



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**THE ROLE OF REGIONAL
HUMAN RIGHTS
MECHANISMS**

DROI

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

THE ROLE OF REGIONAL HUMAN RIGHTS MECHANISMS

Abstract

Regional human rights protection mechanisms constitute important pillars of the international system for the promotion and protection of human rights. At the current state five regional human rights mechanisms can be distinguished varying significantly from a very advanced human rights protection system to an emerging one. In the Council of Europe area, the European Court of Human Rights, the main human rights protection mechanism, has become a victim of its own success and due to its workload is struggling to remain efficient. The Inter-American system is well developed but the diverting political systems together with the non-permanent and not obligatory character of the Court threaten to undermine the political weight of the system. Even though all essential elements of an effective regional human rights mechanism are put in place in Africa, financial as well as professional support will be crucial to overcome some important structural constraints that affect its effectiveness. Even though the Arab Charter of Human Rights in 2004 and the establishment of the Arab Committee of Human Rights in 2009 are important steps in the Arab World, the Charter is in some parts inconsistent with international human rights standards, and it is doubtful whether the members of the Committee are sufficiently independent to address human rights issues effectively. Sub-regional mechanisms such as the ASEAN mechanism appear to be the most practicable solution in the Asia-Pacific region. However, no underlying human rights instrument such as a Declaration or Convention has been developed for the system so far, and the still predominant ASEAN thinking of limiting human rights discussion by reference to non-interference in internal affairs puts the effectiveness of this system in question.

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EXECUTIVE SUMMARY

Regional human rights protection mechanisms constitute the main pillars of the international system for the promotion and protection of human rights. Currently **five regional human rights mechanisms** can be distinguished varying significantly from a very advanced human rights protection system, over an emerging one that is still in its fledgling stages, to a region where no human rights mechanism could be established, as will be shown in **Chapter 1** of this study.

In **Europe** and the **Americas** well-equipped and effective regional human rights systems have been established over the years. In both systems a whole set of regional human rights treaties is in place, together with a corresponding system of procedures ensuring the implementation of the treaties or at least their effective monitoring. Additionally, in both systems a judicial procedure has been established to adjudicate on inter-state or individual complaints alleging violations of human rights. However, while they are rather advanced, both protection systems suffer from a number of flaws. In Europe, the European Court of Human Rights, the main human rights protection mechanism, became something of a victim of its own success, and due to its workload, is now struggling to remain efficient. In the Inter-American system meanwhile, on the one hand, the diverting political systems are increasingly undermining the political weight of the Organisation of American States; on the other hand, the non-permanent and not obligatory character of the Court challenges the effectiveness of the human rights protection mechanism.

Even though all essential elements of an effective regional human rights mechanism are put in place in **Africa**, the system still suffers from some important constraints of a structural nature that reduce its effectiveness. Financial as well as professional support will be crucial for making the African system a success story.

The **Arab human rights protection mechanism** does not constitute a regional mechanism in the strict sense since the countries concerned are geographically located in both Africa and Asia. Consequently, the system is established on the underlying principles of the distinctive nature, heritage, and unity of Arab nation, strongly linked to Islam as its dominant religion. Even though the adoption of the Arab Charter of Human Rights in 2004 and the establishment of the Arab Committee of Human Rights in 2009 are important steps towards a comprehensive protection and promotion of human rights in the region, these developments have to be assessed with caution. The Charter is in some parts inconsistent with international human rights standards, a step back for human rights protection, and it is doubtful whether the members of the Committee are sufficiently independent to address human rights issues effectively.

There is a certain tendency worldwide to consider regional human rights systems as important pillars of international human rights promotion and protection and, thus, there are increasing efforts to strengthen and improve existing ones. Within this framework the **Asia-Pacific** region remains the last UN defined region without such a regional human rights mechanism. Cultural and political diversity, together with a lack of political will, are the main factors that explain why no such mechanisms have really flourished in this region. What seems more plausible, however, is the hope that sub-regional human rights mechanisms will advance here, and, in the longer term, contribute to the creation of a regional human rights protection system in the Asia-Pacific area. Consequently, sub-regional mechanisms, like the ASEAN mechanism with the ASEAN Intergovernmental Commission on Human Rights, appear to be the most practicable way of promoting and protecting human rights effectively in the Asia-Pacific region. Still, once again and similar to the Arab system, the developments made have to be assessed critically. In the ASEAN no underlying human rights instrument such as a Declaration or Convention has been developed thus far. Additionally, the predominant emphasis placed on non-interference in internal affairs – with human rights still being considered – in these terms – brings the effectiveness of this system more than into question.

Chapter 2 will examine subsequently, whether especially in those regions where the regional mechanisms are still ineffective or underdeveloped, **National Human Rights Institutions** may play a significant role, as they do for example already in the Asia-Pacific region, where under the Asia Pacific Forum, 17 NHRIs

perform a more than recognisable task. Even though in hardly any of the established regional mechanisms is cooperation with NHRIs already institutionalised, this track is a possible one for the future, enhancement, promotion and protection of human rights worldwide. The main problem up to date, however, has been the lack of independence and capacities of NHRIs and especially professional support which will be necessary for the advancement of their capabilities.

Chapter 3 analyses the role of the **UN** and especially the OHCHR, which plays a crucial role in the advancement of the effectiveness of regional mechanism especially for those in Africa, the Arab States and in the Asia-Pacific region. Because regional human rights standards complement international ones by putting them in a local context, a comprehensive promotion and protection of human rights requires their effectiveness and functioning. The OHCHR emphasises the importance of regional systems; moreover, the UN is one of the key actors that supports the amelioration of existing regional human rights mechanism and the creation of the latter where they do not yet exist. However, with regard to inter-regional cooperation the collaboration between the UN human rights mechanism and the regional ones is still inefficient and does not occur on a regular and institutionalised basis. Nevertheless, this inter-regional cooperation between the UN treaty bodies and Special Procedures and the regional mechanisms are deemed to be necessary in order to guarantee the comprehensive protection and promotion of human rights globally. Further attempts have to be made to exhaust the full potential of such cooperation and it is in this framework that a **World Court of Human Rights** has been proposed.

From the lessons learned in **Part One, Part Two** then analyses the existing general framework for cooperation between the European Union and regional human rights protection systems, as well as the particular framework that the European Union has established in an *ad hoc* manner regarding each regional system. **Chapter 1**, in particular, proposes how the **general mechanisms** for cooperation with regional human rights protection systems that the European Union has in place, as well as the already set up **relationship with national and international partners**, are or could be used **to realise these regional systems to the fullest extent possible**. In particular, it is suggested that the European Parliament could take advantage of existing mechanisms to foster regional human rights protection systems. The alluded-to general mechanisms and partners for cooperation include the **European Instrument for Democracy and Human Rights (EIDHR), Human Rights Clauses, NHRIs, inter-parliamentary cooperation, Civil Society (Human Rights Defenders and NGOs) or educational institutions**. These partners and mechanisms can be used to **complement the political dialogues** on human rights and strategic partnerships that the European Union has established with third countries or regions.

Following the logic of the Lisbon Treaty, The European Union's **external relations have to become more unitary** and homogeneous. This is not an exception vis-à-vis the actions taken by the European Union in regard to Human Rights, and to orientate the above mechanisms and partnership relations towards the goal of enhancing the protection and promotion of human rights through regional human rights mechanisms is one way of achieving a coherent unitary external human rights policy.

Chapter 2 seeks to **identify particular courses of action** that the European Union and, particularly, the European Parliament could take to contribute in a fundamental manner to the strengthening of human rights protection mechanisms. The courses of action are designed accordingly with the particularities and needs of each system. An analysis of the **overall priorities** and of **policy considerations** suggests that regional human rights mechanisms be placed at the centre of the European Union's agenda and, particularly, at the heart of the European Union's role within the UN. It also suggests enhancing the courses of action with two general orientations; either towards **cooperation and exchange of information**, or towards **capacity building and financial aid**, depending on the system that will be at stake. In a general basis, the actions recommended for the **Asian** and **Arabic** systems is to support a cooperative approach that places its emphasis in **exchange of information, diplomacy, a more coordinated action between the UN and the European Union in the region (through the OHCHR) and capacity building and**

structuring of a weak civil society. It is different for the **African** system, where extensive courses of action are proposed through three different channels. The first includes mechanisms of **direct capacity building** that go directly from the European Union to the African regional system and sub-regional actors. The second one designs a **horizontal strategy** with recommendations to **foster inter-regional systems relationships**, as well as to **enhance intra-regional mechanisms and effectiveness of human rights protection**. Finally, a third approach proposes organising **new courses of action from a universal integrated perspective where the UN is a fundamental actor to facilitate inter and intra-regional cooperation** among regional human rights protection mechanisms.

Finally, the concluding remarks synthesise all proposed new courses of action in regard to each system's needs, with particular attention paid to differentiating between the political and the technical actions to be taken by the European parliament (and the European Union) to make regional human rights mechanisms a referent in worldwide human rights protection.

8 Recommendations for Promoting and Developing Regional Human Rights Systems

1. **Placing regional human rights protection mechanisms among the primary points of the EU human rights agenda:** the EU should work towards the elaboration of a specific strategy intended for the fostering of regional human rights protection systems. This strategy should be implemented through traditional ways of action of the EU: political dialogue, cooperation with third countries, financing through existing funds. The use of new instruments is not recommended; instead the EU should deploy existing instruments in order to foster regional human rights mechanisms.
2. **Central elements of the strategy:** the facilitation of exchange and cooperation among regional systems; strengthened support for the capacity building/maintenance/development of the regional system in Africa; improvement of cooperation with the LAS based on the Arab Charter; contribution to the efforts aimed at the establishment of the regional system in Asia (in particular South-East Asia) and assistance to national capacity building in Third Countries to enable them to better comply with international human rights obligations and promotion of the access to the regional system for individuals.
3. **Exchange and cooperation among regional systems:** support of a platform for exchange of experience (discussion and exploration of cross-regional challenges to the human rights protection; sharing good practices regarding institutional and procedural aspects of the functioning of regional systems; discussing the relationship between universal and regional system of human rights protection; etc).
4. **Institutionalized cooperation (which can be formalized through a Memorandum of Intent or a Memorandum of Understanding) between the universal level – UN – and the regional systems:** Regular exchanges at different levels. For example, exchange of information and documentation including periodical meetings where common goals and expected outcomes could be jointly planned; joint actions (joint visits; joint reports in particular matters that demand joint action; joint press releases, country visits of special Rapporteurs).
5. **Non-institutional Cooperation:** NHRIs, NGOs, HRDs, should assist each other, and cooperate. They should particularly cooperate with the regional organisation in its investigations, facilitating country-visits and cooperating with the transfer of information relevant for the regional court's investigation (including unrestricted, confidential access to victims, witnesses, locations). In the educational field the creation of particular human rights programs that operate horizontally between regions or within a particular region to enhance the opportunities for human rights education (regional masters, online education, etc) is recommended.
6. **Shaping the engagement of the Human Rights Council in strengthening inter-regional cooperation:** The EU can draft, or support the drafting, of the annual report on the state of regional human rights systems in the next Human Rights Council's meeting. The EU can enter into a strategic partnership with the Office of the High Commissioner for Human Rights with a view to enhancing regional protection systems. Cooperation with the Council of Europe and the OSCE to continue to provide know-how and share practical experience.
7. **Taking soft diplomacy seriously:** The EU should also use more indirect actions to bring on board those institutions and states that are more reluctant to cooperate and engage in

capacity-building measures. In general, the EU has to send the message that regional human rights are a priority and, thus, those taking regional systems seriously will share the EU's preferences.

8. **Taking new technologies as a fundamental tool to improve regional human rights systems:** financing and developing new technology structures will allow the setting up of many of the recommendations of the previous points (e-learning platforms; databases and websites for regional human rights court's cooperation; spreading of human rights culture; etc).

LIST OF ABBREVIATIONS

ACFC	Advisory Committee of Independent Experts of the Framework Convention for the Protection of National Minorities
ACHPR	African Charter on Human and Peoples' Rights
AFET	Committee on Foreign Affairs of the European Parliament
AICHR	ASEAN Intergovernmental Commission on Human Rights
APRM	African Peer Review Mechanism
APT	Commission and the Association for the Prevention of Torture
ASEAN	Association of Southeast Asian Nations
AU	African Union
CDDH	Steering Committee for Human Rights
CERD	The Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
CoM	Committee of Ministers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSCE	Conference on Security and Cooperation in Europe
DROI	Subcommittee on Human Rights
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee of Social Rights
ECHR	European Court of Human Rights
EIDHR	European Instrument for Democracy and Human Rights
ESC	European Social Charter
EU	European Union
EUMC	European Monitoring Centre on Racism and Xenophobia
FRA	European Agency for Fundamental Rights
GRETA	The Group of Experts on Action against Trafficking Human Beings
HCNM	High Commissioner on National Minorities
HRD	Human Rights Defenders
ICJ	International Commission of Jurists
LAS	League of Arab States
LIBE	Committee of Civil Liberties, Justice and Home Affairs
NEPAD	New Partnership for Africa's Development
OAS	Organization of American States
OAU	Organization of African Unity
ODIHR	The Office for Democratic Institutions and Human Rights
OHCHR	Office High Commissioner of Human Rights
OSCE	Organization for Security and Co-operation in Europe
PIF	Pacific Island Forum
SAARC	South Asian Association for Regional Cooperation
SCHR	Standing Committee on Human Rights in the LAS

INTRODUCTION

1. General Scope of the Study

The main purpose of this study is to analyse the role of regional human rights mechanisms in the context of the international architecture of the promotion of human rights and the possible relationship between regional human rights courts. It will try to identify elements for a roadmap that would allow for the realisation to the fullest extent possible of the potential inherent in the development of regional human rights systems, as well as to provide suggestions for courses of action to be undertaken by the European Union.

From what has just been stated, we provide a two-folded analysis; a more normative-oriented analysis initially, followed by a more policy-oriented one that follows on from the first. The objective of this dual analysis is to provide the appropriate background to clearly identify the needs of each regional system in order to become stronger and more efficient, both from policy and normative perspectives. In this context, the possible courses of action that the EU – and particularly the European Parliament – could take to enhance the efficiency of those regional systems are privileged.

The normative-oriented aspect of the study (Part One) offers a conceptual mapping of the state of regional human rights protection systems. This includes a detailed mapping of each system (Chapter 1) and the analysis of the role of National Human Rights Institutions (NHRI) and of the UN (Chapter 2), which heads the description of regional human rights mechanisms. Consequently, this descriptive and normative analysis in Chapters I and II provides a sense of the strengths and weaknesses of each system from which any policy-oriented strategy has to depart.

The policy-oriented aspect of the study (Part Two) is devoted to the role of the EU regarding human rights mechanisms. Here, another division is made to maximise the types of actions that the EU can take. Firstly, on a general level, this study looks at **what the international community and particularly the EU can do regarding regional human rights protection systems** (Chapter I). Secondly, it looks at the **role of the EU vis-à-vis particular regional systems**, because only a case-by-case approach can provide the necessary information to propose further action to expand and consolidate said systems. Under this casuistic framework we have provided a particular approach to the relationship between the EU and the African regional system. Both the general and the particular approaches are dealt with from a procedural perspective. The commissioned study seeks to develop the **relationship among instruments of human rights protection** rather than an in-depth study of the substance of the rights recognised by each system.

