

# **Brexiting Human Rights Diplomacy at the United Nations Human Rights Council: Opportunity or Cause for Concern?**

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## **Abstract**

*In recent years, the United Kingdom's influence in multilateral human rights diplomacy has stemmed from its ability to advance its own priorities independently while contemporaneously shaping the collective concerns championed by the European Union. This paper explores the ways in which Brexit may change this state of play. Based on analysis of contributions made at the interactive dialogue sessions at the United Nations Human Rights Council, the paper identifies varying concerns of the United Kingdom and European Union, shedding light on a series of significant gaps that, unless addressed, will exist in Britain's international human rights diplomacy post-Brexit.*

**Keywords: Brexit, Human Rights Diplomacy, Human Rights Council, Interactive Dialogues**

## **Background and Context**

For generations the United Kingdom (UK) has identified as a forerunner in the international human rights project, leading on specific issues and joining in the collective advancement of others. The British public's decision in a 2016 referendum to leave the European Union (EU) gives rise to uncertainty about the future role that Britain will play in the area of human rights on the international stage and, in particular, within the multilateral international institutions where much of this dialogue takes place. This uncertainty stems from the fact that for decades the UK's approach to human rights diplomacy has both shaped, and been shaped by, EU priorities and policies in the area of human rights.<sup>1</sup>

Human rights diplomacy refers to the activities that a state, organisation or individual undertakes in order to advance the promotion and implementation of human rights provisions. It is often understood in a broad sense, encompassing a wide range of measures.<sup>2</sup> Zhu refers to it as 'the international diplomatic activities between states or other international players that are focused on human rights'.<sup>3</sup> For Vogelgesand, it can 'be private or public, multilateral or bilateral, and punitive or positive. And it can be several of the above at the same time'.<sup>4</sup> The style of diplomacy deployed will be heavily dependent on its intended target. Where the diplomacy seeks to raise issues relating to a particular state's implementation of human rights standards, it may involve bilateral discussions or be linked strategically to trade objectives. Where it seeks to drive a specific priority it may be targeted directly at non-governmental organisations (NGOs) and other groups operating within that field. This article is

concerned with the influence of the UK's human rights diplomacy at multilateral institutions where the agenda of global human rights is shaped, concerns are raised, and ideas cultivated.

In recent years, Britain's human rights diplomacy at the United Nations (UN) Human Rights Council (HRC) has operated in two channels. First, the UK has actively engaged as an independent state within the Council and considers its input as key to promoting the 'UK's objectives on human rights'.<sup>5</sup> Its credentials to wield influence are heavily rooted in its contribution to the modern day human rights framework that governs their implementation. Much of this dates back to the inception of the UN. Former Prime Minister Winston Churchill had agreed to embed elements of President Roosevelt's Four Freedoms (freedom from want, fear, worship and speech) into the Atlantic Charter of 1941.<sup>6</sup> This followed the Allied states' Declaration of St James' Palace, London, which remains accepted as the foundation for the concept of peace in the UN<sup>7</sup> and includes references to economic and social security.<sup>8</sup> The UK, together with the United States, Union of Soviet Socialist Republics and China agreed the 1942 Declaration by the UN which built on the Atlantic Charter, its preamble emphasising that victory over enemies is necessary to 'defend life, liberty, independence and religious freedom, and to preserve human rights and justice'.<sup>9</sup> This is one of the earliest agreed references to 'human rights' in an international instrument, something the UK was instrumental in achieving. The UN foundation was predicated on, inter alia, respect for human rights<sup>10</sup> and the UK played a leading role in securing agreement to prepare the International Bill of Rights.<sup>11</sup> Charles Duke, of the UK, was part of the drafting committee for the Declaration.<sup>12</sup> The UK secured regular membership of the Commission on Human Rights, a functional commission of the Economic and Social Council, as well as fielding experts for its sub-commissions.<sup>13</sup> It was also the first signatory to the ground-breaking, legally binding human rights instrument – the 1950 European Convention on Human Rights of the Council of Europe – which was worked on initially by a UK member of Parliament, David Maxwell-Fyfe. The UK has also fielded judges to the European Court of Human Rights, including Lord McNair, Sir Gerald Fitzmaurice and Sir Nicholas Bratza, as well as, since 2015, Registrar Roderick Liddell.

The UK has regularly extolled the virtues of human rights on the international stage, a self-ordained champion of rights in an uncertain global world. It has engaged with the burgeoning human rights system at the regional and international levels, crafting its reputation in human rights diplomacy. It has fielded many human rights experts and supported a wide range of human rights initiatives, drafting and securing support for treaties,<sup>14</sup> giving effect to some human rights in national laws,<sup>15</sup> and commenting on human rights issues at the highest diplomatic levels such as the General Assembly, G20, and Agenda 2030 High Level Panel. Human rights protection was a feature of discussions with states gaining independence and in the aftermath thereof.<sup>16</sup> Later it transferred from being an expectation on other states to appearing in UK parliamentary documentation<sup>17</sup> and being an oft-cited

consideration in development partnerships and assistance programmes with third countries. Moreover, the UK has a permanent mission in Geneva, which serves to represent UK interests in the UN and associated institutions.<sup>18</sup> To this end, the UK openly commits to use the forums and mechanisms of the HRC to advance UK priorities. As United Nations Association (UNA) UK's Chairman, Sir Jeremy Greenstock, stated in evidence for the House of Lords Select Committee on 'Soft Power and the UK's Influence', membership of, and influence on, UN bodies is critical to achieving the aim of promoting British values abroad.<sup>19</sup> Similarly, the Foreign & Commonwealth Office's (FCO) Priority Outcomes include the statement that:

We will use our diplomacy to secure our prosperity; build significantly strengthened bilateral and multilateral relations for Britain; and harness the appeal of our culture and heritage to promote our values, including human rights.<sup>20</sup>

In sum, the UK frequently invokes human rights in international diplomatic and public affairs and its actions arguably justify its self-identification as a global player in human rights. Its frequent rhetoric on projecting influence with the rules based international system corroborates this claim.<sup>21</sup>

The second avenue through which the UK has wielded influence at multilateral institutions is its membership of the EU. This supranational institution places human rights at the centre of its internal and external policies. In 2019, for instance, the EU stated that it will 'promote and protect human rights, democracy and the rule of law; denounce human rights violations and abuses wherever they are committed use all available tools and fora to fulfil its commitments to human rights and promote human rights globally.'<sup>22</sup> The universality and indivisibility of human rights and fundamental freedoms is a general provision guiding the EU's external actions.<sup>23</sup> It holds that there is a global responsibility to protect and promote human rights<sup>24</sup> with the EU positioning itself as a salient actor in this endeavour by affirming to promote human rights in all areas of its external action without exception.<sup>25</sup>

Despite this long-term commitment to human rights diplomacy, the EU's credentials as a global player in the field are only relatively new. Less than ten-years ago Macaj and Koops referred to the EU's 'waning influence' and 'lack of leadership' in human rights affairs at the UN.<sup>26</sup> They found the EU to be isolated within the HRC, with its lack of influence putting the EU's commitment to multilateralism under severe strain.<sup>27</sup> Similarly, Karen Smith cited the fragile position of human rights in EU foreign policy as a reason for its lack of influence at the HRC.<sup>28</sup> This stagnation led to what Egan and Pech describe as a 'period of intense internal reflection' from EU institutions that culminated in a 'robust response' with a re-structured approach to its external activities in human rights diplomacy.<sup>29</sup> The outcome of this process was a June 2012 'Strategic Framework and Action Plan on Human Rights and Democracy' which has served as a foundation for the EU's efforts ever

since.<sup>30</sup> Its policy now seeks engagement through dialogue and development assistance, a commitment to embedding human rights within mainstream diplomacy and a recent recognition for tailoring separate policies to individual states.<sup>31</sup>

Core amongst the EU's external human rights policy is a deep-rooted commitment to multilateralism.<sup>32</sup> In respect of human rights diplomacy, this is most directly manifested in an active presence of the EU at the HRC. As a non-state entity, the EU has status at the Council as an observer,<sup>33</sup> meaning that it does not have the right to vote within council proceedings. It can, however, 'engage in negotiations, co-sponsor and initiate resolutions and make statements in the Council'.<sup>34</sup> While the jury may still be out on how effective recent innovations have been in the EU's position at the HRC early signs are optimistic that a strategic, calculated approach is paying dividends for the organisation's role as a human rights champion. The results of this study will further corroborate this initial confidence.

The external activities of the EU in the field of human rights are shaped by its member states.<sup>35</sup> The Treaty on the EU requires member-states to 'coordinate their action in international organisations and at international conferences' whereby they should 'uphold the Union's positions in such forums'.<sup>36</sup> Member-states cultivate their external actions in the Council of the EU, the European Commission and the European Parliament.<sup>37</sup> Therefore, at a regional level the UK is exercising leadership through contributions to shaping the agenda for the EU's external policies. The UK's contribution within this structure has been evident, with Catherine Ashton of the British Labour party nominated as the first ever High Representation of Foreign Affairs and Security Policy. The UK has further benefitted, and demonstrated its qualifications as a human rights leader, through linking its actions to those of the EU. For instance, in its written pledge before election to the HRC in 2014 it noted '[w]e will continue to be active in EU work across the human rights agenda'.<sup>38</sup>

In effect, pursuant to this dual approach to human rights diplomacy, the UK is able to influence human rights directly through its own individual efforts, and at the same time indirectly through its membership of the EU collective process. In theory, this permits the UK to prioritise certain rights, while also influencing, or at least as a member of a larger collective, being in a position to claim to influence and contribute to, a much broader range of human rights. It is a timely coincidence that as well as leaving the EU, by the end of 2019 the UK will have left the UN's HRC.<sup>39</sup> Its exit will constitute the end of its second two-term membership: it has served for all but two years since the body was established in 2006 and will be seeking re-election at the next available opportunity.<sup>40</sup> Leaving the HRC, alongside its exit from the EU, raises questions about the future of Britain's human rights diplomacy. Which rights will be prioritised and which will be devalued? How will the UK's human rights priorities be shaped and in what direction will they travel? Will attempts be made to fill the gaps left from Brexit and what will the UK need to do to remain a leader in the field?<sup>41</sup>

One way of answering these questions is to investigate the current activities of both the UK and the EU in the context of multilateral human rights institutions. The purpose of this research is to explore how and in what ways the UK's approach to human rights diplomacy has aligned with or departed from the EU in order to determine the impact that Brexit might have on the UK's approach to human rights when it leaves. Our case study exploring these questions is the interactive dialogues that take place at the HRC between Special Procedure mandate-holders and a collective of states, multilateral institutions and civil society organisations. Given that participation is not required in these dialogues, the decision of actors to intervene and the substance of those interventions is a strong indicator of their priorities. Using these engagements as a data set, this paper develops a fuller understanding of the current priorities of both the EU and UK at the HRC, and considers how these priorities may need to change in the wake of Brexit.

