

## EU at the UN: The Effects of its New Rights Agenda on International Social Structures

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### ABSTRACT

This study seeks to determine the effect of the EU's human rights agenda on the international institution of human rights, and the resulting effect on interstate society. To do this, the study examines the way the EU has promoted new norms of gender and the family at the ECOSOC third committee. Using Barry Buzan's concept of vanguard theory of international social structures, it identifies a trend toward more contested norms that require coercive measures to promote as human rights. As illuminated by the vanguard theory, this is likely to result in the weakening human rights as an international institution, and precipitate a more pluralist international society.

### INTRODUCTION

For several years, EU scholars have taken note of the need for more research focused on the way the EU works at the UN outside the Security Council.<sup>2</sup> Several excellent studies have recently concluded that EU member states are increasingly speaking with one voice, especially on human rights issues.<sup>3</sup> The EU has been promoting a unique and very progressive normative agenda in New York and Geneva, spurred on by the adoption and

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<sup>2</sup> Paul Taylor, "The EU in the Economic and Social Arrangements of the United Nations System," *European Political Economy Review*, Vol. 1 No. 1 (Spring 2003), 56-64.

<sup>3</sup> Knud Erik Jorgensen and Katie Verlin Laakikainen, "The EU @ the UN: Multilateralism in a New Key?" Paper prepared for presentation at the ISA Annual Convention, San Diego, California, 2006. Katie Verlin Laakikainen and Karen E. Smith, eds., *The EU at the UN: Intersecting Multilateralisms* (New York: Palgrave, 2006). Paul Luif, "The EU Starts to find its voice in New York," *European Affairs*, Summer/Fall 2003.

enforcement of these progressive norms in Brussels and at the ECHR. The present study seeks to determine the effects of this agenda on the international institution of human rights, and on international society. The broader question we seek to answer is whether an increasingly unified and assertive EU on the world stage is having a destabilizing effect on international order.

Will realist assertions be borne out as the emergence of Europe causes a shift to a new bipolar balance of power? Or does EU grand strategy represent something genuinely new: a civilian or normative power that primarily seeks the promotion of values and multilateralism? According to the European Security Strategy, *A Secure Europe in a Better World*, “The development of a stronger international society, well functioning international institutions and rule-based international order is our objective....Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority.”<sup>4</sup> Does the way the EU operates at the UN help or hinder these goals?

This study applies English School theory to analyze the EU’s rights agenda at the UN, specifically Barry Buzan’s “vanguard theory of international social structures.” The next section introduces the theory and the way it is applied here. The following section provides details of the case at hand: Europe’s agenda on the ECOSOC third committee during the period of 2001-2006. Then the study offers analysis, proposes findings and policy implications, and concludes with suggestions for further research.

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<sup>4</sup> *A Secure Europe in a Better World: European Security Strategy*, December 2003, 14.

## THEORY AND METHODOLOGY

The study of the EU's promotion of new norms on gender and the family at the UN presents a significant theoretical challenge. Essentially, it is a "levels of analysis" problem, since we are attempting to understand what is happening at the level of values and ideas, the inter-state or regional level of the EU, and the international level at the UN. Normative theory, institutional approaches, and grand theory have been used to examine the various levels. While the English School (ES) approach sacrifices the predictive qualities of the individual theories, it makes up for this in allowing us to examine the dynamics among the three levels. It also lends itself to historical analysis of trends in thought and institutions.

### ***The Legitimacy of International Institutions and The Stability of Interstate Society***

This paper uses Barry Buzan's recent adaptation of Martin Wight's model, building on the three traditions (realism, rationalism and revolutionism), accounting for the presence of interstate societies, and allowing for the rise and fall of international social structures. One of the "primary institutions" Buzan identifies in the contemporary context is international human rights.<sup>5</sup> Primary institutions come and go, and among past institutions are colonialism, congresses, messengers, and religious festivals. The point here is that human rights only very recently emerged as an international institution, and could very well go the way of bygone institutions under the right, or wrong, circumstances. The decline of colonialism brought destabilization of world order with the

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<sup>5</sup> Buzan calls international human rights a "primary institution" that derives from the "master institution" of equality of people. Other master institutions include sovereignty, territoriality, diplomacy, great power management, the market, nationalism and environmental stewardship. Among other "derivative" primary institutions are democracy, international law, multilateralism, humanitarian intervention, war, economic liberalization, and others. Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization*. (Cambridge: Cambridge University Press, 2004): 187.

emergence of so many new sovereign states, but its passing as an international institution is certainly seen as a positive event. The deterioration of the Congress of Vienna was also destabilizing but not so benign, since it was brought to an end by the First World War and brought the revival of great power politics. It has become a tenet of the ES that the presence of international society is evident by the number and strength of its institutions. In his recent work, Barry Buzan has also linked the strength of institutions<sup>6</sup> to the stability of interstate societies:

It seems safe to say that there will be a close relationship between where an international society is located on the pluralist-solidarist spectrum, and either what type of institutions it has, or how it interprets any given institution.<sup>7</sup>

Hence a society may have many institutions, but each nation may understand the institutions differently, give them different degrees of importance, and embrace them only at the elite level. This is the mark of a pluralist society, a realist world order marked by conflict, competition or at best coexistence. On the pluralist end of the spectrum, Buzan identifies behavior among states that is apolitical, power political, and coexistence. On the solidarist end, the behavior continues to range from cooperative, to convergence, and finally to confederalism.<sup>8</sup> In the case of solidarism, institutions such as human rights,

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<sup>6</sup> Buzan defines institutions within the English School literature as having “relatively fundamental and durable practices, that are evolved more than designed; and that they are constitutive of actors and their patterns of legitimate activity in relation to each other.” He further notes that Martin Wight said, “the institutions of international society are according to its nature’ which implies that institutions will be different from one type of international society to another.” Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization* (Cambridge: Cambridge University Press, 2004): 167-8.

