instruments adopted, and what actual impact these turn

⁹ Manfred Nowak and Karolina Podstawa, ‘The EU’s (Strategic) Use of Human Rights Tools and Instruments’ in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 542-568 (565).

¹⁰ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 72.

¹¹ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 72-73.

¹² Bruti Liberati, Ramopoulos and Bianchi (n. 3), 76.

¹³ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 76-86.

out to have.¹⁴ Similarly, one may spot a quick wink to the Union's vow to guarantee adequate social protection encapsulated in Article 9 TFEU,¹⁵ without divulging whether (and if so to which extent) this obligation is taken to heart, sidestepping the familiar debates on Europe's efficacy here.¹⁶

Whilst the intention was probably not to generate an exhaustive longitudinal overview of all that has happened in 1950-2020 period, the approach generally comes across as a bit scattered and wobbly, not flowing smoothly towards its conclusion with a wholly balanced coverage of the relevant sub-dimensions. One wonders why e.g. the emergence of the Fundamental Rights Agency, the Human Rights Sanctions Regime, human rights dialogues, or the European Pillar of Social Rights have been omitted. The eclectic *modus operandi* results in certain historical twists and turns being entirely glossed over – for example, the 1986 watershed of the preamble of the Single European Act, which contained the first reference to human rights ever at the level of primary law.¹⁷

As recognised in the aforementioned position paper, the *70 Years of EU Law* volume essentially presents the evolution of EU law as a progressive realisation of the founding fathers' forward-looking vision. In some respects, this appears slightly disingenuous; for the human rights field, it is even demonstrably untrue. It is common wisdom that the 1951 Treaty establishing the European Coal and Steel Community (ECSC Treaty) did not pronounce on the theme, nor did the 1957 Treaties of Rome establishing the European Economic Community or the European Atomic Energy Community. The European Political Community was originally meant to fill the void, yet its derailing in 1954 led it to spell out 'the road not taken'.¹⁸

In many eyes, a humbler admission of the scarcity in the early years could have been apposite, when the tasks were deliberately subdivided between the three supranational entities on the one hand, and the intergovernmental Council of Europe on the other. While human rights initially belonged to the exclusive domain of the latter, things changed over time, especially with the

¹⁴ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 85.

¹⁵ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 85.

¹⁶ See inter alia Marc De Vos (ed.), *European Union Internal Market and Labour Law: Friends or Foes?* (Intersentia, 2009); Catherine Barnard, 'Social Dumping or Dumping Socialism?', CLJ 67 (2008), 262-264; Bea Cantillon, Herwig Verschueren and Paula Ploscar (eds), *Social Inclusion and Social Protection in the EU: Interactions Between Law and Policy* (Intersentia 2012); Koen Caminada and Kees Goudswaard, 'Combating Poverty in the European Union', in: Afshin Ellian and Raisa Blommesteijn (eds), *Reflections on Democracy in the European Union* (Eleven International Publishing 2020), 3-26.

¹⁷ Single European Act [1987] OJ L169/1, recitals 3 and 5 of the preamble.

¹⁸ Gráinne de Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor', AJIL 105 (2011), 649-693.

blossoming of the economic integration project.¹⁹ Stretching the vision of the *pères-fondateurs*, retroactively projecting things onto the foundational texts, has deservedly been equated to a strand of mythological thinking.²⁰ As regards the Union's outreach on the world scene, rhetoric aside, the Communities never managed to stand out: despite the rise of European Political Cooperation since 1969, they continued to play a negligible role in e.g. ending apartheid in South Africa, or halting the disintegration of the former Yugoslavia.²¹ The *70 Years of EU Law* chapter could have admitted as much, clarifying that a truly significant global presence only emerged gradually.²² It goes without saying that academic anthologies of this type rarely succeed in being all things to all people. Hurling a 'Swiss cheese' reproach has nevertheless been made a tad too easy here.

III. Core Fissures

By sticking to a classic positivistic approach, as remarked above, a number of supplementary facts have been left out of the chapter's central narrative. Consequently, readers might be inclined to believe in the EU's benign intentions and ascribe it a thick moral fibre. To arrive at an accurate, holistic perspective of the status quo, it is apt to engage with a series of discrepancies between the foundations sketched *de jure* and the policies *de facto*. These issues stretch beyond a simplistic juxtaposing of 'the law in the books' and 'the law in action', relating equally to ideological inconsistencies, failures of design, and half-hearted policy learnings on the side of the EU.