2. Basic Framework of the Regional Human Rights Protection Mechanisms

An idea that repeatedly appears in this study is the heterogeneity of regional human rights protection systems. They differ in nature and in effectiveness which, consequently, means that the appropriate action to be taken for the advancement of regional human rights protection systems will also be heterogeneous and asymmetric. To manage said heterogeneity, one can distinguish, in general terms, four basic types of situations:

- a. **An advanced regional system of the human rights protection (Europe and America).**
- b. **A regional system requiring further consolidation (Africa).**
- c. **An emerging regional system – at the initial stage of standard setting and implementation machinery (Arab Countries).**
- d. **A region without a regional system of the human rights protection (Asia).**

2.1. The Advanced Human Rights Systems (Europe and Americas)

In Europe and the Americas there is a functional, well-equipped and rather effective regional system of human rights protection, whereby the following four criteria are fully met by the system established by the Council of Europe (CoE) and the European Union (EU) and, in a substantial part, met in the Americas:

1. **All countries of the largely understood region are parts of the system, in essence bound by legal commitments on an equal footing.**
2. **Not only is a set of regional treaties in place, but so is a system of procedures that should ensure the implementation of the treaties or, at least, effective monitoring in this regard.**
3. **A judicial procedure has been established to adjudicate on cases and controversies concerning the enjoyment of human rights, which is accessible to victims of violations of these rights.**
4. **There is a system of follow-up to and enforcement of the decisions in human rights cases by the regional judicial power.**

Despite the fact that the CoE's system follows these criteria, it still has shortcomings that primarily relate to two points. Firstly, it has separate mechanisms to protect, on the one hand, civil and political rights and, on the other, social, economic and cultural rights. In addition, the advancement of the protection mechanisms of rights accessible to individuals is asymmetric with a rather strong preference for the first category of rights. Secondly, it has a limited capability to launch a swift response to problems occurring in the region. On the one hand, the CoE played (and partially continues to do it) a very important promotional role in the political transformation in Eastern and Central Europe that started in 1989. On the other hand, institutions established under the CoE's system (e.g. European Court of Human Rights) do not dispose over capacities commensurate to their tasks. One has to wait with the final assessment for the results of the intended reform in this regard.

The Inter-American System followed to a large extent the examples tested in Europe. However, two major factors have a negative impact on its work today. Firstly and notably, the absence of the US as a party to the Inter-American Convention of Human Rights and the lack of a sufficient political support among member-states of OAS for countering human rights problems in some countries. In other words, the system is not universal for not every state of the region has ratified the American Convention on Human Rights. Secondly, the absence of autonomous access to the system by individuals, for only if states have agreed on such access individuals will be able to bring their cases in front of the Inter-American Commission and the Inter-American Court of Human Rights. This reduces the impact of Inter-American institutions in some cases. Nevertheless, the concept underlying the Inter-American system is truly advanced.

2.2. A Regional System Requiring Consolidation (Africa)

In this case, all essential elements of a regional system of human rights protection have been put in place. The standard-setting has been advanced and continues to be developed. However, the system suffers from some important problems that affect its effectiveness, namely:

1. **Deficiencies in institutional capacities.**
2. **The lack of political determination on the part of some AU member states to cooperate in a constructive manner with the regional system.**
3. **Insufficient domestic capacities to respond appropriately to the requirements of the regional system.**

Together, these factors act as structural obstacles to the regional human rights protection system.

2.3. An Emerging Regional System (Arab Countries)

One can wonder why the League of Arab States decided to set up its own system of the promotion and protection of human rights outside the geographic structure adopted by the United Nations according to which one part of the Arab countries belong to the African and the other part to the Asia-Pacific region. One can draw from the 2004 Arab Charter on Human Rights that the underlying principle of this project is the distinctive nature, heritage, and unity of Arab nation, strongly linked to Islam as its dominant religion. At first glance, this would mean that in this way the first regional system – since it is an inter-state undertaking – is based on the principle of nationality. However, reading carefully the preamble to the charter one can note some analogies to the European Convention on Human Rights, which also refers to ‘European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law’. In other words, the system in the framework of the League of Arab States originates in the political will of its members to have their own human rights protection system in the context of common values and heritage, making them distinct from members of geographically based regional groups. While cultural homogeneity was seen as the essential foundation and premise of success of the system under the Council of Europe at its early stage, one can consider whether the same could be said about the recently set up nucleus of an Arab system and whether cultural homogeneity in this case will be seen as an asset in striving to protect human rights as common standards of achievement set by the 1948 Universal Declaration of Human Rights. This is difficult to predict, the more so that the political environment of this step still lacks clarity and the institutional practice is largely missing. Having said that, one should hope that the Arab system of human rights protection, under conducive circumstances, can develop towards a protective instrument that is helpful to people. **It has to be borne in mind, however, that shortly after the Arab Charter had been ratified by the seventh member state of the LAS – which is needed for the Charter to enter into force – the UN High Commissioner for Human Rights expressed her reservations concerning some inconsistencies of this document with international human rights standards.**

2.4. A Region without a System of Human Rights Protection (Asia and Pacific)

Despite the growing tendency in other regions to strengthen or establish their systems of human rights protection, and in spite of consultations in various settings of Asian states and groups of civil society that have been taking place for many years, there seems to be no imminent possibility of the development of such a system. Some fundamental questions need to be answered:

1. **Taking into account the size of the Asian and Pacific region in terms of the United Nations (population, number of states), is a functional Asian human rights protection system, first, possible at all? Second, is it a rational step?**
2. **Considering specifically that Asia-Pacific probably constitutes the most culturally and politically diversified region of the world, the question is whether there is a sufficient degree of homogeneity that would allow such a system to function? Already today, some countries associate or tend to associate themselves with other regional groups or other types of settings, as e.g. the aforementioned Arab states or Australia, New Zealand, South Korea and Japan.**

Irrespective of the eventual size and framework of any regional human rights agreement, the essential issues concern, however, political will and the determination to set it up. So far, while noting with appreciation some positive movements, it is difficult to speak of any initiatives based on sufficiently clear roadmaps.

2.5. Outlining the Basic Elements that any Regional Human Rights Protection System should aim at

Taking into account the differences among these systems, there are four basic elements that allow regional systems to become effective mechanisms for human rights protection. These four relate to **regional inclusiveness** (a), **independence** (b), **access to justiciability** (c) and **follow-up mechanisms** (e):

- a) **All countries of the largely understood region are parts of the system, therefore, all are basically bound by legal commitments on an equal footing. These legal commitments are established by a set of regional treaties and the appropriate procedures to implement the latter should also be in place.**
- b) **The human rights protection system has to be independent. One cannot obtain real control over the protection of human rights when such control is performed by a commission composed of state-appointed members who, consequently, are likely to follow the instructions of the state that has appointed them. The control, thus, has to be performed by independent experts where, the particular formula of a jurisdictional body remains the model that has most effectively performed an independent control of human rights violations within the member states of a given system.**
- c) **Access to the system for individuals is indispensable. If access is only triggered by attending to state demands, this risks not only allowing human rights violations, but also developing a biased mechanism in which only those violations that states are interested in giving publicity to – for political and diplomatic reasons – will be brought to light through the human rights protection system.**
- d) **Depending on the nature of the organ that controls human rights protection (a jurisdictional body or a political commission) there will be a jurisdictional decision that is binding or a report accompanied by recommendations. Be it one or the other, it is necessary for the efficacy of the system to have a regular follow-up system in place that will ensure that the appropriate remedies to stop or compensate human rights violations have been (or are being) taken.**

These four points provide preferred practices that could be used as yardsticks to measure and compare the advancement of each system.

PART I. – DESCRIPTION OF THE HUMAN RIGHTS SYSTEMS

1 GENERAL OVERVIEW

We begin by recalling the four different scenarios that we have proposed when comparing the five regional human rights systems examined in this study.¹ Due to the significant disparities in the level of development of each system, a bare comparison of all four existing regional mechanism and the ASEAN sub-regional mechanism does not appear to be useful. As the human rights protection systems in the Americas under the auspices of the OAS and in Europe under the framework of the CoE are most advanced, the subsequent part will analyse into detail the major strengths and weaknesses of the two systems in a comparative way. This will be followed by an analysis of the deficiencies of the African human rights system and by a concluding assessment of the newly established human rights protection systems in the Arab States and in the ASEAN.

1.1 Europe and Americas

Both in Europe and in the Americas, well-equipped and rather effective regional human rights systems have been established. As already mentioned (See Annex I), both systems have a whole set of regional human rights treaties with the respective supervisory and **expert bodies (more than 207 for the CoE)**.

In Europe, the **European Convention on Human Rights and Fundamental Freedoms** is the primary human rights instrument.² During the first 50 years of the CoE's human rights protection system's existence, the latter functioned similarly to how the Inter-American System is functioning today; that is, on the basis of a Commission having quasi-judicial functions and a non-permanent Court. It was only in 1998 that Protocol 11 established the European Court of Human Rights (ECHR) as a **permanent Court** overtaking the tasks of the former Commission which was abolished. Any individual claiming to be a victim of a violation of a human right enshrined in the ECHR can therefore directly lodge a complaint against a member state at the Court. Although this **individual complaint mechanism** is one of the major strengths of the system, it has also created serious problems. Regarding the mechanism's success, the influence of the ECHR's case law within and outside Europe is widely acknowledged. This case law refers to multiple and diverse fields such as the rights of detainees, the rights in jurisdictional procedures or the rights of same-sex couples to name just a few. Regarding the mechanism's drawbacks, today, the Court is a victim of its own success and is totally overloaded with work. This fact is best reflected by the 124 000 pending cases in March 2010 and the 57 100 applications in 2009. Therefore, great expectation and hope is pinned on Protocol No 14, which proposes a comprehensive reform of the Court, and is about to enter into force.

A further shortcoming of the **ECHR** is its limited jurisdiction on **social, economic and cultural rights**, leaving the control of these rights in the hands of a weaker supervisory body of the European Social Charter, namely the European Committee of Social Rights (ECSR), which has no judicial powers. Even though both, the European and American systems, lack judicial powers regarding these rights and are generally not able to receive individual complaints – except the ECSR European Committee on social Rights – they play, particularly in Europe, an important role with regard to standards setting. The **soft approach** of the expert bodies, issuing guidelines and recommendations drawn up in accordance with states, allows them to set standards in accordance with the national governments and react to social or political changes

¹ For a detailed study of each regional system see Annex I.

² In Europe additionally to the human rights system of the Council of Europe other human rights institutions and instruments can be found under the framework of the EU and the OSCE. However, since the CoE and its Court play the most prominent role in the protection and promotion of human rights in Europe this analysis will only refer to this one system. For a comprehensive view please read Part 1 of this study.

faster than a Convention or Charter could do. Even the ECHR refers to them in its judgements, and thus creates a legally-binding jurisprudence.

Finally, the coordination between different actors within the European system, namely between the CoE and the European Union (EU), is progressing. Joint actions are taken and, particularly, the accession of the EU to the European Human Rights Convention allows for the setting of common standards for the European continent between the two actors, as well as allowing anyone to access the ECHR in case of a human right violation committed by a member state or by the EU.

In the Americas, despite the fact that the **Inter-American system** is procedurally advanced, it sometimes **lacks efficiency**. One major problem the OAS has to deal with is the dissimilarities of its member states in various regards (e.g. legal and socio-economic heterogeneity of member states).³ The imbalances of powers, the US as the only superpower, and the increasingly diverging political systems in the Western hemisphere are undermining the political weight of the human rights institutions of the OAS. Furthermore, the **two strands of human rights instruments** – on the one hand, the American Declaration on the Rights and Duties of Man and, on the other hand, the American Convention of Human Rights – is challenging the effectiveness of the human rights protection mechanism.

Moreover, the **Inter-American Commission on Human Rights** has a quasi-judicial and promotional mandate and the **Inter-American Court** has a judicial function over those states that are parties to the American Convention and that have recognized its jurisdiction. However, only 25 of the 35 Member States have ratified the Convention – the US, most prominently, has not – and not all of them have accepted the Court's jurisdiction to rule over alleged violations of human rights.⁴

It is a major **strength** of the Inter-American system that the Commission within its promotional functions is allowed to investigate human rights situations in any of the OAS member states by making **country visits, carrying out on-site observations and publishing country reports**.⁵ Its quasi-judicial function encompasses the interpretation of the human rights documents and the making of recommendations on individual petitions alleging human rights violations. **Individual complaints** can be lodged at the Commission based on either the American Declaration or on the American Convention on Human Rights. Though the decisions of the Commission do not have a legally binding character, they –at least– guarantee a **minimum of supervision** of the compliance with the human rights standards set forth in the human rights instruments by the member states of the OAS. However, one problem arising with regard to this competence is the '**filter-position**' that the Commission holds vis-à-vis any complaint before the latter can be brought to the Court. Consequently, individual complaints cannot be directly lodged with the Court and it is the Commission that launches the complaint. This is a direct cause of the very low number of complaints that reach the Court. For example, the number of complaints that the Commission receives has increased to around 1300 complaints a year.⁶ In 2008, the Commission exercised its jurisdiction over more than 500 million inhabitants and only nine cases were submitted to the Inter-American Court of Human

³ In 1962 Cuba was suspended from active participation, however, in 2009 a resolution was adopted resolving the suspension of 1962 by stating that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS. Additionally, in July 2005 Honduras was suspended from active participation in the OAS as a result of the June 28 coup d'état that expelled President José Manuel Zelaya from office.

⁴ 22 states accepted the jurisdiction of the Court, available at: <http://www.cidh.org/Basicos>

⁵ That this tool is used by the Commission in a rather effective way to address human rights violations was confirmed by its latest report on Venezuela in December 2009 accusing Venezuela's government of human rights abuses.

⁶ See Annual Report of the Inter-American Commission on Human Rights 2008, Chapter 3. Inter-American Commission on Human Rights, Annual Reports, <http://www.cidh.org/annualrep/2008eng/TOC.htm>

Rights.⁷ To this factor that seriously jeopardises the effectiveness of the Inter-American Court, one can also add the Court's **non-permanent character** and the fact that this institution is notoriously **under-funded**. In this regard it is interesting to notice that the budget of the Inter-American Commission in 2009 was more than twice the budget of the Inter-American Court.⁸

With regard to **jurisprudence**, the **Inter-American Court** performs an impressive role. In the fields of indigenous people, transitional justice and amnesty laws, the Court delivered some remarkable and **progressive** judgements, especially when it comes to **reparations**. Art. 63 of the American Convention opens up a wide horizon in respect of reparations for violations of the rights enshrined in it. The Court amplified in its decisions the notion of reparation beyond the common material compensation, thereby applying a very comprehensive conception of separation that would include, for example, memorial activities. One aspect of the rich case law with regard to reparations which has to be pointed out is the Court's jurisprudential construction of the **concept of 'project of life'**, linking reparation to the concept of personal fulfilment which an individual may have in his or her life.⁹

The problems arising with regard to the Court's judgements, is that there is **no strong institutionalised form of follow-up** included in the Inter-American system; it is thus mainly due to the pressure of civil society that states generally comply with the judgements made by it. However, an institutional back up for the decisions of the Court as can be found in the Council of Europe, where the Committee of Ministers supervises the execution of judgements, is missing from the Inter-American system.

Finally, it is important to address the **non-institutionalised aspect** of the two systems. The **social perception** of these systems and, in particular, **the role played by NGOs**, is a very important factor for measuring the strengths and weaknesses of each system. Both, in Europe and the Americas NGOs have a very active role in the promotion and protection of human rights. They are in a position to lobby governments and build up a sophisticated network of civil society actors.