<sup>7</sup> Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization*, 161.

<sup>8</sup> A power political society is essentially Hobbesian and is thin on institutions. The main institutions of coexistence are the balance of power, sovereignty, territoriality, diplomacy, war and international law. A cooperative interstate society will have the same institutions but “more elaborate criteria for membership, more stringent institutions concerning the sanctity of agreements, and greater restraints on the use of force.” Convergence implies “not only thick development of institutions across all the functions, but also extremely exacting conditions for membership.” And the move towards confederalism should bring not just

international law, and sovereignty are important, similarly interpreted, and embraced strongly by citizens and elites alike. According to ES logic, the more solidarist characteristics a society has, the more stable it becomes.

It is important to note that solidarist society is not compatible with coercion where such behavior is not legitimate. In the case of rights, solidarism requires their acceptance of norms by belief not coercion:

Interstate societies based on coercion will be less stable than those based on calculation, which will be less stable than those based on belief/identity...legitimacy is crucial to the stability of any political order.<sup>9</sup>

Furthermore coercion is also incompatible with stability in a solidarist society. Stability requires that the content of the rights be non-controversial, and deeply, even passionately held. Also, it matters who shares the values. Buzan notes that if

[R]uling elites support a value, but their citizens mostly oppose it, one finds the grounds for a tension between international and world society that so worries some English School writers. ...variations of this kind will make a difference to the stability of international society, opening up the possibility that even quite advanced, seemingly solidarist international societies may in fact be quite fragile, and vulnerable to sudden reversals...Thus a value such as human rights, or economic liberalism, might be quite widely held if viewed simply as a matter of government policy across a set of states, but be fragile because of the way it is held within some or all of those states.<sup>10</sup>

Further, the higher the number of shared values or rights also, the more evidence of solidarism.<sup>11</sup> And finally, Buzan also notes that “one would expect fewer institutions at the pluralist end of the spectrum and more at the solidarist end.”<sup>12</sup>

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“significant IGOs of the forum kind, like the UN, but also secondary institutions of a more integrative sort, like those in the EU.” Ibid., 194-195.

<sup>9</sup> Ibid., 253.

<sup>10</sup> Ibid., 155.

<sup>11</sup> Ibid., 157.

<sup>12</sup> Ibid., 190.

### *Three explanations for EU's effect on world order*

Buzan brings constructivism into ES thought by allowing for Alexander Wendt's notion of thickness and thinness of norms and institutions. To illustrate the difference, Buzan likens the world to a fried egg with one or more yolks representing thick, presumably solidarist, international societies. The egg white represents norms and values that are shared globally but only thinly. The yolk represents a society in which shared norms are many in number, deeply believed, and democratically adhered to. In fact, Buzan concludes that the EU is the world's thickest interstate society. In the transition or "thickening" process, certain institutions are downgraded or dropped.<sup>13</sup> Thus as the EU gets more cohesive, it will have an effect on the thickness or thinness of international institutions and thus on the stability of world order. Buzan urges ES scholars to explore what problems arise when interstate societies thicken, and he proposes three alternatives. According to Buzan, the integration of the EU and the assertion of its foreign policy will result in one of three alternatives:

- 1) A thickening in one part of the world will cause a second order pluralism or coexistence to emerge. This was the case in the Cold War in which a thickening on two sides of an ideological divide emerged. The United States and USSR did not all together abandon primary institutions, but there was certainly a thinning or move toward pluralism, coexistence;
- 2) A thickening in one part of the world will cause a thickening of institutions on the global level. If this is true, then one would expect to see the EU's approach to human rights cause an overall strengthening or thickening of the international human rights though a vanguard-led process.

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<sup>13</sup> Ibid, 195.

3) A thickening in one part of the world will cause a first order pluralism and destabilizing of world order. Buzan warns us that this is the prediction of his predecessors Hedley Bull and John Vincent. We propose that the first and third alternative is more likely than the second, and that the third is the most likely. We use the vanguard theory of international social structures to examine what is happening. Buzan likens the spread of Europe's values and institutions in the nineteenth century to a vanguard, and notes that coercion was a mainstay. He warns, "the danger of accepting vanguard explanations is well known from the Marxist experience...and the justification of violent means on that basis can be made by extremists of all sorts."<sup>14</sup> No matter how distasteful it is to admit, coercion worked in spreading the norms and institutions of present day international society.

#### ***Vanguard theory of social structures and the role of coercion and deception***

According to the vanguard theory, coercion must be minimal if the vanguard is to "thicken" human rights on a global scale. In order to assess the EU's effects as a vanguard for international human rights, we use the following questions from the vanguard theory: do states adopt the EU's new norms on gender and the family? If so, is this out of belief, calculation or coercion? Are the new norms contentious or not? Are there a growing or decreasing number of new norms shared? Who is adopting these new norms – elites alone, or also the citizenries?

Thomas Schelling famously observed that the power to hurt is bargaining power, and to exploit that is diplomacy.<sup>15</sup> Even though the EU security strategy renounces (and reflects the widespread belief that Europe has renounced) coercion in a turn to

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<sup>14</sup> Ibid., 223.

<sup>15</sup> Thomas Schelling, *Arms and Influence* (New Haven: Yale, 1966).

