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European Union: a "Conditioned Normative Power", the campaign against death penalty in China and the Philippines

Valentina Marino

Coordinator of PhD
Prof. Fulvio Attinà
Full Professor of International Relations

Tutor
Prof. Francesca Longo
Full Professor of International Relations

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"Mon corps est aux fers dans un cachot, mon esprit est en prison dans une idée. Une horrible, une sanglante, une implacable idée! Je n'ai plus qu'une pensée, qu'une conviction, qu'une certitude: condamné à mort!"

Le dernier jour d'un condamné (Victor Hugo)

Introduction

The aim of the present work is to demonstrate that the European Union's power variation, both in terms of nature –*puissance*- and in terms of power exercised– *pouvoir*, is the variable that best explains the EU's success or failure in a specific area of its human rights policy: the campaign against the death penalty. This topic gives rise to at least three interconnected questions:

a) How many forms can the EU's international power take?

b) How does this power vary in relation to third countries? And finally,

c) How do these different forms of power interact with one another?

This analysis will lead to the definition of the European Union as a Conditioned Normative Power (CNP) in the global system. *A Conditioned Normative Power is an actor whose "ability to shape conceptions of 'normal' in international relations" (Manners' first definition of Normative Power Europe 2002:239) doesn't rely on its intrinsic features, but is influenced by the characteristics of the actor it faces and by the type of the relations established. A conditioned normative power is a power by relation and not by nature."*

To address the three questions proposed, it has been decided to focus on two Asian countries: China and the Philippines. The reasons for this choice will soon be addressed.

The interest in the European Union nature is not new, and many scholars have tried and are trying to address the puzzle of the identification of the nature of the EU. The resulting debate has become more articulated since the International Relations theory (IR) began dealing with EU studies.

The European Union's actorness and the presence/absence of its power have been debated by all different IR schools of thoughts. This work is focused on the theory of power, on how the IR theory has used and understood the concept of power and, finally, on the variegated application of the concept of power to the European Union.

The case study of EU influence on the campaign for the abolition of the death penalty in the two given countries was chosen to demonstrate the usefulness of the new definition

proposed. The decision to focus on the death penalty campaign is linked to three main considerations:

1) The high (significant) value in terms of states' resistance in being influenced in the domain of internal penal law issues;

2) The low impact of this national policy aspect on the interdependence between countries;

3) The conspicuous number of documents and activities the EU produces on the topic.

The first point stresses the peculiarity of the death penalty case and, as a consequence, the difficulties in studying it. The death penalty issue has a strong normative meaning *per se*. It implies a judgement of value on what is good and what is bad for a state to do. It is here important to recall that the imposition or abolition of death penalty belongs to the dimension of state sovereignty, which is by definition extremely impermeable. It is possible to say that the death penalty issue is the symbol of state sovereignty, and of a state's capability to place itself above the law; in his reflection on the use and abolition of death penalty, Jacques Derridda takes the definition of sovereignty as elaborated by Schimitt, and he describes it as "the capability to decide the exceptions and the right to suspend the law" (Deridda 2004:199). The use of the death penalty holds a symbolic meaning, and its abolition means a reduction in deciding exceptions (when and how a state can deprive its citizens of their lives) and a partial abdication of the right to suspend the law. Consequently the *diminutio* that comes from the abolition of capital punishment can take the form of state weakening, both at the internal and external level. This reflection is not alien to China, which is constructing its domestic and international image on being a strong power actor.

The second point underlines the fact that the death penalty issue has zero impact on the interdependent dynamics between states: the abolition or preservation of capital punishment doesn't affect the mutual and reciprocal dependence between states as done, for example, by other issues related to the human rights field, such as the exploitation of workers.

In spite of this (third point), by producing a high number of documents on the topic the EU has demonstrated a strong interest in the topic, showing that it deems the topic very important. It will therefore be necessary to trace the normativity of the abolition campaign

from the European Union's side, focusing on how this campaign has started, on why and how the European Union has promoted it outside its borders –after an internal promotion– and on what kind of opposition it has faced.

The fact that the European Union has become a strong promoter of campaign against death penalty should not be taken for granted and the outcome of this promotion towards "the other" countries is therefore not easy to assess, just like it is not easy to evaluate the EU's role in the single countries' processes.

The empirical cases studied in this paper are compared to identify the independent variables that drive two different outcomes in the two case studies (China and Philippines) in relation to the dependent variable. i.e. the European Union's normative power.

These two case studies seem to suggest that the so called Normative Power Europe, i.e "the ability to shape conceptions of 'normal' in international relations" (Manners 2002: 238) is one of the forms of power that can be exercised by the European Union, and that it can only work under certain circumstances. This work investigates the variables that drive the success and the failure when attempting to transfer a norm.

The main result of the analysis -here anticipated- is the identification of two main variables that drive the permeability or resistance to the normative power:

A) Economic relations that intervene between EU27-China and EU27-Philippines;

B) Normative incoherence at the level of the Member States, who would rather not damage and, therefore, pursue their economic interests rather than developing a consistent human rights policy, thus not paying attention to the whole European normativity.

The relevance of the countries' internal dynamics, such as the entity of the internal dissent and the familiarity with the norm proposed are other corollary factors that contribute to facilitating or hindering the permeability of normative promotion.

1.1 Thesis and research questions

The key thesis of the present work is that **the European Union's mixed power nature explains the outcome and the impact (success and failure) of the European Union's policy on death penalty in the time period investigated and in the geographical area selected (two Asian countries). The European Union is a "puissance" that exercises classic (not *sui generis*) forms of "pouvoir". Its normative form of power is constraint by other dimensions of power and it can only function under *certain conditions;*** the aim of this work is to identify the conditions and limits to normative power and to propose a revisited definition of the concept.

The main thesis generates the research questions.

Three of these questions are case-study oriented:

- What kind of power(S) has the EU exercised in China and the Philippines?
- How has the EU's mixed nature affected the outcome and impact of the death penalty policy?
- Which space is left for the Normative Power Europe in these two cases of success and failure? And which are the *conditions* under which it plays a role?

And three are theory-driven:

- How many forms can the European Union's international power take?
- How does this power vary in relation to third countries?
- How do these different forms of power interact with one another?

The empirical method used involves setting the main features of the European Union's power as derived from the EU's interaction with two Asian actors, China and the Philippines, in a specific area of the human rights policy: the campaign against death penalty since it was formally elaborated in 1998. The ultimate goal of this research is to reformulate the concept of normative power, which suffers from a low explanatory power.

The answers to the three theory-driven questions outline this work's main issue: *how many forms can the European Union's international power take*? It is argued that the European Union is able to simultaneously exercise different types of power: material and ideological power, hard and soft power, normative and strategic power.

***How does this power vary in relation to third countries*? The author supports the thesis that the EU's power varies according to "what is at stake", meaning that the variation follows the nature of the relationships between the EU and the countries selected.**

***How do these different forms of power interact with one another*? The author argues that the interactions between them depend on the external conditions and internal constraints rather than on one form of power being more predominant then the other.**

Concerning the case studies-oriented questions, the argumentation addresses the following logics: *what kinds of powerS has the EU exercised in China and in the Philippines*? The EU has exercised several and different forms of power and pressures toward these two countries; it has also suffered from some weaknesses, especially with China.

By grouping the last questions together (*How has this variegated nature affected the outcome and impact of the death penalty policy*? *Which space is left for the NPE in these two cases of success and failure*? *And which are the conditions under which NPE plays a role*?), the author will explain how the outcome and impact of a normative policy –such as the one on death penalty- has been affected by the interchange between different forms of power.

The general independent variable identified in this work states that *the normative dimension only prevails where the EU has a comparative advantage in terms of economic power and cultural affinity;* this means that the EU's normative lever (intended as the pressure exerted to lead the norm to be changed) only worked with a small power whose value dimensions were not too far from the European ones (Philippines). On the other hand, when the EU faced (and faces) a major power –in this case an economic super power like China– with completely different values, norms and normative dimension, the EU's normative lever was affected, and the outcome turned out very different from the Philippines' case. A coherent

normative power approach is extremely costly both in political and economic terms, and not always is the European Union able or willing to pay the bill.

According to the vision proposed, the NPE can be considered as a super structural form of power, which means that "its ability to shape conceptions of normal" works well in a contest of material power disparity (the EU being economically stronger) and value proximity. Material power similarity, competitiveness, and value diversity neutralise the effectiveness of the NPE.

1.2 Structure of the thesis

The structure of the present thesis follows a precise logical pattern.

The work starts with a wide overview and investigation on the concept of power. The analysis then moves on to how the same concept has been applied and used in relation to the European Union; afterwards, it zooms on the case studies of China and the Philippines; finally, the perspective goes back to large, in the attempt to elevate the case studies' conclusions to a general description of the European Union's behaviour.

More in detail, the first chapter, named *Investigation on power,* will analyse the literature on power; the different definitions and puzzles encountered in the debate will be presented in a *unique* table grouped in dichotomies (the power net); a new analytical dichotomy (introduced by the author) will also be presented. Finally, the chapter will be concluded with a specific section that presents how the main schools of International Relations have understood, thought and applied the concept of power.

In the second chapter, titled *Thinking the European Union's complexity, a research on the EU's nature and power*, the investigation will move on to the different definitions proposed to define the European Union as a power; the goal is to connect the general literature on power with the literature that has described the EU as an actor with power, to better catch the nuances of the EU's behaviour and to describe its nature.

The third chapter, *The human rights conundrum: engine or obstacle for a partnership?* represents the main empirical chapter of this work. In this section, the author has conducted an empirical study on the promotion of human rights by the EU in China and the Philippines, with a strong focus on the EU's promotion of the death penalty abolition.

The choice of these two case studies follows the logic of the most dissimilar cases: China and the Philippines show dissimilar features in several dimensions: these include the entity of their bilateral relations with the European Union, the proportion of the use of death penalty and the current position toward capital punishment (abolition/maintaining).

The methodology adopted[1] consists in the qualitative analysis of a combination of different kinds of data: these data are the documents stating how the EU is committed to a generic promotion of human rights and to death penalty abolition, the bilateral documents (EU-China and EU-Philippines) that treat the same topics *bilaterally*, and the economic indicators describing the bilateral economic fluxes.

Finally, the *Conclusions* recollect the considerations elaborated in the work and will attempt to connect the empirical results with the theoretical reasoning that will bring us to think the concept of Normative Power Europe in a new way. NPE needs to be understood in its relational dimension by underlining the conditions that prevent or favour a normative outcome. A reformulation of the NPE concept will follow, and the adjective "conditioned" will be used to summarise the theoretical achievements.

1 The methodology is explained in details at the beginning of the third empirical chapter.

Chapter I Investigation on power

"...as if the words had kept their meanings, the desires their directions, the ideas their logics; as if this world of things said and wanted hadn't met invasions, fights, robberies, tricks."

(Foucault 1977)

"the concept of power is perhaps the most fundamental in the whole political science"

(Lasswell and Kaplan 1969)

1.1 The classic dichotomies of power

"Power has always been the most fundamental concept in the study of politics. Many other concepts are also vitally important to understand the nature of politics, justice, culture, equality, class, rational choice and many more. But in the history of political theory and political science since their origins in ancient Greece, power has constantly stood out as the single most important defining conceptual issue." (Introduction in Goverde, Cerny, Haugaard Lentner 2000:1).

The concept of power is one of the most ancient, crucial and at the same time elusive concepts of the international relations theory, and of the whole political and social sciences fields (especially in political and sociological theory).

When analysing and presenting the concept of power, it is important to consider the difficulties that may arise, due first of all to the concept's centrality, and to the fact that a univocal definition of power is still missing. 'Power' can be said to be a controversial concept in the International Relations theory (Holsti 1964, Gilpin 1981, Waltz 1987, Mearsheimer 2001, Lukes 2007a 2007b). This is why presenting a brief overview of the power concept debate is

an important basic step of this dissertation. To address this purpose, the present work will create a *conceptual power net* in order to set up the power debate; in the writer's opinion, this figurative net will afterwards become useful in order to trace a behavioural profile of the European Union in the given circumstances, and to examine its relations with the other two actors chosen (China and the Philippines).

The level of analysis of the present work is in fact the European Union, understood as a global actor; without holding the peculiar features of a state, the EU presents some elements that allow the observer to consider it as a single actor, authorizing the onlooker to focus more on the elements of agreement between member states, rather than on the national interests which are –not rarely–responsible for the EU's fragmentation. It remains clear that this way of proceeding is pure scientific *fictio,* which is useful to highlight and isolate the elements the analysts judged crucial, without neglecting the complexity of the EU's actorness puzzle.

This chapter may serve as a preparation for the second chapter –where the concept of power will be applied to the EU as a "special actor", presenting all the different conceptual nuances that have been attributed to it (Civilian Power Europe, Normative Power Europe, and so forth); moreover, in the following empirical chapter it will be possible to show how general and detailed definitions of power may overlap in a context of complex relations between actors. A *ground* assumption of this work is the multi dimensionality of the concept of power, also explained as the impossibility of capturing multiple and multidimensional dynamics through simple and singular definitions of power. This chapter constitutes an essential step that will (hopefully) facilitate the duty to grasp the European Union's behaviour in human rights policies; as observed by the writer, this behaviour is frequently characterized, (and consequently better described), by different –though compatible– dimensions of power. The challenge is to find a *multiple* definition that will closely describe the EU's behaviour in the cases selected, as the author believes that "a consideration of power's polymorphous character will enhance and deepen theoretic understanding of international politics" (Barnett and Duvall 2005:40).

Aside from the vagueness of the concept, a second relevant difficulty resides in the fact that the primary and most important studies on the analysis of the concept of power came from

the observations of the power dynamics between individuals, and more in particular between people who govern and decide and people who suffer these decisions (Russell 1938, Dahl 1957, Kaplan and Lasswell 1969, Weber 1980 et al.). This means that a rich and conspicuous part of the academic debate was focused on the individual level and therefore, the debate it generated mainly belongs to the field of social and political theory Therefore, although it would be appropriate to start our analysis with analogies between power among individuals, this choice could bring the present research to deviate from its starting point; it has therefore been decided to focus on the exercise of power between macro actors, such as regional collective actors and the different combinations of them (following the needs dictated by the case studies proposed, EU 27- China, EU 27- Philippines), and on the different notions of power provided by the main IR schools, in order to understand what kind of power relations better describe the present case studies.

However, conscious that the aim of this work is not to conduct a philosophical investigation on the concept of power, the social and political theory of power debate will be mentioned only briefly here, recalling those crucial definitions which, though belonging to the individual level, also have a cascade effect on the IR debate.

The need to further investigate on this concept, and the choice of this multidimensional approach are not new in the IR field. In the past years, a group of scholars which have emphasised the need to further analyze this ancient key concept of political science, also by crossing the classic borders of the IR theories; each of them found different ways to solve the power puzzle (Baldwin 1980, 2002, Guzzini 1993, Barnett Duvall 2005, Berenskoetter and Williams 2007 et al.).

In order to create a coherent and logical *conceptual power net,* the following steps will be taken: first of all this work will present a taxonomy of the definitions considered and judged by the author to be the most relevant dichotomies in the formulation of power as a concept; secondly, it will be necessary to define how power is understood by the main IR schools of thoughts. It is clear that some elements may overlap, or rather they *need to* overlap, thus testifying how different understandings and perspectives may produce alternative

classifications and taxonomies; in the author's opinion, this strategy will help us trace the EU's power profile.

Before proceeding in the construction of the *power-conceptual-net,* it seems appropriate to address here a terminological shortcoming suffered by the English language. To pursue this goal, three different Italian words will be presented. These three words all translate into the single English word *power;* this analysis has been conducted with the help of the Hazon English-Italian dictionary.

While the feminine word "potenza" is used to express power as strength ("the economic power of a nation"), or to indicate a particular state or a group of states ("the Allied powers", or "the Great Powers of Europe"), the masculine word "potere" is used in the following ways: "to hold power", "executive, legislative forms of power", "I have power/I have no power", "economic, financial power".

Lastly, the word *power* is also used to express the feminine word "potestà", but since the same Italian word can alternatively be translated into the English "authority", for the sake of clarity in this work the second term will be used, when necessary.

"Potenza", "potere" and "potestà" are all contained in a single English word: power. The extreme importance of underlining the multiple meanings of the word *power* in different languages resides in the aim of better understanding what are we talking about, and to prevent avoidable misunderstandings.

Going back to the ancient Greek and Latin languages, it is observable how sophisticated shades of meanings were expressed by using different terms which all bring back to the English word *power.*

The usefulness and the need to refer to the ancient Greeks (and Latins) in a power analysis lies in the fact that power is strictly connected to human nature, which is stable no matter how the complexity and intensity of a social structure have increased during the centuries (Lebow 2007).

In the Latin language, two alternative words can be used to express different power dynamics: *potentia* and *potestas* (Lukes 2007b). According to Lukes, who refers to Spinoza's *Tractatus politicus* (1677), while 'potentia' is a symmetrical concept expressing the natural

capability to act and to exist, 'potestas' is an asymmetrical concept, which implies a relational dimension and can be expressed as 'power over (someone)'.

It is particularly interesting to notice how this ontological distinction between *potentia* and *potestas* is used by Ringmar 2007 to oppose realism and idealism. "Realists define power as *potestas*, and their world is made up of actors whose relationships are determined by the power each has over the other" (Ringmar 2007:197), a clear expression of 'power over'. "Idealists, for their part, define power as *potentia* and see world politics in terms of challenges that must be overcome and projects that much be achieved – peace, prosperity, democracy, and development" (Ibidem).

In the ancient Greek language more than one power dichotomy existed: these were *kratos* and *dunamis*, and *hegemonia* and *arché.* Two forms of persuasion (*dolos* and *peitho)* also existed, and all of them were strictly interlinked (Lebow 2007). "*Kratos* is something akin to our notion of material capability, *dunamis* is power exerted in action, like the concept of force in physics"(Lebow 2007:124).

Hegemonia can be translated with the Weberian use of the word "Herrschaft", which, –as shown later on– essentially expresses a legitimate form of power, a legitimate authority based on obedience, which needs an external conferring of a "right to act". On the contrary, the word *arché* is used to express power as a simple capacity, based on pure quantitative data and calculation of material resources, and it entrusts on both *kratos* and *dunamis.* Consequently, *arché* is more fragile than *hegemonia* and it is subjected to the same variations that the distribution of material capabilities may suffer from. The ancient Greeks already perceived the crucial role of persuasion in the context of power dynamics. They distinguished between *dolos* and *peitho*, where *dolos* is, normatively speaking, bad persuasion, the misleading one, the one that uses tricks to prevail; *peitho,* on the opposite, is the good persuasion based on clear arguments and driven by the aim of establishing cooperation (Lebow 2007).

A question arises from this consideration: why is it relevant to pay attention to the concept power as understood by the ancient people? The concept of power can be considered as a "primitive and contested term" (Lukes 2007:83). By using it we are dealing with a particular category of concepts, the basic ones, those that are not reducible to anything else.

This is the reason way any hypothesised and applied interpretation of power is based on a judgement, and it is therefore normatively biased (Lukes 2007).

Inspired by the "classics" for the construction of a conceptual-power-net, the present work will be based on a dichotomous structure, which means that the presentation of the multiple meanings of the power concept will be organized through dichotomies, which are here divided in two families namely the classic and the modern dichotomies. The ambition is to try and connect the elements of these different dichotomies, in order to create original connections between meanings.

So far, the dichotomies found are the following:

Kratos	Dunamis
Arché	Hegemonia
Potentia	Potestas
Peitho	Dolos

1.2 Modern/contemporary dichotomies

Moving on to the so-called *modern (and contemporary) dichotomies of power,* it seems appropriate to review those judged crucial by the author of the present work; the first classification is the one that differentiates between *resource power* and *relational power*; within the relational power family, another relevant classification differentiates between *hard power and soft power;* we then have the famous Weberian distinction between *Macht* and *Herrschaft; power as capacity* and power as *right to act (legitimate capacity)*; the difference between *power over* and *power to*; active and passive power; the elitist approach and the pluralist one, and the trilogy that considers the pluralistic approach as the first dimension of power, followed by a second and a third dimension. Finally, a new dichotomy will be introduced, namely *latent* versus *manifest* power. The usefulness of each single dichotomy for the case studies of the present work will also be explained.

1.2.1. Power-as-resource and relational power

The first branch of literature analyzes power as based on material resources and capabilities, and it measures it (power) by using the same material resources and capabilities as indicators. As will be recalled later, this view mainly represents the realist vision of the concept of power and has a clear international politics imprinting. At state level, the general proposition that can be drawn from this perspective is the following: state A is powerful than state B if its population is larger, if it is more extended and if it is well equipped in terms of both economic and military resources.

Morgenthau's masterpiece *Politics among nations* (1948) certainly goes in this direction. The book provides its reader with the best tools to understand the concept of power in terms of resources, describing in detail the characteristics of national power, from wideness of territory to population figures, from natural resources to military ones.

The second branch of literature explores the power concept in a different and alternative way by paying attention to its relational element: in this case, A exercises power over B if it is able to force B to do something that B would not otherwise do. It is therefore possible to measure power through calculating the probability that B will or will not perform a given action without A's intervention (Dahl 1957).

The book that clearly marks the differences between these two traditions is "Power and society" (Lasswell and Kaplan, 1969), where power is defined as "the participation in making decisions: G has power over H with regards to value K if G participates in making decisions that influence H's behaviour with regards to values K" (author's translation from the Italian version, Lasswell, Kaplan 1969:90). According to the two scholars, the concept of power must be understood as a triadic relation, as three are the elements that need to be identified in order to define power properly: 1) the actor who exercises power; 2) the actor who is subjected to that power; 3) the field in which this exercise takes place (1969:91).

Following the same reasoning, Oppenheim proposes a distinction between *exercising power* and *having power,* both intended in their relational forms. The former is defined as: "'P (a power holder) exercises power over R (a respondent) with respect to x (an action of R)' means that P influences or coerces R to do x" (Oppenheim 1978:589); the latter "'P has power over R's not doing x' means that P has influence over R's not doing x, or prevents R from doing x." (Oppenheim 1978:590).

How can the relational form of power be translated into the context of the international relations theory? More specifically, how can the previous definition be converted into the case study of the present work, which translates into: is the EU able to influence (or coerce) China and the Philippines to abolish death penalty? If it is possible to formulate and demonstrate a positive answer to this question, it also becomes reasonable to state that a sort of relational power dynamics exist between the EU and China or the EU and the Philippines. As proven below, however, these types of power relations are more complex than just described. To anticipate the complexity of this debate, it could be useful to explore the opposite question: do have China/the Philippines have the power to resist the EU's influence toward the abolition of death penalty? How? Is this game played in a single *battlefield* or in more than one?.

In his chapter on *Power and International Relations*, Baldwin (2002) identifies all the different dimensions he considers necessary to understand *what kind of power* and *how much power*. By considering the concept of power as a fragmented one, Baldwin (2002) identifies scopes, domains, weights, costs, and means as the five dimensions to analyse a power relation. These dimensions answer the following questions: in which field/sector/issues is the power relation taking place? Towards whom? How many probabilities of power success are there? What are the costs and values of these power relations? And what are the tools used to exercise power? (Baldwin classifies these as symbolic, economic, military and diplomatic means).

Consequently, even when the choice is to investigate on the second form of power– relational power– only[2], there is no unidirectional indication of which are the actors' possible tools to exercise power; we can therefore affirm that *the crucial element to understand power's nature resides exactly in the ways and modalities in which power is exercised.*

Example:

Actor A can threaten/force actor B to do something.

Actor A can persuade/convince actor B to do something.

In operative terms, it is easier to measure power understood in terms of resources than relational power. A good indicator of resource power can be the Gross National Product itself, the size of the territory, the population, and the military capability measured in terms of military resources available (numbers of soldiers, military equipment and so forth). And how do we measure the relational form of power? Through the probability of compliance, as well as through the rapidity of compliance of actor B, the carrots and sticks of actor A, and the extent of actor B's possibility to do otherwise (Baldwin 2002 cit. Dahl 1968 and Frey 1985, 1989).

To summarize, the analysis of the relational concept of power is marked by a structural problem of measurement. It is in fact more difficult to define and measure the effects of a persuasive or legitimate action of an actor toward another than to measure the comparison between their material resources.

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2 It is recalled here that, in the writer's opinion, the two conceptions of power are interdependent, which means that relational power can –and often is– based on power resources

1.2.2 Hard power and soft power: a false dichotomy?

A classic distinction within the nature of power is the one between hard power and soft power. 'Hard power' imposes itself through the use of mainly military, but also economic strength; hard power can be defined as "military prowess and economic accumulation" (Mattern 2007).

On the contrary, the so-called "soft power" is the one based on cooptation rather than coercion: the capacity of actor A to make actor B desire what actor A wants. (Nye 1990).

Is it however possible to argue that these concepts are really independent? Or is true that "soft power is ironically rooted in hard power"? (Mattern 2007:110) "Where attraction rests upon coercion, the logic of a distinction between soft and hard forms of power becomes unsustainable" (Ibidem).

The same author who elaborated the definition of 'soft power' has tried to clarify the use of the 'soft power' label explaining how the term, created for the IR field, can cross its borders and also be referred to individuals (Nye 2007). 'Soft power'- as originally elaborated by Nye- is based on three resources: culture, political values and on the foreign policy of a given country. (Nye 2007:164). For the purposes of this paper work, it is relevant to consider Nye's clarification of the links between economic resources and hard and soft power: "economic resources can produce both hard and soft power behaviours. They can be used to coerce as well as to attract... A successful economy is an important source of attraction" (Nye 2007:165).

Nye solves this apparent contradiction by reminding us of the importance to investigate on the fact that economic resources are sources of both hard and soft power. According to Nye, it is impossible to understand the difference between hard and soft power doing as if one represented the realist tradition and the other the idealism one: "there is no contradiction between realism and soft power. Soft power is not a form of idealism or liberalism. It is simply a form of power, one way of getting desired outcomes" (Nye 2007:170). Nye invites scholars to overcome the classic debate between realism and liberalism and to focus on those cases where hard and soft power can be studied as two complementary elements of a given strategy, which, if successful, can be named "smart power" (Nye 2007).

The importance of considering soft power as a concept that crosses the classic debate is extremely stimulating for this research, as is the idea that economic resources can be used both to persuade (soft-power) and to coerce (hard-power). How can the economic ties between the EU and China (EU and Philippines) be therefore explained? Are they soft or hard power ties? How do they influence (obstruct or stimulate) a normative issue such as the abolition of death penalty?

1.2.3 Influence and power: two different meanings?

Lasswell and Kaplan made a distinction between influence and power. They wrote that "political interactions between people and groups are constituted by models of *influence* and *power* that are manifested in and influenced by symbols and are stabilized in features of political practices " (Lasswell and Kaplan, Italian version 1969: 67, author's translation). They consider *power* as a form of *influence* presenting a hierarchical order between the two concepts, and they specify how the key feature to distinguish them is the element of coercion. The presence of coercion clearly marks the existence of a power relation, while the absence thereof indicates an influence relation between the actors.

If this distinction is valid, it also becomes relevant for our analysis on the EU's relations with China and the Philippines on death penalty policies: do the dynamics analysed have a power nature, or is it more correct to use the word 'influence'? Does the power dimension have to be considered exclusively toward the EU member states that have a clear obligation to abolish death penalty, or, on the contrary, is the generic concept of influence more suitable to express the EU's ability to deal with those countries that are not interested/included in the EU membership project? Does it become necessary to distinguish between successful influence (Philippines) and unsuccessful one (China)?

Does the decision to clearly mark a distinction between power and influence have a cascade effect on all the definitions presented in the following chapter? Would it more

appropriate to talk about Normative Influencer Europe or Civilian 'Influencer'[3] Union (and so forth) when the definition is applied to third countries?

[3] The word 'influencer' is here used to describe an actor with the ability to influence other actors.

1.2.4 *Macht* and *Herrschaft*: the Weberian vocabulary

It is here important to recall the distinction made by Max Weber, because it also has a spin-off in disciplines other than sociology. The analysis of the power concept represents the most political aspect of Weberian sociology. He clearly marks a distinction between *Macht* (potenza) and *Herrschaft (*potere). The former word is used to describe "any possibility for one's own will to prevail within a social relationship, even against resistance, no matter what this possibility is based on" (author's translation from the Italian edition, Weber 1980:51-2, first book). The latter, *Herrschaft (*potere), is "the possibility to find obedience among certain persons for an order with a specific content" (author's translation from the Italian edition, Weber 1980:51-52, first book). In both cases, the word "opportunity" can replace the word "possibility", as suggested by Berenskoetter (2007).

The two definitions belong to the relational power field: no matter where the opportunity resides, the existence of both social and relational dynamics is given for granted.
While Weber's first definition gives space to coercion, though it is not considered a cogent element (he writes "also against resistance" and not "only against resistance"), the second definition leaves the use of *force* and *coercion* aside, and the crucial element becomes the legitimacy of obedience. "Any real power relation implies a minimum amount of will of obedience, an interest (whether internal or external) in obedience" (author's translation from the Italian edition, Weber 1980:207, first book). This *Gehorsam* (obedience) and its consequent *Gehorchenwollen* (will to obey) depend on the typology of *Legitimitat* (legitimacy) present.

It is therefore possible to distinguish three different forms of "legitimate Herrschaft": rational *Herrschaft*, based on legal power; traditional *Herrschaft*, based on the legitimacy of traditions; and charismatic *Herrschaft*, based on particular individual features.
In all the three cases, there is a shift from the traditional aspects of force to psychological dynamics.

1.2.5 Simple capacity and legitimate capacity

The distinction between power as a 'simple capacity' and power as 'legitimate capacity' belongs to the broad category of relational power and is strictly linked to Weberian dichotomy. On one side there are those scholars who think about power as a "simple quantitative phenomenon... a kind of generalized capacity to act" (Hindess 1996). On the other side, there are those who understood power in a much more elaborated way that involves not only the capacity but also "a right to act" (Ibidem).

How do these two last dichotomies affect the present work? If properly translated, in IR dimension the legitimacy issue cannot be neglected, and many questions need to be answered: does the EU have the legitimacy (a right) to act in favour of the abolition of death penalty worldwide? Is the EU perceived as a legitimate actor by China and the Philippines when it comes to this issue? Or does this issue belong to the sovereignty dimension, which by definition is extremely impermeable, and considers illegitimate any attempt to break it?

1.2.6 Power over and Power to/ Transitive and intransitive power

These two dichotomies can be presented and analysed together because they both belong to the same discourse, though they differ in some crucial aspects. The first dichotomy proposed by Parsons (1963) considers 'power over' as a purely relational understanding of power, because it describes a given social relation where one actor prevails over another (power over someone). 'Power to', on the opposite, loses the relational element and focuses on the ability and capability to perform actions, and it shifts from the realm of the actual power to the realm of the potential power, power to do something.

Following Goehler's reasoning, it is not the distinction between'power over'and 'power to' that helps us capture the differences between Max Weber's and Hannah Arendt's definitions of power, but rather the distinction of transitive and intransitive power; consequently, he introduces a new pair of concepts.

