ConWEB

Year 2003 | No 2

Webpapers on Constitutionalism & Governance beyond the State

European Identity in International Society — A Constructivist Analysis of the EU Charter of Fundamental Rights

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Abstract
In public discourse, the drawing up of the EU Charter of Fundamental Rights was frequently linked to the hope that this project contributes to forging a European identity. This paper's argument starts form the tension inherent in this idea: On the one hand, identity-building implies the visualisation of what is specific for the European Community and its members. On the other hand, human rights are anchored in supposedly universal rules and global regimes, constituting the "international society" belonging to which is a crucial feature of the Union's identity as an international actor. The paper develops a two-dimensional model of European identity and differentiates two types of human rights discourse to capture this tension. It then provides a detailed empirical analysis of the debate in and around the Convention which drew up the EU Charter. The discourse analysis demonstrates that while the international dimension of EU identity was not at the centre of the Charter project in the beginning, the globally-oriented human rights discourse, which stresses Europe's international commitments and responsibilities, gained prominence during the debate and significantly shaped the discursive space for defining the fundamental rights for the European polity.

Keywords:
POLITICAL SCIENCE THEMES: constitution building, European identity
LEGAL ISSUES: fundamental/human rights, international agreements
EU POLICIES AND THEMES: asylum policy, social policy

I.   Introduction[1]

It is no longer revolutionary or original to assert that collective identities are socially constructed. This is even more true for a possible "European Identity", given that "Europe" itself is a contested and fuzzy concept. The analysis of the "Social Construction of Europe" (Christiansen et al. 2001) has therefore moved on to ask more detailed empirical questions, e.g. whether and how national identity constructions are being "Europeanised" (Marcussen et al. 2001), how this process is being forged deliberately by European élites (e.g. Pollak and Mokre 1999), and which norms and rules are dominant in the discursive battle over the distinctive features and values of the European Union (EU). This paper focuses on the latter question, i.e. the *contents* or the *substance* related to the idea of European identity, by examining the

discussions about the Charter of Fundamental Rights of the European Union (EU), which was launched as a political project at the Cologne Summit on 3./4. June 1999, drafted during the year 2000 by the so-called Convention, and solemnly declared in December 2000 at the Nice European Summit.

On the one hand, this Charter has been discussed as an element of the Union's internal human rights policy, specifying and strengthening the rights of EU citizens vis-à-vis European institutions. On the other hand, many observers and also the initiators of the project have underlined the symbolic role of the Charter and its potential for forging a European consciousness and collective identity, by defining, institutionalising and visualising the constitutive norms of the European polity and laying the basis for a European constitution.[2] Despite the broad consensus in Europe regarding the core of human rights and fundamental freedoms the debate over these norms was characterised by sharp controversies. These were not only the result of different ideological, cultural or religious orientations, but also resulted from the specific architecture of the EU polity, where national and EU-ropean norms, identities and human rights protection systems coexist in a delicate balance (Weiler 1999a: 118f). While a would-be European collective identity is being fostered, it may not replace national identities, and while the central role of human rights in the EU is epitomised by the Charter project, the responsibilities and competencies of the Union regarding human rights implementation within the Union remain limited (de Búrca 2001: 128).[3] The following analysis, however, goes beyond this tension between national and European norms and identities. Instead, it concentrates on the impact of the global context and the international human rights regime on the controversial Charter debate. The drafting of a list of fundamental rights, which was supposed to spell out specific European values and bind citizens together, did not take place in a vacuum, but within a densely institutionalised "international society".[4] The European Union and its member states are bound by a close net of international and transnational human rights norms that constitute Europe's identity as an international actor and as a member of international human rights regimes. This dimension of identity is linked to a certain human rights discourse, underlining global responsibilities and international obligations of the Union, which has also been present in

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[2] On the constitutional significance of the Charter, see, for example, Fossum 2002, Wiener 2001a, de Búrca 2001, Lenaerts and de Smijter 2001, Müller-Graff 2000.

[3] The need for an EU human rights *policy,* rather than just symbolic politics, is underlined by Weiler/Fries 1999, Weiler 1999b, Wiener 2001b: 18-22, and contested by von Bogdandy 2000.

[4] Hedley Bull's (1977) concept of an "international society", highlighting the rules binding states in their dealings with one another, has been adopted, refined and extended by the liberal-institutionalist strand of constructivism (e.g. Finnemore 1996: 14-22, Keck/Sikkink 1998: 209-211). The constructivist understanding of international relations as an institutionalised context, i.e. as deplete of systems of rules that govern human interactions and constitute the roles and identities of international agents (not just states), is being followed here. The process of institutionalisation refers to the creation of rules and their strengthening by, for example, increasing the rules' formality, precision and authority (Stone Sweet, Sandholtz and Fligstein 2001: 6f).

the debate over the Charter of fundamental rights. The following paper provides an empirical analysis of the role of this *globally oriented discourse* in the Charter process. Thus, the major question is *not* whether the Charter, the process of deliberation in the Convention[5] or the legal and political practices ensuing from it actually contribute to strengthening identification among European citizens.[6] Rather, the focus is on the *content* of the constitutive rules debated in the Convention and institutionalised by the Charter. The main argument to be substantiated in the empirical analysis is the following: While forging the *international identity* of the Union was not a major objective of the Charter project, a globally oriented discourse underlining the Union's role in international society shaped the discursive space for defining the fundamental rights for the European polity.

Besides the theoretical aim, this research question also has a normative and critical dimension. In contrast to the tension between Europe and the nation state mentioned above, the relationship between the Union and the institutional context of the "international society" has rather been neglected in academic discussions of the Charter so far.[7] The shift of perspective towards the international framework, however, is important with a view to a crucial aspect of the critical debate concerning the construction of a European identity, namely the question of how the mechanism of exclusion and "Othering" will work, and how the relationship to Non-Europe is defined in the construction of a European identity (e.g. Stråth 2000, Cederman 2001a)? This question is also raised by the drafting of the EU Charter, albeit in a more subtle fashion. Although starting from *universal* human rights, constitutions and fundamental rights catalogues establish *particular* interpretations of these rights, defining citizens' privileges and borders of the community. As Schönlau (2001: 123) puts it, there is a certain "tension ... inherent in the idea of bolstering an identity for a distinct political entity by reference to supposedly universal rights". This paper will take global norms and internationally accepted principles as a reference point to assess the balance the EU Charter strikes between the universal claim of human rights and the particularistic elements of constitution building and identity formation.

The empirical approach of this paper forms part of the general research programme known as discourse analysis (Keller 1997), relying on qualitative content analysis as methodological tool (Mayring 1997). Given the focus on political discourses, this paper does not claim to detect a strict causal relationship or mechanism, e.g. linking international and European norms. More

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[5] The "Convention method" and the processes of negotiation and deliberation in the new forum have been analysed in detail by Schönlau 2001, Deloche-Gaudez 2001 and de Búrca 2001, amongst others.

[6] For a detailed theoretical and empirical analysis of the relationship between fundamental rights, European identity and legitimacy with regard to the Charter see Schönlau 2001. For a sceptical view on the assumption that the Charter as such could foster identity feelings among European citizens see Wiener 2001a, 2001b and Haltern 2001.

modestly, the aim of this paper is to search for discursive connections which can provide answers to constitutive questions. It asks - in Wendt's words (1999: 83) – "What, and how possible?", rather than "Why?": *what are the relevant rules and what is the discursive space for constructing European identity in an international society?*

The work of the Convention is understood as a highly institutionalised process of public political discourse, and the Charter itself as a particularly authoritative contribution to the discourse concerning European identity and human rights. The Convention, which was set up to draft the Charter, offers the organisational platform allowing the researcher to identify and access the relevant participants of the discourse, in this case primarily political and societal élites. Given that members of all national, political and institutional orientations are represented in the Convention, it can be seen as a European microcosm. The texts to be analysed include 1) the different drafts of the Charter prepared by the Presidium of the Convention, 2) position papers, proposals and amendments submitted by members of the Convention as well as outside actors, and particularly by non-governmental organisations (NGOs) and associations, and 3) reports from the sessions as well as selected parliamentary debates.[8]

The argument proceeds as follows. First, the theoretical framework is developed by elaborating on and operationalising a two-dimensional concept of identity (II). The next chapter analyses the discourse about the Charter's *function* as an element of identity politics (III). The following section examines the role of a globally oriented human rights discourse in the Charter debate (IV.), focussing on three selected aspects: the minimum level of human rights protection, the inclusion of social rights and the right to asylum. The latter two issues, which are more specific, were selected, because they were highly contested in the Convention and are representative of basic lines of conflict in European human rights policy. The conclusion (V.) summarises the results and attempts to assess the Charter's effects on Europe's international identity.

II. Identity and human rights discourse: a two-dimensional view

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[7] Exceptions are Zöckler 2001, Ménéndez 2001 or Wouters 2001, whereas the latter two focus on the effect of the Charter on the outside rather than vice versa.

[8] The contributions submitted to the Convention and collected in the database of the Council will be quoted here as "Charte" and the respective number. The verbatim records of the Convention meetings have not been published yet. The reports summarising the discussions, authored by the Secretariat of the European Affairs Committee of the German Bundestag (published in Deutscher Bundestag 2002, quoted as "Records"), however, offer a very good overview of the basic patterns and lines of conflict in the deliberations. Furthermore, debates in the European Parliament, the House of Commons and the German Bundestag as well as hearings organised by the German Parliament and the House of Lords were examined in order to identify diverging positions regarding the function of the Charter. For background information I would also like to thank Dr. Markus Engels who participated in the Convention as a staff member of the European Affairs Committee of the German Bundestag.

The term *collective identity* refers to the shared image or we-feeling of a set of people. Collective identities ultimately depend on the *social identities* of the individual members which *identify* with a social category, distinguished by two main features: "(1) rules of membership that decide who is and is not a member of the category; and (2) content, that is, sets of characteristics ... thought to be typical of members of the category, or behaviors, expected or obliged of members in certain situations (roles)" (Fearon/Laitin 2000: 848, see also Weller 2000 and Reese-Schäfer 1999: 16). Thus, to analyse the specific *substance* of identity constructions in the political sphere we can study membership conditions and the rules defining the specific values, rights and duties of members of the alleged community. Public discourse has proven a useful access point for empirical analysis of these features (e.g. Marcussen et al. 2001, Boekle et al. 2001). This approach will also be followed here.