“multilateralism”, coercion remains a tool of international negotiation. In the hammering out of international human rights treaties, there are three main options:

- 1) Persuasion which relies on the merit of the objective, the reasonableness of the argumentation and the attraction to the value, norm, right or other objective;
- 2) Hard bargaining or soft coercion, such as the fear of the loss of financial inducements, or of reciprocity in voting. Another bargaining tactic common in the contentious milieu of human rights is the “bait and switch” of filling up draft documents with contentious language to divert the attention and energy of opposing coalitions and states.
- 3) Deception, when bargaining fails, by getting consensus on undefined language or phrases (Trojan horses) with the intent of re-defining them later with controversial meanings at an elite level.<sup>16</sup> In this study we have termed this “multilateral opacity.”

These can be used sequentially or concurrently. The EU finds coercion and deception necessary to get contentious new norms and rights into negotiated texts. Presumably, once contentious norms have gained acceptance by a large number of states and opposing states and blocks are successfully isolated, the EU can revert to persuasion to maintain momentum of advancing the new norms. Only then, when deception and coercion are no longer necessary, could we expect to see a global “thickening” of human rights a move toward solidarism in international society.

## ADVANCING NEW NORMS OF GENDER AND THE FAMILY

What follows are accounts that help assess the EU rights agenda and test it according to Buzan’s vanguard theory. To what extent has it helped promote the

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<sup>16</sup> The elite levels at which contentious norms are defined away from the delegations who negotiated the treaties include: the seven UN human rights treaty bodies, the UN Special Rapporteurs, and officials in UN programs and agencies such as WHO and UNFPA. Douglas Sylva and Susan Yoshihara, “Rights by Stealth: the Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion.”



institution of human rights, a more solidarist or Grotian international society at the global level, and a world order built around liberal economic values, territorial sovereignty, international law, and diplomacy?<sup>17</sup> Success or failure with regard to progressive gender and family norms will have ramifications for the larger European project. We shall see that there is an inherent tension between the two projects, and the EU is now even apparently willing to threaten or at least circumscribe essential elements of the initial project in order to promote the new project.

Using Buzan's criteria, this section examines to what extent the methods are adopted by the EU to promote these new norms coercive and are the new norms accepted by other states, and if so is a deep or shallow acceptance. It shows that the EU has engaged in a multi-faceted strategy, varying from persuasion to "soft coercion", but that these have had limited utility with the new agenda.

A third, more controversial approach has been used in recent years to circumvent strong opposition to some of the new rights agenda. It is relatively new and increasingly important form of soft coercion tailored to the evolving structural setting of the United Nations human rights milieu. We have labeled "multilateral opacity": the use of benign language in negotiated documents with the intent of redefining the terms outside the negotiation setting. The approach essentially requires the masking of the true intent of specific phrases within multilateral negotiations to promote progressive norms. This is necessary to gain the assent of nations that would otherwise be in opposition to those norms. We find this approach coercive in nature because of the masking function, which undermines openness and transparency in international negotiations, and forces member

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<sup>17</sup> Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization*, 222-225.

states to contemplate decisions regarding new national obligations based upon incomplete information, thereby creating the setting for various other forms of pressure to be applied.<sup>18</sup>

After nations assent to these opaque phrases, the EU can employ its mastery of the UN's deliberative process to establish the acceptable interpretations of the phrases, including its extensive investment of resources. This includes the 27 separate diplomatic staffs of member states, as well as member appointments to official UN positions in the Secretariat, as Special Rapporteurs, and to the UN human rights treaty bodies which act as interpretive and quasi-enforcement bodies.

There are certain phrases that the EU focuses upon each year in the General Assembly, such as "reproductive health services" and "various forms of the family exist." These phrases have never been defined at the General Assembly, and are at the heart of the strategy of opacity in the effort to promote new norms on gender and the family.

It is important to note that this approach runs counter to the now long-standing tradition of United Nations negotiations, a tradition that ties legitimacy of the emerging international social order to the depth of understanding of the assenting member states.

Perhaps more important still is that fact that a strategy of deliberate opaqueness runs counter to the demand and necessity for transparency in contemporary multiparty negotiations in which civil society and public diplomacy play an ever larger role.<sup>19</sup> One of the most enduring characteristics during the development of multilateral negotiation at

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<sup>18</sup> It has become clear, for instance, that the EU favors nations that assent to the phrases it advances through this strategy, and developing nations may feel pressure to assent in order to maintain aid levels from the EU, no matter that the phrases have not been adequately defined or expounded upon.

<sup>19</sup> Klaus L. Aurisch, "The Art of Preparing a Multilateral Conference," *Negotiation Theory and Practice*, J. William Breslin and Jeffrey Z. Rubin, Eds. (Cambridge: Harvard Program on Negotiation Books, 1999): 396.

the UN has been the carefully crafted – often excruciatingly carefully crafted – definitions of essential terms that will form the basis of new national obligations, from terms related to national sovereignty and to the legitimate use of force to matters of international social policy such as the scope and limits of parental authority contained in the 1989 Convention on the Rights of the Child (CRC). The strategy of multilateral opacity has thus reversed or even replaced the tradition of exactness in defining language in international treaties. This trend has brought with it important changes in the tenor and efficacy of international debate, certainly introducing additional elements of distrust and suspicion into today's multiparty negotiations.

One important reason that persuasion and even soft coercion have not been sufficient for the EU to succeed in advancing its rights agenda is cultural and religious barriers in much of the developing world. An increasingly assertive and self-confident Islamic block of nations now covering large parts of Africa, the Middle East, and Asia, and Christian nations in Latin America and Africa, both limit the attractiveness of the EU norms, which can even be conceived of as replacements for the traditional norms embedded within these cultures/religions.

