

VILLKORSKLAUSULER
OM AVTALSKLAUSULER SOM
UTRIKESPOLITISKT INSTRUMENT



Akademisk avhandling

som för avläggande av juris doktorexamen vid Göteborgs universitet offentligt
framläggs och försvaras fredagen den 30 januari 2009, kl. 11.00
i SKF-salen, Handelshögskolan vid Göteborgs universitet, Vasagatan 1, Göteborg.

av

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ABSTRACT

Moberg, Andreas, Villkorskláusuler – om avtalskláusuler som utrikespolitiskt instrument, “Conditionality clauses – on the use of contractual clauses as instruments of foreign policy”, Iustus Förlag AB, Uppsala 2009. ISBN 978-91-7678-712-0.

This is a thesis in Public International Law, or more specifically, relations between the European Union and states that are not members of it. Thus, the thesis also covers EU-law and since the internal EU-law is both Public International Law and internal EU-law at the same time, depending on the chosen perspective, there are many interesting intricacies to analyse.

The subject of the thesis is the political conditionality clauses that the EU uses in relation to third countries. The thesis studies how the clauses were originally constructed, why that happened and how they have evolved since. The thesis also explores how the EU has come to use the political conditionality clauses in practice.

In May 1995, the Council of the European Union decided to accept the Commission’s proposal to include a conditionality clause in all draft negotiating mandates for external agreements. This meant that any and all external agreements, no matter what they concerned – trade, co-operation, aid, just to name a few topics – were supposed to include a clause permitting the parties to suspend, and in some cases terminate, the agreement should the other party violate human rights, democratic principles or the rule of law.

Today, the EU is engaged in contractual relations containing such an “essential elements”-clause with about 150 states.

This thesis explores how the EU uses this potentially powerful tool as a foreign policy instrument with the aim of spreading the respect for human rights, democratic principles and the rule of law throughout the world.

Through extensive case studies of all the cases where the EU invoked the clause between 1995 and 2006, the thesis analyses and discusses the EU’s use conditionality clauses to promote human rights. The conditionality clause has only ever been applied within the context of the Lomé Conventions and Cotonou Agreement, also known as the ACP-EU partnership. Between 1995 and 2006 this happened on 17 occasions against 12 different countries.

The thesis seeks to present the EU’s use of conditionality clauses in external agreements in the interface of law, politics and history. John Searle’s conceptual framework of social reality is used to help analysing the legal construction “conditionality clause”, how it has been applied and what the consequences of the application are. Questions such as “what does it take for the EU to invoke the conditionality clause?” and “are similar cases treated in the same way?” are raised and discussed in a concluding chapter which also highlights the fact that the most important effect of the use of “conditionality clauses” has been to create a “platform for discussion” where the EU can meet other states and work together to strengthen the respect for human rights, democratic principles and the rule of law throughout the world.