In the discipline of international relations and European integration, but also in policy makers' discourse, the concept of (collective) identity is not only applied to individual persons, i.e. citizens or politicians forming (national) communities, but also to corporate actors, such as nation states or the European Union (Weller 2000).[9] It is therefore possible to differentiate between two levels or dimensions of European identity discourse which come along with two different orientations regarding human rights.

The identification of individual citizens with the EU or Europe as an "imagined community" (Anderson 1987) can be described as the *internal* dimension of identity. The citizens' feeling of belonging to the social category "European Union" forms the basis for a would-be *European (collective) identity*. With regard to human rights, this identity dimension is closely linked to the definition of the fundamental rights of the members of that community. It tends to be associated with an inward-looking, *Europe-oriented discourse.* As an ideal-type, this discourse emphasises European norms and standards, stresses what is distinctive or specific to the Union and defines its borders. In this discursive framework, the EU Charter of fundamental rights is expected to describe the Union as a community based on common human rights values. It can formalise and visualise the role of citizens as holders of individual rights, defined and institutionalised from a European perspective and for the specific EU context. The Charter can also determine the membership rules for the European community, e.g. by restricting certain rights to citizens,[10] and by circumscribing the conditions under which foreigners can claim refuge in Europe.

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[9] For a conceptual discussion of different forms and dimensions of identity see also Kowert 1999 and Wendt 1999: 224-230.

[10] According to Schönlau (2001: 124), the Cologne mandate's call for the Charter also to include citizens' rights is an important illustration of the fact that the Charter was supposed to strengthen a EU-specific vision of fundamental rights.

Yet, given the growing institutionalisation of international relations, we can detect another discursive pattern highlighting the roles and responsibilities of the EU as an actor in the international sphere and thus referring to the *external* dimension of identity. This international *identity of the EU* is constituted by rules negotiated and accepted by the Union and/or its member states in international or transnational contexts, defining the obligations and commitments towards external actors. In the sphere of human rights, EU identity is particularly shaped by international human rights treaties and regimes, membership rules of the community of "liberal democratic states" (Risse and Sikkink 1999: 9), and multilateral or bilateral commitments which define the Union's foreign policy role. The principles of universalism and multilateralism can be identified as general features characterising Europe's international identity. All EU member states have ratified the most important international human rights treaties and accepted international monitoring and complaints procedures. They can thus all be described as having a "multilateral human rights policy" (Sikkink 1993: 142-145), or an "internationalist identity" (Donnelly 2000: 315-320). The EU itself has been unable to become party to any of the international human rights treaties due to its restricted tasks and powers, but the commitment to international norms has been announced in numerous documents and declarations. The Union has also committed itself to campaign for these rights beyond its borders, and its foreign policy role as a "promoter of international human rights" has become more clearly defined during the 1990s (Sedelmeier 2000, Manners 2002). Thus, this dimension of identity tends to be associated with a *globally oriented human rights discourse.*[11] As an ideal-type, this discourse emphasises the universal dimension of fundamental rights, and underlines commonalities rather than distinctions. The main points of reference are global norms and rules, agreed upon and accepted by organisations beyond the national or EU level, and even beyond the Council of Europe.[12] The Union is reminded of its commitments and responsibilities towards international society, both with regard to implementing international
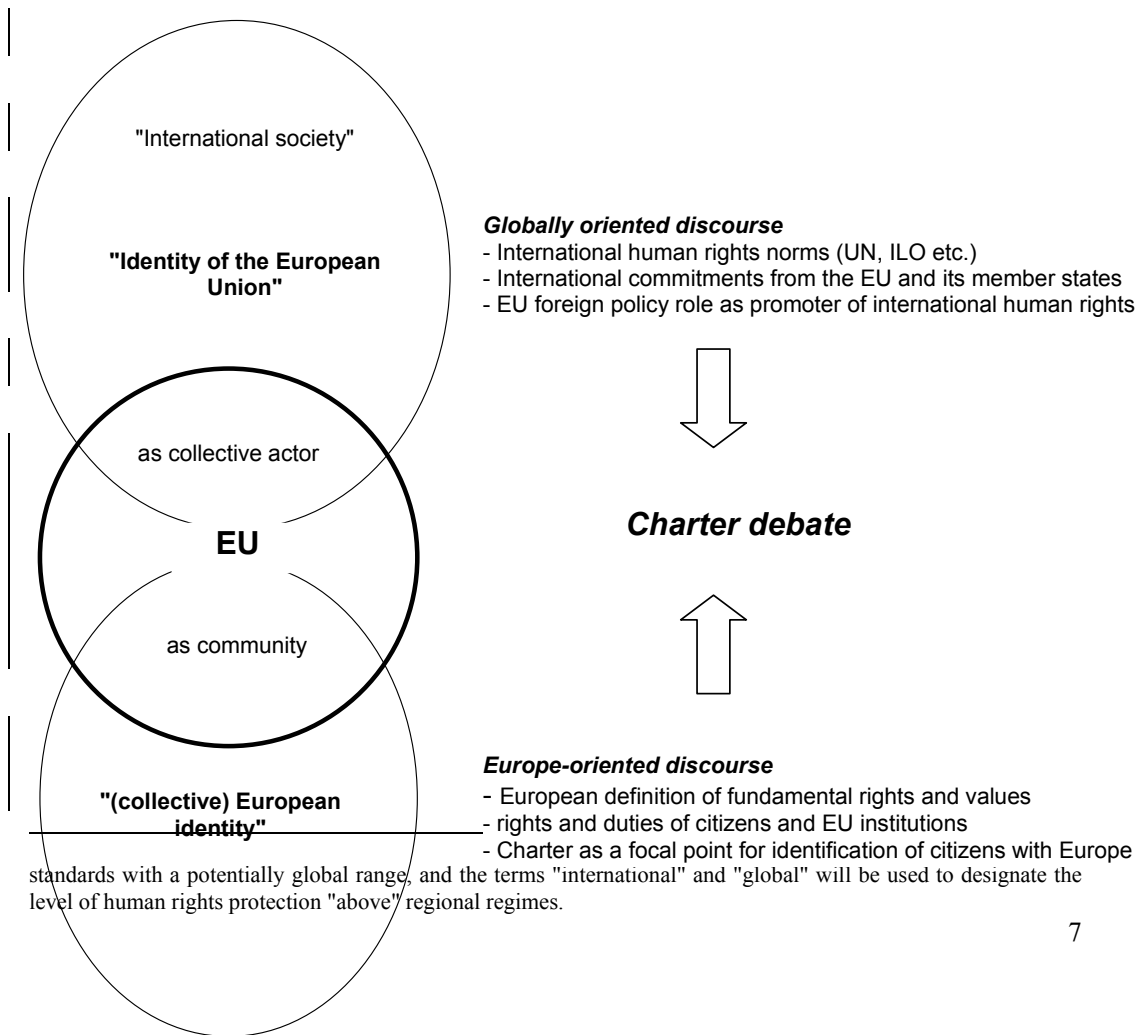
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[11] It should be underlined that while the external dimension of identity and a universalistic human rights discourse go together in the specific case of the European Union they are not necessarily linked. The external identity of an international actor can also be characterized by particularistic values, the denial of international human rights regimes and a foreign policy of "value imperialism".

[12] It is difficult, however, to distinguish between international/global and domestic/EU-specific norms with regard to the Conventions elaborated in the context of the Council of Europe, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter: On the one hand, these Conventions are the normative basis for a community of states going beyond the European Union, and commitment to these pan-European rules can be considered an element of the Union's international identity. On the other hand, the Council of Europe and the EU integration project were closely related from the very beginning, the underlying values are almost identical, and the discourses about "European identity" in both organisations overlap. The commitments emanating from the ECHR are already explicitly integrated in the EU treaties; they are an integral part of the community's legal order (Krüger and Polakiewicz 2001: 94). Although the concrete legal relationship between the two catalogues was highly controversial in the Convention, the need to ensure ECHR compatibility was never in question. Therefore, the following analysis will focus on international human rights

standards at home and to promoting them abroad. The relevance of this globally oriented discourse in the debate concerning the EU Charter will be further analysed in this paper.

Of course, the globally oriented discourse does not necessarily contradict an inward-looking, Europe-oriented discourse, rather it sets different priorities regarding sources and reference points for the legitimisation of human rights claims. Also, the internal and the external dimensions of identity are closely linked and interrelated (Kowert 1999: 33). For example, in the early 70s, the need to assert Europe's s identity vis-à-vis the rest of the world encouraged a policy which was also geared towards a stronger identification of citizens with the European Community (Wiener 2001c: 80f). On the other hand, foreign human rights policies have been employed reflexively as a means of internal identity building since "'European' condemnations or interventions under the flag of human rights are more likely than not to prove popular and increase Community citizens' consciousness of a European consensus on certain values and behaviour" (Clapham 1991: 77). For the purpose of analysis of the relationship between the two dimensions of identity, however, they should be considered separately, as illustrated below:

Figure 1: A two-dimensional view of identity and human rights discourses

standards with a potentially global range, and the terms "international" and "global" will be used to designate the level of human rights protection "above" regional regimes.

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From a legal viewpoint, it may be argued that the question of global norms and rules affecting the Charter and the surrounding discourse is of minor importance. The international standards, such as the conventions of the United Nations (UN) and the International Labour Organisation (ILO), are largely reflected and anchored in existing European and national protection systems, or were themselves inspired by the latter, so that a substantial divergence is unlikely.[13] From a political stance, however, for the Union's membership in the international society or even "community" an *explicit* confirmation of global rules in the Charter is of great importance since it underlines the rejection of a particularistic, Europe-specific interpretation of human rights and documents the commitment to international co-operation and multilateralism. Furthermore, international regimes evolve over time. They are increasingly the result of international and transnational conflicts and discourses and may therefore require adaptations and new interpretations at the EU level.[14] Therefore, only if the EU catalogue clearly reflects an openness to the rules and dynamics of international society, it will strengthen, rather than undermine Europe's external identity. But to what extent was this dimension considered when discussing the Charter's objectives?

