Chapter I: Human rights Policy of the European Union: The External Dimension

1.1 Introduction:

The world is changing dramatically in the present age of rapid communication and continual movement of goods, ideas, messages and persons across international borders. What happens to individuals in one country often has profound implication for other countries. Lack of human rights, civil strife, and systematic discrimination based on race religion, language, colour may for instance force individuals/groups to migrate to safer destinations. Why some countries are poor can itself have a history of colonial exploitation that violated human rights. Human rights are not only at the forefront of concern today for prosecutors and criminal lawyers but also for businesses, trade unions and workers in the global economy (Haas, Michael, 2008: 1). This is an issue of increasing importance in contemporary inter-state interaction and associations. The European Union being an important international actor its approach to the issue of human rights becomes significant. Over the years the European Union is developing and strengthening its action, to promote and ensure respect for human rights, throughout the world.¹ The Union is a powerful and uniquely representative actor on the international scene (Alston, Philip, 1999: 7. The European Union human's rights policy revolves around issues of child rights, women rights, minority rights and abolition of death penalty.² In recent years human rights in Europe have gained momentum. The Charter of Fundamental Rights and the drafting of European Constitution brought human rights issues into the heart of European Union politics.³

This chapter will discuss how the European Union’s approach to human rights has developed over the years. It will focus on how human rights are understood by EU. Are

there rights which are universal or as some have argued are rights culture specific? An exposition of this debate is important especially because if European Union’s human rights policy has an external dimension conflicting positions on this would undermine European Union’s policy effectiveness and legitimacy. The present study focuses on the external dimension of European Union’s human rights policy since Maastricht. But no progress on the specifics can be made without first outlining the European Union’s approach/understanding of human rights per say and then its external human rights policy. This is precisely the present chapter intends to focus on.

1.2 Meaning and Definition:

The history of human rights dates back thousands of years and is judged based upon religious, cultural, philosophical and legal developments throughout the years. Several ancient documents and later religions and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Edicts of Ashoka issued by Ashoka the Great of India⁴ between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews and Pagans.⁵ The English Magna Carta of 1215 is particularly significant in the history of English law, and is hence significant in international law and constitutional law today.

Much of modern human rights law and the basis of most modern interpretations of human rights can be traced back to relatively recent history. The Twelve Articles of the Black Forest (1525)⁶ are considered to be the first record of human rights in Europe. They were part of the peasants’ demands raised towards the Swabian League in the Peasants’ War in

⁴ http://www.absoluteastronomy.com/topics/Human_rights.
⁵ "Muhammad", Encyclopedia of Islam Online.
⁶ The Twelve Articles of the Black Forest are part of the peasants' demands raised towards the Swabian League in the Peasants' War in Germany of 1525. They are considered to be the first record of human rights in Europe. On 6 March 1525 about 50 representatives of the Upper Swabian Peasants Groups (of the Baltringer Mob, the Allgäuer Mob, and the Lake Constance Mob), met in Memmingen to deliberate upon their common stance against the Swabian League. One day later and after difficult negotiations, they proclaimed the Christian Association, an Upper Swabian Peasants' Confederation. The peasants met again on 15 and 20 March 1525 in Memmingen and, after some additional deliberation, adopted the Twelve Articles and the Federal Order. www.cas.edu/hist/faculty/edwords/hist310/reader/12articles .pdf
Germany. The British Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") of 1689 made illegal a range of oppressive governmental actions in the United Kingdom. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded a number of fundamental rights and freedoms into law. A sweeping statement on human rights by United States Declaration of Independence, 1776 states that,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G. W. F. Hegel during the 18th and 19th centuries (Mayer, Henry 2000: 110). The term human rights probably came into use sometime between Paine's The Rights of Man and William Lloyd Garrison's 1831 writings in The Liberator saying he was trying to enlist his readers in "the great cause of human rights".

By the end of the eighteenth century, in Europe and North America, the concept of natural right was secularised and democratised. The concept of the Rights of the Man emerged. This concept covered substantially what came to be known as civil and political rights. Towards the mid-nineteenth century, within the industrial-capitalistic economy of Europe and North America, trade union rights, better wages and better working conditions considerably improved the lot of the majority constituting the working class. Flow of wealth and additional resources from colonial territories also had a cumulative

7 United States Declaration of Independence, 1776. This sentence has been called "one of the best-known sentences in the English language" and "the most potent and consequential words in American history". The passage has often been used to promote the rights of marginalized groups, and came to represent for many people a moral standard for which the United States should strive. This view was greatly influenced by Abraham Lincoln, who considered the Declaration to be the foundation of his political philosophy, and promoted the idea that the Declaration is a statement of principles through which the United States Constitution should be interpreted. (McPherson, James (1991) Abraham Lincoln and the Second American Revolution. (New York: Oxford University Press)
effect in ensuring, along with civil liberties, a minimum of economic and social security to almost all the people in North America and Europe. While countries in Europe and North America were moving towards larger freedoms both political and economic, the people of the rest of the world continued to be victims of colonial and imperialist exploitation. During the colonial era, it was inevitable that rights available to the citizens in metropolitan countries were denied by the same metropolitan powers to their subject people in the colonies. As a consequence, the interaction and comparison between peoples of the two sides helped generate wider awareness and demand for human rights among the peoples under colonial rule. As a result of the convergence of several historical factors, in the middle of the twentieth century, a concept of human rights, universal in its approach and comprehensive in its content emerged. This development found expression in the Charter of the United Nations (Yasin, Adil-Ul, Upadhyay Archana, 2004: 3).

A short reference to human rights is relatively recent. It appears in legal writings of the 1920s in relation to the position of minorities in the post-imperial European states. But the main impetus for the age of rights was the adoption of the Charter of the United Nations in 1945, which made the protection of human rights one of the main aims of the organisation. Three years later, the United Nations General Assembly passed the Universal Declaration of Human Rights, non-binding proclamations of minimum standards of treatment of citizens by their state authorities the world over. It paved the way for the drafting of two binding treaties: the International Covenant on Civil and Political Rights and that of Economic, Social and Cultural Rights, which after long and difficult negotiations were adopted in 1966 (Douzines Cotas 2007: 15).

Some of the widely accepted definitions of Human Rights are as follows:

- The United Nations Centre for Human Rights defines Human Rights “as those rights which are inherent in our nature and without which we cannot live as human beings” (P. Alston, 1992: 3).
- Szabo puts human rights within the framework of constitutional law, the purpose of which it “to defend by institutional means the rights of human beings against
abuses of power committed by the organs of the state and at the same time to promote the establishment of humane living conditions and the multi-dimensional of human personality" (Szabo, 1982: 11).

• Nickel characterises human rights as "norms which are definite, high priority, universal and existing and valid independently of recognition or implementation in the customs or legal systems of particular countries" (J. W. Nicket, 1987: 3-4).

• Human Rights have also been defined as moral rights of the higher order stemming from 'socially shared moral conceptions of the nature of the human person and the condition necessary for a life of dignity'. (Jack Donnelly, 1985: 2).

To understand better the debate over the content and legitimate scope of human rights and the priorities claimed among them, it is useful to note the dominant schools of thought and action that have informed the human rights tradition since the beginning of modern times. The notion of three generations was inspired by the French jurist Karel Vasak. The three generations are the first generations of civil and political rights, the second generation of economic, social, and cultural rights, and the third generation of solidarity rights. Vasak says that rights were inspired by the French Revolution.

The rights which are belonging to the first generations of rights, such as those set forth in Articles 2-21 of UDHR, including freedom from gender, racial, and equivalent forms of discrimination; the right to life, liberty, and security of the person; freedom from slavery or involuntary servitude; freedom from torture and from cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary arrest, detention, or exile; the right to a fair and public trial; freedom from interference in privacy and correspondence; freedom of movement and residence; the right to asylum from prosecution; freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and the right to participate in government, directly or through free elections.

The second generation of economic, social, and cultural rights originated primarily in the socialist tradition, which was foreshadowed among adherents of the Saint-
Simonian movement of early 19th century France and variously promoted by revolutionary struggles and welfare movements that have take place since. In large part, it is a response to the abuses of capitalist development and its underlying and essentially uncritical conception of individual liberty, which tolerated, and even legitimized, the exploitation of working classes and colonial peoples. The rights belonging to this generation are set forth in Articles 22-27 of the UDHR, such as the right to social security; the right to work and to protection against unemployment; the right to rest and leisure, including periodic holidays with pay; the right to a standard of living adequate for the health and well-being of self and family; the right to education; and the right to the protection of one’s scientific, literary, and artistic production.

Finally, the third generations of solidarity rights, while drawing upon and reconceptualising the demands associated with the first two generations of rights, is best understood as a product of both the rise and the decline of the nation-state in the last half of the 20th century. Article 28 of the UDHR, which proclaims that “everyone is entitled to a social and international order in which the rights set forth in this declaration can be fully realised,” this generation appears so far to embrace six claimed rights. Three of these rights reflect the emergence of Third World nationalism and its “revolution of rising expectations”; the right to political, economic, social, and cultural self-determination; the right to economic and social development; and the right to participate in and benefit from “the common heritage of mankind (Falk Richard, Elver, Hilal and Hajjar, Lisa (ed.) 2008: 28).

Many groups and movements have managed to achieve profound social changes over the course of the 20th century in the name of human rights. In Western Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women’s rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi’s movement to free his native
India from the British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the civil rights movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

The World Wars and the huge losses of life and gross abuses of human rights that took place during them were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined, in its Charter was a mandate to promote many of the rights which were later included in the Universal Declaration of human rights.\(^8\)

At the 1945 Yalta Conference\(^9\), the Allied Powers agreed to create a new body to supplant the League's role. This body was to be the United Nations. The United Nations has played an important role in international human rights law since its creation. Following the World Wars the United Nations and its members developed much of the discourse and the bodies of law which now make up international humanitarian law and international human rights law.

Human rights are rights inherent to all human beings, whatever the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are

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all interrelated, interdependent and indivisible. According to that everyone has the right to life, liberty and security of person.¹⁰

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

The concept of human rights has existed under several names in European thought for many centuries, at least since the time of King John of England.¹¹ After the king violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta,¹² or Great Charter, which enumerates a number of what later, came to be thought of as human rights. Among them were the rights of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct.

The political and religious traditions in other parts of the world also proclaimed what have come to be called human rights, calling on rulers to rule justly and compassionately, and delineating limits on their power over the lives, property, and activities of their citizens. In the eighteenth and nineteenth centuries in Europe several philosophers proposed the concept of "natural rights," (Tierney, Brian, 2001: 43). rights belonging to a

¹⁰Article 3 of the Universal Declaration of Human Rights.
¹¹King John was born in 1167 and died in 1216. King John is one of the more controversial monarchs of Medieval England and is most associated with the signing of the Magna Carta in 1215. John was forced to sign the Magna Carta at Runnymede in 1215. This guaranteed the people of England rights that the King could not go back on. In 1216, John tried to go back on the Magna Carta but this only provoked the barons into declaring war on him. Wilson, Chris (1996) An illustrated History of Late Medieval England, (Manchester: Manchester University Press) pp. 87.
¹²Magna Carta, also called Magna Carta Libertatum (the Great Charter of Freedoms), is an English legal charter, originally issued in the year 1215. It was written in Latin and is known by its Latin name. The usual English translation of Magna Carta is Great Charter. Michael L. A (2007) The Principles of Existence and Beyond, Gardeners Books. pp. 39.
person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. This concept was vigorously debated and rejected by some philosophers as baseless. Others saw it as a formulation of the underlying principle on which all ideas of citizens' rights and political and religious liberties were based.\textsuperscript{13}

1.3 Human rights are Universal or culture specific?

An exposition of this debate is important especially because if EU's human rights policy has an external dimension conflicting positions on this would undermine EU's policy effectiveness and legitimacy.

