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Master's Thesis of Public Administration

Trade–Death Penalty Linkage  
– The European Parliament as Defender of  
Human Rights? –

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# Abstract

For decades, the European Union (EU) has claimed to be a global champion of human rights and made many efforts accordingly both inside and outside the region. For many Europeans, linking human rights issues to internal and international trade has become as natural as linking the environment to trade. The death penalty is also a prominent human rights issue, and the EU calls for its universal abolishment. This study examines why and how the EU has connected the death penalty issue to its trade policy. Building upon the literature on issue linkages, this study categorizes the historical development of the linkage between the death penalty and trade in four different phases: recognition, integration, institutionalization, and expansion. It is argued that the linkage has been strengthened in terms of its “coerciveness” and “directness” over the past few decades. This study uses Graham Allison’s (1971) bureaucratic politics model to explain how and to what extent the internal politics among European institutions, particularly between the European Parliament and the European Commission, have determined the ways in which the two otherwise separate issues have been linked. The European Parliament is the main advocate of such a linkage and has successfully induced the European Commission to promote the abolishment of the death penalty through its commercial power despite its earlier objection. This study claims that the consequence of the death penalty–trade linkage is the empowerment of the European Parliament vis-à-vis the European Commission. In each phase of the linkage development, the European Parliament has made explicit efforts to expand its formal and normative power by voicing strong opinions about the internal and external trade of which the European Commission is in charge. This

study concludes that the European Parliament, which stands as an advocate and defender of human rights, has successfully engaged itself in the trade issue area by linking the death penalty to trade and thus increased its influence at the expense of the European Commission.

**Keyword :** European Union, European Parliament, European Commission, trade policy, death penalty, issue linkage.

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<sup>①</sup> This master's thesis is a modified version of my published article in a peer reviewed journal *East and West Studies*, published in September 2018

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# Chapter 1. Introduction

## 1.1. Introduction

The strength of the European Union (EU) comes from its market size, which is the largest in the world, followed by China and the United States (European Commission 2014). The EU is indeed one of the main players in international trade, exerting global influence through means of commerce. However, what started as a means of commercial gain through the integration of European markets is no longer an inward-looking economic animal concerned only about the wealth and growth of Europe. It now promotes a vast array of noncommercial values, norms, and ideals beyond the European continent. The EU acts as a global defender of and progressive advocate for human rights, the rule of law, and democracy. Since the 1970s, the EU has attached so-called essential clauses to its international agreements to promote European human rights standards by other means.

International trade is no exception (Bartels 2005). Human rights conditionalities are now included in almost all trade agreements concluded by the EU. However, among these human rights clauses, there lies a controversial issue: the death penalty. The EU has long defined the death penalty as a violation of human rights and urged other countries to adopt a moratorium, if not a complete abolishment. The EU Guidelines on the Death Penalty state that the EU holds a



“strong and unequivocal opposition to the death penalty in all circumstances.”<sup>②</sup>

The EU has thus attempted to impose its position on others by linking the matter to its trade policy tools. Other things being equal, countries are more likely to comply with certain norms and rules when they are linked to commercial interests (Hafner-Burton, 2005). Upon the legislation of Council Regulation (EC) no. 1236/2005, which prohibits the export of goods related to the death penalty, European policy to link the death penalty to trade became more explicit and legally binding. The EU has further strengthened its position to induce its trading partners to abolish the death penalty by linking the issue to generalized system of preferences (GSP)+ conditionalities and free trade agreements (FTAs).

While the EU effort is deemed noble, little is known about the motives behind such an issue linkage. In general, human rights clauses attached to trade are designed to eventually promote both human rights and trade. For instance, clauses that require the enhancement of labor rights or the betterment of human rights conditions in oppressive and unstable governments are implicitly or explicitly related to the benefits of the linkers as well as the linkees, such as guaranteeing a stable atmosphere for commerce and investment (Petersmann 2000 2005; Aaronson 2007; Lee 2008). However, the death penalty issue lacks the consensual knowledge to be linked to trade and commerce, and it is only a recent development that the EU began to use the term “death penalty” in external relations (Manners 2002). In addition, the death penalty is viewed by many countries as a sovereign rather than human rights matter. Aside from denouncing the death penalty as uncivilized and undemocratic, unilaterally imposing so-called European values on death-penalty-

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<sup>②</sup> Council of the European Union, EU Guidelines on the Death Penalty, 8416/13, 12 April 2013.

retentionist countries is criticized as human rights imperialism (Reuters 19 April 2018). While torture is an apparent violation of international law, capital punishment is not.<sup>③</sup>

There is growing literature on the EU influence on other countries in dealing with the death penalty issue (Hodgkinson 2000; Fawn 2001; O'Mahony 2001; Girling 2005; Schimmelfennig et al. 2005; Lerch and Schweltnus 2006; Schmidt 2007; Neumayer 2008; Mathias 2013). Also, there is nascent scholarly attention to the EU position on the death penalty and/or essential clauses in relation to trade agreements (Stirling 1996; Alston et al. 1999; Horng 2003; Bartels 2005, 2012). However, little work exists that examines the death penalty issue from a linkage perspective. Extant studies often take a normative approach in explaining the EU advocacy for the abolishment of capital punishment (Manners 2002, 2006).

This study begins with the question of why the EU is eager to link the seemingly controversial and nonconsensual issue to trade and how this linkage practice has formed and grown over the three decades. The EU effort to link the death penalty to trade is a recent development, and the scope and intensity of such a linkage have evolved along with changes in the institutional power dynamics within the EU. To demonstrate the dynamic evolution process, this study develops a set of typologies inspired by the issue linkage literature, particularly the work of Giovanni Maggi (2015). With a pluralist viewpoint, this study conducts an in-depth case analysis of the internal politics among EU institutions that hold discrete institutional goals, interests, and powers. Graham Allison's work on the bureaucratic politics model (Model III) offers a conceptual framework that guides

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<sup>③</sup> Council of the European Union, EU Guidelines on the Death Penalty, 8416/13, 12 April 2013.

the causal analysis of the death penalty–trade linkage. It is argued that the unlikely linkage has resulted from explicit and intentional efforts by the European Parliament, which competes with the European Commission for a greater sphere of influence. From this perspective, the development of the death penalty–trade linkage is both the cause and the effect of the empowerment of the European Parliament. This study concludes that the European Parliament, which stands as an advocate and defender of human rights, has successfully engaged in the trade issue area by linking it to the death penalty issue and increased its influence within the EU accordingly.