III. Human rights and identity politics: The purpose of the Charter

"Identity politics"*,* understood here as the active intervention of political agents with the aim of developing, protecting or strengthening (collective) identity (Pollak and Mokre 1999: 317), plays an important and well-proven role in the process of European integration (e.g. Walkenhorst 1999, Laffan 1996, Wiener 1998). The discourse over the EU Charter's objective clearly reveals that the political actors who promoted the initiative saw the formation of a catalogue of fundamental rights as an element of identity and constitution building.[15] It was at the moment when the "imagined community" had become problematic that the decision to draft

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[13] Of course, there are exceptions to the rule. In the field of minority rights, for example, there are significant differences between European and United Nations standards.

[14] On the "exchange" between international and European norms see also Zöckler 2001.

[15] Besides the German Government and Parliament, a EU catalogue of fundamental rights was prominently promoted by the European Parliament and the European Commission. The latter had set up two expert groups on the issue of fundamental rights a short time before the Charter project was launched (European Commission 1999).

a human rights charter for the Union – which had been proposed many times before without success – could finally be achieved in June 1999 under the German Presidency. This relationship between the Charter project and identity politics has been underlined by many observers. A closer look is necessary, however, to establish whether the discourse also paid tribute to the Charter's possible effects on the Union's international human rights identity.

Obviously, in the discourse of the initiators of the project the question of citizens' identification with Europe was in the fore, as epitomised by the speech of the German Minister of Justice Hertha Däubler-Gmelin (1999: 247) at a conference jointly organised by the Ministry of Justice and the representation of the European Commission in Germany in April 1999 under the title "A European Charter of Fundamental Rights – Contribution to a Common Identity". Enumerating six reasons for the Charter, her third argument went as follows:

> "We need an EU Charter of fundamental rights, so that the Europeans can and want to identify even more with the European integration project. ... Here it is possible – and I say that with a view to the critics that still doubt the existence of a European public – that even something like 'constitutional patriotism' could emerge at a European level."[16]

In the German Bundestag, both government and opposition parties prominently stressed the need to enhance citizens' identification with the Union through the formulation of common values, and also the demonstration of how Europe *differs* from the outside:

> "By far the most important function of this Charter is therefore that it issues a timely reminder ... that it [the European Union] is first and foremost a community based on shared values and that our common commitment to these values is the distinguishing mark and badge of the Union in Europe and throughout the world " (MP Peter Altmaier, CDU, Debates in the Bundestag 18.05.2000, English version published in Deutscher Bundestag 2002: 131).

In the same parliamentary debate, the Social Democrat Jürgen Meyer (MP) made a similar reference to the distinctive European features the Charter could visualise:

> "In future, when European citizens are asked, 'What is your defining characteristic? What distinguishes you from the people of other continents?', ... I hope they will then be able to show a little booklet and say, 'We have the charter of fundamental rights; these are the values that we all share'." (Deutscher Bundestag 2002: 124).

For the German Greens with their internationalist and multicultural visions, human rights were the only possible and acceptable value basis for a European identity. At the Conference mentioned above German MEP Edith Müller underlined that "in the world-wide competition

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The rights-identity nexus – although in different shades – was also prominent in the discourse of German academics supporting the Charter (e.g. Schmuck 2000, Pache 2001, and Pernice 2000).

[16] Translation by the author, from the following German original quotation: "Wir brauchen eine EU-Charta der Grundrechte, damit sich die Europäer noch stärker mit dem europäischen Einigungswerk identifizieren können und wollen. ... Hier kann sich – und das sage ich auch angesichts der Kritiker, die auch heute noch an der Existenz einer europäischen Öffentlichkeit zweifeln – sogar auf europäischer Ebene so etwas wie Verfassungspatriotismus entwickeln."

over the right concepts for the future human and citizens' rights are the underpinning of the *specific* European contribution" (1999: 61, emphasis added).[17]

Yet, as the latter quotation already indicates, despite the prominent references to specific European values as a basis for community-building, the globally oriented discourse was not absent in the discussion over the Charter's function. The German Minister of Justice stressed in her speech mentioned above – as the fifth of six reasons supporting the Charter – the need to strengthen the foundations of the external human rights policy and to enhance the credibility of the Union vis-à-vis third countries (Däubler-Gmelin 1999: 247). A prominent role of the globally oriented discourse can also be found in the statements by the supranational European institutions. The European Parliament (EP), in its resolution of March 2000, brought the internal and the external functions of the Charter together: the Charter would "contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together", but also "underpin the Union's ... policies involving third countries" (Charte 4199/00: Pt.1). The European Commission (2000) welcomed the Charter in a press release with the argument that it was necessary to prove to the citizens "that the Union provides a framework with which they can identify." Yet the Commission also underlined that "the adoption of a catalogue of rights will make it possible to give a clear response to those who accuse the Union of employing one set of standards at external level and another internally." (Charte 4956/00: Pt. 12). Thus, the Charter is presented as a tool for reducing the legitimacy deficit inside as well as outside the Union. European trade unions and many NGOs also underlined the relevance of the Charter for the international role of the Union by arguing, for example, that the trading partners of the Union expected Europe to respect those fundamental rights that it propagated in international trade agreements and within the WTO (ETUC, Charte 4124/00: 2). The trade union-NGO-coalition also called for the Charter to explicitly establish the responsibility of the Union for the promotion and protection of international human rights standards in third countries (Charte 4460/00: 5).

To conclude, while the advocates of the Charter primarily aimed at the visualisation of common rights in order to foster internal bonds and "we-feelings", the identity discourse was broader from the very beginning. It also referred to the opportunity of clarifying the Union's foreign policy role as a credible promoter of human rights world-wide. Furthermore, there were other readings present in the debate which highlighted neither of the two dimensions of EU identity

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[17] Translation by the author from the following German quotation: "In der weltweiten Konkurrenz über die richtigen Konzepte für die Zukunft stellen die Menschen- und Bürgerrechte das Fundament für den spezifisch europäischen Beitrag dar".

as a purpose of the Charter.[18] The discourse of the British government representatives was most prominent in underlining the need to protect citizens and member states from uncontrolled interference from Brussels and from endangering their *national* norms and identities. Lord Goldsmith (2000: 30), representing the British government in the Convention, repeatedly argued that the purpose of the Charter was to "restrain the powers of the Union, by showing the areas in which it must not trample on the rights of the citizens when exercising the powers it has" and called for clarifications in the horizontal articles of the Charter regarding the "respect for national identities" (Charter 4332/00: 9).[19]

These different interpretations of the function of a European catalogue of fundamental rights are reflected in the final text of the Charter. In the preamble, the respect for *national* identities and the principle of subsidiarity are explicitly mentioned, and the extension of tasks or powers of the Union is excluded by a special horizontal clause (Art. 51 (2)). While the term *European identity* is strikingly absent, the preamble does emphasise the aim of establishing common values as the basis of the European project. The objective of an "ever closer union" among the peoples of Europe is confirmed in the very first sentence of the Charter, highlighting the ultimate end of furthering European integration. The confirmation of the Union's *international identity* as a member of the international society, committed to a human-rights oriented foreign policy, is not mentioned as a goal of the Charter. Implicitly, however, this purpose can be derived from the fact that the Charter norms are binding for the EU in all fields of activities and across the different pillars, including external relations and foreign policy (Wouters 2001: 4). Furthermore, the preamble refers to the international commitments of the member states as a source and reference point for fundamental rights in Europe. The debates over the concrete definition of the relationship between the Charter and the international human rights regime will be looked at more closely in the next section.

IV. The contents of the Charter: International commitments and European values

1. International norms as a minimum standard for human rights in Europe

The Conclusions of the Cologne European Council, describing the mandate for the Convention, expressed a rather Europe-oriented human rights discourse: the Council only enumerated

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[18] According to the British MEP Andrew Duff there was no consensus among the governments as to the objectives of the Charter: "I was aware that within those 15 Presidents and Prime Ministers lurked considerable disagreement or confusion about what the project was for. The thing was decided upon with a paucity of reflection" (House of Lords 2000: Pt. 37). See also Voggenhuber (2001: 107).

[19] A similar message was sent by the British Minister for Europe, Keith Vaz who declared in a letter to the Daily Telegraph that the objective of the Charter was to "help EU institutions respect fundamental rights in their daily

national and European sources and instruments, i.e. the ECHR, the constitutional traditions common to the member states, the rights of EU citizens (already anchored in the treaties), the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. The human rights conventions of the United Nations (UN), the International Labour Organisation (ILO) or other global instruments were not mentioned. Yet the Convention members did not strictly follow this enumeration and also considered other international legal standards (Lenaerts and de Smijter 2001: 279, Paciotti 2001: 15). The globally oriented discourse, highlighting the impossibility of drafting a Charter from the purely European perspective, quickly gained prominence in the debate. Thus, the Convention not only took European but also global norms into account in order to assure that fundamental rights in the Union would not undermine any of the existing standards. Numerous contributions and position papers, not only by civil society organisations[20] but also by government representatives[21] and EU-institutions,[22] underlined the need to look beyond European and national norms when establishing the level of protection in the Union. Amnesty International (Charte 4290/00, 4331/00, 4446/00) and the trade union-NGO coalition (Charte 4460/00) identified in detailed analyses of the Charter drafts those formulations which did not reflect the framework of international law, or might even lower the current level of protection. The EP resolution called for the Charter to incorporate all standards applicable to the Union which were presented in conventions signed by the member states within the context of the Council of Europe, the United Nations, the ILO and the Organisation of Security and Co-operation in Europe (OSCE) (Charte 4199/00: Pt. 14). The need to abide by international standards was used to influence the concrete substance of certain rights, but it was also put forward as a matter of principle, related to the commitments of the EU in international society. The Fédération internationale des droits de l'homme (FIDH) succinctly expressed the concern that neglecting international norms would entail a European particularism and undermine the Union's international identity as a promoter of international human rights:

> "The universal character of human rights means that they represent a common standard of achievement for all peoples and all nations. ... Human rights lay the foundation of the identity of all human beings, and not only of Europeans. The Universal Declaration of Human Rights was adopted

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activities without for that imprisoning national legal systems in a super European state" (Agence Europe 09.06.2000).

[20] See e.g. the contributions by the Platform of European Social NGOs and the European Trade Union Confederation (ETUC) (Charte 4194/1/00), by the coalition on fundamental rights of eight NGOs (Charte 4198/00) and the "Quality Test" signed by 33 national and European NGOs (Charte 4324/00). .