Human rights are today worldwide accepted, or at least recognised as ideals to be pursued by human societies. A growing number of instruments, bodies and mechanisms have been set up at the international level to implement them. But in the recent decades, we have witnessed gross human rights violations in many parts of the world. Understanding of the notion of human rights still varies from one place to another, and the question remain whether there can be common human rights standard. In the resulting confluence of peoples and cultures in an increasingly global, multicultural world brimming with tension, confusion and conflict in the process of its adjustment to pluralism, there is an understandable urge to return to old conventions, traditional cultures, fundamental values, and the familiar, seemingly secure, sense of one's identity. Without a secure sense of identity amidst the turmoil of transition, people may resort to isolationism, ethnocentrism and intolerance.\textsuperscript{14}

Shashi Tharoor, in his article "Are Human Rights Universal?" opines that the growing consensus in the West that human rights are universal has been fiercely opposed by critics in other parts of the world. At the very least, the idea may well pose as many questions as it answers. Beyond the more general, philosophical question of whether

\textsuperscript{13}http://www.hrweb.org/history.html.

anything in our multi-cultural, multi-polar world is truly universal, the issue of whether human rights is an essentially Western concept—ignoring the very different cultural, economic, and political realities of the other parts of the world. The first is philosophical. All rights and values are defined and limited by cultural perceptions. There is no universal culture; therefore there are no universal human rights. Some philosophers have objected that the concept is founded on an individualistic view of people, whose greatest need is to be free from interference by the state. Non-Western societies often have a communitarian ethic which sees society as more than the sum of its individual members and considers duties to be more important than rights. In Africa it is usually the community that protects and nurtures the individual: 'I am because we are, and because we are therefore I am.' In most African societies, group rights had precedence over individual rights and conflict resolution would not necessarily be based on the assertion and defence of legal rights.15

This situation sharpens a long-standing dilemma: how can universal human rights exist in a culturally diverse world? As the international community becomes increasingly integrated, how can cultural diversity and integrity be respected? Is a global culture inevitable? If so, is the world ready for it? How could a global culture emerge based on and guided by human dignity and tolerance? These are some of the issues, concerns and questions underlying the debate over universal human rights and cultural relativism. The philosophical objection asserts essentially that nothing can be universal; that all rights and values are defined and limited by cultural perceptions. If there is no universal culture, there can be no universal human rights. In fact, some philosophers have objected that the concept of human rights is founded on an anthropocentric, that is, a human-centered, view of the world, predicated upon an individualistic view of man as an autonomous being whose greatest need is to be free from interference by the state—free to enjoy what one Western writer summed up as the "right to private property, the right to freedom of contract, and the right to be left alone." But this view would seem to clash with the communitarian one propounded by other ideologies and cultures where society is conceived of as far more than the sum of its individual members.

Cultural relativism\textsuperscript{16} is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.\textsuperscript{17}

Taken to its extreme, this relativism would pose a serious threat to the effectiveness of international law and the international system of human rights that has been painstakingly constructed over the decades. If cultural traditions were to alone govern state compliance with international standards, then widespread disregard, abuse and violation of human rights would gain legitimacy.

Accordingly, the promotion and protection of human rights perceived as culturally relative would only be subject to state discretion, rather than international legal imperative. By rejecting or disregarding their legal obligation to promote and protect universal human rights, States advocating cultural relativism could raise their own cultural norms and particularities above international law and standards.

1.4 Who Defines Human Rights?

Implicit in this is a series of broad, culturally grounded objections. Historically, in a number of non-Western cultures, individuals are not accorded rights in the same way as they are in the West. Critics of the universal idea of human rights contend that in the Confucian or Vedic traditions, duties are considered more important than rights, while in Africa it is the community that protects and nurtures the individual. One African writer summed up the African philosophy of existence as: “I am because we are, and because

\textsuperscript{16}Cultural relativism is the principle that an individual human's beliefs and activities should be understood in terms of his or her own culture. This principle was established as axiomatic in anthropological research by Franz Boas in the first few decades of the 20th century and later popularized by students. Franz Boas (1887) 'Museums of Ethnology and their Classification', Science 9: 589.

\textsuperscript{17} The Challenge of Human Rights and Cultural Diversity by Diana Ayton-Shenker Published by the United Nations Department of Public Information DPI/1627/HR—March 1995.

we are therefore I am." Some Africans have argued that they have a complex structure of communal entitlements and obligations grouped around what one might call four "r's": not "rights," but respect, restraint, responsibility, and reciprocity. They argue that in most African societies group rights have always taken precedence over individual rights, and political decisions have been made through group consensus, not through individual assertions of rights.

These cultural differences, to the extent that they are real, have practical implications. Tharoor opines that many in developing countries argue that some human rights are simply not relevant to their societies—the right, for instance, to political pluralism, the right to paid vacations and, inevitably, the rights of women. It is not just that some societies claim they are simply unable to provide certain rights to all their citizens, but rather that they see the "universal" conception of human rights as little more than an attempt to impose alien Western values on them. The fiftieth anniversary of the Universal Declaration was celebrated with much fanfare. But critics from countries that were still colonies in 1948 suggest that its provisions reflect the ethnocentric bias of the time. They go on to argue that the concept of human rights is really a cover for Western interventionism in the affairs of the developing world, and that "human rights" are merely an instrument of Western political neocolonialism. One critic in the 1970s wrote of his fear that "Human Rights might turn out to be a Trojan horse, surreptitiously introduced into other civilizations, which will then be obliged to accept those ways of living, thinking and feeling for which Human Rights is the proper solution in cases of conflict." In practice, this argument tends to be as much about development as about civilizational integrity. Critics argue that the developing countries often cannot afford human rights, since the tasks of nation building, economic development, and the consolidation of the state structure to these ends are still unfinished. Authoritarianism, they argue, is more efficient in promoting development and economic growth. This is the premise behind the so-called Asian values case, which attributes the economic growth of Southeast Asia to the Confucian virtues of obedience, order, and respect for authority.

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The human rights concept is understood, applied, and argued over only, critics say, by a small Westernized minority in developing countries. Shashi Tharoor says, Universality in these circumstances would be the universality of the privileged. Human rights are for the few who have the concerns of Westerners; it does not extend to the lowest rungs of the ladder.

After all, concepts of justice and law, the legitimacy of government, the dignity of the individual, protection from oppressive or arbitrary rule, and participation in the affairs of the community are found in every society on the face of this earth. Far from being difficult to identify, the number of philosophical common denominators between different cultures and political traditions makes universalism anything but a distortion of reality.\(^\text{19}\) Historically, a number of developing countries—notably India, China, Chile, Cuba, Lebanon, and Panama—played an active and highly influential part in the drafting of the Universal Declaration of Human Rights.\(^\text{20}\) In the case of the human rights covenants, in the 1960s the developing world actually made the decisive contribution; it was the “new majority” of the Third World states emerging from colonialism—particularly Ghana and Nigeria—that broke the logjam, ending the East-West stalemate that had held up adoption of the covenants for nearly two decades\(^\text{21}\). The principles of human rights have been widely adopted, imitated, and ratified by developing countries; the fact that therefore they were devised by less than a third of the states now in existence is really irrelevant.

Most basically, human rights derive from the mere fact of being human: they are not the gift of a particular government or legal code. But the standards being proclaimed internationally can become reality only when applied by countries within their own legal

\(^{19}\)Ahmad Faiz bin Abdul Rahman, human rights conference in Oslo organised by the North-South Coalition, a Norwegian based NGO, on the theme of "Human Rights: Universal or Culture Specific?" (Dec. 11, 1997) was indeed a success if only for the fact that the participants, if they were representative of the peoples of the North, were more receptive to the notion that human rights was about more than just political and civil liberties. 

\(^{20}\)International Law and Institutions: A Post-Westphalian Landscape Charles B. Shotwell, pp. 12. 

\(^{21}\)Shashi Tharoor: Are Human Rights Universal?, World Policy Journal, Vol. XVI, No. 4 
www.mtholyoke.edu/acad/intrel/tharoor2.htm. This article was adopted from the first Mahbub-ul-Haq Memorial Lecture, South Asia Forum, October 1998.
systems. The challenge is to work towards the "indigenization" of human rights, and their assertion within each country's traditions and history. If different approaches are welcomed within the established framework—if, in other words, eclecticism can be encouraged as part of the consensus and not be seen as a threat to it—this flexibility can guarantee universality, enrich the intellectual and philosophical debate, and so complement, rather than undermine, the concept of worldwide human rights. Paradoxical as it may seem, it is a universal idea of human rights that can in fact help make the world safe for diversity.22

The concept of human is grounded on the idea that Man has rights simply because he is human. The universal worth and dignity of human being is founded in the writing of philosophers such as John Locke and Jean Jacques Rousseau. For the former, "human beings are by nature free, equal and independent"23, and the protection of that freedom and equality should be the end of the political society. Rousseau also insists on the freedom of the human being and writes that Man should never surrender his freedom: "A man who renounces to his freedom renounces at his quality as human being".24 After bloody revolutions, there were attempts to introduce these concepts in states constitution in England, in France, and in the United States of America. But the first recognition of the need to secure rights for human being was stated in the Charter of the United Nations, following the atrocities of the Second World War. In its Preamble, it is said that one of the purpose of the U.N. is the achievement "international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion".25 The Universal Declaration on Human Rights is the first instrument on human rights in its preamble presented itself as "a common standard of achievement for all peoples and nations". It went further by stating: "Recognition of the human dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the

23 Locke, J., Second Treaty on Civil Government, paragraph 140
25 UN Charter, Article I, Paragraph 3.
world". Subsequent instruments such as the Covenant on Civil and political Rights and the Covenant on Economic, Social and Cultural Rights contained what is usually called 'core rights' meaning "that are indispensable for an existence in human dignity and therefore need absolute protection" (Baehr, 1999: 14). Among those core rights are the right to life\textsuperscript{26}, the prohibition of torture,\textsuperscript{27} slavery, arbitrary arrest, discrimination or genocide. No derogation from such rights is permitted, even in time of war.

As Robertson and Merrils write, "it is clear that the mainstream has its origin in the liberal democratic tradition of Western Europe, a tradition which is itself the product of the Greek philosophy, Roman law, the Judeo-Christian tradition, the humanism of the Reformation and the Age of reason" (Robertson and Merrils, 1996: 2). It means that the Western World translated into international law its philosophical, moral, cultural and religious value.

According to Parekh, "different societies throw up different systems of moral beliefs depending on such things as their history, traditions, geographical circumstances, and views of the world. We have no means of judging them for there are no objective and universal criteria available for the purpose, and even if there were, we would be too deeply conditioned by our own society to discover them" (Bhikhu Parekh: 1999: 128).

