

# Report on the analysis and critical assessment of EU engagement in UN bodies

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## Executive Summary

The first deliverable of Work Package No 5 (WP 5) presents the outcome of the analysis and critical assessment of EU human rights engagement in UN bodies. The EU has committed itself in the Treaty on the European Union to ‘promote multilateral solutions to common problems, in particular in the framework of the United Nations.’ In light of this provision, and taking into account the considerable challenges the EU-UN cooperation encounters, the present report aims at four goals. Firstly, to map the long-standing and multifaceted engagement of the EU within and towards UN human rights bodies. Secondly, to critically assess the EU’s engagement in the UN from the perspective of both its policy and institutions. Thirdly, to identify specific and structural flaws in the EU’s approach to human rights at the UN. Fourthly, to find creative ways of enhancing the EU’s position, role, inclusion in and impact upon these UN bodies.

The deliverable consists of seven chapters.

The first chapter presents the aims of the report and the methodology of the research. It also explains the key concepts of the deliverable, such as coherence, leadership or mutual influence between the EU and the UN.

The second chapter explores two of the guiding principles of the EU’s external policy: human rights and multilateralism. In particular, it contains an analysis of the Union’s commitment to ‘effective multilateralism’ and consistency of specific human rights priorities throughout the EU legislation and other documents.

The third chapter presents the institutional framework of the EU-UN relations. As both, the EU and the UN, share a common trait – a high complexity of their organisational structure, chapter III begins with a detailed mapping of both organisations. It also explains the role of different stakeholders in the EU-UN cooperation. This chapter also tackles the relationships between stakeholders and the coordination of the EU’s position at the UN. The status of the EU in the UN is also explored from the point of view of the legal framework of both organisations.

The fourth chapter presents the processes and dynamics behind the formulation of EU human rights aims, objectives and priorities at the UN. It indicates the critical factors, relevant actors and their roles as well as the overall characteristics of the process. The chapter also provides a detailed analysis of the EU’s specific goals and objectives at the UN as well as their consistency. The report focuses on the Union’s priorities with regard to (i) thematic human rights issues, (ii) its country-specific priorities, and (iii) its aims and objectives relating to the institutional architecture of the UN.

The fifth chapter concerns the tools and methods deployed by the EU at the UN. Particular attention has been paid to the issue of the EU’s resolution initiatives in UN human rights fora: the UNGA Third Committee and the HRC. The analysis focuses on resolution initiatives tabled by the Union, but also tackles the national initiatives of the EU Member States and the co-sponsoring of resolutions by the EU/Member States. It also explores the EU’s involvement in the Universal Periodic Review (UPR) process. Taking into account that the EU does not formally participate in the UPR, the involvement of its Member States is analysed, also from the point of view of realisation of EU human rights priorities. This section also explains the notion of light-coordination. Finally, the fifth chapter explores the EU’s

financial contribution to UN human rights activities, in particular to the Office of the High Commissioner of Human Rights.

The deliverable is supplemented by four case studies included in chapter six of the deliverable. They are related to EU's engagement in specific thematic topics at the UN covering the areas of: economic, social and cultural rights, human rights defenders, the right to development and counterterrorism.

The final chapter presents the conclusions of the research. Due to the comprehensive nature of the analysis of the various dimensions of EU-UN interaction, the report seeks not only to advance the existing knowledge on the topic, but also to create a broad base for future research. In particular, the findings of this study will constitute the background for next deliverables of this work package on the Union's engagement with regional multilateral organisations.

## List of abbreviations

AL	Arab League
AMU	Adam Mickiewicz University
Art	Article
ASEAN	Association of Southeast Asian Nations
CARICOM	Caribbean Community
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CFSP	Common Foreign and Security Policy
Ch	Chapter
CHR	Commission on Human Rights
CJEU	Court of Justice of the European Union
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
COAFR	Africa Working Group of the Council of the European Union
COASI	Asia-Oceania Working Party of the Council of the European Union
COHOM	Human Rights Working Group of the Council of the European Union
COMAG	Mashreq/Maghreb Working Party of the Council of the European Union
CONUN	United Nations Working Party of the Council of the European Union
COREPER	Permanent Representatives Committee
CRC	Convention on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
CSDP	Common Security and Defence Policy
CSO	Civil society organisation
CSR	Corporate Social Responsibility
DEVCO	Commission's DG Development and Cooperation – EUROPAID
Doc	Document
DPKO	Department of Peacekeeping Operations
DPRK	Democratic People's Republic of Korea
DROI	European Parliament Subcommittee on Human Rights
ECOSOC	United Nations Economic and Social Council
EctHR	European Court of Human Rights
Ed/eds	Editor/editors
EEAS	European External Action Service
EEC	European Economic Community
EIDHR	European Instrument for Democracy and Human Rights
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
EP	European Parliament
ESCR	Economic, social and cultural rights
ESS	European Security Strategy
EU	European Union
EUSR	EU Special Representative for Human Rights
FAC	Foreign Affairs Council
FAO	Food and Agriculture Organization

FREMP	Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons
GGS	Leuven Centre for Global Governance Studies
GRULAC	Latin American and Caribbean Group
HoDs	Heads of Delegations
HoMs	Heads of Missions
HR/VP	High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission
HRC	Human Rights Council
HRCAC	Human Rights Council Advisory Committee
HRD	Human rights defender
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICT	Information and communications technology
ILO	International Labour Organisation
IPU	Inter-Parliamentary Union
KUL	Katholieke Universiteit Leuven
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LMG	Like Minded Group
MDG	Millennium Development Goals
Mio	Million
MRM	Monitoring and Reporting Mechanism
N/No	Number
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organization of the Islamic Conference
OPT	Occupied Palestinian Territories
OSCE	Organization for Security and Co-operation in Europe
OUP	Oxford University Press
PHRC	Poznan Human Rights Centre, Polish Academy of Sciences
Para	Paragraph
PSC	Political and Security Committee
REIO	Regional economic integration organisation
R2P	Responsibility to Protect
Res	Resolution
RG	Regional groups
RtD	Right to development
SMEs	Small and medium-sized enterprises
SP	Special Procedures
SPT	UN Subcommittee on Prevention of Torture
SuR	State under Review
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations

UNCAT	UN Committee against Torture
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	UN Development Fund for Women
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNWOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review
US	United States
WEOG	Western European and Others Group
WHO	World Health Organisation
WTO	World Trade Organisation

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## I. Introduction

### A. Aim

This report constitutes Deliverable D5.1 of the FP7 project FRAME – ‘Fostering Human Rights Among European (External and Internal) Policies’. It presents the outcome of the analysis and critical assessment of EU human rights engagement at the United Nations (‘UN’).

In the 2011 Joint Communication to the European Parliament and the Council ‘Human Rights and Democracy at the Heart of EU External Action – towards a More Effective Approach’,<sup>1</sup> the European Commission together with the High Representative of the European Union for Foreign Affairs and Security Policy (‘HR/VP’) stated that ‘[t]he European Union has both the will and the means to be a leader when it comes to protecting human rights and supporting democracy worldwide’. Externally, the EU is widely perceived by its partners as a global human rights champion. This perception was, in a way, confirmed when the EU was awarded the 2012 Nobel Peace Prize for advancing the causes of peace, reconciliation, democracy and human rights in Europe.

The EU implements its human rights policies at international, regional and bilateral levels. At the UN, the EU is undoubtedly one of the key human rights actors. While the global nature of the UN offers unique opportunities for the implementation of EU policies, the complexity of this organisation poses multifaceted challenges to the Union. The combination of these two factors makes the UN pre-eminently important for the EU.

The EU human rights work at the UN should be seen in the broader context of its commitment to ‘effective multilateralism’, as one of the fundamental principles of the EU’s external action. It has found expression in numerous policy documents, starting with the European Security Strategy (‘ESS’) in 2003, and has been enshrined in EU primary law in force since the Lisbon Reform. This multilateral strategy obliges the Union to ‘seek to develop relations and build partnerships with [...] international, regional or global organisations’, provided they share a certain set of principles, including human rights, democracy and the rule of law (Article 21(1) TEU). The United Nations (‘UN’), as the most universal international organisation, is therefore of preeminent importance for the EU. As the ESS stated, ‘[s]trengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority’.<sup>2</sup> The total of 15 references to the UN found in the Treaty on European Union (‘TEU’), the Treaty on the Functioning of the European Union (‘TFEU’) and their accompanying Protocols and Declarations firmly anchor the UN as the ‘guiding legal framework’<sup>3</sup> in the EU’s external action.<sup>4</sup> The UN is the principal forum for the EU to ‘promote multilateral solutions

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<sup>1</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, 12 December 2011, COM(2011) 886 final, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>>.

<sup>2</sup> European Council, European Security Strategy: A Secure Europe in a Better World, 12 December 2003, 9.

<sup>3</sup> Ramses A. Wessel, ‘The Legal Framework for the Participation of the European Union in International Institutions’ (2011) 33 *Journal of European Integration* 621, 630.

<sup>4</sup> TEU art 3(5), art 21(1), art 21(2)(c), art 34(2), art 42(1) and (7); TFEU 7<sup>th</sup> recital of the preamble, art 208(2), art 214(7), art 220(1); Protocol No 10 on permanent structured cooperation 3<sup>rd</sup> and 8<sup>th</sup> recital preamble, as well as art 1(b); Declaration No 13 concerning CFSP; Declaration No 14 concerning CFSP; cf Jan Wouters, Anna-Luise Chané, Jed Odermatt and Thomas Ramopoulos, ‘Improving the EU’s Status in the UN and the UN System: An

to common problems' (Article 21(1) TEU). Consequently, the UN system is an important actor with which the EU seeks to cooperate in the framework of its human rights policy. The Union's engagement in the human rights work of the UN is particularly focused on the Third Committee of the UN General Assembly ('UNGA'),<sup>5</sup> the Human Rights Council ('HRC') and its Special Procedures, the UN human rights treaty bodies, the Office of the High Commissioner for Human Rights ('OHCHR') and the UN Security Council ('UNSC'). In addition, the EU has contributed substantively on the ground, most notably in the areas of development cooperation, humanitarian aid and peace-keeping/conflict prevention.

And yet, effective EU engagement with the UN encounters a far-reaching systemic hurdle. The UN, as an intergovernmental organisation, is an example of the traditional state-centric structure of international law, allowing membership of States (Article 4(1) UN Charter) and placing considerable restrictions on the participation of other entities. Full membership rights of the EU in UN bodies are therefore the exception and the EU has a 'patchwork' of different statuses and participation rights in the UN. The ensuing challenges for the organisation of the Union's external representation and the internal coordination of positions between the EU institutions and its 28 EU Member States have frequently been perceived as the primary cause of the limited impact of the Union at the UN. The 2009 Lisbon Treaty was designed to provide the institutional remedy *inter alia* to these challenges. It substantially reformed the external relations architecture of the EU, providing the Union with a single legal personality, creating the office of the double-hatted High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission ('HR/VP') and the office of the President of the European Council, and laying the basis for the creation of the European External Action Service ('EEAS'). While these measures considerably enhanced the stability and consistency of the EU's external action and contributed to giving the EU an external 'face', some of the Union's problems at the UN still partially persist. The EU continues to be perceived as 'punching below its weight' by many partners and observers.<sup>6</sup> Successful in some areas, in some others it is unable to overcome its numerical minority position in UN bodies and to successfully build coalitions, shape the agenda and to promote its policies and values. The institutional frameworks of both the UN and the EU are, however, only one of the hindering factors. It is most importantly the Union's questioned credibility as a human rights actor, attributed to its limited internal-external and external-external consistency, that gives rise to frequent criticism and has been identified as the major stumbling block on the road towards more effective EU action at the UN.

In light of the Union's strong commitment to multilateralism in general and to the cooperation with the UN in the area of human rights in particular, and in light of the considerable challenges this cooperation encounters, the present report aims at:

- Mapping the long-standing and multifaceted engagement of the EU within and towards UN human rights bodies,

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Objective Without a Strategy?' in Christine Kaddous (ed) *The European Union in International Organisations and Global Governance* (Hart Publishing, forthcoming).

<sup>5</sup> The Third Committee of the UNGA deals with social, humanitarian and cultural affairs. A large part of its work focuses on human rights issues.

<sup>6</sup> Cf Daniel C. Thomas, 'Still Punching below Its Weight? Coherence and Effectiveness in European Union Foreign Policy' (2012) 50 *Journal of Common Market Studies* 457; see also Karen Smith, 'The European Union and the Politics of Legitimization at the United Nations' (2013) 18 *European Foreign Affairs Review* 63.

- Critically assessing this engagement from a policy and institutional perspective,
- Identifying specific and structural flaws in the EU's approach,
- Looking for creative ways to enhance the EU's position, role, inclusion in and impact upon these UN bodies.

In order to capture the whole range of EU-UN interaction in the field of human rights, the scope of the study will include a comprehensive in-depth analysis of all involved actors. On the EU side this includes the EU institutions (in particular the EEAS, the Council Human Rights Working Group ['COHOM'], the European Commission) as well as the EU Member States, both in their roles as burden sharers and co-owners of common EU policies at the UN, and as independent actors pursuing national interests in the UN setting. On the UN side this includes intergovernmental UN bodies and other actors (most notably the UNGA Third Committee and the HRC, but also the UNSC, the UN Economic and Social Council ['ECOSOC'] and UN regional groups), treaty bodies and Special Procedures, the OHCHR, and beyond that the UN system as a whole.

Through this comprehensive analysis of the various dimensions of EU-UN interaction, the report will not only considerably advance existing scholarship on the topic, but also create a broad knowledge base for future research. In particular, the findings of this study will inform the subsequent deliverables of this work package, which will address the Union's engagement with regional multilateral organisations.

## B. Conceptual Framework

### 1. Coherence, consistency, effectiveness

The '**coherence**' and '**consistency**' of EU human rights policies constitutes one of the biggest challenges for the Union's effective engagement with the UN. For the sake of this report coherent EU policymaking is defined as

'policymaking that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States.'<sup>7</sup>

Whether the concept of 'consistency' overlaps with 'coherence' or whether it is reduced to a temporal, geographical or personal dimension and thus narrower, is subject to debate. While relevant scholarship commonly uses the term 'coherence',<sup>8</sup> EU treaty law – and consequently EU linguistic

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<sup>7</sup> 'Coherence (and consistency)', FRAME Internal Fact Sheet, 2014, 1; see also Tamara Lewis, Wolfgang Benedek and Anna Müller-Funk, 'Report on coherence of human rights policymaking in EU Institutions and other EU agencies and bodies', FRAME Deliverable 8.1, September 2014, <[www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf](http://www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf)>.

<sup>8</sup> Cf Pascal Gauthier, 'Horizontal coherence and the external competences of the European Union' (2004) 10 *European Law Journal* 23; Carmen Gebhard, 'Coherence' in Christopher Hill and Michael Smith (eds) *International relations and the European Union* (Oxford University Press 2011) 101; Christophe Hillion, 'Tous pour un, un pour tous! Coherence in the external relations of the European Union' in Marise Cremona (ed) *Developments in EU external relations law* (Oxford University Press 2008) 10; Clara Portela and Kolja Raube, 'The EU Polity and Foreign Policy Coherence' (2012) 8 *Journal of Contemporary European Research* 3; Leonhard den

usage more generally – refers to ‘consistency’.<sup>9</sup> The present report will follow the EU approach and employ a broad and overlapping understanding of ‘coherence’ and ‘consistency’, encompassing the above definition as well as the element of uniform action over time and across comparable situations.

The coherence and consistency of EU human rights policies at the UN can be measured across three different dimensions:<sup>10</sup>

- **Internal-external consistency:** This level captures the degree to which the EU applies internally what it promotes externally. It is one of the most frequently voiced criticisms of third countries that the EU ‘does not practice what it preaches’. Common examples include the EU’s treatment of Roma people, the way it addresses racism and xenophobia within its borders, its lack of protection of and respect for economic and social rights – particularly during the economic crisis – and the involvement of several EU Member States in contested United States (‘US’) anti-terror practices during the so-called ‘war on terror’. Addressees of the Union’s internal human rights dimension are not only the EU institutions but also the individual Member States, who act as ‘ambassadors of EU human rights values’.<sup>11</sup>
- **External-external consistency:** This dimension refers to the degree of uniformity in which the EU promotes human rights externally, both with regard to individual human rights issues and with regard to individual third country partners. It has for example been criticised that the EU places a stronger focus on the promotion of civil and political rights, to the detriment of economic, social and cultural rights. It has also been noted, that the EU is quicker to address human rights violations in economically weak and politically isolated countries, while being less vocal about comparable incidents in allied or partner countries. This has sometimes led to the conclusion that ‘country priorities are selected based on political expediency and not on the perceived gravity of the human rights violations’.<sup>12</sup>
- **Internal-internal consistency:** This last level captures the degree to which all representatives of EU institutions and EU Member States convey a uniform message about a particular country-specific or thematic human rights issue in the entirety of EU external action. The added value of the Union’s ‘multiple voices’ has frequently been pointed out, however, it is important that all actors ‘sing from the same song sheet’.<sup>13</sup> With regard to the Union’s participation in UN human rights bodies, this need for internal-internal consistency finds expression in the multitude of sophisticated and time-consuming coordination mechanisms currently in place.<sup>14</sup>

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Hertog and Simon Stroß, ‘Coherence in EU External Relations: Concepts and Legal Rooting of an Ambiguous Term’ (2013) 18 *European Foreign Affairs Review* 373; Anne-Claire Marangoni and Kolja Raube, ‘Virtue or Vice? The Coherence of the EU’s External Policies’ (2014) 36 *Journal of European Integration* 473.

<sup>9</sup> See only TEU, art 18(4): ‘[The HR/VP] shall ensure the consistency of the Union’s external action.’

<sup>10</sup> Based on keynote lecture by EU Special Representative for Human Rights, Stavros Lambrinidis, Interparliamentary Committee Meeting with EU National Parliaments, European Parliament Subcommittee on Human Rights, 25 September 2013.

<sup>11</sup> *ibid.*

<sup>12</sup> Jan Wouters, Laura Beke, Anna-Luise Chané, David D’Hollander and Kolja Raube, ‘A Comparative Study of EU and US Approaches to Human Rights in External Relations’ (2014) Study for the European Parliament, Directorate-General for External Policies of the Union, Directorate B Policy Department, EXPO/B/DROI/2013/27.

<sup>13</sup> Lambrinidis (n 10).

<sup>14</sup> See below, section III.E.

Inconsistency can arise particularly if the following factors apply: '[1] Structures are ill-designed, leading to a lack of coordination in policy design or policy implementation; [2] Frameworks have competing visions or overlapping responsibilities; [3] Interests diverge or conflict among policy goals'.<sup>15</sup>

Lack of coherence and consistency leads to a loss of credibility as a human rights actor, and thus considerably reduces the impact of EU participation in UN human rights bodies. It is one of the most common and persistent criticisms that the EU faces internally and particularly externally. In the past years numerous policy initiatives have addressed this issue but provided only partial remedies.<sup>16</sup> In line with its objective to critically assess the Union's engagement with the UN, this report will therefore aim to identify and analyse instances and patterns of incoherence and inconsistency. It will conclude with recommendations on how these issues could be successfully addressed.

The concept of '**effectiveness**' refers to the 'effects or impacts of a policy'.<sup>17</sup> It is a multidimensional concept that can be conceptualised along several dimensions including

- **goal attainment/problem solving effectiveness**, which refers to the degree to which specific policy goals are achieved;
- **process effectiveness**, which refers to the degree to which the policies are adopted;
- **behavioural effectiveness**, which focuses on the degree to which policies generated differences in behaviour and practices of key-actors;
- **constitutive effectiveness**, which refers to the acceptance of policies by a large group of stakeholders.<sup>18</sup>

Within the scope of this report the term will be used in the sense of goal attainment effectiveness, addressing whether or not the EU achieves to successfully promote its human rights policies and values at the UN level.

## 2. Leadership

The analysis of the role of the EU within the UN human rights framework requires clarification of some preliminary issues. They are:

a) leadership as an aspiration versus responsibility

b) being a leader versus providing leadership

ad. a) An aspiration is a question of choice. In light of the aforementioned Joint Communication to the European Parliament and the Council of 2011 – 'Human Rights and Democracy at the Heart of EU

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<sup>15</sup> 'Coherence (and consistency)', FRAME Internal Fact Sheet, 2014, 2.

<sup>16</sup> For example the closer cooperation between COHOM and FREMP, the appointment of the EU Special Representative for Human Rights, but also the institutional reforms of the Lisbon Treaty in general. For more detail see the reports of FRAME Work Package 8: 'Coherence among EU Institutions and Member States'.

<sup>17</sup> 'Effectiveness', FRAME Internal Fact Sheet, 2014, 1.

<sup>18</sup> *ibid*; see for more detail the wealth of academic scholarship on the definition and measurement of effectiveness, e.g. Anna Tikina and John Innes, 'A framework for assessing the effectiveness of forest certification' (2008) 38 *Canadian Journal of Forest Resources* 1357; Oran R. Young, 'The effectiveness of international governance systems' in Oran R. Young (ed) *International Governance: Protecting the Environment in a Stateless Society* (Cornell University Press 1994) 140.

External Action',<sup>19</sup> this choice has been made in favour of leadership. Some questions arise in the specific context of the UN political setting: is this aspiration justified and reasonable within human rights fora and what should it mean? Is this aspiration accepted at all levels of the EU, e.g. at the levels of the Delegations in Geneva and New York, as well as at the HQs and how is it understood? Or, should the issue of leadership be seen in terms of responsibility? This approach can flow from the very nature of the EU and its role as a global champion of human rights. Acknowledging leadership as responsibility would mean that there is no political choice and the only question would be: how to understand leadership and how to assume this responsibility. On the basis of interviews with various actors, one can note that there is insufficient clarity on these issues within the EU structures and Member States.

Ad b) The concept of 'being a leader' is politically a very delicate issue. It is a matter of status which, in specific political settings like the UN, can be seen as usurpation. Therefore, the EU has made a wise choice to opt for 'providing leadership' which is a functional concept implemented mainly by engagement in some specific areas. This variant requires a careful selection of topics on which the EU would like to provide leadership, alone jointly with partners. Our interviews have shown that, at the moment, the EU provides leadership at the UN on some human rights related topics, especially on civil and political rights and on some country situations. However, in case of the economic and social rights, the EU adopts a reactive approach.

This ambiguity negatively affects the perception of the role of the European Union and is, next to the reaction of the EU to human rights country records one of the reasons for the recurring criticism faced by the EU for its alleged 'double standards' in the area of human rights. The time-consuming internal cooperation mechanism seems to be a major operation obstacle to providing leadership by the EU. Needless to say, this also hampers the EU's ability to effectively achieve its strategic human rights goals.

### 3. Mutual influence

EU human rights policies concerning actions at the United Nations are part of the EU's general human rights strategy, specifically tailored to the UN framework. However, the EU-UN relationship is not a one way impact. The application of the EU strategy at the UN is heavily influenced by the human rights agenda of the latter. This is an understandable mutual dynamic. However, the question may be raised to what extent the EU acts under these circumstances primarily adopts a reactive approach and to what extent it presents an independent vision concerning the human rights programme of the international community rooted in the EU original reflection and analysis.

This question is important for the following reasons:

a) original proposals can help the EU appear as a spearheading actor (the problem of leadership); the predominantly reactive approach may weaken the EU position and provide evidence pointing to a secondary nature of the EU human rights agenda,

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<sup>19</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach (n 1).

b) EU own initiatives could provide a convenient ground for cross regional cooperation and alliances. For obvious reasons, in the case of such initiatives, it is easier for the EU to remain in lead of the processes within the UN,

c) the reactive approach to controversial issues, as e.g. the RtD, may prompt a damage control strategy. Although such a strategy is often necessary, it bears significant risks of alienation and mistrust.

In this context, it is important for the EU to reflect on the balance between its role as a spearheading actor and its responsibility to respond in an adequate way to other UN agenda items. Such reflection should be helpful during the preparatory works for the EU Human Rights Strategy and planning/managing EU participation in the work of the United Nations bodies, in particular the Human Rights Council, the General Assembly and, as appropriate, the Security Council.

The European Union is one of the actors at the UN scene with greatest capacities to shape the UN human rights agenda. These capacities entail analytical potential, advanced procedures of strategy development, operational capacities and coordination mechanisms, as well as high level professional diplomatic manpower and tools. The EU may wish, therefore, to reflect on moving the balance between 'spearheading' and 'reacting' in its policy towards the first. This may facilitate the implementation of the EU human rights strategy and better respond to the expectations of the human rights constituency. Having said this, it must be remembered that pragmatically both ends of the scale should be reconciled at a certain point and do not constitute an 'either-or' alternative.

Another aspect of the mutual influence between both organisations is the impact which the UN human rights system has on EU Member States. All the EU MS are bound by the majority of human rights legal instruments adopted by the UN and are subject to engagement with several mechanisms such as treaty body reporting processes, the UPR and HRC Special Procedures. The EU draws its strength within the UN domain from the collective weight of both EU institutions and Member States. While this strength directly translates into importance and relevance of the EU as a multilateral actor, attention should be paid to how the UN addresses human rights record within the EU Member States. The UN human rights system provides not only evaluation and critique, but also advice and encouragement for improvement of areas where the EU Member States fall behind on human rights record and in doing so may weaken the collective power of the EU as a whole.

### C. Methodology

The research for this report is based on a set of different methodologies, in particular the analysis of primary and secondary sources and data-gathering via semi-structured (confidential) interviews. This section briefly introduces these methodologies. More specific descriptions can be found in several chapters of this study.

**Primary sources** analysed for this report include official documents from the EU and the UN. EU documents were collected using the Official Journal of the EU,<sup>20</sup> the EUR-Lex database,<sup>21</sup> the public register of the Council of the European Union,<sup>22</sup> the register of the Court of Justice of the European

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<sup>20</sup> See <<http://eur-lex.europa.eu/oj/direct-access.html>>.

<sup>21</sup> See <<http://eur-lex.europa.eu/>>.

<sup>22</sup> See <<http://register.consilium.europa.eu/content/int?lang=EN&typ=SMPL>>.



Union ('CJEU')<sup>23</sup> and the conclusions database on the website of the European Council.<sup>24</sup> They comprise, among others, EU primary and secondary law, resolutions of the European Parliament, as well as policy documents such as the 2012 Strategic Framework and Action Plan on Human Rights and Democracy, the annual priorities for the UNGA, the priorities at UN human rights fora, Commission communications, conclusions of the European Council and meeting agendas of EU bodies (in particular COHOM and PSC).<sup>25</sup> Additionally, statements of the EU at the UN were collected through the databases on the websites of the EU Delegations in New York<sup>26</sup> and Geneva.<sup>27</sup> The methods of analysis range from keyword searches to textual and legal analyses, depending on the type of document and the research context.

Official UN documents were collected using the documents database of the UNGA,<sup>28</sup> the repertory of documents of the UNGA Third Committee,<sup>29</sup> the meeting records database of the UNGA,<sup>30</sup> the database of the charter-based bodies,<sup>31</sup> the documents archives on the websites of the HRC<sup>32</sup> and of the CHR,<sup>33</sup> as well as the United Nations Treaty Series Online Collection.<sup>34</sup> Collected documents include, among others, international treaties and agreements, resolutions adopted by the UNGA Third Committee, the HRC and the CHR, L-documents, voting records and session reports. Again, the methods of analysis differ, and include keyword searches, textual and legal analyses.

**Secondary sources** used for this report include published academic articles and books, working papers and policy reports. They were collected through surveys in various databases and library catalogues.

A series of **semi-structured interviews** with key policy-makers, experts and other stakeholders were also conducted as part of the report. These interviews form a critical component of the methodology applied in this report. The main purpose of these interviews was to align the information obtained from the interviewees with practice and to complement the report with (additional) data not otherwise possible to be obtained from the primary or secondary sources only. Thus the main reasons for conducting interviews were:

1. **Lack of written sources on EU engagement in the UN:** The activity of the EU and its Member States within the UN framework is, in particular as far as procedures are concerned, based upon a broad and general legal framework. Much of the actual activity is carried out based on unwritten agreements, long-standing traditions and an array of tools employed in multilateral diplomacy, which is not elaborated upon in print. Research based solely on legal acts and policy documents yields limited information on procedures and practices employed at the UN level.

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<sup>23</sup> See <[http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/)>.

<sup>24</sup> See <<http://www.european-council.europa.eu/council-meetings/conclusions>>.

<sup>25</sup> Note that the outcomes of these meetings often remain confidential and were thus not available as a source for the research conducted for this report.

<sup>26</sup> See <[http://eu-un.europa.eu/articles/articleslist\\_s7\\_en.htm](http://eu-un.europa.eu/articles/articleslist_s7_en.htm)>.

<sup>27</sup> See <[http://eeas.europa.eu/delegations/un\\_geneva/eu\\_statments/index\\_en.htm](http://eeas.europa.eu/delegations/un_geneva/eu_statments/index_en.htm)>.

<sup>28</sup> See <<http://www.un.org/documents/resga.htm>>.

<sup>29</sup> See <<http://www.un.org/en/ga/third/archives.shtml>>.

<sup>30</sup> See <<http://www.un.org/en/ga/documents/pvsr.asp>>.

<sup>31</sup> See <<http://ap.ohchr.org/Documents/gmainec.aspx>>.

<sup>32</sup> See <<http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx>>.

<sup>33</sup> See <<http://www2.ohchr.org/english/bodies/chr/previous-sessions.htm>>.

<sup>34</sup> See <<https://treaties.un.org/pages/UNTSONline.aspx?id=1>>.

2. **Lack of information on EU actors:** There also exists a distinct deficit of publicly available information on the critical actors tasked with matters related to the EU's presence within the UN fora. A prime example is the COHOM, on which little information, except on its mandate<sup>35</sup> is publicly available, lacking information not only on its composition, but also on its work and work modalities.
3. **Confidentiality of diplomacy:** An additional layer of complexity comes from the fact that several areas of EU activity within the UN fora are considered confidential. While a certain degree of confidentiality is necessary in order to protect the individuals and organisations involved, a markedly high level of information related to EU human rights policy within the UN is purposely not made available to the public. This includes such vital areas as country strategies, internal coordination meeting agendas and minutes, and internal evaluations.
4. **Evaluation of performance:** The opinions and evaluations of the EU, the UN and Member States officials who are currently or have until recently been active within their institutions, are an important source of information on the performance of the EU in the UN human rights fora. Based on their practical experience they can highlight achievements and challenges that are not necessarily visible from an outside perspective.

Taking the above into account, a series of 40 semi-structured interviews were conducted. The number of interviews necessarily had to take into account the timeframe of the report and the available resources. Interviews were conducted primarily at UN venues in New York and Geneva and at EU venues in Brussels. The interlocutors came from among representatives of various EU bodies and structures (e.g. EEAS, COHOM), EU Member States delegations and governmental officials, non-EU diplomats, staff members of international organisations, and non-governmental organisations. Attention was paid to ensure a wide geographical spread of EU Member States and third States officials. Interview partners were selected based on their expertise and their position within the EU, UN or national framework. Additionally, an internal workshop engaging stakeholders and experts was held in Poznan, Poland in September 2014. The report also benefits from a discussion held at the Diplomatic Conference organised in July 2014 by the European Inter-University Centre for Human Rights and Democratization (EIUC) in Venice for the European human rights diplomats. Most interviews, as well as the internal workshop, were carried out under the Chatham House Rule.<sup>36</sup> In line with this, the report does not disclose the identity or the affiliation of the speaker(s), nor that of any other participant. A smaller set of interviews was conducted after having obtained consent that the affiliation of the speaker may be revealed. These sources will be indicated in a footnote, providing the affiliation and date of the interview.

The interviews followed a structure consistent with the aims of this report, namely the assessment of EU activities within the UN human rights fora. Overarching issues, such as the perception of the EU, its role as a leader, the consistency, coherency and effectiveness of its action and the mutual influence between the EU and the UN were all touched upon in the interview process.

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<sup>35</sup> EEAS, 'The Human Rights Working Group', <[http://eeas.europa.eu/human\\_rights/workgroup/index\\_en.htm](http://eeas.europa.eu/human_rights/workgroup/index_en.htm)>.

<sup>36</sup> Chatham House – The Royal Institute of International Affairs, 'Chatham House Rule', <[www.chathamhouse.org/about/chatham-house-rule](http://www.chathamhouse.org/about/chatham-house-rule)>.

## D. Structure

The report will firstly provide a brief theoretical background with regard to the EU's twofold commitment to effective multilateralism and to human rights, addressing in particular the respective legal and policy frameworks (chapter II). Secondly, the report will include a comprehensive analysis of the institutional aspects of EU-UN relations in the area of human rights, including a mapping of all involved actors, as well as analyses of the Union's legal status, external representation and internal coordination at the UN (chapter III). Thirdly, the analysis will focus on the substantive goals and objectives of the EU at the UN human rights fora, including thematic, country-specific and institutional priorities. A separate section will examine the policy development process in the EU (chapter IV). Subsequently, the wide array of tools and methods, which is at the EU's disposal in UN human rights fora will be highlighted through the analysis of resolution initiatives, the UPR and the financing of the OHCHR (chapter V). The analysis will conclude with four selected case studies on the EU's engagement in the promotion and protection of economic, social and cultural rights, with regard to human rights defenders, the right to development and human rights in counter-terrorism at the UN. The case studies will serve to illustrate EU-UN relations in specific policy contexts (chapter VI). Finally, the report will provide conclusions, identifying specific and structural achievements and flaws in the EU's engagement with the UN human rights fora (chapter VII).

## II. The place of human rights and multilateralism in European Union's external policy

### A. The EU's Commitment to Effective Multilateralism\*

This section explores the Union's commitment to 'effective multilateralism', a distinct EU concept that was first endorsed in the European Security Strategy of December 2003. Being arguably itself the 'world's most successful case of multilateralism' internally,<sup>37</sup> the Union has placed the commitment to multilateralism at the heart of its external action, permeating all policy areas, including the promotion and protection of human rights. The EU recognises in particular the central importance of the UN, which it supports, promotes and considers as a 'European priority'.<sup>38</sup> Importantly, the EU not only aspires to be one of many actors in the multilateral system but aims to assume a leading role.<sup>39</sup>

The concept of 'effective multilateralism' thus provides the theoretical background and the red thread of this report. In particular, the following chapters will assess to what extent the EU realises its threefold objective to strengthen the UN framework, to seek ever closer cooperation with the UN, and to promote EU policies through UN bodies. The case studies will provide further contextualization in the framework of particular policy areas.

Starting with a brief analysis of the meaning of the concept of multilateralism in general, this section will proceed to examine the emergence, endorsement and content of the EU's distinct notion of 'effective multilateralism' and to analyse the impact of this policy choice for the Union's external human rights promotion.

#### 1. The concept of multilateralism in general

While not a new notion at that time, the concept of multilateralism came to increased prominence after the end of the Cold War, which upended the rigid bipolar international system of the previous decades.<sup>40</sup> Multilateral norms and institutions were credited with having contributed to the stabilization of the consequences of this political shift<sup>41</sup> and multilateralism 'emerged as an option of systemic organization that would remedy the traumas of the bipolar confrontation'.<sup>42</sup> While *Keohane* defined multilateralism as 'the practice of co-ordinating national policies in groups of three or more states',<sup>43</sup> scholars soon expanded this nominal definition to include an additional qualitative

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\* Parts of this chapter will be published in Jan Wouters and Anna-Luise Chané, 'Brussels Meets Westphalia: The European Union and the United Nations' in Piet Eeckhout and Manuel Lopez Escudero (eds) *The European Union's External Action in Times of Crisis* (Hart Publishing, forthcoming).

<sup>37</sup> Katie Verlin Laatikainen and Karen E. Smith, *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 2.

<sup>38</sup> European Council, 'European Security Strategy: A Secure Europe in a Better World', 12 December 2003, 9.

<sup>39</sup> Jan Wouters, Anna-Luise Chané, Jed Odermatt and Thomas Ramopoulos, 'Improving the EU's Status in the UN and the UN System: An Objective Without a Strategy?' in Christine Kaddous (ed) *The European Union in International Organisations and Global Governance* (Hart Publishing, forthcoming).

<sup>40</sup> Spyros Blavoukos and Dimitris Bourantonis, 'Introduction: The EU presence in international organizations', in Spyros Blavoukos and Dimitris Bourantonis (eds) *The EU presence in international organizations* (Routledge 2011) 5.

<sup>41</sup> John Ruggie, 'Multilateralism: The anatomy of an institution' (1992) 46 *International Organization* 561.

<sup>42</sup> Blavoukos/Bourantonis (n 40).

<sup>43</sup> Robert O. Keohane, 'Multilateralism: An Agenda for Research' (1990) 45 *International Journal* 731.

element.<sup>44</sup> Ruggie most prominently reasoned that not every arrangement in which the number of coordinating parties exceeds two can necessarily be characterised as an instance of multilateralism.<sup>45</sup> He argued that it is rather the substantial nature of the relations between the parties that sets a multilateral framework apart from all other organizational forms: ‘multilateralism is an institutional form which coordinates relations among three or more states on the basis of “generalized” principles of conduct’, defining ‘generalized principles’ as those which ‘specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence’.<sup>46</sup>

Depending on whether States endorse multilateralism as a means to an end or as an end in itself, scholars distinguish between ‘instrumental multilateralism’ and ‘principled multilateralism’.<sup>47</sup> Proponents of ‘instrumental multilateralism’ include the US and the majority of the world community. They regard multilateralism as one of many institutional forms which can be employed to achieve certain national policy goals. Multilateralism thereby is considered to have no intrinsic value in itself. On the contrary: Other organisational modes, such as bilateralism, are regarded as equivalent or possibly as superior. Accordingly, ‘instrumental multilateralists’ can either make the decision to opt for or against a multilateral solution on the basis of a value-free cost-benefit analysis. Factors arguing in favor of multilateralism include the legitimizing effect of a decision backed by a multilateral body, the ‘lock-in’ effect in uncertain political scenarios, and the degree to which an actor considers to have influence over a multilateral forum.<sup>48</sup> The proponents of ‘principled multilateralism’, on the other hand, endorse multilateral solutions above all other modes of organisation. They do not balance the advantages and disadvantages of a multilateral solution, but prefer the form over the result. Multilateralism then is ‘part of an ongoing, taken-for-granted subjective understanding of international life’, comprising ‘deliberative and communicative aspects, an emphasis in cooperation through mutual understanding, and norms-oriented behaviour’.<sup>49</sup> As such, multilateralism is seen as a key contributor to the making of a peaceful international order.

## 2. The EU’s commitment to effective multilateralism

While the Union embraced the concept of multilateralism since its early beginnings<sup>50</sup> it was only in 2003 that it started to explicitly set ‘effective multilateralism’ as the central guiding principle of its external action. Nevertheless, the concept of ‘effectiveness’ remains undefined and vague, allowing for no clear conclusions on the ensuing strategies of the Union at the UN level. In addition, there is no agreement on whether the Union ranks among the principled or the instrumental multilateralists. The following section therefore takes a closer look at the EU’s notion of ‘effective multilateralism’,

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<sup>44</sup> The difference between a ‘nominal’ and a ‘qualitative’ dimension of multilateralism was developed by Ruggie (n 41). Diebold for example preferred the terminology of ‘formal’ versus ‘substantive’ multilateralism, see William Diebold, Jr., ‘The History and the Issues’ in William Diebold, Jr. (ed) *Bilateralism, Multilateralism and Canada in U. S. Trade Policy* (Ballinger 1988).

<sup>45</sup> Ruggie (n 41) 565 et seq.

<sup>46</sup> *ibid* 571.

<sup>47</sup> Cf Blavoukos/Bourantonis (n 40) 5 et seq.

<sup>48</sup> *ibid* 6.

<sup>49</sup> *ibid*.

<sup>50</sup> Jan Wouters, Sijbren de Jong and Philip De Man, ‘The EU’s Commitment to Effective Multilateralism in the Field of Security: Theory and Practice’ (2010) 29 *Yearbook of European Law* 164, 170.

examining the emergence and content of the concept, in order to more clearly assess the nature of the Union's commitment.

*a) Emergence and endorsement of the concept of effective multilateralism*

The concept of 'effective multilateralism' made its first appearance in the European Security Strategy ('ESS'), which was adopted by the European Council in December 2003. Recognizing that European 'security and prosperity increasingly depend[ed] on an effective multilateral system' the ESS set the objective of the 'development of a stronger international society, well functioning international institutions and a rule-based international order'.<sup>51</sup> The UN was assigned a paramount role in this new strategy. The ESS not only recognised the UN Charter as the 'fundamental framework for international relations', it also declared that '[s]trengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority'.<sup>52</sup> Equally in 2003, the Commission published a Communication titled 'The European Union and the United Nations: The choice of multilateralism' in which it recognised the commitment to multilateralism as a 'defining principle' of EU external action and declared that it was a crucial moment to 'renew the Union's support for the multilateral and UN system'.<sup>53</sup>

Scholars have identified different reasons for the Union's suddenly increased interest in multilateralism.<sup>54</sup> In light of the temporal coincidence of the publication of the EU's ESS with the US 2002 National Security Strategy and 2003 invasion of Iraq, it was argued that the Bush Administration's strong commitment to unilateralism and its readiness to proceed with a 'coalition of the willing' outside the legitimizing framework of international institutions may have prompted a renewed focus on the strengthening of the multilateral framework in the EU. Other scholars explained the Union's policy based on its internal successful experiences with multilateral integration.<sup>55</sup> Lastly, multilateralism has been identified as a unifying concept, tying together a series of other EU foreign policy aims, such as the promotion of democracy, human rights, and good governance and the safeguarding of peace and security.<sup>56</sup>

Most likely the EU's policy is based on an interplay of all of the above-mentioned factors. Whatever its motivation, the Union's commitment to multilateralism has not wavered since its inception in 2003, but was repeatedly endorsed in subsequent policy documents and has even found its way into EU primary law.

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<sup>51</sup> European Security Strategy: A Secure Europe in a Better World (n 2).

<sup>52</sup> *ibid.*

<sup>53</sup> Commission, 'The European Union and the United Nations: The choice of multilateralism' (Communication) COM(2003) 526 final, 3.

<sup>54</sup> See overview in Robert Kissack, 'The European Union and multilateralism', in Knud Erik Jørgensen, Katie Verlin Laatikainen (eds) *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power* (Routledge 2013) 405, 407.

<sup>55</sup> See Kissack (n 54), referring to the work of Robert Cooper, *The Post-modern State and the World Order* (Demos 2000).

<sup>56</sup> See Kissack (n 54), referring to the work of Karen E. Smith, *European Union Foreign Policy in a Changing World* (Polity Press 2003).

The 2008 Report on the implementation of the ESS reiterated the supreme importance of the UN, which it confirmed to stand ‘at the apex of the international system’.<sup>57</sup> The statement gained additional force through the repetition in two identical sentences in different chapters of the Report. The Union also for the first time declared its goal to assume a leadership role at the global level, stating that ‘Europe must lead a renewal of the multilateral order’.<sup>58</sup>

The TEU, TFEU together with the accompanying Protocols and Declarations contain numerous references to the UN.<sup>59</sup> Article 3(5) TEU declares that the Union shall contribute to the ‘respect for the principles of the United Nations Charter’ in its external relations. Article 21 TEU, outlining the general guiding principles of the Union’s external action, not only provides that the Union ‘shall promote multilateral solutions to common problems, in particular in the framework of the United Nations’, it also refers to the UN Charter in the context of peace and security policy, and defines the promotion of an ‘international system based on stronger multilateral cooperation’ as an objective of the Union’s foreign policy. A large number of provisions throughout the TEU and TFEU request the Union’s institutions to respect and act in accordance with the principles of the UN Charter when carrying out EU policies, and to cooperate with the UN framework. The Union’s commitment to multilateralism has thus been significantly strengthened by its inclusion in EU primary law through the Treaty of Lisbon.<sup>60</sup>

### *b) The notion of ‘effective’ multilateralism*

While official EU documents have thus repeatedly endorsed the concept of ‘effective multilateralism’, none contained a clear indication of its content. This is particularly problematic since ‘effectiveness’ is an ambiguous concept and can have very diverse meanings depending on the context. The various dimensions of effectiveness and the implications for its measurement have received considerable scholarly attention, and their detailed assessment would exceed the scope of this report.<sup>61</sup>

A closer analysis of relevant official EU documents gives some indications of the content of the concept, but yields no definite answer. The Commission’s 2003 Communication ‘The European Union and the United Nations: The choice of multilateralism’ was the first document to elaborate on the meaning of the concept. It stated that:

‘An active commitment to an effective multilateralism means more than rhetorical professions of faith. It means taking global rules seriously, whether they concern the preservation of peace or the limitation of carbon emissions; it means helping other countries to implement and abide by these rules; it means

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<sup>57</sup> European Council, ‘Report on the Implementation of the European Security Strategy – Providing Security in a Changing World’, Doc No S407/08, 11 December 2008, 2, 11.

<sup>58</sup> *ibid* 2.

<sup>59</sup> See TEU art 3(5), art 21(1), art 21(2)(c), art 34(2), art 42(1) and (7); TFEU 7<sup>th</sup> recital of the preamble, art 208(2), art 214(7), art 220(1); Protocol No 10 on permanent structured cooperation 3<sup>rd</sup> and 8<sup>th</sup> recital preamble, as well as art 1(b); Declaration No 13 concerning CFSP; Declaration No 14 concerning CFSP; cf Wouters, Chané, Odermatt and Ramopoulos (n 39).

<sup>60</sup> Wouters, de Jong, De Man (n 50) 173.

<sup>61</sup> For more detailed analyses of the EU and effective multilateralism see for example Edith Drieskens and Louise G. van Schaik (eds) *The EU and Effective Multilateralism: Internal and External Reform Practices* (Routledge 2014); Caroline Bouchard, John Peterson and Nathalie Tocci (eds) *Multilateralism in the 21<sup>st</sup> Century: Europe’s Quest for Effectiveness* (Routledge 2013); Robert Kissack, *Pursuing Effective Multilateralism: The European Union, International Organisations and the Politics of Decision Making* (Palgrave Macmillan 2010).

engaging actively in multilateral forums, and promoting a forward-looking agenda that is not limited to a narrow defence of national interests.<sup>62</sup>

In general the Communication appears to pursue a triple interest: **(1) '[e]nsuring that multilateral targets and instruments have the impact they deserve', (2) achieving 'greater efficiency and impact by working together'** and **(3) '[p]romoting the EU's values and interests effectively'**.<sup>63</sup> The first objective refers to the strengthening of the multilateral UN regime, independent of EU interests, among others by adopting a 'front-runner' role with regard to the negotiation and implementation of UN instruments. The second seeks to establish synergies between the work of the EU and the UN through the creation of a wider partnership. The last aims at the realization of individual EU interests through the multilateral UN framework, and includes strategies relating to the EU's status, external representation and internal coordination. 'Effectiveness' thus appears to have a variety of meanings for the EU's commitment to multilateralism and triggers an array of different approaches. All of these dimensions of 'effective multilateralism' have in common that they refer to a 'regime that is liable to produce tangible results'.<sup>64</sup> Nevertheless, the lack of a clear concept and practical implementation have led to the observation that 'the meaning of "effective multilateralism" seems to have been eroded and its practical usefulness can be questioned'.<sup>65</sup>

Also, as mentioned earlier, it is a contested question, whether the EU is an instrumental or a principled multilateralist. Its unconditional support for multilateralism throughout its primary treaty law, policy documents and official statements suggests a principled approach.<sup>66</sup> This is in line with the character of the Union as a product and facilitator of multilateral integration and its ambition to export this post-modern model globally. However, a considerable part of the Union's external action consists of unilateral and bilateral measures even though they are not as prominent in the EU's political self-presentation.<sup>67</sup> In addition, certain dimensions of the notion of 'effectiveness' point towards a more instrumental approach, given that they refer towards the realization of the Union's policy goals. It has been concluded that even for the Union, who aims to play a leading role in the promotion of multilateralism, this organisational form is 'no Holy Grail *per se*'.<sup>68</sup> Costa argues, that the Union's commitment to multilateralism increases, the weaker its international actorness in a given policy area is.<sup>69</sup> The EU – despite its seemingly unconditional rhetorical commitment to multilateralism – in many ways does not distinguish itself from many other international actors who regard multilateralism as a means to an end and easily rely on other forms of external action whenever this appears expedient.

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<sup>62</sup> COM(2003) 526 final (n 53) 3.

<sup>63</sup> *ibid*, cf the headings of the three chapters.

<sup>64</sup> Wouters, de Jong, De Man (n 50) 171.

<sup>65</sup> Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd edn, Palgrave Macmillan 2014) 300.

<sup>66</sup> See especially TEU art 21.

<sup>67</sup> Knud Erik Jørgensen, 'The European Union in Multilateral Diplomacy' (2009) 4 *Hague Journal of Diplomacy* 189.

<sup>68</sup> Blavoukos/Bourantonis (n 50) 1.

<sup>69</sup> Oriol Costa, 'A force for and because of multilateralism: when is the EU a multilateralist actor in world society?' (2013) 20 *Journal of European Public Policy* 1213, 1223.



### *c) Effective multilateralism in EU human rights policy*

The Union's commitment to effective multilateralism permeates all areas of its external action, including the promotion and protection of human rights. The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy therefore puts a strong emphasis on the Union's presence in the UN human rights architecture.<sup>70</sup> The Strategic Framework names the UNGA, the HRC and the ILO as those UN fora in which the EU will 'continue to speak out [...] against human rights violations'. It highlights the necessity to safeguard the independence and effectiveness of the OHCHR, the treaty monitoring bodies and special procedures. The HRC plays a central role in the Union's human rights engagement at the UN. The EU not only commits to 'contribute vigorously to the effective functioning of the Council', but also to making the recommendations of the UPR, of treaty monitoring bodies and special procedures a part of its bilateral dialogue with third countries, and to provide support for their implementation. 15 items of the Action Plan contain references to the UN. They can roughly be divided into the following categories: cooperation with the UN and support for its instruments (No. 9(a), 16(a), 17(a), 18(b), 19(b), 21(b)), encouragement of third countries to cooperate with the UN (No. 4(b)), alignment of EU policy with and implementation of UN instruments (No. 8(c), 12, 19(a), 25, 29, 30(a), (b)), use of UN bodies as fora for the promotion of specific EU policies (No. 9(a), 23(b)), and EU presence at the UN (No. 34, 35).

The identified categories of action items mirror the above identified dimensions of the Union's notion of effective multilateralism. They aim at the strengthening of the UN as an 'effective' multilateral framework by supporting its bodies and instruments and encouraging the support by third countries. But they also pursue the 'effective' promotion of EU policy through appropriate UN bodies and by enhancing the Union's representation in the UN framework.

Multilateralism thus constitutes an important organisational form for the Union's external human rights policies. As with other policy areas, however, it is neither the only nor the supreme mode of external action for the Union, but stands next to unilateral and bilateral measures. Examples for the latter include human rights clauses in trade and political framework agreements, sanctions, and a rights-based approach in development cooperation. Given that the promotion and protection of human rights can only benefit from a strategy encompassing the whole spectrum of foreign policy, this appears as a positive approach.

The extent to which the Union manages to implement this multilateral approach in its external human rights policy will be the subject of this report.

### **3. Conclusions**

The EU has been a strong proponent of 'effective multilateralism' since it first endorsed the concept in its 2003 Security Strategy. Multilateralism has been elevated to one of the central guiding principles of EU external action, permeating all areas of foreign policy, including human rights. Nevertheless, the exact content of the concept, in particular its 'effectiveness' component, remains underdeveloped and does not allow for the drawing of sufficiently certain conclusions concerning the ensuing Union strategies at the multilateral level. It has been demonstrated that 'effectiveness' is open to a variety

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<sup>70</sup> Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

of definitions, all of which have different implications for the resulting strategies and the appropriate methods for measuring its success. It has also been demonstrated that the Union, while frequently presenting itself as a principled multilateralist, often rather follows an instrumental approach – a choice which may depend on the strength of its international actorness. Multilateralism is of considerable importance for the way in which the Union promotes human rights abroad and consequently plays a central role in the 2012 Strategic Framework and Action Plan. The extent to which the Union achieves to translate its commitment to multilateralism into successful external action within the area of human rights will be analysed in the following chapters.

## B. Human rights in the EU's external policy

This section tackles the place of human rights in the European Union's external policy. It presents the relevant Treaties provisions, EU strategic documents and other acts related to human rights. The aim of this section is to analyse the EU's human rights priorities and their consistency throughout the relevant documents.

### 1. European Union Treaties

#### a) General principles of the EU's external actions

One of the features of the pre-Lisbon era, criticised in the literature, was the lack of clearly articulated objectives of the EU's external relations.<sup>71</sup> The Lisbon Treaty has significantly strengthened the place of human rights in the EU, not only internally (the binding force of the Charter of Fundamental Rights), but also externally, by putting human rights in a central place amongst the principles of the EU's external actions.<sup>72</sup>

Pursuant to Article 205 TFEU the EU's actions in the specific fields covered by the TFEU are to be 'guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union' (Articles 21 and 22, discussed below).

Already in Article 3 (5) TEU it is stated that 'in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the *protection of human rights, in particular the rights of the child*, as well as to the strict observance and the development of international law, including *respect for the principles of the United Nations Charter* (emphasis added)'.

General provisions on the EU's principles and objectives in the field of external relations are expressed Article 21 TEU. According to Article 21(1) TEU: 'the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the *universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of*

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<sup>71</sup> Cf Rolandas Kačinskis, 'The New European External Action Service: Between Ambition and Compromise' (2011) 9 Lithuanian Annual Strategic Review 78.

<sup>72</sup> For a comparison of the internal/external provisions related to human rights cf Grainne de Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 American International Law Journal 682-685.

*equality and solidarity, and respect for the principles of the United Nations Charter and international law (emphasis added)*'. In view of the aims of WP5 it is important to note that this Treaty provision also tackles the issue of the EU's relations with the UN. However, the question of effective multilateralism will be discussed in the previous section of this chapter.

Article 21 (2) TEU enumerates the general aims of the Union's cooperation in the fields of international relations. According to this provision, the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to, *inter alia*, 'safeguard its values, fundamental interests, security, independence and integrity (21 (2)(a) TEU), consolidate and support democracy, the rule of law, *human rights (emphasis added)* and the principles of international law' (21 (2)(b) TEU) and 'preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders' (21 (2)(c) TEU).

According to Article 21 (3) TEU the principles and objectives mentioned above, including human rights, must be respected and pursued by the EU in the development and implementation of:

- the different areas of the Union's external action:
  - covered by Title V of the Treaty on the European Union (General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy);
  - covered by Part Five of the Treaty on the Functioning of the European Union (The Union's external action);
- the external aspects of its other policies.

Article 21 TEU marks a general commitment of the EU to universal and indivisible human rights in the EU's external relations. However, it does not set out any specific priorities or objectives in this field. Therefore, according to Article 22 (1) TEU, the European Council is tasked with the identification of the EU's strategic interests and objectives on the basis of the general principles and objectives set out in Article 21. This provision further clarifies that the decisions of the European Council 'may concern the relations of the Union with a specific country or region or may be thematic in approach' and that 'they shall define their duration, and the means to be made available by the Union and the Member States'. Procedurally, the European Council acts unanimously on a recommendation from the Council and the High Representative and the Commission may submit joint proposals to the Council (Article 22 TEU).

These general principles apply, in accordance with Article 21 (3) TEU and Article 205 TFEU, to the areas of EU's external action covered by the TFEU, including the matters of the Union's relations with international organisations and third countries and Union delegations (Title VI of Part V of the TFEU). Specific provisions included in Title VI are of an institutional nature, therefore they will be discussed in further parts of this report.

## ***b) Principles in the matters of Common Foreign and Security Policy***

According to Article 24 (1) TEU 'the Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence'. Although the Lisbon Treaty created a 'single legal regime for all external actions' of the EU,<sup>73</sup> some specific provisions still apply to the matters of Common Foreign and Security Policy (CFSP).

The specific principles of CFSP are set out in Article 24 (2) and (3) TEU, but human rights are not mentioned in these provisions. However, according to Article 23 TEU, all EU's actions in the field of CFSP are to be guided by principles and objectives set out in Article 21 TEU, mentioned above.

One should also mention that the Treaty on the European Union clearly excludes the possibility of adoption of legislative acts (Article 24 (1) TEU). CFSP is to be conducted by the EU by the measures listed in Article 25 TEU (defining the general guidelines, adopting decisions defining actions to be undertaken by the Union etc.).

Due to the fact, that there are no legislative acts in the field of the CFSP, in further parts of this section, only non-legislative acts will be presented.

### **2. EU Guidelines on Human Rights**

General commitment of the EU to the cause of human rights is specified in a series of Human Rights Guidelines adopted by the Council. To date, 11 thematic guidelines have been adopted. They can be seen as a list of the EU's top priorities in the field of human rights.

List of EU Human Rights Guidelines:

- 1) EU Guidelines on violence against women and girls and combating all forms of discrimination against them (2008);
- 2) Ensuring protection – EU Guidelines on Human Rights Defenders (2008);
- 3) EU Guidelines for the Promotion and Protection of the Rights of the Child (2008);
- 4) EU Guidelines on Children and armed conflict (updated 2008);
- 5) EU Guidelines on promoting compliance with international humanitarian law (updated 2009);
- 6) EU Guidelines on Human Rights dialogues with third countries (updated 2009);
- 7) Guidelines to the EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (updated 2012);
- 8) EU Guidelines on the promotion and protection of freedom of religion or belief (2013);

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<sup>73</sup> Koen Lenaerts and Piet Van Nuffel, *European Union Law* (Sweet and Maxwell 2011) 951.

- 9) Guidelines to promote and protect the enjoyment of all Human Rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (2013);
- 10) EU Guidelines on Death Penalty (2013);
- 11) EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014).

All EU guidelines are related to civil and political rights, there are no guidelines related to economic, social and cultural rights. One should also note that there are two guidelines related to the rights of the child. This conforms to Article 3 (5) TEU, which specifically mentions rights of the child as a human rights priority of the EU in its external relations.

The guidelines are, generally, constructed in the same manner. The first part of the document presents the issue in question, relevant definitions as well as objectives of the guidelines. From the point of this study, the most important part of each of these documents is the operational part, related to the EU's external actions.

The operational guidelines provide for specific actions to be taken by the EU in relation to the issue in question. These actions include political dialogue, démarches, monitoring and reporting etc. The operational guidelines often mention multilateral fora, including the UN human rights bodies. The guidelines may provide for, *inter alia*: raising certain issues at the UN, presenting initiatives, including the issue of Member States' interventions during the UPR.

### 3. EU Strategic Framework and Action Plan on Human Rights and Democracy<sup>74</sup>

In 2012 the Council of the European Union adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy.<sup>75</sup> These two documents 'set out the EU's vision for its global human rights policy in the years ahead and establish a detailed list of actions that the EU will implement in order to promote these goals in practice'<sup>76</sup> and therefore are essential for establishing the place of human rights in the EU's external relations.<sup>77</sup>

The EU Strategic Framework on Human Rights and Democracy sets out principles and defines the EU's objectives and priorities in the field of human rights. The key messages of the Strategic Framework are presented under eight headings. For the purposes of this report only those related to the general commitment to human rights, specific priorities and cooperation with the UN will be presented.

The Strategic Framework states that 'The European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy

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<sup>74</sup> For an extensive analysis of priorities identified by the Strategic Framework/Action Plan, see: Cristina Churruza Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas and Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support', FRAME Deliverable 12.1, <[www.fp7-frame.eu/wp-content/materiale/reports/05-Deliverable-12.1.pdf](http://www.fp7-frame.eu/wp-content/materiale/reports/05-Deliverable-12.1.pdf)>.

<sup>75</sup> Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

<sup>76</sup> EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports), Doc No 9431/13, 13 May 2013, 9.

<sup>77</sup> EU Annual Report on Human Rights and Democracy in the World in 2013, Doc No 11107/14, 23 June 2014, 13.

and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union'. The document also reaffirms the commitment to the promotion and protection of all human rights (civil and political, or economic, social and cultural). In this regard, the Strategic Framework specifically refers to the Joint Communication 'Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach'.<sup>78</sup> In this document, the European Commission and the High Representative stated that 'respect for human rights and fundamental freedoms is at the core of the European Union. The protection and promotion of human rights is a silver thread running through all EU action both at home and abroad'.<sup>79</sup>

The idea of human right permeating all areas of the EU's actions was further specified in the context of external relations by the Strategic Framework, which states that the EU will promote human rights in all areas of its external actions (including trade, investment, technology, Internet, energy etc.) and will place human rights at the centre of its relations with all third countries, including its strategic partners.

Specific priorities of the EU mentioned in the Strategic Framework may be classified in the following manner:

The EU will continue to:

- Promote freedom of expression, assembly and association (on-line and offline);
- Promote freedom of religion or belief;
- Fight discrimination in all its forms (on grounds of race, ethnicity, age, gender or sexual orientation), also through advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities
- Rights and empowerment of women.

The EU will intensify its efforts to promote:

- Economic, social and cultural rights;
- Universality and non-discriminatory access to basic services (in particular for poor and vulnerable groups);
- Implementation of the UN Guiding Principles on Business and Human Rights.

Other priorities:

- death penalty and torture, cruel, inhuman and degrading treatment;
- fair and impartial administration of justice;

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<sup>78</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council Human Rights and Democracy at the Heart of EU External Action –Towards a More Effective Approach, 12 December 2011, COM(2011) 886 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>>.

<sup>79</sup> *ibid* 4.

- right to a fair trial
- equality before the law;
- observance of international humanitarian law;
- fight against impunity for serious crimes of concern to the international community (including sexual violence committed in connection with armed conflict) – commitment to the International Criminal Court;
- political and financial support for human rights defenders, efforts against all forms of reprisals;
- civil society (including support of human rights defenders under the European Instrument for Democracy and Human Rights).

To a large extent, EU priorities in the Strategic Framework concern the same topics as the EU Guidelines (for example death penalty, international humanitarian law or freedom of religion or belief). However, the Strategic Framework includes some thematic issues unrelated to the Guidelines, for example, rights related to the administration of justice. The new priorities are also comprised in the ‘will intensify its efforts to promote’ category, for example, economic, social and cultural rights.

In relation to the UN system, the Strategic Framework underlines the EU’s commitment to a strong multilateral human rights system and states that the EU will speak out in the United Nations General Assembly, the UN Human Rights Council and the International Labour Organisation against human rights violations. The document also pays special attention to the role of the HRC and stresses the need of ensuring the implementation of accepted UPR recommendations.

The Action Plan on Human Rights and Democracy was adopted for the purpose of implementing the Strategic Framework. It builds on ‘the existing body of EU policy on human rights and democracy in external action, notably EU guidelines, toolkits and other agreed positions and the various financial instruments, in particular the European Instrument for Democracy and Human Rights.’ Unlike the Strategic Framework, the Action Plan has a deadline: it covers the period until the 31<sup>st</sup> December 2014.

The Action Plan lists 36 outcomes and 97 respective actions to be undertaken in order to realise the planned outcome. The list of outcomes, in general, mirrors the list of key messages of the Strategic Framework. The Action Plan also sets the timing for specific actions and assigns responsibilities for carrying them out.

#### 4. Conclusions

The Lisbon reform addressed the scholars’ concerns related to the lack of clear objectives of the EU’s external relation. New provisions of the Treaties include a set of principles, objectives and aims in the field of external relations. Among these, human rights are prominently placed. Additionally, the EU’s strong commitment to human rights was confirmed in the Joint Communication of the European Commission and the High Representative. The EU’s human rights objectives in the field of its external relations were put into practical terms by the Action Plan. This document clearly sets out actions and their outcome to be achieved by the EU in its global human rights policy.

The Treaties do not clearly prioritise any thematic issues, except for the rights of the child. However, the Union's thematic priorities can be easily reconstructed from the Strategic Framework and Action Plan, as well as, from the human rights guidelines.



### III. Institutional Framework of EU-UN relations

#### A. Mapping the United Nations

##### 1. Introduction

Since human rights constituted one of the core concepts around which the United Nations were established<sup>80</sup> it is no surprise that they feature throughout the various bodies, agencies, forums and venues of the UN. One can identify elements related directly or indirectly to the promotion and protection of human rights in a great deal of UN work carried out across the globe. Furthermore, human rights are only partially mainstreamed across the UN domain and much divergence remains in how various bodies and agencies embrace in human rights issues. The following analysis considers a broad spectrum of UN human rights bodies and developments with a special focus on venues where the impact and engagement of the EU are particularly profound. The EU participates in or cooperates with various UN human rights system bodies in a meaningful way, engaging its considerable capacities. Particular attention is given to venues where both the EU and its Member States are present and to venues where, according to its Treaties, the EU is represented by the Member States in lieu of a lack of formal standing within the given body.

##### 2. United Nations – General Information

The United Nations is an international organisation established in 1945 that serves the following purposes: maintaining international peace and security; developing friendly relations among nations; and achieving international co-operation, including in promotion and encouragement of respect for human rights and for fundamental freedoms.<sup>81</sup> Throughout the history of the United Nations, this high standing of human rights among the UN purposes has been seen to have a counterweight in the ‘domestic jurisdiction clause’.<sup>82</sup> Fortunately, the attempts made initially by many states to use this clause as a protective shield against criticism for human rights violations have met with an increasing resistance on the part of the international community guided by the universality of rights. The 1993 UN Vienna World Conference on Human Rights contributed to a breakthrough in the abovementioned controversy by emphasizing that: “In the framework of these purposes and principles [of the UN], the promotion and protection of all human rights is a legitimate concern of the international community” and unequivocally reiterating the principle of the universality of human rights.<sup>83</sup> Currently, the UN has 193 members (among them all EU Member States), two observer states and 84 observer organisations and entities (including the EU as a ‘Regional organization allowed by their member states to speak on their behalf’ with a special observer status, see chapter III.C). Only members of relevant UN bodies enjoy full rights to take part in their activities, including voting and initiative rights. Observers can participate in the work of the UN to a limited degree following specific resolutions of the UNGA and established practices.<sup>84</sup> The UN goals are realised through an array of bodies, agencies, programmes

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<sup>80</sup> Julie Mertus, *The United Nations and Human Rights. A guide for a new era* (Routledge 2009) 37.

<sup>81</sup> UN Charter art 1.

<sup>82</sup> UN Charter art 2 § 7: ‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state [...]’.

<sup>83</sup> Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna, 25 June 1993, art 4 and art 1 respectively.

<sup>84</sup> The legal status of observers is not enshrined in the UN legal system and remains subject to a mix of piecemeal regulations and customary practice.



### 3. Regional Groups

The concept of Regional Groups (RG) is an important tool in the organisation of the United Nations and its bodies. Virtually every UN member state belongs to one of the five RG<sup>86</sup>: African Group (54 members, 28% of total UN members), Asia-Pacific Group (53 members, 27,5% of total), Latin American and Caribbean States (commonly referred to as GRULAC, 33 members, 17% of total), Western European and Others Group (commonly referred to as WEOG, 29 members, 15% total) and Eastern European Group (23 members, 12% total). The RG system currently serves primarily the distribution of seats in some UN bodies, including the non-permanent members of the UNSC, members of HRC, ECOSOC, and CESCR. It is also occasionally used as an auxiliary tool for organisation of the work of some bodies and processes (e.g. world conferences). The elections to human rights treaty bodies should be guided by the consideration of equitable geographical (legal systems, cultures, etc.) representation, but there is no distribution of seats among geographical groups (with one aforementioned exception). The actual geographical division of the regional groups originated in the Cold War era and as a result the EU Member States are currently assigned to three regional groups: WEOG (14 EU Member States), Eastern European Group (13 EU Member States) and Asia-Pacific Group (1 EU Member State). Traditionally, the WEOG, whose members have a long history of common cooperation within the UN and other international organisations (such as NATO and Council of Europe), African, and Latin American and Caribbean Groups cooperate on various matters relevant to human rights.<sup>87</sup>The Eastern European Group cooperates exclusively on procedural issues when a position of the group is required by the ongoing processes in the UN bodies. The Asian and Pacific Group also tends to limit its interaction to procedural matters. It is noteworthy that in addition to the EU, there are some other groupings that cross the borders of regions and present advanced forms of cooperation with a considerable impact on the work of the UN. In particular the Non-Aligned Movement, the Organization of the Islamic Conference (OIC), and the Arab League deserve a mention. The UN also takes into account certain initiatives put forward by the Commonwealth and Francophone countries

### 4. Political Divisions

The United Nations features a multitude of political alliances and groups aligned by various commonalities. The end of the Cold War and the end of apartheid eventually put an end to the 'horizontal' ideological and political division between 'the East' and 'the West' and gave a strong positive impetus to human rights cooperation at the UN level. The 1993 World Conference on Human Rights benefited from the spirit of time<sup>88</sup> and produced the landmark Vienna Declaration and Programme of Action which after more than 20 years maintains its standing as the fundamental international programmatic human rights document. Almost parallel, however, many countries and groups started to reposition themselves in the current configuration. At the international level, cooperation on human rights is strongly affected by a 'vertical' North/South divide in economy,

<sup>86</sup> Kiribati is the sole UN Member State which does not fall into any of the regional groups.

<sup>87</sup> Waheguru Pal Singh Sidhu, 'Regional Groups and Alliances' in Sam Daws and Thomas G. Weiss (eds) *The Oxford Handbook on the United Nations* (Oxford 2008) 228.

<sup>88</sup> Zdzisław Kędzia, 'The Road to Vienna: Negotiating the Vienna Declaration and Programme of Action', in Wolfgang Benedek, Clare Gregory, Julia Kozma, Manfred Nowak, Christian Strohal and Engelbert Theuermann (eds) *Global Standards – Local Action: 15 Years of Vienna World Conference on Human Rights* (Intersentia 2009).

development cooperation, trade and international financing and governance. In human rights fora, this divide is focused, among others, on such items as cultural relativism, right to development and the responsibility for an equitable economic order and cooperation or the responsibility for colonialism and slavery. This divide is further reflected by the presence and activity of several coalitions and organisations within the UN which represent various aspects of the North/South divide.<sup>89</sup> The division between the North and the South is instrumentalised by countries that pursue their general political goal to contest the expansion of the UN human rights system, such as the so-called 'Like Minded Group'<sup>90</sup> (LMG). The 2010s witnessed the apex of this process when tensions and divisions within the UN were additionally fuelled by the African Group which on the one hand was disappointed with the follow-up to the 2001 Durban Conference against Racism and Xenophobia and, on the other made attempts to counter biased, in their view, criticism of the African human rights record coming from the North. Meanwhile, however, it seems that, due to *inter alia* the EU efforts, cooperation with African countries has significantly improved. This, and the traditionally close cooperation with GRULAC on various initiatives has significantly contributed to a better climate in the Human Rights Council and to a partial moderation of the negative impact of the North-South divide. Most recently, the EU and its allies within the UN have been able to successfully cooperate with some African countries with a result that the coalition supporting a resolution against anti-LGBT violence and discrimination managed to secure support even from Cuba and Venezuela.

## 5. UN venues<sup>91</sup>

An important introductory note must be made concerning the difference in the nature of the two most important UN venues related to human rights: New York (where the UNGA, the UNSC and the ECOSOC are based) and Geneva (home to, among others, the HRC, the OHCHR, and the ILO). Due to a variety of factors, such as the degree of politicization of the bodies and the practices developed over time, there is a marked difference in how actors operate within both locales.<sup>92</sup> The work carried out in New York is characterised by a higher degree of politicization, lesser amount of human rights expertise available at hand and, in many cases, a far greater degree of direct influence from capitals of Member States. On the other hand, it is said that Geneva-based venues see much more human rights expertise present within delegations and a lesser degree of influence from capitals/central bodies. Issues which cannot be resolved in Geneva are sometimes less difficult to handle in New York owing to the relativisation of their political importance in line with the political agenda of state capitals and organisation HQs. Sometimes, however, agreements reached in Geneva may be upset in New York when the General Assembly takes up the same matter as the one discussed and agreed upon in Geneva. This situation has profound impact on the EU's internal coordination mechanism (see chapter

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<sup>89</sup> For example, the Group of 77 (G77) and Non-Aligned Movement (NAM) are seen as representations of the 'South', while the OECD is perceived as a facet of 'North'.

<sup>90</sup> While informal, this group frequently features i.a. Algeria, Bangladesh, Belarus, China, Cuba, Egypt, Indonesia, Iran, Malaysia, Myanmar, Pakistan, Russia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe.

<sup>91</sup> New York and Geneva are the principal UN venues as far as human rights are concerned. The UN also has two other major office venues: Vienna (home to the, among others, International Atomic Energy Agency and United Nations Office on Drugs and Crime) and Nairobi (where the United Nations Environment Programme is headquartered). However, neither of these two locations sees major involvement and developments in the field of human rights nor is any of them a priority area of EU coordination within the UN system.

<sup>92</sup> Interviews conducted in Geneva and Brussels, October 2013.



III.E) and the dynamics of how the EU and other actors operate within both venues. Sometimes, it also prompts a ‘venue shopping’ approach.

## 6. Legal instruments of the UN human rights system

The UN human rights system is enshrined in several legal instruments. The general outline of the UN commitment to human rights protection and promotion is featured in the UN Charter which contains several references to human rights and their place in the work of the UN, and outlines the competences of particular bodies. The UN Charter does not contain a bill of rights, but enshrines the general concept of respect for human rights as one of the purposes and principles of the UN. The aforementioned bill of rights is a part of the 1948 Universal Declaration of Human Rights (UDHR) and the two 1966 International Covenants: on Civil and Political Rights, and on Economic, Social and Cultural Rights. The UDHR contains an extensive catalogue of both civil and political as well as economic, social and cultural rights and freedoms. Despite its formally non-binding character it has exercised a profound impact on the development and understanding of the UN human rights system.<sup>93</sup> Meanwhile, the Declaration is widely recognised as a source of international customary law. It also articulates the catalogues of rights and freedoms that provide a normative basis for the HRC and other UN intergovernmental bodies. The Covenants expanded the articles of the UDHR into legal rights and obligations and established the first two treaty bodies (the Human Rights Committee and the Committee of Economic, Social and Cultural Rights). The level of ratification of both covenants is very high, notwithstanding several spectacular abstentions.<sup>94</sup> The final tier of the UN human rights system consists of an array of specialised conventions which engage specific areas of human rights.

The central place within the system of the legally binding UN human rights instruments is occupied by so-called core treaties:

1. The International Covenant on Civil and Political Rights (ICCPR)
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
4. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW )
5. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
6. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>95</sup>
7. The Convention on the Rights of the Child (CRC)
8. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)
9. The Convention on the Rights of Persons with Disabilities (CRPD)
10. The International Convention for the Protection of All Persons from Enforced Disappearance (CED)

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<sup>93</sup> Philip Alston and Ryan Goodman, *International Human Rights* (Routledge 2013) 532.

<sup>94</sup> The ICCPR hasn't been ratified by, among others, People's Republic of China, Cuba, Malaysia, Myanmar, Saudi Arabia, Singapore and UAE. The ICESCR hasn't been ratified by, among others Botswana, Cuba, Malaysia, Myanmar, Saudi Arabia, Singapore, South Africa, UAE and United States.

<sup>95</sup> Unlike the case with other Optional Protocols, which are for the most part supplements to their parent treaties and conventions, the OPCAT serves on its own as a separate convention.

The core treaties have established their own monitoring bodies. Under each of them, with the exception of the Optional Protocol to the CAT, optional individual complaint procedures have also been established. Some of them also set up inquiry procedures. The level of ratification of the human rights treaties varies greatly, ranging from nearly universal (eg. CRC, which is currently ratified by 190 UN Member States) to low (CMW, with 47 ratifications). The status of ratification of core UN human rights instruments in EU Member States as of October 2014 is presented in the below table.

*Table 1: Status of ratification of core UN human rights instruments by EU Member States*

<b>Instrument</b>	<b>Ratification Status within the EU</b>
ICCPR	all EU Member States
ICESCR	all EU Member States
CERD	all EU Member States
CEDAW	all EU Member States
CAT	all EU Member States
CRC	all EU Member States
OPCAT	all EU Member States except Belgium, Ireland, Latvia, Slovakia
CMW	no EU Member States
CRPD	all EU Member States + European Union <sup>96</sup> , except Finland, Ireland and Netherlands
CED	Austria, Belgium, France, Germany, Lithuania, Netherlands, Portugal, Slovakia, Spain

It is to be noted that the EU Member States have decided not to take an individual action on the ratification of the CMW which features a wide recognition of rights of migrant workers. The primary reason for this appears to be the lack of a conclusive agreement within the EU as to how the issue of migrant workers from outside the EU is to be tackled within the Union. Owing to unique arrangements regarding freedom of movement and worker migration within the EU, the ratification of CMW appears to require a common action of the EU Member States in order to ensure consistent and coherent application of the Convention.<sup>97</sup> Interesting, and probably regrettable in view of the EU role as a human rights champion, is the patchwork picture of ratifications of complaint procedures under the UN human rights treaties:

- ICCPR – all EU Member States except UK,
- ICESCR – Belgium, France, Finland, Italy, Portugal, Slovakia, Spain,
- CERD – all EU Member States except Croatia, Greece, Latvia, Lithuania and UK,

<sup>96</sup> The EU has entered the CRPD to the extent responsibilities of the member states were transferred to the European Union.

<sup>97</sup> MacDonald and Cholewinski additionally point to other factors, such as legal misconceptions as to the content of the CMW, lack of awareness as to the implications of its ratification and diverging approach to migrants within the UN and EU legal and policy frameworks. See: Euan MacDonald and Ryszard Cholewinski, 'The ICRMW and the European Union' in Ryszard Cholewinski, Paul De Guchteneire and Antoine Pécoud (eds) *Migration and Human Rights. The United Nations Convention on Migrant Workers' Rights* (Cambridge 2009) 360-393.

- CEDAW – all EU Member States except Estonia, Latvia, Malta,
- CAT – all EU Member States except Estonia, Latvia, Lithuania, Romania and UK,
- CRC –Belgium, Germany, Ireland, Portugal, Slovakia, Spain,
- CRPD – all EU Member States except Bulgaria, Czech Republic, Finland, Ireland, Netherlands, Poland, Romania,
- CED –Austria, Belgium, France, Germany, Lithuania, Malta, Netherlands, Portugal, Slovakia, Spain.

Several treaties are expanded upon in Optional Protocols, which establish specific mechanisms such as the individual complaint procedures. The following Optional Protocols are currently in force:

- Optional Protocol to the Covenant on Economic, Social and Cultural Rights,
- Optional Protocol to the International Covenant on Civil and Political Rights,
- Second Optional Protocol to the International Covenant on Civil and Political Rights,aiming at the abolition of the death penalty,
- Optional Protocol to the Convention on the Elimination of Discrimination against Women,
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure,
- Optional Protocol to the Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In addition to human rights treaties (hard law), the UN has developed an impressive and important body of human rights soft law in the form of legally non-binding declarations and resolutions adopted by the General Assembly or the Human Rights Council, which, nevertheless, create political commitments and are sometimes accompanied by monitoring mechanisms.

## **7. United Nations General Assembly**

The principal deliberative and policy making body of the UN is the United Nations General Assembly (UNGA), composed of representatives of 193 UN Member States. The UNGA meets for one session annually, which is officially scheduled to last from September to December. However, currently the sessions are resumed in January and run until just before the following September due to the sheer number of matters brought to UNGA attention. As provided for in Art. 10 and Art. 13(1) of the UN Charter, the UNGA has a broad mandate to address key human rights issues and make recommendations to the Member States and UNGA structures. Its contribution to the UN human rights programme includes: a) standard setting – the GA adopted and opened for ratification most of the human rights treaties and adopted the bulk part of human rights soft law, b) policy development (including convening of world summits and establishing frameworks for the implementation of their outcomes, proclamation of decades on thematic issues, etc.), c) addressing human rights situations (consideration of grave human rights violations), d) establishing human rights bodies (HRC, OHCHR).

The HRC, the OHCHR and some special procedures and treaty bodies deliver annual reports/information and hold interactive dialogue with the GA.

The central body within the UNGA structure that deals with the substantive and procedural aspects of human rights is the Social, Humanitarian and Cultural Committee (Third Committee). The work of the Third Committee is characterised by a high degree of expertise in human rights among Member State representatives and by a very conflicted nature of discourse between various Member States and groups, which leads to frequent situations where notions are won or defeated by a slim margin of votes. The Legal Committee (Sixth Committee) makes its contribution to human rights standard setting. The Administrative and Budgetary Committee (Fifth Committee) plays a key role in the adoption of the UN budget and thus has a decisive impact on the allocation of resources to the UN human rights programme, including the OHCHR.

Controversy remains concerning the power of the UNGA to interfere with the decisions of the HRC. Since the Human Rights Council is a subsidiary body of the UNGA, one can conclude that the UNGA is competent to prevent a HRC resolution from entering into force. However, the opponents of such an approach claim that there is no formal procedure for considering of specific HRC resolutions at the UNGA. The latter only considers the HRC's report and it is inappropriate for the UNGA to single out one HRC resolution and put it on hold or refuse its endorsement. This practice would undermine the institutional autonomy and authority of the HRC and question political compromises reached in this body. Recently, such a situation occurred at the 68 UNGA session (2013). At the motion of African Group supported, among others, by the Like-Minded Group and opposed among others by the EU Member States, the UNGA decided to put on hold the HRC resolution concerning *inter alia* reprisals against human rights defenders.<sup>98</sup> Such steps, despite the criticism leveraged against them, confirm the assessment that regardless of the shift in human rights focus within the UN domain towards the HRC, the UNGA still remains an important venue. This view is reflected in the official statements of the EU, which has recently reinforced its commitment to the revitalisation and strengthening of the UNGA.<sup>99</sup> Interestingly, the EU has called for rationalisation of the UNGA agenda by means of eliminating overlaps with ECOSOC agenda, but did not take the same view on the agenda overlap between UNGA and HRC, indicating that having human rights items feature prominently in the works of both bodies is a desirable situation.

