

Values in the European Union's foreign policy: an analysis and assessment of CFSP Declarations

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Common Foreign and Security Policy (CFSP) Declarations have become one of the main ways in which the EU makes its voice heard on the global stage. Declarations do not have a basis in the Treaty but are the product of close cooperation between the Member States. Their frequency has increased to the extent that they are a stable, regular and institutionalized feature of the CFSP. When placed in the context of the EU's institutional foreign policy arrangements, Declarations can be understood as an integral part of the progress of forging a common foreign policy for the EU and they should not merely be regarded as empty words. In particular, Declarations represent a significant delegation of authority for the High Representative for Foreign and Security Policy to speak for Europe. This article examines the scope and content of the CFSP Declarations issued over the period 2007-2015 by the Council and the High Representative of the Union for Foreign Affairs and Security Policy. By classifying Declarations according to type, 'target' and subject matter, the article suggests that Declarations have become a specific instrument in their own right and reflect a core set of values the EU has pursued via the CFSP.

1. INTRODUCTION

The creation of the Common Foreign and Security Policy (CFSP) in the Treaty on European Union in 1992 was – for those convinced that the time had come for Europe to gain a foreign policy voice consummate with its economic strength – the pivotal moment in the development of a formal, institutional framework to operationalize foreign policy. However, the CFSP has traditionally been regarded as falling short of expectations (even those which it set for itself),¹ and 'declaratory' has been used as a label which suggests that the policy is unable to deliver actions (as opposed to words) and represents 'lowest common denominator politics'.² Much of the criticism stems from expectations that the EU would act in a similar way to a nation state, rather than as a *sui generis* actor,³ and that its emphasis on the use of 'soft power' does little to dampen expectations.⁴ But in turn this led to a lack of focus on what the EU *does* say, and what this reveals about the CFSP, its institutional dynamics and, crucially, the EU's voice in international affairs and the values it expresses.

Declarations have become the most regular means by which the EU has made its voice heard. They are not, however, 'official' instruments of the CFSP – as defined in Articles

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¹ Most notably, by C. Hill, *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, 31(3) *J. Com. Mkt. Stud.*, 305-328 (1993).

² B. Tonra, *Constructing the Common Foreign and Security Policy*, 41(4) *J. Com. Mkt. Stud.*, 731-56 (2003).

³ See, for example, P. Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law*, 34 (Hart Publishing, 2001).

⁴ K. L. Nielsen, *EU Soft Power and the Capability-Expectations Gap*, 9(5) *J. Contemp. European Research*, 723-739 (2013).

23-41 TEU – and are in fact not even mentioned in the Treaty.⁵ They have emerged over a long period of time, from when the EU first began to seek a foreign policy identity in the 1970s (via European Political Cooperation), and represent an institutionalized form of cooperation between the Member States.⁶ Declarations therefore have no formal legal effects but are a statement expressing the EU's official position on aspects of foreign affairs. Since an official position can only arise from cooperation and agreement between the Member States, Declarations offer a rich insight into the emerging foreign policy of the Union and the values the EU seeks to promote.

In terms of values, and why the EU seeks to use Declarations to promote them, the Treaty arrangements of the EU give some guidance as to their content. Article 2 TEU⁷ lists the values upon which the EU is founded, and Article 3(5) TEU⁸ links these to the general objectives of the EU in engaging with the rest of the world. The text of the Treaty is therefore reasonably instructive in terms of the broad spectrum of values which the EU is obliged ('shall uphold and promote'), whilst leaving aside the more specific values held dear, such as opposition to the death penalty.

This article analyses the Declarations issued by the EU during a nine-year period, 2007-2015. 2007 is the start date for the analysis as the gradual practice of primarily using Declarations to signify a text which has been agreed by the Member States was more firmly established. After a brief examination of how Declarations are agreed and issued and their general characteristics, the methodology of categorizing the Declarations for analysis is explained. Three main findings emerge from an analysis of the Declarations according to type, 'target' and subject-matter. These are that, first, Declarations have developed into a specific instrument of the CFSP in their own right; second, that the ability of the High Representative for Foreign and Security Policy (HR/VP)⁹ to represent the EU has increased over time, and third that they demonstrate the EU has refined the core set of values set out in the Treaties it expresses via the CFSP.

2. CFSP DECLARATIONS: THE PROCESSES

Article 25 (a)-(c) TEU lays down the instruments of the CFSP at the EU's disposal which have been characterized as *sui generis* within the EU's constitutional order.¹⁰ Declarations are not mentioned anywhere in the Treaty and they are not modelled on, for example, similar practices in foreign policy by nation states.¹¹ Given their lack of enforceability and formal

⁵ CFSP Declarations under examination in this article are distinct from the 65 Declarations concerning Provisions of the Treaties and Declarations by Member States attached to the Treaty on European Union.

⁶ M. E. Smith, *Europe's Foreign and Security Policy: the Institutionalisation of Cooperation* (Cambridge University Press, 2004).

⁷ 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'.

⁸ Article 3(5) TEU: '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.'

⁹ According to Article 18 (4) TEU, the High Representative has a 'double-hatted' role as one of the Vice Presidents of the Commission. Hence, the abbreviation HR/VP is used in this article.

¹⁰ R. Schütze, *European Constitutional Law*, 281 (2nd ed., Cambridge University Press, 2016).

¹¹ De Baere has referred to Declarations as themselves being *sui generis* instruments; G. De Baere, *Constitutional Principles of EU External Relations*, 122 (Oxford University Press, 2008).

status, they are not considered by some of the leading legal texts on the CFSP.¹² Van Vooren and Wessel have characterized Declarations as a form of ‘informal instrument’¹³ alongside political dialogues with third countries. As such, their emergence has been gradual and had evolved from the days of European Political Cooperation (EPC), the predecessor to the CFSP.

Given their informality and emergence through practice, the use of the specific term ‘Declaration’ for the type of instrument under consideration in this article has arisen only several years after the CFSP’s birth.¹⁴ As Vončina has noted, the lack of institutional coherence in terms of who is ‘in charge’ of the CFSP has resulted in at least three types of ‘statements’ issued by the European Council in the name of the EU, the Presidency of the Council in the name of the EU and by the Presidency alone.¹⁵ During the period under examination (2007-2015) Declarations have become a much more readily recognisable feature of the CFSP which permits an analysis over time.

The responsibility for issuing Declarations has been changed following the entry into force of the Treaty of Lisbon in 2011. Currently, Article 18(2) TEU states that the HR/VP is responsible for the conduct of the CFSP, and thus has taken over from the Council Presidency for the initiation of Declarations.¹⁶ However, given the special provisions applicable to the CFSP which underline the intergovernmental characteristics of the Policy, a Declaration is only issued after consultation with Member States since they are issued in the name of the EU *and* its Member States.

In the absence of written rules or guidelines, the HR/VP’s annual reports on the CFSP give some clarity as to the current practice of issuing public statements and declarations. Declarations by the HR/VP on behalf of the EU – which are the focus of this article – ‘reflect the official position of the EU and are issued under the High Representative’s authority with prior consultation of the Member States. Where no such official position exists, these declarations are agreed by Member States within the Council’.¹⁷ In addition, the High Representative also issues statements, ‘to respond to events requiring quick EU reaction and issued under the HR/VP’s authority without formal consultation of the Member States’.¹⁸ The HR/VP’s spokesperson is also empowered to make statements, ‘for quick EU reaction in cases when the personal involvement of the HR/VP is not necessarily required’.¹⁹ Finally,

¹² See, for example, P. Eeckhout, *External Relations of the European Union*, (2nd ed., Oxford University Press, 2011) or P. Koutrakos, *EU International Relations Law*, (2nd ed., Hart Publishing, 2015).