The remainder of this study unfolds in four sections. Section II presents an overview of the death penalty–trade linkage in the context of the European institutional and legal landscape and offers an analytical framework centered on issue linkage and the bureaucratic politics model. Section III categorizes the evolution of the death penalty–trade linkage in four distinct but related phases and analyzes how the bureaucratic politics between the European Parliament and the European Commission have determined the strength and scope of the linkage in each phase. Section IV summarizes the findings and outlines the future research agenda.

## **1.2. Trade and Human Rights Linkage**

The concept of linking different agendas to trade agreements are hardly something new, and linkages come in various dimensions: environmental components, governance, and human resources management. Bringing normative spheres into commercial interests, the linkage between human rights and trade especially calls

for deeper understanding due to its vastly distant nature, where one's discourse is on deep natural law and the other on market economy discourses. Human rights by itself is normative in that it seeks protection of all individual human beings regardless of their position in the economic market (Voiculescu, 2013).

The emergence of human rights considerations in trade began in the 70s, and more systemically and proactively became institutionalized into trade agreements from the 1990s as a part of 'essential elements'. Monitoring and suspension clauses has been a method for the EU to promote human rights world-wide through trade. These clauses in EU foreign policy are considered to have dual function both domestically and externally (Petersmann, 2015). Though there are contentions in whether they compete with WTO regulations as a form of protectionism in disguise, the European Union has actively tried to link normative matters to its trade policies.

In general, the human rights clauses in trade encompass those in the 'International Bill of Rights' as well as other global standards as the International Labor Organization. The forms in which human rights are incorporated into trade laws vary, which can be a ban on imported goods that undermine human rights (such as child labor or torture), or directly assessing the human rights situations in third countries and urging them to change. Positive conditionalities are those that provide additional trade preferences such as reduced tariffs and access to EU markets when human rights standards are met, and negative conditionalities refer to the withdrawal and elimination of trade preferences or imposition of sanctions (Takács et al, 2013).

Within the human rights-trade linkage, labor related restrictions are especially notable. In the Generalized System of Preferences(GSP), regulations

included in 1994 contains clauses that would allow withdrawing preferences in times of forced labor. In 2001, the GSP regulation was revised to incorporate the Conventions of the ILO, and all the beneficiary countries would have to abide by the labor rights conventions included in as an annex to the regulation. There are cases where the EU actually did withdraw preferences from its beneficiaries, Belarus being one of them in 2007 due to the country not complying with ILO Convention obligations. In other cases, the EU also withdrew GSP+ preferences from Sri Lanka in 2010 after the the systematic human rights violations enacted during the country's civil war. In terms of child labor, the EP recently called for a legislation to impose restrictions on the imports of goods related to such (European Parliament 2018).

Other methods of incorporating human rights include export controls resulting from human rights violations. In 2016, the Commission's proposal to recast the Dual-use Regulation (No 428/2009) banned the exports of cyber-surveillance technologies that can lead to human rights violations in repressive governments. Also, EU's regulation No 2368/2002 mandates certification of the Kimberley process in rough diamonds trade. Due to the human rights violations prevalent in the process, the EU banned rough diamond imports that are not certified of its origin. This goes further in the EU adopting the Conflict Mineral Regulation(to be applied fully in 2021), which would ban trade in minerals that finance human rights abuses (European Parliament 2018).

### **1.3. Legal Backgrounds of the Death Penalty–Trade Linkage**

Human rights law in Europe developed through the European Convention on Human Rights (ECHR) and the interpretations of the European Court of Justice (Manners 2002). During the negotiations for the Treaty on the European Union (TEU, also referred to as the Treaty of Maastricht of 1992), the human rights issue became prominent, and member countries agreed to promote it through various means, including the EU enlargement conditionality clauses. To be admitted to the European Union, membership in the Council of Europe (CoE) is required (Steiker 2002). The CoE adheres to Protocols 6 and 13 of the ECHR<sup>④</sup>, which all the EU members must ratify. Protocol no. 6 requires members to abolish the death penalty during peace times (since 1985), and no. 13 to implement total abolition, including during war times (since 2003). Also, the European Charter of Fundamental Rights in 2000 stipulates an absolute ban on capital punishment for all circumstances, a binding regulation ratified by the 2008 Treaty of Lisbon. The TEU states in Article 6 that the EU must adhere to and recognize the principles that are listed in the charter (Douglas-Scott 2011), which makes the abolition of the death penalty a prerequisite for new membership. During the European Union expansion period of 2004 to 2007, new Eastern European members that had retained the death penalty abolished it accordingly, and no execution has taken place within the EU since 1997.<sup>⑤</sup>

The European Commission began including the “Essential Elements Clause” in trade agreements in 1992 as the principal way to promote the trade–human rights

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<sup>④</sup> Protocol 6 mentions the restriction of the death penalty in times of war, which all Council of Europe members have signed and ratified, except Russia. Protocol 13 stipulates the complete abolition of the death penalty at all times.

<sup>⑤</sup> Article 2 of the EU Charter of Fundamental Rights became legally binding by the Treaty of Lisbon. It states that no one shall be condemned to the death penalty or executed.

nexus as required by the EU's treaty obligations. The underlying logic of the EU commitment to human rights with its external relations is based on the Treaty of Lisbon Article 205, which states that the EU's external policies must respect the principles of "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and ... the principles of the United Nations Charter and international law." This opens up the possibility of promoting its core values, including the abolishment of the death penalty, through trade relations (Behrmann and Yorke 2013: 23-24).