Having already presented Weber's classic definition of power[4]and his distinction between *Macht* and *Herrschaft*, what can we say about Arendt's? According to Arendt, "power corresponds to the human capacity not only to act, but to act together. Power is never an individual attribute; it belongs to a group and it exists until the group remains united." (Author's translation from the Italian version,Arendt 1996:47).

After a quick look, it seems that Weber and Arendt embody the dichotomy 'power over (someone)' versus 'power to (do something)', though in reality Arendt's power is not only potential, but rather "it is power actualised through joint communication" (Goehler, 2000:42). Moreover, even if not immediately intuitive, Arendt's definition also includes a social relation, which clearly differs from the social relation as intended by Weber. Starting from this consideration, Goehler considers the dichotomy "intransitive/transitive" power as able to better capture the two scholars' differences. As commonly known, the distinction between transitive and intransitive primarily belongs to the grammatical reasoning. "Power is transitive when it refers to others...Power is intransitive when it refers back to itself"; and while "the basic model of transitive power consists in the subordination of one person's will to the will of another", intransitive power consist in the subordination of one person's will "to the community itself, to the conditions for its possibility, to its constitution" (Goehler 2000:43-45).

While Weber has elaborated an empirical definition of power, Arendt has provided a normative one. Another crucial difference refers to the zero-sum-game versus the positive-game problem. Transitive power implies a given distribution of power meaning that any increase in A's power corresponds to a decrease in B's power. Intransitive power works differently, in that "the interplay of power brings about an increase in the power of all participants simultaneously" (Goehler 2000:45).

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[4] *Macht*: "opportunity to have one's will prevail within a social relationship, also against resistance, no matter what this opportunity is based on" (Weber cited and translated by Berenskoetter, 2007:3);

Herrschaft: "the opportunity to find obedience amongst specified persons for a given order" (Ibidem).

The "zero- sum problem" applied to power has already been presented and conceptualized by Parsons (1963); he has considered power as a medium similar to money, as a tool that empowers political members to act; and just like money, under particular conditions power doesn't respect the zero-sum assumptions. Parsons brings the example of the "double duty" played by money when it is deposited in a bank. While it is deposited, the bank can loan it to borrowers or invest it. According to Parsons, it is possible to use the same reasoning in the power field by considering the elected leaders as bankers who can use and mobilize power conferred by the voters' community. Based on this comparison, just as bankers do with money, leaders use power in order to produce not only those collective decisions which directly respond to the interests of the voters, but also to produce other policy decisions directed to the general interest.

1.2.7 From the elitists/pluralists dichotomy to the three dimensions of power

In the 1960s, Peter Bachrach and Morton S. Baratz (1962) published their article "Two faces of power" in the *American Political Science Review.* The relevance of this article consists in the presentation of what they called the "second face of power". According to them, neither the pluralist scholars nor the elitist ones were able to understand the real mechanisms of power, and their results differ because of the alternative approaches (sociological versus political scientist one) and because of the divergent methods and techniques used.

Which are the main assumptions of these two different traditions? While the elitist approach considers power as concentrated in the hands of a small group, the pluralist approach believes that power is diffuse. While the elitists haven't recognised any face of power and built a simple "ruling-elite model", the pluralists have identified one face of power focusing on the first dimension only, the so- called 'public face of power'.

The scholar who represents the latter tradition is Robert Dahl. In his famous definition, he defines power as follows: "A has power over B to the extent that he can get B to do something that he would not otherwise do" (Dahl 1957:203). The first dimension of power

mainly focuses on three points: 1) overt decision-making procedures; 2) cases where different actors have different preferences, and 3) what is explicitly said and done in a decision-making or negotiation procedure.

Why is Dahl's definition restrictive and not complete enough to describe the complexity of power relations? The answer lies in the fact that he has made the error of only having investigated on one actor's ability to influence another. The pluralists in general focused on the presence of an effective and tangible conflict as a main element to define a power relation. Is this approach exhaustive? Starting form these observations and considerations, Bachrach and Baratz have introduced the second dimension of power. According to them, Dahl has measured the "relative influence solely in terms of ability to initiate and veto proposals," ignoring "the possible exercise of influence or power in limiting the scope of initiation" (Bachrach and Baratz 1962: 952). The relevance of this second dimension lies in the importance given to the agenda-setting processes and on how these processes can influence the outcomes of power-relation dynamics. In their model, Bachrach and Baratz find the second face of power in the ability to prevent the raise of a specific issue. Power might already have been exercised before it comes to public decision-making, preventing all actors interested to have access to the decision making process on a given issue. How can this result be achieved? For example, by manipulating the agenda and by preventing the discussion of crucial issues and conflicts. In this case, power lies in the hands of those who prepare the agenda, i.e. the so-called agenda-setters.

This consideration is extremely relevant for this work, and in a successful attempt to translate the dynamics into the 'IR coordinates', the question could become: does a given third country have the ability to prevent the raise of the death penalty issue on the negotiation table with the European Union? Is country X able to prevent that such an issue become relevant? Or even better, can X prevent that this potential value-conflict affect economic conflicts?

Moving toward the third dimension: are two faces enough to catch the multi-dimensionality of power? According to Lukes (2005), the bi-dimensional approach (the way he calls the second dimension of power) makes the same error as the first dimension (pluralists vs elitists) as it focuses too much on the conflict dimension, while "the most efficient and tricky

use of power is to prevent the emergence of such conflicts" (Lukes 2005:38, author's translation). This kind of power derives from ideologies, ideas and values.

The third dimension was elaborated by Lukes in his experiment of power trialization. "Lukes goes further to argue that there may also be instances of the exercise of power in which its victims fail even to recognize that their real interests are at risk, and consequently make no attempt to defend those interests. On this view, there is a third, particularly insidious, form of power which is able to influence the thoughts and desires of its victims without their being aware of its effects" (Hindess 1996:5).

The added value of Lukes' main assumption is that when investigating on power, it becomes necessary to not only take into account who participates in the decision-making process, but also to consider who doesn't; thanks to this observation, Lukes introduces his third dimension of power, which can here be named here "the dark side of the power".

The first, second and third dimension of power all deal with the modality of power distribution rather than describing intrinsic and internal power features; consequently, this academic trilogy can be said to be placing itself in a different perspective compared to the other dichotomies, and really answers the question "who holds (or doesn't hold) power?" rather than the question "what kind of power?"

1.2.8 Decision to do (positive) and decision to not do (negative)

Does power only reside in positive decisions? Or does it also reside in positive actions? What about negative decisions? And negative actions, or rather, omissions?

Do sentences like "I decide to do, not act; I decide to do, not comply" express a power dynamic? At first glance, it seems counter-intuitive to attribute power-meaning to these sentences, to an omission or to a negative decision, but the decisions to do and not act, or to do and not participate have consequences; if the consequences imply power mechanisms, they become extremely relevant for a power analysis like the present one.

In this regard, it helps to recall Lukes' observations (2005, 2007b), where he indentifies cases in which non-events have the same features as positive actions.

Under certain conditions, "to act can be a sign of weakness (for instance, conforming to the demands of repressive regimes – such as voting in a Communist election in Soviet times) and the index of an actor's power can be his ability to avoid or resist performing positive actions. Thus, the US under the Bush Administration shows its power by not ratifying the Kyoto protocols on climate change and not participating in the International Criminal Court" (Lukes 2005:480).

Once again, it can be said that both the abolition and the preservation of capital punishment in the countries selected configure a dimension of power. If it is accepted that not only a positive decision but also a negative one configure a power relation, the fact that China is not willing to abolish death penalty in disregard of the EU policy and the worldwide trend testifies a clear exercise of power from the Chinese counterpart. In this case, China's decision to not comply expresses stronger power dynamics (a Chinese reaction to the EU's normative power) than the Philippines' abolition of death penalty, which can first of all be considered in line with the international trend, and only subsequently in line with the EU's will and policy (overestimation of EU's normative power).

1.2.9. Manifest and latent power

The last dichotomy introduced is not yet present in the IR literature and it is here formulated for the first time. Nevertheless, some scholars have applied the same words (manifest and latent) to the power concept (see Mearsheimer 2001, McCormick 2007).

The first peculiarity of this conceptual pair is its domain of application, which differentiates it from the pairs previously presented. Speaking of manifest versus latent power in this work means taking into account the perspective of who observes power dynamics rather than the distribution of power or any other power features. This implies that power is not manifest and latent *per se,* but that it can be analyzed both by only taking into account those manifest dynamics by recording the superficial mechanisms interplaying between actors, and by performing a deeper analysis that doesn't just take into account the manifest dynamics but

also the latent ones, i.e. the ones that cannot immediately catch up those hidden connections between actors.

To clarify the meaning of this conceptual pair, it seems useful to recall the original field in which this dichotomy was developed. The author who firstly introduced this dichotomy into scientific literature is Sigmund Freud, who applied it to psychoanalysis. In his famous book *The interpretation of dreams,* the two attributes "manifest" and "latent" refer to the contents of dreams. According to the author, dreams are composed of two typologies of contents: the manifest and the latent ones. Only through dream interpretation –obtained with psychoanalytical techniques– it is possible to access the latent part of a dream, which is the most authentic and significant for the person.

Having clarified the scientific origins of the dichotomy, the suggestion is to use this pair as follows: the expression *manifest power* indicates power mechanisms interplaying between actors and remaining at the surface, conscious layer of their relations. These mechanisms need to be counted and registered more than investigated, and they can give the false and erroneous persuasion that "if x, then y". *Latent power,* instead gives way to the observation and interpretation of irrational signals, of the errors and false steps in the power dynamics, of the contradictions, and of those elements that need a deeper analysis and repudiate the immediate logic "if x, then y".

1.2.10 The conceptual power net

Kratos	Dunamis
Arché	Hegemonia
Potentia	Potestas
Dolos	Peitho
Power-as-resources	Relational power
Power as a simple capacity	Power as a legitimate capacity
Macht	Herrschaft
Power over	Power to
Transitive power	Intransitive power
Power	Influence
Hard power	Soft power
Manifest power	Latent power

This table represents the *conceptual power net* as thought by the author, and it collects the dichotomies judged relevant and significant for the power debate.

By observing this collection of definitions and concepts, it is possible to notice an increase in terms of explanatory capability and complexity going from the left side to the right side of the table. This consideration is also expressed and conceptually summarised in the last pair of concepts proposed here for the first time, i.e.. manifest versus latent power dynamics.

1.3 Power and IR

An essential preliminary step to the introduction of the International Relations power debate involves briefly presenting the different levels of analysis that can be used when conducting a research in the IR scientific field.

According to Bonanate (1994), four different levels of analysis can be identified in IR theory. These correspond to "four different ways of looking at reality" (author's translation 1994:126). Bonanate makes a distinction between two *substantial* or *material* levels (the individual level and the state level) and two *immaterial* or *abstract* ones (the international system and the global system).

The 'individual level' can be considered as a basic level of analysis: according to this perspective the main decisions and actions that produce tangible changes in human history are attributed to key individual personalities.

The 'state level' considers the state as the most relevant actor in the international relations theory and –as presented in the next sub chapter– this approach is mainly used among the realist scholars. If the state is the key actor of the international relations theory, international politics can consequently be considered as the sum of all foreign policies of each single country. What is missing in this approach is a view that is able to transcend the single actors (whether states or individuals) and to give a comprehensive understanding (which also means interpretation) of reality.

The last two levels address this shortcoming; Bonanate nicknamed them with the adjective 'immaterial' because their conceptualisation is not immediately intuitive, but needs to be codified.

In what features do the international and the global systems differ?

Bonanate recalls that Morton Kaplan is the first scholar who introduced the expression *international system* in academic literature (1957). "By saying that international politics is *systematic,* we want to underline a feature that *doesn't belong to the single parts of the whole,* but to *the way we look at it*" (Bonanate 1994:131, author's translation). In this sense, speaking in terms of international systems means using a specific interpretative and cognitive lens.

The definition of the *global system*, which according to Bonanate was introduced to simplify the conceptual intensity contained in the concept of *international system,* is strongly related to the considerations and implications of globalisation. Due to the level of intensity reached by the binding linkages that connect human beings in a way that it is new for the whole human history, it is now possible to use and think the term 'global society'.

The definition of "political global system" (Attinà 1999) grasps and unifies the two dimensions described by Bonanate in his third and fourth level: the contemporary international process can be described as a system that simultaneously holds the features of being political and global.

Of the four Bonanate levels, the one that better respond to the needs of the present work is the international system level; nevertheless, the specific dynamics occurring between the peculiar European Union actor and the two state actors (China and the Philippines) cannot be explained as merely bilateral, but they have to be understood in their whole logic and in the context of the global political system.

Once the 'level problem' has been clarified, the questions that this section intends to address are the following: how do different IR schools of thoughts consider, understand and use the concept of power? Does it hold the same meaning if different theoretical lenses are applied? The answer is positive. The following pages will briefly present the IR debate on power.

Disagreement among scholars concerns two crucial aspects of power: its nature and its role (Baldwin 2002). It is impossible to identify a univocal nature of power, and we frequently witness the identification of multiple sources of power and different ways of exercising it; although power is the key concept of international politics, "its meaning has remained ambiguous" (Holsti 1964:179) and "there is a considerable disagreement about what power is and how to measure it" (Mearsheimer 2001:55).

One of the main sources of confusion and disagreement is the fact that the concept of power is relevant for all the different IR perspectives and theories, and it would be not only wrong but also *naïve* to think that power matters only for the realist and neo-realist scholars.

What remains true of this common bias is the fact that, in IR discipline, the concept of power has been primarily associated with the realist school, and investigations on this subject have for long been considered a realist prerogative (Carr 1964; Barnett and Duvall 2005, Berenskoetter 2007). In the present days, some things have changed, and the elaborations and theories on the possible nature of power have crossed the borders of political realism. It was therefore possible to identify alternative definitions and conceptions of power belonging to different schools.

1.3.1 Power seen by realists

"Si vis pacem para bellum"

"How many divisions has the pope?"

(Joseph Stalin)

With the aim of giving a general overview of the meaning of power from a realist perspective, it can be primarily said that the study of this concept is naturally linked and usually attributed to the nation states as central actors of the International Relations theory. The observation that the nature of power is changing is better addressed by liberals than by realists, although this consideration should not lead to the erroneous conclusion that all realists share the same conception of power. How do realist scholars understand the notion of power? What do they share? In what do they differ?

In realist tradition, power is mainly based on military and strategic tools, but according to Schmidt (2007), realists don't only "disagree on the underlying reason why international politics can be described as a struggle for power, (but) they also disagree on numerous other issues. These issues include: the strategies that states employ to acquire additional power, how power is utilised to attain desired ends, how power should be measured, and how –if at all– the pursuit of power can be managed within acceptable limits" (Schmidt 2007:44).

It is possible to identify a common trend between those realists *ante litteram* such as Thucydides and Machiavelli and the classic ones, like Morgenthau. This continuity lies on the shared thought that conflicts between states can be explained through common human nature, and it is therefore enough to simply transfer the features of human nature onto the state level to understand what 'power politics' means, and why all states are eager to acquire more power: "statesmen think and act in terms of interests defined as power" (Morgenthau 1997).

The analogy between the two levels, however, differs in a crucial point that is firmly addressed by structural realist scholars: at the International Relations level there exists no Hobbesian Leviathan (a world government) having enough power to maintain an order

between states. States remain free to go to war and to seek more and more power; the state of nature characterises their relations and it is not overcome by a social pact, which instead is the case at the individual level. The key element becomes international anarchy, as underlined by the father of the structural realism, Kenneth Waltz (1979).

Another significant difference between classic realists and structural realists is that while the former think of power as an end in itself, the latter consider it as a tool to maximise security and to guarantee state survival.

"Power-as-resource" expresses the main interpretation of the concept of power in a realist perspective, though not all realists opt for the 'resource approach'; some have instead adopted the 'relational power analysis' approach or, in other cases, a combination of the two.

As said, relying mainly on the 'power resource' analysis means measuring power through a series of indicators, such as the Gross National Product, military assets, population, and so forth. Differently, the relational aspect is expressed by underlining any form of control over actions and decisions of others states. These two perspectives are not alternative as it is possible to share a vision of power that combines the two aspects. For example, Morgenthau used the power concept considering it both as a psychological relation between two different sides and a possession of material and non-material resources. In chapter nine of his *Politics among nations,* titled "The elements of the state power", Morgenthau indicates five material factors: the geographic position, natural resources, industrial power, military preparation, and population; and four non-material resources: national character, national morale, quality of government, and quality of the national diplomacy.

Carr has summarised power relations with the trilogy "military power, economic power and power over opinion" (Schmidt 2007: 49), while Waltz focused more on material resources, understood as the sum of material capabilities in key and strategic fields.

A contemporary realist such as Mearsheimer gives a definition of power that is exclusively based on resources, and he suggests which are the right tools to measure it. He distinguishes between latent power (mainly wealth, economy and population size) and military power. These types of power remain however strictly interconnected: the former is nothing more than the economic base for the latter. Therefore, Mearsheimer defines power "largely in

military terms, because offensive realism emphasizes that force is the *ultima ratio* of international politics" (Mearsheimer 2001:56). Further, Mearsheimer considers as synonyms the two expressions "balance of power" and "balance of military power".

Does it still make sense today to think of power in a pure resources-power approach, only taking into account material capabilities? Mearsheimer's choice is manly methodological: he thinks that power (measured in terms of resources) differs from the power measured in terms of outcomes (i.e. victory/defeat that can only be measured when in relation with a third subject); since Mearsheimer decides to keep the two types of power separate, he deems it necessary to measure them separately. Going back to his dichotomy (latent vs. military power), Mearsheimer decided to measure latent power with two different indicators. He uses "a composite indicator that accords equal weight to a state's iron and steel production and its energy consumption" (Mearsheimer 2001:67) for the period 1816-1960; while he uses a simple GNP for the period 1960-2001.

As discussed, realists differ in their way of using the concept of power, and even where the capabilities/resources approach prevails, the relational dimension is not completely neglected.

1.3.2 Constructivist and postmodernist power

"Constructivism sees the international system as socially constructed through practices, in particular diplomatic practices" (Guzzini 2000:169).

What does power mean for constructivists scholars? It is not easy to give a clear answer to this question, mainly because there exist more then one constructivism and each version has a different understanding of power. Baldwin (2002) makes a general distinction between two "constructivismS": one is Wendt's social constructivism, where power is considered in its relational form and based on ideas, and a post modern version (Foucault's followers) which is less interested in relational dynamics and more focused on key concepts such as knowledge, doubts, uncertainties.

What is shared in the pure constructivist side is the fact that power is considered "as both agential and intersubjective (including non-intentional and impersonal power)" (Guzzini 2007:31). The relevance of this concept resides its nodal function and its ability to connect "the interaction between the social construction of meaning (including knowledge) with the construction of social reality" (Guzzini 2000:170).

With the aim of providing an overview of the variegated uses of the concept of power in the constructivist/postmodern sides, this section will briefly explain how power is understood by some key authors.

When Lukes introduced his "radical view" of power, he was referring to the cases in which actors subjected to power are not able to recognise it because their thoughts and desires are manipulated by others. According to Lukes, the most dangerous situations are the ones where *power exercises its power* through a "socially structured and culturally patterned behaviour" (Lukes 1974:22), because it becomes pervasive, invisible and tremendously effective.

An even more radical understanding of power is provided by Foucault. His definition has influenced post modernists and critical theory scholars. His view of power has been nicknamed a "radical alternative" (Hindess 1996). According to Foucault there is a strict link between power and knowledge, and the former is able to produce the latter. Foucault also thinks that there is an extreme need to separate the study of power from the study of sovereignty and legitimacy, and it is necessary to study power by identifying it in its regional, local, and micro forms first. Power has to be conceptualised as something fluid that moves and holds a web structure (Foucault 1977). Foucault didn't suggest the idea that power is never concentrated; he instead gave a methodological indication according to which we need to conduct an "ascending" analysis from the micro level to the aggregation if we want to succeed in understanding and studying what power is and how it works (Ibidem).

Luhmann's vision of power is based on force, which remains its main source; but the peculiarity of his reasoning is that the use of force must remain alternative to power, which means that where there is power, there isn't force, and vice versa. Power remains power only if it resides in communication and not in actions (like sanctions). In this case power becomes an

"action of communication thanks to which A indirectly *selects* B's actions and omissions, this way producing and removing B alternatives" (author's translation of Scamuzzi 1982:87). The function of power corresponds to its definition: power is a medium of communication and it "transmits actions in the social system" (Ibidem).

To recall Ashley as quoted by Guzzini (2000) –who considered him a voice of contemporary constructivism *ante litteram*– power doesn't depend on capabilities and possessions, but rather "the power and status of an actor depends on and is limited by the condition ofits recognition within a community as a whole."

As demonstrated through these few examples, the constructivist and postmodernist concept of power is completely different from the realist one, and extremely variegated. The former doesn't search power in material (or non-material) capabilities, it doesn't pay attention to resources, but rather looks for power in something that we can call latent manipulation (Lukes), in the micro and regional dynamics and in knowledge (Foucault), in communicative actions (Luhmann) and in the community's recognition.

1.3.3. Liberal and global power

It is a matter of fact that liberals have been quicker than realists in understanding those changes that affected power nature and power dynamics.

It can be said that starting from the falsification of the assumption that "only state matters", it becomes much easier to identify interstices of power between actors other than states, and to discover alternative levels and spaces of power.

In their famous book *Power and interdependence* (1977), Nye and Keohane used these two crucial words together; what does interdependence mean? And how is power understood? "Interdependence is conceptualized as mutual dependence, and power is conceptualized in terms of *asymmetrical interdependence"* (Keohane 2002:276); this means that asymmetrical interdependence are clearly sources of power.

Given that asymmetrical patterns of interdependence express power relationships, it is necessary to understand who the subjects of this interdependence are. At the beginning, this

piece of literature focused its investigation on the field of IPE, international political economy. The pair power/interdependence was used to explain economic relationships between states and non-state actors. This theory was mainly useful to understand two crucial points. First of all, since the publication of *Power and interdependence* (1977) it became clear that states are not always maximizers of power, but under certain conditions they can cooperate and give up part of their sovereignty and "personal" power to reduce costs and gain collective benefits (institutionalism). Secondly, the theory gave way to the shift (later reinforced by the consequences of globalisation) from a realist state-centric approach to a world politics.

Therefore, how can power be re-conceptualized *in the global age*? Beck (2005) used the expression *power in a global age* to title his book, where he explained how globalisation changed both rules of power and domination, creating new actors (besides states and institutions) and new kinds of conflicts.

In a glo-cal society as the one we are facing now, the classic theory of power focused on the national state is not sufficient to let understand the complexity of contemporary politics; it is therefore necessary to reason on a multidimensional perspective. In this respect, there is an interesting and helpful suggestion by Gaventa in 2007. Gaventa elaborated the "power cube", an innovative conceptual tool in which he recognises the need for studying power in a three-dimensional way. The three axes of this particular Rubik's cube measure the levels of power (supra-national, national, and sub-national), the forms of power (invisible, hidden, and visible), and the spaces (closed, invited and claimed/created).

Going back to the definition of power and the interdependence given by Keohane and Nye, it is possible to notice how the two concepts can be applied to dimensions other than the IPE, even if the mechanism remains the same. Keohane (2002) explains how the recent trends of the terroristic attacks can be read through the lenses of asymmetries that are different from the previous one (the 1977 version) such as the *asymmetry of information* and the *asymmetry in beliefs* between the American society and the terrorist groups.

This chapter has presented an alternative methodological way of thinking of power. The dichotomies considered and judged as the most significant and relevant dichotomies of power

have been collected and put together in a unique conceptual and visual *power net*, which is able to present the polarities that have characterised the power reasoning since the origins of this debate. On top of the aforementioned meaning, the new dichotomy ("manifest vs latent power"), invented by the author of the present work, is able to reflect a feature that, according to the author, is common to all other dichotomies in the power debate: i.e., the second word in all dichotomies presented reflects a higher explanatory complexity and intensity when compared to the first word, and this is true for all conceptual pairs. This chapter also been explained whether or not and how the pairs of concepts identified are relevant for the case studies of the present investigation.

Finally, the power debate across the main IR schools has been briefly described with the aim of showing how different approaches propose alternative understandings of the concept. The author of the present work, however, believes that there are many spaces left for *cross-theoretical marriages*: "far from being a battleground for duelling forces of constructivism and rationalism, power analysis may be a point of convergence for at least some members of each camp" (Baldwin 2002:185)

Before moving to the crucial core of the work, it seems necessary to underline that this chapter aimed at presenting how the power concept has been used and how it *can be* used; however due to the impossibility of following all the different paths that the power analysis suggests, in the next chapter the focus will be on the application of the power concept to a particular actor, the European Union. In that case, power means both "potenza" (the European Union seen as a "potenza", as in: 'the EU *is* a power') and "potere" (the European Union being able to exercise relational power toward a different subject, as in: 'the EU has power'). The incipit of the next chapter will explore the identification of the level of analysis and the EU features. The section will present the authors that consider the European Union as a global actor as well as those who have conceptualized the European Union's nature by identifying several declinations of power that describe it. The European Union has been conceptualised as a civilian power, a transformative power, a model power and a normative power, to mention a few.

This analysis will focus on the label 'Normative Power Europe', as this is the theoretical definition that the author of this work has decided to apply to the case studies examined. The definition will be used as a tool to verify whether and how the EU has behaved as a normative power toward China and the Philippines in the campaign against death penalty, or if those power relations can be described differently.

Chapter II Thinking the European Union complexity; a research on the EU's nature and power

"Are we all clear that we want to build something that can aspire to be a world power? In other words, not just a trading bloc but a political force, a power"

(Commission President Romano Prodi, European Parliament, 13 February 2001)

1.Two levels of being *sui generis*

The debate on how to study and conceptualise the European Union involves not only the International Relations theory but also, since recently, the comparative politics discipline.

The question has to do with whether or not the European Union can be considered a *generis subjecto*, and if it can be studied by using specific tools or by comparing it with other phenomena of regional integration or other political systems, being itself a political system (Hix 1999). Of course, there exist other cases of political-economic integration, but "they are all very distant from the European one, because they cover a smaller area (for example the free trade zones) and they lack an autonomous institutional structure from the member states. This consideration has given rise to the statement that the EU represents a single case (N=1)" (author's translation of the Italian edition, Attinà, Natalicchi 2007:74).

Scholars have discussed whether or not the European Union represents an N of 1 (Caporaso, Marks, Moravcsik, Pollack 1997 et alt.), and if the puzzle has to be solved theoretically or methodologically, or at both levels.

Some scholars have challenged the theory of the EU's exceptionalism by claiming that the European Union is a compound democracy, and that for this reason it is comparable with other compound democracies, i.e. with pluralistic political systems with a diffuse distribution of power, such as the United States (Fabbrini 2007). The European Union has been described as a *Regulating state* (Majone 1996) and as a *Multi-level- Governance system* (Hooghe and Marks 2001), explicitly accepting through these definitions the comparison with other federal states.

Without getting into the details of this debate, it is important to notice that apart from the problem of whether or not the EU is a *sui generis* actor due to its particular integration process and institutional organisation, it is possible to formulate an alternative puzzle that investigates on the European Union's behaviour in its relations with the rest of the world. Is the EU a traditional actor or does it place itself outside of the traditional power logic? The present work is less interested in the internal level of the EU being *sui generis* and it will focus more on the EU's *sui generis (*or supposed) behaviour in the world.

Consequently, the coherence/incoherence between the essence of the concept of power and the EU's human rights policy towards third countries must be investigated, and this research chose to promote the abolition of capital punishment in two specific countries (China and Philippines) to test the EU's success/failure of a whatsoever (normative?) kind of power in the specific human rights field. The variables that have driven the two different outcomes of the policy (success and failure) will also be analysed.

The main question of this work is: does the implementation of the EU's policy on capital punishment in the two case studies selected provide an empirical evidence of an exercise of whatsoever (again, normative?) form of power? Or, does it instead provide the empirical evidence of a certain normative weakness/impotence of the EU? Can the EU always be considered a *sui generis* actor in its relation with the rest of the world or is its behaviour similar to that of traditional actors, under certain circumstances? In other words, to what extent does the EU act in a *sui generis* manner with the rest of world? Which are the limits and conditions of this constitutive difference?

Since the creation of the Common Foreign and Security Policy, the EU's commitment in Human Rights has always represented a crucial segment of the EU's foreign policy; the centrality given to Human Rights is linked with the consideration that their promotion is in the interest of the same European Union (Solana 2009)[5] in a general perspective of a European contribution to the international order.

To prepare a fertile base to build the proposed solution of this puzzle, this second chapter presents an overview on how the concept of power (as discussed in the first chapter) has been applied and used in combination with and in relation to the European Union.

5 Javier Solana in the preface to the Guidelines for Human Rights and International Humanitarian Law.

2. At least the EU "is"

The establishment of the Common Foreign and Security Policy (CFSP) with the Maastricht Treaty 1993 and the launch of the Common Security Defence Policy as a branch of the CFSP with the Cologne European Council in June 1999 can be considered two crucial historical watersheds that marked a well-defined recognition of a whatsoever EU actorness in the academic literature; at least formally speaking, these events have in fact broken a taboo: the impossibility of a foreign dimension for a subject different from the classic state notion.

The consolidation of the EU's legal personality and the conversion of the position of the High Representative for Common Foreign and Security Policy[6] into the High Representative of the Union for Foreign Affairs and Security Policy[7], assisted by a European External Action Service (EEAS), plus the institutionalisation of the European Council and the creation of a president of the same Council with the Lisbon Treaty 2007 (entered into force of the on 1 December 2009) consolidated the academic trend that defended the existence of a so-called 'EU actorness'.

This consideration doesn't mean to suggest that no investigations or recognition of a 'European entity' have taken place before, but simply that the two events formerly presented (CFSF/CSDP) have pushed the debate towards a further formalisation at least of the existence of an EU 'being', and the resulting events (the creation of the High Representative and the EEAS) strengthen this academic trend.

The use of the term 'convergence' is not casual; it was chosen to underline the fact that the recognition of a whatsoever role (not exclusively as a trading block, *ça va sans dire*) to the European Union has been transversal in relation to all the different IR schools. This acquisition does not absolutely imply that there was (or is), a shared understanding of the European Union's essence (the contrary is true) but that, as ironically underlined in the title, at least the

6 (Amsterdam Treaty signed in 1997, into force in 1999).

7 In theory the position has been strengthen, in practice the nomination of Catherine Ashton who replaced Javier Solana goes in the opposite direction.

EU *is...as long as people talk about it*! As claimed by a popular Italian motto, no matter what people think about it ('good' or 'bad', in this case 'weak' or 'strong'), the simple fact that they are talking about it expresses the acknowledgement of its 'being'.

To say this in a more proper and academic manner, in a vast part of the IR literature, the existence of something more than a trading area has become a lowest common denominator and has been consolidated and digested. Nevertheless, the consolation of the recognition of the 'EU something' has not closed the debate; on the contrary, as normally it happens in a scientific field when a new object is identified, the debate has shifted from the recognition of the existence to how this "being" should be called, and to the definition of its nature, features, properties, capabilities, and deficiencies.