[21] See e.g. the contributions by the representatives from Finland (Charte 4117/00), France (Charte 4121/00), Denmark (Charte 4181/00) and the Netherlands (Charte 4145/00).

[22] See for example the position of the Economic and Social Committee (Charte 4125/00) and of the European Ombudsman (Charte 4131/00). Commissioner Vitorino underlined in his speech at the constituent meeting of the Convention that the Charter would neither repeal nor render void any of the numerous national or international instruments (Charte 4105/00: 17).

before the European Community was born. ... As the EU is elaborating a new instrument for the protection of human rights, it should reaffirm, more than ever, the universal character of these rights, as resulting from the United the (sic) Nations and ILO instruments. ... By letting believe that human rights represent a European specificity, the EU would weaken its capacity of action in favour of human rights at the international level, facing the risk to be accused of "cultural imperialism" by authoritarian regimes." (Charte 4232/00: 2f)

The question of how to ensure the respect for existing international standards and how to confirm the multilateral orientation of the Union's international identity crystallised in the formulation of the horizontal clause on the "level of protection" which was to clarify the relationship between the Charter and other human rights catalogues.[23] In fact, the question of embedding and framing the Charter in the international context was not, in principle, disputed. Nonetheless, a closer look at the work of the Convention on this article shows that this global orientation was partly overshadowed by other, Europe-specific conflicts.

Table 1: Important steps in the development of the horizontal article on the "level of protection" [emphasis added]

Charte 4111/00, 20.01.2000	Information Note by the Presidium of the Convention on the horizontal questions, Pt. IV. 18: "Under these circumstances, it would perhaps be useful to consider a clause that would establish that there is nothing in the Charter to restrict the protection offered by the European Convention on Human Rights and the common constitutional **traditions and by other instruments which would have to be identified (United Nations Covenant, European Social Charter, etc.)."**
Charte 4123/1/00 15.02.2000	Draft, presented by the Presidium, Art. Z "No provision of the this (sic) Charter may be interpreted as placing restrictions on the protection afforded, in conformity with Article 6 of the Treaty on European Union, by the European Convention on Human Rights."
Charte 4235/00 18.04.2000	Draft, presented by the Presidium, Art. H 4 "No provision of this Charter may be interpreted as restricting the scope of the rights guaranteed by Union law, the law of the Member States, **international law and international conventions ratified by the Member States**, including the European Convention on Human Rights as interpreted by the case law of the European Court of Human Rights."
Final text of the Charter	Article 53: Level of protection "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and **international law and by international agreements to which the Union, the Community or all the Member States are party,** including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

The first note tabled by the Presidium mentions the possibility of including international conventions as a minimum level of protection. In a later draft, the article refers solely to the ECHR: the main concern obviously was to avoid different legal standards in a wider Europe.[24] However, even before the debate over this article in the Convention, and in agreement with several contributions as well as the EP resolution, the international conventions found their

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[23] For a detailed analysis of the history of this article from a legal perspective, see Liisberg 2001.
[24] Liisberg (2001) has suggested that the Presidium's main concern was to convince the members of the Convention that the formulation of individual articles could differ form the respective rights in the ECHR.

place in the draft article, and this confirmation of the international commitments was not contested. Several proposals, arguing from the global perspective, aimed at even clearer and stronger wording:[25] it was suggested that other important international conventions, the (Revised) European Social Charter in particular, are explicitly named, and that not only the conventions which had been ratified by *all* member states should be part of the minimum standard. Furthermore, an additional paragraph was proposed which was to ensure, with regard to social rights in particular, that the dynamic international development would be taken into account in European jurisdiction, in accordance with the identity of the EU as a member of the international human rights community:

> "International protection of fundamental and human rights must be seen as a unified regime which has gained in clarity and binding force over the last fifty years. ... the European states have participated actively in the development of universal conventions, resulting in standards which are binding on all EU Member States. A reference to these standards in the Charter would reaffirm the interdependence of the regime, as reflected in the decisions of national courts and international proceedings too. ... With this reference, the European Union demonstrates that it sees itself as part of the international human rights regime. This would ensure a high status for the Charter of Fundamental Rights at international level." (Charte 4271/00: 5f)[26]

These proposals, although far from revolutionary, are not reflected in the final version of the Charter. Nonetheless, the ultimate formulation of the article still ensures the compatibility of the Charter with the international commitments of the EU. The core conventions of the United Nations were ratified by all member states and are thus part of the minimum level of protection. Some divergences between certain articles in the Charter and the wording in international treaties are therefore generally counterbalanced. Also significant, although in symbolic terms, is the confirmation of international commitments in the preamble of the Charter.[27] The first Presidium proposal of 14 July 2000 did not – despite preceding debates over international standards to be inserted in the horizontal article – mention the global sources of human rights law (Charte 4400/00). During the debates in the Convention, however, several members pointed out that such a reference was lacking (Record 15th meeting). Arguing from the global perspective, a preamble which did not refer to Europe's international human rights commitments was presented as unacceptable. This criticism was taken into account: the final version of the preamble states that the Charter reaffirms rights resulting from – amongst other sources – "the international obligations common to the member states". The preamble of the

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[25] See the proposed amendments to article 49 in Charte 4383/00 (Summary by the Presidium) and in Charte 4372/00, the submission by van den Burg (Charte 4953/00), the proposals by the coalition of social NGOs and trade unions (Charte 4460/00) as well as the NGO-"Quality Test" (Charte 4324/00). See also the records of the 9th and the 13th meeting of the Convention.
[26] The proposed horizontal article was part of the so-called "Three-pillar-model", introduced by the German MP Meyer, which promoted the inclusion of social rights in the Charter (Falke 2000: 46f, Engels 2001a).
[27] For a general analysis of the discussions about the Preamble in the Convention, see Schönlau 2001: 134-142.

Charter proclaimed in Nice thus goes beyond the sources of law mentioned in the Cologne Mandate (Meyer and Engels 2002: 15).

Finally, it should be mentioned that the call for the Union's accession to the ECHR, the European Social Charter, and even other international conventions, although not an issue to be decided by the Convention, was repeated in this context, reflecting the globally oriented human rights discourse. International human rights organisations like Amnesty International suggested that this was an indispensable step, perhaps more important than the EU Charter, since it would improve human rights protection, ensure the international accountability of the European Union and confirm existing international obligations.[28] Furthermore, accession would mean that the EU fulfilled the criteria it applies to other countries in its external human rights policy. "In this perspective, the submission of the European institutions to the external control of the European Court of Strasbourg would have a determinant symbolic impact vis-à-vis third states and their nationals" (FIDH, Charte 4232/00Add1: 3). Representatives of the Council of Europe substantiated their urgent call for accession by warning of a "Europe of two speeds" in the area of human rights protection, as well as pointing out the risks for Europe's international credibility when asserting the universality of human rights (Charte 4961/00: 3, Schwimmer 2000).

The fact that it was not yet possible for the member states to agree on accession – despite the unanimous commitment to the ECHR and core UN conventions – points to the general EU-specific obstacles in attempting to provide a consistent global orientation in its human rights policy. The concern that such a step might ascribe the Union *too much* international identity in the sense of statehood and legal personality is succinctly put by the Convention representative of the British Parliament: "On the political point, it [signing up to the ECHR] also raised issues about the potential statehood of the Commission and about the Community assuming the same identity as a state, so that was off the agenda" (Griffiths, House of Commons-Debate, 22.11.2000: Col. 76WH).

2. The controversy over economic and social rights

The Cologne European Council had determined that social rights should be incorporated into the Charter, yet as expected, the concrete realisation of this task was one of the most difficult issues for the Convention. Furthermore, the Council's decision contained ambivalent guidelines, since economic and social rights were to be taken into account only "insofar as they do not

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[28] Amnesty International (Charte 4290/00). A similar stance was taken by The Advisory Committee on International Affairs (Charte 4451/00), an academic think-tank in the Netherlands. For a general discussion of this question see also Clapham 1999.

merely establish objectives for action by the Union". This sentence touched directly upon the deeply controversial question of indivisibility and justiciability of fundamental social rights (Hausmann 2001a: 253). Opponents of a comprehensive listing of social rights in the Charter did not necessarily deny the general relevance of these rights, but argued that they were of a different nature, and that the relevant international catalogues actually listed political objectives (Engels 2001a: 87).[29] A second important objection pertained to the possibility that the incorporation of a comprehensive list of economic and social rights could lead automatically to an extension of European powers. Therefore, the EU Charter should only contain a catalogue adapted to the Union's range of competence. This would be the only way to prevent national standards from being undermined or threatened by European harmonisation.[30]

With regard to this controversy, the globally oriented discourse manifested itself in the call for the incorporation of a comprehensive list of social rights, on equal footing with political and civil rights and freedoms.[31] *International principles* were – besides the European conventions and the concept of the "European social model"[32] – important arguments for substantiating the claim that a Charter without a full catalogue of social rights was inconceivable: the principle of indivisibility and the understanding that the two categories of rights were *not* essentially different had been confirmed by international organisations. By differentiating between social rights and principles (proposed in an earlier draft of the Charter, Art. 31, Charte 4316/00) and thus implying a distinct nature of social rights, "the EU would initiate a legal interpretation that would severely undermine what all EU-member countries have accepted as modern human rights understanding in the Vienna Human Rights Conference" (FIAN, Charte 4357/00: 3). Furthermore, the *international commitments of member states* substantiated the argument in favour of a comprehensive Charter: establishing social rights at the EU-level was necessary in order to prevent the international rules reflected in national law from being undermined by the process of Europeanisation. It had to be precluded that standards long established by

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[29] Lord Goldsmith (2000: 36), the UK government representative in the Convention, in a commentary on the Charter, uses quotations marks (these 'rights') in order to underline that social rights are fundamentally different from classic civil and political rights. The same device is used by Frédéric Bosvieux (2000: 54), commenting on the Charter project on behalf of the Confederation of British Industry (CBI).

[30] The respective position of the Swedish government, for example, was driven by the concern that *higher* national standards of social protection and security could be endangered, while the British government sought to avoid new commitments in the area of social affairs (Braibant 2000). The argument that the Union lacked competencies, however, was also used strategically with regard to social rights since it was put forward much less frequently in relation to civil and political rights which exceeded the limits of European power and jurisdiction, such as the ban on torture and the death penalty (Paciotti 2001: 17f).