Cultural differences may have an influence on the human rights issues where national competence, the sovereignty of the state or the quest of self-determination are opposed to the idea of universal human rights standards. The 1993 Vienna Conference was an example of arena where, universal principle of human rights clashed with relativistic assumptions. At the eve of that important even, African and Asian groups of nations met to draw their views they intended to put forward at the conference. In the Tunis Declaration, which reflected both their convictions and their expectations, the African group nations gave a different sound. While admitting that the universality of human rights, they declared that "no ready-made model can be prescribed at the universal level

\textsuperscript{26} UDHR, Art.3; Genocide Convention, Art2; ICCPR, Art 6; ICSCER, Art.2, ACHR, Art.4; ACHPR, Art. 4.
\textsuperscript{27} UDHR, Art.5; ICCPR, Art.7; ECHR, Art.3; ACHR, Art. 5(2); ACHPR, Art. 6 and the CAT.
since the historical and cultural realities of each nation and the traditions, standards and values of each people cannot be disregarded.\(^{28}\)

In the Bangkok Declaration, Asian group of nations opposed what they saw as Western imperialism and urged the international community to take into account their cultural difference as regard to human rights. While agreeing like Africans that human rights are universal in nature, they insisted that those rights “must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds”. Furthermore, they added, “the promotion of human rights should be encouraged by cooperation and consensus and not through confrontation and the imposition of incompatible values”. Finally, criticising “the use of human rights as conditionality for extending development assistance and as an instrument of political pressure”, the Bangkok Declaration stressed “the need to avoid the application of double standards in the implementation of human rights and its politicisation”.\(^{29}\) Indonesian Foreign Minister stated later in Vienna: “While human rights are universal in character, it is now generally acknowledged that their expression and implementation in the national context should remain the competence and responsibility of each government. This means that the complex variety of problems of different economic social and cultural realities and the unique value systems prevailing in each country should be taken into consideration”.\(^{30}\) One may draw the conclusion that for Southern countries, priority has to be given to the satisfaction of basic needs for food, shelter, clothes before other rights such as freedom of expression and fair elections. One may even go so far to consider Western concepts of human rights as luxury for poor countries, because “cultural differences between East and West, North and South are so profound as to challenge the universality of human rights”.\(^{31}\)

\(^{29}\) Report of the regional meeting for Asia of the world conference On human rights Bangkok, 29 March-2 April 1993
\(^{30}\) Quoted by Baehr, op. cit., p. 14
But, notwithstanding these reservations of state sovereignty today is no longer an argument for avoiding human rights international obligation or general concern. As Louis Henkins writes, "how a state treats its own inhabitants is no longer its own affair; it is now every state’s affair" (Henkins, L: 1989: 196). Even though some patterns of culture are really incompatible with admitted standards the question remains as to know who should define the universal standard. There is a fear that universal be used as "predatory ideologies", that is in a hegemonic manner. The oppression link to this manner of thinking may justify and legitimise claims of right of difference, as it was noticed during the 1993 Vienna Conference on Human Rights.

The Vienna Declaration and Programme of Action adopted on 25 June 1993 stated that human rights are universal by their nature and that universality was beyond question: “The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question. In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations. Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments". The Declaration also called the international community to treat human rights "globally, in a fair an equal manner, on the same footing and with the same emphasis"

Cultural differences do not contradict the sick for human rights common standards. Pannikkar recognizes that no culture is definitely closed to the human rights “Human rights are the windows through which one particular culture envisages a just human order

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32 Safiya Huseini, a 35-year-old woman, won her case on the 25 of March 2002 after a Sharia Court in the northern town of Sokoto(Nigeria) which her sentenced to death by stoning after she was found guilty of adultery. This was largely thanks to international pressure from governments and non-governmental organizations. These organizations are still campaigning for the abolition of the Sharia in that country (Amnesty International, ‘Nigeria: How Much Suffering After Saphiya?’, 29/4/02)

33 Vienna Declaration and Plan of Action.
for its individuals. But those who live in that culture do not see the window. For this, they need the help of another culture, which sees through another window. Now I assume that the landscape seen through the one window is both similar and different from the vision of the other. If this is the case we should smash the window and make of the many portals a single gaping aperture—with the consequent danger of structural collapse—or should we enlarge the viewpoints as much as possible and, most of all, make people aware that they are—and have to be—a plurality of windows?" (Panikkar, R., 1982: 75).

Article 26 of the Universal Declaration of Human Rights states that “the education shall be directed to the full development of the human personality and the strengthening of respect to human rights and fundamental freedoms”. This may be the means to achieve the universality of respect for human rights, since “By their nature, human rights represent transboundary values.”

1.5 Asian Perspective:

In the debate of culturally relative human right in Asia two versions of cultural relativism can be distinguished. The first one claims that human rights are a Western ideal and do not apply in the same way to non-western societies. The second one formally accepts human rights as universal, but believe that the cultural differences between the West and non-western societies should influence the assessment of non-western states by the UN. For example, in article 8 of the Bangkok Declaration of 1993 Asian states declared that “human rights must be considered in the context of a dynamic and evolving process of international norm setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.” China's 1991 White Paper stated that “owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights.” (PRC, 1991). Again in argument regarding the interpretation of human rights, there is also strong criticism expressed especially by the African states. Western definition of democracy as basically any form of multi-party system of political representation is criticized

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by non-westerns. Making overseas aid conditional on democratization is generally seen as a way to impose Western norms, values and cultures on African states.

Proponent of Asian values argues that Asian societies rank social and economic rights over individual's political and civil rights. And the West is accused of prioritizing civil and political rights over social, economic and cultural rights. Ching, 1993 states “The US state department, issues annual reports on the human rights situation in countries around the world, but the reports cover only political rights, not social, economic and cultural rights.” The Chinese White Paper (1991) stated that “to eat their fill and dress warmly were the fundamental demands of the Chinese people who had long suffered cold and hunger.” Political and civil rights, for this view, do not make sense to poor and illiterate multitudes; such rights are not meaningful under destitute and unstable conditions.

This criticism from Asians is in direct conflict with the doctrine of cultural relativism and found to use by many Asian states to gain support for violation of human right and endanger human security. When it is authoritarian regime or leaders who pose this dilemma, one should be particularly suspicious. The sad truth is that an authoritarian regime can practice political repression and starve the poor at the same time. Moreover, the most immediate victims of oppression-those subjected to imprisonment or torture-are often those who have spoken out against the errors or the incompetence of authorities who have failed to alleviate deprivation, or who in fact have made it worse. Conversely, an end to oppression often means the alleviation of poverty—as when to borrow Amertya Sen’s example, accountable governments manage to avert famine by heeding the warnings of a free press (Sen, 1999).

Asian states refer to the right to economic development as basic to the implementation of other human rights. In the process of development, human rights violations are unavoidable and therefore the level of development should be taken into account when the UN judges the human rights records of states, according to the Asian states (Indonesian Statement to the World Conference on Human Rights, 1993). It is evident that there are close relation among economic development, human development, human right and human security in many aspect. And emphasis on the human dimension of development in recent years clearly has reinforced the place of human security in the international policy agenda. Foreign Minister Surin pointed out this close linkage between human development and human security in the
following way: “Human security and human development are two sides of the same coin. One cannot be considered in isolation from the other. They are mutually reinforcing. Human security provides an enabling environment for human development and vice versa” (Surin, 1999).

Another claim in favor of 'Asian value' is that the individualism of the human rights doctrine is said not to be suitable for the Asian culture. And the so called Asian value of 'community harmony' is used as an illustration of 'cultural' differences between Asian and Western societies, in order to show that the idea of individual's inalienable rights does not suit Asian societies.

However, this Asian view creates confusions by collapsing 'community' into the state and the state into the regime. When equations are drawn between community, the state and the regime, any criticisms of the regime become crimes against the nation-state, the community, and the people. This Asian view relies on such a conceptual maneuver to dismiss individual rights that conflict with regime's interest, allowing the condemnation of individual rights as anti-communal, destructive of social harmony, and seditionist against the sovereign state.

In terms of form of the universal human rights doctrine, the Asian cultural relativist view is that the world community needs more regional instruments and less global directives from the UN. The form in which human rights are protected should also be more co-operative rather than confrontational. This would lead to human rights instruments that are better applicable to specific regions for their culture by taking account of "geographical complexity, diversity and vastness of the region as well as their historical background and levels of political stability, economic development and social progress" (Statement from Indonesia at the World Conference on Human Rights, 1993) (UNHCR, 1993).

This demand for more regional instruments seems a way to deflect attention by the UN and the world community as a whole from human rights violations and endangering human security in the region. In practice, the European regional instruments are most detailed and are most adhered to. The other regional organizations have not been successful in implementing very stringent human rights norms on a regional level (Donnelly, 1989).
For the standards being proclaimed internationally to become reality Shashi Tharoor argues that people have to work towards their 'indigenization' - their assertion within each country's traditions and history. If different approaches are welcomed within the human-rights consensus, this can guarantee universality, enrich the intellectual and philosophical debate and so complement, rather than undermine, the concept of worldwide human rights. Human rights can keep the world safe for diversity. And as European Union understanding is that it believes human rights are universal by respecting the Universal Declaration of Human Rights and respects and adopts the provisions of the Declaration in its human rights policies.

1.6 Overview of the European human rights:

A. Human Rights under United Nations: With the end of Second World War Europe was left in ruins and in doubts of its cultural and civilization achievements. Europe was the continent hit worst by destruction, death and genocide. At least in Western Europe, Auschwitz became a term for the most severe crime against the human race. As a direct reaction to the war atrocities, already in 1948 the United Nations drafted the Universal Declaration of Human Rights (UDHR) which paved the way for the modern human rights system. The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. In 1949 the Genocide Convention was signed, with the International Covenant on Civil and

35 Are Human Rights Universal? by Shashi Tharoor

36 Auschwitz was the largest of Nazi Germany's concentration camps and extermination camp, established in Nazi Germany occupied Poland. Krakowski, Shmuel (1994) The Satellite Camps in Gutman and Berenbaum, pp. 50

Political Rights\textsuperscript{38} (ICCPR) was opened for signature in 1966. However, it was not until 1976 that the Covenant, which is the most recognized international human rights document, entered into force. Considering the tragedy of the past, it was Winston Churchill who carried the idea of a united Europe in peace, freedom and security. Human dignity and totalitarian regimes were identified as mutually excluding elements on the basis of the experiences of the 1930s and 1940s.

**B. Human rights in the Council of Europe:** In 1949 the Council of Europe was founded with the attempt to unify Europe on the basis of democratic governance and human dignity.\textsuperscript{39} All European states were invited to join the Council if they subscribed to the rules of democracy and respect for human rights.\textsuperscript{40} Council members had to ratify the Council of Europe Statute which mentions democracy and the rule of law as preconditions for membership. The Council of Europe was the first regional organisation to address the protection and promotion of human rights through an actual Court as envisaged by the European Convention signed in Rome in 1950. The system of supranational monitoring envisaged by the European Convention on Human Rights, and in particular the role played by the European Court of Human Rights based in Strasbourg, constitute a model that is without precedent at the global level.

**C. European Commissioner for Human Rights:** Another institution of particular importance acting in the framework of the Council of Europe, with specific competencies in this area, is the office of the European Commissioner for Human Rights. The Commissioner's responsibilities include increasing public awareness of and promoting human rights within the member states. Shortly after the Council of Europe was founded, work on the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)\textsuperscript{41} started. Within 15 months this document was brought on paper and in 1950


\textsuperscript{39}Statute of the Council of Europe, Preamble and Article 1 a). http://www.hri.org/docs/ECHR50.html#C.Art1.

\textsuperscript{40}Ibid, Article 4.

\textsuperscript{41}The Convention for the Protection of Human Rights and Fundamental Freedoms (also called the "European Convention on Human Rights" and "ECHR"), was adopted under the auspices of the Council of
opened for signature. On September 3rd 1953 the single most important European human rights treaty entered into force.\textsuperscript{42} Thus the ECHR came into power 23 years ahead of the ICCPR. The western part of Europe was much faster in developing a human rights regime than the United Nations or any other regional human rights system (Brosig, Malte, 2006: 11).

Initially the ECHR was signed by ten western European countries.\textsuperscript{43} Now it is a truly pan-European document with 46 signatory states, with only Belarus not being a member of the CoE and the Convention. Hence one can claim that the rights and standards which are enshrined in the ECHR constitute a set of common European values. The European human rights regime has unique features which set it apart from the UN or other regional systems. The external control of states by an independent human rights Court and possibility to file individual claims is unprecedented.\textsuperscript{44} A further distinctive European feature is the abolition of the death penalty. It seems that a consensus exists on the value of fundamental rights.

During it’s more than 50 years of experience the Council of Europe has further developed the human rights system. So far the ECHR has been enhanced by 14 Protocols. One of the most significant achievements is the recognition by all member states to allow individual complaints before the Strasbourg Court in 1990. It is only the ECHR as an international treaty which grants individuals the right to litigation. A further milestone in the development of the European human rights regime was set by protocol no. 11. As a consequence of protocol 11 in 1998 a permanent Human Rights Court replaced the existing part-time Court. Reforming the Court was a highly necessary measure to secure effective supervision of the ECHR. To give an example, in 1981, 404 cases were brought to Strasbourg meanwhile the number had exploded to 13,858 cases by 2001 (Brosig, Malte, 2006: 12).

