
The Human Rights Protection in the EU-Brazil Relations: Structural Considerations and Current Legal Developments

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Summary: Brazil and European Union have been developing common trade relations since the 70's and over the years they have strengthened them through agreements and open dialogues. Both actors are promoters of human rights at the global level. At the same time human rights issues are present in their mutual relations including the most current documents such as currently forming Association Agreement. The main goal of the paper is to outline and evaluate the developments of the legal framework with an emphasis on how the human rights issues have been streamlined in Brazil and EU relations.

Key words: European Union – Mercosur – Brazil – human rights – association agreements

1. Introduction

The trade relations between the European Union (EU) and Brazil are rooted in long-term interactions between European countries and their former colonies. European states kept their influence in the newly born Latin American countries due to the shared history, language and culture, which also facilitated development of traditional trade relations as well as relations with other European countries grouped in the European Union.¹ The creation of the EU helped to increase European influence in the world as the EU could more easily negotiate agreements

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¹ *HISTORY of the European Union*. 2018 [online]. Available at: <https://europarlamentti.info/en/European-union/history/>

with third countries and had a strong bargain power. This was especially due to the huge EU internal market attractive for importers as well as common commercial policy in relation to third countries.

In this context, **Brazil** had set up trade relations with the EU quite early with the first trade agreement concluded already in 1974.² Both parties considered it beneficial to enhance their cooperation in a broader framework and started further negotiations in the 80's. A subsequent agreement was concluded in 1982 and became a part of a group of agreements that helped to intensify the relations between the EU and developing countries.³

Nowadays, the EU is the second-biggest trading partner of Brazil⁴ and covers more than 18 % of its total trade. At the same time Brazil is the largest economy in Latin America as in 2016 it represented over 30 % of EU's total trade with the Latin America.⁵ The EU exports especially machinery, chemical products and transport equipment to Brazil, while Brazil exports mainly primary products, such as vegetable and mineral products, and is the biggest exporter of agricultural products to the EU worldwide.⁶

Since the late 90's the European Union and Mercosur (Southern Common Market), a bloc which Brazil is part of, have been negotiating an Association Agreement that could help further to enhance the relations between the blocs. Although the possible agreement covers mainly economic issues including the free trade, it also has a special concern about human rights, this being increasingly a crucial topic for the EU. The protection of human rights has become a central goal of the EU external policy.⁷ Along the years, the EU started to include human rights clauses in its agreements with third countries thereby highlighting the importance given to the promotion, protection and respect for human rights. These human rights clauses have been present in all EU agreements since the 90's and influenced Brazil and EU relations, even in the most recent negotiations, including the EU-Mercosur Association Agreement. In the paper we will try to show the development of human

² *PRESS Releases Framework Cooperation Agreement*. November 3, 1989 [online]. Available at: http://europa.eu/rapid/press-release_MEMO-87-106_en.htm. Accessed on January 23, 2019.

³ Ibidem.

⁴ *Countries and Regions – Brazil*. 2018 [online]. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/brazil/>

⁵ Ibidem.

⁶ *Countries and Regions – Brazil*. 2018 [online]. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/brazil/>

⁷ See esp. Art. 3 para. 5 TEU: (5) *In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.*"

rights clauses in the international treaties between the EU and other countries and blocs, especially in EU-Brazil and EU – Mercosur relations.

2. Human rights clauses and their development in the EU

2.1. Origin of human rights clauses in EU external agreements

Although the original treaties founding European Communities/European Union did not include any reference to fundamental rights and left their protection to the EU Member States,⁸ later the approach changed and the EU started to promote human rights not only at the supranational level, but also at the global level. According to the present wording of the founding treaties the EU is founded on human rights, as seen in article 2 of the EU Treaty (TEU),⁹ and can be regarded as one of the leading organizations promoting respect to human rights both internally and externally. The importance of protection of human rights in the EU external relations is nowadays explicitly reflected in article 3 TEU.¹⁰

However, in the late 70's and 80's, the EU was bound by treaties with countries responsible for violation of human rights. Even though it was against the new EU policy, these treaties could not be easily suspended. The only way to suspend them was to invoke the *rebus sic stantibus* clause in situations of fundamental and unforeseeable changes in the circumstances compared to those when the treaty was concluded, making the treaty to lose its binding effect. Correspondingly, the EU could suspend the agreement in cases where the circumstances seen

⁸ VELUTTI, S. *The Promotion and Integration of Human Rights in EU INTERNATIONAL AND EUROPEAN LAW External Trade Relations*. Utrecht Journal of International and European Law, 2016 [online]. Available at: <https://utrechtjournal.org/articles/10.5334/ujiel.342/>

⁹ Article 2 TEU: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*” European Union, *Treaty on European Union (Consolidated Version)*, Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002 [online]. Available at: <https://www.refworld.org/docid/3ae6b39218.html>

¹⁰ Art. 3 para 5 TEU: “*(5) In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.*”

at the time of the conclusion of the treaty changed in an unpredictable way or were predictable with unpredictable consequences.