[31] This position was obviously primarily expressed by Green, socialist or social-democratic members of the Convention. They were supported by trade unions and numerous NGOs. See for example the "Quality Test" of 33 NGOs (Charte 4324/00). See also the records from the 7th, 11th and 14th meeting of the Convention. For a comprehensive explanation of the internationalist position, and a for description of the discussion within the Convention, see van den Burg 2001.

international law and accepted by the member states, such as the right to strike,[33] were now called into question in the EU context. This emphasis on legal commitments was also crucial in the United Nations' line of reasoning: The UN Committee on Economic, Social and Cultural Rights warned in a rather sharply formulated letter that a reduced catalogue would contravene the existing obligations of member states of the European Union. Furthermore:

> "... if economic and social rights were not to be integrated in the Draft Charter on an equal footing with civil and political rights, such negative regional signals would be highly detrimental to the full realisation of all human rights at both the international and domestic levels, and would have to be regarded as a retrogressive step ...." (Charte 4315/00: 4).

Thus, the UN position paper also refers to the *external effects* of the Charter and the role of the Union as a model and example for international human rights politics, an argument also frequently made in other interventions expressing the global orientation: a reduced catalogue at the EU level would send a false signal to the international community (Record 7th meeting, Meyer and Engels 2002: 14) and be incompatible with the foreign policy role of the Union.[34]

The sharp conflict relating to the question of social rights in the Charter at times threatened to lead to a breakdown in the Convention negotiations (Leinen and Schönlau 2001: 31). Yet, the members could finally agree on a compromise. Based on the proposal made by German MP Meyer, which was supported by the French government representative Braibant, social and economic rights were introduced via three different "pillars" in the Charter (Falke 2000: 46f, Engels 2001a). Firstly, the principle of solidarity is explicitly mentioned in the preamble of the Charter and as a sub-heading in the Charter text itself. Secondly, a series of individual social rights is included in several chapters of the Charter, and thirdly, the horizontal clause discussed above ensures that the international standards accepted by all member states also provide a minimum level of protection with regard to economic and social rights.

Thus, the international principle of indivisibility concerning human rights was clearly implemented at the EU level. Furthermore, the universal character of social rights was underlined by granting them to "everyone" or "every worker", independent of EU citizenship. The rights included in the International Covenant on Economic, Social and Cultural Rights are almost entirely found in the Charter (Falke 2000: 52). On the other hand, the need to find a

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[32] See for example the contributions by the NGO-ETUC-Coalition (4194/1/00rev1: 3) and the position expressed by the French government (Braibant 2000). See also the record from the 11th meeting of the Convention.

[33] The explicit confirmation of the right to strike was not only called for by trade unions and the French government (see e.g. Deloche-Gaudez 2001: 15, 18), but also by the European Parliament (Charte 4199/00: Pt. 7e) the Commission (Charte 4477/00: Pt. 23), as well as several members of the Convention. Yet it was – also due to the lack of EU power regarding this question – one of the most controversial points of discussion. See also Engels 2001a: 87.

[34] With regard to the ban on child labour, for example, members of the Convention referred to the activities of the Union in its bilateral relations and in international organisations such as the WTO (Record 14th meeting: 435). During the hearing on the Charter organised by the German Bundestag and Bundesrat, the representative of the

compromise has also resulted in some substantial gaps. From a global perspective, it has been particularly criticised that the right to an adequate standard of living (food, housing) and the right to fair wages, which are included in the International Covenant (Art. 11 and 7), were not included in the Charter (see e.g. Hausmann 2001a). Regarding the highly contested right to work (Art. 6, International Covenant), the Convention could only agree on a formulation which guarantees people in Europe the "right to engage in work" (Art. 15). The right to strike was only incorporated after sharp controversies, and after inserting, in exchange, a new right for employers: the "freedom to conduct a business" (Art. 16). Finally, the scope of protection provided by the Charter is somewhat unclear, since several social rights are guaranteed in accordance with national laws and practices (see Meyer and Engels 2002: 16f), a qualification included in those areas where the Union has limited powers.

Given the compromise arrived upon by the Convention, the final text of the Charter was open to different interpretations.[35] However, the majority of Convention members and observers regarded the compromise as an overall acceptable solution: from a global perspective, the social dimension in the Charter was interpreted as a reflection of international principles and of the Union's commitment to universal standards (e.g. Hausmann 2001b: 55). Yet, the social dimension was also presented as a building block for the "European Social Model" and thus as a specific European advantage: "Social justice, inferred from the principle of solidarity, is the characteristic feature of the European model we have described in the charter" (Meyer, Debate in the Bundestag, 12.10.2000, English version published in Deutscher Bundestag 2002: 167.)

The almost equal attention given to economic and social rights was thus read as a positive factor for EU identity in both respects: as a contribution to Europe's international identity as a promoter of the principles of indivisibility and universality, and as a specific aspect of Europe's tradition of human rights which constitutes a focal point for citizens' identification with the new polity.

3. The rights of refugees

The asylum issue is typically characterised by a tension between identity politics and human rights, between particularistic and universalistic orientations (Noll and Vedstedt-Hansen 1999: 360), because it directly concerns the definition of membership rules. In order to preserve the cultural identity of a community, it seems necessary to draw clear borders and to practice

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German Trade Union Confederation (DGB) also referred to the efforts of the EU to promote human rights in the workplace in the framework of the ILO (Deutscher Bundestag 2000: 44).
[35] See, for example, the comments by Engels 2001a, ETUC 2000 and Hausmann 2001a, and for rejections of the result – from two different camps – Attac 2000 and Schachtschneider 2000. For a balanced legal analysis see Falke 2000 and Gijzen 2001.

cultural exclusion, which may, at the same time, endanger an identity which is defined by the support for universal human rights (Gowlland-Debbas 2001: 222).

In the case of the Charter, an article on the right to asylum was mentioned in the drafts tabled by the Presidium from the very beginning. The concrete wording, however, changed significantly during the controversial negotiations:

Table 2: Important steps in the development of the article on the right to asylum

[emphasis added]

Charte 4137/00 24.02.2000	Draft presented by the Presidium, Art. 17 (1): Right of asylum and expulsion **"Persons who are not nationals of the Union** shall have a right of asylum in the European Union [in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees] [under the conditions laid down in the Treaties]."
Charte 4284/00 05.05.2000	Draft presented by the Presidium, Art 21 (1): Right to asylum and expulsion **"Nationals of third countries** shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees."
Final text of the Charter	Article 18: Right to asylum "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community."

A general global orientation was unanimous in the Convention debate insofar as no one questioned the need to respect international refugee law, particularly the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, which are already enshrined in the EC treaties.[36] The international duties under the international refugee rights regime, constituting Europe's identity in international society, limited the discursive space regarding this right from the very beginning. The concrete obligations ensuing from these rules, however, were interpreted very differently and thus presented a reference point for both restrictive and broad definitions of the rights of refugees.

Diverse amendments rejected the Presidium's proposal for an individual right to asylum and called for an institutional guarantee or a right to apply for asylum, arguing with the international rules in this area: "The internationally recognised right is to 'apply for asylum'. The wording is incorrect and may be dangerously broad" (Bereijo, amendment 424, Charte 4332/00, emphasis in original). It had to be avoided that respective national rules providing for institutional guarantees in accordance with international law were challenged by an EU Charter that would go beyond this and lay down an individual right to asylum (e.g. Gnauck, amendment 412, Charte 4332/00).

Proponents of a more generous approach to refugee protection not only proposed a set of wording that would grant an individual right, but also a broad interpretation of the reasons for claiming asylum, e.g. with regard to gender specific grounds of persecution. In the context of the globally oriented discourse, they referred to new trends in international refugee law and the EU's *international role* as a vanguard in the development of international human rights standards:

> "The inclusion ... of grounds for asylum specific to women is based on a realisation that is gaining in international acceptance, namely that women as a sociological group frequently face particular forms of persecution. ... By incorporating such a clarification of persecution, the Union would be contributing toward the affirmation of a modern fundamental right that is already recognised in specific cases." (Amendment 407, Meyer/Leinen/Martin/van den Burg, Charte 4332/00).

NGOs also reminded the Union of its general responsibility as a model and example: the asylum policy of the Union would decisively influence the future development of the international system of refugee protection (Forum Menschenrechte, referring to the UNHCR, Charte 4224/00).

Secondly, the danger of the Charter *falling behind* existing international norms was an important pattern of the globally oriented discourse, particularly with regard to the question of who would be allowed to claim asylum in the Union. The first drafts of the Presidium foresaw a restriction of the right to asylum to non-EU-citizens, in accordance with a protocol to the EC Treaty agreed upon in Amsterdam in 1997, thus discriminating not against foreigners, but European citizens.[37] This formulation was strongly rejected not only by NGOs[38], but also by many members of the Convention, as reflected in several amendments. The UN High Commissioner for Refugees also intervened, arguing that the wording of the draft article was inconsistent with the Geneva Convention (Charte 4339/00).

Finally, the globally oriented discourse was also prominent in the discussion over the definition of the *holders of certain fundamental rights*, particularly concerning the freedom of movement, whose reservation for EU citizens also affected the situation of refugees. In principle, there was a broad consensus among Convention members that they were to write a Charter not only for EU citizens: generally, fundamental rights and freedoms – in accordance with international norms – were to be granted to "everyone".[39] Yet, the question of which exceptions of this rule were permissible was contested.[40] Regarding the freedom of movement, a majority of the Convention – as well as many NGOs – were in favour of going beyond the status quo in the EC Treaty by extending this right to those Third Country Nationals legally residing in the Union,

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[36] The following analysis is based mainly on the proposed amendments to Article 21 listed in Charte 4360/00 (summary by the Presidium) and in Charte 4332/00 as well as the records from the 6th and 13th meeting of the Convention.

[37] According to this "Protocol on Asylum for Nationals of Member States of the European Union", asylum for EU citizens is restricted in so far as Member States are regarded as constituting safe countries of origin. Many experts – including the UNHCR – have argued that this protocol contravenes the Geneva Convention on the status of refugees (Clapham 1999: 664f, Amnesty International 1999: 20-22).