As mentioned above, prominent avenue for the EU trade–human rights nexus is the GSP and the GSP+ conditionalities. They function as an important instrument to promote and protect human rights in developing countries. The GSP+, an extension of the GSP, is a unilateral measure that grants countries that are extra vulnerable — in terms of their shortcomings on economic diversification and integration into global markets — duty-free access to the EU market. The main beneficiaries of the GSP+ include Pakistan and the Philippines. While both GSP and GSP+ countries have to comply with the human rights principles that are listed in the annex to the GSP regulations, GSP+ countries are obliged to ratify an additional 27 international conventions on human rights standards, including a regulation on the execution of the death penalty listed in the International Covenant on Civil and Political Rights (ICCPR), in order to be granted preferential status (Zamfir 2017a: 4). Beneficiary countries have little option but to ratify and comply with the conventions on human rights, labor rights, sustainable development, and good governance in order to maintain their status.

In addition to GSP and GSP+ measures, FTAs with the EU also include the

consideration of human rights in the “sustainable development chapter” so that the EU can pursue sustainable economic, social, and environmental development in developing countries (Bartels 2012).<sup>⑥</sup> In the Cotonou Agreement of 2000, the principle of sustainable development in Article 9 is defined as “respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development”. In 2006, EU members agreed to negotiate FTAs with developing Asian countries and made it clear that trade agreements include social and labor provisions to address human rights concerns (Aaronson 2007). During negotiation processes with retentionist countries such as Japan, South Korea, and Singapore, the death penalty issue is often raised to be addressed.

However, the most explicit and direct manifestation of the EU’s trade–death penalty linkage is enshrined in the EU Council Regulation of 2005, a legislation that bans the export of goods related to torture or capital punishment.<sup>⑦</sup> This regulation was amended in 2011, in 2014, and finally in 2016 to address loopholes and to strengthen the regulations on a longer list of goods and products such as electric chairs and lethal drugs (Zamfir 2017b).<sup>⑧</sup>

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<sup>⑥</sup> Feedback and the way forward on improving the implementation and enforcement of the Trade and Sustainable Development chapters in EU free trade agreements (European Commission 2018).

<sup>⑦</sup> Council Regulation (EC) no. 1236/2005 of 27 June 2005 concerning trade in certain goods that could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment.

<sup>⑧</sup> The list includes drugs such as pentobarbital and sodium thiopental, which are the two types of anesthetics that the US depends on to carry out executions through lethal injection (Pilkington 2011).



## **Chapter 2. Frameworks of Analysis**

### **2.1. Frameworks of Issue Linkage**

There is a deep and rich literature on the issue linkage. Among others, Ernst Haas (1980) identifies three different types of issue linkages: tactical, fragmented, and substantive. Knowledge and power are important determinants of linkage types. Tactical linkage takes place when the issues linked are not intellectually connected with each other, but when power — either inducive or coercive — plays a linking role between the two otherwise separate issues. A fragmented linkage occurs when the two parties have different views on the causal relationship between two issues, but when they decide to concur anyway. Knowledge about the connection is fragmented and dispersed between the parties. Finally, substantive linkage is induced by the intellectual coherence of issues, whereby knowledge is more consensual among actors than those with fragmented or tactical linkages. The more incoherent the knowledge is, the more political the issue linkages become, whereby the power held by one country either induces or coerces the other country to accept the knowledge base held by the powerful country even if the weaker one does not fully agree with it (Aggarwal 1998 2013).

Building upon this linkage framework, Giovanni Maggi (2016) categorizes three types of issue linkages: enforcement, negotiation, and participation. Enforcement linkage refers to the linkage through which a violation of an agreement in one area can lead to a sanction in a different area. Negotiation linkage occurs when agreements in two different areas are negotiated jointly.

Participation linkage takes place when a threat of sanction in a certain area is used to encourage participation in other areas. In a trade agreement, this type of linkage usually comes in the form of certain clauses that require sanctions against the counterpart for not meeting the standards in non-trade areas such as the environment and human rights. Other things being equal, the two former linkage types are more “direct” in nature than the last.

Hafner-Burton (2005) shows how coercion can be a more effective instrument than persuasion in order to change the counterpart’s behavior through international agreements. She compares FTAs to human rights agreements to find that FTAs are a better way to bring about changes in human rights situations in developing countries. While persuasion alone cannot provide strong incentives to alter behaviors, coercion through trade — that is, trade sanction — can do better. If human rights issues are linked to high trade stakes, the cost may become too high for linkee countries to retain any repressive behaviors.

The extant literature on issue linkage provides guidance for understanding why and how two seemingly distant issues are linked together. For the purpose of this study, Maggi’s framework is useful because it shows how the types of linkages can vary depending on how different issues are discussed and negotiated together: whether they are directly included in an agreement such as a sanction or as part of other deals. Hafner-Burton’s framework is also useful because it clearly illustrates how and to what extent the linkage of trade to the human rights issue in a bilateral trade agreement has a coercive effect on countries that otherwise would not have complied with human rights norms.

As both “state sovereignty” and “human rights” are highly contested, we can reasonably say that there is no consensual knowledge about the linkage

between trade and the abolishment of the death penalty. To that extent, the trade–death penalty linkage is tactical or fragmented at best. In other words, the EU’s weaker trading partners will be induced or coerced to accept death penalty provisions in their trade agreements with the EU if the latter insists that it must be so.

It should also be noted that there was no consensual knowledge among different EU institutions. As mentioned above, the EU is not a unitary actor to the extent that different institutions, particularly the European Parliament and the European Commission as legislative and executive branches, respectively, have different institutional goals and missions. The trade–death penalty linkage issue is no exception. It began as a European Parliament initiative and the European Commission position was initially ambivalent, if not negative.

This is what motivates this study. For the purpose of analysis, it is assumed that the negotiations between the EU and its trading partners in relation to the inclusion of death penalty provisions will be determined by EU preferences, which are not constant. This study strives to examine and portray the strategic interaction between the European Parliament (as a defender of human rights) and the European Commission (as an advocate of free trade) in the evolution and empowerment of the trade–death penalty linkage within EU internal politics and policy-making procedures that would eventually be reflected in trade agreements.