The study ultimately finds that while the UK is relatively active in engaging with the human rights agenda within the interactive dialogue sessions, it prioritises a narrow sub-set of civil and political rights and specific countries for attention. In contrast, the EU is proving to be a prolific actor at the Council making a comprehensive array of contributions across the spectrum of both state and thematic concerns. These findings are not necessarily surprising in and of themselves. Indeed, the prioritisation of civil and political rights not only by the UK but also by many Western European and Others Group countries dates back to the drafting of foundational human rights documents, such as the 1948 United Nations Declaration of Human Rights and the 1950 European Convention on Human Rights. Such actors often view civil and political rights as synonymous with efforts to champion liberal democratic values, perceiving so-called first generation rights as catalysts for, and foundations upon, which to build liberal democratic systems of governance.<sup>42</sup>

Nevertheless, by examining scientifically the extent of the differences that exist between EU and UK human rights priorities at the HRC, this paper brings into stark relief potential implications of Brexit on human rights diplomacy in a post-Brexit landscape. In particular, the disparity between the UK and EU's approach to human rights diplomacy suggests that Brexit has the potential to have a significant impact on both the UK's influence and reputation as a global player at multilateral institutions. Whilst this gives rise to cause for concern for the UK's credentials as a human rights champion, it also indicates that with careful consideration of how to proceed, the UK is presented with an opportunity to re-establish itself as a beacon of human rights in the twenty-first century.

### **Interactive Dialogues with Special Mandate Holders at the Human Rights Council**

The Human Rights Council (HRC), established by General Assembly Resolution 60/251, is the successor to the UN Commission on Human Rights.<sup>43</sup> Pursuant to Resolution 60/251, the Council is given a clear mandate retaining the Commission's competence to address human rights situations in

particular countries.<sup>44</sup> For instance, amongst other things, the Resolution established a new universal periodic review mechanism that holds promise to ensure that all countries' human rights records are addressed periodically.<sup>45</sup>

The drafters of Resolution 60/251 preserved a key strength of the Commission, its unique system of independent experts known as the Special Procedures.<sup>46</sup> Special Procedures are a core independent mechanism appointed by the HRC with mandates to report, monitor and advise on human rights from a thematic or country-specific perspective.<sup>47</sup> The President of the Council consults across regional groupings to determine the preferred candidate. This is occasionally problematic<sup>48</sup> but usually consensus emerges and appointments are made without additional votes. Special Procedures technically serve the Council, with logistical and secretarial support provided by the Office of the High Commissioner of Human Rights in Geneva. Mandate holders are independent and unpaid, the issues or territories they investigate are agreed on by member states, and visits to states only occur with the express consent of the state concerned.<sup>49</sup> Each mandate reports annually to the HRC, some additionally report to the third committee of the General Assembly in New York.<sup>50</sup> Occasionally Special Procedures may present to other bodies, for example, the Security Council of the UN,<sup>51</sup> or undertake missions and report jointly with members of independent experts of the regional human rights systems.<sup>52</sup>

Resolution 60/251 retained and built on the interactive dialogues process with these special mandate holders. Through this, the UN HRC annually sets aside time for each mandate to report orally, speaking to its latest submitted and published report. Thereafter states, multilateral institutions and civil society organisations can make recommendations, requests and responses or raise questions. Traditionally, the mandate holder speaks first, where appropriate the state under review responds,<sup>53</sup> then states, observers and civil society organisations make interventions, before the final round ups of comments of the state under review (if appropriate) and the mandate holder. This exercise is described as an 'interactive dialogue' though it is neither especially interactive nor a dialogue, rather it is a partially pre-scripted exchange. Many states and civil society organisations pre-submit their comments to the Council and simply read them out, striving to ensure completion of the pre-determined points within the tightly allocated time slot and avoid the microphone and therefore translation being switched off.

Notwithstanding the sensitivity over some mandates,<sup>54</sup> it is fair to consider the interactive dialogues with Special Procedures as a depoliticised aspect of the human rights work of the Council. State participation in dialogues is voluntary, without the reciprocity and political elements characterising UPR working group dialogues.<sup>55</sup> Part of the importance and appeal of the interactive dialogues stems from that fact that they allow participants to contribute to the development of human rights as well as

to the general ‘building blocks’ of society for those territories with country mandates. In other words, interactive dialogues provide an opportunity, which enables states and non-state actors to help define the future direction of human rights, both thematically and in terms of how and the extent to which rights are enjoyed in specific countries.

Interactive dialogues are therefore a unique and creative mechanism for advancing human rights. Terlingen describes them as one of the most positive developments of the HRC.<sup>56</sup> Others praise the improvements brought about through the creation of HRC in allowing ‘more flexibility and more opportunities to comment on issues relevant to the various themes and country situations addressed by the Council’.<sup>57</sup> It is thus to be expected that Council members and those states evincing a strong human rights ethos would contribute fully and willingly to these dialogues. It is also to be expected that participants utilise the interactive dialogue process in order to promote issues that are of particular pertinence to them. For instance, states normally establish well in advance what precisely they wish to focus their comments on. Such comments are usually based on discussions with the capital foreign ministry reflecting government priorities, though they may also reflect lobbying by local or international civil society organisations. Interactive dialogues are thus not only an opportunity to shape and influence human rights generally, but to advance and seek to influence specific human rights priorities identified by constituent actors- both state and non-state alike- as priority issues.

## **Methodology**

In order to ascertain the impact of Brexit on the UK’s human rights diplomacy, a comprehensive analysis of both UK and EU contributions in interactive dialogue sessions at the HRC was undertaken. To establish the viability of the project, an initial pilot was conducted by reviewing HRC sessions 30-38.<sup>58</sup> The purpose was to determine whether the methodology was workable and whether the particular line of inquiry was worth pursuing. Using HRC reports, interactive dialogues [hereinafter referred to as IDs for brevity] that had taken place with country and thematic special mandate holders were recorded for each session. This information was then cross-referenced with reports of civil society groups and the draft programme of work for each session to ensure accuracy of IDs recorded.<sup>59</sup> This initial process produced a list of IDs with 14 country and 45 thematic holders across these eight sessions. HRC Session reports also list state and non-state actors that participated in each ID. This information permitted tracing both EU and UK participation in the group of IDs initially identified. To ensure that this information was accurate, records of oral statements on the UN HRC extranet site were also examined to corroborate that both UK and EU had participated.

The information collected provided an initial dataset of UK and EU participation in IDs that had taken place across sessions 30-38. This data enabled a calculation of both EU and UK participation as a percentage of overall IDs on each specific theme or country that had occurred between sessions 30

and 38. As examples, three IDs with the Special Rapporteur on Torture were held between session 30 and 38.<sup>60</sup> Of these, both the UK and the EU had a 100% participation rate. By contrast, of the three IDs with the Special Rapporteur on the Occupied Territories of Palestine (OPT),<sup>61</sup> the EU had participated in 3/3 (100%), while the UK had not participated at all. Percentage participation was a necessary calculation as some mandates were created during the period (hence lower IDs) and others were discontinued. Alongside developing and testing the methodology potential trends were also identified. In the above examples, for instance, both the EU and UK appear to participate regularly in IDs on torture, while the initial data set suggests that the UK opts not to participate in IDs on OPT.

Nevertheless, there are limitations associated with relying solely on quantitative data.<sup>62</sup> For example, it might be inferred that UK participation in certain IDs reflects UK priorities. However, this is less likely to be the case if the purpose of the UK's participation is simply to reiterate the position of the EU. Similarly, where the UK opts not to participate in certain IDs, conclusions might be drawn that this is an area or country in regards to which the UK does not view as a priority. However, the reason for omission might stem from the fact that the EU is reflecting the UK's position, following prior consultation and agreement between both parties. In both cases, these uncertainties suggest that it is necessary to understand the content of UK and EU interventions. The quantitative data was thus supplemented qualitatively by looking to the content of oral statements. Oral statements refer to those contributions made during IDs. They are usually recorded in written form and available via the UN extranet website. In the context of this research project, these statements supplement the quantitative data by informing the content of contributions to IDs, clarifying the nature and purpose of any intervention. This additional information is useful when seeking to determine when UK and EU interventions align or when they differ. Priority areas and diplomatic and political affiliations may be reflected in the data and were cross-referenced as appropriate.

Having identified a workable methodology, limitations, solutions and potential trends, the data collection process was expanded across HRC sessions 1 to 38. The approach of first identifying IDs that had taken place for each HRC Session before tracing UK and EU participation was repeated. This data was further supplemented by examining the content of oral statements. The findings are outlined below.

## **Trends and Patterns**

Figure 1 arranges a number of HRC sessions into clusters on a chronological basis.<sup>63</sup> Overall, it appears that there is a general upward trend in terms of UK participation in interactive dialogues with Special Mandate holders at the HRC over time.

**[inset Figure 1: UK participation in clusters of HRC sessions]**

Nonetheless, there are a number of more specific fluctuations between the clusters of HRC Sessions selected. For instance, from sessions 4 to 5, 15 to 16, 26 to 27, and 35 to 36, UK participation in IDs decreases. Conversely, between sessions 2 and 4, 16 to 17, 27 to 28 and 36 to 35, there is an increase in IDs where the UK opts to engage. Because IDs with different mandate holders are held at each HRC session, the fluctuation of UK participation suggests that there are IDs with which the UK is more likely to engage than other IDs. By contrast, and as demonstrated in figure 2, EU participation rates across the same clusters of HRC sessions are generally consistent and always high. This further suggests that when compared to the UK, the EU appears to participate in most IDs, irrespective of the specific mandate holder in question. This trend reflects the EU as an emergent actor in the Council, establishing its credentials through extensive engagement in public sessions. It also reflects the EU as a more integrated entity vis-à-vis human rights with its former second intergovernmental pillar (security and foreign policy).<sup>64</sup>

**[insert Figure 2: EU participation in clusters of HRC sessions]**

What can clearly be seen in these tables is that both the UK and the EU consistently engage with the interactive dialogue session, thus further consolidating the credentials of both as global players in the human rights movement. Nonetheless, these initial findings raise questions regarding those issues and countries that the UK appears to prioritise. A more detailed analysis of the data across individual HRC sessions 1-38 revealed two broad categories that correspond to these initial inferences. The first involves IDs with special mandate holders where UK participation is high (above 50%) and where UK and EU participation is either identical or similar. These include IDs with both country and thematic mandate holders. The second category points in the opposite direction. While also including IDs with country and thematic mandate holders, UK participation is weak (below 50%) or non-existent, with significant disparities between UK and EU participation. Each category is examined in turn below.

***Category 1: High UK participation Rates and Similar EU involvement***

The IDs that fall within category 1 are those where UK participation is high (over 50%) and often similar to that of the EU. Both country and thematic IDs are included within this group.