\textsuperscript{43} http://www.hrea.org/learn/guides/europe.html.
Death penalty is also one of major issue of ECHR. In protocol 6 of the ECHR European states have agree to enhance the right to life by abolishing the death penalty.\textsuperscript{45} All CoE members have signed protocol no. 6. Besides the ECHR, human rights norms have been put into different treaties and conventions. One such document is the European Social Charter (ESC) of 1965.\textsuperscript{46} In 1989 the Convention for the Prevention of Torture (CPT)\textsuperscript{47} came into force. The ECHR and CPT are the most recognized human rights conventions in the European human rights system. After the end of the Cold War two conventions concerning minorities were drafted, namely the Framework Convention for the Protection of National Minorities (FCNM)\textsuperscript{48} and the European Charter for Regional or Minority Language (ECRML).\textsuperscript{49} 

\textsuperscript{46}The European Social Charter guarantees social and economic human rights. The ESC was signed at Turin on 18th October 1961 by the member states of the Council of Europe and came into force on 26 February 1965. http://conventions.coe.int/Treaty/EN/treaties/Html/163.htm.
\textsuperscript{47}The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or shortly Committee for the Prevention of Torture (CPT) is the anti-torture committee of the Council of Europe. It has been described as a striking inroad into the usually well-preserved domain of sovereign states. The CPT was founded on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), which came into force in February 1989. Paul Evans, Paul Silk (eds.) (2009) *Council of Europe' The Parliamentary Assembly: Practice and Procedure*, Council of Europe. Pp. 187.
\textsuperscript{48}The Framework Convention for the Protection of National Minorities (FCNM) was signed on February 1995 by 22 member States of the Council of Europe. The Framework Convention for the Protection of National Minorities defines a national minority implicitly to include minorities possessing a territorial identity and distinct cultural heritage. http://www.int/dghl/minority/1_atglance/fenn_texts_EN.asp.
\textsuperscript{49}The European Charter for Regional or Minority Languages (ECRML) is a European treaty (CETS 148) adopted in 1992 under the auspices of the Council of Europe to protect and promote historical regional and minority languages in Europe. It only applies to languages traditionally used by the nationals of the State Parties (thus excluding languages used by recent immigrants from other states), which significantly differ from the majority or official language (thus excluding what the state party wishes to consider as mere local dialects of the official or majority language) and which either have a territorial basis (and are therefore traditionally spoken by populations of regions or areas within the State) or are used by linguistic minorities within the State as a whole. http://en.wikipedia.org/wiki/European_Charter_for_Regional_or_Minority_Languages.
1.7 The European Union and Human Rights

The European Union (EU) was established by the Treaty of Maastricht on 1 November 1993 (Craig, Paul; Grainne De Burca, P. P. Craig, 2006: 15), upon the foundations of the pre-existing European Economic Community. With a population of almost 500 million, the EU generates an estimated 30% share (US$18.4 trillion in 2008) of the nominal gross world product. Respect for human rights lies at the foundation of the European Union, together with fundamental freedoms, democracy and the rule of law. Without human rights, there can be no lasting peace or security and no sustainable development. The EU is convinced that this is a legitimate subject of concern and a major responsibility for the international community. It therefore attaches particular importance to respect for human rights, both within and outside its borders.

Human Rights, as defined in the Universal Declaration of 1948, are an essential part of humanity’s shared heritage and where they are not genuinely respected, there can be no question of a lasting peace. The European Union (EU) believes that the promotion and protection of human rights around the world is a legitimate concern of the international community. The European Union is bound by its Treaty to promote human rights, democratization and development. The universality, interrelation and indivisibility of human rights, including civil, political, economic, social and cultural rights, as reaffirmed by the 1993 World Conference on Human Rights in Vienna, is the central principle guiding its actions.

The Copenhagen criteria are the rules that define whether a country is eligible to join the European Union. The criteria require that a state has the institutions to preserve
democratic governance and human rights, has a functioning market economy, and accepts the obligations and intent of the EU. These membership criteria were laid down at the June 1993 European Council in Copenhagen, Denmark, from which they take their name. Excerpt from the Copenhagen Presidency conclusions:

Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

Most of these elements have been clarified over the last decade by legislation of the European Council, the European Commission and the European Parliament, as well as by the case law of the European Court of Justice and the European Court of Human Rights. Human rights are those rights which every person holds because of their quality as a human being; human rights are "inalienable" and belonging to all humans. If a right is inalienable, that means it cannot be bestowed, granted, limited, bartered away, or sold away (e.g. one cannot sell oneself into slavery). These include the right to life, the right to be prosecuted only according to the laws that are in existence at the time of the offence, the right to be free from slavery, and the right to be free from torture.

The United Nations Universal Declaration of Human Rights is considered the most authoritative formulation of human rights, although it lacks the more effective enforcement mechanism of the European Convention on Human Rights. The requirement to fall in line with this formulation forced several nations that recently joined the EU to implement major changes in their legislation, public services and judiciary. Many of the changes involved the treatment of ethnic and religious minorities, or removal of disparities of treatment between different political factions.

54 Presidency Conclusions, Copenhagen European Council 1993, 7.A.iii
The European Union's policy is based on internationally agreed frameworks and standards, reflecting the belief that human rights and democracy are not "Western" values but universal values to which all UN members subscribe. The EU is working towards the universal ratification and implementation of all major international human rights instruments. The European Commission, the executive body of the European Union, participates actively in international human rights fora, such as the UN Commission on Human Rights, the preparation of the World Conference against Racism and the Special Session of the UN General Assembly on Children.

The main instruments available to the European Community to promote respect for human rights are cooperation and partnership agreements with third countries. The new development policy of the European Community is firmly grounded in the principle of sustainable, equitable and participatory human and social development. The promotion of human rights, democracy, the rule of law and good governance are an integral part of the new policy.

The European integration in the economic area has long been the motor for change. But it is becoming evident that Europe is not only striving for economic integration. Visibly the Charter of Fundamental Rights and the draft EU Constitution deliberately attempt to formulate common values. In article I-2 of the European constitution stands that: The Union is founded on the on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. While in the past decades the European communities were focused on economic and political integration the European Union currently reinterprets itself. From the end of World War II until recently, European human rights norms have been regarded as the Council of Europe’s business. There was no comprehensive or systematic approach visible compared with the extent and competence the Council of Europe and the Human Rights Court developed. To some degree, human rights on the one hand and economic integration on the other established parallel regimes which produced specialized intergovernmental and supranational organisations, namely the

\[\text{Values of the European Union as stipulated in the EU Constitution.}\]
Council of Europe and the European Union. In the broader context of the EU Eastern enlargement in May 2004 and progressing economic integration, the Union was to be seen under pressure to reform itself in order to keep a larger Union manageable and not to lose political legitimacy.

The EU’s engagement in human rights does not start with the Charter. In 1977 the European Parliament, the Council, and the Commission issued a joint declaration on human rights.\textsuperscript{56} Two years later the Commission drafted a proposal which recommended accession to the ECHR. However, these attempts failed to influence the EC’s agenda in a sustained fashion. The Parliament, nonetheless, tried to continue its line and compiled a human rights declaration in 1989. Indeed, the Parliament has worked consistently on its profile as a human rights actor. In the meantime, the number of human rights resolutions adopted in Strasbourg has come to exceed 100.\textsuperscript{57} But they have become ineffective since the parliament enjoys limited powers to implement them.

Since the beginning of the 1990s, the European Union has developed first slowly, then energetically an impressive framework for defining its international policy goals, especially in the area of external and development policies. On the EU level, there are many different players and institutions that influence the area of human rights. For a long time, the EU has not succeeded in creating lead institutions with a clear human rights mandate. The Commission and the Council of the European Union lay down the political guidelines on human rights and control their implementation. In the Council, the working group on human rights, COHOM, coordinates EU policies. The Directorate-General for External Relations is responsible for human rights in its field. Its section on human rights is responsible for human rights questions worldwide and for coordination within the Commission. The Directorate-General for Development is responsible for the

\textsuperscript{56}On 5 April 1977, the Presidents of the European Parliament, the Council and the Commission of the European Communities sign a joint declaration in Luxembourg affirming that they will do their utmost to protect the fundamental rights enshrined in both in the constitutions of the Member States and the European Convention on Human Rights (ECHR).http://www.ena.lu/joint-declaration-european-parliament-council-commission-concerning-protection-fundamental-rights-echr-luxembourg-april-1977-020006080.html.
cooperation with the ACP States. Other Directorate-Generals that deal with external relations are the External Trade, European Neighborhood Policy and Enlargement. The European Parliament, especially the Committee on Citizens' Freedom and Rights, Justice and Home Affairs and the Petition Committee. The European Court of Justice (ECJ) and the European Ombudsman are monitoring the respect for human rights at the EU level. They have a special responsibility to control of the executive. In the area of foreign relations, the parliament must agree to international treaties, for example, accession of new member countries and association treaties with third countries. In these cases, the parliament can introduce human rights concerns. Institutionally, a sub-Committee on human rights to the EP Committee on foreign affairs has been created Sous-commission droits de l'homme (DROI). In article 6 (2) of the Treaty of the European Union (Amsterdam Treaty) of 1997 the jurisdiction of the European Court of Justice was extended to the observance of human rights “with regard to action of the institutions, insofar as the Court has jurisdiction under the Treaties establishing the European communities and under this Treaty”. This would include the rights and freedoms of the European Convention on Human Rights, though the Additional Protocols to the Convention have not been ratified by all EU member states.

1.8 EU human rights policy –The External Dimension

The European Union is uniquely placed to influence the human rights agenda as its role in foreign and external security policy, international trade, development and aid

58 The European Union and the African, Caribbean and Pacific countries (ACP countries) enjoy special relations that can be traced back to the Union's beginnings. These political, economic and social relations are to be found mainly in the field of development cooperation. http://webcache.googleusercontent.com/search?q=cache:Vs8OsUutegkJ:europa.eu/legislation_summaries/development/african_caribbean_pacific_states/index_en.htm+The+European+Union+and+the+African,+Caribbean+and+Pacific+countries+(ACP+countries)+enjoy+special+relations+that+can+be+traced+back+to+the+Union's+beginnings.+These+political,+economic+and+social+relations+are+to+be+found+mainly+in+the+field+of+development+cooperation.&cd=1&hl=en&ct=clnk&gl=in.

59 The Court of Justice of the European Communities, usually called the European Court of Justice (ECJ), is the highest court in the European Union in matters of European Community law. It has the ultimate say on matters of EU law in order to ensure its equal application across all EU member states.

60 http://www.europal.eu.int/committees/droi_home.htm.

61 The Treaty of Amsterdam was approved by the European Council held in Amsterdam on 16-17 June 1997 and signed on 2 October 1997 by the Foreign Ministers of the fifteen member countries of the European Union. On 1 May 1999, it came into force having been ratified by all the member States, following their own constitutional rules. http://www.historiasiglo20.org/europe/amsterdam.htm.
increases. One of the objectives of the Union's Common Foreign and Security Policy (CFSP) is "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms." This same objective also has to inform the Community's action in the field of development co-operation. One of the clearest manifestations of an EU human rights policy has been the inclusion, since 1995, of a standard clause on respect for human rights in the ever-expanding network of trade and co-operation, development, and association agreements concluded with third (non-EU) countries. The characteristic feature of the human rights clause is that a violation of its terms may lead to a suspension of co-operation. EU aid and special trade preferences may also be conditional on the observance of human rights in the beneficiary country.