This study assumes that the European Parliament has played the “linker” role, while the European Commission has played the “linkee”. In order to capture the historical evolution of the linkage within the EU context, this study also offers a modified linkage framework with a focus on the level of *directness* and *coerciveness* of the linkage.

The first dimension — the level of directness — examines the degree to which the two EU institutions perceive that trade agreements and the death penalty issue are directly connected. If the trade agreements concluded by the EU explicitly mention the death penalty issue or different agreements are negotiated jointly to include the language in clauses, it would be considered more direct. The second dimension is the level of obligation and coercion in relation to the implementations of the death penalty in partner countries. It is designed measure whether the linkage actually brings about abolishment or at least a moratorium. These two criteria generate four different categories. In Table 1 four different periods in the evolution of the trade–death penalty linkage within the EU context are assigned accordingly. The levels of directness and coerciveness are a function of the power and knowledge dynamics between the European Parliament and the European Commission.

Based on the coerciveness–directness matrix, the historical development of the trade–death penalty linkage can be categorized into four distinct phases. This categorization, however, is in no way mutually exclusive or clear-cut, but rather has overlapping features in order to allow the following stage to take over some components of the preceding stage. The first phase can be labeled as the recognition period: the EU began building up its European identity and norms by perceiving capital punishment as a violation of fundamental human rights. It covers the period of the 1980s to the 1990s, during which human rights discourses became prevalent in Europe. Yet there was no organized effort to link trade to the death penalty. During this period, the linkage, if any, was neither direct nor coercive.

The second phase is referred to as the integration period, which

coincides with the EU enlargement process until the early 2000s. During this period, death penalty abolition became an integral part of new EU membership and thus the enlargement of the EU’s “integration” process. This period is characterized by a coercive but indirect linkage. The third stage is the institutionalization period, occurring around the time when the 2005 Council Regulation was enacted. The language of capital punishment became explicit and institutionalized in EU trade laws. The linkage in this phase is direct in nature but noncoercive. The last phase is dubbed the expansion period when the EU efforts to link capital punishment standards to trade expanded in bilateral agreements as well as in unilateral measures vis-à-vis a larger range of countries. This period coincides with the time when the game-changing Treaty of Lisbon was signed in 2007 and is marked by a significant increase in coerciveness and directness.

**Table 1.** The Directness–Coerciveness Matrix and the Evolution of the Trade–Death Penalty Linkage within the EU.

	High Directness	Low Directness
High Coerciveness	Phase 4: Expansion Period	Phase 2: Integration Period
Low Coerciveness	Phase 3: Institutionalization Period	Phase 1: Recognition Period (no linkage)

**2.2. Bringing in the Allison Model III: Bureaucratic Politics**

A supplementary framework is needed to connect the internal politics within the

EU to the directness–coerciveness matrix laid out in the previous section. This section begins with an observation that there was hardly any consensual knowledge between the linker (the European Parliament) and the linkee (the European Commission) at the beginning. In the early stage, the linkage was tactical in nature to the extent that the Council was not persuaded by the Parliament’s logic that trade is, and should be, connected to the death penalty issue. Tactical linkages are “driven by an actor’s ability to offer sufficient resources — either threats or rewards — to induce others to accept something in which they have no real interest” (Haas, 2003: 256). Therefore, the persuasion mechanism of tactical linkages is inherently based on power. The objective of tactical linkages is also political in that the linker tries to obtain leverage over the other party. It was not until the onset of EU democratic deficiency becoming a major issue in the early 2000s that the Commission finally realized its own real interest in upholding the “substantive” trade–death penalty linkage.

The European Parliament as a linker has attempted to increase its political influence, and the European Commission as a linkee has its own organizational interests to defend. Therefore, it is important to understand how such power dynamics between the two EU institutions have been played out and determined the EU-level position on the trade–death penalty linkage to be included in trade agreements. To argue that the linkage development and evolution process was not just a result of the EU’s noble cause for human rights, but rather a result of internal politics and power play, this study adopts the bureaucratic politics model by Allison (1971), which explains how actors with different preferences work together and compete with each other to increase their own power and sphere of influence. Power is defined as the ability to exert influence upon policy outcomes, which

include, in Allison's (1969) terms, factors such as "formal authority, institutional backing, constituents and status that shape bargaining advantages."

The bureaucratic politics model is grounded in the idea that policy decisions are an outcome of bargaining games between organizational actors within an institution, whose goals and interests do not necessarily coincide with the ones held by individual institutional actors. This is in contrast to Model I (rational choice), in which an organization is regarded as a unitary actor that always makes rational decisions. According to Allison (1971: 255), in Model III, "outcomes are formed and deformed by the interactions and competing preferences" and government actions are a consequence of "compromise, coalition, competition" amongst players at different hierarchical and political positions. Separate judgements, preferences, goals, and maneuvers are held by the principal players, and the perceptions and priorities of the entities are largely shaped by their hierarchical positions. The decisions have consequences for each actor's "organizational stakes", and the players who are engaged in the decision-making process act in order to increase their own organizational turf and advance the orientations that they have.

In the case of the EU, actions and decisions are not made by a single actor or by members who share the same goals, but are outcomes of separate institutions competing with one another. The EU's policy-making process involves three major players: the European Council, the European Commission, and the European Parliament. This study focuses mainly on the latter two institutions. The political dynamics between these two institutions in their effort to advance their own institutional preferences for or against the trade-death penalty linkage are mostly absent in the existing literature and thus deserve more attention from the academic

community.

To briefly introduce the preferences of each institution, the Commission stands for material interests through free and unrestricted trade. In contrast, the European Parliament stands for normative core values: openness and democracy (Mckenzie and Meissner 2016). In the following section, the development of the coupling process will be further elaborated in terms of how much more coercive and direct the linkages have become over the course of years.

The European Parliament was the first EU institution that started engaging in the abolitionist movement in the 1980s (European Parliamentary Research Service 2017) and has been an active advocate of worldwide eradication of the death penalty ever since. In 1980 the Parliament adopted the first resolution, which strongly voiced a call for abolition within the EEC. It has adopted a series of legislative resolutions on human rights and the death penalty in relation to less developed countries that retain the death penalty and has constantly brought the issue to the EU agenda. Since the mid-1990s, the Parliament has adopted more than 30 resolutions on capital punishment in third states (Vutz 2010). Only in recent decades has it made differences in the real policy world.