The agenda of the UNGA features plenary discussions on a multitude of topics directly or indirectly related to human rights, as well as adoption of resolutions entailing recommendations, suggestions and findings. UNGA resolutions are not legally binding on Member States, but create political and moral commitments, and thus have potential for a considerable influence. They draw attention to selected topics and often serve as a foundation for action within the UN human rights system. Resolutions adopted by consensus often require far-reaching compromises which may negatively affect their strength and precision.<sup>100</sup> For example, at its 68th Session (2013/2014), the UNGA adopted: a) eight institutional resolutions (including one regarding strengthening the treaty body

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<sup>98</sup> See UNGA Res 68/451 (2013) UN Doc A/RES/68/451 adopted with 94 votes in favor, 71 against, with 23 abstentions; the relevant HRC resolution – HRC Res 24/24 (2013) UN Doc A/HRC/RES/24/24.

<sup>99</sup> EU Statement – United Nations General Assembly: Revitalization of the GA, 18 November 2014 <[http://eu-un.europa.eu/articles/en/article\\_15756\\_en.htm](http://eu-un.europa.eu/articles/en/article_15756_en.htm)>.

<sup>100</sup> Benedetto Conforttii, *The Law and Practice of the United Nations* (Martinus Nijhoff 2005) 82 referring to consensus within the UNSC, 99 referring to the prior observations as valid in reference to UNGA as well.



system); four country resolutions (Myanmar, Iran, DPRK, Syria); c) thirty-six thematic and related resolutions (related to topics such as: women rights, human rights defenders, IDPs, migrants, counterterrorism, right to food, declaration on rights of minorities, NHRIs, freedom of religion, religious intolerance, globalization, privacy, enforced disappearances, right to the truth, elections, journalists, coercive measures, right to development, right to water, torture, international covenants, treaty body membership, international cooperation, democratic and equitable international order, cultural diversity, covenants, mercenaries, follow-up to Durban Conference against Racism and Xenophobia, Nazism, indigenous peoples, early/forced marriage, rights of child, human rights of Palestinian people, gender-related killing of women and girls, treatment of prisoners).

## 8. United Nations Security Council

The principal UN body tasked with maintenance and protection of global peace and security is the United Nations Security Council (UNSC).<sup>101</sup> Several other matters critical to the UN as a whole fall under the purview of the UNSC, including the appointment of the Secretary-General of the UN and admission of new members to the UN. The UNSC has five permanent members (P5), two of which are EU Member States (France and UK) and ten non-permanent members which are elected by the GA for two-year terms. The power of the permanent members to veto any substantive decision of the SC has a tremendous impact on the workings of the UNSC and the UN as a whole, including in matters relevant to human rights. Despite some initiatives in the past, at the moment, there is no realistic prospect of any change in this respect.

For close to 50 years since its creation, the UNSC has been consistently reluctant to engage in matters related to human rights issues.<sup>102</sup> Human rights concerns were seen as an unproductive interference with peace and security efforts. This situation, however, began to change in the early 90s, under the pressure of genocide cases in Cambodia, Rwanda and Srebrenica. The linkage between grave violations of human rights and internal and international conflicts could no longer be ignored. The gradual developments, including the adoption of the Arria formula that allowed for inviting e.g. the HCHR to informal meetings of the UNSC had led to the adoption of the following landmark statement by the 2005 UN World Summit: “We acknowledge that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. We recognise that development, peace and security and human rights are interlinked and mutually reinforcing.”<sup>103</sup> Complementary to this provision seems to be the concept of the Responsibility to Protect (R2P) also adopted by the 2005 World Summit.<sup>104</sup> Currently, the UNSC does not refrain from taking up human rights problems if they are linked to military conflicts, although some actors continue to raise the argument that human rights are essentially not part of the UNSC mandate.<sup>105</sup> Remarkably, recent UNSC resolutions concerning peace keeping operations usually establish strong human rights components of such operations. The importance of the UNSC in the area of human rights manifests itself in several ways. Unlike the GA resolutions, the UNSC resolutions are legally binding for the Member States if taken under the Chapter VII of the UN Charter, which sets out the UNSC powers to maintain peace and global security. Under the same Chapter, the UNSC can take enforcement

<sup>101</sup> UN Charter, art 24.

<sup>102</sup> Sydney D. Bailey, *The UN Security Council and Human Rights* (St. Martin Press 1994) 77.

<sup>103</sup> UNGA Res 60/1 (2005) ‘2005 World Summit Outcome’ UN Doc A/RES/60/1 § 9.

<sup>104</sup> *ibid* § 138 and 139.

<sup>105</sup> Mertus (n 80) 102.

measures in form of sanctions, targeted either at entities or individuals. Over the years, the UNSC has developed an extensive array of sanctions and committees that oversee their implementation.<sup>106</sup> In particular, several sanction mechanisms related to counterterrorism which target individuals have direct impact on human rights and freedoms of sanctioned persons.<sup>107</sup> Furthermore, with the introduction of Resolution 1373/2001 on counter-terrorism<sup>108</sup>, the UNSC has for the first time obligated the Member States to take specific measures within their own legal systems. This act of law-making has sparked an intense debate within the academia<sup>109</sup>, and was followed by several other UNSC resolutions which aimed to have a direct impact on national and regional legislations, with the most recent one being Resolution 2178/2014 on foreign terrorist fighters.<sup>110</sup> Although the human rights paradigm has become an important point of the UNSC's attention, its record on addressing human rights situation remains uneven.<sup>111</sup> On the one hand, the UNSC was able to draw upon human rights concerns as grounds for its successful action in several instances such as the endorsement of military intervention in Libya in 2011, yet, on the other hand, it failed utterly to take a meaningful action during the Syrian civil war, prompting criticism from various sources, such as the academia<sup>112</sup> and the OHCHR.<sup>113</sup>

## 9. United Nations Human Rights Council

The UN Human Rights Council was established by the UNGA as its subsidiary body in 2006 in order to replace its predecessor, the Commission on Human Rights, whose credibility, integrity and effectiveness had been heavily criticised by Member States, civil society and academia. Various aspects of its work will be discussed throughout this report, in particular in Chapter V. The HRC is composed of 47 members elected by the UNGA for three-year terms (with the possibility of two consequent re-elections), with membership split across the UN Regional Groups. Membership in the HRC may be suspended by a UNGA 2/3 majority vote if a HRC Member is found to have committed gross and systematic human rights violations. So far, this rule has been applied only in one case when on 1<sup>st</sup> March 2011 the membership of Libya under Colonel Kaddafi rule was suspended by the UNGA on the recommendation of the HRC (membership was restored in autumn same year). The HRC meets at least three times a year, with a minimum total of 10 weeks in session. The HRC is envisioned to be the focal point of the UN human rights system and a primary forum for discussion on human rights

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<sup>106</sup> Cathleen Powell, 'The Legal Authority of the United Nations Security Council' in Benjamin J. Goold and Liora Lazarus (eds) *Security and Human Rights* (Hart Publishing 2007) 158-165.

<sup>107</sup> For more on the interaction between the UN counterterrorism sanction system and EU legal order, see ch VI.D.

<sup>108</sup> UNSC Res 1373/2001 (2001) UN Doc S/RES/1373 (2001).

<sup>109</sup> Powell (n 106).

<sup>110</sup> UNSC Res 2178/2014 (2014) UN Doc S/RES/2178 (2014).

<sup>111</sup> Bruno Fassbender, 'The Role for Human Rights in the Decision-making Process of the Security Council' in Bruno Fassbender (ed) *Securing Human Rights? Achievements and Challenges of the UN Security Council* (Oxford 2011) 74-75.

<sup>112</sup> David Forsythe, *The UN Security Council and Human Rights. State Sovereignty and Human Dignity* (Friedrich-Ebert Stiftung 2012) 5-7.

<sup>113</sup> UNSC Meeting S/PV.7247, 21 August 2014.

and the activity within the UN. Kędzia identifies the following primary roles of the HRC, noting that in fact the Council in many ways is akin to a global parliament on human rights:<sup>114</sup>

- central UN forum for human rights debate,
- human rights policy development and standard setting,
- human rights monitoring (via UPR),
- human rights protection and intervention,
- creation.

The Council's work engages Council Member States, State observers, UN actors, NHRIs, NGOs<sup>115</sup> and independent experts. The agenda of the HRC follows a general structure where individual elements are grouped into the following items:

- Item 1. Organisational and procedural matters
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
- Item 4. Human rights situations that require the Council's attention<sup>116</sup>
- Item 5. Human rights bodies and mechanisms
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
- Item 10. Technical assistance and capacity-building

Similarly to the UNGA, the HRC passes country-specific and thematic resolutions concerning various areas of human rights, which are usually adopted without a vote or with a vote if there are diverging positions within the HRC. These resolutions are not legally binding, but their impact and the role they play is similar to the UNGA resolutions. The views of the HRC can also take the form of the HRC President's statements.

Additionally, in order to fully fulfil the mandate of the primary human rights forum of the UN, the HRC employs several specific mechanisms and procedures:

#### *a) Universal Periodic Review (UPR)*

The UPR was introduced as a new tool together with the establishment of the Human Rights Council. In 2005, the Secretary-General Kofi Annan while presenting the proposed new peer review procedure to the Commission on Human Rights emphasised that the review was to become universal (engaging every UN Member State), regular (carried out on a periodic schedule) and horizontal, engaging

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<sup>114</sup> Zdzisław Kędzia, Teaching Materials for International Protection of Human Rights (in Polish) <<https://prawo.amu.edu.pl/strona-glowna/jednostki-organizacyjne/katedry/katedra-prawa-konstytucyjnego/prawa-czowieka>>.

<sup>115</sup> NGOs which enjoy consultative status granted by the ECOSOC.

<sup>116</sup> In practice this means human rights violations on a large scale.

Member States to conduct a mutual peer review while at the same time ensuring that UN bodies, NHRIs and civil society play an important role in the process.<sup>117</sup> The new review mechanism seeks to both evaluate how Member States fulfil their human rights obligations and voluntary commitments, and to establish areas where Member States could benefit from best practices and assistance. Currently, the UPR is conducted in cycles (which span four and a half years), during which every UN Member State (referred to during its review as State under Review, SuR) is subject to the peer review procedure. The documentation on which a review is based consists of: a SuR state report on human rights, summary of information from the UN domain compiled by the OHCHR (including input from treaty bodies and special procedures) and a summary of information stemming from NGOs and NHRIs, also compiled by the OHCHR. Member States may also submit advance questions ahead of a review. The actual review includes an interactive dialogue where other Member States may make recommendations towards the improvement of the SuR human rights situation and performance. The outcome of the review is subject to adoption in the HRC. The final results of the review form a basis for further review cycles. Despite some deficiencies of the UPR, its evaluation insofar is generally positive, with the process often hailed as one of the greatest achievements of the UN human rights system reform.<sup>118</sup> For further details concerning UPR – see part V.C. of this report.

### **b) Special Procedures (SP)**

The term ‘Special Procedures’ refers to a wide variety of mechanisms inherited by the HRC from its predecessor – the Commission on Human Rights. The four types of SP which are established by the HRC are: Special Rapporteurs (SR), Independent Experts, Special Representatives of the Secretary General, and Working Groups. Currently, the HRC has established 39 thematic special procedures and 14 country specific.<sup>119</sup> They cover all categories of human rights. The mandate holders have the status of independent experts and are appointed in the framework of a transparent procedure by the President of the HRC for a tenure of 3 years (one re-appointment is possible). Elements of the mandate are determined in HRC resolutions establishing a given special procedure. Generally, the experts are mandated to gather and analyse information relevant to their mandates and present their findings and recommendations in the annual or mission reports to the HRC and the UNGA, as appropriate. To that end, they conduct country visits and cooperate with various stakeholders, including Governments, international organisations, non-governmental organisations and the wider civil society. Many special procedures may act on individual cases and send communications to Governments (letters of allegations, urgent appeals), be it on their own initiative or in response to received complaints. Special procedures are involved in the development of international human rights standards, human rights advocacy and technical cooperation. There is a common opinion that special procedures constitute an important pillar of the UN human rights system, owing to their independence, prestige and Independence and high authority of mandate holders. It is to be noted that the number of special procedures has increased significantly in the recent years. One can have the impression that this process is only partially prompted by actual needs to address particular

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<sup>117</sup> Secretary-General's Address to the Commission on Human Rights, Geneva, 7 April 2005 <<http://www.un.org/sg/statements/?nid=1388>>.

<sup>118</sup> Edward R. MacMahon, *The Universal Periodic Review: A Work In Progress. An Evaluation Of The First Cycle Of The New UPR Mechanism Of The United Nations Human Rights Council* (Friedrich Ebert Stiftung 2012) <<http://library.fes.de/pdf-files/bueros/genf/09297.pdf>>.

<sup>119</sup> Current directory of SP mandate holders may be found at <<http://www.ohchr.org/EN/HRBodies/SP/Pages/Publications.aspx>>.

human rights situation, while at the same time the expansion of special procedures is influenced by political interests and compromises.

### *c) Complaint Procedure*

The HRC complaint procedure<sup>120</sup> was established in order to allow all those who possess reliable information (*actio popularis*) about consistent patterns of gross human rights violations to bring such facts to the attention of the HRC. Distinctly from other complaint mechanisms both in the UN human rights system and other systems, the HRC procedure does not apply to individual violations. Complaints are submitted and considered confidentially, and after consideration by HRC working groups are subject to further action within the HRC, provided the complaint is well grounded and not politically motivated. The HRC may follow up the complaint and (i) discontinue consideration of the situation, if no further action is needed; (ii) keep the situation under review, and request further information from the State concerned; (iii) keep the situation under review and appoint an independent expert to monitor the situation and report back to the Council; (iv) discontinue reviewing the situation under the confidential complaint procedure in order to take up a public consideration (under agenda item 4 of the HRC), or (v) recommend to the OHCHR to provide the State concerned with technical assistance. While the introduction of complaint procedures is seen as a positive development, their effectiveness is hampered by the extensive length of proceedings and political influence stemming from the nature of the HRC, resulting in the majority of successfully lodged complaint procedures being aimed at politically isolated or vulnerable states.

### *d) The Human Rights Council Advisory Committee*

The Advisory Committee consists of 18 experts elected by the HRC for a period of three years with the possibility of a single re-election. It holds sessions twice a year. The Committee provides advice and expertise on identified matters and in the manner and form requested by the Council. Its advisory functions are limited to thematic issues of the promotion and protection of human rights.

The HRC was welcomed as an attempt to cast away the errors and weaknesses of the CHR and to bring a new quality within the UN domain. Indeed, the HRC is praised for several new achievements such as the UPR, seen by many experts as a tangible development with great potential,<sup>121</sup> fostering cross-regional cooperation and eroding the traditional political divides within the UN and the improvements to modalities of its work. The preservation of the of positive features of the CHR such as the Special Procedures or participation of NGOs is also seen as a positive development. However, the HRC is not free from some basic CHR shortcomings, such as continued politicisation and regionalisation of the body, membership of countries notorious for serious human rights violations or lack of political will and determination to hold powerful human rights violators accountable.<sup>122</sup>

The EU and its Member States, despite some initial reservations, ultimately played a key role in setting up the Human Rights Council and defending some of its fundamental mechanisms and procedures which were exposed to attempts by LMG and other actors who sought to undermine them. Fortunately for human rights, the EU working together with partners from other regions succeeded in

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<sup>120</sup> HRC Res 5/1 (2007) UN Doc A/HRC/RES/5/1.

<sup>121</sup> Manfred Nowak 'An Introduction to the UN Human Rights System' in Manfred Nowak, Karolina Januszewski and Tina Hofstätter (eds) *All Human Rights for All. Vienna Manual on Human Rights* (NWV Verlag 2013) 65-92.

<sup>122</sup> Bertrand Ramcharan, *The UN Human Rights Council* (Routledge 2011) 123.

this effort. Unlike the United States, the EU embraced the HRC despite the fact that the final shape of the Council diverged from the initial concept and was subject to several compromises necessary to gather support for its creations. But, until the United States reversed its distanced policy on the HRC in 2009 (and later that year gained a seat on the Council), the EU was the major actor fully committed to support the HRC. With the United States leaving the HRC in 2015 and several traditional opponents of the EU (such as China, Russia and Cuba) retaining their seats, the EU will once again face a challenge of its ability to spearhead pro-human rights dynamic within the HRC.

## 10. Treaty Bodies

The term ‘treaty bodies’ refers to ten bodies established by the UN human rights treaties in order to facilitate and monitor their implementation. Currently, the following treaty bodies are operational:

1. The Human Rights Committee (HRC)
2. The Committee on Economic, Social and Cultural Rights (CESCR)
3. The Committee on the Elimination of Racial Discrimination (CERD)
4. The Committee on the Elimination of Discrimination against Women (CEDAW)
5. The Committee against Torture with Subcommittee on Prevention of Torture (CAT)
6. The Subcommittee on Prevention of Torture (SPT)
7. The Committee on the Rights of the Child (CRC)
8. The Committee on Migrant Workers (CMW)
9. The Committee on the Rights of Persons with Disabilities (CRPD)
10. The Committee on Enforced Disappearances (CED)

Despite progressing harmonisation, the mandates and the size, as well as the rules of procedures and the methods of work differ between the treaty bodies. Several traits are nevertheless common to all. The treaty bodies consist of 10 to 23 independent experts in the field of human rights, who are elected by State parties to the respective treaties (with the exception of the Committee on Economic, Social and Cultural Rights which is elected by ECOSOC) for renewable terms of four years. All treaty bodies review reports of State parties regarding respect and implementation of a given treaty, which are supposed to be submitted to treaty bodies on regular basis.<sup>123</sup> SPT is an exception here since its mandate focuses on preventive visits to places of detention with a view to strengthening the protection of persons held there against torture and other cruel, inhuman or degrading treatment or punishment. In general, the purpose of reporting is to monitor progress and identify problems and shortcomings in the implementation of the treaty, as well as to assess future needs and objectives to enhance a further implementation of the treaty. Reports are considered by treaty bodies in a process which involves a public dialogue with state parties and elaboration of concluding observations. Another competence common to all treaty bodies (exception: SPT) is the ability to publish general comments (recommendations) which mainly focus on the interpretation of the rights under the respective treaties. Although not legally binding, general comments have a significant impact on the understanding of human rights and their protection at the international and domestic levels. All treaty bodies (except for SPT and CMW ) currently have the power to consider complaints submitted by victims of human rights violations or third parties on their behalf, providing that the State party concerned specifically accepted the complaint procedure. The Committees do not consider complaints

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<sup>123</sup> In practice, the regularity of state reports is markedly uneven. Some state parties neglect reporting in general, some others are regular in reporting to some treaty bodies and lapse in regard to others.



that are being considered by another international judicial body or settlement procedure. This results in a markedly low amount of complaints from EU Member States, since in majority of human rights violation cases citizens of such countries prefer to refer to the ECtHR, not the least due to both its location and the fact that unlike the treaty bodies, the Strasbourg tribunal may award monetary compensation to the applicants. Communication with the parties takes place only in written form – no hearings or trials are foreseen. In their ‘views’ concluding the consideration of the case, the Committees assess whether a violation has taken place or not, and if so make recommendations to State parties concerning changes in law and practice, as well compensation for victims of violations. The ‘views’ are not legally binding but because of their public nature they usually influence the conduct of State parties. An optional inter-state complaint procedure under human rights treaties has never been applied. CAT, CEDAW, CRPD, CED and CESCRC Committees have also the ability to launch inquiries into human rights situation in particular State party. According to a widely shared assessment, the treaty bodies constitute another pillar of the UN human rights protection system.<sup>124</sup> In April 2014, a process of strengthening the UN human rights treaty bodies was concluded by a resolution of the UNGA<sup>125</sup> which introduced several measures addressing *inter alia* the problem of insufficient meeting time and scarcity of resources allocated to the treaty bodies, as well as the enhancement of technical assistance to the relevant capacity building by State parties.<sup>126</sup>

## 11. Office of the United Nations High Commissioner for Human Rights

The United Nations High Commissioner for Human Rights (UNHCHR) and the Office of the Commissioner (OHCHR) were both established following the 1993 Vienna World Conference on Human Rights. The Commissioner is appointed by the SG and approved by the UNGA for a four-year term with the possibility of extension for another term. The Commissioner is the UN official with principal responsibility for United Nations human rights activities under the direction and authority of the SG. Notably, the Commissioner’s duties have both external and internal dimensions. In the external aspect, the HCHR *inter alia* plays ‘an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world’, engages in a dialogue with Governments ‘with a view to securing respect for all human rights’, undertakes measures to enhance international cooperation for their promotion and protection, provides education, expert advice and assistance. Internally, the HCHR spearheads and coordinates action for human rights throughout the United Nations system, addresses other UN bodies and agencies in regard to matters concerning human rights and works to strengthen the UN human rights system and to mainstream human rights across all areas of the UN.

While the Member States and observers do not participate directly in the management of the OHCHR, they provide voluntary contributions to the OHCHR budget. These contributions are vital, since the Office and the wider UN human rights programme are only partially funded from the general UN budget. The OHCHR continuously faces financial shortages, which have negative impact on its work, particularly in the area of field operations. This particular issue has been recently highlighted as one

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<sup>124</sup> Kerstin Mechlem, ‘Treaty Bodies and the Interpretation of Human Rights’ (2009) 42 Vanderbilt Journal Of Transnational Law 945-946.

<sup>125</sup> UNGA Res 68/268 (2013) UN Doc A/RES/68/268.

<sup>126</sup> Christine Broecker and Michael O’Flaherty, ‘The Outcome Of The General Assembly’s Treaty Body Strengthening Process: An Important Milestone On A Longer Journey’ (Universal Rights Group 2014), <<http://www.universal-rights.org/component/k2/outcome-of-ga-treaty-body-strengthening-process>>.

of the biggest challenges ahead of the Commissioner, considering the increasing need of its relevant activity on the ground. The issue of EU contribution to the budget of OHCHR is explored in part V.E. of this report. Owing to the fact that the OHCHR is a body headed by a single person which sets the tone and modality of the Office's work, the personalities of the Commissioner's and their approach to both internal and external challenges have profound impact on OHCHR performance. However, despite differences in how the various Commissioners operated in the past, each of them has played a significant role in the UN human rights system, exerting both external influence and fostering internal consistency within the UN.

## 12. United Nations Economic and Social Council (ECOSOC)

The United Nations Economic and Social Council serves as the principal discussion forum for social and economic issues within the UN and reports to the General Assembly. It is also responsible for coordinating the economic, social and related work of UN specialised agencies, their functional commissions and five regional commissions. 54 Member States sit on the ECOSOC and are elected by the GA for overlapping three-year terms (18 members are elected every 3 years). The UN Charter mandates the ECOSOC to 'make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all'. In the past, the ECOSOC played an important role in this respect since the central human rights body – the Commission on Human Rights – had a status of its functional commission. The Commission was elected by the ECOSOC, reported to the ECOSOC, and its decisions were subject to endorsement by the ECOSOC. The replacement of the Commission by the Human Rights Council as a subsidiary body of the General Assembly, decisively reduced the influence of the ECOSOC on the human rights area. Among the residual ECOSOC competencies, one has to mention its functions as a 'gateway' for NGOs willing to participate in the works of UN venues, as it has the power to grant consultative status to non-governmental organisations, providing them with access to UN premises and limited rights for participation in some areas of UN activity. The ECOSOC also elects members of the Committee on Economic, Social and Cultural Rights<sup>127</sup> but the UNGA Resolution 68/268 recommends transfer of this responsibility to State Parties.

## 13. International Labour Organisation (ILO)

The **International Labour Organisation (ILO)** is a specialised UN agency which promotes and protects rights at work, the enhancement of equal working and income opportunities for men and women, the advancement of social protection and tripartite framework of social dialogue. The ILO has several unique characteristics which set it apart from other UN bodies. It originally existed as an agency of the League of Nations and was one of the few bodies that outlived the League itself and continued to fulfil its mandate until absorbed into the UN framework. Another unique feature of the ILO is that it functions as a tripartite institution, engaging representatives of governments, workers' organisations and employers' organisation from the 185 Member States of the ILO.<sup>128</sup> The principal organs of the ILO are the International Labour Conference (ILC, the deliberative body), the Governing Body (GB, an

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<sup>127</sup> According to the text of the International Covenant on Economic, Social and Cultural Rights (Art 16-22), ECOSOC is entrusted with the role of a treaty monitoring body. However, ECOSOC decided to establish the Committee on Economic, Social and Cultural Rights to perform this function.

<sup>128</sup> Of the current UN Member States, the following are not Members of the ILO: Andorra, Bhutan, Liechtenstein, Micronesia, Monaco, Nauru, DPRK and Tonga.



executive body) and the International Labour Office (ILO Office, the permanent secretariat of the ILO). As of 20 September 2014, the ILO has adopted 189 Conventions and 203 Recommendations. Eight of these conventions constitute what the ILO considers as the four Core Labour Standards (CLS), which are expected to be followed and respected by ILO Member States even if given Member State did not ratify all the individual conventions which contribute to the CLS. The current array of the CLS and the respective conventions is as follows:

- i. Freedom of association and the effective recognition of the right to collective bargaining
  - Convention concerning Freedom of Association and Protection of the Right to Organise
  - Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively
- ii. Elimination of all forms of forced or compulsory labour
  - Convention concerning Forced or Compulsory Labour
  - Convention concerning the Abolition of Forced Labour
- iii. Effective abolition of child labour
  - Convention concerning Minimum Age for Admission to Employment
  - Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- iv. Elimination of discrimination in respect of employment and occupation
  - Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value
  - Convention concerning Discrimination in Respect of Employment and Occupation

Apart from the legal basis enshrined in CLS and other conventions, the ILO operates under policy frameworks which establish its current goals and leitmotifs, such as the 2008 Declaration on Social Justice for a Fair Globalization or the 2009 Global Jobs Pact. The latter formulated the ILO's response to the global economic and financial crisis, centred around the Decent Work Agenda concept (Creating jobs, Extending social protection, Promoting social dialogue, Guaranteeing rights at work).<sup>129</sup> The ILO engages in areas directly or indirectly related to human rights, including trade union rights, forced labour, safety and standards of workplaces, child labour, migrant workers, right to social security, and rights of indigenous peoples. The ILO has established a complaint procedure, however it stands apart from other UN human rights procedures in several aspects: it is not an individual complaint procedure (complaints may be lodged only by ILO Member States, ILC delegates and the GB), the procedure features an enforcement mechanism in case the Member State fails to comply with recommendations and the Member State may appeal to the International Court of Justice.

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<sup>129</sup> Bregt Saenen, *The Causal Relation Between the European Union's Coherence and Effectiveness in International Institutions. The Union in the Standard-Setting Procedure of the International Labour Organization*, PhD thesis defended, pending publication (University of Gent 2014) 25-26.

#### 14. Other UN bodies, agencies, programmes and mechanisms

Human rights are reflected in standards, policies and mechanisms of various UN bodies, agencies and mechanisms, not only those which have been specifically entrusted with the promotion and protection of these rights as their main task. For example, the mission of the **United Nations Educational, Scientific and Cultural Organization (UNESCO)** is 'to contribute to the building of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information.' In this context, it is engaged in the promotion and protection of several human rights, including the right to education, the right to participate in cultural life and to share scientific advancement, the right to information, including freedom of opinion and expression, freedom of thought, conscience and religion, and freedom of association. UNESCO has also made an important contribution to the development of human rights standards. The 1960 Convention against Discrimination in Education is recognised as a human rights treaty. In addition, UNESCO has adopted declarations laying down soft-law standards, including standards on Bioethics and Human Rights (2005) and the Human Genome and Human Rights (1997). UNESCO has established a procedure, applicable to all its Member States, under which victims of violations of rights covered by the Organization may submit their complaints. In this framework protection is extended to teachers, students, researchers, artists, writers and journalists.

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The **United Nations High Commissioner for Refugees (UNHCR)**' mandate is to extend protection to uprooted and/or stateless people. To that end, the UNHCR undertakes to ensure the basic human rights to those people either in their countries of asylum or habitual residence. It take steps to protect refugees against involuntary return to a country where they could face persecution (non-refoulment). UNHCR also implements programmes to assist refugees in finding appropriate and sustainable solutions to their problems, allowing them to find a dignified place for living.

Other parts of the UN system are expected to integrate human rights standards and principles into their policies and apply the human rights methodology (human rights based approach) to their programming, as appropriate. This is the essence of the policy of mainstreaming human rights which takes roots in the 1993 World Conference on Human Rights.<sup>130</sup> A decisive contribution was made in

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<sup>130</sup> Zdzisław Kędzia, 'Mainstreaming human rights within the United Nations system', in Gudmundur Alfresson, Jonas Grimheden, Bertrand G. Ramcharan and Alfred Zayas (eds) *International Human Rights Monitoring*

this regard by the 2005 World Summit that firmly emphasised the mutual dependence of the three pillars of the United Nations: peace and security, development and human rights.<sup>131</sup> A spectacular example is found in the United Nations International Children's Fund (UNICEF) which in the Mission Statement approved by its Board in 1996 adopted the Convention on the Rights of the Child as the normative framework for its work. However, while the advancement of human rights within the United Nations cannot be questioned, their mainstreaming meets uneven interest among various parts of the UN system and remains an unfinished job. One of the reasons for that is the political reluctance of governing bodies of various agencies and programmes to get engaged in this area. For example, FAO after it adopted in 2004 Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security has not given much prominence to human rights in its work. The FAO case is relevant and interesting due to the EU's full membership, which is a unique case among UN agencies and programmes.

Even if this mapping of human rights within the United Nations allows presentation of only a general picture, it is necessary to mention three other key developments at the United Nations that are vitally important for human rights. Firstly, it is the establishment of international criminal jurisdiction, in particular the International Criminal Court and International Criminal Tribunals for the former Yugoslavia and for Rwanda. Adopted in 1998, the Rome Statute of the ICC makes, in fact, most severe human rights violations punishable as international crimes of genocide, crimes against humanity, and war crimes and establishes jurisdiction over the perpetrators. Secondly, International Court of Justice increasingly involves human rights arguments in its reasoning, referring explicitly to standards of civil, cultural, economic, political and social rights and the relevant human rights treaties. Thirdly, the principle of the Responsibility to Protect adopted by the 2005 World Summit makes each individual state and the international community responsible for ensuring protection to populations exposed to genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>132</sup> This relatively new but vital principle continues to give rise to various political and doctrinal controversies. It seems that a consequent supportive position in this respect taken by the EU and its Member States, including the permanent members of the Security Council, can importantly influence the practical applicability of R2P. This is to be said, even if it is also clear that the elaboration of such a position will not be an easy task, to say the least. R2P is a challenge to the EU, because despite the fact that the EU is not a member of the UNSC it is represented both in the P5 and among the non-permanent members. It would be certainly desirable for the consistency of the EU position to introduce basic common agreements on matters such as R2P between the EU Member States. However in the context of the UNSC membership, the issue of autonomous position of France and the UK would have to be taken into the account.

## 15. Conclusions

This basic mapping of UN human rights is aimed at outlining the vital UN human rights instruments, bodies, agencies and mechanisms relevant to the EU's engagement in the UN forums. Just as the EU formulates substantive priorities as to which areas of human rights concern it wishes to promote and protect, it also must identify the venues where the UN human rights system is realised to the fullest

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*Mechanisms. Essays in honour of Jacob Th. Möller* (Raul Wallenberg Institute for Human Rights and Humanitarian Law 2009).

<sup>131</sup> UNGA Res 60/1 (2005) '2005 World Summit Outcome' UN Doc A/RES/60/1 § 9.

<sup>132</sup> UNGA Res 60/1 (2005) '2005 World Summit Outcome' UN Doc A/RES/60/1 § 138-139.

degree. Towards this end the EU focuses its work on the Human Rights Council and the Third Committee of the UN General Assembly. Both these venues play a pivotal role in the UN human rights system, with particular regard to the HRC which is envisioned to be the focal point of human rights discourse within the UN. While the Security Council is increasingly stepping up on human rights concerns, its highly political nature and peculiar membership system remain as major challenges for an intergovernmental organisation willing to influence the works of the UNSC. The diminished role of the ECOSOC combined with the negative outlook of its potential reform discourage engagement and invite focusing the efforts and resources elsewhere. On the other hand, support and strengthening of both the OHCHR and treaty bodies directly contributes to enhancing the UN human rights system, given the critical role of these actors. Finally, the scattered landscape of UN specialised agencies, with many of them having become ‘kingdoms within kingdoms’ creates not only an opportunity for a meaningful influence, but also major challenges, not the least coming from the lack of mainstreaming human rights within the UN domain.

## B. Mapping the European Union: Major EU Human Rights Stakeholders involved directly or indirectly in cooperation with the UN

The following section will map the major stakeholders in the EU which are involved directly or indirectly in the cooperation with the UN human rights fora. It will provide a brief overview of the multitude of EU institutions and mandate holders which form the main part of the intricate system of EU engagement at the multilateral level while paying attention to the consequences and effects of the Lisbon Treaty reforms on the EU’s institutional external relations architecture. More in-depth analyses of the competences and the work of the various actors will follow in the subsequent chapters of this report.

### 1. European Council

The European Council is designed as the principal agenda setter and strategic body of the Union. Composed of the Member States’ Heads of State or Government, its President and the President of the Commission,<sup>133</sup> the European Council is mandated to provide the EU with ‘impetus’, ‘political directions’ and ‘priorities’.<sup>134</sup> It is supposed to assume a similar decision-making function in the area of Common Foreign and Security Policy (‘CFSP’), where it shall ‘identify the Union’s strategic interests, determine the objectives [...] and define general guidelines’.<sup>135</sup> In essence, the European Council is thus responsible for **setting the general directions of EU foreign policy**, which are then translated into concrete policies by the Council of the European Union and are finally executed by the HR/VP and the Member States.<sup>136</sup>

The European Council acquired the status of a formal EU institution with the 2009 **Lisbon reform**.<sup>137</sup> The Treaty of Lisbon also created the office of the President of the European Council, thereby replacing

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<sup>133</sup> TEU art 15(2).

<sup>134</sup> TEU art 15(1).

<sup>135</sup> TEU art 26(1).

<sup>136</sup> TEU art 26(2), (3).

<sup>137</sup> TEU art 13(1), 15.

the six-monthly rotating presidency held by the EU Member States with a stable mandate holder who is elected for a renewable term of 2.5 years.

In line with its institutional design and mandate the European Council is responsible for setting broad directions and guidelines concerning EU cooperation with the UN. It has done so most crucially through the adoption of the **European Security Strategy** ('ESS') on 12 December 2003, which introduced the concept of 'effective multilateralism' as the core guiding principle of EU external action and identified '[s]trengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively'<sup>138</sup> as a 'European priority'.<sup>139</sup> The European Council thereby set the course for the EU's focus to seek multilateral solutions, in particular in the UN framework, throughout all policy areas, including the promotion of human rights. In the following years, however, the European Council only rarely addressed the EU's involvement with the UN. Even after the entry into force of the Lisbon Treaty, which tasked the European Council with developing the strategies for the Union's CFSP, the Council's agenda was often dominated by EU internal issues, among which the Eurozone crisis featured prominently.<sup>140</sup> The **European Council of 16 September 2010** is one of the examples in which the body ventured to provide general guidance to the EU's external relations. The Conclusions asserted the 'need for Europe to promote its interests and values more assertively' and reaffirmed the Union's 'firmly-rooted belief in effective multilateralism, especially the role of the UN' and 'universal values'.<sup>141</sup> The European Council also proposed internal arrangements for stronger EU external action, addressing the need for internal-external consistency, for synergies between EU and Member States' foreign affairs, and for close and regular coordination between all involved actors.<sup>142</sup>

Since then, references to the UN in European Council conclusions have become more frequent, in particular with regard to specific country situations. The European Council has either called upon the UN Member States and institutions to take action or it has urged the country in question to comply with UN measures. For example the **Syria** crisis has regularly been on the agenda of the European Council since 2011. The European Council stressed that the EU 'lends its full support to diplomatic efforts aimed at ensuring that the UN Security Council can assume its responsibility and give adequate response to the situation',<sup>143</sup> urged 'all members of the UN Security Council to assume their responsibilities in relation to the situation in Syria',<sup>144</sup> and 'called for united action by the UN Security Council to add more robust and effective pressure, including the adoption of comprehensive sanctions under Chapter VII'.<sup>145</sup> The EU also addressed Syria directly, reminding it of its responsibility to 'allow[...] full and unhindered humanitarian access and ensur[e] the safety of the United Nations observers'<sup>146</sup> and – 'in line with the United Nations Human Rights Council resolution of 1 March' – it demanded that 'Syrian authorities immediately stop the massive violence and the human rights abuses inflicted on

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<sup>138</sup> European Council, 'European Security Strategy – A Secure Europe in a Better World', Brussels, 12 December 2003, 9.

<sup>139</sup> *ibid.* Cf also *supra*, ch II.A.

<sup>140</sup> Cf Youri Devuyt, 'The European Council and the CFSP after the Lisbon Treaty' (2012) 17 *European Foreign Affairs Review* 327, 345.

<sup>141</sup> European Council, 'Conclusions', Doc No EUCO 21/1/10 REV 1, 16 September 2010, introduction and para 2.

<sup>142</sup> *ibid.*, annex I.

<sup>143</sup> European Council, 'Conclusions', Doc No EUCO/10/1/11 Rev. 1, 20 April 2011.

<sup>144</sup> European Council, 'Conclusions', Doc No EUCO/52/1/11 Rev.1, 30 November 2011; cf also European Council, 'Conclusions', Doc No EUCO/139/1/11 Rev.1, 25 January 2011.

<sup>145</sup> European Council, 'Conclusions', Doc No EUCO/76/12, 29 June 2012.

<sup>146</sup> *ibid.*

the civilian population'.<sup>147</sup> Most notably, the European Council in March 2014 explicitly **called for an HRC resolution on Sri Lanka**:

‘The European Council calls for the adoption of a resolution on Sri Lanka at the Human Rights Council that would provide for an international investigation into alleged war crimes by both sides during the war, as recommended by the UN Commissioner for Human Rights.’<sup>148</sup>

HRC Resolution 25/1 on ‘Promoting reconciliation, accountability, and human rights in Sri Lanka’<sup>149</sup> was tabled on 27 March 2014 by a core group consisting of Mauritius, Montenegro, Macedonia, the UK and the US and co-sponsored by all EU Member States. It was successfully adopted by 23 votes to 12, with 12 abstentions.

With regard to thematic human rights issues, the European Council has referred to the UN in the context of the **rights of migrants and refugees**. In October 2013, it called for ‘closer cooperation with the relevant international organisations, in particular UNHCR’<sup>150</sup> and in June 2014 it stated that the focus should be on ‘strengthening and expanding Regional Protection Programmes, in particular close to regions of origin, in close collaboration with UNHCR; increase contributions to global resettlement efforts, notably in view of the current protracted crisis in Syria’.<sup>151</sup>

The European Council’s track record with regard to setting the Union’s strategies for its external action has sometimes been evaluated rather critically in academic scholarship.<sup>152</sup> This was attributed in particular to its composition of 28 Heads of State or Government, who may put short-term national (electoral) interests before long-term European interests and who may be insufficiently versed in issues of foreign affairs.<sup>153</sup> Recent years, however, indicate that the European Council pays increasing attention to external affairs matters, and that the UN frequently serve as the ‘guiding framework’ for proposed action. More structural guidance on the EU’s human rights engagement at the UN has so far not been provided, which leaves the Council of the EU to fill this vacuum.

The **President of the European Council** is responsible for convening and chairing European Council meetings, for giving impetus to the work of the institution, for ensuring continuity and facilitating cohesion and consensus.<sup>154</sup> Importantly, the President is also one of those EU bodies which are entrusted with the external representation of the Union on CFSP issues.<sup>155</sup> In this capacity he addressed the UNGA in its 66<sup>th</sup> session as the first President of the European Council, who was not concurrently a Head of State or Government. Human Rights were not at a central point in his speech. However, in the closing sentences, he assured the world that it ‘will continue to have Europe’s commitment in building a world of peace and security, in promoting the universal values of human

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<sup>147</sup> European Council, ‘Conclusions’, Doc No EUCO/4/2/12 Rev.2, 26 April 2012.

<sup>148</sup> European Council, ‘Conclusions’, Doc No EUCO/7/14, 21 March 2014.

<sup>149</sup> HRC Res 25/1 (2014) UN Doc A/HRC/RES/25/1.

<sup>150</sup> European Council, ‘Conclusions’, Doc No EUCO/169/13, 25 October 2013.

<sup>151</sup> European Council, ‘Conclusions’, Doc No EUCO/79/14, 27 June 2014.

<sup>152</sup> Cf Devuyt (n 140) 332.

<sup>153</sup> Since Lisbon the national Ministers of Foreign Affairs no longer automatically attend the European Council, but may be invited if the agenda so requires (TEU art 15(3)). Cf Devuyt (n 140) 341 et seq.

<sup>154</sup> TEU art 15(6).

<sup>155</sup> For more detail see below, ch III.C.

rights and democracy and in combating famine and poverty'.<sup>156</sup> In the two following years, the President of the European Council again addressed the UNGA, and again refrained from making strong human rights statements.<sup>157</sup>

Overall, the work of the President of the European Council has been evaluated mostly positively. After initial doubts about his appointment, he has been credited for making a 'valiant effort to "drive forward" the work of the Council'<sup>158</sup> and for showing 'incredible skill at working the system and in acquiring control'.<sup>159</sup> Nevertheless, some had hoped for stronger leadership, expecting a 'President', not a 'Secretary General'.<sup>160</sup>

## 2. Council of the European Union

The Council of the European Union exercises **policy-making, coordinating and legislative functions** within the Union.<sup>161</sup> It is composed of the ministers of the EU Member States and meets in 10 different configurations based on the subject matter.<sup>162</sup> Among them the Foreign Affairs Council is responsible for the definition and implementation of the EU's foreign policy. The Council is supported by a Secretariat, the Permanent Representatives Committee ('COREPER'), the Political and Security Committee ('PSC') and more than 150 specialised committees and working parties.<sup>163</sup> It is chaired by a rotating presidency, held by each EU Member State for a period of six months.<sup>164</sup>

### a) Foreign Affairs Council

The Foreign Affairs Council of the EU convenes once a month to adopt decisions concerning the EU's external action. In line with Article 16(6) TEU the Foreign Affairs Council 'shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent'. It is composed of the ministers for foreign affairs of the 28 EU Member States, or, if it deals with questions of CSDP, development cooperation or trade, by the

<sup>156</sup> President of the European Council, 'Address to the 66<sup>th</sup> United Nations General Assembly General Debate', New York, 22 September 2011.

<sup>157</sup> President of the European Council, 'Address to the 67<sup>th</sup> United Nations General Assembly', New York, 26 September 2012; President of the European Council, 'Address to the 68<sup>th</sup> United Nations General Assembly', New York, 25 September 2013.

<sup>158</sup> Jolyon Howorth, 'The 'New Faces' of Lisbon: Assessing the Performance of Catherine Ashton and Herman van Rompuy on the Global Stage' (2011) 16 *European Foreign Affairs Review* 303, 310.

<sup>159</sup> Federiga Bindi, 'One Year On: Assessing the European Foreign Policy and the European External Action Service' (2011) 17 *Brown Journal of World Affairs* 125, 128.

<sup>160</sup> Cf Howorth (n 158) 313.

<sup>161</sup> TEU art 16(1).

<sup>162</sup> See TEU art 16(6). For more information on the different configurations see Council of the European Union, 'Council configurations', <[www.consilium.europa.eu/council/council-configurations?lang=en](http://www.consilium.europa.eu/council/council-configurations?lang=en)> accessed 10 October 2014.

<sup>163</sup> See for an overview: <[eu2013.ie/ireland-and-the-presidency/abouttheeu/theeuexplained/councilworkingparties/](http://eu2013.ie/ireland-and-the-presidency/abouttheeu/theeuexplained/councilworkingparties/)> accessed 10 October 2014.

<sup>164</sup> For a list of countries, which will hold the Council Presidency up until 2020 see Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council [2009] OJ L 322/28, annex I.

ministers with the respective portfolios. Article 18(3) TEU stipulates that the Foreign Affairs Council is chaired by the HR/VP.<sup>165</sup>

The Foreign Affairs Council is instrumental for the adoption of decisions concerning the EU's human rights priorities and strategies at the UN. Most notably, on 25 June 2012 it adopted the EU **Strategic Framework and Action Plan on Human Rights and Democracy** which provided strategic guidance for the Union's engagement with UN human rights fora by listing the EU's thematic human rights goals and objectives and translating them into concrete actions.<sup>166</sup> Additionally, the Foreign Affairs Council in February 2012 adopted the '**EU Priorities at the UN Human Rights Council**' which listed the Union's thematic, country-specific and institutional goals and objectives for the 2012 sessions of the HRC.<sup>167</sup> One year later, and in line with No. 34 of the Action Plan, it adopted with the '**EU priorities at the UN Human Rights Fora**' for the first time a strategic document, which contained priorities for the entire UN human rights system and the entire calendar year<sup>168</sup> – a practice that has continued in 2014.<sup>169</sup> Furthermore, the Foreign Affairs Council annually adopts the Union's **priorities for the upcoming session of the UNGA**, which regularly contain a separate chapter on human rights priorities, including thematic, country-specific and institutional aims and objectives.<sup>170</sup>

### **b) COREPER**

COREPER is a committee consisting of the Permanent Representatives of the Governments of the Member States to the EU. Its responsibilities include 'preparing the work of the Council', 'carrying out the tasks assigned to it by the latter'<sup>171</sup> and 'ensur[ing] consistency of the European Union's policies and actions'.<sup>172</sup> COREPER meets in two formations, with COREPER I consisting of the Deputy Permanent Representatives of the EU Member States and COREPER II of the Permanent Representatives. Among the two, it is COREPER II which deals with matters of EU external relations.<sup>173</sup> The committee plays an important role in the decision-making process of the Council. Although it has no formal decision-making power with the exception of certain procedural decisions,<sup>174</sup> it examines in advance all agenda items of the Council and thus has considerable influence on EU policy making.<sup>175</sup> COREPER is chaired by the EU Member State which holds the rotating six-monthly Council Presidency.

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<sup>165</sup> But note that the debates on trade issues will be chaired by a representative of the Council Presidency, see n (162).

<sup>166</sup> Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012; for an in-depth analysis see below, ch IV.A.

<sup>167</sup> Council of the European Union, 'Council Conclusions on EU priorities at the UN Human Rights Council', Doc No 6813/12, 27 February 2012; for an in-depth analysis see below, ch IV.A.

<sup>168</sup> Council of the European Union, 'Council Conclusions on EU priorities at the UN Human Rights Fora', Doc No 6398/13, 18 February 2013; for an in-depth analysis see below, ch IV.A.

<sup>169</sup> Council of the European Union, 'Council Conclusions on EU priorities at the UN Human Rights Fora', Doc No 6181/14, 10 February 2014; for an in-depth analysis see below, ch IV.A.

<sup>170</sup> See for example Council of the European Union, 'EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations', Doc No 10856/14, 23 June 2014; for an in-depth analysis see below, ch IV.A.

<sup>171</sup> TFEU art 240(1).

<sup>172</sup> Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure [2009] OJ L325/35, art 19(1).

<sup>173</sup> For more information see (n 163).

<sup>174</sup> See Council Decision 2009/937/EU (n 172) art 19(7).

<sup>175</sup> *ibid* art 19(2).



### c) *Political and Security Committee*

The Political and Security Committee ('PSC') is a permanent Council committee, consisting of the ambassadors of the EU Member States. Its responsibilities include: monitoring the international situation within the area of the CFSP, contributing to policy making by delivering opinions to the Foreign Affairs Council, and monitoring the implementation of agreed policies.<sup>176</sup> The PSC is chaired by a representative of the HR/VP.<sup>177</sup> It is the main point of contact for the EU Special Representative for Human Rights<sup>178</sup> from which it receives regular reports and to which it may provide 'strategic guidance and political direction'.<sup>179</sup> Equally, the PSC is the principal interlocutor for the EU Delegation in New York with regard to CFSP and CSDP issues<sup>180</sup> and it decides 'all substantial issues' in the area of the CFSP for the European Council.<sup>181</sup> The annual EU human rights priorities for the UN are decided by the PSC, as were for example the EU's medium-term priorities at the UN (2012-2015).<sup>182</sup> It must be highlighted, that although COREPER receives every PSC document that is put on the agenda of the Foreign Affairs Council, it will not reopen matters that have already been decided at PSC level.<sup>183</sup>

### d) *CONUN*

The United Nations Working Party ('CONUN') is one of the working parties under the Foreign Affairs Council. Set up in 1975,<sup>184</sup> it meets on a monthly basis to develop EU policies on UN matters. In particular, CONUN monitors the work of the UN and provides relevant information to the Council, it coordinates the Union's position on candidates for high-level UN posts, and heads the coordination process for UN conferences.<sup>185</sup> With regard to other Council working parties which deal with thematic and geographic issues falling under the remit of the UN, CONUN assumes a 'supervising role'.<sup>186</sup>

### e) *COHOM*

The Council Working Group on Human Rights ('COHOM') plays a key role in defining the EU's human rights policy and coordinating the Union's position in the UN human rights fora.<sup>187</sup> Established in 1987,<sup>188</sup> it was initially composed of human rights experts coming from the capitals of the EU Member States ('capitals COHOM'). In light of the increasing workload of the Working Group, in order to improve the reaction time of the body and in order to strengthen its interaction with the Council, COREPER, the PSC and other working groups, No. 7 of the Action Plan provided for the additional

<sup>176</sup> TEU art 38.

<sup>177</sup> Council Decision 2009/937/EU (n 172) art 19(4).

<sup>178</sup> See below section 5.

<sup>179</sup> Council Decision 2014/385/CFSP of 23 June 2014 extending the mandate of the European Union Special Representative for Human Rights [2014] OJ L 183/66, art 4(2) and 10.

<sup>180</sup> Maximilian B. Rasch, *The European Union at the United Nations: The Functioning and Coherence of EU External Representation in a State-centric Environment* (Martinus Nijhoff 2008) 126.

<sup>181</sup> Uwe Puetter, *The European Council and the Council: New intergovernmentalism and institutional change* (OUP 2014) 219.

<sup>182</sup> Interview under Chatham House Rules, September 2014.

<sup>183</sup> Puetter (n 181).

<sup>184</sup> Anne Degrand-Guillaud, 'Actors and Mechanisms of EU Coordination at the UN' (2009) 14 *European Foreign Affairs Review* 405, 416.

<sup>185</sup> Rasch (n 180) 130; Degrand-Guillaud (n 184) 416.

<sup>186</sup> Rasch (n 180) 130.

<sup>187</sup> For a detailed analysis see below ch III.E. and IV.B.

<sup>188</sup> Degrand-Guillaud (n 184) 416.

establishment of a Brussels-based COHOM, composed of human rights experts from the Member States' Permanent Representations. Today, COHOM meets in two formations – 'Brussels-based' and 'capital'. The Union's human rights policy at the UN, however, is only being discussed by the latter.<sup>189</sup>

According to the 1987 mandate of COHOM, the responsibilities of the Working Group include:

1. 'Discussion and submission of recommendations to the Political Committee on general guidelines for common reactions to actual or predictable violations of human rights, including options and modalities for reactions of the Twelve;
2. Co-ordination of positions of the Twelve on human rights issues likely to arise within all relevant international fora;
3. [...]
4. Collection and evaluation of information on current violations of human rights in various parts of the world and actions undertaken by the Twelve in cases of such violations.
5. Discussion and, where appropriate, submission of recommendations to the Political Committee on i.a. the general aspects of human rights questions as well as on the general aspects of the implementation of the Twelve's human rights policy, including examination of the general balance of the interventions of the Twelve in the field of human rights.
6. Reporting annually to the Political Committee on actions taken by the Twelve in the field of human rights.'<sup>190</sup>

The mandate was extended in 1999 to include the follow-up of the 'Declaration of the EU on the Occasion of the 50<sup>th</sup> Anniversary of the Universal Declaration on Human Rights, Vienna, 10 December 1998',<sup>191</sup> and again in 2003 to include first pillar issues.<sup>192</sup>

The 1987 mandate provided that the working group 'should meet at least twice a year (once before the session of the UN Human Rights Commission and once before the General Assembly)', but that '[a]dditional meetings could be called when required'.<sup>193</sup> Today, however, COHOM meets more frequently, as its agenda indicates, at least once a month,<sup>194</sup> as well as every six months during informal meetings held by the EU Presidency.<sup>195</sup> In addition, COHOM holds approximately two to three unofficial meetings per week.<sup>196</sup> All meetings are being held in Brussels, with the exception of one

<sup>189</sup> Interview under Chatham House Rules, September 2014.

<sup>190</sup> Council of the European Union, 'The 1987 COHOM Mandate', <[www.consilium.europa.eu/uedocs/cmsUpload/COHOM\\_mandates.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf)> accessed 11 October 2014.

<sup>191</sup> COREPER, 1999 extension of the COHOM mandate, 27 April 1999, <[www.consilium.europa.eu/uedocs/cmsUpload/COHOM\\_mandates.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf)> accessed 11 October 2014.

<sup>192</sup> See <[www.consilium.europa.eu/uedocs/cmsUpload/COHOM\\_mandates.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf)> accessed 11 October 2014.

<sup>193</sup> 1987 COHOM Mandate (n 190190).

<sup>194</sup> See Council of the European Union, 'Calendar of meetings', <[www.consilium.europa.eu/meetings/calendar-of-meetings](http://www.consilium.europa.eu/meetings/calendar-of-meetings)> accessed 11 October 2014.

<sup>195</sup> Interview under Chatham House Rules, Brussels.

<sup>196</sup> *ibid.*

annual meeting in Geneva.<sup>197</sup> In line with Council Decision 2009/908/EU, the chairmanship is exercised by a representative of the HR/VP.<sup>198</sup> This permanent chair increases the potential for the stability and better strategic planning of the Union's human rights policy.

COHOM is the forum in which the EU's strategic documents for its human rights engagement at the UN are prepared. This includes most notably the 2012 Strategic Framework and Action Plan, the annual priorities for the UNGA and the priorities for UN human rights fora, which are adopted in February each year since 2012. The Working Group aims to maintain close contact with the Delegations in Geneva and New York, for example through regular video conferences after meetings, and through the annual meeting in Geneva.

The role of COHOM in the Union's internal coordination and strategy development process will be further examined below, ch III.D. and IV.B.

### *f) FREMP*

The Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons ('FREMP') does not deal with the (external) human rights policy of the Union, but with the (internal) dimension of fundamental rights. It is thus not directly involved in the definition and coordination of Union positions at the UN human rights fora, although it may sometimes pick up issues that are under discussion at the UN and translate them into internal EU policy items.<sup>199</sup> Nevertheless, the distinction between human and fundamental rights has often been considered artificial and even harmful when it comes to internal-external consistency<sup>200</sup> and the ensuing credibility of the Union's policies. More regular exchanges between COHOM and FREMP – in addition to the half yearly joint meetings<sup>201</sup> – have therefore been identified by EU officials interviewed for this report as a potential remedy, which will be analysed in detail below.

## **3. EU High Representative for Foreign Affairs and Security Policy/Vice President of the Commission**

The Lisbon Treaty created the position of the double-hatted High Representative for Foreign Affairs and Security Policy/Vice President of the Commission ('HR/VP'), which combines the two posts of the former High Representative for CFSP and of the former EU Commissioner for External Relations. This

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<sup>197</sup> For the most recent meeting see EU Delegation to the UN – Geneva, 'EU discusses human rights strategies and priorities for 2014 (24/01/2014)', <[http://eeas.europa.eu/delegations/un\\_geneva/press\\_corner/all\\_news/news/2014/20140124\\_cohom\\_en.htm](http://eeas.europa.eu/delegations/un_geneva/press_corner/all_news/news/2014/20140124_cohom_en.htm)> accessed 13 October 2014.

<sup>198</sup> Council Decision 2009/908/EU (n 164).

<sup>199</sup> See for example the conclusions of the Council of the European Union Justice and Home Affairs on 'Preventing and combating all forms of violence against women and girls, including female genital mutilation', <[http://eu-un.europa.eu/articles/en/article\\_15107\\_en.htm](http://eu-un.europa.eu/articles/en/article_15107_en.htm)> accessed 15 October 2014.

<sup>200</sup> This issue has been high on FREMP's agenda, see 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union', 5/6 June 2014, <[www.consilium.europa.eu/uedocs/NewsWord/en/jha/143099.doc](http://www.consilium.europa.eu/uedocs/NewsWord/en/jha/143099.doc)> accessed 15 October 2014.

<sup>201</sup> Interview with an EU official, February 2014.

‘hybrid capacity’ – covering both CFSP and non-CFSP policies – was designed to increase coherence across the whole spectrum of EU external relations.<sup>202</sup>

According to Article 18(2) TEU the ‘High Representative shall conduct the Union’s common foreign and security policy’ and ‘shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council’. The HR/VP shall chair the Foreign Affairs Council,<sup>203</sup> represent the Union externally for matters relating to the CFSP,<sup>204</sup> and organise the coordination of EU Member States’ positions in international organisations and conferences.<sup>205</sup> Article 34(2) TEU provides that the EU ‘Member States which sit on the Security Council shall request that the High Representative be invited to present the Union’s position’. As Vice President of the Commission, the HR/VP ‘shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action’.<sup>206</sup>

In the area of the CFSP, the HR thus has considerable competences regarding policy making, internal coordination and external representation. It has sometimes been observed, that her competences as VP of the Commission remained more limited – possibly too limited to allow the HR/VP to fulfil her mandate of ensuring consistency throughout the EU’s external action. *Bindi* for example pointed out that in the Commission, the HR/VP ‘remains a *primus inter pares* without authority over the colleagues’ whose portfolios contain substantive external relations aspects (‘Relex Group’).<sup>207</sup> *Blockmans/Spernbauer* make a similar observation, stating that ‘in striking contrast with relevant Treaty provisions, the VP’s actual coordinating powers within the Commission over issues pertaining to EU external action have not been (fully) effectuated’.<sup>208</sup> The Relex Group was initially chaired by Commission President Barroso, and it appears that only recently an agreement was reached between Commission President and the HR/VP on more frequent meetings of the Relex Group, chaired by the HR/VP.<sup>209</sup> The HR/VP’s position will potentially be additionally strengthened under the new Juncker Commission, in which she is designated to oversee the Commissioners with the portfolios on European Neighbourhood Policy and Enlargement Negotiations, Trade, International Cooperation and Development and Humanitarian Aid and Crisis Management, as well as on Climate Action and Energy, Migration and Home Affairs and Transport and Space.<sup>210</sup> Her appearance in the basic human rights bodies would also be an important sign of her personal engagement in human rights and thus, send another strong signal of the EU attachment in this respect. It is to be noted that various observers have repeatedly pointed out, also during the interviews conducted for this report, that in the past HR/VP only once attended a session of the HRC,<sup>211</sup> thereby giving rise to the observation that human

<sup>202</sup> Steven Blockmans and Martina Spernbauer, ‘Legal Obstacles to Comprehensive EU External Security Action’ (2013) 18 *European Foreign Affairs Review* 7, 11.

<sup>203</sup> TEU art 18(3), 27(1).

<sup>204</sup> TEU art 15(6), 27(2).

<sup>205</sup> TEU art 34(1).

<sup>206</sup> TEU art 18(4).

<sup>207</sup> *Bindi* (n 159) 128.

<sup>208</sup> *Blockmans and Spernbauer* (n 202) 12.

<sup>209</sup> EEAS Review 2013, <[http://eeas.europa.eu/library/publications/2013/3/2013\\_eeas\\_review\\_en.pdf](http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf)> 8, accessed 12 October 2014.

<sup>210</sup> European Commission, ‘The new structure of the Juncker Commission’, <[http://ec.europa.eu/about/juncker-commission/docs/structure\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/structure_en.pdf)> accessed 15 October 2014.

<sup>211</sup> 16<sup>th</sup> session of the HRC, February/March 2011, see Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, ‘Speech before the Human Rights

rights might not play a central role at the higher hierarchical levels of the Union's institutional architecture.<sup>212</sup>

See below for more detailed analyses of the HR/VP's role in the Union's external representation (ch III.C.).

#### 4. EEAS

The creation of the European External Action Service ('EEAS') was another of the major reforms of the Union's external relations architecture, realised by the Lisbon Treaty. As a diplomatic service, the EEAS is tasked with supporting the HR/VP in fulfilling her mandate,<sup>213</sup> and with assisting 'the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'.<sup>214</sup> Comprising staff of the former Commission DG for external relations, of the Council Secretariat and the EU Member States, the EEAS is neither part of the European Commission, nor of the Council, but a 'sui generis' entity in the Union's institutional architecture.<sup>215</sup> It is no Union institution in the sense of Article 13 TEU, nor does it have decision-making power.<sup>216</sup> The EEAS is supposed to cooperate with the diplomatic services of the Member States, the Council and the Commission in order to ensure consistency in the Union's external action.<sup>217</sup> It shall consult with the Commission 'on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the CSDP'.<sup>218</sup> In order to ensure the smooth cooperation between both actors, the EEAS and the Commission in 2012 adopted Working Arrangements in line with Article 3(3) and 4(5) of the Council Decision 2010/427/EU.<sup>219</sup>

At **headquarters** level, the Directorate for Human Rights and Democracy (VI.A.) is responsible for mainstreaming human rights in the work of the EEAS. It was created after considerable discussions between the HR/VP on the one hand, who considered human rights to be part and parcel of every thematic and geographic desk, and the European Parliament and the Council on the other hand, who saw the need for a specialised unit.<sup>220</sup> Within the Directorate, two Divisions deal with 'Human rights strategy and policy implementation (VI.A.1.) and 'Human rights and multilateral diplomacy' (VI.A.2.). This separation exists for managerial reasons only, and both divisions in practice 'act as if they were just one'.<sup>221</sup> The main task of the divisions is mainstreaming, which presupposes close contact with

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Council Human Rights Council, 16th session, High Level Segment Geneva, 28 February 2011', Doc No SPEECH/11/127, 28 February 2011.

<sup>212</sup> Interview with an EU official, February 2014.

<sup>213</sup> TEU art 27(3); Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30, art 2(1).

<sup>214</sup> Council Decision 2010/427/EU (n 213) art 2(2).

<sup>215</sup> Jan Wouters and others, 'Organisation and functioning of the European External Action Service: achievements, challenges and opportunities' (2013) EXPO/B/AFET/2012/07, 20; Bart van Vooren, 'A Legal-Institutional Perspective on the European External Action Service' (2011) 48 Common Market Law Review 475, 481 et seq.

<sup>216</sup> Wouters and others (n 215); van Vooren (n 215) 490.

<sup>217</sup> Council Decision 2010/427/EU (n 213) art 3(1).

<sup>218</sup> *ibid* art 3(2).

<sup>219</sup> European Commission, Secretariat-General, 'Working Arrangements between Commission Services and the European External Action Service (EEAS) in Relation to External Relations Issues', Doc No SEC(2012)48.

<sup>220</sup> Interview with an EU official, February 2014.

<sup>221</sup> Two interviews with EU officials, February and April 2014.

the respective thematic and geographic desks. Additionally, EEAS officials increasingly chair meetings of the relevant Council Working Groups, such as COHOM (see supra ch III.B.2.e.), so that the coordination process in Brussels ‘mirrors’ the one on the ground, in Geneva or New York.<sup>222</sup>

The Lisbon Treaty also brought with it the transformation of the various Commission Delegations and Liaison Offices of the General Secretariat of the Council into **EU Delegations**.<sup>223</sup> The first information and communication offices of the European Community at the UN had been opened in 1961 in Geneva and 1964 in New York and Paris, followed by offices in Nairobi (1976), Vienna (1979) and Rome (1993).<sup>224</sup> In New York, the granting of observer status in the UNGA to the EEC<sup>225</sup> prompted the establishment of a Commission Delegation, which in subsequent years represented the EEC/EC, whenever an issue fell under its competences. In 1994, after the Maastricht Treaty, a Liaison Office of the Council followed, a ‘small administrative unit with a mainly internal focus’ whose tasks included providing assistance to the EU Member State holding the rotating Council Presidency and maintaining the contact with the Brussels-based institutions.<sup>226</sup> Before Lisbon, the external representation of the Union was exercised either by the Council Presidency or by the Commission Delegation, depending on whether the agenda item concerned 1<sup>st</sup> pillar issues or not. The process of internal coordination in order to ensure EU unity was chaired by the Council Presidency.

The Lisbon reforms aimed to establish a ‘single diplomatic presence’ for the EU.<sup>227</sup> Article 221(1) TFEU today provides that ‘Union delegations in third countries and at international organisations shall represent the Union’. This entailed a massive administrative process in which the former Commission Delegations and Council Liaison Offices were transformed into EU Delegations. The two offices in New York were fused, while the EU Delegation in Geneva was split into a Delegation to the UN and a Mission to the WTO. As will be further elaborated on below (ch III.C.), due to extensive preparations, the transition was managed comparatively well in New York, whereas progress was slower in Geneva, where the complex institutional environment of multiple UN fora and varying degrees of EU participation provided a challenging setting.<sup>228</sup> The change was more than a mere renaming but included significant new responsibilities. EU Delegations are tasked with the external representation of the Union and have in that respect replaced the rotating Council Presidency, wherever the EU’s status and participation rights in a UN forum allow for it. EU Delegations also have taken over the chairing of the internal coordination process on the ground. They were expected to instantly assume these new responsibilities with the entry into force of the Lisbon Treaty. Lack of sufficient staffing, but also of experience and diplomatic networks provided challenges and necessitated close cooperation between the EU Delegation and the Council Presidency in the first months. All EU Delegations are

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<sup>222</sup> Geert De Baere and Esa Paasivirta, ‘Identity and Difference: The EU and the UN as Part of Each Other’ in Henri De Waele and Jan-Jaap Kuipers (eds) *The Emergence of the European Union’s International Identity – Views from the Global Arena* (Martinus Nijhoff 2013) 21, 29.

<sup>223</sup> Edith Drieskens, ‘What’s in a Name? Challenges to the Creation of EU Delegations’ (2012) 7 *The Hague Journal of Diplomacy* 51.

<sup>224</sup> *ibid* 53.

<sup>225</sup> UNGA Res 3208 (XXIX) (11 October 1974).

<sup>226</sup> Drieskens (n 223) 61.

<sup>227</sup> Ramses A. Wessel and Bart van Vooren, ‘The EEAS’s diplomatic dreams and the reality of European and international law’ (2013) 20 *Journal of European Public Policy* 1350, 1352.

<sup>228</sup> Wouters and others (n 215) 77 et seq.

placed under the authority of the HR/VP.<sup>229</sup> They are tasked with maintaining close cooperation with the EU Member States' diplomatic services.<sup>230</sup>

The evaluation of the new EU Delegations appears to be rather positive. After initial hurdles, the new Delegations have mostly successfully assumed their new responsibilities. Some interviewees perceived the delegations as 'strong'. Others, however warned of a possible radicalization of the goals of individual Member States and of a decreasing sense of ownership.<sup>231</sup> It has been argued by *Laatikainen*, that the Council Presidency as a *primus inter pares* was better placed to achieve consensus between the EU Member States, given that 'there is an odd disjunction between the new EU delegation with lesser legal status and the EU-27 whose votes and positions it will be required to coordinate'.<sup>232</sup>

See below for more detailed analyses of the EEAS' role in the Union's external representation (ch III.C.) and internal coordination (ch III.D.).

## 5. EU Special Representative for Human Rights

On 25 July 2012 the Council appointed Stavros Lambrinidis as the first EU Special Representative for Human Rights ('EUSR') and as the only EU Special Representative with a thematic mandate, with the aim of enhancing the visibility and effectiveness of the Union's human rights policy.<sup>233</sup> The EUSR took office on 1 September 2012. His initial mandate ran until 30 June 2014 and was subsequently extended until 28 February 2015.<sup>234</sup> The EUSR is tasked *inter alia* with improving the coherence and mainstreaming of human rights in EU external action, as well as with 'enhanc[ing] dialogue with governments in third countries and international and regional organisations on human rights',<sup>235</sup> in order to strengthen the Union's 'effectiveness, presence and visibility in protecting and promoting human rights'.<sup>236</sup> He works under the authority of the HR/VP,<sup>237</sup> and receives additional 'strategic guidance and political direction' from the PSC.<sup>238</sup> Furthermore, he works 'in full coordination' with the EEAS<sup>239</sup> and submits reports to the HR/VP and the PSC on a six monthly basis.<sup>240</sup>

Expectations for the EUSR were high. During the plenary session of the European Parliament on 12 June 2012, MEP Richard Howitt, speaking on behalf of the S&D group expressed the hope that the

<sup>229</sup> TFEU art 221(2).

<sup>230</sup> *ibid.*

<sup>231</sup> Interview under Chatham House Rules, September 2014.

<sup>232</sup> Katie Verlin Laatikainen, 'Multilateral Leadership at the UN after the Lisbon Treaty' (2010) 15 *European Foreign Affairs Review* 475, 480.

<sup>233</sup> Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21; for more information on the EUSR see also Dominik Tolksdorf, 'EU Special Representatives: An Intergovernmental Tool in the Post-Lisbon Foreign Policy System?' (2013) 10 *European Foreign Affairs Review* 471; Jan Wouters, Laura Beke, Anna-Luise Chané, David D'Hollander and Kolja Raube, 'A comparative study of the EU and US approaches to human rights in external relations' (2014) EXPO/B/DROI/2013/27, 65 et seq.

<sup>234</sup> Council Decision 2014/385/CFSP of 23 June 2014 extending the mandate of the European Union Special Representative for Human Rights [2014] OJ L183/66.

<sup>235</sup> Council Decision 2012/440/CFSP, art 3(c).

<sup>236</sup> *ibid* art 2(a).

<sup>237</sup> *ibid* art 4(1).

<sup>238</sup> *ibid* art 4(2).

<sup>239</sup> *ibid* art 4(3).

<sup>240</sup> *ibid* art 10; Interview under Chatham House Rules, September 2014.

EUSR would be a “big player” for Europe with third country governments, the UN Human Rights Council and the ICC, akin to the role of the Under Secretary for Human Rights in the US Department of State’.<sup>241</sup>

Throughout his mandate, the EUSR has actively engaged with the work of the UN human rights fora and on multiple occasions represented the Union externally, both in Geneva and New York.

## 6. European Commission

The European Commission is the Union’s executive body. According to Article 17(1) TEU, it shall ‘promote the general interest of the Union and take appropriate initiatives to that end’, and ensure and oversee the application of EU primary and secondary law.<sup>242</sup> In line with these provisions, the Commission actively engages in mainstreaming human rights across all policy areas.<sup>243</sup> It is responsible for implementing binding measures adopted at the UN level in the EU, for example the UN Convention on the Rights of Persons with Disabilities, which entered into force in the EU on 22 January 2011 and for which the Commission assumes the role of a ‘focal point for matters relating to [its] implementation’.<sup>244</sup> But also with regard to non-binding instruments, such as the UN Guiding Principles on Business and Human Rights, the Commission plays a decisive role with regard to their implementation, for example by translating them into detailed guidance for small and medium-sized enterprises (‘SMEs’) and for three business sectors.<sup>245</sup>

Furthermore, the Commission is also tasked with the Union’s external representation in all areas that do not fall under the CFSP.<sup>246</sup> As has been stated above, the EEAS is supposed to cooperate with the Commission<sup>247</sup> and shall consult with the Commission ‘on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the CSDP’.<sup>248</sup> The 2012 Working Arrangements between the Commission and the EEAS govern the relations between both actors.<sup>249</sup> They provide that the Commission may issue instructions to the EU Delegations, whenever an issue falls into an area of Commission competences, and that the Commission may ‘call on EU Delegations to carry out activities related to policy implementation, demarches and policy advocacy’.<sup>250</sup> The Working Arrangements reiterate the wording of Article 221 TFEU, and add that

<sup>241</sup> ‘European Parliament plenary session in Brussels on 12 June 2012: Debate on EU Special Representative for Human Rights, and annual human rights report’, Doc No 11518/12, 14 June 2012.

<sup>242</sup> TEU art 17(1), 27(2).

<sup>243</sup> For a detailed analysis of the human rights policy of the various Commission DGs, see Frame Report D4.2, ‘Report global human rights protection governance system’ (forthcoming July 2015).

<sup>244</sup> Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010) OJ L23/35, art 3.

<sup>245</sup> See the three EU Sector Guides on Implementing the UN Guiding Principles on Business and Human Right for Employment & Recruitment Agencies, <[www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/E&RA/EC-Guide\\_E&RA.pdf](http://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/E&RA/EC-Guide_E&RA.pdf)>, the ICT sector, <[www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide\\_ICT.pdf](http://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide_ICT.pdf)> and the oil and gas sector, <[www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide\\_O&G.pdf](http://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide_O&G.pdf)>, as well as the guide for SMEs, <[ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf)> all accessed 13 October 2014

<sup>246</sup> TEU art 17(1).

<sup>247</sup> Council Decision 2010/427/EU (n 213s) art 3(1).

<sup>248</sup> *ibid* art 3(2).

<sup>249</sup> Working Arrangements between Commission Services and the European External Action Service (EEAS) in Relation to External Relations Issues (n 219).

<sup>250</sup> *ibid* 1.2.



whenever the ‘relevant Commissioner participate[s] in meetings, conferences or negotiations related to international organisations, conventions and/or agreements, he/she will represent the EU position in non-CSFP matters’.<sup>251</sup> For meetings at official level, the Working Arrangements provide that ‘the non-CFSP EU position can be presented either by the EU Delegation or by Commission officials’.<sup>252</sup> For example, the Commission represents the Union in the annual Conference of States Parties of the UN Convention on the Rights of Persons with Disabilities.<sup>253</sup> It has also represented the EU in the 2012 and 2013 sessions of the ILO Governing Board, alternatively with the rotating Council Presidency, other EU Member States that are members of the ILO Governing Board, and the EU Delegation in Geneva.<sup>254</sup> Most recently, a number of Commissioners participated in events during the 69<sup>th</sup> session of the UNGA. For example, Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, Kristalina Georgieva attended an event on Protection from Gender-Based Violence in Emergencies, organized by US Secretary of State John Kerry,<sup>255</sup> and Commissioner for Development, Andris Piebalgs, addressed the Forum ‘2015 Education Countdown: Failure is Not an Option’ during the United Nations General Assembly Ministerial Week with a speech on universal primary education.<sup>256</sup>

See below for detailed analyses of the Commission’s role in EU external representation (ch III.C.).

## 7. European Parliament

The European Parliament (‘EP’) has gained increasing importance since the entry into force of the Lisbon Treaty. As the Council has stated in its 2012 Strategic Framework, the European Parliament’s (‘EP’) ‘democratic mandate gives it particular authority and expertise in the field of human rights’. Although not directly involved in the Union’s internal coordination and external representation, the European Parliament ‘plays a leading role in the promotion of human rights, in particular through its resolutions’.<sup>257</sup> In the past years the EP has addressed the Union’s engagement in UN human rights fora in multiple resolutions. For example, the EP has adopted resolutions on the 19<sup>th</sup> session of the HRC,<sup>258</sup> on the priorities of the 16<sup>th</sup> session of the HRC and the 2011 review,<sup>259</sup> on the 13<sup>th</sup> session of

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<sup>251</sup> *ibid* 1.3.

<sup>252</sup> *ibid*.

<sup>253</sup> See for example Statement on behalf of the European Union by Mr. Johan Ten Geuzendam, European Commission at the fourth session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, 7 September 2011.

<sup>254</sup> Rudi Delarue, ‘The EU-ILO partnership and the global identity of the Union’s social model’ in Henri De Waele and Jan-Jaap Kuipers (eds) *The Emergence of the European Union’s International Identity – Views from the Global Arena* (Martinus Nijhoff 2013) 131, 153.

<sup>255</sup> EU Delegation to the UN – New York, ‘Highlights from the 69th UN General Assembly’, <eu-un.europa.eu/articles/en/article\_15525\_en.htm> accessed 13 October 2014.

<sup>256</sup> EU Delegation to the UN – New York, ‘Speech by Andris Piebalgs, European Commissioner for Development, on “Still on time to achieve universal primary education” at the Forum: 2015 Education Countdown: Failure is Not an Option, United Nations General Assembly Ministerial Week’, <eu-un.europa.eu/articles/en/article\_15496\_en.htm> accessed 13 October 2014.

<sup>257</sup> Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012, 9.

<sup>258</sup> European Parliament resolution of 16 February 2012 on Parliament’s position on the 19<sup>th</sup> Session of the UN Human Rights Council (2012/2530(RSP)).

<sup>259</sup> European Parliament resolution of 10 March 2011 on the priorities of the 16th Session of the UN Human Rights Council and the 2011 review (2012/C 199 E/20).

the HRC<sup>260</sup> and on the 7<sup>th</sup> session of the HRC.<sup>261</sup> It has followed closely the development of the newly created HRC and adopted resolutions on the outcome of the negotiations on the HRC<sup>262</sup> and on its development.<sup>263</sup> Additionally, the EP regularly adopts resolutions on the Annual Report on Human Rights in the World.<sup>264</sup>

Next to the adoption of resolutions, the EP also regularly sends small delegations to attend sessions of the HRC and the UNGA Third Committee.<sup>265</sup> EP delegations form part of the EU Delegation and have no negotiation mandate or even the right to participate in negotiation meetings.<sup>266</sup> From the EP they are mandated to voice concerns of the EP and to report back to DROI. Contact between the EP and the UN is a two-way street in which the EP also invites UN officials and special procedures mandate holders to its own sessions.<sup>267</sup> In addition, the Chair of COHOM is a regular guest in the EP's Subcommittee on Human Rights ('DROI'), participating in exchanges of views on the EU's human rights policy.<sup>268</sup>

## 8. Member States

The EU Member States play a double role at the UN. On the one hand, they are burden sharers and co-owners of common EU policies, on the other hand they are independent actors pursuing national interests. Before the entry into force of the Lisbon Treaty, the EU Member State holding the rotating six monthly Council Presidency played a crucial role in the Union's internal coordination and representation. While these tasks have now largely been taken over by the new EU Delegations, the Council Presidency still represents the Union whenever the EU's status and participation rights in a UN forum are insufficient to allow it to be represented through its own officials. Other EU Member States may step in, whenever the country holding the Council Presidency is not a member of the respective UN body. This pre-Lisbon situation persists for example in the HRC, where the EU only has a 'simple' observer status.<sup>269</sup> But even in the Third Committee, where the Union's status was upgraded in 2011,<sup>270</sup> the Council Presidency continues to participate in the external representation of the EU. The EU Member States have a particular role to play in those UN fora, where the EU has no status at

<sup>260</sup> European Parliament resolution of 25 February 2010 on the 13th session of the United Nations Human Rights Council (2010/2528(RSP)).

<sup>261</sup> European Parliament resolution of 21 February 2008 on the seventh session of the United Nations Human Rights Council (UNHRC) (2008/2526(RSP)).

<sup>262</sup> European Parliament resolution on the outcome of the negotiations on the Human Rights Council and on the 62nd session of the UNCHR (2006/2535(RSP)).

<sup>263</sup> European Parliament resolution of 14 January 2009 on the development of the UN Human Rights Council, including the role of the EU (2008/2201(INI)).

<sup>264</sup> See only European Parliament resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy (2011/2185(INI)).

<sup>265</sup> European Parliament, 'Information about participation at the 25<sup>th</sup> session of the HRC' (2014).

<sup>266</sup> Council of the European Union, 'Request for European Parliament participation at the 16th session of the United Nations' Human Rights Council (UNHRC) (Geneva, 28 February-25 March 2011) – Approval of a reply', Doc No 7327/11, 4 March 2011.

<sup>267</sup> European Parliament resolution of 14 January 2009 on the development of the UN Human Rights Council, including the role of the EU (2008/2201(INI)) para 57.

<sup>268</sup> See e.g. DROI meeting of 11 September 2014, Doc No DROI\_PV(2014)0911\_2.

<sup>269</sup> See only the statements delivered by the Council Presidency 'on behalf of the European Union', <eeas.europa.eu/delegations/un\_geneva/eu\_statments/human\_right/index\_en.htm> accessed 13 October 2014.

<sup>270</sup> UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276.

all. With regard to the UNSC, Article 34(2) TEU provides that those EU Member States ‘which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed’, ‘defend the positions and the interests of the Union’ and ‘request that the High Representative be invited to present the Union’s position’ whenever the EU has a defined position on a subject which is being discussed by the UNSC. Additionally, the EU Member States participate in the burden sharing system of the EU, which aims to make use of the capacities of the 28 diplomatic services of the Member States and to increase the sense of ownership of the Member States.

As members of the UN, the EU Member States additionally participate as independent actors at the UN level, for example by introducing resolution initiatives or co-sponsoring resolutions. As will be further explained below (ch V.B.), many EU Member States have developed specializations on certain human rights topics and will regularly table resolutions addressing these matters. These national resolution initiatives are not coordinated by the EU, although Member States will regularly inform each other and invite support. Also, the EU does not officially coordinate the co-sponsoring of resolutions, although interviewees confirmed that *de facto* a certain degree of coordination between the EU Delegation and the EU Member States delegations takes place (for all this see further below, ch V.B.). When promoting their national interests, EU Member States are still bound by the duty of sincere cooperation (Article 4(3) TEU), according to which the ‘Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties’ and which obliges the Member States to take measures in order to ensure the fulfilment of their treaty obligations, to facilitate the Union’s tasks and to refrain from measures which could jeopardise the EU’s objectives.