¹³ B. Van Vooren & R. A. Wessel, *EU External Relations Law*, 381-382 (Cambridge University Press, 2014).

¹⁴ Regelsberger and Wessels, in an earlier analysis of foreign policy statements, chart the increase from the advent of EPC in 1970 (when none were issued) to 2002 (almost 200). However, this differs from the analysis here since it takes into account *all* statements from the EU, rather than those from the Council in the name of the Member States collectively: E. Regelsberger & W. Wessels, *The Evolution of the Common Foreign and Security Policy: a Case of an Imperfect Ratchet Fusion*, in *Institutional and Policy-making Challenges to the EU in the Wake of Enlargement*, 91-116 (ed. A. Verdun & O. Croci, Manchester University Press, 2004).

¹⁵ T. Vončina, *Speaking with One Voice: Statements and declarations as an Instrument of the EU’s Common Foreign and Security Policy*, 16(2) *European For. Affairs Rev.*, 169-186, 172 (2011).

¹⁶ ‘The High Representative shall conduct the Union’s common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy’.

¹⁷ Council of the European Union, *Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament 2014*, 11083/15, 288 (20 Jul. 2015).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

'local' EU statements are 'used in the context of a specific local/regional issue'²⁰ and do not appear to involve the HR/VP personally, or the Member States. To this should be added *démarches* which are communicated to third country governments but which are confidential.²¹

Declarations therefore require the input, and the agreement, of the Member States before they can be issued. For some Declarations, this process is uncontroversial. But there are likely to be more intense negotiations when the issue in question relates to matters which lie at the core of state sovereignty, or where there is no pre-existing policy. All this takes place in a fast-moving context, since Declarations are (generally) issued in response to world events. The COREU network is the usual means by which secure information is passed between Member States and has contributed to the development of frequent contacts and information sharing between national governments and the EU institutions.²² Where there is difficulty in gaining agreement between the Member States – either on whether a Declaration should be issued at all, or what it should say – the final text may be worded in very general terms or may not appear at all. There is no guarantee therefore that a Declaration will necessarily be issued, even if the EU has done so before on a similar issue regarding another country. Very occasionally, a Declaration is issued jointly with another, non-EU organization, such as the Council of Europe.²³

Once a Declaration is agreed by the Member States, selected third states – 14 in total – are invited to align themselves with the Declaration. These states are candidates or potential candidates for EU membership,²⁴ EEA/EFTA states,²⁵ and selected states within the EU's Eastern Partnership/European Neighbourhood Policy in Eastern Europe and the Caucasus.²⁶ If they express their wish to align themselves, these states are added to the text of the Declaration to signal their public agreement with the text of the Declaration. Some Declarations are specifically used to identify which of these third states have aligned their legal systems with restrictive measures (sanctions) regimes put in place by the EU.²⁷ Once finalized the alignment of the third states, Declarations are placed in the (publicly available) press releases section of the website of the Council.²⁸

3. METHODOLOGY

This article examines the 708 Declarations which were issued by the High Representative (or Council, prior to the entry into force of the Treaty of Lisbon in 2011) over a nine-year period between 2007 and 2015. 2007 was chosen as a start date since earlier practices in the 2000s

²⁰ *Ibid.*

²¹ U. Khaliq, *Ethical Dimensions of the Foreign Policy of the European Union* (Cambridge University Press, 2008).

²² F. Bicchi, *The EU as a community of practice*, in *The EU's Common Foreign and Security Policy: the Quest for Democracy* (ed. H. Sjursen, Routledge, 2012).

²³ See, for example, *Joint Declaration by the European Union High Representative Federica Mogherini, on behalf of the EU, and the Secretary General of the Council of Europe, Thorbjørn Jagland, on the European and World Day against the Death Penalty, 707/15*, (9 Oct. 2015).

²⁴ Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Iceland (though it has since withdrawn its membership application), Montenegro, Serbia, Turkey. Croatia was invited third country as a candidate and then accession state for the period under examination in this article from 2007 until its EU accession in July 2013.

²⁵ Iceland (which was also a candidate state until it withdrew its application), Norway and Liechtenstein.

²⁶ Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

²⁷ See P. J. Cardwell, *The Legalisation of European Union Foreign Policy and the Use of Sanctions*, 17(1) Cambridge Y.B. European Leg. Stud., 287-310 (2015).

²⁸ See, <<http://www.consilium.europa.eu/en/press/press-releases/>>, (3 Feb. 2016).

were not always consistent with the use of ‘declaration’, ‘statement’ etc or which institutions were responsible for issuing them. By 2007 the practice of primarily using Declarations to signify a text which has been agreed by the Member States was more firmly established. This has continued in the post-Lisbon Treaty, which (as set out above) led to a more coherent practice from the HR/VP in terms of delineating Declarations (which involve the Member States) and statements (which do not). Beginning in 2007, it is therefore possible to analyse Declarations alone, whilst recognizing that these are not the only way in which the EU may express a foreign policy view. For the analysis in each of the following sections, each individual Declaration has been classified according to three criteria. Part IV breaks down the Declarations into five types according to their purpose. Part V categorizes according to geographical spread and countries to which they are addressed. Finally, Part VI classifies each of the Declarations according to the values expressed in them. The data is presented in graph form to illustrate where trends can be detected.

4. FREQUENCY AND TYPES OF DECLARATION

To understand the diversity in the content of the Declarations, they have been categorized into five distinct types.

100 Declarations are classified as ‘support for international institutions’. These include the support expressed by the EU for institutions or international law or agreements. They are often issued on designated days (e.g. International Human Rights Day), for individuals appointed to key UN posts or for developments such as the proceedings in the International Criminal Court (ICC).²⁹ It is usual for such declarations to refer to the Union’s own values, for example; ‘Standing up for Human Rights, democracy and the rule of law is the silver thread that runs through EU external relations’.³⁰ These Declarations can appear rather anodyne, since they are not addressed to any third state in particular (though they could be applied to a regional initiatives)³¹ and their content is usually uncontroversial. However, they can include direct criticism of third states, for example, in the Declaration on the European and World Day against the Death Penalty, which singles out Belarus.³²

The ‘complimentary’ type covers 136 Declarations which commend a third state for a particular action. For example, these occur when a third state has improved democratic processes,³³ upon the resolution of internal strife or a moratorium or abolition of the death penalty. This category of Declaration is unlikely to cause any major diplomatic tensions and are likely to be agreed by the Member States relatively easily.

‘Limited or mixed criticism’ Declarations represent a half-way house between complimentary and critical. These Declarations, of which there are 94 in total, usually express concern at events in a third state, or over a state’s behaviour. However, they stop short of strong criticism or condemnation, even though this may be implied by the fact that a Declaration is a public statement. For example, a 2015 Declaration on Rwanda warned against an envisaged constitutional reform without overtly criticising.³⁴ Similarly, this type of

²⁹ *Declaration by the Presidency on behalf of the European Union following the start of the Thomas Lubanga trial at the ICC in January 2009*, 5850/09, (28 Jan. 2009).