The 1992 Maastricht Treaty introduced the “co-decision procedure” in legislation pertaining to some important areas and thus empowered the Parliament’s legislative rights within the EU. However, agreements under Article 133<sup>⑨</sup> explicitly excluded important trade agreements from the list that require the Parliament’s assent (Rosén 2016). Previously, the Single European Act of 1986 clarified the Parliament’s role in the legislative procedure to cooperate with other

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<sup>⑨</sup> It states that “the Commission shall submit proposals to the Council for implementing the common commercial policy.”



EU institutions and mandated the Parliament to assent to accession and association treaties. The 1999 Treaty of Amsterdam expanded areas for which the Parliament holds assenting powers, with the goal of placing the Parliament on the same institutional level of the European Commission and the European Council. The Parliament was also authorized to approve the appointment of the President of the Commission, thus becoming a “constitutional agenda setter” in the EU context (Hix 2002). In its struggle for power, the Parliament effectively took advantage of the loopholes in the co-decision system under the Maastricht Treaty by threatening not to cooperate with other institutions. The Parliament also made full use of the 2001 Treaty of Nice, which allows the Parliament to formally assent to the accession of new EU members (European Parliament 2018).

For the European Parliament, the most important momentum and opportunity to push forward human rights using the EU’s commercial power came with the 2007 Treaty of Lisbon (Beke et al. 2014). The Treaty of Lisbon enabled the Parliament to play a significant role in trade affairs by mandating all essential EU trade policies to go through the Parliament before they are adopted by the European Council. Also, the Treaty on the Functioning of the European Union (TFEU) Article 207 gives the Parliament the power to legislate matters concerning common commercial policy “in the context of the principles and objectives of the Union’s external action.” TEU Article 21 also stipulates that these principles and objectives include the promotion of compliance with human rights legislation (Bartels 2014: 22). The Treaty of Lisbon mandates the Commission to report to the Parliament on trade negotiations at all stages (Woolcock 2007; Van den Putte et al. 2014). As a result, the Parliament not only holds consenting power in trade agreements, but also has the agenda-setting power to include human rights

conditionality in trade agreements. While the Commission initiates trade policy objectives and negotiates agreements, the Parliament exercises co-decision power by approving related legislations. This veers the Parliament towards a more protectionist stance than other EU institutions (Rosén 2017).

The European Commission forms the executive branch of the EU, representing the interests of the European Union as a whole. Inside the European Union, the relationship between the European Commission and the European Parliament is more or less competitive and disagreeable, especially when it comes to trade, the consequences of which directly affect a large number of European citizens (Dur and Zimmerman 2007). Along with the European Council, the European Commission operates on a more liberal and free trade spectrum than its legislative counterpart and works in a more technocratic manner rather than normative (Michailidou and Trenz 2013). Also, the Commission tends to regard trade sanctions as a last resort to promoting human right clauses, while believing that an exercise of threat alone can induce changed behaviors in its trading partners (Beke 2014). In contrast, through its human rights campaign, the European Parliament has not only gained a strong normative foothold in the global arena but also scored political credit within the EU as a gatekeeper of European core values. It is not a coincidence that the European Council has been drawn into the trade–death penalty linkage despite its concerns about the trade diversion effect.

### **2.3 The Death Penalty and the European Parliament**

Then there is the question of why the death penalty among other issues was so important to the European Parliament in expanding its sphere of influence. The

matter was clear cut and had little room for dispute when it came to determining its violation compared to other human rights issues. It was execution or no execution, and abolition or no abolition. In fact, most of the human rights clauses attached to EU's external trade preferences were vaguely identified and criticized for its unclear use and mere existence as soft law with no visible obligation (Borlini 2018).

Furthermore, the Parliament used this to ward off any countries that threatened its position in the process of the EU integration and enlargement. This is especially evident in the Parliament's stance towards the accession of Turkey. Since the negotiations for Turkey's accession began in the 1980s, the Parliament voiced a strong opinion against membership. The argument was that Turkey did not meet EU accession criteria in human rights, where death penalty retention was most evident. Although Turkey did abolish the death penalty to meet the requirements, the EP still was not fond of the country's membership. Even recently in 2016, the EP even voted to suspend Turkey's membership negotiations after President Erdogan came to power, who had the intention to reinstate the death penalty (Independent 2016). While the EU's position may have come from democratic and human rights concerns, Turkey's Islamic backgrounds may have factored in, and more importantly, the EP was in fear of Turkey dominating the Parliament in its decisions. Since the number of MEPs were representative of the domestic population, Turkey would have the second-highest number of members which would greatly influence EU's policy decisions (The Economist, 2017).

Lastly, the Parliament was aware that the Commission shared a common interest in framing the EU in the global society as a normative actor, differentiating itself from the major powers in trade as Russia, China, and especially the United States, one of the few developed countries that retained and actively executed the

death penalty. The EP, along with EC was seeking for EU's place in the 'abolitionist vanguard' to distinct its international identity to these super actors (Manners, 2002). While the EU never expected the US and China to abandon the death penalty execution, it at least had the intention to establish its stance in the global arena as a moral leader, on the other hand condemning the "super executioners' for their undemocratic, uncivil behaviors (Demleitner, 2002).