***Interactive dialogues with Special Procedure country mandate holders***

The UK, like the EU, has designated priority countries. In the case of the UK, these are thirty identified priority countries for human rights,<sup>65</sup> a list covering most of the UN Special Procedure country mandates.<sup>66</sup> The UK has a broader list of country priorities for general human rights.<sup>67</sup>

The European Council's conclusions on EU priorities in UN Human Rights fora are adopted annually. For 2018, assistance to people in need in Yemen, Syria, Myanmar/Burma, Libya, South Sudan, the Democratic Republic of Congo, the Central African Republic, the Gaza strip and the non-government controlled areas of Ukraine was highlighted,<sup>68</sup> with little change for 2019 priorities.<sup>69</sup> The EU also led on resolutions on DPRK.<sup>70</sup>

There are a number of country-focused IDs across HRC sessions 1 to 38 where UK participation is 50% or above. Countries that fall within this grouping are namely the Central African Republic, Eritrea, Mali, Iran, the Democratic People's Republic of Korea (DPRK), Cambodia, Belarus, Somalia, Myanmar, Côte d'Ivoire, Liberia, Haiti and Sudan. Of 137 IDs with mandate holders from these countries, the UK participated in 116 (approx. 84% participation rate).

In certain cases, the UK has a 100% participation rate (Eritrea (8/8), Mali (5/5), and Iran (7/7)). For three, namely IDs with Special Procedure mandate holders for Central African Republic (CAR) (12/13), Cambodia (12/12) and DPRK (12/13)), the UK has participation rate of 90% or above. In respect of four countries (Belarus (7/8), Somalia (13/15), Myanmar (13/16), Côte d'Ivoire (8/10)), the UK also has a participation rate between 80 and 90%. Participation with IDs with the Special Rapporteur (2005-2009) and the Independent expert (IE) (2009- present) for Sudan (11/14) stands at a 78.6% participation rate, while IDs with the IE (2003-2008) for Liberia (2/4) and the IE for Haiti (6/12) are at 50%.

**[inset Figure 3: Country-specific IDs where EU and UK participation is 50% or over]**

As illustrated in figure 3, with the exceptions of IDs on Haiti and to a lesser extent Sudan and Myanmar, UK and EU participation is either identical or largely similar. That is to say, in IDs with countries where the EU participates, so too does the UK. Perhaps, given the overlap in priority countries, this is not too surprising. With all dialogues, seemingly random factors can impede participation. Such factors include the physical timing of the interactive dialogue in the Council, the concurrent scheduling of bilateral discussions in Palais des Nations, registering to speak on time and the calls of the myriad of side events and diplomatic events which pervade the calendar when the Council is in session.

#### *Interactive dialogues with Special Procedure thematic mandate holders*

Thematic priorities appear to diverge more. Both the UK and EU identify discrete priority areas. These apply within UN human rights fora and may shape additional activities (human rights bilateral dialogues, offers and provision of technical assistance, development funding and so on). As will be seen, the UK's participation in thematic mandate IDs correlates closely to its designated priority areas.

There are a number of thematic mandate holders where UK participation is 50% or more in interactive dialogues. Included in this group are IDs on leprosy, Sexual Orientation and Gender Identity (SOGI), freedom of assembly and association, terrorism, freedom of opinion and expression, violence against women, discrimination against women, contemporary forms of slavery, human rights defenders (HRD), torture, transnational corporations (TNCs), religion and summary executions. Of 134 IDs across these themes, the UK participated in 95, with a participation rate of 71%. The EU participated 129 times with a participation rate of 96%.

IDs with mandate holders on Leprosy, and SOGI show a UK participation rate of 100%.<sup>71</sup> LGBTI rights are a designated UK priority area and contentious within the Council so perhaps that is not surprising. The UK also has a high participation rate of over 80% with IDs relating to terrorism and freedom of expression and association. Such issues as contemporary forms of slavery, human rights defenders, and torture evidence a UK participation rate of 70% percent or more. These each link to priority areas. While less prevalent, religion and Transnational Corporations fall within the bracket of 60% participation, despite freedom of religion or belief being a longstanding priority area, with summary executions consisting of 50% or more. Abolition of the death penalty and torture prevention are current priority areas.<sup>72</sup>

As developed below, UK participation in IDs on other ‘group’ rights such as minorities or Internally Displaced Persons (IDPs) is generally low.<sup>73</sup> The position is more positive with IDs pertaining to the rights of women. For instance, of the 12 IDs on violence against women, the UK has participated in 9, and 5 out of a total of 7 IDs on discrimination against women. This is interesting but could be explained by the UK priority of gender equality.<sup>74</sup>

**[inset Figure 4: Thematic IDs where UK and EU participation is 50% or over]**

### *Summary*

In the main, the IDs with which the UK tends to engage the most pertain to issues that are of a civil and political rights nature, illustrated though high UK participation rates on such issues as torture, religion and summary executions.

Nevertheless, two caveats in particular must be offered at this stage. First, in some cases, UK participation merely supports the position adopted by the EU.<sup>75</sup> This suggests that it is necessary to be cautious when identifying high UK participation rates. For instance, at the 23<sup>rd</sup> HRC Session with the Clustered Interactive Dialogue with Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the ‘United Kingdom support the points made on behalf of the European Union.’<sup>76</sup> Similarly, during the ID with the Special Rapporteur on the Islamic Republic of Iran, the UK endorsed the statement of the EU.<sup>77</sup>

Secondly, as figure 4 shows, despite the high levels of engagement on the part of the UK in IDs with certain thematic mandate holders, there are notable differences between the overall rate of UK and EU participation. In some cases, the EU participates in between one and two IDs more than the UK. Examples include IDs on freedom of assembly and association, contemporary forms of slavery, discrimination against women, human rights defenders, and TNCs. In others cases, the EU participates in between 3 to 5 more IDs than the UK. This suggests that notwithstanding the fact that UK participation rate is over 50% of IDs on specific issues, it is still often lower than EU participation. Approached from the perspective of asking how Brexit might affect UK participation at the HRC, it is notable then that in a number of cases, despite high participation rates, the UK still lags behind the EU.

What emerges from the data is that the UK tends to participate more consistently in IDs with country mandate holders. In most cases, participation rates are either identical or largely similar to that of the EU. In only four instances does the UK opt not to regularly participate in IDs with country mandate holders. These are OPT, Cuba, Burundi and DRC.<sup>78</sup> Although OPT is a designated priority country, the UK has aligned itself with positions of other states, notably the United States, re perceived bias in the Council against Israel.<sup>79</sup> There are also a number of IDs with thematic holders where the UK is a regular participant. While difficult to categorise with precision, it is generally the case that these IDs are civil and political in nature. This category includes such issues as terrorism, slavery and torture. However, notwithstanding high UK participation rates, it is also worth noting that content analysis of oral statements points to the fact that in some cases UK participation merely reflects that of the EU, while in others EU engagement with Special Procedure mandate holders significantly exceeds that of the UK.

Read together and notwithstanding the above caveats, category 1 demonstrates examples of relatively high and consistent participation of the UK in IDs with country mandate holders and IDs with thematic mandate holders dealing with civil and political rights. While this can be seen as a strength, when compared against the level of EU contributions the UK still lags far behind with EU participation higher in relation to almost every issue. This trend is demonstrated further when examining low UK participation rates in the IDs of a number of other country and thematic mandates.

### ***Category 2: Low UK participation Rates and disparities between UK and EU involvement***

The second broad category that emerges from the data includes IDs in respect to which UK participation is both below 50% and/or where significant disparities exist between UK and EU participation. Category 2 highlights those countries and themes where the UK appears less likely to engage and where Brexit might affect the extent to which the UK's perspective is voiced.

### *Interactive dialogues with Special Procedure country mandate holders*

As introduced above, there are four countries where UK participation in country IDs is minimal. These are namely, the Democratic Republic of Congo, Cuba, the Occupied Palestinian Territories and Burundi. In two cases, namely the IDs with the Independent Experts on the Democratic Republic of Congo and Burundi, UK participation has been 33.3% and 25% respectively. In regards to IDs on Cuba and OPT, the UK has not participated at all. The extent of the UK's lack of participation is particularly striking in the context of OPT, where a total of 14 IDs have been held without the UK participating. These figures can be contrasted with EU participation where, with the exception of IDs on Burundi where the EU has participated in 5/8 (62.5%), the rate of participation is 100% (see figure 5).<sup>80</sup> It is also worth recalling that Burundi was the subject of a special session in December 2015<sup>81</sup> and is currently subject to a Commission of Inquiry (CoI).<sup>82</sup> The attention of states was arguably diverted by urgency and seriousness of events around the elections last year and many states engage with the CoI in interactive dialogues with that mechanism.

#### **[inset Figure 5: Country-specific IDs with UK participation 50% or less]**

### *Interactive dialogues with Special Procedure thematic mandate holders*

The picture is more complex when examining the differences that arise in regards to UK and EU participation with Special Procedure thematic mandate holders. Differing from category 1, which could be loosely categorised as compromised of civil and political rights, IDs with thematic Special Procedure mandate holders where UK participation is low are many and diverse. For this reason, subcategories were created to better identify broad groups of issues and themes where the UK appears less likely to engage. While difficult to demarcate with precision and while different interpretations are likely to emerge regarding appropriate classification, the subcategories are *certain* civil and political rights, collective rights, group rights, and socioeconomic rights.

#### *Civil and political rights*

Despite the fact that the UK tends to participate in IDs addressing civil and political issues, there are a number of exceptions. Included in the current grouping are IDs on such issues as privacy, arbitrary detention, independence of judges and lawyers, use of mercenaries and enforced or arbitrary detention. Of the 54 IDs across these 5 issues, the UK participated in just 8 (16.7%). The EU, by contrast, participated in 52/54 with a participation rate of approximately 92%. With the UK's earlier (eg. 2014-2015) priority area of democratic processes and its repeated assertion of commitment to rule of law in its candidatures for the Council, this is surprising. Its position contrasts with the EU, which also professes support for the rule of law and democratic processes, a stance its participation in dialogues corroborates.

The UK has participated in only 4 out of 12 IDs (33%) on the use of mercenaries, and 1 out of a potential 3 IDs (33%) on privacy. IDs on arbitrary detention and independence of judges and lawyers is even less standing at 23.1% (3/13) and 7.7% (1/13) participation rate.

**[insert Figure 6: EU and UK participation in IDs on civil and political rights with 50% or under UK participation]**

Further still, the UK has failed to participate in a single ID on enforced or voluntary disappearances. This is especially curious when death penalty abolition and torture prevention are priority areas, both being inextricably linked to enforced disappearances. In contrast, figure 5 highlights the disparities between EU and UK participation. Only in one case (use of mercenaries) is EU participation below 100%. Across civil and political rights, the EU consistently engages with mandate holders.