See below for detailed analyses of the Member States’ role in EU external representation (ch III.C.), internal coordination (ch III.D.), the strategy development process (ch IV.B.), the tabling of resolution initiatives (ch V.A.) and the UPR (ch V.C.).

### C. External representation\*

The following section will examine the presence, representation and visibility of the EU in UN human rights fora. This requires firstly an analysis of the legal framework for EU participation in the UN and the UN system, looking at the (internal) dimension of EU law and at the (external) dimension of UN law. The interplay between both legal systems determines the ‘status’ of the EU in the UN, and thus the possibilities and boundaries for EU presence. Secondly, the analysis will focus on the division of external representation competences between the various EU institutions, highlighting the changes introduced by the Lisbon Treaty, and comparing the theoretical regime to the actual implementation. This will lastly allow us to draw conclusions on the strengths and weaknesses of EU representation in the UN system.

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\* Parts of this chapter will be published in Jan Wouters and Anna-Luise Chané, ‘Brussels Meets Westphalia: The European Union and the United Nations’ in Piet Eeckhout and Manuel Lopez Escudero (eds) *The European Union’s External Action in Times of Crisis* (Hart Publishing, forthcoming).

## 1. Status of the EU in the UN and the UN system

The status of the EU in the UN and the UN system is determined, both, by Union's internal division of powers with the Member States, as incorporated in the Treaty on European Union ('TEU') and the Treaty on the Functioning of the European Union ('TFEU'), and by the Charters, Constitutions, Resolutions, Rules of Procedure and other instruments that form the legal framework of the UN. EU participation is conditioned on (1) the existence of a legal instrument (e.g. resolution, exchange of letters or regional economic integration organisation ('REIO') clause<sup>271</sup>) allowing for the participation of the EU in (2) a UN body whose mandate falls into an area of EU competence. The legal framework of the respective UN body additionally determines the specific arrangement of EU participation and the associated rights and duties.

### a) EU legal framework

Since the Lisbon Treaty the TFEU devotes a separate title to the 'Union's relations with international organisations'.<sup>272</sup> Article 220(1) TFEU provides that the 'Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies [...]'. The Union is thus competent and obliged to establish and maintain contacts with the UN, to informally participate in its work and to acquire observer status. Similar provisions on cooperation with international organisations exist for a variety of different policy areas, e.g. Article 191(4) TFEU (environment), Article 211 TFEU (development cooperation), Article 212(3) (economic, financial and technical cooperation) and Article 37 TEU (CFSP). With regard to the cooperation with the UN, however, Article 220(1) TFEU is *lex specialis*.<sup>273</sup> It should be noted that 'cooperation' within the meaning of these articles does not include the right to obtain or even request membership in a UN body, given that this would presuppose the conclusion of an international agreement in accordance with the requirements and the procedure of Articles 216 and 218 TFEU.<sup>274</sup>

While EU primary law does not contain a provision explicitly granting the Union a general competence to acquire membership in an international organisation,<sup>275</sup> such a competence is generally recognised, based on an early ECJ opinion.<sup>276</sup> In Opinion 1/76 the ECJ affirmed the Community's power to set up an international institution and to provide it with decision-making power.<sup>277</sup> This reasoning was

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<sup>271</sup> EU participation in UN bodies can be governed by a variety of legal instruments, see only UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276 granting the EU enhanced observer rights in the UNGA and certain subsidiary bodies; Exchange of letters of 21 and 22 December 1989 between the European Commission and the International Labour Organization (1989) OJ C 24/8, renewed by an exchange of letters of 14 May 2001 (2001) OJ C 165/23, concerning the EU's observer status in the ILO; or FAO Constitution art II(3) which contains a so called REIO clause, allowing for the membership of an international organization.

<sup>272</sup> TFEU, title VI, art 220-221.

<sup>273</sup> Kirsten Schmalenbach in Christian Calliess, Matthias Ruffert (eds) *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta* (4th edn, Beck 2011) TFEU art 211 n 3, art 212 n 13; Rudolf Streinz and Tobias Kruis in Rudolf Streinz (ed) *EUV/AEUV: Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union* (2nd edition, Beck 2012) TFEU art 211 n 2, art 212 n 22.

<sup>274</sup> Schmalenbach (n 273) TFEU art 220 n 7; Juliane Kokott in Rudolf Streinz (ed) *EUV/AEUV: Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union* (2nd edition, Beck 2012) TFEU art 220 n 35.

<sup>275</sup> Piet Eeckhout, *EU External Relations Law* (2nd edn, OUP 2011) 222.

<sup>276</sup> Kokott (n 274); Eeckhout (n 275).

<sup>277</sup> Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels* [1977] ECR 741, n 5; implicitly confirmed by Opinion 1/94 *World Trade Organization* [1994] ECR I-05267.

implicitly confirmed almost two decades later in the ECJ's Opinion 1/94, which dealt with the Communities' participation in the World Trade Organisation ('WTO'), of which it is a founding member. As the Court thus expressly recognised the Union's power to establish a new international organisation, it has been concluded *a maiore ad minus* that the EU also has the power to accede to an already existent organisation. Membership in an international organisation requires the conclusion of an international agreement according to the requirements and procedure outlined in Articles 216 and 218 TFEU. Article 216(1) TFEU provides that the Union may conclude agreements with international organisations in four cases: (1) where the Treaties so provide, (2) where the conclusion of an agreement is necessary in order to achieve an objective referred to in the Treaties, (3) where this is provided for in a legally binding Union act or (4) where this is likely to affect common rules or alter their scope.<sup>278</sup> While numbers 1 and 3 refer to cases in which an express competence exists, number 2 and 4 refer to implied competences. The EU may thus conclude international agreements whenever this is necessary to attain a Treaty objective, as well as in all those areas where it holds exclusive or shared internal competences.

With regard to the EU's human rights policy in the UN framework, the question of competence remains complex and contested. The EU has no internal 'direct general human rights competence'.<sup>279</sup> Member States retain their competence to legislate for the protection and promotion of human rights. The EU only enjoys direct human rights competences with regard to certain specific issues (e.g. with regard to discrimination, see Article 19(1) TFEU which allows the Union to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'). Apart from that the EU only has an indirect competence to safeguard human rights within other areas of exclusive or shared Union competence.

This has implications for the EU's external human rights policy in UN fora. In line with Article 216(1) TFEU, the EU is competent to conclude international agreements in those areas where it enjoys express internal human rights competences. For example, based on the external dimension of Article 19(1) TFEU, the EU had the power to negotiate and ratify the UN Convention on the Rights of Persons with Disabilities ('CRPD'). Furthermore, the EU has the competence to ensure human rights externally in the context of its activities in other policy areas where it holds exclusive or shared competences, such as trade, security, labour, agriculture or the environment. In addition, though not conferring a specific competence to the EU, the post-Lisbon Articles 3(5) and 21 TEU enshrine human rights as a value and mandatory goal of the Union's external action.<sup>280</sup>

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<sup>278</sup> Note that principles 2 and 4 were developed in ECJ case law and only later codified in TEU art 216(1), see Case 22/70 *European Agreement on Road Transport* [1971] ECR 263; Opinion 1/76 (n 277).

<sup>279</sup> Samantha Besson, 'The Human Rights Competence in the EU: The State of the Question after Lisbon' in Georg Kofler, Miguel Poiares Maduro and Pasquale Pistone (eds) *Human Rights and Taxation in Europe and the World* (IBFD 2011) 37, 42; cf Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (5th edn, OUP 2011) 392.

<sup>280</sup> For more detail see above, ch II.B. See also Craig and de Búrca (n 279); Hans-Joachim Cremer in Christian Calliess and Matthias Ruffert (eds) *EUV/AEUV: Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta* (4th edn, Beck 2011) TEU art 21 n 2 et seq; Lorand Bartels, 'The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects', *European Journal of International Law*, forthcoming.

Under EU law the Union thus has the competence to obtain observer or even full member status in the UN system. While its human rights competences remain arguably more limited, they have been considerably strengthened by the Lisbon Treaty.

### *b) UN legal framework*

The UN legal framework is the second decisive factor which determines the possibility and extent of EU engagement in the organisation. The UN remains a predominantly state-oriented institution, and therefore a challenging environment for EU foreign policy and diplomacy. Only a small minority of UN bodies allows other international organisations to join as full members. The vast majority either limits their participation to narrow observer rights or excludes any formal participation at all. In line with its commitment to effective multilateralism<sup>281</sup> and in order to safeguard the exercise of its competences at the international level, the Union has continuously sought to ensure its strong presence in the UN. In its 2003 Communication ‘The European Union and the United Nations: The Choice of Multilateralism’, the Commission declared that the Community ‘should be given the possibility to participate fully in the work of UN bodies where matters of Community competence are concerned, and Member States should contribute effectively towards this’.<sup>282</sup> Full membership was regarded as the preferred status and ultimate goal. However, in reality the EU’s efforts for status enhancement have only yielded slow and partial successes, and – in the case of the UN General Assembly (‘UNGA’) – even led to a public diplomatic debacle.<sup>283</sup> In light of recent failures, European Commission President Barroso and Vice-President Ashton proposed a less ambitious policy in their 2012 ‘Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon’.<sup>284</sup> While the strategy still holds onto the aim of an ‘improvement of the EU status and its alignment with the objectives of the EU Treaties’, it avoids any endorsement of concrete negotiation goals.<sup>285</sup> So far, the EU only holds member status in the Food and Agriculture Organization (‘FAO’) and its Codex Alimentarius Commission. It has observer status in most UN bodies, and acquired enhanced participation rights in the UNGA in 2011. In a number of bodies the EU is nevertheless still not formally represented, most importantly in the UNSC.

#### (1) Member status/contracting party

Article 4(1) UN Charter which states that ‘[m]embership in the United Nations is open to all other peace-loving *states*’ (emphasis added) is generally understood to limit membership in the main organization to states only, thereby prohibiting the accession of other international actors, such as

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<sup>281</sup> See *supra*, ch II.A..

<sup>282</sup> Commission, ‘The European Union and the United Nations: The choice of multilateralism’ (Communication) COM(2003) 526 final, 23

<sup>283</sup> See below, section (2).

<sup>284</sup> Communication to the Commission from the President in Agreement with Vice-President Ashton, ‘Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon’, C(2012) 9420 final.

<sup>285</sup> See for a detailed analysis of the Barroso-Ashton Strategy, Jan Wouters, Anna-Luise Chané, Jed Odermatt and Thomas Ramopoulos, ‘Improving the EU’s Status in the UN and the UN System: An Objective Without a Strategy?’ in Christine Kaddous (ed) *The European Union in International Organisations and Global Governance* (Hart Publishing, forthcoming).

the EU.<sup>286</sup> However, it does not bar the multitude of bodies and fora in the UN system to include provisions in their respective governing instruments which allow for membership of international organisations.

The FAO, which is committed to the promotion and realization of the human right to food, was the first and is so far the only UN Specialised Agency that amended its Constitution in order to allow for the accession of an international organisation.<sup>287</sup> As a Member Organisation,<sup>288</sup> the EU enjoys largely the same participation rights as Member States, including the right to submit proposals and to vote. Nevertheless, there remain a few important exceptions, which render its status slightly inferior to the one held by states. In particular, the EU does not have the right to participate in certain restricted committees<sup>289</sup> and the committees responsible for the internal working of the conference, it does not have voting rights for elective places<sup>290</sup> and budget matters<sup>291</sup> and may not hold office in the Conference, the Council and their subsidiary bodies.<sup>292</sup> Although the 1991 amendment of the FAO Constitution was at that time expected to prompt other UN bodies to follow suit, so far there have been no similar developments in the UN framework.

However, the EU actively engaged in the negotiations of the 2006 Convention on the Rights of Persons with Disabilities ('CRPD'), and ensured the inclusion of a 'regional (economic) integration organisation clause' ('R(E)IO clause') which provides that the Convention 'shall be open for signature by all States and by regional integration organizations'.<sup>293</sup> The CRPD was signed by the EU on 30 March 2007 and entered into force for the EU on 22 January 2011, following a Council Decision to conclude the CRPD from 26 November 2009.<sup>294</sup> As a fully-fledged contracting party the EU is obliged to comply with the monitoring structure provided for in Article 33 CRPD. Thus, after two years of preparation by the EU focal point, in cooperation with other EU bodies (particularly the European Commission and the European Economic and Social Committee), as well as consultations with stakeholders, EU Member States and the European Commission Disability Support Group, the EU has on 5 June 2014 for the first time presented a progress report on the implementation of the CRPD in the EU.<sup>295</sup> It also participated in the CRPD State Parties Conference in 2011.

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<sup>286</sup> Frank Hoffmeister, 'Outsider or Frontrunner? Recent Developments Under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies' (2007) 44 *Common Market Law Review* 41.

<sup>287</sup> *ibid.* The EU obtained membership in 1991.

<sup>288</sup> FAO Constitution, art II(3).

<sup>289</sup> Programme Committee, Finance Committee, Committee on Constitutional and Legal Matters, FAO Constitution, art II(9); FAO General Rules, rule XLVI.

<sup>290</sup> FAO General Rules, rule XLV(2).

<sup>291</sup> FAO Constitution, art XVIII(6).

<sup>292</sup> FAO Constitution, art II(9); FAO General Rules, rules XLIII(3), XLIV.

<sup>293</sup> UN Convention on the Rights of Persons with Disabilities art 42.

<sup>294</sup> EU Council, 'Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities', OJ L 23/35, 27 January 2010.

<sup>295</sup> European Commission, Commission Staff Working Document, 'Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union', SWD(2014) 182 final, 5 June 2014.



## (2) Observer status

The EU has observer status in considerable number of UN bodies, which are mandated with the protection and promotion of human rights. Among them are the UNGA,<sup>296</sup> the Human Rights Council ('HRC'), the United Nations Children's Fund ('UNICEF'), the Executive Committee of the United Nations High Commissioner for Refugees ('UNHCR') and the International Labour Organisation ('ILO').<sup>297</sup> While the participation rights of observers can vary, they usually include the right to attend (formal) meetings and the right to speak. They usually exclude the right to vote, to raise points of order or to submit candidates. Observers are generally seated apart from the Member States. They may frequently speak only after all the Member States have spoken and are allocated shorter speaking time slots than the Member States.<sup>298</sup>

Given that these limited participation rights conflict with the Union's effective exercise of those competences that have been conferred to it by its Member States, the EU has continuously sought to improve its observer status by turning it into a full membership or by enhancing it with additional rights. One of the most notable examples is the 2011 'upgrade' of the Union's observer status in the UNGA, which aimed to align the Union's representation in the UNGA with its changed internal division of powers after the entry into force of the Lisbon Treaty. In particular, the EU sought the possibility to participate in its own right instead of having to rely on the rotating Council Presidency, which had been stripped of its external representation competences by the Lisbon Treaty. A first draft resolution was introduced in the UNGA in 2010 but failed to be adopted.<sup>299</sup> Even some of the Union's traditional allies, such as Australia, Canada and New Zealand, did not support the Union's proposal, thus contributing to the EU's 'shambolic defeat'.<sup>300</sup> After increased outreach and substantive amendments, UNGA Resolution 65/276 was eventually adopted on 3 May 2011. Critics remarked that the final Resolution had been watered down and 'utterly de-Europeanized'.<sup>301</sup> Nevertheless, the EU achieved its core goal, the right to be represented through its own officials. Its enhanced participation rights include:

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<sup>296</sup> The EU has held observer status in the UNGA since 1974, see UNGA Res 3208 (XXIX) (11 October 1974).

<sup>297</sup> For all see: Jan Wouters, Frank Hoffmeister and Tom Ruys (eds) *The United Nations and the European Union: An Ever Stronger Partnership* (TMC Asser Press 2006), annex; for the ILO see additionally Exchange of letters of 21 and 22 December 1989 between the European Commission and the International Labour Organization (1989) OJ C 24/8, renewed by an exchange of letters of 14 May 2001 (2001) OJ C 165/23.

<sup>298</sup> Cf the speaking time arrangements of the HRC, where observers are allocated 1-2 minutes less speaking time than Member States, depending on the type of discussion, HRC, 'Information note for ease of reference on speaking time arrangements', 24th session, 9-27 September 2013.

<sup>299</sup> The Union's diplomatic debacle around its UNGA status upgrade has received considerable scholarly attention, see for example Evan Brewer, 'The Participation of the European Union in the Work of the United Nations: Evolving to Reflect the New Realities of Regional Organizations' (2012) 9 *International Organizations Law Review* 181; De Baere and Paasivirta (n 222); Jan Wouters, Jed Odermatt and Thomas Ramopoulos, 'The Status of the European Union at the United Nations General Assembly' in Inge Govaere, Erwan Lannon, Peter Van Elsuwege and Stanislas Adam (eds) *The European Union in the World: Liber Amicorum Professor Marc Maresceau* (Brill 2014) 211.

<sup>300</sup> Paul Luif, quoted in Judy Dempsey, 'For Europe, a Challenge to Make Its Voice Resonate' *The New York Times* (New York, 13 October 2010) <[www.nytimes.com/2010/10/14/world/europe/14iht-letter.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/10/14/world/europe/14iht-letter.html?pagewanted=all&_r=0)> accessed 2 October 2014.

<sup>301</sup> Jan Wouters, Jed Odermatt and Thomas Ramopoulos, 'The Status of the European Union at the United Nations after the General Assembly Resolution of 3 May 2011', *Leuven Centre for Global Governance Studies, Global Governance Opinion*, July 2011, 3.



1. To be inscribed on the list of speakers among representatives of major groups, in order to make interventions,
2. To participate in the general debate of the UNGA,
3. To have its relevant communications circulated directly, and without intermediary, as documents of the Assembly, meeting or conference,
4. To present proposals and amendments orally,
5. To exercise the right of reply.<sup>302</sup>

It explicitly does not have the right to vote, to co-sponsor draft resolutions or decisions, or to submit candidates.<sup>303</sup>

The practical implementation of these rights subsequently entailed considerable and unexpected difficulties.<sup>304</sup> Some UN Member States, most vocally the CARICOM group, advocated a narrow interpretation of UNGA Resolution 65/276, fearing an erosion of the intergovernmental character of the body and the principle of sovereign equality of the UN Member States. In particular the right 'to be inscribed on the list of speakers *among representatives of major groups*' (emphasis added) triggered controversies about whether major groups represented by states should take preference. The dispute escalated in the UNGA's Third Committee, which is responsible for human rights related matters. The conflict on the speaking order hindered the effective functioning of the body to an extent that a meeting had to be postponed, after consultations and interim solutions, including a rotation of the speaking slots, had been insufficient to overcome the disagreement.<sup>305</sup> Another dispute focused on the right to deliver an explanation of vote, which some considered to be only assigned to those actors that also had a right to vote. Most of those issues have been resolved in subsequent sessions through demarches sent to CARICOM members, and by isolating CARICOM through a deal struck with the African Group.<sup>306</sup> Nevertheless, the realization that the successful implementation of formally obtained rights cannot be taken for granted, prompted President Barroso and Vice-President Ashton to call for continued efforts to ensure the full implementation of the Resolution.<sup>307</sup>

UNGA Resolution 65/276 only applies to the 'sessions and work of the General Assembly and its committees and working groups' as well as 'international meetings and conferences convened under the auspices of the Assembly and in United Nations conferences'.<sup>308</sup> It has not had any impact on the EU's status in other main UN bodies or even other than the mentioned subsidiary organs of the UNGA. In the HRC, for example, the EU retains its traditional 'simple' observer status and continues to rely on representation through the Member States, in particular the Council Presidency, although the EU delegation also exercises the right to speak in the slots reserved for observers.<sup>309</sup> The Union's observer

<sup>302</sup> UNGA Res 65/276 (n 271) annex, para 1.

<sup>303</sup> *ibid*, annex, para 3.

<sup>304</sup> See for more detail, Wouters, Chané, Odermatt, Ramopoulos (n 301).

<sup>305</sup> UNGA Third Committee, 'Landmark Election in Tunisia Superb Demonstration of UN Providing Advice, Support, while Fully Respecting National Leadership, Ownership Third Committee Told' (25 October 2011) UN Doc GA/SHC/4019; UNGA Third Committee, 'With Crises Disproportionately Affecting Most Vulnerable, World Community Must Ensure Economic, Social Rights Not Relegated to Second Tier, Committee Told' (26 October 2011) UN Doc GA/SHC/4020.

<sup>306</sup> Wouters and others (n 215) 79.

<sup>307</sup> C(2012) 9420 final (n 284).

<sup>308</sup> UNGA Res 65/276 (n 271) para 2.

<sup>309</sup> Karen E. Smith, 'The European Union and the Review of the Human Rights Council', Study for the European Parliament, Directorate-General for External Policies of the Union, EXPO/B/DROI/2010/06, February 2011, 12.

rights include the right to ‘engage in negotiations, co-sponsor and initiate resolutions and make statements’.<sup>310</sup> The right to vote, on the other hand, can only be exercised by those EU Member States that are also Members of the HRC.

The ILO is another UN body in which the EU only has a simple observer status. Despite its wide-reaching internal competences and legislative action in the field of labour rights, the EU does not have the right to vote, to participate in the work of the ILO Governing Board’s programme and finance committee, or even to ratify ILO Conventions.<sup>311</sup> While this has in the past led to tensions between the Commission and the Council, to proceedings before the ECJ and finally to the blocking of the ratification of ILO conventions,<sup>312</sup> EU-ILO relations are assessed in a more positive light today, based on the improved relations between the EU, its Member States and the social partners, but also on the increasing cooperation between both organisations, particularly after the conclusion of a Strategic Partnership in the field of development in 2004.<sup>313</sup> The EU’s representation in the ILO is, however, far from settled. The exchange of letters of 1989, which established the Community’s observer status in the ILO, has only been updated once, in 2001, and still reflects the pre-Lisbon situation. Since Lisbon, the EU has been ‘experimenting with new arrangements within the ILO’.<sup>314</sup> In the 2012 and 2013 sessions of the ILO Governing Board, for example, the EU was alternatively represented by the rotating Council Presidency, other EU Member States that are members of the ILO Governing Board, the EU Delegation in Geneva and the Commission.<sup>315</sup> Primary EU interlocutors for the ILO are the Directorate-General for Employment, Social Affairs and Inclusion (DG Employment), the Directorate-General for Development and Cooperation (DG DEVCO), the Directorate-General for the European Neighbourhood Policy and Enlargement Negotiations (DG Enlargement) and the EEAS.<sup>316</sup> However, depending on the subject matter in question, the other Commission DG’s may also be involved in the cooperation with the ILO, in particular the Directorate-General for Trade (DG Trade) and the Directorate-General for Justice (DG Justice).

### (3) No formal status

The UN Security Council (‘UNSC’) is one the few UN bodies in which the EU holds no formal status. Instead, the EU has to rely on those of its Member States that have either a permanent seat (France and the United Kingdom) or have been elected as temporary Council members (on average two other EU Member States).<sup>317</sup> Aiming to safeguard EU representation even in the absence of formal presence, Article 34(2) TEU provides that the EU Member States have the duty to represent the positions and

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<sup>310</sup> Jan Wouters and Katrien Meuwissen, ‘The European Union at the UN Human Rights Council: Multilateral Human Rights Protection Coming of Age?’ (2014) *European Journal of Human Rights* 135, 144.

<sup>311</sup> Rudi Delarue, ‘The EU-ILO partnership and the global identity of the Union’s social model’ in Henri De Waele and Jan-Jaap Kuipers (eds) *The Emergence of the European Union’s International Identity – Views from the Global Arena* (Martinus Nijhoff 2013) 131, 144, 147.

<sup>312</sup> Eeckhout (n 275) 224-225.

<sup>313</sup> Cf Delarue (n 311) 131, 132, 143; European Commission/International Labour Organisation, ‘Memorandum of Understanding concerning the establishment of a strategic partnership between the International Labour Organisation and the Commission of the European Communities in the field of Development’, 15/16 July 2004.

<sup>314</sup> *ibid* 139.

<sup>315</sup> *ibid* 153.

<sup>316</sup> International Labour Organization, ‘European Union’, <<http://www.ilo.org/brussels/donors/european-union/lang--en/index.htm>> accessed 21 November 2014.

<sup>317</sup> Sieglinde Gstöhl, ‘“Patchwork Power” Europe: The EU’s Representation in International Institutions’ (2009) 14 *European Foreign Affairs Review* 385, 400.

the interests of the Union.<sup>318</sup> The Treaty also strengthened the role of the HR/VP in the UNSC, obliging Member States to request that the HR/VP be invited to a meeting, whenever a Union position on a UNSC agenda item exists.<sup>319</sup> Even in the absence of membership or observer status, the HR/VP has thus quite regularly been able to represent the EU's position in the UNSC.<sup>320</sup> Nevertheless, there is still no 'strong collective EU presence' in the UNSC.<sup>321</sup> Proposals for a single EU seat on the UNSC have so far not found sufficient political support to present a realistic alternative. While they have been endorsed by various EU institutions and actors, in particular the EP, the former High Representative Javier Solana and the former Commissioner for External Relations and the European Neighbourhood Policy, Benita Ferrero-Waldner, the United Kingdom and France have been concerned to maintain their strong position at the UNSC.<sup>322</sup>

## 2. Division of competences

The following section gives a brief overview of the allocation of external representation competences to the various EU institutions. In light of the Lisbon Treaty's far-reaching institutional reforms of the Union's external relations architecture, the pre-Lisbon framework will be briefly introduced and juxtaposed with the current division of competences.

### a) Pre-Lisbon

Before the entry into force of the Lisbon Treaty, the external representation of the Union was ensured by the European Commission concerning 1<sup>st</sup> pillar issues, and by the Member State holding the rotating Council Presidency concerning all other issues. The advantage of this solution was, that the Council Presidency as a sovereign state easily fit into the state-centric structure of the UN. It could smoothly and prominently deliver presidential statements for the EU in speaking slots reserved for states, circulate documents and negotiate with third countries. The downside was, however, a lack of consistency and stability due to the six-monthly rotation. Third states criticised the lack of transparency of the external representation, due to the ever changing 'hats' and the lack of a European 'phone number'. Logistical issues ensued and EU representation appeared chaotic when Commission and Presidency representatives had to switch seats during meetings depending on the agenda item.<sup>323</sup>

### b) Post-Lisbon

The Lisbon Treaty sought to increase the coherence and unity of the Union's external representation through a series of institutional reforms, dividing the tasks between four different EU actors: the Commission, the President of the European Council, the HR/VP and the EEAS. Competences are roughly divided along the fault lines of CFSP/non-CFSP matters and summit level/non-summit level, with the EEAS rendering assistance across all policy areas and levels.

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<sup>318</sup> TEU art 34(2).

<sup>319</sup> *ibid.*

<sup>320</sup> See for a list of statements: European Union Delegation to the United Nations – New York, 'EU Statements at the UN Security Council', <[www.eu-un.europa.eu/articles/articleslist\\_s52\\_en.htm](http://www.eu-un.europa.eu/articles/articleslist_s52_en.htm)> accessed 2 October 2014.

<sup>321</sup> Spyros Blavoukos and Dimitris Bourantonis, 'The EU's Performance in the United Nations Security Council' (2011) 33 *Journal of European Integration* 731, 733.

<sup>322</sup> *ibid* 737 et seq.

<sup>323</sup> De Baere and Paasivirta (n 222) 25.

Table 2: EU External Representation – Division of Competences Post-Lisbon

	CFSP matters	non-CFSP matters	
Summit level	President of the European Council	President of the European Commission	EEAS
Below summit level	High Representative for Foreign Affairs and Security Policy	European Commission	
EEAS			

The Commission represents the Union in all areas that do not fall under the CFSP<sup>324</sup> with the President of the Commission assuming the role of EU representative at summit level.<sup>325</sup> Concerning issues that fall under the CFSP, the tasks of external representation are divided between the HR/VP and the President of the European Council.<sup>326</sup> The latter only plays a limited role in this context. As Article 15(6) TEU provides, the President of the European Council ensures the external representation ‘at his level and in that capacity’ and ‘without prejudice to the powers of the High Representative’. His tasks are therefore mainly reduced to representing the Union at the level of Heads of State or Government, for example in the UNGA. The HR/VP on the other hand bears the main responsibility of conducting the CFSP. This includes not only the responsibility to drive forward the development of this policy, but also to lead the political dialogue with third countries and to represent the Union in international organisations and international conferences. Nevertheless, the division of work between the President of the European Council and the HR/VP is not clearly determined.<sup>327</sup> Article 15(6) TEU deliberately contains a vague formulation. The respective roles will therefore be flexibly shaped, both, through cooperation and coordination but potentially also through power plays and turf battles between the respective office holders.

Lastly, the Union delegations of the EEAS are responsible for the representation of the Union at the UN.<sup>328</sup> EU delegations to UN bodies exist in Geneva, Paris, Nairobi, New York, Rome, and Vienna. They cover CFSP and non-CFSP matters<sup>329</sup> and lend assistance at the summit level as well as in other settings. Upon the entry into force of the Lisbon Treaty the EU’s delegations to the UN were met with the considerable challenge of having to ‘assume as soon as possible the role and functions [...] performed by the rotating Presidency in terms of local coordination and representation of the Union’.<sup>330</sup> This sudden increase in workload was exacerbated by a lack of staff, and the legal and political complexities of EU participation in the UN framework.<sup>331</sup> While the EU Delegation in New York

<sup>324</sup> TEU art 17(1).

<sup>325</sup> Sieglinde Gstöhl, ‘EU Diplomacy After Lisbon: More Effective Multilateralism?’ (2011) 17 *Brown Journal of World Affairs* 181, 186.

<sup>326</sup> TEU art 15(6), art 27(2).

<sup>327</sup> Xi Jin, Madeleine O. Hosli, ‘Pre- and Post-Lisbon: European Union Voting in the United Nations General Assembly’ (2013) 36 *West European Politics* 1274, 1278.

<sup>328</sup> TFEU art 221(1).

<sup>329</sup> Gstöhl (n 325) 186.

<sup>330</sup> Council of the European Union, ‘Presidency report to the European Council on the European External Action Service’, Doc No 14930/09, 23 October 2009, para 31.

<sup>331</sup> Wouters and others (n 215) 77 et seq.

managed the transition comparatively well, due to extensive preparations, the experience was less positive in the Geneva Delegation. Not only did the different modes of participation in the various Geneva-based UN bodies provide for a more complex legal and political environment, the lack of a Head of Delegation during the crucial transition period did not contribute to a speedy resolution of the contentious issues.<sup>332</sup> Nevertheless, already during the first HRC session after the entry into force of the Lisbon Treaty, the Delegation in Geneva 'started undertaking specific tasks in the coordination and representation of the EU: it delivered all interventions on behalf of the EU during the Interactive Dialogues with Special Procedures and negotiated, on behalf of the EU, several draft resolutions.'<sup>333</sup>

### 3. Opportunities and challenges

The new institutional framework promises to considerably enhance the effectiveness and coherence of EU representation at the UN level. The creation of the offices of the President of the European Council, the HR/VP and the establishment of the EEAS increase the coherence of the EU's external action, allow for the creation of an institutional memory and enable third country partners to identify relevant contact persons more easily. While the first evaluations of the new architecture are mostly positive, its success will depend to a large extent on the constructive contribution of all involved stakeholders, including the Member States.

This is exemplified by the fact that despite these institutional reforms, the post-Lisbon years have seen a number of controversies about the Union's external representation. There are two particular factors that have fuelled disagreements and necessitated lengthy negotiations in search of internal agreements: representation in areas of shared EU/Member States competences and the phenomenon of 'mixity'.

Regarding the first, fears of a silent 'competence creep' of the Union into those areas that are still the prerogative of the Member States, have repeatedly given rise to discussions. In areas of shared competence, Member States retain their competence 'to the extent that the Union has not exercised its competence'.<sup>334</sup> This means that the division of powers is constantly evolving, but also that it may at times be difficult to precisely distinguish between EU and Member States' competences. This may also impact on the Union's external representation in human rights related matters. The United Kingdom made the headlines in 2011, when it blocked a sizeable number of EU statements. The dispute focused on the question of whether statements concerning areas of shared EU/Member States competences should be delivered 'on behalf of the EU' or 'on behalf of the EU and its Member States'.<sup>335</sup> 'General Arrangements' had to be adopted in October 2011 to restore the Union's ability to act, but given that they only provide that 'Member States agree on a case-by-case basis whether and how to co-ordinate and be represented externally'<sup>336</sup> the issue appears not yet to be fully settled.

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<sup>332</sup> *ibid* 79.

<sup>333</sup> Council of the European Union, 'EU Annual Report on Human Rights and Democracy in the World in 2010', Doc No 11501/2/11, 26 September 2011, 72.

<sup>334</sup> TFEU art 2(2).

<sup>335</sup> Julian Borger, 'EU Anger over British Stance on UN Statements', *The Guardian* (20 October 2011) <[www.guardian.co.uk/world/2011/oct/20/uk-eu-un-statements-wording](http://www.guardian.co.uk/world/2011/oct/20/uk-eu-un-statements-wording)> accessed 2 October 2014.

<sup>336</sup> Council of the European Union, 'EU Statements in Multilateral Organisations – General Arrangements', Doc No 15901/11, 24 October 2011; for more detail see Catherine Flaesch-Mougin, 'Représentation externe et compétences de l'Union européenne: quelques réflexions à propos des arrangements généraux du Conseil relatifs aux déclarations de l'UE dans les organisations multilatérales' in Chahira Boutayeb (ed) *La Constitution*,

Similarly, the United Kingdom criticised the Commission's proposal for an updated Declaration of Competence, to be submitted to the FAO, on the basis that it lacked 'any recognition of the extent to which the EU has not exercised its competence under shared competence areas'.<sup>337</sup>

The institutional reforms of the Lisbon Treaty will therefore only yield improvements if all concerned stakeholders act in concert. This applies to the EU institutions entrusted with the external representation of the Union, which have to fill the provisions of the Lisbon Treaty with life and find workable solutions to implement them to their fullest extent. This also applies to the Member States, whose latent fear of 'competence creep' frequently causes resistance against loss of traditional prerogatives in the state-centric UN system and creates obstacles for a unified EU presence.

#### 4. Conclusions

The external representation of the EU at the UN is still one of the most complex issues of EU external relations. While it is settled under EU law that the EU has the right to obtain observer and even full member status in international organisations, the legal framework of the UN only allows for a 'patchwork' presence of the EU, meandering between full member status, simple or enhanced observer status and no formal status. Additionally the EU's external human rights competences are limited and contested. Even when the EU has been granted participation rights in a UN body, the question of which EU institution is competent to exercise them remains challenging, although the Lisbon Treaty has provided for a more stable institutional architecture. In addition the division of powers between the EU and the Member States, particularly in areas of shared competences or in cases of mixed EU-Member State membership of a UN body, remains a constant source of conflict and necessitates cumbersome internal coordination processes. It has thus been observed that the EU and its Member States are 'not seldom [...] preoccupied with internal struggles about who is competent to speak in international fora.'<sup>338</sup> This has led to the conclusion that '[w]hen the EU loses itself in such inward-looking discussions, this obviously complicates its ability to speak with one voice vis-à-vis the rest of the world and undermines its international reputation and negotiating power'.<sup>339</sup>

#### D. Common Foreign and Security Policy Parameters – Principle of Unanimity

A body of outstanding literature has been devoted to general parameters and principles of CFSP, their development and implications.<sup>340</sup> Among the ones most often discussed are the concept of intergovernmentalism in the CFSP and the principle of unanimity. From the perspective of this report there is little room for discussing the intergovernmental nature of the CFSP in general, save for remarking that the concept of vesting the political weight of both decisions and their implementation in Member States (as opposed to the communitarised and integrated 'Brusselisation' model of

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*l'Europe et le droit – Mélanges en l'honneur de Jean-Claude Maslet* (Publications de l'Université Paris-Sorbonne 2013) 571.

<sup>337</sup> United Kingdom, Department for International Development, Explanatory Memorandum on COM (2013) 333 final, Doc No 10368-13, 27 June 2013, para 3.

<sup>338</sup> Peter Van Elsuwege and Hans Merket, 'The Role of the Court of Justice in Ensuring the Unity of the EU's External Representation', CLEER Working Papers 2012/5, 37.

<sup>339</sup> *ibid.*

<sup>340</sup> Recent works include: Paul James Cardwell (ed) *EU External Relations Law and Policy in the Post-Lisbon Era* (Springer 2012); Eeckhout (n 275).

governing other areas of EU policies) brings about both the advantage of employing the collective weight of 28 Member States in multilateral fora and the consequences of giving ample space for their political influence.

As a general rule established in Art. 24 of TEU, decisions within the CFSP are by default taken unanimously. This principle has been carried over from the second pillar and from the European Political Cooperation mechanism. While the Lisbon Treaty has introduced several adjustments and parameters that allow the Council to take decisions by a qualified majority vote on select occasions, the principle of unanimity remains the default paradigm of decision-making within the CFSP on all levels.<sup>341</sup> Despite criticisms<sup>342</sup> the EU Member States have vigorously defended this principle as a vital element of the CFSP and ensured it being carried over through subsequent revisions to the TEU.<sup>343</sup>

The principle of unanimity influences the external EU human rights policy at the UN both in positive and negative sense.

1. In view of the discussed principle, the preparatory works of COHOM and other Council Working Groups/Parties must be aimed at producing policy documents that are satisfactory to all 28 Member States. While the underlying consensus politically strengthens a specific EU position, it involves the risk of arriving at a lowest common denominator that, as a consequence, may weaken this position in terms of substance. Moreover, the principle of unanimity may ultimately be easily used to prevent the EU from taking a position on a specific matter altogether. Therefore, the principle of unanimity should also be seen as one of the factors behind the substantive deficits in EU human rights policies, highlighted throughout this report.
2. In case of multilateral forums where the EU as well as its Member States are present as actors, the principle of unanimity becomes sometimes uncomfortable to Member States and may result in attempts to circumvent attempts to reach a common position by acting outside the CFSP. On the other hand, this also means that in some cases when reaching the common position is blocked by single Member States or small groups, the almost-common position may be carried on by consenting Member States, despite it no longer being the official stance of the EU. As M. Rasch points out, 'Open incoherence among the EU MS that way becomes brutally apparent within an IGO in comparison to many situations in EU politics and results in a loss of image towards third parties. Consequently all EU MS have an interest to avoid such a scenario wherever possible.'<sup>344</sup> To expand upon these words, an incoherent action brings the EU away from being perceived and approached as a unique coordinated structure, encourages piecemeal diplomacy with external stakeholders engaging individual EU Member States instead of the EU as a whole and makes it easier for opponents to drive the wedge between the EU Member States even further by playing them against each other. Fortunately, in most cases the awareness of Member States as to the fact that achieving particular goals within the UN fora depends on the ability to enter feasible

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<sup>341</sup> Uwe Petter, 'The Latest Attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination' in Paul James Cardwell (ed) *EU External Relations Law and Policy in the Post-Lisbon Era* (Springer 2012) 25.

<sup>342</sup> Fergus Carr, 'Whither Europe?' in Fergus Carr and Andrew Massey, *Public Policy and the New European Agendas* (Edward Elgar 2006) 39.

<sup>343</sup> Rasch (n 180) 50.

<sup>344</sup> *ibid* 5.

alliances prevails, and the EU presents itself as a very compelling vehicle for carrying forward national initiatives.

3. Needless to say that the situation where the EU must work towards an unanimous position while its Delegations and Member States are engaged in multilateral diplomacy with 165 other countries and countless other stakeholders presents an enormous challenge to all those responsible for the implementation of the EU human rights policy. Furthermore, at times UN environments can be highly dynamic, adding a layer of time pressure to all negotiation processes. To quote M. Rasch once again:

(...) the main problem that can be felt in New York is a general institutional predicament of the CFSP: the principle of unanimity. The current consensualist policy-setting is too inefficient in terms of preparation and human resources, but also thwarts the possibility of common EU positions in cases in which just a few EU MS hold different views than the mainstream. Only if qualified majority decisions were allowed, the EU could move forward also despite internal differences. Then of course the overall coherence would be complete, as no divergent votes would occur and no national statements could impede the EU Presidency line. The EU would be a credible and reliable single actor for third parties.<sup>345</sup>

In general, this statement applies to UN venues in Geneva as well, however the relatively lesser politicization and lower amount of direct political investment from Member State capitals does somewhat mitigate the problem, paving way to consensus based more on human rights expertise and less upon particular foreign policy interests of Member States.

Taking into account the positive consequences of the principle of unanimity, in particular the enhancement of the EU common weight, on the one hand, and the related problems, on the other hand, the EU will be well advised to revisit the scope of human rights matters requiring unanimous agreement, both in the policy-setting works of the Council and on the ground at UN venues. One can dare this suggestion even bearing in mind that the principle of unanimity offers a particular advantage – it is often used as a convenient diplomatic ‘shield’ against criticism from non-EU stakeholders, allowing the EU and its Member States to point to the fact that their position reflects a common consensus and cannot be attributed solely to individual actors within the EU domain.

## **E. Internal coordination**

An analysis of the institutional framework of the EU-UN relations and the internal coordination of various EU stakeholders is a critical component of an assessment of the EU’s performance in the field of human rights at the UN. The relationships between these stakeholders and the matter of coordination between them are crucial for the EU’s ability to effectively, coherently and consistently pursue its human rights priorities and strategy at the UN. The chief actors involved in the process of coordinating the EU’s human rights policy at the UN are: COHOM, EEAS and EU Delegations and Member States.

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<sup>345</sup> *ibid* 380.



Member States of the EU are obliged to coordinate their action in international organisations (and at international conferences) and uphold EU's position (Article 34(1) TEU). The diplomatic and consular missions of Member States and the EU delegations cooperate, i.a. by exchanging information and carrying out joint assessments.<sup>346</sup> The importance of the role Member States play in the EU external engagement is highlighted by the fact that the Action Plan indicates responsibility (or co-responsibility) of Member States for carrying out no less than 51 out of 97 items on the plan.

An effective coordination mechanism can allow the EU to fully realise its potential as an actor within the UN fora and to bring forth the collective weight of EU institutions and Member States. This requires both efficient and cohesive action from EU bodies as well as strong ownership and burden sharing from Member States and responsibility from all parties involved.

### 1. Council Working Party on Human Rights – COHOM

Members of COHOM are human rights experts from Member States and the European Commission. In the post-Lisbon era, the chairmanship of COHOM is permanently assigned to a representative of the EEAS.<sup>347</sup> Since 2012 COHOM can meet in: capitals formation (attended by the human rights directors of EU Member States' ministries of foreign affairs) and Brussels formation (regular meetings of the Brussels – based representatives).<sup>348</sup> In case of the UN Human Rights Fora, decisions are taken in the capital-based formation.

COHOM is supported by the taskforces (experts from EEAS, Commission and Member States) in specific priority areas, for example those covered by EU Guidelines on Human Rights.<sup>349</sup>

COHOM is responsible for strategic development and implementation of the EU policy in the field of human rights and democracy (EU guidelines on human rights, the human rights dialogues and consultations with third countries and the mainstreaming of human rights in EU external action).<sup>350</sup> It identifies the EU's strategic priorities and 'oversees the overall implementation of the EU Strategic Framework and Action Plan'.<sup>351</sup> The COHOM is therefore described as being 'the nexus for the strategic development and implementation of EU human rights'.<sup>352</sup>

The work of COHOM, consisting of representatives of EU Member States and of the European Commission, takes form of developing the EU's strategy for each year and then, for each individual session of the HRC and UNGA Third Committee. The adoption of COHOM's strategic documents is always preceded by an evaluation of the EU's activities at the UN in the previous sessions of the UN Human Rights Fora. It is worth mentioning that the annual work plan is elaborated by COHOM working in cooperation with EU delegations in Geneva and New York.

J. Wouters and , K.Meuwissen note, that 'in the context of COHOM, specific EU priorities have been singled out that guide the variety of EU voices during each session of the Council. As a result, EU

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<sup>346</sup> TEU art 35.

<sup>347</sup> Bindi (n 159) 129.

<sup>348</sup> EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 41.

<sup>349</sup> Jan Wouters and Katrien Meuwissen, *The European Union at the UN Human Rights Council. Multilateral Human Rights Protection Coming of Age?*, Working Paper No 126, 15.

<sup>350</sup> EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77), 41.

<sup>351</sup> *ibid.*

<sup>352</sup> Jan Wouters and Katrien Meuwissen (n 349) 15.

coordination meetings in the HRC are less occupied with substantive discussions, but rather focus on finding burden-sharing agreements between the Union Delegation and EU Member States'.<sup>353</sup> The same can be said for the coordination in New York. Adoption of strategies in the framework of COHOM, in which all Member States are represented, means that the coordination of EU position does not need to be duplicated on the ground.

However, as strategic COHOM documents are prepared in advance of HRC and UNGA Third Committee sessions, they leave a certain degree of flexibility. As one of our interviewees have said: 'you cannot micro-manage Geneva and New York from Brussels'. Taking into account the 'fluidity of UN intergovernmental negotiation process',<sup>354</sup> the possibility of taking specific decisions on the ground is essential for EU's negotiation ability as well as its ability to react to developments.

## 2. The European External Action Service (EEAS) and EU delegations

### a) EEAS

The EEAS is a functionally autonomous body of the EU under the authority of the High Representative. It is separate from the General Secretariat of the Council and from the Commission and has the legal capacity necessary to perform its tasks and attain its objectives (Article 1 (2) of the the Council Decision 2010/427/EU). The Service supports the High Representative in fulfilling his mandate to conduct the CFSP as well as in his capacity as President of the Foreign Affairs Council and in his capacity as Vice-President of the Commission. The EEAS also assists the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations (Article 2 of the Council Decision 2010/427/EU).<sup>355</sup>

Article 3 of the EEAS Decision obliges the Service to support and cooperate with the diplomatic services of the Member States, as well as with the General Secretariat of the Council and the services of the Commission, in order to ensure consistency between the different areas of the Union's external action and between those areas and its other policies.

### b) EU Delegations

The role of the EEAS in the process of internal coordination is realised through the EU delegations on the ground in Geneva and New York. Pre-Lisbon all coordination meeting of EU members at the UN were chaired by the delegation of the Member State holding the EU presidency, but now, this role was taken over by the EU Delegation.<sup>356</sup> It is necessary to explain that according to Article 221 TFEU EU's delegation in third countries and at international organisations represent the Union and that they are placed under the authority of the High Representative.<sup>357</sup> The delegations are obliged to 'work in

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<sup>353</sup> *ibid* 17.

<sup>354</sup> Davide Zaru and Charles-Michael Geurts, 'Legal Framework for EU Participation in Global Human Rights Governance' in Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 55.

<sup>355</sup> For a detailed presentation of EEAS's relations with EU institutions see Steven Blockmans and Marja-Lissa Laatsit, 'The European External Action Service: Enhancing Coherence in EU External Action?' in Paul James Cardwell (ed) *EU External Relations Law and Policy in the Post-Lisbon Era* (Springer 2012) 142-146.

<sup>356</sup> Laatikainen (n 232) 479.

<sup>357</sup> However, the Commission may issue instructions to the Delegations under Article 221(2) TFEU, see Kačinskas (n 71) 95.

close cooperation and share information with the diplomatic services of the Member States'.<sup>358</sup> As provided for in Article 35 TEU Union's delegations, upon request by Member State, support the Member States in their diplomatic relations.<sup>359</sup>

The relationship between the EU delegations and the Brussels-based EEAS can be compared to that linking the national delegations and the ministries of foreign affairs. In practice, EU delegations have a large margin of freedom and independence in carrying out their duties as on-the-ground, but whenever the delegation needs to consult the headquarters, it contacts the Human Rights Directorate of the EEAS.<sup>360</sup>

### c) Coordination

Under Article 34 (1) TEU Member States of the EU are obliged to coordinate their action in international organisations, like the UN, and to uphold EU's position (Article 34(1) TEU). The aim of the coordination process is to achieve a common position of all Member States on issues on the agenda of the UN Human Rights Forum in question. This includes EU statements, draft resolutions sponsored by third countries and EU's own initiatives.<sup>361</sup>

The coordination of a common position of Member States in the UN Human Rights Fora is chaired by the EU Delegation (EEAS). The expectations of Member States regarding the role of the EU Delegation in the coordination meetings differ. In the times of a rotating Presidency, the Member State holding the Presidency 'coordinated the EU Member States as *primus inter pares*'<sup>362</sup> and often proposed initiatives related to that country's priorities. Now, the possibility of the EEAS pursuing the EU human rights agenda is not accepted by all Member States. Our interviews have shown that some EU states see the delegation as the secretariat and a facilitator in the process of reaching a consensus between the EU Member States. In such a case, the role of the EU delegation would be reduced to ensuring that the Member States reach a common position.

The common positions are agreed upon based on strategic EU documents provided by COHOM ahead of the specific Human Rights Council or UNGA 3<sup>rd</sup> Committee sessions. The process of coordination in Geneva/New York consists of finalisation and operationalization of EU priorities on the ground as well as finding burden-sharing agreements between the Union Delegation and EU Member States. In the beginning of the EU delegation chairmanship of the coordination meeting, a lot of time was also spent on discussions concerning strictly procedural topics. For example, some concerns related to the precise wording of the statements: some Member States opposed the use of formulation 'on behalf of the EU' and opted for the formulation 'on behalf of the EU and its Member States'.<sup>363</sup> These initial

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<sup>358</sup> Art 5 (9) of the EEAS Decision.

<sup>359</sup> Art 5 (10) of the EEAS Decision.

<sup>360</sup> Based on interviews.

<sup>361</sup> Emanuele Giaufret, 'The EU in the UNGA Third Committee' in Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 72.

<sup>362</sup> Laatikainen (n 232) 480.

<sup>363</sup> See Sebastian Barkowski and Katarzyn Wiatr, 'External Representation of the European Union and Shared Competences – an Unsolved Puzzle' (2013) 15 Yearbook of Polish European Studies 166-168.

doubts have now been mostly resolved. Taking our example, some statements are headed 'on behalf of the EU', some 'on behalf of the EU and its Member States', depending on the venue and topic.

It has been said by our interviewees that with COHOM providing strategic guidance, the amount of discussions concerning thematic issues in coordination meetings has decreased as the vital points have already been agreed upon. However, with the dynamics of the situation on the ground, many decisions have to be taken on the spot. In practice, when it is impossible to reach a consensus on the expert level, an ad hoc meeting of the Heads of Missions is convened.

In practice, the issue of EU's internal coordination is said to be one of the main reasons for EU's 'difficulties' at the UN. As K. E. Smith explains: 'an unwieldy, slow and time-consuming internal coordination process means the EU devotes too little attention to working with other UN Member States'.<sup>364</sup> Interviews conducted for this report indicate that the coordination has improved in the post-Lisbon period, especially due to improvement of the strategy planning process. However, the EU continues to be faced with some problems. In particular, other states still claim that once the EU reaches a common position it becomes inflexible in the negotiations process. As one of our interviewees have said: 'The main problem with the EU is that when the 28 Member States reach a consensus "it is impossible to change a comma"'. These opinions are not shared by the representatives of the EEAS and EU Member States. According to them, the coordinated position of the EU can be quickly re-coordinated in order to include other states' proposals thanks to the fast-track procedure.

The coordination meetings concern not only thematic issues, but also burden sharing. The concept of burden sharing concerns the division of work between the EU delegation and the MS. In practice, an individual Member State is appointed as 'EU burden-sharer' and follows up a specific topic by attending informal negotiations of draft resolutions etc.<sup>365</sup> The EU Action Plan on Human Rights and Democracy specifically attributed the responsibility for an effective burden sharing in the UN to, both, the Member States and the EEAS. According to the Plan 'Strengthen the existing system of burden sharing so as to make best use of Member States capacity and expertise, to strengthen the ownership and responsibility of all EU partners in the formulation and implementation of EU human rights policy'.<sup>366</sup> The capacities of different Member States depend mostly on the quantity of diplomatic staff on the ground. Clearly, countries which have big delegations in Geneva and New York may take up more tasks related to the realisation of the common EU human rights policy. The burden sharing allows the EU to make use of the good relations of the Member State in question with other countries at the UN.

A good working relationship between the EU delegation and the Member States requires good communication. Some members of national delegations on the ground have expressed the view that the EU does not share enough information with them. On the other hand, the EEAS believes that Member States should share information pertinent to the EU received in bilateral contacts by national Ministries of Foreign Affairs. These opinions show that what is lacking is a feeling of mutual trust.

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<sup>364</sup> Karen E. Smith, 'The European Union and the Politics of Legitimization at the United Nations' (2013) 18 *European Foreign Affairs Review* 64.

<sup>365</sup> Jan Wouters and Katrien Meuwissen (n 349) 145.

<sup>366</sup> Action Plan, outcome 35.

### 3. Conclusions

The obvious advantage of the EU is the capability of acting as a powerful regional structure with clear common objectives and aims in the field of human rights. The process of internal coordination leads to the adoption of a common position of the EU Member States. As a result, the position can be presented at UN human rights fora by the delegations of all Member States in a consistent manner.

The internal coordination of the EU is carried out during meetings organised by the delegations in New York and Geneva. Common positions are agreed upon basing on strategic EU documents provided by COHOM ahead of HRC/UNGA 3<sup>rd</sup> Committee sessions. The efficiency on COHOM was improved by the creation of the so called Brussels- formation and it now can deal with its increasing workload. This is especially important for the process of coordination, because the adoption of strategies in the framework of COHOM (in which all Member States are represented) means that the coordination of EU position does not need to be duplicated on the ground.

The role of the EEAS in the process of internal coordination is realised through the EU delegations on the ground, which took over the chairmanship of coordination meeting from the rotating presidency. The Member States still see the EEAS's role in the coordination process differently; however, some initial procedural disputes have already been resolved.

With the work of COHOM on strategies, the coordination meeting in Geneva and New York focus on finalisation of EU priorities and on finding burden-sharing agreements between the Union Delegation and EU Member States. Burden sharing makes use of EU and Member States potential and results in a more effective implementation of EU's human rights policy at the UN.

## IV. Goals and objectives of the EU at the UN

### A. Substantive goals and objectives of the EU at the UN

This section examines the EU's aims and objectives in UN human rights fora, focusing firstly on the Union's priorities with regard to thematic human rights issues, secondly on its country-specific priorities and thirdly on its aims and objectives relating to the institutional architecture of the UN. Each of those categories will be analysed in the light of three different factors: the content of the policy, its development over time and the consistency of the policy. The first two categories will additionally be examined with regard to their relationship with particular UN fora. In order to keep the scope of the analysis manageable for the sake of this report, the timeframe will be limited to the period between 2000 and 2014 – from the 55<sup>th</sup> session of the UNGA Third Committee until today.

#### 1. Methodology

There are a variety of methods to define and assess policy priorities. Priorities may be inferred from the degree of activity the EU demonstrates with regard to a given issue. For example, the number and strength of resolution initiatives, statements or other measures within the UN framework may indicate a certain focus of EU policy or lack thereof. Priorities may also be derived from strategic documents of the EU. Every year, the Council publishes the EU's 'Priorities at the UN human rights fora' and the priorities for the upcoming sessions of the UNGA, which consistently refer to a list of 'key human rights concerns'. The first approach risks conflating priorities with practical implementation and thus may overlook those issues that were set as a priority but insufficiently implemented in practice. The second approach may yield an incomplete picture if it only takes into account publicly declared priorities but ignores the more sensitive issues, which the EU might not expressly declare a priority but nevertheless address through its engagement with the UN.

In order to capture the benefits and remedy the deficiencies of both approaches, this chapter therefore combines both methods. '**Priorities**' in the sense of this analysis are defined as those **human rights issues that are expressly included in the strategic documents** listed in the following paragraph. They include every thematic, country-specific or institutional issue which the Council describes as a 'key human rights concern', to which it affirms its commitment or with regard to which it sets out certain actions. With regard to those issues that are not covered by these strategic documents, additional attention will be paid to the **EU's action in practice**, in particular to its statements delivered in the UNGA Third Committee, in the CHR and in the HRC<sup>367</sup> in order to discover those policy priorities which might appear only in internal documents.

While the framework and process for setting human rights aims, goals and objectives within the various EU structures will be analysed more in detail in the subsequent chapter (section IV.B.) it is necessary to already give a brief overview of the various documents in which the EU lays down its human rights priorities for UN bodies, and which have served as the main data sources for this chapter.

- **European Union medium-term priorities at the United Nations (2012-2015).**<sup>368</sup> The 'Medium-term Priorities' were adopted by the PSC on 4 May 2012. They set core aims and objectives

<sup>367</sup> See HRC Res 5/1 (2006) UN Doc A/HRC/RES/5/1 for the items of the HRC's permanent agenda.

<sup>368</sup> Political and Security Committee, 'European Union medium-term priorities at the United Nations (2012-2015)', Doc No 9820/1/12 Rev 1, 10 May 2012.

for EU action at the UN concerning the three ‘key pillars’ of the UN: peace and security, sustainable development and human rights. They are to guide and permeate the annual documents containing EU short-term priorities for the period of 2012 to 2015, thereby enhancing the stability and predictability of EU policy-making. The ‘human rights’ chapter of the Medium-term Priorities contains both institutional and thematic human rights objectives for the EU, but is silent with regard to country-specific priorities, thus leaving their selection to the annual priorities documents.

- **EU Strategic Framework and Action Plan on Human Rights and Democracy:**<sup>369</sup> The ‘Strategic Framework’ and the accompanying ‘Action Plan’ were adopted by the Council on 25 June 2012. The Strategic Framework affirms the Union’s commitment to ‘promote human rights in all areas of its external action without exception’, lists the EU thematic human rights priorities which are to be implemented, and contains aims and objectives with regard to the institutional architecture of the UN. The Action Plan translates these priorities into concrete actions, assigned to specific EU actors. Like the Medium-term priorities, the Strategic Framework and Action Plan should ideally inform the annual priorities which the Council of the EU develops for the UN human rights fora in general and for the UNGA in particular.
- **EU priorities for the United Nations General Assembly:** In June or July of each year the Council adopts priorities for the upcoming session of the UNGA. For the period under review in this chapter this includes the following documents:
  - European Union Priorities for the 55th United Nations General Assembly, 1 July 2000.
  - European Union Priorities – 56th Session of the United Nations General Assembly, 12 July 2001.
  - EU Priorities for the 57<sup>th</sup> General Assembly, 22 July 2002.
  - EU priorities for the 58<sup>th</sup> General Assembly, 1 July 2003.
  - European Union priorities for the 59<sup>th</sup> session of the United Nations General Assembly, 7 July 2004.
  - European Union priorities for the 60<sup>th</sup> session of the United Nations General Assembly, 22 July 2005.
  - EU Priorities for the 61<sup>st</sup> General Assembly of the United Nations, Doc. No. 11380/06, 11 July 2006.
  - EU Priorities for the 62<sup>nd</sup> General Assembly of the United Nations, Doc. No. 10184/07, 5 June 2007.
  - EU priorities for the 63<sup>rd</sup> United Nations General Assembly, Doc. No. 9978/08, 27 May 2008.
  - EU priorities for the 64<sup>th</sup> United Nations General Assembly, Doc. No. 10809/09, 9 June 2009.
  - EU priorities for the 65<sup>th</sup> United Nations General Assembly, Doc. No. 10170/10, 25 May 2010.
  - EU Priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations, Doc. No. 11298/11, 10 June 2011.
  - EU Priorities for the 67<sup>th</sup> Session of the General Assembly of the United Nations, Doc. No. 12851/12, 23 July 2012.
  - EU Priorities for the 68<sup>th</sup> Session of the General Assembly of the United Nations, Doc. No. 11521/1/13 REV 1, 15 July 2013.
  - EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations, Doc. No. 10856/14, 23 June 2014.

Except for the 59<sup>th</sup>-61<sup>st</sup> UNGA these documents contain a separate chapter on human rights priorities, including thematic, country-specific and institutional aims and objectives. Other

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<sup>369</sup> Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012.

than the titles of the documents suggest, they do not only set priorities for the UNGA and its subsidiary bodies (in particular the Third Committee and the HRC), but also for the UN human rights architecture in general, including the OHCHR and the treaty monitoring bodies.

- **EU Priorities at the UN Human Rights Council:** In February 2012 the Council adopted a strategy document on its priorities for the upcoming sessions of the HRC, containing thematic, country-specific and institutional aims and objectives. The document aimed to increase the predictability of the EU's action at the HRC by setting out priorities for the entire calendar year. Nevertheless it remained the only one of its kind, as it was replaced in the following year with the EU priorities at the UN Human Rights Fora.
  - Council Conclusions on EU priorities at the UN Human Rights Council, Doc. No. 6813/12, 27 February 2012.
- **EU priorities at the UN Human Rights Fora:** In February 2013 the Council adopted for the first time a list of priorities covering the entire UN human rights system and the entire calendar year. This set the basis for a new practice which has continued in February 2014. For the period under review this chapter therefore examines the following documents:
  - Council Conclusions on EU priorities at the UN Human Rights Fora, Doc. No. 6398/13, 18 February 2013.
  - Council Conclusions on EU priorities at the UN Human Rights Fora, Doc. No. 6181/14, 10 February 2014.

This new approach is in line with no. 34 of the Action Plan which contained the commitment to '[d]evelop and agree an annual approach to the identification of priorities at the UN – and where relevant the ILO – across all human rights related meetings in Geneva and New York, in consistency with the midterm priorities defined for its action at the UN'. The earlier identification of priorities is supposed to allow for more proactive outreach and to enhance the consistency and stability of EU external action. Ideally, the EU priorities at the UN Human Rights Fora should inform and be consistent with the EU priorities for the UNGA session, which are adopted a few months later.

- **EU Annual Report on Human Rights and Democracy in the World:** In its annual human rights report the EU gives an overview of its activities concerning the promotion of democracy and human rights in the preceding year. These reports usually include thematic and geographic chapters, as well as a section on action in multilateral fora. They help to identify the fora in which the EU has primarily pursued its declared human rights aims and objectives, and frequently (in particular in earlier years) name additional priorities which were not listed in the preceding priorities documents. For the period under review in this chapter examines the following documents:
  - Annual Report on Human Rights 2001.
  - EU Annual Report on Human Rights 2002, 21 October 2002.
  - EU Annual Report on Human Rights, 13 October 2003.
  - EU Annual Report on Human Rights, 13 September 2004.
  - EU Annual Report on Human Rights 2005, 3 October 2005.
  - EU Annual Report on Human Rights, Doc. No. 13522/1/06 REV 1, 4 October 2006 (covering the period from July 2005 to June 2006).
  - EU Annual Report on Human Rights 2007, Doc. No. 13288/1/07 REV 1, 18 October 2007 (covering the period from 1 July 2006 to 30 June 2007).



- EU Annual Report on Human Rights 2008, Doc. No. 14146/1/08 REV 1, 29 October 2008, (covering the period from July 2007 to June 2008).
- Human rights and democracy in the world – Report on EU action, Doc. No. 8363/1/10 REV 1, 11 May 2010 (covering the period from July 2008 to December 2009).
- EU Annual Report on Human Rights and Democracy in the World in 2010, Doc. No. 11501/2/11 REV 2, 26 September 2011 (covering 2010).
- Human Rights and Democracy in the world: report on EU action in 2011, Doc. No. 9238/12, 6 June 2012 (covering 2011).
- EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports), Doc. No. 9431/13, 13 May 2013 (covering 2012).
- EU Annual Report on Human Rights and Democracy in the World in 2012 (Country Reports), Doc. No. 15144/13, 21 October 2013 (covering 2012).
- EU Annual Report on Human Rights and Democracy in the World in 2013, Doc. No. 11107/14, 23 June 2014 (covering 2013).

Within each document, searches were conducted for keywords indicating thematic, country-specific or institutional aims and objectives. This data allows us to draw preliminary conclusions on the range, development and consistency of the Union's human rights priorities at the UN. With regard to the gaps identified through this analysis, an additional look was taken at EU statements at the HRC<sup>370</sup> as well as at EU statements at the UNGA Third Committee,<sup>371</sup> in order to identify additional policy objectives. With regard to the fora in which the EU promotes these objectives, it was examined in which way the Annual Reports establish connections between certain thematic/country-specific priorities and certain UN fora.

Additionally, the findings of the documents were assessed through a series of **interviews** conducted in Geneva, Brussels and New York between October 2013 and September 2014. Interview partners included senior EEAS and UN officials, as well as diplomats from EU Member States' and third countries' diplomatic services. In order to ensure an open dialogue with the interviewees, all names and affiliations have been kept confidential.

## 2. Thematic aims and objectives

Thematic priorities refer to a certain human rights or human rights issue, e.g. individual liberties or the rights of vulnerable groups. EU policy documents display an increasing amount and variety of thematic priorities for UN human rights fora. For the year 2014 alone there were five different EU policy documents in force,<sup>372</sup> containing between six and 18 distinct thematic human rights priorities. By comparison, in 2000 only a single EU policy document dealt with human rights priorities at the UN,<sup>373</sup> explicitly naming only two distinct thematic issues. This development raises questions about

<sup>370</sup> For a list of EU statements at the HRC see <[www.eeas.europa.eu/delegations/un\\_geneva/eu\\_statments/human\\_right/index\\_en.htm](http://www.eeas.europa.eu/delegations/un_geneva/eu_statments/human_right/index_en.htm)> accessed 6 October 2014.

<sup>371</sup> For a list of EU statements at the New York UN fora see <[eu-un.europa.eu/articles/articleslist\\_s7\\_en.htm](http://eu-un.europa.eu/articles/articleslist_s7_en.htm)> accessed 6 October 2014.

<sup>372</sup> Namely the Medium-term priorities (n 368), the Strategic Framework and the Action Plan (n 369), the Council Conclusions on EU priorities at the UN Human Rights Fora, Doc No 6181/14, 10 February 2014, and Council of the European Union, 'EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations', Doc No 10856/14, 23 June 2014.

<sup>373</sup> Namely Council of the European Union, 'European Union Priorities for the 55th United Nations General Assembly', 1 July 2000.

the scope and balance of the selected aims and objectives, about their evolution and consistency but also about the fora in which they are promoted.

### *a) Content*

A brief look at the abovementioned EU policy documents shows that the Union's thematic priorities cover a very broad range of human rights, mostly from the area of civil and political rights, considerably less from the area of economic, social and cultural rights. Since 2000, EU priorities have comprised the following thematic areas:

- Women's rights and gender issues,
- The opposition against the death penalty,
- Freedom of religion or belief,
- Freedom of expression,
- Freedom of association and assembly,
- Eradication of torture and other cruel, inhuman and degrading treatment or punishment,
- Eradication of racism, racial discrimination, xenophobia and related intolerance,
- Support for Human Rights Defenders, civil society and non-governmental organisations,
- Rights of LGBTI persons,
- Rights of indigenous people,
- Rights of people with disabilities,
- Children's rights,
- Rights of the youth,
- Rights of minorities,
- Rights of refugees,
- Rights of migrants,
- Free media,
- Economic, social and cultural rights (in particular the right to safe drinking water, sanitation and food),
- Business and human rights,
- Private military and security companies and human rights,
- Right to fair trial and equality before the law.

Of these 22 distinct thematic aims and objectives, it is possible to identify a smaller group of three core priorities. Criteria for the inclusion in this group are their long-standing and nearly continuous listing in EU policy documents, as well as the fact that the EU has actively and repeatedly tabled resolution initiatives on these issues in the UNGA Third Committee, the HRC or both.

First, the EU's opposition against the **death penalty** ranks among its core thematic human rights priorities. It has been included in the annual priorities for the UNGA sessions in 2001-2003, 2007-2010, and again since 2012, as well as in the 2014 Council conclusions on EU priorities at the UN Human Rights Fora and in the 2012 Strategic Framework. Action no. 16 of the Action Plan provides that EEAS and EU Member States shall '[a]ctively contribute to lobbying on the UNGA 67 Resolution on the death penalty moratorium, in order to increase support among States while developing also further the content of the initiative'. The EU has been an active member of a cross-regional initiative supporting a moratorium on the use of the death penalty, which led to the successful adoption of Resolutions 62/149, 63/169, 65/206, 67/176 with steadily growing support.

Secondly, the promotion of the **rights of the child** is one of the core objectives of the EU at the UN. Children's rights have been listed in the annual priorities for the UNGA sessions between 2000 and 2003, in 2006, and again continuously since 2009. They are listed in the 2013 and 2014 Council conclusions on EU priorities at the UN Human Rights Fora and in the 2012 Strategic Framework. Action no. 19 of the Action Plan contains a series of measures to be undertaken by the EU to promote and protect children's rights, including the continued support of the work of the UN Special Representative of the Secretary-General for Children and Armed Conflict and of UNICEF. Through the Lisbon Treaty, the EU's goal to promote the rights of the child in its external relations has been enshrined in EU primary law. Article 3(5) TEU states that '[i]n its relations with the wider world, the Union shall [...] contribute to [...] the protection of human rights, in particular the rights of the child [...]'. In a stable partnership with GRULAC, the EU annually co-sponsors resolutions on child rights in the UNGA Third Committee and the HRC.

Lastly, **freedom of religion or belief** has been listed as one of the EU's objectives in the annual priorities for the UNGA sessions since 2009, as well as in both Council conclusions on EU priorities at the UN Human Rights Fora 2013 and 2014. It is mentioned as a priority in the 2012 Strategic Framework, and in the Action Plan, where action no. 23(b) obliges the EEAS and the EU Member States to '[p]resent EU initiatives at the UN level on freedom of religion or belief, including resolutions at General Assembly and Human Rights Council'. In practice this priority has been most notably implemented through the introduction of EU-sponsored resolutions on the elimination of all forms of intolerance based on religion or belief in the UNGA Third Committee and the HRC.

The overwhelming majority of EU thematic human rights priorities at the UN stems from the field of **civil and political rights**, covering a considerable part of the rights enshrined in the ICCPR. The EU's focus lies particularly in the area of individual liberties, namely freedom of religion or belief (Article 18 ICCPR), freedom of expression (Article 19 ICCPR), freedom of assembly (Article 21 ICCPR), freedom of association (Article 22 ICCPR), the protection of the child (Article 24 ICCPR) and the rights of minorities (Article 27 ICCPR). The EU also lists two rights to physical integrity among its priorities, namely the prohibition of torture and cruel, inhuman or degrading punishment (Article 7 ICCPR) and the death penalty (Article 6 ICCPR). With regard to the latter, the EU's stance to oppose the death penalty in its entirety goes beyond the provisions of the ICCPR, and is in line with the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, which so far counts 81 parties. EU priorities are less pronounced in the area of procedural fairness and the rights of the accused. Merely the Strategic Framework and the Action Plan refer to the right to fair trial and equality before the law.<sup>374</sup> EU priorities do not cover the area of liberty and security of person, in particular the freedom from arbitrary arrest or detention (Articles 9-11 ICCPR). They are also silent on issues of slavery, freedom of movement, and marriage (Articles 8, 12, 23 ICCPR).

It is notable that **economic, social and cultural rights** play a significantly less prominent role in the various EU lists of human rights priorities. They have only recently been listed in the annual priorities for the UNGA sessions since 2011, appear in the 2014 Council conclusions on EU priorities at the UN Human Rights Fora and in the 2012 Strategic Framework. While civil and political rights are addressed individually in EU policy documents (see above), economic, social and cultural rights are usually

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<sup>374</sup> Strategic Framework (n 369) 3; Action Plan (n 369) no 26.

introduced as a group – ‘the realization of all Economic, Social and Cultural Rights’<sup>375</sup> – and followed by two to three examples, typically including the right to safe drinking water, to sanitation and to food. The Strategic Framework provides that the ‘EU will intensify its efforts to promote economic, social and cultural rights’ and action no. 9 of the Action Plan stipulates that the EU Member States, the EEAS and the Commission will ‘[c]ontribute to shaping the agenda on economic, social and cultural rights with specific focus on the UN Human Rights Council and in close cooperation with UN Special Rapporteurs covering the respective rights’. Nevertheless, economic, social and cultural rights were entirely absent from the 2012 Council conclusions on EU priorities at the UN Human Rights Council and the 2013 Council conclusions on EU priorities at the UN Human Rights Forum, and have not yet played a significant role with regard to EU involvement at the HRC. Furthermore, EU priorities display a very narrow focus on the right to water, to sanitation and to food. Important rights, such as the right to social security (Article 9 ICESCR), to physical and mental health (Article 12 ICESCR) and to education (Article 13 ICESCR) have so far not been generally included among EU priorities. A look at the practical implementation of this priority shows a very similar picture. The EU has repeatedly confirmed its commitment to economic, social and cultural rights in its item 3 statements at the HRC<sup>376</sup> and in the UNGA Third Committee.<sup>377</sup> Nevertheless, these statements were always very cursory compared to the significantly higher attention paid to civil and political rights. Here again, the issue of access to safe drinking water and sanitation often served as the only example for an economic right.<sup>378</sup> However, it may not be overlooked, that while the EU struggles to promote economic, social and cultural rights in a general manner, it does so very actively with regard to certain rights holders. In particular through its resolutions on the rights of the child, the EU has repeatedly brought far-reaching economic, social and cultural rights to the table, for example the right to physical and mental health,<sup>379</sup> to education<sup>380</sup> and to an adequate standard of living.<sup>381</sup>

While the EU considers a variety of vulnerable groups among its priorities, namely children, women, LGBTI persons, indigenous people, people with disabilities, minorities, refugees and migrants, one group that has received particular attention at the UN level in recent years is absent from the EU policy

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<sup>375</sup> EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations (n 372), ch ‘Human Rights’ para 3.1.

<sup>376</sup> See only for the period since 2012: Statement by H.E. Ambassador Steffen Smidt, Permanent Representative of Denmark to the United Nations Office in Geneva on behalf of the European Union, HRC 19<sup>th</sup> session, 7 March 2012, 2-3; Statement by H.E. Mr. Steffen Smidt, Ambassador, Permanent Representative of Denmark to the United Nations Office in Geneva on behalf of the European Union, HRC 20<sup>th</sup> session, 26 June 2012, 2; Statement by H.E. Mr. Leonidas Pantelides, Ambassador, Permanent Representative of Cyprus on behalf of the European Union, HRC 21<sup>st</sup> session, 14 September 2012, 4; Statement by H.E. Mr. Gerard Corr, Ambassador, Permanent Representative of Ireland, on behalf of the European Union, HRC 22<sup>nd</sup> session, 8 March 2013, 2; Statement by H.E. Mr. Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 25<sup>th</sup> session, 14 March 2014, 2; Statement by H.E. Mr. Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 26<sup>th</sup> session, 18 June 2014, 2.

<sup>377</sup> See e.g. European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67<sup>th</sup> General Assembly Third Committee Item 69 (b and c): Human Rights, 6 November 2012; European Union Statement delivered by Rafael de Bustamante, Delegation of the European Union to the United Nations, at the United Nations 67<sup>th</sup> General Assembly Third Committee Items 69 (a, d): Promotion and Protection of Human Rights, 23 October 2012.

<sup>378</sup> Cf Statement by H.E. Mr. Leonidas Pantelides, Ambassador, Permanent Representative of Cyprus on behalf of the European Union, HRC 21<sup>st</sup> session, 14 September 2012, 4.

<sup>379</sup> HRC Res 22/32 (2013) UN Doc A/HRC/RES/22/32.

<sup>380</sup> HRC Res 19/37 (2012) UN Doc A/HRC/RES/19/37.

<sup>381</sup> *ibid.*

documents. The issue of the **rights of older persons** holds a high priority particularly for the Latin American states and for a number of developing countries, who support the development of a binding international instrument on the rights of older persons. The EU is among the opponents of a new instrument, arguing that there exists no normative gap, but that the existing human rights framework including the ICCPR, the ICESCR, the CRPD and CEDAW provide sufficient protection. Nevertheless, the EU recognised that the practical implementation and application of these rights for the protection of the elderly is often lacking and requested to pay greater attention this issue in the framework of the UPR, in the work of treaty bodies and relevant UN human rights mandate holders, such as Special Rapporteurs, and through mainstreaming the issue in the work of UN agencies. Despite these detected shortcomings, the rights of the elderly do not appear in the priority lists of the EU. Only the Strategic Framework refers to the elderly and only with regard to age related discrimination: The EU will 'fight discrimination in all its forms through combating discrimination on grounds of [...] age'.<sup>382</sup> This commitment is neither picked up in the Action Plan, nor has it entered the annual priorities for the UNGA or for the UN human rights bodies so far. A look at the statements delivered by the EU at the HRC and the Third Committee shows a similar picture.

It can be concluded that EU policy documents on human rights objectives at the UN today contain a broad range of thematic human rights priorities. These priorities are heavily slanted towards civil and political rights, whereas economic, social and cultural rights have only been unenthusiastically included since 2011, and appear to be mostly reduced to the right to drinking water, sanitation and food, leaving out the more difficult and far-reaching guarantees of social security, physical and mental health and education. Given that economic, social and cultural rights have a very high priority particularly for developing countries, the EU's reluctant stance has done its credibility as a human rights champion a disservice. Several of the interviewees argued during the interviews conducted for this report, that the EU needed to put a stronger focus on economic, social and cultural rights.<sup>383</sup> However, the EU's difficult internal situation, due to the lack of unity among EU Member States on the issue, was also acknowledged.<sup>384</sup>

Furthermore, it is noteworthy, that those issues on which the EU's internal record is regularly and most strongly criticised by third countries – the rights of refugees and migrants – are among the weakest priorities for its external action. Only the Strategic Framework refers to all three vulnerable groups, stating that the EU will 'fight discrimination in all its forms through [...] advocating for the rights of [...] persons belonging to minorities, [...] refugees, migrants [...]'.<sup>385</sup> It is important to stress, that even the Strategic Framework merely refers to the fight against discrimination, and not to any further reaching rights, in particular economic, social and cultural rights. The Action Plan only picks up on the rights of persons belonging to minorities and only in an action that is not geared toward multilateral fora. The Medium-term Priorities and all annual priorities for UN human rights fora and the UNGA omit those three vulnerable groups. It follows that on those issues that prove to be difficult internally, the EU appears to be not very vocal externally either.

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<sup>382</sup> Strategic Framework (n 369) 2.

<sup>383</sup> Based on interviews.

<sup>384</sup> Based on interviews.

<sup>385</sup> Strategic Framework (n 369) 2.

### *b) Development of priorities over time*

As has already been indicated above, the number of listed distinct EU thematic human rights priorities for UN bodies has significantly increased since 2000. The priorities for the 55<sup>th</sup> session of the UNGA, for example, only explicitly referred to the fight against racism and to children's rights.<sup>386</sup> An increase is noticeable with regard to the 57<sup>th</sup> session of the UNGA, and then again prior to the 64<sup>th</sup> session of the UNGA, where the priorities list included a paragraph on the general EU human rights priorities:

General EU priorities in the field of human rights are effective promotion and protection of human rights, including the rights of members of vulnerable groups, abolition of the death penalty, freedom of expression, freedom of religion, free media, rights of the child, protection of human rights defenders, cooperation with civil society and non-governmental organisations and cooperation with international human rights mechanisms.<sup>387</sup>

This second increase coincides with the year of the entry into force of the Lisbon Treaty, which provided for a strengthened human rights commitment of the Union in its external relations.

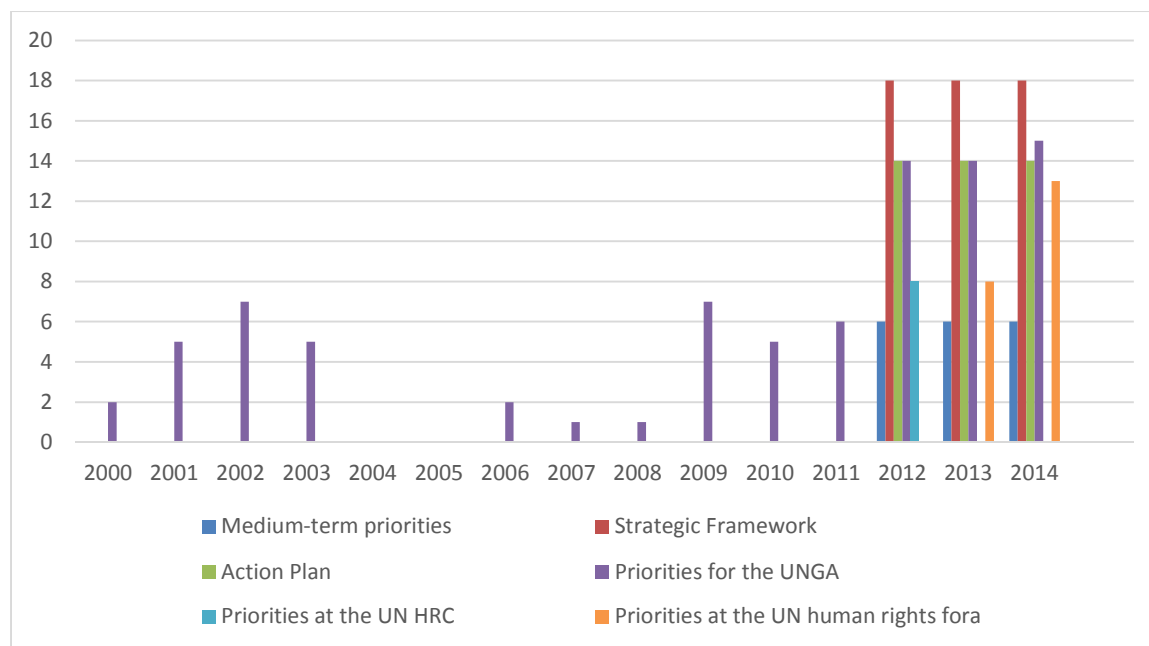
2012 saw the adoption of the Medium-term Priorities and of the Strategic Framework/Action Plan. While the Medium-term Priorities only contained a moderate list of six thematic aims and objectives, the Strategic Framework/Action Plan has been called a 'Christmas tree', comprising a total of 18 distinct thematic human rights priorities. This catalogue has since largely been mirrored in the priorities for the UNGA. From the 66<sup>th</sup> to the 67<sup>th</sup> session the list of the EU priorities for the UNGA jumped from six to 13 entries, reaching a record of 15 thematic priorities in 2014. The 2012/2013 EU priorities at the UN Human Rights Council/UN Human Rights Fora started off with a comparatively slim list of eight thematic aims and objectives, but increased the number to 13 priorities in 2014.