# **Chapter 3. Analyzing the Evolution of the Trade-Death Penalty Linkage**

## **3.1. Phase 1: Integration (from the 1990s to the early 2000s)**

The integration period is characterized by the coerciveness and indirectness of the issue linkage. During the EU enlargement process and assessments for EU membership, all applicant states had to abolish the death penalty to gain membership and the corresponding trade benefits. To enjoy access to the integrated European market, applicant states were asked to abolish the death penalty in accordance with the EU protocols and accession criteria with respect to human rights standards, including the death penalty.<sup>⑩</sup> The trade benefits, however, were coupled rather loosely with the accession criteria. Human rights criteria stipulating the abolition of the death penalty were not directly linked to trade agreements. Nevertheless, the ECHR and the charter protocols have a binding, coercive effect on the behavior of individual states. Applicants for new membership had no option but to abolish the death penalty for accession (European Parliament 1999). Unlike the founding members of the European Economic Community (ECC) and the EU, new members who joined as part of the European Union enlargement since the early 2000s (application made in the 1990s) had to comply with new requirements on human rights conditionality for accession. This accession conditionality was not

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<sup>⑩</sup> In the common provisions of the TEU and principles of the European Community Treaty as conditions for accession, a declaration annexed to the Final Act urges and/or requires states' abolition of the death penalty.

directly discussed in joint trade negotiations.<sup>11</sup>

The European Parliament's interest in linking the death penalty issue to EU trade was motivated not solely by a noble cause to promote human rights but also by a secular goal to obtain normative power within EU politics, particularly in relation to the European Commission. The EU enlargement process starting in the early 1990s helped the Parliament to forge a new, proactive organizational identity about its role and place within the EU, especially with respect to the Association Agreements (The European Parliament 2001). The Parliament called for a more democratic input to the accession process as well as for more solid measures for civil society issues. The between-the-lines intention was to check and balance against the European Commission, which was in charge of the enlargement process.<sup>12</sup>

Against this backdrop, parliamentary resolutions on the death penalty issue were adopted in 1992, urging all members of the EU to ratify Protocol 6 of the Convention of Human Rights and Fundamental Freedoms, as well as ICCPR's

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<sup>11</sup> The coerciveness of the linkage can be illustrated by the fact that most Eastern European countries with newly earned EU membership indeed abolished the death penalty. Cyprus, Poland, and Malta, for instance, gained EU membership in 2004 as part of the EU enlargement process. For Cyprus, its membership in the CoE began in 1961, and for Poland it was 1991. However, they ratified Protocol no. 6 of the ECHR only in 2000, which indicates that the abolition of the death penalty was not a response to joining the CoE but rather to joining the European Union (Manners 2002). Bulgaria applied for membership in 1995, abolished the death penalty in 1998, and gained membership in 2007. In the meantime, Turkey was one of the most controversial countries for new membership. It abolished the death penalty in 2004 in an effort to facilitate its accession to the EU, but has been constantly reminded by the European Parliament that there are other human rights concerns remaining to be addressed (Özbudun 2007).

<sup>12</sup> As will be discussed below, however, it was not until the 2001 Treaty of Nice that the Parliament was given consenting power with regard to the accession of new members.

Second Optional Protocol, which requires signatories to abolish the death penalty in peace times (Behrmann and Yorke 2013). Parliament efforts came to fruition when it became a prerequisite for new membership to abolish or pledge to abolish the death penalty. During this stage, however, the linkage was not directly directed at trade negotiations within Europe. The European Commission still viewed the Parliament as an immature, irresponsible actor in dealing with EU trade (Rosén 2016). Even during the Amsterdam Treaty negotiations, the Commission was not very concerned about an “empowered” European Parliament due to the Parliament’s lack of competence (Groen and Niemann 2011).

The Parliament was able to exercise rhetorical and normative power in regard to human rights concerns, the result of which was the inclusion of the death penalty in the accession criteria. However, its influence on trade agreements was extremely limited due to the lack of formal consenting power on trade issues. The European Commission successfully guarded its trading negotiation authority in the face of growing normative challenge by the Parliament (Rosén 2016).

### **3.2. Phase II: Institutionalization (the mid-2000s)**

During this period, the Parliament’s role in coupling human rights, especially the death penalty, with trade became more vital to its position as the source of the EU’s normative power. The Parliament executed this by issuing a number of parliamentary resolutions to pressure the European Commission. For the Parliament, the Constitution Treaty of 2002 marked an important momentum for external trade policies. The Parliament had a significant influence on the treaty and

emphasized its role as a constitutional agenda setter (Hix 2002). The Parliament was also influential in creating the Legislative Council, a single council to account for taking legislative decisions to the public, which reflected its calls for enhanced transparency and simplicity in the EU legislative process (Beach 2007). Building upon this, the INTA (European Parliament Committee on International Trade) was created in 2004, a committee in the Parliament responsible for implementing and monitoring EU external policies. In the same year, the Parliament Subcommittee on Human Rights (DROI) was reconstituted. Regarding the death penalty matter, the EP issued a regulation.

Since the Council Regulation of 2005 (EC no. 1236/2005), EU trade regulations and their linkage to capital punishment have become much more institutionalized than before and expanded outside the boundaries of the European continent. The Council Regulation of 2005 was the start of a direct and explicit form of law connecting trade to the death penalty. The protocol explicitly regulates “trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment.”<sup>13</sup> Trade became a more direct instrument to influence the practice of capital punishment among the EU’s trading partners. However, the EU’s trading partners were not coerced into abolishing or declaring a moratorium on the death penalty. Compared to the previous phase, during which the outcome of the linkage resulted in the actual abolition of the death penalty, the trade regulation itself was not effectively

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<sup>13</sup> On 3 October 2001, the Parliament adopted a resolution urging the Commission to prohibit European firms from exporting “inherently cruel, inhuman or degrading” police and security equipment. In accordance with the resolutions, the Commission legislated a regulation, but the Parliament did not have consenting power to approve it. The legislation turned out to contain loopholes (Zamfir 2017b).



enforced during this phase. It was the United States that became an unintended target, as the regulation prohibited European pharmaceutical companies from exporting certain anesthetic drugs used for lethal injections, thus slowing down executions in some states such as Ohio, North Dakota, and Texas (The Guardian 20 December 2011; The Atlantic 18 February 2014).

The question of why the Commission decided to concur with the Parliament on the trade–death penalty linkage remains. The answer can be found in the Commission’s effort to address the institution’s “democratic deficit” (Rosén 2016: 420). Since the Amsterdam negotiations had started in 1997, the deficiency of the EU’s democratic legitimacy in trade policies was accounted for by the Commission’s lack of transparency. The Commission, which holds immense bureaucratic power in proposing legislation as well as negotiating trade agreements, is considered the most undemocratic of the three pillars of the EU (Jacobs 2003: 3–4).