One example in that regard concerns the EU-Turkey relations. After one of the military coups d'état in Turkey and subsequent allegations of serious violations of human rights, the EU continued to apply all the terms of the EU-Turkey Association Agreement, but it suspended the financial assistance.¹¹ The consolidation of mutual relations was conditioned by a restoration of the civilian government and civil liberties.¹² Consequently, since the 90's the EU started to include human rights clauses in its agreements as the human rights violations not necessarily change the circumstances in which the agreement was concluded and the denouncement under *rebus sic stantibus* doctrine could be difficult.

2.2. Examples of human rights clauses in agreements with Mercosur countries

As concerns the South-American region, one of the first agreements with a human rights clause was the **Framework Agreement with Argentina**¹³ that mentions human rights in its Article 1(1).¹⁴ However, for example Bartles is not sure about the enforceability of this clause and deems that “*this [human rights] clause does not actually commit the parties to comply with democratic principles or human rights. Rather, it states an assumption on which the continuing application of the agreement is based.*”¹⁵ In other words, the human rights clauses added a conditional element to these agreements – the agreement would only continue to apply if the clause would not be violated. The idea was to create circumstances where *rebus sic stantibus* doctrine could be used, yet the clause was not effective: paradoxically the inclusion of the human rights clause in the agreement makes the use of *rebus sic stantibus* principle *stricto sensu* impossible because this principle applies only to unforeseen changes in the treaty circumstances and the clause already predicted a change.

¹¹ PRESS Releases. April 25, 1996 [online]. Available at: http://europa.eu/rapid/press-release_MEMO-96-42_en.htm

¹² Ibidem.

¹³ FRAMEWORK Agreement for Cooperation between the European Economic Community and the Argentine Republic. October 26, 1990 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A21990A1026%2801%29>

¹⁴ “Article 1(1) Cooperation ties between the Community and Argentina and this Agreement in its entirety are based on respect for the democratic principles and human rights which inspire the domestic and external policies of the Community and Argentina.” – Framework Agreement.

¹⁵ BARTELS, L. *A model human rights clause for the EU's international agreements* [online]. Available at: https://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Studie_A_Model_Human_Rights_Clause.pdf, p. 12.

Consequently, the *rebus sic stantibus* principle was abandoned and a different rule was introduced, namely the suspension or termination of a treaty in case of “*violation of a provision essential to the accomplishment of the object and purpose of the treaty*”.¹⁶ This new clause was introduced in the **Framework Agreement between EU and Brazil from 1995**¹⁷ where both parties affirmed “*the importance they attach to the principles of the United Nations Charter, to democratic values and to respecting human rights*”, as outlined in Article 1 of the Framework Agreement.¹⁸ Nevertheless, this type of clause did not create an enforceable obligation for the parties, since there were no provisions regulating the consequences of human rights’ violations.¹⁹ Consequently, the human rights clause was not yet fully applicable and the EU did not have clear remedies in the treaty if human rights violations would take place.

The **modern human rights clause**, included in all agreements nowadays is called a **non-execution clause** and it is expressed in the EU standard safeguards clause. It permits that either parties in case of human rights violations or any violation of the essential elements take appropriate measures and, sometimes, even suspend the agreement.²⁰ However, the EU usually suspends agreements as an ultimate means²¹ and only after trying to stop the violations with dialogue, since the suspension of the agreement would possibly be the worst solution for both parties and their future relations. Those clauses not only recognize human rights as an essential element of the agreement, but also bring the possible consequences of those violations. One example of an agreement containing the modern human rights clause is the **Interregional Framework Cooperation Agreement with Mercosur**,²²

¹⁶ Ibidem.