*Collective rights*

The second sub-category identified relates to collective rights. While similar to group rights discussed below, collective rights and issues refer to mandates that do not necessarily target a specific group but address collective issues. IDs that fall within this category are racism, trafficking, truth, justice and reparations, foreign debt, poverty, right to development, environment, hazardous waste and substances, international solidarity, unilateral coercive measure, and democratic and international order.

**[insert Figure 7: EU and UK participation in IDs on Collective Rights]**

Of the 105 IDs across these themes, the UK participated in 11 (approx. 10.5% participation rate). The EU by contrast contributed to 80/105 (approx. 77% participation rate). In all cases, UK participation is less than 33% of overall IDs. Three IDs demonstrate a rate of UK participation between 20 and 30% (racism 4/18 (22.2%), trafficking 3/11 (27.3%), and truth, justice and reparations (2/7 (28.6%)), this despite modern slavery being a UK priority area. In two cases, namely IDs on foreign debt and poverty, UK participation rate is 7.1% and 6.7% respectively. Given the forthcoming addendum on the UK mission by the Special Rapporteur on poverty, this may change.<sup>83</sup> Beyond these examples, the UK has not opted to participate in IDs on such issues as the right to development, democratic and equitable international order; unilateral coercive measure; international solidarity; environment, and hazardous waste and substances. With the UK one of the countries meeting the 0.7% ODA of the UN Sustainable Development Goals (SDGs), the lack of engagement on development is perhaps the most surprising. It is also notable that the UK has hosted the SR on hazardous waste and substances.<sup>84</sup>

By contrast, in the vast majority of cases, EU participation is between 90% and 100%. As with civil and political rights, the EU appears to embrace engagement with SPs regardless of topic. In three instances, namely IDs on foreign debt, democratic & equitable international order, and unilateral

coercive measures, EU participation is less than 33%. With these three exceptions, it is evident that the UK is currently less likely than the EU to engage on IDs addressing collective issues.

### *Groups and group rights*

While similar to collective rights, groups and group rights refer to mandate holders whose remit focuses on a specific and definable group. IDs that fall within this category are IDPs, indigenous peoples, older persons, migrants, children (sale of children and child pornography), people of African descent, people with disabilities and the Albino community. As noted above, LGBTI and persons with leprosy have experienced high engagement from the UK.

Of the 90 IDs across these issues, the UK participated in just eight (8.9%). The EU, by contrast, participated in 86/90 (participation rate of approximately 96%). In all instances examined, UK participation is less than 25% of the scheduled IDs. Once again, it appears that the UK currently benefits from its membership of the EU in that as part of the EU it engages consistently in IDs with mandate holders.

#### **[inset Figure 8: EU and UK participation in IDs on Group Rights]**

The extent of the UK's absence is best demonstrated by reference to IDs with certain mandate holders. Examples include IDs on IDPs, where UK participation was 2/13 (15.4%), indigenous peoples, which returned a rate of 1/13 (7.7%), as did IDs with mandate holders on the rights of migrants, sale of children and people of African descent. The lack of engagement with the SR rights of persons with disabilities is particularly striking given that the UK has been a strong proponent of those rights and was an early adopter of laws on disability discrimination.<sup>85</sup> This is a comparatively new and popular mandate with both the UK and the EU being party to the salient Convention.<sup>86</sup>

### *Economic, social and cultural rights*

The final sub-category is that of economic, social and cultural rights. The data suggests that the UK rarely engages in IDs addressing rights of this nature. For instance, of 71 IDs included within this grouping, the UK has participated in just 11 (15.5% participation rate). The EU, in comparison, has participated in 69/71 (approx. 97%). IDs that fall within this category include the right to health, right to education, right to water and sanitation, cultural rights, right to housing and the right to food.

#### **[inset Figure 9: EU and UK participation in IDs on Economic, Social and Cultural Rights]**

In each case, UK participation is less than 25% of the overall number of IDs. By contrast, figure 8 illustrates only two exceptions to the EU's 100% participation record (right to education and right to housing). Both those areas are subject to EU regulation especially for migrant workers.

In sum, the data suggests that the UK does not necessarily prioritise all civil and political rights but rather certain civil and political rights. More explicitly, it suggests three sub-categories of with which the UK rarely engages in this public forum: group rights, collective rights and economic, social and cultural rights. One notable exception to group rights is the UK's participation in issues pertaining to the rights of women. In contrast to the intermittent engagement with these issues by the UK, the EU regularly participates in IDs irrespective of mandate. This further suggests that not only is there a number of areas where the UK does not participate but that significant differences exist between UK and EU participation.

### ***Reflections on UK Participation in Interactive Dialogues and UK Priorities***

What is apparent from the data is the extent to which UK participation reflects designated priority areas. Reviewing the UK's participation in HRCs in 2018, what emerges is a clear picture of UK involvement in IDs that reflect thematic designated priorities. For instance, during 2018 the UK has participated in the only ID on freedom of religion<sup>87</sup> and torture.<sup>88</sup> It also participated in the only ID on SOGI.<sup>89</sup> During 2018 and in promotion of Gender Equality, at the 38<sup>th</sup> HRC Session the UK participated in the only ID on the issue of discrimination against women. Moreover and more precisely, the UK's oral statement demonstrates its firm commitment to girls' education:

We must also remain unified in our belief that girls' education and women's economic empowerment remain the key to unlocking a world free from violence and discrimination – and a world which leaves no one behind. That is why we are committed advocates for 12 years of quality education for every girl across the globe.<sup>90</sup>

The UK also participated in the 38<sup>th</sup> HRC Session Clustered interactive dialogue with the Independent Expert on human rights and international solidarity and the Special Rapporteur on the right to education. Directing its comments to the issue of education, this was only the third time of a possible 12 IDs that the UK has participated in an ID on education. Interestingly, the content of that contribution underlined the importance of girl's education noting, amongst other things, that '[a]ll of us must - and can - do more to make 12 years of quality girls' education a priority, which is why we hope to count on your support for a joint statement that makes exactly this point.'<sup>91</sup>

Looking to HRC sessions that fell within 2014-2015<sup>92</sup> similar patterns emerge. For instance, the UK participated in 2 out of a possible 2 IDs on freedom of expression;<sup>93</sup> torture;<sup>94</sup> religion;<sup>95</sup> summary executions,<sup>96</sup> and preventing sexual violence against women.<sup>97</sup> The UK also participated in IDs pertinent to such issues as democratic processes like human rights defenders<sup>98</sup> and in at least 50% of IDs on TNCs<sup>99</sup> and discrimination against women.<sup>100</sup> Again, where not stated as a priority, the UK did not participate in IDs on cultural rights,<sup>101</sup> right to food,<sup>102</sup> right to health<sup>103</sup> and IDPs.<sup>104</sup> It is also

interesting to look at those IDs where the UK does not engage. For instance, at the 37<sup>th</sup> HRC session, the UK did not participate in IDs on truth, justice, reparations and non-repetition, TNCs, disabilities and the environment. Similarly, at the 38<sup>th</sup> HRC the UK did not participate in IDs on the independence of Judges and Lawyers, poverty, or IDPs. None of these IDs fell within the priorities set for 2018.

## **Implications and Potential Responses**

These results demonstrate that the UK is less active and considerably more selective than the EU in its participation in interactive dialogues with Special Procedures. Should the UK continue to focus on a narrow subset of rights post-Brexit, it is likely that it will be unable to contribute to the shape and development of aspects of the international human rights project outside of these areas. It should also be recalled that Special Procedure mandate holders are frequently tasked with drafting guidelines and preparing guidance, which pertains to all states and the UK would lose its influence in shaping this discourse.<sup>105</sup> The consequences of the UK's current approach may therefore have ramifications both on its actual influence in shaping the human rights agenda and on its reputation as a beacon of human rights. The question is then one of what, if anything, can be done to prevent a backslide in UK human rights diplomacy? The remainder of this paper considers a number of potential responses for the UK to consider: continuing to align with the EU irrespective of its withdrawal; adopt and then engage across a broader range of human rights priorities; invest more in human rights diplomacy; and play a more active role in other areas of the council.

### *Continue to align with the EU*

The first potential response would be for the UK to continue to act in alignment its European counterparts. The UK has been at the forefront of pushing for such issues as women's rights and has been instrumental in pushing forward a relatively liberal EU human rights agenda. Understanding the influence of the UK in the EU is important and it is acknowledged that the UK might continue to align with the EU on certain issues. Their shared historic focus on perceived democracy rights (including freedoms of expression, religion, assembly and association) is but one example. The (currently draft) Political Declaration setting-out the framework for the future relationship between the EU and the UK envisages such cooperation in the future.<sup>106</sup> The declaration foresees shared positions at multilateral institutions:<sup>107</sup>

The Parties should seek to cooperate closely in third countries, including on security, consular provision and protection, and development projects, as well as in international organisations and fora, notably in the United Nations. This should allow the Parties, where relevant, to support each other's positions, deliver external action and manage global challenges in a coherent manner, including through *agreed statements, demarches and shared positions*.<sup>108</sup>

As we have demonstrated, the UK is not averse to simply adopting the EU position on issues within the ID sessions. That said it has done so sparingly and generally in relation to issues on which it recognises as a priority in the first instance. While this solution would perhaps present the most straightforward manner in which the UK could continue to shape the dialogue, caution should be voiced. In the first instance, one must not overlook the possibility of a change in dynamics within the EU resulting from the UK's withdrawal. According to Gifkins, Jarvis and Ralph, 'for any loss of influence that the UK may experience there are other states looking to capitalise on shifting capacity.'<sup>109</sup> More worryingly, scholars have noted, that Brexit might create space for less liberal states to advance their own particular agendas within the EU. As Richard Gowan states:

More conservative EU members – including Hungary, Malta, and Poland – may take the opening provided by Brexit to rein in what they see as the egregiously progressive norms on issues such as gender and sexuality pushed by more liberal members, sowing more dissension in the bloc. At a minimum, these conservatives have the potential to stop the EU establishing new progressive positions at the UN as a bloc – at a time when other Western UN members, such as Canada and Norway, are loudly promoting liberal positions.<sup>110</sup>

In other words, the possibility that the UK might continue to align with the EU's position presupposes that the EU's position will remain consistent. This may not be the case if power struggles within the EU emerge. This suggests that not only does the UK not promote such issues as economic, social and cultural rights, but also the opportunities to align with others who do so may dwindle. While the recent rise in right-wing populism and anti-human rights rhetoric in Europe is certainly a cause for concern, the inherent link between human rights and the EU's ideological project may ultimately offset any negative implications on the EU's external human rights policies. Those within the EU who are deeply committed to the position of human rights in the broader 'European project' may not permit any reduction in the EU's strength, particularly given the recent momentum in multilateral human rights diplomacy. Instead, it is perhaps more likely that those states with governments are hostile to the human rights project follow Britain's lead and exit the EU.