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<sup>386</sup> European Union Priorities for the 55th United Nations General Assembly (n 373).

<sup>387</sup> Council of the European Union, 'EU priorities for the 64th United Nations General Assembly', Doc No 10809/09, 9 June 2009, para 45.

Figure 2: Evolution of EU human rights priorities at UN human rights fora



[Note that the columns for the Medium-term priorities, the Strategic Framework and the Action Plan refer to a single document each, covering the period between 2012-2014, whereas the columns for the Priorities for the UNGA and the Priorities at the UN Human Rights Council/UN Human Rights Fora refer to a separate document each year.]

Figure 2 illustrates this increase. The annual EU Priorities for the UNGA were the only general document to set out the Union's human rights aims and objectives at the UN until 2011, starting at a moderate level of one to two explicit objectives for the upcoming year, and displaying two peaks in 2002 and again in 2009, the latter coinciding with the Lisbon Treaty. In 2012, with the Medium-term priorities, the Strategic Framework and the Action Plan, three medium-term policy documents were adopted, informing the annual EU priorities for the UNGA and causing a sharp rise of stated aims and objectives. In 2012, 2013 and 2014 the additional EU priorities at the UN Human Rights Council/UN Human Rights Fora were adopted, adding another layer of priorities. For an overview of thematic priorities per policy document see below section 2.c.

The issues of children's rights, death penalty, freedom of religion or belief and women/gender are among the longest-standing human rights priorities of the EU, appearing in a considerable number of EU priorities for the UNGA since 2000.<sup>388</sup> A number of thematic issues have only been listed as EU priorities since 2011/2012, among them freedom of association and assembly, the rights of indigenous people, minorities, migrants and refugees, and economic, social and cultural rights. There are no thematic human rights priorities which have disappeared over time. On the contrary, it is noticeable that new priorities tend to stick, which leads to an accumulation of aims and objectives. The reason for this can be found in an observation made by one of the persons interviewed for this study: 'There are limits to what you can drop. It will send the wrong political signal.'<sup>389</sup>

<sup>388</sup> The right to freedom of religion or belief only appears since the EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387).

<sup>389</sup> Interview under Chatham House Rule, September 2014.

Today, all EU policy documents on human rights objectives at the UN contain veritable ‘shopping lists’ of thematic priorities. It seems questionable, whether a list of e.g. 15 thematic priorities for the 69<sup>th</sup> session of the UNGA can still be effectively implemented in practice. In particular it might be questioned whether the EU possesses the required resources to promote and be involved in all of these issues, even if the burden-sharing mechanism worked to perfection. The time and man-power needed to deliver statements, prepare initiatives, cooperate with UN actors and third countries, to lobby and conduct outreach, but also to coordinate internally, is immense. Even apart from these resource-related concerns, it might be asked whether a list of 15 priorities can still be called successful prioritization. On the contrary, these ‘shopping lists’ might give third countries the impression that the EU stands for everything and for nothing, thus weakening its credibility as a human rights advocate.

Nevertheless, the officials interviewed for this study were split on whether the considerable number of thematic policy priorities at the UN should indeed be considered as problematic. One interviewee stated that the EU ‘should continue to do this’, affirming that the EU ‘can contribute to all those issues in a way that is good for human rights’.<sup>390</sup> Another explained that ‘you need to have a human rights antenna in lots of different areas, otherwise you are not effective’.<sup>391</sup> On the other hand, several interviewees saw difficulties with the current approach. As one interviewee stated: ‘The EU is overextended in the field of human rights. The current approach leads the EU to taking a position on everything that is on the agenda and voicing its opinion on every item. This overextension waters down the EU presence, because it is not clear what exactly are the EU’s priorities as far as human rights are concerned.’<sup>392</sup> This was corroborated by a second interviewee: ‘The EU lacks substantive prioritization. It is unclear which areas of human rights and which issues are on the top of the EU’s list’. Although – as demonstrated above – the EU shows a certain focus on a few core issues, particularly the death penalty, children’s rights and freedom of religion or belief, it appears that third countries are critical of the EU’s ownership. One interviewee explained: ‘The EU could use taking ownership of some specific issues related to human rights. While the EU’s position is visible in several areas (mostly related to civil and political rights), there are no particular items that appear strongly ‘owned’ by the EU’.<sup>393</sup>

It might therefore be conducive to the EU’s effective human rights promotion at the UN, if it achieved to narrow down its thematic priorities to a few core issues which it then supported with the full weight of its diplomatic, political and economic power and with full ownership. This approach should also take into account the need to achieve a certain balance between civil and political rights on the one hand and economic, social and cultural rights on the other hand, as indicated above. Rather than dropping some human rights issues entirely, it might be considered to ‘prioritise the priorities’, e.g. singling a few core issues out for resolution initiatives and other time-intensive and proactive actions, and to create other categories of human rights priorities in which the EU will be involved to a lesser degree, e.g. by making statements or participating in discussions. As one interviewee said, the current

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<sup>390</sup> Interview under Chatham House Rule, September 2014.

<sup>391</sup> Interview under Chatham House Rule, September 2014.

<sup>392</sup> Interviews under Chatham House Rule, October 2013

<sup>393</sup> Interviews under Chatham House Rule, October 2013



approach of the EU is 'a bit repetitive and not very visible'.<sup>394</sup> Stronger prioritization might provide an effective remedy.

### *c) Consistency of priorities*

The parallel existence of a multitude of different documents containing EU thematic human rights priorities for the EU's engagement in the UN human rights fora raises questions about the consistency of the policy framework. Ideally, the Medium-term Priorities and the Strategic Framework/Action Plan should inform all EU priorities for the UNGA since the 67<sup>th</sup> session and all EU priorities at the UN Human Rights Fora since 2013. Additionally, the EU priorities at the UN Human Rights Fora should ideally inform the EU priorities for the UNGA of the corresponding year. Lastly, the Action Plan should mirror the Strategic Framework in order to create the highest degree of effectiveness.

An analysis of all above-listed policy documents since 2012 (the year the EU priorities for the UNGA were supplemented by the Medium-term Priorities and the Strategic Framework/Action Plan) shows a generally high degree of consistency. The six thematic human rights aims and objectives of the Medium-term Priorities<sup>395</sup> are uniformly mirrored in the subsequently adopted Strategic Framework/Action Plan, EU priorities for the UNGA and EU priorities at the UN Human Rights Fora with the sole exception of the 2013 EU priorities at the UN Human Rights Fora in which the death penalty is not listed as a priority.<sup>396</sup> A comparison of the Strategic Framework with the annual priorities for the UN human rights fora in general and the UNGA in particular shows, that the largest part of the aims and objectives contained in the Strategic Framework has been taken up in the annual priorities. However, the issues of discrimination, of fair trial and equality before the law, as well as the rights of minorities, refugees and migrants have so far not found their way into the concrete lists of aims and objectives of the EU at the UN.

A comparison of the annual priorities for the UNGA, and the 2014 EU priorities for UN human rights fora evidences a large degree of consistency. The priorities for the UNGA mirror the priorities for UN human rights fora but add the rights of people with disabilities, which is surprisingly absent from the latter document. The comparison of the 2013 priorities for the UNGA and for the UN human rights fora in general on the other hand shows a larger degree of discrepancy. The priorities for the UN human rights fora are considerably slimmer, omitting the death penalty, torture, racism, the rights of indigenous people and economic, social and cultural rights, which have been added in the later priorities for the 69<sup>th</sup> UNGA session.

A comparison of the 2012 Strategic Framework with the Action Plan shows, that most thematic priorities of the Strategic Framework have been translated into concrete actions in the Action Plan. Nevertheless, four thematic areas have been left out in the Action Plan, namely freedom of association and assembly, discrimination, as well as the rights of refugees and migrants. They are thus merely contained in the list of general EU priorities, but no action to ensure their implementation has been suggested.

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<sup>394</sup> Interview under Chatham House Rules, September 2014.

<sup>395</sup> Children's rights, women/gender, death penalty, freedom of religion or belief, freedom of expression, rights of LGBTI persons.

<sup>396</sup> This is in line with the practice to review the matter on a bi-annual basis, see UNGA Res 67/176 (20 December 2012) UN Doc A/RES/67/176 para 8.

The analysis shows that EU policy documents on thematic human rights priorities at the UN are largely consistent. In particular, the two Medium-term documents – the Medium-term Priorities and the Strategic Framework/Action Plan – have effectively influenced the annual lists of priorities. Especially the adoption of the Strategic Framework/Action Plan has caused a significant expansion of thematic human rights issues in the annual policy documents. The sole exception are the EU priorities at UN human rights fora which started with a comparatively slim list of issues in 2013, but increased these priorities considerably in 2014.

#### *d) Fora*

It is noteworthy that the above-mentioned general EU policy documents rarely specify in which fora these thematic human rights objectives will be pursued. Only exceptionally will a certain body be identified and associated either with a particular EU initiative or targeted for general EU support. An example for this is the Action Plan, which – in line with its purpose to be easily operational – contains mostly clearly specified actions. For example, it identifies the UNGA and the HRC as the appropriate forums for EU initiatives on freedom of religion or belief, the UNGA for further engagement towards a death penalty moratorium, and the HRC as well as the relevant UN Special Rapporteurs for pursuing the EU's agenda on economic, social and cultural rights.<sup>397</sup> The Medium-term Priorities and the EU priorities at the UN human rights fora are frequently formulated in a more open manner, stating, for example, that a certain thematic objective will be pursued in 'all appropriate UN bodies and channels'<sup>398</sup> or omitting this addition altogether.

This openness allows for a certain flexibility in terms of policy making. However, it does obviously not mean that the EU pursues its thematic objectives uniformly throughout the entire UN human rights system. An analysis of the way the Annual Reports establish connections between certain thematic priorities and certain UN fora shows the UNGA Third Committee and the HRC as the two general bodies in which the EU addresses a wide (though not entirely overlapping) range of thematic issues, and a myriad of additional UN bodies, in which the EU promotes selected human rights, based on the mandate of the respective forum.

The EU's aim to abolish the **death penalty** was initially pursued in the CHR, but today focuses almost entirely on the UNGA Third Committee. In the 61<sup>st</sup> session the EU initiated a cross-regional statement on the death penalty, supported by a large group of 85 States. One year later, EU efforts towards a moratorium on the death penalty were rewarded with the adoption of Resolution 62/149, supported by 104 countries, and co-authored by 10 countries, including Portugal representing the EU. The voting results were even more favourable in the 63rd,<sup>399</sup> 65th<sup>400</sup> and 67th session.<sup>401</sup> Every time the EU played an active role in the cross-regional group that promoted the respective resolutions. Additionally, during the 68<sup>th</sup>

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<sup>397</sup> Action Plan (n 369) no 9(a), 16(a), 23(b).

<sup>398</sup> Council Conclusions on EU priorities at the UN Human Rights Fora, Doc. No. 6398/13, 18 February 2013, para 13.

<sup>399</sup> UNGA Res 63/169 (18 December 2008) UN Doc A/RES/63/169, adopted with 106 votes in favor.

<sup>400</sup> UNGA Res 65/206 (21 December 2010) UN Doc A/RES/65/206, adopted with 109 votes in favor.

<sup>401</sup> UNGA Res 67/176 (20 December 2012) UN Doc A/RES/67/176, adopted with 111 votes in favor.

session, the HR/VP participated in a UNGA High Level Ministerial Meeting on the 'Role of regional organisations in the fight against the death penalty'.<sup>402</sup>

EU efforts towards the eradication of **torture and other cruel, inhuman and degrading treatment or punishment** on the other hand are spread over a variety of bodies. Over the course of the past sessions the EU delivered several statements in the Third Committee of the UNGA, affirming the absolute prohibition of torture and condemning violations of this prohibition in individual countries.<sup>403</sup> Successful resolution initiatives were annually introduced by Denmark and co-sponsored by the EU Member States, who also co-sponsored resolutions on the issue in the HRC. The EU has repeatedly affirmed its support for the UN Special Rapporteur on Torture, the OHCHR, the UN Voluntary Fund for Victims of Torture, the UN Committee against Torture ('UNCAT') and the UN Subcommittee on Prevention of Torture ('SPT'). With regard to the two latter, several EU Annual Reports on Human Rights state that the EU 'considered ways and means to better coordinate with UNCAT and SPT'.<sup>404</sup> With regard to the UN Special Rapporteur on Torture, the EIDHR has provided funds aimed at facilitating the implementation of his recommendations.<sup>405</sup>

The EU engages with the widest number of UN bodies with regard to the promotion of the **rights of the child**. In the UNGA the EU – jointly with GRULAC – annually tables resolutions on the rights of the child, which have consistently been successfully adopted, up until the 56<sup>th</sup> session of the UNGA and since the 64<sup>th</sup> session even without a vote. Several of these resolution initiatives have created a bridge towards other EU thematic priorities, e.g. Resolution 66/141 which focused on the rights of children with disabilities, Resolution 67/152 which focused on indigenous children and Resolution 68/147 which contained new language on children and armed conflict. Prior to the introduction of these resolutions, the EU has repeatedly hosted side events in New York, jointly with Uruguay, addressing the issues at hand and bringing the respective stakeholders to the table.<sup>406</sup> The EU-GRULAC cooperation on children's rights also extended to the CHR and subsequently to the HRC, where both have annually tabled resolutions since the 7<sup>th</sup> session. EU efforts to combat **child labour** are primarily pursued through the ILO, with whom the EU had already signed a Strategic Partnership in 2004.<sup>407</sup> The ILO was also one of the partners with whom the EU cooperated on the issue of the reintegration of former Burmese child soldiers into the society.<sup>408</sup> The EU's strong focus on the protection of **children in armed conflict** is mostly pursued through cooperation with the UN Security Council working group on children and armed conflict, the Monitoring

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<sup>402</sup> EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77).

<sup>403</sup> See only EU Annual Report on Human Rights and Democracy in the World in 2010 (n 333) 34; Human rights and democracy in the world – Report on EU action, Doc No 8363/1/10 REV 1, 11 May 2010, 55.

<sup>404</sup> EU Annual Report on Human Rights and Democracy in the World in 2010 (n 333) 35; Human Rights and Democracy in the world: report on EU action in 2011, Doc No 9238/12, 6 June 2012, 37; EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 74.

<sup>405</sup> EU Annual Report on Human Rights and Democracy in the World in 2010 (n 333) 36.

<sup>406</sup> Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 115; EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 109.

<sup>407</sup> European Commission/International Labour Organisation, 'Memorandum of understanding concerning the establishment of a strategic partnership between the International Labour Organisation and the Commission of the European Communities in the field of Development', 15/16 July 2004.

<sup>408</sup> EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 83.

and Reporting Mechanism (MRM) on grave violations of children's rights in situations of armed conflict, and the UN Special Representative of the UN Secretary-General for children and armed conflict. The latter repeatedly provided expert advice on the possibilities for cooperation between the UN and the EU,<sup>409</sup> on the review of the implementation of the EU Guidelines on Children and Armed Conflict<sup>410</sup> and on the development of a pre-deployment child protection training module, which will be used for the training of EU Member States' military and civilian staff.<sup>411</sup> When the UN Special Representative to the Secretary-General on Violence against Children was appointed in 2009, the EU expressed its support and later achieved jointly with GRULAC the extension of her mandate.<sup>412</sup> Lastly, the EU cooperates extensively with UNICEF on the rights of the child. UNICEF not only provides training and tools to the staff of EU and Member States institutions, but provides expert advice on child rights issues, and has in the past conducted joint programs with the EU.<sup>413</sup> The EU additionally provides funding to an UNICEF program on the registration of children.<sup>414</sup>

The promotion of the right to **freedom of religion or belief** focuses clearly on the UNGA Third Committee and on the HRC, with the introduction of annual resolutions on the 'Elimination of all forms of intolerance based on religion or belief' and the equally traditional fight against the OIC initiative on 'defamation of religions'. Additionally, the EU supports the UN Special Rapporteur on freedom of religion or belief and has actively supported the preservation of his mandate through various resolutions.<sup>415</sup>

As with respect to children's rights, the EU's efforts to promote the **rights of women** are spread over a large range of UN bodies. Notably, the UNGA does not play a particularly relevant role for the EU, where it is rather France and the Netherlands who consistently table resolutions on the elimination of all forms of violence against women, as national initiatives. The EU is an active participant in the annual sessions of the Commission on the status of women,<sup>416</sup> through statements, outreach and lobbying. In 2008 it hosted a side event on the 'Euro-Mediterranean Partnership and the Istanbul Process: financing for gender

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<sup>409</sup> EU Annual Report on Human Rights 2008, Doc No 14146/1/08 REV 1, 29 October 2008, 65.

<sup>410</sup> EU Annual Report on Human Rights and Democracy in the World in 2010 (n 333) 47.

<sup>411</sup> EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 84. The pre-deployment child protection training module is currently being finalized, see Statement on behalf of the European Union and its Member States by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the Security Council Open Debate on Children and Armed Conflict, United Nations, 8 September 2014.

<sup>412</sup> UNGA Res 67/152 (20 December 2012) UN Doc A/RES/67/152 para 48.

<sup>413</sup> E.g. the 2012 programme on undernutrition in Asia and Africa, EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 82.

<sup>414</sup> EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 68. For more detail see: UNICEF, 'Uganda, 10 September 2013: "Breaking with broken systems" – Pan African study tour in Uganda offers way forward in strengthening civil registration systems in Africa', available at <[www.unicef.org/esaro/5440\\_uganda\\_civil-registration.html](http://www.unicef.org/esaro/5440_uganda_civil-registration.html)> accessed 7 October 2014.

<sup>415</sup> Most recently HRC Res 14/11 (2010) UN Doc A/HRC/RES/14/11 and HRC Res 22/20 (2013) UN Doc A/HRC/RES/22/20.

<sup>416</sup> For more detail on the Commission see <[www.un.org/womenwatch/daw/csw/](http://www.un.org/womenwatch/daw/csw/)> accessed 7 October 2014.

equality and women's empowerment'.<sup>417</sup> The European Commission in 2007 also concluded a three-year partnership with the UN Development Fund for Women ('UNIFEM'), focusing on women in development and peace building.<sup>418</sup> Women and armed conflicts/crises play a particular role for the EU, who promotes these issues through the UNSC, the UN DPKO and through the EU-UN Steering Committee on Crisis Management. In particular, through EIDHR the EU provided funding for the implementation of UNSC Resolution 1325 – the first resolution of the body that had addressed women's rights. The EU also organised together with Belgium a high-level event, commemorating the 10<sup>th</sup> anniversary of the resolution, and contributed to a UNSC debate on women, peace and security in October 2011. In 2009 and 2012 the EU-UN Steering Committee on Crisis Management included gender issues in its joint conclusions. The EU and UN Women signed a Memorandum of Understanding in 2012,<sup>419</sup> followed by a work program in 2013.<sup>420</sup> Currently, the EU and UN Women conduct eight joint programs dealing among others with 'political leadership, violence against women, economic empowerment, gender-responsive planning and budgeting, and women's participation in peace-building'.<sup>421</sup>

The issue of **Human Rights Defenders** is promoted mostly through the HRC and the UNGA, as well as by support for the UN Special Representative of the Secretary-General on the situation of human rights defenders. Already in the first session of the HRC, the EU successfully advocated the inclusion of this thematic issue among the priority topics.<sup>422</sup> In 2011 and 2012 the EU delivered statements urging the HRC to provide support to human rights defenders and condemning reprisals against them.<sup>423</sup> In 2012, the EU and Brazil jointly organised a side-event on women human rights defenders.<sup>424</sup> The EU also has publicly expressed its support for the UN Special Representative on human rights defenders. The review of the EU Guidelines on Human Rights Defenders was informed by her recommendations.<sup>425</sup>

In the period covered by this report, **economic, social and cultural rights** have not been a priority for the EU in the UNGA but have rather been addressed – if at all – in other bodies. For example, the EU

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<sup>417</sup> European Delegation to the United Nations New York, 'Side event at UN on the 29th of February – "The Euro-Mediterranean Partnership and the Istanbul Process: Financing for Gender Equality and Women's Empowerment"', available at <eu-un.europa.eu/articles/en/article\_7727\_en.htm> accessed 7 October 2014.

<sup>418</sup> EC/UN Partnership on Gender Equality for Development and Peace, <www.gendermatters.eu> accessed 7 October 2014.

<sup>419</sup> Memorandum of understanding between the European Union and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 16 April 2012.

<sup>420</sup> UN Women, 'New EU-UN Women initiative will tackle violence against women and girls in three countries', <www.unwomen.org/en/news/stories/2013/11/joint-eu-un-women-programme-in-three-countries> accessed 7 October 2014.

<sup>421</sup> EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 72.

<sup>422</sup> Council of the European Union, EU Annual Report on Human Rights 2006, Doc No 13522/1/06 REV 1, 4 October 2006, 174.

<sup>423</sup> See only Statement by H.E. Mr. Leonidas Pantelides, Ambassador, Permanent Representative of Cyprus on behalf of the European Union, HRC 21<sup>st</sup> session, 14 September 2012.

<sup>424</sup> EU Delegation to the United Nations – Geneva, 'EU Delegation to the UN and Mission of Brazil hosted side-event on Women Human Rights Defenders (19/6/2012)', <eeas.europa.eu/delegations/un\_geneva/press\_corner/all\_news/news/2012/20120619\_en.htm> accessed 7 October 2014.

<sup>425</sup> EU Annual Report on Human Rights 2006 (n 422) 76.

participated and observed the work of the Open-ended Working Group on an optional protocol to the ICESCR,<sup>426</sup> establishing an individual complaint mechanism. The Working Group completed its mandate in 2008 upon the submission of a draft optional protocol to the HRC, which was subsequently adopted by the HRC and the UNGA and entered into force on 5 May 2013. So far, only a minority of five EU Member States have ratified the Optional Protocol.<sup>427</sup> The EU has also repeatedly expressed its support for Special Rapporteurs, mandated with economic, social and cultural rights, in particular the Special Rapporteurs on education, housing, physical and mental health, food, toxic and dangerous products and wastes, internally displaced persons and indigenous peoples as well as the Independent Experts on extreme poverty and on access to drinking water and sanitation.<sup>428</sup> Within the framework of the ILO the EU advocates labour rights, in particular through promoting the ratification and implementation of ILO Conventions and through interventions in the International Labour Conference and the Governing Body on grave labour rights violations. The EU also actively lobbied for the adoption of the *ILO Declaration on Social Justice for a Fair Globalisation* (2008).

The EU's objective to promote the rights of **migrants** and **refugees** has been pursued largely outside of the UNGA and the HRC. While there appears to be overall no consistent, strong engagement with the UN on this issue, it seems that the EU has cooperated in particular with the UNHCR (with which it had concluded a Strategic Partnership in 2005), with the ILO (on migrant workers), with the Special Rapporteur on the human rights of migrants and with the OHCHR.

The issue of **racism and xenophobia** has always been a sensitive issue for the EU at the UN. In particular its participation in the 2009 Durban Review Conference, from which several EU Member States withdrew, was widely regarded as difficult.<sup>429</sup> In the HRC, the EU frequently issues statements addressing this matter.<sup>430</sup> In addition, the EU appears to have provided funding to the UNHCHR for the implementation of standards on equality and non-discrimination through awareness-raising, technical cooperation and research, at least until 2011.<sup>431</sup> Also, the EU repeatedly expressed its support for the mandate of the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, and welcomed its renewal.

<sup>426</sup> For more detail on mandate and work see <[www.ohchr.org/EN/Issues/ESCR/OEWG/Pages/OpenEndedWGIndex.aspx](http://www.ohchr.org/EN/Issues/ESCR/OEWG/Pages/OpenEndedWGIndex.aspx)> accessed 7 October 2014.

<sup>427</sup> See ratification status on the website of the UN Treaty Collection, <[https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-3-a&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-3-a&chapter=4&lang=en)> accessed 7 October 2014.

<sup>428</sup> See only Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 98.

<sup>429</sup> See for more detail Joelle Hivonnet, 'The European Union in the 2009 Durban Review Conference' in Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 122.

<sup>430</sup> See only Statement by H.E. Ambassador Steffen Smidt, Permanent Representative of Denmark to the United Nations Office in Geneva on behalf of the European Union, HRC 19<sup>th</sup> session, 7 March 2012, 4; Statement by H.E. Mr Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 25<sup>th</sup> session, 14 March 2014, 4.

<sup>431</sup> Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 110.

The EU's efforts with regard to the **rights of persons with disabilities** have focused on the negotiations of the International Convention on the Rights of Persons with Disabilities in the UNGA.<sup>432</sup> The EU not only actively participated in the negotiation process, it also successfully negotiated the inclusion of a REIO clause in the new Convention and ratified the Convention in 2010. It was the first time that the EU became a party to a UN human rights convention. The EU has participated in the CRPD State Parties Conference in 2011. It included the rights of persons with disabilities in its UNGA Resolution 66/141, which focused on the rights of children with disabilities, and actively supported the 2013 High Level Meeting of the General Assembly on disability and development.

EU promotion of the **rights of persons belonging to minorities** appears to mostly focus on expressions of support for and interest in the work of relevant UN fora, in particular the Independent expert on minority issues, the UN Working Group on minorities and the Forum for Minority issues.<sup>433</sup>

With regard to the **rights of indigenous people**, the EU supported the UN Declaration on the Rights of Indigenous People, which was adopted by the HRC in its first session.<sup>434</sup> When the UNGA deferred the consideration of the resolution, the EU unanimously voted against the deferral, fearing that a reopening of the negotiation process would jeopardise the Resolution. The EU was one of the co-sponsors when the Resolution was again introduced in the 61<sup>st</sup> session of the UNGA, where it was ultimately adopted.<sup>435</sup> In recent sessions of the UNGA Third Committee, the EU has consistently delivered statements on the rights of indigenous people. The EU is also one of the supporters of the upcoming World Conference on Indigenous People, a high-level plenary meeting of the UNGA which was held on 22-23 September 2014.<sup>436</sup> Furthermore, the EU supports the UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People, having repeatedly participated in the interactive dialogue with him at the HRC and having funded through the EIDHR a project for the implementation of his recommendations in Mexico and Guatemala. Lastly, the EU has delivered statements at the 2011-2013 sessions of the Expert Mechanism on the Rights of Indigenous Peoples ('EMRIP').

The UN's work in the field of **business and human rights** was significantly advanced through the work of the UN Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. The EU stated repeatedly that it 'closely followed the work' and welcomed the extensions of his mandate.<sup>437</sup> EU representatives took part in interactive debates with the UN Special Representative, both in the framework of the HRC<sup>438</sup> and the

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<sup>432</sup> For more detail see Grainne de Burca, 'The European Union in the negotiation of the UN Disability Convention' (2010) 35 *European Law Review* 174.

<sup>433</sup> See only Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 112.

<sup>434</sup> HRC Res 1/2 (2006) UN Doc A/HRC/RES/1/2.

<sup>435</sup> UNGA Res 61/295 (13 September 2007) UN Doc A/RES/61/295.

<sup>436</sup> For more information see <[www.un.org/en/ga/69/meetings/indigenous](http://www.un.org/en/ga/69/meetings/indigenous)> accessed 7 October 2014.

<sup>437</sup> See only Council of the European Union, 'EU Annual Report on Human Rights 2007', Doc No 13288/1/07 REV 1, 18 October 2007, 81.

<sup>438</sup> HRC 4<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> session.

UNGA Third Committee,<sup>439</sup> and provided comments on draft versions of the Guiding Principles.<sup>440</sup> After the UN Special Representative had completed his work, a UN Working Group on the issue of human rights and transnational corporations and other business enterprises was created and mandated with the follow-up of his work, in particular the dissemination and implementation of the Guiding Principles.<sup>441</sup> Again, the EU expressed its support and actively contributed to the work program and the work of the Group. In addition, members of the Working Group were consulted for the development of the EU *Guides on Implementing the UN Guiding Principles on Business and Human Rights* for three business sectors (oil and gas, employment and recruitment, ICT).<sup>442</sup> EU representatives also participated actively during the first two UN Forums on Business and Human Rights, held in Geneva in December 2012 and 2013. Apart from that, the EU has cooperated with the ILO on issues of Corporate Social Responsibility ('CSR') and supported the UN Global Compact, a voluntary initiative launched by then UN Secretary-General Kofi Annan.

Although **LGBT(I) rights** remain a sensitive issue in a number of EU Member States, the EU has repeatedly expressed its 'commitment to the defence of LGBT [...] people'<sup>443</sup> at UN human rights fora during the period under review. In the 65<sup>th</sup> session it was part of a group of likeminded states, who successfully lobbied for the reintroduction of a reference to sexual orientation in Resolution 65/208 on extrajudicial killings. In the 67<sup>th</sup> and 68<sup>th</sup> session the EU co-organised high-level side events on homophobia.<sup>444</sup> In the HRC the EU has been supportive of resolutions dealing with violence and discrimination based on sexual orientation and gender identity. It participated in a panel on 'Ending Violence and Discrimination Based on Sexual Orientation and Gender Identity' in the 19<sup>th</sup> session of the HRC and supported a cross-regional statement led by Norway in the 23<sup>rd</sup> session. Most recently it supported the adoption of a resolution on human rights, sexual orientation and gender identity, tabled by Brazil, Chile, Colombia, Uruguay in the 27<sup>th</sup> session of the HRC, and subsequently celebrated its adoption as a 'landmark achievement'.<sup>445</sup>

EU activities promoting the **freedom of association and of assembly** appear comparatively limited. In the HRC the EU has been supportive of the creation of the mandate for a Special Rapporteur on Freedom of association (15<sup>th</sup> session). According to its Annual Report, the EU also delivered a statement in 2011 at the HRC, urging it to 'maintain its focus on freedom of association and assembly'.<sup>446</sup>

<sup>439</sup> UNGA Third Committee 65<sup>th</sup> session.

<sup>440</sup> EU Annual Report on Human Rights and Democracy in the World in 2010 (n 333) 62; Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 81.

<sup>441</sup> For more detail see <[www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx)> accessed 7 October 2014.

<sup>442</sup> EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 106.

<sup>443</sup> Human rights and democracy in the world – Report on EU action (n 403) 107.

<sup>444</sup> See EU Delegation to the United Nations – New York, 'Sport comes out against homophobia: UN event brings attention to the discrimination encountered by LGBTI people', <[eu-un.europa.eu/articles/en/article\\_14358\\_en.htm](http://eu-un.europa.eu/articles/en/article_14358_en.htm)> accessed 7 October 2014.

<sup>445</sup> EU Delegation to the United Nations – New York, 'Key outcomes of the 27th session of the Human Rights Council – the EU perspective', <[eu-un.europa.eu/articles/en/article\\_15513\\_en.htm](http://eu-un.europa.eu/articles/en/article_15513_en.htm)> accessed 7 October 2014.

<sup>446</sup> Human Rights and Democracy in the world: report on EU action in 2011 (n 404) 72.



Concerning the **freedom of expression**, the EU has repeatedly delivered statements in the HRC and in UNGA Third Committee.<sup>447</sup> Additionally, the EU cites UNESCO as one of the international forums in which it promotes the safety of journalists in its Annual Report 2012.<sup>448</sup>

Table 3: Overview of UN fora for the promotion of EU thematic human rights priorities

Thematic priority	UN fora
<b>Death penalty</b>	<p><b>UNGA Third Committee</b></p> <ul style="list-style-type: none"> <li>➤ Resolution initiatives for a moratorium on the use of the death penalty, in particular Res. 62/149, 63/169, 65/206, 67/176</li> </ul>
<b>Torture and other cruel, inhuman and degrading treatment or punishment</b>	<p><b>UNGA Third Committee</b></p> <ul style="list-style-type: none"> <li>➤ Statements, support for EU Member States initiatives</li> </ul> <p><b>UN Committee against Torture, UN Subcommittee on Prevention of Torture, OHCHR, UN Voluntary Fund for Victims of Torture</b></p> <ul style="list-style-type: none"> <li>➤ Public support</li> </ul> <p><b>UN Special Rapporteur on torture</b></p> <ul style="list-style-type: none"> <li>➤ Public support, EIDHR funding for implementation of recommendations</li> </ul>
<b>Rights of the child</b>	<p><b>UNGA Third Committee</b></p> <ul style="list-style-type: none"> <li>➤ Annual resolutions (with GRULAC), sometimes linking to other EU priorities: children with disabilities (Res. 66/141), indigenous children (Res. 67/152), children in armed conflict (Res. 68/147)</li> </ul> <p><b>HRC</b></p> <ul style="list-style-type: none"> <li>➤ Annual resolutions (with GRULAC)</li> </ul> <p><b>ILO</b></p> <ul style="list-style-type: none"> <li>➤ Strategic Partnership, focus on child labour, reintegration of child soldiers</li> </ul> <p><b>UNSC Working Group on children and armed conflict, Monitoring and Reporting Mechanisms (MRM) on grave violations of children's rights in situations of armed conflict, UN Special Representative of the UN Secretary-General for children and armed conflict</b></p> <ul style="list-style-type: none"> <li>➤ Focus on children and armed conflict</li> </ul> <p><b>UN Special Representative to the Secretary-General on violence against children</b></p> <ul style="list-style-type: none"> <li>➤ Support, extension of mandate (with GRULAC)</li> </ul> <p><b>UNICEF</b></p> <ul style="list-style-type: none"> <li>➤ Training, expert advice, joint programs, funding</li> </ul>
<b>Freedom of religion or belief</b>	<p><b>UNGA Third Committee, HRC</b></p> <ul style="list-style-type: none"> <li>➤ Annual Resolutions on the 'Elimination of all forms of intolerance based on religion or belief'; opposition to the concept of 'defamation of religions'</li> </ul> <p><b>UN Special Rapporteur on freedom of religion or belief</b></p> <ul style="list-style-type: none"> <li>➤ Support, extension of mandate</li> </ul>
<b>Women's rights</b>	<b>UNGA/HRC</b>

<sup>447</sup> See for example European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67<sup>th</sup> General Assembly Third Committee Item 69 (b and c): Human Rights, 6 November 2012.

<sup>448</sup> EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76) 97.

	<ul style="list-style-type: none"> <li>➤ <i>Statements, support for EU Member States initiatives</i></li> </ul> <p><b>Commission on the status of women</b></p> <ul style="list-style-type: none"> <li>➤ <i>Statements, outreach/lobbying, organisation of side event</i></li> </ul> <p><b>UN Development Fund for Women</b></p> <ul style="list-style-type: none"> <li>➤ <i>3-year partnership concluded in 2007: women in peace building</i></li> </ul> <p><b>UNSC, UN DPKO, EU-UN Steering Committee on Crisis Management</b></p> <ul style="list-style-type: none"> <li>➤ <i>Focus on women and armed conflicts/crises, EIDHR funding for implementation of UNSC Res. 1325</i></li> </ul> <p><b>UN Women</b></p> <ul style="list-style-type: none"> <li>➤ <i>Memorandum of Understanding (2012), currently eight joint programs</i></li> </ul>
<b>Human Rights Defenders</b>	<p><b>UNGA Third Committee, HRC</b></p> <ul style="list-style-type: none"> <li>➤ <i>Statements, joint EU-Brazil side event on women human rights defenders</i></li> </ul> <p><b>UN Special Representative on human rights defenders</b></p> <ul style="list-style-type: none"> <li>➤ <i>Public support, inclusion of recommendations in EU Guidelines</i></li> </ul>
<b>Economic, social and cultural rights</b>	<p><b>Open-ended Working Group on an optional protocol to the ICESCR</b></p> <ul style="list-style-type: none"> <li>➤ <i>Participation and observation; ratification of OP by five EU Member States</i></li> </ul> <p><b>Special Rapporteurs on education, housing, physical and mental health, food, toxic and dangerous products and wastes, internally displaced persons and indigenous peoples, Independent Experts on extreme poverty and on access to drinking water and sanitation</b></p> <ul style="list-style-type: none"> <li>➤ <i>Public support</i></li> </ul> <p><b>ILO</b></p> <ul style="list-style-type: none"> <li>➤ <i>Focus on labour rights</i></li> </ul>
<b>Rights of migrants and refugees</b>	<p><b>UNHCR</b></p> <ul style="list-style-type: none"> <li>➤ <i>Strategic Partnership since 2005</i></li> </ul> <p><b>ILO</b></p> <ul style="list-style-type: none"> <li>➤ <i>Focus on migrant workers</i></li> </ul>
<b>Racism and xenophobia</b>	<p><b>Special Rapporteur on the human rights of migrants, OHCHR</b></p> <p><b>2009 Durban Review Conference</b></p> <ul style="list-style-type: none"> <li>➤ <i>Participation, but several EU Member States withdrew</i></li> </ul> <p><b>UNGA, HRC</b></p> <ul style="list-style-type: none"> <li>➤ <i>Statements</i></li> </ul> <p><b>UNHCHR</b></p> <ul style="list-style-type: none"> <li>➤ <i>Funding for implementation of standards on equality and non-discrimination</i></li> </ul> <p><b>UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance</b></p> <ul style="list-style-type: none"> <li>➤ <i>Public support</i></li> </ul>
<b>Rights of persons with disabilities</b>	<p><b>UNGA</b></p> <ul style="list-style-type: none"> <li>➤ <i>Negotiation and ratification of International Convention on the Rights of Persons with Disabilities; first ratification of a UN human rights convention through the EU</i></li> </ul>

	<p><b>CRPD State Parties Conference</b></p> <ul style="list-style-type: none"> <li>➤ Participation</li> </ul>
<i>Rights of persons belonging to minorities</i>	<p><b>Independent Expert on minority issues, UN Working Group on minorities, Forum for minority issues</b></p> <ul style="list-style-type: none"> <li>➤ Expressions of support and interest</li> </ul>
<i>Rights of indigenous people</i>	<p><b>UNGA, HRC</b></p> <ul style="list-style-type: none"> <li>➤ Support and co-sponsorship of UN Declaration on the Rights of Indigenous People, statements, support for World Conference on Indigenous People</li> </ul> <p><b>UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous people</b></p> <ul style="list-style-type: none"> <li>➤ Participation in interactive dialogues, EIDHR funding for implementation of recommendations</li> </ul> <p><b>Expert Mechanism on the Rights of Indigenous People</b></p> <ul style="list-style-type: none"> <li>➤ Statements delivered at 2011-2013 sessions</li> </ul>
<i>Business and human rights</i>	<p><b>UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises</b></p> <ul style="list-style-type: none"> <li>➤ Support, participation in interactive debates (HRC, UNGA Third Committee), comments on draft versions</li> </ul> <p><b>UN Working Group on the issue of human rights and transnational corporations and other business enterprises</b></p> <ul style="list-style-type: none"> <li>➤ Contribution to work program, consultation on EU Guides on implementation of the UN Guiding Principles, participation during 2012 and 2013 UN Forum on Business and Human Rights</li> </ul> <p><b>ILO</b></p> <ul style="list-style-type: none"> <li>➤ Focus on Corporate Social Responsibility</li> </ul> <p><b>UN Global Compact</b></p> <ul style="list-style-type: none"> <li>➤ Public support</li> </ul>
<i>Rights of LGBT persons</i>	<p><b>UNGA Third Committee</b></p> <ul style="list-style-type: none"> <li>➤ Statements, support for Res. 65/208, organisation of high-level side events</li> </ul> <p><b>HRC</b></p> <ul style="list-style-type: none"> <li>➤ Support for resolution initiatives and cross-regional statement, participation in a panel</li> </ul>
<i>Freedom of association and of assembly</i>	<p><b>Special Rapporteur on freedom of association</b></p> <ul style="list-style-type: none"> <li>➤ Public support</li> </ul> <p><b>HRC</b></p> <ul style="list-style-type: none"> <li>➤ Statements</li> </ul>
<i>Freedom of expression</i>	<p><b>UNGA Third Committee, HRC</b></p> <ul style="list-style-type: none"> <li>➤ Statements, support for HRC Res. 20/8</li> </ul> <p><b>UNESCO</b></p>

This overview shows that the EU engages with a wide variety of UN fora to promote its thematic human rights aims and objectives. The UNGA Third Committee and the HRC serve as the central bodies in which

the EU can engage with the world community and advance new policy initiatives. A comparison between the HRC and the UNGA Third Committee indicates a large degree of thematic overlap. Most thematic priorities of the EU are addressed in both fora. Exceptions are the death penalty and the rights of people with disabilities, which have been mostly targeted in the framework of the UNGA, and economic, social and cultural rights, which received more attention in the HRC. The rights of migrants, refugees and minorities, on the other hand, have not played a significant role for the EU in either body.

### 3. Country-specific aims and objectives

Next to those thematic human rights priorities, the EU also has country-specific priorities which it seeks to promote through its engagement in the UN human rights fora. These priorities typically find expression through the tabling of country resolutions (e.g. condemning human rights violations, creating or extending the mandates of special rapporteurs, establishing independent inquiry mechanisms), through the initiation of or support for special sessions of the HRC, or through statements, offers of support etc. Geographic priorities have only been included in the EU's policy documents on human rights priorities at the UN since 2010. Until 2011 they were included in the EU priorities for the UNGA, since 2013 they have been listed in the EU priorities at the UN Human Rights Fora. The Medium-term Priorities and the Strategic Framework/Action Plan do not contain country-specific priorities, likely due to the fact that the human rights situation in a country can quickly change and is therefore less suitable to medium-term planning and better reviewed on an annual basis.

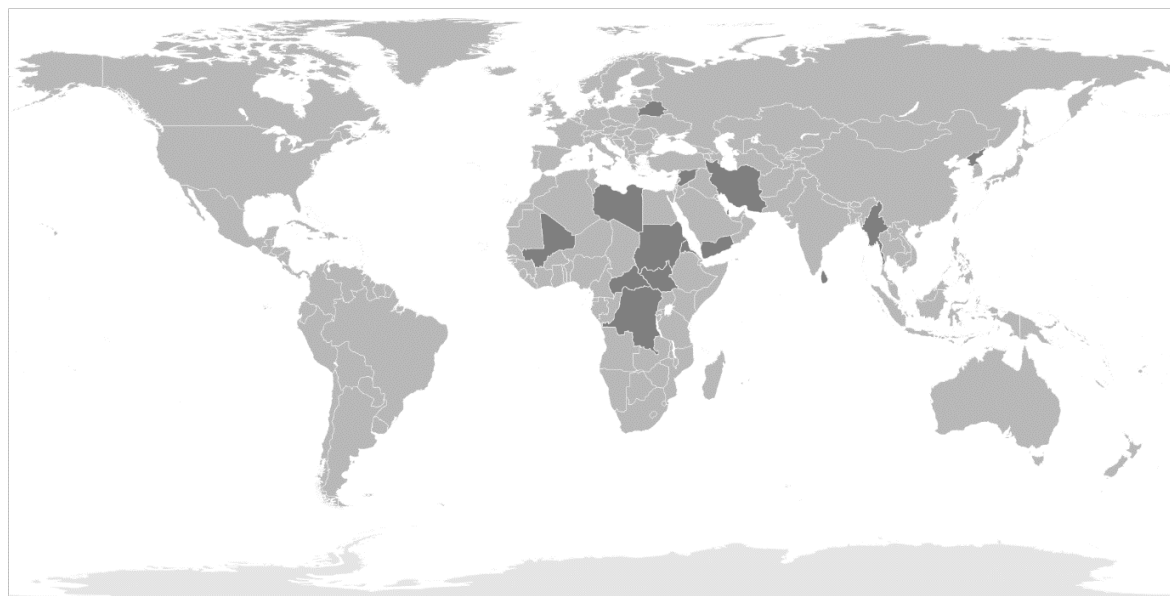
#### a) Content

Since 2010<sup>449</sup> the EU has listed fifteen different countries as its geographic priorities, namely Bahrain, Belarus, the Central African Republic, the Democratic People's Republic of Korea ('DPRK'), the DR Congo, Eritrea, Iran, Libya, Mali, Myanmar/Burma, Sri Lanka, South Sudan, Sudan (Darfur), Syria and Yemen.

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<sup>449</sup> Note that in the period since 2000, country-specific priorities are first referred to in the EU priorities for the 65th UNGA and have been taken up by the EU priorities at the UN Human Rights Fora since 2013.

Figure 3: The EU's geographic priorities since 2010



Of these fifteen countries, four can be identified as geographic **core priorities**. As with the thematic human rights priorities, criteria for the inclusion in this group are their long-standing and nearly continuous listing in EU policy documents, as well as the fact that the EU has actively and repeatedly tabled and supported resolution initiatives on these issues in the UNGA Third Committee, the HRC or both.

The first of these core priorities is the **DPRK**. It has been listed in the EU priorities for the UNGA from 2010 to 2011 and has since 2013 been included in the EU priorities at the UN Human Rights Fora. Already prior to that the EU together with Japan annually tabled resolutions on the DPRK in the UNGA and the HRC. Indeed, the EU's Annual Report on Human Rights and Democracy in the World 2008 refers to the resolution on the DPRK as a priority in the 62<sup>nd</sup> session of the UNGA,<sup>450</sup> and as a 'subject of close attention'<sup>451</sup> in the HRC, without it being mentioned in the EU priorities for the 62<sup>nd</sup> UNGA. The priorities for the 65<sup>th</sup> UNGA name the resolution on the DPRK a 'key country resolution',<sup>452</sup> the priorities for the 66<sup>th</sup> UNGA refer to the 'traditional resolution[...] on the DPRK'.<sup>453</sup> In 2013 the EU priorities at the UN Human Rights Fora stated that:

The EU will continue to draw the attention of the HRC and the General Assembly to the persistent critical human rights situation in the Democratic Peoples' Republic of Korea. The EU will reinforce its calls on the government of the DPRK to urgently improve the human rights situation in the country. Together with Japan, the EU will

<sup>450</sup> EU Annual Report on Human Rights 2008 (n 409) 119.

<sup>451</sup> *ibid* 122.

<sup>452</sup> Council of the European Union, 'EU priorities for the 65<sup>th</sup> United Nations General Assembly', Doc No 10170/10, 25 May 2010, para 31.

<sup>453</sup> Council of the European Union, 'EU priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations', Doc No 11298/11, 10 June 2011, para 37.

propose, at the HRC, the creation of an independent inquiry mechanism in support of the Special Rapporteur.

The Commission of Inquiry on human rights in DPRK was subsequently established through the adoption of Resolution 22/13, which was jointly tabled by the EU and Japan. The follow-up of its work has been declared the priority of the EU for 2014:

The grave and systematic human rights violations in the Democratic People's Republic of Korea deserve the attention of the international community. The EU strongly supports the work of the Commission of Inquiry investigating the human rights situation in the DPRK, and will ensure follow-up to its report and recommendations upon publication, including on accountability.<sup>454</sup>

The second geographic core priority of the EU at the UN is the human rights situation in **Myanmar/Burma**. Similar to the situation in the DPRK, Myanmar/Burma has been listed as a priority in the EU priorities for the 65<sup>th</sup> and 66<sup>th</sup> UNGA and in the 2013 and 2014 EU priorities at the UN Human Rights Fora. It equally appears in the EU's 2008 Report on Human Rights and Democracy in the World as a priority in the UNGA and as a 'subject of close attention' in the HRC. It is referred to as a 'key country resolution' in the list of priorities for the 65<sup>th</sup> UNGA,<sup>455</sup> and as a 'traditional resolution' in the list of priorities for the 66<sup>th</sup> UNGA.<sup>456</sup> The EU has annually tabled resolutions on Myanmar/Burma since 2006 and supported the calling of a Special Session of the HRC on the situation in the country in 2007.<sup>457</sup> Contrary to the EU's engagement on the situation in the DPRK, Myanmar/Burma has cooperated with the EU in the UNGA on the adoption of consensus resolutions. The EU priorities at the UN Human Rights Fora 2013 and 2014 recognise this cooperation, and express the EU's aim to 'seek[...] to maintain international attention on the developments and encourage further reform'.<sup>458</sup>

The human rights situation in **Iran** has been listed as an EU priority in the EU priorities for the 65<sup>th</sup> and 66<sup>th</sup> UNGA and in the 2013 and 2014 EU priorities at the UN Human Rights Fora. Other than with regard to the DPRK and the Myanmar/Burma, however, the EU is not in the lead in tabling the annual resolutions at the UNGA or the HRC. Instead, the EU supports the Canadian-led initiative in the Third Committee and a resolution with Sweden and the US in the core group in the HRC.<sup>459</sup> The 2013 EU priorities at the UN Human Rights Fora list Iran as the third country-specific priority after Syria and the DPRK, stating that:

The EU will actively support the extension of the mandate of the UN Special Rapporteur on the Islamic Republic of Iran who undertakes important work to address

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<sup>454</sup> Council Conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 8.

<sup>455</sup> EU priorities for the 65<sup>th</sup> United Nations General Assembly (n 452) para 31.

<sup>456</sup> EU Priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations (n 453) para 37.

<sup>457</sup> Fifth Special Session of the HRC, 2 October 2007.

<sup>458</sup> Council Conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 10; similarly in the Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 11.

<sup>459</sup> EU Priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations (n 453) para 37.

the worrying human rights situation in the country and should urgently be granted access to the country.<sup>460</sup>

The 2014 EU priorities at the UN Human Rights Fora have maintained the same ranking and provide that:

Against the backdrop of an evolving political situation, the EU remains very concerned by the enduring human rights abuses and violations in Iran, including a recent spate of executions. The EU will continue to push for tangible changes and access for UN mandate holders. In view of this the EU will support the extension of the Special Rapporteur's mandate and keeping the country on the agenda of the General Assembly.<sup>461</sup>

Lastly, the human rights situation in **Belarus** is one of the core priorities of the EU at the UN, as evidenced through the continuous and successful tabling of resolution initiatives in the HRC since 2011 and already prior to that in the CHR and in the UNGA Third Committee.<sup>462</sup> Belarus is listed as a priority country in the 2013 and 2014 EU priorities at the UN human rights fora.

A closer look at the geographic spread of the EU's country-specific human rights priorities at UN fora shows a distinct focus on Asia and Africa. While the majority of addressed countries is situated on the African continent, three of the four core priorities concern Asian countries. Latin American or Western countries on the other hand are entirely absent from the EU's list of priorities. On the European continent, the EU only addresses the human rights situation in Belarus. The situation in Ukraine, for example, which ranks among the key priorities of the United States at the HRC for 2014,<sup>463</sup> is omitted in the lists of EU priorities.

The question is then whether this geographic slant also finds expression in the EU's actual engagement with the Third Committee and the HRC. While the EU only tables resolution initiatives on the three abovementioned priority countries Myanmar/Burma, DPRK and Belarus, an analysis of its item 4 statements in the HRC since its 19<sup>th</sup> session and of its statements in the 2012 and 2013 sessions of the UNGA Third Committee shows, that the EU has in fact addressed countries on the American continent, namely Cuba (HRC 19)<sup>464</sup> and Venezuela (HRC 25, 26,<sup>465</sup> UNGA Third Committee 67<sup>466</sup>). Similarly, the EU

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<sup>460</sup> Council Conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 7.

<sup>461</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 9.

<sup>462</sup> For more detail, see below, ch V.A.

<sup>463</sup> United States Department of State, Office of the Spokesperson, 'Key U.S. Outcomes at the UN Human Rights Council 25th Session', 28 March 2014.

<sup>464</sup> EU statement on human rights situations requiring the Council's attention (Item 4), HRC 19<sup>th</sup> session, 13 March 2012.

<sup>465</sup> Statement by H.E. Mr. Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 25<sup>th</sup> session, 18 March 2014, 5; Statement by H.E. Mr. Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 26<sup>th</sup> session, 19 June 2014, 4.

<sup>466</sup> European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67<sup>th</sup> General Assembly Third Committee Item 69 (b and c): Human Rights, 6 November 2012.

has repeatedly addressed the situation in Ukraine in statements at the HRC, and in very clear terms.<sup>467</sup> Although it thus does not list Latin American countries or the Ukraine as a priority in its strategic documents, the EU continues to address related human rights concerns through its regular statements. Nevertheless, members of the WEOG have not been addressed in EU statements in the period under review. This may be due to the closer ties between the EU and these partner countries, but also to their human rights records.

Apart from these geographic considerations, it is also noticeable, that EU priorities tend to concern politically isolated and economically weak countries. Statistics ranking the EU's trade partners based on the value of merchandise trade with the EU show Belarus on 44 (12,017 mio. Euro, 0.4% share), Iran on 55 (6.223 mio, 0.2%), Sri Lanka on 67 (3,537 mio., 0.1 %), the DR Congo on 76 (2,750 mio., 0.1 %), Bahrain on 77 (2,710, 0.1%), Yemen on 89 (1,699, 0.0%) Sudan on 105 (1,093 mio., 0.0%), Syria on 117 (885 mio., 0.0%), Mali on 120 (796 mio., 0.0%), Myanmar/Burma on 132 (569 mio., 0.0%), the Central African Republic on 164 (126 mio., 0.0%), Eritrea on 170 (88 mio., 0.0%), the DPRK on 161 (144 mio, 0.0%) and South Sudan on 177 (50 mio., 0.0%).<sup>468</sup> The highest rank assumes Libya on 26 (31,076, 0.9%) which is only once referred to in the 2012 EU priorities for the UN Human Rights Council, in the aftermath of the Libyan Civil War.

The political isolation and economic weakness of a country may frequently go hand in hand with governments that commit grave human rights violations. However, several of the EU's closest allies and most important trading partners have questionable human rights records and are yet omitted on the EU's lists of priorities (Table 4).

Table 4: Human rights ratings of the five 'not free' top-20 EU trading partners

Trade Rank (2013) <sup>469</sup>	Freedomhouse, 'Freedom in the World 2014' <sup>470</sup>	Maplecroft Human Rights Risk Index 2014 <sup>471</sup>	World Press Freedom Index 2014 <sup>472</sup>
2. China	Not free, 7/6 <sup>473</sup>	Extreme risk	175.
3. Russia	Not free, 6/5	Extreme risk	148.
11. Saudi Arabia	Not free, 7/7	Extreme risk	164.
13. Algeria	Not free, 6/5	High risk	121.
14. UAE	Not free, 6/6	High risk	118.

<sup>467</sup> See below, same section.

<sup>468</sup> European Commission, Directorate General for Trade, 'Client and Supplier Countries of the EU28 in Merchandise Trade (value %) (2013, excluding intra-EU trade)', 20 March 2014.

<sup>469</sup> *ibid.*

<sup>470</sup> Freedom House, 'Freedom in the World 2014', <[freedomhouse.org/sites/default/files/FIW%202014%20Scores%20-%20Countries%20and%20Territories.pdf](http://freedomhouse.org/sites/default/files/FIW%202014%20Scores%20-%20Countries%20and%20Territories.pdf)> accessed 7 October 2014.

<sup>471</sup> Maplecroft Human Rights Risk Index 2014, <[reliefweb.int/sites/reliefweb.int/files/resources/2014\\_Human\\_Rights\\_Risk\\_Index\\_Map.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/2014_Human_Rights_Risk_Index_Map.pdf)> accessed 7 October 2014.

<sup>472</sup> World Press Freedom Index 2014, <[rsf.org/index2014/data/index2014\\_en.pdf](http://rsf.org/index2014/data/index2014_en.pdf)> accessed 7 October 2014.

<sup>473</sup> The first number stands for the rating of political rights, the second for the rating of civil liberties, with 1 being the most free and 7 the least free rating.



Again, the question remains, whether the EU merely refrains from classifying these countries as priorities for political reasons, all the while still addressing their human rights violations in practice. It is worthwhile to analyse whether the EU really is as silent on these countries at the UN as their omission in the lists of priorities suggests. In terms of resolution initiatives, the EU has addressed none of the abovementioned countries by means of a draft resolution since the last unsuccessful initiative on the human rights situation in Chechnya in 2004 (CHR 60). Nevertheless, a look at the recent statements of the EU in the HRC and the Third Committee shows, that China has been consistently addressed in every statement since the 67<sup>th</sup> Session of the Third Committee and the 19<sup>th</sup> session of the HRC (2012), and that Russia has equally been addressed since the 67<sup>th</sup> Session of the Third Committee and since the 24<sup>th</sup> session of the HRC (2012). With regard to China, the EU showed itself ‘concerned’ or ‘seriously concerned’ about ‘various cases of arbitrary detention, enforced disappearances and harsh prison sentences handed down for political reasons’, ‘heavy-handed measures in Tibetan-populated areas’, ‘residential surveillance and house arrest, the treatment of petitioners, the prolonged use of solitary confinement’, ‘the widespread use of the death penalty’, ‘mass sentencing’, violations with regard to freedom of expression and freedom of religion and belief, ‘the situation of minorities’, ‘the use of force when dealing with peaceful protest’, ‘trials, convictions, detentions and house arrests of human rights defenders’.<sup>474</sup> With regard to Russia, the EU addressed issues concerning civil society organisations and human rights defenders, freedom of assembly and association, inclusion and tolerance of minorities, the rights of LGBTI persons, as well as Russian legislation with regard to ‘NGOs receiving foreign funding, the regulation on demonstration, the control of internet, and the work of journalists through criminalisation of libel’.<sup>475</sup> During the 25<sup>th</sup> session of the HRC, the EU ‘condemn[ed] the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation in clear breach of the international law, and the holding of an illegal referendum in Crimea on joining the Russian Federation on 16 March, in clear breach of the Ukrainian Constitution

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<sup>474</sup> In the HRC see EU statement on human rights situations requiring the Council's attention (Item 4), HRC 19<sup>th</sup> session, 13 March 2012; Statement by Mr Søren Kragholm, Deputy Permanent Representative of Denmark to the United Nations Office in Geneva on behalf of the European Union, HRC 20<sup>th</sup> session, 28 June 2012; Statement by H.E. Mr. Leonidas Pantelides, Ambassador, Permanent Representative of Cyprus on behalf of the European Union, HRC 21<sup>st</sup> session, 17 September 2012; Statement by H.E. Gerard Corr, Ambassador, Permanent Representative of Ireland, HRC 22<sup>nd</sup> session, 12 March 2013; Statement by H.E. Gerard Corr, Ambassador, Permanent Representative of Ireland on behalf of the European Union, HRC 23<sup>rd</sup> session, 4 June 2013; Statement by H.E. Mr Rytis Paulauskas, Ambassador, Permanent Representative of Lithuania on behalf of the European Union, HRC 24<sup>th</sup> session, 17 September 2013; Statement by H.E. Mr Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 25<sup>th</sup> session, 18 March 2014; Statement by H.E. Mr Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 26<sup>th</sup> session, 19 June 2014; Statement by H.E. Mr Maurizio Enrico Serra, Ambassador, Permanent Representative of Italy on behalf of the European Union, HRC 27<sup>th</sup> session, 16 September 2014. In the Third Committee see European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67<sup>th</sup> General Assembly Third Committee Item 69 (b and c): Human Rights, 6 November 2012; European Union Statement delivered by Ioannis Vrailas, Deputy Head of the Delegation of the European Union to the United Nations, at the 68<sup>th</sup> United Nations General Assembly Third Committee Item 69 (b) and c): Promotion and Protection of Human Rights, 30 October 2013.

<sup>475</sup> European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67<sup>th</sup> General Assembly Third Committee Item 69 (b and c): Human Rights, 6 November 2012.

and international law',<sup>476</sup> which, together with the shrinking space for civil society, constituted the main focus of the EU's statements on Russia in the following sessions.<sup>477</sup> This brief overview shows, that the EU does indeed address human rights violations committed by two countries which are of significant strategic and economic importance. The fact that it does so only through statements and without publicly declaring the situation to be a policy priority, stems from the political sensitivity of the issue. In addition to delivering statements directed at particular countries, the EU has in sensitive cases sometimes relied on indirectly addressing certain countries through targeting thematic issues that are of particular relevance with regard to the countries in question, e.g. the death penalty.

Nevertheless, the reluctance to expressly prioritise certain countries, and the absence of other countries, most notably Saudi Arabia, Algeria and the UAE from both strategic documents and statements, has sometimes fuelled the impression that the EU ranks economic and strategic interests higher than the human rights in question. Third countries have repeatedly accused the EU of 'playing favourites' and of selecting its country priorities based on factors unrelated to human rights, in particular political and economic interests. One interviewee referred to the 'politicisation of the EU's agenda, leading to a certain selectivity'.<sup>478</sup> The reason behind this noticeable selectivity is most often a lack of internal unity in the EU. Country priorities need to reflect a compromise among all Member States and concentrate therefore on those cases where the public condemnation will not harm significant national interests. EU Special Representative Stavros Lambrinidis recognised this lack of external-external consistency during a keynote speech at the European Parliament in September 2013. However, he argued, that this unequal application was 'not always the result of sinister planning or Machiavellian thinking' but rather the consequence of the lack of leverage of the EU over certain countries and its greater proximity to other countries.<sup>479</sup> While the lack of leverage may serve as an explanation for varying reactions to human rights violations in bilateral relations, it is unsatisfactory at the multilateral level, where the institutional framework itself helps to create leverage.

The selection of EU country-specific aims and objectives continues to present a slightly imbalanced and inconsistent picture, which may contribute to undermining the EU's external credibility as a human rights actor. A more vocal and self-critical EU, also concerning human rights violations by Western countries, allies or trade partners might strengthen the perception that human rights have paramount importance for the EU and are not trumped by unrelated political or economic considerations.

### ***b) Development of priorities over time***

The development of country-specific priorities over time covers a time-frame that is considerably shorter and based on less policy documents, than with regard to the thematic human rights objectives. Country-specific aims and objectives at the UN were absent in earlier EU policy documents. In the period since

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<sup>476</sup> Statement by H.E. Mr Alexandros Alexandris, Ambassador, Permanent Representative of Greece on behalf of the European Union, HRC 25<sup>th</sup> session, 18 March 2014.

<sup>477</sup> See *supra* (n 474).

<sup>478</sup> Interviews carried out under Chatham House Rule, October 2013.

<sup>479</sup> Keynote lecture by EU Special Representative for Human Rights, Stavros Lambrinidis, Interparliamentary Committee Meeting with EU National Parliaments, European Parliament Subcommittee on Human Rights, 25 September 2013.

2000, they are first referred to in the EU priorities for the 65<sup>th</sup> UNGA and have been taken up by the EU priorities at the UN Human Rights Fora since 2013. While the EU priorities for the 65<sup>th</sup> and 66<sup>th</sup> UNGA only explicitly referred to the DPRK, Myanmar/Burma and Iran, the EU priorities for the 67<sup>th</sup> UNGA omitted every mention of a distinct country and merely stated that the EU should 'seek to increase support for [...] the EU's country initiatives on human rights situations in the Third Committee'.<sup>480</sup> The 2012 EU priorities at the UN Human Rights Council then went on to take up the prior core priorities and supplement them by the situations in Yemen, Bahrain, Libya and Sri Lanka. The 2013 EU priorities at the UN Human Rights Fora dropped the first three and added Syria and Belarus, as well as five African states (DR Congo, Eritrea, Mali, Sudan and South Sudan). The 2014 EU priorities at the UN Human Rights Fora additionally added the Central African Republic. While it is again noteworthy, that priorities tend to stick rather than to disappear, this cannot be stated with the same absoluteness as with regard to thematic priorities. It is noticeable that the 2012 EU priorities at the UN Human Rights Council list Yemen, Bahrain and Libya which appear in no other of the analysed strategy documents. However, the short time-frame of this analysis does not allow for a sound assessment of whether a satisfactory improvement of the human rights situation on the ground in a given country would also be met with a removal from the EU's priorities list. Due to the greater volatility of country-specific human rights issues, it is to be expected that EU priorities would demonstrate a corresponding degree of flexibility. In practice, it could be expected that the traditional prioritization of Myanmar/Burma will be discontinued in the short to medium term, based on recent positive developments.

### *c) Consistency*

Similarly to the development of geographic objectives, the analysis of their consistency has to be necessarily brief, given that neither the Medium-term Priorities nor the Strategic Framework/Action Plan contain references to the geographic priorities of the EU in UN human rights fora. They are thus not part of the medium-term planning of the EU but have to be reviewed annually in the priorities documents for UN human rights fora and the UNGA. The EU priorities for the 65<sup>th</sup> and 66<sup>th</sup> UNGA consistently named the same three country situations (DPRK, Myanmar/Burma and Iran) as key priorities. The EU priorities at the UN Human Rights Fora have taken up these priorities and supplemented them with eight additional geographic priorities, all of which are consistently set as priorities for 2013 and 2014. Based on the developments in the country, the 2014 EU priorities at the UN Human Rights Fora only adds the Central African Republic to the list. It is also noteworthy, that all of these geographic priorities are in line with prior engagement of the EU, before the countries were publicly listed as key priorities. With regard to Sri Lanka, Belarus, the DR Congo and Sudan (in particular the situation in Darfur) the EU has been tabling or supporting resolutions in the UNGA and the HRC or delivered statements since 2006/2007. Syria, Eritrea and South Sudan have equally received attention since 2011/2012. The only document that sits slightly apart are the 2012 EU priorities for the UN Human Rights Council, which lists with Yemen, Bahrain and Libya three country-situations which are mentioned in none of the other examined strategy papers, both before and after 2012.

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<sup>480</sup> Council of the European Union, 'EU Priorities for the 67<sup>th</sup> Session of the General Assembly of the United Nations', Doc No 12851/12, 23 July 2012, 8.

#### d) *Fora*

Other than with regard to the EU's thematic human rights priorities at the UN, EU policy documents contain references to specific UN fora for the promotion of the country-specific priorities. Although the EU has frequently stated that the UNGA Third Committee remains a relevant forum for addressing country-specific situations, it identifies only three geographic priorities which are to be pursued in New York, namely the situations in the DPRK, in Myanmar/Burma and in Iran. In line with this the EU has annually tabled successful resolutions on the DPRK and Myanmar/Burma in the UNGA, and has consistently supported the Canadian-led initiative on Iran. All of these three priorities are additionally addressed by the EU in the HRC, where the EU has delivered statements, supported a Special Session on Burma/Myanmar and advocated for the creation and extension of country-specific mandates, including Special Rapporteurs for all three countries and an international independent commission of inquiry for the DPRK. The 2013 and 2014 EU priorities at UN human rights fora identify the HRC as the relevant body to address all other country-specific priorities (Syria, Sri Lanka, Mali, Belarus, DRC, Eritrea, the Central African Republic, Sudan and South Sudan).

#### 4. Institutional aims and objectives

Besides thematic and geographic human rights priorities, the EU also pursues certain objectives with regard to the UN institutional human rights architecture. They concern the UN human rights system in general, but also particular bodies, notably the UNGA Third Committee, the HRC, the OHCHR and the treaty bodies system. The Union's aims and objectives with regard to the UN's institutional dimension are expressed in the Medium-term Priorities, the Strategic Framework, the annual EU priorities for the UNGA and in the EU priorities at the UN Human Rights Fora. Their content, development and consistency merit closer attention.

#### a) *Content*

The EU pursues a small number of objectives which concern the **UN human rights system in general**. This includes in the first line the effective integration and mainstreaming of human rights 'in all aspects of the work of the United Nations'.<sup>481</sup> The EU commits to 'actively promote' this goal, thereby mirroring at the multilateral level its internal endeavour to mainstream human rights into all its policy areas. The Medium-term Priorities additionally commit the EU to 'strive to preserve [...] the independence of the UN Human Rights System'.<sup>482</sup> The goal of independence is also frequently reiterated with regard to particular UN human rights bodies, namely the Special Procedures and the OHCHR.<sup>483</sup> Lastly, the EU priorities for the

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<sup>481</sup> Council of the European Union, 'EU Priorities for the 61<sup>st</sup> General Assembly of the United Nations', Doc No 11380/06, 11 July 2006, para 3; Council of the European Union, 'EU Priorities for the 62<sup>nd</sup> General Assembly of the United Nations', Doc No 10184/07, 5 June 2007, para 9; Council of the European Union, 'EU priorities for the 63<sup>rd</sup> United Nations General Assembly', Doc No 9978/08, 27 May 2008, para 25; EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387) para 44; EU priorities for the 65<sup>th</sup> United Nations General Assembly (n 452) para 30; EU Priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations (n 453) para 34; Medium-term priorities (n 368) 6.

<sup>482</sup> Medium-term priorities (n 368) 6.

<sup>483</sup> See below.

63<sup>rd</sup> UNGA affirm the EU's intention to 'pay[...] special attention to the improvement of the efficiency' of the UN human rights mechanisms,<sup>484</sup> and set the goal that the UN human rights system should work in a more cost-effective manner. This aim is reiterated in subsequent policy documents with regard to the UPR and the treaty bodies.

Possibly driven by the concern that the **UNGA Third Committee** might lose its role to the newly established HRC, earlier EU priorities for the UNGA between the 62<sup>nd</sup> and the 64<sup>th</sup> session contain commitments of the EU to 'ensur[e] that the 3<sup>rd</sup> Committee continues to play an important role in the promotion and protection of human rights'.<sup>485</sup> In 2008 and 2009 the EU stressed that the UNGA itself and its Third Committee 'remain relevant universal fora' to address country specific and thematic human rights issues and affirmed that 'the EU will continue to act accordingly'.<sup>486</sup> When this concern did not materialise, the EU's aim turned towards the relationship between the UNGA Third Committee and the HRC. The 2013 and 2014 EU priorities for the UNGA focus on avoiding 'duplication of work, while increasing the complementarity and close collaboration' between both bodies'.<sup>487</sup> The Medium-term Priorities, EU priorities at the UN Human Rights Fora and Strategic Framework contain no objectives for the work and structure of the UNGA as such, but merely set aims for the EU's engagement in the forum, in particular its 'active and determined'<sup>488</sup> participation through statements, interventions and the tabling of initiatives,<sup>489</sup> as well as its close cooperation with third countries.<sup>490</sup>

When the **HRC** came into existence in 2006, its institutional set-up deviated considerably from the EU's initial visions for the new body. Based on the experiences with the controversial Commission on Human Rights ('CHR'), the EU had advocated for a smaller institution<sup>491</sup> with stronger membership criteria, admitting only those UN Member States who demonstrated a clear human rights commitment and had been elected by a two thirds majority in the UNGA.<sup>492</sup> The HRC was envisaged as a standing body<sup>493</sup> and principal organ of the UN. Although none of these ideas came to fruition, the EU nevertheless supported the final UNGA Resolution 60/251 and the new body. All of its policy documents on the priorities at the UN human rights fora since 2006 contain extensive language on the institutional aspects of the HRC, with

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<sup>484</sup> EU priorities for the 63<sup>rd</sup> United Nations General Assembly (n 481) para 25.

<sup>485</sup> EU Priorities for the 62<sup>nd</sup> General Assembly of the United Nations (n 481) para 8.

<sup>486</sup> EU priorities for the 63<sup>rd</sup> United Nations General Assembly (n 481) para 27; EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387) para 47.

<sup>487</sup> Council of the European Union, 'EU Priorities for the 68<sup>th</sup> Session of the General Assembly of the United Nations', Doc No 11521/1/13 REV 1, 15 July 2013, ch 'Human Rights' para 7; EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations (n 372) ch 'Human Rights' para 7.

<sup>488</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 4.

<sup>489</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 4.

<sup>490</sup> Medium-term priorities (n 368) para 26; Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 4; Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 4.

<sup>491</sup> European Community Statement by Dr Benita Ferrero-Waldner, European Commissioner for External Relations and European Neighbourhood Policy, at the United Nations High Level Meeting (14-16 September 2005), New York, available at <[www.eu-un.europa.eu/articles/en/article\\_5030\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_5030_en.htm)> accessed 24 April 2014.

<sup>492</sup> UNGA, 'General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, With 3 Abstentions', Press Release GA/10449, 15 March 2006, available at <[www.un.org/News/Press/docs/2006/ga10449.doc.htm](http://www.un.org/News/Press/docs/2006/ga10449.doc.htm)> accessed 24 April 2014.

<sup>493</sup> Annual Report on Human Rights 2006 (n 422) 170.

the priorities shifting over time, in line with the evolution of the institution. The EU priorities for the 61<sup>st</sup> UNGA were adopted a few days after the inaugural session of the HRC and are still strongly marked by declarations of support for the new body and the aspiration that the HRC will be a 'key player' in human rights promotion and protection who 'fulfil[s] its mandate responsibly and effectively'.<sup>494</sup> The EU priorities for the 62<sup>nd</sup> UNGA spell out more clearly which tasks the EU expects the HRC to fulfil, in particular 'addressing the most serious breaches of human rights throughout the world, encouraging the implementation of human rights standards, and developing further thematic issues of global importance'.<sup>495</sup> In line with the EU's concern that the HRC would repeat the mistakes of its predecessor, 'increasing the credibility and effectiveness of the HRC' is named as one of the priorities of the EU. Additionally, the EU put considerable weight behind the participation of NGOs and CSOs in the HRC.<sup>496</sup>

The HRC's **special procedures** came under fire in the institution-building process<sup>497</sup> when it was argued by some countries that country-mandates had been rendered obsolete by the creation of the UPR or that they constituted counterproductive 'naming and shaming'. The EU advocated for the maintenance of all special procedures, and against a Code of Conduct, favoured by some States, that would have created obstacles for the work of the mandate holders.<sup>498</sup> It could, however, not prevent the termination of the country mandates on Belarus and Cuba.<sup>499</sup> Positioning itself for the upcoming review of the HRC (2009-2011) the EU's policy objectives were spelled out in the priorities for the 63<sup>rd</sup> UNGA, which focused on the 'preservation and strengthening of all special mechanisms, including country specific and thematic mandates'.<sup>500</sup> The EU priorities for the 64<sup>th</sup> UNGA addressed this controversy even more explicitly. Reiterating the objective to preserve and strengthen all special procedures, the EU stated that 'the UPR should not be considered as an exclusive instrument addressing human rights situations'.<sup>501</sup> After the conclusion of the review process and when it became clear that the existence of special procedures was no longer generally questioned, the EU turned its focus towards their effective functioning. Reacting to the difficulties, which the holders of thematic and country mandates faced regarding the exercise of their work, the EU stated in the 2013 EU priorities at the UN Human Rights Fora:

The EU continues to attach great importance to the UN Human Rights Council Special Procedures; their access to countries and their free and unhindered contact and cooperation with individuals and civil society are indispensable. The EU calls on all countries which have not yet done so to extend a standing invitation.<sup>502</sup>

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<sup>494</sup> EU Priorities for the 61<sup>st</sup> General Assembly of the United Nations (n 481) para 3.

<sup>495</sup> EU priorities for the 62<sup>nd</sup> UNGA (n 481) para 8.

<sup>496</sup> Annual Report on Human Rights 2006 (n 422) 170; EU Annual Report on Human Rights 2008 (n 409) 127; EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 112.

<sup>497</sup> The institution-building process was completed in mid-2007 with the adoption of HRC Res 5/1 (2007) UN Doc A/HRC/RES/5/1.

<sup>498</sup> EU Annual Report on Human Rights 2007 (n 437) 143.

<sup>499</sup> *ibid.*

<sup>500</sup> EU priorities for the 63<sup>rd</sup> United Nations General Assembly (n 481) para 26.

<sup>501</sup> EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387) para 46.

<sup>502</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 21.

Subsequently it was reaffirmed in the 2014 EU priorities at the UN Human Rights Fora:

The EU will continue to promote full cooperation with and support to the UN Human Rights Council Special Procedures, upholding the independence of the mandate holders and supporting their free and unhindered contact and cooperation with individuals and civil society.<sup>503</sup>

Focusing rather on the follow-up side of the special procedures, the Strategic Framework stated, that the recommendations of UN Special Procedures should be raised by the EU and its Member States in their bilateral relations with third countries.<sup>504</sup> It thereby bridged the gap between action at the multilateral and at the bilateral level. Additionally, the Strategic Framework committed the EU Member States to 'ensure implementation of such recommendations within their own frontiers',<sup>505</sup> thus striving for a 'lead by example' strategy and aiming to lessen the Union's internal-external consistency gap.

During the institution-building process, the **UPR** proved to be a similarly contentious topic for some states. It was particularly the involvement of NGOs and independent experts in the process that proved controversial. The EU was a vocal supporter of a strong UPR – both during the institution-building and the subsequent review process – focusing in its priorities for the 63<sup>rd</sup> and 64<sup>th</sup> UNGA on the 'proper and efficient realization of the Universal Periodic Review'.<sup>506</sup> While the existence of the UPR was never questioned to the same extent as the maintenance of the special procedures, its effectiveness – particularly due to lack of cooperation of some Member States, and due to a lack of implementation of UPR recommendations – remained unsatisfactory for the EU. The Strategic Framework targeted this issue by proposing three distinct kinds of measures: (1) bilaterally addressing the UPR recommendations, which had been accepted, (2) ensuring the internal implementation of UPR recommendations by the EU Member States, (3) offering support to third states for the implementation of UPR recommendations.<sup>507</sup> The 2012 EU priorities at the Human Rights Council picked up on no (1) and (3), reaffirming the EU's 'interest in discussing with partner countries ways and means to implement relevant recommendations [...] including through technical assistance'. The 2013 EU priorities at the UN Human Rights Fora only reiterated the aim to 'discuss[...] with partners about the implementation of [UPR] recommendations'. Other than that, both the 2013 and the 2014 EU priorities at the UN Human Rights Fora focused on 'call[ing] upon all UN Member States to effectively cooperate with the mechanism'.<sup>508</sup>

The dominant objective of the EU with regard to the **OHCHR** is the safeguarding and defence of its independence. The EU priorities for the 63<sup>rd</sup> to 65<sup>th</sup> UNGA, the 2012 EU priorities in the UN Human Rights Council and the 2013 and 2014 EU priorities at the UN Human Rights Fora unanimously emphasise this goal. The Medium-Term Priorities refer to the 'independence of the UN Human Rights System' in general,

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<sup>503</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 5.

<sup>504</sup> Strategic Framework (n 369) 8.

<sup>505</sup> *ibid.*

<sup>506</sup> EU priorities for the 63<sup>rd</sup> United Nations General Assembly (n 481) para 26; cf also EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387) para 46.

<sup>507</sup> Strategic Framework (n 369) 8.

<sup>508</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 21; Council conclusions on EU priorities at the UN Human Rights Fora 2014 (n 372) para 5.

but add that '[p]articular attention will be paid to the High Commissioner of Human Rights and her Office'.<sup>509</sup> The Strategic Framework stresses that the 'independence and effectiveness of the UN Office of the High Commissioner for Human Rights [...] is essential'.<sup>510</sup>

The enhancement of the **UN treaty body system**, in particular through the support for the strengthening process launched by the OHCHR in 2009, is one of the dominant though recent priorities of the EU in the UN human rights system. An overview of the relevant policy documents since 2012 helps identify the three factors that the EU expects in the first line from a functioning treaty body system: effectiveness, efficiency and independence. In particular the EU recognises that the increased number of State Parties to the major UN human rights conventions has put considerable strain on the capacities of the treaty bodies. In terms of institutional set-up and procedure the Union therefore aims to put the system in a 'better position to address the increased number of ratifications and reports in a more timely and effective manner, and provide sustainability with regards to future developments'.<sup>511</sup> In terms of output, the Union's objective is to discuss 'with partners about the implementation of recommendations [...] formulated by Treaty bodies'.<sup>512</sup> Lastly, the EU aims to improve the cost effectiveness of the system.<sup>513</sup>

Finally, the Union's priorities over the past years up until 2011 twice included the 'mainstreaming of gender issues into all aspects of UN activities'.<sup>514</sup> After the UNGA had adopted Resolution 64/289, thereby creating the entity **UN Women**, the EU welcomed this step and affirmed its full support for the new body and its activities.<sup>515</sup>

This brief overview shows, that the EU is a staunch supporter of a strong UN human rights system, advocating for independent and effective institutions with considerable competences. It is thereby diametrically opposed to the sizeable group of UN Member States that prioritises state sovereignty over human rights. Countries affiliated with this so called 'axis of sovereignty' include Russia, China as well as OIC countries.<sup>516</sup> The EU fights uphill battles with regard to many of its core institutional priorities, in particular the strengthening of the special procedures on country situations, the independence of the UPR and the OHCHR, as well as the implementation of recommendations made throughout the UPR, by Special Rapporteurs or treaty bodies.

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<sup>509</sup> Medium-Term Priorities (n 368) 27.

<sup>510</sup> Strategic Framework (n 369) 8.

<sup>511</sup> EU Priorities for the 68<sup>th</sup> Session of the General Assembly of the United Nations (n 487) ch 'Human Rights' para 4; EU Priorities for the 69<sup>th</sup> session of the General Assembly of the United Nations (n 372) ch 'Human Rights' para 4.

<sup>512</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 23; see also Strategic Framework (n 369) 8.

<sup>513</sup> EU Priorities for the 67<sup>th</sup> Session of the General Assembly of the United Nations (n 480) 9.

<sup>514</sup> EU priorities for the 64<sup>th</sup> United Nations General Assembly (n 387) para 16; EU priorities for the 65<sup>th</sup> United Nations General Assembly (n 452) para 33.