¹⁷ *FRAMEWORK Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil*. November 1, 1995 [online]. Available at: <https://investment-policyhub.unctad.org/Download/TreatyFile/3101>

¹⁸ Article 1: “*Democratic basis for cooperation: Cooperation ties between the Community and Brazil and this Agreement in its entirety are based on respect for the democratic principles and human rights which inspire the domestic and international policies of both the Community and Brazil and which constitute an essential component of this Agreement*”.

¹⁹ Comp. BARTELS, L. *A model human rights clause for the EU’s International Agreements* [online]. Available at: https://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Studie_A_Model_Human_Rights_Clause.pdf

²⁰ Ibidem.

²¹ Usually, when EU suspends an agreement, it does not mention human rights issues but uses as a justification a political event, such as a *coup d’état*.

²² *INTERREGIONAL Framework Cooperation Agreement between the the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part*. April 29, 1999 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r14013>

concluded in 1999. Its article 1²³ reaffirms the importance of human rights in the agreement and Article 35 (1)²⁴ includes consequences for the party that violates human rights.

3. EU-Brazil relations with the perspective of human rights protection

3.1. Bilateral Framework Agreement

As was already mentioned, in 1995 Brazil signed the Bilateral Framework Agreement²⁵ mentioning human rights as an essential element in Article 1²⁶ with a lack in the determination of consequences of their violations. Yet, the article 35(1)²⁷ showed a clear willingness of the parties to expand their trade relations and also to take into consideration the importance of human rights for both parties. The EU continued a parallel dialogue with Brazil which led both actors to reconsider the approach towards their bilateral relations.²⁸ The EU perceived Brazil as a partner with whom it could conclude a strategic partnership. Similarly, Brazil

²³ Article 1 of the Interregional Framework Cooperation Agreement: “*Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights inspires the domestic and external policies of the Parties and constitutes an essential element of this Agreement.*”

²⁴ Article 35(1) of the Interregional Framework Cooperation Agreement: “*The Parties shall adopt any general or specific measure required for them to fulfil their obligations under this Agreement and shall ensure that they attain the objectives laid down in that Agreement. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures.*”

²⁵ FRAMEWORK Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil. November 1, 1995 [online]. Available at: <https://investment-policyhub.unctad.org/Download/TreatyFile/3101>

²⁶ Article 1 of FRAMEWORK Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil: “*Cooperation ties between the Community and Brazil and this Agreement in its entirety are based on respect for the democratic principles and human rights which inspire the domestic and international policies of both the Community and Brazil and which constitute an essential component of this Agreement.*” (emphasis added).

²⁷ Article 35(1) of the FRAMEWORK Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil: “*The contracting parties may by mutual consent expand this agreement with a view to enhancing the levels of cooperation and supplementing them by means of instruments on specific sectors or activities.*”

²⁸ See PAVESE, C., WOUTERS, J., MEUWISSEN, K. The European Union and Brazil in the Quest for the Global Diffusion of Human Rights: Prospects for a Strategic Partnership. *Utrecht Journal of International and European Law*, August, 2014 [online]. Available at: https://ghum.kuleuven.be/ggs/publications/working_papers/2014/143pavesewoutersmeuwissen, p. 7.

itself saw it as an opportunity to increase its role at the international scene and to strengthen its bilateral relations with both old and new partners.²⁹

3.2. Strategic Partnership

Consequently, both the EU and Brazil shared interests in promoting human rights globally and in 2007 they concluded the Strategic Partnership,³⁰ reaffirming that they intended to establish dialogues and reach a consensus on the actions which should be taken in relation to human rights in the next years through a multilateral approach.³¹ The Strategic Partnership could be seen as a recognition of Brazil's emerging power worldwide and was a substantial step for both parties. The EU was already trying to approach Brazil through Mercosur, nevertheless, it saw a good opportunity to enhance its relations with Brazil using also a bilateral approach, since it was expected that their partnership would bring more advantages for both parties. Consequently, the Strategic Partnership covers many other areas of cooperation at different levels and across several areas.³²

In addition, both parties agreed to hold **annual summits** to promote a dialogue about human rights. These summits should strengthen their positions in United Nations Human Rights Council because they could discuss various issues in advance and, consequently, could coordinate EU and Brazil's position about the issues discussed.³³ Since 2007 until 2014 the summits occurred annually and the parties discussed important issues – including human rights.