A further concern to be mindful of is that this approach would render the UK advancing external human rights priorities that it had taken no part in shaping. Far from the mantra of 'taking back control' which underpinned the leave campaign during the referendum, the UK would be reduced to advancing its own narrow set of priorities and merely echoing the concerns of a supranational organisation which it had previously wielded considerable influence within. Thus, while alignment with the EU based on the current priorities, which the UK has assisted in shaping is certainly an option, and given the draft political statement may be the preferred solution, merit may lie instead in a deeper consideration of the UK's human rights priorities.

### *Broaden Human Rights Priorities*

In order to determine how the UK might widen those areas with which it opts to participate, it is necessary to consider why the UK currently restricts its contributions to specific IDs in the first place. This can be understood by contrasting the internal urges within the EU with those within the UK. As a collective of states endeavouring to represent a unified position, the EU must attempt to reconcile and converge the individual interests and priorities of states. The result of combining individual state priorities tends to be a broader spectrum of issues that the EU identifies as priorities, itself an exercise in, and an example of, diplomacy and accommodation within a supranational institution. This, alongside a staunch commitment to promoting and protecting human rights more generally, helps to explain the more extensive participation of the EU across the vast majority of IDs. In other words, the broad range of priorities helps to explain the broad participation of EU at IDs. The EU's involvement in so many IDs therefore stems from the multiplicity of priorities that emerge from individual states with individual priorities coming together collectively.

The same logic applies when approached from the perspective of the UK. UK participation in IDs is both a manifestation and result of the political priorities it sets. This suggests therefore that in order to play a more proactive role in IDs, and thus to advance a broader range of issues, the UK must alter its policy on human rights priorities. This becomes apparent when comparing UK participation in IDs with UK priorities. Thus, the extent to which the UK participates in IDs, themselves a mechanism for helping shape the international human rights project, appears to stem primarily from national human rights priorities. To this end, Brexit presents a potential opportunity for the UK to reappraise its priorities.

There are, however, also difficulties with this approach. The UK has proven relatively consistent in the human rights issues it seeks to prioritise abroad. This is substantiated when comparing UK priorities from the time of the HRC's inception in 2006 until the present day. When seeking to argue that the UK must broaden its priorities in order to contribute to the ongoing development of the human rights project, it is helpful to outline some potential ways that this might be achieved. Garnering support for its next HRC candidacy affords an opportunity to refresh the priority list, reflecting the UK as a political actor outwith the EU. Recent reports by Special Procedure mandate holders on the UK offer a window of self-reflection and an opening for the UK to strengthen engagement on, for example, extreme poverty and privacy.<sup>111</sup> With the UK undergoing a voluntary national review at the High Level Political Forum, the SDGs also offer a possibility to reframe its priorities.<sup>112</sup> A broader more inclusive range of themes in particular would be welcome and reflect a commitment to the universality, interrelatedness, indivisibility and interdependence of rights and

freedoms. In turn, this presents an opening for civil society actors to petition the government to have their areas of practice elevated to a higher national standing.

### *Invest more in human rights diplomacy*

A follow on from the above point is that any conscious political decision to be more proactive across all IDs should be supported by targeting resources to support more extensive human rights diplomacy. Greater awareness of all human rights and indeed their interdependence, interrelatedness and indivisibility<sup>113</sup> should advance UK engagement across all areas. The Department for International Development should also reflect the expanded, more holistic priorities cutting across rights and freedoms whether individual or collective. As noted above, the HLPF offers an early post scheduled-Brexit to display the UK's commitment across such a spectrum of rights and freedoms. One recent development in this regard is the appointment of Rita French by UK Foreign Secretary Jeremy Hunt on 20 May 2019 as International Ambassador for Human Rights. The purpose of this role is to champion human rights across the globe.

Within the UK itself, more work remains to be done in terms of human rights education and awareness raising. The negative reactions amongst parliamentarians and many sectors of media to the recent UK mission by the UN Special Rapporteur on extreme poverty, Professor Philip Alston, is symptomatic of the problem.<sup>114</sup> The UK itself is not immune to human rights infringements and it can share experiences with states in interactive dialogues. Training, not least in accordance with the commitments on the World Programme of Human Rights Education, would perhaps help capture the negativity and release a more positive constructive approach.

Working with a wide range of civil society actors in the UK as well as across the world could evolve into a global engagement on all human rights issues, rather than the current focus on a narrower range of priority areas. More funding may be required and more training. Changing priorities will also require other constituents lobbying UK government to do their priorities. This could involve, for instance, civil society actors working on such issues as economic, social and cultural rights.

### **Conclusions**

The findings of this paper support views that both the UK and EU are beacons of human rights. However, there are clear differences regarding the extent to which these constituents engage in the full international human rights project. While with a few exceptions the EU engages in almost all IDs, UK involvement in IDs appears more targeted. It tends to prioritise certain countries and specific civil and political rights. The implications of Brexit are such that this narrower focus is likely to mean that the UK will be unable to exert its influence on the development of such issues as group rights,

collective rights and economic, social and cultural rights. To address this, this paper has sought to argue that the UK will need to expand its focus. By drawing connections between the UK's involvement in IDs with national priorities set by government, this paper has also sought to suggest that post-Brexit, the UK will be forced to reconsider its priorities both as a matter of maintaining its position as an influential beacon of human rights and for the international human rights project more generally.

Brexit might also create opportunities for the UK to play a greater and broader role in promoting the full range of human rights. Yet in order to seize upon these the UK will need to increase its voice at the Council and, in this vein, to contribute to more IDs to influence a wider range of human rights issues. As the UK demits membership of the HRC and leaves the EU, the time for it to address the causes for concern and seize emerging opportunities for universal international human rights diplomacy is now.

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## Notes

<sup>1</sup> Jan Wouters and Katrien Meuwissen, 'The European Union at the UN Human Rights Council: Multilateral Human Rights Protection Coming of Age?', Leuven Centre For Global Governance Studies, Working Paper No. 126 (2013).

<sup>2</sup> Dzidek Kędzia, Michael O'Flaherty, and George Ulrich, *Report from the High-Level Workshop on Human Rights Diplomacy*, held in Venice, 30-31 January 2009.

<sup>3</sup> Yuchao Zhu, 'China and International Human Rights Diplomacy', *China: An International Journal* 9, no. 1 (2011): 1.

<sup>4</sup> Sandy Vogelgesang, 'Diplomacy of Human Rights', *International Studies Quarterly* 23, no. 2 (1979): 219.

<sup>5</sup> See, for example, Foreign & Commonwealth Office [FCO hereinafter], *Human Rights & Democracy: The 2015 Foreign & Commonwealth Office Report* (2016).

<sup>6</sup> United Nations, *The Atlantic Charter*, 14 August 1941, especially fifth and sixth iterations.

<sup>7</sup> The Royal Institute of International Affairs, *United Nations Documents 1941-1945* (1947), 9-11 (The Atlantic Charter and St James' declaration).

<sup>8</sup> *Ibid.*, St James' Declaration, Resolution 3.

<sup>9</sup> United Nations, *The Yearbook Of The United Nations, 1946-47* (1947), (Part 1: The United Nations. Section 1: Origin and Evolution).

<sup>10</sup> See United Nations, *Documents Of The United Nations Conference On International Organization, San Francisco* (1945) Volume III, Dumbarton Oaks Proposals, Preamble.

<sup>11</sup> Comprising the Universal declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the implementation mechanisms.

<sup>12</sup> Dag Hammarskjöld Library, *Drafting of the Universal Declaration of Human Rights*, <http://research.un.org/en/undhr/draftingcommittee> (accessed May 29, 2019)

<sup>13</sup> The UK was a member of the Commission during the following periods: 1947-1978, 1980-1990, 1992-2006. As for its key Sub-Commission on the Promotion and Protection of Human Rights, Francoise Jane Hampson was a UK member.

<sup>14</sup> The UK has ratified seven of the nine designated core UN human rights treaties, accepts three inquiry processes and one individual communication process.

<sup>15</sup> The Human Rights Act 1998 gives further effect in national laws to most provisions of the Council of Europe's European Convention on Human Rights.

<sup>16</sup> Almost all former colonies have written constitutions (only New Zealand like the UK itself has no written constitution) with most acknowledging human rights.

<sup>17</sup> There is now a joint parliamentary select committee on human rights, see

<https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/> (accessed May 29, 2019)

<sup>18</sup> See FCO, *United Kingdom Mission to the United Nations*, <https://www.gov.uk/world/organisations/uk-mission-to-the-uk-joined-nations-geneva> (accessed May 29, 2019)

<sup>19</sup> Sir Jeremy Greenstock, Written evidence, in *Soft Power and the UK's Influence Committee Oral and Written Evidence – Volume 1*, (14 Aug. 2013).

<sup>20</sup> FCO, *Business Plan 2011-2015, Foreign and Commonwealth Office*, 1 (May 2011).

<sup>21</sup> FCO, *Corporate Report, Foreign and Commonwealth Office Single Departmental Plan*, 2018, in particular and 2.1; FCO Priorities 2017-2018 and 2.2 'Champion Democracy and Human Rights'.

