

THE EU AND HUMAN RIGHTS AT THE UN – 2009 REVIEW

Richard Gowan and Franziska Brantner

Last September, the European Council on Foreign Relations published a report warning that the European Union faced a “slow-motion crisis” at the United Nations, as a growing number of its former allies were beginning to oppose its vision of multilateralism and human rights.¹ While the EU had grown increasingly internally cohesive on human rights votes, its reluctance to use its leverage and its failure to reach out to moderate states were handing the initiative to defenders of traditional sovereignty like China, Russia and their allies.

This is the first in an ongoing series of annual updates on the EU’s performance in human rights debates at the UN, published in the run-up to the opening of the UN General Assembly. It covers the most recent Assembly session, from September 2008 to July 2009.

The 2008-09 session at the UN was marked by uncertainty and transition, the result in part of the global economic crisis and the arrival of a newly engaged American administration. It has been another difficult year for the EU, characterised by three troubling developments:

- **Public divisions within the EU over human rights.** In April, EU member states split very publicly over whether to attend the Durban Review Conference on racism. Differences also emerged in the EU’s scrutiny of China’s human rights performance in the Human Rights Council.
- **Intensifying power politics in the Security Council and Human Rights Council.** Russia and China blocked western efforts to use the Security Council to put pressure on the Sri Lankan government over its bloody spring offensive in Tamil areas, and backed a Human Rights Council resolution endorsing the assault.
- **Clashes with the developing world over the UN’s economic role.** European governments have focused their multilateral response to the financial crisis through the G8 and G20 rather than the UN, antagonising developing countries that have pressed their case for a new economic order through the UN General Assembly. In June, the EU found itself locked in frustrating negotiations with developing countries in the General Assembly over the crisis.

¹ “A global force for human rights? An audit of European power at the UN” by Richard Gowan and Franziska Brantner, European Council on Foreign Relations, September 2008.

Some fear that these growing tensions could see the UN return to the dark days of the 1970s, when the Security Council was paralysed by cold war tensions, the General Assembly became a pulpit for anti-western ideologists, and European countries were powerless bystanders.²

But the situation is hardly that bad. In fact, perhaps the biggest change at the UN over the past year was a positive one: the return of the US. In the final Bush years, if the US wasn't boycotting human rights discussions at the UN, it was usually undermining them. But once Obama entered office and his adviser Susan Rice took over the US mission to the UN, American diplomats began to re-engage enthusiastically.

It is too early to quantify an "Obama effect" in our voting data, much of which dates from the last days of the Bush presidency. But we can begin to make out the contours of the new American approach. In the Human Rights Council, for example, the new US administration has adopted tactics similar to some of those we suggested for the EU last year, working to wean moderate states away from radical governments.

Yet the overall US strategy remains uncertain. European diplomats discern recurrent, high-level divisions within the administration between those who want to take a hard line on human rights and others who favour engaging with the likes of China and Russia. Washington's decision-making is also affected by the need to defend Israel from perennial criticism at the UN.

So the EU must avoid the temptation to hang back and leave the hard work to the US. The next two years will see major UN conferences on climate change, the Millennium Development Goals and the Nuclear Non-Proliferation Treaty. Tentative negotiations on Security Council reform are under way, and the Human Rights Council will be formally reviewed in 2011. The EU cannot afford to stumble over these events.

The General Assembly

On 23 September 2008, the 63rd session of the General Assembly opened amid dramatic circumstances. The collapse of Lehman Brothers less than a week earlier had sent shockwaves through the world's financial systems, and the Security Council was still reeling from the Russia-Georgia war in August.

Overall, the human rights votes that followed brought few surprises – but confirmed the decline in European influence our report identified last year. As the report showed, since the late 1990s the EU had grown increasingly united on human

EU progress on UN human rights diplomacy, 2008–09

In last year's report, we argued that the EU needed a new strategy to regain the initiative on human rights at the UN. Over the past year there has been no decisive change in the EU's approach, although some small, incremental steps have been taken:

- The European Commission has committed to provide aid to third countries to help them meet the human rights commitments they make at the UN – a key recommendation of our report. The first support packages should be announced by the end of this year.³
- The Commission is moving towards funding NGOs that monitor UN commitments, another of our report's recommendations.
- In December 2008, the European Parliament passed a resolution calling for a stronger European role at the Human Rights Council, although many of its conclusions were unspecific.
- The European Commission has created a new post at its Geneva office specifically to liaise with the Human Rights Council.

rights at the UN, reaching 100% cohesion between 2005 and 2008. In 2008-09, the EU continued to hold together on human rights resolutions in the General Assembly, with the exception of a vote setting the scene for the Durban Review Conference.