Multilateral opacity is therefore needed – and its success has been decidedly mixed. This is essentially a strategy of deception, but it is also a form of coercion since it requires that nations accept the ill-defined or undefined phrases. But the EU's approach is therefore vulnerable to a countervailing strategy of definition-setting. The demand for definition and clarification comes from the EU's most consistent adversaries on the new rights agenda in addition to the Islamic block: the United States under the direction of the

Bush administration and the Holy See Mission to the United Nations.<sup>20</sup> There exist ample strategies of discovery or definition-setting that are effective in countering the EU's multilateral opacity and it makes the EU's current approach vulnerable and even risky. This is compounded by the increasing involvement of civil society in negotiations since the Cairo conference of 1994. After the publicity surrounding the controversial conference, there has developed a tradition-minded component of civil society that acts at the UN level to perform many of these same functions, with the goal of increasing transparency in international negotiations.

### ***Redefining family***

The two primary goals requiring multilateral opacity are redefinition of the family and promotion of reproductive rights. Since at least 2001, the EU has acted upon an internal consensus on how the very term "family" would be referenced by EU Member States and by the European Union rotating presidency. In almost all cases in which "family" arises in UN dialogue, the EU adds the clause "in all its forms" or "noting that various forms of the family exist."<sup>21</sup> These are the phrases that EU puts forward time and again during international negotiations on social policy.

This has proved more than just a semantic decision, or a symbolic nod to diversity; in 2004, during the celebrations of the tenth anniversary of the International Year of the Family, this position led the European Union to oppose a widely-supported

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<sup>20</sup> It is often the case that these states demand that the EU and its allies define the phrases that they seek to insert into negotiated documents, or that the United States and the Holy See educate other nations as to what the phrases could potentially mean in international law, or what they could mean to the compliance committees entrusted with the interpretative authority over UN conventions and treaties. Or it is often the case that the United States and the Holy See offer their own definitions for the contested phrases, usually asserting that they recognize the creation of no new human rights around the issues of family and gender norms (see, for instance, the recent US statements made at the annual Commission on the Status of Women).

<sup>21</sup> EU Presidency Statement, Women in Development, 6 November 2001.

General Assembly resolution. The resolution was promoted vigorously by the United States, however it did not reflect the evolving EU understanding of family by mentioning the necessary phrase “various forms,” and it was therefore opposed by the EU.

One of the EU presidency statements on the subject explains the EU’s decision to vote against the resolution:

The European Union recognizes the crucial role of parents, carers and families in improving outcomes for children and young people and the need to provide support for them to do so. We share the view of many in this room about the valuable contribution that families make to strengthening our societies and the need to develop policies to support their role. But for these policies to be successful, they must also be inclusive. Across the European Union, as in the rest of the world, families have changed and continue to change with time – illustrating the fact that a family is a living, dynamic entity. In this regard, the European Union believes that we must all continue to recognise this diversity, as we did at the various UN conferences and summits of the 1990s, and that our ongoing policy discussion and development should similarly continue to reflect the diversity of family forms. We regret, therefore, that this resolution fails to do so.<sup>22</sup>

What the statement obscures is that the resolution the EU opposed simply restated the longstanding conception of family that is found in most of the seminal UN documents – the very founding documents of the United Nations (and therefore the very founding documents of the successful solidarist project long sought after by European nations).

The phrase that the EU opposed in the GA resolution is, with slight variation, common to all of these documents: “the family is the natural and fundamental group unit of society.”

This is so even though the term is found in the Universal Declaration of Human Rights:

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.<sup>23</sup> The term is found in International Covenant on Civil and Political Rights (ICCPR): “The family is the natural and fundamental group

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<sup>22</sup> EU Presidency, Explanation of Position: International Year of the Family, posted 15 November 2005.

<sup>23</sup> Universal Declaration of Human Rights, Article 16 (3).

unit of society and is entitled to protection by society and the State”.<sup>24</sup> And it is found in the Convention on the Rights of the Child: “Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”<sup>25</sup> The EU’s new definition therefore departs from negotiated treaty language and it must therefore break consensus to introduce the new language.

***Breaking consensus to advance new norms***

Few doubt that the EU takes this pathfinder role in international human rights seriously. In this case, it was willing to break consensus on the General Assembly resolution, thereby opposing a resolution introduced by the Group of 77 and China – the developing world – and backed by the EU’s most important worldwide ally, the United States. This is true even though the resolution merely repeated the language cited above, and even though the resolution would have had no major impact on international programming, since it possessed almost no operative language. The rather limited intentions of the drafters of the resolution was obvious even at the time, as a United Nations Press Centre news release makes clear: “Qatar’s representative, speaking on behalf of the ‘Group of 77’ developing countries and China said the main purpose of the text was to recognize the celebration of the Year, and to commend the positive responses and efforts of Member States and international agencies to promote the aims and principles of the Year.”<sup>26</sup>

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<sup>24</sup> International Covenant on Civil and Political Rights, Article 23 (1).

<sup>25</sup> The Convention on the Rights of the Child, Preamble.

<sup>26</sup> United Nations News Centre Press Release, GA/10311, 12 June 2004.

In other words, the resolution was one of a myriad of symbolic resolutions the General Assembly puts forward every year, which are passed and then promptly forgotten. The resolution was merely to “recognize the celebration of the Year.” Nor was there any real threat that the resolution, if passed, would have possessed any particular standing with regard to international law, or would have set any sort of important international legal precedent. Since it was passed three years ago, it has not once been referenced in any major international forum where family was being discussed. In fact, the momentary prominence the resolution gained was specifically because the EU opposed it. Therefore, the EU did not need to fight this battle and risk alienating allies. It could have let the resolution pass and fade from memory in the way most member states react when on the losing side of UN negotiations. This indicates that the values or interests at stake in the negotiations are considered to be so important that it is worth standing up for them, even in defeat, and worth upsetting consensus – the fuel upon which the United Nations runs – and the fuel that will push the international social structure towards the solidarism so favored by the EU.