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- <sup>22</sup> European Council, *Protection and promotion of human rights*, <https://www.consilium.europa.eu/en/policies/human-rights/> (Accessed May 29, 2019).
- <sup>23</sup> Article 21.1 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, Article 34.1. See further, Annabel Egan and Laurent Pech, 'Respect for Human Rights as a general objective of the EU's external action', in *Research Handbook on EU Law and Human Rights*, ed. Sionaidh Douglas-Scott and Nicholas Hatzis, (Cheltenham: Edward Elgar Publishing Limited, 2017).
- <sup>24</sup> The Council of the European Union, *EU Annual Report on Human Rights and Democracy in the World* (2017).
- <sup>25</sup> The Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (2012).
- <sup>26</sup> Gjovalin Macaj and Joachim A. Kooops, 'Inconvenient Multilateralism: The Challenges of the EU as a player in the United Nations Human Rights Council', in *The EU as a "Global Player" in Human Rights*, ed. Jan E. Wetzel (London and New York: Routledge, 2011).
- <sup>27</sup> *Ibid.*, 80.
- <sup>28</sup> Karen E. Smith, 'The European Union at the Human Rights Council: speaking with one voice but having little influence', *Journal of European Public Policy* 17, no 2 (2010).
- <sup>29</sup> Egan and Pech, *supra note* 23, 247.
- <sup>30</sup> The Council of Europe (2012), *supra note* 25.
- <sup>31</sup> Egan and Pech, *supra note* 23, 256.
- <sup>32</sup> European Commission, *Communication from the Commission to the Council and the European Parliament on the European Union and the United Nations: The Choice of Multilateralism* (2003)
- <sup>33</sup> A/HRC/RES/5/1, rule 7(a).
- <sup>34</sup> Wouters and Katrien, *supra note* 1, 7.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> Treaty on European Union, *supra note* 23, Article 34.1.
- <sup>37</sup> Egan and Pech, *supra note* 23, 248.
- <sup>38</sup> FCO, *UN Human Rights Council: United Kingdom 2014 - 2016 candidate*, 4, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/142894/UN\\_HRC\\_-\\_UK\\_Candidacy\\_2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/142894/UN_HRC_-_UK_Candidacy_2014.pdf) (accessed May 29, 2019).
- <sup>39</sup> Membership of the Council is fixed in term for a period of 3 years with states eligible to serve a maximum of two consecutive terms.
- <sup>40</sup> The UK was an initial member from 2006-2008. It was then re-elected 2009 – 2011, before serving 2014-2016 and 2017-2019.
- <sup>41</sup> The terminology of 'leader', 'global player' and 'champion' is used interchangeably in order to refer to the contributions that the UK can make in terms of its human rights diplomacy. This is to be distinguished from the wider perception of the UK's human rights record, which traditionally and currently has remained questionable.
- <sup>42</sup> See Oliver P. Richmond, *The transformation of peace* (Basingstoke: Palgrave Macmillan, 2015); Oliver P. Richmond, *A post-liberal peace* (London: Routledge, 2011)
- <sup>43</sup> UN General Assembly, *Human Rights Council: resolution /adopted by the General Assembly*, 3 April 2006, A/Res/60/251.
- <sup>44</sup> Paras 3 and 5, GA Res. 60/251.
- <sup>45</sup> Para. 5(e), GA Res.60/251.
- <sup>46</sup> Para. 6, GA Res.60/251.
- <sup>47</sup> Special Procedures were reviewed by the Human Rights Council and strengthened under Resolution 5/1
- <sup>48</sup> For example, the appointment of the Occupied Palestinian Territories divided the Council in 2014 and 2016.
- <sup>49</sup> See Office of the High Commissioner for Human Rights (OHCHR), *Manual of the United Nations Human Rights Special Procedures* (2008), <https://www2.ohchr.org/english/bodies/chr/special/manual.htm> (accessed May 29, 2019).
- <sup>50</sup> For example, poverty, internally displaced persons, trafficking, privacy, Iran.
- <sup>51</sup> The Special Rapporteur on Trafficking in persons especially women and children participated in an open debate in the Security Council in June 2016 on conflict-related sexual violence. See Report of the twenty-first annual meeting of special rapporteurs, representatives, independent experts and working groups of the Special Procedures of the Human Rights Council, including updated information on the Special Procedures Annual Report, UN Doc A/HRC/34/34, para 32.
- <sup>52</sup> For example, in June 2017, the UN Special Rapporteurs on the rights of indigenous peoples (Victoria Tauli Corpuz), on human rights defenders (Michel Forst) and on the environment (John Knox) joined with the IACHR Rapporteur on Indigenous Peoples (Francisco Jose Eguiguren Praeli) to denounce attacks on indigenous and environmental rights in Brazil. See OHCHR, *Indigenous and environmental rights under attack in Brazil, UN and Inter-American experts warn*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21704&LangID=E> (accessed May 29, 2019)
- <sup>53</sup> With Country mandates, the state under review always has the opportunity to respond to the report tabled. Note that only five of the twelve mandates currently have access to visit the state under review.
- <sup>54</sup> For example, Occupied Palestinian territories, Democratic Peoples Republic of Korea, Freedom of Expression, and Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity.
- <sup>55</sup> Hilary Charlesworth and Emma Larking, *Human Rights and The Universal Periodic Review: Rituals And Ritualism* (Cambridge: Cambridge University Press, 2015).
- <sup>56</sup> For instance, scholars such as Upton commend the decision to both keep and enhance NGO participation (Helen Upton, 'The Human Rights Council: First Impressions and Future Challenges', *Human Rights Law Review* 7, no. 1 (2011): 32.
- <sup>57</sup> Claire Callejon, 'Developments at the Human Rights Council in 2007: A Reflection of its Ambivalence' *Human Rights Law Review* 8 (2008): 339.

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<sup>58</sup> Note that at the time of conducting the empirical research, the 39<sup>th</sup> HRC Session Report was not available. Thus, HRC Session 39 does not form part of this study.

<sup>59</sup> See, for example, the Universal Rights Group Geneva's Portal on HRC Session Reports: <https://www.universal-rights.org/category/urg-human-rights-council-reports/> (accessed May 29 2019)

<sup>60</sup> HRC sessions 31, 34 and 37.

<sup>61</sup> HRC sessions 31, 34, and 37.

<sup>62</sup> See, for discussion, Todd Landman, 'Quantitative Analysis', in *Research Methods In Human Rights* ed. Lee McConnell and Rhona Smith (London: Routledge, 2018).

<sup>63</sup> Cluster 1 includes HRC sessions 3, 4, and 5; cluster 2 includes HRC sessions 15, 16, and 17; cluster 3 includes HRC sessions 26, 27, and 28; and cluster 4 includes HRC sessions 35, 36, and 37.

<sup>64</sup> Pillars established by the treaty of Maastricht and abolished by the Lisbon treaty. The Lisbon treaty established the EU with a single legal personality (Article 24 TEU) ensuring its distinct international legal personality.

<sup>65</sup> FCO, Human Rights and Democracy Report (2017). See also FCO, Corporate Report Human Rights Priority Countries: Human Rights Minister Gives Update (7 December 2018).

<sup>66</sup> Myanmar/Burma, Eritrea, Iran, Occupied Palestinian Territories, CAR, Somalia, Sudan, Syria and DPRK. Only Cambodia, Mali and Belarus have country mandates but do not appear on the FCO priority countries.

<sup>67</sup> *Ibid.*, FCO (2017).

<sup>68</sup> Note the EU also operates a system of bilateral human rights dialogues with a long list of countries – see EU guidelines on human rights dialogues, [https://eeas.europa.eu/topics/human-rights-democracy\\_en](https://eeas.europa.eu/topics/human-rights-democracy_en) (accessed May 29, 2019)

<sup>69</sup> Delegation of the European Union to the UN and other international organisations in Geneva, EU Priorities for the 40th Session of the Human Rights Council (2019).

<sup>70</sup> With Japan, EU pushed for HRC res. 37/28, which extended the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

<sup>71</sup> It is, however, noteworthy that these are relatively recent mandates with only 2 IDs held with these relatively recent mandate holders up until and including the 38<sup>th</sup> HRC session.

<sup>72</sup> FCO Update (2018), *supra* note 65.

<sup>73</sup> See *infra* sections 4.2.2.2 and 4.2.2.3., on collective and group rights.

<sup>74</sup> FCO Update (2018), *supra* note 65.

<sup>75</sup> See, for example, UK, Human Rights Council- 11<sup>th</sup> Session, *Statement for the Interactive Dialogue With The Special Rapporteur on Freedom of Opinion and Expression and The Special Rapporteur on the Right to Health* (7 June 2009).

<sup>76</sup> UK, Human Rights Council- 23<sup>rd</sup> Session, *Clustered Interactive Dialogue with Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Dr Christof Heyns and Special Rapporteur on Internally Displaced People, Dr Chaloka Beyani* (29 May 2013).

<sup>77</sup> Interactive dialogue with the Special Rapporteur on the situation of human rights in Iran – Asma Jahangir 13 March 2017.

<sup>78</sup> Cambodia, Mali and Belarus have country mandates but do not appear on the FCO priority countries, all other country mandates are listed as UK priority countries.

<sup>79</sup> See, for example, UK Mission to the United Nations Geneva, Human Rights Council 37: Explanation of Votes on Resolutions on Israel and The Occupied Palestinian Territories (23 March 2018).

<sup>80</sup> Commission resolution 2004/82 'Decides to appoint an independent expert to provide backing for the Government of Burundi in its efforts to improve the human rights situation.' The mandate ended with the establishment of the Independent National Commission of Human Rights (INCHR) in Burundi in accordance with Council resolution 9/19, which decided 'to extend the mandate of the independent expert until an independent national human rights commission has been established.'

<sup>81</sup> See 24th special session of the Human Rights Council on preventing further deterioration of the human rights situation in Burundi - 17 December 2015.

<sup>82</sup> See, for instance, UK HRC 38- statement at 38<sup>th</sup> Human Rights Council Session June 2018,

<https://www.gov.uk/government/news/human-rights-council-38-human-rights-in-burundi> (accessed May 29, 2019). The Human Rights Council established the Commission of Inquiry on Burundi through resolution 33/24 of 30 September 2016. Its mandate was renewed twice, each time for one additional year by resolution 36/19 adopted on 4th October 2017 and by resolution 39/14 adopted on 28 September 2018.

<sup>83</sup> See Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E> (accessed May 29, 2019)

<sup>84</sup> See Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to the United Kingdom of Great Britain and Northern Ireland, A/Hrc/36/41/Add.1

<sup>85</sup> Disability Discrimination Act 1995 (now subsumed by the Equality Act 2010).

<sup>86</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/Res/61/106, which is the first human rights treaty the EU ratified.

<sup>87</sup> 37<sup>th</sup> HRC Session.

<sup>88</sup> 37<sup>th</sup> HRC Session.

<sup>89</sup> 38<sup>th</sup> HRC Session.

<sup>90</sup> UK, HRC session 38- Statement for the Working Group on discrimination against women and the Special Rapporteur on trafficking in persons, especially women and children (20 June 2018).

<sup>91</sup> UK, HRC 38<sup>th</sup> Session, *Statement for the interactive dialogue with the special rapporteur on the right to education* (18 June 2018).

<sup>92</sup> 22nd Session 25th February to 22nd March, 2013 to 27<sup>th</sup> Session 8th – 26th September, 2014.

<sup>93</sup> 23<sup>rd</sup> and 26<sup>th</sup> HRC Sessions.

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<sup>94</sup> 22<sup>nd</sup> and 24<sup>th</sup> HRC Sessions.

<sup>95</sup> 22<sup>nd</sup> and 25<sup>th</sup> HRC Sessions.

<sup>96</sup> 23<sup>rd</sup> and 26<sup>th</sup> HRC Sessions.

<sup>97</sup> 23<sup>rd</sup> and 27<sup>th</sup> HRC Sessions.

<sup>98</sup> 22<sup>nd</sup> and 24<sup>th</sup> HRC Sessions.

<sup>99</sup> 26<sup>th</sup> HRC Session.

<sup>100</sup> 23<sup>rd</sup> HRC Session.

<sup>101</sup> 23<sup>rd</sup> and 25<sup>th</sup> HRC sessions.

<sup>102</sup> 22<sup>nd</sup> and 24<sup>th</sup> HRC Sessions.

<sup>103</sup> 23<sup>rd</sup> and 26<sup>th</sup> HRC Sessions.