On the case law of the European Court of Justice as portrayed in the chapter, it must be said that there is little room for argument. Irrefutably, the judiciary has been a major driver, imparting a plethora of stimuli on its interlocutors. It could be doubted still whether the judicial avalanche of the 1970s and 1980s bore immediate and genuine fruit for the average citizen, verily ushering in a new dawn at the grassroots level.²³ Authors have understandably tagged the ECJ's activism as a 'quiet revolution', which arguably

¹⁹ de Búrca (n. 2), 486-490.

²⁰ Stijn Smismans 'The European Union's Fundamental Rights Myth', *JCMS* 48 (2010), 45-66.

²¹ See e.g. David Allen, Reinhardt Rummel and Wolfgang Wessels, *European Political Cooperation: Towards a Foreign Policy for Western Europe* (Butterworth 1982); Simon J. Nutall, *European Political Cooperation* (Clarendon Press 1992).

²² Sebastian Santander, 'The EU and the Shifts of Power in the International Order: Challenges and Responses', *European Foreign Affairs Review* 19 (2014), 65-82.

²³ Going back to the seminal publication of Jason Coppel and Aidan O'Neil, 'The European Court of Justice: Taking Rights Seriously?', *LS* 12 (1992), 227-245.

did not become entrenched at the political and societal strata before the 1990s and 2000s – ergo, perhaps for the best part of 70 years, the supposed benefits did not trickle down meaningfully and measurably.²⁴ For now, this matter is best shelved, as it once again demands elaborate follow-up studies, adhering to validated empirical methodologies.

As has been abundantly rehearsed already, a crucial fissure resides in that the EU pretends to care a great deal about human rights and seeks to promote them aggressively, but way too often turns a blind eye or sits idly by in the face of manifest breaches by its Member States.²⁵ A first case in point is the conscious condoning of the appalling treatment of its largest ethnic minority. Despite a smorgasbord of anti-discrimination and inclusion efforts, the Roma are still the single most discriminated and excluded group on the continent, suffering supreme hardships in e.g. accessing housing, education services, and the labour market.²⁶ Over a decade ago, measures in France entailing to a crackdown and forced deportation of Roma communities to Romania and Bulgaria did not trigger an infringement procedure.²⁷ A comparable situation in Italy was rejected with the argument the Commission did not possess enough information to construct a solid enough case.²⁸ It is a badly kept secret that earlier, Poland, Lithuania and Romania ignominiously hosted ‘black sites’ run by the American Central Intelligence Agency (CIA) during the war on terror, where the latter indulged in unlawful interrogation techniques.²⁹ As known, a lot of ink has been spilled as well on the EU’s broader reticence to stand up for the rule of law in its confrontation with ‘backsliding’ Member States, particularly Poland and Hungary.³⁰ At the moment, some visible and welcome steps are finally being taken, after endless warnings and

²⁴ Joseph H.H. Weiler, ‘A Quiet Revolution: The European Court of Justice and Its Interlocutors’, *Comparative Political Studies* 26 (1994), 510-534.

²⁵ See e.g. Williams (n. 2).

²⁶ See the vast inventory of data available at <<https://fra.europa.eu/nl/themes/roma>>, last access 17 February 2026.

²⁷ See e.g. Mark Dawson and Elise Muir, ‘Individual, Institutional and Collective Vigilance in Protecting Fundamental Rights in the EU: Lessons from the Roma’, *CML Rev.* 48 (2011), 751-775.

²⁸ Nowak and Podstawa (n. 9), 560.

²⁹ PACE, Committee on Legal Affairs and Human Rights, ‘Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report’, Strasbourg, 7 June 2007; ECtHR, *Abu Zubaydah v. Lithuania*, judgement of 31 May 2018, no. 46454/11.