Within the framework of the CFSP, EU démarches to the authorities in third countries, and public declarations, have drawn attention to particular human rights concerns. The collective weight of the Member States may be brought to bear in the adoption of a common EU position in international fora by, for example, tabling statements or resolutions at the UN Commission on Human Rights or the UN General Assembly on specific themes or countries. EU co-ordinate diplomatic measures, such as restrictions on visas or on high level contacts and the imposition of arms embargoes have also been a means of demonstrating concern at the human rights situation in particular countries. Under the EU Code of Conduct on Arms Exports, adopted in June 1998, respect for human rights in the country of final destination is one of the criteria to be considered by a Member State in deciding whether to issue an export license. The Union has also agreed

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63 Article 177(2) EC Treaty. Now, Article 234 of the EC Treaty.
64 Under the Community's Generalised System of Preferences (GSP) additional trade preferences are available for developing countries which adhere to international labour standards set out in certain ILO Conventions. Practices such as forced labour may result in the withdrawal of preferences, as has been the case, since 1997, with Myanmar.
65 http://74.125.155.132/search?q=cache:PNKlTY0qoNYJ:www.crin.org/HRC/index.asp+statements+or+resolutions+at+the+UN+Commission+on+Human+Rights+or+the+UN+General+Assembly+on+specific+themes+or+countries.&cd=1&hl=en&ct=clnk&gl=in.
guidelines to promote and strengthen at international level EU policy on the universal abolition of the death penalty.68

The Treaty of Amsterdam, which came into force on 1 May 199969, marked a significant step forward in integrating human rights into the legal order of the European Union. This treaty inserts article 6, a new article reaffirming that the European Union “is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. Member states violating these principles in a “serious and persistent” way run the risk of having their rights deriving from the application of the Union Treaty suspended.70 The Treaty of Amsterdam also brought to the “First Pillar”, a general clause on combating discrimination, a provision on measures concerning asylum, refugees and immigration and certain competences in the field of employment, working conditions and social protection.

The Commission’s action in the field of external relations is guided by compliance with the rights and principles contained in the European Union Charter of Fundamental Rights that was officially proclaimed at the Nice Summit in December 2000 for its promotion of coherence between the EU’s internal and external approaches. The Charter makes the overriding importance and relevance of fundamental rights more visible to the EU’s citizens by codifying material from various sources of inspiration, such as the European Convention on Human Rights, common constitutional traditions, and international instruments.71 The European Union set out its human rights goals as follows: The European Union respects and promotes the universal principles as laid down in the UN

70 Article 7 states: (2) The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6 (1), after inviting the government of the Member State in question to submit its observations.
Universal Declaration on Human Rights and its complementary International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. The Union’s activities are also based on the main international and regional instruments for the protection of human rights, including the European Convention on Human Rights. These instruments enshrine common values regarding fundamental freedoms and democratic principles, which are universal, indivisible and interdependent. Respect for these values is a condition for efficient development in any society. Other important sources with regard to defining the priorities of the EU are the declaration and the programme of action or the World Conference on Human Rights (Vienna 1993), the declarations of the International Conference on Population and Development (Cairo, 1994), of the World Summit for Social Development (Copenhagen, 1995) and of the Fourth World Conference on Women (Beijing 1995).

The EU has made human rights, a central aspect of its external relations. Human rights, democracy and the rule of law constitute core values of the EU member states. The EU has taken several steps over the years to develop the human rights policy since the Treaty of Rome. Joint declarations, joint actions on democracy and human rights have been taken by the European Council, Parliament and Commission. This obviously has pushed EU to improve its policies in regard to human rights.


In a joint declaration European Parliament, the Council and the Commission have underlined the importance they attach to the protection of fundamental rights, as derived

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72 The conference was marked by an unprecedented degree of participation by government delegates and the international human rights community. Some 7,000 participants, including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations (NGOs) -- two thirds of them at the grass-roots level -- gathered in Vienna to review and profit from their shared experiences. [http://www. unhchr.ch/html/ menu5/ wchr.htm](http://www.unhchr.ch/html/menu5/wchr.htm).


in particular from the Constitutions of the member states and the European Convention on Human Rights. Furthermore, in the preamble to the Single European Act, the states have declared their resolution “to work together to promote democracy on the basis of fundamental human rights recognized in the Constitutions and Laws of the member states, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter notably freedom, equality and social justice.”

1978: Declaration on democracy

At the 1978 Copenhagen European Council meeting a Declaration on Democracy was adopted in which the Member States promised to safeguard the principles of representative democracy and the rule of law. This declaration was adopted against the backdrop of applications for membership from Greece, Portugal and Spain all of whom had emerged from periods of military-authoritarian rule only within the previous 3-4 years. There was then, a live concern that once admitted the new Member States might succumb to pressures from the right, and also possibly from the left, to adopt a totalitarian or authoritarian political model. A clear message was being sent that representative democracy and the rule of law were to be regarded as political conditions for EU membership.

1986: Joint declaration against racism and xenophobia

The European Parliament, the Council, the representatives of the Member States, meeting within the Council, and the Commission made a joint declaration against racism and xenophobia, of 11 June 1986. Recognizing the existence and growth of xenophobic attitudes, movements and acts of violence in the Community which are often directed

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78 Joint Declaration by the European parliament, the council, the representatives of the member states meeting within the council, and the commission against racism and xenophobia (11 June 1986). http://www.moqatel.com/mokatel/data/Wthaek/Wthaek/MalahekEroup/E/MalahekEroup12_1-1.htm.
against immigrants, Whereas the Community institutions attach prime importance to respect for fundamental rights, as solemnly proclaimed in the Joint Declaration of 5 April 1977, and to the principle of freedom of movement as laid down in the Treaty of Rome;

Whereas respect for human dignity and the elimination of forms of racial discrimination are part of the common cultural and legal heritage of all the Member States;

Mindful of the positive contribution which workers who have their origins in other Member States or in third countries have made, and can continue to make, to the development of the Member State in which they legally reside and of the resulting benefits for the Community as a whole,

1. Vigorously condemn all forms of intolerance, hostility and use of force against persons or groups of persons on the grounds of racial, religious, cultural, social or national differences;

2. Affirm their resolve to protect the individuality and dignity of every member of society and to reject any form of segregation of foreigners;

3. Look upon it as indispensable that all necessary steps be taken to guarantee that this joint resolve is carried through;

4. Are determined to pursue the endeavors already made to protect the individuality and dignity of every member of society and to reject any form of segregation of foreigners;

5. Stress the importance of adequate and objective information and of making all citizens aware of the dangers of racism and xenophobia and the need to ensure that all acts or forms of discrimination are prevented or curbed.


Over the years the various treaties, policies have focused on issues of democracy and human rights. Some of the most relevant positions are discussed below.
The Treaty on European Union (TEU) represents a new stage in European integration since it opens the way to political integration. It creates a European Union consisting of three pillars: the European Communities, Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters (JHA).\(^79\) The Treaty introduces the concept of European citizenship, reinforces the powers of the European Parliament and launches economic and monetary union (EMU).\(^80\) Besides, the EEC becomes the European Community (EC). The Treaty on European Union (TEU), signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. The Maastricht Treaty creates the European Union, which consists of three pillars: the European Communities, common foreign and security policy and police and judicial cooperation in criminal matters.

The Treaty on European Union (TEU) which entered into force on 1\(^{st}\) November 1993 represents a particularly important step forward, as it provides a legal legitimacy for the incorporation of human rights as a key element of the Union’s internal and external policies (Nanette A. Neuwahl, Allan Rosas (eds.) 1995: 297). One of the TEU’s major innovations is the explicit reference made in different parts of the text to human rights, fundamental freedoms and respect for democratic principles and the rule of law.

**Human rights references in the TEU**

**Preamble, third recital\(^81\):** Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and the rule of law....

\(^{79}\) Police and Judicial Co-operation in Criminal Matters (PJC), formerly Justice and Home Affairs (JHA), is the third of the three pillars of the European Union, focusing on co-operation in law enforcement and combating racism. It is based more around intergovernmental cooperation than the other pillars meaning there is little input from the Commission, Parliament and the Courts. It is responsible for policies including the European Arrest Warrant.


\(^{80}\) In June 1988 the European Council confirmed the objective of the progressive realisation of Economic and Monetary Union (EMU). It mandated a committee chaired by Jacques Delors, the then President of the European Commission, to study and propose concrete stages leading to this union.


http://books.google.co.in/books?id=mp8T5zldh8kC&pg=PA63&lpg=PA63&dq=References+in+the+TEU+Preamble+third+recital+source=bl&ots=GANSwTEJj&sig=hRMP0RaE-
Title 1, Common Provisions:

Article F (1): The union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy:

Article F (2): The Union shall respect all fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

Title XVII EC, Development Cooperation:

Article 130u (2): Community Policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

Title V, Common Foreign and Security Policy:

Article J. 1 (2), fifth indent: The objections of the common foreign and security policy shall be to develop and consolidate democracy and the rule of law, and respect for human rights and Fundamental Freedoms.

Treaty of Amsterdam 1997:

The Treaty of Amsterdam has also made specific progress in the field of human rights. An express commitment to the protection of human rights as an objective is supported by

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82 John Tillotson, Nigel G. Foster.(2003), Text, cases and materials on European Union law, RoutledgeCavendish. pp. 16.
Article 13, extending protection from discrimination beyond that of mere sex discrimination (Article, 141), or that based on nationality (Article 12). Proposals for future expansion, coupled with demands for greater accountability of the EU institutions, have increased concern over such issues. The EU now has the power to impose penalties for the persistent breach of fundamental human rights by a Member State.

Passing of the EU Charter on Fundamental Rights: 2000

Another major development was the passing of the European Union’s Charter of Fundamental Rights in 2000. The European Union Charter of Fundamental Rights is signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

The European Union Charter of Fundamental Rights sets out in a single text, for the first time in the European Union’s history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU.

These rights are divided into six sections: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice.

They are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of the EU Member States, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the European Union or its Member States are parties.

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The issue of the Charter's legal status - i.e. whether to make it legally binding by incorporating it into the TEU - was raised by the Cologne European Council, which originally launched the Charter initiative. The Convention drew up the draft Charter with a view to its possible incorporation, and the European Parliament voted in favour of incorporation. The Nice European Council decided to consider the question of the Charter's legal status during the general debate on the future of the European Union, which was initiated on 1 January 2001.89

The Commission Communication on the EU's Role in promoting Human Rights and Democratisation in Third Countries (No. 252 final)90: 2001

In order to present a framework for all European Union activities in the area of human rights, the Commission, since 1995, has issued a series of communications to the Council and the Parliament. Strategies aimed at enhancing the consistency and effectiveness of the human rights and Democratisation approach of the European Union are set up.

A key communication by the Commission on the EU role in Promoting Human Rights and Democratisation in Third Countries (May 2001) concentrated mainly on developing a coherent strategy in this field for EU external assistance. Rather than seeking to rewrite the fundamental policy, the Commission aims to set this policy in the context of its overall strategic approach to external relations for the future. The document takes into account developments in the legal and political framework for the EU activities including the Amsterdam and Nice Treaties and the Charter of Fundamental Rights, which foresees in particular more coherence between the EU internal and external approaches to human rights.

• The Council Conclusions of 25 June 2001 supported the Commission's commitment to step up the process of mainstreaming human rights, good governance and democratization objectives into all aspects of EU external policies. This was outlined in the Commission's communication on "the European

Union's role in promoting Human Rights and Democratization in third countries" (COM (2001) 252 final) (Philip Alston, Olivier de Schutter, 2005: 24), which emphasized that the country strategy papers (CSPs) should contribute to a more systematic approach to human rights and democratization. The communication proposed that human rights and democracy be included in the planning, design, implementation and monitoring of all policies and programs.

It was explicitly stipulated that the positive impact of EC assistance programs on respect for human rights and democratization should be improved by:

- Including these issues in the dialogue used to draw up the country strategy for EC assistance;
- Using country strategies to focus on sectors or cross-cutting interventions to improve the overall governance situation;
- Supporting participation of civil society in the EC's development co-operation, in line with the approach in the Cotonou Agreement, and building the capacity of civil society actors engaged in dialogue and implementation of programs;
- Taking active steps to use participatory approaches in program design and to assess, monitor and enhance the impact of individual projects and programs on human rights;
- Taking performance in the area of human rights (including economic, social and cultural rights), democracy and the rule of law into account when deciding country allocations under the main co-operation programs.