³⁰ *Declaration by High Representative Catherine Ashton on behalf of the European Union on Human Rights Day*, 17549/1/12 REV 1, (10 Dec. 2012).

³¹ *Declaration by the High Representative Catherine Ashton on behalf of the European Union on Femicide (Latin America) (2010)*, 11706/1/10, (30 Jun. 2010).

³² *Supra*, n. 23.

³³ For example, *Declaration by High Representative Catherine Ashton on behalf of the European Union on the approval of a new Constitution in Kenya (2010)*, 12785/10 (2010).

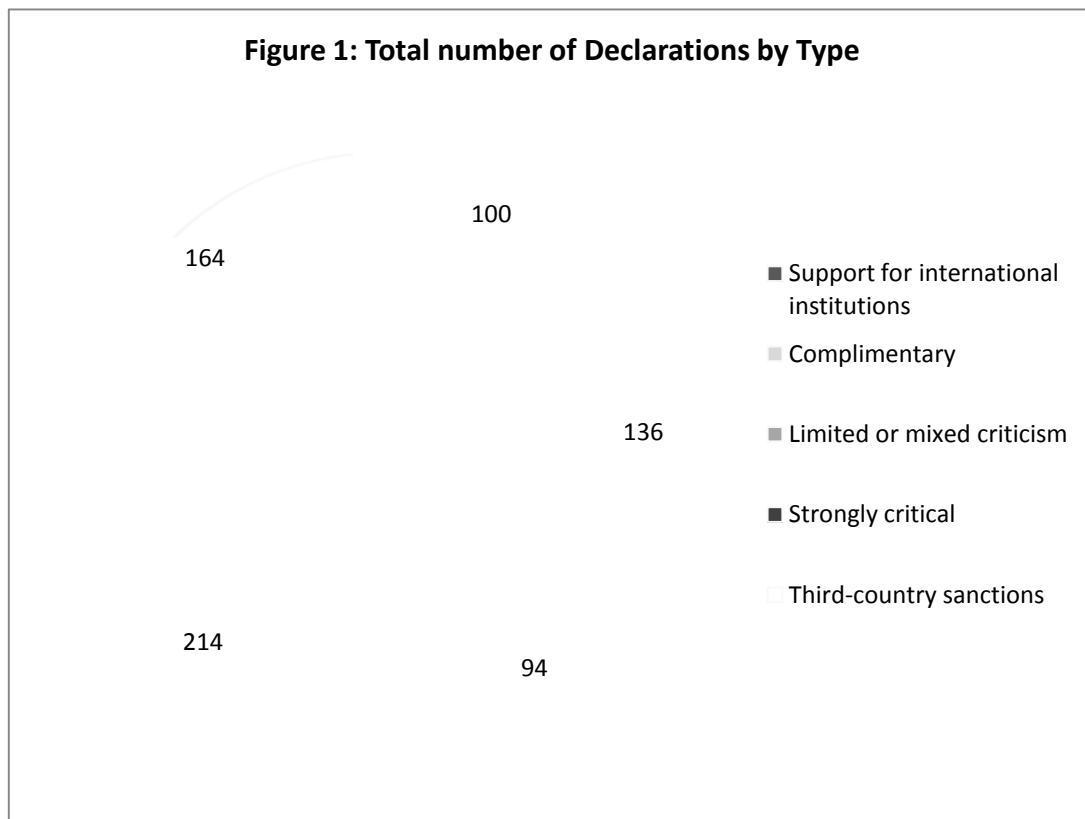
³⁴ *Declaration by the High Representative Federica Mogherini on behalf of the EU on constitutional review in Rwanda (2015)*, 892/15, (3 Dec. 2015).

Declaration may compliment a third country (e.g. on holding relatively free and fair elections) moving towards democratization but noting where there are shortcomings or further democratic progress to be made.³⁵

‘Strongly critical’ are the most common type of Declarations overall. The 214 in this category strongly criticize or condemn a third state for actions including human rights abuses, threatening behaviour towards its population or neighbouring states or the unauthorized testing of weapons. A Declaration included in this type will generally use language such ‘the EU condemns in the strongest possible terms and urges...’, indicates the strongest kind of language employed by the EU towards a third state. country in question.

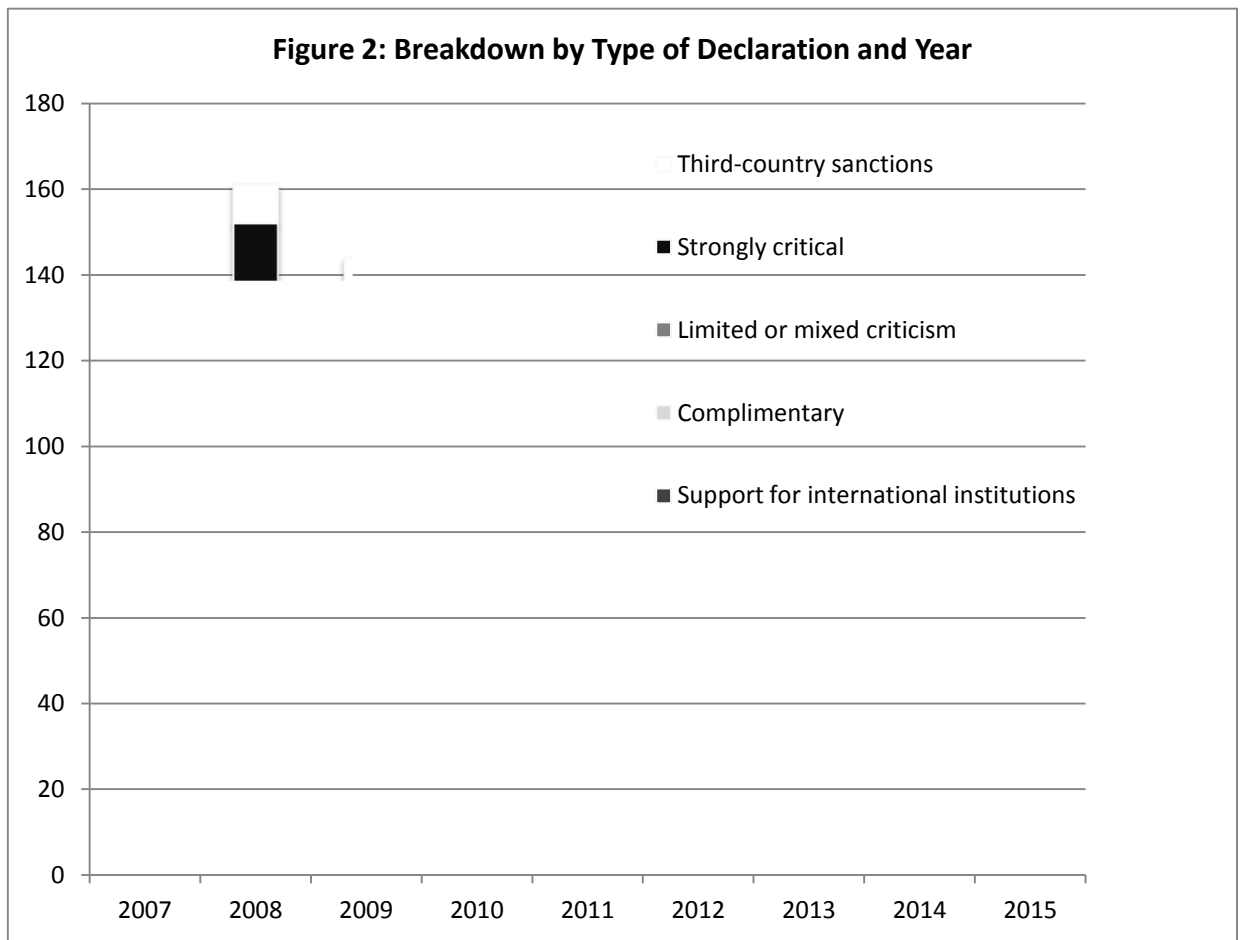
Finally, ‘third country sanctions’ Declarations (164 in total) are those which give notice of the alignment of third states (listed in the previous section) with a CFSP Decision (or, pre-Lisbon, a Common Position) on the imposition of restrictive measures (sanctions) against a state, a breakaway region of a state or individuals. As of January 2016, there are over 30 restrictive measures regimes in place towards states in all parts of the world, and two regimes which target individuals suspect of terrorism and their assets. Alignment requires both domestic legal and policy changes. Such changes to put in place might include the freezing of assets, limitation of trade or imposing a travel ban on officials. Some restrictive measures are based on sanctions agreed by the United Nations Security Council, others are derived from autonomous EU measures.³⁶