But our report also found that external support for EU positions had declined over the past decade: other countries' "voting coincidence" (see methodological note, p8) with the EU in human rights votes dropped from 75% in 1998-99 to 55% in 2007-08. Meanwhile, support for China – which tends to support positions that endorse sovereignty against external "interference" – leapt from 50% to 74%.

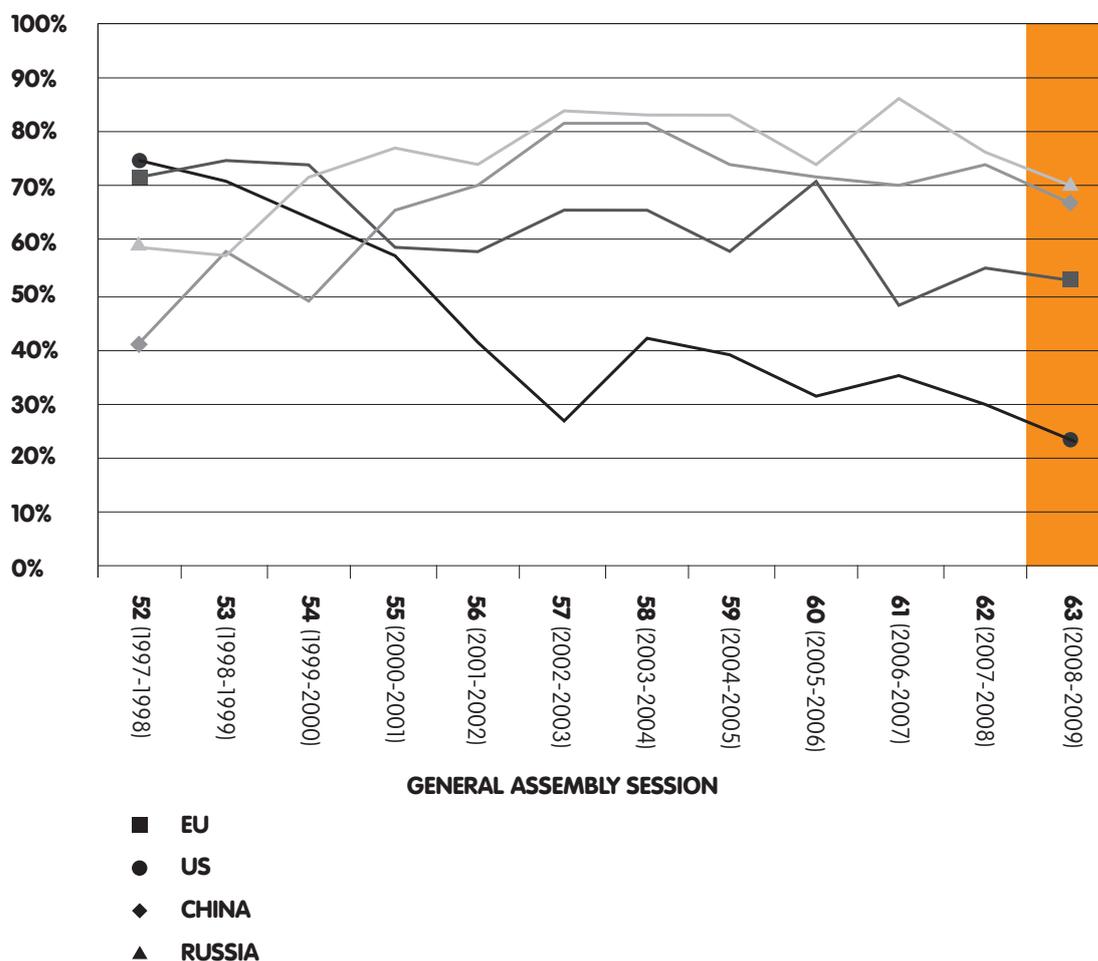
Over the past year, the EU's voting coincidence score dropped slightly, to 52%. But China's also fell, to 67%, as did Russia's, from 76% to 70% (see graph, right). The Bush administration continued to be a spoiler, voting alone or nearly alone against widely supported measures like resolutions on the rights of children or the right to water, leaving the US with a voting coincidence score of 23%.

These voting patterns suggest an unusual degree of uncertainty at the UN, with more countries abstaining on human rights votes than in recent years. But the EU's circle

² See, for example, "UN's disunited members ponder reform" by Harvey Morris, *Financial Times*, 23 September 2008. In 2007, two leading Security Council experts warned of a "new type of bipolarity" between rich and poor countries at the UN that could condemn the organisation to irrelevance ("Relations with the Security Council" by James Cockayne and David M Malone, in Simon Chesterman (ed), *Secretary or General?* (Cambridge, 2007), pp83-85).