In the Inter-American system the role of NGOs has been pivotal in two respects. On the one hand, NGOs have facilitated individual access to the system enormously. That is, due to poverty, illiteracy, security, among other factors, many victims of human rights violations in America are not in the position to bring their cases in front of the Inter-American Commission and Court. NGOs, thus, have provided security to human rights defenders and human rights violations victims, as well as helping with resources and expertise to bring these cases to the system. This task of NGOs – which are often associations of human rights violation victims' families – has also a second positive impact within the system, namely that of making the Commission's decisions and the Court's jurisprudence on human rights more sophisticated.. NGOs have allowed many diverse violations to reach the Court. In particular, vis-à-vis the Commission, where most of human rights violations are brought by NGOs, there has been a direct influence of the work of civil society and the decisions taken by this body. Due to the complaints brought by NGOs regarding Brazil, the Commission opened an investigation on slavery in this country. In the same manner, the Commission has paid particular attention to women's rights thanks to the applications brought by women right's associations.¹⁰

⁷ Ibid.

⁸ OAS, Office of the Secretary General, Program Budget of the Organisation, p. 5, available at <http://www.oas.org/budget/2009/Budget%20Approved%202009%20English.pdf>

⁹ Inter-American Court of Human Rights, Loayza-Tamayo vs. Peru, Judgment of November 27, 1998, para. 148, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_42_ing.pdf

¹⁰ Krsticev, V., 'El papel de las ONG en el sistema Interamericano de protección de los derechos humanos. Trámite de los casos ante la Corte Interamericana de Derechos Humanos', in: Hernández Montes de Oca, R. (ed.), *El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral del Siglo XXI (MEMORIA DEL SEMINARIO)*, Tomo I. 23 y 24 de noviembre de 1999, Biblioteca Jurídica Virtual: Margarita 2003, at pp. 408-410.

1.2 Africa

Even though in Africa all the essential elements of an effective regional human rights mechanism are in place, the system still suffers from some important deficiencies that affect its effectiveness, deficiencies that are mainly of a structural nature.

One obstacle to the effective functioning of the African human rights mechanism is the **lack of political determination** of some member states to cooperate with and participate constructively in the regional mechanism. For instance, states are held to biannually report to the Commission on their efforts in implementing the African Charter on Human and People's Rights with the aim of establishing an objective dialogue on the improvements and the still-existing gaps that each state has to face regarding human rights protection. This theoretically effective mechanism suffers from the possibility of falling under malign political influence and the unwillingness of states to accept external criticism on their human rights records; as a result, the biannual report has remained a rather ineffective instrument. The same applies to the African Peer Review Mechanism (APRM), an innovative monitoring process consisting of a national self-assessment based on a questionnaire, the drafting of a Program of Action to remedy identified shortcomings, an international review, a country visit and the final country review report. However, the fruits of the mechanism are significantly reduced since only 29 countries have accepted the APRM.

Furthermore, **deficiencies in institutional capacity** undermine the proper functioning of the human rights protection system. The African Commission, together with its Special Rapporteurs and working groups, has the potential to set standards as it was already proven with the establishment of the Robben Island Guidelines or with the various decisions and opinions released by the Commission. However, the Commission suffers not only notorious under-funding but also of human capital, since most Commissioners hold high-ranking national positions. This raises, of course, additional concerns about the independence of the Commissioners.

Great expectations lay on the African Court which published its first judgment in December 2009 (rejecting an individual application against Senegal on the basis that Senegal has not accepted individual applications). However, up to that date, not every African state had accepted its jurisdiction. Similar to the Inter-American system, individual complaints are only possible through the Commission except when member states accept through an *ad hoc* declaration the use of the individual complaint procedure. Yet, once again, reaching the court is not the only issue at stake when it comes to enhancing human rights protection in Africa; another important point is whether the Court has sufficient **financial and human resources**. With this in mind, independent judges would play a major role in the proper functioning of the African human rights protection system and, consequently, emphasis should be put on their training and recruiting.

Somewhat differently from other regional systems, the African Commission has a strong **promotional mandate** with regard to human rights, the implementation of which, however, is hampered by insufficient financial means. Such a promotional mandate is not in tandem with the civil society, as happens in the Americas. In the analysis of **the role of NGOs in Africa**, it is hard to treat the continent as one entity. Civil society is able to flourish with a certain degree of democracy and institutional protection of individuals, but, these conditions vary greatly between states. In many African countries the space for civil society and, in particular, for the work of NGOs as supporters of the regional human rights protection system, still needs to be created. An appropriate legislative framework, transparency and accountability have to be put forward in the state-design. States are nonetheless not alone in their responsibility to provide such space for NGOs. All stakeholders of the society have to participate in it (e.g. lowering violence and insecurity, providing support for local NGOs, rendering legal mechanisms more accessible to the people, etc).¹ Regardless of the

¹ A. Augie, Justice A., 'Human Rights and Good Governance in Africa: A critical Nexus Expanding Human Rights', Governance for a Progressing Africa, available at: www.uneca.org, at p. 10.

number of NGOs that exist in Africa, one of the most effective activities in reporting human rights violations within states remains in the governmental organisations domain as the NEPAD's peer review mechanism exemplifies.²

In sum, the African human rights system has significant potential, but financial and professional support from the international community will be a key factor in making it an effective system for the promotion and protection of human rights.

1.3 The Arab States

It is difficult to assess the newly created human rights system in the Arab states since it is still in *statu nascendi* and the **institutional practice is largely missing**. It has to be borne in mind, however, that the underlying instrument, namely the **Arab Charter of Human Rights 2004** that entered into force in March 2008 after having received seven ratifications, is in various parts **inconsistent with international human rights standards** and, thus, remains a missed opportunity to bring the region up to date with international human rights protection standards. To become a serious human rights protection instrument, the defects of the Charter should be addressed through further revision and the addition of optional protocols. The same applies to the newly established **Arab Committee on Human Rights**, the success of which will largely depend on the guarantees of and the respect for the **independence of its members**.

Regarding the involvement of **civil society** in the incipient Arab system we encounter *mutatis mutandis* similar difficulties to those highlighted within the context of the African system. Arab states are to a certain degree less heterogeneous than African states, but, still, most of them converge by lacking the appropriate structures that allow civil society to flourish and, in particular, that ensure a space for NGOs in the regional human rights protection system. NGOs tend to be perceived as instrumental organisation to impose western values within Islamic states.³ Changes are nonetheless visible. In this respect we have to recall the meeting that took place in Cairo on 15 October 2009. There, four international and regional non-governmental organizations (NGOs) met with the newly formed Arab Human Rights Committee in the Headquarters of the League of Arab States.⁴ The meeting, which brought together the representatives of Amnesty International, the International Federation for Human Rights, the Arab Organization for Human Rights and the Cairo Institute for Human Rights Studies, has to be seen as an important step towards the construction of a relationship between, on the one hand, civil society and, on the other hand, new regional system, as a mutually reinforcing cooperation that will foster human rights protection in the Arab world.

Finally, there is still considerable uncertainty about the ways the Arab system will evolve, whether all its standards proclaimed will be in conformity with the international human rights standards and how the Arab Committee will fulfil its protective mandate. Still, the mere establishment of such a system gives rise to hope and should definitely be assessed as a positive step forward for the human rights protection in the Arab states.

1.4 Asia-Pacific

Despite the tendency to consider regional human rights systems as important pillars of international human rights promotion and protection, and the increasing efforts to strengthen and improve existing ones, the Asia-Pacific region remains the last UN defined region without such a mechanism. Not only is such a mechanism missing, but the perspectives to establish this one are quasi non-existent. If we take into account how all attempts made by the UN during the 1990s to push forward the creation of such a system and the fact that these efforts remained fruitless, one has to raise the question of **whether a functional and**

² The NEPAD communicates to the African Commission and other mechanisms the activities of its governments.

³ See Res. 1/37-LEG of the OIC's Council of Foreign Ministers adopted on May 2010.

⁴ <http://www.fidh.org/-League-of-Arab-States->

effective regional Asia-Pacific mechanism is possible and a reasonable step? The Asia-Pacific region is one of the most culturally and politically diversified ones in the world, and it is doubtful that a sufficient degree of homogeneity exists – one that would allow such a system to function. Due to the lack of political will and determination to set up a regional mechanism it seems that the ongoing development with creating **sub-regional human rights mechanism** is more realistic in the Asia-Pacific. Even though the newly established **ASEAN** human rights mechanism is still in a fledgling stage it might have **spill over effects** on other already established sub-regional mechanism as the SAARC, and further human rights mechanisms could be established at this level.

Even though the ASEAN human rights mechanism is an **important step** towards the better promotion and protection of human rights in the region, its effectiveness has to be questioned. One central element of the effective promotion and protection of human rights, namely a **binding Charter on Human Rights** comprising a list of rights and the corresponding enforcement mechanisms, is still missing in the ASEAN system. This is particularly awkward because one of the tasks of the ASEAN Intergovernmental Commission on Human Rights is to develop such an instrument. Furthermore, the AICHR's **weak mandate** – as it is considered to be a mere consultative body without any competences to receive complaints – the doubtful independence of its members and the rigid application of the principle of non-interference in internal affairs make it an inefficient instrument rather than a strong body monitoring, promoting and protecting human rights. Additionally, the terms of reference mean that all decisions have to be taken by consensus, which significantly weakens the position of the Commission for any member can reject a particular criticism of its human record by using its veto powers.

As described in further detail in Annex II, in **the Asia-Pacific region National Human Rights Institutions** (NHRIs) under the network of the **Asia Pacific Forum** (APF) play a **major role promoting and protecting human rights**. Since a regional mechanism is missing and the sub-regional mechanism of the ASEAN is a rather weak instrument, the APF with its 17 NHRIs is the 'closest that the Asia-Pacific region has come to a regional arrangement or machinery for the protection and promotion of human rights.'⁵

Finally, when it comes to the role of civil society, we are again in a region that is too diverse to allow a general analysis. Although Asia has been considered one of the most repressive areas in the world, with the structures that foster civil society participation clearly lacking there, one can still find examples of NGOs that contribute to the strengthening of human rights.⁶ In Europe and the Americas it is possible to target particular aid to NGOs that will immediately contribute to the enforcement of regional human rights protection systems. Thus, in Africa, the Arab world and, particularly, in Asia, there is still the need to work on the basic political and legal structures that are required in a democratic state, in order then to be able to talk about a civil society contributing to the development of regional human rights protection mechanisms.

⁵ Muntarbhorn, Vitit, 2005, p. 14.

⁶ If we look at central Asia where there are states in which any kind of freedom exists (Turkmenistan and Uzbekistan), we still find examples such as the one of Kyrgyzstan, where NGOs have participated in the Government's ratification of the Optional Protocol to the Convention Against Torture. Goldstein, J. 'The Human Rights Situation in Central Asia,' document prepared for the Asia, Pacific and Global Environment Subcommittee of the House of Foreign Affairs Committee, at p. 3.

1.5 Comparative Synthesis

The table reproduced below summarises the core characteristics of each system to be interpreted and compared in the light of the four guiding principles /yardsticks proposed in the introduction of this study. This summary establishes the **benchmark** of regional human rights protection systems:

Controlling organs

		Political Organs composed of the representatives of governments	Independent expert bodies	Permanent or non-permanent judicial organs
EUROPE	Council of Europe	<i>Committee of Ministers of the Council of Europe</i> (implementation of the judgments of the ECHR)	<ol style="list-style-type: none"> 1. <i>European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)</i> 2. <i>European Commission against Racism and Intolerance (ECRI)</i> 3. <i>European Committee of Social Rights (ECSR)</i> 4. <i>Advisory Committee under the Framework Convention for the Protection of National Minorities (ACFC)</i> 5. <i>Group of Experts on Action against Trafficking Human Beings (GRETA)</i> 6. <i>The European Commissioner on Human Rights</i> 	<i>Single and permanent European Court of Human Rights</i> (established in 1998; 47 judges, Strasbourg)
	European Union	<i>European Council</i> (art. 7 TUE)	<ol style="list-style-type: none"> 1. <i>European agency of Fundamental Right</i> 2. <i>European Ombudsman</i> 3. <i>European Data Controller</i> 	<i>Court of justice of the European Union</i>
		Political Organs composed of the representatives of	Independent expert bodies	Permanent or non-permanent

	governments		judicial organs
AMERICAS	<ol style="list-style-type: none"> 1. <i>Permanent Council</i> 2. <i>Inter-American Council for Integral Development</i> 	<ol style="list-style-type: none"> 1. <i>Commission on the Prevention, Punishment and Eradication of Violence against Women</i> 2. <i>Committee on the Elimination of All Forms of Discrimination against Persons with Disabilities</i> 	<ol style="list-style-type: none"> 1. <i>Quasi-Judicial Inter-American Commission</i> established in 1959, 7 members, Washington D.C 2. <i>Non-permanent Inter-American Court on Human Rights</i>, established in 1979, 7 judges San José
AFRICA	<ol style="list-style-type: none"> 1. <i>Assembly of Heads of State and Government of the Union</i> 2. <i>Executive Council of Ministers of the Union</i> 3. <i>Commission of the African Union;</i> 	<i>The African Committee on the Rights and Welfare of the Child</i>	<ol style="list-style-type: none"> 1. <i>Quasi-judicial African Commission on Human and People's Rights;</i> established in 1987, 11 members, Banjul 2. <i>Non-permanent African Court on Human Rights</i> established 2004, 11 judges, Arusha
ARAB STATES	<ol style="list-style-type: none"> 1. <i>Council</i> 2. <i>Secretariat</i> 	<ol style="list-style-type: none"> 1. <i>Arab Human Rights Committee</i>, established in 2009, 7 members 2. <i>Sub Commission on Human Rights</i> 	
ASIA-PACIFIC (ASEAN)	<p>ASEAN Summit</p> <ol style="list-style-type: none"> 1. <i>ASEAN Coordinating Council, SEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council,</i> 2. <i>Committee of Permanent Representatives</i> 	<i>ASEAN Intergovernmental Commission on Human Rights (AICHR)</i> established 2009, 10 members,	

Modalities of Control

	Inter-state complaints	Individual complaints	Regular reports
EUROPE	Yes	Yes	Report by expert bodies
AMERICAS	Yes	Yes (via Commission)	Reports by expert bodies; state reports of and to the Commission
AFRICA	Yes	Yes (via Commission)	Reports by expert bodies; state reports of and to the Commission
ARAB STATES	Yes	No	State reports to the Arab Human Rights Committee
ASIA-PACIFIC (ASEAN)	No	No	No

Implementation of Control

	Judgement	Advisory opinion	Reports	Recommendations	Monitoring of the Implementation of the Judgement
EUROPE	Yes	Yes	Yes	No	Yes (Committee of Ministers)
AMERICAS	Yes	Yes	Yes (Commission)	Yes (Commission)	No (Written procedure between the Court and the state concerned)
AFRICA	Yes	Yes	Yes (Commission)	Yes (Commission)	Executive Council and Assembly of the AU
ARAB STATES	No	No	No	No	No
ASIA-PACIFIC (ASEAN)	No	No	No	No	No

2 NATIONAL HUMAN RIGHTS INSTITUTIONS AND THEIR RELATIONSHIP TO REGIONAL HUMAN RIGHTS MECHANISMS

National Human Rights Institutions (NHRIs) remain recent phenomena with the large majority of them being less than 20- years old.¹⁷ In 1993 the UN approved the 'Principles Relating to the Status [and Functioning] of the Network of National Institutions for the Promotion and Protection of Human Rights' (Paris Principles) governing the key criteria for the creation, the competences, the composition and the powers of NHRIs.¹⁸ Today 65 NHRIs comply with the criteria laid down in the Paris Principles (A-status).¹⁹ **Governments adopting these standards granted NHRIs the status of institutions independent from and functional within the structure of the state.** Established in all the UN-defined regions of the world, they show commonalities but vary as well in their typology, composition, tasks and their degree of independence. For example, in regional terms, trends in NHRIs' typology showed that in Europe and the Asia-Pacific NHRIs are mainly statute-based commissions, whereas in Africa the preferred type is a constitutionally-based commissions and in the Americas mainly constitutionally-based ombuds-institutions.²⁰ It is the task of NHRIs to provide individuals with the means to draft complaints about threats to or violations of human rights, engage in activities with regard to the promotion and education of human rights, and encourage the states to ratify international or regional human rights instruments while ensuring that national laws are in accordance with them. To comply with these tasks, according to the Paris Principles, **NHRIs should cooperate with the UN as well as with the regional mechanism established to protect and promote human rights.** With regard to the former, **NHRIs** cooperate through the interaction with the UN Special Procedures and through their contributions to the Universal Periodic Review. Furthermore the UN and especially the OHCHR is organising biannual conferences of NHRIs for the promotion and protection of human rights, the last of which took place between 21-24 October 2008 and resulted in the Nairobi Declaration.²¹

The state of the art and the effectiveness of the regional human rights mechanisms vary significantly which has further implications on the role NHRIs play in the promotion and protection of human rights. In the subsequent part of this study the eventual cooperation between NHRIs and regional mechanism will be examined with the aim of showing whether these relationships should be further strengthened and supported or whether other strategies should be developed to implement human rights standards most effectively and, thus, foster human rights protection.