<sup>515</sup> EU Priorities for the 66<sup>th</sup> Session of the General Assembly of the United Nations (n 453) para 44.

<sup>516</sup> Richard Gowan and Franziska Brantner, 'The EU and human rights at the UN – 2009 review', European Council on Foreign Relations, September 2009, 4.



### *b) Development of priorities over time*

Other than with the thematic priorities, the EU's institutional priorities have remained fairly stable over time. As a convinced multilateralist, the EU's support for a strong multilateral human rights architecture permeates its engagement with the UN. The independence, effectiveness and efficiency of the UN human rights system are core priorities for the EU and constitute a red thread throughout the relevant policy documents. Priorities with regard to the HRC underwent the most pronounced changes, mirroring the evolution of the new body. While the support and strengthening of the fledgling institution was crucial in the first time, attempts to weaken the UPR and the Special Procedures during the institution-building and later during the review process caused the EU to focus on both mechanisms. Similarly, concerns that the UNGA might be outranked by the new HRC gave way to the aim of increasing complementarity and collaboration between both bodies while avoiding the duplication of work.

### *c) Consistency of priorities*

The consistency of the EU's institutional objectives is high. All policy documents identify identical or aligned priorities, aiming to achieve the same goals. While most policy documents focus exclusively on the Union's action at the UN level, the Strategic Framework as an overarching document covering bilateral and multilateral external action, was the first document to connect both dimensions, committing the EU and its Member States to raise recommendations of the UPR, treaty monitoring bodies and Special Procedures in their bilateral relations, to monitor their implementation and to provide support.<sup>517</sup> This was later taken up in the 2013 EU priorities at the UN human rights fora, which state that the EU 'discusses with partners about the implementation of recommendations'.<sup>518</sup>

## **5. Conclusions**

The EU pursues a large array of **thematic human rights objectives** at the UN, the core priorities of which include the rights of the child, the opposition against the death penalty and the right to freedom of religion or belief. The EU's aims and objectives are heavily slanted towards civil and political rights, and place significantly lesser emphasis on economic, social and cultural rights. The analysis also shows that the EU is generally less vocal externally about thematic human rights issues that have proven sensitive internally, in particular the rights of migrants and refugees, as well as the treatment of racism and xenophobia, although it has been a prominent promoter of LGBTI rights at the UN level. Since 2000, the EU's thematic human rights objectives have significantly increased and current policy documents contain veritable 'shopping lists' of priorities, giving rise to the criticism that the EU might be overextended and lack ownership for all its various objectives. The consistency between EU policy documents on thematic human rights objectives at the UN is fairly high. The fora in which the priorities are to be promoted are rarely identified. The analysis shows that the UNGA Third Committee and the HRC serve as central fora in which the EU addresses the widest range of thematic objectives. They are supplemented by a myriad of additional bodies, depending on the subject matter and the institutional framework of the UN.

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<sup>517</sup> Strategic Framework (n 369) 8.

<sup>518</sup> Council conclusions on EU priorities at the UN Human Rights Fora 2013 (n 398) para 23.

Since 2010 the EU has listed fifteen country situations among its **country-specific objectives**, of which the core priorities are the DPRK, Burma/Myanmar, Iran and Belarus. The EU's strategic documents focus heavily on Asia and Africa, displaying a complete omission of Western and Latin American States. Nevertheless, in practice, the EU has addressed a number of omitted country situations in recent years, thereby lessening the gap. Additionally, it has been argued that EU priority countries can consistently be characterised as economically weak and politically isolated countries. Important EU trade partners or allies with similarly weak human rights records are not among the priority countries in EU strategic documents, thereby giving rise to the criticism of 'political selectivity'. However, it may not be overlooked that in practice at least China and Russia figure among those countries that the EU addresses rather consistently through statements in the HRC and the Third Committee. The number of EU country-specific objectives has significantly increased over the past years, however the limited time frame allows for no definite conclusions on whether this indicates a trend of accumulation or whether – due to the higher degree of volatility of country-situations – EU priorities will display an equal degree of flexibility. The consistency between EU policy documents on country-specific objectives is high. The appropriate fora are usually indicated. The HRC serves as the main forum for the EU to address country-situations. Three countries – DPRK, Myanmar/Burma and Iran – are also regularly addressed in the UNGA.

The EU's **institutional objectives** focus on a strong, independent and credible UN human rights system. In particular the EU is a staunch supporter of the HRC's Special Procedures and of a strong UPR and has defended these mechanisms throughout the negotiations on the creation of the HRC, the institution-building phase and the subsequent review process. EU priorities have remained largely stable, but displayed sufficient flexibility to react to changing circumstances and demands. Finally, the consistency between EU policy documents on institutional objectives is high.

## B. Policy development process

### 1. Introduction

The following section aims at presenting the processes and dynamics behind the formulation of EU human rights aims, objectives and priorities at the UN. It sets to indicate the critical factors (such as entry points and triggering effects for setting the EU strategies), relevant actors and their roles as well as the overall characteristics of the process. It will also provide a brief characterisation of the process in an attempt to establish the vital specifics which define strategy development as far as human rights in multilateral environments are concerned. While an outstanding body of literature and commentary exists on general matters regarding CFSP and EU External Relations Law<sup>519</sup> and the EU's participation in multilateral environments,<sup>520</sup> relatively little attention insofar has been given to the insight on the process of drafting and adopting the relevant policy documents.

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<sup>519</sup> Eeckhout (n 275); Cardwell (n 340).

<sup>520</sup> Knud Erik Jorgensen and Katie Verlin Laatikainen (eds) *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power* (Routledge 2013); Spyros Blavoukos and Dimitris Bourantonis (eds) *The EU presence in international organizations* (Routledge 2011).

## 2. Methodology

An analysis of strategy development processes entails two basic levels of research. One is the research on primary and secondary sources regarding the legal grounds for strategy development, both in terms of the roles and competences vested in relevant EU bodies, which provides an indication on actors tasked with the development of aims and objectives for EU action within the UN forums, and within their mandate. The other level concerns itself with modalities, practices and processes within the relevant EU bodies. In particular, the working methods and activities of various secondary-level bodies (working groups, committees, directorates, task forces) need to be examined in order to provide an insight into the practical dimension of strategy development process. This allows, *inter alia*, to identify the role and involvement of both the internal participants from within the EU domain and the external stakeholders such as the civil society or representatives of other international organisations. This segment of research faced an additional challenge due to the level of confidentiality and lack of publicly available information within the EU domain, and certain types of documents (e.g. all COHOM minutes and some of the agendas) considered confidential or secret. This problem is coupled with the fact that a substantial bulk of COHOM work is carried out during informal meetings which, owing to their nature, do not feature publicly available agendas. Agendas of formal meetings are publicly available and they were also used in the research in order to establish the scope of the process. Additionally, the research team was able to interview several current and former EU officials who provided an valuable insight into the modalities of the strategy development process.

The following types of public documents have been identified as the most relevant:

- **EU Strategic Framework and Action Plan on Human Rights and Democracy**
- **EU Medium-term Priorities at the United Nations (2012-2015)**
- **EU Priorities for the United Nations General Assembly**
- **EU Priorities at the UN Human Rights Council**
- **EU Priorities at the UN Human Rights Fora**
- **EU Human Rights Thematic Guidelines/Country Strategies<sup>521</sup>**

The European Security Strategy (ESS) was not included in the list due to the fact that it contains very brief and overt references to human rights and cooperation with multilateral environments, and that the European Council has refrained from adopting any adjustments to the ESS since its inception, ostensibly leaving the elaboration of specific priorities of CFSP to the Council. Since all of the abovementioned document types are adopted as results of similar development processes, the following part of this

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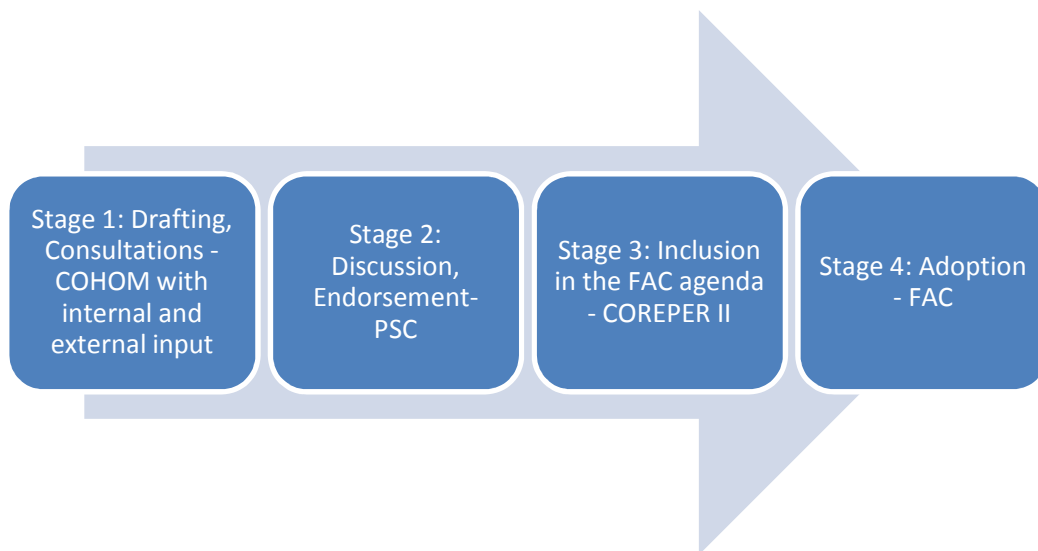
<sup>521</sup> The existence of confidential strategies was confirmed in several interviews carried out by the research team. A portion of confidential strategies is reflected in the public EU strategy documents on priorities at the UN forums, however the bulk of specific guidelines concerning particular countries is closed to public.

subchapter will address them jointly, pointing to substantial differences between particular document types.

### 3. Overview of the Process

As outlined in Chapter III.B, the competence for framing the CFSP, including elaboration of strategies and policy-making, is vested in the Council in its Foreign Affairs Council configuration. In practice, the Council dominates the CFSP, in particular in regard to policy-making and strategy development<sup>522</sup>. However, in line with TEU art. 26(2), the HR/VP cooperates with the Council in order to ensure unity, consistency and effectiveness of the EU's external action. Towards this end, the EEAS features throughout the process, providing substantive input and having its representatives chair both COHOM and PSC, with HR/VP herself chairing the FAC. The substantive work within the Council follows a multi-stage procedure. The first stage comprises of preparatory body-level work, where documents are drafted and discussed with various stakeholders from within and outside the EU. In the second stage, the relevant documents are forwarded to the Political and Security Committee where substantial decisions regarding the CFSP are undertaken. This stage was final for the EU Medium-term Priorities at the United Nations (2012-2015) which were endorsed by the PSC. The remaining strategy documents followed the 'conveyor belt' of the Council machinery into the third stage, where they were passed to COREPER II, a body that decides on the FAC agenda. The final stage is a formal adoption of the document by the FAC, at which point it begins to function as a non-legally binding policy tool for use by EU stakeholders in the implementation of the CFSP. The entire process follows a 'top-down' model, however at the preparatory stage there is a significant amount of formal and informal consultation with stakeholders on the ground in Geneva and New York.

Figure 4: Stages of the strategy development process



<sup>522</sup> Eeckhout (n 275) 487.

### a) *Stage 1: Drafting, Consultations*

At the first stage, COHOM is the key actor within the Council's domain.<sup>523</sup> COHOM is responsible for preparatory works on all CFSP policy documents in the field of external human rights activity. In case of the EU Strategic Framework and Action Plan on Human Rights and Democracy, the EU Priorities for the United Nations General Assembly, the EU Priorities at the UN Human Rights Council, the EU Priorities at the UN Human Rights Fora and the EU Human Rights Thematic Guidelines COHOM is the primary actor responsible for drafting the document. In regard to the EU Medium-term Priorities at the United Nations (2012-2015), the document was prepared by CONUN, however COHOM contributed to the entire human rights-related content. The Country Strategies are prepared primarily by EU Missions to a given country with participation of COHOM. Permanently chaired by a member of EEAS<sup>524</sup>, the Working Party on Human Rights facilitates the process of drafting strategy documents and ensures proper outreach, both internal and external. Matters related to interaction with UN are currently handled exclusively by the 'capital' formation of COHOM. On the internal side, COHOM cooperates with other Council Working Parties, the EEAS, the EC, the EP, the Special Representative for Human Rights, and EU delegations and Member State missions in Geneva/New York. As regards the other Council Working Group/Parties, COHOM sees extensive involvement of other foreign affairs preparatory bodies, such as COMAG<sup>525</sup>, COASI<sup>526</sup>, COAFR<sup>527</sup>, and occasional involvement of other Working Groups/Parties, with the special mention of CONUN as the Working Group in charge of the EU's overall involvement in the UN. Notably, COHOM meets on regular basis with FREMP in order to foster coherence between internal and external dimensions of the EU policy.<sup>528</sup> Substantial input is provided by the EEAS via its human rights units. The EEAS provides COHOM with drafts of overarching policy documents (such as with the 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy) as with an input on country strategies and particular issues faced in the UN human rights forums.<sup>529</sup> The Commission's involvement is mostly limited to directorates which execute external actions of the Commission, chiefly the DG Development and Cooperation – EUROPAID (DEVCO) and the DG Trade (TRADE). Consultations with the European Parliament, which have increased in number and intensity in the recent years, are conducted with the Subcommittee on Human Rights (DROI). Annually, COHOM holds formal meetings with EU Delegations and Member State missions in Geneva and New York in order to discuss strategic planning and coordination. In order to facilitate cross-institutional cooperation, COHOM has established a number of thematic Task Forces (e.g. death penalty, LGBTI rights, torture) which involve specialists from across the EU domain tasked with providing input for the formulation of priorities and guidelines related to a given theme.

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<sup>523</sup> Wouters and Meuwissen (n 310) 135.

<sup>524</sup> The current COHOM chair is Mr. Engelbert Theuermann (Austria).

<sup>525</sup> Working group on Mashreq/Maghreb. E.g. Council of the European Union, Meeting of the Working Party on Human Rights, 21 April 2014, Doc No 2618/14.

<sup>526</sup> Working Group on Asia.

<sup>527</sup> Working Group on Africa.

<sup>528</sup> Council of the European Union 'Presidency Discussion Paper Consistency between internal and external aspects of human rights protection and promotion in the EU', Doc No 8318/14.

<sup>529</sup> Interviews with EU officials, October 2013.

The involvement of external stakeholders appears to be focused on three groups: other international organisations, human rights defenders and civil society. In the first group one can identify representatives of various UN bodies (OHCHR, Special Rapporteurs<sup>530</sup>). In regard to the civil society, COHOM holds informal exchanges with individual NGOs and NGO networks (such as the Human Rights and Democracy Network or the International Federation for Human Rights). There is no indication on COHOM inviting independent experts or academics, although members of the Working Group frequently actively participate in academic events.<sup>531</sup>

As far as modalities of the work are concerned, COHOM convenes in three modes. The first mode includes formal meetings of COHOM, held at least once per month in Brussels.<sup>532</sup> These meetings are primarily aimed at discussing recent and short-term developments and strategies, such as the priorities for upcoming UNGA/HRC sessions. The second mode comprises regular informal meetings which are held once every 6 months by the current Presidency. These meetings are undertaken in order to discuss long-term planning and priorities, emergent themes and developments. The third mode is ad hoc informal meetings, such as dialogues and trilogies. Additionally, members of COHOM participate in meetings hosted by other stakeholders within the EU domain as well as various unofficial dialogues and trilogies. These ad hoc informal meetings are held with a high frequency (2-3 meetings per week).<sup>533</sup>

The work on preparation of the strategic documents also entails analysis of the outcomes of implementations of previous iterations of the document (in case of UNGA priorities) or ongoing implementation processes (Thematic Guidelines/Country Strategies and Strategic Framework/Action Plan). COHOM discusses the outcomes of UNGA/HRC sessions, the current state of implementation of thematic/country guidelines and the Action Plan(s), as well as the feedback from HoMs/HoDs from New York and Geneva. Finally, a vital source of policy drafting comes from the agendas of UN venue meetings (in particular the UNGA and the HRC), due to the overarching assumption that the EU priorities and guidelines attempt to cover as much of the UN human rights agenda as possible.

Taking stock of these entry points and triggering effects, COHOM formulates proposals of policy documents for further consideration within the Council, taking into consideration the fact that according to the CFSP principles, the adoption of policy documents must be unanimous.

### *b) Stage 2: Discussion, Endorsement*

In the second stage, the document prepared by COHOM is forwarded to the PSC for discussion and endorsement. The PSC is an ambassadorial-level body, and due to the wide scope of foreign policy and security matters it handles, human rights are only a fraction of its concern. The PSC not feature human rights expertise to the degree which COHOM does.<sup>534</sup> However, while it does represent a step away from

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<sup>530</sup> Council of the European Union, Meeting of the Working Party on Human Rights, 27 August 2014, Doc No 3858/14.

<sup>531</sup> For example, the COHOM Chair participated as a speaker and panel moderator in the 2014 EIUC Diplomatic Conference 'The EU's role in the UN human rights fora' in Venice, 5 July 2014.

<sup>532</sup> In practice, COHOM convenes in Brussels at least twice per month.

<sup>533</sup> Interviews carried out under Chatham House Rule, October 2013.

<sup>534</sup> Rasch (n 180) 28.

the focus on human rights, it is a step closer to political decision-making. It is a body where the necessary unanimous consensus required for CFSP decisions can be achieved. As a result, a discussion on human rights policy documents within the PSC focuses less on the substantive content, and more on the clarification of objectives to be achieved within a given area and practical aspects of implementation, including matters such as the division of work and burden sharing between the EU bodies and Member States.<sup>535</sup> However, in many cases, the endorsement of COHOM policy documents is purely a procedural step. The endorsed document is subsequently forwarded to COREPER II for inclusion in the Council agenda.

### *c) Stage 3: Inclusion into the Council Agenda*

The final preparatory stage sees COREPER II consider inclusion of the item regarding the adoption of a policy document in the Council's agenda. In the past, inter-institutional rivalry between both COREPERs and the PSC resulted in clashes between the committees with both regarding themselves as the 'gateway' to the Council.<sup>536</sup> However, in the recent years this conflict was resolved and currently COREPER does not re-open items which have been endorsed by the PSC in the field of CFSP.<sup>537</sup> Therefore, the COREPER step is purely procedural and does not entail any substantive discussion on policy documents.

### *d) Stage 4: Adoption by the Council*

Ultimately, the proposed policy document reaches a Council meeting held in the Foreign Affairs Council configuration (composed of the EU Member State cabinet ministers responsible for foreign affairs). No substantive discussion is being held at this point, and the Council adopts the document as it is presented by the PSC via COREPER.

## **4. Concluding Observations**

The first observation is a part of a broader discussion on where the policy-making of EU's external relations should be located. Arguments have been formulated on the viability of the current model and the possibility of shifting the policy-making closer to policy implementation, for example by tasking the EEAS with policy drafting.<sup>538</sup> While this particular discourse is far too general and overarching to be discussed in regard to one particular facet of the CFSP, there are two important points to be made. First of all, the EEAS already has substantial influence on the shaping the EU human rights policy at the UN, not the least by having an EEAS representative as a permanent chairperson of COHOM, but also by providing substantial input to preparatory works on policy documents. This, combined with other developments such as establishing the 'Brussels-based' COHOM, has contributed to a marked increase in the amount and scope of priority documents formulated in the recent years (see chapter IV.A). However, while the policy development does not appear to be hampered by the current division of competences within the EU, there remains the question of policy implementation. In practice, EU Delegations and Member States

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<sup>535</sup> Interviews carried out under Chatham House Rule, October 2013.

<sup>536</sup> Eeckhout (n 275) 489.

<sup>537</sup> Puetter (n 181) 55.

<sup>538</sup> Mario Telò and Frederik Ponjaert, *The EU's Foreign Policy: What Kind of Power and Diplomatic Action?* (Ashgate 2013) 154.

in New York and Geneva are given large leeway in how they operate, including how they implement the priorities, guidelines and strategies.<sup>539</sup> In fact, some of the interviewed stakeholders indicated that the relationship between the actors on the ground and Brussels, both in terms of coordination and implementation of policies, mirrors the relationship most Member State delegations have with their capitals – namely, the delegations in Geneva and New York tend to follow the policy documents in a relaxed fashion, sometimes going in line with the Council’s priorities and strategies, and sometimes ignoring them altogether.

The assessment of the EU human rights policy development process in regard to the UN is *de facto* an assessment of COHOM. Despite the many reforms and enlargements which the EU has seen over the years, the critical point of formulating and adjusting the external human rights policy within the Council remains constant: the COHOM continually serves as the focal point of elaborating aims, objectives and strategies. The Working Group on Human Rights is the nexus of gathering entry points, observing triggering effects, facilitating wide outreach and fostering expert discussion on human rights issues. In fact, one can observe that in the recent years COHOM has increased its own initiative at fostering a dialogue and ensuring wide consultations of proposed policies. This situation results in several positive consequences, but at the same time generates salient questions. On the positive side, there are major advantages to having the bulk of strategic planning regarding human rights located within one body, thus avoiding scattering the competences and provoking issues such as inter-organisational rivalry. Furthermore, the fact that the strategy-making processes are continually vested in one entity ensures a high degree of institutional memory and operational flexibility. However, there are also risks involved with vesting so much policy-drafting competence in one body. The chief risk is the overload of COHOM, which was made evident in the recent years. Despite the frequent formal and informal meetings, the sheer amount of COHOM work related to the UN itself is staggering, which combined with other external action areas where COHOM is involved (i.a. relations with regional organisations and bilateral relations) results in a work overload, which has only recently been alleviated, since the creation of Brussels-based COHOM, which handles matters unrelated to the UN and thus frees up the capacities of the ‘Capital-based’ COHOM. However, the overload continues to persist, and, assuming that suggestions and proposals elaborated upon in other chapters of this report were to be taken up, this would yield an even greater increase in workload for COHOM.

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<sup>539</sup> Zaru and Geurts (n 354) 55.



## V. Tools and methods employed by the EU at the UN

At the UN human rights fora the EU has a wide array of tools and methods at its disposal, including *inter alia* delivering statements, drafting, supporting and tabling resolution initiatives, support of side events and major UN conferences, funding of UN work, and various other aspects of human rights diplomacy. It would be beyond the scope of this report to provide an in-depth analysis of the various facets in which the EU and the UN engage in the field of human rights. Instead, the report will focus on three highly visible and relevant aspects of the Union's activities within UN human rights bodies: resolution initiatives in the HRC and the UNGA Third Committee, the UPR and the financing of the OHCHR. These three chapters will serve as case studies to illustrate the range of EU-UN relations in the area of human rights.

### A. Resolution initiatives

This chapter examines the EU's resolution initiatives in UN human rights fora, namely the UNGA Third Committee, the CHR and its successor, the HRC. The analysis will focus on resolution initiatives tabled by the Union, but a brief look will also be taken at national initiatives of the EU Member States and at their co-sponsoring of resolutions. Aiming to keep the scope of the analysis manageable for the sake of this report, the timeframe will be limited to the period between 1999/2000 and 2014. The findings of this report are based on the EU's annual reports on human rights 1999/2000-2013, as well as on the relevant documents (reports, L-documents, resolutions, meeting records, voting records) of the UNGA, the CHR and the HRC. Within the documents systematic text searches were conducted to identify draft resolutions, voting results, co-sponsorship and statements.

#### 1. Introduction

The UNGA Third Committee, the CHR and the HRC<sup>540</sup> can address thematic or geographic human rights issues through the adoption of resolutions. Resolutions usually bring to a close the debate on an agenda item. While they have no legally binding value for the UN Member States they capture the opinion of the world community (in the UNGA) or of the CHR/HRC Members on a certain human rights topic and therefore carry significant political weight.<sup>541</sup> Usually, resolutions are introduced on a recurring basis, either annually or biannually.<sup>542</sup> In the period under review, the UNGA Third Committee adopted around 60-70 resolutions annually, the CHR around 80-90, and the number of resolutions adopted in the HRC has gradually increased from 14 in its first year to 95 in 2013. Thematic resolutions focus on a particular human rights issue. They usually make policy recommendations, e.g. urging UN Member States to ratify and implement international human rights treaties and requesting UN bodies to incorporate human rights

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<sup>540</sup> For more detail on the institutional structure and work of these bodies see *supra*, ch III.A. Note that the UNGA Third Committee is a plenary body in which all 193 UN Member States are represented. The CHR on the other contrary had only 53 elected members, and its successor, the HRC is composed of 47 Member States. Note also, that the EU is not a member in any of these bodies, although all EU Member States are Members of the UNGA and a limited number sat/sit as elected members on the CHR/HRC (for more detail on this see *supra*, ch III.C.).

<sup>541</sup> Note, that UNGA resolutions – particularly if adopted by consensus – can also be considered as the expression of the *opinion juris* of states.

<sup>542</sup> For example, the EU's resolutions on the rights of the child, freedom of religion or belief, the DPRK and Myanmar/Burma are tabled annually. Resolution on the death penalty are introduced every two years.

perspectives into their work. Country-specific resolutions deal with the situation of human rights in a particular country. Their content typically includes welcoming positive and condemning negative human rights developments, making policy recommendations to the national government, and assigning mandates to UN bodies. CHR and HRC resolutions can additionally create or extend the mandate of thematic or country-specific special procedures – Special Rapporteurs, Independent Experts or Working Groups tasked with reporting and advising on particular issues covered by their mandate.<sup>543</sup>

Resolutions are by default adopted without a vote ('by consensus'). If a vote is called, resolutions require a simple majority of the 'members present and voting' for their adoption.<sup>544</sup> Votes can also be requested on specific parts of a proposal ('paragraph vote'). Sometimes a resolution is subjected to numerous paragraph votes before it is adopted.<sup>545</sup> An item under debate may be adjourned if a so called 'no-action motion' is proposed by a Delegation and supported by a majority in the immediately following vote.<sup>546</sup> No-action motions became a popular tool to block the adoption of country-resolutions in the CHR – a trend that spilled over into the UNGA Third Committee during its 59<sup>th</sup> session.

While the EU has many means at its disposal in the UN framework to promote its human rights objectives (see *supra* chapters IV.A., V.A.), the adoption of a resolution most effectively captures the benefits of the multilateral forum and potentially has the highest impact. It is important to distinguish the different degrees in which the EU can be involved in the tabling of a resolution.

- **Resolution initiatives of the EU:** The EU can table resolutions in the UNGA and in the CHR/HRC, thus acting as the 'main sponsor'. Although the institutional framework of these UN bodies requires the representation of the EU through an EU Member State, these resolutions represent a collective diplomatic effort of the Union.
- **Resolution initiatives of EU Member States:** Next to the EU, the EU Member States can table resolutions at the UNGA, the CHR and the HRC. Other than EU resolutions, these initiatives have a national background and are not formally coordinated in advance, although EU Member States may discuss them and invite support.
- **Resolutions co-sponsored by the EU Member States:** The EU Member States can express their strong support for a resolution by becoming 'co-sponsors'. The endorsement of the draft resolution is thus made public before the voting procedure with the list of the co-sponsors being included in the L-document. Countries, which join as co-sponsors after the tabling of the resolution are read out before the vote is taken. Co-sponsoring is not officially coordinated in the

<sup>543</sup> For a list of thematic mandate holders see <<http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>> accessed 5 September 2014; for a list of country mandate holders see <<http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>> accessed 5 September 2014.

<sup>544</sup> UNGA Rules of Procedure rule 85, note that a two-thirds majority is necessary for 'important questions' in the sense of rule 83; HRC Rules of Procedure rule 20. For a detailed overview of the adoption of a UNGA resolution see Permanent Mission of Switzerland to the United Nations, *The PGA Handbook: A practical guide to the United Nations General Assembly* (2011) 52 et seq.

<sup>545</sup> E.g. the EU's draft resolutions on the rights of the Child were often subject to lengthy paragraph votes in the UNGA.

<sup>546</sup> UNGA Rules of Procedure rule 74.

EU, however, in practice a high degree of coordination between the EU Delegation and the Member States takes place.<sup>547</sup>

The resolutions thus tabled can then be either adopted by consensus or by a majority of votes, they can be rejected, subjected to amendments or to a no-action motion, and finally they can be withdrawn by the sponsor before a vote can take place. The EU itself does not have the right to vote on tabled resolutions. It strives to coordinate the voting behaviour of its Member States, which is largely successful, with only a very few split votes over the past years.<sup>548</sup>

All of this raises a number of highly relevant research questions which will be addressed in this chapter. Firstly, with regard to the EU resolution initiatives, closer attention will have to be paid to their scope, development over time and to the strategies the EU employs to ensure their success. Linking the findings of this chapter back to the findings of Chapter IV.A. ('Aims and objectives'), it will be analysed which thematic and geographic priorities the EU actually addresses through the instrument of resolution initiatives and which strategies for the selection of issues can be detected. It will be analysed how the EU's engagement to table resolutions at the Third Committee, the CHR and the HRC has developed over time, and under which circumstances new initiatives are introduced or existing initiatives dropped. A closer look will also be taken at the hurdles that the EU faces as an actor in the abovementioned UN fora, and which strategies it has adopted to overcome them. In order to obtain a complete picture, the analysis will then focus on the individual resolution initiatives of EU Member States, in order to assess, whether they can fill the gaps left by the Union of the 28, in particular with regard to economic, social and cultural rights. Starting from the premise that these individual initiatives can only effectively be characterised as a tool for realizing EU goals if they are supported by the unified weight of all EU Member States, it will then be examined, whether EU Member States consistently co-sponsor those individual initiatives that correspond to EU priorities. Lastly, it will also be analysed, whether EU priorities are addressed through resolutions of non-EU Member States and which position EU Member States take towards them, in particular whether they act as co-sponsors.

## 2. Resolution initiatives of the EU

This section will analyse EU resolution initiatives, i.e. draft resolutions tabled by an EU Member State (in general the rotating Council Presidency) on behalf of the EU. Given that these resolutions carry the weight of a collective diplomatic effort of the Union, they constitute a strong tool for furthering EU policy objectives in UN human rights fora, but may also be particularly vulnerable to the Union's traditional hurdles as an actor in the UN human rights system, in particular the frequently mentioned lack of

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<sup>547</sup> Note, that UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276 annex para 3 explicitly negates the EU's right to co-sponsor draft resolutions.

<sup>548</sup> Most of them related to the Israel/Palestine conflict, see e.g. HRC Res 16/20 (2011) UN Doc A/HRC/RES/16/20 on the 'Follow-up to the report of the independent international fact-finding mission on the incident of the humanitarian flotilla', HRC Res 16/32 (2011) UN Doc A/HRC/RES/16/32 on the 'Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict'. But see also the recent HRC resolution on drones, HRC Res 25/22 (2014) UN Doc A/HRC/RES/25/22, titled 'Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law', in which a three-way split occurred.

credibility and diplomatic flexibility. This section will therefore examine to what extent the EU relies on resolution initiatives in order to promote its policy objectives at the UN. It will analyse how this engagement has developed over time and how the EU deals with the hurdles that it faces. The analysis will be divided into thematic and geographic resolution initiatives and draw specific as well as general conclusions.

### a) *Thematic resolutions*

In the period from 1999 to 2014, the EU has only introduced resolutions on three distinct thematic human rights issues in the UNGA Third Committee, the CHR and subsequently the HRC: the death penalty, the rights of the child, and freedom of religion or belief. This constitutes only a small fraction of the wide range of thematic priorities that the EU has set itself through its medium and short term strategic documents (see above, chapter IV.A.).

#### (1) *Death penalty*

The fight against the death penalty represents one of the core thematic human rights priorities of the Union and is also a distinctive feature of the European human rights regime.<sup>549</sup> The ECHR and the Charter on Fundamental Rights contain clear prohibitions of the death penalty, banning it on the European continent, while worldwide a large number of countries still remain in favour and actively practice it.<sup>550</sup>

European efforts to fight against the death penalty at the level of the UN originated in an Italian initiative. Italy had already in 1994 introduced a draft resolution against capital punishment in the Third Committee. While this first proposal failed to garner sufficient support, two resolution initiatives in the 1997 and 1998 sessions of the CHR respectively were successful. In 1999, the EU took over these initiatives and not only successfully tabled a strengthened resolution in the CHR<sup>551</sup> but also introduced a resolution in the 54<sup>th</sup> session of the Third Committee. Although the EU achieved to garner the support of 72 co-sponsors,<sup>552</sup> it also faced strong opposition by retentionist countries who considered the resolution to encroach on their sovereignty and introduced a series of ‘wrecking amendments’.<sup>553</sup> Rather than to ‘risk the passing of a resolution that would have incorporated wholly unacceptable arguments’<sup>554</sup> the EU decided to withdraw the initiative, following the rationale that ‘no resolution was better than a fatally flawed text’.<sup>555</sup> The EU subsequently focused on the CHR, trying to build momentum for the universal abolition of the death penalty, by gaining further co-sponsors and achieving better voting results. To this end the EU relied on burden-sharing in demarches, increased internal coordination, as well as active lobbying in Geneva and

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<sup>549</sup> Giuseppe Balducci, ‘The EU’s promotion of human rights’ in Knud Erik Jorgensen, Katie Verlin Laatikainen (eds) *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power* (Routledge 2013) 185, 191.

<sup>550</sup> In Europe only Belarus still practices the death penalty.

<sup>551</sup> CHR Res 61 (1999) UN Doc E/CN.4/RES/1999/61.

<sup>552</sup> Which may include EU Member States.

<sup>553</sup> William Schabas, *The Abolition of the Death Penalty in International Law* (3rd ed, CUP 2002) 205.

<sup>554</sup> Christian Behrmann and Jon Yorke, ‘The European Union and the Abolition of the Death Penalty’ (2013) 4 *Pace International Law Review Online Companion* 1, 58 fn 286.

<sup>555</sup> *ibid.*

the national capitals with NGO support.<sup>556</sup> It was only in the 61<sup>st</sup> session, that the EU again decided to take action at the level of the UNGA. Supported by 85 states, the EU presented a cross-regional ‘Declaration against the Death Penalty’ on 19 December 2006, which committed the signatories of the statement to work towards the abolition of the death penalty.

This set the scene for the successful adoption of the UNGA ‘Resolution on a Moratorium of the Use of the Death Penalty’ on 18 December 2007,<sup>557</sup> which was celebrated by the EU as a ‘landmark achievement’ and the ‘culmination of longstanding EU efforts’.<sup>558</sup> The adoption of the resolution was the result of a sophisticated strategy of the EU, which was ‘forced to adapt its coordination method, change its policy objectives and lower its profile’<sup>559</sup> in order to ensure the success of the initiative.

Firstly, the EU resolved to lower its ambitions and amend its **policy objectives** from a resolution on the abolition of the death penalty to a resolution on a simple moratorium. This policy change was not without difficulties. Some EU Member States, including Italy, favoured the reduced aim of the resolution for pragmatic reasons, knowing that a majority for a resolution on the abolition of the death penalty was elusive. Other EU Member States, notably the Netherlands, Sweden and Denmark, were hesitant to give up the further-reaching policy goal, arguing instead, that the tabling of the resolution should be postponed to the following year, when the larger diplomatic capacities of the French Presidency would allow for increased lobbying and outreach. Until shortly before the opening of the 62<sup>nd</sup> session of the UNGA, the EU continued to aim for abolition. It was only in the context of the political realities in New York and through dialogue with the cross-regional co-authors of the draft resolution, that the EU finally changed its policy in order to increase the chances of a positive outcome.

The EU also needed to make strategic choices in order to overcome its traditional hurdles at the UN, including its numerical inferiority, its widely perceived lack of credibility, and its difficulties to ensure effective outreach. The solution was found in the creation of a **cross-regional coalition**, which acted as co-authors of the draft resolution. It comprised two countries per regional group, namely Albania and Croatia, Angola and Gabon, Brazil and Mexico, The Philippines and Timor Leste, as well as New Zealand and the Portuguese Presidency representing the EU. The cross-regional authorship ensured increased credibility of the draft resolution as well as effective outreach across all regions when ‘within each region co-authoring states formed a caucus to lobby within their region for the adoption of the resolution’.<sup>560</sup> As has been identified by Kissack, the EU also needed to make two additional strategic choices. Firstly, the Portuguese Presidency participated in the cross-regional group as an equal partner, which did not enjoy any special treatment because of its added weight as a representative of a Union of 26 Member States. Secondly, the EU, which had initially intended to play a visible leadership role in the negotiation of the

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<sup>556</sup> Council of the European Union, ‘EU Annual Report on Human Rights 2004’, 13 September 2004; EU Annual Report on Human Rights 2006 (n 422).

<sup>557</sup> UNGA Res 62/149 (18 December 2007) UN Doc A/RES/62/149.

<sup>558</sup> EU Annual Report on Human Rights 2008 (n 409) 52.

<sup>559</sup> Robert Kissack, ‘The EU in the Negotiations of a UN General Assembly Resolution on a Moratorium on the Use of the Death Penalty’ in Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds) *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora* (Palgrave Macmillan 2012) 103.

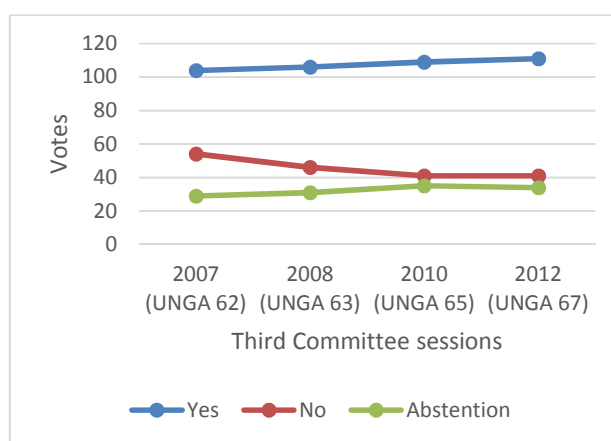
<sup>560</sup> *ibid* 112.

draft resolution, lowered its profile so that the cross-regional character of the proposal would come to the fore.<sup>561</sup> It was realised in the EU, that strong leadership might sometimes be less effective than constructive team-work, and that an ‘overtly EU signature’ might contribute less to the success of an initiative, than a truly cross-regional package.

An additional strategic decision was to **closely cooperate with NGOs**, in particular with Amnesty International, which has since decades advocated for the abolition of the death penalty. The added expertise and capacities of Amnesty International were crucial for the campaign, both in terms of lobbying and strategizing.

The **choice of forum** was another important aspect to be considered. While the EU had been consistently successful with its resolutions on the abolition of the death penalty in the CHR, a continuation of these successes could not immediately be presumed in the new HRC, which had shifted the numbers of seats allocated to the various groups to the disadvantage of the EU. The EU therefore had to consider to ‘transplant’ its traditional resolution initiative to the UNGA, albeit with a reduced scope, taking into account that a resolution adopted at the plenary level also represented a ‘qualitative step forward’.<sup>562</sup>

Figure 5: Voting results of the ‘Resolution on a Moratorium of the Use of the Death Penalty’ (2007-2012)



Lastly, the **internal coordination** of the EU needed to be adapted towards the challenges of negotiating the resolution. As Kissack has noted, ‘Portugal worked both in Brussels and in New York to extend the flexibility of its mandate and reduce agent monitoring by the 26 other Member State principals’.<sup>563</sup> Greater leeway of Portugal as a negotiator and the avoidance of a bloc mentality during the negotiations in the cross-regional group were essential to ensure the success of the proposal.

The resolution was reaffirmed in the subsequent session of the UNGA (2008)<sup>564</sup> and has since been adopted every two years (2010, 2012)<sup>565</sup> with increasing support (Figure 5). Each year the EU was strongly involved in outreach and lobbying, supporting the cross-regional alliance. Scholars have since referred to the moratorium on the death penalty as a ‘human rights success story’ in which the EU was and continues to be ‘crucially involved’.<sup>566</sup>

<sup>561</sup> *ibid* 116.

<sup>562</sup> *ibid* 104.

<sup>563</sup> *ibid* 116.

<sup>564</sup> UNGA Res 63/168 (18 December 2008) UN Doc A/RES/63/168.

<sup>565</sup> UNGA Res 65/206 (21 December 2010) UN Doc A/RES/65/206; UNGA Res 67/176 (20 December 2012) UN Doc A/RES/67/176.

<sup>566</sup> Behrmann and Yorke (n 554) 61.

## (2) Rights of the child

Originally a Swedish initiative, the promotion of the rights of the child ranks among the most long-standing and most consistently pursued human rights objectives of the EU in the UNGA Third Committee and the CHR/HRC (see *supra* chapter IV.A.). In the period under review, resolutions on children's rights were tabled consistently in all sessions of the UNGA Third Committee. In addition, annual resolutions on the rights of the child were introduced in the CHR and the HRC, with the exception of the transition years 2005-2007.

Similar to the resolutions on the death penalty, the annual resolutions on the rights of the child are a **cross-regional initiative** of the EU and the Group of Latin American and Caribbean countries (GRULAC). Every year, both actors jointly table the draft resolution, and share the responsibility for the drafting process, which alternates each year between the EU and GRULAC. While this close thematic cooperation has in the past run mostly smoothly, it has not always been without difficulties. For example in the 57<sup>th</sup> and 58<sup>th</sup> session of the CHR (2001/2002) the EU proposed to have a 'shorter and more concise resolution'.<sup>567</sup> Neither of those proposals were supported by GRULAC and a compromise had to be found. Additionally in the 60<sup>th</sup> session of the UNGA (2005) the Caribbean Group (CARICOM) refused to sponsor the resolution due to a difference of opinion over the issue of corporal punishment in schools, but in later sessions the unity of the group could be restored.

All of the resolutions tabled by the EU and GRULAC were successfully adopted – up until the 56<sup>th</sup> session of the UNGA (2001) and since the 64<sup>th</sup> session (2009) until today even by consensus and often with large numbers of co-sponsors (e.g. 132 co-sponsors in the 54<sup>th</sup> session of the UNGA). This indicates that the proposed resolutions are squarely in line with the opinion of the world community and contain generally **uncontroversial** provisions. The only discrepancies arose during the Bush Administration, when the US began calling votes, and consistently voted against the resolution up until the 63<sup>rd</sup> session (2008). Contentious issues included the recognition of the Convention on the Rights of the Child – to which the US is not a State Party – as setting the standard for the protection and promotion of the rights of the child, references to the International Criminal Court, and to the imposition of the death penalty for crimes committed by children. Several times, the adoption of the resolution was preceded by lengthy paragraph votes.<sup>568</sup> The picture in the CHR was similar. While the US had merely dissociated itself from consensus through a statement in the 59<sup>th</sup> session of the CHR (2003) after intensive diplomatic efforts of the EU, it voted against the draft resolution in the following years. The situation changed when the Obama Administration came into power. Since the 64<sup>th</sup> session of the UNGA (2009) until today the resolution has been adopted by consensus, with increasing numbers of co-sponsors, among whom the US figures since the 65<sup>th</sup> session (2010).

The EU's engagement with regard to the rights of the child has been and remains one of the Union's core priorities in the UN human rights fora. It is a good example for a successful and long-standing cross-regional initiative despite sometimes differing approaches, but it also exemplifies the schism that existed

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<sup>567</sup> See only Council of the European Union, EU Annual Report on Human Rights 2001, 91.

<sup>568</sup> See only <[www.un.org/News/Press/docs/2005/ga10442.doc.htm](http://www.un.org/News/Press/docs/2005/ga10442.doc.htm)> accessed 8 October 2014.

between the EU and the US during the Bush era, and while the Obama Administration is more favourable towards the resolution initiatives in the UNGA and the HRC, the US still remains among the three countries that have not ratified the Convention on the Rights of the Child.<sup>569</sup> The resolution on the rights of the child is lastly the only thematic EU initiative, which contains provisions on economic, social and cultural rights. Although the EU has not yet introduced a general resolution on these issues, it has addressed the right to physical and mental health,<sup>570</sup> to education<sup>571</sup> and to an adequate standard of living<sup>572</sup> with regard to children as a vulnerable group.

### (3) Freedom of religion or belief

Lastly, the EU annually introduces resolutions on the 'Elimination of all forms of religious intolerance' in the Third Committee and the CHR/HRC. Originally a national Irish initiative, it was for the first time introduced by the EU under the Irish Council Presidency in the 60<sup>th</sup> session of the CHR<sup>573</sup> and in the subsequent 59<sup>th</sup> session of the UNGA (2004).<sup>574</sup> Since then it has been consistently adopted by consensus, supported by large numbers of co-sponsors. It can therefore also be classified as one of the more **uncontroversial** resolution initiatives.

### (4) Discussion of thematic resolution initiatives

The EU's **scope** of thematic resolution initiatives is limited to the three areas of the death penalty, the rights of the child and freedom of religion or belief, and thus to a small fraction of its thematic human rights priorities at the UN – what can be identified as 'core priorities'. General resolution initiatives on economic, social and cultural rights are absent, but EU resolutions on the rights of the child have in the past contained references to a selected range of these rights. In general, it is noteworthy, that the EU has selected two rather uncontroversial issues – children's rights and freedom of religion or belief – to be addressed by means of resolutions, but also successfully managed to build substantial cross-regional support on the issue of the death penalty, which remains one of the more divisive issues in the UN context.

In terms of **development** over time, the initiative on the rights of the child is the longest-standing among the three EU resolution initiatives, while the resolution on freedom of religion or belief was only for the first time introduced by the EU in the 60<sup>th</sup> session of the CHR (2004). Resolutions on the death penalty have been introduced successfully between the 55<sup>th</sup> and the 61<sup>st</sup> session of the CHR (1999-2005) and have made the transition to the UNGA – albeit with a restricted scope – in 2007. In general, the EU's thematic initiatives demonstrate a high degree of consistency, with the transition period from the CHR to the HRC as the sole interruption.

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<sup>569</sup> The other two being Somalia and South Sudan. Note that the South Sudan National Legislative Assembly has adopted a bill to ratify the Convention in November 2013. It will become the 194<sup>th</sup> State Party once the bill has been signed.

<sup>570</sup> HRC Res 22/32 (2013) UN Doc A/HRC/RES/22/32.

<sup>571</sup> HRC Res 19/37 (2012) UN Doc A/HRC/RES/19/37.

<sup>572</sup> *ibid.*

<sup>573</sup> CHR Res 14 (2004) UN Doc E/CN.4/RES/2004/14.

<sup>574</sup> UNGA Res 59/199 (20 December 2004) UN Doc A/RES/59/199.



The EU's **strategy** to form cross-regional coalitions for authoring draft resolutions is exemplified with regard to the initiatives on the rights of the child and the death penalty. This approach not only contributes to compensating the Union's numerical inferiority at the UN human rights fora, but also compensates its credibility problem and facilitates cross-regional outreach. The example of the resolution on a moratorium of the death penalty also highlights other EU strategies, including the close cooperation with NGOs and the decision to adapt policy objectives in the light of unfavourable voting prognoses.

### *b) Country-specific resolutions*

The EU is one of the staunchest advocates of country-specific resolutions at the UNGA Third Committee and the CHR/HRC. It considers them as valuable instruments to 'attract international attention to serious human rights violations' and argues that they can have a 'protective and preventive impact for victims of human rights violations on the ground'.<sup>575</sup> For many developing countries, on the contrary, resolutions targeting specific countries are considered as counterproductive 'naming and shaming'. They argue, that country-specific resolutions are mainly motivated by geopolitical reasons and usually refer to the double-standard problem and the lack of credibility of the main sponsors. The controversy increased particularly since 2002, due to a growing rift between developed and developing countries. The EU was not immune to the strong opposition of a sizeable number of UN Member States and experienced a number of voting defeats and no-action motions in the UNGA Third Committee and in the CHR.

The opponents of country-specific resolutions had repeatedly argued that confrontational country resolutions should be replaced by a more cooperative process. When the HRC – and with it the new UPR – was established, they saw their position confirmed and argued that the UPR should be regarded as an exclusive instrument for addressing country-specific human rights situations, thus rendering country-specific resolutions and Special Procedures obsolete. The EU, however, remained steadfast in defending country mandates of the Special Procedures, as well as country resolutions in the HRC and in the UNGA Third Committee. Nevertheless it adapted to the political climate by reducing the number of its resolution initiatives on distinct country-specific situations from twelve in the CHR to six in the HRC.

This section will analyse the scope of the country-specific EU resolution initiatives, their development over time, the EU's hindering factors and associated strategies. This will take the form of short notes on the various geographic EU initiatives in alphabetical order, followed by a detailed conclusions chapter. The length and detail of the different sections necessarily has to vary, given that for many initiatives the information available is rather scarce.<sup>576</sup> It has to be pointed out that linking the EU's resolution initiatives to its geographic human rights priorities is only possible to a limited extent, given that EU strategy documents contain references to country-specific issues only since 2010. Note also, that the chapter will not address the consensual resolutions adopted under item 10 'Technical assistance and capacity-building' of the HRC's agenda, given that they do not entail the same diplomatic challenges as the resolutions under item 4.

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<sup>575</sup> Council of the European Union, 'EU Annual Report on Human Rights 2003', 13 October 2003.

<sup>576</sup> On the 'iceberg problem' see also *supra*, ch I.C.

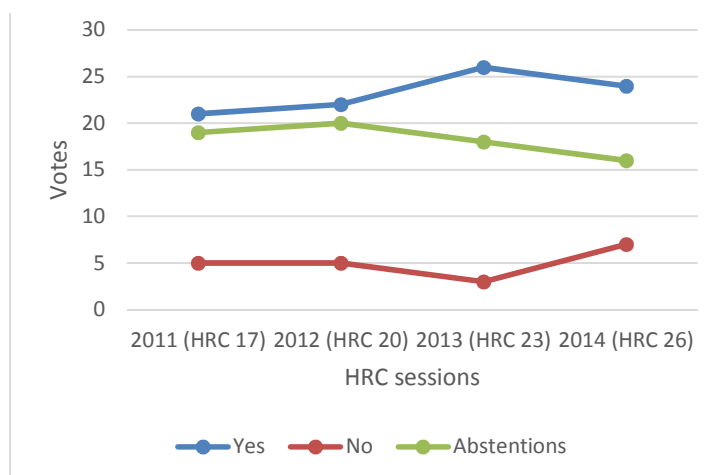
## (1) Belarus

The resolution on the human rights situation in Belarus was originally an initiative of the US, Canada and a number of Eastern European countries,<sup>577</sup> which the EU **joined as a co-author** in the 60<sup>th</sup> and 61<sup>st</sup> session of the CHR (2004/2005)<sup>578</sup> and in the 59<sup>th</sup> session of the UNGA Third Committee (2004). The two resolutions in the CHR were successful, and the first one created a new special rapporteur mandate for Belarus. The resolution in the UNGA Third Committee, however, was subjected to a **no-action motion**, adopted with a majority of 75 to 65 votes and 28 abstentions.<sup>579</sup> While no-action motions had already been a popular tool in the CHR to block unwelcome country-resolutions, this was the first time that they were also used in the Third Committee.

It was only in the 62<sup>nd</sup> session of the UNGA (2007),<sup>580</sup> that the EU and the US resumed their co-authorship of the Belarus resolution. This time, the resolution was adopted with a large margin of 68 to 32 votes and 76 abstentions. Already in the year before, the US had introduced a successful resolution on Belarus, which the EU had co-sponsored.

When the HRC was established, replacing the CHR, the EU strongly defended the 'preservation and strengthening of all special mechanisms',<sup>581</sup> including the controversial country mechanisms. Nevertheless, the EU was **unable to prevent the termination of the country mandates** on Belarus and Cuba, which was considered as one of the Union's 'major defeats'<sup>582</sup> in the new HRC. The EU refrained from quickly introducing a new initiative to re-establish the mandate on Belarus, given the lack of support in a Council, where the majority of Member

Figure 6: Voting results of the Resolution on 'The situation of human rights in Belarus' (2011-2014)



States opposed country mandates in general. When the HRC, however, created the mandate of the Special Rapporteur on the human rights situation in Iran on 24 March 2011, the EU 'considered the time ripe'.<sup>583</sup>

<sup>577</sup> Namely Bulgaria, the Czech Republic, Hungary, Latvia, Poland and Slovakia. CHR Res 14 (2003) UN Doc E/CN.4/RES/2003/14.

<sup>578</sup> CHR Res 14 (2004) UN Doc E/CN.4/RES/2004/14; CHR Res 13 (2005) UN Doc E/CN.4/RES/2005/13.

<sup>579</sup> UNGA Third Committee, 'Status of draft proposals', <[www.un.org/ga/59/third/draftstatus.htm](http://www.un.org/ga/59/third/draftstatus.htm)> accessed 8 October 2014.

<sup>580</sup> UNGA Res 62/169 (18 December 2007) UN Doc A/RES/62/169.

<sup>581</sup> EU priorities for the 63<sup>rd</sup> United Nations General Assembly (n 481).

<sup>582</sup> Wouters and Meuwissen (n 310) 163.

<sup>583</sup> *ibid* 163. One interviewee, however, stated that there was no link between the initiative on Iran and the one on Belarus, interview under Chatham House Rule, September 2014.

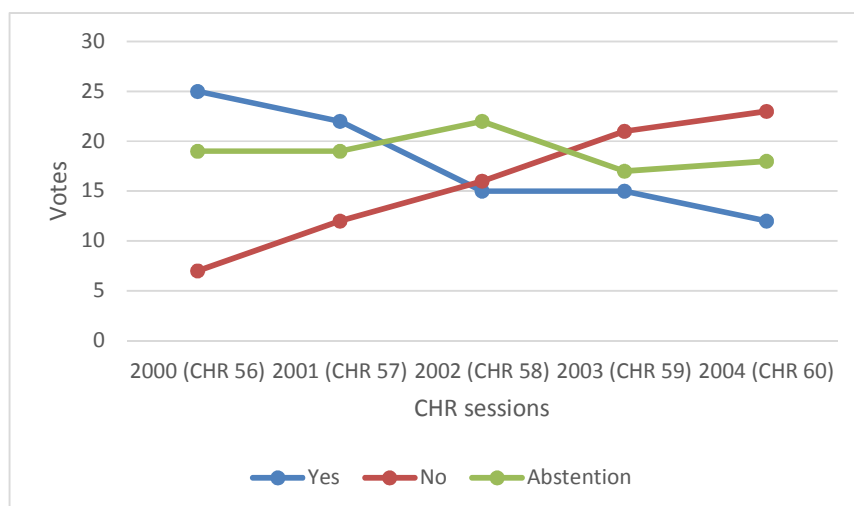
The combination of heavy lobbying and a weak resolution text<sup>584</sup> ensured the success of the EU's resolution initiative on the 'Situation of human rights in Belarus' on 17 June 2011 (**Error! Reference source not found.**)<sup>585</sup> One year later, the EU was able to build on this first success by tabling a draft resolution providing for the **creation of a new country mandate**, which was adopted with cross-regional support.<sup>586</sup> The mandate was extended in 2013<sup>587</sup> and again in 2014.<sup>588</sup> **Decreasing margins** in the last year evidence dwindling support and highlight the new challenges for the EU in the HRC, after the election of Cuba, China and Russia.<sup>589</sup>

## (2) Chechnya

The EU's initiatives on the human rights situation in Chechnya are one of the rare examples, where the EU has **targeted one of the world's most powerful states** and one of its strategically and economically important partners through a resolution. In the context of the Second Chechen War the EU tabled successful resolutions in the 56<sup>th</sup> and 57<sup>th</sup> session of the CHR (2000/2001), which were adopted with 25 to 7 votes and with 22 to 12 votes respectively (**Error! Reference source not found.**)<sup>590</sup> While these resolutions were welcomed by many, it was also criticised that their content remained too weak, given that they did not provide for the establishment of an international commission of inquiry.<sup>591</sup>

The climate in the CHR changed in its 58<sup>th</sup> session (2002), which has been described as 'particularly difficult' due to the developments in the OPT, an 'increasingly politicized divide between developed and developing world, with acrimonious debates on economic, social and cultural rights, and **increased resistance to EU initiatives on specific countries**'.<sup>592</sup> The EU lost the votes

Figure 7: Voting results of the Resolution on the 'Situation in the Republic of Chechnya of the Russian Federation' (2000-2004)



<sup>584</sup> Wouters and Meuwissen (n 310) s163-164.

<sup>585</sup> HRC Res 17/24 (2011) UN Doc A/HRC/RES/17/24.

<sup>586</sup> HRC Res 20/13 (2012) UN Doc A/HRC/RES/20/13.

<sup>587</sup> HRC Res 23/15 (2013) UN Doc A/HRC/RES/23/15.

<sup>588</sup> HRC Res 26/25 (2014) UN Doc A/HRC/RES/26/25.

<sup>589</sup> UNGA, 'Election of the Human Rights Council', <[www.un.org/en/ga/68/meetings/elections/hrc.shtml](http://www.un.org/en/ga/68/meetings/elections/hrc.shtml)> accessed 8 October 2014.

<sup>590</sup> CHR Res 58 (2000) UN Doc E/CN.4/RES/2000/58; CHR Res 24 (2001) UN Doc E/CN.4/RES/2001/24.

<sup>591</sup> Human Rights Watch, 'U.N. Resolution on Chechnya Welcomed' (20 April 2001) <[www.hrw.org/news/2001/04/19/un-resolution-chechnya-welcomed](http://www.hrw.org/news/2001/04/19/un-resolution-chechnya-welcomed)> accessed 8 October 2014.

<sup>592</sup> Pramod Mishra, *Human Rights Reporting* (Isha Books 2006) 164.

on the Chechnya resolutions in the following three years. During the 58<sup>th</sup> session of the CHR it stated to have ‘engaged in **intensive discussions** with the Russian Federation’ to ensure a consensus resolution.<sup>593</sup> When these negotiations failed, a vote was called on the EU’s proposal and rejected by a narrow margin of 15 to 16 votes with 22 abstentions.<sup>594</sup> Opposition against country-specific resolutions continued in the 59<sup>th</sup> session of the CHR (2003). The EU’s initial goal was a mere **Chairperson’s statement** on the situation in Chechnya,<sup>595</sup> a comparatively weaker instrument than a resolution. However, when the negotiations with Russia again failed, the EU presented a draft resolution to the CHR, which was again defeated in the vote.<sup>596</sup> In 2004 the EU and Russia entered into bilateral human rights consultations, during which the EU again unsuccessfully negotiated towards a Chairperson’s statement. The resolution text that was finally tabled, garnered even less support than in the previous year.<sup>597</sup>

Since 2004, the EU has no longer addressed the human rights situation in Chechnya – or in Russia in general, for that matter – through a resolution at either the UNGA Third Committee or the CHR/HRC. While the EU officially stated that its decision not to table a country resolution resulted from its ‘aim of taking forward cooperation’, the dismal voting records may also have played a role. Instead of sponsoring a resolution initiative, the EU instead opted for **delivering statements** in both the HRC and the UNGA Third Committee.

### (3) DPRK

The situation in the DPRK is one of the four EU country resolutions that have survived the transition from CHR to HRC. The EU presented for the first time a resolution on the DPRK in the 59<sup>th</sup> session of the CHR, which was adopted with 28 votes in favour and 10 votes against.<sup>598</sup> A year later, a new resolution initiative was again adopted with increasing support.<sup>599</sup>

It established the mandate of a Special Rapporteur for North Korea, which was extended in the following year. During the 61<sup>st</sup> session (2005), the resolution on the DPRK was for the first time **jointly tabled by the EU and Japan** – again an example of the EU’s strategy to foster cross-regional coalitions in order to strengthen its proposals.<sup>600</sup> During the following 60<sup>th</sup> session of the UNGA (2005), both actors jointly presented their resolution for the first time in the UNGA ‘with much press attention’.<sup>601</sup> Since then, resolutions on the human rights situation in the DPRK have been annually and successfully tabled in both the UNGA and the CHR/HRC (with the exception of the transition years 2006-2007). The 2012 and 2013 Resolutions in the UNGA were even adopted by **consensus**, although the DPRK and a few other countries

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<sup>593</sup> Council of the European Union, ‘EU Annual Report on Human Rights 2003’, 13 October 2003.

<sup>594</sup> E/CN.4/2002/L.29.

<sup>595</sup> EU Annual Report on Human Rights 2004.

<sup>596</sup> E/CN.4/2003/L.13/Rev.1.

<sup>597</sup> E/CN.4/2004/L.29.

<sup>598</sup> CHR Res 10 (2003) UN Doc E/CN.4/RES/2003/10.

<sup>599</sup> CHR Res 13 (2004) UN Doc E/CN.4/RES/2004/13.

<sup>600</sup> CHR Res 11 (2005) UN Doc E/CN.4/RES/2005/11.

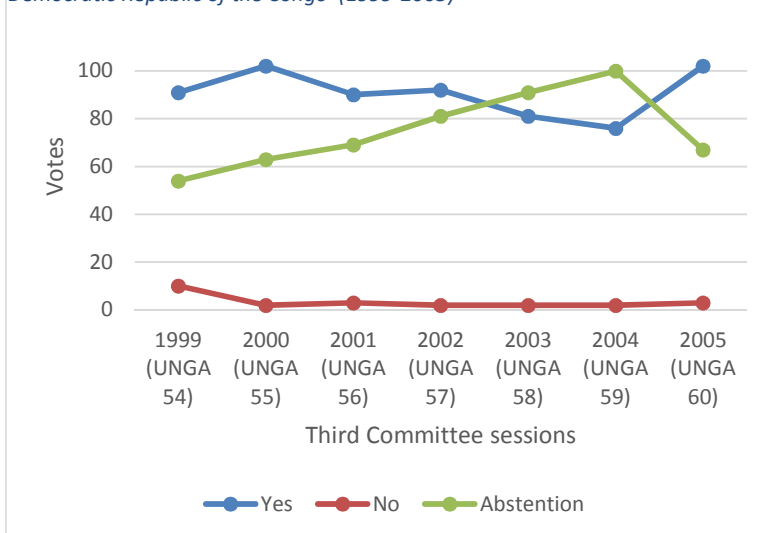
<sup>601</sup> EU Annual Report on Human Rights 2006 (n 422) 168.

disassociated themselves from it. The EU's initiatives on the DPRK can thereby also be characterised as one of those human rights issues that is rather **uncontroversial** in the CHR/HRC and the UNGA.

#### (4) DR Congo

The EU's annual resolutions on the human rights situation in the DR Congo are particularly noteworthy as one of two EU initiatives that were '**outsourced**' to the African Group. In the UNGA Third Committee, the EU successfully presented resolutions on the DR Congo between the 54<sup>th</sup> and the 60<sup>th</sup> session (1999-2005) (**Error! Reference source not found.**), in the CHR between the 56<sup>th</sup> and the 59<sup>th</sup> session (2000-2003). In the UNGA Third Committee, resolutions were consistently adopted after a vote. The resolutions on the DR Congo were even spared the almost ubiquitous no-action motions. In the 60<sup>th</sup> session of the Third Committee (2005), for example all EU initiatives were subject of no-action motions, except for the proposal on the DR Congo.<sup>602</sup> This is certainly linked to the fact, that the DR Congo itself supported the initiative and voted in favour of the draft resolution. The situation was equally **cooperative** in the CHR, where the EU maintained a 'constructive dialogue with the DRC and other African Group countries'.<sup>603</sup> This meant that the resolution could be adopted by **consensus** in the 56<sup>th</sup> to 59<sup>th</sup> session (2000-2003). From the CHR's 60<sup>th</sup>

Figure 8: Voting results of the Resolution on the 'Situation of human rights in the Democratic Republic of the Congo' (1999-2005)



session onwards (2004), the African Group took over the annual tabling of the DR Congo resolution, which focused on technical cooperation and advisory services.<sup>604</sup> According to the EU, this formed part of its strategy to 'adopt policies regarding human rights situations in Africa based on cooperation rather than confrontation'.<sup>605</sup> For the EU this entailed to 'outsource' country-specific resolutions dealing with human rights situations in Africa to the African Group. Collaboration between the EU and the African Group remained close during the drafting of the resolution. The EU has pursued a similar strategy with regard to Sudan (see below).

#### (5) Iran

The EU presented resolutions on the human rights situation in Iran up until 2002, after which the decision was taken **not to continue** this initiative due to the **establishment of a human rights dialogue** with the

<sup>602</sup> ibid 165.

<sup>603</sup> See only Council of the European Union, 'EU Annual Report of Human Rights 2005', 3 October 2005.

<sup>604</sup> CHR Res 84 (2004) UN Doc E/CN.4/RES/2004/84.

<sup>605</sup> EU Annual Report of Human Rights 2005 (n 603).

country concerned.<sup>606</sup> The resolutions in the 54<sup>th</sup> to 56<sup>th</sup> session of the UNGA (1999-2001) had been adopted with 61 to 47, 67 to 54 and 72 to 49 votes respectively. The resolutions in the 56<sup>th</sup> and 57<sup>th</sup> session of the CHR (2001/2002) had equally been successful, however, the last resolution in March 2002 during the 58<sup>th</sup> session of the CHR was defeated with 19 to 20 votes, thus bringing the mandate of the Special Representative to an end.<sup>607</sup> After the EU had ceased its initiatives on Iran, **Canada** proceeded to introduce the traditional resolution in the UNGA Third Committee. In the HRC, a core group including the **US and Sweden** has tabled resolutions creating and extending the mandate of a Special Rapporteur on the human rights situation in Iran. The EU is now a steady **co-sponsor** of the annual resolutions and it ranks the human rights situation in Iran continuously as one of its top priorities for the upcoming sessions of the UN human rights fora.

#### (6) Iraq

In the period under review, the EU tabled resolutions on the human rights situation in Iraq in the 54<sup>th</sup> to 57<sup>th</sup> session of the UNGA Third Committee (1999-2002) and in the 56<sup>th</sup> to 59<sup>th</sup> session of the CHR (2000-2003). All resolutions were adopted by vote. When the Iraq War broke out three days into the 59<sup>th</sup> session of the CHR, the **new developments had to be taken into account**, and substantial amendments to the draft resolution had to be made. This resolution, which extended the mandate of the Special Rapporteur on the situation of human rights in Iraq for another year,<sup>608</sup> was the last resolution that was adopted on this country in the CHR/HRC until the 22<sup>nd</sup> Special Session of the HRC on 1 September 2014 on 'The human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups'.<sup>609</sup> The mandate of the Special Rapporteur, which had been created in 1991, therefore ended in 2004.

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<sup>606</sup> EU Annual Report on Human Rights 2003 (n 593).

<sup>607</sup> E/CN.4/2002/L.33.

<sup>608</sup> CHR Res 84 (2003) UN Doc E/CN.4/RES/2003/84.

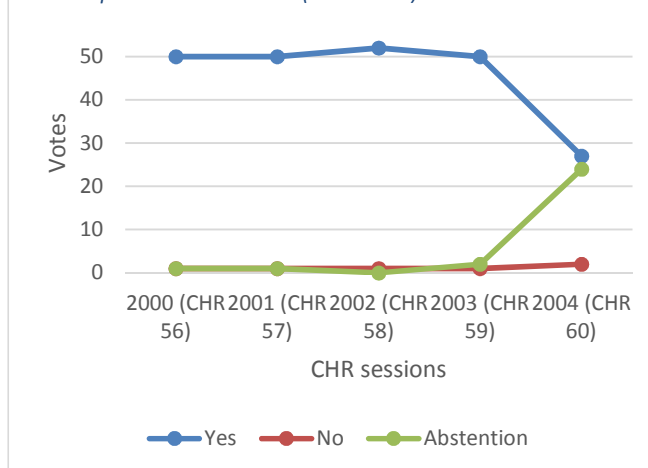
<sup>609</sup> HRC Res S-22/1 (2014) UN Doc A/HRC/RES/S-22/1.

### (7) Israeli settlements in the occupied Arab territories

The Israeli settlements in the occupied Arab territories are another example for a human rights issue on which the **EU and the US were split**. Between the 56<sup>th</sup> and the 59<sup>th</sup> session (2000-2003) the EU introduced resolution initiatives which were met with a generally high degree of support, but were opposed by the US.<sup>610</sup> In the 60<sup>th</sup> session **support for the draft resolution plummeted** due to a series of modifications introduced in the draft text (**Error! Reference source not found.** 9).

Particularly controversial was the addition of a paragraph which urged 'the Palestinian Authority to demonstrate concretely its determination in the fight against terrorism and extremist violence'. The Palestinian delegate stated, that '[s]uch a statement amounted to an instigation to war against the Palestinian people' who 'were not terrorists but were merely exercising their legitimate right to resist occupation'. The representative of Pakistan, speaking on behalf of the OIC, added that this paragraph 'placed the onus of

Figure 9: Voting results of the Resolution on 'Israeli settlements in the occupied Arab territories' (2000-2004)



violence in the occupied Palestinian territories solely on the Palestinian Authority'. Other delegations criticised the draft resolution more generally as imbalanced, such as the Costa Rican representative, who explained that 'although his delegation supported the underlying principles contained in the draft resolution, it would abstain from voting because the draft text failed to reflect that there were two parties to the conflict and that both were suffering from violence'. The Australian delegate stated that the 'draft resolution was unbalanced in its criticism of Israel'. The Resolution was finally adopted by 27 votes to 2 (Congo, US), with 24 abstentions.<sup>611</sup> This was the last time that the EU introduced a resolution on this issue. The following year the **Arab countries decided to present their own resolution** on the question of Israeli settlements and the EU withdrew.

### (8) Libya

In light of the Libyan Civil War which broke out in February 2011, the EU called for a special session of the HRC on 25 February 2011 (15<sup>th</sup> special session). It also tabled Resolution S-15/1 on the 'Situation of human rights in the Libyan Arab Jamahiriya', which was adopted without a vote.<sup>612</sup> A subsequent resolution in the 17<sup>th</sup> session of the HRC was introduced by Jordan, Maldives, Qatar and the UK.<sup>613</sup> Since then, the HRC has addressed the situation in Libya through item 10 resolutions.

<sup>610</sup> Note, that in 2002 the US was not a member of the CHR.

<sup>611</sup> CHR Res 9 (2004) UN Doc E/CN.4/RES/2004/9.

<sup>612</sup> HRC, 'Report of the Human Rights Council on its fifteenth special session' (2011) UN Doc A/HRC/S-15/1.

<sup>613</sup> HRC Res 17/17 (2011) UN Doc A/HRC/RES/17/17.



## (9) Myanmar/Burma

The human rights situation in Myanmar/Burma is one of the traditional EU priorities, originating from a French initiative. Resolutions have been introduced every year in the CHR/HRC in the period under review (with the exception of the transition period), as well as in the UNGA Third Committee since the 57<sup>th</sup> session (2002). Underlining the **uncontroversial** nature of the resolution, it has been adopted by **consensus** in the majority of the sessions. Following the end of the military junta in 2011, the EU strove to ensure ‘**close [...] engagement with the country concerned**’, thereby enhancing the **consensual** character of the resolution.<sup>614</sup>

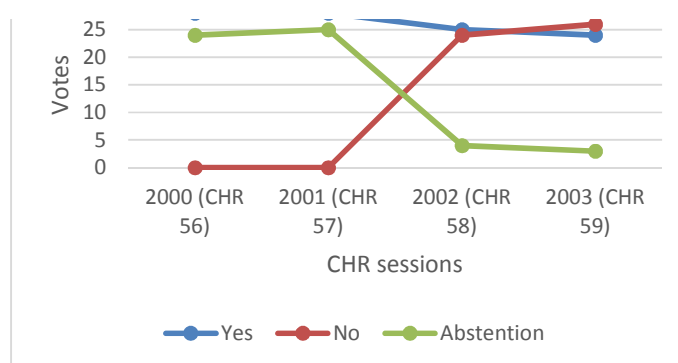
## (10) South-Eastern Europe

In the CHR’s 58<sup>th</sup> session (2002), the EU tabled a resolution on the ‘Situation of human rights in parts of south-eastern Europe’, renewing the mandate of the Special Representative of the Commission for Bosnia and Herzegovina and the Federal Republic of Yugoslavia, which had been established by a US-led resolution in the year before. It addressed in particular the rights of minorities, the return of displaced persons and refugees and persisting acts of ethnically motivated violence. The resolution was adopted by **consensus**.<sup>615</sup> It was not renewed in the following years and the mandate of the Special Representative consequently ended in 2003.

## (11) Sudan

The resolution on Sudan is the second initiative, which the EU ‘**outsourced**’ to the African Group during the 60<sup>th</sup> session of the CHR (2004).<sup>616</sup> Having enjoyed considerable support during the 56<sup>th</sup> and 57<sup>th</sup> session of the CHR, the number of countries that decided to vote against the resolution rose steeply in the 58<sup>th</sup> session (**Error! Reference source not found.** 10), in line with the general trend against country-specific resolutions, and the ‘difficult’ and politicised atmosphere of the CHR’s 58<sup>th</sup> session (see above). While the resolution was finally adopted by a narrow margin of one vote,<sup>617</sup> the increasing opposition to the draft resolution led to a **defeat** in the 59<sup>th</sup> session of the CHR (2003).<sup>618</sup> As with the traditional resolution on the DR Congo, the EU aimed towards transferring the responsibility for the

Figure 10: Voting results of the Resolution on the ‘Situation of human rights in the Sudan’ (2000-2003)



<sup>614</sup> Human Rights and Democracy in the world: report on EU action in 2011 (n 404); EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports) (n 76); EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77).

<sup>615</sup> CHR Res 13 (2002) UN Doc E/CN.4/RES/2002/13.

<sup>616</sup> CHR Res 128 (2004) UN Doc E/CN.4/RES/2004/128.

<sup>617</sup> CHR Res 16 (2002) UN Doc E/CN.4/RES/2002/16.

<sup>618</sup> E/CN.4/2003/L.35.



resolution on the African Group, ‘to take charge [...] of local situations of human rights violations’. In **close cooperation** with the EU the Group of African states tabled successful resolutions in the 60<sup>th</sup> and 61<sup>st</sup> sessions of the CHR. Nevertheless, subsequently in the HRC, the EU was again actively involved in sponsoring resolutions on the situation of human rights in Darfur and in the Sudan. In 2007 and 2008 the EU tabled jointly with the Group of African States Resolutions 4/8, 6/35, 7/16 and 9/17. In the run-up to session 11 (June 2009) both the African Group and the EU declared to prepare separate proposals. The African Group intended not to renew the mandate of the Special Rapporteur, while the EU was in favour of a country-specific mandate. Taking the African draft as a basis, the EU successfully presented an amendment which significantly strengthened the wording of the text and added a provision on the creation of the mandate of an independent expert.<sup>619</sup> It was adopted with a very close margin of 20 votes in favour, 19 against and 8 abstentions. This result was also brought about by a split in the African Group itself, with Mauritius and Zambia voting in favour of the amendment, and Burkina Faso, Ghana, Nigeria and Senegal abstaining.<sup>620</sup> The mandate of the independent expert has been extended until today.<sup>621</sup>

## (12) Syria

Reacting to the deteriorating human rights situation in the Syrian Civil War, the EU called for two special sessions of the HRC on 22 August and 2 December 2011 (17<sup>th</sup> and 18<sup>th</sup> special session) and was part of the group of states that called for special session 19 on 1 June 2012. Poland, which held the Council Presidency at that time, introduced resolutions S-17/1, which created an Independent International Commission of Inquiry,<sup>622</sup> and S-18/1 – both of which were successfully adopted. Subsequently, on 23 March 2012, the EU successfully tabled a resolution on the ‘Situation of human rights in the Syrian Arab Republic’ during the HRC’s 19<sup>th</sup> regular session, which was equally adopted. Since then, however, the EU has lost its lead on this situation. The HRC has continuously adopted resolutions addressing the ‘continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic’ in every session from 2012 until today, however the initiative was always taken by a group of states, including Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Turkey, and the US, as well as the EU Member States France, Germany, Italy, and UK. Equally, successful resolutions were tabled in the UNGA Third Committee, among others by EU Member States France, Germany and the UK.<sup>623</sup> While interviewees stressed, that the EU did not ‘need to lead on each and every issue’ and that it was the result that mattered, the **loss of the initiative** and the **‘side-lining’ of the EU** was also referred to as ‘unfortunate’ and ‘deplorable’.<sup>624</sup>

<sup>619</sup> A/HRC/11/L.19.

<sup>620</sup> For a more detailed analysis see International Service for Human Rights, ‘Analytical Overview Human Rights Council, 11<sup>th</sup> session, 2 to 19 June 2009, Council Monitor, available at <[www.ishr.ch/sites/default/files/article/files/council\\_overview\\_11th\\_session.pdf](http://www.ishr.ch/sites/default/files/article/files/council_overview_11th_session.pdf)> accessed 9 October 2014.

<sup>621</sup> For more information see the website of the Independent Expert on the situation of human rights in the Sudan, <[www.ohchr.org/EN/HRBodies/SP/CountriesMandates/SD/Pages/IESudan.aspx](http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/SD/Pages/IESudan.aspx)> accessed 9 October 2014.

<sup>622</sup> For more information see Independent International Commission of Inquiry on the Syrian Arab Republic, <<http://www.ohchr.org/en/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx>> accessed 9 October 2014.

<sup>623</sup> UNGA Res 66/176 (23 February 2012) UN Doc A/RES/66/176.

<sup>624</sup> Interviews under Chatham House Rule, September 2014.

### (13) Turkmenistan

In the 58<sup>th</sup>, 59<sup>th</sup> and 60<sup>th</sup> session of the UNGA Third Committee (2003-2005), the EU tabled resolutions on the human rights situation in Turkmenistan. They addressed among others the repression of the political opposition, the 'abuse of the legal system through arbitrary detention, imprisonment and surveillance of persons who try to exercise their freedoms of thought, expression, assembly and association, and harassment of their families', suppression of the media, violations of freedom of expression and thought, conscience and religion and discrimination of minorities. The last of those resolutions was **tabled jointly with the US**, which also provided the draft.<sup>625</sup> A **no-action motion** was introduced, but defeated by 70 to 64 votes. EU/US cooperation on this issue existed also in the CHR, where two successful resolutions were tabled in the 59<sup>th</sup> and 60<sup>th</sup> session (2003/2004).<sup>626</sup> However, after the 60<sup>th</sup> session of the UNGA, the EU's initiatives on Turkmenistan have been discontinued and neither the UNGA Third Committee nor the HRC has addressed the situation since. In light of the persisting human rights violations in the country, the reasons for this remain unclear.

### (14) Uzbekistan

The EU's resolution on Uzbekistan in the 60<sup>th</sup> session of the UNGA Third Committee<sup>627</sup> remained a **singular event**, not repeated in subsequent UNGA sessions or the CHR/HRC. It constituted a reaction to the massacre committed by Uzbek security forces in the city of Andijan on 13 May 2005. The resolution was adopted by 73 to 38 votes with 58 abstentions, after a **no-action motion** had been defeated.

### (15) Zimbabwe

The initiative to table an EU resolution on Zimbabwe **emerged from the UK**, which felt that there was a need to address the human rights situation in the country through a UN resolution, but at the same time considered a national initiative to be counterproductive and the chances for an initiative of the Commonwealth to be low.<sup>628</sup> Between 2002 and 2004 the EU tabled four resolution initiatives on the 'Situation of human rights in Zimbabwe' (CHR 58-60 and UNGA 59). Reacting in particular to the human rights violations committed during the 2002 Presidential elections in Zimbabwe, they condemned among others the role of the state in the deaths of supporters of the opposition Movement for Democratic Change.<sup>629</sup> All of the resolutions fell victims to **no-action motions** of the African Group. The strategy to block country-resolutions through no-action motions had become increasingly popular in the CHR since the 58<sup>th</sup> session and spilled over into the Third Committee during its 59<sup>th</sup> session (2003). The EU subsequently abandoned its efforts to table resolutions on the issue and until today neither the HRC nor the Third Committee have addressed the human rights situation in Zimbabwe through a resolution.

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<sup>625</sup> UNGA Res 60/172 (16 December 2005) UN Doc A/RES/60/172.

<sup>626</sup> CHR Res 11 (2003) UN Doc E/CN.4/RES/2003/11; CHR Res 12 (2004) UN Doc E/CN.4/RES/2004/12.

<sup>627</sup> UNGA Res 60/174 (16 December 2005) UN Doc A/RES/60/174.

<sup>628</sup> Karen E. Smith, 'The European Union, Human Rights and the United Nations' in Katie Verlin Laatikainen and Karen E. Smith (eds) *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 154, 162.

<sup>629</sup> E/CN.4/2002/L.23.

## (16) Discussion of country-specific resolution initiatives

Since 1999 the EU has introduced resolution initiatives on 15 different country situations in the UNGA Third Committee and in the CHR/HRC. The majority of resolution initiatives dates from the period until 2005. Only four of those – the initiatives on the situations in Belarus, the DPRK, Myanmar/Burma and Sudan – have been retained in the new HRC and in the UNGA after its 60<sup>th</sup> session. With Libya and Syria the EU additionally addressed two newly emerging country situations. While the EU verbally still strongly supports the country-specific resolutions in the UNGA and in the HRC, its practice demonstrates that it may partially have caved to the strong opposition of the so called ‘axis of sovereignty’.<sup>630</sup>

The **opposition** against country-specific resolutions has found expression in a series of no-action motions which were introduced with regard to EU initiatives – at first only in the CHR, since the 59<sup>th</sup> session also in the Third Committee. It has also brought about the termination of the country mandates on Cuba and Belarus in 2007, despite the Union’s strong support. The situation for the EU has been exacerbated due to its more unfavourable numerical position in the HRC. The 2013 election, in which countries such as China, Cuba, Russia and Saudi Arabia were elected to the HRC, has equally been disadvantageous for the Union, which saw its resolutions adopted with decreasing margins (see e.g. **Error! Reference source not found.**).