That being said, strengthening the power of the Parliament, the only democratically elected body despite the low turnout rate, was a way to enhance the overall democratic legitimacy of the EU. The Parliament successfully framed the issue in its own favor. By the early 2000s, trade policies became more sensitive to “politically correct” issues, including human rights (Rosén 2016: 418–421).

The rise of parliamentary power within the EU vis-à-vis trade issues was caused by the Parliament’s active campaign for human rights. At the same time, the European Commission made concessions to the Parliament because the former was well aware that the legitimacy deficit in trade policy-making process would eventually backfire on the Commission. The Parliament’s rhetoric as the champion of European values (and its naming and shaming strategy) was too powerful for the

Commission to ignore completely (Yan 2015). It is notable that the Parliament exercised its “soft power” through resolutions, committee hearings, opinions, and questions to the Commission (Rittberger 2012). The Commission, for fear of being shamed and named as illegitimate and unethical, eventually made a concession — that is, linking trade policies with the death penalty — to the Parliament (Rosén 2017). Still, due to the lack of formal consenting power on EU trade policy, the EP remained only a normative power in legislation, and regulation contained numerous loopholes and limitations that the EP later had to identify.

### **3.2. Phase III: Expansion (from the 2007 Treaty of Lisbon to August 2018)**

After the Treaty of Lisbon, the European Parliament was vested with legislative powers in all EU common commercial policies (CCPs), becoming one of the vertexes in the new triangular political structure (Yan 2015). The EP now not only holds normative and consultative power regarding trade issues, but also has the formal power of legislation, thus enabling it to implement human rights agendas more effectively through trade agreements. Also noting the internal administration of the EP, the INTA secretariat was doubled in size within five years after its establishment in 2004, with its administrative and technical services significantly strengthened (Bendini 2015).

The GSP+ status awarded to developing countries is now closely monitored by the European Parliament, which ensures that human rights conditionality clauses are properly enforced in beneficiary states, including the

death penalty. For the first time in decades, the INTA proposed amendments in 2011 to the GSP scheme and its conditions of withdrawal from preferences. It also played an essential role in setting the duration of GSP regulations, and most of the proposed amendments were reflected in the regulations (Zamfir 2017b). The EP steps into all processes of FTA negotiations regarding the matter of human rights achievements, as in the case of the Korea–EU FTA during which the EP raised the issue of death penalty retention in South Korea and formally questioned the Commission’s negotiation process.

During this phase, the EU’s efforts were guided by the EP’s leading role in the amendment of Council Regulation no. 2005 and the EP’s active role in implementing and attaching death penalty issues to GSP+ conditions as well as FTAs. With regards to regulations on banning trade in goods related to the death penalty, the Council Regulation of 2005 was revised in 2011 and in 2014, and it was newly adopted in 2016 (Regulation (EU) 2016/2134) to tighten trade-related measures. In the amendment of (EC) no. 1236/2005, the INTA played a major role by proposing and sealing stricter regulations on the export of death-penalty-related products. In 2010, the EP began pressuring the Commission to initiate substantial changes in the law by adopting a resolution that eventually compelled the Commission to propose new drafts (Zamfir 2017b).<sup>14</sup> A resolution was once again adopted in 2014, which reiterated its earlier calls to member states.<sup>15</sup> The EP was successful in forming a coalition with other interest groups, most notably

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<sup>14</sup> 2010/2685(RSP): resolution on the implementation of Council Regulation (EC) no. 1236/2005 concerning trade in certain goods that could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment.

<sup>15</sup> European Parliament resolution of 11 March 2014 on the eradication of torture in the world (2013/2169(INI)).

Amnesty International and the Omega Research Foundation, and urged the Commission to adopt new proposals. This coalition identified specific loopholes in the 2005 regulations. The original regulations were amended in 2011 and again in 2014. The 2014 amendment, in particular, was driven by the INTA. The new regulations were adopted both by the Parliament and the Council thanks to the EP's consenting power newly given by the Treaty of Lisbon.

With these new regulations in place, the EU also began targeting Asian developing countries through GSP+ and other Asian industrialized countries such as South Korea, Japan, and Singapore through FTAs. The EU is now more openly and forcibly using trade as a carrot and stick to encourage respect for human rights and the abolishment of the death penalty in these countries. EU trading partners are now more coercively reminded of the human rights obligations than in Phase 3, although not as much as in Phase 2. In line with the International Covenant on Civil and Political Rights (ICCPR) and its protocols, the GSP+ conditionalities require beneficiary countries to abide by human rights obligations, including the abolition of the death penalty, to maintain GSP+ status and preferential access to the European market (Zamfir 2017b). Pakistan, for instance, is on the verge of preference withdrawal for executing prisoners for crimes that are not categorized as “most serious”, thereby breaching the ICCPR protocols. The EP has expressed concerns and warned Pakistan that it could imperil its GSP+ status (The Express Tribune 18 June 2017). The Philippine government is also facing the threat vis-à-vis its GSP+ status. When the House of Representatives of the Philippines approved a bill to reinstate the death penalty, the EU warned of a setback in terms of preferences (Reuters 19 April 2018).

More highly developed Asian countries also face pressure and the threat

of withdrawal of preferential treatment. For instance, under pressure from the European Parliament, South Korea's Ministry of Justice submitted a pact of non-application of capital punishment when negotiating an extradition agreement with the EU in 2008. This was a move to appease the European Parliament in the middle of an FTA negotiation with the EU, which started in 2007 (Views and News 23 March 2010).<sup>16</sup> In fact, during the negotiation process the Parliament adopted a resolution asking the Korean National Assembly to abolish the death penalty by 2010, just before the FTA would come into effect in 2011.<sup>17</sup>

Why was the otherwise competitive European Commission so eager to cooperate on the EP's commitment to link trade to human rights, more specifically to the death penalty? It is notable that the Commission itself supported and recognized the Parliament's power increase during EU Conventions (Rosén 2016). While this can be attributed to the lack of democratic legitimacy, a more important reason lies in the fact that the EP now holds greater political and formal power. In the 2014 EU elections, Eurosceptic factions became a salient political influence. They were not favorable to the free trade idea advocated by the Commission. On top of that, the Parliament exercised its veto power by rejecting the Anti-Counterfeiting Trade Agreement (ACTA) in 2012. Its rationale was based on

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<sup>16</sup> The case of Singapore is an exception. Singapore "leads the world in executions, putting to death more people than Saudi Arabia, China and Sierra Leone on a per capita basis" (CNN 2004). However, the EU remained curiously silent when negotiating an FTA with the city state. The Singaporean government was unwilling to compromise its position on the death penalty matter and the EU exercised no pressure at all.