As established in the detailed study on NHRIs in Annex II, even though the cooperation between NHRIs and regional systems is not institutionalised to any extent, their potential regarding the promotion and protection of human rights must not be underestimated. As described above, NHRIs can, as is the case in the Asia-Pacific region, take over some of the protectoral and, in particular, promotional tasks if the regional human rights mechanisms fail in this regard.

¹⁷ For a detailed analysis see annex II.

¹⁸ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and protection of Human Rights in Paris 7-9 October 1991 and lay down the fundamental criteria for a NHRI: establishment by law, independence, as broad a human rights mandate as possible, composed of a collegiate body reflecting the composition of society, adequate resources, accessibility, and working cooperatively with civil society. The Paris Principles were subsequently adopted by the UN Human Rights Commission by Resolution 1992/54 of 3 March 1992 and the UN General Assembly by Resolution 48/134 of 20 December 1993.

¹⁹ See UN, Process Currently Utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to Accredite National Institutions in Compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010.

²⁰ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, p. 4, available at <http://www.nhri.net/2009/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>

²¹ Nairobi Declaration available at <http://www.ohchr.org/Documents/Countries/NairobiDeclarationEn.pdf>

However, the main factor behind the potential of for NHRIs to become effective tools is their **independence and the willingness of populations to accept them as autonomous human rights instruments**. The factor depends highly on the political will of the authorities, as their effectiveness is contingent on the degree of independence and the legal margin granted to them. Consequently, NHRIs are often rightly regarded as political institutions of respective governments that do not present a genuine alternative for addressing human rights violations or abuses.

Professional support from the international side will be a crucial factor in making NHRIs effective tools rather than ineffective instruments merely established to 'keep up appearances'. **Ongoing cooperation** as for example the Arab-European Human Rights Dialogue for National Human Rights Institutions **should be further fostered to endow NHRIs with the necessary capacities to fulfil their aims in particular with regard to the promotion of human rights and human rights education**. Additionally, cooperation between NHRIs and regional mechanisms should be institutionalised and NHRIs more involved in the regional human rights protection mechanism. **NHRIs, as already discussed in the example of the Council of Europe, could play a more significant role regarding the monitoring of the implementation of decisions of regional human rights supervisory bodies.**

3 THE UNITED NATIONS AND ITS RELATIONSHIP TO REGIONAL HUMAN RIGHTS MECHANISMS

3.1 The UN Actions at the Regional Level

The UN human rights system provides the main architecture of the international human rights protection regime, and regional human rights protection mechanisms constitute one of its fundamental pillars by complementing and often improving it on a regional level.

In the past, the UN, mainly through the OHCHR, was significantly engaged, both by providing support for existing regional systems to improve their human rights protection mechanisms, or for initiatives aimed at the establishment of such a system. Emphasis was put on the African, the Asian and the Arab human rights systems whereas it was recognised that neither the European nor the Inter-American systems were in need of the support of the OHCHR. The three other regions were mainly approached within **technical cooperation programmes**, contextualized in accordance with the situation in the specific region.

With regard to Africa the OHCHR's policy focused on the strengthening of the institutions, in particular of the African Commission on Human and Peoples Rights, including trainings for the staff of the Commission, assisting in developing information and documentation systems, and facilitating exchange of experience with relevant institutions, including those belonging to the international system of human rights protection. In the Asia-Pacific region one primary concern was the establishment of a regional human rights mechanism and OHCHR co-organised various workshop for this aim. Since all attempts failed to create a consistent human rights mechanism for the whole region emphasis is put now on the sub-regional level, such as, for example, on the newly emerged ASEAN human rights mechanism. Finally, in the Arab system the OHCHR was highly involved in the drafting process of the Arab Charter of Human Rights in 2004 since all the seven experts appointed to draft the new Charter were members of the OHCHR's treaty bodies. Additionally, **in all the three regions OHCHR tried to enhance protection of human rights through the establishment of further regional offices and human rights centres that provide an additional structure promoting the concept of regional protection of human rights** (e.g. the Centre for Human Rights and Democracy for Central Africa in Yaoundé, or the Training and Documentation Centre for South-West Asia and the Arab Region in Doha).

Even though the UN is actively supporting the development and improvement of the regional systems questions arise with regard to inter-regional cooperation and coordination.

3.2 Inter-regional Cooperation of the UN with Regional Mechanisms

In 2008 the OHCHR evaluated that 'Cooperation between regional mechanisms has increased in the past 10 years but still lacks the efficiency and regularity that would be obtained through systematic exchanges.'²² In fact, while the history of calls for a more systematic approach to inter-regional cooperation in the area of human rights goes back to the 70s – already in 1977 the UN General Assembly adopted a resolution on 'Regional Arrangements for the Promotion and Protection of Human Rights'²³ - activities in this direction accelerated quite recently in the follow up to resolution 6/20 of the Human Rights Council in 2007. In this resolution the Council, requested the OHCHR in 2008 to convene a workshop 'for an exchange of good practices, added value and challenges' for regional arrangements for the promotion and protection of human rights.

This workshop was the initial step and in a subsequent resolution the Human Rights Council requested the OHCHR to 'hold a workshop on regional arrangements for the promotion and protection of human rights on a regular basis and to convene the next one in the first semester of 2010, within existing resources, to allow further sharing of information and concrete proposals on ways and means to strengthen cooperation between the United Nations and regional arrangements in the field of human rights and the identification of strategies to overcome obstacles to the promotion and protection of human rights at the regional and international levels, with the participation of representatives of the relevant regional and sub-regional arrangements from different regions, experts and interested States Members of the United Nations, observers, national human rights institutions and representatives of non-governmental organizations'.²⁴ Consequently, the OHCHR organized at the end of 2009 three regional consultations in Africa (Addis Ababa, Ethiopia), the Americas (Washington D.C.) and Europe (Strasbourg) to prepare the International Workshop 'Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights' that has taken place in Geneva on 3 and 4 May 2010. The statement given by the High Commissioner for Human Rights at the end of this meeting underlined the necessity of investing in information-sharing among systems, in particular with respect to databases and web pages. It also highlighted the importance of conducting joint activities of regional and international human rights mechanisms (joint publications, joint visits, joint statements, joint reports and jointly monitoring follow up with recommendations), as well as avoiding contradictory messages among the systems and investing in the promotion of the systems outside specialised circles.²⁵

Although the main common goal of both the UN and the regional mechanisms is the enhancement of human rights protection throughout the world, cooperation between them remains often minimal, ineffective and at a technical rather than fully institutionalized. Moreover, besides missed opportunities, many areas covered by UN mechanism, especially in the case of thematic mandates, are covered by regional procedures as well. Even though these overlaps do not entail a weakening of human rights protection, in times of limited resources and insufficient capacities to address the burgeoning human rights issues, coordination and cooperation between the UN and the various regional human rights mechanism appears to be necessary. The following part will thus give an overview of the state of the art of cooperation between, firstly, the UN human rights treaty bodies and the regional mechanism and secondly between the Special Procedures and the regional mechanism.

²² Report of the Secretary-General on the workshop on regional arrangements for the promotion and protection of human rights, 24 and 25 November 2008; UN Doc. A/HRC/11/3, para 55.

²³ GA Resolution on Regional Arrangements for the Promotion and Protection of Human Rights, UN Doc. GA 32/127, 16 December 1977.

²⁴ UN Doc. A/HRC/RES/12/15.

²⁵ The resolution of this meeting will be available later this year, in the 15th session of the HRC.

3.2.1 Cooperation with the UN Treaty Bodies and Contribution of the Regional Human Rights Mechanism to the Universal Periodic Review

To date **no institutionalised or regular cooperation** exists between the UN treaty bodies and the regional mechanism. Nevertheless, from the side of the UN the reports and findings of the regional human rights bodies are likely to be consulted when member states are undergoing examination by the treaty bodies. Additionally, occasional reference is made to the jurisprudence – if there is a Court established within the regional mechanism – and other documentation of the regional human rights bodies which significantly strengthens the findings of the treaty bodies by placing member states in a regional context and emphasising its complementary set of human rights obligations within its own region.²⁶

With regard to the UPR, cooperation between the UN and the regional level occurs on a case-by-case basis rather than through institutionalised procedures. For example, the country reports of the Council of Europe Human Rights Commissioner are used in the Universal Periodic Review process and the Commissioner intends to assist in the implementation of recommendations made by the UPR Working Group to the Council of Europe member states by following up on the pledges the states made during their review process.²⁷

3.2.2 Cooperation of the Regional Human Rights Bodies with the UN Special Procedures

The cooperation between the Special Procedures of the OHCHR and the regional mechanism is slightly more developed, especially with regard to the **cooperation between the thematic mandate holders**. At the 14th annual meeting of the Special Procedures in June 2007, the cooperation with regional mechanism was on the agenda for the first time and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, introduced a paper on cooperation with regional human rights mechanisms highlighting the relevance of collaboration between the UN Special Procedures and, *inter alia*, the Inter-American Commission and the thematic Rapporteurs of the OAS; the African Commission on Human and People's Rights and its system of thematic special mechanism; the Council of Europe's treaty bodies including the Court, the Committee for the Prevention of Torture, the European Committee of Social Rights and the Advisory Committee of the Framework Convention on the Protection of National Minorities, and other specialized mechanisms, particularly the Council's Human Rights Commissioner; the OSCE's High Commissioner on National Minorities, the Representative on Freedom of the Media and the Special Representative and Co-ordinator for Combating Trafficking in Human Beings; and the European Union's Working Party for Human Rights and other European Union expert bodies.²⁸

Cooperation between the Special Procedures and the regional mechanisms mainly occurs in the fields of **technical expertise and general exchange of information** and **country visits**. With regard to technical cooperation, the collaboration currently being undertaken almost routinely includes: the mutual participation in expert workshops and exchange of information on relevant activities; the exchange of views on substantive issues, as well as on working methods; and collaborative actions in relation to specific situations. For example, conjoined activities have been carried out by the Independent Expert on minority issues in cooperation with the Inter-American Commission's Special Rapporteur on persons of African descent and against racial discrimination, concerning future inter-American standards on the issue of racial

²⁶ Report of the Secretary-General on the workshop on regional arrangements for the promotion and protection of human rights, 24 and 25 November 2008; UN Doc. A/HRC/11/3, para 50.

²⁷ *Ibid*, para 49.

²⁸ Stavenhagen, Rodolfo, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Special Procedures and Regional Human Rights Systems: Areas for Strengthening Cooperation*, 4 June 2007, available at:

http://www2.ohchr.org/english/bodies/chr/special/annual_meetings/14th.htm

discrimination, or by the Representative of the Secretary General on internally displaced persons and his counterpart at the African Commission on Human and Peoples' Rights, concerning ongoing discussions regarding the drafting of an AU instrument on internally displaced persons. Similarly, the Special Rapporteur on torture has engaged in long standing cooperation with relevant bodies and secretariats at the European level, *inter alia* the OSCE Office for Democratic Institutions and the Council of Europe's Committee on Legal Affairs and Human Rights, the Commissioner for Human Rights, and, the Committee for the Prevention of Torture. Additionally, he has participated in several meetings of the African Commission on Human and Peoples' Rights regarding issues related to his mandate.²⁹

During the preparation of their country visits, the Special Procedures routinely use the country thematic reports drawn up by the respective regional human rights bodies as well as their recommendations concerning specific countries or cases. The information provided by these appears to be crucial in the elaboration of the recommendations of the mission reports of the Special Rapporteurs. Besides this indirect form of participation, cooperation also takes place more directly through the on-site assistance given in the preparation and conduct of special procedures' visits. For instance the OSCE supported the country visit of the Special Rapporteur on torture in 2005 in Georgia; and the Inter-American Centre of Human Rights under an agreement signed by the Institute and the OHCHR frequently provides assistance to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people when he is visiting Latin American countries.³⁰ **In cases where special procedures of the regional mechanism are similar to those of the UN, as is the case with the African system in particular, the conduct of joint missions offers the opportunity to strengthen cooperation further.** Examples for joint missions between the UN special procedures and the regional special procedures are rare, but, for example, in 2008 the UN and the AU Special Rapporteur on human rights defenders conducted a joint mission to Togo and issued joint press releases.³¹

3.3 Conclusion

Up to date collaboration between the UN human rights mechanism and regional mechanisms is still inefficient and does not occur on a regular and institutionalised basis.³² However, there is a widely shared view that the **regional and universal systems are complementary** and that **the potential of the protection at the regional level may further develop as a result of exchange of experience and cooperation between the existing systems.** Therefore, the strengthening of regional systems is one of the key avenues to take in order to increase the level of protection of human rights and fundamental freedoms worldwide. At the regional level, the UN is one of the key actors engaged in improving existing human rights mechanisms and creating such where none exist. Additionally, inter-regional collaboration would bring a large number of benefits for both the UN and the regional systems. Obviously the **exchange of expert knowledge and information is already benefiting both the regional and the UN mechanisms.** But better cooperation and coordination would have further advantages. The **risk of thematic overlaps between the mandates of the UN special procedures and the regional ones could be diminished and the already limited resources and capacities unburdened.** Through joint missions of the UN Special Rapporteurs together with the regional mechanisms, the recommendations that have been made would be bedded in a more local context which might enhance awareness on human rights by the people of the region. Generally, **UN bodies mission reports should refer more extensively to the reports, findings, and cases of the regional mechanisms in order to endow their recommendations**

²⁹ Ibid, para 5.

³⁰ Ibid, paras 7-8.

³¹ See:

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/572692643D0A809BC125749C00784B1A?opendocument>

³² Some have proposed a World Court of Human Rights to solve this problem. See our analysis of the World Court in Annex III.

with more weight. A state might be more willing to implement the findings if they also take regional human rights standards into account. Cooperation with the regional mechanism is also crucial for an effective follow-up of the decisions by the UN treaty bodies. In this regard, the UN system also might benefit in terms of adopting best practices that have emerged at the regional level. For instance, the UN follow up system might be strengthened significantly by adopting similar procedures to the European system.

The International Workshop 'Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights' that took place in May 2010 in Geneva is a further step towards the strengthening of the cooperation between the UN and regional mechanism at the inter-regional level. Comprehensive strategies for enhanced overall cooperation and coordination of the policies of the regional and the UN system would strengthen the linkages between and the joint impact of the international and regional human rights system.