The regulations for the new financing instruments for external assistance under the Financial Perspectives 2007-2013 (the Development Co-operation instrument) also stipulate the mainstreaming of the promotion of human rights and democracy in all programs. (Regulation (EC), No. 1905/2006: "Establishing a financing instrument for development co-operation").

The Treaty of Lisbon

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The Treaty of Lisbon is a treaty that was signed by the European Union (EU) member states on 13 December 2007, and entered into force on 1 December 2009. It amends the Treaty on European Union (TEU, Maastricht; 1992) and the Treaty establishing the European Community (TEC, Rome; 1957). In this process, the TEC was renamed to Treaty on the Functioning of the European Union (TFEU).

Prominent changes included more qualified majority voting in the Council of Ministers, increased involvement of the European Parliament in the legislative process through extended co-decision with the Council of Ministers, the elimination of the pillar system and the creation of a long-term President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy to present a united position on EU policies. The Treaty also made the Union’s human rights charter, the Charter of Fundamental Rights, legally binding.

The fifty-five articles of the Charter of Fundamental Rights (ChFR) list political, social, and economic rights for EU citizens. Under the Treaty of Lisbon, the Charter is legally binding (except for those member states with an opt-out for this provision). It is intended to make sure that European Union regulations and directives do not contradict the European Convention on Human Rights which is ratified by all EU Member States (and to which the EU as a whole has acceded under the Treaty of Lisbon). In the rejected EU Constitution, it was integrated into the text of the treaty and was legally binding. The UK, as one of the two countries with a common law legal system in the EU, and a largely uncodified Constitution, was against making it legally binding over domestic law. The suggestion by the German presidency that a single reference to it with a single article in the amended treaties, maintaining that it should be legally binding, was implemented. Nevertheless, in an attached protocol, Poland and the United Kingdom have opt-outs.

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from these provisions of the treaty.\textsuperscript{95} The Czech Republic has an assurance that the terms do not apply retrospectively. Article 6 of the Treaty on European Union elevated the Charter to the same legal value as the Treaty on European Union and the Treaty on the Functioning of the European Union.

1.9 Conclusion:
Notwithstanding the debate on universality of human rights, it can be safely concluded that today all states are judged by their compliance to human rights norms and standards. The EU has over the years developed a comprehensive approach to human rights. It is active in promoting these concerns in its relations with other countries. It has for their purpose put in place instruments and mechanisms which the next chapter will focus on.

\textsuperscript{95}Article 30 of the Treaty.
The main instruments available to the European Community to promote respect for human rights are cooperation and partnership agreements with third countries. The new development policy of the European Community is firmly grounded in the principle of sustainable, equitable and participatory human and social development. The promotion of human rights, democracy, the rule of law and good governance are an integral part of the new policy. EU's cooperation and partnership agreements with third countries offer opportunities to conduct regular political dialogues and to provide financial support to human rights related policies and activities. The European Community's cooperative funding programme includes: the European Development Fund (EDF) for African, Caribbean and Pacific (ACP) countries; the ALA funds for Asian and Latin American countries; Tacis for the Russian Federation, the Newly Independent States and Mongolia; Phare for countries of Central and Eastern Europe (candidate countries to the EU); CARDS for the western Balkans; and MEDA, for Mediterranean countries. It also

2 European Centre for Minority Issues, (2004), Mechanisms for the implementation of minority rights - Council of Europe, pp. 194. http://books.google.co.in/books?id=kMijNm2371UC&pg=PA194&dq=The+main+instruments+available+to+the+European+Community+to+promote+respect+for+human+rights+are+cooperation+and+partnership+agreements+with+third+countries. &lr=

3 The European Development Fund (EDF) is the main instrument for providing Community aid for development cooperation in the ACP States and OCT. The 1957 Treaty of Rome made provision for its creation with a view to granting technical and financial assistance, initially to African countries which at that time were still colonised and with which some Member States had historical links. http://europa.eu/legislation_summaries/development/overseas_countries_territories/r12102_en.htm.

4 European Investment Bank lending in Asia and Latin America (ALA) started in 1993 and is governed by mandates from the European Union (EU). Under the current mandate (ALA IV), covering the period the 2007-2013, the EIB is authorised to lend up to EUR 3.8 billion for financing operations supporting the EU cooperation strategies in these regions and complementing other EU development and cooperation programmes and instruments in these regions. http://www.eib.org/projects/regions/ala/.

5 The main financial aids for Russia under the EU-Russia Cooperation Programme came from the so called (Technical Assistance to CIS countries), in place from 1994 until the end of 2006 for the main CIS country. http://julienfrisch.blogspot.com/2009/01/tacis-funds-for-russia-were-waste-of.html.

6 The Phare programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. Originally created in 1989 as the Poland and Hungary: Assistance for Restructuring their Economies (PHARE) programme, Phare has expanded from Poland and Hungary to currently cover ten countries. It assists the eight of the ten 2004 accession Member States: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia, as well as those countries that acceded in 2007 (Bulgaria and Romania), in a period of massive economic restructuring and political change. http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/phare/index_en.htm

7 Community Assistance for Reconstruction, Development and Stabilisation (CARDS) is the programme of the European Commission in the Western Balkans in the period from 2000 to 2006. It praised the EU executive for quick delivery of assistance to the participating countries (Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo and Serbia). http://www.highbeam.com/doc/1G1-174020213.html.
includes other thematic budget lines, such as the European Instrument for Democracy and Human Rights (EIDHR) and funds to co-finance projects with development NGOs, for combating HIV, promoting gender equality, and providing humanitarian aid, which is managed by the European Community Humanitarian Aid Office (ECHO). Other European Community policies, such as those on trade can also have an effect on human rights and democratization.

The other instruments of the EU’s human rights policy are:  

- Human Rights guidelines
- Human Rights Dialogues
- Démarches and declarations
- Human rights clauses in cooperation agreements with third countries
- The European Instrument for Democracy and Human Rights (EIDHR)
- The European Neighbourhood Policy
- A Common Foreign and Security Policy (CFSP) of the European Union

2.2 Human Rights guidelines

The EU guidelines on human rights are policy documents adopted by the Council. They cover issues of particular importance to EU member states including the death penalty (1998, updated 2008), torture and other cruel, inhuman or degrading treatment or punishment (2001, updated 2008), human rights dialogues (2001), Children and armed conflict (2003, updated 2008), human rights defenders (2004) and rights of the child (2007). In addition, the EU adopted guidelines on promoting compliance with International Humanitarian Law (IHL) in December 2005. The main aim is to set out operational tools for the EU to promote compliance with IHL. Guidelines are legally not binding, but very pragmatic instrument of EU human rights policy. They provide the

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different EU actors not only at headquarters, but also in third countries with elements allowing sustained action in a number of key actors of concern.9

The EU has developed guidelines on Death penalty (1998)10

During the 62nd session of the General Assembly, the Plenary of the General Assembly adopted the Third Committee resolution on a Moratorium on the use of the death penalty (62/149). The European Union actively participated in the cross-regional alliance which successfully led and guided this initiative through the General Assembly and all EU partners co-sponsored this initiative. In this resolution, the General Assembly calls on all States that still maintain the death penalty to:

- Respect international standards that provide safeguards guaranteeing the protection of the right of those facing the death penalty, in particular minimum standards;
- Progressively restrict the use of death penalty and reduce the number of offences for which it may be imposed;
- Establish a moratorium on executions with a view to completely abolishing the death penalty.

At the October 1997 Council of Europe Summit, Heads of Government, including all EU member states, called for universal abolition of the death penalty (Jörg Polakiewicz, 1999: 31). Moreover, new member states of the Council of Europe have committed themselves to moratoria and to ratify the 6th Protocol of the European Convention on Human Rights (ECHR) committing them to permanent abolition. The 13th Protocol of the ECHR, which has been signed by all EU member states and entered into force on 1 July 2003, commits the member states concerned to permanent abolition of the death penalty in all circumstances.

The Committee of Ministers of the Council of Europe decided in September 2007 to declare a “European Day against the Death Penalty” which is to be marked each year on 10 October. In December 2007, this European Day (Bernan, 2008: 209) was also declared by the European Union.

Article 2 of the EU Charter of Fundamental Rights provides that no one shall be condemned to the death penalty, or executed. All European Union member states are fully committed to these provisions and implement them in practice. The EU will keep these Guidelines under regular review and would envisage conducting such a review every three years.

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

iii) Capital punishment may not be imposed on:
   - Persons below 18 years of age at the time of the commission of their crime;
   - Pregnant women or new mothers;
   - Persons who have become insane.

http://books.google.com/books?id=Pkoal1nNseUC&pg=PA162&dq=Where+states+insist+on+maintaining+the+death+penalty,+the+EU+considers+it+important+that+the+following+minimum+standards+should+be+met;
iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.

v) Capital punishment must only be carried out pursuant to a final judgment rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.

vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.

vii) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.

ix) Capital punishment may not be carried out in contravention of a state's international commitments.

x) The length of time spent after having been sentenced to death may also be a factor.

xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.

xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.¹³

Torture and other cruel, inhuman or degrading treatment (2001)¹⁴

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States. Respect for human rights features among the key objectives of the EU's common foreign and security policy (CFSP). To work towards the prevention and the eradication of all forms of torture and ill-treatment within the EU and world-wide is a strongly held policy view of all EU member states. Promotion and protection of this right is a priority of the EU's human rights policy.

In its work towards the prevention and eradication of torture and ill-treatment the EU is guided by relevant international and regional norms and standards on human rights, the administration of justice and the conduct of armed conflict including inter alia those contained in the following instruments¹⁵:

- Universal Declaration of Human Rights.
- UN International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol.
- UN Convention on the Rights of the Child (CRC) and its two Optional Protocols.
- UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol.
- UN International Convention for the Protection of All Persons from Enforced Disappearance.

¹⁴ Cf. EU 2002a:249ff.
http://books.google.co.in/books?q=In+its+work+towards+the+prevention+and+eradication+of+torture+and+ill-treatment+the+EU+is+guided+by+relevant+international+and+regional+norms+and+standards+on+human+rights&btnG=Search+Books.
• European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols no.6 and 13 as well as the relevant case-law of the European Court on Human Rights
• European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
• Statute of the International Criminal Court.
• Statute of the International Tribunal for the Former Yugoslavia.
• Statute of the International Tribunal for Rwanda.
• Geneva Conventions on the Protection of Victims of War and its Protocols as well as customary rules of humanitarian law applicable in armed conflict.\textsuperscript{16}

The Council Working Group on Human Rights (COHOM) and the relevant Geographic Working Groups will on the basis of the reports of the Heads of Mission and other relevant information, such as reports and recommendations from UN Special Rapporteurs\textsuperscript{17} and Treaty Bodies as well as non-governmental organisations, identify situations where EU actions are called upon, agree on further steps or make recommendations to higher levels.

\textbf{Children in armed Conflict (2003)\textsuperscript{18}}

In the past decade alone, armed conflicts are estimated to have claimed the lives of over two million children and physically maimed six million more. Conflict deprives children of parents, care-givers, basic social services, health care and education. There are some twenty million displaced and refugee children, as well as one million orphans, while others are held hostage, abducted or trafficked. Systems of birth registration and juvenile

\textsuperscript{17} Rapporteur (derived from French) is used in international and European legal and political contexts to refer to a person appointed by a deliberative body to investigate an issue or a situation and report to that body. 
justice systems collapse. At any given time, there are estimated to be at least 300,000 child soldiers participating in conflicts. The EU underlines the fundamental role of international criminal jurisdictions in fighting impunity and addressing the relevant violations of international law concerning the illegal use and recruitment of child soldiers. Promotion and protection of the rights of the child is a priority of the EU's human rights policy. The European Union (EU) considers it of critical importance to address the issue of children and armed conflict not only because children are suffering in the present and will shape the future but because they have inherent and inalienable rights, as set out in The Convention on the Rights of the Child (CRC), its Optional Protocols and other international and regional human rights instruments. The EU's aim is to raise the awareness of this issue by giving more prominence to EU actions in this field, both within the EU and in its relations with third parties.