In order to cope with these challenges, the EU has adopted a variety of **strategies**. In order to garner support for its initiatives and in order to share the burden of drafting, negotiation and outreach, the EU strives to foster **coalitions** with other UN Member States. This strategy has already been identified with regard to thematic human rights initiatives (on the death penalty and on the rights of the child) and is equally applied with regard to country resolutions, albeit to a lesser extent. The initiative on the DPRK, for example, is traditionally a joint EU/Japanese resolution, and with regard to Belarus and Turkmenistan, the EU has cooperated closely with the US. It needs to be pointed out, though, that the EU’s credibility issue can more successfully be tackled through a cross-regional initiative. Cooperation with the US can even be counter-productive in this respect. EU officials interviewed for this report stated that the cooperation with the US in the UN human rights fora is a ‘double-edged sword’ due to the US’ vulnerability to criticism on its human rights record. One interviewee explained that ‘appearing with the US on the international human rights front is not to the EU’s benefit’ and added that ‘[t]he better strategy is therefore to talk to the US but not to appear in public together’.<sup>631</sup>

The analysis above also provides examples for the EU’s aim to reach a **consensus** on the tabled resolutions. In particular with regard to the resolutions on Chechnya and on the Sudan, the EU engaged in prior intensive negotiations with the country concerned. With regard to Chechnya, the EU even chose to aim for a weaker **Chairperson’s statement** instead of a resolution, in order to bring the country concerned on board.

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<sup>630</sup> See for this expression e.g. Richard Gowan and Franziska Brantner, ‘The EU and human rights at the UN – 2009 review’, European Council on Foreign Relations, September 2009.

<sup>631</sup> Interview with an EU official, 27 March 2014.

It is noteworthy that there is a high degree of **stability** in the EU's country-specific resolution initiatives. Once a new resolution is taken up, it is usually introduced repeatedly over a series of years. The emergence of new initiatives is rare and the EU rather appears to stick to those resolutions that have been known, tried and tested. Nevertheless, several factors can be identified that may trigger the creation of a new initiative:

- **National interests of an EU Member State:** As Smith has stated, the decision to table a new resolution is 'motivated more often by member state interests than by changing priorities in the EU's external human rights policy or its foreign policy in general'.<sup>632</sup> The resolution initiative on Zimbabwe can be cited as an example for a case, where one EU Member State pressured for the creation of a new EU resolution initiative. EU Member States may prefer to act as part of a Union of 28, rather than individually, in order to benefit from the additional political and diplomatic weight of the group. They may also feel that they are more immune to criticism – either from other UN Member States or from their national constituencies – if the resolution carries the signature of the EU. In these cases the Union may be used as a 'convenient shield'.<sup>633</sup>
- **Replacement:** The EU may choose to adopt a formerly 'national' resolution initiative either of an EU Member State or of another UN Member. This was most apparent with regard to the three thematic EU initiatives on the death penalty (Italy), the rights of the child (Sweden) and freedom of religion or belief (Ireland). But also with regard to country-specific resolutions, the EU has applied this strategy. The resolution on Myanmar/Burma was originally a French initiative and was transformed into an EU resolution during the French Presidency in the first half of 1995. The resolution on Belarus was first introduced by the US, as was the resolution on South-Eastern Europe. The EU will be more likely to take over those resolutions that have in the past enjoyed some success at the ballot. With regard to the two US resolutions, it will also have played a role that both dealt with situations on the European continent, prompting the EU to take charge of situations within its own region.
- **Particularly grave human rights violations:** In the case of Uzbekistan, Libya and Syria, the EU has opted for resolution initiatives to address a particularly grave violation of human rights. This indicates, that the EU considers UN resolutions as an effective instrument to address violations of a certain gravity. It also exemplifies the higher degree of flexibility of country- as opposed to thematic resolutions, due to the greater volatility of the human rights situation within a certain area.

It must be added, that resolution initiatives at the UN appear as a means of *ultima ratio* for the EU. It has been found to only table a resolution if there is no human rights dialogue with the country concerned and if no other, less confrontational, instruments are available.<sup>634</sup> An existing human rights dialogue will however not stand in the way of the EU co-sponsoring a resolution tabled by another UN Member State.

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<sup>632</sup> Smith (n 628) 162.

<sup>633</sup> *ibid* 157.

<sup>634</sup> *ibid* 162.

With regard to Iran, for example, the EU ceased its own initiative, but co-sponsored the resolutions tabled by Canada in the following sessions, despite the newly established EU-Iran human rights dialogue.<sup>635</sup>

With the resolutions on the DPRK and Myanmar/Burma the two most **uncontroversial** EU initiatives from the CHR era have been retained in the new HRC. The re-introduction of the resolution on Belarus appears as an attempt to iron out the major defeat of 2007. Apart from that the EU has invested efforts in the maintenance of the special procedure on Sudan, and has to a limited extent taken on new initiatives (Libya and Syria), based on the changing landscape of human rights violations in the world. With regard to the latter it must be highlighted, that the EU quickly lost the lead on the Syria initiative to a group of states, including several of its own Member States. Most of the old CHR or Third Committee initiatives from before 2006 have disappeared from the EU's agenda, but for very different reasons:

- **Voting defeats:** The EU is more likely to drop a resolution after it has suffered a voting defeat.<sup>636</sup> This appears to have been the case with the resolutions on Chechnya, Iran, Sudan and Zimbabwe. Despite these numbers, the former EU External Relations Commissioner Benita Ferrero-Waldner stated in 2005 that 'the likelihood of defeat does not, in itself, constitute an overriding reason to refrain from running a resolution: as human rights defenders constantly attest, the very act of tabling a draft resolution sends a clear signal to the government and people of the country concerned'.<sup>637</sup> In practice, however, the voices within the EU, which fear a repeated defeat and urge the EU not to take any risks, appear to be louder. Indeed, as Smith has stated, a negative voting prognosis is a 'key reason' for the EU to drop a resolution initiative.<sup>638</sup> Interviewees for this study, however, also pointed to the harmful consequences that a defeat at the ballot might have, stating that the rejection of a country-resolution might be understood as an endorsement of the country's human rights policy.<sup>639</sup>
- **Bilateral relations:** As has been stated above, the EU appears to consider the tabling of a resolution as a measure of last resort. Consequently, it will likely drop a resolution initiative, if bilateral relations are picking up and a dialogue is being established. For example, the EU stated that the initiative on Iran had been terminated due to the establishment of a human rights dialogue between both actors. It also explained its decision not to table another resolution on the human rights situation in Chechnya with its 'aim of taking forward cooperation'. Nevertheless, the fact that the EU had in both cases previously been defeated at the vote may also have motivated these decisions.
- **Changed circumstances in the country concerned:** The end of the regime of Saddam Hussein and the outbreak of the 2003 Iraq War, along with the subsequent occupation, may have been the reason behind the EU's decision not to continue its initiatives on the human rights situation in

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<sup>635</sup> See also the statement of then EU External Relations Commissioner Benita Ferrero-Waldner that 'the fact that the EU engages in a human rights dialogue should not preclude support for a resolution on a particular country', 'Declaration on 61st session of the UN Commission on Human Rights (CHR)', Speech at the European Parliament, SPEECH/05/111, 23 February 2005.

<sup>636</sup> Smith (n 628) 162.

<sup>637</sup> *ibid.*

<sup>638</sup> *ibid* 163.

<sup>639</sup> Interviews under Chatham House Rules, September 2014.

the country. Likewise, a resolution may be dropped if the human rights situation in the country concerned improves to a satisfactory degree.

- **Outsourcing:** In the cases of the initiatives on the DR Congo and on the Sudan, the EU groomed the Group of African States to ‘take charge’ of human rights violations committed within their region, and to take over the EU’s traditional resolutions. In these cases the EU remained heavily involved during the negotiations. Again, the EU had lost the vote on the Sudan resolution in the year before it conferred the initiative to the African Group. The EU nevertheless stayed engaged with the issue, tabling an amendment on one of the subsequent resolutions on the situation in Sudan, when it considered the text of the African proposal to be too weak.
- **Replacement:** The EU may cease to introduce a draft resolution because it has been taken over by another Member State. For example, the EU did not re-introduce its traditional resolution on the Israeli settlements in the occupied Arab territories when the Arab Group announced that it would table a resolution on the issue. The human rights situation in Iran was taken up by Canada and Sweden after the EU ceased its initiative. Although EU Member States have tended to co-sponsor these resolutions, the EU has not taken over the issue again as an EU resolution.

### *c) Conclusions*

An overall look at the EU’s thematic and geographic initiatives shows, that the EU has a very limited scope for resolution initiatives in general. With regard to thematic initiatives it has only introduced proposals on a mere three of its human rights priorities, with regard to country initiatives, the number of distinct geographic issues addressed in the UNGA/HRC has decreased to six since 2006.

Table 5 gives an overview of the EU’s resolution initiatives in the UNGA and the CHR/HRC since the UNGA’s 54<sup>th</sup> session until today.

Table 5: Overview of the EU's resolution initiatives at the UNGA, CHR and HRC since 1999

	1999/2000	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
	UNGA54, CHR56	UNGA55, CHR57	UNGA56, CHR58	UNGA57, CHR59	UNGA58, CHR60	UNGA59, CHR61	UNGA60, CHR 62, HRC 1-3	UNGA61, HRC 4-6	UNGA62, HRC 7-9, 5-5	UNGA 63, HRC 10-12	UNGA64, HRC 13-15	UNGA65, HRC 16-18, 5-15	UNGA66, HRC 19-21, 5-17/18	UNGA67, HRC 22-24	UNGA 68, HRC 25-27
<b>Thematic</b>															
Children															
Death penalty															
Religion/belief															
<b>Country-specific</b>															
Belarus															
Chechnya															
DPRK															
DR Congo															
Iran															
Iraq															
Liberia															
Libya															
Myanmar/Burma															
OPT															
SE Europe															
Sudan (Darfur)															
Syria															
Tunisia															
Turkmenistan															
Uzbekistan															
Zimbabwe															

Dark/light blue fields indicate a successful/unsuccessful resolution initiative in the UNGA; dark/light orange indicates a successful/unsuccessful resolution initiative in the CHR/HRC; green indicates an item 10 resolution in the HRC.

The table clearly shows the ‘proposal gap’ during the transition period from CHR to HRC (indicated by dashed lines). It also highlights the considerable consistency of the EU’s resolution initiatives over time. Most resolutions are introduced several years in a row or reappear at a later stage. The EU is ‘quite conservative’ and does not frequently ‘push “new” issues’, due to internal fears of voting defeats.<sup>640</sup> Nevertheless, the comparison of thematic and geographic initiatives also shows, that the thematic proposals have remained steady throughout the entire period covered by this report, while the EU’s country-specific resolutions have undergone a steep decline, in particular after the creation of the HRC. The reason for this can be found in the strong opposition of the ‘axis of sovereignty’ towards the targeting of individual countries, to which the EU – despite all verbal protestations – has partially caved.

<sup>640</sup> ibid 158, 162.

Only a few of the Union's thematic and geographic priorities for the UN human rights fora are actually translated into EU resolution initiatives. It would however be too early to conclude that the EU remains inactive in this regard as far as UN resolutions are concerned. The following sections will analyse, whether EU or non-EU Member States can and do fill the gap through individual initiatives.

### 3. Resolution initiatives of the EU Member States

Many EU Member States have in the past been active proponents of their own 'national' initiatives. They have developed specializations on certain human rights topics, or 'pet' issues.<sup>641</sup> These resolutions are not the product of a concerted EU diplomatic effort, but are advanced individually by the diplomatic service of the respective Member State.

A number of these initiatives fall squarely in an area which the EU has declared to be one of its thematic or geographic priorities. Austria, for example has a strong thematic focus on the rights of **minorities**. It traditionally introduces resolutions on the 'Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' in the Third Committee. In the CHR, Austria successfully tabled Resolution 2005/79 which created the mandate of the Special Rapporteur on minority issues, and it has since continuously supported the extension of her mandate in the HRC. Belgium and Slovenia biannually introduce resolutions dealing with the work of the Committee on the Elimination of All Forms of **Racial Discrimination** in the UNGA Third Committee. Denmark's long-standing engagement against **torture and other cruel, inhuman, degrading treatment or punishment** is particularly noteworthy because it corresponds to one of the EU's core policy priorities with regard to UN human rights fora. France and the Netherlands traditionally table joint resolutions on the elimination of all forms of **violence against women**, which equally corresponds to one of the EU core priorities. Sweden, lastly, is in the core group of countries which tables resolutions on **Iran** in the HRC – a geographic core priority of the Union. It participated in the successful introduction of Resolution 16/9 which established the mandate of the Special Rapporteur on Iran, and has since contributed to the extension of the mandate through successful resolutions in 2012, 2013 and 2014.

Given that the EU has frequently been criticised for its inaction in the field of economic, social and cultural rights, 'national' initiatives of EU Member States in this area carry a particular weight. Germany and Finland have in the past repeatedly introduced resolutions on **adequate housing**, Germany and Spain traditionally table joint resolutions on access to **safe drinking water and sanitation** in the HRC. France focuses on **extreme poverty** in the HRC, Portugal traditionally introduces resolutions on the right to **education**. Additionally, Portugal was also the main sponsor of the resolution on an '**Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**' in the 8<sup>th</sup> session of the HRC and subsequently in the 63<sup>rd</sup> session of the UNGA Third Committee. The Optional Protocol establishes an individual complaints mechanism for the ICESCR and entered into force in May 2013. In the 4<sup>th</sup> session of the HRC, Portugal also introduced a resolution on the '**Question of the realization in all countries of economic, social and cultural rights**', which it has since followed up every year.

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<sup>641</sup> *ibid* 232.



Beyond that, EU Member States advance a host of initiatives which fall outside the scope of EU priorities at the UN. This includes, for example, Austrian support for the mandate of the Special Rapporteur on the human rights of **internally displaced persons** and its engagement with regard to the protection and promotion of human rights in the **administration of justice**. In the HRC, Belgium is the sponsor of resolutions on **regional arrangements** for the promotion and protection of human rights. Croatia has repeatedly sponsored successful resolutions on the **conscientious objection** to military service, both in the CHR and later in the HRC. France focuses on the issue of **enforced disappearances**, both in the Third Committee and in the HRC, and on **arbitrary detention** in the HRC. Germany's focus in the Third Committee is on national human rights institutions (**NHRIs**). In the HRC, Germany and the Philippines regularly table joint resolutions dealing with **human trafficking**. Hungary did not introduce resolution initiatives in the Third Committee in the period under review, but has developed a focus on the **independence of the judiciary** in the HRC. Italy on the contrary is mostly active as a main sponsor in the Third Committee, with a thematic focus on the **UN Crime Prevention and Criminal Justice Programme**. Poland has introduced three resolutions on the 'role of **good governance** in the promotion and protection of human rights' in the HRC, and Portugal has – in a coalition with the Senegal and the Republic of Moldova – tabled resolutions on **youth** rights in the Third Committee.

The question nevertheless remains, whether initiatives of individual EU Member States can be considered a tool for realizing EU goals. It is noticeable that the EU and its Member States are frequently seen by third actors as a regional bloc. The external perception rarely distinguishes between resolutions tabled by the EU or resolutions tabled by an EU Member State in its national capacity, if they are backed by the majority of the EU Member States. This logic appears to have been adopted by the EU. When Smith interviewed diplomats of EU Member States in 2010, they argued that the EU was the group which had introduced one third of the resolution initiatives at the HRC in previous years, counting both EU initiatives and national initiatives of the Member States.<sup>642</sup> Several of the EU officials interviewed for this report reasoned very similarly. In line with this, EU Annual Reports on Human Rights regularly count the resolution initiatives of the 'the EU as a whole, including initiatives by individual Member States'.<sup>643</sup> This logic appears not entirely convincing. While they may be perceived externally as an 'EU product', national initiatives of individual EU Member States are not the result of a concerted EU effort. They may receive the positive votes of the remaining EU Member States, but in that they are similar to resolution initiatives introduced by non-EU Member States.

Nevertheless, resolution initiatives introduced by EU (and non-EU) Member States have additional weight if they are backed by the entire Union through the means of co-sponsorship. Thereby, the resolution would be endowed with the full collective weight of the 28 Member States – a prominent sign that its text embodies a position of the EU.

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<sup>642</sup> *ibid* 232.

<sup>643</sup> See only EU Annual Report on Human Rights 2006 (n 422) 120.

#### 4. Resolutions co-sponsored by EU Member States

The EU Member States can co-sponsor resolutions introduced by EU or non-EU Member States and thereby declare their support for the initiative prior to the vote and in a very prominent manner. They frequently make use of the opportunity to co-sponsor resolutions introduced by EU or non-EU Member States which correspond to core policy priorities of the EU.

For the year 2013, for example, the EU had included 17 different thematic and eleven geographic priorities in its strategy documents. Of those, it only addressed two thematic issues (rights of the child, freedom of religion or belief) and three geographic situations (Belarus, DPRK, Myanmar) by means of an EU resolution. A look at the adopted resolutions in the 68<sup>th</sup> session of the Third Committee and the 22<sup>nd</sup>-24<sup>th</sup> session of the HRC shows, nevertheless, that most of the Union's priorities have been addressed through resolutions either introduced by EU Member States or by non-EU Member States and that the Union has been very active in co-sponsoring these, whenever they were in line with its policy objectives.

EU Member States introduced resolutions on torture, the rights of refugees, minorities and women, on the fight against racism, freedom of assembly and association. All of these were co-sponsored by large numbers of EU Member States. In the area of economic, social and cultural rights, EU Member States tabled resolutions on access to safe drinking water and sanitation, on the realization of economic, social and cultural rights in all countries, and on the mortality and morbidity of children. Again, support by EU Member States was high. In the HRC, EU Member States tabled resolutions on Iran and Syria, the first of which was jointly co-sponsored by the Union as a whole.

Thematic resolutions introduced by non-EU Member States on women's rights, the rights of people with disabilities, the rights of indigenous peoples, the freedom of expression, assembly and association as well as human rights defenders received strong EU support, the two latter by the entire Union. EU Member States were less active to co-sponsor non-EU resolution initiatives on economic, social and cultural rights due to disagreements on the content of these proposals, but nevertheless co-sponsored a resolution on physical and mental health introduced by Brazil in the HRC. Lastly, the EU Member States co-sponsored a US-led resolution on Sri Lanka in the HRC, and supported resolutions on Syria, Eritrea and the DR Congo, as well as an item 10 resolution on Mali.

Table 6: Overview of resolutions, which correspond to the EU's 2013 priorities for the UN, introduced during the 68th session of the Third Committee, and the 22nd to 24th session of the HRC.

Tabled by the EU	Tabled by EU Member States	Tabled by third states and co-sponsored by EU Member States
Thematic resolution initiatives		
<ul style="list-style-type: none"> <li>➤ <b>Rights of the child</b></li> <li>➤ <b>Freedom of religion or belief</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Rights of <b>minorities</b> (Austria)</li> <li>➤ The role of <b>freedom of opinion and expression</b> in <b>women's empowerment</b> (Romania, UK et al.)</li> <li>➤ Education as a tool to prevent <b>racism</b>, racial discrimination, xenophobia and related intolerance (Portugal, Romania et al.)</li> <li>➤ <b>Refugees</b> (Finland)</li> <li>➤ <b>Torture</b> (Denmark)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Rights of people with <b>disabilities</b> (Mexico/New Zealand)</li> <li>➤ <b>Freedom of expression, assembly, association</b> (Switzerland)</li> <li>➤ <b>Human rights defenders</b> (Norway)</li> <li>➤ <b>Indigenous peoples</b> (Guatemala/Mexico)</li> <li>➤ <b>Women's rights</b> (multiple resolutions, by Norway, Colombia/Mexico, Canada)</li> </ul>
ESC rights		
	<ul style="list-style-type: none"> <li>➤ Mortality and morbidity of <b>children</b> (Ireland/Botswana)</li> <li>➤ Safe <b>drinking water</b> and <b>sanitation</b> (Germany/Spain)</li> <li>➤ Realization of <b>economic, social and cultural rights</b> (Portugal)</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Physical and mental health</b> (Brazil)</li> </ul>
Geographic resolution initiatives		
<ul style="list-style-type: none"> <li>➤ <b>Belarus</b></li> <li>➤ <b>DPRK</b></li> <li>➤ <b>Myanmar</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Iran</b> (US, Sweden et al.)</li> <li>➤ <b>Syria</b> (France, Germany, Italy, UK et al.)</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>DR Congo</b> (item 10, Gabon)</li> <li>➤ <b>Eritrea</b> (Djibouti, Nigeria, Somalia)</li> <li>➤ <b>Iran</b> (Canada)</li> <li>➤ <b>Mali</b> (item 10, Gabon)</li> <li>➤ <b>Sri Lanka</b> (US)</li> <li>➤ <b>Syria</b> (multiple resolutions by Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Tunisia, UAE)</li> </ul>

Main sponsors are indicated in brackets.

Table 6 shows, that the EU did not introduce resolutions on economic, social and cultural rights in 2013, and that its Member States were very hesitant to co-sponsor resolutions on these issues, which were introduced by non-EU Member States. This not only indicates the EU's internal struggles to agree on a common position in this area, but also the difference of opinion on the scope and content of economic, social and cultural rights between the EU and countries from other regions of the world, in particular the global South. The resolutions introduced by individual EU Member States appear as a practical way to fill this gap to some extent. The significant support by other EU Member States highlights, that the positions found therein were shared by many.

The table also highlights, that those thematic human rights issues on which the EU's internal agenda is considered to be weak – in particular the rights of minorities, and refugees, as well as the fight against racism – have been taken up by several of its Member States and received wide support by other EU Member States. It is also telling, that EU countries tended to co-sponsor mostly those non-EU thematic

initiatives which were introduced by members of the WEOG, suggesting a certain similarity of opinions on human rights issues.

Lastly, with regard to country-specific resolutions, the EU co-sponsored the resolutions on Iran – one of its core priorities despite the discontinuation of its traditional resolution initiative in 2002. The EU also left the tabling of resolutions on the human rights situations in African countries to UN Members from that continent, in line with its strategy to encourage UN Member States to ‘take charge’ of their own region. Nevertheless, EU Member States acted as engaged co-sponsors to express their support of these resolutions.

## 5. Conclusions

At the UN, the EU has many means at its disposal to promote its human rights objectives – resolution initiatives being the most prominent and arguably most influential one. Nevertheless, the analysis of EU and UN records dating from the period 1999-2014 has shown, that the EU only addresses a small fraction of its policy priorities at the UN through EU resolutions. While the scope of its thematic resolution initiatives has been consistently limited to a mere three, the number of country-specific resolutions introduced has significantly dropped. The EU faces significant hurdles when it tables resolutions in the UN human rights fora, including an alleged lack of credibility and insufficient capacities for outreach. The implementation of a sophisticated array of strategies to overcome these challenges – in particular the fostering of cross-regional coalitions, the adaptation of policy objectives, changes in the internal coordination process, and increased lobbying – have yielded prominent successes in the past years.

The analysis has also shown, that a mere focus on EU resolution initiatives would yield an incomplete picture. EU Member States have partially been able to fill the gaps left by the EU in the area of economic, social and cultural rights and in those areas where its internal human rights record is vulnerable to criticism, notably the rights of refugees and minorities and the fight against racism. These individual EU Member State initiatives can however not be equated with an EU proposal, given that they do not represent a collective diplomatic effort of the Union. Through the tool of co-sponsoring, the EU can nevertheless express its strong support of a Member State resolution in a prominent way. EU Member States employ this tool widely, not only with regard to proposals tabled by another EU Member State but also with regard to initiatives of non-EU Member States, whenever they correspond to the aims of the Union.

Nevertheless, it cannot be overlooked, that in the end only resolutions introduced ‘on behalf of the EU’ represent ‘first class’ Union resolutions. Even though EU initiatives and national EU Member States’ initiatives may frequently be perceived by third actors as stemming from the same regional bloc, only resolutions introduced ‘on behalf of the EU’ put the Union in the driver’s seat. Unless the Union broadens its thematic scope to include economic, social and cultural rights it will be criticised for its lack of action on this issue. Unless it broadens its scope of geographic initiatives to include human rights situations in influential or even partner countries, it will be criticised for its double standard and for having relented to the strong opposition against country-resolutions.

## B. Universal Periodic Review

### 1. Universal Periodic Review

The Universal Periodic Review (UPR) was created along with the establishment of the Human Rights Council in 2006. According to the General Assembly resolution 60/251, it is a cooperative mechanism based on an interactive dialogue aiming at reviewing of the fulfillment by each state of its human rights obligations and commitments. During the Working Group session, a National Report is presented by the state under review. This part is followed by an interactive dialogue which allows each state to address questions, statements and recommendations concerning the human rights situation. The first cycle of the UPR with its twelve sessions started in 2008 and ended in 2011. In this period all UN Members were reviewed. Since 2012 states have been under review for the second time, during the second cycle which is to be completed in 2016.

### 2. The European Union in the UPR

#### a) *Light coordination*

The EU does not participate in the UPR process. However, at the beginning of 2008 a discussion was held among EU experts in Geneva and COHOM about the EU's involvement in the UPR. One of the possible approaches considered at that time was a division of specific subjects among Member States. Each state would then be responsible for tackling the subjects assigned to it during the UPR so that EU human rights policy could be realised. However, a strong position of the EU could undermine the idea of the UPR as a state to state process. Not without significance was the fear that if the EU had acted as a bloc it would have provoked the other regional organisations and groups (e.g. the OIC) to behave in the same manner. The effect of this debate was the adoption of an approach called *light coordination*. It has two significant characteristics. Firstly, Member States receive checklists sent by the EEAS. These checklists contain some issues that should be raised and major challenges based on Human Rights country strategies. Apart from the EEAS and UN documentation, the civil society contributions also are taken into account. The practice of sending checklists aims at ensuring that all aspects of the human rights situation important from the EU's perspective will be tackled during the UPR. In the first cycle these lists were prepared by the Presidency with the support of the Council secretariat. This procedure seemed to be more efficient as the Presidency tried to include issues that otherwise would not have been covered. The other characteristic of the *light coordination* is spreading information among Member States about recommendations that each state intends to put forward. It must be noted that both means of coordination above refer only to reviews of non-EU countries. Furthermore, it should be underlined that the decision about the participation in a certain review and on the content of recommendations is taken only by Member States. In this way, the EU impact on the UPR process is limited. The EU's role could be described rather as a facilitator of the process than a coordinator. However, the scope of the light coordination is restricted to

acting during the UPR sessions. All other decisions related to the UPR, especially institution-building matters are a part of standard coordination.<sup>644</sup>

### ***b) The UPR in the EU human rights documents***

The consequence of the adoption of the aforementioned approach is a low number of cases in which the UPR is invoked in EU documents. In the EU Strategic Framework and Action Plan on Human Rights and Democracy adopted by the Council in 2012<sup>645</sup>, the UPR recommendations are mentioned only with regard to raising them in bilateral relations with third countries and to its implementation by EU Members. The only strategy for forthcoming UPR rounds included in the document concerns paying close attention to the degree of implementation of accepted UPR commitments by third countries and endeavoring to provide support for their implementation. In the European Union medium-term priorities at the United Nations (2012-15)<sup>646</sup>, support of active participation by UN Member States at the Universal Periodic Review was expressed. The Council's conclusions on EU priorities at the UN Human Rights Fora<sup>647</sup> reaffirmed the EU's commitment to the UPR and called upon states to effectively cooperate with this mechanism. Implementation of states' own commitments during the UPR was mentioned as one of standard elements of the EU's bilateral engagement on human rights with third countries in the Annual Report on Human Rights and Democracy in the World in 2013<sup>648</sup>. The document also indicated the active role of the EU in the three sessions of the UPR which the EU 'strived to preserve as a universal mechanism of a cooperative nature'. The UPR was also mentioned in some of the EU guidelines concerning specific human rights issues which will be presented in section 4.

### **3. General involvement of EU Member States in the UPR**

The general involvement of EU Member States as recommenders in the UPR process must be acknowledged. These 28 states, less than 15% of all UN Members, made almost one third of all recommendations raised on sessions from 1 to 18<sup>649</sup>. They also participated actively in submitting questions in advance and making statements during the interactive dialogue. The recommendations remain, however, the main indicator of a state's involvement in the review.

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<sup>644</sup> Information about *light coordination* obtained from representatives of EEAS and permanent missions to the United Nations Office in Geneva.

<sup>645</sup> Luxembourg, 25 June 2012, Doc No 11855/12, 4.

<sup>646</sup> Adopted by the Council of the European Union, Brussels, 23 May 2012, Doc No 9820/1/12 REV 1, 7.

<sup>647</sup> Adopted on Foreign Affairs Council Meeting, Brussels, 10 February 2014, Doc No CL14-013EN, para 5.

<sup>648</sup> Adopted by the Council of the European Union, Brussels, 23 June 2014, Doc No 11107/14, 35, 110.

<sup>649</sup> All statistics provided in this section are based on the website <<http://www.upr-info.org>> which includes all the sessions up to the 18<sup>th</sup> one.

Figure 12: EU Member States in the UN

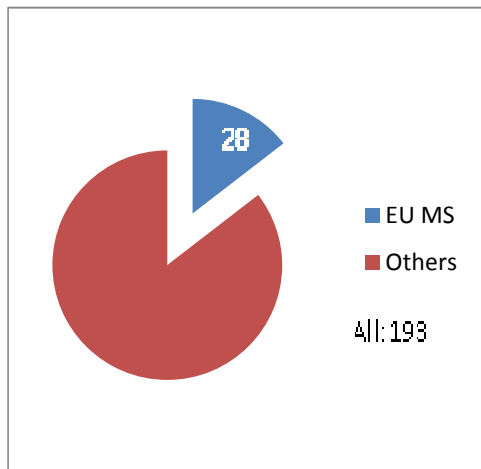
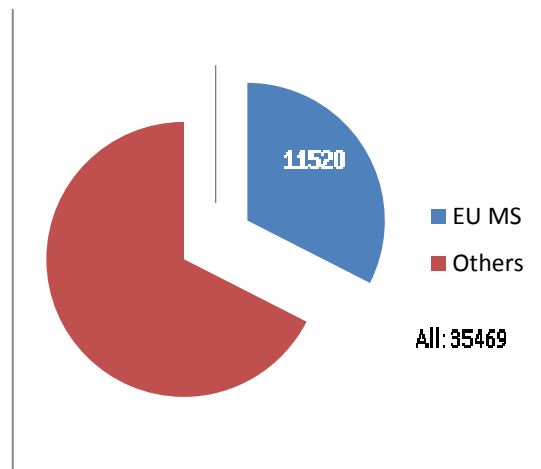
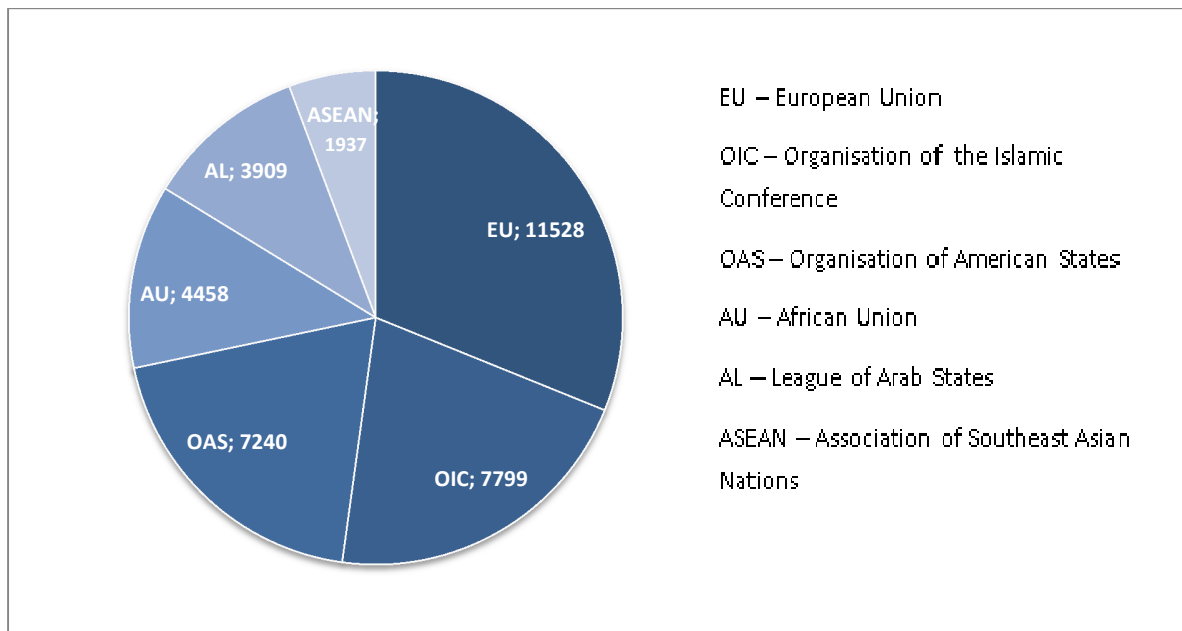


Figure 11: EU Member States recommendations



The EU’s members make most of the recommendations, although in terms of percentage of UN membership, it is not the biggest organisation.

Figure 13: Number of recommendations made by members of regional organisations



The table below presents the engagement of EU Member States in raising selected particular issues during the UPR. As it can be easily noticed, some of them can be regarded as priorities, while others are clearly out of EU countries’ interest.

Table 7: Issues raised in the UPR

Issue	Total number of recommendations	Number of recommendations made by EU Member States	Percentage	EU Member States which made the highest number of recommendations
International instruments	7227	2794	39%	Spain, France, Slovakia
Women's rights	6328	1970	31%	Slovenia, Spain, France
Rights of the Child	5765	1955	34%	Slovenia, Slovakia, Italy
Torture and other CID treatment	2698	1326	49%	France, Czech Republic, Spain
Justice	2688	1110	41%	France, Slovakia, UK
Detention conditions	2221	1086	49%	Czech Republic, UK, France
Right to education	1680	269	16%	Finland, Slovenia, Slovakia
Minorities	1558	450	29%	Austria, UK, Slovenia
Labour	1534	261	17%	Slovakia, France, Spain
Migrants	1498	130	9%	UK, Netherlands, Slovakia
Death penalty	1495	861	58%	France, Spain, Italy
Racial discrimination	1271	240	19%	France, Spain, UK
Disabilities	1233	318	26%	Spain, Slovenia, Slovakia
ESC rights – general	1064	307	29%	Spain, Portugal, France
Right to health	1063	141	13%	Slovenia, Spain, France
Freedom of opinion and expression	1023	518	51%	France, Sweden, Netherlands
Freedom of religion and belief	835	274	33%	Italy, Austria, Slovenia, UK
Freedom of the press	823	445	54%	France, Netherlands, Austria
Sexual Orientation and Gender Identity	809	473	58%	Netherlands, France, Czech Republic
Development	698	16	2%	Austria, Spain, Bulgaria, Slovenia
CP rights – general	596	250	42%	Spain, France, Slovenia
Freedom of association and	577	314	54%	France, Czech Republic, United Kingdom



<b>peaceful assembly</b>				
<b>Human rights defenders</b>	549	300	55%	Ireland, Czech Republic, Netherlands
<b>International humanitarian law</b>	403	155	38%	Spain, Slovenia, Austria
<b>Right to food</b>	218	26	12%	Luxembourg, Spain, Slovakia
<b>Right to housing</b>	206	43	21%	Spain, Sweden, UK, France, Austria

According to the data presented in Table 7, the following issues have been granted the highest percentage of EU Member States recommendations: death penalty, sexual orientation and gender identity, human rights defenders, freedom of association and peaceful assembly, freedom of the press and freedom of expression. The highest number of recommendations was made on women's rights, rights of the child and torture and other CID treatment. All these issues are fully consistent with the EU human rights priorities set out in the EU Strategic Framework and Action Plan on Human Rights and Democracy and other EU human rights policy documents.

#### 4. Realization of EU human rights priorities in the UPR

##### a) Death penalty

The first priority mentioned in the Action Plan on Human Rights and Democracy is the abolition of the death penalty. The main document concerning the matter is the EU Guidelines on the Death Penalty, adopted in 1998 and updated in 2013. Pursuant to that document, EU Member States should include in the recommendations made in the UPR process references to the establishment of a moratorium on executions and the abolition of the death penalty. Even though the EU's strong opposition to the death penalty is underlined in the document, merely advocating its abolition is regarded as insufficient. To achieve the final goal, which is the universal abolition of the death penalty, the EU will take specific actions with respect to the countries where the capital punishment is still used. These actions include seeking accurate data on persons sentenced to death and ensuring the respect for minimum standards for the application of the death penalty explicitly set out in the Guidelines. The number of the UPR recommendations on death penalty confirms EU Member States' deep involvement in realizing aims stated in the aforementioned Guidelines. The recommendations could be divided into different groups reflecting specific provisions of the document. The first group includes the most direct recommendations to abolish the death penalty. The recommendations concerning the establishment of a moratorium on the application of the capital punishment were put forward more frequently. Depending on the specific situation in the state under review, Member States also recommended transforming the *de facto* moratorium on death penalty into the *de jure* moratorium, continuing the *de jure* moratorium or respecting of the *de facto* moratorium. Other, less frequent, recommendations addressed to the countries where the death penalty is still applied referred to the reduction of the number of crimes for which the

death penalty is implemented, the provision of appropriate statistics and the respect of minimum standards relating to the death penalty. The latter recommendation could be divided into several groups. The Guidelines include a catalogue of the acts that must not be sanctioned by capital punishment. However, with the exception of recommendations concerning the abolition of the death penalty for consensual same-sex relations between adults, addressing specific crimes is not the approach of the Member States. More attention is paid by Member States to instances of the imposition of capital punishment on minors, where sometimes the element of the minimum standard was underlined. For example, Slovenia's recommendation to Sudan during the 11<sup>th</sup> session: 'Ensure that the death penalty is not carried out at least on persons under 18 years of age' (underlining added). Other specific recommendations include transparency of the clemency process in the death penalty and the respect of international standards on the rights of prisoners sentenced to death. A great number of the recommendations on ratification of the Second Optional Protocol to the ICCPR is also consistent with the Guidelines. It is noteworthy that EU countries (Latvia and Poland) were also encouraged to ratify the Protocol, which they did in 2013 and 2014, respectively.

#### *b) Torture and other cruel, inhuman or degrading treatment*

The problem of torture and other cruel, inhuman or degrading treatment is also part of the EU's human rights priorities. In 2012, the Council of the EU updated the Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, which are to be used in multilateral human rights fora. The only reference to the UPR included in the document concerned the EU's assistance to countries in implementing UPR recommendations related to the prevention and combating of torture and other ill-treatment. However, this EU human rights priority is reflected in many UPR recommendations. Moreover, four of five states which put forward the greatest number of recommendations on this issue are EU countries (France, Czech Republic, Spain and UK). As in the case of the Guidelines on death penalty, this document refers to different types of actions that were recommended during the UPR process, regarding prevention, prohibition and condemnation of torture and other cruel treatment. The examples are criminalization of all forms of torture, establishing an effective National Preventative Mechanism and conducting thorough and impartial investigation into allegations of torture and physical abuse. The Guidelines give also importance to the question of combating impunity, which was not reflected to any significant extent in the UPR process, although some states mentioned it. Even less frequently, the EU Member States recommended ensuring the rehabilitation for torture victims and their families (e.g. 'Carry out immediate investigations into all allegations of torture committed during the regime of Ben Ali, and ensure that victims and their families are entitled to rehabilitation and compensation', Austria to Tunisia, 13<sup>th</sup> session). On the contrary, a great number of recommendations concerned the ratification of the UN Convention against Torture or its Optional Protocol. Some states which acceded to the Optional Protocol were told to implement or follow-up the recommendations of the Committee against Torture, or submit delayed reports. The issue of the prohibition of torture in the struggle to combat terrorism mentioned in the Guidelines was virtually absent in the UPR process. Only France explicitly invoked it in its two recommendations (to Morocco and Swaziland). Most of recommendations were general, while those referring to particular cases of torture were rarely made. One of the latter was the Czech Republic's recommendation in the review of China (4<sup>th</sup>

session) on investigating all cases of police brutality and torture, such as the death of Mr. Pema Tsepak in Chambo in January 2009.

### *c) Human Rights Defenders*

European Union Guidelines on Human Rights Defenders adopted in 2004 indicate some actions that should be taken for promoting respect for the rights of human rights defenders in relations with third countries and in multilateral fora. They include recommending countries under the Universal Periodic Review to bring their legislation and practices into line with the UN Declaration on Human Rights Defenders. In spite of this explicit advice for EU Member States, they have fulfilled it only on a small scale – merely 14 recommendations mentioned the Declaration (half of them made by Slovakia). More frequently this issue was raised together with the protection of the freedom of expression and the freedom of the press. Many recommendations concerned human rights defenders, journalists, and less often, civil society activists. Member States suggested, for instance, combatting violence and harassment against human rights defenders and journalists, stopping their intimidation, and investigating cases of aggressions or threats. Some of the recommendations referred to the activity of the Special Rapporteur on the situation of human rights defenders. Few concerned specific groups of defenders of human rights such as those who work for minorities or the LGBT persons. It is surprising that despite worldwide understanding of the situation of human rights defenders as victims of numerous violations, only one recommendation concerned a concrete case<sup>650</sup>. This is one of the many examples of States, respecting cooperative character of the UPR, being reluctant to tackle specific questions which are more sensitive for the State under review. In general, the recommendations on human rights defenders are not very frequent. EU Member States raise this issue more frequently than members of the other regional groups. However, none of the EU member states seems to highly prioritise this problem, unlike Norway which is responsible for almost 20% of all recommendations raised. Among the states which received the greatest number of recommendations were Mexico, Colombia, the Russian Federation, Uzbekistan and Turkmenistan.

### *d) Rights of the child*

The rights of the child are a matter of broad interest of many States from every regional group. However, the top two States that make UPR recommendations on this issue are Slovenia and Slovakia. In general, EU Member States are highly engaged in raising this issue during the process. By putting forward almost 2000 recommendations they have realised one more of the EU's human rights priorities. The rights of the child are the subject of two EU Guidelines for the Promotion and Protection of the Rights of the Child, and on Children and Armed Conflict. These documents and many other EU activities<sup>651</sup> tackle different aspects of this problem, which is raised during the UPR as well. EU Member States paid attention to the most

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<sup>650</sup> 'That Abdulhadi Al Khawaja be transferred to the Danish authorities for medical treatment, in line with the agreement reached on March 14<sup>th</sup>' (Denmark's recommendation to Bahrain, 13<sup>th</sup> session).

<sup>651</sup> Global lobbying campaign on the promotion of the ratification of two Optional Protocols to the UN Convention on the Rights of the Child and ILO Convention 182 on the worst forms of child labour, conducting projects to prevent child labour, financing a project to improve birth registration rates in some countries, contribution of the assistance for children affected by armed conflict, to name but a few.

burning issues concerning children such as trafficking, labour exploitation and sexual abuse. Many recommendations referred to the problem of domestic violence and corporal punishment. Some countries, mainly African and Asian, were advised to raise the minimum legal age for labour or marriage. The question of discriminatory birth registration systems was also noted. As far as the situation of children during armed conflicts is concerned, Member States engaged most strongly in the review of the Democratic Republic of Congo in the 6<sup>th</sup> session, when twenty States raised the issue of child soldiers. Apart from noting problems characteristic to a certain state, Member States often recommend the ratification of the Optional Protocol to the UN Convention of the Rights of Child on a communications procedure. Less frequently the implementation of the Committee on the Rights of the Child recommendations was raised.

#### *e) Women's rights*

Protection of the rights of women, and protection against gender-based violence is another of the EU human rights priorities realised in the UPR on a large scale. According to the EU Guidelines on violence against women and girls and combating all forms of discrimination against them, the EU 'will encourage Member States to make specific commitments to combat violence and discrimination against women within the framework of the UPR'. This provision refers to the reviews of the Member States and there is no reference in the document to their actions as recommending states. Nonetheless, many EU Member States recommendations concerned such problems as domestic violence and discrimination of women. In some cases the importance of raising awareness about gender equality, promoting the rights of women and adopting gender-specific approach in different areas of political and social life was underlined. More specific questions were also tackled, for instance forced marriages, honour killings, access to education for girls, decriminalization of abortion under certain circumstances and the practice of female genital mutilation. Member States also advised lifting reservations to the Convention on the Elimination of All Forms of Discrimination against Women and, unusually, to present, without delay, a report to the Committee on the Elimination of Discrimination against Women.

#### *f) Freedom of religion and belief*

Freedom of religion or belief was the subject of the EU actions in the Human Rights Council taken as a response to the initiatives of the Organization of Islamic Conference. In the UPR process, Member States also raised this issue, although no country seemed to pay any special attention to this problem, with the exception of Italy which has the second greatest number of the recommendations on this question. It can be presumed that in the next sessions the focus on this issue will be greater if Member States decide to realise provisions of the EU Guidelines on the promotion and protection of freedom of religion and belief adopted in 2013. Such a development should, in fact, be expected, especially in light of the following provision of this document: 'EU Member States will draw attention, as appropriate, to freedom of religion or belief in the Universal Periodic Review of the UN Human Rights Council. The implementation of recommendations accepted by the state under review will be monitored and supported as appropriate'.

### *g) LGBTI rights*

Another EU human rights priority concerns the enjoyment of human rights by LGBTI persons. This is another example of an issue in which more than 50% of all recommendations were made by the EU countries. Netherlands made the most, followed by the Czech Republic, France and Spain, making up four of the top five states of the list. The increase in the EU Member States engagement in the topic in the future UPR sessions is probable because of their adoption of the Guidelines to promote and protect the enjoyment of all Human Rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in 2013. The document also mentions the inclusion of LGBTI questions and recommendations in the interventions during the UPR process.

### *h) Freedom of expression*

The same prediction concerns the EU Guidelines on Freedom of expression online and offline adopted in 2014. The UPR is also invoked in this document, namely in the provision stating that EU Member States will draw attention to the freedom of expression in the UPR and the implementation of recommendations will be monitored and supported. Until now this issue has not been among those most frequently raised, although every other recommendation was taken up by EU Member State. Apart from the general advice to promote, protect and respect the right to freedom of expression, Member States mentioned more specific issues as blasphemy, defamation and libel. Many recommendations concerned the rights of journalists and media (including Internet) freedom. Occasionally, specific state laws were invoked along with a suggestion to revise or even derogate them. Member States also referred to the actions of the Special Rapporteur on freedom of opinion and expression.

### *i) International humanitarian law*

The EU takes measures to promote compliance with international humanitarian law and the Guidelines were also adopted on this issue. However, during the UPR, this matter was rarely raised. None of Member States paid special attention to it, although Spain and Slovenia made the greatest number of recommendations – 19 and 16 respectively. In many cases the Member States' recommendations on this issue concerned the rights of the child during the armed conflict.

### *j) Other priorities*

The Strategic Framework and Action Plan on Human Rights and Democracy indicate more human rights priorities than those expressed in the guidelines, with the issue of the administration of justice mentioned the most frequently in the UPR recommendations. Many recommendations concerned ratification of the Rome Statute of the International Criminal Court and other issues such as impunity, independence of judges or free legal assistance. Other priorities are much less realised in the UPR, i.e. freedom of association and assembly, human rights for persons with disabilities, rights of persons belonging to minorities, or racial discrimination. The latter was the subject of more than 240 recommendations made by Member States, which received almost 600 recommendations on the same issue<sup>652</sup>.

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<sup>652</sup> The EU is the regional organization with the greatest number of received recommendations on racism.

In analyzing the number of EU Member States' recommendations on certain issues, one can see their deep involvement in the area of civil and political rights. It becomes even more apparent in contrast with their relatively few recommendations on economic, social and cultural rights. The percentage of EU Member States recommendations on such matters as right to health, right to education or right to food was around 15%.<sup>653</sup> As far as the right to development is concerned, the EU countries are virtually absent, making 2% of all recommendations.

Some visible gaps in covering human rights issues during the UPR may influence the perception of the EU Member States activity during the UPR. The assessment of their credibility and objectivity by other actors depends on EU Member States' engagement in raising specific issues. For this reason, a need for a tool to fill these gaps, more effective than *light coordination*, should be taken into consideration.

### 5. The character of recommendations made by EU Member States

The UPR Info's Database of UPR Recommendations provides the statistics on the character of the recommendations. They are based on a specific approach where the action requested is analyzed<sup>654</sup>. In this approach, certain groups of actions are marked with numbers from 1 to 5. Number 1 indicates recommendations to take minimal actions (for instance, seeking technical assistance) or not directed at the state under review. Recommendations tagged as number 2 concern continuity of actions taken by the country and are expressed by such verbs as *continue, maintain or pursue*. Number 3 recommendations refer to considering change and are characterised by verbs: *consider, analyse, review, examine* and others. Recommendations of actions with a general element (for instance contained in expressions: *take measures, strengthen, promote, guarantee, address*) are tagged with number 4. Then, number 5 is given to recommendations of specific actions articulated with words such as *conduct, investigate, establish, adopt, ratify, implement, amend, eliminate, abolish*.

States which use the UPR to praise their allies more frequently than resorting to the 1<sup>st</sup> and 2<sup>nd</sup> kind of recommendations. Recommendations number 3 and 4 seem to be the most convenient for those who emphasise the cooperative character of the UPR. The last group of recommendations (5) can be much more difficult to accept by the state under review. However, implementation of the UPR recommendations can be effectively followed up only in the case of these recommendations. The higher the percentage of specific recommendations (5), the greater probability of a scrutinizing review of human rights situation in the country.

Statistics show that general recommendations (4) are the most frequently taken up accounting for 39% of all. Specific actions (5) are suggested in 33% of the cases. Continuing recommendations (2) are made less frequently – 17%. Considering (3) and minimal (1) actions are the least recommended – 9% and 2% respectively. As far as EU Member States are concerned, these numbers differ and show an increase in more specific recommendations. This proves the serious attitude of the EU countries to the UPR and underlines their deep involvement because, as has been indicated, concrete recommendations are the

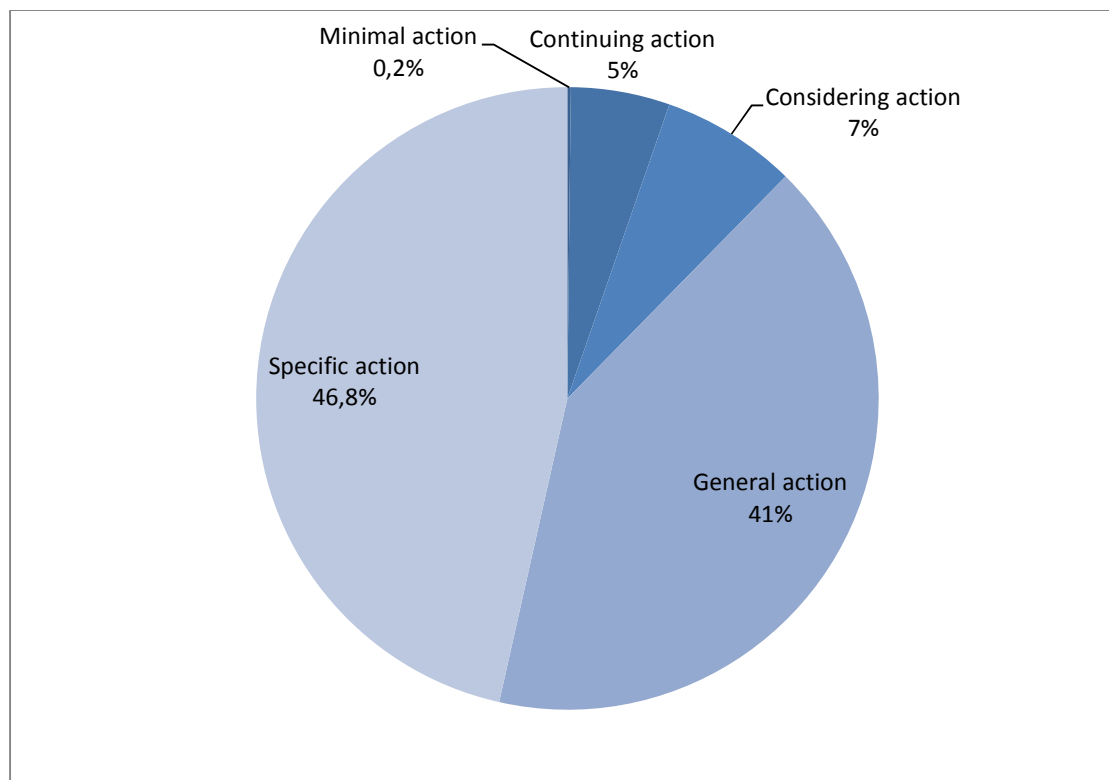
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<sup>653</sup> See Table 7.

<sup>654</sup> This so called Action Category was developed by Professor Edward R. McMahon of the University of Vermont with the support of UPR Info.

most valuable from the point of view of their implementation and follow-up. It is worth adding that Spain and France are two top states which significantly contribute to the total of number 5 recommendations. Other three EU Member States are among the first ten (the United Kingdom, Slovenia and Austria).

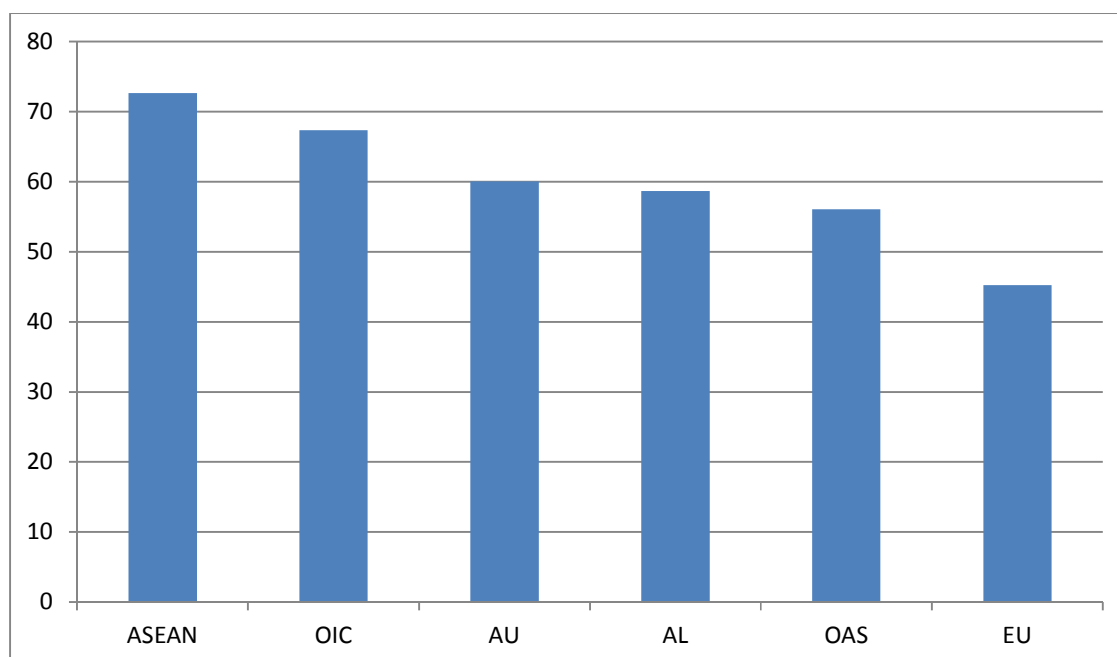
Figure 14: Character of recommendations made by EU Member States



## 6. Double standards

The state to state process cannot be conducted without an element of politicization. The more clear are those elements, the more frequent the accusations of selectivity and using double standards. In comparison to many states which praise their allies by ignoring widely-known facts, the EU countries' approach seems to be objective. Admittedly, the median number of recommendations to one member of regional organisation, presented in Figure 15, is lower than in the case of others. However, it cannot be treated as a clear proof of double standards. It should be noted that EU countries do not take up recommendations to commend other members of their organisation, which is characteristic of some countries belonging, for instance to the OIC or AU. The total number of recommendations made by EU countries (1267) accounts for more than 27% of all addressed to them. This proves that EU Member States do not try to avoid participating in their reviews. In the case of other regional organisations included in Figure 15, this percentage was lower with the exception of the Organization of American States (almost 30%).

Figure 15: Median number of recommendations made by EU MS to one member of regional organisation



Participation in many reviews can be regarded as an attempt to avoid the accusation of selectivity. This approach was adopted to the greatest extent by France which participated in reviews of all other 192 states. Close to this result was the United Kingdom, making recommendations to 188 states. Five other countries participated in more than 150 reviews: Spain in 185, Slovenia in 183, Germany and Slovakia in 158 and Netherlands in 154.

EU Member States are not free from placing their political interests above the objectivity of the process. Not accidentally, among 63 EU Member States recommendations addressed to Turkey, 17 were made by Greece and Cyprus. Moreover, there are some problems which seem not to be given adequate attention. Only two of the EU Member States' recommendations to the United States concerned the controversial case of Guantanamo (both made by Ireland). Five recommendations addressed to China referred to the problem of Tibet (two of the Czech Republic, one by UK, Germany and France, each). As was stated before, countries are also reluctant to point out the very concrete human rights violations (indicating, for example, the name of the victim). Some traces of politicization can be found in the poor level of involvement in some reviews. However, the most clear examples refer to the first cycle of the UPR and as such are difficult to assess because of different rules of procedures and the lack of a guaranteed place on the speaker's list for all interested states. One of the examples of this problem was Libya's review in 2010 in which EU countries did not play an active role. Only six countries<sup>655</sup> participated in this review, making 21 recommendations. Similarly, Saudi Arabia in its first review received 26 recommendations from eight

<sup>655</sup> Czech Republic, France, Malta, Poland, Slovakia, and United Kingdom.



EU Member States<sup>656</sup>. In comparison to other reviews of the first cycle<sup>657</sup>, some political and economic reasons for such poor involvement are probable but the aforementioned rules of procedures should also be taken into account. Even fewer recommendations were made to such countries as Algeria, Brazil or India, in this case, however, the review during the second cycle showed greater engagement of EU Member States. The increase of their involvement was significant also in China's review (12 countries engaged in the first one and 19 in the second one). The clear assessment of this problem will be possible to make after the end of the second cycle of the UPR.

## 7. Conclusion

Taking all these points into consideration, some general observations can be drawn. Firstly, the objectives of the light coordination are fulfilled. EU Member States do not appear to act as a bloc. However, on the other hand, they realise EU human rights priorities. The adoption of this approach should be assessed positively because by leaving full autonomy to Member States, it has led to the implementation of the EU's human rights policy. As it was presented, all priorities are the subject of numerous recommendations, which makes them constantly present during the UPR. Secondly, although EU Member States are in general deeply involved in the UPR, their absence in regard to some issues should not be overlooked. Especially noticeable is the sharp difference between recommendations on civil and political rights and those concerning economic, social and cultural rights. As far as the character of recommendations is concerned, it must be stated that EU Member States lead when it comes to making specific recommendations, and avoid putting forward those suggesting minimal actions. The problem of double standards is difficult to be unambiguously assessed. It is clear that elements of politicization are present in the activity during the UPR. On the other hand, EU Member States do not praise their allies as many other countries do. In conclusion, broad involvement of EU countries must be once again emphasised.

### C. Financing

This section explores the EU's financial contribution to UN human rights activities. Through financing the UN's work, the EU promotes and strengthens the protection of human rights globally. For many observers, the contribution is also a way of *showing* explicitly the Union's commitment to universal human rights. The main focus of this section is the financing of the Office of the High Commissioner of Human Rights (OHCHR). This section presents briefly the agreements between the OHCHR and the EU, as well as the EU regulations which form the basis for the contributions to the OHCHR. Next, funds contributed by the EU to the OHCHR over the years are analysed, with special attention to the amount of unearmarked contributions<sup>658</sup>. Also member states contributions to the OHCHR are evaluated. The analysis is based on

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<sup>656</sup> Austria, Belgium, Finland, France, Germany, Italy, Sweden and United Kingdom. It has to be noted that during the second review Saudi Arabia was addressed 74 recommendations.

<sup>657</sup> For instance: 76 recommendations made by EU Member States to Democratic Republic of Congo, 58 to Egypt, 94 to Iran, 64 to Zimbabwe.

<sup>658</sup> Voluntary funds allocated to UN agencies are generally earmarked, meaning donated for a specific purpose. In the past the majority of voluntary contributions to the OHCHR has been earmarked, which has changed in the last couple of years. The OCHRH encourages donors to provide unearmarked contributions. Now, a big part of contributions is unearmarked, meaning that the OHCHR itself can decide where it allocates those funds to.

primary sources (agreements, EU regulations, OHCHR reports and plans) and on targeted interviews with stakeholders.

### 1. The legal grounds of the EU's contribution to the OHCHR

The EU's contributions to the OHCHR are part of the EU's large donations to the UN. It is also worth mentioning that the UN's human rights program is not only realised by the OHCHR. The OHCHR works to mainstream human rights in all areas of work of the UN, including development, peace and security and humanitarian affairs. Therefore, the EU's contributions to other UN actors, such as the UNDP, UNICEF and UNWOMEN, also support the UN's human rights activities. However, we are analysing only contributions to the UN's main human rights agency, the OHCHR.

On 29<sup>th</sup> April 2003, the UN and the EU signed a *Financial and Administrative Framework Agreement*.<sup>659</sup> It is a document that oversees the EU-UN cooperation, and applies to all contribution-specific agreements signed between both organisations after that date. The Agreement regulates issues such as reporting, payment schedules and various other financial issues.

A cooperation agreement<sup>660</sup> concerning the Union's contribution to the implementation of the OHCHR's Management Plan 2012-2013<sup>661</sup> was signed in February 2012, and set the maximum amount of contribution at EUR 4,000,000. The Directorate-General in the European Commission responsible for the agreement is the Development and Cooperation – EuropeAid (DEVCO). A partnership agreement or a memorandum of understanding between the EU and the OHCHR is currently being negotiated. The OHCHR and EU partners are hoping to sign a partnership agreement with the EU in 2015.

Financing the OHCHR is regulated by EU law. The EU contribution is provided through the European Instrument for Democracy and Human Rights (EIDHR), which is a financing instrument for the promotion of democracy and human rights worldwide. It is a successor programme to the European Initiative for Democracy and Human Rights (2000-2006)<sup>662</sup>. The EIDHR was established by a regulation<sup>663</sup> in December 2006 for the period 2007-2014. Article 13 of the regulation mentions among possible forms of community financing '*grants to support operating costs of the Office of the UN High Commissioner for Human Rights*' (Article 13.1.d). Under the 2014-2020 financial perspectives, the regulation has been renewed<sup>664</sup> in 2014. It includes an annex with five specific objectives and priorities of the EIDHR, one being the 'Support to targeted key actors and processes, including international and regional human rights instruments and

<sup>659</sup> Financial and Administrative Framework Agreement between the European Community, represented by the Commission of the European Communities and the United Nations, signed 29 April 2003.

<sup>660</sup> European Union Contribution Agreement with an International Organization, EIDHR/2012/285-071.

<sup>661</sup> OHCHR Management Plan 2012-2013. Available at: <[http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_mp\\_2012\\_2013\\_web\\_en/#/home](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_mp_2012_2013_web_en/#/home)>.

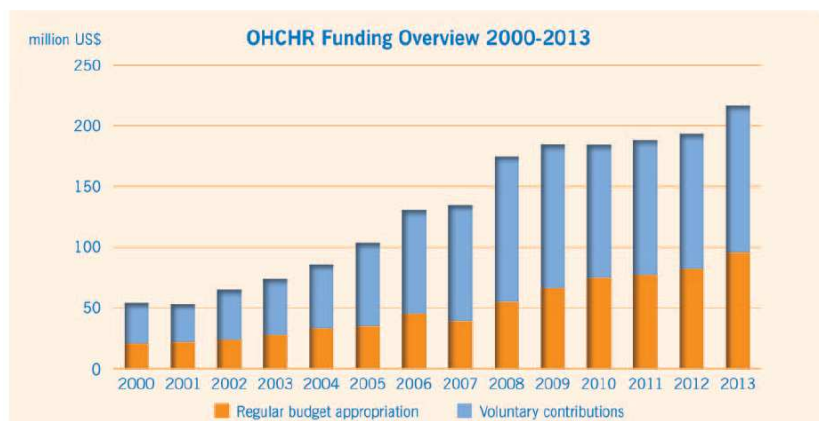
<sup>662</sup> The European Initiative for Democracy and Human Rights was regulated by Council Regulations No 975/1999 and 976/1999. The European Instrument for Democracy and Human Rights was created after the expiry of these two regulations.

<sup>663</sup> Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

<sup>664</sup> Regulation (EC) No 235/2014 of the European Parliament and of the Council of 11 March 2014 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

mechanisms'. Additionally, another regulation was adopted in 2014 on instruments for financing external action<sup>665</sup>, which includes – among other specific financing provisions – grants to the OHCHR (Article 6.1.c.iii)<sup>666</sup>.

Figure 16: OHCHR Funding Overview 2000-2013<sup>1</sup>



Those regulations are to be implemented through various measures<sup>667</sup>. On the 24<sup>th</sup> of July 2014, the Commission adopted an Implementing Decision on the Work Programme 2014. The 7<sup>th</sup> Annex to the decision is an action document for supporting the OHCHR<sup>668</sup>. It states the overall amount of unearmarked contribution to the OHCHR (4.000.000 EUR) in 2014, as well as the core objective of the action: to enhance the High Commissioner's global leadership, thereby reinforcing its policy influence role within the United Nations system and worldwide. Importantly, the document points out that this contribution does not constitute the only EU support for the rights and activities covered by the OHCHR.

## 2. Contributions to the Office of the High Commissioner of Human Rights

### a) General remarks on contributions to the OHCHR

The OHCHR receives funds from the UN's regular budget and voluntary donors. As the contributions from the regular budget are not sufficient to cover the OHCHR's global funding needs, the contributions from voluntary donors are of high importance. They constitute about 60% of the OHCHR budget. Over the past years, the contributions from the regular budget as well as the voluntary donations have risen. The majority of the voluntary donors are countries (in 2013 UN donations from member states accounted for

<sup>665</sup> Regulation (EC) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

<sup>666</sup> The same article includes also grants to EUIC.

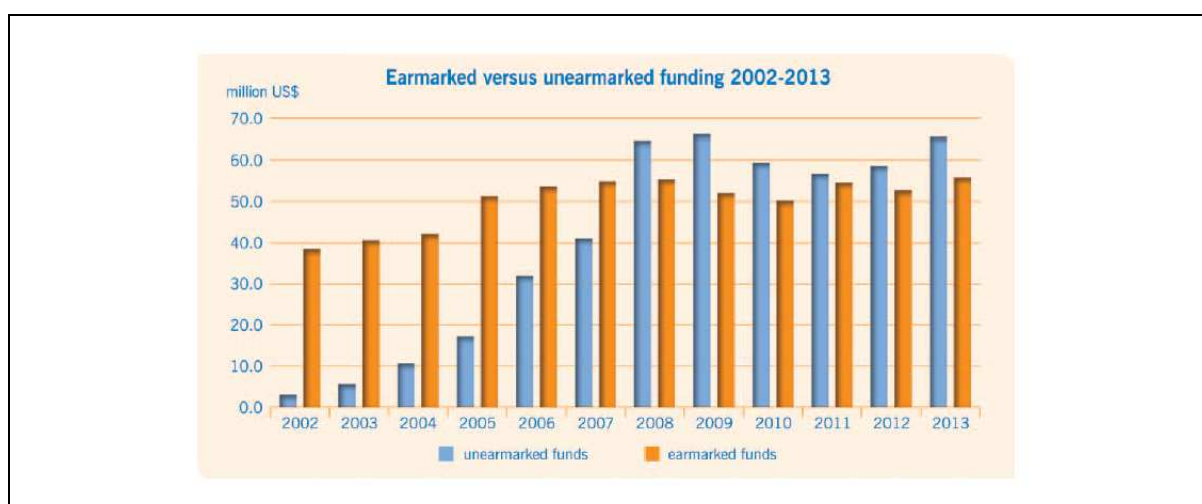
<sup>667</sup> Regulation (EC) No 235/2014, art 4.1; Regulation (EC) No 236/2014, art 2.

<sup>668</sup> Annex 7 of the Commission Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR). Title: Supporting key actors – UN Office of the High Commissioner for Human Rights. CRIS number: EIDHR/2014/37406.

83.5% of all voluntary contributions), but additionally intergovernmental organisations and private donors are contributing.

Voluntary donations can be either earmarked (i.e. donated for a specific purpose) or unearmarked. As the High Commissioner explains in the Human Rights Appeal 2014, the OHCHR encourages donors to provide unearmarked contributions, as they provide greater flexibility when planning activities and responding to evolving needs and situations. However, countries very often have to follow specific budget lines and private donors have particular areas of interest, so many donors still choose to earmark their contribution. Nevertheless another dimension of the matter is at least of similar importance – the question of earmarking is a highly controversial political issue. Especially developing countries have continuously criticised the OHCHR for being ‘donor-driven’, which was one of the main reasons for the OHCHR to promote the principle of unearmarked funds. Since 2008, the share of unearmarked funds has exceeded the earmarked funds. There are still countries, however, that voice this criticism with regard to earmarked contributions and the influence which the donor countries have on the OHCHR activities.

Figure 17: Earmarked versus unearmarked funding 2002-2013.<sup>669</sup>



### *b) European Union*

The EU donates funds to the OHCHR every year. The amount of the EU’s contribution to the OHCHR has changed over the years and so has the share of the EU’s contribution to the OHCHR in the total contributions and the rank by donor contributions.

<sup>669</sup> OHCHR report 2013, p. 134.

Table 8: EU contributions to the OHCHR 2000-2013.<sup>670</sup>

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
% of total contributions to OHCHR	3,8%	9,2%	1,0%	5,2%	11,8%	5,4%	8,7%	5,3%	6,2%	7,0%	6,4%	10,9%
rank by donor contribution	8/62	3/54	16/65	8/65	2/63	9/72	4/93	7/77	6/71	5/79	5/74	3/78

Between 2002 and 2013, the EU was responsible for about 5-10 % of the total voluntary contributions to the OHCHR, varying year by year. Over the reported years' timespan, the EU belonged to the top 10 donors with an exception of one year (2004), and half of the time it was among the top five donors.

The EU contributes to the OHCHR's earmarked and – since 2008 – unearmarked funds. Over the years, the earmarked contributions have been allocated to specific country situations (18 countries/territories<sup>671</sup>), special procedures (2002, 2003, 2005, 2006, 2007, 2008), treaty bodies (2003, 2005, 2006, 2007, 2009), treaty bodies webcasting (2014), transitional justice (2002, 2004, 2006), national institutions (2006, 2007, 2008), indigenous population (2005, 2010, 2011, 2012), effective implementation of the Durban Declaration and Plan of Action (2007, 2008, 2011), achieving women's human rights (2007, 2008, 2010), and Define humanity – Film directors, artists and writers for human rights (2008, 2009)<sup>672</sup>.

The overall annual input to the OHCHR is EUR 4,000,000 of unearmarked contributions and an additional EUR 2-3,000,000 on actions and ad-hoc projects which are negotiated by the headquarters in Belgium or by one of DEVCO's delegations in the world. This level of contributions has not changed in the last couple of years and as we were informed by stakeholders during targeted interviews in Brussels, this form and amount of contribution to the OHCHR is very likely to be maintained.

In 2013, the EU was the third biggest contributor of all voluntary donors (US \$13,216,992), following Sweden (US \$18,421,751) and the United States (US \$13,260,122). Additionally, out of the top five contributors, the EU had the highest share of unearmarked funding (78%)<sup>673</sup>. In 2013, the only earmarked funds were related to field presence – in Bolivia (strengthening the judiciary), Colombia (protection of human rights defenders), Kyrgyzstan (human rights protection for stability in Central Asia), occupied Palestinian territory (to support the OHCHR's leadership of the protection cluster) and Syria (support to human rights activities). The question which those projects pose is whether they have been initiated by

<sup>670</sup> Source: Integrated Management Information System (IMIS); OHCHR, 10th June 2013.

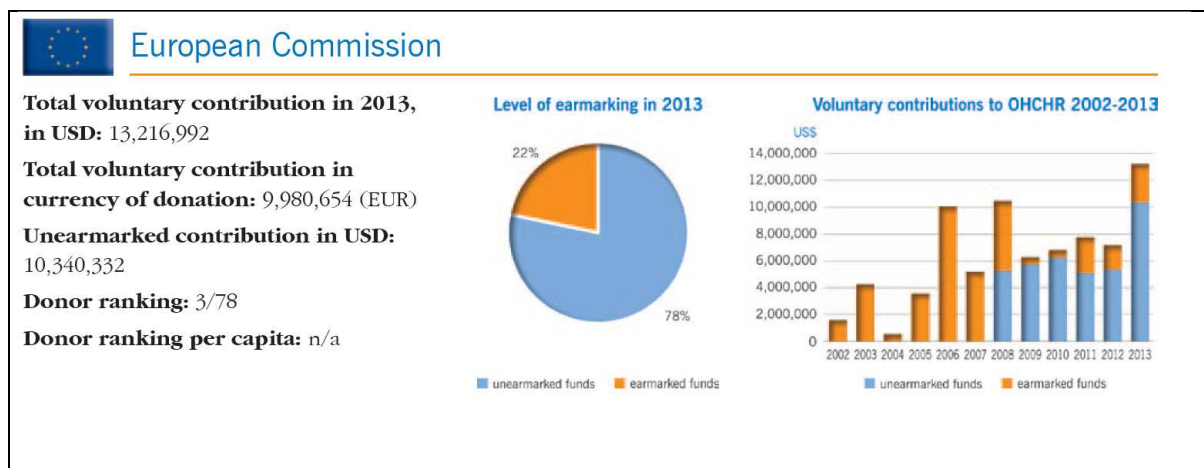
<sup>671</sup> Bolivia (2013, 2014), Burundi (2003, 2005), Colombia (2002,2003, 2005, 2006, 2008, 2010, 2013, 2014), Democratic Republic of the Congo (2002, 2003, 2004, 2005, 2007), Guatemala (2005, 2007, 2008), Kyrgyzstan (2011, 2012, 2013, 2014), Mexico (2005, 2006, 2007, 2008, 2009), Moldova (2014), Morocco (2003, 2005), Myanmar (2012), Nepal (2006), Nicaragua (2004), occupied Palestinian territory (2011, 2012, 2013, 2014), Russian Federation (2002, 2004), Sierra Leone TRC (2003, 2006), Syria (2013, 2014), Togo (2007, 2008), Uganda (2007, 2008, 2011).

<sup>672</sup> Source: Integrated Management Information System (IMIS); OHCHR, 10th June 2013.

<sup>673</sup> Sweden – 58,4%, United States of America – 33,9%, Norway – 64,1%, Netherlands – 63,1%.

the OHCHR or selected by the EU, due to EU priorities. If they were 'project-driven' (i.e. initiated by the OHCHR) then they are different from regular earmarking.

Table 9: Donor profile of the European Commission in 2013.<sup>674</sup>



The European Commission is one of the five intergovernmental organisations<sup>675</sup> that provided the OHCHR with funding in 2013. Out of all the non-state donors (both intergovernmental organisation and private donors), only the EU provided unearmarked funding. This has also been the case in previous years as well. Financing the work of the OHCHR is an important form of implementing the EU human rights strategy. One of the key messages of the strategy is *Working through multilateral institutions*, which explicitly states, that the EU finds the independence and effectiveness of the OHCHR essential. Unearmarked contributions strengthen the OHCHR's independence and effectiveness<sup>676</sup>; therefore, it seems reasonable for the EU to contribute high amounts of unearmarked funds. It is also noteworthy that the OHCHR is the only UN agency which receives unearmarked contributions from the EU.

### c) European Union Member States

One of the challenges the EU is facing is securing the EU member states funding to the OHCHR. There is a fear among EU stakeholders, that the EU's input to the OHCHR reduces that of its member states. This would be a troubling trend, as the EU contributions should supplement the member state's contributions and not replace them. It is not possible to assess unambiguously whether member states are contributing less to the OHCHR because of the EU contributions, as there are many other factors that influence the amount of voluntary contributions – economic situation, budgetary issues, contributing to other agencies and causes, to name but a few. Nevertheless, the level of member states' contributions can be analysed

<sup>674</sup> OHCHR report 2013, p. 188.

<sup>675</sup> Organisation Internationale de la Francophonie, United Nations Central Emergency Response Fund, United Nations Development Programme, World Health Organization.

<sup>676</sup> According to the OHCHR, a 'high level of unearmarked funding (...) underlines OHCHR's independence and ensures that programmes are developed and implemented in line with priorities established by the High Commissioner, in accordance with her mandate'. United Nations Human Rights Appeal 2014, OHCHR, p. 47.

and compared with the overall voluntary donations to the OHCHR. In order to assess this, member states' voluntary contributions over the last 6 years have been compiled in a chart. It was decided not to include Croatia, when the analysis was made, as it had only been an EU member state for six months.

Table 10: Contribution of EU member states to the OHCHR 2008-2013 in US dollars.<sup>677</sup>

	2008	2009	2010	2011	2012	2013
Austria	543 833,00	564 596,00	836 862,00	520 108,00	1 059 239,00	436 517,00
Belgium	1 842 939,00	1 534 527,00	1 082 251,00	2 539 651,00	1 293 103,00	936 521,00
Bulgaria	11 000,00	0,00	0,00	0,00	7 000,00	8 000,00
Cyprus	40 707,00	3 631,00	28 178,00	31 948,00	30 068,00	13 561,00
Czech Republic	22 804,00	20 000,00	20 543,00	18 867,00	20 439,00	19 555,00
Denmark	432 505,00	3 593 071,00	2 764 261,00	3 276 909,00	2 589 841,00	5 455 648,00
Estonia	49 697,00	26 962,00	24 361,00	25 670,00	23 897,00	49 544,00
Finland	3 441 350,00	4 013 917,00	3 779 143,00	3 875 120,00	2 744 859,00	3 178 958,00
France	2 836 865,00	2 273 913,00	2 774 133,00	2 921 346,00	2 785 179,00	2 943 438,00
Germany	4 367 405,00	7 632 262,00	6 378 447,00	5 092 323,00	6 701 381,00	6 839 229,00
Greece	178 827,00	249 370,00	131 062,00	98 555,00	0,00	27 137,00
Hungary	74 405,00	27 855,00	0,00	65 703,00	126 805,00	63 857,00
Ireland	6 704 130,00	2 808 989,00	2 621 232,00	3 030 881,00	2 613 941,00	2 618 581,00
Italy	2 379 520,00	272 109,00	0,00	128 213,00	93 559,00	67 853,00
Latvia	32 000,00	0,00	0,00	0,00	12 987,00	13 587,00
Lithuania	0,00	0,00	0,00	0,00	0,00	0,00
Luxembourg	371 940,00	216 535,00	201 389,00	160 000,00	147 059,00	167 742,00
Malta	985,00	0,00	0,00	0,00	0,00	0,00
Netherlands	11 646 972,00	12 771 703,00	10 279 253,00	15 002 139,00	12 206 007,00	10 331 405,00

<sup>677</sup> The table was prepared by the author of the section on the basis of donor profiles in the OCHCR reports 2008-2013.



Poland	99 379,00	100 752,00	0,00	105 768,00	115 933,00	161 468,00
Portugal	80 000,00	80 000,00	100 000,00	100 000,00	139 982,00	100 000,00
Romania	0,00	0,00	0,00	0,00	64 935,00	88 315,00
Slovakia	9 569,00	9 990,00	9 990,00	10 858,00	0,00	10 941,00
Slovenia	70 000,00	101 492,00	50 000,00	42 918,00	0,00	68 966,00
Spain	10 673 854,00	13 900 952,00	6 855 401,00	4 774 584,00	1 469 371,00	896 552,00
Sweden	8 686 174,00	6 531 532,00	8 421 862,00	11 435 607,00	11 955 866,00	18 421 751,00
United Kingdom	7 087 518,00	5 145 128,00	5 429 354,00	4 446 539,00	6 292 602,00	4 779 840,00
<b>Sum:</b>	<b>61 684 378,00</b>	<b>61 879 286,00</b>	<b>51 787 722,00</b>	<b>57 703 707,00</b>	<b>52 494 053,00</b>	<b>57 698 966,00</b>

As shown in the chart, the total amount of EU member states voluntary contribution to the OCHCR peaked in 2009 at US \$62 mln, dropped sharply in 2010 to US \$52 mln, recovered in 2011 to a level of US \$58 mln, dropped again in 2012 to US \$52 mln and increased in 2013 to US \$58 mln. During this period, a quite similar trend could be observed with regard to the overall sum of voluntary contributions to the OHCHR, which peaked in 2008, dropped somewhat in 2009 and then more sharply in 2010, recovered slightly in 2011 and 2012 and then increased greatly in 2013, exceeding the sum from 2008<sup>678</sup>. The fall in financing, both in overall and EU funding, was affected by the global financial crisis. While the general development was quite similar, the total voluntary contributions to the OHCHR in 2013 were higher than in 2008, while the EU member states contributions in 2013 were 6.5% lower than they were in 2008 and 2009. This might be only accidental, but in the context of the debate about member state contributions, it should be noted and the development observed.