³⁰ See only András Jakab and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values* (Oxford University Press 2017); Laurent Pech and Kim Lane Scheppele, ‘Illiberalism Within: Rule of Law Backsliding in the EU’, *Cambridge Yearbook of European Legal Studies* 19 (2017), 3-47; R. Daniel Kelemen, ‘The European Union’s Authoritarian Equilibrium’, *Journal of European Public Policy* 27 (2020), 481-499.

vapid threats.³¹ Suffice to say that at the Union's highest level of governance, the ongoing reluctance to toggle paragraphs 2 and 3 of the iconic Article 7 TEU continues to stain its record.

The enduring asylum and refugee crisis, supporting the rise and reform of FRONTEX, neatly emblematises the culture of negligence existing on this front. Contraventions by domestic officials vary from unilateral border closures and detention under atrocious conditions, to overaggressive surveillances, pushbacks, and forced removals.³² The agency mentioned started life as a late by-product of the Schengen regime, together with the Area of Freedom, Security and Justice trumpeted by the Treaty of Amsterdam. In 2016, subjected to a sudden re-appreciation, upgrading it to a veritable European Coastguard and Border Control Agency was regarded as the holy grail to enhance the EU's capability to cope with the external incursions and assist national civil servants, somewhat magically ameliorating the latter's human rights demeanour in the process. Its competences were expanded and operational capacities beefed up correspondingly.³³ Following a path-dependent logic however, FRONTEX has incrementally grown from being a (perceived) part of the solution to becoming a (perceived) part of the problem – testimony to which is the mushrooming of litigation on its accountability, accusing it of having become complicit in the deeds of the Member States.³⁴ European Commissioners have recently gone on record nonetheless maintaining everything is peachy keen.³⁵ The generic deficit observable on the supranational plane is a close corollary of the foregoing, with insiders

³¹ Council of the EU, 'Rule of Law Conditionality Mechanism: Council Decides to Suspend €6.3 Billion Given Only Partial Remedial Action by Hungary', 12 December 2022; Gavin Barrett, 'Rule of Law Chickens Coming Home to Roost', *Verfassungsblog*, 21 June 2024, doi: 10.59704/1d158aab48c749aa; 'EU to withhold €200 million from Hungary over asylum fine', *Deutsche Welle*, 18 September 2024.

³² See e.g. ECtHR, *Alkhatib and Others v. Greece*, judgement of 16 January 2024, no. 3566/16; Pavlos Eleftheriadis, 'Pushbacks and Lawlessness', *EJILTALK!*, 25 March 2022, available at: <<https://www.ejiltalk.org/20837-2/>>; Annastiina Kallius, 'Rupture and Continuity: Positioning Hungarian Border Policy in the European Union', *Intersections 2* (2016), 134-151.

³³ Regulation 2016/1624/EU of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation 2016/399/EU of the European Parliament and of the Council and repealing Regulation 863/2007/EC of the European Parliament and of the Council, Council Regulation 2007/2004/EC and Council Decision 2005/267/EC, [2016] OJ L 251/1.

³⁴ General Court of the EU, *WS and Others v. European Border and Coast Guard Agency* (Frontex), judgement of 6 September 2023, case no. T-600/21, ECLI:EU:T:2023:492; Mariana Gkliati, 'The Next Phase of The European Border and Coast Guard: Responsibility for Returns and Push-backs in Hungary and Greece', *European Papers 7* (2022), 171-193.

³⁵ Fernando Heller and Lucía Leal, 'EU's Johansson Dismisses Need to Reform Frontex', *EurActiv.com*, 12 March 2024, <<https://www.euractiv.com/section/politics/news/eus-johansson-dismisses-need-to-reform-frontex/>>, last access 18 February 2026.

expressing bemusement about the protracted delays in disseminating and implementing the Charter there. Needed are, allegedly, an improved systemic awareness, combined with a proactive translation of commitments into obligations.³⁶

Yet another major fissure between the image presented and the lived reality ties in with the oft-heard statement that the Union is more vigorous in its protection of human rights externally than it is internally.³⁷ To a large extent, even that old legend ought to be torn apart. The *70 Years of EU Law* chapter indeed gives rich illustrations of the Union's international activities, but oddly overlooks the instruments that have openly crossed over into the dark side. Characteristic is the deal from 2016, euphemistically titled the 'EU-Turkey Statement', which Amnesty International christened 'A blueprint for despair'.³⁸ Commentators qualify the deal as the epitome of incoherence between the official commitment to human rights on the one side and objectives in the migration domain on the other, by dumping thousands of third country nationals in squalid and dangerous living condition, sending many of them back in a rush without a chance to seek asylum or appeal against their return.³⁹ Resorting to specious and succinct inadmissibility arguments, the Court of Justice conveniently found that it did not have to look into the case's merits.⁴⁰ The embracing of a similar 'mass migration management tool' in relation to Tunisia, plus a recent agreement on parallel measures with the Egyptian authorities, suggest that it cannot be dismissed as