²⁹ Comp. PAVESE, C., WOUTERS, J., MEUWISSEN, K. *The European Union and Brazil in the Quest for the Global Diffusion of Human Rights: Prospects for a Strategic Partnership*. Utrecht Journal of International and European Law, August, 2014 [online]. Available at: https://ghum.kuleuven.be/ggs/publications/working_papers/2014/143pavesewoutersmeuwissen

³⁰ *EU-BRAZIL Strategic Partnership*, March 12, 2009 [online]. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0140+0+DOC+XML+V0//EN>

³¹ During Lula's government a reciprocal multilateralism approach was adopted; it was defined by Meuwissen, Pavese and Wouters as "*the existence of rules to ensure a fair and equal engagement of all the parties and the contribution of all international actors in the agreement of these rules*". (p. 7).

³² PAVESE, C., WOUTERS, J., MEUWISSEN, K. *The European Union and Brazil in the Quest for the Global Diffusion of Human Rights: Prospects for a Strategic Partnership*. Utrecht Journal of International and European Law, August, 2014 [online]. Available at: https://ghum.kuleuven.be/ggs/publications/working_papers/2014/143pavesewoutersmeuwissen

³³ In practice, however, Brazil and EU's members vote usually diversely, see in this regard MEUWISSEN, PAVESE and WOUTERS, op. cit., 2014 (p. 15–17).

3.3. Joint Action plans and informal dialogues

Moreover, in 2008 and 2013 during summits the EU and Brazil also concluded **Joint Action Plans**³⁴. In the first Join Action Plan (2008), they defined some goals to achieve through cooperation, allowing them to carry out a frequent dialogue about human rights. The second Join Action Plan (2011) reaffirmed the first one and accentuated that Brazil should promote human rights paying a special attention to vulnerable groups, such as kids, homosexuals, poor and disabled people.³⁵

Brazil and the EU also promote **informal dialogues** that consist for example in lectures given by experts from both Brazil and the EU, debating about currently important issues with the society, including human rights. These dialogues should give a chance for “ordinary” citizens to debate and give their opinion about issues considered important for the development of EU and Brazil partnership.³⁶

Last but not least, in 2009, the **European Parliament issued a recommendation** to the EU Council about the Strategic Partnership concluded in 2007. According to the European Parliament “*the Strategic Partnership should be a tool to promote democracy and human rights, the rule of law and good governance at global level; the partners should further cooperate in the UN Human Rights Council and the Third Committee of the UN General Assembly to promote worldwide human rights.*”³⁷ In other words, both parties wanted to increase its influence in the United Nations’ Human Rights Council and other international organizations to promote the respect, protection and fulfilment of human rights globally.

4. EU – Mercosur relations with the perspective of human rights protection

4.1. Introductory remarks

The EU-Brazil relations have been modified also due to Brazil’s membership to Mercosur (Southern Common Market), an economic bloc created by Argentina,

³⁴ Joint Action Plan is a cooperation between government institutions on policy issues that underpin mutual cooperation.

³⁵ *SECTOR Dialogues Human Rights*. 2017 [online]. Available at: <http://www.sectordialogues.org/sector-dialogues/human-rights#>

³⁶ Ibidem.

³⁷ *RECOMMENDATION on the European Union-Brazil Strategic Partnership*. March 12, 2009 [online]. Available at: <http://www.europarl.europa.eu/delegations/en/dmer/product/20181204D-PU20582>

Brazil, Paraguay and Uruguay. In brief, the Mercosur treaty was important for the economic integration in Latin America and attracted investments and trade opportunities from other countries and supranational entities around the world. It established a common market among the parties, as mentioned in Article 1³⁸ of Treaty of Asunción – an important tool for maintaining good relations among Latin America countries.

It may be added that in the 90's, the EU was trying to intensify bilateral relations with Mercosur countries and proposed bilateral agreements to all of them. Argentina's agreement was concluded in the 1990,³⁹ Uruguay's⁴⁰ and Paraguay's⁴¹ agreement in 1992 and – as already mentioned – the bilateral agreement with Brazil was concluded in 1995.⁴² A common characteristic of these agreements is the presence of human rights clauses, even though they do not have the same wording and may produce different legal effects.