<sup>104</sup> 23<sup>rd</sup> and 26<sup>th</sup> HRC Sessions.

<sup>105</sup> In 2005, the UN Commission on Human Rights adopted resolution E/CN.4/RES/2005/69 requesting “Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises”. This subsequently led to A/HRC/Res/8/7, which requested the Special Representative to operationalize the Protect, Respect and Remedy” Framework proposed by the Special Representative in his final report under the 2005 mandate. The result was the adoption of the United Nations Guiding Principles on Business and Human Rights.

<sup>106</sup> The Political Declaration states that: ‘The Union and United Kingdom are determined to work together to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers’ rights, consumer and environmental protection, and cooperation against internal and external threats to their values and interests’. (see UK Government, Political Declaration Setting out the Framework for the Future Relationship Between the European Union and the United Kingdom, para. 2 (2018)).

<sup>107</sup> *Ibid.*, Para 6: reaffirms a commitment to multilateralism.

<sup>108</sup> *Ibid.*, para 2. see also para 92.

<sup>109</sup> Jess Gifkins, Samuel Jarvis and Jason Ralph, ‘Global Britain in the United Nations’, United Nations Association- UK, 3 (2019).

<sup>110</sup> Brian Gowan, With China ascendant, Britain’s ability to shape human rights at the UN now looks uncertain (10<sup>th</sup> May 2018), London School of Economics Blogpost, <https://blogs.lse.ac.uk/brexit/2018/05/10/with-china-ascendant-britains-ability-to-shape-human-rights-at-the-un-now-looks-uncertain/> (accessed, May 29, 2019)

<sup>111</sup> See, for example, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland*, A/HRC/35/28/Add.1.

<sup>112</sup> See Danish Institute for Human Rights, ‘Human Rights and the 2030 Agenda for Sustainable Development: Lessons Learned and Next Steps’ (Denmark: The Danish Institute of Human Rights, 2018).

<sup>113</sup> UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23.

<sup>114</sup> His final country report is available as A/HRC/41/39/Add.1, published 22 May 2019. See, for responses, Carly Read, ‘Brexit-bashing UN diplomat blasts Britain as ‘mean-spirited and callous’ in welfare rant’ (17 Nov. 2018), Daily Express <https://www.express.co.uk/news/politics/1046677/brexit-news-United-nations-Philip-Alston-poverty-theresa-may> (accessed May 29, 2019); Leo McKinstry, *Anti-austerity rant of UN envoy who compares ‘mean’ Britain to communist China is another demolition job on the UK... funded with our own cash!* (17 Nov. 2018) Mail Online, <https://www.dailymail.co.uk/debate/article-6399879/Anti-austerity-rant-envoy-compares-mean-Britain-communist-China.html> (accessed May 29, 2019)