First of all, is the EU a *sui generis* actor in IR? Is it a case of an 'n' of 1? At what level can it be considered *sui generis*? If so, does it have to be studied with new academic tools? Or does the fact that it is *sui generis* not imply that new tools are needed? Also, does it need to be considered as an independent subject, or as a subject composed by 27 Member States?

To address these questions, the literature has been prolific in proposing a variegated set of definitions to describe the European Union. But new questions have come up: can the EU be called a global actor (Bretherton and Vogler 1996, 2006)? Does it have actorness? If so, which are the minimum requirements for actorness? Or is the EU better described as international presence (Ginsberg 1999; Bretherton and Vogler 1996, 2006)? Is it a force (Maull 2005)? Or a power (Duchêne 1973; Maull 1990, 2005; Padoa Schioppa 2001; Stavridis 2001; Manners 2002, 2006a, 2007, 2008, 2010b; Moravcsik 2003; Nicolaidis and Howse 2002; Telò 2004, Leonard 2006; Grabbe 2006; Laatikainen and Smith 2006; Pace 2007; McCormick 2007; Aggestam 2008; Toje 2010, 2011)? An empire? (Zielonka 2006), and if so, what kind of force? What kind of presence? What kind of actor? "What kind of power" (Sjursen 2006b)?

The insolubility of this puzzle is linked to the empirical fact that, *nolens volens,* up until today the European Union remains the only existing experiment of a (growing) group of sovereign states, which decided to give up part of their sovereignties in order to cooperate and achieve common goals and advantages. This experiment, born from the impulses of the Second World

War and from the awareness that 'they'd had enough', started as an economic project (European Coal and Steel Community) and evolved touching 'high political issues'.

The institutional level is really complex because it reflects both intergovernmental and supranational features; the old definition, according to which the EU (the European Community in the original version) "is not a political entity that is easily understood. Unique in its institutional structure, it is neither a state nor an international organization"(Sbragia 1989:24), is still valid.

There exist differences among the three main institutions: while the European Council is composed by the Heads of Governments and consequently is purely intergovernmental, the European Commission, on the contrary, is purely supranational (the Commissioners do not represents the countries where they come from); the European Parliament is composed by members that once elected at national level join the European arena where transnational interests and political belongings guide the composition of the European political groups.

It is exactly this 'European institutional cocktail' (intergovernmental and supranational ingredients mixed together) and its former incapability to cooperate in high political issues, that has made it difficult in the past to answer the famous question addressed (supposedly) by Harry Kissinger "Who do I call if I want to talk to Europe?" Today, Kissinger would have a number, the number of Catherine Ashton, the present High Representative of the Union for Foreign Affairs and Security Policy; but what follows the phone call? Who does what? Is it always possible to reconcile national and supranational choices and interests? The complexity of the puzzle persists; clearly, the European Union is not a state,and even after the abolition of the three-pillar structure with the entering into force of the Lisbon Treaty, the Common Foreign and Security Policy remains mainly intergovernmental; *what is then? What does it do?* Doubts aside, what remains true is that since the '50s, the integration process that shaped the European Union has continued in all the three evolutionary dimensions underlined by Attinà and Natalicchi (2010), i.e. the territorial one, the scope, and level of authority.

The structure of the present chapter is based on these preliminary remarks and considerations. In the first section it will be presented a selection of those judged the most significant and

"recent" definition/formulation/attributes/adjectives used to describe the European Union, understood as a power.

To be coherent with the focus of this work, and to check how the concept of power has been applied to the EU, a distinction has been made between the conceptualisations that use 'qualitative' attributes to describe the European Union, and those that use the size of power (small/middle/super) as a distinguishing factor. It is clear that one approach doesn't exclude another, and they simply represent different lenses through which the EU 'being' is understood, conceptualises and read.

Secondly, a special zoom will be made on the Normative Power concept, and the theoretical bases for an empirical revisitation of the NPE definition will be posed. Lastly, the puzzling and (according to the author) dubious compatibility between the exercise of a normative 'potere' and the promotion of the abolition of death penalty in China and the Philippines will be presented *in nuce*.

2.1 Once it was a civilian power...

When, in the early '70s, Francois Duchêne labelled the former European Community a civilian power, he undoubtedly made an effort of conceptualisation; this effort was particularly hard (and academically precious), as he was dealing with a 'young' entity. His definition, however, was quickly reverted by the prompt critique of Hedley Bull, who stigmatised it as a "contradiction in terms" and firmly claimed that "Europe is not an actor in international affairs, and does not seem likely to become one" (Bull 1982:151). Bull was clearly wrong. The *querelle* at that time was the following: according to Duchêne, the European Community had a special interest which differentiated it from other actors, "that of civilising the relationships between states" (Duchêne 1973:31, author's translation from the Italian version); this attitude was evident not only in the relationships between member states but also in the EC's relations with the rest of the world. And where did this preference Duchêne talks about come from? It is a "spontaneous preference of an organized group of citizens (...) for peripheral democratic and civilian standards rather than for military and power-balancing ones" (Ibidem). A normative consideration follows this description: "the European Community can only profit from its possibilities if it stays faithful to its own essential characteristics, which are civilian goals and means and an internal sense of collective action that expresses, however imperfectly, the social values of equality, justice and tolerance" (Ibidem). According to Duchêne, the constitutive civilian preference of the European Community is an opportunity and not a weakness; the EC is different and it has to remain different. "The European Community must be a force able to spread civil and democratic standards worldwide, otherwise it will remain victim of the power politics decided by the stronger and more united powers" (Duchêne 1973:32, author's translation). In his critique, Hedley Bull listed the reasons why Europe, or better "the nation-states of Western Europe" should opt for a military power. He stressed three main reasons: the absence of convergence with US interests, the persistent threat form the USSR, and the political necessity to be self sufficient in both defence and security.

The former *querelle* evolved and, in reality, never ended. The debate took multiple forms, shifting like a pendulum between the problem of identifying the "nature of the Beast" (Risse-

Kappen 1996) and that of methodologically "exploring the nature of the Beast" (Ibidem), which means finding the best academic tools to study the animal put under the lens.

However, throughout the years some scholars noticed that the civilian power debate suffered of a bias (Borzel and Risse 2007 et alt.). Duchêne's original notion of civilian power was in fact not in contradiction with a military dimension: the key goal of his label was to underline a constitutive preference for civilian means and goals, stressing its *sui generis nature* without rejecting a military dimension *tout court*; consequently, the proposed dichotomy, which gained credit in the literature ('civilian' versus 'military' power) is not well formulated (Borzel and Risse 2007).

This interpretation of the original bias is confirmed by Maull (2005) who, referring to his application of the concept to the specific cases of Germany and Japan (Maull 1990), stressed how the civilian power notion was not in contradiction with a military dimension. The fact that the military dimension doesn't represent the distinctive feature of a civilian power doesn't imply that military force cannot be used under certain conditions. According to Maull, the minimum requirements for military force to be used are: "never alone and autonomously, but only collectively, only with international legitimacy and only in the pursuit of 'civilising' international relations" (Maull 2005:781). Maull also 'admitted' that the civilian power notion contains a normative element, which lies in the ambition –of such kind of power– to civilise international relations. The compatibility between a civilian power nature and the acquisition of military capabilities is shared by Stavridis (2001) who invited to "move from the concept of a civilian power by default to one of a civilian power by design" (Stavridis 2001:49) as the best way to strengthen the EU's role in the international order.

On the contrary, part of the academic literature argues that the implementation of a military force alters the civilian power nature *per se* and, as a consequence, the EU can no longer be considered and described as a civilian power. In the construction of the two ideal types, Smith (2005a) argues that while a civilian power uses civilian means to pursue civilian goals and its acts through soft power and persuasion and it is based on a democratic control, a military power uses military means to obtain military ends adopting coercion and hard power, and it is based on the absence of a democratic control (Smith 2005a:6); the coherence of each

of ideal type is guaranteed only if all requirements are respected, otherwise there is the risk of watering down the concepts. Smith (2005a) argues that if pursuing civilian ends (regardless of how) is sufficient to be a civilian power, the European Union is not an exception but it becomes one of many civilian powers that promote their values no matter how. Civilian or not, it is the research question that needs to be modified: it is necessary to move "beyond the civilian power debate" (Smith 2005b) and to study what the EU does in relation to third countries, rather than focusing on what it is (Ibidem).

In spite of –or thanks to– this debate, the civilian understanding of the European Union has remained vivid in the academic literature (Whitman 2002; Orbie 2006; Telò 2006).

The same family of understanding also includes the label Gentle Power Europe (Padoa Schioppa 2001). Being 'gentle' is a recognisable feature at both the EU's internal dimension (internal acquisitions and achievements between member states) and at its external level (as a single subject towards third countries, i.e. in international relations). According to Schioppa, the European Union has had the ability and opportunity to build an institutional framework that could guarantee peace and prosperity among the same people and nations that have fought the Second World War. This achievement could play a role of example and emulation for similar experiments in different regional areas.

In the academic evolution of his thought, Maull (2005) concluded that more than a 'power',the European Union has to be conceptualised as a 'force in international relations'. Having neglected any incompatibility between the notion of 'civilian power' and the military dimension doesn't change how the history went: the European Community and its evolutions have been short in providing its own security, consequently "certain structural deficiencies of Europe as an independent power centre in international relations" (Maull 2005:782) cannot be omitted. The concept of force seems to Maull more appropriate to describe the EU. He specifies that being a 'force' rather than a 'power' doesn't mean being weaker or stronger; the key factor is the international context. In a post-modern and globalised world it can be more convenient (in terms of influence) to be a force rather than a power. What kind of force then is the EU? A 'civilian force' able to civilise international relations through its *golden tools*, the

"carrots and sticks" that go from the membership to the agreements, from the sanctions to the agreements clauses.

Strictly connected to those typical European tools (the famous carrots and sticks, mainly with an economic nature) is the qualitative definition that describes the European Union as a 'transformative power' (Grabbe 2006; Leonard 2006; Borzel and Risse 2009). Grabbe's analysis (2006) deals specifically with the EU's behaviour towards Central and Eastern Europe (a case of Europeanization) and it gives a perspective of the inside mechanisms (and limits) that allow this transformative power to work: this kind of power for the scholar primarily relies on the conditionalities and on the EU's negotiating power. A similar understanding of the transformative power conception is the one proposed by the Borzel and Risse (2009), with a strong stress on the EU's ability to diffuse ideas; but this transformative power has some limits, such as the inconsistent use of membership conditionality (Borzel 2010).

The 'transformative power' described by Leonard includes the previously underlined profiles, but the extension of his concept is broader. In his book *Why Europe will run the 21st century,* Leonard (2006) proposes an idea of the European Union as transformer of all the (old) mechanisms that have ruled International Relations in the past, through all the tools available, going from the so-called power of law (he considers the law as the European weapon *par excellence*) to the "revolutionary power of the passive aggression", which consists in the European possibility to threaten the suspension of an economic friendship/membership; he also imagines "the Elitarian European club" composed of 50 members, in the name of the inclusion philosophy.

From which sources, and from where does the EU get these forces? Can the strength of the EU possibly originate from the European Kantian choices and from the narrative of being different and from its projection of a EUtopia? (Nicolaïdis and Howse 2002; Nicolaïdis 2004).

With the aim of encompassing "both civilian and military power as well as social and material power" and to transcend Civilian and Normative Power European notions, Aggestam (2008) proposes the acronym EPE, Ethical Power Europe. Firstly coined in a public speech given by David Milliband, the British Foreign Secretary, the expression 'model power Europe' has been investigated (together with its derived meanings, such as the terms *model* and *modelling)* both

theoretically and empirically by using the definition by psychologist Albert Bandura (Ferreira-Pereira 2010). Clearly, this notion that describes the European Union as a model (as an example to be emulated by other actors and, most importantly, which can propose itself as such), is part of the tradition in which the EU is intended as a 'good actor' and therefore belongs to the *qualitative definitions* family thus far analysed.

2.2 The size of the EU: small power or superpower?

The size of the European power also generates some doubts; it is interesting to notice how the literature swings between minimum size 'small power Europe' and the maximum 'superpower Europe'. Toje (2010; 2011) argues that the European Union is a power, and he describes it as a 'small power' driven by strategic considerations (placing himself in clear opposition to the normative understanding of the EU power).

By identifying a list of parameters found in literature (dependence/variable geometry/lovers of the law/defensive by nature) and defining what a small power is, Toje argues that the European Union displays all these features. The 'dependence' is clearly expressed by its asymmetrical relation with the United States in the key field of providing security; the 'variable geometry' is reflected in the fact that "as a power, the EU is economically strong, militarily weak and politically fragmented" (Toje 2010:53). The EU clearly loves and supports international laws and international institutions, and is always committed to international and transnational global causes (see climate change); lastly, it is 'defensive by nature', as demonstrated by the timid European style in conducting its own military operations (Toje 2010). All these factors, plus the well-known problem of compatibility between powerful member states and common European decisions, lead Toje to conclude that "having to choose between those who see in the EU a nascent superpower and those who dismiss entirely its foreign policy efforts, the small power concept is a more suitable and sober yardstick for the EU" (Toje 2010:57).

At odds is the definition given by McCormick, who describes the European Union as a 'superpower'.

The starting point of this analysis is a reconfiguration of the concept of power itself; assuming that the nature of power has changed, and that neither statehood nor material power have remained as crucial as they were in the past, it can be said that the European Union has profited of this change and has joined the club of the superpowers. But what is a superpower? It is "an actor that has the ability to project power globally, and that enjoys a high level of autonomy and self sufficiency in international relations. More than was the case with the old great powers, a superpower has global interests, and earns the prefix 'super' through the extent of its ability to promote and protect those interests, whether directly or indirectly, whether actively or passively. A superpower may deliberately seek to influence policy or to impose its will, but it may also achieve its status by virtue of the resources that it controls, whether they are natural, economic, cultural or moral" (McCormick 2007:18).

As recalled by the same scholar, the idea of a superpower Europe is not new; Johan Galtung 1973 labelled the of the European Community as a 'superpower in the making'. "He argued that the common market was more than a market, but was also a struggle for power and an effort to make the world Eurocentric 'with an explicit peace philosophy, with a pax bruxellana in mind'. When David Buchan described Europe in 1993 as 'a strange superpower', he agreed that it had many of the 'physical potentials of a superpower' and was without question a major trading power." (McCormick 2007:28)

A combination of qualitative and quantitative adjectives characterises the definition of the European Union as a 'quiet superpower' (Moravcsik 2002, 2009). The European Union is not in decline; on the contrary, it is the only superpower, together with the Unites States. It has the ability to use soft and hard power, it behaves as a civilian power (commitment to multilateralism, aids policy and so forth and so on), it has a strong economic market, and it is the world's second military power. According to Moravcisik, far from being a declining power, the EU is strong enough to be labelled superpower, and peaceful enough (in its relations with the rest of the world, but also in the achievement of a peaceful regional area) to be defined 'quiet'.

In between 'small' and 'super', the European Union has also been labelled as a 'middle power' by Laatikainen (2006); to be more precise, Laatikainen analyzes how the European Union's

effective multilateralism has been borrowed by the traditional standard behaviour of the Nordic European countries at the United Nations, the so-called 'middle powers'; as a consequence, Laatikainen (2006) observes a phenomenon that he calls the "Europeanization of middle-power diplomacy". (Laatikainen:70).

2.3 A simple normative "power"?

Before starting this sub-chapter, it is important to underline that this work doesn't intend to neglect the normative dimension of the European Union, or that of any other actor that plays in the international arena and who holds enough capabilities to be recognised as such. On the opposite, what we here wish to zoom on are the EU's problematic abilities (which must be confirmed) to transfer/diffuse/suggest/propose its values/norms to other states. The present sub-chapter analyzes the rules, the mechanisms, and the requirements that favour or hinder this process.

The concept of Normative Power appeared for the first time in an article published by Ian Manners (2002) in the Journal of Common Market Studies. Although he recognises that previous scholars have already caught a normative dimension of the European Union and its ancestors (the European Community), the specific label of Normative Power Europe was firstly introduced by Manners.

The first incoherence of the NPE concept applied to the European Union is that while Manners suggests that the secret to catch the essence of the NPE is to focus more on 'what the EU is' than on 'what it does', afterwards he presents as a test case on the EU's international pursuit of the abolition of death penalty, which represents a specific target of the EU's human rights policy and, of course, belongs to the sphere of 'doing', rather than to the one of 'being'. The importance of keep what the EU 'is' and 'what the EU does' separate for the analysis and the evaluation of the EU role in international politics (Smith 2005a 2005b; Aggestam 2008) is here shared. According to the author, doing differently has created more than a simple shadow of confusion.

Concentrating on the purely literal meaning, while 'what it is' expresses the existence of a subject that is a power, intended as the Italian 'potenza' and with the French 'puissance', 'what it does' expresses a given actor's ability to exercise a sort of power; in this case, the Italian word 'potere' and the French 'pouvoir' better address the needs. In the case of normative power, being a "normative potenza" is different from having (and exercising) a "normative potere". While saying that the EU is a "normative potenza" can be considered as a

generic normative assumption, useful to conceptualise the EU's nature, and to suggest a shareable wish, the 'having' and 'exercising' concepts belong to the empirical domain and necessitate the support of accurate empirical data. As a consequence, while the "normative potenza" label can be considered to be a suitable definition to depict the constitutional essence of an actor and its Weltanschauung towards the world, a "normative potenza" can lack of "normative potere" which is here understood as the ability of an actor to transfer/diffuse/export norms outside of its borders; this "potere" can be (and, according to the author, has to be) assessed case by case. The goal is not to falsify the constitutive normative nature of the EU, but it isn't either to fall in the trap of easy generalisations.

In the conclusion of his famous paper, Manners (2002) seems to shut down every doubt. There are three normative power dimensions: "an ontological quality to it –the EU can be conceptualised as a changer of norms in the international system; a positivist quantity to it –the EU acts to change norms in the international system; and a normative quality to it –the EU should act to extend its norms into the international system" (Manners 2002:252). The 'being', the 'doing' and the 'should' dimensions stand together in the scholar's understanding of what NPE is.

What is observed here (at a terminological level, too) is that while the 'EU being', intended as a way of conceptualizing the EU's nature, and the 'EU should' both belong to the normative domain and cannot therefore be contested, the fact that the EU acts to change norms in the international system needs to be confirmed case by case. There are cases in which the normative power concept (in its third declination) doesn't work; there are cases in which behind a seeming promotion of norms, the EU counteracts (or does not act) to push the change of norms. The 'price' to be paid in order to concretely promote the change of norms is too high; therefore, the promotion of norms cannot be pursued at the expense of vital interests, and this feature makes the European Union similar to other traditional actors. The goal of this work is to find those discriminant factors that lower or increase the EU's capability to promote norm change in relation with third countries.

The two case studies have been selected with the aim of testing the following empirical hypothesis: while the abolition of death penalty in the Philippines is a success story, and shows

how a mix of normative and traditional civilian means have contributed to the positive outcome (the empirical normative power remains valid while not exclusive), the Chinese case (where death penalty is still well-rooted both in the penal code and in society[8]) represents the case *par excellence* in which normative power is strongly limited by economic dynamics, which place the EU in a weak normative position; consequently, the domain of applicability of the general concept itself is restricted.

The normativity of the generic international campaign against death penalty –which has seen the European Union, and in particular some specific Member States of the EU, promote a moratorium (i.e a suspension, not abolition, of death penalty) to the United Nations General Assembly– is still valid; nevertheless, the moratorium remains a 'not binding' document of the United Nations of General Assembly (UNGA), and therefore cannot be considered a test case of a pure exercise of empirical normative power.

The proposal here is not to criticise the concept, but to underline some lacks and limits in the same test case that has been chosen by Ian Manners as the best example of a pure exercise of normative power. It is here argued that the pursuit of the abolition of death penalty doesn't allow generalisations on Normative Power Europe.

To follow this aim, this work proposed to make a distinction between two different typologies of EU coherences. On one side the coherence underlined by Lerch and Schwellnus (2006) partially[9] helps explain and normatively justify the promotion of the abolition of capital punishment in third countries. It is true that "in this area the EU practises what it preaches (i.e. coherence between rhetoric and action)" (Lerch and Schwellnus 2006: 310) and, as wellknown, all the member states of the European Union have abolished death penalty. On the other hand, a coherence between policy intentions and actions taken to concretely promote the policy seems to be missing; this lack reduces the normative 'potere', which can therefore be compared to an empty shell that justifies the cases in which the abolitions take place (by overestimating

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8 The recent reduction of the list of crimes for which the penalty is prescribed needs to be underlined.

9 Partially because, as underlined by Lerch and Schwellnus, a clear international reference that invokes the abolition of death penalty is missing in the international law.

the EU's role and underestimating the pre-existing dynamics that drive the norm change) and, on the contrary, shows a normative impotence in opposite cases.

We here propose to differentiate between 'passive coherence' and 'active coherence'. More in particular, Balducci (2010) underlines a specific aspect of the absence of 'active coherence', together with the importance of understanding who the subject of this power is when using the NPE concept. By criticising the unitary approach proposed by Tocci (2008b), and using a multilevel governance approach to European foreign policy, Balducci distinguishes three different levels of European Foreign Policy; and the normative power perspective has to be applied (and verified) to each one of the three levels. These levels are: the pure CFSP level, the European Commission level, and the member states level. Balducci's analysis (2008; 2010) highlights divergences and differences in the normative power exercises by the three actors' levels. This crucial point needs special consideration in the development of the empirical analysis of this work. The methodological solution here proposed is to mainly consider the first and second level. It is hypothesised that the EU level already presents a lack of coherence; it remains clear that, where necessary, and if functional to strengthen the present thesis, the incoherent behaviour of some key member states will be taken into account.

Also, it is here hypothesised that, in some cases, labelling the European Union as Normative Power becomes a justification for what the EU 'does not do'; what if there is an inconsistency between the promotion of the human rights policy and the development of other policies? Is there the risk of labelling as 'normative power' what remains an empty 'normative façade'? Several doubts and questions need to be raised.

In analysing the European Union's human rights policy and the Normative Power Concept, Youngs (2004) has attempted to demonstrate that this policy, too, is rooted on strategic considerations and that it can be explained by simply taking into account utilitarian calculations: "the position taken here is not the standard one of doubting the EU's genuine commitment to normative values. Rather, it is argued here that the way in which certain norms have been conceived and incorporated into external policy reveals a certain security-predicated rationalism" (Youngs 2004:421). As clearly noted by Diez (2005) "Richard Youngs argues that normative concerns and strategic interests always go together in the EU's external relations,

and that one therefore needs a combination of rationalist and constructivist approaches in order to assess the respective impact of both factors" (Diez 2005: 625). By citing once again Youngs (a key scholar for the adoption of a critical perspective of normative power), Wood explains how "among the more critical perspectives, Richard Youngs' perspicacious analyses illuminate how material–strategic interests and instrumentalist calculations are at least as influential as values, social learning and 'persuasion' (without coercion or bribes) in the implementation of EU democratization and human rights policy" (Wood 2009: 112). The position here defended states that it is possible to observe the controversy (or contradiction?) between norms and interests from a different point of view, by using a different perspective. It is argued (and will be tested empirically) that the general promotion of human rights and the specific case of the international pursuit of the abolition of death penalty are not in themselves rooted on strategic considerations[10], while it is the inefficacy of the policy that is driven strategically. The policy itself is not clearly oriented to the winning result. In this respect, it seems appropriate to recall the dichotomy presented in the first chapter, i.e. manifest versus latent power. In this case, the dichotomy will be applied as follows: 'manifest power policy versus latent power policy: do they go on the same direction?' We need to make a distinction between the manifest promotion of abolition (internally coherent) and the latent inefficacy justified by other policies and priorities. Reasoning in these terms helps to differentiate between being normative –understood as 'being on the good side' as a promoter of human rights, good governance, rule of law and so forth, this way constructing the normative side of the European Union– and the incapacity/inefficacy/unwillingness to give concretely pursue the values proclaimed.

The latter argument is close to the observations made by Hyde Price (2004), and it goes further; according to Hyde Price, "the EU is only able to shape or change normative values when the target state is seeking to acquire some economic or political advantage from good relations with the EU. In this sense, the EU is acting as a hegemon in classic Gramscian fashion, shaping its external milieu using a mix of policy instruments"; this case reflects the supposed (to be empirically verified) normative alignment for strategic and other reasons

10 What in fact would be the EU's strategy/interest behind the promotion of the abolition of death penalty in third countries? What are the advantages? What are the immediate and direct profits of the European Union in this case?

which took place in the Philippines. A new consideration introduced in this work is that the EU is unable to shape or change normative values when the target state is immune to the sticks and carrots and when the EU itself is sensitive to the possible loss of economic advantages from good relations with third countries. In this case, the argument here proposed is more complex than the Hyde Price one, which stops at the positive weaknesses of the EU's (manifest) action. The need to focus on the negative weakness of the EU's (latent) omissions, is here highlighted. In addition, clearly speaking of death penalty, Hyde Price claims that "the advocacy of the end of capital punishment, for example, has no impact on the balance of power or on the primary goal of survival. It will be pursued so long as its advocacy does not generate power political dilemmas, or threaten the economic interests of its member states". (Hyde Price 2004:10). It is argued that there is a gap between the rhetoric/manifest/normative promotion and advocacy for the abolition of capital punishment and the latent mechanisms for the protection of *alter* interests.

Going back to Manners (2002), another cause of concern lies in the question as to whether or not the six factors he proposed to explain how norms are diffused are valid (Manners 2002:244). The main questions: are these factors really measurable and, more importantly, are they really normative, which means not based on material or physical power? While the absence of material roots sounds acceptable for factors such as contagion, informational diffusion, overt diffusion and cultural filters[11] (although how to measure them is still unclear), things are different for factors like procedural and transference filters. What in fact is more based on material factors and economic gains than the enlargement of the European Union? This enlargement is included by Manners in the list of the procedural factors, together with the inter-regional and cooperation agreement. And what about "the EU

[11] Contagion: "diffusion of norms results from unintentional diffusion of ideas from the EU to other political actors (Whitehead, 1996, p.6)" (Manners 2002:244)

Informational diffusion: "diffusion is the result of strategic communications, such as new policy initiatives by the EU, and declaratory communications such as initiatives from the presidency of the EU or the president of the Commission" (*Ibidem*).

Overt diffusion: "occurs as a result of the physical presence of the EU in third states and international organizations" (Manners 2002:245).

Cultural filter: "which affects the impact of international norms and political learning in third states and organizations leading to learning, adaptation or rejection of norms (Kinnvall, 1995, pp. 61-71)" (*Ibidem*).

exchanges goods, trade, aid or technical assistance with third parties through largely substantive or financial means" (Manners 2002:245). The doubt is that by including all these different procedures inside the NPE, this concept may become nothing more than a renovated edition of Civilian Power Europe (CPE), with the ambition of claiming that the EU has "the ability to define what passes for 'normal' in world politics. Nevertheless, given the complexity of the concept, it was decided to accept a broader definition of the NPE concept, in order to verify whether or not the EU is really able to promote norm change and diffusion "to define what passes for 'normal' in world politics' " and if not, what conditions prevent it.

Is it true that "simply by existing as different in a world of states and the relations between them, the European Union changes the normality of 'international relations' " (Manners 2008:45)? At a certain point, Manners also distinguishes between 'being' and 'acting' as a normative power (Manners 2008), and proposes a list of three "maxims that should shape the EU's normative power in world politics: live by example; be reasonable; and do the least harm." (Manners 2008:47).

By differentiating between manifest and latent power dynamics, it is argued that the European Union does not always possess the conditions to follow these three maxims, and this depends on how 'living by example', 'being reasonable' and 'doing the least harm' is measured. The 'manifest vs latent power' approach allows to make a distinction between two alternative dynamics that can be both filtered by the selection of maxims proposed by Manners.

According to the scholar, saying that the declarations of intentions and the principles inserted in the Lisbon Treaty (protection of rule of law, freedom, human rights, freedom, human safety, and so forth) and the resulting policies are "at best unimportant, or (that they) at worst provide cover for more covert commercial interests" reflects a cynical attitude. On the contrary it is here argued that Manners' approach suffers an overestimation of the manifest intentions, while he underestimates these commercial interests' weight in what 'EU does not do'. The approach promoted here is neither cynical nor pessimistic, but rather suggests a critical analysis of the EU's behaviour and the verification of whether, why and under which conditions the EU's diffusion of the 'famous' principles is narrowed; to fill this knowledge gap (when does the EU normatively fail?), the two case studies have been chosen.

The aim of this chapter was to give an overview on how the concept of power has been used in combination to the European Union, and how it can describe the EU's nature. It has been found that, starting from the common understanding of the European Union as a power, several definitions have been elaborated and tested. This work sticks with a critique to the NPE because promoting the abolition of death penalty is a clear example of norm promotion, an attempt to "shape conceptions of normal" (Manners 2002).

According to the author, it is necessary to investigate on how the norms are promoted and which factors and conditions drive the success or failure of this promotion, and whether a convergence toward a successful outcome is verifiable, or, on the opposite, a fuzzy logic characterised the EU's behaviour. The necessity to combine constructivist and rationalist approaches (Youngs 2004; Diez 2005; Wood 2009) to study the promotion of norms is here shared. The European Union is clearly a power, but its three levels of being *sui generis,* underlined in the introduction of this chapter, highlight the difficulty of catching the its nature within a simple and univocal definition. Also, it seems questionable that the EU at external level always acts in a *sui generis* manner.

Furthermore, it has been noted that a combination of the word 'power' with the variegated selection of adjectives (model, normative and so forth) recalls the *leitmotif* question of this work: does 'power' only indicate a way of staying in the world (potenza)? Or does 'being a power' also mean 'being able to exercise a power' (potere)? And consequently: does being a whatsoever kind of power have to go together with being perceived as such? And does being a power (potenza) have to be supported by the achievement of changes that are consistent with the nature of the proposed power? If you promote norms, you are a 'normative power' only if the norms promoted are accepted by 'others'; if you promote a model of staying in the world, you are a 'model power' only if your model is shared and accepted; otherwise the word 'power' needs to be replaced by the word 'promoter': 'promoter of a model', 'promoter of values', 'promoter of norms'. The key point expressed here is that the EU meets difficulties and obstacles in reconciling ambition and interests. It is true that the EU promotes values, model and norms; but to what extent does it do so (albeit at the expense of strategic interests), and to what extent is it able to do so? And, finally: to what extent is the rest of the

world really interested in accepting and sharing these European values, models and norms? A Eurocentric bias affects European studies, emphasising the confusion between what 'we' (European scholars) want from the EU and what the EU is able to give us.

Chapter III The human rights conundrum: an engine or an obstacle for partnership?