According to EU statements this move was made in the name of the diversity of family forms – but the meaning of this is unclear from those same statements. The question therefore arises: what caused the EU to go to such lengths in this case. After all, the diversity of families is nothing new. Divorces, deaths, disruptions occur often, and the resulting varieties of family forms are recognized globally. Nor can this represent an EU embrace of some kind of sweeping and unlimited relativism of family forms, since there are some kinds of diverse families, such as families based upon child-marriage, that the

EU certainly does not support.<sup>27</sup> Not surprisingly, most analysts have concluded that the point of highlighting, repeatedly and with such vigor, that “various forms of the family exist,” is to promote progressive norms centered upon homosexual marriage and reproductive rights. The EU statement, issued by the delegation of the Netherlands, on the day of General Assembly debate on the proposed resolution for the tenth anniversary of the International Year of the Family, confirms this contention. First, as reported by the United Nations News Centre, the EU reiterates its recognition of the diversity of family forms:

In different cultural, political and social systems, various forms of the family existed, he continued, adding that, although the family was indeed society’s ‘basic unit,’ its concept and composition had changed over time, illustrating the fact that a family was a living, dynamic entity. Within the European Union, for instance, there had been a substantial increase in the number of single-person households, and by the year 2025 such households were projected to exceed 60 million – almost one third of all family structures.<sup>28</sup>

Next, the EU illustrates the types of families that do not fit into the legitimate range of such diversity:

While recalling that marriage should be entered into only with the free and full consent of the intending spouses, the European Union would express concern at the negative implications that might result from early marriages, in particular with regard to early child-bearing maternal mortality....He also stressed that families needed to provide a safe environment for children, and that family violence, under any circumstances, in any country could not be treated as a private matter.

Domestic violence, including marital rape, needed to be criminalized, and child abuse needed to be eradicated.<sup>29</sup>

Finally, the EU expounds upon how the legitimately constituted family diversity should be expanded, first, with a rather subtle insertion of “sexual orientation” on the list of

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<sup>27</sup> The EU has spoken out repeatedly against child-marriage; see, for instance, the EU Presidency Statement, Rights of the Child, 14 October 2005.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.



attributes that cannot rightly be used by the state to limit an individual's right to marry and found a family:

Here, he stressed that every individual of full age had the right to found a family: it was not up to the State to impose limitations based on race, nationality, religion, sexual orientation or any other status.<sup>30</sup>

Needless to say, such an insertion would constitute a revolutionary expansion of the UN-recognized "right to marry." For instance, the Universal Declaration of Human Rights states: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."<sup>31</sup> Not only has the EU added sexual orientation, but it has also added the phrase "or any other status," thereby implying that there are no legitimate grounds for a state to deny two (or perhaps more) people the right to marry. This has led opponents of these norms to argue that the EU is actually attempting to promote a radical redefinition of marriage, and to do so on a universal scale, by taking the first, and seemingly innocuous step, of convincing the rest of the world to acknowledge that "various forms of the family exist."

### ***The promotion of reproductive rights***

The EU asserts that this emerging diversity should be protected and promoted by a universal recognition of sexual and reproductive rights as well:

In addition, he stressed the need to support international action towards the advancement of women and reproductive health and rights. Improving young women's ability to choose when and how often to have children was the basis for creating strong families and protecting their own families' health.<sup>32</sup>

Reproductive rights has become the most contentious subject in international social policy of recent times. It has been one of the EU's most enduring strategies in recent

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<sup>30</sup> Ibid.

<sup>31</sup> Universal Declaration of Human Rights, Article 16.

<sup>32</sup> United Nations News Centre Press Release, GA/10311, 12 June 2004.

years to elevate reproductive rights language into a UN document such as a convention, thereby solidifying and expanding the advances made in the 1990s, when much of the sexual and reproductive rights agenda was first included in United Nations conference documents like the outcome documents of the International Conference on Population and Development (Cairo, 1994) and the Third World Conference on Women (Beijing, 1995).

In essence, the EU has strived to promote the legal status of the language, to move the language from soft law documents (conference programs of action, for instance) to hard law documents (conventions). The enumeration of this intention has become an annual goal at the annual Commission on the Status of Women (CSW), with the EU announcing the need to turn the conference recommendations and national commitments into binding guarantees – into international human rights. In 2005, therefore, the EU stated:

Until the Cairo Programme of Action is implemented in its entirety, including by improving standards of maternal health and guaranteeing full access to the complete range of sexual and reproductive health services as agreed at Cairo, mothers will be unable to provide adequate care and support for their children, condemning them to the poverty and ill-health suffered by their parents.<sup>33</sup>

In 2006, the EU stated: “As stressed in our statement for CSW, gender equality cannot be achieved without guaranteeing women’s sexual and reproductive health and rights in accordance with the ICPD Cairo Agenda.”<sup>34</sup> Again, multilateral opacity is required because the EU’s adversaries habitually suspect that the EU is attempting to elevate vague reproductive rights language into hard law documents in order to establish a universal right to abortion on demand. These suspicions are aided by the fact that

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<sup>33</sup> EU Presidency Statement, Advancement of Women, 11 October 2006.

<sup>34</sup> EU Presidency Statement, Advancement of Women, 9 October 2006.

attending the conferences are lobbyists from major abortion services providers such as International Planned Parenthood and Marie Stopes, which openly endorse the inclusion of the EU language.