### 3. Conclusions

Although currently there is no specific agreement concerning financing between the EU and the OHCHR, the EU makes quite constant contributions to the OHCHR: annually EUR 4,000,000 of unearmarked and about EUR 2-3,000,000 of earmarked contributions. A natural question is whether the level and modality of the contributions correspond appropriately with the potential of the EU and the needs of the OHCHR. As the needs of the OHCHR are nearly unlimited, any increase in contributions would be desirable. The EU itself should reassess its donations regularly. While reassessing, the stakeholders in the EU should consider a number of factors, for example, donations to other organisations and projects, the current financial situation of the EU and the effective use of previous contributions. However, another important factor that should be considered during the regular reassessment is the political sensitivity of financing

<sup>678</sup> 2008: 119.894.253,00; 2009: 118.109.378,00; 2010: 109.362.504,00; 2011: 111.084.289,00; 2012: 111.147.264,00; 2013 - 121.217.538,00.



the OHCHR. High proportions of EU contributions in the overall budget might lead to criticism about the OHCHR being 'EU-driven'. Even when the majority of the Union's contributions is unearmarked, the very fact that the EU has its own human rights priorities might influence the OHCHR activities, especially if it becomes one of the main contributors. This could develop into a major issue of criticism towards the OHCHR. Fortunately, at this stage there is a balance. However, another issue which should be considered during the reassessment is securing the EU member states funding to the OHCHR, as the EU contributions should supplement the member state contributions and not replace them.

## VI. Case studies

### A. EU engagement in the promotion and protection of the economic, social and cultural rights at the UN

#### 1. Policy Framework

A recently published Commentary to the International Covenant on Economic, Social and Cultural Rights by professors from Sydney University begins with the following words: ‘Despite the much-emphasized indivisibility of human rights, economic, social and cultural rights have long been seen as the poor cousins of civil and political rights.’<sup>679</sup> Indeed, the rights belonging to this category have found themselves again at the centre of international discourse. There are many indicators of this process, including the adoption and relatively rash ratification process of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (including by some EU member states); much attention is paid to this category of rights not only by many states but also by non-governmental organisations, including those which in the past tended to focus exclusively on civil and political rights (such as Amnesty International and International Commission of Jurists); and the growing jurisprudence of regional and domestic courts related to economic, social and cultural rights. From the perspective of the EU engagement in this process at the United Nations one may say that the Union is lagging behind.

There are three basic strategic documents outlining the EU human rights policy, including at the UN fora: a) EU Strategic Framework and Action Plan on Human Rights and Democracy with b) the EU Action Plan on Human Rights and Democracy and c) the EU medium-term priorities at the United Nations (2012-2015).

The EU Strategic Framework and Action Plan on Human Rights and Democracy was adopted by the Council of the European Union on 25 June 2012 and it sets out the key EU priorities and objectives with respect to human rights and democracy policy, including at the UN fora<sup>680</sup>. As for economic, social and cultural rights (ESCR) the EU reaffirms in the Strategic Framework its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural. Furthermore, under Implementing EU priorities on human rights section of the Strategic Framework, the EU expresses its will to intensify its efforts to promote economic, social and cultural rights and to strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups.

At the same time, to implement *the EU Strategic Framework*, the Council adopted *the EU Action Plan on Human Rights and Democracy*. *The EU Action Plan* covers the period until the end of 2014. It contains 96 actions under 36 intended outcomes/headings. There are two ESCR-specific outcomes in *the EU Action*

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<sup>679</sup> Ben Saul, David Kinley, and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP 2014).

<sup>680</sup> The EU Strategic Framework and the EU Action Plan are accessible at <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)>.

*Plan:* a) respect for economic, social and cultural rights with two actions and b) ensure promotion of human rights in the external dimension of employment and social policy with one action.<sup>681</sup>

Moreover, on 4 May 2012, the EU Political and Security Committee endorsed *the EU medium-term priorities at the United Nations (2012-2015)*.<sup>682</sup> There is no specific reference to the ESCR in the document, but only a general statement of the universality, indivisibility and interdependency of human rights. Based on *the EU Strategic Framework*, since 2013 at the beginning of each consecutive year, the EU Foreign Affairs Council has been adopting the EU priorities at the UN human rights fora for the upcoming one-year period. In the EU Foreign Affairs Council's meeting conclusion on the EU priorities at the UN human rights fora for 2013 of 17 February<sup>683</sup>, there is only one reference (paragraph 15) to the child's rights resolution, run together by the GRULAC and the EU, at the Human Rights Council (HRC) and the UN General Assembly, focusing on the enjoyment of the right to health, which is ESCR related.

In the EU Foreign Affairs Council's meeting conclusion on the EU's priorities at the UN human rights fora for 2014 of 10 February 2014<sup>684</sup> only paragraph 26 is devoted to ESCR. It is of a general nature and no specific actions are mentioned:

'As a firm advocate of the universal, indivisible, interdependent and interrelated nature of all human rights, the EU will intensify its efforts to promote and protect economic, social and cultural rights. The EU will contribute to shaping the agenda on economic, social and cultural rights with specific focus on the UN Human Rights Council and in close cooperation with UN Special Rapporteurs covering the respective rights.'

It should be noted, however, that there is a reference to the right to food in the EU run (together with Japan) country resolution on the human rights situation in the Democratic People's Republic of Korea, which was adopted at the 25<sup>th</sup> session of the Human Rights Council in March 2014.<sup>685</sup>

<sup>681</sup> Outcome no 9 – Respect for economic, social and cultural rights; actions – (a) Contribute to shaping the agenda on economic, social and cultural rights with specific focus on the UN Human Rights Council and in close cooperation with UN Special Rapporteurs covering the respective rights, (b) Address specific questions related to economic, social and cultural rights in dialogues with third countries.

Outcome no 15 – Ensure promotion of human rights in the external dimension of employment and social policy; action – Promotion of universal ratification and implementation of the four ILO core labour standards: the ban on child labour, the ban on forced labour, non-discrimination and freedom of association and collective bargaining.

<sup>682</sup> The text of the EU medium-term priorities at the United Nations is accessible at <[http://eeas.europa.eu/delegations/un\\_geneva/documents/eu\\_un\\_geneva/20120525eu\\_mt\\_goals\\_un\\_en.pdf#page=1&zoom=auto,-107,842](http://eeas.europa.eu/delegations/un_geneva/documents/eu_un_geneva/20120525eu_mt_goals_un_en.pdf#page=1&zoom=auto,-107,842)>.

<sup>683</sup> Available at <[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/135514.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135514.pdf)>.

<sup>684</sup> Available at <[http://eeas.europa.eu/delegations/canada/documents/news/news2014/council\\_conclusions\\_on\\_the\\_eu\\_priorities\\_at\\_un\\_human\\_rights\\_fora.pdf](http://eeas.europa.eu/delegations/canada/documents/news/news2014/council_conclusions_on_the_eu_priorities_at_un_human_rights_fora.pdf)>.

<sup>685</sup> A/RES/HRC/25/25; operational paragraphs 2 d and 3 d: (2d) (Condemns...) Systematic, widespread and grave violations of the right to food and related aspects of the right to life, exacerbated by widespread hunger and malnutrition; (3d) (Urges the Government of DPRK..) To promote equal access to food, including through full transparency regarding the provision of humanitarian assistance, so that such assistance is genuinely provided to vulnerable persons.

The ESCR are also marginally featured in the EU statements delivered at the general debates under agenda item 3 and 8 of the Human Rights Council agenda, which cover ESCR rights (item 3 – *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*; and, item 8 – *Follow-up to the Vienna Declaration and Programme of Action*). The EU does not raise any ESCR-related issues at debates under item 4 of the Council (Human Rights situations that require the Council's attention), devoted to discussing country human rights situations.<sup>686</sup>

Additionally, the EU Foreign Affairs Council has been adopting its conclusions on the EU priorities ahead of each of the UN General Assembly sessions. They cover a broad range of issues, including human rights. The Council's conclusions of 23 June 2014 on the EU priorities for the 69<sup>th</sup> session of the UNGA<sup>687</sup> indicate that the EU will be promoting the realization of all economic, social and cultural rights, including the human right to safe drinking water and sanitation, and the right to food, as components of the right to an adequate standard of living. It was the same priority for the 68<sup>th</sup> and the 67<sup>th</sup> session of UNGA (the Council's conclusions of 24 June 2013 and 23 July 2012)<sup>688</sup>. However, it must be noted that so far no EU initiatives have followed at the UNGA in this regard and the resolution on water and sanitation is run in their national capacity by Germany and Spain.

## 2. Practice

In practice, the EU does not engage in any systematic way in the promotion and protection of the economic, social and cultural rights at the United Nations fora. Neither at the Human Rights Council, nor at the UN General Assembly is there a single EU led initiative solely devoted to the ESCR, and it is not prominently featured in the EU statements delivered to the UN human rights bodies. Such an approach runs against the EU declarations, contained also in the EU programming documents on the human rights policy, on the equal commitment and importance of all rights, as well as in the fundamental international human rights documents, such as the 1993 Vienna Declaration and Programme of Action, stressing that all human rights are universal, indivisible and interdependent and interrelated, and that the international community must treat them globally in a fair and equal manner, on the same footing, and with the same emphasis (§ 5 of the Declaration).

Neglecting the economic, social and cultural rights by the EU is also politically harmful to the EU policy at the UN fora in the field of human rights. It exposes the EU to the criticism of a selective approach to the promotion and protection of human rights, by, e.g. putting emphasis on the civil and political rights, while in general not attaching the same significance to ESCR. The EU's relative disengagement with respect to ESCR also leaves the space for other states/groups to set the tone of the UN debate on the economic, social and cultural rights and push the EU into a defensive position without any attempts to actively influence the UN agenda in this regard.

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<sup>686</sup> The EU statements at the Human Rights Council are available at <[http://eeas.europa.eu/delegations/un\\_geneva/eu\\_statments/human\\_right/index\\_en.htm](http://eeas.europa.eu/delegations/un_geneva/eu_statments/human_right/index_en.htm)>.

<sup>687</sup> Available at <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/143347.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/143347.pdf)>.

<sup>688</sup> The Council's conclusions for the UNGA sessions for the last years are available at <[http://www.eu-un.europa.eu/articles/articleslist\\_s27\\_en.htm](http://www.eu-un.europa.eu/articles/articleslist_s27_en.htm)>.

### 3. Way forward – proposals

It is in the EU's interest to be more active in the field of ESCR and to make its human rights policy more coherent and effective. In this regard, various options can be considered:

- a) Highlighting, in a more prominent way, ESCR in country resolutions, given, that in particular, violations of ESCR, and not only civil and political rights, are at the root causes of many ongoing conflicts/serious human rights situations;
- b) Considering running purely ESCR devoted initiatives, including the taking over by the EU one of the ESCR initiatives already run by some EU member states;
- c) A more proactive approach to the shaping of the ESCR UN agenda by outreaching actively and early to non-EU/Western countries, particularly from Africa and Latin America, trying to build cross-regional alliances;
- d) Making more frequent references to ESCR in EU statements at the Human Rights Council and the UN General Assembly, and at the country specific discussions;
- e) In terms of public diplomacy, organizing at the UN side-events/seminars highlighting the EU contribution to the practical realization of ESCR as the biggest international donor of the development aid.

## B. Human Rights Defenders

### 1. Introduction

Both the EU and the UN aim to support and protect human rights defenders ('HRDs'). This case study provides an overview of how these two multilateral institutions interact and collaborate to ensure this goal. Former UN Commissioner for Human Rights, Mary Robinson, stated that by demanding respect for 'universal standards' in 'their local environment', human rights defenders are the 'vital bridge between the theory and practice' of human rights protection.<sup>689</sup> In picking up this role, these individuals often become a target of human rights violations themselves and risk censure, legal prosecution, imprisonment, forced disappearance, and/or various forms of harassment and intimidation by governmental or non-governmental actors. The EU is part of a diverse group of actors, including governments, intergovernmental bodies, civil society actors and others, which have developed protection mechanisms and practices to support HRDs at risk.<sup>690</sup> As the EU gradually evolved into a more coherent and unified

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<sup>689</sup> Mary Robinson, 'Linking the National and the International: a Challenge for Human Rights Defenders', speech delivered at the Dublin Platform for Human Rights Defenders, Dublin, 17 January 2002, cited in Kevin Boyle (ed) *A Voice for Human Rights. Mary Robinson* (University of Pennsylvania Press 2006).

<sup>690</sup> Alice M. Nah and others, 'A Research Agenda for the Protection of Human Rights Defenders' (2013) 5 *Journal of Human Rights Practice* 401.

foreign policy actor, the protection of HRDs has become an increasingly prominent aspect in its external human rights policy. This includes the EU's interaction with the UN system.

In 1998, the UNGA adopted the 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', commonly referred to as the UN Declaration on Human Rights Defenders ('UN Declaration').<sup>691</sup> As an 'international instrument for the protection of the right to defend human rights',<sup>692</sup> the UN Declaration spells out the 'rights and protection accorded to HRDs, the duties of states, and the role and responsibilities of non-state actors'.<sup>693</sup> It reiterates principles and rights based on other legally binding international instruments, such as the ICCPR, given that 'the State's duty to protect all human rights includes the Protection of the rights of human rights defenders'.<sup>694</sup> The UN Declaration does not provide a clear definition to qualify a person as a HRD,<sup>695</sup> and several authors have highlighted that the 'HRD label' is often used without a consistent rationale, applying to some actors while excluding others.<sup>696</sup> None the less, the UN Declaration signalled the growing international recognition of the importance of HRDs and their work, and should be understood as a 'foundation for further progress in establishing a productive relationship between human rights defenders, states, and the international community'.<sup>697</sup>

Following the Declaration, the UN system developed its mechanisms addressing the protection of HRDs, most notably through the establishment of the mandate of a UN Special Rapporteur on the situation of human rights defenders ('UNSR on HRDs') in 2000. At the same time, the UN provides a forum for its Members States and other stakeholders to address the protection of HRDs through multilateral diplomacy.

In addition to supporting and protecting HRDs through its own mechanisms and measures, the EU has sought to support and protect HRDs through the UN system in a variety of ways. This case study provides an overview of the EU's efforts in addressing the protection of HRDs at the UN level. It builds on the concept of 'effective multilateralism' elaborated above, (see *supra* ch. II.1) whereby the EU has committed itself to (1) '[e]nsuring that multilateral targets and instruments have the impact they deserve', (2) achieving 'greater efficiency and impact by working together' and (3) '[p]romoting the EU's values and

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<sup>691</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA Res 53/144 (9 December 1998) UN Doc A/RES/53/144.

<sup>692</sup> UN Special Rapporteur on the situation of human rights defenders, 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (2011), available at <[www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf](http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf)> accessed 15 October 2014, p 4.

<sup>693</sup> Nah (n 690) 403.

<sup>694</sup> Commentary on the UN Declaration (n 692) 8.

<sup>695</sup> Drawing on the UN Declaration, the OHCHR has published a 'factsheet' on HRDs stressing that there is no 'minimum standard' for qualifying as a HRD, but also highlighting that HRD's must 'accept the universality of human rights as defined in the UDHR' and can only take peaceful action in their defense of human rights. See OHCHR, 'Human Rights Defenders: Protecting the Right to Defend Human Rights' (2004) Fact Sheet No 29, 8-10.

<sup>696</sup> Nah (n 690) 404, 405.

<sup>697</sup> Robinson (n 689).

interests effectively'. The case study applies this concept to the protection of HRDs through and with the UN's framework and instruments. First, a brief overview of the EU's general policy on HRDs is provided focusing on the 'EU Guidelines on Human Rights Defenders' ('EU Guidelines') adopted in 2004 and revised in 2008.<sup>698</sup> Secondly, the EU's engagement across the UN system is brought into focus. In line with the framework developed above, this section first identifies the EU's support for those UN bodies and instruments relevant for the protection and promotion of HRDs. Secondly, it assesses how the EU supports the UN framework and mechanisms through its relations and cooperation in and within third countries. Third, the case study explores how the EU promotes its policies on HRDs through the UN's multilateral fora, in particular the HRC and UNGA. A final section places the EU's HRD policy in the broader context of EU foreign policy.

## 2. EU Policy on Human Rights Defenders

Providing support and protection to HRDs has become an important dimension of the EU's overall human rights policy. As early as 1988, the EP began awarding the Sakharov Prize to individual HRDs, and it regularly calls attention to the situation of specific HRDs through resolutions.<sup>699</sup> The European Commission in turn, has set out a 'sophisticated policy framework' and a 'related set of instruments' to support HRDs.<sup>700</sup> A milestone in the EU's policy was the adoption of the 'EU Guidelines on Human Rights Defenders' ('EU HRD guidelines' or 'Guidelines') by the Council of the EU in 2004. Like other EU Guidelines addressing human rights issues, the EU HRD guidelines are a non-binding instrument which aims to establish coherent action among EU institutions and Member States on a specific human rights issue. In this regard, the EU guidelines are considered to have brought 'additional structure, a sense of purpose, coherence and legitimacy to the actions undertaken before'.<sup>701</sup> As further elaborated below, they have also been instrumental in linking the EU's policy on HRDs to the UN's framework and mechanisms. This first section briefly elaborates the scope of the EU HRD guidelines and how they shape the EU's policy towards the UN. It also briefly assesses how the EU has followed up their overall implementation.

### *a) The UN Declaration and the EU's HRD Guidelines – complementary instruments for supporting and protecting HRDs*

The adoption of the EU HRD Guidelines in 2004 signalled a political willingness across the EU to enhance protection and support for HRDs. The Guidelines set out several 'practical suggestions' for action at the bilateral and multilateral level, relevant for both the EU institutions and the EU Member States.<sup>702</sup> The

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<sup>698</sup> Council of the European Union, 'Ensuring protection – European Union Guidelines on Human Rights Defenders', Doc No 16332/2/08 REV 2, 10 June 2009.

<sup>699</sup> Specific cases in the category of 'Human rights defenders/NGOs' were one of the most frequently addressed groups in the EP's resolutions between 1999 and 2006. See European Inter-University Centre for Human Rights and Democratisation, 'Beyond Activism: The impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union' (2006) EP/ExPol/B/2005-15, 86.

<sup>700</sup> Consortium PARTICIP-ADE-DIE-DRN-ECDPM-ODI, 'Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms (including solidarity with victims of repression)', December 2011, 51.

<sup>701</sup> *ibid.*

<sup>702</sup> Council of the European Union (n 698) 1.

Guidelines were reviewed in 2008, refining certain operational guidelines and – important in this context – recognizing the UN Human Rights Council which was established after the original guidelines.<sup>703</sup>

In a number of ways, the Guidelines build upon and reinforce the UN Declaration on HRDs. Initially, when defining the nature of HRDs, the EU HRD Guidelines explicitly draw upon and refer to the UN Declaration, reiterating that ‘everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels’.<sup>704</sup> However, the EU HRD Guidelines take this a step further in defining who can qualify as a HRD. To begin with, the EU Guidelines consistently use the term ‘human rights defender’, whereas this term is actually not evoked in the UN Declaration. The EU Guidelines specify that HRDs comprise of both individuals seeking ‘the promotion and protection of civil and political rights’ as well as ‘the promotion, protection and realisation of economic, social and cultural rights’.<sup>705</sup> HRDs can also be those individuals who promote and protect the ‘rights of members of groups such as indigenous communities’.<sup>706</sup> The EU Guidelines further specify that ‘individuals or groups who commit or propagate violence’ cannot be considered HRDs, an important reservation which is only implicitly included in the UN Declaration.<sup>707</sup> The EU’s Guidelines also identify what type of actions HRDs might undertake, which can 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’.<sup>708</sup>

In summarizing the operational guidance contained in the EU HRD Guidelines, various levels of action can be distinguished:

- **In-country support:** The Guidelines clarify the role of EU Heads of Mission in monitoring, reporting, and assessing the situation of HRDs in third countries and reporting to the Council. At the country-level, EU Delegations as well as EU Member State Embassies are expected to develop strategies and policies to support and protect HRDs active ‘on the ground’. This also covers the use of development assistance to fund, capacitate, and assist HRDs in their work.
- **Bilateral and Multilateral Diplomacy:** The Guidelines state that the EU's objective is to ‘influence third countries to carry out their obligations to respect the rights of human rights defenders’ by using both bilateral and multilateral diplomacy.<sup>709</sup> At the multilateral level, the Guidelines

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<sup>703</sup> *ibid.* This study refers to the 2008 revised version of the HRD guidelines in all citations, unless mentioned otherwise.

<sup>704</sup> *ibid.* 2.

<sup>705</sup> *ibid.*

<sup>706</sup> *ibid.*

<sup>707</sup> *ibid.* Art 12 of the UN Declaration states that ‘everyone has the right, individually and in association with others, to *participate in peaceful activities* against violations of human rights and fundamental freedoms’ [emphasis added]. As noted above, the OHCHR has also stressed that HRDs can only undertake peaceful action see (n 695).

<sup>708</sup> *ibid.* 3.

<sup>709</sup> *ibid.* 7.



specifically highlight the use of UN fora, such as the HRC and UPR to address the situation of HRDs.

- **Strengthening UN-bodies and Mechanisms:** The Guidelines further emphasize the need to provide support for the UN's bodies and mechanisms which engage with HRDs. Particularly relevant are the Special Procedures of the HRC, especially the Special Rapporteur on Human Rights Defenders. This also implies support and cooperation with the OHCHR – the main supportive body of the UN's Special Procedures.

These various intervention levels are intertwined, and help strengthen the UN's mechanisms. However, the EU's engagement with the UN framework is also relevant to its diplomatic and 'country support' activities.

The EU's Guidelines can be considered a practical tool through which the EU aims to put into practice its commitments under the UN Declaration. The Guidelines identify specific actions for the Commission and EU Member States, specifically for their country level presence – the Commission Delegations and Member State Embassies. The reform of the EU's foreign policy apparatus after Lisbon meant that the newly created EEAS and the EU Delegations replacing the Commission delegations now gained a critical role in implementing the EU's HRD Guidelines. Within the EEAS, the Directorate for Human Rights and Democracy and the various geographic desks handle support and protection of HRDs.<sup>710</sup> The Guidelines also emphasise the central role of the Council's working parties, in particular COHOM, in monitoring the implementation of the Guidelines, and reporting – through the Political and Security Committee (PSC) and Committee of Permanent Representatives (COREPER) – to the Council on decisions regarding their further implementation.<sup>711</sup> COHOM and other Council working parties also have a role in promoting the issue of HRDs in 'relevant EU policies and actions'.<sup>712</sup>

### *b) Implementation of the HRD Guidelines and recent policy developments*

A decade after the adoption of the Guidelines, the situation of HRDs has become the subject of more systematic attention, and arguably, an issue of increasing importance within the EU's external action. The Council has consistently highlighted the implementation of the Guidelines in its annual reporting on human rights. In 2006, a first review of the implementation of the Guidelines, which reflected views by Commission staff, human rights NGOs, and the UNSR on HRDs, was largely positive highlighting that the 'Guidelines have provided a structure, purpose and a consciousness of action which was previously lacking'.<sup>713</sup> But the review also recommended that several actions be taken to ensure further implementation, including enhanced awareness raising and capacity building towards all stakeholders. A

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<sup>710</sup> Karen Bennett, 'Assessing the implementation of the European Union Guidelines on Human Rights Defenders: The cases of Kyrgyzstan, Thailand and Tunisia' (2013) EXPO/B/DROI/2012/11, 27.

<sup>711</sup> Council of the European Union (n 698) 12.

<sup>712</sup> *ibid.*

<sup>713</sup> Council of the European Union, 'Council Conclusions on the first review of the implementation of the EU Guidelines on Human Rights Defenders', 12 June 2006, 6.

review by Amnesty International in 2007 highlighted this gap between policy formulation and implementation at country level, noting a lack of consistency across countries in supporting HRDs, and a lack of commitment by the EU Member States to support concerted action and take individual action.<sup>714</sup>

The review and update of the Guidelines in 2008 reinvigorated their significance and elaborated more specific guidance.<sup>715</sup> Most importantly, within the context of this case study, the reviewed guidelines also took into account new developments in the UN human rights system, as is further discussed below. In an effort to enhance their impact across the EU's external action, the Commission invested in training activities towards country delegations to accelerate a more consistent implementation of the EU guidelines. A survey of Commission delegations carried out in 2010 indicated that HRDs were the most common focus of the Commission's country strategies on human rights (where such strategies had been put in place in 2010),<sup>716</sup> and the HRD Guidelines were considered the most important of the EU's policy documents in effectively supporting human rights within a country.<sup>717</sup> The same evaluation study concluded that the 'sheer existence' of the Guidelines had 'facilitated dialogue and coordination among EC and Member States' on HRDs and 'improved the focus of aid spent on HRDs', particularly by using the funding available to the Commission through EIDHR.<sup>718</sup>

Despite the positive reception of the HRD Guidelines, a number of continuing deficiencies in the EU's policy on HRDs have come to be prominent. The matter of consistency remains problematic, whereby one study found 'little awareness' of the Guidelines throughout the Asian region and even less 'successful instances of their implementation'.<sup>719</sup> Critical views on the EU's HRD policy were also voiced by Human Rights NGOs at the 13th Annual EU-NGO Forum on Human Rights, with some participants stressing a lack of systematic engagement with HRDs.<sup>720</sup> In 2010, the European Parliament expressed similar concerns regarding the lack of consistent follow-up and implementation, also noting the challenges posed by the EU's newly emerging foreign policy structure.<sup>721</sup>

In the aftermath of the Lisbon reforms, a number of policy developments reinvigorated the EU's overall human rights policy. Renewed commitments to protect and support HRDs were part of the HR/VP's policy

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<sup>714</sup> Amnesty International, 'Ensuring protection? The European Union and human rights defenders' (2007) 3, 8.

<sup>715</sup> The revision further clarified the operational guidance in relation to coordinating support for HRDs, the role of HRDs in local strategies, and the monitoring and protection mechanisms of the EU. See Bennett (n 710) 24.

<sup>716</sup> Consortium PARTICIP-ADE-DIE-DRN-ECDPM-ODI (n 700) annex V, 8. The survey consisted of a questionnaire sent to a sample of 50 Commission Delegations, of which 32 replied (a list of delegation which participated is included, see *ibid* 43. As of 2013, 146 human rights country strategies had been drafted by the Commission. See EU Annual Report on Human Rights and Democracy in the World in 2013 (n 77) 15. As these country strategies are not made publicly available, it is unclear to what extent HRDs are consistently included.

<sup>717</sup> Consortium PARTICIP-ADE-DIE-DRN-ECDPM-ODI (n 700) annex V, 4.

<sup>718</sup> *ibid* 51.

<sup>719</sup> Emerlynne A. Gil, 'Human rights defenders and democracy building: an Asian perspective' (2009) IDEA Discussion paper 8.

<sup>720</sup> For example, one NGO representative noted that engagement with HRDs by Commission delegations depended on the Head of Mission's personal motivation to do so. Remarks made by Mr Grégoire Thery – FIDH Permanent Representative to the EU at the 13<sup>th</sup> Annual EU-NGO Forum on Human Rights, Brussels, 8-9 December 2011.

<sup>721</sup> European Parliament, 'Report on EU Policies in favour of human rights defenders', Rapporteur Heidi Hautala, (2009/2199(INI)).

initiative to put ‘human rights at the heart of EU external action’<sup>722</sup> and included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy.<sup>723</sup> This new agenda set out to increase the funding available for assisting HRDs, and importantly, to make EIDHR’s funding more accessible for HRDs through more flexible procedures. Although the Action Plan does not specifically refer to the HRD Guidelines,<sup>724</sup> it does identify ‘effective support’ to HRDs as a specific outcome. This covers three actions to be undertaken by the EEAS, the Commission and the MS: (i) ‘Develop and implement a voluntary initiative to facilitate the provision of temporary shelter to human rights defenders at risk’, (ii) ‘Promote improved access by human rights defenders to the UN and regional human rights protection mechanisms, and address the issue of reprisals against defenders engaging with those mechanisms’, and (iii) ‘Publish contact details of the human rights focal points of all EU missions, as well as EU Liaison Officers on human rights defenders on the websites of the EEAS and EU Delegations.’ The Action Plan also calls upon EU Delegations and Heads of Mission to ensure monitoring of ‘important human rights related trials’ taking place, in particular trials against human rights defenders.<sup>725</sup>

To what extent these specific actions have been implemented is not systematically assessed in this case study; however their adoption indicates the continuing importance of HRDs in the EU’s overall human rights policy. Another important aspect of the EU’s renewed external human rights policy is the elaboration and adoption of ‘Human Rights Country Strategies’ by each EU Delegation. These are expected to be drafted in collaboration with local civil society and human rights actors, but whether or not this new tool addresses and incorporates the role of HRDs, and builds on the framework presented by the HRD Guidelines, has been flagged as a critical issue by experts.<sup>726</sup>

In summarizing the current institutional set-up for protecting and supporting HRDs at the EU level, a division of tasks can be identified between the different EU institutions and branches. The EEAS ensures political support to HRDs, makes public declarations, raises individual cases through bilateral and multilateral dialogues, and adopts specific approaches to third countries. The Commission is responsible for operational support to HRDs on the ground, and manages – in close coordination with the EEAS – the key financial instruments to this end, in particular EIDHR. The EP and the Council both play an active role in supporting HRDs through their own public statements and *demarches*,<sup>727</sup> while also exercising an oversight function regarding the EEAS and the Commission’s performance in protecting and supporting HRDs and effectively applying the HRD Guidelines. The Council’s COHOM is the main body which regularly reviews EU-wide HRD policy. Clearly, the role of the Member States in implementing and reinforcing such policy is of crucial importance.

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<sup>722</sup> European Commission/High Representative of the European Union for Foreign Affairs and Security Policy, ‘Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach’ (Joint Communication to the European Parliament and the Council) COM(2011) 886 final, 12 December 2011.

<sup>723</sup> Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012.

<sup>724</sup> *ibid.* The pre-amble of the Action Plan clarifies that it builds on existing policy documents, including EU guidelines.

<sup>725</sup> *ibid.* outcome 26(b).

<sup>726</sup> Bennett (n 710) 77.

<sup>727</sup> In case of the European Parliament, the annual award of the ‘Sakharov Prize for Freedom of Thought’ can be highlighted in this context.

With the tenth anniversary of the HRD Guidelines in 2014, the Council reaffirmed their importance and stressed that they have been instrumental in making the EU's policy on HRDs more effective and coherent.<sup>728</sup> In its latest annual report on Human Rights, the Council stressed that the Guidelines continue to be a 'central reference point' in bilateral dialogues and multilateral fora.<sup>729</sup> None the less, recent studies highlight a number of continuing shortcomings and challenges regarding their consistent implementation across all third countries the EU engages with.<sup>730</sup>

The following sub-section will outline the 'operational' relationship between the EU's policy on HRDs and the UN system. The remaining sections in this case study bring into focus the EU's interaction with the UN system as a specific dimension of the EU's HRDs policy. This specific aspect has remained relatively overlooked, as reviews and assessments of the EU's support for HRDs tend to focus mostly on assessing country-specific actions, rather than interactions with multilateral or international organisations.

### *c) EU Policy for addressing HRDs through the UN Framework and Mechanisms*

The EU and its Member States have been a driving force behind the gradual evolution of a global UN framework for protecting HRDs. In the light of the adoption of the UN Declaration in 1998, the EU called for a new UN mechanism to monitor the implementation of the Declaration's commitments.<sup>731</sup> One year later, a broad coalition at the CHR, including all EU Members States, adopted a resolution to create the mandate for a UN Special Rapporteur on Human Rights Defenders.<sup>732</sup> Building on this support, the EU-wide approach elaborated in the EU Guidelines sets out various ways to engage consistently with the UN system. The EU Guidelines set as an objective to urge third countries to respect their obligations under the UN Declaration on HRDs,<sup>733</sup> but also identified support for UN Mechanisms as a self-standing goal,<sup>734</sup> and recognised the UNGA and the HRC as the main bodies to address HRDs at the multilateral level.<sup>735</sup> A summarised overview of how the EU Guidelines seek to engage with the UN framework and mechanisms is presented in table 11.

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<sup>728</sup> Council of the European Union, 'Council Conclusions on the 10th anniversary of the EU Guidelines on Human Rights Defenders', Doc No 11107/14, 23 June 2014, para 4.

<sup>729</sup> *ibid* 66.

<sup>730</sup> Bennett (n 710).

<sup>731</sup> CHR, 'Promotion and Protection of Human Rights: Human Rights Defenders, Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', Report of the Secretary-General, E/CN.4/2000/95, 13 January 2000.

<sup>732</sup> CHR Res 2000/61 (2000) UN Doc E/CN.4/RES/2000/61.

<sup>733</sup> Specifically, the EU Guidelines state that 'the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration.' See Council of the European Union (n 698) 7.

<sup>734</sup> *ibid* 9.

<sup>735</sup> *ibid* 7.

Table 11: EU Guidelines on HRDs: Operational Guidance related to UN Framework and Mechanisms

Aspect of EU Guidelines	Specific Measures/Actions		
<b>Monitoring, reporting and assessment of compliance with UN framework</b>	The rights referred to in the UN Declaration are relevant when EU HoMs assess the national institutional framework and its impact on HRDs	Recommendations from the UNSR on HRDs, other UN Special Rapporteurs and Treaty bodies will be taken into account by COHOM (and other working parties) when recommending EU action	
<b>Promoting respect for HRDs in relations with third countries and in multilateral fora</b>	The EU will express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration	The EU will work closely with other like-minded countries notably in the UN HRC and the UN GA	The EU will recommend where appropriate, to countries when they are under the Universal Periodic Review of the HRC that they bring their legislation and practices into line with the UN Declaration
<b>Support for Special Procedures of the UN HRC, including the UNSR on HRDs</b>	EU action includes encouraging States to accept as a matter of principle requests for country visits under UN Special Procedures	The use of UN thematic mechanisms by local human rights communities and HRDs will be promoted by EU missions. This includes, but is not limited to, facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and HRDs	EU Member States will support the allocation of sufficient funds from the general budget to the OHCHR
<b>Practical supports for HRDs including through Development Policy</b>	EU will ensure that human rights education programmes promote, inter alia, the UN Declaration		
<b>Role of Council Working Parties</b>	COHOM (and other Working Parties) will examine, as appropriate, further ways of cooperating with UN and other international and regional mechanisms in support of HRDs		

Put briefly, the EU Guidelines urge the EU institutions and the MS, to not only use their political and diplomatic clout to strengthen the UN's instruments and mechanisms on HRDs, but to also coordinate and exchange information with, as well as provide budgetary support for, the UN framework and mechanisms. The EU Guidelines highlight the role of the UNSR on HRDs, but also stress that other UN Special Procedures are 'vital' to international efforts to protect HRDs.<sup>736</sup> Since the creation of the UNSR on HRDs and the adoption of the EU Guidelines, the various EU institutions have – more or less – consistently highlighted the importance of working with the UN to support and protect HRDs. Further strengthening of cooperation with the UNSR on HRDs was one of the recommendations taken on board by the Council,

<sup>736</sup> *ibid* 9.

after the first review of the EU guidelines.<sup>737</sup> The practical embodiment of this engagement could be seen in the joint organisation of a large EU-UN conference on HRDs in 2008, which was welcomed as a ‘major inter-institutional initiative’ by the EP, the Commission and the UN.<sup>738</sup> On the tenth anniversary of the EU Guidelines in 2014, the Council of the EU again reiterated the importance of the UN framework for EU policy on HRDs, committing to actively support UN monitoring of reprisals against HRDs, and to ‘step up’ training of EU institutions and Member States staff on the Guidelines and the UN Declaration.<sup>739</sup> In addition to collaborating directly with the OHCHR and the UNSR on HRDs, the EU has also utilised the UN’s various platforms for multilateral diplomacy to address the situation for HRDs. Strengthening the institutional framework of the UN was highlighted in the EU Action Plan, which urged the various EU actors to promote improved access by HRDs to the UN and regional human rights protection mechanisms.<sup>740</sup> The next section will bring into focus concrete measures the EU and the Member States have undertaken when engaging with and within the UN framework on HRDs.

### 3. Measures taken across the UN framework

Departing from the EU’s concept of ‘effective multilateralism’, this section provides an assessment of the implementation of the EU’s policies for engaging HRDs within the UN system, which have been outlined in the previous section. This analysis is structured around three levels of policy; (i) support for the UN bodies, instruments and mechanisms relevant to HRDs as a self-standing priority; (ii) the use of the EU’s relations with third countries to support the UN framework and mechanisms on HRDs and (iii) the use of the UN’s multilateral fora by the EU and the EU MS to prioritise and address HRDs.

#### a) Supporting UN bodies, instruments and mechanisms – overview

##### (1) General Political and Budgetary Support

As previous chapters in this report have mentioned (see chapter II.A), the EU’s commitment to ‘effective multilateralism’ includes a heavy emphasis on supporting the UN system, including the instruments and mechanisms that are part of the UN’s human rights architecture. A broader indication of the EU’s political support for the UN in the area of HRDs is its backing of the Special Procedures of the HRC (see chapter III.A.9.b). The UN Special Procedures relevance is twofold. They have a crucial ‘liaison function’ in reaching out to ‘local’ HRDs, while they are also considered to be HRDs themselves. In addition to supporting the creation and extension of various Special Procedures mandates, the EU’s political backing is also evident in budgetary support. As elaborated in chapter V.C of this report, the EU institutions and Member States contribute significantly to the budget of the OHCHR, the supportive body of the UN Special Procedures. Ensuring an adequate budget for the UN Special Procedures is specifically included as operational guidance in the EU HRD Guidelines.<sup>741</sup> In the past, the voluntary contributions from the EU institutions

<sup>737</sup> EU Annual Report on Human Rights, Doc No 13522/1/06 REV 1, 4 October 2006.

<sup>738</sup> European Parliament resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union’s policy on the matter (2008/2336(INI)) para 21.

<sup>739</sup> Council of the European Union (n 728) 2,3.

<sup>740</sup> Strategic Framework and Action Plan no 18: Effective Support to HRDs: b) Promote (EEAS, MS, Commission).

<sup>741</sup> Council of the European Union (n 698) 10.

have repeatedly included earmarks for channelling financial support to the UN Special Procedures. In more recent years, the EU has aimed to provide greater un-earmarked funding for the OHCHR.<sup>742</sup>

The EU's support for UN bodies and mechanisms which address HRDs is most clearly visible in two specific areas: support for the mandate of the UNSR on HRDs, and the backing of a proposal to establish a UN-wide focal point to address reprisals against HRDs. Both issues are elaborated in more detail below.

## (2) Support for the UN Special Representative on Human Rights Defenders

At the 56<sup>th</sup> Session of the CHR, the resolution to establish the mandate of a Special Representative for Human Rights Defenders was approved by a large majority of votes. Sponsored by more than seventy states, including all 15 EU members at the time, the resolution indicated broad-based support, both within and outside the EU, to act on the UN Declaration on HRDs and to shape the UN's human rights apparatus accordingly.<sup>743</sup> The resolution created the mandate for a period of three years, and identified three main tasks: (i) to seek, receive, examine and respond to information on the situation and the rights of HRDs, (ii) to establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration (on HRDs), and (iii) to recommend effective strategies that better protect HRDs, and then follow up on these recommendations.<sup>744</sup>

The resolution on the mandate of the UNSR on HRDs has come up for extension on three occasions (2003, 2007, 2011). Whereas the first resolution to establish the mandate in 2000 required a vote, with Cuba, China and Rwanda eventually abstaining, the following resolutions maintaining the mandate were adopted without a vote. In 2006, the EP specifically urged the members of the CHR to renew the mandate of the UNSR on HRDs, which was coming to an end during the transition period where the Human Rights Commission was replaced by the Human Rights Council.<sup>745</sup> The number of co-sponsorships for the extension of the UNSR on HRDs remained high, and a core group of EU Member States consistently co-sponsored these resolutions in the CHR, and subsequently in the HRC (see table 12).

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<sup>742</sup> See ch V.C.

<sup>743</sup> Coming to a vote, HRC Res 2000/61 (2000) UN Doc E/CN.4/RES/2000/61 was approved by 50 of the 53 members of the Human Rights Commission, with Cuba, China and Rwanda abstaining. See FIDH-OMCT, 'Human Rights Defenders on the Front Line, Annual Report 2000' (2001).

<sup>744</sup> CHR Res 2000/61 (2000) UN Doc E/CN.4/RES/2000/6, para 3.

<sup>745</sup> European Parliament resolution on the outcome of the negotiations on the Human Rights Council and on the 62<sup>nd</sup> session of the UNCHR (2006/2535(RSP)).

Table 12: Sponsorship of the Resolutions on extending the UNSR on HRD<sup>746</sup>

	Establishment - 2000	1 <sup>st</sup> Extension - 2003	2 <sup>nd</sup> Extension - 2008	3 <sup>rd</sup> Extension – 2011
Total Sponsors and co-sponsors	73	66	53	65
EU MS	All 15 MS	All 15 MS	22 MS out of 27 (excl. Lithuania, Slovakia, Malta, Cyprus, and Ireland)	26 MS out of 27 (excl. Luxemburg)

With the exception of the draft resolution establishing the mandate – which was introduced by the representative of Morocco – the subsequent draft resolutions were all introduced by Norway.<sup>747</sup> In addition to sponsoring the extension of the mandate, EU Member States have also systematically supported resolutions at the UNGA Third Committee in order to reiterate the importance of the UN Declaration and to signal support for the work of the UNSR on HRDs. These resolutions were introduced by Norway on a biannual basis in the UNGA Third Committee, and were consistently co-sponsored by all EU Member States.<sup>748</sup>

Under the impetus of the second mandate-holder of the UNSR on HRDs, Margaret Sekaggya, a strong emphasis on women HRDs came to be prominent. In 2013, Norway introduced a new version of the resolution, which retained the previous elements recalling the UN Declaration on HRDs and supported the UNSR on HRDs, but also added a new emphasis on the specific risks and challenges faced by women HRDs. The draft resolution was again co-sponsored by a large group of co-sponsors, including all EU MS. However, a number of amendments were put forward by several States, including China, Gabon on behalf of the Group of African States, Iran, Saudi Arabia, and others. These states objected to certain elements in the draft concerning ‘gender equality’, the inclusion of ‘sexual and reproductive rights’ and the understanding of which rights can be defended.<sup>749</sup> After several revisions which toned down certain elements, the EU MS decided to withdraw their co-sponsorship. After the adoption of the resolution, the Representative of Lithuania speaking on behalf of the EU noted that a ‘heavy’ price had been paid to reach

<sup>746</sup> This table lists the sponsorships of the following resolutions: E/CN.4/2000/L.37, E/CN.4/2003/L.87, A/HRC/7/L.23, and A/HRC/16/L.15. The mandate of the SR on HRDs was also temporarily extended, together with the mandate of various other Special Procedures, by HRC Res 5/1 (2007) UN Doc A/HRC/RES/5/1, which regulated the ‘transition’ from the Human Rights Commission to the Human Rights Council.

<sup>747</sup> See Commission on Human Rights Report On The Fifty-Sixth Session (20 March-28 April 2000) Economic And Social Council Official Records, Supplement No. 3 2000; Commission on Human Rights Report On The Fifty-Ninth Session (17 March-24 April 2003) Economic And Social Council Official Records, Supplement No. 3, 2003; Human Rights Council, Report Of The Human Rights Council On Its Seventh Session (3 March-1 April 2008); Human Rights Council, Report of the Human Rights Council on its sixteenth session (28 February-25 March 2011).

<sup>748</sup> GA resolution 60/161 of 16 December 2005, GA Resolution 62/152 of 18 December 2007, GA resolution 64/163 of 18 December 2009, and GA Res 66/164 of 19 December 2011.

<sup>749</sup> This relates to the question of referring to individuals working on ‘human rights’ instead of ‘universally recognized human rights’, the latter being a more narrow category excluding certain rights.



a consensus.<sup>750</sup> With these recent developments, the question of how the EU will remain a key driver behind the ‘traditional’ resolution supporting the UN Declaration and the mandate for the UNSR on HRDs has become increasingly important.

### (3) Creation of an UN-wide senior focal point

Whereas the concern of reprisals against HRDs and a call for greater protection has been at the heart of the EU’s policy, the more specific issue of reprisals against HRDs which cooperate with the UN has come to be a key priority and concern for the EU in recent years. The notion that HRDs are increasingly exposed to risks when collaborating with the UN has led the EU to endorse the development of stronger protection mechanisms within the UN. This issue was first addressed through a draft resolution at the 12<sup>th</sup> session of the HRC in 2009 – sponsored mainly by EU Member States – which requested UN mechanisms to record instances of harassment and violation against the HRDs they had worked with, and requested that the UNSG report on this matter and propose measures to address this matter.<sup>751</sup> After its adoption, the UNSG convened a panel on the matter in 2012, which formulated a range of proposals on how enhanced protection can be offered to HRDs cooperating with the UN.<sup>752</sup> In taking account of the HRC’s (and the panel’s) decisions, the SG requested further UN consideration on concrete measures including the ‘creation of a central database on cases of reprisals’, and most importantly, ‘the appointment of a mediator or ombudsman to act as a focal point of the United Nations system for cases of intimidation and reprisal.’<sup>753</sup>

These developments crystallised into a concrete proposal – co-sponsored by all EU MS – at the Twenty-fourth session of the HRC.<sup>754</sup> The resolution requests the Secretary-General and the HCHR to ‘designate, within the existing structures, a United Nations-wide senior focal point to engage with all stakeholders’.<sup>755</sup> It was eventually adopted by vote in the HRC in September of 2013, with 31 in favour, one vote against, and 15 abstentions.<sup>756</sup> The appointment of a senior-official as a UN focal point to address perpetrators of violence against HRDs was hailed by NGO observers as ‘a huge step forward in the UN’s efforts to address reprisals’ and the strongest call for action since the issue of reprisals emerged.<sup>757</sup>

<sup>750</sup> General Assembly Sixty-eighth session, Third Committee Summary record of the 54<sup>th</sup> meeting, 27 November 2013 (A/C.3/68/SR.54), para 146.

<sup>751</sup> HRC Draft Resolution 12/2. Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc A/HRC/24/L.17/Rev.1 and A/HRC/RES/12/2.

<sup>752</sup> HRC 22<sup>nd</sup> session, ‘Summary of the Human Rights Council panel discussion on the issue of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights’, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, UN Doc A/HRC/22/34.

<sup>753</sup> UN Secretary-General Ban Ki-moon, ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report by the Secretary-General’, UN Doc A/HRC/24/29, 31 July 2013, para 4, 52-55.

<sup>754</sup> HRC Res 24/24 (2013) UN Doc A/HRC/24/24.

<sup>755</sup> *ibid* para 8.

<sup>756</sup> HRC Res 24/24 (2013) UN Doc A/HRC/RES/24/24.

<sup>757</sup> International Service on Human Rights, ‘UN passes strongest resolution yet on ending reprisals against human rights defenders’, Press Release, 27 September 2013, available at <[www.ishr.ch/news/un-passes-strongest-resolution-yet-ending-reprisals-against-human-rights-defenders#sthash.HwaYkL7o.dpuf](http://www.ishr.ch/news/un-passes-strongest-resolution-yet-ending-reprisals-against-human-rights-defenders#sthash.HwaYkL7o.dpuf)> accessed 16 October 2014.

Despite the favourable vote in the HRC, the initiative to establish the UN-wide focal point was eventually blocked at the UN General Assembly. Following the deliberations at the HRC, Gabon, on behalf of the Group of African States and as the newly elected president of the HRC for its 2014 sessions, put forth a draft resolution which requested to ‘defer consideration of any action’ on the establishment of a UN focal point, ‘in order to allow time for further consultations thereon’.<sup>758</sup> Objecting heavily to this proposal, Lithuania on behalf of the EU, and 14 other States, called for amendments to be made dropping these new stipulations.<sup>759</sup> A vote was taken to approve these amendments, which were rejected by a slight margin. The draft resolution was subsequently voted on and adopted with 87 to 66 votes, and 22 abstentions, with all EU Members voting against its adoption.<sup>760</sup> The defeat of the initiative was heavily criticised by NGO observers, which noted that none of the African States who had supported the resolution in the HRC, had supported it at the GA.<sup>761</sup> In addition to signalling the GA’s reluctance to ‘protect human rights defenders from attacks’ this also ‘directly challenges the authority of the Human Rights Council to effectively coordinate and mainstream human rights within the United Nations system’, a spokesperson for Amnesty International noted.<sup>762</sup> For the EU, it represented a strategic defeat and a failure to enhance the protection of HRDs through and within the UN system.

### *b) Support for the UN framework through bilateral relations*

Whereas the EU has used the multilateral space offered by the different UN fora to call for action on HRDs, it has also used a ‘bilateral approach’ to push forward its policy on HRDs and strengthen the UN framework and mechanisms relevant for HRDs. This section briefly highlights this aspect, identifying several measures which illustrate how the EU engages with and within third countries to cooperate, coordinate and strengthen the UN framework on HRDs. The emphasis in this section is on the various actions by EU bodies and institutions, rather than the multitude of actions undertaken by individual MS.

#### *(1) Urging States to bring their legislation and practices in line with the UN Declaration*

The objectives of the Guidelines on HRDs clearly states that the EU will ‘influence third countries to carry out their obligations to respect the rights of human rights defenders’ and ‘express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration.’<sup>763</sup> To what extent the EU’s diplomatic weight is used towards third countries to push for

<sup>758</sup> UNGA, ‘Gabon: draft resolution – Report on the Human Rights Council’, UN Doc A/C.3/68/L.75, 23 November 2013.

<sup>759</sup> For statements and actions by State representatives for and against resolution A/HRC/24/24 and statements and voting for and against A/C.3/68/L.75 and the subsequent amendment of A/C.3/68/L.77, see UNGA, ‘Summary record of the 54<sup>th</sup> meeting,’ UN Doc A/C.3/68/SR54, 20 January 2014, paras 84-128. For a summarized version (excluding State statements), see UNGA Third Committee, ‘Report of the Human Rights Council,’ UN Doc A/68/451, 3 December 2013.

<sup>760</sup> *ibid* paras 97-98.

<sup>761</sup> International Service on Human Rights, ‘UN General Assembly turns its back on human rights defenders’, Press Release 19 December 2013, available at <<http://www.ishr.ch/news/un-general-assembly-turns-its-back-human-rights-defenders#sthash.FWacgl0R.dpuf>> accessed 16 October 2014.

<sup>762</sup> *ibid*.

<sup>763</sup> Council of the European Union (n 698) 7.

greater compliance with the UN Declaration on HRDs is difficult to assess. Political dialogues with partner governments, of a general or human rights-specific nature, generally take place behind closed doors.

However, the EP has reiterated on various occasions this aspect of the EU Guidelines, stressing ‘the need to systematically raise the situation of human rights defenders in all political and human rights dialogues and in trade negotiations with third countries’ and ‘reminding partners of the responsibility of States to ensure that all the obligations and rights embodied in the UN Declaration on Human Rights Defenders are included in national law’.<sup>764</sup> According to the EP, these rights also include the ‘right to receive domestic and foreign funding in full transparency and in respect of their autonomy of decision’.<sup>765</sup> The EP has also used its own weight to address the EU’s third country partners. Its resolution on human rights violations in China of 21 January 2010, urged China to comply with the provisions of the UN Declaration on Human Rights Defenders.<sup>766</sup> Similarly, in 2006 the EP urged Belarus authorities to comply with all the provisions of the United Nations Declaration on Human Rights Defenders.<sup>767</sup> Although the EP issues resolutions addressing the situation of HRDs on a regular basis, it should be noted that these do not systematically invoke the UN Declaration on HRDs.<sup>768</sup>

This is also the case in the statements on HRDs issued by the EEAS spokespersons and the HR/VP. While these statements typically condemn specific cases in which HRDs have been imprisoned or convicted by authorities,<sup>769</sup> there is no systematic reference to the UN Declaration on HRDs. In some cases, the statements do recall the ‘international obligations’ of States to respect the freedom of HRDs in carrying out their work.<sup>770</sup> Other entry-points for the EU to call upon third country governments to comply with the UN Declaration on HRDs are the ‘human rights dialogues’ it convenes on a regular basis with more than thirty countries.<sup>771</sup> As the issues covered in each dialogue are decided on a ‘case-by-case basis’<sup>772</sup> and the proceedings of these dialogues are not made public, it remains unclear to what extent HRDs and the UN Framework on HRDs are central in these exchanges.

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<sup>764</sup> European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders.

<sup>765</sup> *ibid.*

<sup>766</sup> European Parliament resolution of 21 January 2010 on human rights violations in China, notably the case of Liu Xiaobo (2010).

<sup>767</sup> European Parliament resolution on the outcome of the negotiations on the Human Rights Council and on the 62<sup>nd</sup> session of the UNCHR (2006).

<sup>768</sup> For example, the European Parliament resolution of 24 May 2012 on the human rights situation in Azerbaijan(2012/2654(RSP)), or the European Parliament resolution of 18 December 2008 on attacks on human rights defenders in Russia and the Anna Politkovskaya murder trial, do not invoke the obligations under the UN declaration on HRDs.

<sup>769</sup> The various statements issued by the HR/VP or EEAS spokespersons are available <[http://eeas.europa.eu/human\\_rights/defenders/news/index\\_en.htm#top](http://eeas.europa.eu/human_rights/defenders/news/index_en.htm#top)> accessed 5 November 2014.

<sup>770</sup> See, for example, ‘Statement by the spokesperson of High Representative Catherine Ashton condemning the arrest of Mazen Darwish, the head of the Syrian Centre for Media and Freedom of Expression’, Brussels, 17 February 2012.

<sup>771</sup> See EEAS website on ‘EU Human Rights Dialogues’, available <[http://eeas.europa.eu/human\\_rights/dialogues/index\\_en.htm](http://eeas.europa.eu/human_rights/dialogues/index_en.htm)> accessed 5 November 2014.

<sup>772</sup> *ibid.*

## (2) Encouraging States to accept requests for country visits by UN Special Procedures

As previously mentioned, the UN Special Procedures can be considered to have a key role in connecting local HRDs to the UN system and the international community, and can be considered to be HRDs themselves. The EU Guidelines on HRDs specify that the EU will encourage States to ‘accept as a matter of principle requests for country visits under UN Special Procedures’.<sup>773</sup> Several sources indicate that this specific piece of operational guidance has been followed up in relation to certain countries. For example, in relation to Uzbekistan, with whom the EU has maintained a formal human rights dialogue, the Council has urged ‘full cooperation with all relevant UN Special Rapporteurs’.<sup>774</sup> The EU’s formal human rights dialogues thus provide a key entry-point for implementing this aspect of the HRD Guidelines. However, given the lack of transparency on the substance of the EU Human Rights Dialogues it remains unclear if allowing visits of UN Special Procedures is consistently prioritised. For example, the EEAS Press Release on the ‘EU-Turkmenistan Human Rights Dialogue’ of 15 September 2014 appears to suggest that the issue of UN Special Procedures visits was not addressed;<sup>775</sup> however Turkmenistan has pending requests of ten different UN Special Procedures and has allowed only one visit – the UNSR on freedom of religion or belief in 2008 – since it started receiving requests.<sup>776</sup>

None the less, the adoption of the EU Guidelines on HRDs does appear to have led to *démarches* urging States to allow country investigations by UN Special Procedures. In Ethiopia, the EU Heads of Mission agreed on a ‘Local Implementation Strategy to the EU Guidelines on Human Rights Defenders’ which specifically seeks to encourage visits of Special Procedures mandate holders from the UN.<sup>777</sup> A similar local implementation strategy in Nepal also identified the role of EU missions in engaging with the government to arrange for country visits by the UNSR on HRDs and/or other UN Special Procedures.<sup>778</sup> In addition to the EEAS, the EP has also sought to put pressure on certain states to allow UN Special Procedures. In relation to Belarus, the EP has urged the government to ‘extend a standing invitation to all UN Special Procedures’ and particularly to accept the demand of the UNSR on HRDs to visit the country.<sup>779</sup>

Although various EU actors have applied their diplomatic weight to urge partner countries to accept country visits by the UNSR on HRDs and other Special Procedures, more qualitative in-depth analysis is

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<sup>773</sup> Council of the European Union (n 698) 9.

<sup>774</sup> Council of the European Union, Human rights and democracy in the world – Report on EU action 2009’, Doc No 8363/1/10 REV 1, 11 May 2010, 155.

<sup>775</sup> ‘EU-Turkmenistan Human Rights Dialogue’, EEAS Press Release 140915/03, Brussels 15 September 2014, available at <[http://eeas.europa.eu/statements/docs/2014/140915\\_03\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140915_03_en.pdf)> accessed 5 November 2014.

<sup>776</sup> The OHCHR provides an overview of ‘Country and other visits by Special Procedures Mandate Holders since 1998’ on its website, available at <<http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx>> accessed 5 November 2014.

<sup>777</sup> EU HoM – Local Implementation Strategy HRD Guidelines Ethiopia (2009).

<sup>778</sup> EU HoM – Local Implementation Strategy Nepal (2010).

<sup>779</sup> European Parliament, ‘Recommendation of 12 September 2013 to the Council, the Commission and the European External Action Service on EU Policy towards Belarus,’ Committee on Foreign Affairs, (2013/2036(INI)), 11, 14.

required to assess how and to what extent the requests for country visits by Special Procedures are consistently backed up by EU-wide pressure.

### (3) Cooperation and Coordination with OHCHR Country offices

A particular way of how the EU engages with the UN framework on HRDs is through the relationship between EU Delegations/Member State embassies and the country level presence of the OHCHR. A recent evaluation study found that in one country, the OHCHR was regarded by local HRDs and EU diplomats as a 'significant partner and interlocutor between HRDs and the diplomatic community'.<sup>780</sup>

Various EU Head of Missions also reserve a specific role for the OHCHR when elaborating their 'Local Implementation Strategies' for the EU Guidelines on HRDs. In Nepal, the EU sought to raise awareness about the HRDs through its network of local partners, in particular the OHCHR.<sup>781</sup> In Uganda, an EU 'HRD focal group' – consisting of representatives from EU Missions – was set up to coordinate action and liaise with the OHCHR on the issue of HRDs.<sup>782</sup> Cooperation between EU Delegations and OHCHR country offices can also feed into other UN mechanisms. For example, in Thailand the OHCHR country office facilitated a dialogue between representatives from EU MS, local HRDs and civil society organisations regarding their contribution to the UPR of Thailand.<sup>783</sup> As the OHCHR's country offices are also the 'support base' for the UN Special Procedures during country visits, they also play a role in connecting the EU's country presences with Special Procedure mandate holders.

#### c) Promoting EU policies through UN fora

The UN human rights system, in particular the HRC and the UNGA Third Committee, provides important fora in which the EU can promote its policy on HRDs. Through the recent practice of setting out EU-wide priorities for engagement at the UN Human Rights Fora, the Council has highlighted the protection of HRDs as a recurrent priority for EU action within the UN system. This sub-section aims to break down the various measures and actions taken by the EU and its Member States at these UN fora, although it does not represent an exhaustive analysis of all *démarches* or measures taken on the issue of HRDs.

#### (1) Prioritizing HRDs at UN Fora – A long term perspective

The various thematic and geographic priorities of the EU at the UN have been discussed elaborately in chapter IV.A of this report. Protection and support for HRDs has emerged as a self-standing thematic issue, while it is simultaneously an aspect within the EU's geographic priorities (see following section). By looking at the prioritization of human rights issues at the UNGA by the Council of the EU – as reflected in figure 18 – one can see that the protection and support for 'HRDs, NGOs and CSOs' have only been mentioned in three years between 2000 and 2014, and up until 2009 this was not considered to be a self-standing

<sup>780</sup> Bennett (n 710) 48.

<sup>781</sup> EU HoM – Local Implementation Strategy Nepal (2010).

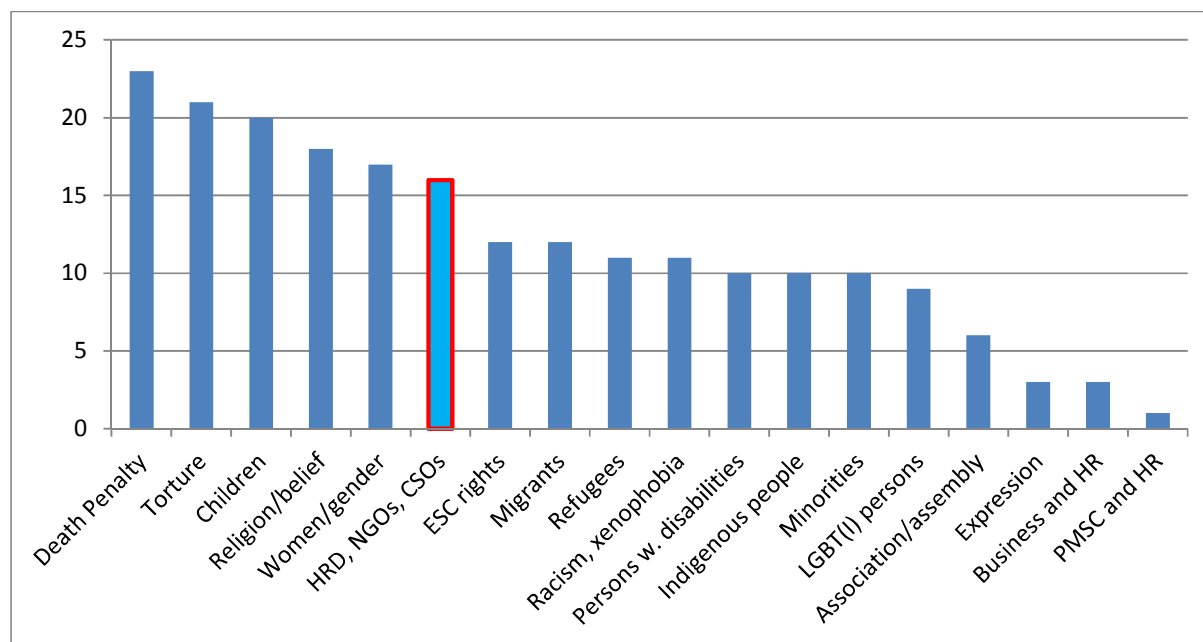
<sup>782</sup> EU HoM – Local Implementation Strategy Uganda (undated).

<sup>783</sup> Bennett (n 710) 53.

issue at all. This is somewhat surprising as the EU HRD Guidelines clearly highlight the necessity to support HRDs through multilateral fora.

When comparing HRDs to the other thematic issues which the Council has highlighted as priorities for action at UN fora between 2000 and 2014, HRDs emerge as a relatively consistent priority although various other priorities have been addressed more consistently.

Figure 18: Total References to EU-wide Thematic Priorities at UN Fora, 2000-2014<sup>784</sup>



Since 2012, HRDs have been included more consistently in the various priority-setting documents of the Council. While the findings above suggest that, as a self-standing issue, HRDs have only recently been included as an EU-wide priority, this observation and the ‘quantitative’ analysis it is based upon should be nuanced. First, the Council’s documents setting out EU-wide priorities do not necessarily reflect how thematic issues are addressed consistently by all EU Member States. Accordingly, the fact that the Council did not include HRDs as a priority for several years does not necessarily imply that this issue was not addressed, generically or in relation to specific cases, by EU Member States in their actions at the UN fora. Secondly, rather than including it as a ‘generic’ self-standing priority, it could be argued that the protection of HRDs should be considered as a country-specific issue which the EU and its MS will raise more

<sup>784</sup> This figure is based on the methodology for assessing EU priorities elaborated in Chapter IV. The figure aggregates the number of references to a thematic priority in 27 strategic documents drafted by the Council of the EU between 2000 and 2014. Some of these strategic documents set out priorities for several years, in which case each year the document covers is counted as one reference. The priority setting documents are the following; Council Conclusions on EU Priorities for the UNGA (from 2000 to 2014), the EU medium-term priorities at the United Nations (2012, 2013, 2014), the EU Strategic Framework on Human Rights and Democracy (2012, 2013, 2014), the EU Action Plan on Human Rights and Democracy (2012, 2013, 2014), Council Conclusions on EU Priorities at the UN Human Rights Council (2012), Council Conclusions on EU Priorities at the UN Human Rights Fora (2013, 2014), Private Military and Security Companies (2012).

consistently in their geographic priorities. In this regard, the following section briefly analyzes how the EU addresses HRDs through country-specific action at the UN fora.

## (2) Country-specific resolutions and statements on HRDs

Both at the HRC and the UNGA Third Committee, the EU and its Member States have undertaken a range of actions, from introducing and supporting resolutions to making statements, to addressing the situation of HRDs in a given country (see chapter V.2.b). The EU has been a strong proponent of the creation and continuation of certain country-specific UN Special Procedures. As noted before, these UN Rapporteurs can play a key role as interlocutors between local HRDs and the international human rights system.<sup>785</sup> While the interaction between these UN mechanisms and HRDs is not addressed extensively here, the Council has highlighted the continuation of these UN mandates as one of the EU's achievements.<sup>786</sup>

The EU has continuously addressed the situation of HRDs in Belarus,<sup>787</sup> Myanmar,<sup>788</sup> Syria<sup>789</sup> and Libya<sup>790</sup> through its resolution initiatives in the UNGA Third Committee and the HRC. This leaves its traditional resolution on the DPRK as the only country-specific resolution tabled – whereby HRDs are not explicitly addressed – by the EU in the HRC and the UNGA Third Committee. In addition, EU Member States regularly co-sponsor country-specific resolutions introduced by third states, which include references to the situations of HRDs, for example the Canadian-led resolution initiative on Iran<sup>791</sup> and the US-led initiative on Sri Lanka.<sup>792</sup>

In addition to initiating and sponsoring resolutions, the practice of highlighting specific situations where HRDs are at risk through statements is another way the EU engages at different UN fora. At the 67<sup>th</sup> session of the UNGA Third Committee in 2012, the EU expressed its concern that 'countries continue to limit the space of human rights defenders by restricting their activities', noting in particular, threats against HRDs in the DR Congo, continuing harassment and intimidation of HRDs in Belarus, the continuing crackdown on HRDs in Iran, and the convictions of human rights defenders in Cambodia.<sup>793</sup> At the 68<sup>th</sup> session of the Third Committee, the EU highlighted the restrictive legislation that was limiting the scope of action of HRDs in Russia and reprisals against HRDs in Sri Lanka who had engaged with the UN High Commissioner

<sup>785</sup> The UN Special Rapporteurs can also be regarded to be HRDs themselves, and on various occasions these experts have harassed, detained, or deported in the exercise of their UN mandate. See Surya P. Subedi, 'Protection of Human Rights through the Mechanism of UN Special Rapporteurs' (2011) 1 Human Rights Quarterly 33.

<sup>786</sup> Council of the European Union, EU Annual Report on Human Rights, Brussels, Doc No 14146/1/08 REV 1, 29 October 2008, 8.

<sup>787</sup> UNGA Res 62/169 (2007) UN Doc A/RES/62/169; HRC Res 17/24 (2011) UN Doc A/HRC/RES/17/24; HRC Res 20/13 (2012) UN Doc A/HRC/RES/20/13; HRC Res 23/15 (2013) UN Doc A/HRC/RES/23/15; HRC Res 26/25 (2014) UN Doc A/HRC/RES/26/25.

<sup>788</sup> See only HRC Res 25/26 (2014) UN Doc A/HRC/RES/25/26 and UNGA Res 68/242 (2013) UN Doc A/RES/68/242 for the latest resolutions.

<sup>789</sup> HRC Res S-17/2 (2011) UN Doc A/HRC/S-17/2; HRC Res S-18/1 (2011) UN Doc A/HRC/RES/S-18/1.

<sup>790</sup> HRC Res S-15/1 (2011) UN Doc A/HRC/RES/S-15/1.

<sup>791</sup> See only UNGA Res 68/184 (2013) UN Doc A/RES/68/184.

<sup>792</sup> See only HRC Res 25/1 (2014) UN Doc A/HRC/RES/25/1.

<sup>793</sup> European Union Statement delivered by H.E. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, at the 67th General Assembly Third Committee Item 69 (b and C): Human Rights, 6 November 2012.



on Human Rights.<sup>794</sup> In addition to the UNGA Third Committee, the HRC provides the EU with a forum to pinpoint specific situations related to HRDs. By looking at EU statements over the last two years under the agenda item ‘human rights situations that require the Council’s attention’, the situation of HRDs has been addressed regularly.<sup>795</sup> While several country situations are sporadically highlighted, including Belarus, Iran and Egypt, the EU’s statements have focused more systematically on specific cases of HRDs at risk in China, and the situation of HRDs in Russia.

### (3) Addressing HRDs through the Universal Periodic Review

An additional mechanism which allows the EU to address the obligations of certain countries to protect HRDs is the Human Rights Council’s Universal Periodic Review. When the EU Guidelines on HRDs were revised in 2008, one specific adaptation concerned the newly established Universal Periodic Review. The new operational guidance urges EU Member States, where applicable, to make recommendations to countries under review, so that they may ‘bring their legislation and practices in line with the UN Declaration on Human Rights Defenders’.<sup>796</sup> In exercising their role as ‘reviewers’ in the UPR process, the EU Member States are thus expected to consider whether a state under review should receive a recommendation regarding the situation of HRDs.

By looking at UPR recommendations for the UPR’s first cycle (2008-2012) and ongoing second cycle (2012-2016),<sup>797</sup> a number of trends can be identified in how HRDs are addressed at the UPR by EU MS.

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<sup>794</sup> European Union Statement delivered by Ioannis Vrailas, Deputy Head of the Delegation of the European Union to the United Nations, at the 68th United Nations General Assembly Third Committee Item 69 b) and c): Promotion and Protection of Human Rights, 30 October 2013.

<sup>795</sup> With the exception of the EU statement under item 4 at the 23th HRC session, all EU statements under this agenda item addressed one or more situations in which HRDs were found to be at risk. See United Nations Human Rights Council 20th Session (18 June – 6 July 2012) Item 4 Statement by Mr Søren KRAGHOLM Deputy Permanent Representative of Denmark to the United Nations Office in Geneva on behalf of the European Union Geneva, 28 June 2012; United Nations Human Rights Council 21st Session (10 to 28 September 2012) Item 4 Statement by H.E. Mr. Leonidas Pantelides, Ambassador, Permanent Representative of Cyprus on behalf of the European Union Geneva, 17 September 2012; United Nations Human Rights Council 22nd Session (25 February to 22 March 2013) Item 4 Statement by H.E. Gerard CORR Ambassador, Permanent Representative of Ireland on behalf of the European Union Geneva, 12 March 2013; United Nations Human Rights Council 23rd Session (27 May – 14 June 2013) Item 4 Statement by H.E. Mr Gerard CORR Ambassador, Permanent Representative of Ireland on behalf of the European Union Geneva, 4 June 2013; United Nations Human Rights Council 24th Session (9 – 27 September 2013) Item 4 Statement by H.E. Mr Rytis Paulauskas Ambassador, Permanent Representative of Lithuania on behalf of the European Union Geneva, 17 September 2013; United Nations Human Rights Council 25th Session (3 – 28 March 2014) Item 4 Statement by H.E. Mr Alexandros Alexandris Ambassador, Permanent Representative of Greece on behalf of the European Union Geneva, 18 March 2014; United Nations Human Rights Council 26th Session (10 – 27 June 2014) Item 4 Statement by H.E. Mr Alexandros Alexandris Ambassador, Permanent Representative of Greece on behalf of the European Union Geneva, 19 June 2014; United Nations Human Rights Council 27th Session (8-26 September 2014) Item 4 Statement by H.E. Mr Maurizio Enrico Serra Ambassador, Permanent Representative of Italy on behalf of the European Union Geneva, 16 September 2014.

<sup>796</sup> Council of the European Union (n 698) 8.

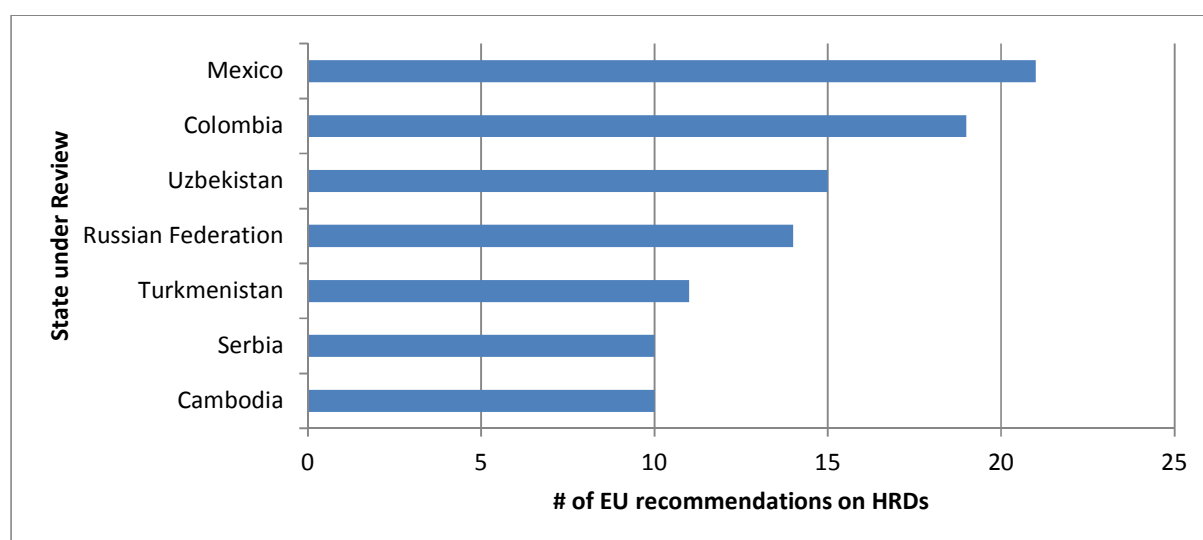
<sup>797</sup> UPR recommendations per country are listed in the report of the working group of the UPR. Information on all UPR recommendations covering the first cycle (2008-2012) and the ongoing second cycle (2012-2016) is archived online by UPR.info, an initiative financed by Norway, Denmark, Switzerland and several other donors. See <[www.upr-info.org/database](http://www.upr-info.org/database)> accessed 15 October 2014. The data presented in this section is based on the UPR.info database and not on the official reports of the working groups of the UPR.



Recommendations addressing HRDs often refer to a broader set of human rights, including freedom of opinion and expression, freedom of the press, and freedom of association and peaceful assembly. They also regularly refer to other groups such as journalists and/or civil society in general. There is a high variety in the scope and specificity of the recommendations. Some recommendations urge States to bring their legislation and practices into line with the UN Declaration, or urge states to accept visits from Special Procedures, including the UNSR on HRDs. However, many recommendations are formulated in a broader sense, without specific reference to the UN framework. Such recommendations are rather generic, urging States to take appropriate measures for ‘the proper defence and protection’ of HRDs.

In total, the EU MS have proposed 300 recommendations on HRDs in the UPR. The EU recommendations account for 55% of all recommendations on HRDs made at the UPR (a total of 549 having been recorded), which reflects the EU’s leading role in addressing this human rights issue. In terms of geographic focus, a handful of countries have clearly received more recommendations on HRDs by EU MS than others (see figure 19).

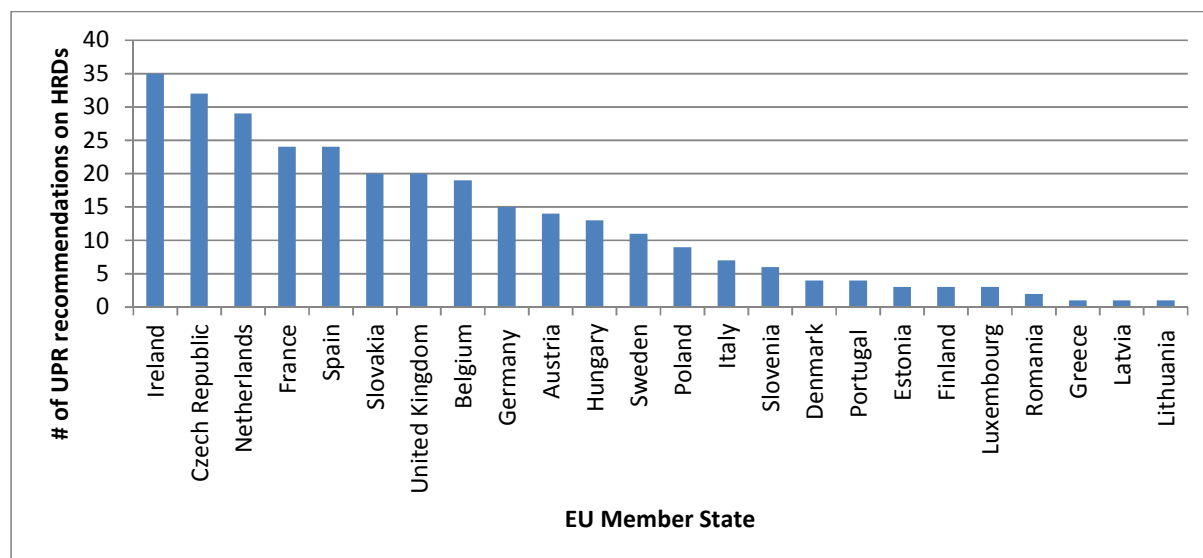
Figure 19: States under Review receiving ten or more UPR recommendations on HRDs from EU MS, 2008-2014



Interestingly, several States the EU has addressed regarding the situation of HRDs, through resolutions or statements (see previous section), have not received a high amount of UPR recommendations on HRDs. This includes Belarus, China and Iran, which respectively received five, six and three recommendations on HRDs from EU MS. The high number of UPR recommendations for Mexico and Colombia might be explained by the possibility that these States could be more receptive to recommendations on the issue of HRDs.

Further in-depth, qualitative research is required to contextualise the quantitative data on these recommendations, and how the HRD issue is prioritised in the strategic decision-making process behind the recommendations within and across EU-delegations. When breaking down the total number of UPR recommendations by Member State, several European countries distinguish themselves (see figure 20).

Figure 20: Number of UPR recommendations on HRDs per EU MS, 2008-2014



Frontrunners Ireland (35 recommendations), Czech Republic (32 recommendations) and the Netherlands (29 recommendations) clearly tend to be more active in addressing HRDs through the UPR. Although the differences in the total number of recommendations on HRDs are modest, the ‘specialised’ role of Ireland in addressing this issue is more outspoken when looking at the share of recommendations on HRDs as part of all recommendations by one EU MS. Approximately 10% of Ireland’s UPR recommendations considered HRDs, whereas this percentage was much lower for Czech Republic (5%) and the Netherlands (4%), which introduced much more UPR recommendations on a broader set of topics. A number of explanatory factors should be considered in analysing the prioritization of HRDs by individual MS, rather than dividing EU MS along the lines of high or low-performers in addressing HRDs. An informal ‘division of work’ across EU MS might explain why certain states focus more on this area. Again, more qualitative data on the strategic decision-making process within and across EU MS delegations is required. In addition, certain cultural and historical factors, as well as the presence of ‘leading figures’, might also explain prioritization of HRDs. The role of former High Commissioner for Human Rights Mary Robinson, during whose mandate the UN Declaration on HRDs was adopted and the mandate of the UNSR on HRDs was created, could be an explanation for Ireland’s attention to HRDs at the UPR.

#### (4) Hosting side-events

In addition to using the regular sessions and formal mechanisms to address HRDs, EU delegations and EU MS can also organise or sponsor side-events within the structure of the UN forums. A high-profile example of this was the EU Delegation’s side event on ‘Women Human Rights Defenders’ organised together with the Mission of Brazil in 2012 during the 20<sup>th</sup> session of the Human Rights Council.<sup>798</sup> Representatives of EU MS might also support and attend other side-events which relate to the situation of HRDs.

<sup>798</sup> ‘EU Delegation to the UN and Mission of Brazil hosted side-event on Women Human Rights Defenders’ EEAS Press release, 19 June 2012. Available at <[http://eeas.europa.eu/delegations/un\\_geneva/press\\_corner/all\\_news/news/2012/20120619\\_en.htm](http://eeas.europa.eu/delegations/un_geneva/press_corner/all_news/news/2012/20120619_en.htm)> accessed 15 October 2014.

#### *d) HRDs in the Wider EU Foreign Policy Framework*

While the adoption of EU Guidelines on HRDs in 2004 did not represent the beginning of a completely 'new' EU foreign policy, it is safe to say that a more systematic and 'institutionalised' policy on HRDs has emerged since. The various measures and actions listed in this case study have also highlighted how the UN framework on HRDs and the EU's engagement on the issue shape and interact with each other at various levels.

At the same time, supporting and protecting HRDs remains one amongst many human rights issues the EU seeks to address, and the advancement of human rights remains one out of many aims which the EU pursues through external action. Given the various drivers and shapers of EU external action, critical questions emerge regarding the extent to which the EU has been able to put its collective weight behind HRDs at risk. At the UN level, the EU MS have been among the strongest proponents for enhancing and strengthening mechanisms addressing the protection of HRDs. While we can identify a sustained EU commitment to addressing HRDs within the different fora of the UN system, it is less clear how this engagement is part of the EU's relationships with third countries in which HRDs are targeted. Whereas prioritization at UN fora can be traced through statements, declarations, sponsorship of resolutions and votes, the prioritization of HRDs towards third countries is difficult to assess. How the EU has successfully applied its influence to have third countries comply with the UN Declaration and accept visits by UN Special Procedures has only been assessed briefly in this case study. Qualitative, country-by-country analysis would be required to further analyze the inconsistencies and implementation gaps. Such research would help to clarify how the triangular link between EU external action, HRDs in third countries, and the UN framework has formed and evolved. Moreover, how the EU's renewed human rights policy will provide a new space to bring together EU actors, local HRDs and the UN system, is another avenue for further research. Here, the elaboration of the EU's human rights country strategies can be regarded as a key entry-point for more concerted action; however, to date it remains unclear to what extent these new country strategies will integrate and build on the EU's HRD Guidelines.