³ See the statement by Véronique Arnault (Director, multilateral relations and human rights, External Relations Directorate General, European Commission) to the 10th session of the HRC, March 2009.

Voting coincidence with China, the EU, Russia and the US on human rights votes in the General Assembly, 1997–2009 (in cases of EU consensus)



European successes and failures at the UN, 2008-09 session

SUCCESSSES:

1. Defending the Responsibility to Protect in the General Assembly.
2. Maintaining pressure for a moratorium on the death penalty.
3. Blocking efforts in the Security Council to disrupt the ICC’s indictment of Sudanese President Omar al-Bashir over Darfur.

FAILURES:

1. Failing to gain decisive pressure at the UN for full humanitarian access in Tamil areas during the Sri Lanka crisis.
2. Splitting over whether to attend the Durban Review Conference on racism.
3. Lack of leverage over Israeli actions in Gaza through the Security Council and the Human Rights Council.

of allies nevertheless continues to shrink. In last year's report, we divided non-EU countries into four categories according to their voting coincidence with the EU on human rights votes. The last year has seen a shift away from the EU across these categories.

- The **Wider Europe** category – consisting of 16 non-EU European countries that typically align with EU positions – has frayed at the edges. Alienated over Kosovo, Serbia voted with the EU less frequently this year – while Georgia and Ukraine sometimes sided with the US over the EU in the event of transatlantic splits, seeking American support in the face of Russian expansionism.
- The **Liberal Internationalists** include those non-European states, including the US, that align with the EU more than half the time. This group has shrunk from 44 countries to 32 in the past year. The decline is mostly the result of African and Asian states, from Tanzania to Afghanistan, moving away; the Liberal Internationalists are increasingly confined to Latin America and America's diehard allies like Israel.
- The number of **Swing Voters**, who vote with the EU 35-50% of the time, is shrinking: only 77 countries now qualify for this category, down from 86. Most of the countries that have moved away are members of the Organisation of the Islamic Conference (OIC).
- The **Axis of Sovereignty** – those countries that support EU human rights positions less than 35% of the time – has swollen to 40 states from 19. Yet the name of the group perhaps needs updating, as opposition to the EU is now increasingly centred on two poles: those countries that want to defend traditional state sovereignty against “post-national” liberal values (China, Russia and a motley crew of human rights abusers like Burma and Zimbabwe), and those that prioritise religious values over individual rights (largely Muslim nations, co-operating through the OIC). These groups overlap – Egypt belongs to both – but the distinction helps explain how the decline in support for EU positions has not automatically translated into new support for China and Russia.

The EU did perform creditably in the General Assembly on one of its priorities: the Responsibility to Protect (R2P).⁴ A report by Secretary-General Ban Ki-moon on implementing R2P ruffled feathers when it was released at the start of the year, leading to animated debate between a well-organised EU, operating through the European Commission, and opponents of the concept. When the matter came to General Assembly debate in July, the EU's opponents hijacked proceedings – even wheeling out Noam Chomsky to address the Assembly on the evils of western intervention. But firm defensive diplomacy by the EU prevented a vote that might have seriously discredited R2P.

⁴ The Responsibility to Protect (“R2P”) concept, which was adopted at the 2005 World Summit, encourages the UN Security Council to take measures to protect civilians from genocide and war crimes when their own governments prove unable or unwilling to do so.

The EU also managed to maintain support for its annual resolution calling for a moratorium on the death penalty. Danish and French efforts to repeat this success with a declaration condemning the criminalisation of homosexuality were, however, complicated by Maltese opposition.

Countries shifting between voting categories, 2008-09

From Swing Voters to Liberal Internationalists:
Democratic Republic of Congo.

From Liberal Internationalists to Swing Voters:
Afghanistan, Bahamas, Dominican Republic, Ecuador, Guatemala, Haiti, Madagascar, Nepal, Nicaragua, Papua New Guinea, Tanzania, Tonga, Tuvalu.

From Swing Voters to Axis of Sovereignty (OIC states with *):

Bangladesh*, Brunei Darussalam*, Comoros*, Dominica, Gambia*, Guinea*, Guyana*, India, Kuwait*, Laos, Nigeria*, Oman*, Qatar*, St Vincent and the Grenadines, Saudi Arabia*, Senegal*, Sri Lanka, Swaziland, Uganda*, Venezuela, Yemen*.