4.2. Interinstitutional Cooperation Agreement

From the multilateral perspective, the political dialogue between Mercosur and the EU started in 1992, when Brazil, Argentina, Uruguay and Paraguay, as members

³⁸ Article 1 of the Treaty of Asunción: “*The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the “common market of the southern cone” (MERCOSUR). This common market shall involve: The free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures; The establishment of a common external tariff and the adoption of a common trade policy in relation to third States or groups of States, and the co-ordination of positions in regional and international economic and commercial forums; The co-ordination of macroeconomic and sectoral policies between the States Parties in the areas of foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any other areas that may be agreed upon, in order to ensure proper competition between the States Parties; The commitment by States Parties to harmonize their legislation in the relevant areas in order to strengthen the integration process.*”

³⁹ See f.e. *FRAMEWORK Agreement for Cooperation between the European Economic Community and the Argentine Republic*. October 26, 1990 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A21990A1026%2801%29>

⁴⁰ See f.e. *FRAMEWORK Agreement Cooperation between European Economic Community and the Eastern Republic of Uruguay*. March 16, 1992 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31992D0205>

⁴¹ See f.e. *FRAMEWORK Agreement for Cooperation between the European Economic Community and the Republic of Paraguay*. October 19, 1992 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31992D0509>

⁴² *FRAMEWORK Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil*. November 1, 1995 [online]. Available at: <https://investment-policyhub.unctad.org/Download/TreatyFile/3101>

of Mercosur,⁴³ concluded the Interinstitutional Cooperation Agreement⁴⁴ whose main goal was to exchange information between parties to help Mercosur in the integration process. Also, it established a joint advisory committee consisting of representatives of the European Commission and Mercosur's Common Market Group. The aim of the advisory committee is to enhance and intensify the interinstitutional dialogue, and to promote and monitor cooperation.⁴⁵ Yet, as a political agreement, it does not directly mention human rights, but only the exchange of information, staff, training, technical assistance and institutional support.

4.3. Interregional Framework Cooperation Agreement

In 1999, the European Community and Mercosur signed the Interregional Framework Cooperation Agreement.⁴⁶ The agreement is based on democratic values, the rule of law and human rights.⁴⁷ It reassures the binding effect of human rights in Article 1: “*Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights inspires the domestic and external policies of the Parties and constitutes an essential element of this Agreement*”,⁴⁸ thereby recognizing the respect of human rights as an obligation for the parties and as an essential part of the agreement.

Furthermore, the Article 35⁴⁹ talks about the fulfilment of obligations present in the agreement and confirms that the parties could adopt necessary measures

⁴³ Mercosur was created in 1991 after Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asunción.

⁴⁴ *PRESS releases*. October 19, 1994 [online]. Available at: http://europa.eu/rapid/press-release_MEMO-94-62_en.htm?locale=en

⁴⁵ *Ibidem*.

⁴⁶ *INTERREGIONAL Framework Cooperation Agreement between the the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part*. April 29, 1999 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r14013>

⁴⁷ See f.e. Preamble of the Interregional Framework Cooperation Agreement: “*CONSIDERING their full commitment to the content and principles of the Charter of the United Nations and to democratic values, the rule of law and promoting and respecting human rights.*”

⁴⁸ *INTERREGIONAL Framework Cooperation Agreement between the the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part*. April 29, 1999 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r14013>

⁴⁹ Article 35 (1) of the Interregional Framework Cooperation agreement: “*The Parties shall adopt any general or specific measure required for them to fulfil their obligations under this Agreement and shall ensure that they attain the objectives laid down in that Agreement. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. [...] (3) The Parties agree that the ‘appropriate measures’ referred to in this Article are measures taken in accordance with international law. If a Party takes a measure*

including the suspension of the agreement. Still, it may be assumed that the parties would hardly adopt extreme measures as it would be against interests of both of them. This agreement is very broad and has as a main goal the development of closer relations between the EU and Mercosur with indefinite duration.⁵⁰

4.4. EU–Mercosur Association Agreement

In addition, the Interregional Framework Agreement envisaged the conclusion of an Interregional Association Agreement between Mercosur and EU.⁵¹ The EU has consolidated trade relations with Mercosur along the years and has a huge interest in a complex agreement. Just to demonstrate the economic significance to this region, it was the destination for the EU-origin goods worth of 42 billion euros (2016) and EU services worth 22 billion euros (2015).⁵² The objective of the envisaged agreement is to enhance Mercosur and EU trade by cancelling trade barriers between the countries as well as, among others, the promotion of the sustainable development, respect to rights of indigenous people and the promotion of human rights (explicitly labour rights).⁵³

The negotiations between Mercosur and the EU have been in progress since 2000 covering political dialogue and cooperation.⁵⁴ In 2004, after an exchange of market offers revealed substantial differences between the parties concerning the level of liberalization of trade in agricultural goods, services and public procurement markets,⁵⁵ the negotiations were suspended. In 2010, negotiations were relaunched, but in 2012 they were suspended again because of economic issues. In 2016 new presidents who supported business and market access took power both in Brazil and

in a case of special urgency as provided for under this Article, the other Party may ask that an urgent meeting be called to bring both Parties together within 15 days.”