"Geheimnisvoll am lichten Tag,
Läßt sich Natur des Schleiers nicht berauben,
Und was sie deinem Geist nicht offenbaren mag,
Das zwingst du ihr nicht ab mit Hebeln und mit Schrauben."
Johann Wolfgang Goethe, Faust

1. Introduction

Through this section, the present work moves from the theoretical framework to the analysis of the empirical data. Having presented the political science meaning of the word "power" (in the two acceptations of "potenza" and "potere") and its use in combination with and in relation to the European Union (studied as a *sui generis* actor of IR), the attention now shifts to the analysis of the relations occurred between the European Union and China, and European Union and the Philippines, as connected to the topic of this work, i.e. the EU human rights policy towards the two countries. Special attention is paid to the promotion of death penalty abolition, which represents a key goal of the EU human rights policy.

The reason why the two countries mentioned have been chosen is linked to the fact that they represent the most dissimilar cases: China is the first super-executor in the world, and the EU's engagement towards China seems to not put human rights at the core of their bilateral relationships. On the contrary, the Philippines have been considered a "success story" for the EU's human rights policy, and "although there were other contributing factors, it is believed that project activities financed under the EIDHR were instrumental in influencing the opinion of both key decision-makers and the general public", as claimed by Europe Aid General Direction. However, the differences between China and the Philippines stressed in this work are not exclusively linked to the countries' changed (or unchanged) positions toward death penalty, but also to their economic relations with the European Union: while China for the EU

represents *the* market, and while the two have a mutual (although not perfectly symmetrical) dependency in purely economic terms, the Philippines are an almost irrelevant market for the EU.

Based on these preliminary remarks, the goal of this work is to present a framework for analysis that, once accepted, can be adapted and used to understand to what extent the European Union intentionally and structurally behaves as a normative power. The most relevant achievement of this work consists in underlining the need to differentiate, *pluribus* levels, when the Normative Power Europe concept is adopted and used. Normative power is here considered as a bubble that is inflated or deflated depending on several factors, such as, firstly, the economic relevance for the European market of a third country. The concept cannot be applied *tout court* as a general principle or as a distinguishing feature of the EU's behaviour in IR; in other words, it needs to be revisited.

1.1 Empirical hypotheses and data

The author claims that the European Union's "normative approach" varies according to the country and through this approach the EU promotes values and norms. These differences in the EU's normative approaches are due to contingent, economic and strategic interests.
The core hypotheses of this work are the following:

HP1) As long as human rights promotion does not affect "vital" interests, and the EU remains in an advantageous asymmetrical position, norms and values are consistently promoted; when "vital" interests are at stake, the EU shifts to a symmetrical position and it lacks inexpensive leverages, the EU's normativity suffers from some limitations. In other words, it is conditioned by external factors.

HP2*) A negative correlation exists between symmetrical economic relations and the EU's ability to live up its own human rights policy and to implement its human rights guidelines on*

death penalty, while there is a positive correlation between a structural bilateral economic asymmetry and a successful outcome in terms of normative power results.

The empirical investigation is conducted by studying a combination of two different kinds of data:

a. Documents showing a general EU commitment to the promotion of human rights and to the campaign for the abolition of death penalty worldwide, plus documents that put human rights and death penalty on the agenda of the EU's bilateral relations with China and the Philippines;
b. Documents and indicators that measure bilateral economic relations between EU27 and China/Philippines, plus a selection of the bilateral fluxes between three member countries (Germany, United Kingdom and France) and the two targeted countries.

The first group of data is composed of two subcategories: the generic documents the European Union has produced on human rights promotion and on the death penalty topic, and the country-focused documents on the same topic. The analysis of the rationale of the first subcategory has a double function: on one hand it gives a picture of the EU's general approach towards human rights promotion worldwide, it testifies the salience of the topic for the European Union, and it also delineates the EU's way of introducing itself; on the other hand, by analysing the practical tools at the EU's disposal for human rights promotion itself, it provides the instruments to measure whether or not the EU has used the tools available (in the two case studies) in a coherent way.

The second subcategory of data collects the documents on human rights and death penalty that explicitly refer to China and the Philippines. All the European Parliament resolutions[12] that mentioned the target countries ("China" and "the Philippines") and the expression "human rights" were selected. Among all the resolutions found, the ones where the specific issue of "death penalty" was addressed were isolated (counted and qualitatively analysed).

[12] The author used multiple sources to find all the documents: Eur-Lex database, the European Parliament Archive and the European Parliament register.

Concerning the Council of the European Union, the research was conducted by analysing the documents contained in three different press release archives of the 'Consilium' website: "Foreign Affairs", "Meetings and agreements with third countries" and "Common Foreign and Security Policy (CFSP) Statements". As for the European Parliament, in this case, too, all the documents where China and the Philippines where mentioned in combination with the "human rights" expression were selected; furthermore, the presence/absence of the "death penalty" topic was measured. The same reasoning was used for the declarations by the presidency of the Council of the European Union and for the European Council conclusions.

Regarding the Commission's documents, the Commission Communications and the Country Strategy papers having as object the target countries were selected, and the "importance" (both in terms of rationale and money allocated) attributed to human rights in comparison with other issues was assessed. As for the institutional bilateral fora, the Joint Statements of the EU's human rights dialogue with China as well as the press release of the EU-China Summits and the EU biannual Senior Officials' Meetings with the Philippines were examined to verify to what extent the 'human rights' and the 'death penalty' issues were addressed during those meetings.

Finally, the projects financed under the European Instrument for Democracy and Human Rights Promotion were collected, and the quota of money allocated to Anti-Death Penalty Projects among the rest of projects was identified.

The second group of data collects the volume of trade (importations and exportations in goods) between EU27 and the target countries, and the bilateral fluxes between three country members (Germany, France and United Kingdom) and China and the Philippines. The reason behind the isolation of the three European country members resides in the observation that, on different occasions, these three countries have prevented the formulation of a common European position, a behaviour that can be ascribed to economic justifications.

The sources used for this second group of data are the official economic indicators of the World Bank, available on the official websites of the Directorate General for Trade and of the European Commission delegation to China and to the Philippines, as well as the International Trade Centre database.

How can the hypotheses presented and the empirical tools identified be connected? *The logic is to verify if the relevance attributed to the human rights discourse and the outcome of the EU campaign is affected by the economic performance between the two actors, and whether it is possible to find a correlation between the asymmetric/symmetric economic relations of the EU with China/Philippines and the successful EU human rights promotion in the implementation of the campaign against the death penalty.*

What are the implications expected at the theoretical level? It remains clear and doubtless that the European Union has a core list of values that constitutes its domestic essence, and these are historically granted in all the key treaties and documents; what is less clear is 'to what extent' the EU is committed to the promotion of these values outside its borders and, consequently, 'to what extent' it can be *simply* called 'Normative Power Europe'. The thesis that needs to be demonstrated here is that, when economic interests prevail, the EU chooses to favour the interests rather the promotion of values. This implies that when the EU doesn't *naturally* behave as a normative power because it is facing a strong market, and in absence of leverages, it doesn't act to change the nature of the relationship, which could be done for example by threatening to interrupt of a given human rights bilateral forum nor does it condition the advancement of the economic relations towards substantial improvements in human rights protection

In this sense, a constitutive and inherent weaknesses of the so-called Normative Power Europe can be highlighted, suggesting the need to fill a gap, at least in the description of the EU. This work proposes to add the attribute "conditioned" to the classic label: the EU behaves as a "Conditioned Normative Power".

2. Human rights: an EU priority

The promotion of *universal* values and principles (the adjective universal is used to indicate those principles and values enshrined in international law) constitutes a relevant part of the EU's behaviour in its relations with third countries. The issue here is that the EU's bilateral behaviour with third states is conditioned and limited by strategic considerations and weaknesses and, therefore, the EU has difficulties behaving as a pure/coherent Normative

Power on the world stage. At the same time, both EU institutions and part of the academic literature (analysed in the previous chapter) are trying to converge on the promotion of a self-perception of the EU as a Normative Power.

The European Union presents itself as a "global force for human rights"[13], clearly shifting in its definition from an actor who commits to respecting human rights at an internal level to a player committed to make others respect human rights (this approach justifies the use of the word "force").

How does the EU present itself? The introductory chapter contained in the European Union's External Action Service, under the section *The EU and human rights* states the following:

"Human rights, democracy and the rule of law are core values of the European Union. Embedded in its founding treaty, they were reinforced when the EU adopted the Charter of Fundamental Rights in 2000, and strengthened still further when the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009.

Countries seeking to join the EU must respect human rights. And all trade and cooperation agreements with third countries contain a clause stipulating that human rights are an essential element in relations between the parties.

The Union's human rights policy encompasses civil, political, economic, social and cultural rights. It also seeks to promote the rights of women, of children, of those persons belonging to minorities, and of displaced persons. With a budget of €1.1 billion between 2007 and 2013, the European Instrument for Democracy and Human Rights supports non-governmental organisations. In particular it supports those promoting human rights, democracy and the rule of law; abolishing the death penalty; combating torture; and fighting racism and other forms of discrimination."[14]

Moreover, Article 21 of the Treaty of the European Union, as introduced by Article 1(24) of the Treaty of Lisbon, recognises that "the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement,

[13] http://europa.eu/pol/rights/index_en.htm

[14] http://eeas.europa.eu/human_rights/index_en.htm

and which it seeks to advance in the wider world: 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 respect for the principles of the United Nations Charter and international law".

The questions that need to be addressed are the following: does the always EU place human rights at the core of its relations with third countries? Or are there restrictions that condition its normative promotion of values and norms?

2.1 Guidelines on Human Rights and International Humanitarian law

The Guidelines on Human Rights constitute an integral part of the European Union Human Rights Policy. They are eight practical tools at the disposal EU's external representations. The first, elaborated in 1998, is on death penalty; the other guidelines deal with torture, dialogues with third countries, children affected by armed conflict, human rights defenders, children's rights, violence against women and international humanitarian law.

These practical tools are important because they try to favour a coherent and consistent approach towards third countries by coordinating, organising and supporting human rights promotion. Due to its relevance for this work, the guideline on death penalty will be discussed in the next subchapter, while all the others will be briefly analysed here.

The "Guidelines on Torture and other cruel, inhuman or degrading treatment or punishment" were elaborated in 2001 and updated in 2008; their purpose is to work towards the prevention of torture and ill-treatment in third countries. The document firstly recalls all the international and regional norms and standards that the EU invokes, defining "torture" and disciplining its unconditional prohibition[15]; secondly, it identifies the ways and tools to improve the guidelines, such as monitoring and reporting violations committed in third countries, making démarches (i.e. the public statements that the European Union uses to denounce and condemn violations), encouraging the ratification of international norms, allowing domestic procedures for complaints, strengthening the national institutions devoted to the prevention of torture, helping to train security and policy workers, supporting medical doctors who register violations.

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15 To mention some of them: Universal Declaration of Human Rights; UN International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols; UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; UN Convention on the Rights of the Child (CRC) and its two Optional Protocols;UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD); UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; UN International Convention for the Protection of All Persons from Enforced Disappearance; UN Convention on the Rights of Persons with Disabilities and its Optional Protocol; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols no.6 and 13 as well as the relevant case-law of the European Court on Human Rights; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); Statute of the International Criminal Court; Statute of the International Tribunal for the Former Yugoslavia; Statute of the International Tribunal for Rwanda; Geneva Conventions on the Protection of Victims of War and its Protocols, as well as customary rules of humanitarian law applicable in armed conflict.

The second category of tools available to the European Union's Foreign Policy are the Human Rights Dialogues, formalised thanks to the Council Conclusions of 25 June 2001, which welcomed the suggestion contained in the Commission Communication of 8 May 2001. Different typologies of dialogues exist: the general ones, in which human rights are discussed in a wider framework of cooperation, such as in the relations with candidate countries, the Western Balkans, and Mediterranean countries; those exclusively devoted to the discussions of human rights, such as the one with China. Lastly, the dialogues carried on with "special" countries, meaning countries that have a special relation with the European Union, such as the United States, Canada and Japan.

The reasons behind the establishment of a formal human rights dialogue lie in the consideration of the mutual benefit in discussing all the human rights questions in a given meeting; the establishment of a specific dialogue, however, should not (at least in principle) prevent the EU from expressing or denouncing violations in different fora, such as the multilateral ones. Also, the EU can interrupt the dialogue when not satisfied of its evolution. Each dialogue needs to be assessed and evaluated by using benchmarks able to indicate progresses or possible setbacks.

The 4th, 5th, 6th and 7th Guidelines are all devoted to the promotion and protection of special and weak categories of persons. The "Guidelines Children and armed conflict" were elaborated in 2003 and updated in 2008 and they discipline the protection of children involved in conflicts, while the Guidelines titled "Promotion and protection of the rights of the child" deal with the protection of children in general, under all circumstances. The document recalls a list of international and regional tools and norms[16] that the EU can invoke in its relations with third countries. The Guidelines for the "protection of women from violence and discriminations", elaborated in 2008, follow, together with those dedicated to "human rights defenders" (first edition 2004, updated 2008), a special category of individuals who are often

16 To mention some of them: Convention on the Rights of the Child, 1989; Optional Protocol II to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002; Optional Protocol I to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002; ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999. Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1978; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

the target of violence because of the very fact that they work for the protection of human rights. In all those cases, the tools available to the EU are political dialogues, démarches, specific forms of training, monitoring of violations and denunciations in multilateral fora.

The last type of guidelines are those on "Promoting Compliance with International Humanitarian Law" (IHL). These were developed by European legal experts in 2005 with the aim of increasing compliance to a set of rules and norms valid exclusively during wartime and occupations. In this case, too, the European Union's specific tool is based on the pre-existing intentional instruments.[17]

2.2 Campaign against death penalty, an EU priority since 1998

It would be a mistake to take the abolition of death penalty for granted among the countries members of the European Union and, more in general, in Europe. While it is true that the debate on the abolition of capital punishment is well rooted in Western European society, it has to be admitted that the origins of the debate did not match with an abolitionist trend. From the Italian Cesare Beccaria's famous book, *Dei delitti e delle pene,* to the first abolitions in European countries and the mobilisation of an active civil society (Amnesty International, Hands off Cain and Comunità di Sant'Egidio in particular) there is a gap of more than two

17 To mention some of them: 1907 Hague Convention IV Respecting the Laws and Customs of War; Annex to the Convention: Regulations Respecting the Laws and Customs of War;1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; 1949 Geneva Convention I for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field 1949 Geneva Convention II for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; 1949 Geneva Convention III Relative to the Treatment of Prisoners of War; 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War; 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts;1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts; 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict Regulations for the Execution of Convention for the Protection of Cultural Property in the Event of Armed Conflict;1954 First Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict;1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict;1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects;1980 Protocol I on Non-Detectable Fragments; 1980 Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby- Traps and Other Devices;1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices 1980 Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons; 1995 Protocol IV on Blinding Laser Weapons; 2003 Protocol V on Explosive Remnants of War;1993 Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction;1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; 1993 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;1994 Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994;1998 Rome Statute of the International Criminal Court.

hundred years. Beccaria's book was published in 1764 and "represents the first work that seriously deals with the problem and proposes some rational arguments to find a solution that is in opposition to a centuries-old tradition" (author's translation Bobbio 1990:180). While it is often remembered in the literature that Tuscany was the first place in the world where the capital punishment was abolished in 1786, thanks to the decision of Peter Leopold, it is seldom recalled that it was reintroduced there four years later. The historical course was really long and complex, and it is possible to argue that the abolitionist trend is a recent phenomenon, which involved the last thirty years.

Going into details, it is interesting to note that France abolished death penalty in 1981, both for civil and wartime, Spain in 1995, and Belgium in 1996. Italy abolished it with the 1948 Constitution, but excluded it from the Military Code only in 1994. In the United Kingdom, death penalty was abolished in 1998. This brief timeline reinforces the thesis that the abolition trend is recent. In addition, even the key international documents elaborated after World War II to guarantee the respect of human rights have an ambiguous position toward death penalty. While the Universal Declaration of Human Rights voluntary omits any reference to capital punishment, Article 2 of the European Convention on Human Rights 1950 explicitly affirms an exception to the right to life by stating that:

" 1.Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

It is not until Article 6 of the International Covenant on Civil and Political Rights 1966 that we find a specific reference to death penalty: while the first paragraph affirms that " Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", paragraph 2 identifies *certain conditions* that have to be

respected by those countries which still have the death penalty in their Civil Code: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide."

Article 1 of the 6th additional Protocol 1983 to the European Convention on Human Rights specifically previews the abolition of the death penalty by claiming that "the death penalty shall be abolished. No-one shall be condemned to such penalty or executed", the only exceptions refer to wartime (article 2).Those exceptions are finally excluded in Protocol 13th where the death penalty is abolished for all cases. This Protocol entered in force less than ten years ago (1st July 2003).

It can be recognised that the evolution of these international and regional documents has followed a specific trend: the strategy goes from the omission of the capital punishment's thorny institute in order to guarantee the protection of other relevant human rights, to the limitation of this worldwide practice (which can be considered one of the most ancient practices in the human history); from the identification of some *conditions* under which the death penalty can still be practised, to its complete abolition (this is the case of the regional European document).[18]

Today, all the 27 members of the European Union have abolished capital punishment, and what is more interesting is that the whole regional area (except Bielorussia) is free from this legal provision. This historical evolution justifies the assumption according to which the campaign for abolition of death penalty became a constitutive element of the European Union's identity; this statement is also defended by the fact that the abolition of death penalty is a precondition to being a member of the Union. Furthermore, the resolution on a moratorium against death penalty, firstly voted by the European Parliament and then proposed and voted at the 62th session of the United Nations General Assembly, are two crucial facts that support this thesis (Zolo 2010, 33:40). The EU's activism on the death penalty moratorium is not the focus of this work, and the moratorium remains in the domain of the political achievement, because

[18] Reconstruction of key steps and documents inspired by Pietro Costa's introduction to the book "The right to kill", Feltrinelli 2010

the United Nations member countries are not obliged to respect it giving that it is a not binding resolution.

The relevant question for this work is now: how does the European Union behave in its bilateral relations when pushing countries to abolish the capital punishment? How does the EU bilaterally try to spread this norm? In which way does it exercise a normative pressure? Does it use the same approach toward all third countries? Does it hold the same tools, no matter the identity of the third country? In this regard, it is interesting to notice that the year in which the Council adopted its first operative tool in favour of the abolition of death penalty coincides with the year in which the United Kingdom abolished it (1998). The operative document is the EU Guideline on the death penalty, which represents the first document dedicated to human rights protection worldwide.

The Guideline on death penalty is extremely relevant for this research for three reasons: it represents the first operative commitment of the European Union to the promotion of death penalty abolition worldwide; it was elaborated in 1998, the starting date for the present analysis (even if some key events that have taken place before will be mentioned in separate sections), and lastly because the content of the guideline generates a relevant corollary question to the main research question (to what extent does the European Union act as a Normative power?) which is the following: to what extent is the European Union committed to implementing the Guideline on death penalty in case studies selected? What are the limitations of this implementation? What are the obstacles?

Elaborated in 1998 and updated in 2008, the Guidelines on death penalty transform an internal achievement of a given regional organisation (the European Union) into a foreign policy goal. The European Union's goals in this regard are:

"- To work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states; if necessary with the immediate establishment of a moratorium on the use of the death penalty with a view to abolition.

- Where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards as set out in the attached paper,

while seeking accurate information about the exact number of persons sentenced to death, awaiting execution and executed".

The measures available to pursue this objective mainly consist in raising the issue in all the bilateral meetings with third countries by calling for the complete abolition of penalty or for a moratorium of executions, and by encouraging the ratification of the international norms. Concerning the countries determined to keep capital punishment in their internal legislation, the European Union firstly asks them for transparency, urging them to provide clear information on the phenomenon's proportions; in addition, it calls for the respect of the so called "minimum standards". A list of "may/may not be imposed" follows: "only for the most serious crimes", "only for a crime for which death penalty was prescribed at the time of its commission", "only when the guilt of the person charged is based upon clear and convincing evidence, leaving no room for alternative explanation of the facts". Three categories are protected: persons below 18 years of age, pregnant women and the mentally insane. Moreover, a list of judicial provisions are indicated, such as the right to appeal, the possibility for the sentenced to death to benefit from international procedures, the prisoner's right to not suffer during the execution. In case of violation of the minimum standards, the European Union can make individual démarches to address individual cases.

3. A normative approach to the Chinese case?

3.1 EU-China relations

EU-China relations started in 1975 with the establishment of the first diplomatic contacts. The subsequent crucial dates are: the *Agreement on trade and economic cooperation,* signed in 1985, and the opening of the Delegation of the European Commission in Beijing in 1988.

The 1989 Tien An Men facts represent a crucial date for the EU-China relations, and though these facts do not fall in the period here reviewed, it is important to recall what happened and how the EU-China relations have changed. The EU's reactions to these incidents and killings are particularly relevant to this work; it is argued that these initiatives can be considered the EU's only normative actions towards China until now; since then, the European behaviour seems to have been affected by a "normative schizophrenia".

The normative action performed by the former European Community consists in an imposition of sanctions and arms embargo towards China. Although the embargo was interpreted in different ways by the various EU members states in the years following the events, its normative nature remains valid. With the Conclusions of the European Council, adopted in Madrid on June 27 1989, the twelve member states decided to adopt six measures:

"(i) raising of the issue of human rights in China in the appropriate international forums; asking for the admittance of independent observers to attend the trials and to visit the prisons; ii) interruption by the Member States of the Community of military cooperation and embargo on trade in arms with China, iii) suspension of bilateral ministerial high-level contacts, iv) postponement by the Community and its Member States of new cooperation projects, v) reduction of programmes of cultural, scientific and technical cooperation to only those activities that might maintain a meaning in the present circumstances, vi) prolongation by Member States of visas to the Chinese students who wish it" [19]

[19] Council Conclusions available here: http://aei.pitt.edu/1453/

This document undoubtedly holds an operative essence: it contains positive actions, such as the interruption of military cooperation, the imposition of an embargo, the suspension of bilateral meetings, and the reduction of programmes.

The relations started to normalise in 1994, with the creation of a framework for a political dialogue. In 1998, the dialogue took the shape of the so-called *EU-China Summit:* this became the base for renewed, more structured and articulated political relations. The dialogue, as it appears today, involved and covered a plurality of issues. The numbers of the High level meetings also increased, reflecting the complexity of the European Union itself. This is the reason why the "classic" Annual Summits (where the EU is represented by the President of the European Council and by the President of the European Commission, assisted by the European High Representative for Foreign and Security Policy/Vice President of the Commission) were accompanied by so-called "executive-to-executive" meetings between the executive bodies of the two countries, i.e. the European Commission, represented by its President, and the Chinese Premier with the State Council members. In addition, a complex network of thematic meetings, where experts of specific sectors met to find common solutions and discuss common problems (arms control, environment, terrorism and so forth), were developed.

The political dialogue, however, constitutes just one of the series of dialogues taking place between the European Union and China. The number of co-operation areas has grown from 14 to more than 50 in five years only (from 2004 to 2009). The dialogue involves fields ranging from experiences of regionalism (since 2004), culture and education (since 2004), environment, civil society, economic and financial issues, trade, and human rights, which are relevant for this analysis.

The negotiations on a new EU-China Partnership and Cooperation Framework Agreement officially began in Beijing on 17 January 2007.

3.2 The normative tangle: the suspension of the human rights dialogue and the "Geneva querelle"

As far as the Chinese case is concerned, the author will proceed as follows: firstly, two crucial elements, selected according to the 'manifest' and 'latent' power logics, will be identified and analyzed. These elements underline acertain incoherence at the EU level, caused by the fragmented positions between members states for the prevalence of economic logics that have affected the exercise of a whatsoever form of European normative power. Secondly, the study moves on to the attention that the single institutions pay to human rights, stressing in particular whether or not the topic of death penalty abolition has been raised in the EU-China relations.
It is in fact argued that some key moments can be identified in the evolution of the human rights discussion between the European Union and China: these key moments are here nicknamed "normative tangles". The expression is used to define events in which latent and manifest dynamics are interconnected, and through which it is possible to register a "normative schizophrenia". The human rights dialogue is the first "normative tangle" under review and it is studied in connection with the "Geneva querelle", an expression used to define the divergences between EU member states in tabling and co-sponsoring a critical resolution on China at the former United Nations Human Rights Commission in Geneva.

The Human Rights Dialogue between the European Union and China was launched in 1996, and is still ongoing; as specifically underlined by the Commission Communication, "A long term policy for China- Europe Relations" (1995)/279 the dialogue was launched "at China's suggestion." Formally, the dialogue takes place twice a year but one year after its start, in 1997, it was interrupted for the first time.

The reason why China decided to suspend the dialogue was linked to the fact that, in the same year, Denmark decided to table a resolution at the Human Rights Commission in which the Chinese human rights behaviour was strongly criticised (of the member countries only Ireland and the Netherlands supported the Danish initiative, while France, Germany, Spain and Italy tried to block the Commission's proposal). The suspension of the dialogue from the Chinese counterpart was not a surprise. On the contrary, its behaviour was strongly predictable:

China's decision to engage in a dialogue was justified by the need to avoid condemnations at United Nations levels. It can be argued that, since the EU decided to normalise the relations after the Tienanmen facts, China started to build its strategy by discouraging criticism in the multilateral fora or during the official bilateral meetings.

In 1996, the mechanism in which the European Union was falling was already *in nuce:* this is well described by Ilija Radmilovic (2009): "Every attempts to evidence the Chinese democratic deficit is accused to be a 'Cold War mentality' product and China is ready to divide Europe by awarding with advantageous economic exchanges those countries that show to understand the Chinese internal problems. Using economic power to exercise political influence is not a Chinese invention, but this is the first time that China can use this power to pursue political goals." This reasoning is strongly supported by the fact that beside the suspension of the dialogue, which can be a considered a "European price" paid by the whole European Union, China decided to postpone the Danish and Dutch trade missions and threatened them with further retaliatory measures.

The original beginning and subsequent suspension of the dialogue have a strong meaning in terms of power dynamics as classified in the first chapter. According to the 'manifest' and 'latent' power classification, the following line can be traced: a manifest exercise of power is (was) observed by the EU's engagement in a well-structured human rights dialogue, while latently the dialogue was proposed by China to avoid international criticism. Whenever the European Union, or better, some of its members, did not respect the "latent pact" by tabling a resolution at the Human Rights Commission, China suspended the dialogue; the suspension could be considered a direct expression of China's power and of the European Union's weakness. The dialogue was restored when the resolution was not presented. The European decision was justified by the Chinese progress in terms human rights protection, while the NGOs were claiming the opposite (Amnesty International Report 1997, Human Rights Watch Report 1997). The steps of this process became clear after reviewing the Council Conclusions, which show that the EU has shifted from an operative position to a no-action one toward the tabling of a resolution that criticises China at the Human Rights Commission. In 1997, the Council Meeting GENERAL AFFAIRS *1989 Relations with China* stated that "The

Council, meanwhile, invited the Presidency to continue and intensify, in close cooperation with other interested parties, the consultations and preparations already underway for the possible tabling of a Resolution on human rights in China in the UN Commission for Human Rights in Geneva," And added that a decision would be made in view of developments." The resolution tabled by Denmark followed. The following year, during the *2070th* Council Meeting GENERAL AFFAIRS 1999in its China Conclusions, "in view of the first encouraging results of the EU-China human rights dialogue, the Council agreed that neither the Presidency nor Member States should table or co-sponsor a draft Resolution at the next UN Commission on Human rights. The EU's opening statement at the 54th session of the Commission on Human rights will refer to the human rights situation in China. If the situation arose, the Council agreed that EU delegations should vote against a no-action motion."

This position shift is extremely relevant in the normative power logic, because it shows that the European Union was unable to exercise its power by deciding to not table a resolution against Chinese violations, thus demonstrating a normative weaknesses. The justification was not convincing either: how could the Chinese suspension of the dialogue, due to the presentation of the previous year's resolution, be considered an encouraging result? What is more important is that the decision to not table a resolution and to not co-sponsor it if proposed by others but to "possibly" vote in favour did not change in the following years. By analysing the Council Conclusions on the topic, the approach chosen is clear: the bilateral dialogue was protected at the expenses of an international condemnation.

In the *2168th* Council Meeting GENERAL AFFAIRS *1999* "the Council confirmed its position concerning the EU's approach to China in the CHR, where it will express its growing concerns on the human rights situation in China". Translated into practical terms, this means expressing preoccupation in the formal statement while avoiding the hot potatoes of a resolution. In the *2338th* Council Meeting GENERAL AFFAIRS *2001,* after realising that the United States had decided to table a resolution that criticised China, the Council agreed to the following: "–If the resolution is put to a vote, EU members of the Commission will vote in favour, but the EU will not co-sponsor; –EU members of the Commission will vote against a no-action motion, should one be presented, and the EU will actively encourage other

Commission members to do likewise, since in the EU's view, the very notion of no-action is in itself contrary to the spirit of dialogue". The same approach has been adopted in the following years, in 2002 and 2003. The protection of a bilateral dialogue at the expenses of a strong signal (as a resolution tabling is) can hardly be considered normative, given that the coherence with the international norms and standards and the support of these norms and standards in multilateral fora is a core element of a normative approach.

Even more interesting is the fact that the Council's approach is in clear contrast with the provision that the Council itself will elaborate in the *EU guideline on human rights dialogue with third countries 2001,* which explicitly prevents the case in section number 9 of the dialogue, according to these indications: "Human rights dialogue and Resolutions submitted by the European Union to the UNGA or the HRC on the human rights situations in certain countries are two entirely separate forms of action. Accordingly, the fact that there is a human rights dialogue between a third country and the EU will not prevent the EU either from submitting a resolution on the human rights situation in that country, or from providing support for an initiative by the third country. Nor will the fact that there is a human rights dialogue between the EU and a third country prevent the European Union from denouncing breaches of human rights in that country, inter alia in the appropriate international fora, or from raising the matter in meetings with the third countries concerned at every level"[20].