[38] See for example the position papers by Amnesty International (Charte 4290/00) and the European Council for Refugees and Exiles (ECRE) (Charte 4290/00).

[39] See House of Lords (2000: Pt. 147) and for the common position of important NGOs and trade unions regarding this issue, the report from a hearing held by the Presidium (Charte 4148/00).

[40] A restriction to EU citizens was proposed, for example, with regard to social security and social assistance and the freedom to choose an occupation. See the amendments Nos. 40, 41 and 240 regarding articles 32 and 41 in document Charte 4372/00. On the debate over the holders of rights, see also Schönlau 2001: 123-130.

including persons with refugee status.[41] International standards did not allow discrimination in this regard and were thus an important point of reference. This element of the globally oriented discourse, however, was also combined with the specific European idea of a Union without borders, as illustrated by the following NGO-contribution:

> "... the extension of this right to Third Country Nationals could be considered in the future to be a result of the right to freedom of movement, as consecrated in various international human rights protection instruments. These clauses have no reference to nationality as a criteria for application (...). In regards to European integration, it is logical and fair that the rights to freedom of movement and establishment within the EU should equally benefit all persons legally resident. This would follow the ethos of those who originally dreamt of an internal market and Union without borders." (NGO-Coalition, Charte 4198/00: 4) [42]

The final Charter text reflects – just as in the case of social rights – a compromise. Going beyond the status quo was not possible: the freedom of movement remains a privilege of EU-citizens, and instead of granting an individual right to asylum, the Charter only contains an institutional guarantee that refugees will be granted protection by EU member states. The proposal to mention gender specific grounds for persecution was not accepted either. On the other hand, the explicit discrimination of EU citizens was removed from the article, in accordance with international norms.[43] The Geneva Refugee Convention and the respective Protocol are the only international conventions with a global scope explicitly referred to in the Charter. Although this reference was a compromise chosen in the light of diverging interpretations of these international standards (Meyer and Engels 2002: 20), it does confirm the Union's multilateral orientation.

Furthermore, Article 19, which contains complementary rules important for the protection of refugees, prohibits removal, extradition or expulsion not only in case of the serious risk that the person concerned would be subject to torture, inhuman or degrading treatment, but also if she might be subject to the death penalty. Given that this form of punishment is not generally outlawed by international law, the Charter here expresses a distinctive consensus of European values but also underlines the international role of the Union as a vanguard in the struggle for the progressive evolution of human rights norms.

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[41] See the amendments to article 30 (Charte 4332/00) as well as the Record of the 14th meeting.

[42] This coalition of eight NGO focussed particularly on the rights of third country nationals. Members of this Coalition were the European Justice and Peace Commissions, International Federation of Leagues for Human Rights, European Migrants Forum, International Catholic Migration Commission, KAIROS Europe, Pax Christi International, Representatives of Communities of African Origin, and the Quaker Council for European Affairs.

[43] However, according to the Charter, asylum is also guaranteed in accordance with the Treaty establishing the European Community which contains the above mentioned protocol. The – non-binding – explanations to the Charter by the Presidium (Charte 4473/00) assert that the article "is in line with the Protocol on Asylum annexed to the EC Treaty". The question of discrimination of EU citizens is thus not ultimately answered by the Charter.

V. Conclusions

From a theoretical perspective, the aim of this analysis was to identify the relevance of the Union's international identity, epitomised in the *globally oriented human rights discourse,* for the Charter debate about fundamental rights and European collective identity.

With regard to the *purpose and function* of the Charter, an inward-looking, Europe-oriented discourse was prominent in the articulations of its initiators. They stressed the aim of strengthening citizens' identification with the European Union by confirming and visualising a (distinctive) consensus of European values. Yet, elements of the globally oriented discourse were also present in the debate over the Charter's functions: it was interpreted as a contribution to the consolidation of the international role of the Union by providing a coherent normative basis for its foreign policy. This purpose is also reflected in the final Charter text in that it applies to all policy areas, including external relations.

The globally oriented discourse, referring to the international identity of the EU, also clearly influenced the debate over the contents of the Charter. With regard to the *minimum standard* of protection to be provided by the new catalogue, the mandate for the Convention did not provide a clear basis for the global rights discourse: the Cologne European Council solely mentioned European and national sources of law to be taken into account in the Charter. During negotiations in the Convention, however, this rather inward-looking orientation was broadened. A Charter not referring to, or even falling below global norms, such as UN or ILO conventions, was constructed as being impossible, given the Union's multilateral foreign policy role and the international obligations of member states. Thus, in the preamble of the final Charter text, international standards of both a global and European scope are mentioned as a reference point for human rights in Europe, and the international conventions ratified by all member states provide a minimum level of protection for European citizens.

International norms and obligations were also important reference points in the dispute over the incorporation of *social rights* and *the rights of refugees*. What was possible in the debate over European values was limited by the international commitments entered into by the Union and Member States. A Charter without economic and social rights was rejected not only because this would contradict the "European social model", but also because of the adverse effects of the signal given to the outside world and the incompatibility with the Union's international obligations. Similarly, the general commitment to international refugee law excluded an explicit discrimination of EU citizens with regard to the right to asylum. Despite substantial dispute regarding their interpretation, the explicit reference to relevant international refugee conventions was accepted by different camps. And while the Charter does not go beyond the status quo with regard to citizens' rights, the right to freedom of movement in particular, the fact

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that most rights in the Charter are formulated as human rights applicable to "everyone" has been interpreted as a confirmation of the principle of universality and as an extension of the concept of European citizenship (Rodotà 2001: 73f).

On the whole, the catalogue finally adopted in Nice is – like any European document – a compromise, yet one which is compatible with the internationalist identity of the member states and the role of the Union in international human right politics. The globally oriented discourse affected the debate over fundamental rights and the distinctive features shaping a would-be collective European identity. However, the impossibility to realise many further reaching proposals anchored in the global rights discourse also reveals the specific difficulties in drafting a fully internationalist Charter in a multi-level polity. On the one hand, the Charter of fundamental rights was expected to improve legal protection in Europe, and even foster European consciousness in accordance with international norms and commitments. On the other hand, it was – just like any other element of EU human rights policy – also carefully guarded to ensure that the Union does not acquire too much identity, endangering national identity and autonomy.

From a normative perspective the Charter is not only relevant, because it will – even though not yet legally binding – have an impact on concrete decisions regarding the protection of human rights and the respective policy initiatives in Europe, but also because it contributes to the international debate concerning the relationship between universalism and particularism. In this respect, it can be concluded that despite the discourse concerning the need for a common European identity, the Charter does not present a recognisable specifically *European* reading of human rights. Given the global orientation on the one hand, and the need to respect national spheres of competence on the other, definitions distinctive for Europe are difficult to find. Regarding culturally sensitive issues, for example, such as abortion or the definition of the family, the Charter does *not* give a clear European answer, but leaves diversity in Europe untouched. Similarly, the interpretation of the scope of several social rights is subject to national rules and practices. Furthermore, the Charter does not define specific European roots underlying the concept of human rights. According to the preamble, the Union is founded on the "indivisible, universal values of human dignity, freedom, equality and solidarity". The Union is "conscious of its spiritual and moral heritage", yet the character of this heritage remains unspecified since there was no agreement in the Convention regarding possible references to Europe's cultural or religious background.[44]

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[44] Even regarding a *general* reference to religious values in the preamble, a real compromise between the German and the French position was impossible to find (Engels 2001b: 13, see also Schönlau 2001: 134-142). The conflict was finally solved by agreeing to slightly diverging translations of the Charter. The German text reads "in dem

In one respect, however, the substance of the Charter *is* distinctive: namely by partly going beyond the internationally agreed upon level of protection. This concerns, among other issues, the ban on the death penalty, the recognition of the duty to protect asylum seekers as part of a fundamental rights catalogue, and the incorporation of modern human rights, e.g. regarding environmental protection, data protection or bioethics. These elements also epitomise differences vis-à-vis other polities – with the ban on the death penalty being the most obvious case of divergence from the United States or Japan – but they are still compatible with the internationalist identity and the global orientation of the Union since a *higher level* of protection is generally permitted by international law.[45] The integration of economic and social rights on equal footing with civil and political rights is also often described as a specific European trait, particularly distinctive when compared to the liberal heritage dominant in the United States (von Bogdandy 2000: 1314, Fn. 37, Hohmann 2000: 9, Pache 2001: 479). However, as discussed above, the inclusion of social rights can also be interpreted as an implementation of internationally agreed upon rules concerning the indivisibility of the different generations of human rights.

To sum up, if we look for "European distinctiveness" in the Charter, first, we find a globally embedded, yet modern definition of fundamental rights, and second – in accordance with the multi-level character of the polity – a fragmentation of powers regarding the precise definition and implementation of these rights. Europe promises to respect the internationally established universal values and "the diversity of the cultures and traditions of the peoples in Europe as well as the national identity of the member states" (Charter preamble). The absence of a particularistic reading of human rights in the Charter ensures that the Union's role as a champion for the principles of universality and multilateralism in international human rights politics is not undermined, and may even be potentially strengthened. Despite some gaps and restrictions and the non-binding character, the Charter sends the signal to the outside world that the Union also internally realises its commitment to human rights and remains oriented towards the internationally agreed upon standards, even though there is no consensus yet for subjecting the Union itself to international monitoring mechanisms.

It needs to be stressed, however, that the Charter is only one chapter of the story about European identity. Although the Charter has contributed significantly to clarifying and institutionalising common values, what should be regarded as "distinctively European", and

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Bewusstsein ihres geistig-religiösen und sittlichen Erbes". In all other language versions, the term 'religious' is absent.

[45] In the foreign policy of the European Union, a danger of Western "human rights imperialism" would only arise if the Union expected other countries to comply with the entire set of standards, including those going beyond the international consensus (Wouters 2001: 8f).

whether we really need to define it remains to be contested. This controversy will further manifest itself in the legal interpretation and practical implementation of the norms contained in the Charter, i.e. in secondary law regarding the right to asylum, in the social and economic policies or the guidelines for the Union's foreign and development policy. Whether these policies turn out to be compatible with the internationalist commitments from the European Union, will hopefully be answered in a future paper which needs to go beyond an analysis of European human rights *discourse*.