Figure 1 covers all the Declarations issued over the nine-period under examination. Figure 2 shows the breakdown per year for each type of Declaration, and also shows the total number of Declarations issued annually.



³⁵ A good example of this combined approach is: *Declaration on behalf of the European Union on the presidential elections in Egypt (2014)*, 10649/1/14 REV 1, (5 Jun. 2014).

³⁶ C. Beaucillon, *Comment choisir ses mesures restrictives*, EUISS Occasional Paper 100 (Brussels, 2013).



From this data, three trends can be drawn out. First, it can be seen that there is a relatively even split between the different types of Declarations. Declarations are not therefore used to exclusively criticize or compliment, nor are they simply a tool which are used to issue uncontroversial, expected views (of those generally found within the ‘support for international institutions’ type). This typology reveals that the Declarations are not merely used in a routine fashion to express uncontroversial or ‘expected’ views. If this were so, we would expect far more in the first two categories than is suggested by the evidence. It is also a reasonable assumption that issuing a Declaration which is more critical in tone implies a much greater level of caution on the part of the Member States than a ‘complimentary’ Declaration, and hence a much greater level of interaction between the EU institutions and the Member States. We can see from this data that there is a high proportion of ‘limited or mixed criticism’ and (especially) ‘strongly critical’ Declarations. This strongly indicates not only the agreement between the actors but also the existence of a dense institutional network and familiarity between them which allows the Declaration to be drafted, agreed and issued in such a short period of time.

Second, the overall number of Declarations has declined from a peak in 2008. But the number of Declarations of each type has shifted over time. ‘Third country sanctions’ Declarations in particular have occupied a far greater proportion of the Declarations issued in the final years of the period under scrutiny. This trend can be explained by the institutional changes to the EU’s CFSP machinery upon the entry into force of the Treaty of Lisbon. The frequency and type of Declarations issued is also instructive in terms of the EU’s

institutional coherence. Ensuring institutional coherence in external relations was one of the dominant themes in the drafting of the Constitutional Treaty and the Treaty of Lisbon, with particular focus on the High Representative (or Union Minister, as was foreseen in the Constitutional Treaty).³⁷

The assumption of responsibility for the process by the High Representative caused a sharp decline in the number of Declarations issued in the name of the HR/VP and the Member States. Whilst this might indicate that the EU has not managed to agree on foreign policy issues, or that Declarations are no longer seen as necessary or useful, the argument made here is rather to the contrary. This is due to the overall number of statements issued by the two post-Lisbon HR/VP (Catherine Ashton and Federica Mogherini) and their spokespersons has increased rapidly.³⁸ In 2013 and 2014 there were 252 and 173 statements issued by the HR/VP, plus 201 and 235 by the spokespersons.³⁹ In 2010, there were a total of 149 HR/VP statements and 80 from these spokespersons.⁴⁰ Whilst this means that – in strictly numerical terms – Declarations under examination here have become rather more the exception than the rule, the overall context is one where the EU has more, not less, to say through the CFSP.

The high number of category ‘limited or mixed criticism’ and ‘strongly critical’ type Declarations issued since the High Representative took over their coordination can be seen as a success in terms of the EU’s search for coherence and being more vocal about expressing the EU’s values when they are under threat elsewhere in the world. This responds positively to Vončina’s question at the time of the entry into force of the Lisbon Treaty as to whether there would be actual improvements to the EU’s record.⁴¹ Compared to the period prior to 2011 when the Council Presidency issued Declarations, there is less variation in institutional responsibility. This supports an analysis that having a more regular ‘face’ for the CFSP allows the Declarations to be developed as a specific type of instrument within the CFSP and avoids the possibility that a single Member State holding the Presidency will be seen as ‘responsible’ for the criticism.

The decline since 2011 in the use of Declarations in favour of statements issued by the HR/VP alone suggests that Declarations have become reserved for special cases. Most of the Declarations from 2013, 2014 and 2015 have been ‘third country sanctions’ type Declarations. These could not be done by HR/VP statements. The remaining Declarations are evenly split between all the other types. They are not reserved only for the most critical cases. Since Declarations require coordination, cooperation and potentially negotiation between the Member States, the Declarations themselves form an ‘acquis’ which the HR/VP can then use as a basis for subsequent statements, without the need to do so in cooperation with the Member States. On the one hand, this means that the EU’s relationship with a third

³⁷ See, *inter alia*, S. Blockmans & M-L Laatsit, *The European External Action Service: Ensuring Coherence in EU External Action?*, in *EU External Relations Law and Policy in the Post-Lisbon Era*, 135-159 (ed. P.J. Cardwell, Asser Press, 2012); C. Hillion, *Tous pour un, un pour tous! Coherence in the external relations of the European Union*, in *Developments in EU External Relations Law*, 10-36 (ed. M. Cremona, Oxford University Press, 2008); L. den Hertog & S. Stroß, *Coherence in EU External Relations: Concepts and Legal Rooting of an Ambiguous Term*, 18(3) *European For. Affairs Rev.*, 373-388 (2013).

³⁸ Data from before 2010 is not included in the annual CFSP reports.

³⁹ Council of the European Union, *Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament 2013*, 12094/14, (23 Jul. 2014); and *Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament 2014*, 11083/15, (20 Jul. 2015).

⁴⁰ Council of the European Union, *Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament 2010*, 12562/11, (6 Jul. 2011).

⁴¹ Vončina *supra* n. 15, 186.

country can be more easily ascertained from the issuance of Declarations. On the other hand, the High Representative can be seen to have a greater sense of legitimacy to represent the Union (and by analogy the Member States) and issue statements of her own accord, without the need to worry that every single statement must first be considered by the Member States. Recalling that the ability to act quickly has been one of the main criticisms of the EU and the CFSP, this practice would seem to confront this perceived drawback.