In the Chinese case, these rules are violated: the link between resolution submission→dialogue interruption/absence of submission→restoration of the dialogue is strong and direct; even though it can be argued that the specific Guidelines follow these facts (which is chronologically true), the EU didn't change its attitude in the following years, and continued to not table the resolution while only accepting to vote in favour of a resolution if tabled by other actors. The normative snare in which the European Union has been caught is superbly described by Baker (2002) when he analyses in detail the links between the protection of human rights –the European Union's behaviour– and China's behaviour in relation to the first normative tangle of this section (the human rights dialogue): "...one has to applaud the

20 Page 12, point 9 of the *EU Guideline on Human rights dialogues with third countries* elaborated in 2001, section titled "Consistency between human rights dialogues and EU Resolutions to the UNGA and the HRC", updated 2009:

Chinese diplomats for having invented a superb weapon. If EU member states threatened to return to the policy of co-sponsoring a resolution, the Chinese could threaten to break off the dialogue. If that were to happen, then the EU member states would appear to have no policy at all towards human rights in China. In this way, the Chinese could threaten to break off a totally valueless dialogue - which was costing them nothing other than the time of the officials taking part - and in so doing effectively control EU policy with regard to human rights in China." (Baker 2002:59) According to the perspective of the present work, Baker's consideration can be pushed further by taking into account the counter-argument, or better the possible counteraction, which consists in the EU's likelihood to suspend the dialogues in the case of China's doubtful behaviour or in the absence of progresses in the dialogue itself. It is clear that the EU never used this "weapon", as the dialogue was established although the same Guideline on death penalty mentions this possibility, as stated in the following text: "if no progress has been made, the European Union should either adjust its aims or consider whether or not to continue the human rights dialogue with the country concerned. Indeed a dialogue assessment must allow for the possibility of a decision to terminate the exercise if the requirements given in these guidelines are no longer met, or the condition under which the dialogue is conducted are unsatisfactory, or if the outcome is not up to the EU's expectations."[21]

Differently from the Council, the European Parliament has repeatedly expressed the need for a critical resolution both on China's human rights situation and on the dialogue's progress; in its *Resolution on the 53rd session (1997) of the UN Commission on Human Rights*, the Parliament "calls on the Council and the Member States to make China a main priority for the forthcoming session of the UN Commission on Human Rights in view of China's worsening human rights record and to oppose any attempt to prevent the UN Commission from discussing the situation in China, while making every effort to gain support for this resolution from other members of the UN Commission on Human Rights"; the same invitation is addressed in the *EU's priorities for the 55th Session of the United Nations Commission on Human Rights,* where the European Parliament "calls on the Council to make China a priority at the forthcoming session and to table a draft resolution on human rights in that country". In

[21] Page 13 of the *EU Guideline on Human rights dialogues with third countries* elaborated in 2001, updated 2009.

its *Resolution on the human rights situation in China 2000,* the European Parliament invites the Council to work together with the United States to co-sponsor a resolution on China, and does the same the following year, after recalling that "the EU has a duty to promote, within the appropriate international bodies, any initiative whose purpose is to denounce any violation of human rights in general and recourse to the death penalty in particular". It has been observed that European Parliament's approach has remained consistent throughout the years in that it has always promoted the adoption of a critical resolution on China by never accepting the Council's positions and justifications. On the contrary, the European Parliament has always clearly stressed that the human rights dialogue should not be used to avoid presenting a critical resolution.

From a purely normative point of view, the comment made by Dick Oosting, Director of Amnesty International's EU Office seems acceptable: he said that "the human rights dialogue with China is an excuse for the EU not to put forward a resolution at the United Nations Human Rights Commission in Geneva criticizing China's human rights record. However, the EU has always stressed that dialogues should produce concrete results and assured that the dialogue with China would not prevent public scrutiny of human rights issues. Given today's Amnesty International report and the general picture of persistent gross abuse across a broad spectrum of human rights in China, these assurances seem very thin."[22]

Nevertheless, some efforts also need to be acknowledged at the Council level, at least to ameliorate and favour the assessment of the dialogue itself. To follow this purpose, in January 2001 the Council created a list of parameters to measure the improvements. These parameters consist in eight benchmarks, one of them (number three) directly addressing the death penalty issues. The benchmarks are: 1) Ratification and implementation of the two covenants; 2) Cooperation with human rights mechanisms (visit by the rapporteur on torture, invitation to other rapporteurs, follow up to recommendations from conventional mechanisms and rapporteurs, implementation of the agreement with the Office of the High Commissioner for Human Rights); 3) Compliance with ECOSOC guarantees for the protection of those sentenced to death and provision of statistics on the use of the death penalty; 4) Reform of administrative

[22] http://www.amnesty.eu/en/press-releases/business-and-human-rights/eu-china-relations-and-the-death-penalty-0163/

detention, introduction of judicial supervision of procedures, respect for the right to a fair trial and the right of the defense; 5) Respect for fundamental rights of all prisoners, progress on access to prisoners and constructive response to individual cases raised by the EU; 6) Freedom of religion and belief, both public and private; 7) Respect for the right to organise; 8) Respect for cultural rights and religious freedom in Tibet and Xinjiang, taking account of the recommendations of the UN treaty bodies, halting the "patriotic education" campaign in Tibet, and access for and independent delegation to the young Panchen Lama who has been recognised by the Dalai Lama.

A clear picture of the dialogue's internal assessments is unfortunately not available, as the assessments were not made public; also, the habit of publishing press releases after the meetings started only in 2006. It is however significant to recall the evaluation of the dialogue made in the specific focus of the *Evaluation of the European Commission's cooperation and partnership with the People's Republic of China 2007* commissioned by the European Union itself. According to this official study carried out by the European Commission, "the identifiable link between the HR Dialogue and the cooperation programme is low and in particular –so far– no bilateral cooperation project has been directly linked to one of the eight agreed benchmarks to assess the progress achieved".[23]

The Chinese case is certainly a complex and particular one; the rules the EU tries to impose on itself and on its own behaviour with third countries are brought into question when it faces a special actor such as China. This consideration leads to the main hypothesis of this work: the EU "normativitiy" is conditioned by the economic relevance of a third state for the EU market.

The fact that the dialogue doesn't include conditionality reinforces this thesis. The result is that the dialogue continues parallel to other types of relationships, without interfering on economic ties; consequently the dialogue's main achievement is its existence rather than its achievements. In this regard, the dialogue can be intended as an "exit strategy" lacking a normative essence and used only to formally discuss human rights, where the two actors keep

[23] Page 15 of the "Evaluation of the European Commission's cooperation and partnership with the People's Republic of China country level evaluation Final Synthesis Report -Volume 2 Annexes" April 2007

playing their roles. The EU plays the normative power that engages a violator in formal talks while China takes the shape of the country who wants to change its attitude (manifest dynamics). Latently, however, the European Union does not ask China to improve its human rights score, and China is not willing to do so. The tangible difference between the two actors lies in the fact that while China has decided to threaten the suspension of economic benefits for the European countries that formally criticised it (see the Danish case previously mentioned) the European Union, as single actor, has never used the same tool because it is does not want to (it cannot) pay economic costs for the promotion of human rights. In addition, the absence of conditions attached to the dialogue is a clear sign that the preferred outcome is an impasse of these formal talks. Paradoxically, it can be argued the Chinese economic threats (which represent a partial cost for the same China) hold a strong normative value as they are moved to protect a system of internal values and sovereignty, while the EU seems uncapable to pay the same mirror-like costs to "extend its norms into the international system" (Manners 2002: 252). This problem is obviously linked to the EU's *sui generis* nature, and China is able to take advantage of this constitutive weaknesses.

The acknowledgement of the connection between economic interests and norm promotion or, to be more precise, the recognition of the limitations that the economic interests can play in the development of the human rights dialogue, can be found in the European Parliament approach. In its resolution of 6 September 2007, the European Parliament "recommends that the human rights dialogue not be treated as separate from the rest of Sino-European relations; to that end, (the EP) urges the Commission to ensure that its trading relationship with China is linked to human right reforms, and calls in this regard on the Council to carry out a comprehensive evaluation of the human rights situation before finalising any new partnership and cooperation framework agreement"[24]. In this respect, the European Parliament plays the role of the "normative conscience" of the whole European Union by underlining and preventing the implicit risks of treating human rights as a separate issue.

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24 European Parliament resolution 6 September 2007 on Human rights dialogues and consultations on human rights with third countries, OJ C 187E , 24.7.2008, p. 214–228 ; operative paragraph n. 59.

The trend of the human rights dialogue perfectly reflects the consideration that "defence of human rights and democratic principles is an important component of EU foreign policy, but when setting priorities in relations with third countries such as Russia and China, strategic and economic objectives stand higher on the agenda" (Panebianco 2006a:132).

3.3 The normative tangle: human rights in the EU-China Summit and its suspension

As previously said, the EU-China Summit represents the renewed version of the former political dialogue between the European Union and China. The first summit took place in London on 2 April, 1998. On that occasion, the European Union was represented by Jaques Santer, at that time European Commission President, and by Tony Blair, who was English Prime Minister and President of the European Union, while on the Chinese counterpart there was the then Primer Minister Zhu Rongji. The first bilateral meeting followed the London-Beijing bilateral summit. Since 1998, the Summit has taken place every year except for 2008, when it was cancelled by the Chinese counterpart (and the reasons for this decision are explained below), while in 2009 it occurred twice. What role do human rights in general, and death penalty in particular, play in the context of this meeting?

The analysis of the available joint press statements of the summits[25] gives the following results: with the exception of the 11th Summit all documents refer to human rights, but none of them to death penalty. The qualitative study of the documents shows a similarity between all the "human rights" paragraphs throughout the years: the counterparts agree to continue the human rights dialogue, they renovate their commitment to the UN system and as of 2004, the human rights paragraphs state that "China is committed to the ratification of the International Covenant on Civil and Political Rights (ICCPR) as soon as possible", a promise until now (2011) unkept. It is clear that human rights are not at the core of the Summit, which instead focuses on expanding the economic field of cooperation. This fact is supported by China's behaviour on the occasion of the Lyon Summit 2008, cancelled by China because (as declared by the official Chinese spokesman) Nicolas Sarkozy's intended to meet the Dalai Lama. Recalling the tone used by the Chinese administration can help us understand the importance attributed to that meeting: on that occasion, China expressed to "have informed"[26] the

[25] Two press statements are not available: those of the second and third summits (1999/2000).

[26] ANSA Archives.

European French presidency of the fact that the simple possibility of a meeting with the Dalai Lama would have made cooperation between the European Union and China "difficult". Eventually, when Sarkozy –on behalf of the European Union– met the Tibetan spiritual leader, Beijing declared that this was a case of "an opportunistic approach to the Tibetan issue"[27] andthat it represented "a reckless behaviour that hurt both the feelings of the Chinese people and the French-Chinese relations"[28]. The latter declaration clearly expresses the innate weakness of the European Union in its relations with strong third economies: even when a country speaks on behalf of the EU, it can face bilateral commercial retaliations. To better understand the French-Chinese *querelle*, it is important to recall that, at the beginning of the same year (2008), Nicolas Sarkozy (then President of the European Union) had threatened to not attend the Beijing Olympic Ceremony due to the Tibetan repressions; this announcement had immediately produced the reaction of the Chinese nationalists, who decided to boycott the French company Carrefour. Afterwards, when China expressed its intention to engage in a dialogue with the Tibetan representatives, Sarkozy decided to attend the ceremony; during the Olympic games, the French energy company EDF signed a contract with the Chinese Company Cgnpc to build two nuclear plants in China. What emerges from this second tangle here briefly analysed are once again the conditions and the limitations of Normative Power Europe when it faces strong economies: any attempt to push (or stop) a change in the protection of human rights and fundamental freedoms are blocked by economic retaliations (or rewarded with advantages); what is more important is that these retaliations (or advantages) don't affect (or favour) the entire EU economy, but only the single member state economy "responsible" of the complaint (or yielding positions). The tool China holds is really strong.

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27 ANSA Archives.

28 Ibidem

4 EU institutions, human rights and death penalty in China

4.1 The European Parliament

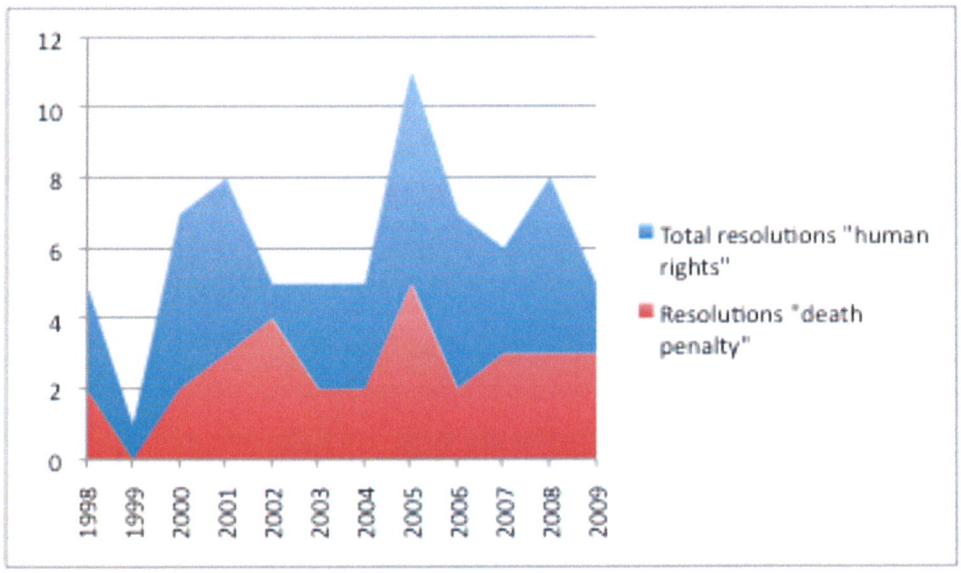
This section provides a measurement of the how relevant the death penalty topic is considered by the single European institutions.

The first institution analysed is the European Parliament. The analysis was carried out by selecting all the resolutions adopted by the European Parliament in which "human rights" have been discussed in relation to China in the 1998–2009 period. The 73 resolutions found were divided following two criteria, which addressed two different needs. According to more a general principle, within the main group of EP resolutions in which "human rights" were examined, the resolutions that mentioned "death penalty" were identified. Following a more detailed criterion, the resolutions containing instructions that meant to be forwarded to China were separated from the resolutions *without* the same instructions. It was this way possible to distinguish between the resolutions with a "merely" inter-institutional nature and those "explicitly" directed to the violator country. Quantitative considerations aside, this section's research question is: given that the abolition of death penalty is a key priority for the European Union's human rights policy, to what extent has the subject been discussed on these documents?

Before presenting the qualitative analysis of the resolutions, it seems relevant to present *the numbers* that will give us an idea of the phenomenon; the data collected was in a table and elaborated in one graph: **TABLE Research made by using "human rights" and "death penalty" in combination with "China" as key words in the EurLex database**

	Resolutions with instructions to forward to China (death penalty)	Resolutions without instructions to forward to China (death penalty)	Total number of the EP resolutions on human rights in China (death penalty)
1998	4 (2)	1 (0)	5 (2)
1999	0 (0)	1 (0)	1 (0)
2000	5 (2)	2 (0)	7 (2)
2001	5 (2)	3 (1)	8 (3)
2002	5 (4)	0 (0)	5 (4)
2003	4 (2)	1 (0)	5 (2)
2004	3 (2)	2 (0)	5 (2)
2005	7 (5)	4 (0)	11 (5)
2006	4 (2)	3 (0)	7 (2)
2007	2 (2)	4 (1)	6 (3)
2008	5 (3)	3 (0)	8 (3)
2009	4 (3)	1 (0)	5 (3)
Total 1998/2009	48 (29)	25 (2)	73 (32)

Graph 1 Resolutions about "death penalty" on the total of resolutions on "human rights"



A first and purely quantitative consideration that emerges from the table is that the number of resolutions containing instructions to be forwarded to the Government of the People's Republic of China and dealing with "death penalty" is closer to its total (resolutions on human rights with instructions) than the number of "death penalty resolutions" without instructions is to its total; this means that the European Parliament "prefers" to put the topic in its agenda when it directly addresses the Chinese government.

In general, it can be said that the proportion between the total number of resolutions on human rights and those on "death penalty" remains constant during the time frame (less than 50%).

Quantitative considerations aside, it is important to understand how the European Parliament has discussed death penalty in relation to China, and to achieve what goals: is it to address individual cases? To show concerns? To call for a moratorium, or directly for abolition?

In 1998, the Parliament adopted two resolutions mentioning the death penalty issue, both containing instructions to forward the texts to China. One case, mentions how the EP is "appalled by the number of executions taking place each year in countries such as China, Iran, Saudi Arabia and the United States"[29] and "calls on those states still practising the death

[29] European Parliament resolution on the abolition of the death penalty; date of document: 17/12/1998; Official Journal C 098,

penalty to declare an immediate moratorium"[30]. On the other case, the resolution addresses the problem of the sale of organs of persons sentenced to death in China, and consequently exercises a double pressure by urging "the Chinese authorities to do their utmost forthwith to stop these inhuman practices"[31] and "(renewing) its demand that the authorities of the People's Republic of China abolish the death penalty as soon as possible," also calling on them, "pending complete and final abolition of the death penalty, to publish full details of the executions carried out"[32]. This document firstly seems to contain a request that will later be frequently, and unsuccessfully, repeated by the European Union, and which consists in the EU's wish to obtain public data on the number of executions; this request was also addressed by several NGOs that work in the same field. Unfortunately, the number of executions still remains a state secret in China (2010).

Like in 1998, in 2000[33] two resolutions deal with the topic; the first one is the case of a general invitation directed to the Council and the Commission "to inform (them) of any progress made towards the abolition of the death penalty, in particular in the context of the political dialogue with China"[34]; the European Parliament's invitation clearly suggests the need to put the topic at the core of the political dialogue with China. The second one is a simple notice in the preamble of a resolution entirely dedicated to the human rights situation in China[35], stating once more how the situation had deteriorated due to the high number of executions.

09/04/1999 P. 0293; clause A of the preamble.

30 European Parliament resolution on the abolition of the death penalty; date of document: 17/12/1998; Official Journal C 098, 09/04/1999 P. 0293; operative paragraph n.5

31 European Parliament resolution on the sale of organs of persons sentenced to death in China; date of document 14 May 1998; Official Journal C 167, 01/06/1998 P. 0224; operative paragraph n. 1

32 European Parliament resolution on the sale of organs of persons sentenced to death in China; date of document 14 May 1998; Official Journal C 167, 01/06/1998 P. 0224; operative paragraph n. 5

33 No resolutions found in 1999.

34 European Parliament resolution on the Annual Report on International Human Rights and European Union Human Rights Policy, 1999 (11350/1999 - C5-0265/1999 - 1999/2002(INI)); date of document 16 March 2000 Official Journal C 377 , 29/12/2000 P. 0336 – 0344; operative paragraph n. 64

35 European Parliament resolution on the human rights situation in China; date of document: 20/01/2000; Official Journal C 304 , 24/10/2000 P. 0209 – 0209; clause A of the preamble.

In 2001, the European Parliament once again "calls on all States to introduce a moratorium on executions with a view to completely abolishing the death penalty and reiterates firmly its request to the United States, China, Saudi Arabia, Congo, Iran and other States to immediately end all executions"[36]. After noticing that the year 2000 saw 88% of the executions take place in only four countries, including China, the European Parliament expresses concerns "by the recent massive recourse to execution for common crimes and ideological and religious dissent, as a supposed instrument of social control, in the People's Republic of China..."[37] The issue is also mentioned in the Preamble of the European Parliament resolution on Beijing's bid to host the 2008 Olympic Games 5 May 2001, but it doesn't contain operative paragraphs on the topic, nor is it directly addressed to the Government of the People's Republic of China, but rather simply recalls "the frequent imposition of capital punishment, leading to over a thousand reported executions in China every year, as well as the widespread use of torture by the Chinese police and military forces."[38]

2002 is an interesting year for this analysis, as four of five resolutions passed by the European Parliament on the situation of human rights in China discuss the death penalty issue, and all of them contain instructions to be forwarded to China. In particular, the *Resolution on the Commission Communication to the Council and the European Parliament on a EU Strategy towards China* uses a particularly strong language to condemn the executions: the Parliament "expresses its indignation at the increasingly high number of executions in China, and at the links to the supply of body parts of human transplantation, and demands that the Chinese government abolish the death penalty, declare a moratorium on the executions of persons already sentenced to death, and accelerate judicial reforms in order to eliminate the use of torture and the violation of human rights in the country."[39]

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36 European Parliament resolution on human rights in the world in 2000 and the European Union Human Rights Policy date of document 5/07/ 2001; operative paragraph n. 108.

37 European Parliament resolution on the death penalty in the world and the introduction of a European Day against the Death Penalty 5 July 2001; operative paragraph n. 9.

38 European Parliament resolution on Beijing's bid to host the 2008 Olympic Games; date of document: 05/07/2001.

39 European Parliament resolution on the Commission Communication to the Council and the European Parliament on a EU Strategy towards China: implementation 1998 Communication and future steps for a more effective EU policy (COM 2001) 265); date of document 11/04/2002; Official Journal C 127 E , 29/05/2003 P. 0652 – 0658; operative paragraph n. 38.

The EP *Resolution on human rights in the world in 2001 and European Union human rights policy,* firstly reiterate that "the imposition of the death penalty to persons under 18 years contravenes customary international law and that international human rights standards ban the use of the death penalty against the insane and recommend its elimination for the mentally disabled or those with extremely limited mental faculties."[40] A new call for a moratorium follows: "with a view to completely abolishing the death penalty". The *Resolution on the Commission Communication on Europe and Asia: A Strategic Framework for Enhanced Partnerships* firstly calls for abolition, and secondly urges the countries involved to "to declare a moratorium on the execution of persons already sentenced to death"[41]. The last resolution of 2002 is different, as it addresses two individual cases by asking for the commutation of the death sentences handed down to Tenzin Delek and Lobsang Dhondup, two Tibetans.[42] The case of the two Tibetans is also raised the following year when, by calling the need to sponsor or support a resolution on China at the Human Rights Commission, the EP "strongly condemns the execution of the Tibetan Lobsang Dhondup on 26 January 2003, for his alleged political crimes and calls for the death penalty passed on the Lama, Tenzin Delek, to be cancelled immediately"[43]; "the high number of death sentences each year"[44] is stressed once again by the Parliament in 2003 to confirm its hypothesis of the absence of minimum conditions to lift the embargo on trade in arms with the People's Republic of China. In 2004, two resolutions explicitly denounce the issue of death penalty in China. The first one expresses concern for what can be called the "Chinese counter-tendency", i.e. the fact that while in the rest of the

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40 European Parliament resolution on human rights in the world in 2001 and European Union human rights policy (2001/2011(INI); date of document 25/04/2002;Official Journal C 131 E , 05/06/2003 P. 0138 – 0147; operative paragraph n.54.

41 European Parliament resolution on the Commission Communication on Europe and Asia: A Strategic Framework for Enhanced Partnerships (COM(2001) 469 – C5-0255/2002 – 2002/2120(COS)); date of document 5/09/2002; OJ C 272E , 13.11.2003, p. 476–482; operative paragraph n.33.

42 European Parliament resolution on the human rights situation of Tibetans; date of document 19/12/2002; OJ C 31E , 5.2.2004, p. 264–265; operative paragraph n.1.

43 European Parliament resolution on the EU's rights, priorities and recommendations for the 59th Session of the UN Commission on Human Rights in Geneva (17 March to 25 April 2003); date of document 30/01/2003; Official Journal C 039 E , 13/02/2004 P. 0070 – 0073; operative paragraph n.18.

44 European Parliament resolution on the removal of the EU embargo on arms sales to China European Parliament resolution on arms sales to China.

world the number of abolitionist countries was (and is) growing, China has been registering an increase in the number of executions[45]; the second text adopted calls once again for the prevention of Tenzin Delek Rinpoche's execution, condemns the execution of Lobsang Dhondup, and stresses the need to maintain the arms embargo considering all the violations still in place.[46]

In 2005 the documents produced by the European Parliament on the topic reached a peak with eleven resolutions discussing the human rights situation in China, five of which mentioning "death penalty". The reasons for concern in resolutions don't differ from those of the previous year: the case Tenzin Delek Rinpoche (whose sentence was finally commutated)[47], the call for the abolition and moratorium[48]; the importance of discussing the issue during the session human rights dialogue with China[49].

2006 is the year of adoption and publication of a dense resolution text on the EU-China relations, representing a new occasion to "urge China to abolish the death penalty and declare an effective moratorium in respect of persons already sentenced"[50] but also to "take note of the

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45 European Parliament resolution on Human rights in 2003 and EU policy European Parliament resolution on human rights in the world in 2003 and the European Union's policy on the matter (2003/2005(INI)); date of document 22/04/2004; Official Journal C 104 E , 30/04/2004 P. 1048 – 1060; clause D of the preamble.

46 European Parliament resolution on Tibet, the case of Tenzin Delek Rinpoche; date of document 18/11/2004; OJ C 201E , 18.8.2005, p. 122–123.

47 European Parliament resolution on Tibet 13 January 2005; date of document 3/01/2005; OJ C 247E , 6.10.2005, p. 158–159; operative paragraph n.1;

European Parliament resolution on the case of Tenzin Delek Rinpoche; date of document 27/10/2005; OJ C 272E, 9.11.2006, p. 585–587 operative paragraph n.1-3-4;

European Parliament resolution on Tibet and Hong Kong; date of document 15/12/2005; OJ C 286E , 23.11.2006 operative paragraph n.8.

48 European Parliament resolution on Tibet 13 January 2005; date of document 3/01/2005; OJ C 247E , 6.10.2005, p. 158–159; operative paragraph n.2;

European Parliament resolution on the EU's priorities and recommendations for the 61st session of the UN Commission on Human Rights in Geneva (14 March to 22 April 2005); date of document 24/02/2005; MANCA OJ operative paragraph n.4.

49 European Parliament resolution on the Annual Report on Human Rights in the World 2004 and the EU's policy on the matter (2004/2151(INI)); date of document 28/04/2005OJ C 45E , 23.2.2006, p. 107–127; operative paragraph n.58.

50 EU-China Relations (2005/2161(INI)); date of document 7/09/2006; OJ C 305E , 14.12.2006, p. 219–232; operative paragraph n.38.

significant signal given by Chinese jurists that the death penalty should be imposed only in cases of serious, violent crimes, by contrast with the present situation, in which 68 offences are punishable by the death penalty, of which half do not involve capital offences"[51], to express concern about China being the first executer in the world and to ask the release of official figures on the matter. "The frequent use of the death penalty"[52] is also condemned in the EP resolution that analyzes the Annual Report of Human Rights in the World 2005 released by the Council of the European Union.

In 2007, the European Parliament adopted two texts that both express the importance of raising the issue in the context of the human rights dialogue[53]. The EP also recorded a positive change that took place in China the year before, i.e. the decision to have all death penalty cases reviewed by the Supreme Court however "remaining concerned by the fact that China still carries out the majority of executions worldwide"[54]. The same sentence is used in the mirror-like annual resolution 2008[55]. Two other resolutions of 2008 also call for a moratorium as an extremely significant signal in the year of the Beijing Olympic Games, and condemn the frequent use of the death penalty in China[56].

In 2009, the issue is raised three times. Firstly, in the context of a resolution on economic and trade relations with China (the relevance of this case will be explained in the next section), where the imposition of death penalty by the Chinese authority "on some of the

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51 Ibidem

52 European Parliament resolution on the Annual Report on Human Rights in the World 2005 and the EU's policy on the matter (2005/2203(INI)) date of document 18/05/2006; OJ C 297E , 7.12.2006, p. 341–356; operative paragraph 36.

53 European Parliament resolution of 6 September 2007 on the functioning of the human rights dialogues and consultations on human rights with third countries (2007/2001(INI)); date of document 6/09/ 2007; OJ C 187E , 24.7.2008, p. 214–228; operative paragraph n.56;

European Parliament resolution of 13 December 2007 on the EU-China Summit and the EU/China human rights dialogue, date of document: 13/12/2007; OJ C 323E , 18.12.2008; operative paragraph n.10

54 European Parliament resolution of 26 April 2007 on the Annual Report on Human Rights in the World 2006 and the EU's policy on the matter (2007/2020(INI)); date of document 26/04/2007; OJ C 74E , 20.3.2008, p. 753–775; operative paragraph n.81.

55 European Parliament resolution of 8 May 2008 on the Annual Report on Human Rights in the World 2007 and the European Union's policy on the matter (2007/2274(INI)); date of document 8/05/2008; OJ C 271E , 12.11.2009, p. 7–31;operative paragraph n.46.

56 European Parliament resolution of 10 April 2008 on Tibet OJ C 247E , 15.10.2009, p. 5–7; operative paragraph n.9;
European Parliament resolution of 10 July 2008 on the situation in China after the earthquake and before the Olympic Games; operative paragraph n.6.

people involved in the contamination of powdered infant formula with melamine"[57] is criticised. A brief note on death penalty is also present in the resolution on the Annual Report on Human Rights, which once again recall how the positive decision to have all death penalty cases reviewed by the Supreme Court is still paired with China's negative supremacy as first executer in the world[58]. The last (and most recent) document here analysed is a key resolution passed by the European Parliament on minority rights and on the application of death penalty in China. In this document, the Parliament addresses both individual cases and general considerations: it condemns the executions of two Tibetans and nine Uighurs and calls for the suspension and commutation of other individual cases[59]; it also insists on the need to check whether or not the recommendations of the previous human rights dialogues are applied and "calls on the Council and the Commission to put the questions of the abolition of the death penalty and observance of ethnic minorities' and religious rights on the agenda for the 12th EU-China Summit on 30 November 2009, and to continue to pursue inclusion on the new Partnership and Cooperation Agreement, currently in negotiation of a clause concerning respect for human rights in China"[60].

The complete picture resulting from this investigation is the following: 31 out of 73 "human rights" resolutions passed by the European Parliament mention "death penalty"; the other themes treated are the Tibetan issue, the necessity to present or co-sponsor a resolution on Chinese violations at the Human Rights Commission in Geneva, the concerns for the impasse of the human rights dialogue, the protection of minority rights, a strong position against the lifting of the arms embargo, and the need to guarantee that the economic progress registered in the EU-China relations corresponds to substantial achievements in terms of

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57 European Parliament resolution of 5 February 2009 on Trade and economic relations with China (2008/2171(INI); date of document 5/02/2009; OJ C 67E , 18.3.2010, p. 132–141; operative paragraph n.58.

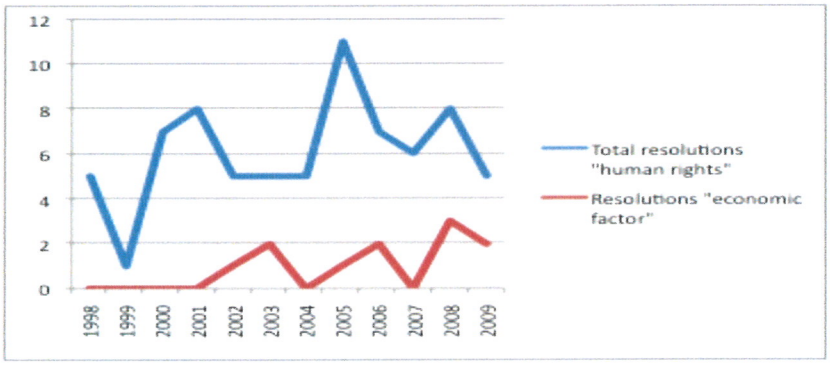
58 European Parliament resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union's policy on the matter (2008/2336(INI)); OJ C 212E , 5.8.2010, p. 60–81; operative paragraph n.89.

59 European Parliament resolution of 26 November 2009 on China: minority rights and application of the death penalty; date of document 26/11/ 2009; OJ C 285E , 21.10.2010; operative paragraph n.3.