References

Documents, Debates and Speeches

Attac 2000: *Attac's Position on the Mobilization at Nice* (www.attac.org/fra/asso/doc/doc35en.htm).
Braibant, Guy 2000: *Die aktuelle Diskussion um den Entwurf der Grundrechtecharta,* Presentation to the conference "Soziale Grundrechte in der Europäischen Union", 14./15. June 2000, Stuttgart-Hohenheim (http://www.bma.de/de/europa/konferenz/).
Däubler-Gmelin, Hertha 1999: Grundrechte in Europa, Speech at the conference "Eine europäische Charta der Grundrechte – Beitrag zur gemeinsamen Identität", 27 April 1999, Cologne, reproduced in: *Bulletin der Bundesregierung* No. 25, 04.05.1999, 245-248.
Deutscher Bundestag, Ausschuß für die Angelegenheiten der Europäischen Union 2000 (Ed.): *Materialsammlung und Stenographisches Protokoll der öffentlichen Anhörung der EU-Ausschüsse des Deutschen Bundestages und des Bundesrates am 05.04.2000.*
Deutscher Bundestag, Referat Öffentlichkeitsarbeit (Ed.) 2002: *The Charter of Fundamental Rights of the European Union and the work of the Convention,* Texte und Materialien, Vol. 29, 2nd enlarged edition, Berlin: Deutscher Bundestag.
Deutscher Bundestag, Referat Öffentlichkeitsarbeit (Ed.) 2001: *Die Charta der Grundrechte der Europäischen Union.* Berichte und Dokumentation, Berlin: Deutscher Bundestag.
ETUC (European Trade Union Confederation) 2000: *ETUC position on the proposed Charter of Fundamental Rights in view of the Nice Summit*, adopted by the ETUC Executive Committee on 25-26 October 2000.
European Commission 1999: *Die Grundrechte in der Europäischen Union verbürgen. Bericht der Expertengruppe "Grundrechte"*, Luxemburg: Amt für Amtliche Veröffentlichungen der Europäischen Gemeinschaften.
European Commission 2000: *Fundamental rights in the European Union: Commission stresses added value of future Charter*, Press release, IP/00/995, 12.09.2000.
European Council (Cologne) 1999: *European Council Decision on the Drawing Up of a Charter of Fundamental Rights of the European Union,* Presidency Conclusions, 3/ 4 June 1999, Annex IV.
House of Commons: Debates on the European Union Charter on 16.02.2000 and 22.11.2000 (http://www.publications.parliament.uk/pa/cm/cmse9900.htm).
House of Lords, Select Committee on European Union 2000: *EU Charter of Fundamental Rights*, Eighth Report, 16 May 2000.

The documents relating to the work of the Convention, quoted as "Charte" plus the official document number, can be searched and downloaded from the database of the Council (http://db.consilium.eu.int/df/default.asp?lang=en). The documents Charte 4332/00 and 4372/00 listing the amendments submitted by Convention members have to be ordered directly from the Council Secretariat.

Secondary Sources

Alston, Philip and J.H.H. Weiler 1999: An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights. In: Alston, Philip with Mara Bustelo and James Heenan (Eds.): *The EU and Human Rights*, Oxford: Oxford University Press, 3-66.
Amnesty International 1999: *Für Verfolgte ausgeschlossen? Asylpolitik in der Europäischen Union*, Bonn: amnesty international.
Anderson, Benedict 1987: *Imagined communities: reflections on the origin and spread of nationalism*, London: Verso.
Boekle, Henning, Jörg Nadoll, and Bernhard Stahl 2001: *European Foreign Policy and National Identity: Detecting the Link*, Paper Prepared for Presentation at the Fourth Pan-European International Relations Conference, Canterbury (U.K.), 6-10 September 2001.
Bosvieux, Frédérique 2000: A Business Perspective on the EU Charter. In: Feus, Kim (ed.): *An EU Charter of Fundamental Rights. Text and commentaries*, London: Federal Trust, 147-159.
Bull, Hedley 1977: *The Anarchical Society. A study of Order in World Politics*, London: Macmillan

Field Code Changed

Cederman, Lars-Erik 2001a (Ed.): *Constructing Europe's identity: the external dimension*, Boulder: Lynne Rienner.

Cederman, Lars-Erik 2001b: Political Boundaries and Identity Trade-Offs. In: Cederman, Lars-Erik 2001a (Ed.): *Constructing Europe's identity: the external dimension*, Boulder: Lynne Rienner, 1-32.

Christiansen, Thomas, Erik Jörgensen and Antje Wiener 2001 (Eds.): *The Social Construction of Europe*, London: Sage.

Clapham, Andrew 1991: *Human Rights and the European Community: A Critical Overview*, Baden-Baden: Nomos.

Clapham, Andrew 1999: Where is the EU's Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?. In: Alston, Philip with Maria Bustelo and James Heenan (Eds.): *The EU and Human Rights*, Oxford, 627-683.

De Búrca, Gráinne 2001: The drafting of the European Union Charter of fundamental rights. *European Law Review* 26, 126-139.

Deloche-Gaudez, Florence 2001: *The Convention on a Charter of Fundamental Rights. A Method for the Future?*, Notre Europe, Research and Policy Paper 15, November 2001 (http://www.notre-europe.asso.fr/fichiers/Etud15-en.pdf).

Diez, Thomas 1998: Perspektivenwechsel. Warum ein "postmoderner" Ansatz für die Integrationsforschung doch relevant ist. *Zeitschrift für Internationale Beziehungen* 5: 1, 139-48.

Diez, Thomas 1999: *Die EU lesen. Diskursive Knotenpunkte in der britischen Europadebatte*, Opladen: Leske und Budrich.

Donnelly, Jack 2000: An Overview. In: Forsythe, David P. (Ed.): *Human Rights and Comparative Foreign Policy,* Tokyo: United Nations University Press, 310-334.

Engels, Markus 2001a: *Soziale Grundrechte in der Europäischen Grundrechtecharta*. In: Frank, Thomas, Anne Jenichen and Nils Rosemann (Eds.): *Soziale Menschenrechte – die vergessenen Rechte? Zur Unteilbarkeit der Menschenrechte – ein interdisziplinärer Überblick*, Berlin: Dr. Köster, 77-89.

Engels, Markus 2001b: *Die europäische Grundrechtecharta: Auf dem Weg zu einer europäischen Verfassung?*, Reihe Eurokolleg 45, Bonn: Friedrich-Ebert-Stiftung.

Falke, Josef 2000: Soziale Grundrechte als Bestandteil einer Charta der Grundrechte der Europäischen Union. In: Bremische Bürgerschaft (Ed.): *Charta der Grundrechte der Europäischen Union*, Expert Meeting, 26 September 2000, Bremen.

Fearon, James D. and David D. Laitin 2000: Violence and the Social Construction of Ethnic Identity. *International Organization* 54: 4, 854-877.

Finnemore, Martha 1996a: *National Interests in International Society*, Ithaca: Cornell University Press.

Fossum, John Erik 2002: *Charters and Constitution-making. Comparing the Canadian Charter of Rights and Freedoms and the European Charter of Fundamental Rights*, Arena Working Paper 02/8, Oslo: Arena

Gijzen, Marianne 2001: The Charter: A Milestone for Social Protection in Europe?. *Maastricht Journal for European and comparative law* 8: 1, 33-48.

Goldsmith, Lord 2000: Consolidation of Fundamental Rights at EU Level – the British Perspective. In: Feus, Kim (ed.): *An EU Charter of Fundamental Rights. Text and commentaries*, London: Federal Trust, 27-38.

Gowlland-Debbas, Vera 2001: European Asylum Policies and the Search for a European Identity. In: Cederman, Lars-Erik (Ed.): *Constructing Europe's identity: the external dimension*, London: Lynne Rienner, 213-229.

Green, David Michael 2000: On Being European: The Character and Consequences of European Identity. In: Green Cowles, Maria and Michael Smith (Eds.): *Risks, Reform, Resistance, and Revival.* The State of the European Union, Vol. 5, Oxford: Oxford University Press, 292-322.

Guzzini, Stefano 2000: A Reconstruction of Constructivism in International Relations. *European Journal of International Relations* 6:2, 147-182.

Haltern, Ulrich 2001: *Europe goes Camper. The EU Charter of Fundamental Rights From a Consumerist Perspective*, Constitutionalism Web-Paper, ConWEB 3/2001.

Hausmann, Ute 2001a: Europäische Grundrechtecharta – Soziale Menschenrechte im Kreuzfeuer. In: *Jahrbuch Menschenrechte 2002*, Frankfurt: Suhrkamp, 251-261.

Hausmann, Ute 2001b: Soziale Menschenrechte in der globalisierten Welt – internationale Bedeutung der Grundrechtecharta. Friedrich-Ebert-Stiftung (Ed.): *Unteilbarkeit auf Europäisch – Signal*

28

weltweit? Soziale Menschenrechte in der Grundrechtecharta, Bonn: Friedrich-Ebert-Stiftung, 54-61.

Hohmann, Harald 2000: Die Charta der Grundrechte der EU: Ein wichtiger Beitrag zur Legitimation der Europäischen Union. *Aus Politik und Zeitgeschichte* B 52-53, 5-12.

Keck, Margaret and Kathryn Sikkink 1998: *Activists beyond Borders*, Ithaca/London: Cornell University Press.

Keller, Reiner 1997: Diskursanalyse. In: Hitzler, Ronald and Anne Honer (Eds.): *Sozialwissenschaftliche Hermeneutik,* Opladen: Leske und Budrich, 309-333.

Kowert, Paul 1999: National Identity: Inside and Out. In: Chafetz, Glenn, Michael Spirtas and Benjamin Frankel (Eds.): *The origins of national interests*, London: Frank Cass, 1-34.

Krüger, Hans Christian and Jörg Polakiewicz 2001: Vorschläge für ein kohärentes System des Menschenrechtsschutzes in Europa. *Europäische Grundrechtezeitschrift*, 92-105.

Laffan, Brigid 1996: The Politics of Identity and Political Order in Europe. *Journal of Common Market Studies* 34: 1, 81-101.

Leinen, Jo and Justus Schönlau 2001: Die Erarbeitung der EU-Grundrechtecharta im Konvent: nützliche Erfahrungen für die Zukunft Europas. *Integration* 24: 1, 26-33.

Lenaerts, Koen and Eddy de Smijter 2001: A "Bill of Rights" for the European Union. *Common Market Law Review* 38, 273-300.