# Brexiting Human Rights Diplomacy at the United Nations Human Rights Council: Opportunity or Cause for Concern?

## Figures

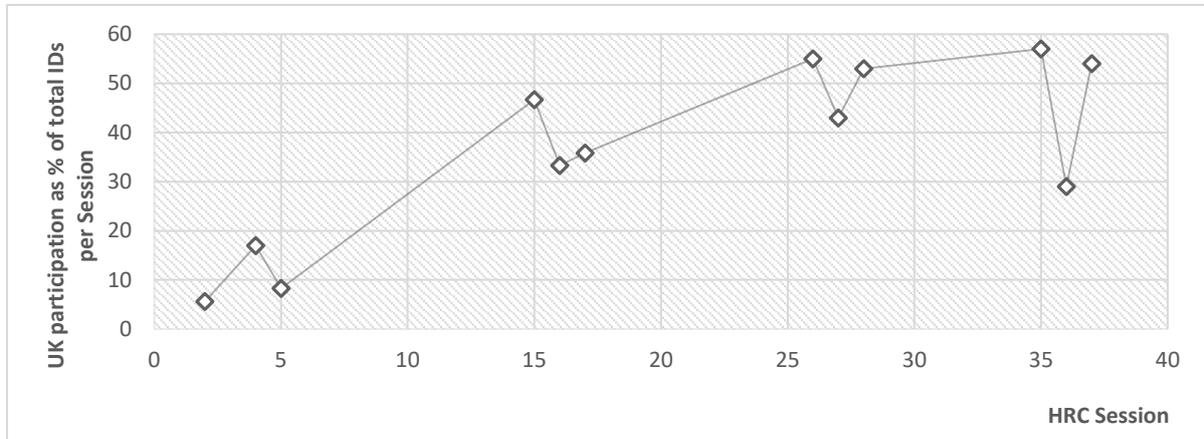


Figure 1: UK participation in clusters of HRC sessions

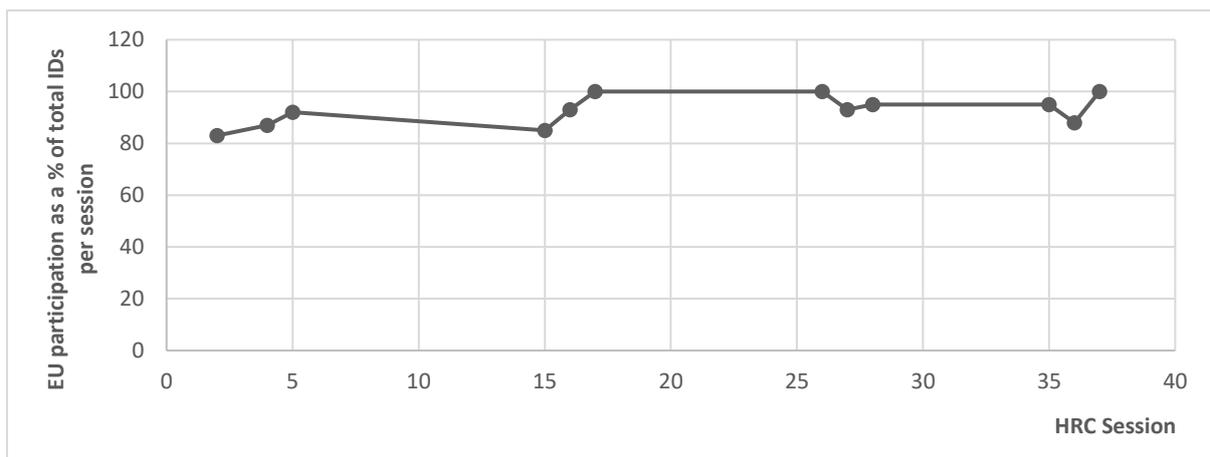


Figure 2: EU participation in clusters of HRC sessions

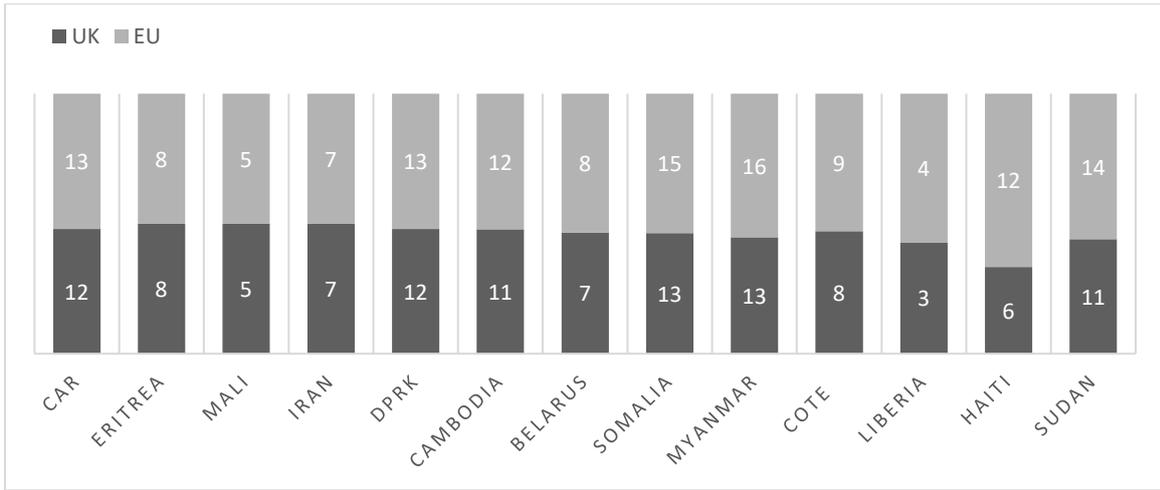


Figure 3: Country-specific IDs where EU and UK participation is 50% or over

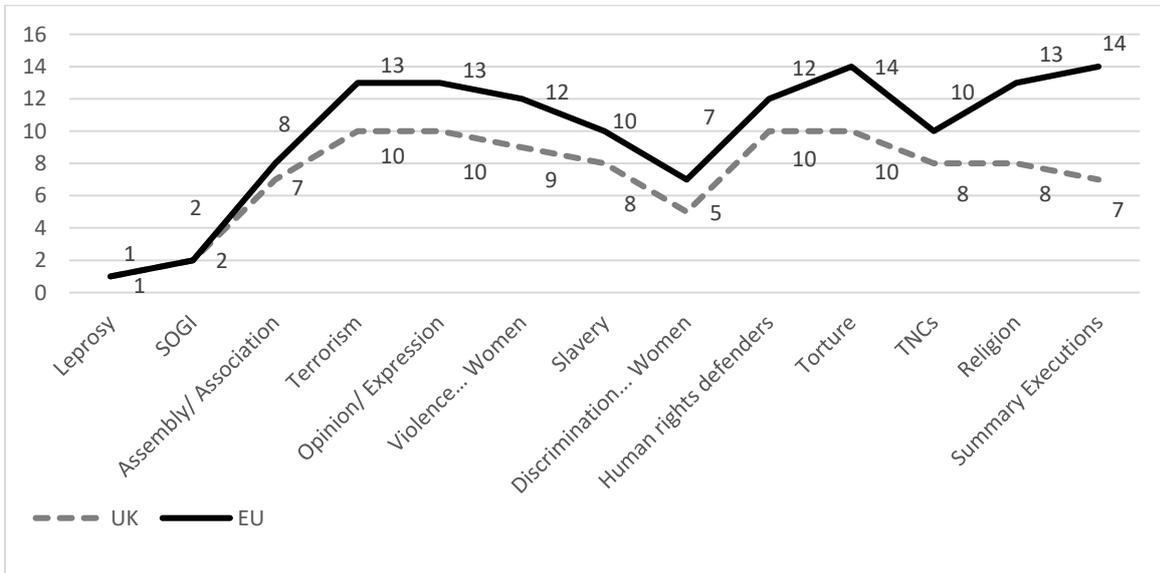


Figure 4: Thematic IDs where UK and EU participation is 50% or over

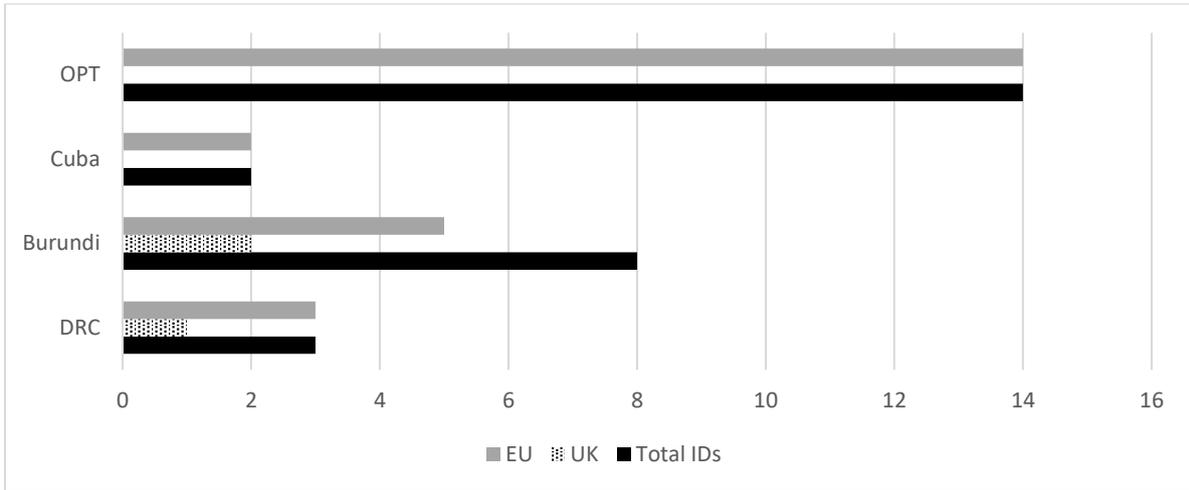


Figure 5: Country-specific IDs with UK participation 50% or less

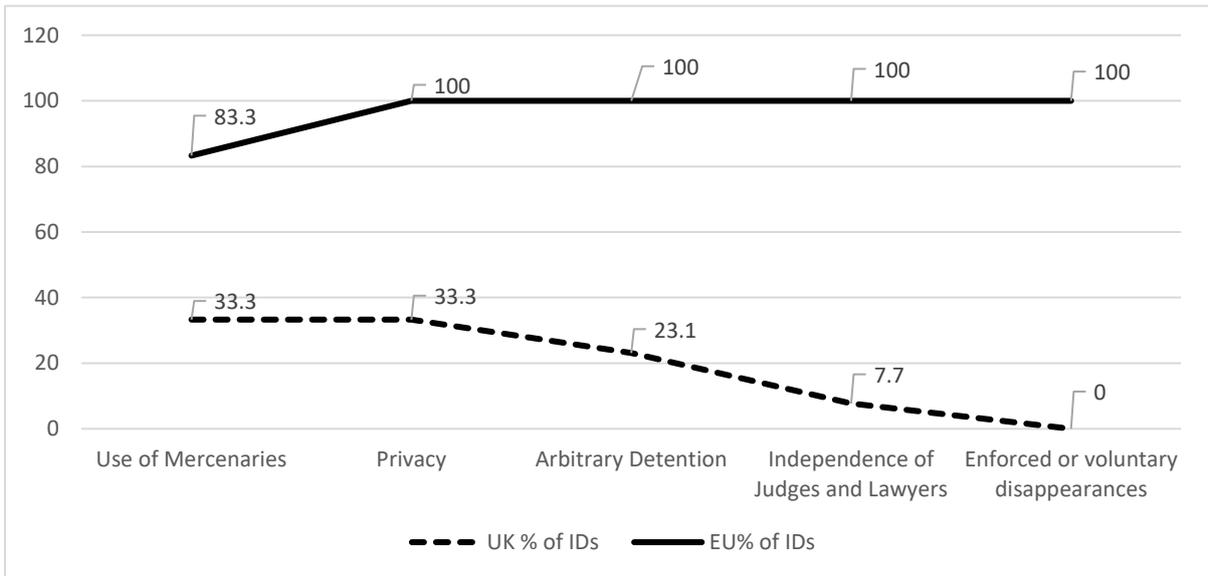


Figure 6: EU and UK participation in IDs on civil and political rights with 50% or under UK participation

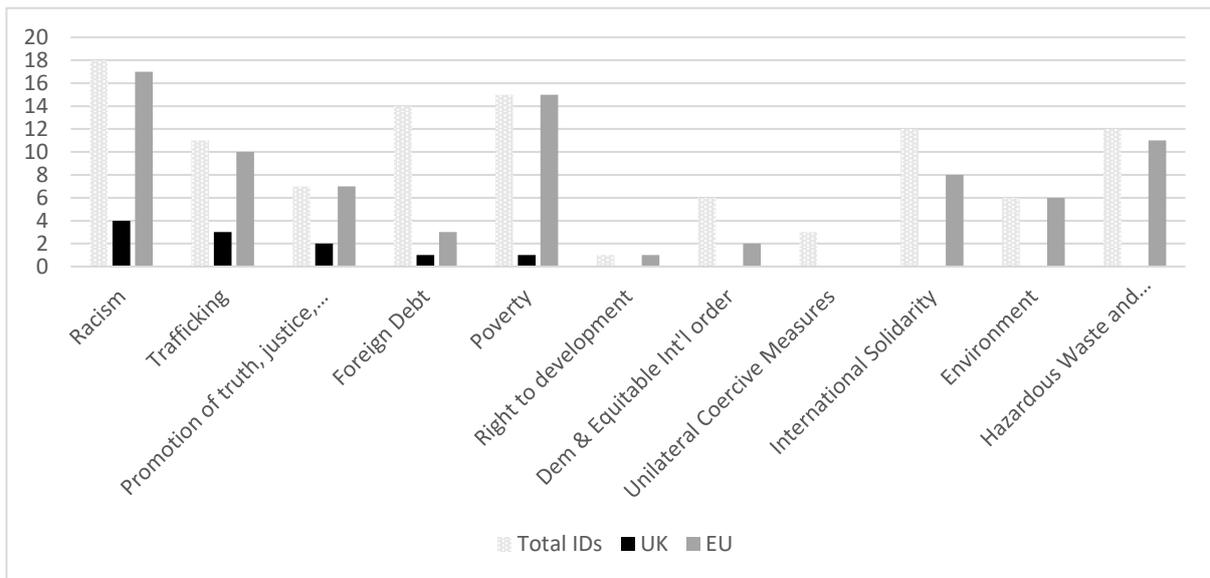


Figure 7: EU and UK participation in IDs on Collective Rights

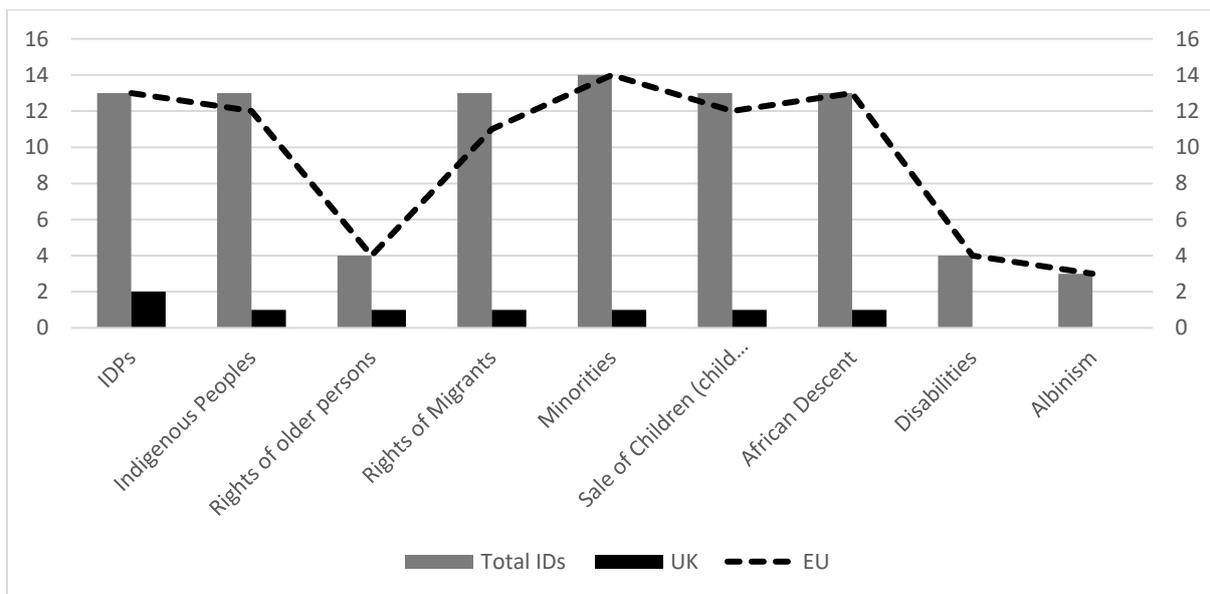


Figure 8: EU and UK participation in IDs on Group Rights

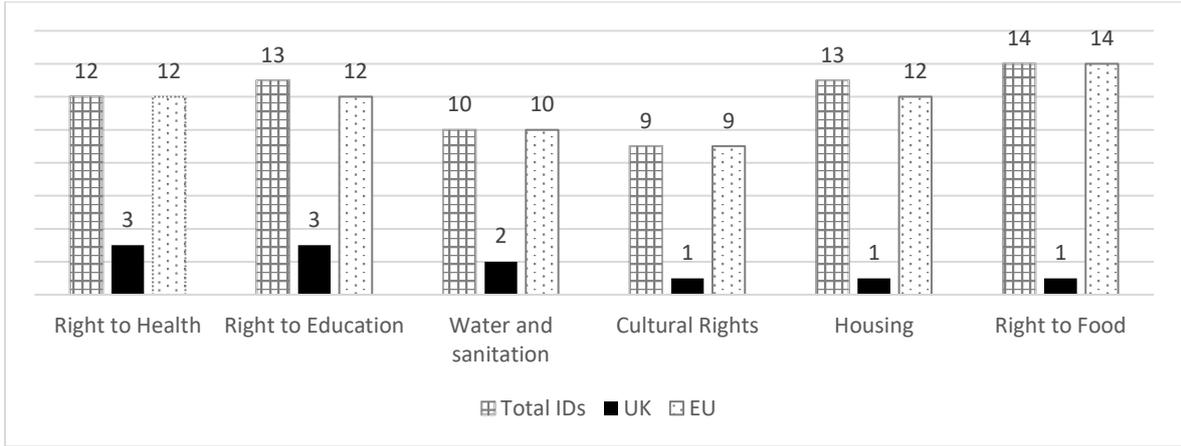


Figure 9: EU and UK participation in IDs on Economic, Social and Cultural Rights