60 European Parliament resolution of 26 November 2009 on China: minority rights and application of the death penalty; date of document 26/11/ 2009; OJ C 285E , 21.10.2010; operative paragraph n.7.

human rights protection. The latter issue is extremely relevant for the present work, as it tries to overcome the European Union's "normative schizophrenia" by attempting to reconcile latent and manifest dynamics. If it is true that the economic relations between the European Union and China have increased exponentially in the period here analysed, the question is: how frequently has the European Parliament paired the "human rights discourse" with the "economic factor" by denouncing that these relations have grown in the frame of human rights violations and in absence of tangible improvements? Among the 73 resolutions on human rights, eleven resolutions have been found in which human rights and economic relations go together; the *rationale* of these documents can be deducted by citing one of these eleven texts, which expresses regret for the fact that "increased trade and economic relations with China have brought about no substantial progress in the field of democracy, human rights and the rule of law, which are basic components of the political dialogue between China and the EU; takes the view, in this respect, that the development of trade relations with China must go hand in hand with the development of a genuine, fruitful and effective political dialogue"[61]. The chronological distribution of these texts is showed in the following graph.

Graph2: Resolutions where the increase of trade relations is "conditioned" by human rights improvements



Although these documents' frequency is low, it is still significant because it shows the European Parliament's approach to connecting the improvements of the economic relations with China to its own human rights behaviour (the most explicit case is the European

61 EU-China Relations (2005/2161(INI)); date of document 7/09/2006; OJ C 305E , 14.12.2006, p. 219–232; operative paragraph n.4.

Parliament's genuine opposition to the lift of arms embargo, which would have corresponded to an increase in weapon sale for the EU member.

4.2 The Council of the European Union and the European Council

During the period under review 24 Council Meetings GENERAL AFFAIRS have been found in which the status of Chinese human rights is at least mentioned. 11 of them include a reference to death penalty. The previously discussed paragraphs expressing the two institutions' positions on a critical resolution toward China at the Human Rights Commission will not be recalled in this section. In this section it is sufficient to remember that between 1998 and 2003 the Council's position fluctuated between the decision not to table or co-sponsor a resolution, the choice to vote in favour if the resolution were to be tabled by someone else, and the choice to vote against a no-action motion.

Three 1998 documents comply with our criteria. During the *2066th* Council Meeting GENERAL AFFAIRS that followed the visit of the British Foreign Affairs Minister Robin Cook in Beijing, the Council agreed on the proposal for an EU-China Summit and expressed "strong interest in pursuing an intensified dialogue with China on human rights questions and in developing a common approach within the EU on this aspect of the relationship."[62] It is significant to recall that during his visit Robin Cook gave the Chinese leaders a list, elaborated in collaboration with the other European partners, containing the names of twelve Chinese dissidents; in that occasion Cook asked for clear information about the situations of these individuals and he expressed hope for their the EU deems particularly important the improvements in the human rights situation in China and it believes that the expansion of the human rights dialogue could be a good way to achieve it. In addition, the EU encourages "further Chinese engagement with the UN's human rights instruments"[63] and expresses the will to expand the human rights cooperation programmes. In line with these conclusions are those

62 2066 Council General Affairs 26/1/1998.

63 2070 Council General Affairs 23/2/1998.

of the *2111th Council Meeting GENERAL AFFAIRS,* where a new element appears: the hope "that a means will be found to involve non-governmental groups" in the human rights dialogue. This sentence needs to be read in combination with China's explicit disagreement regarding NGO participation in the human rights dialogue, which shows a weaknesses of dialogue *under Chinese conditions*. From this moment on, the EU has tried to include NGOs and Civil Society at least in the seminars, which represent the more public part of the dialogue. In 2007, even this habit was interrupted when a seminar did not take place due to the Chinese refusal to allow the participation of two EU-nominated NGOs.

Of the 1999 documents, only the *2168th Council Meeting GENERAL AFFAIRS* contains a section devoted to the human rights in China. It must be noted, however, that the words used in this document are stronger than the ones found in the previous documents; the Council "noted with regret" the absence of positive steps, it expresses its dismay for China's violence the previous year and it "reiterates its concern at the use of the death penalty, the continued practice of administrative detention, the restrictions on religious freedom as well as the lack of freedom of assembly, expression and association."[64] This is the first time[65] the Council ever mentions the use (and abuse) of the capital punishment in China in one of its General Affairs meetings. Nevertheless, it is here possible to observe an attempt to shift the discussion on human rights from the multilateral (United Nations) to the bilateral fora (human rights dialogue): right when the EU clarified that "dialogue is not an end in itself" and declared its intentions to express concerns at the Geneva level, the EU also confirmed its intention to neither table nor co-sponsor a resolution text on the Chinese situation.

The *China Conclusions* of the *2249th* Council Meeting GENERAL AFFAIRS, show the same schizophrenia as the 1999 *Conclusions*: reporting the lack of progresses, the worsening of the domestic situation, the frequent use of the death penalty, and the arrests and sentences passed against minorities are stated next to the recognition of the positive Chinese "willingness to discuss of a number of sensitive issues of common concern in the framework of the

[64] 2168th Council meeting General Affairs, 21/22 March 1999.

[65] For the period 1998-2009.

dialogue"[66] and the importance attached to the dialogue itself. The strategy adopted by the Council gives the impression of being driven by the need *to run with the hare and hunt with the hounds:* while the Council denounces all the recent violations because it has to play the role of a normative power, it also expresses a positive assessment of the bilateral human rights dialogue, justified by the Chinese willingness to discuss. The latter sounds as a reassurance toward the Chinese counterpart: "no matter what to do on field, the dialogue is safe".

The same mechanism also drives the *2327th Council Conclusions*, and it does so in a more explicit way, both by underlining the positive steps achieved thanks to the dialogue, and by expressing worry for the lack of progress in the same, well-known areas (and capital punishment is one of them). What is new is the clarity with which the EU expresses the centrality attributed to the dialogue; the EU considers dialogue as the "Union's preferred channel for working to improve the situation in areas of concern to it"[67]. The dialogue is the priority: but if the steps backwards are more than those forwards, can dialogue still be considered a normative option? The dialogue looks like a strategy to banish the human rights *to the attic* and far from economic considerations. Moreover, if it is true that "the Union's dialogue with China on human rights was an acceptable option only if real progress was achieved on field", as reasserted in the 2338th and 2362nd Council Meeting GENERAL AFFAIRS 2001, how could the Amnesty International estimation of at least 1356 people executed during the year 2000 be considered in terms of progress, given that the death penalty was an explicit and key EU priority of the same bilateral meeting? The fact that the suspension of dialogue has never been discussed by the European side poses some doubts in terms of its effectiveness and normative nature. In addition, the death penalty issue can be considered a significant indicator of this schizophrenia: the abolition of the death penalty is a key priority for the European Union, and its abuse is not sufficient to judge the dialogue as an at least partial failure.

The *human rights/China Council Conclusions 2003* need particular attention because they address the so- called "strike hard" campaign; during the repression, 4014 people were

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66 2249th Council meeting - General Affairs- BXL 20 March 2000.

67 2327th Council Meeting-General Affairs- Brussels, 22-23 January 2001.

sentenced to death, and the execution victims were estimated to be 2468 (at least 1781 in the period between April and July 2001). The European Union denounced the campaign and asked China to put an end to it, stating that the human rights dialogue "is one of the Union's channels for working to improve the situation in areas of concern"[68] and not the Union's "preferred channel", as it was defined the year before; this change is probably due to the EU's understanding of how inappropriate it is to attribute too much value to the dialogue given the deterioration of the situation on field. What is surprising is that the "strike hard" campaign wasn't able to push the European Union to table a resolution at the Human Rights Commission; nevertheless, the EU expressed the possibility of voting in favour if a resolution were to be tabled by other countries.

Two of the 2003 Council Meetings discuss Chinese human rights, both of them denouncing the death penalty. Our analysis goes straight to the second one, as the content of the first one (*2495th* Council Meeting GENERAL AFFAIRS) is the same as that of the documents just analysed. The second one, the *2532nd Council Meeting* contains some new elements worthy of attention; these elements are contained in the *Conclusions* of the Commission's *Policy Paper on China* titled *A maturing partnership - shared interests and challenges in EU-China relations*[69]. The study of this document shows a general convergence between the Council and Commission's approaches towards China, and what is more important is that, while deploring the human rights situation in China, the Council also "stresses the need to ensure the smooth development of bilateral trade relations"[70]. Unlike in the European Parliament's approach, for the Council the development of trade relations must not be affected by domestic improvements in terms of human rights protection. On the contrary, launching new sectorial dialogues for the expansion of economic ties seems to follow the opposite logic; this strategy can partially be read through the lens of the liberal International Relations theory by arguing that economic ties are the best way to achieve political changes and to integrate China into in the international society. In this regard, it is possible to borrow (and adapt) a

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68 2416th Council meeting- General Affairs - Brussels, 11 March 2002.

69 Document that will be analysed in the European Commission section.

70 2495th Council meeting - External Relations - Brussels, 18 March 2003.

question asked by Breslin 2004 in the study of the bilateral relations between UK and China: "Is a policy of engagement primarily pursued because it promotes reform and change within China, or because it benefits key commercial interests within the UK?" (Breslin 2004:417). For the purposes of this work, the question becomes: is the strategy of constructive engagement launched by the Commission and adopted by the Council because it promotes reforms and changes within China, or because it benefits key commercial interests within the European Union?

A good answer to this question comes from one of the subjects discussed in the Council Meetings 2004. Two out of the four documents under review discussed the re-examination of the embargo on arms sale to China in the absence of relevant human rights improvements. Following the instructions of the European Council Conclusions from 12 December 2003, the Council firstly declared that though such a decision was in line with the "EU's intention to develop a strategic partnership with China,"[71] it was necessary to "take into account the human rights situation in China and the questions relating to the application of the EU Code of Conduct on Arms Exports"[72]. The following Council Meeting GENERAL AFFAIRS expresses the EU's readiness to give a positive signal to China in this regard[73]. The fact that the European Union has decided to maintain the arms embargo must be ascribed to the disapproval of the strong United States (who influenced Great Britain and many East European member states), more than to the deterioration of human rights in China (Erickson 2008). In substance, the United States threatened the balance of transatlantic cooperation in the case of an EU insistence in pursuing its plan (Berkofsky 2006). The "embargo querelle" can be considered a test case to grasp the limits and conditions of Normative Power Europe because it shows how an external cause (the USA's pressure)[74] more than a pure normative approach can be responsible for a normative result. The EU's general and problematic relationship between the EU's arms export and human rights protection, and the specific discussion on lifting the arms

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71 2577th Council meeting - External Relations - Luxembourg, 26 and 27 April 2004.

72 Ibidem.

73 2622nd Council Meeting General Affairs and External Relations- Brussels, 22-23 November 2004.

74 The United States has threatened to freeze the delivery of defence technology to Europe.

embargo to China in particular "highlight the need to consider material interests and normative concerns in tandem, in order to understand EU foreign policy" (Erickson 2008).

Two 2005 documents meet our requirements, one of them being particularly important as it contains the Council's authorisation for the Commission to open negotiations with the People's Republic of China on a Partnership and Cooperation Agreement.[75] This decision marks an significant scale shift because it reinforces the constructive engagement approach inaugurated by the 1995 Commission Communication[76]. According to the Council, the goal of the PCA would be "to establish an agreement encompassing all aspects of EU-China relations in order to further strengthen cooperation and trade and investment relations and to work for the integration of China into the international system"[77] without omitting the respect for human rights and fundamental freedom that would be at the basis of the agreement. Today, the PCA negotiations are still ongoing and it is not possible to forecast whether or not signing this agreement will reinforce or weaken the EU's commitment to the promotion of human rights in China. What is certain is that the previous *Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China* (1985) did not contain references on human rights. Balducci (2009) has hypothesised two possible scenarios on the treatment of human rights in a possible conclusion of the PCA, both of which would confirm the EU's weaknesses in promoting and defending its values. The first scenario involves the exclusion of the human rights clause due to a strong Chinese pressure (justified by the absence of the same clause in the PCA recently signed with India) or the inclusion of it in exchange of the Taiwanese clause acceptance. "This may prove a tricky scenario for Europeans" concludes the scholar. "While the EU has rarely applied the human rights clause and it has only done so with mostly marginal countries, the Taiwan clause is more likely to be utilised by China. Thus, even in the case of a successful conclusion of the PCA negotiations, the EU will not acquire any other meaningful means of influence for the promotion of human rights in the country." (Balducci 2009:12). The second scenario recalls the manifest and latent

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[75] 2700th Council Meeting General Affairs and External Relations General Affairs Brussels, 12 December 2005.

[76] A long-term policy for China-EU relations COM 1995 (279).

[77] 2700th Council Meeting General Affairs and External Relations General Affairs Brussels, 12 December 2005.

power dynamics previously described: even a manifest European normative success (the introduction of the clause) hides China's latent ability to profit from the situation, due to the structural weaknesses shown by the EU's normative power when facing a strong market as China is now, and will be in the next foreseeable future.

Both Council meetings that took place in 2006 on the human rights condition in China discuss the 'capital punishment affair'. The first one expresses concern on the "extensive use of the death penalty"[78], while in the second one the Council "welcomes proposals to improve judicial oversight of death penalty cases, but continues to be concerned about the widespread application of the death penalty".[79] It must be recalled that the years 2004, 2005 and 2006 can be considered black years for the high number of executions, and for the deep gap between the numbers obtained by the NGOs and those reported by insider and local officials and judges. In 2004, Amnesty International counted *at least* 3,400 executions, while local sources indicated 10,000 victims. In 2005, the NGOs estimated *at least* 1,770 executions, compared to the 8000 indicated by the local sources. The year 2006 marks the largest gap between NGO data and information revealed by "credible sources", with 1,010 executions counted by the NGOs versus the 7,500–8,000 victims estimated locally.[80]

No relevant considerations have been found in the Council meeting press releases from 2007 and 2008[81], apart from the usual concerns for the common violations (restrictions on freedom of expression, freedom of religion, minority rights, torture and extensive use of the death penalty). The documents also recalled the importance of the human rights dialogue and the need to incorporate the human rights in the next EU-China Summit. No Council Meetings addressed the requirements of the present research in the year 2009.

This investigation would be incomplete without a note on the twenty declarations released by the presidency of the Council on behalf of the European Union between 1998 and

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78 2770th Council Meeting General Affairs and External Relations-External Relations BXL 11-12 December 2006.

79 2771st Council Meeting General Affairs and External Relations- General Affairs-BXL 11-12 December 2006.

80 Amnesty International Reports 2004, 2005, 2006.

81 2831st Council Meeting General Affairs and External Relations Brussels, 19-20 November 2007; 2839th Council Meeting General Affairs and External Relations 10/12/2007; 2879th Council Meeting General Affairs and External Relations16 June 2008 .

2009, addressing human rights issues and individual cases. 3 out of 20 declarations express satisfaction for the visits of the Dalai Lama's representatives in China and for the positive atmosphere of the dialogue between the two counterparts; the other 17 declarations address individual cases of imprisonments and death sentences. Six out of seventeen declarations (2005/2006) welcome positive decisions taken by the Chinese government, while the rest communicates "deep concern" and "condemnations" for individual cases of executions (2008/2009).

The wording used in these condemnations appears stronger than that contained in the Council meetings on the same death penalty issue. This occurrence may be explained by the intrinsic declaratory nature of these declarations, and by their "zero impact" in practical terms. It is argued that these declarations fall into the category of *declaratory* documents, elaborated more to keep and play the role of normative power than to support an active norm change. This hypothesis is confirmed by the fact that one of the potential executions condemned by the Council, the one of Mr Wo Weihan, took place soon after the conclusion of the *Chinese human rights dialogue 2008* in which China shows complete indifference to the EU's repeated calls during formal occasions.

Table Council of the European Union, human rights-death penalty

Year	Council General Affairs-Human rights-China	Presence of the death penalty issue	Declaration by the presidency-human rights in China	Presence of the death penalty
1998	3	none	0	0
1999	1	yes	0	0
2000	1	yes	0	0
2001	3	yes (1)	0	0
2002	1	yes	1	None
2003	2	yes (2)	0	0
2004	4	yes (1)	1	None
2005	2	yes (1)	4	3
2006	2	yes (2)	3	3
2007	2	yes (1)	0	None
2008	1	none	4	4
2009	none	none	7	7

The condition of human rights in China is not a matter of discussion at the European Council level. Except for the *Presidency Conclusions 2005,*[82] in which the Presidency underlines the importance attached to the human rights dialogue, no other mentions have been found for the years under review at the European Council level.

82 Presidency Conclusions European Council, Brussels 16, 17 June 2005.

4.3 European Commission documents and projects

The last European institution here analysed is the European Commission. The dataset contains not only the Commission's key documents elaborated on the EU-China relations and partnership, but also a review of the projects financed under the European Instrument for Democracy & Human Rights (EIDHR) and explicitly devoted to the protection and development of human rights and fundamental freedom in China.

The Commission's documents here analysed include five Communications to the Council and to the European Parliament, two Country Strategy papers and one Report on the implementation of the 1998 Communication.

The first document falling in the timeframe 1998-2009 is the Communication titled B*uilding a comprehensive partnership with China 1998 (181)*. The basic line of action follows the previous milestone *Communication on China 1995* (729) titled *A long term policy for China-Europe Relations,* which initiated the *constructive engagement doctrine* and whose main goal was to get China involved in the international community by strengthening and encouraging its *'opening up'* policy. The strategy here remains the same as the previous document's, however acknowledging the need for an upgrade, mostly due to China's economic growth. It is interesting to note that after a small preamble indicating a catalogue of areas of concern in human rights (one of which is the extensive use of death penalty), the Commission goes on to underline the merits of the human rights dialogue by stating that "(ever) since its resumption in November 1997, China has shown a new-found willingness to engage in a serious and results-oriented dialogue" by omitting the reasons which have pushed China to suspend the dialogue. It is argued here that China's suspension of the dialogue, which is due to the tabling of a critical resolution at the Human Rights Commission, contravenes the European Commission's opinion of a Chinese willingness to engage. As previously stated, the dialogue suspension marked the beginning of a bilateral dialogue that was more oriented towards not irritating China than towards pushing for a concrete change. In addition, the outline of the Communication itself shows a clear predominance of efforts aimed at engaging and integrating China into the international community and world economy, while less attention is paid to the promotion and protection of

human rights and fundamental freedom. This is due to the persuasion that the latter is conditioned by the former. This interpretation might have been true in the past, but it has been denied by the empirical fact that after sixteen years of constructive engagement (except for some façade adjustments and weak sensible improvements[83]), Chinese human rights scores have never crossed the threshold of the minimum standards, and China remained the first world executer. Concerning the death penalty issue, the *Communication 1998* includes its extensive use in the list of violations that worries the EU, but does not go any further than that (it is mentioned only once).

In 2000, the Commission released a report focusing entirely on China, named the *Implementation* of *the Communication (1998)552.* This document underlines some positive steps, such as the signing of the *UN Covenant on Civil and Political Rights* in October 1998 (not yet ratified by China in June 2011) and the two visits of the UN Human Rights Commissioner Mary Robinson in September 1998 and March 2000. In spite of these developments, the Commission notes a gap between the improvements in economic and social rights and the deterioration of the civil and political rights: and the extensive use of death penalty falls in the second category. This document is extremely interesting for this work because it shows how the EU evidently changed its position on China's human rights situation at the UN Commission on Human Rights (UNCHR). The decision not to table or cosponsor, however, seems compensated by the European opening statements at the UNCHR, addressing China's critical situation. Without falling in the trap of rhetoric, it is clear that the Commission supported the Council's approach aimed at weakening the actual multilateral condemnations (presentation of a resolution), while formally maintaining the complaint in the opening statements. A second relevant point of the report lies in the presentation of a list of concrete initiatives aimed at supporting human rights: these initiatives are *The human rights small projects facility* (a specific fund allocated to finance small projects) and the *EU-China Legal and Judicial Programme* directed to the training of legal workers to obtain respect for human rights during the legal assistance. On top of these two initiatives, the Commission presented the cooperation budget for

[83] The sign of the UN Covenant on Economic and Social Rights in 1997 with a reservation concerning the freedom to establish trade unions.

China, totalling €65 million per year in 1998 and 1999; it has been observed that the commitment for the budget line B7-707 (the one dedicated to human rights and above which the European Instrument on Democracy and Human Rights will be formalised) was much lower than that of the B7-300 (technical and financial assistance) line and of the B7-301 (economic cooperation) line. In 1998, the commitment for human rights totalled €2,256,893, totalling €50,172,254 and €14,921,078 for budget lines B7-300 and B6-301, respectively; in 1999, the gap increased to €267,840, compared to €45,912,850 and €16,341,000 for the other two categories. Although the numbers contained in the report were referred to the commitments and not to the final payments, they certainly hold a meaning in terms of EU priorities towards China, which are more oriented towards technical and financial assistance and economic cooperation rather than to the promotion of human rights.

A complete description of the individual projects is unfortunately missing, but it seems reasonable that the discussion of the death penalty issue was in the agenda of both the legal seminars carried out in 1998 and 1999. The quota allocated and spent for the death penalty projects will be presented in the analysis of the European Instruments on Democracy and Human Rights, the European financial tool entirely devoted to human rights; through that analysis it will be possible to understand whether or not the death penalty has been a priority in the specific human rights cooperation with China.

In 2001, the European Commission released the Communication (2001)265 *EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy*; this document shows a coherence with the Communication 1998. The previous Commission's approach (coordinated with the Council) remains valid and the logic doesn't suffer any substantial changes: the strategy remains one of constructive engagement and the main goal is to integrate China in the world economy. Human rights remain a constitutive element of aim number 2, which is *supporting China's transition to an open society*; a particular emphasis is placed on the human rights dialogue's evolution, which, in line with the Council approach, is considered in principle as "an acceptable option only if progress is achieved on field". The promotion of death penalty abolition finds space in the presentation of the seminar that took place in Beijing in May 2001; also, the protection of categories that could potentially

face death penalty, and the restriction of death penalty cases are both considered benchmarks to measure a potential *more effective and results oriented* dialogue, as claimed by the General Affairs Council of 22 January 2001.

In the same year, the European Commission released its first *China Strategy Paper* for the period 2001-2006 (the strategy paper 2007-2013 will follow), with a cooperation budget of €250 millions for the five years.

In this document, the Commission (after having analysed the political economic and social situation in China and the challenges it poses to the European Union) presents its *response strategy* addressing all the three priorities defined in the previous Commission's documents: 1) support to the social and economic reform process; 2) environment and sustainable development; 3) good governance and strengthening of the rule of law and human rights. Regarding the latter topic, the document does not explicitly refer to any initiatives aimed at the death penalty issue, while the EU's commitment to assist the Chinese development of a new legal system remains clear. By analysing the table contained in Annex 3 of the *China Strategy Paper 2001-2006,* which groups the "Main projects committed in 1998, 1999, 2000, 2001" it has been noticed that four projects belong to priority number 3; two of them have been financed under budget line B7-707 (Human Rights in Asia) for a total amount of €10.640.000 and involved the support of the disabled people federation and other small project facilities; of the other two, one was linked to the human rights dialogue with the goal of training Chinese lawyers, judges, prosecutors and legislators; the second aimed to support the Chinese National School of Administration. Both of them were financed through the Technical and Financial Assistance budget line (B7-300), for a total amount of €18.900.000. Therefore, the total commitment for priority number 3 was almost €30 million. Concerning priority number 1 (support to reforms), €104,361,000 were committed; for priority number 2 (environment), €24 million were allocated, plus €8 million spread in multi-sectoral projects. Priorities number 1 and 2 benefited from budget line B7-300 (Technical and Financial Assistance) for a total amount of €115 million, and from budget line B7-301 (Economic cooperation) for €34 million.

Lastly, three projects aimed at the humanitarian aids were committed by the European Community Humanitarian Office budget line number B7-210, for a total amount of €3,5 millions.

A similar distribution of funds is reflected in the *National Indicative Programme*, a document included in the *Country Strategy Paper* and covering the allocation of fund for the three-year period 2002-2004. The total amount available for the period indicated was €150 million, distributed as follows: 75 millions for priority number 1, 45 millions for priority number 2, and 30 millions for priority number 3. The distribution of funds forecast by the European Commission in order to develop its strategy toward China shows the hierarchical order of the EU's priorities, and supporting China's integration in the world market represented the EU's main goal.

In 2003, a new milestone EC Communication called *A maturing partnership - shared interests and challenges in EU-China relations* updates the previous *Communications 1998* and *2001*. The strategy proposed is in continuity with the previous documents, and since China's importance for the European Union increased year by year, this communication addresses the need to implement relations and bilateral contacts with China at all levels and fields possible. While human right remained an EU priority, together with the promotion of common values, the European Commission admitted that significant improvements were still missing, especially in the bilateral framework of the Human Rights Dialogue. The mere fact that the dialogue did not face interruptions and that it took place regularly (together with the seminars) was not enough to encourage positive steps in sensitive issues such as the use of torture, the violation of the freedom of expression and minorities' rights. Also, the Commission noticed that China still refused (and refuses) to provide statistics on use of death penalty. The absence of concrete improvements was the reason that pushed the Commission's proposal to upgrade the dialogue to the vice-ministerial level and to complement it with "experts exchange".

Once again, the violation of human rights in general and the extensive use of death penalty in particular (which can be considered the symbol of the European human rights policy weakness) play the role of an Achille's heel in a partnership that is on its way to becoming "mature". By paraphrasing the title of the last *Communication (2006)632* falling in the chosen

framework of time, the European Union and China have become *closer partners* and have started to face *growing responsibilities:* "China's biggest trading partner, EU trade policy has an important impact on China, as do China's policies on the EU." Human rights, scarcely mentioned in half a page of this document (which makes no references to death penalty abuse) are still considered crucial, but the fact that the European Union is not satisfied with the dialogue remains in the domain of the observations and doesn't prevent the EU's agreement from continuing to work towards the embargo lift.

The approach doesn't change in the *China Strategy paper 2007-2013.* This new document shows how the allocation of funds indicated in the NIP 2002-2004 for priority number 3 (good governance and rule of law) was not confirmed in the subsequent document (the *China Strategy paper 2007-2013)* due to the topic's "sensitiveness". Concerning the NIP 2005-2006, the allocation of €60 million had been planned to support social and economic reforms. However, only €19 million were used (2006) while another €25 million were employed for the good governance and rule of law sectors, to fill the gap created by the absence of projects financed in this field during the previous biannual NIP. Like in the previous strategy paper, here too the paragraph listing the most relevant abuses that China still carries out does not mention the extensive use of the death penalty; not enough space, in comparison with other topics, is left to human rights protection in general and to the EU's contribution in this field.

A qualitative analysis of the Commission's documents shows a decreased attention to the human rights field. The Commission's *Communication 2006* mentions "human rights" only four times, compared to the twenty-nine of the previous Communication[84], and it doesn't refer to death penalty abuses. The death penalty issue is also absent in the two strategy papers, which are more *strategically* inclined to underlining the Chinese achievements in all the other sectors than to recall China's sad primacy of being the first world executor. In addition, as confirmed by the data elaborated on the *Evaluation* committed by the Commission[85], it is evident that the EU's key priority with China is the "economic and social reform".

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[84] It is important to consider that COM(2003)533 contains 26 pages without the annexes, while COM(2006)631 only contains 12; in any case the, frequency remains lower.

[85] Evaluation of the European Commission's co-operation and partnership with the People's Republic of China Country Level Evaluation, Final Synthesis Report, April 2007.

The Commission's approach suggests that China's unwillingness to move forward on human rights protection is not a good reason to change strategy towards China by following a more coherent normative approach: *constructive* (and, in many instances, unconditional) *engagement* is the only *modus operandi* possible with an important partner such as China. The only possibility the EU is left with is the chance to *softly* underline the absence of concrete steps in the human rights protection, and to believe in the mantra that "trade with China will lead to democracy". The reality is that since trade with China is not an option whether or not it will lead to democracy, the EU's ambitions of being a Normative Power *at all costs* are here meeting some obstacles.

4.3.1 EIDHR projects

This section collects all the projects funded by the European Commission in China through the European Instrument for Democracy and Human Rights (EIDHR), the financial tool established to support democracy and human rights in third countries; the reason behind the choice to analyse these projects is linked to the fact that the death penalty issue has been addressed mainly through this financial instrument. The projects chosen are the ones belonging to the EIDHR 2000-2006 and EIDHR 2007-2013[86].

The goal of this section is to measure to what extent death penalty abolition was treated as a financial priority in terms of amount of money allocated to human rights promotion in China. By collecting the projects from different categories, "death penalty" is the second item funded for projects begun in the period 2000-2009, with €2,614,446, after "promotion and protection of human rights and fundamental freedoms" (€2,864,280); "torture" follows, with €1,525,685, as summarised in the graph below.

The total amount allocated for the period 2000-2009 was around €12 million.

86 In order to be consistent with this research's time framework, the list of projects only includes the ones begun in and before 2009.

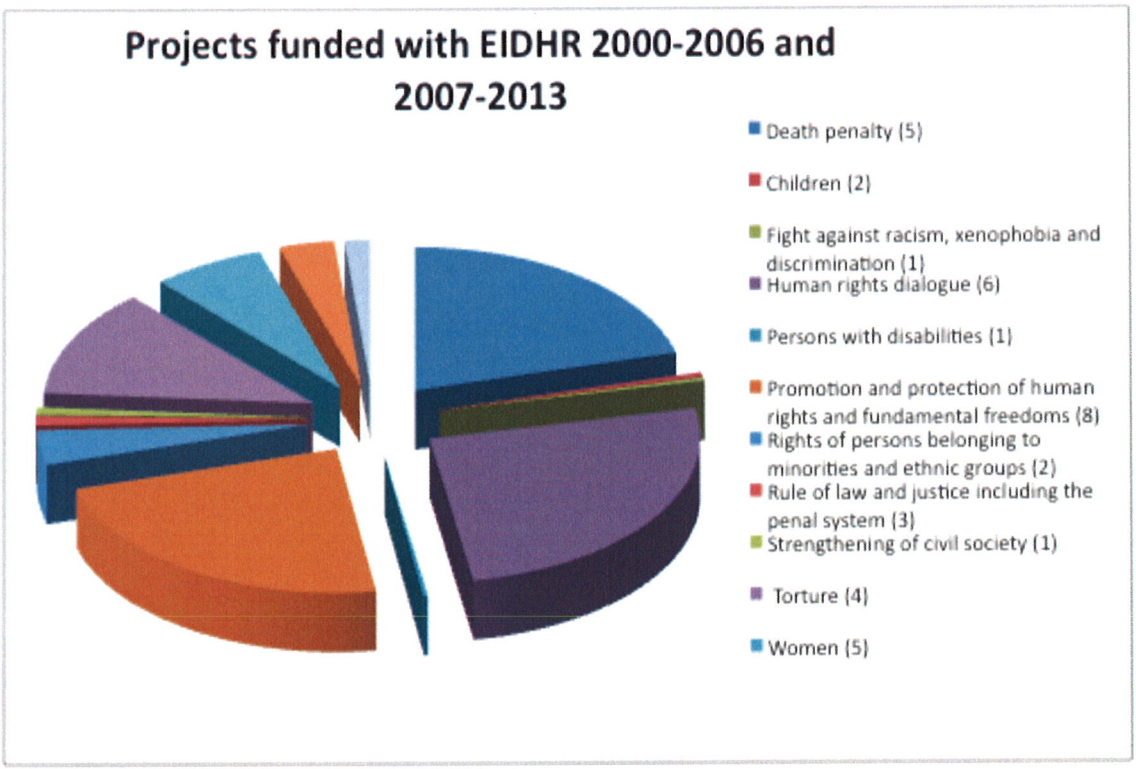

Projects funded with EIDHR 2000-2006 and 2007-2013
Death penalty (5)
Children (2)
Fight against racism, xenophobia and discrimination (1)
Human rights dialogue (6)
Persons with disabilities (1)
Promotion and protection of human rights and fundamental freedoms (8)
Rights of persons belonging to minorities and ethnic groups (2)
Rule of law and justice including the penal system (3)
Strengthening of civil society (1)
Torture (4)
Women (5)

Table EIDHR projects in China

Field (number of projects)	Amount allocated for projects funded by EIDHR 2000-2006 and 2007-2013 (€)
Death penalty (5)	2614446,6
Children (2)	59409,14
Fight against racism, xenophobia and discrimination (1)	48000
Human rights dialogue (6)	3209755,5
Persons with disabilities (1)	30963,95
Promotion and protection of human rights and fundamental freedoms (8)	2864280,28
Rights of persons belonging to minorities and ethnic groups (2)	482942,3
Rule of law and justice including the penal system (3)	120694,24
Strengthening of civil society (1)	100000
Torture (4)	1525685,25
Women (5)	846462,97
Governance (3)	414426,68
Cross Fields projects (3)	190265,12
Grand Total	12507332,03

Sources: EIDHR compendium by theme, by location and Asia available at http://ec.europa.eu/europeaid/what/human-rights/projects_en.htm

It seems clear that death penalty has been a priority for the projects financed under the EIDHR. Going into detail, 5 projects out of 46 addressed the "death penalty" topic; two were financed with the budget 2000-2006 and three with the 2007-2013 one. All of them aimed to reduce the use of the death penalty by addressing the civil society, local judges and public opinion.