The EU has a variety of tools for action at its disposal. The EU building on existing initiatives in order to consolidate, strengthen and advance EU actions for children affected by armed conflict. In addition, the tools at the EU's disposal include, inter alia, the following: Political dialogues, Démarches, Multilateral co-operation, Crisis management operations and training.19

EU Actions in the field of Children and Armed Conflict (Annex 1).


Support for human rights defenders is already a long-established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The

Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means of supporting and assisting human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteur on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While the primary purpose of the Guidelines is to address specific concerns regarding human rights defenders, they also contribute to reinforcing the EU's human rights policy in general.

The EU supports the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:
- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms; and
- Mainstreaming human rights culture and information on human rights defenders at national, regional and international level.\\n
Role of EU Missions in supporting and protecting human rights defenders see Annex 2.

EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008)

The adoption of guidelines on violence against women and girls is a mark of the EU's clear political will to treat the subject of women's rights as a priority and to take long-term action in that field. In focusing on the issue of violence against women and girls, the EU will be taking effective action against one of the major human rights violations of today's world.

In tune with the various resolutions of the UN like UN resolution 61/143 on intensification of efforts to eliminate all forms of violence against women (2006) and UN Security Council resolutions 1325 (2000) and 1820 (2008) on women, peace and security, for instance, as resolution 2005/2215 of the European Parliament on the situation of women in armed conflicts and their role in the reconstruction and the democratic process in countries after a conflict. The EU has also passed resolutions/guidelines number of specific projects aimed at women and girls, financed by, *inter alia*, the European Instrument for Democracy and Human Rights, but also by any other appropriate financial instrument of the EU and the Member States.

The Council Working Party on Human Rights is responsible for regularly evaluating the implementation of these guidelines, *inter alia* on the basis of the reports submitted by the Heads of Mission and after informal consultation with civil society. The Working Party on Human Rights kept the Council informed of the application of the guidelines and propose to the Council any necessary improvements for applying the guidelines.22

### 2.3 Human Rights Dialogues

The European Union is committed to dealing with those priorities, issues which should be included on the agenda for every dialogue. These include the signing, ratification and implementation of international human rights instruments, cooperation with international

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human rights procedures and mechanisms, combating the death penalty, combating
torture, combating all forms of discrimination, children's rights, and in particular those of
children in armed conflicts, women's rights, freedom of expression, the role of civil
society and the protection of human rights defenders, international cooperation in the
field of justice, in particular with the International Criminal Court, promotion of the
processes of democratisation and good governance, the rule of law and the prevention of
conflict. The dialogues aimed at enhancing human rights cooperation could also include –
according to the circumstances – some of the priority issues referred to above, (in
particular the implementation of the main international human rights instruments ratified
by the other party), as well as preparing and following up the work of the Human Rights
Council in Geneva, of the Third Committee of the UN General Assembly in New York
and of international and/or regional conferences. They are held on a reciprocal basis,
which enables the third country to raise the human rights situation in the European
Union.23

The European Union is engaged in human rights dialogues with a number of countries.
Those dialogues are in themselves an instrument of the Union's external policy.24 That
instrument is one of a range of measures which the EU may use to implement its policy
on human rights, and constitutes an essential part of the European Union's overall
strategy aimed at promoting sustainable development, peace and stability. However, there
are at present no rules to determine at what point it should be applied. It should also be
said that there is room for greater consistency in the EU's current approach towards
dialogues, which at present employs several different types:

Dialogues or discussions of a rather general nature based on regional or bilateral treaties,
agreements or conventions dealing systematically with the issue of human rights.25 These
include in particular:

• Relations with candidate countries;

23 EU guidelines on human rights dialogues with third countries.
Commission. pp. 68.
• The Cotonou Agreement with the ACP States and the Trade, Development and Cooperation Agreement with South Africa;
• Relations between the EU and Latin America;
• The Barcelona process (Mediterranean countries);
• Political dialogue with Asian countries in the context of ASEAN\(^{26}\) and ASEM\(^{27}\);
• Relations with the Western Balkans;
• Bilateral relations in the framework of association and cooperation agreements.

At present there is only one regular, institutionalised dialogue devoted solely to human rights between the European Union and a third country, namely that with China.\(^{28}\) This is a highly structured dialogue held at the level of senior human rights officials. The European Union also maintained a human rights dialogue with the Islamic Republic of Iran.\(^{29}\) This type of dialogue, focusing solely on human rights, has so far only been used with countries with which the European Community had no agreement and/or where the agreement contained no "human rights" clause. The fact that such dialogue exists does not preclude discussion of the human rights issue at any level of the political dialogue;

Ad hoc dialogues extending to CFSP-related topics such as that of human rights, For instance, the EU currently maintains dialogues with Cuba and Sudan at the level of heads of mission; Dialogues in the context of special relations with certain third countries, on the basis of broadly converging views. With the United States, Canada and the associated countries these take the form of six-monthly meetings of experts, with the Troika

\(^{26}\) The Association of Southeast Asian Nations, commonly abbreviated ASEAN is a geo-political and economic organisation of 10 countries located in Southeast Asia, which was formed on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then, membership has expanded to include Brunei, Burma (Myanmar), Cambodia, Laos, and Vietnam. Its aims include the acceleration of economic growth, social progress, cultural development among its members, the protection of the peace and stability of the region, and to provide opportunities for member countries to discuss differences peacefully. http://en.wikipedia.org/wiki/ASEAN.

\(^{27}\) ASEM is a vital forum for dialogue between Europe and Asia. Asia-Europe Meeting (ASEM) is the main multilateral channel for communication and dialogue between Asia and Europe since 1996. As one of the four " coordinators" of ASEM, the European Commission underpins the process. ASEM involves virtually the whole of Asia and Europe. http://ec.europa.eu/external_relations/asem/index_en.htm.


representing the EU, before the Commission on Human Rights and the annual United Nations General Assembly. The main objective of these dialogues is to discuss issues of common interest and the possibilities for cooperation within multilateral human rights bodies. In addition to dialogues at EU level, a number of Member States also maintain dialogues with various third countries at national level.30

The objectives of human rights dialogues vary from one country to another and are defined on a case-by-case basis. These objectives may include:31
(a) Discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations;
(b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country. Moreover, human rights dialogues can identify at an early stage problems likely to lead to conflict in the future.

Issues covered in human rights dialogues32

The issues to be discussed during human rights dialogues are determined on a case-by-case basis. However, the European Union is committed to dealing with those priority issues which should be included on the agenda for every dialogue. These include the signing, ratification and implementation of international human rights instruments, cooperation with international human rights procedures and mechanisms, combating the death penalty, combating torture, combating all forms of discrimination, children's rights, women's rights, freedom of expression, the role of civil society, international cooperation in the field of justice, promotion of the processes of democratisation and good governance, and the prevention of conflict. The dialogues aimed at enhancing human rights cooperation could also include – according to the circumstances – some of the

30 European Union guidelines on human rights Dialogues. pp. 2
31 Ibid., pp. 4.
priority issues referred to above, (in particular the implementation of the main international human rights instruments ratified by the other party), as well as preparing and following up the work of the Commission on Human Rights in Geneva, of the Third Committee of the UN General Assembly in New York and of international and/or regional conferences.

Practical arrangements for human rights dialogues

Flexibility and pragmatism are the keywords in the context of the practical arrangements for human rights dialogues, which should thus be determined on a case-by-case basis, by joint agreement with the country concerned. The arrangements will cover aspects such as where and how often the dialogue is to be held and the level of representation required. To ensure that the discussions are as fruitful as possible, the dialogues would, as far as feasible, be held at the level of government representatives responsible for human rights. For the sake of continuity, the European Union should be represented by the Troika – at the level either of representatives from the capitals or of Heads of Mission. The European Union ensures that dialogue meetings are regularly held in the country concerned. This approach has the advantage of giving the EU delegation a better opportunity to gauge for itself the situation on the spot and, subject to the agreement of the country's authorities, to contact the people and institutions in which it is interested. Traditionally, dialogues whose primary purpose is to discuss issues of mutual interest and to strengthen human rights cooperation are held in Brussels.33 As far as possible, the European Union asks the authorities of countries involved in the human rights dialogue to include in their delegations representatives of the various institutions and Ministries responsible for human rights matters, such as the Justice and Interior Ministries, the police, prison administration etc. Likewise, civil society could become involved under the most suitable arrangement in the preliminary assessment of the human rights situation, in the conduct of the dialogue itself (particularly by organising meetings with civil society at local level

in parallel with the formal dialogue), and in following up and assessing the dialogue. The European Union could thus signify its support for defenders of human rights in countries with which it maintains exchanges of this kind. The EU as far as possible give the human rights dialogues a degree of genuine transparency vis-à-vis civil society.

**Managing human rights dialogues**

Given the prospect of increasing numbers of dialogues, the Working Party on Human Rights (COHOM) considers the problem of how these should be managed. Continuity is a very important factor, as is the strengthening of the structures supporting the current Council Presidency in the preparations for the dialogues and their follow-up to prepare each dialogue. Input from the geographical working parties, the Working Party on Development Cooperation (CODEV) (Jan Orbie, Lisa Ann Tortell, 2008:190) and the Committee on measures for the development and consolidation of democracy and the rule of law; and for the respect of human rights and fundamental freedoms are required to prepare. The Council Secretariat's support is essential in terms of centralising all the data, preparing both the content and the logistics, and following up the dialogues. The European Union could also consider, on a case-by-case basis, the possibility of associating a private foundation or organisation specialised in the field of human rights with one or more dialogues. In this connection, Sweden's experience (the Wallenberg Institute).

**The human rights position in political dialogues**

As indicated in paragraph 3 of the treaty of Union 1993, the Union will ensure that the issue of human rights, democracy and the rule of law is incorporated into all meetings and discussions it has with third countries, at every level, including political dialogue. The European Union undertakes to include human rights experts in the EU delegations. The decision on who will provide the expert knowledge will be taken on a case-by-case

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basis, but with an eye to continuity. Although this type of discussion does not afford the possibility of dealing with human rights issues in any great depth, the European Union will endeavor to raise the priority issues referred to in paragraph 5 treaty of 1993, with the country concerned.

On 14 May 2009 the European Union and the People's Republic of China held the 27th round of the EU-China Dialogue on Human Rights» in Prague. The Dialogue provided a platform for a candid and constructive exchange of views between the People's Republic of China and the EU on a wide range of human rights issues. Taking place one week before the 11 EU-China Summit, the dialogue was conducted in a frank atmosphere and was an occasion to express concerns and differences of opinion with regard to the implementation of international human rights standards in China and the EU. Key issues for the EU were freedom of expression, (Jens Hillebrand, 2008:4) including freedom of the press, situation of human rights defenders, situation in Tibet and Xinjiang, death penalty, torture, and the ratification by China of the ICCPR. The EU and China also discussed a number of specific items tied to right to health, in which substantive endeavours of future cooperation were identified. The EU welcomed the recently published Human Rights National Action Plan of the People's Republic of China while pointing at the challenges in its implementation. China raised racism and discrimination in the EU, as issues of concern, pointing to a number of alleged incidents of racial discrimination in some Member States. Concerning cooperation in international organisations, the EU attached special importance to the honest spirit of UPR, to maintenance of special procedures, both country and thematic, of the Human Rights Council (HRC) and to possible visits of Special Rapporteurs to China. Both sides looked forward to close coordination on issues for the next session of the UN General Assembly and of the Human Rights Council in June. The EU welcomed China's cooperation in the HRC for the renewal of the special procedure on Burma/Myanmar. The EU and China expressed their commitment to continue the legal seminar, which took place for the 18th time on 12-13 May in Prague, focusing on access to justice and rights of the disabled

people. The Parties will now start preparations for the next seminar to be held during the second semester of 2009. The EU-China Human Rights Dialogue has, with short interruptions, taken place biannually since 1995 (Peter Wallace Preston, 2003:319). The next regular meeting will be held in the second half of 2009 in Beijing under the Swedish Presidency.\(^{37}\)

### 2.4 Demarches and Declarations

Demarche means a formal diplomatic representation of the official position, views, or wishes on a given subject from one government to another government or intergovernmental organization. Demarches on human rights to the authorities of third countries are important instruments of the EU's foreign policy. Départements\(^{38}\) are usually carried out in a confidential manner, jointly by the current and incoming Presidencies as well as the Commission. In addition, the EU makes public declarations calling upon a government or other parties to respect human rights, or welcoming positive developments. These declarations are published simultaneously in Brussels and in the Presidency's capital.\(^{39}\)

Demarches and declarations have been used to convey concerns related to human rights. The main subjects tackled by them are protection of human rights defenders, illegal detention, forced disappearances, the death penalty, torture, child protection, refugees and asylum seekers, extrajudicial executions, freedom of expression and of association, the right to a fair trial, and elections.