Liisberg, Jonas Bering 2001: *Does the EU Charter of Fundamental Rights Threaten the Supremacy of Community Law?*, Jean Monnet Working Paper (http://www.jeanmonnetprogram.org/papers/01/010401.html).

Manners, Ian 2002: Normative Power Europe: A Contradiction in Terms?. *Journal of Common Market Studies* 40: 2, 235-258.

Manzella, Andrea 2001: Dal mercato ai diritti. In: Manzella, Andrea Andrea, Piero Melograni, Elena Paciotti and Stefano Rodotà (Eds.): *Riscrivere i diritti in Europa*, Bologna: Il Mulino, 29-55.

Marcussen, Martin, Thomas Risse, Daniela Engelmann-Martin, Hans-Joachim Knopf and Klaus Roscher 2001: Constructing Europe? The evolution of Nation-State Identities. In: Christiansen, Thomas, Erik Jörgensen and Antje Wiener 2001 (Eds.): *The Social Construction of Europe*, London: Sage, 101-120.

Mayring, Philipp 1997: *Qualitative Inhaltsanalyse. Grundlagen und Techniken,* 6th edition, Weinheim: Deutscher Studienverlag.

Melograni, Piero 2001: La Carta nel processo di costruzione europea: una testimonianza. In: Manzella, Andrea, Piero Melograni, Elena Paciotti and Stefano Rodotà (Eds.): *Riscrivere i diritti in Europa*, Bologna: Il Mulino, 91-102.

Ménéndez, Augustin José 2002: *Exporting rights: The Charter of Fundamental Rights, membership and foreign policy of the European Union*, Arena Working Paper 02/18, Oslo: Arena.

Meyer, Jürgen and Markus Engels 2001: The Charter of Fundamental Rights of the European Union. An introduction. In: Deutscher Bundestag, Referat Öffentlichkeitsarbeit (Ed.): *The Charter of Fundamental Rights of the European Union and the work of the Convention.* Texte und Materialien Vol. 29, Berlin: Deutscher Bundestag, 7-38.

Müller, Edith 1999: Weg zu einer Charta der Grundrechte der Unionsbürgerinnen und –bürger der EU. In: Heinrich-Böll-Stiftung (Ed.): *Europäische Verfassung, Grundrechte und Unionsbürgerschaft,* Brüssel: Heinrich-Böll-Stiftung, 59-67.

Müller-Graff, Peter-Christian 2000: Europäisches Verfassung und Grundrechtscharta: Die Europäische Union als transnationales Gemeinwesen. *Integration* 23: 1, 34-47

Noll, Gregor and Jens /Vedsted-Hansen, Jens 1999: Non-Communitarians. Refugee and Asylum Policies. In: Alston, Philip with Mara Bustelo and James Heenan (Eds.): *The EU and Human Rights*, Oxford: Oxford University Press, 359-410.

Pache, Eckhard 2001: Die Europäische Grundrechtscharta – ein Rückschritt für den Grundrechtsschutz in Europa?. *Europarecht* 36: 4, 475-4494

Paciotti, Elena 2001: La Carta: i contenuti e gli autori. In: Andrea Manzella, Piero Melograni, Elena Paciotti and Stefano Rodotà (Eds.): *Riscrivere i diritti in Europa*, Bologna: Il Mulino, 9-27.

Pernice, Ingolf 2000: Eine Grundrechte-Charta für die Europäische Union. *Deutsches Verwaltungsblatt*, No. 12 (15 June 2000), 847-459.

Pollak, Johannes and Monika Mokre 1999: Europäische Kulturpolitik als Identitätspolitik. Formen, Prozesse, Resultate. *Österreichische Zeitschrift für Politikwissenschaft* 28: 3, 317-331.

Reese-Schäfer, Walter 1999: Einleitung: Identität und Interesse. In: Reese-Schäfer, Walter (Ed.): *Identität und Interesse. Der Diskurs der Identitätsforschung*, Opladen: Leske und Budrich, 7-43.

Reese-Schäfer, Walter 2001: Globale Orientierung und Europabewußtsein, in: Landfried, Christine (Ed.): *Politik in einer entgrenzten Welt*, Köln: Verlag Wissenschaft und Politik, 99-116.

Risse, Thomas and Kathryn Sikkink 1999: The socialization of international human rights norms into domestic practices: introduction. In: Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink (Eds.): *The power of human rights: international norms and domestic change*, Cambridge: Cambridge University Press, 1-38.

Risse, Thomas and Stephen C. Ropp 1999: International human rights norms and domestic change: conclusions. In: Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink (Eds.): *The power of human rights: international norms and domestic change*, Cambridge: Cambridge University Press, 234-278.

Rodotà, Stefano 2001: La Carta come atto politico e documento giuridico. In: Manzella, Andrea, Piero Melograni, Elena Paciotti and Stefano Rodotà (Eds.): *Riscrivere i diritti in Europa*, Bologna: Il Mulino, 57-89.

Schachtschneider, Karl Albrecht 2000: Eine Charta der Grundrechte für die EU. *Aus Politik und Zeitgeschichte* B52-53, 13-21.

Schmuck, Otto 2000: Die Ausarbeitung der Europäischen Grundrechtscharta als Element der Verfassungsentwicklung. *Integration* 21: 1, 48-56.

Schönlau, Justus 2001: *The EU Charter of Fundamental Rights: Legitimation through Deliberation*, PhD Thesis – The University of Reading (UK).

Schwellnus, Guido 2001: *"Much ado about nothing?" Minority Protection and the EU Charter of Fundamental Rights*, Constitutionalism Web-Paper, ConWEB 5/2001.

Schwimmer, Walter 2000: Einheit – auch in den Menschenrechten, *Frankfurter Allgemeine Zeitung*, 14.03.2000: 12.

Sedelmeier, Ulrich 2000: Eastern Enlargement and the EU as an Actor in European Security Structures: The Interplay Between the EU's Role and Policy. In: *Redefining Security. The Role of the European Union in European Security Structures,* Proceedings from an ARENA Workshop, Arena Report No 7/2000, Oslo: Arena, 185-203.

Sikkink, Kathryn 1993: The Power of Principled Ideas. Human Rights Policies in the United States and Europe. In: Goldstein, Judith and Robert O. Keohane (Eds.): *Ideas and Foreign Policy. Beliefs, Institutions and Political Change*, Ithaca, 139-172.

Stone Sweet, Alex, Wayne Sandholtz and Neil Fligstein 2001: The Institutionalisation of European Space. In: Stone Sweet, Alex, Wayne Sandholtz and Neil Fligstein (Eds.): *The Institutionalisation of Europe*, Oxford: Oxford University Press, 1-28.

Stråth, Bo 2000 (Ed.): *Europe and the Other and Europe as the Other,* Brüssel: Peter Lang.

Van den Burg, Ieke 2001: Die EU-Grundrechtecharta aus der Sicht eines sozialen Europas. In: Kaufmann, Sylvia-Yvonne (Ed.): *Grundrechtecharta der Europäischen Union. Mitglieder und Beobachter des Konvents berichten*, Bonn: Europa Union Verlag, 35-50.

Voggenhuber, Johannes 2001: Die Wahrheit ist bloß eine Behauptung. In: Kaufmann, Sylvia-Yvonne (Ed.): *Grundrechtecharta der Europäischen Union. Mitglieder und Beobachter des Konvents berichten*, Bonn: Europa Union Verlag, 107-114.

von Bogdandy, Armin 2000: The European Union as a Human Rights Organization? Human Rights and the Core of the European Union. *Common Market Law Review* 37: 1307-1338.

Waever, Ole 1996: European Security Identities. *Journal of Common Market Studies* 34: 1, 103-132.

Walkenhorst, Heiko 1999: *Europäischer Integrationsprozeß und europäische Identität,* Baden-Baden: Nomos.

Weiler, J.H.H. 1999a: *The Constitution of Europe*, Cambridge: Cambridge University Press.

Weiler, J.H.H. 1999b: Editorial: Does the European Union Truly Need a Charter of Rights. *European Law Journal* 6: 2, 95-97.

Weiler, J.H.H. and S.C. Fries 1999: A Human Rights Policy for the European Community and Union: The Question of Competences. In: Alston, Philip with Mara Bustelo and James Heenan (Eds.): *The EU and Human Rights,* Oxford: Oxford University Press, 147-165.

Weller, Christoph 2000: *Kollektive Identität in der Menschenrechtspolitik. Zur Analyse der Entstehung einer asiatischen Identität*, Paper presented to the Workshop "Die Menschenrechtspolitik Japans, Indonesiens und der Philippinen: Spiegel 'asiatischer Identität'?, Instituts für Asienkunde, Hamburg, 29.06.2000.

Wendt, Alexander 1999: *Social Theory of International Politics*, Cambridge: Cambridge University Press.

Wheeler, Nicholas J. and Tim Dunne 1998: Good international citizenship: a third way for British foreign policy. *International Affairs* 74: 4, 847-870.

Wiener, Antje 1998: *"European" Citizenship Practice - Building Institutions of a Non-State*, Boulder: Westview Press.

Wiener, Antje 2001a: The Constitutional Significance of the Charter of Fundamental Rights. *German Law Journal* 2: 18.

Wiener, Antje 2001b: *Zum Demokratiedilemma europäischer Politik: Symbole und Inhalte der Verfassungsdebatte*, Jean-Monnet-Working Paper 2001/1, Jean-Monnet-Centre for European Studies, University of Bremen.

Wiener, Antje 2001c: Zur Verfassungspolitik jenseits des Staates. Die Vermittlung von Bedeutung am Beispiel der Unionsbürgerschaft. *Zeitschrift für Internationale Beziehungen* 6: 1, 73-104.

Wouters, Jan 2001: The EU Charter of Fundamental Rights – Some Reflections on its External Dimension. *Maastricht Journal for European and comparative law* 8: 1, 3-10.

Zöckler, Markus 2001: Auswirkungen der Europäischen Grundrechtecharta auf das internationale und europäische Menschenrechtsregime. In: Friedrich-Ebert-Stiftung (Ed.): *Unteilbarkeit auf Europäisch – Signal weltweit? Soziale Menschenrechte in der Grundrechtecharta*, Bonn: Friedrich-Ebert-Stiftung, 18-28.