PART II. – RECOMMENDATIONS FOR EUROPEAN UNION ACTION

4 THE EUROPEAN UNION IN THE GENERAL FRAMEWORK

The EU Treaties divide and circumscribe the possible courses of action that the EU can undertake in its relations with third countries into two distinct areas. On the one hand, there is the Common Foreign and Security Policy (art. 23 to 46 of the TUE) and, on the other, the remainder of external actions, which include commerce, cooperation and development (art. 206 to 212 TFEU). In the same manner, the different actions that the EU has set in place to promote and protect human rights have either been adopted through the mechanisms created for the CFSP or for the rest of external relations.³³ Those actions have thus been channelled through financial instruments, cooperation and aid to development, diplomacy and commerce. Despite the myriad of different political actions and mechanisms through which the EU acts in the human rights arena and despite the unavoidable fragmentation created by a divided regulation of the EU's external relations, **the EU has put in place several instruments to protect and promote human rights that try to turn the latter into a more transversal domain** rather than a fragmented one that is treated by each external policy separately.

In fact, **coherence between the CFSP and the rest of EU external policies should be solved within the framework provided by the Lisbon Treaty**. In this regard arts. 22.1 and 29 of the TEU afford the European Council the competence to define the strategies that are of horizontal application in all EU external relations policies. These policies could be thematic and one of them could relate to human rights. Concerning the HR element of the CFSP, the latter will have the role of organising the CFSP and intervening in development and humanitarian aid policies, with a view of ensuring a global vision in EU external policies. Concerning the EP, the latter has to ensure that such horizontal and harmonic perspective in the EU external policies will be adopted. Moreover, the EP will be able to influence the process through its competences on international treaties, in relation to external programmes and within the framework of its budgetary competences.

The mechanisms in place that we are referring to include, first, the EU guidelines on Human Rights. These guidelines establish the EU's priorities in the promotion and protection of human rights, such as torture, the death penalty, the protection of Human Rights Defenders (HRD), and children's and women's rights. Secondly, and partly built on those guidelines, the EU has around 40 ongoing human rights dialogues and consultations with other countries. Many of those dialogues have as their object of discussion human rights based on regional or bilateral treaties, agreements or conventions (e.g. regarding the Cotonou Agreement, the Barcelona process or the ASEAN and ASEM). Other such discussions focus exclusively on human rights, as happens with the dialogue that the EU has with China. Finally, some of these dialogues are *ad hoc* discussions that are established as part of the CFSP (e.g. Sudan) or, very differently, conversations with countries with broadly converging views (e.g. Canada or the USA).³⁴

The fundamental instruments and partners that the EU has at hand to promote and protect human rights and, in particular, to influence the development of regional human rights mechanisms: (1.) the European Instrument for Democracy and Human Rights (EIDHR); (2.) the human rights clause in all bilateral (and some multilateral) treaties; (3) NHRIs and the UN as institutional partners; and (4.) civil society – in particular HRD – as non-institutional partners.

³³ The legal entrenchment for EU activities in the field of human rights are art. 11, 49, 177, 179 and 308 of the TEU and the Charter of Fundamental Rights.

³⁴ The EU guidelines on human rights dialogues with third countries, at pp. 2-4. Available at http://ec.europa.eu/external_relations/human_rights/dialogues/index_en.htm

4.1 The European Instrument for Democracy and Human Rights

The EIDHR is the keystone of the EU's human rights policies and actions.³⁵ It is a versatile instrument that allocates a particular budget to many different human right policies and courses of action. The EIDHR's budget follows the rationale of the EU's priorities and targeted countries; moreover, the **EIDHR provides flexibility to EU policies** in that part of its budget is not *a priori* assigned to a particular project and, thus, it is possible to use such budget for new or unanticipated human rights situations.

The EIDHR aims in particular at supporting civil society organisations, HRD and victims of repression in third countries as a mechanism to enhance observance of the rights and freedoms proclaimed in international and regional human rights instruments. Moreover, it aims to reinforce democracy and the rule of law at the global level by sustaining regional and international frameworks for protection and promotion of human rights. Finally, it seeks to restore confidence in democracy through election observation missions and by supporting civil society organisations that are devoted to electoral processes.³⁶ The idea behind the EIDHR, which can be clearly seen from its general aims, is that **the EU should be able to operate without the need of the States' concerned** and³⁷ thus directly work with individuals, civil society and organisations that are key for the promotion and protection of human rights.

The EIDHR has come under pressure to finance multiple projects. The necessity to manage the EIDHR's resources has forced the EU to re-shape the instrument and to discharge it from tasks that can be fulfilled through other regional programmes. Whereas the EU and the Member States fund and provide technical resources to each regional programme, the EIDHR intervenes with direct funding to particular local actors that, usually, will be non-state actors. From this perspective, the EIDHR complements existing mechanisms such as the Cotonou agreement between the EU and ACP countries.

Despite the EIDHR's vocation to work with non-state actors, this program has also been designed to support the cooperation between the EU and international organisations such as the cooperation between the EU and the UN or the OSCE; in particular, this program has widely supported the International Criminal Court and human rights education projects organised through the European Inter-University Centre for Human Rights and Democratisation (EIUC).

4.2 Human Rights Clauses

Since 1992, the EU inserted a clause in all bilateral treaties (and some multilateral ones) signed with developing countries. This clause is an 'essential element' of the treaty and it provides that the parties have to respect human rights in order to respect the treaty at stake. In some cases, in the framework of the agreements where such clauses are contained, permanent subcommittees and subgroups have been created to discuss the promotion of human rights.³⁸

These clauses represent the commitment the EU has to the protection and promotion of human rights. Despite the EU's approach to human rights as universal values, the clause does not allow the EU to hold a unitary position regarding breaches of human rights and, particularly, concerning these clauses. The keyword that sums up the essential challenges that these clauses have to overcome in order for the EU to fulfil its task of **unifying the response of international actors towards human rights is 'asymmetry'**. There is asymmetry due to the fact that the clause is contained in some of the agreements established by the EU, as well as asymmetry within the agreements where there is such a clause, because the manner in

³⁵ Regulation n°1889/2006 of the European Parliament and the Council of the 20th December 2006. It regulates the budget for human rights policies and activities from 2007 until 2013.

³⁶ Regulation (EC) n° 1889/2006 of the European Parliament and the Council in its art 1.2. points a), b) and c).

³⁷ Consultation Paper. Thematic Programme for the promotion of democracy and human rights worldwide. DG RELEX/B/5.12.07, at p.4. Available at: <http://ec.europa.eu/europeaid/what/human-rights>

³⁸ DGExPo/B/PolDep/Study/2005/06 (29/09/2005), available at: <http://www.europarl.europa.eu>

which the clause is inserted and invoked varies among them. On the one hand, the clause has never been introduced in any general cooperation agreement with a developed country and is conspicuously absent in agreements that date back to the 1960s – such as those signed between the EU and Turkey – or from the 1980s – such as those signed with China and other South East Asian Nations.³⁹ On the other hand, the human rights clause is sometimes accompanied by a non-execution clause and sometimes it is not. As a result, a breach of human rights by Brazil or India (in which there is no non-execution clause) will not result in the same treatment that most of countries would get, since, in most of the agreements with a human rights clause, there is a specific non-execution clause.⁴⁰ To this asymmetry has to be added that only in the cases of the Cotonou agreement between the EU and ACP countries, the agreement between the EU and South Africa and between the EU and the Euro-Mediterranean countries (except Syria), does the human rights clause provide a mechanism of dispute resolution.⁴¹

Despite these weaknesses, however, there is plenty of room to perfect these clauses as the European Parliament has already had the chance to underline.⁴² Their utility has to be underlined because they can contribute to the development and strengthening of regional human rights protection systems. These clauses are not currently the tool that would reinforce human rights worldwide as they could be; nonetheless, **they are an effective mechanism for opening political dialogue between the EU and the country/es of the agreement.** Their enforcement depends in the last instance on the States that are party to the agreement and thus the clauses seem to be an instrument of soft law. Still, within an exclusive political realm, the clauses remind the parties of the agreement that human rights are on the table (**the clause fosters human rights awareness**) and that the EU could react in cases of violation of those rights (**the clause fosters human rights consensus throughout the EU for it demands agreement on the role of human rights within the particularities of each agreement and situation**).

4.2.1 The European Parliament and Human Rights Clauses

The European Parliament (EP) has clearly stood up for a reform of such clauses. Within the different observations that the EP has made about those clauses, one is drawn towards the issue of the vagueness of the language in which they are written. Such vagueness has different consequences. For example, since many clauses are inserted into agreements whose object has nothing to do with the protection of human rights, it is hard to know what the exact role for the clause is and how it relates to the agreement and the state parties. In these contexts the vagueness of the clause does not allow one to discern whether the clause is a mere condition of signing the agreement or whether there are positive obligations stemming from that clause.⁴³

³⁹ Id. at p. vi. It should be stressed through that the absence of these clauses in treaties with developed countries is due to the fact that any of the latter has accepted to introduce such clauses.

⁴⁰ Even within the latter category, there are interpretative declarations on the different agreements which makes that the human rights clause's application will also depend on such *ad hoc* interpretative agreement and, thus, contribute to the asymmetry of the functioning of this clause.

⁴¹ The EP has been pivotal promoter of the human rights clause in the framework of the Cotonou Agreement. In 1978 the EP demanded to add such clause in the Lomé convention that regulated the relationship between the EU and the ACP countries, in I. Mény (ed.) 'Building Parliament. 50 years of European Parliament History (1958-2008)' at p.270. available at:

http://www.europarl.it/ressource/static/files/failai_internetui/Construction_of_EP.pdf

⁴² European Parliament 'Resolution on the human rights and democracy clause in European Union agreements', Ref: A6-0004/2006 / P6_TA-PROV(2006)0056, from 14 February 2006. Available at:

http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/agnoletto_commission_reply_/agnoletto_commission_reply_en.pdf

⁴³ See supra note 38, at p. 9.

The EP has to continue to consider the reform of these clauses as a principal element of its human rights agenda. This is due to the fact that **better human rights clauses will have a wider impact than it might seem, upon regional human rights systems.** In the framework of the latter, **it is suggested that human rights clauses include non-compliance with a resolution from a regional human rights court as a breach of the clause.** To link human rights clauses with regional human rights protection system is beneficial in two senses. **First, it renders human rights clauses clearer and easier to interpret and comply with; second, it shows worldwide the EU's commitment on regional human rights protection mechanisms,** which will make those systems more credible and will be taken more seriously by the parties of the agreements with such clauses.

If the use of human rights clauses as a vehicle to foster regional human rights protection mechanisms is to work, **it is important that the EP is informed about human rights situations in each state party of an agreement.** A useful way to guarantee this is by having the **EU Mission inform the EP about their findings on human rights in each state,** and in particular about the EU Mission's supervision of the respect of the clause. The effectiveness of this clause is also subjected to the **harmonisation of their content** because it will allow for the setting up of **patterns of control** such as **patterns in the consequences of non-compliance with regional human right's protection institution's decisions.** Finally, **the EP must use its powers on the suspension of treaties as one more enforcing mechanism of these clauses and, ultimately, of the respect of regional human rights protection systems.**

4.3 Institutional Partners

4.3.1 National Human Rights Institutions

The EU will find in NHRIs pivotal institutional partners to foster and strengthen human rights worldwide. NHRIs have already been developed above, but they are mentioned here too because they have to figure clearly as key institutions during the planning of new courses of action to be taken vis-à-vis the development of regional human rights systems. Suffice it to mention that NHRIs are particularly necessary for **joint initiatives in those regional areas with a weak regional human rights protection system (Asia) or with a system in *status nascendi* (Arab countries).** We have identified three types of action that the EU could trigger vis-à-vis NHRIs:

- a) **In Africa, where NHRIs already exist, action has to be oriented towards connecting the work of NHRIs to the mechanisms of the African Union. Systems of cooperation between the EU, the African NHRIs and the EU could follow similar patterns such as the more institutionalised UN-NHRIs mechanisms of cooperation that are already in place.**
- b) **In Asia, where fewer NHRIs exist, the EU should incorporate, as part of its route map, to strengthen regional human rights mechanisms by including a particular chapter for the development of NHRIs.**
- c) **In Arab countries, where hardly any NHRIs exist and their independence and, thus, effective work is seriously compromised, the development of NHRIs should be seen as one of the primary actions to be taken within the wider framework of advancing the construction of a regional system for the protection of human rights.**

A proposed course of action regarding the integration of NHRIs and the regional systems is to include NHRIs within the framework for human rights control that each EU Mission performs in each country. Thus, not only will the EU find it easier to gain first hand knowledge of human rights breaches (and thus enforce the human rights clause), moreover, an NHRI would also become part of the regional human rights mechanisms, enabling its work to benefit the regional system and vice-versa.

4.3.2 Inter-parliamentary Cooperation

Besides NHRIs, national parliaments (NPs) are another key institution for the development of regional human rights protection systems. Moreover, within the framework of each agreement that is concluded between the EU and a third states, the establishment of a parliamentary delegation follows. From such a delegation (where members of the EP and of the respective NP assemble) it is possible to follow the state of human rights in the state at stake.⁴⁴ Other parliamentary cooperation arrangements have to be situated within the ACP, the Eurolat and the Euromed agreements.⁴⁵ In each of these agreements the EP has established a special cooperation with NPs from each of these regions. Each forum is the first one in terms of informing the EP about human rights situations in Africa, the Mediterranean and Latin America. To this mapping a final framework is added, the Inter-Parliamentary Union (IPU), which is a third institutional actor to take seriously.

Through the IPU the EP is able to encourage national parliaments to be sensitive and proactive concerning the mechanisms that are already established to promote human rights. On the one hand, HRD or human rights clauses can be strengthened from this forum through the cooperation of parliaments. On the other hand, it is also in this forum that promotion and awareness pro-regional systems for human rights protection can be achieved. The IPU has its own human rights technical assistance programme in some countries and at a regional level; in particular, initiatives such as the seminar organised by the IPU regarding ‘**The role of parliaments in the implementation of international and regional human rights instruments**’ should take place more often, either in the same manner (particular to a region) or multi-regionally. **The IPU’s action should be oriented towards building parliamentary assistance around regional systems.**

An approach to regional human rights protection mechanisms through the IPU will likely foster **agreement among national legislators of the need to bring their legislations in harmony with the regional system mechanisms**, and thus provide the necessary means to guarantee the respect of the regional court’s decisions. Moreover, the IPU not only provides a forum to discuss how parliaments can become more actively involved with regional human rights mechanisms, such a forum can also prove that there are barriers that are preventing such involvement of legislatures (e.g. within the IPU forum it was stressed that parliaments were not well-informed of the work of the UN Treaty Bodies).⁴⁶

4.3.3 A Partnership with the United Nations

As of 1 December 2009, the European Union has succeeded the European Community within the UN framework, and with this succession the EU continues the long-standing close collaboration between the UN and the European Community.

The EU has traditionally been the strongest supporter of the UN human rights system. In particular, the EU has been the principal donor of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has supported the work of the treaty bodies by participating in procedures to implement at a national level the recommendations of the treaty bodies.⁴⁷ Moreover, the EU is compromised with the

⁴⁴ See supra note 41, at pp. 282-283.

⁴⁵ ACP inter-parliamentary assembly was created the 20th July 1963; Euromed’s Inter-parliamentary assembly was created the 3rd December 2003 and Eurolat’s Inter-parliamentary assembly was created the 8th November 2006. Id. at pp. 286-289.

⁴⁶ IPU Seminar on ‘The role of parliaments in the implementation of international and regional human rights instruments’, at p. 2. Available at: <http://www.ipu.org/Splz-e/ouaga07.htm>

⁴⁷ ‘EU-UN co-operation to promote and protect all human rights for all Brussels, 14 October 2009’. Available at: http://ec.europa.eu/europeaid/what/human-rights/documents/fact_sheet_cooperation_en.pdf

reform of the UN system that is also taking place regarding the role of the treaty bodies and the Universal Periodic Review.