An economic revolt

In spite of Angela Merkel's proposal last year to create a UN Economic Council to guide global economic governance, European diplomats have shown little desire to deal with the crisis through the UN, preferring the more informal channels of the G20. This approach has not been entirely to the taste of the developing world.

The disagreement came into full view in June when the General Assembly convened a special conference “on the world financial and economic crisis and its impact on development”. The EU and the developing countries spent the early summer struggling over the draft outcome document, with the latter accusing the former of renegeing on development commitments and complaining that western finance ministers were ignoring the conference. The text on which the exhausted diplomats finally agreed at the end of June was almost entirely shorn of substance.

Farical as it was, the process showed how willing developing countries are to engage in trench warfare at the UN. And there are plenty of opportunities over the next couple of years for animosity over development to derail other UN talks.

The EU splits: the Durban Review Conference

European diplomats had long feared that the Durban Review Conference (“Durban II”) in Geneva in April could cause more harm than good. Its ostensible goal was to assess progress on global anti-racism measures since the 2001 UN Durban Conference, an event largely remembered for a US boycott over anti-Zionist statements in the outcome document.

But in the preparatory discussions, it soon became clear that the OIC and its allies in the developing world were again going to use the conference as an opportunity to bash Israel. The OIC also began pushing for an outcome document supporting limits to free speech in the name of religion – the sort of move the EU regularly fights in the General Assembly and Human Rights Council.

Despite the high stakes, the EU failed to engage seriously with the Durban II agenda early on. For much of 2007 and 2008, while the Bush administration was boycotting the talks and the OIC and its allies were peppering the outcome document with attacks on Israel, the EU was concentrating on secondary issues like the conference budget.

Splits within the EU emerged in March 2009 when Italy announced that it would not attend the conference, citing anti-Israel bias. The UK was expected to follow. Calls mounted for the EU to withdraw *en bloc*.⁵ But European calculations were upended by the Obama administration’s decision to engage: Ambassador Susan Rice reportedly

saw the event as a way to signal renewed American interest in the UN. EU members that had been intending to walk now redoubled their efforts to get a compromise deal, and their opponents, apparently also keen to please the US, began to soften their stance.

But American re-engagement had its limits. Washington had maintained a studied vagueness on whether it would actually attend the conference throughout the preparations, but two days before the event began announced it would stay away, blaming Durban II’s *pro forma* endorsement of the declaration from the original 2001 conference.

The decision threw the EU into confusion. Germany and the Netherlands immediately followed the American lead. Other member states thought that the outcome document had been sufficiently shorn of offensive language, and that they were in too deep to pull out so late. They did, however, provide the lasting image of the conference by walking out in protest at an anti-Israeli speech from Iranian President Mahmoud Ahmadinejad.

The whole affair left the EU, in the words of one participant, looking “a bit daft”. The fact that the EU was so easily swayed – and split – by American choices, however mixed the signals from Washington, highlighted the lack of a robust European strategy to begin with. The EU’s mistake was to allow its opponents to set the terms of debate two to three years ago, rather than working with its allies to set out a more liberal agenda for the conference in advance.

The Human Rights Council

The General Assembly’s May 2009 elections to just over a third of the seats in the Human Rights Council (HRC) proved to be a rather *pro forma* affair – with most regional groupings presenting as many candidates as seats available to them, precluding competition – although they were enlivened by the Obama administration’s decision to run (see table, overleaf). The US won its seat with 90% support. Overall, the elections favoured opponents of the EU, although the Europeans and the US successfully campaigned to keep Azerbaijan out.

As in previous years, the EU lost more than half the votes at the HRC – although it did score some successes on North Korea, torture and religious intolerance. But the EU also suffered its first ever split in the HRC when Germany, Italy and the Netherlands voted against a resolution on Palestine on the grounds that it was too anti-Israeli, while other European states abstained.

The HRC session also saw growing strains between the west and African countries. In March, African states and their allies defeated EU efforts to increase HRC monitoring of human rights in the Democratic Republic of Congo – apparently in an effort to reduce western influence in their backyard. In June, the US’s campaign to maintain human rights monitoring in Sudan passed by only a single vote after the African bloc abstained *en masse*.