	Project title	Description	Grant amount	Beneficiary	
	1) Strengthening the defence of the death penalty cases in the PRC (Starting date: 10/7/2003); EIDHR 2000-2006	The projects' aims are to strengthen the capacity of lawyers in promoting the legal rights of those accused of capital crimes by building up a body of experience and providing successful defence for those facing the death penalty; to identify best practice for legal aid in these cases; and to increase the professional standards of Chinese defence lawyers.	EURO 484,790.00	THE GREAT BRITAIN CHINA CENTRE UK NOT FOR PROFIT ORGANISATION	
	2) Moving the debate forward: China's use of the death penalty EIDHR 2000-2006	The aim is to reduce the use of the death penalty in China, and specifically to raise the awareness among the public and key decision-makers on the main arguments against the death penalty, and to promote a legislative reform to the criminal law to reduce the number of the capital crimes	EURO 708,621.60	THE GREAT BRITAIN CHINA CENTRE UK NOT FOR PROFIT ORGANISATION	
	3) Promoting Judicial Discretion in the Restriction and Reduction of Death Penalty use EIDHR 2007-2013	This project aims at training local judges to judicial discretion and at the development of strict sentencing and evidence guidelines for trial procedures	EURO 633,470.00	THE GREAT BRITAIN CHINA CENTRE UK NOT FOR PROFIT ORGANISATION	
	4) Voices of Victims against the Death Penalty EIDHR 2007-2013 [87]	The aim is to limit the application of death penalty through a categorical reduction of death sentences and then achieving moratorium and abolition through the amplification of victims' voices against the death penalty	EURO 495,000.00	MURDER VICTIMS' FAMILIES FOR HUMAN RIGHTS USA NGO	
	5) Restricting[88] the Death Penalty for Drug Offences through Human Rights Impact Assessment (HRIA) of Multi-lateral Drug Enforcement Assistance to Death Penalty States EIDHR 2007-2013	Aim: to restrict the application of the death penalty for drug offences through harnessing the political and financial influence of multi-lateral donors in states receiving donor support for drug enforcement activities	EURO 292,565.00	THE INTERNATIONAL HARM REDUCTION ASSOCIATION NGO UK	

The first project in this list deserves special attention because, unlike the human rights dialogue, it has been positively evaluated by the Report 2007 committed by the European

[87] China is not the only country involved in the project.

[88] China is not the only country involved in the project.

Commission.[89] The report explains that, although the project's goals were not achieved –there was neither a reduction of the death penalty cases nor a law change–, it has contributed to fostering the debate which gave the exclusive revision power of all death the sentences (as it was before the 80s when power was delegated to the provincial level courts) back to the Supreme People's Court. According to the evaluation report, the criteria for success were: the timing of the project, which was initiated while the national debate was ongoing; the combination of empirical research and practical work; and the choice of reliable Chinese partners. Apart from these positive elements, the weak fund flexibility, the short time dedicated to choosing partners, and the need of a longer-term perspective worked against obtaining better results.

It is also important to highlight a shortcoming contained in the evaluation report, which was the absence of a political support from the Commission after the end of the projects, i.e. in the phase of consolidation of the achievements.

It is here argued that good projects on the field need to be supported by a common and strong standpoint at the institutional and political level, and that only a position of this kind would allow to send a clear and positive sign to the local civil society of the third country in question. Otherwise, the results could be 'schizophrenic', meaning that the EU could be perceived with mixed feelings by the local civil society. It could be seen as a normative power and a "good" force when operating on the field, and as a (normatively weak) realist power when it is not able to take resolute political initiatives toward Chinese violations because of fearof economic retaliations. (See the Normative Tangle cases).

4.4 Economic ties and "Chinese" conclusions

It is incontrovertible that the EU-China economic relations are rising steadily; between 1999 and 2009, the EU imports from China have increased fourfold, jumping from 49,6 to 214,09 billion ECU and representing 17,8% of the EU's total imports, compared to 1999's 6,4%; the

[89] Evaluation of the European Commission's cooperation and partnership with the people's republic of China- Country level evaluation. April 2007.

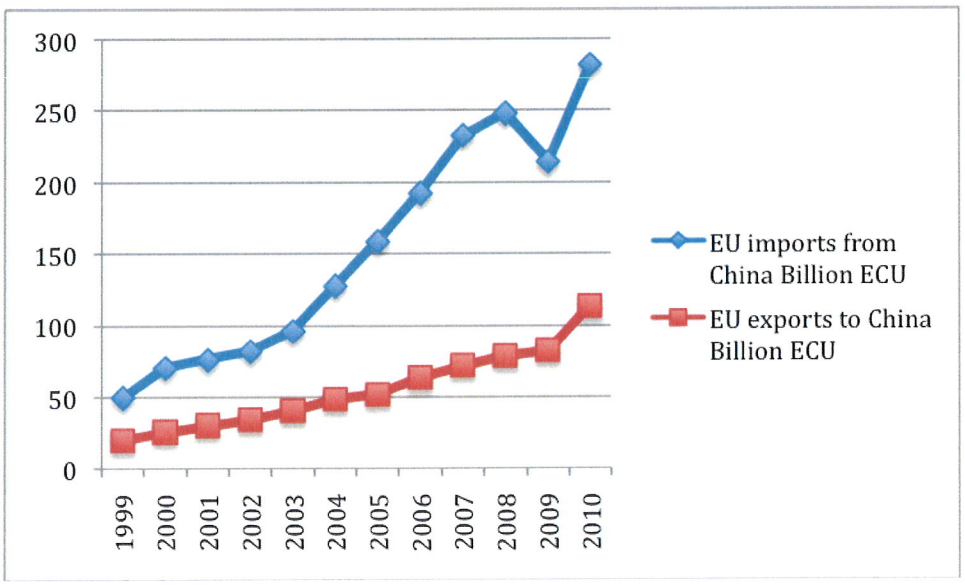
same (however in a smaller proportion) happened with the EU's exports to China which grew from 19,3 to 82,4 billion ECU (from 2,8% to 7,5% of the EU's total export).

In 2002, China was the EU's fourth trading partner in terms of exports and the same ranking position was also registered in 2007: between 2007 and 2010, China became the EU's second export partner after the United States with a percentage of 8,4 of the EU's total exports.

As far as imports are concerned, China was the second partner in 2002 and the first in 2007, and it is still keeping this position today with 18,9% of the whole EU imports. Considering the total trade, in 2010 China was the EU's second major trade partner (13,9 %).

In 2009, the European Union was China's second imports partner after Japan (which had 0,3% points of advantage), covering 14% of China's total imports, and the first export market (20%). Combining imports and exports, EU27 is the first Chinese trade partner since 2009.

Graph 3 EU imports/ exports from and to China (1999-2010)



Sources: Graph elaborated by using the data available at http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/china/

Table EU imports/exports from and to China, share of EU total

	EU imports from China, share of EU total	EU exports to China, share of EU total
1999	6,40%	2,90%
2000	7,50%	3,00%
2001	7,40%	3,10%
2002	8,30%	3,40%
2003	9,70%	4,80%
2004	12,30%	5,10%
2005	13,40%	4,90%
2006	14,20%	4,90%
2007	16,20%	5,80%
2008	15,80%	6,00%
2009	17,80%	7,50%
2010	18,90%	7,50%

Sources: Graph elaborated by using the data of the http://www.intracen.org/

These data reveal that the two actors enjoy a special relationship, which can be defined "asymmetrical symmetry". There is in fact a mutual dependence between the two economies (EU27 is China's first trade partner and China is the EU27's second partner after the United States, with a 0,6% difference), and this weakens the leverages to exercise a possible normative power. In addition, the symmetry is asymmetrical because towards the EU China maintains the attitude it has with its major partners: it exports more than it imports, thus favouring the exponential growth of the EU's trade deficit with China.

The EU's trade deficit with China experienced a dramatic rise from €24,4 billion in 1998 to €131,6 billion in 2009, and this unbalanced situation inevitably creates stress on the European Union, that feels unable to penetrate the Chinese markets as China does with the European one.

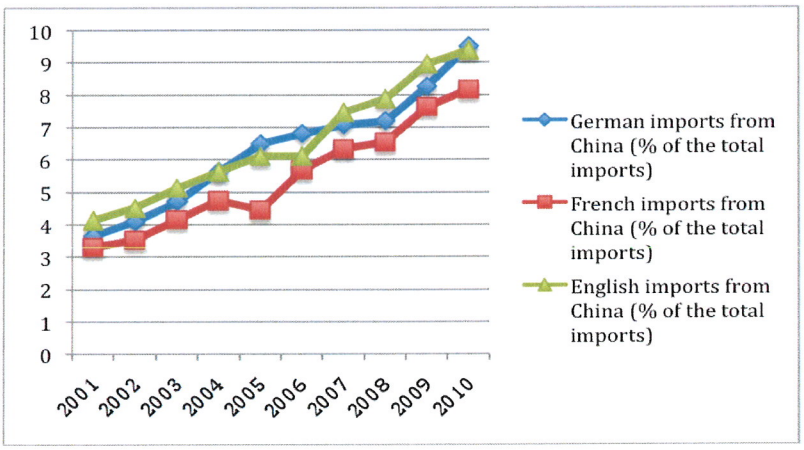
In this regard it can be said that the possible insertion of the human rights clause in the future Partnership and Cooperation Agreement would help correct this unbalance, fostering the EU's normative profile by encouraging the use of a "normative" leverage also with a giant economic partner.

Further, the particular nature of the European Union and its being a *sui generis* political organisation (as recalled in the first chapter) plays a role in increasing the normative schizophrenia when the individual member states' interests are robust and may compete

against each other. Considering the economies of Germany, France and the United Kingdom and their trade fluxes with China in the last ten years, it is clear that both the imports and exports increased steadily during this period. In-depth data analysis has shown that while the share of the imports from China has grown similarly for the three economies, the same cannot be said for the EU's exports to China.

Germany's imports from China increased from 3,64% of Germany's imports from the rest of the world in 2001 to 9,50% in 2010; France's imports grew from 3,30% of the total French imports in 2001 to 8,16% in 2010; and the United Kingdom's imports from China represented 4,13% of the total in 2001 and 9,38% in 2010.

Graph4: Chinese quota (%) of the total German, French and English imports

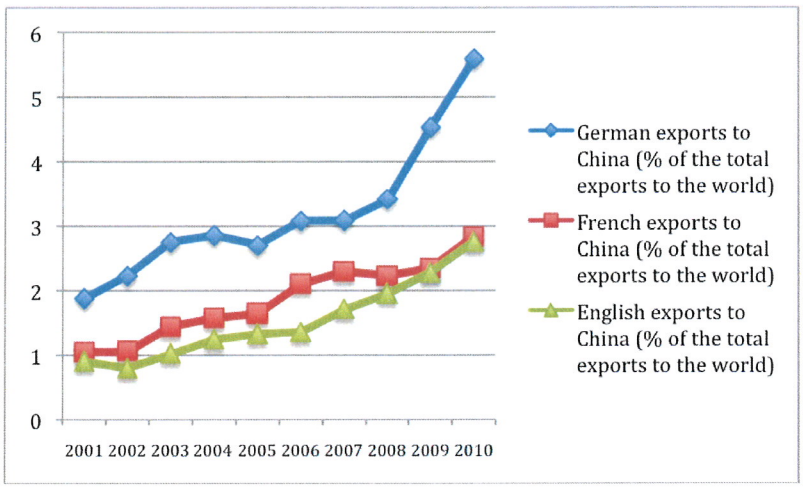


Graph elaborated with the data of the International Trade Center http://www.intracen.org/

In 2001, Germany's exports to China represented 1,88% of the total and they reached quota 5,59% in 2010; France's exports to China have grown slowly from 1,01% of the total France's exportations to the world in 2001 to 2,84% in 2010; the United Kingdom shifted from the 0,91% of the total UK's imports to 2,76% in 2010.[90]

[90] Percentage elaborated from the International Trade Centre Database, http://legacy.intracen.org/welcome.htm

Graph 5 Chinese quota (%) of the total German, French and English



Graph elaborated with the data of the International Trade Center http://www.intracen.org/

In practical terms, these data show that Germany's trade deficit with China is smaller than the French and the English ones, which means that Germany has been able to penetrate the Chinese market better than the other two European partners. The aim of this example was to suggest that, besides the EU's general economic position towards China, there exist 27 different economic positions that may influence the pursuit of a "clear and unambiguous objective" shared by all member states, such as the abolition of death penalty, due to economic considerations and fear of retaliations. Consequently, the clarity and unambiguousness of the political goal is not sufficient to prevent a normative weakness: a normative outcome needs to be matched with a shared "relational" neutrality or absence of strong economic interests, as the Philippines case testifies.

The Fox and Godement's policy report *A power audit of EU-China relations,* published by the European Council on Foreign Relations in 2009, goes in this direction by classifying the EU member states' attitudes towards China using two parameters: the *economic attitude* (which is more liberal and protectionist) and the *political attitude* (which is more critical and supporting). The authors this way placed each country in a spatial dimension in which the two attitudes are combined together, and they elaborated an interesting member country-specific profile that reflects their position toward China.

Going back to the institutional level, a primary conclusion that can be drawn from the study of the single institutions' documents is the following: the European Parliament is the only institution that supports a positive and *a priori* commitment to the goal of making trade relations with China go hand in hand with the development of a political dialogue and the respect of human rights. This position is slightly but fundamentally different from the "constructive engagement" approach defended by the Council and the Commission, whose main hypothesis is that trade with China will lead to democracy and respect of human rights. In the latter case, human rights and democracy are considered natural consequences and not preconditions for a partnership; the latter approach reduces the EU's normative responsibility and, consequently, its normative power, and drives to a realistic interpretation of the EU's approach to international politics. It can therefore be argued that the European Parliament is the only institution that shows the strongest "normative attitude", not only because it appears to be the most prolific institution in terms of documents discussing human rights (and death penalty) in relation to China, but also for the attention paid to the importance of an *a priori* commitment to human rights and democracy.

The European Parliament's approach reinforces one of the main hypotheses of this work, i.e. that the number of declaratory documents increases at the increase in relevance of economic interests between the two countries. Considering the EP's resolutions as "declaratory documents" doesn't imply a critique to the normative coherence of these documents, on the contrary the expression is used to stress their constitutive normative weaknesses. If it is true that the "resolutions adopted by the European Parliament denouncing the low respect of human rights and democratic principles in China always annoy the Chinese establishment" (Panebianco 2006a:148), it is equally true that they represent the lowest price possible (and consequently acceptable) for the Chinese counterpart; this is because they don't have an operative nature, nor do they possess the international echo that can be found for example on the equally not-binding resolutions of the former Human Rights Commission.

On the other hand, the "constructive engagement" approach defended by the Council and by the Commission hides a deception: human rights promotion remains a manifest European goal that is inexpensive for China, while latently no concrete results have been

obtained on the field. In this regard, the definition of "unconditional engagement" that Fox and Godement 2009 proposed to describe the EU-China relations can here be accepted: according to them, *unconditional engagement* is "a policy that gives China access to all the economic and other benefits of cooperation with Europe while asking for little in return" (Fox and Godement 2009:2). In the two scholars' case, the expression "little in return" is not only linked to human rights protection but also to the bilateral access to the market, which is not equal, given that China is able to keep some obstacles and to therefore benefit from bilateral trade more than the European Union does (the EU's trade deficit with China has constantly grown in the past years). Nevertheless, even for the two scholars the EU's ambition and leverage are mostly mismatched in the human rights area (Fox and Godement 2009:63) "but to renounce human rights goals in the name of 'realism' would weaken the essential principle of the EU and European society- the rule of law" (Ibidem). To conclude, the fact that the European Union's diplomacy has decided to de-link the political and human rights dialogue from the possible sanctions on the *high politics issues* (mainly trade and security) has produced not only a gap with the western media and human rights activists (Balme 2008), but also an unconscious gap with the EU's self-perception of being a coherent normative power.

5. The EU and the Philippines

It can be argued that the European Union played a role in the process of death penalty abolition in the Philippines, mainly through the projects financed with the European Instrument for Democracy and Human Rights (EIDHR). Although the institutions' attention was not very high, due to the country's weak political relevance for the European Union, it is argued that *the positive outcome was facilitated by the timely realization of the projects ,the structural asymmetry in their mutual bilateral economic relations, and the coherence between manifest and latent dynamics, or better, the absence of clashes between interest protection and norm promotion.*

It is clear that death penalty abolition in the Philippines cannot entirely and exclusively be ascribed to the European Union's behaviour in general, or to the exercise of its normative power in particular. The outcome was facilitated by many structural internal factors, such as the religious factor (the strong relevance of the Catholic religion), and the past historical experiences of the country (which was the first in the Asian region to abolish death penalty and then to reintroduce it), nevertheless the focus of this work remains the EU's behaviour, because it is the dependent variable of this thesis.

According to the present work, the differences –from the European perspective– between the Chinese case and the Philippines one is the presence (in the first case) or absence (in the second one) of a whatsoever typology of impeding factors (of political or economic nature) to exercise a normative power. This consideration reinforces the necessity to think the Normative Power Europe as a bubble that inflates or deflates depending on the features of the country the EU faces. The NPE concept must be considered *as a European relational factor, much more than an EU intrinsic feature. Only by conceptualising it this way is it possible to understand its limits and its variations.* According to this thesis, the crucial element of a successful normative outcome depends on the structural and spatial position the European Union occupies towards a given country.

In the case of the Philippines' abolition of death penalty, it is argued that the abolition was facilitated not only by the essential internal factors, but also by two EU-Philippines relational features (positive conditions), i.e. the absence of a *mutual* economic interdependence

(as in the Chinese case) –which means that there is a structural asymmetry between the two actors–, and the fact that the Philippines don't belong to the group of "other major countries that do not share the same political values and norms" (Mattlin 2010:8), but are a medium-sized country with some cultural affinities with the western systems of values, mainly due to the strong role played by the Catholic religion.

As far as economic considerations are concerned, it is argued that while the Chinese case can be defined as an experience of "asymmetrical symmetry", the Philippine one is better described by the definition of "asymmetrical asymmetry". The former expression is used to describe a mutual dependence between the two economies –symmetry–(EU27 is China's first trade partner and China is the second EU27 partner after the United States with 0,6% difference), which weakens the leverages to exercise a possible normative power; moreover, in the EU-China case the symmetry is *asymmetrical* because China exports more than it imports, facilitating this way the exponential growth of the EU's trade deficit with China –an attitude China has with all of its major partners. On the contrary, the expression "asymmetrical asymmetry" indicates the absence of a mutual relevance between the two economies. In 2009, the European Union represented the Philippines' fourth trade partner, while for the European Union it is the 47th (structural asymmetry). Nevertheless, like in the Chinese case, the EU trade deficit existing between the EU and the Philippines has remained steady throughout the years (though it decreased due to the decrease of European imports from the Philippines) and in 2009 it totalled less than one billion, but the extent of this second asymmetry is not significant enough to affect the normative dynamics.

Before reviewing the crucial ongoing political and economic relations between the European Union and the Philippines, it is essential to recall that the Philippines is a member of the Association of Southeast Asian Nations (ASEAN) and consequently the relations between the two actors also pass through the bilateral (regional) channel[91]. Nevertheless, for the purposes of this work it has been chosen to only focus on the EU-country specific relations for two reasons: firstly, the asymmetrical dependence of the bilateral economic relations between the EU and the Philippines does not reflect the EU-ASEAN trade relationship, as the ASEAN

[91] The European Union's dialogue with ASEAN began in the late 1970s; the formalisation of this dialogue took place with the signature of an EC-ASEAN co-operation agreement in 1980

as a whole represents the EU's third partner outside Europe; also, the Philippines' position toward death penalty is not representative of the entire regional area –except for Cambodia, which has completely abolished death penalty, all the other member countries still have the capital punishment in their legal systems.[92]

Concerning the bilateral relations between the European Union and the Philippines, the first relevant year is 1964, which saw the beginning of diplomatic relations; in 1984, the RP-EC Framework of Agreement was signed, constituting the base for the European Community's projects for development, cooperation and assistance in the Philippines; in 1991, the European Commission's Delegation Office to the Philippines was created; the formalisation of the bilateral high-level contacts first occurred in 1997 through the Senior Officials' Meeting, which ever since 1997 takes place every two years, alternatively in Manila and Brussels. Currently the two partners are negotiating a Partnership and Cooperation Agreement, which would enhance their relations.

[92] Brunei, Laos and Myanmar are de facto abolitionists, which means that no death sentences were carried out in the last ten years.

5.1 EU institutions and the case of death penalty in the Philippines

This section collects the European institutional documents that mention the protection of human rights and the issue of the death penalty in the Philippines; a special section of this chapter will be dedicated to two important issues in the EU-Philippines relations: the human rights dialogue (centred on death penalty) between the Commission on Human Rights of the Philippines and the European Union on one side, and the EIDHR projects on the topic on the other. It is argued that these "ad hoc" forms of collaboration, in combination with a structural asymmetry between the two actors, have encouraged the EU's "ability to shape the conception of normal" (Manners 2002), and have shaped a concrete EU role to the abolition of death penalty in the Philippines.

Before presenting the qualitative analysis of the documents collected, it is necessary to briefly trace the history of death penalty in the Philippines, in order to more easily isolate the internal factors that facilitated the successful outcome.

The Philippines first abolished death penalty for all crimes with the 1987 Constitution, becoming the first Asian country to make this decision, however reintroducing it six years later, in 1993, through the Republican Act 7659. The reason behind the re-imposition can be found in the rising criminality that affected the country in the early '90s. The Death Penalty Law identified 46 crimes punishable by death (25 mandatory and 21 eligible), but subsequently the list of crimes punishable by death became 52, 30 death mandatory and 22 eligible.

1999 was a special year as President Joseph Estrada, after having put seven people to death, decided to issue a moratorium on executions due to the pressure coming from the "Jubilee Year" and from the Pope's call in favour of death penalty abolition. The same position was also maintained by the following administration under President Gloria Macapagal Arroyo. The last obstacle to the final abolition came from the increase of drug trafficking and kidnapping crimes in 2003. This pushed the President to announce the lifting of the moratorium on executions, but in practical terms, since the moratorium lift no other official executions took place, thanks to the practice adopted by the administration to cancel and commute on scheduled executions. Finally,

on June 24, 2006, President Arroyo signed the Republican Act 9346 "prohibiting the imposition of Death Penalty in the Philippines".

5.2 The European Parliament

During the period 1998-2009, eleven resolutions of the European Parliament discussed or simply mentioned a specific aspect of the human rights situation in Philippines, as well as their promotion and implementation. Eight out eleven addressed the specific topic of death penalty and its corollary problem of extra judicial executions[93] still taking place in the country.

The first document that falls in the framework of time chosen is a resolution on the Philippines 1999[94], in which the European Parliament renews its support to the peace process between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines (NDFP) and asks the Council and the Commission to encourage the implementation of the *Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law* approved by the two counterparts, as a positive step that goes in the direction of a successful peace negotiation process. In the second document examined[95] the tone changes because the European Parliament condemns the problem of the human rights abuse and violations taking place not only among the opposition's group side (hostage-taking and killings) but also within the Philippines' armed forces (mainly extra-judicial executions, torture, "disappearances" and indiscriminate killings of civilians) and calls the other European institutions to assist the government of the Philippines to solve the tensions afflicting the Mindanao island. In the 2001 resolution, the European Parliament expresses its "extreme concern" for the contents of a report contained in the American magazine called *the National Catholic Reporter,* which documented rapes and sexual abuses committed by priests against Catholic nuns. The Philippines were one of the 23 countries denounced in the report, and with its resolution the European Parliament condemns all the violations committed and urges the

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93 The extrajudicial killings are those executions committed by formal authorities in absence of a regular and legal process.

94 European Parliament resolution on the Philippines; date of document 14/01/1999; Official Journal C 104 , 14/04/1999 P. 0116.

95 European Parliament resolution on Human rights: Philippines; date of document 18/05/2000; Official Journal C 059, 23/02/2001 P. 0280 - 0281

judicial authorities of the countries mentioned to take "all appropriate judicial action to establish the truth about these cases of violence against women"[96].

Thirteen days after the announcement of the lifting of the moratorium on executions by the President of the Philippines Arroyo, the European Parliament adopted a resolution in which it considered "regrettable that President Arroyo has changed her position on the death sentence"[97] and called directly "on the President of the Philippines to reverse her decision to end the existing moratorium as of 1 January 2004".[98] Moreover, the Parliament profited of this occasion to once again call the Council and the Commission to treat "as a matter of priority and urgency any Community initiative aimed at achieving a moratorium on, and repeal of, the death penalty and giving practical support to all non-governmental organisations acting to this end"[99] and invited the institutions to place the abolition of the death penalty and a universal moratorium on executions as crucial element in the relations between the EU and third countries, by "raising this issue when concluding or renewing agreements with third countries"[100]. The latter sentence testifies a peculiarity of the European Parliament's strategy that remains unaltered no matter the identity of the third countries it faces.

In 2005, the case of the European citizen Francisco Juan Larrañaga, who was accused of rape and murder in a trial judged unfair and sentenced to death by the Philippines' authorities, gave the Parliament the opportunity to treat the issue of the death penalty in the Philippines twice. In the annual resolution on *Human Rights in the World (2004) and EU's policy*, the Parliament "calls on the authorities in the Philippines to put a stop to the implementation of death sentences"[101] and urges to review the case of the EU citizen. In the following resolution the Parliament recalls the path of death penalty in Philippines: since it was restored –in 1993–

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96 European Parliament resolution Human rights: Violence towards Catholic nuns; date of document 05/04/2001.

97 European Parliament resolution on Philippines: end of the moratorium on the death penalty; date of document 18/12/2003; *Official* Journal C 091 E , 15/04/2004 P. 0691 – 0692; operative paragraph 2.

98 Ibidem, operative paragraph 3.

99 European Parliament resolution on Philippines: end of the moratorium on the death penalty; date of document 18/12/2003; Official Journal C 091 E , 15/04/2004 p. 0691 – 0692; operative paragraph n.5.

100 Ibidem, operative paragraph 6.

101 European Parliament resolution on Human Rights in the World (2004) and EU's policy Philippines Official; date of document 28/04/2005; Official Journal C 45E , 23.2.2006, p. 107–127; operative paragraph n.145.

seven executions had taken place out of 1916 death sentences, and the moratorium's implementation by President Estrada was followed by the announcement of the lifting by president Arroyo. The Larrañaga affair took place in this *legal environment*; not surprisingly, the request for an urgent protection of a European citizen was combined with a renovated general support to death penalty abolition worldwide, and in the Philippines in particular. The Parliament called on the President "to revoke her decision to end the moratorium on the death penalty"[102] and also addressed the Congress "to repeal the law on the reintroduction of death penalty[103]", and directly asked the President "to exercise her powers by granting an absolute pardon to Francisco Larrañaga and securing his immediate release from prison, as well as commuting the death penalty of the prisoners on death row, particularly the 18 child offenders"[104].

In 2007, the year after abolition, the EP passed a resolution *on the initiative in favour of a universal moratorium on the death penalty,* in which it recalled the Philippine experience as another positive step in the direction of worldwide abolition[105].

The historical decision taken by the Philippines' authorities did not lower the EP's attention to the country's human rights situation in general, and to the extrajudicial killings in particular. In April 2007, the Parliament adopted a pregnant text *on the human rights situation in the Philippines*[106], in which it welcomed the abolition of the death penalty but expressed "grave concern" for the political killings involving the Armed Forces of the Philippines (AFP), and asked the Government of the Philippines to match the engagement shown through the elaboration of a 6-point plan to stop extrajudicial killings to a clear commitment for the investigation on those killings. In the *Annual Resolution on Human Rights in the World 2007*,

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[102] European Parliament resolution on Philippines (the sentencing to death of Francisco Larrañaga, an EU citizen); date of document: 17/11/2005; OJ C 280E , 18.11.2006, p 472–473 ; operative paragraph n. 2.

[103] Ibidem

[104] European Parliament resolution on Philippines (the sentencing to death of Francisco Larrañaga, an EU citizen); date of document: 17/11/2005; OJ C 280E , 18.11.2006, p 472–473 ; operative paragraph n.4.

[105] European Parliament resolution on the initiative in favour of a universal moratorium on the death penalty; date of document 1/01/12007; OJ C 250E , 25.10.2007.

[106] European Parliament resolution on the human rights situation in the Philippines; date of document of 26/04/ 2007; OJ C 74E 20.3.2008, p. 788–790

the EP urged all the countries that had not ratified the Rome Statute to do so, and the Philippines was one of the countries in the list. In the *text on Trade and Economic Relations with the countries of South East Asia (ASEAN)*, the Philippines were commended for having abolished the death penalty, the Parliament invited the other member countries to uphold the UN moratorium. The latter resolution has a strong normative meaning, because the European Parliament clearly demanded that human rights form "an integral part of the negotiations with ASEAN, especially in the PCAs"[107] which, according to the text, needs to include to a specific human rights clause. It remains to be seen whether the PCA that is currently under negotiation with the Philippines will contain this clause or not.