Third, the high number of third country sanctions Declarations, which are only issued if some of the invited third countries align themselves, demonstrates that the instances of EU-led restrictive measures has increased and have been supported by non-EU Member States too. In fact, the frequency of alignment by the third states to Declarations has been high, with at least seven of the 14 invited states doing so on each occasion, and usually around ten.⁴² Some of the 14 non-EU states align themselves almost without exception. Albania, for example, has not missed an opportunity to do so since 2011. States which are part of the enlargement process tend to have a higher rate of alignment, with the exception of Turkey, which has not aligned itself with most of the Declarations on restrictive measures. This has been pointed out in the enlargement reports on Turkish progress towards full membership.⁴³ It could suggest an indirect link between CFSP activity and alignment of the *acquis* required for membership. Nevertheless, Norway and Liechtenstein – which are not part of the enlargement process – have the highest rates of alignment behind Albania and Montenegro. For the countries of the Eastern Partnership, Moldova and Ukraine’s alignment is much higher than Armenia and Georgia, with Azerbaijan as the only country to align itself very rarely. As a policy decision to include these states in the EU’s CFSP Declarations, it can be understood as a successful one, based on the general rate of alignment across all the third countries. The increase in the number of ‘third country sanctions’ Declarations, which are specifically for the purpose of alignment of third countries with restrictive measures put in place by EU law, demonstrates not only that sanctions are increasingly prevalent as a tool of EU foreign policy but that the Declarations are used to signify when the EU is ‘doing’ something (and convincing others to do something too). The analysis runs counter to a view that Declarations are merely words and nothing more.

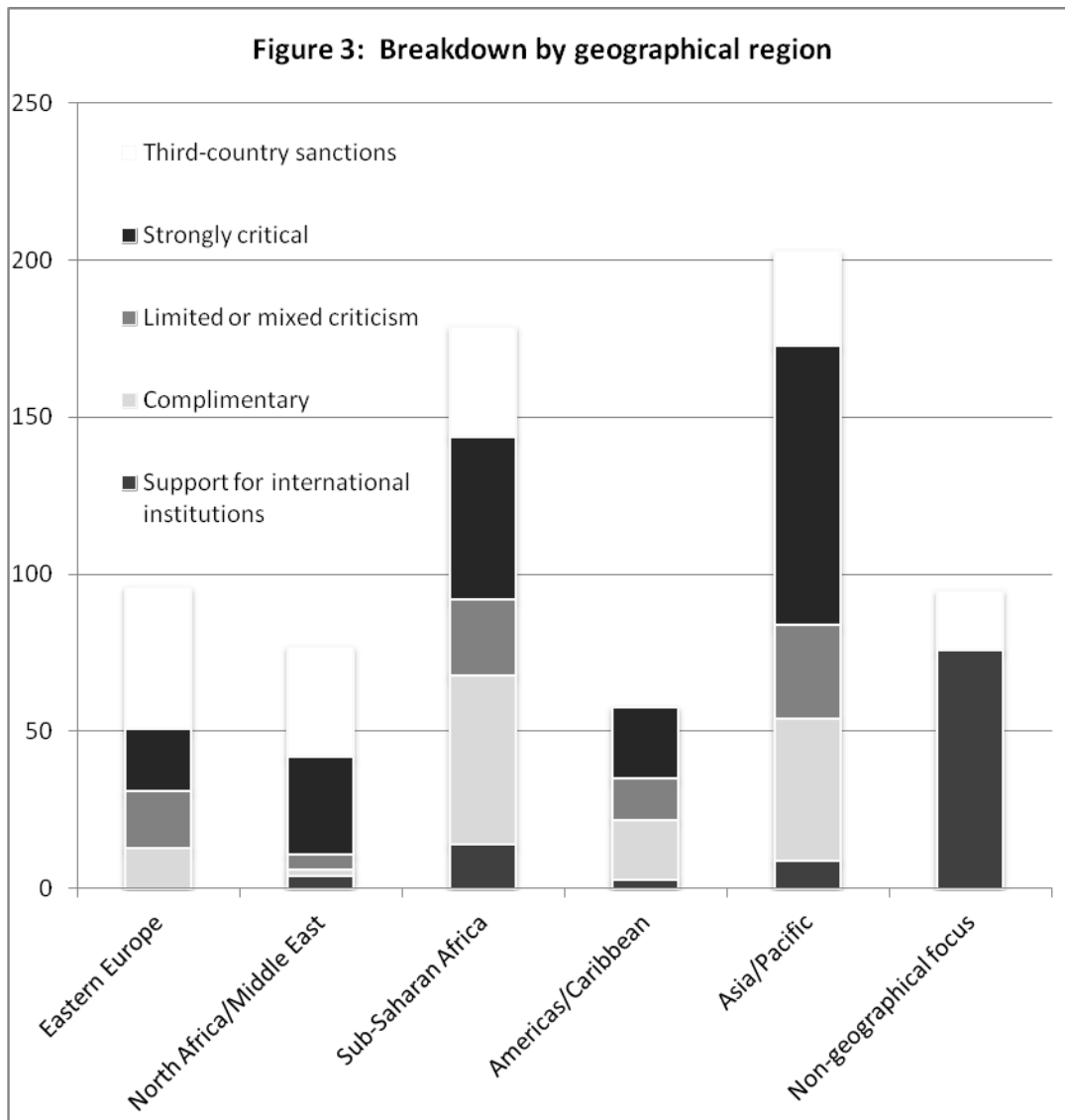
5. GEOGRAPHIC SPREAD OF THE ‘TARGETS’ OF DECLARATIONS

The previous section demonstrated that Declarations are a stable and regular feature of the CFSP, and used for a variety of purposes in foreign policy. In this section, the Declarations have been classified according to geography and ‘target’ state in order to ascertain if Declarations are particularly used towards certain states or regions. Declarations are public proclamations and are therefore not addressed to third states as such, but the ‘target’ is usually the government of a third state, but is sometimes a faction or breakaway region/unrecognized government (e.g. South Ossetia in Georgia). Figure 3 shows how the five different types of Declaration have been used towards five regions.⁴⁴

⁴² The additional data on each third country’s alignment and inclusion in each Declaration is not included here, due to limitations of space. However, see Cardwell, *supra* n. 24.

⁴³ The Commission’s 2015 report on Turkey notes that the country ‘should align itself more closely with EU declarations and Council decisions’ over the coming year. <http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf>, p. 81, (3 Feb. 2016).

⁴⁴ The non-geographic focus Declarations are only some of ‘supporting international institutions’ type (such those which commemorate particular internationally recognized days) and some of the ‘third country sanctions’ Declarations. For the latter, these are alignment with the restrictive measures regimes against suspected terrorists (ie. the *Kadi* situation) and their assets, who may be situated anywhere in the world. Declarations which support an international day particular to a region (e.g.



The geographical breakdown of the addressee countries of Declarations in Figure 3 reveals that over the course of the nine-year period under examination, they have been relatively evenly applied to countries across the globe. This also applies when they are divided by type.