⁵⁰ See Article 34 (1) of the Interregional Framework Cooperation agreement: “*This Agreement shall be valid indefinitely.*”

⁵¹ See also Preamble of the Interregional Framework Cooperation Agreement “*MINDFUL of the terms of the Joint Solemn Declaration in which both Parties propose to conclude an Interregional Framework Agreement covering commercial and economic cooperation and preparing for gradual and reciprocal liberalization of trade between the two regions as a prelude to the negotiation of an Interregional Association Agreement between them*”.

⁵² *EU-MERCOSUR Association Agreement: A vast economic potential, building bridges for open trade and sustainable development*. 2016 [online]. Available at: http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156465.pdf

⁵³ For details see *EU-MERCOSUR Association Agreement: A vast economic potential, building bridges for open trade and sustainable development*. 2016. Available at: http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156465.pdf. Accessed: January 29, 2019.

⁵⁴ LEGISLATIVE train schedule, 2016 [online]. Available at: <http://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-mercotur-fta>

⁵⁵ Ibidem.

Argentina, the negotiations resumed and made a considerable progress afterwards. Actually, the political consent on the free trade agreement was reached in June 2019.⁵⁶

It is significant that the preparatory materials on the agreement mentioned not only trade, but other issues such as sustainable development, provisions for civil society, responsible business conduct or rights of indigenous communities.⁵⁷ It could have justly been expected that the agreement would include a modern human rights clause, mentioning human rights as an essential element and bringing consequences for their violation. However, such a general clause seems missing in the final text.⁵⁸ It is also not sure how the human rights and sustainable development will be effectively enforced. The EU officials claim that the final agreement “*addresses issues like the environment and labour rights, as well as reinforcing sustainable development commitments we have already made, for example under the Paris Agreement.*”⁵⁹

However, there appeared also negative evaluations in this regard. Critics assert that the new agreement gives preference to trade to the detriment of protection of forest and human rights.⁶⁰ There is also a threat that the agreement will have problems with the ratification in some EU Member States⁶¹ as such a ratification is a precondition for the treaty to enter into force. The same may be valid also for the European parliament which has a traditionally good record in streaming human rights in its activities.⁶²

We assume that at present all scenarios are possible including non-ratification of the agreement in the EU Member States or a postponement thereof conditioned by safeguards for human rights protection in Mercosur countries.

⁵⁶ For more see: <https://ec.europa.eu/trade/policy/in-focus/eu-mercosur-association-agreement/>

⁵⁷ *EU-MERCOSUR Association Agreement: A vast economic potential, building bridges for open trade and sustainable development*. 2016 [online]. Available at: http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156465.pdf

⁵⁸ Actually the LSE report indicates that the Mercosur countries themselves do not include human rights clauses in their free trade agreements as illustrated on a number of such agreements. For more see: *Sustainability Impact Assessment in support of association agreement negotiations between the European Union and Mercosur Inception Report*, 24 January 2018, p. 84. Available at: https://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156631.pdf

⁵⁹ The EU Commissioner for Trade Cecilia Malmström. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3396

⁶⁰ See <https://www.fern.org/news-resources/eu-mercosur-deal-sacrifices-forests-and-rights-on-the-altar-of-trade-1986/>

⁶¹ Such assertions have already appeared in relation to Austria, France and Ireland. See for example: <https://www.theguardian.com/world/2019/sep/19/austria-rejects-eu-mercosur-trade-deal-over-amazon-fires>

⁶² For a survey of main constraints see BALTENSPERGER, M. and DADUSH, U. *The European Union-Mercosur Free Trade Agreement: prospects and risks*, pp. 13–14. The paper also makes a thorough analysis of expected effects of the agreement. Available at: https://bruegel.org/wp-content/uploads/2019/09/PC-11_2019.pdf

5. Conclusions

The promotion of human rights by the EU over the years was important not only for the development of these rights at the EU level, but also at the international scene. Many countries, including Brazil, are influenced by the EU, its decisions and legislation. Once the EU decided to have the promotion of human rights as a main goal and put the respect for them as an essential element in every trade agreement since the 1990's, many countries also decided that this was a key issue and others, like Brazil, started to increasingly support that goal.