***Diverging with the United States on the content of the rights agenda***

Ironically, the EU was most successful when it partnered with its most fierce opponent today: the United States. Under the Clinton Administration during the 1990s the United States and the EU pursued complementary positions on these issues. The EU has proven much less successful during the past decade, and the opportunities offered by the tenth anniversaries of Cairo and Beijing, opportunities to hold the type of successor conferences so common at the UN, were not even taken, with some of the EU's allied non governmental organizations (NGOs) admitting that it would be fruitless, perhaps even damaging, to hold such conferences with the presence of the Bush administration at the United Nations. It would prove difficult to lead the world on these issues, not only without the United States at its side, but in the face of determined opposition from the United States. EU member states seemed to sense this possibility at the first major UN social policy event at which the Bush administration participated, the Special Session on Children of 2001. According to the EU Presidency Statement, the EU was not only concerned that it could fail in advancing the cause of the conferences of the 1990s, expanding the recommendations and promises that recognized the new family and gender norms into rights, but that the Bush administration could manage to roll back the outcomes of the conferences themselves.

Although the United States is not mentioned by name in the following quotation, the United States was the major antagonist who could “call into question” the conference documents:

The EU will unstintingly work to ensure that the rights to reproductive health care and services for boys and girls, rights accepted in all the basic documents of the major UN conferences, are not called into question in the final document of the Session.<sup>35</sup>

Interestingly, the only significant policy difference between the United States and the EU at the Special Session concerned whether the outcome document would recognize that adolescents possessed a right to “reproductive health services.” Again, it was on the most controversial subject that the EU chose to make a stand and to reject compromise, as well as to risk consensus. It was also the most poorly defined – the EU rejected repeated calls from the United States, as well as from developing nations, to define the term “reproductive health services,” which is perhaps one of the most glaring examples of the soft coercion of “multilateral opacity,” of seeking nations to adopt open-ended obligations.

### ***Divergence on the meaning of international law and norms***

Other significant differences between the United States and the European Union concerning family can be discerned from the United States statement during debate on the General Assembly resolution noting the tenth anniversary of the International Year of the Family. Perhaps surprisingly, it is the United States hewing closely to the longstanding UN understanding of family as found in such documents as the Universal Declaration and the International Convent on Civil and Political Rights (and therefore hewing closely to the original European liberal project), while the EU is attempting to

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<sup>35</sup> EU Presidency Statement, the Rights of Children, 22 October 2001.

push the UN in new directions that threaten to alienate large numbers of UN Member States. According to UN account of the debate, the U.S. representative said that,

The State did have a role in strengthening families, he added, but it must be recognized that the family predated the State as an institution, and existed apart from the State. The State must recognize and acknowledge the family's rights and defend and protect the institution of the family.<sup>36</sup>

Echoing the original UN conception of the family as the "natural" group unit of society, the US under the Bush administration holds that the family must be protected by the state; part of that protection must be considered family insulation from interference from the state, itself: "Yet, while the Government should provide a social safety net, the limits of State responsibility must be recognized."<sup>37</sup>

The EU, on the other hand, contends that the family is not beyond state scrutiny; the EU is interested in the rights of individuals, and the protection of those rights, whether those individuals live within families or not. The delegation of the Netherlands put it this way: "Everyone also needed to ensure the full enjoyment of all human rights and fundamental freedoms by all family members."<sup>38</sup> These conceptual differences concerning family are profound and extensive. According to the United States, government should establish policies to help families to exist on one salary (with the implication, unstated, that children do best with one parent in the home):

Given this understanding of the relationship between the family and the State, the principles that should guide governments in their family policy should remain focused on efforts to create conditions that allowed strong and healthy families to thrive, including keeping the tax burden on families as low as possible and attempting to ensure that both parents were not required to enter the workforce to maintain a decent standard of living.<sup>39</sup>

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<sup>36</sup> United Nations News Centre Press Release, GA/10311, 12 June 2004.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

The concern for the EU, on the other hand, is that family may keep adult members of the family, especially women, from being able to pursue professional careers:

Further, each partner must have the right to choose a profession or employment suited to his or her abilities, qualifications and aspirations, as provided under the Convention on the Elimination of All Forms of Discrimination against Women.<sup>40</sup>

The EU fleshed out the policy implications of this position in 2006, when it stated:

The European Union has focused on women's experience of work and how to address the many practical challenges in this area. These include, for example, improving women's employment rates and tackling women's unemployment, the gender pay gap, sex segregation in the labour market, the unequal share of the burden of unpaid labour between women and men, and gender-specific inequalities in decision making.<sup>41</sup>

The United States considers women and men, mothers and fathers, to have complementary roles in the family:

The government should recognize the unique and irreplaceable contributions made by both mothers and fathers to children's development, and also promote healthy marriages and the two-parent family.<sup>42</sup>

The EU statements, on the other hand, assert that the roles of mothers and fathers are socially constructed, and therefore the highest form of justice within the family is complete gender equality, and the EU is willing to contemplate potentially extensive government intervention into families, culture, and the media in order to achieve this gender equality. During the 2004 Commission on the Status of Women, the EU stated that the world community had to enlist all of civilization, including men and boys, to transform masculinity in order to liberate women and to achieve gender equality:

The European Union emphasizes that the full enjoyment of all human rights by women is crucial to the achievement of gender equality and sustainable development and peace. However, the goal of gender equality cannot be achieved by focusing our strategies and practical work on women only. Therefore, the

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<sup>40</sup> Ibid.

<sup>41</sup> EU Presidency Statement, Advancement of Women, 11 October 2006.

<sup>42</sup> United Nations News Centre Press Release, GA/10311, 12 June 2004.