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human rights concerns, stating that the agreement could threaten citizen liberties. This indicates that parliamentary consent was substantial, making the Commission become much more aware of the existence of the EP as a legitimate governing body (Beke 2014; Bendini 2015). Against this political backdrop, the Commission had no choice but to support the Parliament.

The EP has indeed made conscious efforts to link the death penalty issue to EU trade policy, thereby expanding its policy turf and interests. This has in turn empowered its status within European bureaucratic politics. In contrast, the Commission's policy autonomy has been greatly reduced. With the democratic legitimacy issue, however, it is in the Commission's best interests to cooperate with the Parliament. Most importantly, the Parliament now has both "hard" and "soft" powers, which is a clear departure from Phase 3. It is also notable that the Parliament's promotion of the linkage was not only driven by a noble cause but also by its own institutional and political interests. This is especially well portrayed by the EU–Singapore FTA (EUS FTA) negotiations during which the Parliament was not active in pushing forward the linkage. This was because the Parliament did not consider the EUSFTA as a means and opportunity to expand its political influence within the European Union (Mckenzie and Meissner 2016).

## Chapter 4. Conclusion

The unfolding of the power politics within European institutions is truly puzzling in relation to the linkage between trade and the death penalty. This study examined why and how the coupling between the two otherwise separate issues — the death penalty and trade — has been strengthened in the European Union in terms of coerciveness and directness. By analyzing the interplay between the European Parliament and the European Commission with a focus on their institutional and political interests, this study showed that the Parliament has successfully advanced and expanded its power, both soft and hard, while advocating the high value of human rights, including the abolishment of the death penalty.

The significance and implications of this study are four-fold. First, the European Union is not a unitary actor. The pluralistic approach of this study reveals that the trade–death penalty linkage is an outcome of competition between rival institutions. It is notable that the development of the linkage between trade and the death penalty has been made possible by the European Parliament’s constant efforts at expanding its sphere of influence within the EU. Democratic legitimacy is one of the most important assets for the Parliament in waging a contest for power. The Commission now accepts and promotes the trade–death penalty linkage, not because there is consensual knowledge about the linkage, but because it had no other options but to follow the Parliament’s lead given the Commission’s lack of democratic legitimacy in the trade policy-making processes.

Second, the linkage between trade and the death penalty inside and outside the European Union has not emerged in a linear and progressive manner. In

Phase 2, when the issue linkage began to develop through the EU accession criteria, the European Parliament held neither leadership nor normative power and its role was thus limited. In Phase 3, however, the Parliament was granted significant normative power thanks to the prevalence of the EU's democratic deficit agenda. Using its new power, the Parliament explicitly institutionalized the issue linkage within European trade law. Lastly, in Phase 4, the European Parliament earned the power of co-legislation and co-decision with the European Commission in the trade issue area and exercised its power to mandate the Commission to link the death penalty to GSP+ conditionalities as well as FTA negotiations.

Third, it is remarkable that the European Union has become an advocate of worldwide death penalty eradication, going so far as to induce its trading partners to follow in its footsteps by using the carrot and stick. Although the linkage is likely to be strengthened as long as the European Parliament maintains its hard-earned powers, both soft and hard, there is no consensual knowledge about the linkage, not only within the European Union but also among its trading partners. Although the linkage process is partly driven by normative concerns, it was power politics that eventually led to policy equilibrium, at least within the European Union. That said, the trade–death penalty issue will remain controversial and complex.

Fourth and finally, this study shows the fruitful results of combining and blending two otherwise separate literatures: the issue linkage framework and the bureaucratic politics model. Such a conceptual linkage has allowed this study to conduct a more systematically staged analysis of the evolution of the trade–death penalty linkage, which itself holds an ambivalent, if not contradictory, position within human rights concerns. The issue linkage was “tactical” to the extent that



there was no consensus between the linker (the Parliament) and the linkee (the Commission) from the very beginning. However, the linkage did not fail because of the power play between the two institutions in favor of the former.

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## Abstract (Korean)

유럽연합(European Union)은 그 기원이 경제공동체이지만, 오늘날 세계 인권의 수호자로서 자리매김하고 있다. EU는 여러 국제관계를 통해 전 세계적으로 유럽의 인권 규범을 전파하고자 노력하고 있으며, 무역도 예외는 아니다. 본 논문에서는 이러한 EU 인권규범과 통상의 연계 가운데 두드러진 이슈로 사형제를 살펴본다. EU는 사형제의 폐지를 인권 보호의 차원에서 강력하게 주장하고 있으며, 2005년에는 명시적으로 사형제와 관련된 물품의 유럽 외 수출을 법률로 금한 바 있다. 이슈연계라는 측면에서 본 논문은 사형제와 통상의 연계가 어떻게 발전되어 왔는가를 시기별로 분류하며, 그 원인으로 엘리슨(1971)의 관료정치 모형(Model III)을 들어 EU조직들 간의 정치행태를 이해한다. 이 논문은 유럽의회(European Parliament)가 사형제과 무역을 연결하려는 링커(linker)로서 어떻게 유럽집행위원회(European Commission)를 설득하여 효과적으로 이슈연계를 강화했는가 살펴봄으로써, 그것이 유럽의회의 EU 내 입지 강화의 결과와 원인으로 작용했다는 점을 밝힌다.

핵심어: 유럽연합, 유럽의회, 유럽집행위원회, 무역정책, 사형제, 이슈연계