The numbers of Declaration for each region show that Sub-Saharan Africa (179) and Asia and the Pacific (203) are the most common geographical regions to be the subject of Declarations. However, they are also much larger in area – and with a much greater number of countries – than the other regions. The number of Declarations which cover states close to the EU borders, in Eastern Europe, North Africa and the Middle East is relatively low. Russia and Belarus account for 63% of the critical and sanctions Declarations in the Eastern Europe category, and Syria for 45% in the Middle East/North Africa category. Neither critical nor complimentary Declarations are a common tool towards third states close to the EU’s borders, in the Western Balkans, Eastern Europe or North Africa. Since third states in the Western Balkans and Eastern Europe are invited to align with Declarations, and are involved in deep engagement with the EU, a Declaration (particularly a strongly critical one) would be

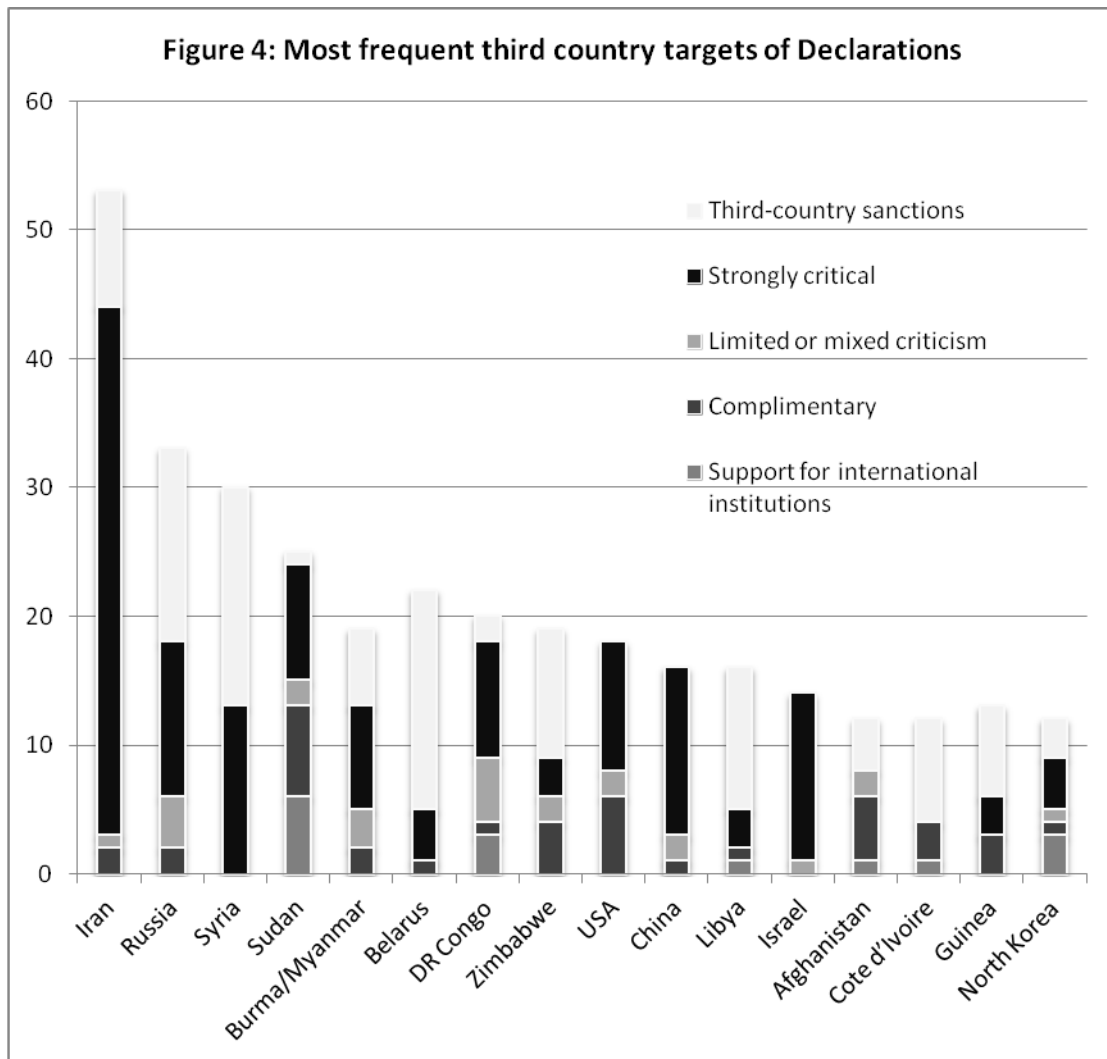
ASEAN) and where restrictive measures apply to a specific country have been included in their respective regions in the table.

a significant step to take because it would risk threatening neighbourly, political relations. The exceptions are for states including Belarus and, since 2013, Russia. Both Belarus and Russia are the subject of restrictive measures regimes by the EU, which explain a high number of third country sanctions Declarations too.

The high number of Declarations towards Sub-Saharan Africa indicates a very mixed use of Declarations – they are readily used to both compliment third countries in this region, and to criticize. This can be contrasted with Asia, where ‘strongly critical’ type Declarations are more widely used, though this region is the only one where there is an overall lack of balance between ‘complimentary’ and ‘strongly critical’. The addressee countries in Sub-Saharan Africa are part of the EU-ACP (African, Caribbean, Pacific) partnership – the Cotonou Agreement – which includes essential elements regarding human rights, democratic principles and the rule of law,⁴⁵ mirroring the EU’s own Treaty-based obligations.⁴⁶ Most countries in Asia which are addressees of Declarations do not have a deep relationship with the EU. This suggests that the EU is more willing to compliment states with which it has a stronger relationship, rather than only criticize. However, in order to test this further, a country-by-country breakdown across the globe is also useful to complete the geographical picture. The countries in Figure 4 are the most frequently targeted (with more than 10 instances) by Declarations, of any type.

⁴⁵ Article 9, *Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, and the European Community and its Member States (2000)*, O.J. L 287 (4 Nov. 2010) (revised version).

⁴⁶ These are explored in more detail in Part VI.



All the countries in Figure 4 are subject to restrictive measures (sanctions) regimes, with the exception of China, Israel and the USA. Thus, all these countries are the addressees of ‘third country sanctions’ Declarations (some or all of the invited third countries join the EU in supporting the restrictive measures), but not exclusively so. It is always the case that they will be joined by separate ‘strongly critical’ Declarations too. Rarely are these countries the focus of ‘complimentary’ or even ‘limited or mixed criticism’ Declarations, with the exception of Côte d’Ivoire, which was not the subject of either type of critical Declaration.

For some countries on the list, the subject matter is limited. For the US, the Declarations only concern the use of the death penalty, with ‘strongly critical’ Declarations when it has been used (in controversial circumstances) and ‘complimentary’ Declarations issued when a state has abolished its use (such as Maryland in 2013).⁴⁷ Declarations about Russia are almost exclusively related to criticisms of its activities in neighbouring or breakaway states, and since 2011, the restrictive measures placed due to – according to the Declaration – ‘destabilizing’ activities in Ukraine.⁴⁸ On the other hand, Declarations addressed to Belarus, Syria, Iran and Burma/Myanmar are almost exclusively of the ‘strongly

⁴⁷ Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the abolition of the death penalty in Maryland, USA (2013), 9212/2/13 REV 2, (2 May 2013).

⁴⁸ Declaration by the High Representative on behalf of the EU on the alignment of certain countries concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (2015), 794/15, (10 Nov. 2015).

critical' type. This reveals that the approach to these countries has been repeated use of critical Declarations which combine with restrictive measures.