European Union emphasizes the importance of also addressing and changing discriminatory male behavior and attitudes and underlines the crucial role of men and boys as partners in promoting gender equality. The achievement of gender equality is now clearly seen as the responsibility of society as a whole, which needs to fully engage men as well as women. Clearly, there are many aspects to the role of men in promoting gender equality in society which range over culture, socialization processes, the media, educational and gender policies....Linked to this challenge are negative male attitudes to women and girls, and understanding of masculinity which are still often characterized by gender stereotyping that in extreme forms can manifest itself in sexual harassment of women and violence against women and girls. *The European Union believes that there must be a fundamental shift in society's perception of the roles of both women and men.*<sup>43</sup>

Thus, the scope of the EU rights agenda is a change of mindsets that in some cases requires states intervention and enforcement to achieve. In other words, the EU is willing to contemplate limiting many of the fundamental freedoms enumerated in the original UN founding documents in order to promote its new progressive and gender norms. One United Nations document often cited approvingly by the EU, called the International Guidelines on HIV/AIDS and Human Rights, actually calls for sweeping and extensive government control over the media, religion and the family, itself, in order to establish *a fundamental shift in society's perception of the roles of both women and men.*

### ***A widening cultural divide in the West?***

From this investigation, it is apparent that the EU is willing to court controversy, and to threaten consensus, in order to promote its conception of family in the form of new and expanded international human rights. The European Union is willing to upset major negotiations in order to push for this agenda, even if the negotiations do not at first appear to be closely related to these issues. Such was the case when the World Summit for Children came to revolve around a battle over the inclusion of a right to reproductive health services for children. Perhaps more importantly, the negotiations over the

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<sup>43</sup> EU Presidency Statement, Commission on the Status of Women, 1 March 2004.

proposed convention on the rights of people with disabilities, the first major hard law document on social policy since the Convention on the Rights of the Child (1989), also hinged upon the inclusion of reproductive and sexual rights language.

In this regard, the European Union has sought to establish a new, albeit informal, block of EU values allies. This block includes most nations of the developed world, with the most ardent supporters being nations such as Canada and New Zealand, as well as some Latin American and African nations, most notably Brazil and South Africa. If this values advocacy is intended to gain the EU a new leadership position at the United Nations, in this regard it has succeeded, as many of these countries routinely look to the EU for guidance on family issues.

By its own measures, the EU has not succeeded in establishing these new human rights in support of its current conception of the diverse family. When the EU and its allies fought for adolescents' rights to reproductive health services during the World Summit for Children, the EU could not answer repeated questions from nations, including the United States, to define what the phrase included. When the Canadian delegation admitted that the phrase would include a right to abortion for girls, it was swept from the document in a sea of disapproval from the United States and a large proportion of the developing world, most notably the nations of the Organization of the Islamic Conference (OIC). With regard to the Convention on the Rights and Dignity of People with Disabilities, the EU and its allies did manage to include some language pertaining to sexual and reproductive health, which seems like a victory, but only after the Chairman of the convention process had to repeatedly reassure many wary delegations that such



language would create no new international rights, thereby making it appear to an EU victory devoid of much legal significance.

It does not appear that the current approach can serve to strengthen the larger Grotian project still formally endorsed by the EU of promoting liberal norms and the rule of law.

The tension between building a Grotian world order based upon deep belief in international law and the coercive approach necessary to promote the new norms as international law is strong and growing stronger. Circumstances may dictate that the EU must make a choice between the two projects and to choose to support a now-outdated or limited international consensus (that does not gibe with current gender and family norms in Europe), or continue to pursue the new normative project, with its seemingly necessary multilateral opacity but which threatens the greater consensus and essential respect for transparency in international negotiations.

#### ANALYSIS & IMPLICATIONS

This study set out to determine the effect of the EU's rights agenda upon the international institution of human rights and the resultant effects on interstate society. It finds that the EU agenda is increasingly contentious in content, and therefore requires an increasingly elitist and coercive approach to implement it. The result is that the overall number of shared norms in this regard has diminished in recent years. The EU agenda seems to have caused a strengthening of the countervailing institution of sovereignty, in the form of increased regional groups blocking attempts to spread contentious norms. This appears to have caused a weakening in the institution of human rights. According to the vanguard theory of international social structures, the sub-global society of the EU

should have been able to thicken or strengthen the global institution of human rights.

What happened?

***A move to pluralism.*** The situation is indicative of a pluralist world order in which weaker states typically rely on sovereignty and international law to protect them from stronger states. And stronger states can ignore or bend the rules to suit their interests. Said another way, it could be argued that both the United States and the EU are each using the international institutions that favor the achievement of their interests. For the United States it is the institution of war, and for the EU it is the institutions of human rights and international law. No doubt the uses of these institutions will have an effect on their legitimacy in the future, just as the two world wars and the horrors of the holocaust decreased the legitimacy of war for Europeans and gave rise to human rights.

***Multilateralism and coercion are not mutually exclusive.*** The second issue with the EU approach is that it is essentially coercive and lacks transparency. While this certainly is not associated with the use or threat of force, it is nonetheless clear that other states are not adopting the EU arguments by “belief.” While the EU at the UN reflects the broader EU commitment to acting in the world through effective multilateralism, this study finds that multilateralism and coercion are not mutually exclusive. In the context of contemporary diplomacy, this is seen in the move away from transparency and toward an elitist reinterpretation of existing rights and enforcement of those interpretations through various means.<sup>44</sup>

***Decline of the institution of human rights.*** The rise of human rights among the Western powers and globally began with the framing of the UDHR in 1948 and probably lasted

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<sup>44</sup> See Douglas Sylva and Susan Yoshihara, “Rights by Stealth: the role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion,” *National Catholic Bioethics Quarterly*, Vol. 7 No.1 (Spring 2007).