#### *e) Conclusion*

This case study provided a first assessment of how the EU and the UN interact towards a specific goal: the provision of support and protection for HRDs. It is safe to state that the issue of HRDs has emerged as one of the key issues within the EU's human rights agenda with the adoption of the EU HRD Guidelines, and has remained so after the Lisbon reforms. It is also clear that the EU Member States have played a crucial role in the development of the UN framework on HRDs, in particular the adoption of the UN Declaration and the creation of a UN Special Rapporteur on HRDs.

Departing from the operational guidance of the EU guidelines on HRDs, this case study has identified the EU's efforts to support the UN's framework and mechanisms on HRDs, has highlighted how the EU uses multilateral diplomacy at different UN fora to address the protection of HRDs, and how in its 'bilateral' relations with third countries the EU has supported the UN framework and mechanisms on HRDs.

A first observation is how relatively little follow-up has been undertaken to assess the 'UN dimension' of the EU's HRD policy. Whereas several studies have been commissioned to review the implementation of

the EU Guidelines (see chapter 2.b.), the various pieces of operational guidance which prescribe support for and coordination with the UN framework have not been thoroughly evaluated. As such, subsequent evaluations or reviews of the EU's HRD policy would benefit from having a stronger multilateral component, which could cover both the UN and relevant regional frameworks.

Despite the limited assessment available, this case study has identified several efforts of how the EU has engaged the UN framework and mechanisms for the protection of HRDs. In terms of providing the necessary political and financial support for the UN's mechanisms to address HRDs, the EU institutions and Member States are highly instrumental. Notwithstanding the recent failure to gain consensus on the creation of a UN-wide focal point to address reprisals against HRDs, the EU's role in supporting such reforms of the UN system will continue to be crucial. This case study has also highlighted various examples of how EU bodies and institutions (and to a lesser extent Member States) have supported the UN framework and mechanisms on HRDs through dialogues with governments and cooperation with the OHCHR offices. While efforts have been undertaken to use the EU's diplomatic leverage to empower the UN framework and mechanisms, this does not appear to be systematic. This finding echoes criticisms that the EU's support for HRDs is overall inconsistent; however, this case study is non-exhaustive in this regard and further in-depth research would be required to assess where and when the EU has or has not been able to incentivise partner countries to comply and cooperate with the UN framework. In relation to the EU's action through the UN's multilateral fora, addressing the protection of HRDs has emerged as a priority. The EU Member States have largely acted in concert of supporting country specific resolutions which address the situation of HRDs. Similarly, at the UPR, the group of EU countries are the most active in urging countries to protect HRDs.

As mentioned in a recent evaluation study on the EU's HRD policy, a fresh revision of the EU Guidelines seems called for a decade after their adoption.<sup>799</sup> Given the various possibilities of further engaging with the UN framework and its mechanisms, it would seem a logical step if a more refined strategy would be set out in this regard. This would ideally allow the EU to connect HRDs at the local level with international and multilateral platforms, whilst ensuring their protection is guaranteed.

## C. European Union and the right to development

### 1. The purpose of the study

Discussions concerning the relationship between human rights and development in the UN human rights fora have equally long as controversial history. The magnitude of competing economic and political interests involved has always limited the room for reasonable compromises. Mistrust and suspicion, frustrations and conflicts often prevail over the spirit of cooperation. The current stage of the debate has some special features that make it even more important.<sup>800</sup>

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<sup>799</sup> Bennett (n 710) 80-82.

<sup>800</sup> Office of the UN High Commissioner for Human Rights, *Realizing the Right to Development. Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (OHCHR 2013).

Firstly, the world is at the final stage of the Millennium Development Goals process. At the same time, preparatory works for the Post-2015 development agenda have entered a decisive phase and fully reflect the struggle between those who would like to keep human rights somewhat in the background, as it has been the case with the MDGs, and advocates of an integrated approach to development and human rights. Divides in this respect do not necessarily reflect the usual political frontiers in the Human Rights Council.

Secondly, the discussions on the Right to Development, which is perceived by many in the Global South as a conceptual and political synthesis of the relationship between human rights and development, seem to be in the middle of another deadlock. It goes without saying, therefore, that related controversies will most probably have an important impact on designing and implementing the Post-2015 Agenda.

Thirdly, the European Union sends, as it is perceived by its partners, ambiguous signals concerning its attitude to the RtD and possible cooperation in this respect. Some of the most recent examples include:

- In the EU Statement delivered on 12 May 2014 at the opening meeting of the Working Group on the Right to Development of the Human Rights Council, the EU Delegation stated ‘We would like to reiterate our support for the Right to Development, as based on the indivisibility and interdependence of all human rights, the multidimensional nature of development strategies and the individuals as the central subjects of the development process.’<sup>801</sup> Taking into account a rather reserved attitude of the EU towards economic, social and cultural rights, resulting from differences among Member States, an outsider can raise a question about the real meaning of the declared ‘support for the Right to Development’
- Another document distributed around the same time was the ‘Commission staff working document. Tool-box. A rights-based approach, encompassing all human rights for EU development cooperation’<sup>802</sup>. It clearly stated that ‘An RBA [Rights Based Approach] is not about the Right to Development. While the EU is fully committed to the important recognition of the interdependence between rights, security and development, and to the objectives of human well-being and dignity for all, the EU has not formally endorsed the content of the UN Declaration on the Right to Development from 1986. An RBA is not a *de facto* endorsement of the Declaration.’ If one takes into consideration that the RBA seems to be the essence of the EU policy with regard to the ‘human rights and development’ relationship, little room is left for the declared ‘support for the Right to Development’.

The place of the RtD in the EU human rights policies within the United Nations is too important to be left to rather mixed signals of the EU’s intentions. Koen de Feyter writes:

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<sup>801</sup> HRC ‘15th session of the Working Group on the Right to Development’ (May 2014), EU Statement, Conference Paper.

<sup>802</sup> European Commission, ‘Commission staff working document. Tool-box. A rights-based approach, encompassing all human rights for EU development cooperation’, Doc No SWD(2014) 152 final, 30 April 2014.

At the United Nations General Assembly and at the Human Rights Council, the division of opinion between the Non-Aligned Movement and the European Union not only affects the debate on the right to development. It also extends to many other thematic and country-specific issues. The European Council on Foreign Relations has for years concluded in its annual reports on the EU and human rights at the UN that there is a gradual erosion of support for the EU's positions in votes on human rights issues. The EU needs to forge coalitions at the Human Rights Council with non-Western States on the issues prioritized in the EU's external human rights action. As Rathgeber argued, in order to move beyond the bloc voting practice which is detrimental to the EU external human rights action, the EU needs to revise its policies in addressing some of the main concerns of countries from the Global South at the Human Rights Council (Rathgeber 2009:156). Global human rights law cannot be truly global if it does not engage in valid human rights concerns originating in the Global South.<sup>803</sup>

Indeed, there is a lot of evidence that the RtD is one of the key dividing issues, which significantly and rather negatively impacts on the ability of the EU to achieve its human rights goals in the United Nations. The potential of the related controversies to contaminate the human rights debate in general cannot be underestimated. This study should help to better identify and understand the challenges faced by the European Union in this regard.

## 2. Historical context of the RtD

The advancement of human rights in the post-1945 period has led to the recognition that related standards and principles should be part and parcel of concepts and efforts aimed at the resolution of essentially all political, social and developmental problems occurring at the international and domestic level. Eventually, the 2005 World Summit proclaimed: 'We acknowledge that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. We recognize that development, peace and security and human rights are interlinked and mutually reinforcing.' (§ 9).

The desire of developing countries to stop and finally reverse the global process of deepening economic stratification and reduce the growing distance between them and the developed world is widely perceived as fair, understandable, just and deserving support. Tensions between the developing and developed countries often occur when it comes to defining ways and methods to achieve this goal.

When the peoples of Africa, Asia and Latin America struggled to liberate themselves, the classical concept of the legitimate right of peoples to independence and sovereignty used by, among others, American colonies in the 18<sup>th</sup> century was revived and used as the basis for demands of liberation movements. This approach together with the advancement of human rights provided a fertile ground for capturing access to development opportunities in the format of a right to development.<sup>804</sup>

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<sup>803</sup> Koen de Feyter, 'Towards a Framework Convention on the Right to Development' (Friedrich Ebert Stiftung 2013) 4.

<sup>804</sup> Andrea Cornwall and Celestine Nyamu-Musembi, 'Putting the 'Rights-Based Approach' to Development into Perspective' (2004) 25 Third World Quarterly 1420.

The very concept of the Right to Development was proposed already more than forty years ago, in 1972.<sup>805</sup> The Organization of African Unity decided to establish this right as a legal standard in the African Charter of Human and Peoples' Rights of 1981. Maybe this fact sheds additional light, in addition to strategic and geopolitical reasons, why South Africa and other African states are particularly dedicated to the RtD and tend to involve it into the discussion concerning various aspects of human rights.

The RtD has been officially proclaimed within the United Nations in 1986 when the General Assembly adopted its Declaration on the Right to Development.<sup>806</sup> Some Western countries did not support this step. The United States voted against, and Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the United Kingdom abstained. Remarkably, on the same day, already eleven Western states voted against a related GA resolution which aimed at the elaboration of an action plan for the implementation of the Declaration. In addition to the United States, Canada and Japan, eight of the current EU member states, cast 'No' votes. They were: Belgium, France, Germany, Italy, Luxembourg, Netherlands, Portugal and the United Kingdom.<sup>807</sup> Yet, in 1993 at the II World Conference on Human Rights, all 171 UN Member States adopted the Vienna Declaration and Programme of Action that explicitly endorsed the concept of the Right to Development as a human right. Of course, the VDPA was a package agreement, which means that its signatories differed in their support for one or another of its provisions. So, although the RtD became

#### **Vienna Declaration and Programme of Action (Part I)**

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at

part and parcel of this compromise, it has also remained one of the most controversial political concepts in the area of human rights.

<sup>805</sup> Kéba M'Baye, 'Le Droit au développement comme un Droit de l'homme, Inaugural Address at the International Institute of Human Rights in Strasbourg' (1972) 5 *Revue des Droits de l'Homme* p. 503-534.

<sup>806</sup> UNGA Res 41/128 UN Doc. A/RES/41/128.

<sup>807</sup> Andrea Cornwall and Celestine Nyamu-Musembi comment on this voting as follows: 'The industrial countries rejected this because they saw it as the imposition of one-sided obligations and an invasion into what should be, according to them, the discretionary/voluntary field of development assistance, where spelling out precise obligations is anathema.' see Andrea Cornwall and Celestine Nyamu-Musembi (n 801).

### 3. Geopolitical context – key ideas

According to Bonny Ibhawoh,

Southern discourses have focused on demanding a radical change in the international economic order. The dominant Southern view is that the right to development requires wide-ranging changes in extant international economic regimes to ensure that they contribute to furthering the right to development in at least two ways: (i) by encouraging rather than constraining conditions permitting the realization of the right to development within a country, and (ii) by ensuring that inter-country inequalities, in terms of access to natural and other resources, are reduced as much as possible.<sup>808</sup>

The RtD is perceived by many developing countries as a rights-based vehicle to achieve equitable development conditions. According to its underlying concept, international and bilateral economic and political concessions in favour of developing countries are not a matter of good will or generosity, but result from their legitimate and legally founded claim to favourable arrangements in various forms of international economic cooperation and developmental assistance (bi- and multilateral). Developing countries emphasise that it is legitimate because the wealth and wellbeing of developed countries takes its roots in the exploitation (both historical and current) of their people. Therefore, those favourable arrangements should be seen as a compensation for the injustice done throughout history.

Developed countries reject the concept of legal obligations on their part in the above context and promote the understanding of development assistance and cooperation primarily as resulting from the moral imperative of human solidarity. They raise a range of conceptual doubts regarding the content, function and enforceability of the RtD, which fundamentally oppose the recognition of RtD as a human right in the same terms as other rights and freedoms. In addition, developed countries accuse their adversaries, directly or indirectly, of using RtD as a tool to pursue their general political agenda, including diverting the attention of the international community away from problems with democracy deficits and human rights violations.<sup>809</sup>

Indeed, following the political battles around human rights, democracy and development, one can easily note that the RtD is often used by adversaries instrumentally. Ibhawoh writes about RtD paradoxes in this respect, indicating *inter alia* that:

The paradox of the right to development talk coming from the South is that it is at once deployed to demand radical change in the international economic order and to resist change in the national political order. When Chinese officials invoke the right to development to demand more favourable trade terms or when the Ugandan government invokes it to push for more development assistance from the West, the emphasis is often on challenging a hegemonic international economic system with a view to changing the *status quo*. Yet, when China invokes the right to development to deflect criticism of its human rights record, or to resist pressure to

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<sup>808</sup> Bonny Ibhawoh, 'The Right to Development: The Politics and Polemics of Power and Resistance' (2011) 33 Human Rights Quarterly 90.

<sup>809</sup> Compare e.g. Andrea Cornwall and Celestine Nyamu-Musembi, 'Putting the 'Rights-Based Approach' to Development into Perspective' (2004) 25 Third World Quarterly 1420, 1422.



cap environmental emissions, the intent is clearly to maintain the domestic economic order and preserve the political *status quo*. [...] The right to development has been used as both a sword and as a shield in the battle for high moral grounds on some of the most important human rights issues that confront our world today.<sup>810</sup>

The Global North is not saved from a similar criticism: ‘While demanding structural economic and political changes within developing nations as a means of achieving the right to development, many Northern states continue to resist corresponding changes in the mechanisms of global trade and finance that are, in fact, central to the ability of developing states to enforce these rights.’<sup>811</sup>

Under these conditions, one can expect that the RtD may remain not only a source of major controversies between the Global South and Global North for a longer period, but also one of the main reference points for international debates in the area of human rights. As a consequence, the RtD will continue to be a lens through which positions taken by states in international relations will be categorised and assessed.

There is no doubt, either, that the RtD will also remain a multifaceted challenge for the European Union. On the one hand, the Union has accepted, under a growing political pressure, to operate with the RtD language. Indeed, due to the insistence by the non-aligned movement, none of the recent world summits on general or social matters, including the World Summit in 2005 and Rio+20 Conference, had a chance to adopt an outcome document without a reference to the right to development. On the other hand, both the notions and rhetoric used in this respect in the EU documents demonstrate to an outsider, even not necessarily a hostile outsider, either internal tensions that lead to the lowest possible common denominator among EU member states, or a deliberate rejective policy towards the RtD, or both. It is self-evident that such interpretations can only be detrimental to the pursuance of the EU human rights and other policies.

The questions of how to respond to these challenges and how to disarm the negative potential of the RtD – still remain to be answered.

#### 4. The current parameters of the EU policy on the RtD

In light of the above, the current parameters that delineate the room for the EU policy making on the RtD may be defined as follows:

- i. RtD will remain one of the important elements of the human rights debate in the UN intergovernmental fora, in particular in the Human Rights Council, and, maybe to a lesser extent in the view of its general mandate, in the General Assembly;
- ii. RtD will continue to give rise to serious political controversies the poles of which are determined by its rejection as a human right and by the postulate to give this right the status of a commitment

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<sup>810</sup> Bonny Ibhawoh (n 808) 78-79.

<sup>811</sup> *ibid* 79.

- biding under international law (see the proposals of the elaboration of an international convention on the right to development);
- iii. RtD will also continue to give rise to theoretical controversies because of its flaccid normative content limiting, at present, the room for using this rights as a basis for legal claims, differing positions concerning its subject (how to define development as a subject of a legal claim?), its holders (an individual – society – states?), and its duty bearers (a given developing country, developed partner states, the international community and its institutions?);
  - iv. The position taken in controversies around RtD, in particular by governments and international institutional actors, will continue to be seen by governments of many developing countries as an indicator of the attitude to their problems;
  - v. Sluggish work of the HRC Working Group on the Right to Development is largely a consequence of the lack of agenda proposals that could actually count on cross-regional support. Numerous interviews conducted with diplomats appear to suggest that frustrations in all corners evidently prevail over the belief in mutual understanding between the key partners. While representatives of the Global South are inclined to criticise the EU and the Global North in general, for the lack of good will in the approach to the RtD, the representatives of the EU Member States point to the fact that even rational and free of ideological bias proposals, that have been elaborated in the framework of the Working Group on the RtD, are subject to obstruction by some key players among developing countries ('like minded group' – e.g. Cuba, Egypt and South Africa). An example is provided by the largely negative attitude to the criteria and operational-sub-criteria for the implementation of the right to development,<sup>812</sup> elaborated by the Task Force of the WG on the RtD entrusted with the task 'to examine Millennium Development Goal 8, on global partnership for development, and suggest criteria for its periodic evaluation.'<sup>813</sup> Apparently, complex and detailed proposals of the Task Force did not respond to the political agenda of those who otherwise pretend to be advocates of the RtD. One can speak about an evident lack of interest in a human rights impact assessment of development programmes and in the use of human rights methodology to the general evaluation of such programmes;
  - vi. Disappointments and frustrations with previous initiatives by developed countries, aimed at a kind of paradigm shift, make it difficult within the EU to re-launch a more proactive and constructive approach to RtD. On record are attempts to focus the debate on such aspects of the RtD which might be seen in general human rights terms as contributing an added value (e.g. the RtD as the vehicle for popular participation in decision making in the area of development or as a platform for the *human rights based approach* to development programming and impact assessment of development programmes, as well as multilateral and bilateral economic and

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<sup>812</sup> HRC, 'Consolidation of findings of the high-level task force on the implementation of the right to development' A/HRC/15/WG.2/TF/2/Add.1.

<sup>813</sup> UN Doc E/CN.4/2005/25, para. 54 (i).

development cooperation). As a consequence, scepticism vis-à-vis the RtD and a possible change of relevant policies prevail among the EU member states and institutions;

- vii. On the other hand, widely spread frustrations and the awareness of their detrimental impact on international relations may, in a paradoxical way, give some impetus to change. Maybe, the political hard bottom has already been hit. Therefore, despite the rather gloomy and prolonged state of affairs, there may be a room for some new initiatives aimed at getting out from the present deadlock. The EU may wish to reflect on this particular opportunity and consider refining its policy on the RtD. If successful, such an attempt can give an important boost to the implementation of the general EU human rights policy at the UN.

## 5. Policy options

In the context of these findings, one can raise the following questions:

1. Is this in the interest of the European Union's human rights policy to get more pro-actively engaged in the debate on the Right to Development?
2. Is it not preferable for the EU to continue to distance itself from the RtD, at least at this stage, and apply a 'damage control approach'?
3. If the answer to the first question is positive, what are the desirable modalities of the EU policies?

### ***Distancing versus Engagement***

It may be said that historically the EU position vis-à-vis the RtD debate has been moving between distancing (withdrawal) and engagement. These changes seem to be driven, on the one hand, by the content of the RtD, and, on the other hand, by the evolving attitude of partners from the Global South. The EU appears to be aware that controversies around the RtD have not been helpful at any stage. They have rather been counterproductive to the overall human rights agenda and constitute a serious obstacle to the achievement, by the EU, of its human rights objectives. Therefore, when the climate of the debate seemed to warm up, the EU was ready to demonstrate a more cooperative attitude. However, cooling down usually prompted the EU to step back.

At the present stage of the RtD debate, the EU takes a largely reactive and distanced approach to the RtD, which may have good reasons, including the prevalently sceptical approach of the Member States to the recognition of the RtD as a human right with the same status and features as e.g. civil and political rights. The visible differences as to the engagement in any debate on the RtD among Member States also create a clear obstacle to common EU engagement policy. Largely failed previous attempts to enter into a constructive dialogue with the Global South in this respect fertilise the ground for disengagement, as well. Finally, the present policy proves to be, by and large, functional in terms of the damage control approach.

However, despite some evident merits of this reasoning, it does not need to prevail, eventually. What points may be made in favour of the EU pro-active engagement in the debate on human rights and development?

For many developing countries such an engagement may be a convincing argument that the EU human rights policy is built on a constructive and cooperative approach, recognizing real concerns and needs of the developing world. One can, of course, argue that such an approach can be demonstrated by other means, including economic and development cooperation. This is probably true. But the choice of policy in this case should not be made on 'either – or' terms. As it has already been emphasised, the RtD debate is firmly and precisely located within and has a negative impact on the UN human rights agenda. It continues to be a generator of mistrust and suspicion. If the EU hopes to contribute to a gradual transformation of this debate into a positive factor in the human rights area, its policies should address this debate in a manner convincing to the majority of partners. In other words, it may be advisable to the EU to build its own constituency to that end. This can significantly strengthen its position in the human rights framework, in general. The EU in its action at the UN level is, of course, building on its bilateral or regional cooperation in the development of assistance projects (e.g. with regard to the application of the human rights based approach). However, there still seems to be a potential in this respect, if the partners in such projects will recognise that the EU takes a more strategic and coherent approach.

This postulate may be considered not only in terms of influence building but also in terms of responsibility. A fair question arises in this context: who is, indeed, in a position to neutralise, at least, the negative impact of the RtD controversy? The EU has this potential which, however, to be utilised requires the will and support of the Member States. And, this is not a simple issue. A comparison of the pros and cons of the options of a possible policy may be helpful.

#### *Distancing*

- Advantages
  - maintenance of controversies within the EU on the RtD debate at a relatively comfortable level of a common position ('under control'),
  - 'the ball is in the garden' of adversaries which, generally, is not a bad situation,
  - preservation of a bargaining position in the context of the RtD may be an asset in the overall framework of human rights negotiations.
- Risks
  - contaminating impact of the RtD deadlock on international cooperation in the field of human rights – the climate of international relations dominated by a lack of mutual trust,
  - critical perception of the EU human rights policy by potentially cooperative developing countries (they seem to be in the majority) – possibility of accusations on the lack of understanding and empathy for the problems faced by developing countries, the risk of 'double standards', and the danger of the EU being perceived as arrogant and attempting to impose conditionality,
  - potential loss of opportunities of building alliances for ambitious human rights goals. JJ:  
potential loss of opportunities for building alliances which could be used to further human rights goals

## Engagement

- Advantages
  - in general, a prolonged deadlock of the debate on the right to development may foster the desire for initiatives that might facilitate cooperation in this difficult field. In this situation, conciliatory/constructive proposals can count on interest and support in various corners of the international community,
  - under these conditions, the best case scenario: thanks to its constructive proposals, the EU might spearhead positive changes in the UN human rights agenda; the minimum level scenario: the EU may present itself to partners from developing countries as a reliable and willing actor, seriously reflecting on their concerns and taking them into account while developing its own human rights policies,
  - in both cases, the recognition of the EU's human rights engagement by developing countries may contribute to gradual disappearance of criticism based on arrogance stereotype and improve its overall negotiating power. This could facilitate a better and more constructive cooperation in various related human rights areas, such as good governance (anti-corruption, democracy, the rule of law), etc.,
  - in areas related to human rights and development, constructive engagement may narrow down the influence of actors notorious for their counterproductive attitude to human rights,
  - a greater understanding among civil society actors (national human rights institutions, NGOs, academia) of the rationale underlying the EU policy in the broad development, economic and social context of human rights.
- Risks
  - EU initiatives may be interpreted as a tool to disarm the RtD and thus, be counterproductive and/or even add to the existing mistrust,
  - an action taken by the EU may also be misinterpreted as a deliberate move to undermine the solidarity among the developing countries,
  - there is also a possibility that constructive proposals will be taken up by partners from the Global South without reciprocity in terms of an appropriate adjustment of their own policies.

### **Criteria for substantive options**

The requirements that need to be met by the proposals for possible EU initiatives correspond with those that are *mutatis mutandis* applicable in the case of the implementation of the EU policies, in general:

- a) the proposals should be tangible enough to be read as a serious attempt to move forward the cooperation between the EU and the developing countries on the RtD,
- b) the proposals should aim at ultimately enhancing the respect and protection of human rights, in particular through the strengthening of national capabilities and capacities to that end; they should avoid the risk of diverting the discussion on human rights from its main stream, which is the intention of some powerful advocates of the RtD,
- c) the proposals should be as little antagonistic as possible.

## 6. Possible initiatives

If the EU decides to reflect on the possibility of the adjustment of its policy on RTD at the United Nations, various modalities of action are available. Some of them can be taken as original proposals, some others could be a continuation of already existing concepts, but reinvigorated as a cooperation offer, still others can provide a response to ideas already tabled by other actors.

Specific steps that may be taken:

- a) directly by the EU delegation,
- b) by one or a group of Member States acting with a clear support of the entire EU,
- c) by the EU or Member States in the framework of an interregional initiative.

Taking into account political sensitivities, option (c) seems to be the most suitable.

### Examples

- a) Human Rights and the post-2015 Sustainable Development Goals.

Following on its engagement so far, including its critical assessment of the exclusion of human rights from the Millennium Development Goals<sup>814</sup>, the EU may wish to play a spearheading role in integrating human rights into the post-2015 development agenda. The Council declared clearly that an overarching post-2015 framework should *inter alia* 'Ensure a rights-based approach encompassing all human rights. [...] We remain committed to the promotion, protection and fulfilment of all human rights ...'<sup>815</sup> This position has recently been reiterated by the EU Commission,<sup>816</sup> who also stated in its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions that:

A rights based-approach, encompassing all human rights, will decisively contribute to the improvement of the quality of governance, to reducing inequality and exclusion and realizing the envisaged targets and actions of this agenda through participation, transparency and accountability. Key requirements are to strengthen participatory political systems that give people, especially marginalised and vulnerable groups, a say in policy choices and decision-making that affect them and to ensure that those responsible can be held accountable. Such an approach becomes increasingly important in an interconnected world. This will enable people to build up

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<sup>814</sup> European Union, 'Submission in follow-up to HRC resolution 15/25 "The Right to Development"': 'The European Union also shares the view of the High Level Task Force that the MDGs are "divorced from a human rights framework". In that respect, the European Union welcomes the efforts of the UN High Commissioner for Human Rights to promote the intersection of MDGs and Human Rights and her exhaustive analysis on how human rights can contribute to the Goals, as this is totally consistent with the EU's Human-Rights based approach to Development.'

<sup>815</sup> EU Council, 'The Overarching Post 2015 Agenda' – Council conclusions General Affairs Council meeting <[http://eu-un.europa.eu/articles/en/article\\_13692\\_en.htm](http://eu-un.europa.eu/articles/en/article_13692_en.htm)>.

<sup>816</sup> EU Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. A decent Life for all: from vision to collective action' (2 June 2014) COM/2014/0335.

their lives, capitalise on economic opportunities and, hence, participate productively and peacefully in political, economic and social life.

The EU may consider whether an initiative could be taken at the level of the EU Delegations in Geneva and New York or through the Member States with a view of reflecting this general approach in the documents of the Human Rights Council and the General Assembly and thus, strengthening the human rights in the negotiation process leading up to the post-2015 Agenda. The EU may also wish to consider integration into relevant documents of some of the sensitivities of the partners from the Global South related to the RTD. Needless to say, that cross-regional initiatives in this respect would be particularly helpful.

b) Human rights aspects of the reaction to economic and financial crises

The impact of the economic and financial crises on the enjoyment of human rights, in particular economic, social and cultural rights, has been addressed on various occasions within the UN human rights bodies. Yet, no systemic approach has been elaborated in this respect, so far. In fact, a comprehensive and conclusive discussion with the participation of governments, non-governmental organisations, national human rights institutions and relevant UN bodies is still missing. One of the important contributions in this respect has been made by the UN Committee on Economic, Social and Cultural Rights. On 16 May 2012, the Committee addressed a Letter to the State Parties<sup>817</sup> which underlines that ‘States parties should avoid at all times making decisions which might lead to the denial or infringement of economic, social and cultural rights’. Further, the Committee states that ‘Economic and financial crisis and a lack of growth impede the progressive realization of economic, social and cultural rights and can lead to retrogression in the enjoyment of those rights. The Committee realises that some adjustments in the implementation of some of these Covenant rights are at times inevitable.’ In this context, the Committee emphasises that such adjustments have to meet the following requirements: a) be a temporary measure covering only the period of crisis, b) be necessary and proportionate, c) must not be discriminatory, mitigate inequalities that can grow in times of crisis and ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected, d) identify the minimum core content of rights, or a social protection floor, as developed by ILO, and ensure the protection of this core content at all times. One can perceive the Committee’s position expressed in this Letter as an attempt to outline, in general terms, an emergency doctrine under the International Covenant on Economic, Social and Cultural Rights.

The EU/Member States may wish to consider initiating, in the Human Rights Council, a comprehensive discussion on the impact of economic crises on human rights with a view to elaborating on the directives related to the protection of groups and sectors of societies, particularly those affected by adjustment policies (e.g. austerity measures), to participation of disadvantaged and marginalised groups in the elaboration of anti-crisis policies, and to other aspects of the problem (e.g. methodology of identifying the minimum core content of rights), as appropriate.

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<sup>817</sup> CESCR, ‘Letter to the State Parties’ CESCR 48<sup>th</sup>/SP/MAW <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=68](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=68)>.

### c) Human rights and policy coherence for development

For a long time policy coherence for development has been seen by many as an essential paradigm. The report prepared by the UN System Task Team on the Post-2015 UN Development Agenda recognises human rights, equality and sustainability as the core values of the future. It also emphasises that ‘To realise the future we want for all, a high degree of policy coherence at the global, regional, national and sub-national levels will be required.’<sup>818</sup>

The need for policy coherence in the area of development has also been recognised within the European Union. However, certain documents on the subject indicate that the European Union must still make another mile to fully integrate human rights into its thinking about development policy coherence. For example, the provisions of the Council conclusions on policy coherence for development (December 2013) do not refer to human rights at all.<sup>819</sup> The ‘Commission Staff Working Document. Policy Coherence for Development Work Programme 2010-2013’ refers to human rights only once where it is recommending to seek further progress in strengthening coherence of the European migration policy with other policies, including human rights.<sup>820</sup>

Although this is primarily an internal problem, if unsolved it can have a negative impact on the perception of the EU position with regard to the coherence of development policies. This would be generally unhelpful, and also an obstacle to the engagement of the EU in the promotion of human rights as one of the essential foundations of a coherent development policy. In fact, the EU should build on its position in this respect, according to which human rights should help to design specific sustainable development goals, develop implementation strategies and establish evaluation and accountability mechanisms and procedures.

In this context, EU/Member States may wish to consider ‘providing leadership’ to the elaboration by the Human Rights Council of guidelines concerning the human rights based policy coherence in the area of development and development cooperation.

## **D. EU and human rights in counter-terrorism at the UN**

### **1. Introduction**

The European Union is widely perceived within the UN domain as a strong and vocal promoter and defender of civil and political rights. Such a perception has very strong entrenchment in facts, for the EU actively engages in a wide variety of areas related to rights enshrined in the UDHR, ICCPR and other core treaties. As shown in the chapter IV.A, several important items such as death penalty and freedom of religion and belief feature prominently both within the priorities of the EU as outlined in the policy documents, but also in actions which the EU and its Member States undertake within the UN fora. Such strong stance on civil and political rights is frequently juxtaposed with a relatively weak position on

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<sup>818</sup> UN System Task Team on the Post-2015 UN Development Agenda, ‘Realizing the Future We Want for All. Report to the Secretary-General’ (United Nations 2012) 22.

<sup>819</sup> EU Council, Foreign Affairs (Development) Council meeting, 12 December 2013.

<sup>820</sup> European Commission, ‘Commission Staff Working Document. Policy Coherence For Development Work Programme 2010-2013’ (21 April 2010) SEC(2010) 421 final.



economic, social and cultural rights. However, even within the areas of civil and political rights, the record of the EU is uneven. Scholars have identified several areas of human rights concern, both thematic and country-oriented, which are considered as so-called 'double standards', where either internal human rights issues or political alignments undermine the EU's efforts to promote human rights standards externally. Smith observes:

The EU is also vulnerable to accusations of double standards and selectivity, as well as hypocrisy – and several states in the HRC have been quite adept at pointing these out. The EU is not keen to discuss the human rights records of friends or allies. Furthermore, 'Islamophobia' in the North (at least as perceived in the South), the restrictions of civil liberties that several European states have justified in the name of the fight against terrorism, and direct or indirect complicity with violations of human rights by the US (as in 'extraordinary rendition'), are just some of the developments that concern Muslim states in particular and that are regularly brought up by them in HRC debates. (...) The EU is trapped by its own rhetoric on human rights: its perceived and actual failings in this regard make it hard to claim the moral high ground.<sup>821</sup>

The 'double standards' issue has been extensively discussed in academic publications and policy analyses.<sup>822</sup> Authors point out to continued internal problems of the EU such as violations of human rights and inability to provide adequate fulfilment and protection, or external policy choices such as geographical selectivity and restraint from addressing human rights issues in allied or partner states which are hampering the external presence of the EU, damaging its credibility and rendering it unable to meaningfully engage these topics in multilateral fora. This case study focuses on one of the 'double standard' areas, namely the EU's approach to the matter of protecting human rights in counterterrorism. This topic is made all the more relevant with the recent developments concerning the rising threat of the so-called Islamic State ('IS'). The rise of IS brings about several issues which may possibly have impact on internal, external and internal/external dimensions of the EU human rights policy. Firstly, the creation of IS has resulted in emergence of a new safe haven for terrorism, with several prominent terrorist groups aligning themselves with IS. The intentions of the IS to carry out and support terrorist attacks abroad has been spelled out clearly in official statements of its representatives, fuelling concern for a new wave of terrorist attacks in Europe. Additionally, hundreds of EU citizens have willingly joined the IS, with some of them openly displaying a desire to actively participate in its militant undertakings. The question emerges regarding the consequences of such individuals returning to countries of origin and subsequent danger posed by them. This aspect of IS threat in particular will pose a challenge for the EU both internally and externally. Since the international reaction to the IS threat will undoubtedly bring the issue of human rights protection in counterterrorism into the spotlight, the EU's stance and presence within the UN human rights system on the topic warrants closer examination.

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<sup>821</sup> Karen E. Smith, 'The European Union at the Human Rights Council: speaking with one voice but having little influence' (2010) 17 *Journal of European Public Policy* 235-236.

<sup>822</sup> Grainne de Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 *American International Law Journal* 649; Susi Dennison and Anthony Dworkin, 'Towards an EU Human Rights Strategy for a Post-Western World', European Council on Foreign Relations, September 2010.

## 2. Counterterrorism and human rights as a policy focus at the UN

Until the late 90s within the UN terrorism was dealt with by the UNGA, with a series of piecemeal resolutions related to various aspects of countering this phenomenon, such as terrorist attacks against various modes of transport or financing of terrorism.<sup>823</sup> The issue of human rights and terrorism was introduced in a series of annual UNGA and CHR resolutions which were first passed in 1994.<sup>824</sup> Both the UNGA and CHR resolutions were initially relatively weak, and focused on a general reaffirmation of necessity of protecting human rights without highlighting specific types of human rights violations or patterns recurring in counterterrorism. In fact, one can observe that initially the UN human rights resolutions were primarily focused on human rights situation of terrorism victims. During the 90s, terrorism began to feature increasingly prominently in the activity of the UNSC, which first adopted several resolutions concerning particular acts of terrorism and introduced the first sanction regimes, initially targeted against governments (Libya in 1992<sup>825</sup> and Sudan in 1996<sup>826</sup>). In 1999 the first UN anti-terrorist sanctions mechanism against individuals was introduced in UNSC Resolution 1267/1999, known as '1267 sanctions'. Initially, the 1267 sanctions were aimed at Taliban, but their scope was subsequently expanded to cover Al-Qaeda and individuals with links to Osama bin Laden. Resolution 1267/1999 established a dedicated Committee for handling matters related to 1267 sanctions ('1267 Committee').<sup>827</sup> The Committee was tasked, among others, with overseeing compliance of Member States with the Resolution, maintaining a list of individuals and entities targeted by sanctions and carrying out a delisting procedure.

The UN response to terrorism was dramatically altered following the events of September 9/11. The United States spearheaded an unprecedented reaction within the UN, paving way to major developments such as UNSC Resolution 1373/2001 which obligated Member States to undertake a wide catalogue of counter-terrorism measures, including imposition of sanctions against individuals linked to Al-Qaeda, and established the UN Counter-Terrorism Committee (CTC) as a body tasked with monitoring implementation of Resolution 1373/2001. Resolution 1373/2001 contained no major references to human rights, and the dominant US-led narrative within the UN omitted the topic entirely. In fact, the American drive to frame the discourse on counterterrorism within the UN without consideration for human rights was virtually unopposed by other UN Member States, with neither the traditional allies of the US (including the EU) nor its frequent opponents willing to bring up human rights concerns and risk confrontation with the US.<sup>828</sup>

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<sup>823</sup> Jane Boulden and Thomas G. Weiss, 'Whither Terrorism and the United Nations?' in Jane Boulden and Thomas G. Weiss (eds) *Terrorism and the UN. Before and After September 11* (Indiana University Press 2003) 10-11.

<sup>824</sup> CHR Resolutions 2003/68 of 25 April 2003, 2004/87 of 21 April 2004 and 2005/80 of 21 April 2005, UNGA Resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005, 61/171 of 19 December 2006, 62/159 of 18 December 2007, 63/185 of 18 December 2008, 64/168 of 18 December 2009, 65/221 of 21 December 2010, 66/171 of 19 December 2011 and 68/178 of 18 December 2013.

<sup>825</sup> UNSC Res 748/1992 (1992) UN Doc S/RES/748 (1992).

<sup>826</sup> UNSC Res 1054/1996 (1996) UN Doc S/RES/1054 (1996).

<sup>827</sup> Eventually, the 1267 sanctions system was split in 2011 into two committees, one dealing with sanctions related to Al-Qaeda and one with sanctions related to Taliban.

<sup>828</sup> Richard Falk, 'Human Rights: A Descending Spiral' in Richard A. Wilson (ed) *Human Rights in the War on Terror* (Cambridge 2005) 229-232.

Within the UN domain, determined action for inclusion of human rights concern in the rapidly expanding counterterrorism paradigm was taken by the HCHR, who has repeatedly called for respecting human rights obligation in the so-called 'global war on terror'.<sup>829</sup>

From 2001 on, the issue of counterterrorism at the UN splits into two major tracks.<sup>830</sup> One is the UNSC realm which has over the years seen the adoption of several further anti-terrorism resolutions. These resolutions have reaffirmed and expanded the scope of measures introduced in Resolutions 1267/1999 and 1373/2001, and introduced new mechanisms.<sup>831</sup> In 2003 the UNSC adopted Resolution 1456/2003<sup>832</sup> which was the first one to include significant references to human rights in counterterrorism, stating that 'States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law'.<sup>833</sup> The UNSC apparatus was also expanded with another body, the Counter-Terrorism Committee Executive Directorate (CTED) established by UNSC Resolution 1535/2004. The CTED was tasked with assisting CTC in implementation of UN counterterrorism measures and coordinating the process of monitoring the implementation of Resolution 1373/2001. Concurrently to developments at the UNSC, the UN human rights increasingly addressed the issue of human rights and terrorism. For example, UN special rapporteurs and independent experts, at their annual meeting in Geneva in June 2003, adopted a joint statement in which they elaborated their concerns for impact of counterterrorism legislation on human rights.<sup>834</sup> The relevant treaty bodies such as Human Rights Committee and Committee Against Torture highlighted human rights concerns in their considerations of state reports, while the OHCHR, having itself suffered a tragic loss due to terrorism with the death of High Commissioner Sergio Vieira de Mello, continued its efforts to bring the issue of human rights in counterterrorism to the attention of both UN bodies and member states. In September 2003 OHCHR published the 'Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism', bringing together relevant findings of United Nations human rights bodies and others of Europe, Africa and the Americas<sup>835</sup> and in 2008, the 'Fact Sheet on Human Rights, Terrorism and Counter-Terrorism' which remains one of the most comprehensive UN

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<sup>829</sup> See: 'Joint statement issued by Mary Robinson, the UN High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe, and Ambassador Gérard Stoudmann, Director of the OSCE's Office for Democratic Institutions and Human Rights', Geneva/Strasbourg/Warsaw, 29 November 2001, <<http://www.osce.org/odihr/54035>>.

<sup>830</sup> The third element of the UN counterterrorism mechanism is the United Nations Office on Drugs and Crime which facilitates technical legal assistance for the UN Member States. It has recently published a 'Counter-Terrorism Legal Training Curriculum module on Human Rights and Criminal Justice Responses to Terrorism'.

<sup>831</sup> Among new mechanisms the UNSC introduced the '1540 Sanctions' aimed at prevention of access to weapons of mass destruction to terrorists and the '1636 Libya Sanctions' system introduced in UNSC aimed at individuals connected with assassination of former Lebanese Prime Minister Rafiq Hariri. Neither of these system have been insofar used.

<sup>832</sup> UNSC Res 1456/2003 (2003) S/RES/1456 (2003).

<sup>833</sup> *ibid* art 6.

<sup>834</sup> Joint Statement of Special Rapporteurs on Human Rights and Terrorism E/CN.4/2004/4, annex 1.

<sup>835</sup> Office of the High Commissioner for Human Rights, 'Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism' <<http://www.ohchr.org/Documents/Publications/DigestJurisprudenceen.pdf>>.

publications on the topic.<sup>836</sup> The CHR was able to take several meaningful actions during its final years, such as establishing the Independent expert on Terrorism (mandate for years 2004-2005) and subsequently the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (mandate active since 2005).

The issue of fragmentation of counter-terrorism policies and approaches within the UN domain was noticed and led to adoption of an overarching UN Global Counter-Terrorism Strategy by the UNGA in 2006.<sup>837</sup> The strategy contains several references to protection of human rights in counterterrorism and includes a separate item on its Action Plan entitled 'Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism'. In order to further the implementation, the third counterterrorism related entity, the UN Counter-Terrorism Implementation Task Force (CTITF), was established in 2006 in order to coordinate and streamline the approach to counterterrorism across the UN system. The CTITF was also mandated with integrating human rights issues throughout the UN counterterrorism system and promotion of good practices in regard to protection of human rights.

The HRC has taken forward major developments in promotion of human rights in counterterrorism introduced by the CHR, namely the mandate of the Special Rapporteur and the annual resolution on human rights and terrorism. The scope of the annual UNGA and HRC resolutions on human rights in prevention of terrorism has gradually expanded over the years to include a catalogue of human rights issues such as arbitrary detention, protection of privacy and fair trial standards. The UPR procedure provided actors from within the UN realm, Member States and civil society with an opportunity to raise human rights concerns regarding various areas related to counterterrorism during the universal peer review of Member States. In the recent years, the Special Rapporteur and the HRC introduced several new developments such as addressing the use of drones for targeted killings of terrorism suspects.

The UN counterterrorism infrastructure was expanded by yet another body established in 2011, the UN Counter-Terrorism Centre (UNCCT) was tasked with implementation of the UN Global Counter-Terrorism Strategy and supporting the CTITF, though the lines of division between it and CTITF are not entirely clear. The Centre was established basing on an initial donation of 10m USD from the government of Saudi Arabia, and in the following years received further donations from Saudi Arabia up to 100m USD annually as well as financial contribution from other UN Member States, including France and Germany. The EU was granted a seat on the UNCCT Advisory Board as a 'guest observer', vis a vis full members such as Egypt, Nigeria, Saudi Arabia, Russian Federation and United States.

A major recent development in action against terrorism at the UN fora was the adoption of UNSC Resolution 2178/2014<sup>838</sup> which foresees measures to contain the travel of and support for persons intending to participate in terror acts, with the primary intended target of the resolution being individuals joining the Islamic State. The resolution, adopted under Chapter VII on the UN Charter, obligates Member

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<sup>836</sup> Office of the High Commissioner for Human Rights, Fact Sheet 32 'Terrorism and Counter-terrorism', <<http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/FactSheets.aspx>>.

<sup>837</sup> UNGA Res 60/288 (2006) UN Doc A/RES/60/288.

<sup>838</sup> UNSC Res 2178/2014 (2014) UN Doc S/RES/2178 (2014).

States to, among others, prevent entry and departure of ‘foreign terrorist fighters’. While the Resolution features references to human rights standards and obligations, its language in several parts is vague and inconsistent with existing UN documents, paving way to doubts regarding the process of implantation.<sup>839</sup>

The current array of UN counterterrorism bodies and policies has come under increased critique in the recent years. Major points raised include: fragmentation and proliferation of bodies leading to incoherence, lack of mainstreaming major themes (including human rights), deficiency in engagement with non-state actors and civil society, weak leadership and insufficient capacity building.<sup>840</sup> Despite the changes to 1267 sanctions system prompted by judgments of the EU courts (see below par. 4), the sanctions and listing/de-listing procedure remains controversial and was recently critically assessed by the Special Rapporteur.<sup>841</sup> While the UN human rights system is steadily increasing its attention to human rights in counterterrorism, and the UPR has allowed for major progress in strengthening the monitoring and reporting architecture, several issues remain. First is the relative politicisation of the UNGA/HRC and its consequences, such as the existence of aforementioned ‘double standards’ manifested by several Member States and groups within the UN or the ability of several major actors (such as the US) to successfully block initiatives which run counter to their policy. While the OHCHR and the Special Rapporteur have contributed a great deal towards mainstreaming the issue of human rights in counterterrorism across the UN, their capabilities for expanded action and carrying out field work remain limited due to financial constraints. Finally, an overarching issue persists due to the divide between the UN human rights and the UNSC counter-terrorism systems, which are developing independently of each other and see little cooperation on common topics.

### 3. The EU policy on counterterrorism at the UN fora

Issues related to terrorism engage a wide range of EU policies and venues. They feature prominently in the European Security Strategy, which outlines terrorism as one of key threats to the EU’s security. Due to its nature, counterterrorism engages both internal and external policies in areas such as AFSJ, CDSP and CFSP. Consequently, actions related to counterterrorism are spread across the domains of several EU bodies. One can identify relevant policies and activities in the works of the Commission, the Council, the Parliament as well as several specialized agencies such as EUROPOL and EUROJUST. The EU sought to streamline and reinforce its counter-terrorist policy which Keohane has described as suffering from ‘countless committees’<sup>842</sup> with the appointment of the EU Counter-Terrorism Coordinator in 2004. The Coordinator has made some initial progress in streamlining the EU counterterrorist activity, but was

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<sup>839</sup> Kai Ambos, ‘Our terrorists, your terrorists? The United Nations Security Council urges states to combat “foreign terrorist fighters”, but does not define “terrorism”’, < <http://www.ejiltalk.org/our-terrorists-your-terrorists-the-united-nations-security-council-urges-states-to-combat-foreign-terrorist-fighters-but-does-not-define-terrorism/>>.

<sup>840</sup> James Cockayne, Alistair Millar, David Cortright and Peter Romaniuk, *Reshaping United Nations Counterterrorism Efforts: Blue-Sky Thinking for Global Counterterrorism Cooperation 10 Years After 9/11*, Global Center on Cooperative Security, June 2012.

<sup>841</sup> ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Promotion and protection of human rights and fundamental freedoms while countering terrorism’, 26 September 2012, A/67/396.

<sup>842</sup> Daniel Keohane, ‘The EU and Counter-Terrorism’, Centre for European Reform, 2005, 38.

dodged by inter-institutional rivalry between the Commission and the Council.<sup>843</sup> Looking specifically at the engagement with the UN post-9/11, the EU was from the beginning a very active and strong partner for the UN counter-terrorism system.<sup>844</sup> The EU has contributed to a wide array of actions and topics, such as fostering international cooperation and technical assistance in counter-terrorism and policy development. The EU remains a vocal supporter of the insofar unsuccessful attempts to adopt the UN Comprehensive Convention on International Terrorism.<sup>845</sup> Employing its unique supranational character and the ability to introduce law binding for all Member States, the EU implemented and enforced the UN sanction regimes aimed at persons suspected of conducting or funding/aiding terrorist activity and cooperated in enforcing measures against individuals listed by the 1267 Sanctions Committee and in implementation of other sanction regimes.

Items explicitly related to human rights in counterterrorism featured in the EU Priorities for the United Nations General Assembly in 2008, 2009 and 2011. They have not been included in the 2012 EU Council conclusions on EU priorities at the UN Human Rights Council and in 2013 and 2014 Council Conclusions on EU priorities at the UN Human Rights Fora. The European Union medium-term priorities at the United Nations (2012-15) outline the priority to implement the UN Global Counter-Terrorism Strategy (which, as mentioned above, includes items related to human rights) and to support the UN sanctions systems. The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy, which is intended to become the primary EU policy document for human rights in external action, contains several references to human rights in counterterrorism. The Strategic Framework outlines the commitment to promote human rights in all EU external action areas, including the counterterrorism policy. This commitment is reinforced by the fact that the Strategic Framework is intended to function as a permanent document. As far as the Action Plan is concerned, its part IV 'Human Rights in all EU external policies' contains the outcome 13 'Entrench human rights in counter-terrorism activities, with two specific actions regarding development of operational guidance on human rights (action 13a) and ensuring inclusion of human rights issues in counter-terrorism dialogues (action 13b). However, both these actions explicitly refer to action towards third countries and feature no references to the UN or multilateral fora. This stands in a marked contrast to several other items on the Action Plan such as outcome 16 'Abolition of the death penalty', outcome 17 'Eradication of torture and other cruel, inhuman or degrading treatment or punishment' or outcome 18 'Effective support to Human Rights Defenders' which all specifically indicate elements of the UN human rights system as points of engagement and/or reference.

#### 4. Impact of judgments of the EU courts – Kadi cases

Paradoxically, one of the biggest contributions of the EU to the development of the UN counter-terrorist policies and fostering human rights within them did not come as a result of Common Foreign and Security Policy or any other facet of a common EU external action. In 2002, as part of implementation of the UN sanctions system, the Council of the EU introduced Council Regulation 881/2002 which provided that all

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<sup>843</sup> Daniel Keohane, 'The Absent Friend: EU Foreign Policy and Counter-Terrorism' (2008) 46 *Journal of Common Market Studies* 132-134.

<sup>844</sup> Sanderijn Duquet and Jan Wouters, 'The United Nations, The European Union and Multilateral Action Against Terrorism', Leuven Centre for Global Governance Studies Working Paper No 113, 17-25.

<sup>845</sup> *ibid* 9-17.

funds and economic resources shall be frozen that belonged to, or were owned or held by, a natural or legal person, group, or entity designated by the 1267 Sanctions Committee. The list of targets of these sanctions included Mr. Yasin Kadi, who was listed by the 1267 Sanctions Committee as a target of anti-terrorist sanctions owing to his alleged connections to Al-Qaeda and organising financial support for Saudi terrorists. Mr. Kadi challenged the subsequent assets freeze and other measures taken by the Commission before the EU courts, leading to a protracted legal battle which eventually culminated in a landmark ruling by the ECJ, namely *Kadi I*.<sup>846</sup> The case, which was delivered on an appeal from a CFI ruling, has had particular significance due to two of its elements. The first one related to the fundamental matter of relationship between the EU law and UN law.<sup>847</sup> The CFI initially refused to review the conformity of the Council Regulation with the principles of EU legal system, claiming that it had no jurisdiction to review the lawfulness of the decision of the EU institution in question. According to the CFI, due to the fact that the mere purpose of the Regulation was to put into effect a resolution of the UNSC, the Council acted under 'circumscribed powers, with the result that they had no autonomous discretion.'<sup>848</sup> As such, the CFI did not find itself competent to perform a de facto review of UN legal regulations. The ECJ in *Kadi I* overruled this element of CFI ruling, stating that while it indeed is not competent to address the UN laws directly, it is fully entitled to review Community measures implementing such laws. Effectively, this established the position of the ECJ that the implementation of UN law does not enjoy immunity from judicial review within the scope of EU courts. The second important tangent of *Kadi I* addressed specifically the implementation of the 1267 Sanctions Committee and the procedures used to list the suspect and freeze their assets. The ECJ found that Mr Kadi's rights of defence, effective judicial protection and property had been infringed, in particular with regard to lack of evidence provided by to Mr Kadi over the course of the sanctions procedure. The *Kadi I* ruling was the first major challenge before regional judicial systems against the UN sanctions regime. It has had a profound impact on the UN sanctions system, as it eventually led to changes in the delisting procedure within the 1267 Sanctions Committee and led to introduction of the Office of the Ombudsperson of the 1267 Committee, which was tasked with handling requests for de-listing and ensuring that the person targeted by sanctions can access the relevant grounds for the decision on his/her listing.<sup>849</sup>

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<sup>846</sup> Case C-402/05 P and C-415/05, P. *Kadi and Al Barakaat International Foundation v. Council and Commission* [2008] ECR I-6351. The subsequent legal battles of Mr. Kadi with subsequent listing and de-listing of his person in Council regulations are largely beyond the scope of this case study. In the recent 2013 *Kadi II* judgment, the Court of Justice of the European Union ruled on the standards of handling evidence of terrorist activity before the EU courts.

<sup>847</sup> Grainne De Búrca, 'The European Court of Justice and the International Legal Order After *Kadi*' (2010) 51 *Harvard International Law Journal* 1; Julianne Kokott and Christoph Sobotta, 'The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?' (2012) 23 *The European Journal of International Law* 1016.

<sup>848</sup> Albert Posch, 'The Kadi Case: Rethinking the Relationship between EU Law and International Law?' (2009) 15 *Columbia Journal of European Law* 2.

<sup>849</sup> Agnieszka Grossman, 'A Proper Shake or Just a Stir? Critical assessment of changes in the 1267 Sanctions Committee procedures with a focus on the mandate of the Ombudsperson in light of due process rights' <<http://www.e-ir.info/2012/03/03/a-critical-assessment-of-the-1267-sanctions-committee/>>.

## 5. Engagement at the UNGA and the HRC

The EU Member States continue to co-sponsor and support UNGA resolutions on protection of human rights and fundamental freedoms in prevention of terrorism and HRC resolutions on the same topic<sup>850</sup>, both of which are adopted annually (with exception of 2011 for the HRC and 2012 for the UNGA, when no resolution was tabled) without a vote.

### 1. The EU and the Special Rapporteur on protection and promotion of human rights and fundamental freedoms while countering terrorism

Insofar, the Special Rapporteur has conducted one visit to an EU Member State, namely Spain during the days of 7-14 May 2008. The report from the visit contains conclusions and recommendations on several topics, such as the general legal framework for counterterrorism measures, actions following the 2004 Madrid bombings, prohibition of torture and cruel treatment/punishment and the situation of victims of terrorist attacks.<sup>851</sup> The Special Rapporteur also holds regular meetings with EU stakeholders such as the EU Counter-Terrorism Coordinator, the European Commission and the Counter-Terrorism Committee of the European Parliament.

### 2. EU Member States in the UPR

Matters related to human rights in counterterrorism featured both in the reviews of human rights situation in the EU Member States as well as in recommendations issued by the EU Member States during the UPR reviews of other countries. As outlined in chapter V.B, the EU uses a 'light coordination' approach to the UPR, with Member States coordinating their efforts to a limited degree but only in regard to non-EU Member States. During the insofar concluded reviews from the 1<sup>st</sup> and 2<sup>nd</sup> cycles of the UPR, the EU Member States have issued 36 recommendations related to counterterrorism, which constitute 26% of all counterterrorism recommendations. For comparison, the EU Member States have issued 809 recommendations regarding death penalty (57% total) and 469 recommendations regarding freedom of expression (50% total). The following EU Member States received recommendations from other EU Member States regarding human rights and terrorism: United Kingdom (3), Spain (2), Romania (1), Denmark (1). Poland, which has recently been the subject of ECtHR rulings on extraordinary rendition<sup>852</sup>, received no recommendations regarding counter-terrorism from other EU Member States. At the same time Romania, which is pending an ECtHR judgment in a similar case, received a single terrorism-related recommendation from an EU Member State (France). One can contrast this situation with an example of other human rights area that is featured in EU external human rights policy documents and at the same time is frequently a subject of domestic and international controversies in regard to both aforementioned countries, namely the LGBTI rights. Poland received 9 recommendations from other EU Member States,

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<sup>850</sup> UNGA resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005, 61/171 of 19 December 2006, 62/159 of 18 December 2007, 63/185 of 18 December 2008, 64/168 of 18 December 2009, 65/221 of 21 December 2010, 66/171 of 19 December 2011 and 68/178 of 18 December 2013; HRC resolutions 6/28 of 14 December 2007, 7/7 of 27 March 2008, 10/15 of 26 March 2009, 13/26 of 26 March 2010 and 19/19 of 23 March 2012.

<sup>851</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin Addendum Mission to Spain, 16 December 2008 A/HRC/10/3/Add.2.

<sup>852</sup> Case 28761/11 *Al Nashiri v. Poland* [2014] ECtHR; Case 7511/13 *Husayn (Abu Zubaydah) v. Poland* [2014] ECtHR.



out of 14 total, while Romania has received 9 recommendations from other EU Member States, of 11 total, on matters concerning LGBTI rights.

## 6. Conclusions

The EU's current position on human rights in counterterrorism at the UN is a result of several internal and external factors. One is the overall condition of the EU as an actor in counterterrorism, both internally and externally. Bures points out to several issues, such as lack of strong coordination by the EU Counter-Terrorism Coordinator, failure to address root causes of terrorism in Europe and abroad and incoherence in counterterrorism policies of Member States.<sup>853</sup> Referring to the EU's capability as a global actor in counterterrorism, Brattberg and Rhinard indicate that one of the key issues hampering the capability of the EU in this regard is the lack of consistency application and implementation of policies in Brussels and between Member States.<sup>854</sup> Overlapping with these concerns is the issue of mainstreaming human rights throughout the EU counterterrorism policies. Disregard for considerations of human rights standard in implementation of the 1267 Sanctions system has led to the ECJ verdict in *Kadi* case. While arguably a positive development with a profound impact on the UNSC sanctions regime, *Kadi* was not a result of the EU pursuing and implementing a common policy, but of the EU courts fulfilling their role of safeguarding the *acquis* and fundamental rights found therein. Despite developing an extensive list of policies, bodies and instruments related to counterterrorism the EU still relies on Member States in carrying out a great deal of its actions against terrorism, and thus brings their markedly uneven human rights record into the spotlight. It seems that the EU, being aware of such state of affairs made the conscious decision to maintain human rights in counterterrorism as a low priority item in its policy regarding the UN fora. Additionally, the EU action at the UN fora in regard to human rights in counterterrorism continues to suffer from the 'double standards' issue. One aspect of it is the lack of EU's political will to engage UN fora in relation to human rights issues in counterterrorism found within EU Member States and traditional allies of the EU. In areas where EU Member States are strongly aligned, follow a prioritised common policy and enjoy a perceived moral high ground, such as is the case with LGBTI rights, they are willing and able to highlight human rights concerns in regard to other EU Member States. However, the very same Member States which receive UPR recommendations on LGBTI rights see virtually no recommendations related to their complicity with extraordinary rendition from other EU Member States. The issue of extraordinary rendition is significant because it touches upon another vital aspect of the 'double standards' problem, which is the stance of the EU towards the US in regard to human rights in counterterrorism. It appears that the EU is unwilling to open a new front of disagreement on human rights with the US, fearing that it could lead to an increased difficulty in reaching consensus needed for both actors to cooperate and achieve common goals within the UN human rights fora. An attempt to move away from the 'double standards' problem would require both internal action towards properly addressing human rights concerns in counterterrorism as well as the political will to engage the US and other UN Member States in a discourse on the issue.

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<sup>853</sup> Oldrich Bures, *EU Counterterrorism Policy* (Ashgate 2011) 245-251.

<sup>854</sup> Erik Brattberg and Mark Rhinard, 'The EU as a global counter-terrorism actor in the making' (2012) 21 *European Security* 574.

Regarding the question of the EU's engagement in the wider UN counterterrorism system, one can observe certain similarities between both organisations. Interestingly, the UN seems to suffer from similar problems to the EU in regard to counterterrorism, with issues such as lack of strong leadership and coordination or insufficient mainstreaming of human rights concerns. Bures argues that the EU is moving forward to overcome its weaknesses in counterterrorism policy and is 'growing teeth'<sup>855</sup>, while Brattberg and Rhinard see the EU as a global counterterrorism actor in the making.<sup>856</sup> Such 'coming of age' of the comprehensive EU counterterrorist policy could draw upon positive developments within the UN domain, such as the achievements of the OHCHR and the Special Rapporteur in order to reinforce the respect for human rights. At the same time, the UN itself sees questionable developments such as the introduction of UNCCT backed by Saudi Arabia. In line with its aspiration to becoming a major global actor in both protection and promotion of human rights and combating terrorism, the EU could be well positioned to help the UN overcome its weaknesses. In doing so, the EU could contribute to mainstreaming human rights within the UN counterterrorism system and overcoming the abovementioned deficiencies. Such action should be intrinsically linked with parallel moves to ensure adequate promotion and protection of human rights in counterterrorism internally, in order to avoid the 'double standards' issue. The upcoming implementation of UNSC Resolution 2178/2014 and action against IS will likely be an important test for the EU and its Member States in this regard.

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<sup>855</sup> Bures (n 853) 252-254.

<sup>856</sup> Brattberg and Rhinard (n 854) 575.

## VII. Conclusions

Set against the background of the EU's twofold commitment to effective multilateralism and to human rights, the purpose of this report is to analyse the long-standing and multifaceted engagement of the EU towards and within the UN human rights bodies, to critically assess this engagement from a policy and institutional perspective, to identify specific and structural achievements and flaws in the EU's approach, and to look for creative ways to enhance the EU's position, role, inclusion in and impact upon these UN bodies.

To that end, the report provides a comprehensive analysis of the institutional aspects of EU-UN relations in the area of human rights, including a mapping of all involved actors, as well as analyses of the Union's legal status, external representation and internal coordination at the UN. A closer look was taken of the Union's substantive goals and objectives at the UN human rights fora, including thematic, country-specific and institutional priorities, as well as the strategy development process. This was complemented by an examination of the wide array of tools and methods, which the EU employs in UN human rights fora, and highlighted through the analysis of resolution initiatives, the UPR and the financing of the OHCHR, as well as case studies.

The conclusions follow the structure of the report, with special attention being paid to the issues of effectiveness, coherence and credibility which permeate all aspects of EU-UN human rights engagement.

### A. Institutional framework

#### 1. EU participation in UN human rights fora

This study confirms that the EU is one of the main actors in UN Human Rights fora. The EU and its Member States engage actively on a broad range of thematic and country related issues. At recent human rights sessions, numerous important initiatives were presented by the EU and several EU Member States – often in conjunction with UN Member States from other regions. Furthermore, the EU participates actively in negotiations of initiatives presented by the third countries. It is also important to stress that the EU position is a point of reference to a number of states in the UN which often follow the EU lines on many issues. In this context it should be noted that the external observer often does not make a distinction between those actions that are taken by the EU, as such, and those that are put forward by one or several EU Member States, so that the notion of 'EU engagement' de facto acquires a broader meaning than the purely legalistic interpretation of EU action. While the discussion on the EU legal status and participation rights remains relevant, its importance in relation to the overall visibility and impact of EU action should be seen in practical context and measured by achieved results.

#### 2. Legal status and participation rights

The UN remains a state-centred institution, and therefore a challenging environment for EU external action. Only a small minority of UN bodies and instruments allows international organisations to join as full members or contracting parties. The vast majority either limits their participation to narrow observer rights or excludes any formal participation at all. Consequently, despite considerable efforts to enhance

its participation rights, the EU continues to hold a patchwork of different statuses at the UN human rights fora, ranging from fully-fledged contracting party through upgraded or simple observer status, to no formal status at all. As a consequence, EU internal competences and external participation rights in the UN frequently do not align. Even after the entry into force of the Lisbon Treaty, the Union's positions are not only represented by the EU Delegations but also by EU Member States in many UN bodies. Although under some circumstances this situation can be helpful, since it allows for a flexible adjustment of modalities of action, the ensuing difficulties in terms of the EU internal division of competences and coordination can be seen as an obstacle to the Union's effective implementation of its external policies. As a consequence, the EU should maintain the issue of its status at the UN on its agenda. This is to be emphasised, despite the fact that finding a solution will probably be a complicated and time consuming process.

### 3. Strategy development process – COHOM and other actors

The human rights strategy development process has a clear institutional framework which involves both human rights specific bodies and other key EU structures, such as the Council, the Commission and EEAS. Since its establishment in 1987, the role and importance of COHOM has substantially expanded to the point where it became the critical point of formulating common policy in regard to human rights in external relations. An essential breakthrough has been achieved with the implementation of the Lisbon Treaty. The establishment of the position of the COHOM Chair within the EEAS; the introduction of two settings: Brussels-based and capital-based COHOM, making COHOM work almost permanently, and the assignment of new responsibilities have enabled this body to assume the role of the central platform for internal EU human rights strategy development and coordination. COHOM also engages relentlessly in ensuring wide outreach and a high level of expertise in formulating human rights policies. All this was followed by the adjustment of work within the Delegations in Geneva and New York which after the entry into force of the Lisbon Treaty partially took over the role of the EU rotating Presidency, e.g. by chairing coordination meetings which facilitated interaction between HOMs and the headquarters in Brussels. These changes have helped to better streamline and coordinate action between the EU structures and Member States and among the latter. The positive impact of these changes and the continuously improving interaction between various EU structures have not only been welcomed by EU actors but also noticed by external partners. The latter appreciate a better EU outreach, clearer objectives and priority settings, easier setting of cooperation frameworks, and more availability of relevant counterparts. There is, however, a need to remain vigilant and preserve this progress, which could be at risk, if there was insufficient coordination between EU Delegations and Member States within the UN human rights fora. In this context, the relationship between the Council policy-making and Member State/EEAS implementation of adopted policies is crucial for ensuring the coherent and consequent EU action. Ongoing and consistent monitoring of this coherence is vitally important. The existing cooperation between COHOM and EEAS on the one side, and 'internal' human rights bodies of the EU on the other side (in particular FREMP, FRA and DROI), is vital for ensuring that feedback and observations are exchanged between relevant actors within the EU domain. It must also be borne in mind that continually increasing EU engagement, including suggested enlargement of its thematic scope, will constitute a significant additional challenge to the strategy and policy development, as well as to a coordinated and

coherent implementation of the EU priorities. In all this work, the support of the European Parliament for the human rights strategy development and coordinated implementation cannot be overestimated. In addition to all its competencies established by the EU treaties, it plays an important role in building the human rights constituency in the political structures of Member States.

#### **4. External representation**

The Lisbon Treaty has provided the Union with a new institutional framework of its external relations architecture. The creation of the offices of the President of the European Council, the HR/VP and the establishment of the EEAS has improved long- and mid-term strategic planning, increased the coherence and effectiveness of the EU's external action, enhanced internal coordination, helped to continue building an institutional memory, and enabled third country partners to identify relevant EU counterparts more easily. All this has contributed to strengthening EU action at the UN human rights fora. Nevertheless, some considerable challenges remain. The HR/VP's competences in the Commission were initially too limited to safeguard coherence across all areas of EU external action. The EU multilateral Delegations, including in New York and Geneva, had to adjust to their new role (previously exercised by the rotating presidency). They had to assert themselves, not only in the state-centric world of the UN, but also among EU Member States. Additionally, the division of powers between the EU and its Member States, particularly in areas of shared competences or in cases of mixed EU-Member State membership of a UN body, remains a potential source of tensions. Cumbersome internal coordination processes, sometimes bind valuable resources and seem to considerably limit the EU's capacity for outreach and coalition-building in some areas. Sometimes the burden of discussing the formal position of the EU at the UN and vis-à-vis EU Member States may still get in the way of achieving the overarching policy goals. Hence, the ongoing efforts aimed at streamlining and rationalizing the coordination process continue to be very important.

#### **5. Internal coordination**

The obvious advantage of the EU is the ability to act as a powerful political and regional structure with clear common objectives and aims in the field of human rights. The process of internal coordination leads to the adoption of a common position of the EU Member States. As a result, the position can be presented at UN human rights fora by the delegations of all Member States in a consistent manner.

The tasks of the EEAS in the process of internal coordination are realised through the EU delegations on the ground, which took over the internal coordination of the EU work, including the chairmanship of coordination meetings from the rotating Presidency. Some initial procedural disputes in this context have already been resolved. Common positions on human rights issues are agreed upon based on strategic EU documents provided by the Foreign Affairs Council and COHOM ahead of HRC/UNGA Third Committee sessions. The efficiency of COHOM was improved by the creation of the so-called Brussels-formation, which allowed it to deal with its increasing workload. This is especially important for the process of coordination, because the adoption of strategies in the framework of COHOM (in which all Member States are represented) means that the coordination of EU positions does not need to be duplicated on the ground.

With the work of COHOM on strategies, the coordination meetings in Geneva and New York focus on finalisation and operationalisation of EU priorities and on finding burden-sharing arrangements between the Union Delegation and EU Member States. Burden-sharing makes use of EU and Member States potential, expertise and results in a more effective implementation of the Union's human rights policy at the UN.

## **6. The principle of unanimity as a factor limiting the EU performance**

The principle of unanimity within the CFSP has a profound impact on the way the EU performs in multilateral fora. The requirement of reaching a common position on both the policy and actions on the ground is frequently seen as one of the most inhibiting factors in the EU's external human rights policy at the UN. Whilst having a position that is the result of a common, unanimous stance of 28 Member States does offer several advantages, not the least increasing the collaborative weight of the EU as an actor, it does also cause major issues. The necessity to negotiate the common position becomes cumbersome in the UN environment. Once a delicate consensus is reached between the 28 Member States it is quite difficult to recalibrate it when external developments require a swift adjustment of the common position. Towards increasing the negotiation flexibility of the EU, a reconsideration of the unanimity paradigm in regard to multilateral fora appears to be a valid step.

### **B. Substantive goals and objectives**

#### **1. Thematic human rights priorities**

Since 2000, the number of the EU's thematic human rights goals and objectives at the UN has increased and current policy documents contain veritable 'shopping lists' of priorities, giving rise to doubts whether the EU is overstretched and whether such a priority-setting is functional, at all. In addition, the 'shopping list' approach may generate confusion both internally and externally. Judging from the list of thematic issues for which the EU Ministers have – since 1999 – adopted 'EU Guidelines' the priorities include death penalty, torture, human rights defenders, rights of the child, rights of women, freedom of religion or belief, freedom of expression, etc. – all of which have consistently been promoted through statements and resolution initiatives. While the approach may appear comprehensive, certain imbalances or gaps remain. In particular, the EU's aims and objectives are heavily slanted towards civil and political rights, and place significantly lesser emphasis on economic, social and cultural rights (see below). Finally, the analysis shows, that the EU is less vocal externally about thematic human rights issues that have proven sensitive internally, in particular the rights of migrants and refugees, as well as the treatment of racism and xenophobia. The combination of long 'shopping lists' of priorities with gaps on certain thematic human rights issues has weakened the credibility of the EU and arguably limited its effectiveness. A stronger prioritization, paired with a more balanced approach, might provide an effective remedy.

## 2. Economic, social and cultural rights

The overwhelming majority of EU thematic human rights priorities at the UN stems from the field of civil and political rights – focusing in particular on individual liberties and physical and sexual integrity. Economic, social and cultural rights on the contrary are largely absent from the various lists of EU aims and objectives. They have been inconsistently included in policy documents since 2011, and are usually referred to in a general fashion – ‘the realization of all Economic, Social and Cultural Rights’ – and followed by two to three examples, typically including the right to safe drinking water, to sanitation and to food. Other, far-reaching rights, such as the right to physical and mental health, to education and to an adequate standard of living have not yet been generally included among EU priorities, although the EU has not hesitated to promote them through its traditional resolutions on the rights of the child. There is neither at the Human Rights Council nor at the UN General Assembly a single EU led initiative solely devoted to ESCR and it is not featured in the EU statements delivered at the UN. However, it should be noted that some EU Member States have been very active on economic, social and cultural rights, regularly introducing resolution initiatives within their national capacity, for example, in the areas of adequate housing, education, as well as safe drinking water and sanitation. Nevertheless, given that economic, social and cultural rights have a very high priority particularly for developing countries, the EU’s reluctant stance has done its credibility as a human rights champion an evident disservice. It exposes the EU to the criticism of the selective approach to the promotion and protection of human rights, i.e. putting emphasis on the civil and political rights, while in general not attaching the same significance to ESCR. The EU’s relative disengagement with respect to ESCR leaves also the space for other states/groups to set the tone of the UN debate on these rights. The EU would benefit from a stronger focus on economic, social and cultural rights, for which the array of priorities commonly pursued by EU Member States through national initiatives can constitute a starting point for further prioritization at the EU level. It could also be argued that better communication on the support provided by the EU to projects on such issues as right to education could contribute to counter the perceived disproportion of the EU’s interest in civil and political rights.

## 3. Country-specific human rights goals and objectives

Since 2010 the EU has listed fifteen country situations among its country-specific objectives. The core priorities among them are the DPRK, Burma/Myanmar, Iran and Belarus, on which the EU regularly tables or supports resolution initiatives. The EU’s priority countries are situated almost exclusively in Asia and Africa and can consistently be characterised as economically weak and politically isolated countries. Important EU trade partners or allies with similarly weak human rights records are not among the priority countries listed in EU strategic documents, thereby giving rise to the criticism of ‘political selectivity’. While it may not be overlooked that the EU has in its statements also repeatedly addressed human rights situations in Latin American countries, Russia and China, the lack of explicit prioritization may send the message that human rights supposedly having paramount importance for the EU may be trumped by pressing political or economic considerations. A more vocal and self-critical EU, also concerning human rights violations by Western countries, allies or trade partners would strengthen the Union’s credibility as a human rights actor at the UN.

#### **4. Institutional goals and objectives for the UN human rights architecture**

The EU's institutional objectives focus on building a strong, independent and credible UN human rights system. In particular the EU is a staunch supporter of main structures and mechanisms, i.e. the Human Rights Council and its Special Procedures, human rights Treaty Bodies and Universal Periodic Review. Noteworthy is the spearheading role of the EU in defending Special Procedures throughout the negotiations on the creation of the HRC, the institution-building phase and the subsequent review process. It continues to be one of the staunchest defenders of country mandates and resolutions at the UN. Equally important was the constructive leadership provided by the EU in the critical phase of the recent Treaty Bodies strengthening process, concluded by the adoption of UNGA resolution 68/268. The EU advocates for the close collaboration of the UNGA Third Committee and the HRC, and for the empowerment and independence of the OHCHR. It continues also to support and defend the civil society engagement in the UN work regarding the human rights, notably at the Human Rights Council. One can expect, however, that the system will further evolve and new initiatives will be presented, such as, for example, the proposal of an International Human Rights Court. If the EU would like to continue its spearheading role, it needs to be prepared for these processes since just defending the status quo probably will turn out, rather sooner than later, to be insufficient.

### **C. Tools and methods**

#### **1. Thematic resolution initiatives**

The EU's scope of thematic resolution initiatives is essentially limited to the three areas of the death penalty, the rights of the child and freedom of religion or belief, and thus to a small fraction of its thematic human rights priorities at the UN – which can be identified as 'core priorities'. In addition, the EU is implementing its human rights policy through the support to numerous thematic resolutions tabled either by Member States or by means of participation in larger, often cross-regional, co-sponsorships. Nevertheless, the EU is visibly absent or perceived as a hostile partner in some thematic areas. The latter situation is probably unavoidable in view of the diversity of political interests and settings within the HRC and the UNGA. However, areas seen as important for the protection of human rights by many stakeholders but orphaned by the EU, such as the already mentioned economic, social and cultural rights, the rights of migrant workers or the Right to Development, are often quoted by third parties as exemplifications of the EU's thematically imbalanced and selective approach. Therefore, the EU may wish to further analyse and address the issue of the scope and focus of its human rights thematic engagement at the UN, taking into account such concerns.

#### **2. Country-specific resolution initiatives**

Since 1999 the EU has introduced resolution initiatives on 15 different country situations in the UNGA Third Committee and in the CHR/HRC. The majority of these initiatives dates from the period until 2005. Only four of those – the resolutions on the situations in Belarus, the DPRK, Myanmar/Burma and Sudan – have been retained in the new HRC and in the UNGA, and with Libya and Syria only two newly emerging



country situations have been added. It should be emphasised in this context that the EU played a crucial role in the establishment of the Commissions of Inquiry for Syria and DPRK. Resolutions appear to constitute a means of *ultima ratio* for the EU that will only be employed after exhausting other, less confrontational, means. While making a decision on tabling or dropping a country resolution, the EU apparently takes into account, in addition to the substantive factors and its role as a human rights champion, actual or potential support by other members of the relevant UN body, the status of bilateral relations as well as the possibility of ‘outsourcing’ a resolution to another actor at the UN. While acknowledging the complexity of decisions concerning country resolutions, the EU is, of course, aware of the fact that only few other issues are equally sensitive in the assessment of the EU stance, impartiality and credibility by other stakeholders. Therefore, the EU should further reflect on its reluctance to address human rights violations in countries which are important political or economic partners, and revisit its policies, if necessary. Otherwise, the present criticism of the EU for its sometimes perceived ‘double standard’ and biased approach will continue to negatively influence the ability to pursue its human rights goals at the UN.

### 3. UPR

The EU’s status at the UN does not allow for its participation in the Universal Periodic Review. The question of the EU’s possible involvement in the process was answered by the adoption of a light coordination approach. It covers only non-EU countries’ review and consists of two elements: (i) dissemination by the EEAS of checklists of issues that should be raised and (ii) exchange of information among member states about recommendations that they intend to take up. The report has shown that the objectives of the light coordination are fulfilled. The EU’s member states, although they do not appear to act as a bloc, follow on the EU’s human rights priorities. All of these priorities are subject to numerous recommendations, which makes them constantly present during the UPR. However, there is a sharp difference between attention paid to recommendations concerning civil and political rights and those related to economic, social and cultural rights, to the detriment of the latter. The alleged problem of double standards in the case of UPR is difficult to be unambiguously assessed. It is clear that elements of politicization are present in the positions taken by EU member states. On the other hand, EU member states do not praise their allies as many countries do.

### 4. Financing OHCHR

The EU contributes to the OHCHR annually EUR 4 mln of unearmarked and about EUR 2-3 mln of earmarked (meaning donated for a specific purpose) funds. Such a level of contributions has been rather constant over the past years and is expected to be maintained, although there is currently no formal cooperation agreement between the EU and OHCHR. As the needs of the OHCHR are nearly unlimited, it would, of course, welcome every increase in contributions. The EU itself should assess its donations regularly and in doing so, the stakeholders in the EU should consider a number of factors, for example the achieved goals, the current financial situation of the EU, donations to other organisations and projects, or the effective use of previous contributions.

This regular assessment should also consider the problem of political sensitivity of financing the OHCHR. High proportions of EU contributions in the overall budget might lead to criticism about the OHCHR being 'EU-driven'. Even when the majority of the Union's contributions is un earmarked, the very fact that the EU has its own human rights priorities might influence the OHCHR activities, especially if EU became one of the main contributors. This could develop into a major issue of criticism towards the OHCHR and the EU. Another issue which should be considered is securing the EU member states funding to the OHCHR, as the EU contributions should supplement the member state contributions and not replace them.

#### **D. Case studies**

The report embraces four case studies the purpose of which is to contextualise the analysis of the EU policy and illustrate the arguments made. They address a) Economic, social and cultural rights, b) Human rights defenders, c) Right to development, and d) Human rights in counter-terrorism. All studies show the place of the selected topics on the agenda of the international community, the approach taken by the EU and its consequences for the implementation of the EU human rights strategy at the UN, as well as possible modalities of EU future policies.

#### **E. Effectiveness, coherence and credibility**

Under the Lisbon Treaty, there is a visibly better strategic planning for and coordination of the EU actions at the UN human rights fora (see above). This significantly contributes to meeting the requirements of effectiveness, coherence and credibility in the EU's strive towards achieving its human rights goals at and through the United Nations. As a consequence, the EU is able to provide leadership in significant areas of human rights activities undertaken by the international community. Such an assessment has been articulated by a number of interlocutors representing various institutional and professional settings who were questioned in the framework of the present analysis. However, as it results from this study and has been reflected on in the conclusions, some residual and partially new challenges in this respect remain and will need to be addressed. They may be qualified as a) political divergences (for example, differences of interests and priorities between Member States), b) institutional competition (for example, differences between priorities of various EU actors), c) procedural impediments (for example, despite all the improvements still time-consuming and sometime not flexible enough coordination process), and d) capacity shortcomings (for example, insufficient workforce of EU Delegations and COHOM support). Nevertheless, one can say that the normative, institutional and procedural framework for addressing existing challenges in an effective way has been, by and large, set up by the Lisbon Treaty and is generally commensurate with the present stage of the European integration. More significant problems occur rather at political level where different interests among Member States, and preferred options among EU actors, lower the collaborative weight and negotiations flexibility of the EU. It goes without saying that the principle of unanimity within the CFSP, one of the EU foundations for the time being, adds to problems in this respect. One of the already mentioned examples here is the impossibility by the EU to take a more proactive stance on economic, social and cultural rights. At the political level one can also see the key to resolve the problem of perceived 'double standards', supposedly applied in the EU human rights policy. Critics refer, for instance, to the EU's approach to counterterrorism and renditions in the context of the Iraq war, protective attitude to the human rights record of powerful or friendly countries, EU refugee and

migration policy or the attitude to international cooperation on development and human rights. The EU tends to avoid these particular topics for the fear of immediate backlash from its traditional opponents within the UN fora. While the topic of internal-external coherence will be addressed thoroughly in other Work Packages of the FP7-FRAME Project (most notably WP8, led by University College Dublin), it goes without saying that the EU should step up efforts to avoid the impression of 'double standards' in its human rights policies and action, and to aim for consistency between external/internal human rights policy, for example, by taking a principled stance in favour of respecting human rights whilst fighting terrorism. This is not only a question of damage control for the EU, but rather a way for the EU to continue to provide effective human rights leadership at the United Nations fora and elsewhere.

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