The last resolution adopted in the chosen time frame is the one dedicated exclusively to the deterioration of the peace process in the country, and to the connected rise of the extrajudicial killings. The Parliament called the Philippines' authority "to investigate cases of extrajudicial executions and enforced disappearances", and to create an independent mechanism to monitor the situation, to adopt tangible measures, and to be more firm in the condemnations of the human rights violations; finally, it reiterated its request to incorporate the international human rights instruments and tools in the country's legislation, and to be more open toward the United Nations' special body.

[107] European Parliament resolution on trade and economic relations with the Association of South East Asian Nations (ASEAN) (2007/2265(INI)); date of document 8/05/2008; OJ C 271E , 12.11.2009, p. 38–44; operative paragraph n.48.

5.3 The Council of the European Union and the European Council

Every year, the Council of the European Union drafts the EU Annual Report on human rights[108]. Examining this document allows us to trace Europe's behavioural profile on the human rights situation in the Philippines, its initiatives and main concerns. Ever since its first edition in 1998/1999, the Council has always reported to have raised the death penalty problem with a series of countries, including the Philippines; in 2000, under the Finnish and Portuguese presidencies, the Philippines' authorities were contacted once again to discuss the issue; the EU authorities also expressed satisfaction for the moratorium on executions introduced in the country. The EU also supported the initiatives undertaken by the Philippines at the Human Rights Commission in 2002 and 2003, having as object violence against women.

In 2003 and 2004, the Philippines were a target country for EU démarches concerning human rights violations; the European Union also chose the Philippines as a pilot country whom to give technical assistance to, in order to implement the United Nations' resolution against terrorism by training the local police.

In 2005 and 2006, death penalty was discussed by the two partners once again, and the European Union was able to keep a solid pressure at a time in which the abolitionist trend was particularly strong. Since 2005, the problem of the extrajudicial killings and the journalist massacre has become a European priority and, after death penalty was abolished in 2006, the EU continued to exercise pressure towards the government by offering its assistance to solve the problem.

This mutual availability (the EU's proposal and the Philippines' acceptation) created an opportunity for new forms of collaboration aimed at reducing the Extra-Judicial Killings (EJK), and culminated with the 2009 signing of an *EU-Philippine Justice Support Programme (EPJUST)*, explicitly devoted to assisting the Philippines' system of justice.

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[108] The analysis of the Annual Reports was neglected in the Chinese case because the information provided overlapped with that contained in the other institutional documents analysed, that are missing in the Philippines' case.

The Annual Report 2008 recalls the approval of a United Nations resolution for a moratorium on executions, and the multiple diplomatic efforts taken by the European Union also included getting non-European countries involved. The Philippines was one of the co-sponsors of the text adopted. The European Union declared that human rights are at the core of the ongoing PCA negotiations; it still needs to be verified whether or not the agreement's conclusion will contain the human rights and the International Criminal Court clauses, as hoped by the EU.

Unlike with China, in the Philippines' case no Council General Affairs or External Relations meetings have dealt with the human rights situation, while the Presidency released six declarations discussing different aspects of the same topic (five of them covering the death penalty issue). The first declaration was released on the occasion of Filipino citizen Mr Echegaray's execution in 1999. The Council *deeply* regretted this act, whose importance was due to the fact that the Philippines had formally broken a *de facto* moratorium that was continuing since 1977. The Council also called the authorities to restore the *status quo ante* by resuming the moratorium.

The following year, President Estrada decided to introduce a formal moratorium on executions; on behalf of the European Union, the Presidency welcomed this decision, considering it a crucial and essential step for a future abolition. As previously pointed out, Estrada's decision was strongly influenced by the "religious" factor. The president's announcement of the death sentence's cancellation took place after attending a Catholic mass, and the Jubilee Year and the strong critiques of the Filipino Church significantly facilitated the results.

In 2001, the presidency released a declaration after the violent facts that took place in Manila, and after expressing its support for the new political leadership in the country, it called all the political forces to respect human rights and rule of law.

In 2006 and 2007, which follow the Philippines' complete death penalty abolition, the Presidency three times expressed a *warm* welcome for Arroyo's decision; firstly in a specific declaration directed to the Philippine's case, secondly in the annual declaration on the occasion

of the World Day against Death Penalty and, thirdly, on the occasion of the Third World Congress against the Death Penalty, which took place in Paris in February 2007.

Concerning the European Council, no Presidency Conclusions mentioned the human rights situation in the Philippines for the period 1998-2009.

5.4 European Commission Strategy Papers

By analysing the two EC-Philippines country strategy papers 2002-2006 and 2007-2013 and their annexed documents (National Annual Indicative Programme 2002- 2004 and 2005-2006 and Multi Annual Indicative Programme 2007-2010), it is possible to understand the European Commission's strategy towards the Philippines, and its evolution during the period of time under review.

The first elements emerging from the country strategy paper 2000-2006 are the EU's priorities towards the Philippines. There are two are main focus areas: the assistance to the poorest sectors of society and the assistance to trade and investment, in order to facilitate the integration of the Philippines in the flow of international trade. Other areas of cooperation follow, such as human development and rights stability and security, education, culture, science, and technology.

The document also clarifies that "during the period 1992-2000 the EU was the second largest source of grants, after Japan. Today, however, overall EU assistance to the Philippines is decreasing. The EC announced during the 1998 Senior Officials Meeting that its assistance would be reduce. The Philippines could no longer be considered a priority country for EC development aid in the region" and the budget foreseen at that moment for the period 2002-2006 was of €63 millions; in spite of this *low* interest, the main sectors in which the EC decided to intervene were poverty reduction, sustainable development, institutional reform and good governance.

Concerning human rights specifically, it is interesting for this work to observe that the fourth time they are mentioned in the document, the EU highlights that "the human rights situation in the Philippines continues to be a matter of concern. In particular, in 2000, a moratorium on executions was declared. However, since the moratorium has lapsed, no new death sentences have been carried out". The death penalty moratorium and its interruption are monitored by the EC and are considered a crucial barometer to measure the Philippines' human rights condition. How is this attention translated in practical terms? By, for example, promoting a *focused approach* on a given priority: "An example of this focused approach can

be the recent funding decision regarding the death penalty, where the Community has supported DNA forensic testing and free legal assistance for death row convicts."

In terms of economic bilateral relations, the Commission remembered the special role played by the European Union toward the Philippine market. When the document was published, the EU was the "second largest export market of the Philippines and has been instrumental in reducing the impact of the Asian financial crisis on the Philippines economy by absorbing a substantial share of increasing exports".

Through a comparative analysis of the National Indicative Programme 2002-2004 and 2005-2006, it is possible to understand the re-orientation in terms of money allocated of the European Commission's strategy. The indicative budget foreseen by the first National Indicative Programme for the Consolidation and Expansion of the Philippines-EC Rural Development Programme (which belonged to the first focal area- Assistance to Poorest Sectors of Society-) was €22 million, reduced at €7 after the Mid-Term-Review and finally cancelled, the budget for the Health Sector was increased from € 20 million to € 32-34 million, and the money allocated to assistance to trade was also increased. For what concerns human rights, these were financed through the thematic budget line B7-702, which is the EIDHR's financial budget line analysed in the next section. It has been observed that among the different thematic budget lines, the human rights one received the lowest amount of contributions, totalling only €300.000, compared to €7,465,952 for refugee projects, €2,246,561 for tropical forest projects, €850.000 Echo (Humanitarian Aid department) projects and €6,581,091 for generic NGO projects. The €300,000 were however not fragmented into different projects, but rather spent entirely on Strengthening the abolition of the Death Penalty Campaign by information drive.

Under the strategy paper 2007-2013, the amount allocated by the European Commission for the Philippines reaches €130 million, and the focal sector identified is the "Support for the Philippines to the delivery of basic social services" by addressing poverty reduction and promoting economic and governance reforms and supporting sustainable development.

Human rights thus become a "cross cuttings issue", together with 'gender' and 'governance'. According to the EC, the Philippines' human rights situation remains a source of

concern, mainly because the extrajudicial killings have increased after death penalty abolition. The former can be considered an unintentional consequence of a political achievement.

The cost of order of the Multi-Annual Indicative programme 2007-2010 is €60 million, in line with the total €130 million for the whole period 2007-2013. The focal sector remains the "Support to the delivery of basic social services", especially health, in continuity with both country strategy papers 2002-2006 and 2007-2013, while the Support to the Mindanao Peace Process, the

Dialogue on Governance and Trade Related Assistance (TRA) remain the three main non-focal sectors.

What emerges from the EC strategy papers and annexed documents is that human rights have mostly been integrated in actions under NGO co-financing, de-centralized Cooperation budget lines and EIDHR. The next section is entirely dedicated to the EIDHR instrument, under which the core projects that have contributed to the abolition of death penalty have been financed.

5.5 The EIDHR and the human rights dialogue[109]

The projects carried out by the European Commission through the E*uropean Instrument for Democracy and Human Rights* in combination with a series of human rights dialogues on death penalty and restorative justice, organised by the EU and the Commission of Human Rights of the Philippines, played a significant role (from an EU point of view) in the abolition of death penalty in the Philippines. The intervention of the Catholic Church was another external element that gave a strong contribution to the result (92% of the Philippines' population is Christian), while the domestic Philippine political factor inevitably constituted the essential prerequisite on which the political success was built.

The three EIDHR-funded projects aiming at the abolition of death penalty in the period 2000-2006 involved three local actors: the Free Legal Assistance Group (Human Rights Foundation), the Philippines Human Rights information Center (Philrights) and the University of Philippines Foundation. The three projects were funded almost simultaneously (they all started between 2001 and 2002) and they covered three different aspects of the death penalty's *multifaceted* issue.

The first project financed was the *Anti-death penalty campaign of the Free Legal Assistance Group (FLAG) Hr Foundation Inc.* and its specific initiatives. The FLAG decided to cover a complex and articulated combination of activities to address different aspects of the death penalty issue and to exercise pressures from a plurality of perspectives, conscious that only by adopting an articulated strategy it would have been possible to obtain a concrete result. The legal assistance organised for 80 people sentenced to death was combined with specific training for local lawyers and with a general campaign directed to sensitise the local public opinion. Also, the members of the Senate and Congress judged relevant for political success were targeted with a pure 'lobby and advocacy' operation, followed by the preparation of the

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109 Main sources for this paragraph:

The Philippine Experience in 'Abolishing' the Death Penalty Briefing paper requested by the European Parliament's Sub-committee on Human Rights, January 2007.

Comparative evaluation of the Human Rights Projects and Interventions of the European Union in the Philippines and Cambodia, June 2007.

European Initiative for Democracy and Human Rights Evaluation on the Abolition of Death Penalty Projects. EuropeAid, Final Report 4 April 2007.

so-called "briefing boxes", to be used by the politicians in the political arena to show their commitment and expertise to the abolition's cause. According to the *Evaluation on the Abolition of the Death Penalty Projects 2007* issued by the European Commission itself, this project seems to have played a crucial role in the abolition.

The second project funded was initiated a few months after the start of the Anti-Death penalty campaign promoted by FLAG, and had a well-defined scientific approach. It was developed by the University of Philippines, and its main goal was to introduce DNA-testing to avoid judicial mistakes. The effects of this project were twofold: on one side, it contributed to making DNA-testing available for Philippine justice, on the other side it was able to influence public opinion by clearly showing the risk of sentencing innocent people. According to the previously cited Evaluation document, this was the first EU-funded project that had a pure scientific approach.

The third project funded the activities of the *Philippines Human Rights Information Centre* and though it was considered less effective than the others, its main contribution was to lobby and advocate in a wide spectrum of the Philippines' society by collecting all the actors and networks dealing with the abolition of the death penalty. The 2007 evaluation on death penalty projects commented this project by saying that "public advocacy work may prove crucial in the long run to ensure that death penalty is never reintroduced and in contributing to the eventual signing of the 2nd Optional Protocol"; although it is not possible to verify a causal link between the project and the facts, what is certain is that the Philippines signed the Protocol in September 2006 and it ratified it in November 2007.

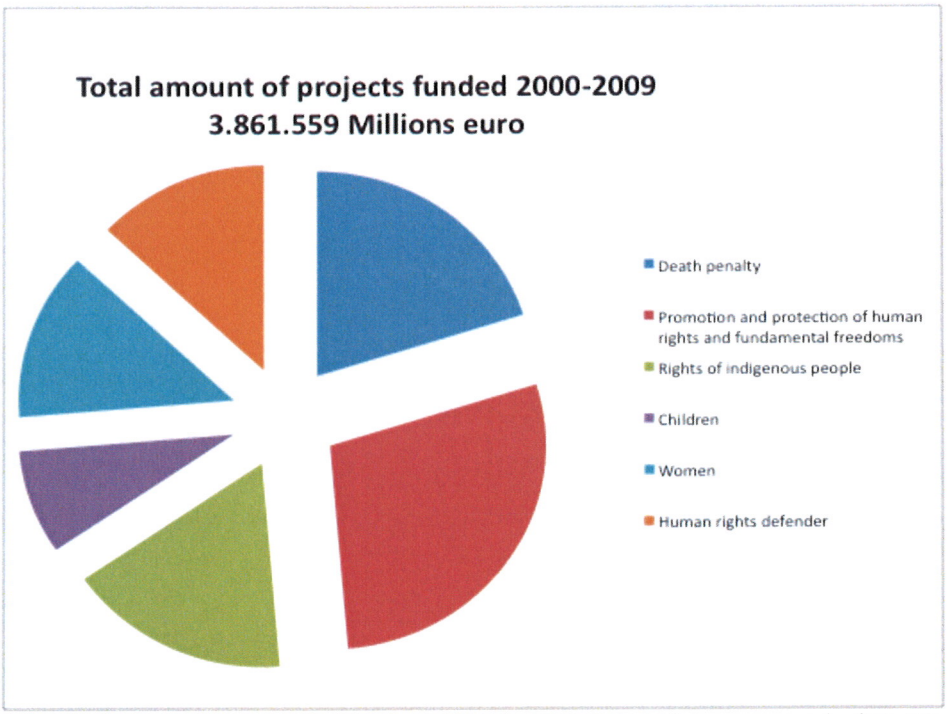
The fact that this crucial achievement happened in a time frame in which the project was still ongoing (it ended 1st June 2009) may prove that the financed project had the ability to contribute to the signing of the Protocol by keeping the pressure high even after the abolition was completed. The Philippine case teaches that the phases that follow institutional success are always crucial for its stabilisation. When the Philippines decided to reintroduce death penalty after the first abolition, all the legal protection to avoid this occurrence was missing; on the contrary, the second abolition was followed by international legal consolidation, and a reintroduction is now unthinkable. Nevertheless, the political achievement was marked by an

unintentional negative- consequence, which is the raise in the number of extrajudicial killings, and solving this problem will require a different approach.

Table: Anti Death penalty project in Philippines

Project title	Summary	Max grant amount	Beneficiary	EU contribution And number of months
1) Anti death penalty campaign EIDHR 2000-2006		EURO 200.205,00	FLAG HUMAN RIGHTS FOUNDATION	62,5% 55 months
2) Strengthening the Abolition of the Death Penalty Campaign by Information Drive Philippines EIDHR 2000-2006	Supporting the creation of a just and peaceful society that imbues human rights culture as a way of life of the people and the State to respect, protect and fulfil the right to life and fight against any form of cruel, inhuman or degrading punishment, like the death penalty.	EURO 300.000,00	PHILIPPINES HUMAN RIGHTS INFORMATION CENTRE (Philrights)	100,00% 78 months
3) Analyse A.D.N EIDHR 2000-2006	Developing the national capability for forensic DNA testing through rigorous research, training and extension services; and to apply this capability through DNA testing of post-conviction Death Penalty cases in order to aid in freeing those who have been wrongly convicted	EURO 305.593,00	UNIVERSITY OF THE PHILIPPINES FOUNDATION	44,70% 75 months

Is it possible to argue that the Anti Death Penalty (ADP) campaign was a priority of the European Instrument for Democracy and Human Rights? It certainly was, given that between 2000 and 2009 the ADP activities covered the second area of intervention, which received the highest amount of money, after *promotion and protection of human rights and fundamental freedom* (strongly correlated to ADP) and previous to *rights of indigenous people, children, women* and *human rights defenders*.



The graph above presents the distribution of funds allocated, and covers a total of €3.861.559 spent for human rights projects in the Philippines, of which €805.798 were allocated for the three Anti Death Penalty projects previously analysed.

As said, the EIDHR projects were not the exclusive tool used by the EU; the financing of these activities (which were thought and elaborated by the local civil society and not *directly directed* by the EU) ran in parallel with the inter-institutional dialogues that gave a strong acceleration to the process, and implicated a formal commitment of the European Union to the cause.

The idea of organising dialogues on death penalty and restorative justice came up during the 4th Senior Officials' Meeting that took place in Brussels in February 2005. On that occasion, the chairperson of the Commission on Human Rights of the Philippines (CHRP) explicitly asked the European institutions for a concrete collaboration on the human rights field. In the previous years, the CHRP had played a crucial role in the fight against death penalty by financing and supporting the activities of the local NGOs involved in the protection of those sentenced to death. This was done by evaluating the compatibility between the Philippines' behaviour and the International Treaties signed, by eventually denouncing breaches in their provisions, by analysing the controversial condemnation cases and, finally, by orienting the debate toward alternative solutions. This well-structured pre-existing context gave shapes, meanings and substance to the three rounds of dialogues that took place in the cities of Cebu, Davao and

Manila in the months of November and December 2005. The main topic discussed by the 350 participants[110] was the concept of restorative justice and they managed to underline how this concept, far from being a pure western value, was already present in the tradition of the indigenous forms of conflict resolution.

The final Joint Statement released by the two dialogue promoters (the European Union and the CHRP), defended the position against death penalty and the valorisation of the restorative justice approach. The importance of the dialogues mainly resides in their inter-institutional profile combined with a timely pro-abolition pressure exercised on the Philippines' authorities.

[110] The composition of the audience and speakers was extremely variegated: members of human rights groups, NGOs, university personnel, local institutional representatives and European staff all sat at the same table.

5.6 Conclusions and economic considerations

The Philippine experience allows to draw some conclusions and to try and give an answer to the following question: what is it that worked in this "success story"? It is important to highlight that the definition of "success story" was forged by the European Commission itself to describe the Philippines' abolitionist experience.

With the exception of the European Parliament's resolutions on human rights in the Philippines, 70% of which discuss the death penalty topic, the attention of institutional documents doesn't generally seem very high; on the contrary, the EU's contribution to success has to be ascribed to the EIDHR's Anti Death Penalty projects and to the topic-oriented human rights dialogues.

Following the considerations elaborated by the Final Report of the *Comparative evaluation of the Human Rights Projects and Interventions of the European Union in the Philippines and Cambodia,* released by the EU in June 2007, "the success of the European involvement in abolition attempts can be summarised as coordinated action with a clear and unambiguous objective which is shared by all Member States. The EC Delegation in Manila funded a group of projects with the aim of achieving this objective, which helped create and sustain a momentum and which has led to abolition."

This work defends the thesis that the presence of a "clear and unambiguous objective" shared by all Member States is not sufficient *per se* to guarantee a whatsoever kind of political achievement. The manifest pursuit of abolition (which clearly is a common goal for EU countries) needs to go together with the absence of latent dynamics that can undermine the coherent pursuit of a political goal.

The Philippine market is not an extremely relevant one for the European Union as a whole. The EU imports from the Philippines fluctuated between 0,9% of the EU's total imports in 1999 and 0,4% in 2010, while the exports ranged between 0,5% and 0,3% and they never reached 1%[111].

[111] DG Trade statistics 2010 available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113436.pdf

Graph 6 Imports from and exports to the Philippines (share of the EU total)

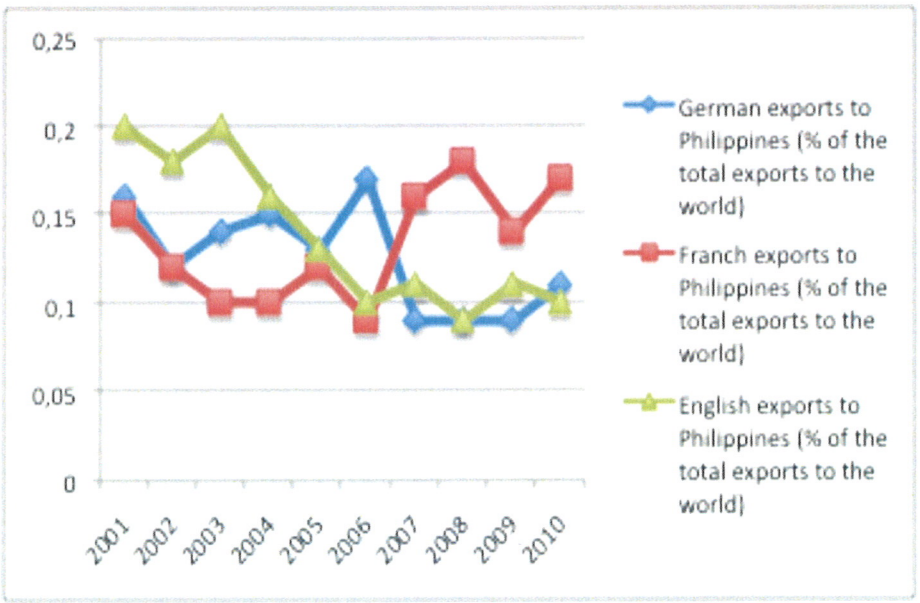
	EU imports from Philippines (share of EU total)	EU exports to Philippines (share of EU total)
2003	0,80%	0,40%
2004	0,70%	0,40%
2005	0,60%	0,40%
2006	0,50%	0,40%
2007	0,40%	0,30%
2008	0,30%	0,30%
2009	0,30%	0,30%
2010	0,40%	0,30%

This "irrelevance" is also reflected in the absence of competing interests between Member States.

By analysing the economic fluxes between Germany, France, United Kingdom and the Philippines, it is possible to measure the importance of the Philippines market for the three European countries.

Germany's exports to the Philippines represented 0,16% in 2001 and 0,11% in 2010 of the total exports and the highest value reached was 0,17% in 2006; France's exports were 0,15% of the total in 2001 and 0,17% in 2010, and the peak was 0,18% in 2008; the United Kingdom's exports to the Philippines passed from 0,20% in 2001 to 0,10% in 2010, the 2001 value being the highest one.

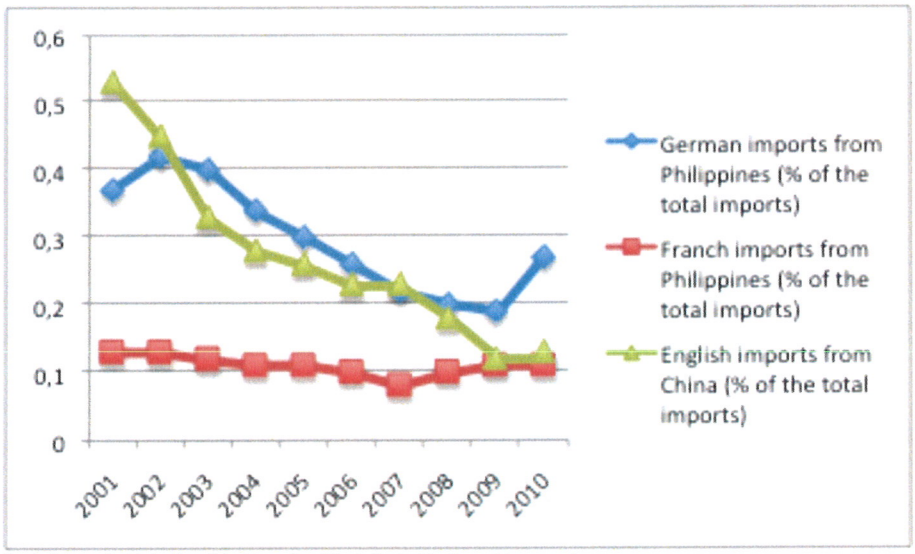
Graph 7 German, French and English exports to the Philippines



Graph elaborated with the data of the International Trade Center http://www.intracen.org/

Germany's imports from the Philippines represented 0,37% of the total in 2001 and 0,27% in 2010 (0,42% in 2002); France's imports decreased from 0,13% (highest value) to 0,11% and the United Kingdom's ones decreased from 0,53% (highest value) to 0,13%.[112]

Graph 8: Quota of German, French and English imports from the Philippines



Graph elaborated with the data of the International Trade Center http://www.intracen.org/

On the contrary, since 2009 the entire EU market represented the fourth trade partner for the Philippines. It is argued here that the asymmetrical economic relations between the EU and the Philippines, and the absence of competition between the three strongest economies of the European Union did not obstruct Europe's technical and political engagement in abolition; it remains clear that the domestic factors were crucial and probably even more important than the EU's formal support, but the present work's aim was not to weigh the importance of the many factors, but rather to demonstrate that Europe's attitude towards the Philippines has been different from the one towards China. This is why this work has proposed to think the NPE in a

[112] Percentages elaborated from the data contained in the International Trade Centre database http://www.intracen.org/

non-traditional way, i.e. by underlining the conditions under which NPE works and by considering it from its relational point of view rather than as an individual resource.

Conclusions

This work's main goals were to underline the conditioning factors that prevent the EU from being a coherent normative power under *all circumstances,* and to give a significant contribution to the adaptation of the concept itself.

According to this thesis, bilateral relations between actors are influenced by some structural factors whose presence/absence an favour/hinder the pursuit of a normative goal.
The two case studies presented in this work explain that the European behaviour worldwide depends not only on the European Union's intentions towards a clear and unambiguous objective shared by all Member States (as is the campaign for the abolition of death penalty worldwide), but also on how the specific features of the third country faced by the EU affect the EU's power by, for example, taking advantage of the EU's intrinsic weakness.

This is why I proposed to consider the concept of Normative Power Europe as a super-structural and relational form of power. With the expression 'super-structural' I mean to suggest an understanding of normative power that is not independent, but rather rooted in alternative and different forms of power. I use the word 'relational' to explain that the normative power (normative outcome) depends on the spatial position played by the European Union towards a given country. In this regard, the metaphorical use of the 'bubbles' image helps clarify my reasoning: the EU's power can be considered as a bubble that inflates or deflates depending on the entity of the other power bubbles it faces.

In the absence of strong incentives, such as EU membership, the EU's "ability to shape conceptions of normal" (Manners 2002) works well in a context of material power disparity (EU economically stronger) and proximity of values. On the contrary, material power similarity, competitiveness, and diversity of values neutralise the effectiveness of the NPE.
It is important to note that the variable that drives the hypothesis is not a result of the policy (abolition or maintenance), but rather the European Union's behaviour, which varies depending to who the third country the EU is facing is.

The Philippine case does not present cases of 'normative tangles' (i.e. situations in which the European Union's normative schizophrenia has been particularly evident), nor does it show incoherence between latent and manifest dynamics. In the Philippine case the

unambiguous goal of fostering the process of death penalty abolition (by criticising the reintroduction and then suspension of the moratorium, by assisting the local civil society and the institutional bodies interested in obtaining the result) didn't meet impeding factors such as economic retaliations or a simple slowdown of the economic fluxes.

On the contrary, the European human rights behaviour towards China shows the European Union's weakness in promoting human rights respect in the "Market" due to the fear of retaliations, the impossibility of facing an economic slowdown and the deep diversity of values.

According to the present work, the conditions that drive a permeability or resistance to the normative power are the following:

A) asymmetry/symmetry of the economic bilateral relations;

B) divergences at the Member State level on how to manage relations with a special third country (mainly linked to economic considerations);

By recalling the hypothesis formulated in the empirical chapter, this work has demonstrated that there is a negative correlation between symmetrical economic relations and the EU's ability to live up its own human rights policy and to implement its human rights guidelines on the death penalty; on the contrary, the correlation between a structural bilateral economic asymmetry and a successful outcome in terms of normative power result holds a positive sign, meaning that an increase in economic asymmetry is associated to an increase in the success rate of the normative result.

It has been noticed that the European Union tends to produce a high number of "declaratory documents" while not being able to produce concrete results. The 73 resolutions adopted by the European Parliament can be considered as nothing more than a good sign in terms of EP attention to the topic, but they have no concrete effects on bilateral dynamics. The "declaratory documents" only have a meaning at the manifest level, while they are unable to affect latent dynamics.

Finally, the internal factors are determining preconditions for successful norm promotion, which means that a European normative attitude only becomes effective if the recipient country

is willing to accept the norms proposed and is able to activate the local channel to promote the change.

Let us recall the introductory questions of this work: What kind of power(S) has the EU exercised on China and the Philippines? How did the EU's mixed nature affect the outcome and impact of the death penalty policy? What space is left for the Normative Power Europe in these two cases of success and failure? And what are the *conditions* under which NPE plays a role? How many forms can the European Union's international power take? How does this power vary in relation to third countries? How do these different forms of power interact with one another?

The answers suggested by this work are the following: the European Union has the ambition to promote some core values in its relations with different actors, but this ambition is conditioned by strategic (and mainly economic) considerations and by a structural deficiency the EU suffers due to its being "an EU27" and not a simple European Union. Also, the EU doesn't act in a neutral environment but rather in a context where different actors correspond to different preferences, powers and values.

The EU cannot be considered a normative power *tout court* but a Conditioned Normative Power. Its "ability to shape conceptions of 'normal' in international relations" (Manners 2002:239) doesn't rely on its intrinsic features but is conditioned by the characteristics of the actor it faces and by the typology of the relations established. *A conditioned normative power is a power by relation and not by nature.*

The theoretical attempt is to move the normative power from the domain of power as a resource (even of a particular and immaterial resource) to a relational form of power.

This new definition gives two main contributions to the literature, by suggesting:

a) to pay more attention on the factors that *condition* the European Union's normative behaviour;

b) to reshuffle the *a priori* bias that considers the European Union as an actor that is coherently committed to the promotion of values.

This work doesn't mean to neglect the European Union's normative power dimension, which certainly exists, for example, in the European Union's behaviour toward candidate countries or in the multilateral fora for specific issues[113]; the question here has to do with whether the normative power definition is or is not always able to explain the EU's nature by considering it an intrinsic feature of the EU rather than a contingent relational behaviour conditioned by a series of circumstances (as proposed in this work).

It seems interesting to note that China recently decided to reduce the number of offences punished with death penalty and to leave the reviewing power to the Supreme Court only, rather than to local courts. It is here argued that the strategy to support the reduction of crimes punishable by death (defended by one of the EIDHR projects) needs to be sustained by strong political and institutional signals, which at the moment are missing.

In the author's opinion, China's ability to exploit the EU's weaknesses needs to be reduced by promoting a shared and strong position between EU members States; only through the awareness of the fact that the EU needs China just as much as China needs the EU will it be possible to break the chain of "conditions" and give human rights the place they deserve to define a Normative Power.

[113] Although recent studies have demonstrated how the United Nations "risks becoming paralysed or even actively opposed to the EU's vision of multilateralism" (Brantner and Gowan 2008).

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