<table>
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<tr>
<th>In the period under review, the Union made human-rights-related declarations concerning inter alia the following countries:</th>
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<tr>
<td>Afghanistan, Azerbaijan, Belarus, Burma/Myanmar, China, Colombia, DRC,</td>
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Countries in which the EU carried out general death penalty démarches:
Afghanistan, Belarus, Brunei, Burundi, Canada, Chad, Congo, Congo (Brazzaville), Egypt, Equatorial Guinea, Ethiopia, Fiji, Ghana, Grenada, Guatemala, Guinea-Bissau, India, Iran, Iraq, Japan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Liberia, Libya, Madagascar, Malawi, Morocco, Namibia, Niger, Papua, Palau, Russia, Saudi Arabia, South Korea, Sudan, Syria, Tanzania, Taiwan, Togo, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, the US and Zambia.

Demarches and declarations are also employed in a positive sense. In the period under review, the EU welcomed a number of positive developments through declarations on, for example, humanitarian agreements in Colombia (9 October 2007), and the abolition of the death penalty (4 January 2008) and the release of human rights defenders (14 February 2008) in Uzbekistan. Declarations are also used to convey a message in support of EU priorities: e.g. on the European Day against the Death Penalty (common declaration of the EU and the Council of Europe) or the UN International Day in Support of Victims of Torture. Départements were made in all regions of the world to promote the universality and integrity of the Rome Statute of the International Criminal Court. In addition the EU High Representative for the CFSP occasionally makes statements on key human rights developments.

2.5 Human rights clauses in cooperation agreements with third countries

Since 1995, the European Community has sought to insert a human rights clause in all agreements, other than sectoral agreements, concluded with non-industrialised countries. The human rights clause makes human rights a subject of common interest and part of the dialogue between the parties, and serves as a basis for the implementation of positive measures on a par with other key provisions in an agreement. In the event of serious and persistent breaches of human rights, the human rights clause enables one party to the agreement to take restrictive measures against the offending party in proportion to the gravity of the breaches.44 On 15 October 2007, the European Community concluded an Interim Agreement on Trade and Trade-Related Matters with the Republic of Montenegro which contained a human rights clause.45

In its Resolution of 8 May 2008 on the Annual Report on Human Rights in the World 2007 and the EU's policy on the matter46, the European Parliament deplored the fact that the human rights and democracy clause was not being implemented in a concrete fashion, due to the lack of a mechanism that would allow it to be enforced. The Parliament reiterated its call for human rights clauses to be implemented through a more transparent procedure of consultation between the parties.

2.6 Activities funded under the European Instrument for Democracy and Human Rights (EIDHR)\textsuperscript{47}

The European Instrument for Democracy and Human Rights (EIDHR) succeeded the previous EIDHR Initiative in 2007 as an independent financing instrument specifically designed to complement Community assistance provided through bilateral development and economic cooperation. It contributes to the development and consolidation of democracy, the rule of law and to the promotion and protection of human rights and fundamental freedoms worldwide.

Its aim is to provide support for the promotion of democracy and human rights in non-EU countries. The key objectives of the EIDHR are:

- Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk;
- Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation;
- Supporting actions in areas covered by EU Guidelines: dialogue on Human rights, human rights defenders, the death penalty, torture, children and armed conflicts and violence against women;
- Supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law and the promotion of democracy;
- Building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through monitoring electoral processes.

The EIDHR instrument can grant aid where no established development cooperation exists, and can intervene without the agreement of the governments of third countries. It can support groups or individuals within civil society defending democracy as well as intergovernmental organisations that implement the international mechanisms for the protection of human rights. Work with, for and through civil society organizations gives to the EIDHR its critical profile. Assistance under EIDHR complements other tools which are used to implement EU policies for democracy and human rights. These range from political dialogue and diplomatic initiatives to various instruments for financial and technical cooperation, including the Development Co-operation Instrument and ENPI. It also complements the more crisis-related interventions of the Instrument for Stability.

For the period 2007-2013 the EIDHR has a budget of €1.104 million.

Assistance may take the following forms:

- projects and programmes,
- grants to finance projects submitted by civil society and/or international/intergovernmental organizations
- small grants to human rights defenders,
- grants to support operating costs of the Office of the UN High Commissioner for Human Rights and the European Inter-University Centre for Human Rights and Democratisation (EIUC)
- human and material resources for EU election observation missions
- public contracts

Based on the new Financial Regulation, the EIDHR includes the possibility under certain circumstances to finance not only registered organisations, but also non-legal entities.48

The current EIDHR Strategy Paper (2007–2010) is implemented on the basis of annual action programmes.49 EIDHR partners are primarily local and international civil society organisations (91% of contributions), but also international intergovernmental bodies

with special expertise (9% of contributions). Work with, for and through civil society organisations gives to the EIDHR its critical profile. On the one hand, it promotes the kind of open society which civil society requires in order thriving and, on the other hand, it supports civil society in becoming an effective force for dialogue and reform. The EIDHR is an independent financing instrument that can be used even in situations where there are no development cooperation links to the European Community. The EIDHR can finance projects without the consent of a third-country government or other public authorities.

Activities take place at country, regional and global levels. The Commission's Delegations in third countries are in charge of the management of EIDHR country-level projects. In 2007-2008, EIDHR resources for human rights and democracy projects amounted to over EUR 108 million, making it possible to fund a wide range of projects in more than 80 countries. In addition, the EU Election Observation Missions (EOMs) were funded under the EIDHR. These have developed into a pivotal means of fostering democratic processes in a country.

Based on the new Financial Regulation allowing for more flexible and innovative ways of financing, the new EIDHR includes the possibility under certain circumstances to finance not only registered organisations, but also non-legal entities. It furthermore provides the possibility of 're-granting', meaning that in order to enhance human rights in situations where they are most at risk, civil society organisations in charge of the project implementation can award small grants to other local organisations, non-legal entities or individual human rights defenders.

Regular meetings take place between the Commission and civil society representatives both at local level in the partner countries, as well as in Brussels with NGO platforms of interest to the EIDHR, with the aim of increasing dialogue with implementing partners and sharing information. The EIDHR also includes funds for capacity building of local civil society organisations in partner countries.

EC-OSCE joint management project to promote democratisation and human rights in Eastern Europe and a contribution to the production and presentation of films as human rights communication tools within the framework of the 60th anniversary of the Universal Declaration of Human Rights. The partnerships further include an annual contribution to the Office of the High Commissioner for Human Rights' Strategic Management Plan as well as the Master's Degrees in Human Rights and Democratisation of the European Inter-University Centre for Human Rights and Democratisation (EIUC).

Evaluations and analysis

An evaluation on EIDHR support for prevention of torture and torture rehabilitation centres assessed 36 projects carried out during the last five years in 28 countries of the Middle East/Asia, Africa, Eastern and Western Europe, and in Latin America. The evaluation concluded that work on torture prevention contributed positively to the situation on torture and other human rights issues in a large number of countries. The assistance to torture victims provided by rehabilitation centres of torture victims had been constantly increasing at the same time as the quality of the services provided had improved. The relevance, efficiency and effectiveness of the projects were assessed to be highly satisfactory. The evaluation also concluded that it was not easy to assess projects on the rehabilitation of torture victims due to the lack of relevant, objective and verifiable indicators.

Furthermore, an analysis completed on all EIDHR projects since the year 2000 gives an overview of what the EIDHR has supported and how its relevance and impact could be evaluated. The desk study produced electronic compendiums covering all EIDHR projects organised geographically and thematically.

2.7 Action plans within the framework of the European Neighbourhood Policy

The European Neighbourhood Policy (ENP) was developed in 2004, with the objective of avoiding the emergence of new dividing lines between the enlarged EU and its neighbours and instead strengthening the prosperity, stability and security of all concerned. The central element of the European Neighbourhood Policy is the bilateral ENP action plans agreed between the EU and each partner. This tool sets out an agenda of political and economic reforms with short and medium-term priorities. The political chapter of each ENP action plan covers a wide range of human rights, governance and democratisation issues, with a varying emphasis and differentiation according to the degree of commitment shown by each partner country. ENP serves to enhance cooperation in the economical, political and cultural field. An action plan serves to address the strengthening of democracy, good governance, rule of law and human rights as well as economic modernization. In the EU general strategy paper of 12 May 2004 and the action plan of 9th December 2004, however, the human rights are not specifically mentioned with the execution of a reference to the necessity of intensive cooperation to prevent the trade of human beings.

The commitments in the action plans aim to contribute to key reforms in the area of democratisation (e.g. electoral laws, decentralisation, strengthening of administrative capacity), the rule of law (e.g. reform of penal and civil codes, codes of criminal procedure, strengthening the efficiency of judicial administrations, elaboration of strategies in the fight against corruption), and human rights (e.g. legislation protecting human rights and fundamental freedoms, enforcement of international human rights conventions, fight against racial hatred and xenophobia, human rights training and enforcement of international conventions on core labour rights).

It has witnessed the implementation of twelve ENP action plans (Armenia, Azerbaijan, Georgia, Egypt, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine). The implementation of these action plans is jointly monitored through subcommittees, including for some partner countries through dedicated subcommittees on human rights and democracy. Human rights subcommittees have so far been established and sessions held with Jordan (3rd session on 25 June 2008), Morocco (2nd session on 27 November 2007), Tunisia (1st session on 12 November 2007) and Lebanon (1st session on 12 March 2007). The informal working group on human rights with Israel held its third session on 30 April 2008. With Egypt, commitments in the field of human rights under the ENP action plan were discussed on 2 and 3 June 2008 within the subcommittee on political matters, human rights and democracy, international and regional issues. With Moldova and Ukraine, human rights issues under the ENP action plans were discussed under the auspices of the Justice, Freedom and Security Subcommittees, which met on 19 September 2007 and 10 April 2008 respectively. At the first EU–Georgia subcommittee on Justice, Freedom and Security, on 30 April 2008, it was agreed that regular informal meetings on human rights would be held back to back with this subcommittee. The EU seeks to develop further the working methods of these new structures, including by focusing on key operational issues, prioritising and sequencing actions as well as by jointly defining deliverables of the process. Obviously, the effectiveness and the actual outcome of the dialogue largely depend on the willingness of the partner country to implement and enforce its ENP commitments in the fields of human rights and fundamental freedoms.

The Commission's communication "A Strong European Neighbourhood Policy" (December 2007) made a number of specific proposals intended to achieve a more substantial EU offer vis-à-vis partner countries, particularly on trade and economic integration, mobility and tackling regional conflicts. This communication was welcomed by the EU Foreign Ministers in their conclusions of February 2008 as a basis for further

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