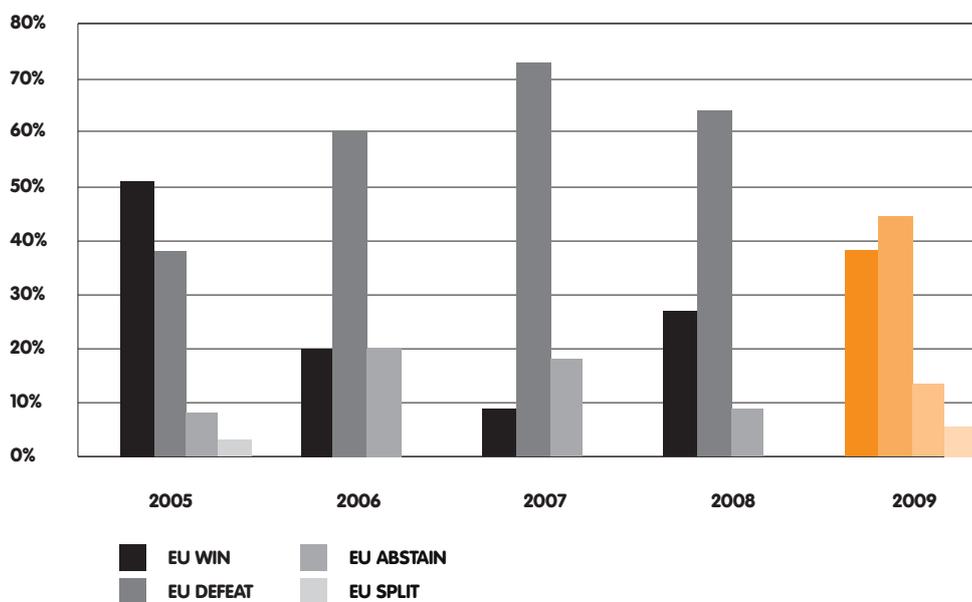
Differences within the EU came to the fore in the 2009 session of the Universal Periodic Review (UPR), a mechanism which reviews the human rights performances of a quarter of all UN members every year. EU diplomats do not formally co-ordinate over the UPR, unlike most HRC business, so the event gives a clearer picture of differing national approaches to human rights.

⁵ See “Don’t Go There”, Alexander Lambsdorff, *International Herald Tribune*, 8 March 2009.

Elections to the HRC, by country voting category ⁶

ELECTION YEAR	EU	WIDER EUROPE	LIBERAL INTERNATIONALISTS	SWING VOTERS	AXIS OF SOVEREIGNTY	TOTAL
2006	8	2	10	20	7	47 ⁷
2007	3	1	2	6	2	14
2008	3	1	5	5	1	15
2009	2	1	3	7	5	18

EU performance in votes on resolutions adopted by the Commission on Human Rights (2005) and HRC (2006–2009)



⁶ Countries are elected to the HRC for three-year terms.
⁷ In 2006, all seats on the newly formed HRC were open.

This year saw Russia and China on the agenda, the first real test for the UPR. Those EU members that spoke on Russia converged on a single set of priorities: the rule of law, xenophobia, homophobia and attacks on freedom of speech.⁸ But there was far less coherence on China. The Czech Republic and the UK criticised Beijing's behaviour in Tibet, whereas Germany and France concentrated on technical justice issues and the death penalty. Hungary, on the other hand, "took pride in being China's partner in a common bilateral human rights dialogue".⁹ Although no one seriously expected Beijing to pay much attention to the UPR, the process was nonetheless embarrassing for the EU, confirming the conclusions of ECFR's *Power Audit of EU-China Relations*¹⁰: EU policy on Chinese human rights is fragmented and ineffective.

Crisis diplomacy in the Security Council and Human Rights Council

The UN is ultimately judged on how it deals with crises, particularly through the Security Council. And on the two major security challenges of the past year – Gaza and Sri Lanka – it failed to deliver. In each case EU member states attempted to halt the violence through both the Security Council and the HRC – but struggled to win over other big powers or to translate diplomatic progress into results on the ground.

Although **Israel** was never likely to pay attention to any UN censure of its behaviour, its attack on Gaza in December-January still served to highlight differences between the EU's diplomatic leverage in the Security Council and HRC. In the former, the UK led the drafting of a resolution calling for a ceasefire, which passed by 14 votes to nil.¹¹ By contrast, in the HRC, African, Asian and Latin American countries drafted a resolution calling not only for a cessation of violence but also for Israel's immediate withdrawal from all the territory it had conquered since 1967. The EU abstained, and the resolution passed.

The assault by Sri Lankan forces on areas held by the Tamil Tigers in the first part of 2009 presented the EU with a more complex test. As the scale of the offensive became clear, EU member states and the US repeatedly called for the issue to be put on the Security Council agenda. Opposition from China and Russia, however, meant that it was not until May that the Security Council issued a statement calling for Sri Lanka to respect its humanitarian obligations – and even this had no legal force.