The EU has actively supported the Human Rights Council and ensured the independence and effectiveness of the Office of the High Commissioner of Human Rights. Moreover, **the Fundamental Rights Agency has recently established a network of liaison officers that will provide a forum where the UN bodies, the OSCE, the European Parliament and other agencies of the EU and all member states will be able to work together.**⁴⁸

Under this framework, there is a wide range of possible mechanisms that could favour the relationships between the UN's and the European human rights mechanisms. **On a more political level, the EU could take the role of promoter of regional human rights mechanisms within the UN forum.** The EU has already made many efforts to promote political dialogue in order to coordinate its positions with those of other regions, such as the African Union. Thus, the EU has to place as a clear priority of the UN the surveillance, implementation and improvement of regional human rights systems. A manner in which this could be achieved more effectively would be by **having the EU responsible for the HRC resolution on the state of regional human rights systems**, which has only been accepted by Belgium so far.⁴⁹ This would result in a long term policy-making process at the HRC level, the development of a prioritized approach in this regard, and the entering into of relevant consultations with a view to establishing a cross-regional alliance mobilizing support for regional systems of human rights protection.

From a more technical-juridical perspective, the UN and the European human rights mechanisms favour a system of exchanges of jurisprudence through an 'e-jurisprudence' platform and judicial colloquia. Such an exchange ensures the reciprocal use of jurisprudence and findings which, in its turn, would allow the two systems to converge and, thus, contribute to the universality of human rights. On top of this, regular meetings and joint actions could also simplify procedures (e.g. follow up of judgements and decisions). Moreover, **it is also suggested that the UN Human Rights Council in the UPR would systematically take into account European human rights mechanisms, while, in its turn, the UPR would review the status of said regional human rights protection mechanisms.**

Finally, conversion between the EU and the UN human rights systems could be achieved through the UNHRO in the following manner. The latter **would strive to address these human rights challenges by helping to integrate UN human rights standards and principles into EU-wide internal policies, legislation and implementation measures. It would also seek to ensure that these standards and principles are integrated in the EU's external policies and activities, including technical assistance projects, peacekeeping and peace-building operations, development and mediation efforts, and trade initiatives.** To these ends, the Office would provide policy advocacy and advisory services and would work with governments, parliaments, judicial and national human rights institutions, civil society organizations and the UN offices in Brussels. Key regional partners would include the EU institutions based in Brussels (the Council, the Commission, and the Parliament), and the EU Agency for Fundamental Rights in Vienna, the CoE, and the OSCE.

4.4 Non-institutional Partners

Civil society is another of the pillars supporting regional human rights. Without a civil society with knowledge of and expertise on human rights, as well as being deprived of the necessary mechanisms for activity in the area of human rights protection, any possibility of having a fully-fledged regional human rights protection system is lost.

⁴⁸ See supra note 24.

⁴⁹ Co-sponsors of this initiative are Senegal, Armenia, Thailand and Mexico for the respective regional groups.

We have provided an overview on the role of civil society within the different regional systems on chapter 2. Suffice it to recall here that Asia and the Arab countries seem to be where the **EU has to continue to prioritize the setting up of mechanisms aimed at making NGOs stronger players in human rights protection**. Through NGOs, as well as NHRIs, the EU will have done much for the development of a regional system in both of these areas.

Within civil society it is possible to identify two clear partners with whom the EU has to work closely: we refer to **Human Rights Defenders (HRD)** and **educational institutions**.

4.4.1 Human Rights Defenders

The contribution of HRD to the promotion and protection of human rights is pivotal, particularly in situations in which the state (the utmost responsible for the protection and promotion of human rights) is unable or unwilling to fulfil its role as human rights protector. For this reason the EU has completed its work directed at the state through its efforts aimed at the protection of HRD.

HRD are individuals or organisations that fight for the respect and promotion of human rights in their respective countries; in particular, the EU has adopted paragraph 1 of the 'UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms' to define said HRD: 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels'.⁵⁰ These human rights and fundamental freedoms that are alluded to are civil and political rights, as well as socio-economic rights and the rights of indigenous communities.⁵¹

HRD will, in particular, document human rights violations, provide assistance to human rights violations victims (e.g. legal, psychological and medical). **The role of HRD is particularly necessary in contexts in which there has traditionally been a 'culture of impunity'**, which goes hand in hand, first, with systematic violations of human rights and, second, a lack of education on human rights and availability of human rights programs. It is against this background that HRD are exposed to repression and the arbitrary exercise of power, particularly in case of emergency situations. As a result, the EU has afforded protection to those HRD in order to ensure that they will more likely be in the position to avoid such repression and, thus, fulfil their task as promoters and guarantors of universally recognised human rights and fundamental freedoms.

The EU guidelines for the protection of HRD reflect the EU's will to apply in all external policies these guidelines in a transversal manner. Both, from CFSP and Development perspectives, all relevant stakeholders are recipients of these guidelines. In particular, **the EU Missions are in charge of the implementation of these guidelines and the COHOM supervises its implementation and follow-up. EU Heads of Mission are encouraged to be proactive in preparing local strategies that will allow the implementation of the EU's guidelines on a case-by-case basis.** Moreover, the guidelines are suitable to be part of the EU's political dialogues with third countries as well as to provide a battleground for EU-UN joint action. In this respect, **the EU recognises the special role of the UN Human Rights Council and its special rapporteurs vis-à-vis the protection of HRD.**

The EU is fully aware of the importance of Human Rights Defenders. It is already financing and has to keep on doing it through the activity of a number of NGOs, which work to defend human rights and to promote regional systems of human rights protection. For instance, the EU contributes to the functioning of the Inter-American system providing support to the NGOs, which help the litigation of

⁵⁰ Resolution 53/144 of 8 March 1999.

⁵¹ The Council of the European Union's 'Guidelines for human rights and international humanitarian law' from 1999, at p. 40. Available at: http://ec.europa.eu/europeaid/infopoint/publications/communication/40g_en.htm

emblematic cases at the Court, notably the Center for Justice and international law which is based in Washington.

The European Parliament should take action to place the regional systems of human rights protection in the same prominent position as the protection of HRD. The reason for this has to be understood from the following reasoning. On the one hand, the EU has a strong rationale for supporting HRD as a necessary policy to defend 'the right to defend human rights'. Such a right has two sides: the first is represented by activists (individuals or institutions that promote and protect human rights from a grass-roots perspective); and a second side of the right to defend human rights is embodied by the legal means to articulate such defence. Here, the regional systems for human rights protection are a key element together with the national and universal human rights protection systems. On the other hand, **placing the topic of regional courts in the same prominent position occupied by HRD in EU policies and actions is pivotal as HRD is one of the few genuine transversal and, thus, coherent human rights external actions of the EU.** HRD is one of the elements that the EU treats through bilateral relations (in its human rights dialogues) as well as in multilateral fora (through other organisations); moreover, HRD is present in its external and security policy and its development policy.

Following this reasoning, possible courses of action vis-à-vis the existing mechanisms of the HRD and empowering regional human rights protection mechanisms from the perspective of the tandem that the two perform are:

- a) **Reinforcing HRD through a stronger input on regional systems will produce more protected and resourceful HRD and more consolidated human rights mechanisms.** In other words, regional mechanisms for human rights protection better guarantee the respect of freedoms of expression, association and assembly that are pivotal for the work of HRD. Here, the performance of the European Court of Human Rights as a defender of these values exemplifies how regional mechanisms are key when the national framework fails to protect such rights. Moreover, to bring HRD and regional systems closer will ensure that the former act as local ambassadors of the latter. HRD will offer an effective local channel to create and strengthen the culture on the regional systems of human rights protection. The HRD would thus spread the knowledge of regional mechanisms among the individuals and organisations which the HRD encounter through their work and, at the same time, the HRD themselves would be better equipped to use those mechanisms (when available).
- b) For the purpose of mutually reinforcing the two sides of 'the right to defend human rights', **programs directed to HRD for the purpose of education, training, monitoring and awareness-raising on regional human rights systems has to be more and more promoted by the EU or through EU partners (e.g. EIUC).**
- c) On top of the particular training for HRD there is also a political channel that has to continue to be reinforced. **In its human rights dialogues the respect of HRD and the promotion of regional mechanisms have to appear as two sides of the same coin,** which are necessary within any country that is willing to promote and protect human rights.

4.4.2 Educational Institutions

Finally, it should be underlined that particular courses of action oriented to educational institutions should be put in place. Educational institutions have a fundamental role to play in reinforcing at a grass-roots level and at a more élite level awareness of human rights. Educational institutions, thus, are key actors in connecting civil society and professionals of the regional systems, in order to create mutual exchanges and global knowledge on human rights. At the moment, the EIDHR offers a platform from which substantial cooperation between the EU and educational institutions can be designed. An example that illustrates such cooperation is the relationship between the EU and the European Inter-University Centre for Human Rights

and Democratisation (EIUC). Such cooperation shows the potential of educational institutions to help in fostering a culture and knowledge of human rights. These institutions serve:

- a) **As a forum where *inter alia* human rights activists, practitioners and judges can meet to enhance their competences on human rights.**
- b) **As a platform to ensure human rights education all over the world through regional masters programs and through e-learning platforms.**

4.5 Concluding Remarks on the EU's General Framework for Realising to the Fullest Extent Possible Regional Human Rights Mechanisms

The EU already plays an important role in the promotion of human rights and democracy in all the regions. Thanks to its current partnerships (for example *Memorandum of Understanding* with OAS and Africa-EU strategic partnership) the EU has the chance not only to improve the functioning of human rights mechanisms, but also to enhance the public awareness to human rights. The measures proposed above draw the main characteristics of the framework that the EU has at hand to place regional human rights protection systems at the centre of EU human rights policies and actions. By continuing to pursue this goal, the EU is **sending a clear message to third countries, namely that regional systems are pivotal**. Moreover, by placing the topic of regional human rights protection systems at the core of the EU agenda, the EU is also furthering its own identity. EU member states have stood out as the promoters par excellence of human rights. Coherently with this, it seems an international responsibility of the EU to ensure the functioning of regional systems of protection of human rights as one of the mechanisms that can more effectively ensure an improvement on people's lives in all these regions.

It has to be stressed that despite the analysis of different mechanisms and actors separately, **EU human rights policies aim to be unified and transversal** within EU external relations. Many of the channels of action analysed connect with one another (e.g. the relationship between Human rights clauses, NHRIs and NRD highlighted above).

The EP has to pursue its human rights agenda and, consequently, continue to draw the Commission and the Council's attention to reforms on the EU's mechanisms laid down to protect and promote human rights. The EU and its Member States have been paradigmatic ambassadors of human rights in the world; within the EU the EP is **the institution which has the highest democratic pedigree and a tradition of placing human rights at the centre of its agenda. Such a particular pedigree that only the EP enjoys could be exploited to foster formal or informal changes that would allow the EP to be more involved in the human rights mechanisms that we are here reviewing and that the EP can expand, particularly to promote regional human rights protection mechanisms.**

The EP should push for the placing of regional mechanisms for human rights protection among the primary aims of the EU human rights agenda (EU guidelines). In the same manner that the protection of HRD are a priority for the EU's human rights policy, and that there is a comprehensive set of guidelines regarding the protection of HRD, **the EP should work towards the elaboration of a similar set of guidelines exclusively intended to foster regional systems of human rights protection. Moreover, the EP could use its annual report on the state of human rights around the world to devote part of it to the state and part of the evolution of regional human rights protection mechanisms.**

5 THE EUROPEAN UNION IN A CASE-BY-CASE FRAMEWORK

5.1 Introductory Considerations

Having mapped the state of regional human rights mechanisms in today's world, weighed up their weaknesses and strengths, and having identified which mechanisms are available and which actors involved with regard to regional human rights systems, the following points serve to pin down on a case-by-case basis possible courses of action to enhance human rights protection within said regional systems. Firstly, the overall strategy that the EU has to follow when facing the question of 'what to do' or 'what ought to be done' in today's state of regional human rights systems will be addressed. The strategy will be coupled with the priorities to be kept in mind by the EU in this particular area. Secondly, particular examples of the role that the EU (and particularly the EP) could play in each system are advanced – with particular attention paid to the African system. These examples are organised into three different frameworks of human rights cooperation:

- a) **Capacity building in inter-system cooperation. Vertical relationship EU-regional system: this framework describes the relationship between the EU and each regional human rights protection system. It is about capacity building from the EU towards regional systems.**
- b) **Horizontal cooperation and coordination. The relationship EU-regional system in the inter-system framework: this framework describes horizontal relations among regional systems where the EU indirectly acts to foster such cooperation.**
- c) **Vertical cooperation and coordination. The relationship UN-regional systems: This framework describes the relationships between the international or universal level of the UN human rights arena in connection with regional human rights protection systems.**

In each scenario we distinguish when an action from the EU is really necessary, and the channel through which a necessary action should be carried out, and at what intensity.

5.1.1 The Overall Priorities and Modalities of Action

The overall strategy of the EU has to aim at three general objectives:

- a) **The actions that the EU will take have to orientate towards the facilitation of exchange and cooperation among the different levels that we have just mentioned (horizontal – between regional systems – and vertical – between them and the universal system).**
- b) **Actions must go beyond cooperation and reach assistance in those cases in which the regional systems require it.**
- c) **The EU has to be available to assist efforts to establish a regional system or systems where they do not yet exist, or where they are at an early stage.**

The three pillars of the general strategy face the same challenge: adjust to fragmentation and universalisation. The two are part of today's international human rights order. On the one hand, the UN human rights system – and many human rights themselves – aim at universalisation. On the other hand, the multiplicity of human rights systems (national, sub-regional, regional and universal) inevitably results in fragmentation in the fashion in which human rights are promoted and protected. Complementarity between these two tendencies implies that fragmentation helps fill the gaps that may exist in national human rights protection systems, while at the same time helping each regional or sub-regional system converge with international human rights norms. In sum, **regional systems are bottom-up and top-down facilitators that help universalise human rights practices from the national to the universal level and vice-versa. Consequently, the following points are drawn with the aim of contributing to such complementarity** of the national towards the universal human rights protection levels, and vice-versa, through regional human rights mechanisms.

Within complementarity as the backdrop, particular modalities of action are thus proposed. **The EU needs to diversify its engagement, not only in relation to the advancement of the target but also in the context of political sensitivity.** It should be tailored with specific objectives and methods of work with a given setting in mind. Moreover, while planning specific projects and actions, the full range of modalities of action should be considered, including human rights diplomacy, working in partnership with international and regional actors. The specific political environment in question may require long-term approaches, which are also therefore worth considering. In sum, there are different possible levels of intervention or means of action, and the latter should not be understood as a dictating to, but rather as jointly working with, the parties involved.

Taking into account the advancement of regional systems, the list of priorities might be envisaged as follows:

- a) **Facilitation of exchange and cooperation among regional systems.**
- b) **Support for the capacity building/maintenance of the regional system in Africa.**
- c) **Exploration of the feasibility of cooperation with the LAS based on the Arab Charter.**
- d) **Contribution to the efforts aimed at the establishment of the regional system in Asia, in particular South-East Asia.**
- e) **Assistance to national capacity building in Third Countries to enable them to better comply with international human rights obligations.**

5.1.2 Policy Considerations

In order to determine the possible modalities of action, a mapping of each system is essential. The analysis conducted in previous sections of this study grounds the choices that are made in the following parts. We have to take into account that **the EU has to act very differently regarding each regional system.** The region itself, the state of the regional mechanism and the mechanisms that the EU has at hand to cooperate with these systems varies greatly:

- a) **The American system has been very successful. The EU is already paying a lot of attention also to As a result, the EU should prioritise those systems that are developing or emerging.**
- b) **We have to distinguish between political and the juridical-technical work. Whereas the EU already has many political mechanisms in relation to Africa and, thus, it is possible to deepen on possible new courses of action from a human rights juridical-technical perspective, in the case of Asia the EU must still stick to a political dialogue in order to develop the mechanisms that, at a later stage, will enable the discussion of possible courses of action from a juridical-technical perspective. The EU has to open up a process of partnership with Asian countries that will allow them to jointly elaborate a *feuille de route*, which can be reinforced by an action 'in private' from the EU through the Office of the High Commissioner on Human Rights.**
- c) **By the same token, the regional system in the Arab countries is not yet sufficiently well developed to be able to go beyond the particularities that have already been analysed in the first part of this study.⁵²**

As a result, the modalities of action that we are proposing are particularly recommended for the relationship between the EU and the African regional human rights system. We have maintained a generic approach suitable to any system whenever the action at stake allowed it to. At other times we have framed the action in a particular system towards which the measure should be directed.