³⁶ Nowak and Podstawa (n. 9), 559. On the aside, preferably a rethink on the artificial distinction between rights and principles in the Charter, which casts doubts on the 'indivisibility' principle; see Bruno de Witte, 'The Trajectory of Social Rights in the European Union' in: Gráinne de Búrca and Bruno de Witte (eds), *Social Rights in Europe* (Oxford University Press 2005), 153-168 (160).

³⁷ See e.g. Philip Alston and Joseph H.H. Weiler, 'An "Ever Closer Union" in Need of a Human Rights Policy: The European Union and Human Rights', *EJIL* 9 (1998), 658-723. The argument can be made though that in making such claims, some risk to succumb to imaginative reconstructions of institutional limitations and legitimacy: see Kalypso Nicolaidis and Robert Howse, "This is my EUtopia ...": Narrative as Power', *JCMS* 40 (2002), 767-792.

³⁸ European Council, 'EU-Turkey Statement', 18 March 2016, <<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement>>, last access 18 February 2026; Amnesty International, 'EU: Human Rights Cost of Refugee Deal with Turkey Too High to Be Replicated Elsewhere', <<https://www.amnesty.nl/actueel/eu-human-rights-cost-of-refugee-deal-with-turkey-too-high-to-be-replicated-elsewhere>>, last access 18 February 2026.

³⁹ See e.g. Maybritt Jill Alpes, Sevda Tunaboylu, and Ilse van Liempt, 'Human Rights Violations by Design: EU-Turkey Statement Prioritises Returns from Greece Over Access to Asylum', European University Institute/Robert Schuman Centre for Advanced Studies Policy Brief 29/2017.

⁴⁰ *GC, NF v. European Council*, order of 28 February 2017, case no. T-192/16, ECLI:EU:T:2017:128; ECJ, *NF v. European Council*, order of 12 September 2018, cases no. C-208/17 P to C-210/17 P, ECLI:EU:C:2018:705.

an incidental, meanwhile superseded affair – *au contraire*.⁴¹ Far from exhibiting a rigorous dedication, the EU displays a Janus-face, requesting adherence to pledges it does not comply with itself.

In the *70 Years of EU Law* chapter, prominent through its absence is also the Union's 'Magnitsky Act' or Human Rights Sanctions Regime (HRSR). Launched in 2020, it is geared towards those responsible for grave abuses worldwide, introducing a fast-track method for slapping on individual travel bans and asset freezes.⁴² The HRSR has streamlined procedures, facilitated the targeting of individuals, and reasserted the Union's devotion to universal values. Once again, path dependence in the historical trajectory of the EU's sanctions policy has brought us here, but the result is unfortunately underwhelming. While the propaganda that accompanied its inception could to lay audiences make it seem earth-shattering, in truth we are being sold old wine in new bottles. The setup of the Regime as such remains uncomfortably narrow, as inter alia acts of corruption have been excluded from its ambit. Moreover, since it was no less possible before to impose measures freezing the funds and economic resources of persons, entities, or bodies responsible for serious human rights violations, legally it is far from innovative. On top of that, most probably the targeted will (go on to) evade the practical consequences of being sanctioned, regardless of the technical means employed.⁴³ Examples of similar virtue-signalling platforms are the creation of a special representative for human rights in 2012, and a special envoy for the promotion of the freedom of religion in 2016.⁴⁴

The chapter does discuss the popular use of 'essential elements' clauses in international treaties, repeatedly unmasked elsewhere as exercises in keeping

⁴¹ 'Memorandum of Understanding on a Strategic and Global Partnership Between the European Union and Tunisia', Tunis, 16 July 2023, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887>, last access 18 February 2026; European Commission, 'Joint Declaration on the Strategic and Comprehensive Partnership Between the Arab Republic of Egypt and the European Union', Brussels, 17 March 2024.