until the negotiating of the covenants on political and social rights in the mid-1960s. Between 1966 and the negotiation of the CEDAW treaty in 1979, fissures in the Western international society became apparent. By the time of the Cairo and Beijing conferences of 1994 and 1995 these fissures appeared as fractures in understandings about the content of international human rights regarding the family. Since 1995, a further deepening of the divide has become apparent, and this study has shown a widening of that divide since 1995 by examining the way the controversy over family rights between the EU on one hand and the United States, the OIC and other states and transnational actors on the other. *Cross currents of sub-global and global IS.* Similarly, the “thickening” or move toward solidarism of the EU is contrasted with the “thinning” or move toward pluralism regarding international human rights during the same time period (1948-present). It appears, then, that the vanguard theory does not fully explain what is happening at the global level unless it is adapted to account for negative consequences. That is, instead of a sub-global society strengthening aspects of that society on the global scale, the contentious content and coercive means used to spread the sub-global norms weaken or “thin” the institution globally. Thinning of institutions, according to ES scholars, is evidence of a more pluralist global order. Hence, it appears that Bull and Vincent had it right.

#### CONCLUSIONS FOR FURTHER STUDY

Barry Buzan’s vanguard theory of international social structures proposes that a very strong sub-global society with a shared culture/civilization can strengthen rather than weaken aspects of that society on a global scale.<sup>45</sup> Buzan notes:

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<sup>45</sup> This is what many believe happened in the nineteenth century, when Europe, thickened by shared Christian/European culture spread interstate society itself throughout the world and dominated the

Whatever the mechanisms and whatever the rationales, the effect is one of a sub-global vanguard leading a global development. In the first, classical round of this process, the main effect was to expand Westphalian interstate society from Europe to global scale. In the second phase, now in its early stages, the main attempt will be to increase the number and depth of shared values.<sup>46</sup>

This study illuminates the possibility of a thinning of that shared Western/Christian culture. One might conclude this from observing the EU's need to repeatedly ally itself with China, Brazil and other non-Western states in order to gain momentum necessary to promote the new rights agenda while having to distance itself, in outright opposition, to the United States. According to Buzan's vanguard theory, the result of this weakening of the Western alliance is global instability:

If it fails badly, by seriously dividing its core, or by pushing too hard on contested values (most obviously democracy, human rights), or by failing to deliver promised effects (e.g. economic development and better distributed wealth), or by delivering damaging side-effects...it could give rise once again to oppositional sub-global interstate/international societies.<sup>47</sup>

We must ask at this point how much the contentiousness and divisiveness of the new rights agenda really matters. Does it have spill over effects into grand strategy, or do states compartmentalize? Many of the states at sharpest odds with the U.S. in matters of sexual and family norms (U.K., Canada, and New Zealand) are allies in the War on Terror, for example. Does this indicate that gender and family norms are of little consequence at the highest levels of EU leadership? Even though security strategies are often thought of as rhetorical and even propagandistic, it is puzzling that human rights

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international system. Spread of norms and institutions was often coercive, and the values were not necessarily internalized by the world's citizens. By 1945 the two world wars brought an end to European imperial expansion, and led to significant changes in the primary institutions. This includes the fall of colonialism and the rise of sovereign equality of states and human rights. These two institutions have been in tension ever since their rise. And the rise of multiculturalism in the post-colonial period, particularly in the UN, has been a major indicator of the cohesiveness of international societies since 1948.

<sup>46</sup> Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization*, (page).

<sup>47</sup> *Ibid.*, 225.

and multilateralism feature so centrally in the EU's most recent security strategy if that is true. Either way, the current rights agenda seems out of step with the stated EU foreign policy goals.

Another variable is trend in thickening or thinning of Islamic culture, one of the main counterweights and obstacles to the EU agenda. The EU has made some advances in promoting sexual and reproductive rights in Muslim countries, but has encountered a backlash from the region on homosexual rights. The stiff opposition of the United States under the Bush administration will invariably end in 2009. Whether a Democratic or Republican White House replaces the Bush administration, 2009 will no doubt find the EU with an ally or less fierce opponent in its rights agenda, and thus the EU could very well make significant gains in codification of the new norms. One could therefore regard the next few years as a turning point for the EU's agenda. A united front from the Western countries, even if for four years, would likely create significant animosity in OIC states and a strengthening of anti-Western sentiment.

More research into the causes and effects of this situation will help. Barry Buzan once argued that Martin Wight over-emphasized the role of coercion in international society.<sup>48</sup> Yet coercion is too often downplayed in the study of norm dynamics. It is time to bring Wight back in, especially the study of his third tradition, the revolutionist tradition, with its movements of "subversion and liberation". Present day rights enthusiasts bear the marks of the third tradition in the way the norms they promote are often at odds with established cultural and religious traditions, in the way they take on a religious zeal, and in the way they often seek the end (establishing the rights) without due

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<sup>48</sup> Ibid, 6-15.

regard for the means (preserving the institution of rights).<sup>49</sup> For Wight, who believed the notion of international society very closely tied to that of natural law, the post war era was a move away from Grotianism and toward realism and revolutionism. This study finds that resurgence of revolutionism deeply attached to, perhaps imbedded in, the institutions of Grotianism.

Future scholarship should better account for the truly normative or moral dimension of the dynamic of social structures on the international level. We believe Buzan's vanguard theory could be a useful way to explore this relationship and to further account for the effects of EU integration and norm dynamics on the broader institution of human rights and international society. This will require Wight's keen insight into competing ideologies and Buzan's extensive work with respect to social structures and institutions. Such a project may also help find ways to mend the widening breach among Western powers in their respective rights agendas.

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<sup>49</sup> Martin Wight, *International Theory: The Three Traditions*, (London: Holmes & Meier, 1992).