⁵² A new forum might be found in the just created Union for the Mediterranean.

The fact of having prioritised Africa should not be seen as a biased approach or as a fragmented one. We have argued that there is no one recipe to address globally the needs that each regional system has. As a result, **the EP has to orientate the EU's action towards the most effective way of promoting regional systems. To have invested in the African system is a political choice that effectively permit to reinforce regional systems at a universal level for the following reasons:**

- a) **There are plenty of political mechanisms of cooperation already established, such as the Africa-EU strategic partnership on human rights and good governance, which proves that direct and indirect aid and cooperation will have a clear impact and exponentially enhance human rights.**
- b) **There is already a regional human rights protection system in place that is similar to the European one. For the EU it is easy to see where and how to cooperate, and there is no need to create the regional system but rather merely to help that system work.**
- c) **Africa's particularities suggest that the success of human rights on the African continent will be an object of emulation. Some Arab countries are in Africa, thus, the 'African experience' will influence emerging systems such as the nascent Arab system. In sum, a victory in the African regional system of human rights protection is a worldwide victory on human rights and also a victory for the EU as promoter of human rights.**

5.2 Capacity Building in Inter-system Cooperation: The Vertical Relationship EU – Regional system

As human rights continue to be a sensitive issue in the perception of political leaders in some regions, the engagement of the EU in enhancing inter-regional cooperation and development of regional systems of protection needs thoughtful consideration with regard to both objectives and modalities of action. As a matter of fact, one can assume that they should not pretend to be a driving actor in operational sense. **Indirect influence, cooperation with partners, and human rights diplomacy should be the vehicles for the EU's contribution in this area.**

Two different perspectives on capacity building are identified. **On the one hand, there is the type of inter-system cooperation where the EU has a clear role empowering a particular regional system and, on the other hand, an approach through which the EU is a peer among the other regional systems** or, even where the EU is not directly present because what is at stake is the fostering of relationships among regional systems and within regional systems (when sub-systems exist) and with their relationship with national systems (horizontal relations).

5.2.1 Policy Considerations within the Capacity Building Strategy

The first element to look at is the mechanisms in place that have been used for capacity building, or that could be used for such capacity building purpose.

Between the European and the Inter-American systems there has been a tradition of cooperation and exchange of practices that has benefited the two. While there is still room for improvement, both European and Inter-American systems have the endogenous resources to continue developing into better systems. In fact, the cooperation between these two systems has been so positive that any capacity building programme launched by the EU should take note of the mechanisms that have been set up in place within the framework 'Europe-Americas'. To exemplify this, the regular exchanges between the Council of Europe and the Inter-American system could serve as a pattern to pass expertise to the African system and a contribution to setting up the African system and emerging systems. These kind of exchanges allow also the promotion of the individual applications.

On 2008, for the first time, the three regional human rights courts, the European Court on Human Rights, the African Court on Human and Peoples' Rights and the Inter-American Court, met in Strasbourg on the

occasion of the celebration of the 60th anniversary of the UDHR. The EU, in cooperation with the CoE, could strengthen this cooperation and foster regional human rights protections mechanisms on the political level by establishing annual meetings of the three regional courts.

To improve access of the individuals to the International system **EU should contribute to the ‘Fondo de Asistencia Legal del Sistema Interamericano de Derechos Humanos’** (The Inter-American Human Rights System’s Fund for Legal Assistance – the Fund).⁵³ The Fund helps aid access to the Inter-American system for those deprived of the appropriate means to bring their case in front of the Commission (and, eventually, the Court). Moreover, **the Fund has been identified as something that will strengthen the Inter-American system.** That is, where the Inter-American system clearly suffers is in being open to most of citizens of the region, for they are not in the position to finance bringing their cases to the system. The EU stopped contributing to the Inter-American system in 2007 (since then only Norway and Spain have continued to support it). Thus, **financing the fund would allow the EU to easily monitor the impact of its financing activities in the Americas and, at the same time, help the system endure what is now its principal challenge: to become accessible to the majority of the population.**

Regarding Asia and the Arab countries, we can mostly point to the human rights dialogues that have been developed in another part of this study. If one would look for particular technical mechanisms for capacity building, it would be difficult to find many; there is though the ASEAN Intergovernmental Commission for Human Rights and the Arab Committee of Human Rights. **In the incipient systems of Asia and the Arab states, capacity building should start after political dialogues are well developed and, within the latter, where clear road maps have been laid down.** One of the first actions to be supported in this regard is to have **close cooperation in the drafting of human rights declarations of said systems.** It is important that the latter adopt a human rights charter that reflects human rights standards. Here, a recent development within the Arab system has to be considered. The Council of Foreign Ministers of the Organisation of the Islamic Conference (OIC) established the statute of the **Independent Permanent Commission on Human Rights.**⁵⁴ Through the resolution, the **OIC emphasises its concern over the difficulties of cooperating with non-Islamic countries and organisations through a shared understanding of human rights that will respect cultural, social and religious specificities.** The new Commission (which will be based in the OIC’s UN delegation in New York) has to ensure the presence of the OIC in the different international organisations and **contribute to the safeguarding of the interests of Islamic countries.** The OIC’s resolution is important, moreover, because alongside the setting up of this new Commission it also **encourages OIC Member States ‘to study the possibility of establishing regional arrangements in the field of Islamic human rights to boost their regional cooperation in this regard’.** While the IOC’s initiative is unquestionably positive because it highlights the importance of respecting human rights and, particularly, strengthening regional and international cooperation on this matter, it also shows the difficult path to be followed, one that will ensure Islamic values without being perceived as damaging to international human rights standards.

As a result, **both, in Asia and the Arab world, it is of utmost importance to establish and reinforce the appropriate political dialogue to allow progressive conversion between the charter of the new human rights regional systems and other regional and international human rights protection systems.**

Vis-à-vis Africa, there is a long tradition of political dialogue between it and the EU. In particular, the main instrument that has laid down particular channels for capacity building in Africa is the one that the EU uses in its relations with the countries of Africa, Caribbean and Pacific. The Lomé convention, which was later replaced by the Cotonou agreement, describes a partnership among those countries that, among other

⁵³ Regulation of this Fund in Resolution CP/RES. 963 (1728/09) from 11th November 2009.

⁵⁴ Resolution 2/37-LEG that followed the meeting of 18-20 May 2010 of the OIC’s Council of Foreign Ministers.

things, have to respect and promote human rights. Art. 9 of this agreement obliges all parties to respect human rights and art. 96.2.a) establishes that the non-compliance of human rights obligations will trigger political dialogues and consultations that might impose sanctions on the party that has not complied with its human rights obligations.⁵⁵ Also, with the Joint Africa/EU Strategy the two sides have committed to conduct an in-depth dialogue on human rights and democratic governance, to promote these values on a global level in international fora and to strengthen their cooperation in this field. From this dialogue and cooperation comes understanding, cooperation and programmes that bond leaders, civil society and citizens in the pursuit of governance and human rights. **In Africa, mechanisms are laid down, but the situation is not as in the Americas; in the African context the need for exogenous support remains key in order to ensure that the human rights protection system is developed and consolidated to the point of being able to survive endogenously.**

From this mapping it becomes clear that financial and political efforts should be placed on Africa, for it is in this region that we find the appropriate background for said resources to flourish. This does not by any means signify that the EU should place in a secondary level Asia or the Arabic countries, but that **the EP has to convey the message that a very different task has to be undertaken in the latter cases.**

5.2.2 Capacity Building Strategy in Africa

The OHCHR Management Plan for 2010-2011 notes steady progress at the institutional and legislative level in the region: 'The African Court of Justice completed its merger with the African Court on Human and Peoples' Rights, and the African Union approved a ground-breaking new treaty for internally displaced people in Africa. The African Network of National Human Rights Institutions grew in number and prominence'.⁵⁶

It is therefore essential for the EU to reinforce its current engagement in the support for the African protection system in order first to develop it, but also to make sure of the public awareness and facilitate the access of individuals to the Court. At the same time, it is to be born in mind that while seeing their regional protection system as a precious baby, many African states are particular sensitive to its ownership and independence. In this sense the political dialogue on human rights and democracy has to be reinforced within the framework of EU-Africa Strategic partnership. In the same context it has been planned to work for capacity building for the Court and the Commission. For instance, the EU has already intervened in the managing of individual applications and providing of recommendations to the member states This support in capacity building show EU's interest in democratisation processes and respect of human rights in Africa. The creation of EU-Africa partnership website would also allow a shared communication including information on human rights.

But the potential of the AU protection system is far from being fully exploited at this time. Capacity gaps at the regional and national level, as well as commitments gaps on the part of political leaders in the region are major obstacles to the improvement of the situation.

The European Union may wish to consider the following opportunities:

1. The European Union' Interactions with the African Union

Providing more financial and know-how support to the capacity building of the human rights institutions of the African Union. The main problem the African system on Human and People's Rights is confronting is the lack of adequate funding from the side of the African Union. The establishment of an African Court of Human Rights has increased that problem. The African Commission has a large mandate in the field of human rights education, since the African Charter

⁵⁵ This procedure is developed in Annex VII of the agreement.

⁵⁶ Available at: <http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>

on Human and People's Rights gives special attention to human rights education in art. 25 stipulating that 'state parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present charter and see to it that its freedoms and rights as well as corresponding obligations and duties are understood'. Accordingly, the African Commission has designed a number of activities to meet its obligations under this provision, which, however, have never been properly implemented, because of lack of funds. Even if EU is already deeply engaged, a more and more supportive strategy of the European Union to the African system could consequently assist the African Commission in meeting its obligations deriving from the Charter.

Adequate resources are vital for ensuring independence and proper functioning. If regional systems depend on the voluntary donations of states, the system will privilege certain matters over others and, therefore, lose its credibility and *raison d'être*.

2. The EU's Interactions with Institutional African Players (inter alia AU, NHRIs and NPs)

- a) In order to ensure the effective performance of the monitoring system of human rights protection in Africa, capacity building should prioritise the setting up of an effective **early warning system to prevent gross-violations of human rights** (e.g. as the OSCE High Commissioner for Minorities). This is particularly important for those regions in Africa (or in Asia) where war crimes, crimes against humanity and genocide are more likely to happen (or are actually happening).
- b) The EP has a special role to play here. Through the Parliament's contact with third states' parliaments it is possible to advance much in compromises regarding the promotion of regional human rights mechanisms. In the context of the Cotonou agreement, the **ACP-EU Joint Parliamentary Assembly should provide the European Parliament with a privileged forum in which to place as a priority the gradual realisation and consolidation of the African system.**⁵⁷ An example here would be to draw a more concrete procedure in case of human rights violations, which would be placed in the ACP-EU Joint Parliamentary Assembly.⁵⁸ In particular, to detail the cases in which the procedure will be triggered and the actors involved in the negotiation to redress human rights violations, as well as a clear array of possible counter measures for the countries infringing human rights could be more effectively managed by the parliament of the contracting parties
- c) **Existing agreements on infrastructures could be used** (and if needed with an allocation of more money from the EIDHR) **in order to enhance infrastructure for new technologies as fundamental background for the development of regional mechanisms.** The relationship between regional mechanisms and new technologies can be seen from the perspective of the transfer of know-how from other courts: access to documentation, etc.
- d) Here a forum to take into consideration is the **Inter-Parliamentary Union**. Cooperation of the European Parliament with the IPU – which implements its own human rights technical assistance programme in some countries and at the sub-regional level – might be important to involve the IPU in the work for the African regional system *inter alia* through building parliamentary alliances around this system. **Organisations such as the IPU (for the diversity and number of states that are involved, through their parliaments, in this organisation; as well as for the particular**

⁵⁷ The assembly is the forum *par excellence* where dialogues between EP and African countries take place. See supra note 41, at pp. 286-287.

⁵⁸ In fact, in 2008 the European Parliament already drew attention to the lack of concrete mechanisms to apply the human rights clauses in commercial agreements between the EU and ACP countries. In particular, the European Parliament claimed that there is a lack of mechanisms to evaluate the human rights violations that would be clear and transparent to all states parties in these treaties. See supra note 45.

position of parliaments within states) is a privileged partner to foster inter-regional cooperation:

- For instance in the realm of education. From the IPU parliaments could coordinate **education and public campaigns** (e.g. joint campaigns to promote the regional or sub-regional systems). They could also share experience on human right's popularization within particular states.
- The IPU is also a privileged actor when seeking an organisation able to trigger human rights education in such inter and intra-regional framework. Here, the **education of the military, the police, judges, NGOs, schools or universities or the parliamentarians themselves is at the centre of the IPU's interests in the promotion of human rights education.**

3. The European Union's Interactions with the United Nations and/or the Council of Europe with the African Union

a) It is particularly interesting that the EU will have an *ad hoc* partnership with the CoE and the UN for the fostering of regional human rights protection systems (partnership that has to be contextualised in the horizontal and vertical cooperation mechanisms are proposed in the following sections). Such cooperation with partners to provide **a more concerted support to the African protection system has the following modalities of action:**

- **Reinforce the cooperation with the OHCHR to develop a medium term programme.**
- **Reinforce the cooperation with the Council of Europe to continue to provide know-how and share practical experience and help to develop public awareness and access of the individuals to human rights mechanism.**

b) Enhancing the financial and practical support given to the capacity building of the African Court on Human and Peoples' Rights, which is in the process of merging with the African Court of Justice, may be vital. In particular, the EU should give assistance to judges, and support the development of capacities for the effective and efficient performance of their functions, thus facilitating their access to the experience of the human rights courts within the Council of Europe and the Inter-American system. An important role can be played in this context by the Court of Justice of the European Union

4. The European Union's Interactions with Civil Society and Educational Institutions

The EU should allocate within its capacity building strategy a certain amount of resources that would be directed towards linking civil society and educational institutions in African countries with the regional human rights protection system. Strategies of this nature would include:

- a) **Providing funding and technical assistance if required to allow, as far as possible, the circulation of all reports and findings of the regional system.**
- b) **Publicising for meetings organised in the region and making press releases in response to important developments or with core information about the regional system in order to spread knowledge and culture on human rights. Such information distribution could consist of two aspects:**
 - On the one hand, the aim would be to **spread the findings** of the human and people's rights court **to the organisations that are technically prepared to understand and use it** (academia, NGOs, state bodies such as parliaments, NHRIs, etc.).
 - On the other hand, it would be important to ensure that part of the funding for spreading the work of the regional system is devoted **to simplifying and making available to the**

wider public the regional system's work, to ensure that they are part of a policy of fostering a human rights culture among the people.