⁴² Council Regulation 2020/1998/EU of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, [2020] OJ L 410I/1; Council Decision 2020/1999/CFSP of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, [2020] OJ L 410I/13.

⁴³ Clara Portela and Kim Olsen, 'Implementation and Monitoring of the EU Sanctions' Regimes, Including Recommendations to Reinforce the EU's Capacities to Implement and Monitor Sanctions', Study for the AFET Committee of the European Parliament, PE 702.603, October 2023.

⁴⁴ Council of the EU, 'Stavros Lambrinidis Appointed First EU Special Representative for Human Rights', Brussels, 25 July 2012; European Commission, 'President Juncker Appoints the First Special Envoy for the Promotion of Freedom of Religion or Belief Outside the European Union', Vatican City, 6 May 2016.

up appearances.⁴⁵ The key benchmarks are vaguely defined, leading to a piecemeal implementation, with the retaliatory mechanisms for when a third country does not stick to its side of the bargain being deployed harrowingly infrequently.⁴⁶ By the same token, the *70 Years of EU Law* chapter is actually prudent in not bringing up the human rights dialogues – the EU’s laudable attempt to engage in permanent conversations with countries where the concomitant record is subject to improvement.⁴⁷ By now, these dialogues have been exposed as largely failed designs that further undermine the Union’s reputation, inter alia as their agendas are often found to be woefully deficient.⁴⁸ At the end of the day, its glorious idea of conditionality boils down to a protean concept.

One last distressing point should be made on the EU’s double standards, in that a blatant discrimination is noticeable in the treatment of third countries. It has not escaped the public attention that typically, those with notable power or in which the Union has vested interests invariably succeed in getting away with violations, whereas weaker ones or those finding themselves in a less strategic or commercially advantageous position will regularly meet the whip, stick, or be fed the carrot.⁴⁹ Of late, especially the accession trajectory has thrown up surprises here, with the importance attached to the human rights record varying markedly from one country to the next.⁵⁰ The unwillingness to rethink its relations with Middle East regimes in face of the massive eruptions during the Arab Spring of 2011 – of for that matter, to rethink its relations with Israel in light of the Gaza conflict –, reveals how the

⁴⁵ Bruti Liberati, Ramopoulos and Bianchi (n. 3), 86; see e.g. Elena Fierro, *The EU’s Approach to Human Rights Conditionality in Practice* (Nijhoff 2003); Urfan Khaliq, *Ethical Dimensions of the Foreign Policy of the EU – A Legal Analysis* (Cambridge University Press 2009).

⁴⁶ Nicholas Hachez and Axel Marx, ‘EU Trade Policy and Human Rights’, in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 365-385 (370-374).

⁴⁷ European External Action Service, ‘Annex Relex 2 B. Annex Revised EU Guidelines on Human Rights Dialogues with Partner/Third Countries’, 6279/21 (2009).

⁴⁸ In particular by ignoring the plight of individual human rights defenders and the protection of specific minorities, as e.g. experienced by dissidents in Saudi Arabia and the Uyghurs in China; see e.g. Balázs Majtényi, Lorena Sosa, and Alexandra Timmer, ‘Human Rights Concepts in EU Human Rights Dialogues’, FRAME Report 3.5, 2016, <<https://www.fp7-frame.eu/wp-content/uploads/2016/11/Deliverable-3.5.pdf>>, last access 18 February 2026.

⁴⁹ Flying in the face of the EU’s ‘Guidelines on Non-Discrimination in External Action’, 6337/19, Brussels, 18 March 2019, <<https://data.consilium.europa.eu/doc/document/ST-6337-2019-INIT/en/pdf>>, last access 18 February 2018.

⁵⁰ See e.g. Beáta Huszka and Zsolt Körtvélyes, ‘EU Enlargement Policy and Human Rights’ in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 345-364.