By contrast, Declarations concerning Guinea, Sudan, the Democratic Republic of the Congo and Zimbabwe are generally more varied in type. These countries therefore typify the practice with states in Sub-Saharan Africa: Declarations which are complimentary are as readily issued as Declarations which are critical, even where restrictive measures regimes are in place. For states in North Africa and the Middle East, the EU has issued few complimentary Declarations of and far more of the 'limited or mixed criticism' type. The evidence suggests that the practice of Declarations is affected by questions of geography, with states closer to the EU being far more often the addressees of critical Declarations than complimentary ones. With states further from the EU, in Africa, the Americas and Asia, a much more mixed picture emerges, with Declarations used a tool to compliment as well as criticize. The frequency of such countries is discussed in more detail in the following section, however, there are patterns which emerge in the type of Declaration used for certain countries. The continued use of Declarations towards certain countries more frequently suggests that once a critical Declaration has been made regarding a country, it becomes more likely that this instrument will be used again. As such, Declarations can be seen to form a part of a coherent strategy towards a third country. Similarly, the lack of critical Declarations towards countries which nevertheless have engaged in behaviour that the EU has criticized in other states demonstrates either that (a) there is no agreement between Member States which prevents a Declaration from being issued or (b) that Declarations are not seen as the appropriate tool. Whichever, both demonstrate that the Declarations are an institutionalized form of cooperation and are not simply issued haphazardly.

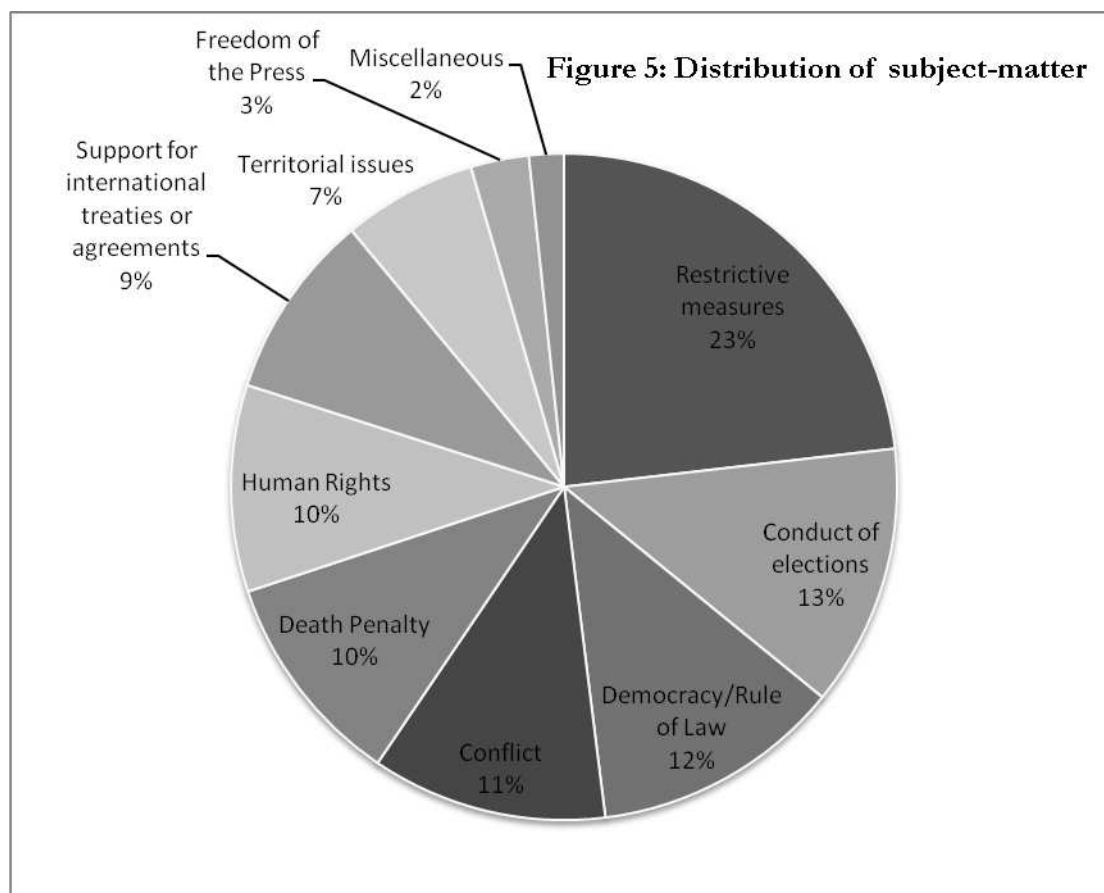
6. THE SUBJECT-MATTER OF DECLARATIONS

The final part of the analysis examines more closely the subject-matter of the Declaration. The CFSP Declarations themselves often refer to the Union's values, as detailed in Articles 2 and 3(5) TEU, providing an outward legitimacy or justification to issue a Declaration (particularly a 'strongly critical' one). Categorizing the Declarations according to which of these values they relate to is a difficult task, which does not necessarily permit a worthwhile analysis. For example, a Declaration which criticizes an undemocratic election in a third country relates to potentially all of the values listed in Article 2 TEU. It is difficult to isolate Declarations which relate only to the 'strict observance and the development of international law' as stated in Article 3(5) TEU since this might cover territorial disputes, human rights protection and election and other democratic processes.

In order to better understand the substantive issues which Declarations have been used to highlight in third countries or internationally, a more thematic analysis is needed. The Declarations have been grouped according to the following major subjects. Restrictive measures (and the third countries aligning themselves) are covered exclusively by the 'third country sanctions' type, though the rationale behind the sanctions may be referred to in other Declarations.⁴⁹ Freedom of the press/media and the death penalty are the most common, specific matters to which Declarations have been addressed, and therefore are categorized separately. The categories of human rights and democracy are, in a sense, two sides of the same coin. To help distinguish them here they have been divided into two categories. Declarations included within the Democracy category are where the Declaration concerns the respect for national law and democratic processes (except elections), including

⁴⁹ For example, on Burma/Myanmar: *Declaration by the Presidency on behalf of the European Union on the verdict against Daw Aung San Suu Kyi (2009)*, 12628/1/09 REV 1, (12 Aug. 2009).

appeals for the release of detained individuals such as political opponents or activists.⁵⁰ Human rights are those instances which specifically mention the protection/respect for human rights, within a country⁵¹ or more globally (e.g. indigenous peoples' rights).⁵²



All the Declarations can be seen to relate to the EU's values as defined in the Treaty. The figures reveal, however, that more specific values feature prominently in the Declarations and the topic to some extent explains differences between the three complimentary and critical-type Declarations in particular. For instance, the EU appears to issue a complimentary-type Declaration far more readily for a successful election process than to strongly criticize. The opposite appears to be true in cases where conflict is occurring, or threatening to occur.

What the analysis reveals, nevertheless, is that there is a relatively even spread between the main issues on which a Declaration may appear. Democracy and human rights Declarations are by far the most common, more so than the traditional foreign policy domains of territorial issues, conflict or perhaps restrictive measures. Since the nature of Declarations are a rapid reaction to an event or a change (with the exception of the annual support given to international commemorative days), we cannot assume from this

⁵⁰ For example, on Bahrain: *Declaration by High Representative Catherine Ashton on behalf of the European Union concerning the situation of Abdulhadi Al-Khawaja (2012)*, 8822/1/12 REV 1, (17 Apr. 2012).

⁵¹ For example, *Declaration by the High Representative on behalf of the European Union concerning the Ugandan Anti-Homosexuality Act (2014)*, 7267/1/14 REV 1, (4 Mar. 2014).