The EU went on to suffer a defeat in the HRC over Sri Lanka in late May when Germany, backed by other member states, put forward an even-handed draft resolution highlighting abuses by both sides. The EU's opponents – led by India, Pakistan, Cuba and, unusually, Brazil – responded with a resolution welcoming Sri Lanka's "bringing permanent peace to the country".¹² This passed, with the Europeans voting against.

The response to the crisis in Sri Lanka – which, in the absence of an international humanitarian effort that the UN could have delivered, claimed up to 10,000 civilian casualties – underlined the shifting balance of power at the UN. The EU remains able to push issues on to the agenda in New York and Geneva. But its foes are increasingly able to decide the results – even turning European initiatives on their heads, effectively endorsing human rights abuses.

Yet the EU weakened its own hand over Sri Lanka by failing to fully co-ordinate its diplomatic efforts. Some officials feel that too little was done to link up EU diplomacy in New York and Geneva, and that European diplomats in Geneva were ill-informed about European initiatives elsewhere. Activists accused the Commission of failing to make use of trade penalties to pressure Sri Lanka.¹³

The EU did not lose every battle in the Security Council this year: France and Britain resisted attempts to hold up the International Criminal Court's indictment of Sudan's President Omar al-Bashir for genocide in Darfur. But they did so in the face of near-total opposition from other African leaders.

How the EU can reclaim the initiative

To ensure that the three developments outlined at the beginning of this policy memo do not continue to erode European influence at the UN, the EU should overhaul its diplomacy in the following ways:

- If the EU is to avoid **public splits** on major conferences like Durban II, it needs to improve its long-term planning. Long-term planning for major UN events, such as the 2011 HRC review, takes place in Geneva or New York, often without proper consultation with Brussels or national capitals. *The European Council's Brussels working groups on the UN and human rights, CONUN and COHOM, should take on a more strategic role, co-ordinating planning up to three years before major events.*
- The EU must resort to tougher diplomacy to deal with **power politics** in the Security Council and the HRC. EU initiatives in both councils should be backed by stronger

⁸ See the "Report of the Working Group on the Universal Periodic Review: Russian Federation", UN doc. A/HRC/11/19 (3 March 2009).

⁹ "Report of the Working Group on the Universal Periodic Review: China", UN doc. A/HRC/11/25 (3 March 2009), para 97.

¹⁰ "A Power Audit of EU-China Relations" by John Fox and François Godement, European Council on Foreign Relations, April 2009.

¹¹ While the US abstained, secretary of state Condoleezza Rice described the text as a positive step. There were reports that she favoured stronger support for the UK, but was blocked by the White House.

¹² "Sri Lanka: UN Rights Council Fails Victims", Human Rights Watch, 27 May 2009.

¹³ In October 2008, the Commission began considering whether to extend trade privileges to Sri Lanka under the "General System of Preferences Plus" (GSP+) mechanism. While it now seems likely that the investigation will recommend ending Sri Lanka's GSP+ privileges, the Commission was criticised for not terminating them immediately earlier this year.

bilateral diplomacy with China and Russia – while to avoid a repeat of what happened this year over Sri Lanka, the EU should refrain from tabling humanitarian issues until it has a solid coalition of support. Most importantly, the EU must align all its diplomatic tools – including trade policy – when responding to crises on the UN agenda. *The High Representative for CFSP should appoint “diplomatic crisis co-ordinators” to help link EU actions in UN forums to bilateral initiatives (such as trade negotiations with Sri Lanka).*

- If the EU is to steer clear of clashes over economics and development, it needs to regain the initiative on economic rights at the UN while keeping the developing world on side. The Commission has a lead role here, as it negotiates for the EU on economic issues in UN forums. *While most European leaders will continue to focus on the G8 and G20, the Commission should launch new initiatives in UN forums (including the Economic and Social Council and the International Labour Organisation) on assisting poor countries.*¹⁴

Looking further ahead, the EU must also begin to think seriously about its approach to important events on the UN calendar over the next couple of years, in particular next year’s Millennium Development Goals conference and the 2011 intergovernmental review of the Human Rights Council. The agenda for the MDG summit remains open – and, crucially, can be expanded beyond narrow development issues – presenting the EU with an opportunity to address the tensions that have hamstrung the UN over the last year. Rather than wait for the summit to run out of control as irate developing countries browbeat the west for their broken promises, EU leaders should begin tabling proposals now for the conference to tackle the major weaknesses in the UN system.