European Neighbourhood Policy has for too long favoured stability over the rule of law in the Union's own backyard.⁵¹ Naturally, where quiet diplomacy might succeed better, an overt naming and shaming risks to be counterproductive. But it amounts to rank hypocrisy *tout court* when treaty partners are held to account while internally one shies away from letting barking be followed by biting, or even abstains from barking at all. Consistency is the unmistakable victim on this altar. If the 'principled pragmatism' slogan of the EU's 2016 Global Strategy must be taken seriously, the emphasis undoubtedly lies on 'pragmatism'.⁵²

IV. Causes and Effects

For sure, the above findings are hardly new. The EU's real record with regard to enforcing human rights, within or outwith its jurisdiction, nevertheless looks beyond the pale, with countless problems of coherence and implementation. As crude as it is likely to sound, a chapter that elects to brush these under the carpet does not tell the whole story, almost tantamount to a cover-up. Instead of leaving it there, the pretty posturing we encounter raises the issue why the Union disappoints so terribly. Previous researchers have done a wonderful job in retrieving the causal factors, which range from the historical and the cultural to the accidental and the technological.⁵³ Purely legally, blame is assigned to a shortage of adequate competences, hindering the EU to e.g. step up the game in the social field.⁵⁴ Organisational fragmentation, with policies and tasks carried out in distinct silos, enables institutions, services, agencies, directorates-general, and units to counteract, or even cancel out each other's output. Herein as well lies a cause of the identified malfunctioning, casting doubt on the viability of the 'mainstreaming' philos-

⁵¹ Niklas Bremberg, 'Making Sense of the EU's Response to the Arab Uprisings: Foreign Policy Practice at Times of Crisis', *European Security* 25 (2016), 423-441.

⁵² 'Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign And Security Policy', Brussels, 28 June 2016, <https://www.eeas.europa.eu/eeas/global-strategy-european-unions-foreign-and-security-policy_en>, last access 18 February 2026.

⁵³ Eva Maria Lassen, 'Factors Enabling and Hindering the Promotion and Protection of Human Rights by the EU' in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 39-61.

⁵⁴ Jan Wouters, 'From an Economic Community to a Community of Values – The Emergence of the EU's Commitment to Human Rights' in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 11-38 (37-38); see Article 153(5) TFEU.

ophy.⁵⁵ The eternal elephant in the room, hampering too the success of the Council of Europe and the European Court of Human Rights, is the (non-) allocation of sufficient resources, entailing that choices need to be prioritised.⁵⁶ That element itself neither justifies nor explains e.g. the EU's double standards. Among its international partners, consequently, respect for human rights starts to resemble a shibboleth.

Of course, it is not difficult to take aim at the Union for failing to deliver while in many ways the Member States continue to be the puppet masters. The EU is a composite, not a monolithic structure, with the diversity of preference and opinion cherished by its 27 national components causing constant trouble for the realisation of a uniform human rights governance.⁵⁷ For instance, the case of the Roma, flagged in section III, testifies to domestic brutalities primarily, showing how principles codified in the Treaties are shared nominally until push comes to shove. The *acquis* could have been expanded a long time ago already with a horizontal equal treatment directive, stuck in the Council due to the Member States' intransigence.⁵⁸ At the United Nations (UN), the constant internal strife precludes the EU from demonstrating innovative leadership.⁵⁹ Scholars would be myopic to excoriate a Union for being a collection of countries, mistaking it for a separate self-standing entity, as the hybris and lack of sincerity run more deeply. Put differently, it would amount to attacking an empty throne, or a quixotic fight against windmills.

The million euro question arises, why did the Commission Legal Service choose to refrain from coming clean? Would it not have been thinkable for the book and its authors to sketch a holistic, less superficial portrait of the

⁵⁵ Johannes Pollak and Sonja Puntischer Riekmann, 'European Administration: Centralisation and Fragmentation as Means of Polity-Building?', *W. Eur. Pol.* 31 (2008), 771-788; Sevasti Chatzopoulou, 'Resilience of the Silo Organizational Structure in the European Commission', *JCMS* 61 (2023), 545-562. See also Clair Gammage and Narin Idriz, 'Implementation mechanisms of the Human Rights Clause. Case studies on Ethiopia, Tunisia and Vietnam', <[https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754447/EXPO_STU\(2024\)754447_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/754447/EXPO_STU(2024)754447_EN.pdf)>, 85.

⁵⁶ See e.g. Felipe Gómez Isa et al., 'Challenges to the Effectiveness of EU Human Rights and Democratisation Policies', *FRAME Report* 12.3, 2016, <<https://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-12.3.pdf>>, last access 18 February 2026.