⁵² *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the International Day of the World's Indigenous Peoples (2013)*, 13019/1/13 REV 1, (9 Aug. 2013).

breakdown that the EU ‘cares’ more about certain issues than others. What we can see, however, is that two topics in particular stand out in terms of the numbers of Declarations issues, and these merit further attention: elections and the death penalty.

Declarations concerning the conduct of elections are, behind restrictive measures, the most common subject. There is also a readiness to congratulate a third country for successful election process, including referenda. They are particularly used in instances where a country has made (or is in the process of making) a recent transition to democracy,⁵³ or when democratic elections are held against the background of recent violence. The relatively high number of ‘limited or mixed criticism’ Declarations are typically accounted for when an election has generally been seen as democratic but that there is still work to be done. ‘Strongly critical’ Declarations address an undemocratic election process, or where the elections themselves are not seen by the EU or the international community as legitimate (for example, in an unrecognized or occupied province). The high number of complimentary Declarations, and the overall frequency of Declarations addressed to election processes is explained by the nature of elections as regular events. Many of the election processes under scrutiny will have been observed by the EU itself, the Organization for Security and Cooperation in Europe (OSCE) or other international organizations such as the African Union.⁵⁴ The evidence provided by these reports, as well as a relatively clear set of criteria to judge whether an election is free and fair, means that there is an objective standard to measure against. Hence, issuing a Declaration should be relatively straightforward.

Some of this reasoning also applies to the Declarations concerning the death penalty. Since the opposition to the death penalty is a readily identifiable and distinct EU value, with agreed Common guidelines,⁵⁵ it is unsurprising that numerous Declarations on the topic have been issued. These include ‘support for international institutions’ (for World Day against the Death Penalty),⁵⁶ ‘complimentary’, where a state has issued a moratorium on the use of the death penalty, or abolished it altogether,⁵⁷ and – most frequently – ‘strongly critical’ when the death penalty has been restored or applied to new crimes,⁵⁸ or used in spite of doubts over due process (such as when a moratorium has been in place for a considerable period of time).⁵⁹ Declarations are issued either as a means to attempt to prevent an imminent execution or after the event has occurred.

The number of Declarations issued, whilst high up the list of subject-matter, nevertheless indicates that they are not issued on every instance of the use of the death penalty around the world. The most striking thing about the use of ‘strongly critical’ Declarations is the countries to which they are addressed – and which they are not. Countries which have the some of the closest, strongest relationships with the EU, including

⁵³ For example: *Declaration by High Representative Catherine Ashton on behalf of the European Union on the final results of the elections in Angola (2012)*, 14095/2/12 REV 2, (24 Sep. 2012).

⁵⁴ *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union following presidential elections in Zimbabwe (2013)*, 13092/13, (22 Aug. 2013).

⁵⁵ Council of the European Union, *EU Guidelines on the Death Penalty*, 8416/13 (2013), at: <http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf>, (3 Feb. 2016).

⁵⁶ *Supra* n. 21.

⁵⁷ For example, *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the decision of the Ethiopian President to uphold the moratorium on the death penalty (2011)*, 12311/1/11, (30 Jun. 2011).

⁵⁸ For example, *Declaration by High Representative Catherine Ashton on behalf of the European Union on the reintroduction of the death penalty in Papua New Guinea*, 10477/1/13 REV 1, (3 Jun. 2013).

⁵⁹ *Declaration by the High Representative, Catherine Ashton, on behalf of the EU on the execution of Mr Jackson in Delaware, USA (2011)*, 13368/2/11 REV 2, (2 Aug. 2011).

USA and Japan are often the subject of critical Declarations.⁶⁰ Only Iran has been the subject of more ‘strongly critical’ Declarations on the death penalty (21, out of 41 of this type in total concerning Iran). Yet other countries which carry out the most executions per year⁶¹ – China, Iraq, Saudi Arabia and Sudan – have seldom been the focus of Declarations. Therefore, whilst the frequency of Declarations on the death penalty reinforces the promotion of abolition as a European value, public CFSP Declarations are not necessarily seen as a desirable method to so by the High Representative or the Council. This differentiated approach can be criticized for not using the same techniques to condemn third countries for the use of the death penalty, and demonstrates the limits to a value-led foreign policy when other interests (such as commercial ones) are at stake, or where collective decision-making may be prevented by one or more Member States does not agree with a Declaration.

7. CONCLUSIONS

The analysis of CFSP Declarations here demonstrates that they have become an important feature of the CFSP and offer a rich insight into the way in which European foreign policy works. Declarations have become more regular, not just in terms of frequency but in terms of subject matter. They have been applied to countries across the globe and have a close correlation with the EU’s values, with particular attention paid to the EU’s opposition to the death penalty and the freedom of the press. The mix of complimentary and critical Declarations is indicative of the EU’s ability to agree publicly on a common approach for foreign policy issues. Nevertheless, it is not suggested by the evidence that Declarations are the ‘go to’ instrument, even where no further ‘concrete’ action (such as restrictive measures) are planned. The example of the lack of criticism of certain countries which regularly use the death penalty is a case in point. As such, Declarations should be seen as a particular type of ‘tool’ or ‘instrument’ of EU foreign policy which are appropriate in some but not all circumstances. In this respect, Declarations work in much the same way as other tools of foreign policy – or indeed in any policy area – since they may or may not be the best response to a situation given the circumstances and wider context.

The consistent and regular alignment by many third states in the EU’s neighbourhood upon invitation underlines a claim that the EU is taking a more coherent approach to foreign policy than it has in the past. One might continue to criticize the fact that Declarations remain – in the most part – words on paper and therefore leave the EU open to criticism that it is not capable of anything more. However, the regularity of critical Declarations applied to such a wide range of countries or issues tells us at the very least that the EU has made considerable progress towards achieving a *common* foreign and security policy.

Whilst the number of Declarations has declined sharply since the transfer of responsibility to the HR/VP, the evidence suggests that this tendency should not be seen as the EU/Council having nothing to say or no position which can be agreed between the Member States. Rather, the increasing number of overall statements from the HR/VP of her own accord suggests a high level of delegation on foreign policy matters from the Member States and a familiarity with (to return to the point made above) the appropriateness of the use of Declarations as a foreign policy tool. The relative appropriateness is particularly significant in cases where Declarations or statements are strongly critical of third countries. Moreover, the extremely wide range of third states and issues to which Declarations have been addressed during the period 2007-2011 (i.e. before the change in institutional role for

⁶⁰ Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on executions in Japan (2012), 8392/12, (29 Mar. 2012).

⁶¹ Amnesty International, *Death Sentences and Executions 2014*, (2015) <<https://www.amnesty.org/en/documents/act50/0001/2015/en/>>, (3 Feb. 2016).

the HR/VP) demonstrates that there is something equivalent to an EU CFSP '*acquis*' – a set of institutionalized rules and practices which tells us what CFSP *is* and when and why it is used. In turn, the development of the '*acquis*' allows the HR/VP to more fully claim to represent the EU's views, and in practice issue a statement which can be seen to link to previous Declarations as discussed with the Member States. All the Declarations relate to the EU's commitment to promoting and defending its values in the wider world. The analysis has demonstrated that there has been progress in carving out particular values to express via CFSP Declarations. There is an opportunity for further research to investigate the links between the EU's words, as expressed via the Declarations, and the other tools at the EU's disposal in foreign policy to evaluate what effects – in the short and long-term – these might have on third countries and in the international community.