These will have to include economic issues (such as links between the UN and the G20) – or the developing world will accuse the EU of avoiding its development commitments. But the EU should also push for progress on security and human rights, possibly by calling for a high-level agreement on how the Security Council and HRC can ensure humanitarian aid delivery in crisis situations.¹⁵

The HRC review presents a dilemma. If the EU retreats into defensiveness, focusing merely on safeguarding mechanisms like the UPR, its opponents will aim to undercut even these minimal positions. On the other hand, any attempt at major reforms of the HRC, such as rewriting its membership rules – which the Obama administration is rumoured to be keen on – is likely to invite a backlash from Russia, China and co. Any signs of differences between the US and the EU will invite

their opponents to pull them even further apart, dashing hopes for a liberal resurgence at the UN.

The US and the EU should therefore set up a working group, including the European Council and Commission, to co-ordinate their position on the review, inviting potential allies in Latin America and elsewhere. Meanwhile, the EU should use its bilateral dialogues with China and Russia in 2010 to emphasise that, although it is open to talks in Geneva, it will fight any attempts to constrain the HRC. It should also launch discussions with Swing Voters, most notably in Africa, to build a consensus on sensitive issues like the HRC’s monitoring procedures. The EU cannot decide the fate of the HRC alone. But if it can move away from internal discussions and towards coalition-building, it should at least be able to avoid a Durban II-style breakdown.

There is a lot of hard bargaining ahead. But the alternative is likely to be a paralysed UN – or one in which the rules of the game are set by opponents of the EU’s liberal agenda.

Methodological note

To calculate voting coincidence with the EU on human rights, we took all votes on draft human rights resolutions adopted by the General Assembly in which the EU’s members voted “in favour” or “against” together. (Resolutions adopted without a vote were excluded.) We calculated the voting coincidence of non-EU members by dividing the number of votes cast by non-EU countries coinciding with the EU’s positions by the overall number of votes, abstentions and no-shows of all non-EU countries on these resolutions, giving us a percentage score for support for EU positions.

The EU split on one human rights vote in 2008-09, and we excluded this from our calculations. When non-EU states abstained or did not participate in a vote, their vote was coded as partial disagreement, weighing half as much as full disagreement.

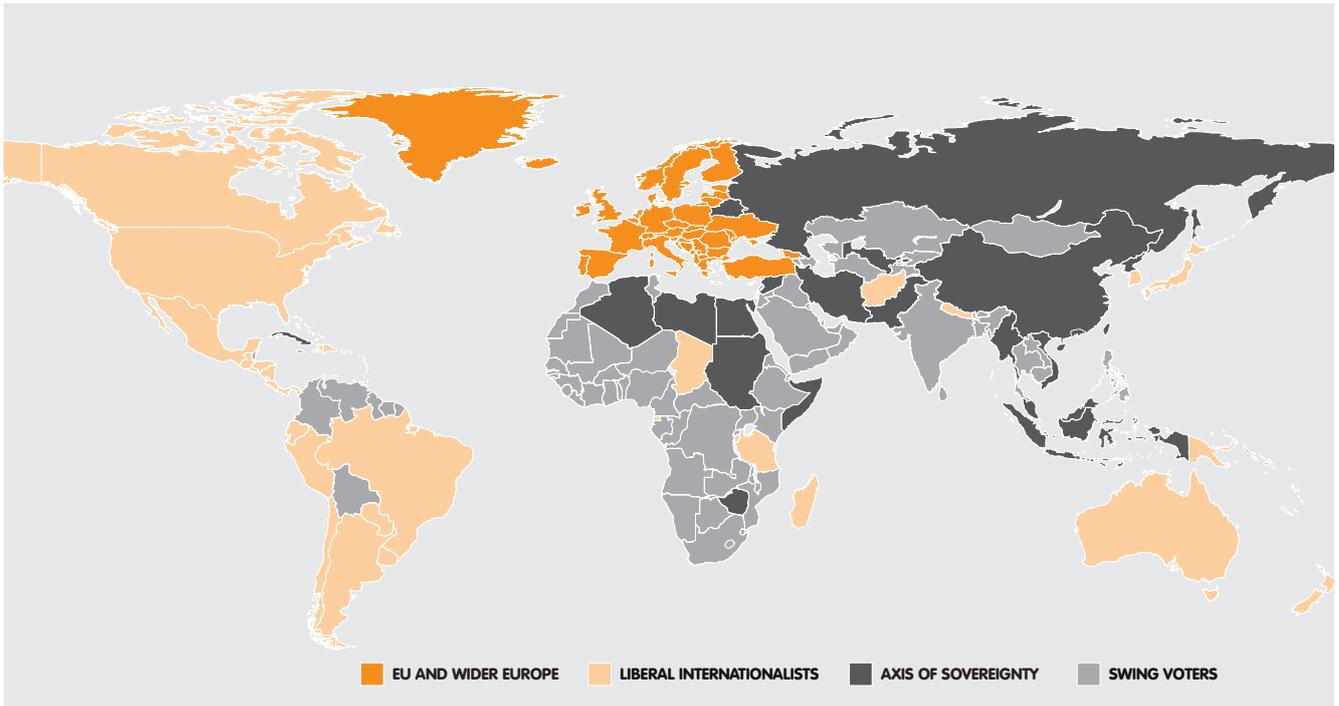
We applied the same calculations to China, Russia and the US. “Human rights votes” refers to those on resolutions from the Third Committee of the General Assembly, which deals with “social, humanitarian and cultural” affairs.