It is also important to highlight that the regular insertion of human rights clauses in EU agreements was a huge step and that without them – even with uncertainty about the real legal consequences of human rights violations in relations with EU – human rights would not be taken as seriously as they are nowadays.

Over the years Brazil became an active and important promoter of human rights as a leader in Latin America and also an emerging power worldwide. However, its approach to internal violations of human rights appears contradictory as not all of them were satisfactorily investigated.⁶³ For example, during the military dictatorship in Brazil (1964–1985) there were many evidences about tortures, killings and other violations of human rights and none of the responsible persons were punished once an amnesty law pardoning the crimes was signed in 1979.⁶⁴ Also, after the re-democratization of the country in 1988, the problems have not been fully solved, yet.⁶⁵ Brazil was also criticized for example by the Inter-American system of human rights in that regard for not applying transitional justice domestically⁶⁶ including the investigations about the Araguaia guerrilla.⁶⁷

This approach is particularly controversial because externally Brazil acknowledges the importance of human rights and democracy for other countries

⁶³ SANTORO, M. *Will Brazil ever become a credible Human Rights promoter in South America?* In: VAN LINDERT, T.; VAN TROOST, L. (eds.). *Shifting Power and Human Rights Diplomacy*. Netherlands: Amnesty International Netherlands, 2014, pp. 67–76 [online]. Available at: https://www.amnesty.nl/content/uploads/2016/11/rising_power_brazil.pdf?x19843

⁶⁴ BRASIL. Lei nº 6.683, de 28 de agosto de 1979. Concede anistia e dá outras providências. Brasília, 1979 [online]. Available at: http://www.planalto.gov.br/ccivil_03/leis/L6683.htm

⁶⁵ See especially the work of the National Truth Commission that investigated the crimes committed by the military dictatorship.

⁶⁶ “*Transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response*”; for more, see <https://www.ictj.org/about/transitional-justice>

⁶⁷ During the late 1960's in the region known as ‘Bico do Papagaio’ a left-wing guerrilla was established. The military forces went to the region and killed the people living there. They were decapitated and sometimes even thrown alive from helicopters. Until today the military force denied that this happened, the government has not investigated either.

in Latin America. Also, the United Nations and the EU are not usually rigid with Brazil's deficits in this area, once they see the country as an important ally in the promotion of human rights and for trade relations. Therefore a proper emphasis on human rights in agreements with the EU may play an important role in supporting good practice in Brazil.

Definitely over the years, EU-Brazil relations have strengthened, whether through bilateral relations or through regional agreements. It concerns not only economic, but also political issues. This helped Brazil to engage even more in the promotion of human rights internationally. Also, the human rights clauses present in previous EU-Brazil agreements and partnerships were evolving and becoming more easily enforceable against the parties that violate them. This could be seen for example in the Interregional Framework Agreement from 1999.

From this perspective the recent finalisation of the negotiations on the Association Agreement between Mercosur and the EU does not seem to be fully confirming previous developments. It lacks a clear human rights clause and does not offer an overall guarantee for the protection of human rights. It just refers to certain rights connected to trade, environmental issues as well as sustainable development. Also, environmental and human rights groups had demonstrated their concerns, once the deal could have massive implications on environmental and climate change.⁶⁸

However, it will much depend on the practice of mutual relations and whether the EU will be ready to enforce these rights in individual cases. The scope of manoeuvre for the EU will probably be rather limited as a suspension of a “big” trade agreement might seem a high price. The question is whether – except the possible hard core legal consequences – the political negotiations and dialogues⁶⁹ will turn to be a sufficient tool. On the other hand, it may be expected that the importance of good relations with the EU would also put a real pressure on Brazil as well as other Mercosur countries to avoid or at least eliminate human rights violations in their internal policies.

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⁶⁸ For more see: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640138/EPRS_BRI\(2019\)640138_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640138/EPRS_BRI(2019)640138_EN.pdf)

⁶⁹ For example provisions of the agreement called Dialogues presumes in art. 1 a dialogue in several areas, namely, animal welfare matters, issues related to the application of agricultural biotechnology, combating antimicrobial resistance and scientific matters related to food safety, animal and plant health. For more see: https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158156.%20Dialogues.pdf

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