⁵⁷ See Mark Dawson, *The Governance of EU Fundamental Rights* (Cambridge University Press 2017).

⁵⁸ European Commission, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final.

⁵⁹ Anna-Luise Chané, 'The EU's Engagement with the United Nations on Human Rights' in: Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds), *The European Union and Human Rights – Law and Policy* (Oxford University Press 2020), 171-189.

status quo? A first possible answer is forgetfulness – which may quickly be discarded. The earlier-cited remark that EU policy ‘has multiple positive effects’ proves that the writers are aware the rules do not operate in a vacuum. Alternatively then, did the omissions occur because the supplementary facts discussed did not belong to the mission brief, for lying inevitably outside the scope of a legal study? Make no mistake, what the chapter says about the law is, in itself, absolutely not wrong. At the same time, it represents legalism at its ugliest, with lawyers absorbed in their private little continuum. Whilst the role of law in the integration process should not be disregarded or underrated, it should not be overappreciated either. As Wendell Holmes indeed reminded us, besides the normative sphere, our discipline encompasses at least part of the lived reality. One of his relatively obscure *bons mots*, relevant for our purposes, is that ‘[f]or the rational study of the law, the blackletter man may be the man of the present, but the man of the future is the man of statistics’.⁶⁰ Without the facts on the ground, accounts of how the law developed remain a plaything for intellectuals, utterly meaningless to the uninitiated. And if the discrepancy between codified principles on the one hand and the real world on the other grows big enough, things fall apart.

A possible third reason for the Legal Service’s oversight might be plain embarrassment, a fourth administering of prior censorship (or maybe even a wholly voluntary *self-censorship*?). When all is said and done, the casual reader is left guessing how exactly the cards were dealt behind the scenes in the production of the volume. A combination of these last two explanations does not seem implausible however.

The *70 Years of EU Law* chapter being what it is, the potentially detrimental ramifications of the EU’s posturing must anyhow be properly understood: with the spreading of a faux narrative, it only invites an extra harsh scholarly critique, simultaneously extending a license or alibi for Member States to persist in their obstructions. As e. g. happens at the UN, the latter then go on to function as roadblocks, in place of multipliers. All this erodes the Union’s international clout and places strain on its supposed ‘soft power’. In turn, multilateral partners intensify their resistance against its authority, creating a vicious circle of waning effectiveness.

⁶⁰ Oliver Wendell Holmes, ‘The Path of the Law’, Harv. L. Rev. 10 (1897), 457-476 (469).

V. Coda

As in Raymond Queneau's *Exercices de style*, there are surely several ways to recount how the protection of human rights was consolidated as an objective of Union action. Conversely, there are constraints on how it can be done most accurately. Historiography is ordinarily best left to historians, yet the Commission's Legal Service can be forgiven in this respect. The tackled theme is nevertheless too important to be left to lawyers, risking to sketch a haphazard, incomplete, ultimately distorted picture otherwise.

It could be contended that the gist of the foregoing analysis bears resemblance to the debate on whether the glass is half-full or half-empty, especially in light of the legal progress that was undeniably made since 1952. Even in that simile, the fissures identified above show the glass is nowhere near as filled-up as the *70 Years of EU Law* chapter makes it out to be. Whereas across the globe, few laws are executed with perfection, the contribution engages in an unhelpfully deceptive form of whitewashing by sidestepping the countless shortcomings and shadow-sides in their entirety. The *res publica* finds itself in manifest decline when the powers-that-be confine themselves to talking the talk, refusing to admit misalignments in walking the walk, with which predictable criticisms could have been averted.

Obviously, it is absurd to expect of any international human rights actor to be able to impose its views, and ensure that everybody else abides by its wishes. The seven continents are replete with sovereign states, intermittently either attuning to or diverging from European standards. Vice versa, the EU may well be labelled easy prey, certainly not constituting an outrageous exception in breaching the principles it vows to uphold. Arguably though, the EU finds itself in an extra vulnerable spot considering the claims it makes, in spite of the chasm between promise and delivery. While its insulation thereby increases, its comparative weight appears to diminish. By way of remedy, not before long the Union ought to start practicing what it preaches, and allow its biographers to move beyond symbolism.