For a full methodology, see www.ecfr.eu

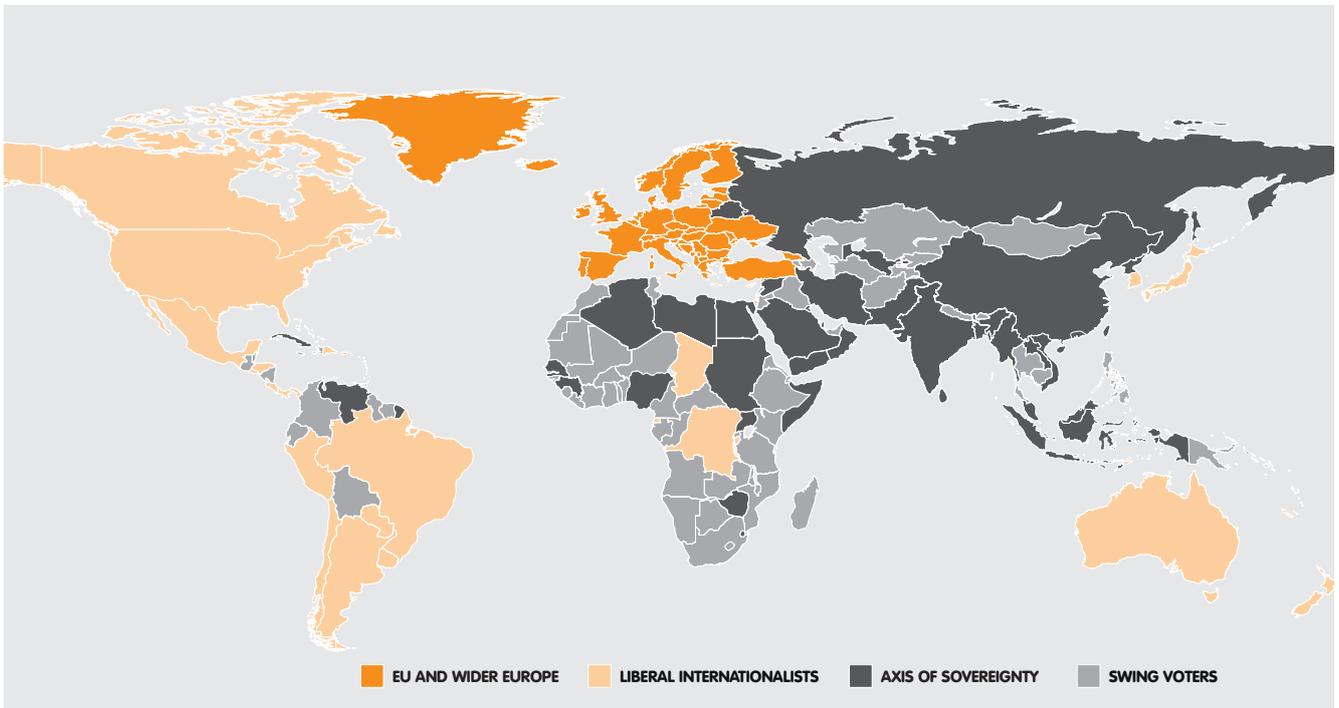
¹⁴ At the Economic and Social Council, for example, the Commission could build up a human rights agenda on the basis of the International Covenant on Economic, Social and Cultural Rights.

¹⁵ A number of American commentators have suggested negotiating an agreement with China and Russia to refrain from vetoing Security Council resolutions on humanitarian crises. See “A Plan For Action” by Bruce Jones, Carlos Pascual and Stephen John Stedman (Brookings, 2008), p20

Supporters and opponents of the EU on human rights at the UN, 2006-2008



Supporters and opponents of the EU on human rights at the UN, 2008-2009



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