- c) In connection with the technological gap mentioned above, **to invest in technological infrastructures is a pivotal policy for advancing in the field of human rights education.**⁵⁹ Here, the relationship between new technologies and human rights has to be seen from the perspective of education on human rights and, in particular, to regional human rights mechanisms: **access to knowledge through on-line learning initiatives.** As a result, the EU should seriously consider **initiatives that palliate the isolation of most of Africans from human rights education.** One way to do this could be by **building centres devoted to the management of e-learning and empowerment in the field of human rights.**

5.3 Horizontal Cooperation and Coordination. The EU-Regional System in the Inter-system Framework

At the moment, there is no functional platform for cooperation between the regional systems on the one hand, and, on the other hand, between the regional and the universal systems.⁶⁰

From a general framework perspective, inter-regional cooperation is key because it offers an example of a positive experience that varies from the traditional western-world based approach. Through such cooperation the Asian and Arabic systems may have a special partnership with the American and the African systems, enabling them to learn from the experiences of the latter. Such horizontal relationship opens up a debate that has usually been dominated by the western world countries and, particularly, by three institutions (the CoE, the EU and the UN). The plurality of *fora* for cooperation and the exchange of experience is not only important from a political perspective, in definitively leaving behind a post-colonial scheme where there is only a north-south cooperation; the fact that the African system has been developed in recent years also offers a framework in which their experience is contextualised much closer to the context within which Asia and Arabic countries are facing the development of their own human rights regional systems (globalisation). Thus, it is possible that a south-south cooperation will enhance sympathetic consideration for the goals reached in the Americas or in Africa and, thus, be a valuable motor to the promotion and development of regional human rights protection systems in Asia and in the Arab countries.

Inter-system cooperation could be advantageous as:

- a) A platform for exchange of experience and mutual enriching.
- b) The creation of an Expertise and Experience Network (EEN) is recommended. In any regional system judges are reluctant to follow training and capacity building. However, close cooperation between them to create a sort of alliance of human rights judges may have a tremendous positive impact on the quality of work of regional and international systems. The EU may wish to support the establishment of an EEN. This network, a 'club' opened to judges at regional courts, would be supported by a specially designed Website. The data base will contain an updated and analysed sources of human rights law, case law and study collection; all organized on universal, regional and comparative basis. The chat-room will give the judges an opportunity to consult with each other in an informal way. Annually or biannually, the members should be brought together to give the arrangement a personal touch and an opportunity for a live-exchange. The network should also be opened to leading personalities of the emerging regional systems. The flavour of an elite club may

⁵⁹ 80% of the population in Africa has no electricity which, together with Africa's population high rate of illiteracy, remains a huge handicap to the expansion of human rights in African countries.

⁶⁰ Although there is a tendency to create such platform through the OHCHR's initiative to coordinate meetings among regional systems. See supra notes 22 and 26..

be a driving force in the development of closer cooperation among judges from different regions. To create such a network would require a continuing financial support, at least in a medium-term perspective. The EU should consider its role as the main supporter of such an initiative .

- c) A framework for discussion and exploration of cross-regional challenges to the human rights protection.
- d) A framework for sharing good practices regarding institutional and procedural aspects of the functioning of regional systems.
- e) An encouragement by example for setting up/development of protection system in those regions which face deficits in this regard.
- f) A platform for discussion on the relationship between universal and regional system of human rights protection (e.g. through a biannual meeting of representatives of the systems – both advanced and emerging; including members of the commissions, judges and secretariat and, perhaps, some NGOs).

5.3.1 The Particular Inter-system Strategies to be Considered within the African Framework

1. Institutional Cooperation

- a) Within regional systems it is important to elaborate a Memorandum of Understanding such as the one existing in Europe (*Memorandum of Understanding between the Council of Europe and the EU*). The latter facilitates the work of each organisation and body that is competent on human rights. It economises on efforts since each is responsible for a particular task and it helps coordinate all bodies at a regional level.
- b) A creation of a Human Rights Agency should be also weighed up and seriously considered. Such agency could have competences for example to control compliance with the human rights clauses of the agreements between the African countries and EU,⁶¹ or to inform on compliance of countries to member states by working with the APR mechanism, the NEPAD or to the UPR mechanism.

2. Non-institutional Cooperation

- a) HRD could also play a role in protecting those individuals that have cooperated with the findings of the regional court for human rights. It is key for the functioning of regional and sub-regional systems that complainants, witnesses and those involved in conducting the investigation at stake will not be under threat. Any threat or violence should be reported and redressed from the authorities. Nonetheless, the victims of these threats might find it easier (or as only resource) to approach HRD or NGOs for that purpose.
- b) Educational institutions. The idea is to have particular human rights programs that operate horizontally between regions or within a particular region to enhance the opportunities for human rights education. Regional masters, online education programmes, etc. will ensure that human rights education has a wider and richer network that will serve as a base to sustain all other efforts to promote human right within regional systems. Any educational centre specialised in human rights (e.g. EIUC) could enter into partnership with the regional system to jointly produce studies on specific subjects on human rights topics and on the functioning of the regional system, as well as to disseminate the information through academic institutions, NGOs and Think Tanks.

3. Institutional Cooperation meets Non-institutional Cooperation

Through the Instrument, the EU should continue to promote NGOs active in the field of human rights and democracy.

⁶¹ See supra note 41, at p. 9.

Inter alia NHRIs, NGOs, and HRDs have to assist each other through cooperation. They should particularly cooperate with the regional organisation in its investigations, facilitating country-visits and cooperating with the transfer of information relevant for the regional court's own investigations (including unrestricted, confidential access to victims, witnesses, locations).

- a) The relationship between NHRIs, NGOs, sub-regional organs and regional organs has been highlighted. Such a relationship has been a priority for the OHCHR, which has maintained that one of the most important tasks to be undertaken in Africa is the development of 'a coherent human rights strategy with stakeholders' and the strengthening of the AU NGO Forum. This strategy has the aim of reinforcing and increasing the capacity of the AU human rights institutions to promote and protect human rights and to implement their decisions and recommendations. NGOs are functioning like watchdogs for the African Commission and regularly participate in its meetings as observers, for the purpose of which an NGO-seminar is usually held before the meeting of the Commission. Accordingly, support for such NGO-seminars may give them more opportunities and enrich and strengthen the work of the Commission *per se*. Obviously, there would also be the possibility to include representatives of other regional systems or from the UN system in such events, which could benefit inter-regional cooperation as well as cooperation between the African Commission and the UN

5.4 Vertical Cooperation and Coordination. The Relationship between UN-Regional Systems

OHCHR seems ready to be placed by the HRC in a central position in the efforts to strengthen the regional systems (although one never knows, taking into account the level of political sensitivities). Therefore, thinking about the strategic partnership of the EU with the OHCHR in the discussed context seems to have strong merits

In this framework, a *de facto* ear-marked contribution to the OHCHR voluntary fund may be an appropriate tool for operationalizing this strategic partnership.

- a) There is a need for **institutionalized cooperation** (which can be formalized through a Memorandum of Intent or a Memorandum of Understanding) **between the universal level – UN – and the regional system at stake to favour:**
- **Regular exchanges** at different levels. For example the exchange of information and documentation. This would include **periodical meetings where common goals and expected outcomes could be jointly planned**. Moreover, the **organization of workshops or other training sessions** would also contribute to the cross-fertilization of expertise between the regional and international levels.
 - **Greater opportunities for consultation.**
 - **Joint actions (joint missions - such as the country mission of UN special Rapporteurs with Thematic Rapporteurs of the Inter-American System on freedom of expression; joint reports in particular matters that demand joint action; joint press releases).**
 - **Country visits of special Rapporteurs.**
- b) **A special unit within the regional systems in charge of such contacts, exchanges, etc., with the UN framework should be created.** The importance of such unit resides in the fact that only an internal organization of each system towards the furthering of its relations with the UN will effectively channel the new proposed methods of cooperation and coordination among the systems.
- c) Subject to budgetary availability, **the holding of thematic discussions to intensify cooperation in key themes for each system** such as happens with torture or the protection of HRD **is recommended.**

- d) The relationship between regional systems and the UN should also serve to **enhance the cooperation of the UN with the national arena through the regional systems**. That is, the UN and the regional systems should take into account the role of NHRIs and of national NGOs as key pieces in the cooperation of human rights between the regional and the international levels and as key actors for strengthening human rights in each state (as it is sought by the regional and universal instruments). In fact, in order to further mutually-reinforce the universal, regional and local levels, with the role of NHRIs and NGOs, the role of constitutional courts should be also taken into account. Thus, to hold activities (e.g. workshops) with constitutional court judges could also reinforce the national implementation of internationally and regionally protected human rights.
- e) Regarding the **exchange of jurisprudence** developed at each level there are different options to consider. A highly ambitious one (and highly recommended too) could be developed over time since it demands funds and that coordination mechanisms among the different systems would be put in place. Such an ambitious plan would consist in the **creation of an 'e-jurisprudence' platform where each regional system and the UN could load and update its jurisprudence (with summaries, opinions, reports, conclusions, recommendations, etc.)**. Until that is a reality, however, other mechanisms are available. For example, the exchange of a biannual bulletin with the court or treaty bodies' jurisprudence is recommended. Finally, the less budget constraining option would be to share information and data relating the system's jurisprudence through user-friendly web-links.
- f) Despite the fact that each system has a particular follow-up mechanism for its decisions or recommendations, an important focus of cooperation should be placed on the issue of **follow-up**. In particular, in connection with the decisions and recommendations that are of mutual concern, cooperation between the UN and the regional system would have a double beneficiary effect. On the one hand, it would increase the coordination and common positions in such questions of mutual concern. On the other hand, the cooperation would enhance the effectiveness of each system and would provide a better remedy for human rights violations and thus strengthen the confidence of individuals and organizations in regional and the UN human rights protection mechanisms. **Such cooperation could be as ambitious as setting up appropriate mechanisms to jointly carry out the follow-up for the implementation of the decisions, and the recommendation of the regional and the UN human rights protection systems.**
- g) A particular mechanism towards the coherence of human rights decisions at the regional level and at the UN level would be **to submit the reports prepared by the regional mechanisms to the UN (Human Rights Council and OHCHR) in order that the Universal Periodic Review would take them into consideration as official documents that refer to country reports**. In such a scenario it would be as useful to provide the information from the cases decided within the regional systems as to provide the information regarding the non-implementation of the decisions or recommendations that have been made by the regional organ hearing the cases at stake.
- h) In the direction towards a more unified and universal approach to human rights that would stem either way from **both regional and UN levels, Special Rapporteurs of each system could act as amicus curiae by presenting an amicus curiae brief**. This would provide the regional or UN body with further technical input to decide on the case, as well as would facilitate coherence between the decisions that in similar cases are taken at both levels.

It should be ensured that the countries of the different regional mechanisms have signed and ratified all core international human rights treaties. For this purpose, actions in such a direction would allow for the taking of one more step towards a universality and unity of human rights protection within the fragmented regional systems. For instance, the EU advises African States on how to ratify the UN Convention against torture. Moreover, to have those international instruments ratified would facilitate cooperation between the UN human rights bodies and the regional once as regards cross-fertilization of the way each applies and interprets universally-recognized human rights.

CONCLUSIONS

General Framework

The strategy

The EU is already deeply engaged within the support of different regional mechanism and follows the human rights situation in the different regions, encouraging the efforts of each region to address the challenges of democratic security. One of these challenges is, when needed, the establishment of regional mechanisms for human rights and the development existing ones.

Its action is already oriented and must aim to the following three general objectives:

- a) **To facilitate exchange and cooperation among regional systems and between them and the universal system.**
- b) **To be available for assistance in the efforts to establish a regional system or systems where they do not exist yet or are at the inceptive stage.**
- c) **To promote the elements that allow regional systems to become effective mechanisms for human rights protection: regional inclusiveness, independence, access to justiciability and follow-up mechanisms.**

Modalities of Action

The EU needs to diversify its engagement not only in relation to the advancement of the target but also in the context of political sensitivity. Its involvement should be tailored to specific objectives and methods of work in a given setting. Moreover, while planning specific projects and actions, the full range of modalities of action should be considered, including human rights diplomacy, working in partnership with international and regional actors. Political environments may require long-term approaches.

Overall Priorities

Taking into account the advancement of regional systems, the list of priorities might be envisaged as follows:

- a) **Facilitation of exchange and cooperation among regional systems and between them and the universal system.**
- b) **Reinforcement of the support for the capacity building/maintenance/development of the regional systems in Africa.**
- c) **Cooperation with the LAS based on the Arab Charter on Human Rights.**
- d) **Contribution to the efforts aimed at the establishment of the regional system in Asia (in particular within ASEAN) if political conditions allow for this approach (a political decision will be necessary).**
- e) **Assistance in national capacity building in third countries to enable them to better comply with the obligations under the regional systems, including the treaty system of the Council of Europe.**

Specific Contexts

Facilitation of Exchange and Cooperation among Regional Systems and between them and the Universal System

1. Point of Departure

At the moment, there is no functional platform for cooperation between the regional systems on the one hand and, on the other, the regional and universal systems.

During the 2008 Workshop and three regional consultations before the May 2010 Workshop, several interesting points were made that should receive the attention of the human rights constituency, as well as may be worth considering by the European Union. These include the following suggestions:

- a) **Mutual recognition of documents and findings by various systems as the basis for their respective work – e.g. adding the appropriate regional documents to the considerations of the human rights performance by States in the framework of the Universal Periodic Review by the Human Rights Council.**
- b) **Undertaking joint actions by international and regional bodies, such as country missions involving the assessment of human rights situations by experts (special procedures or others, as appropriate), and the adoption of a schedule of visits to places facing fundamental human rights challenges with a view to preparing and publishing joint or coordinated reports, may both be considered.**
- c) **Harmonizing human rights education efforts.**

In addition, one can also mention by way of example:

- a) **Adoption of a principle that international and regional systems will set up joint periodical human rights objectives and mechanisms to monitor and evaluate their implementation (e.g. freedom of opinion, access to social security, rights of stigmatized groups).**
- b) **Adoption of joint strategies to address the situation of different vulnerable groups, including setting up mechanisms of monitoring and assessing their implementation.**
- c) **Review of national systems of the human rights protection and development of programmes to address the existing shortcomings.**

To that end some capacities need to be made available in terms of the staff needed to manage these activities, as well as programmatic and technical equipment. For example, the creation of the relevant databases was postulated at the aforementioned meetings. Support for these efforts may be considered by the EU.

2. Policy Considerations

Inter-system cooperation could be advantageous as:

- a) **A framework for discussion and exploration of cross-regional challenges to the human rights protection.**
- b) **A platform for exchange of experiences and sharing good practices regarding institutional and procedural aspects of the functioning of regional systems.**
- c) **An encouragement by example for the setting up/development of protection systems in those regions which face deficits in this regard.**
- d) **A platform for discussion on the relationship between universal and regional systems of the human rights protection.**
- e) **A source of inspiration for global initiatives to promote and protect human rights.**

As human rights continue to be perceived as a sensitive issue by some political leaders, the engagement of the EU in enhancing inter-regional cooperation and development of regional systems of protection needs thoughtful consideration with regard to both objectives and modalities of action. As the matter of fact, one can assume that the EU should not pretend to be a driving actor in an operational sense. Indirect influence, cooperation with partners, and human rights diplomacy should be the vehicles for the EU's contribution in this area.

In this context an additional point needs to be stressed – various cooperation programmes often tend to focus on process and somewhat neglect substance. It is, indeed, vital to avoid such a bias. Therefore, the engagement of the EU should depend on the ability of actors involved to strike a balance between

substance and process factors. In other words, programme of cooperation between the European Union and different stakeholders should focus on process as a tool (not an objective) and substance as a goal. The latter makes a real difference for the rights holder – the human being.

3. Possible Initiatives

The European Union may wish to analyze the following opportunities:

- a) **The European Union may consider its role as the spearheading actor in shaping the engagement of the Human Rights Council in strengthening inter-regional cooperation – this would mean a medium/long term engagement in policy making at the HRC level.**
- b) **In particular the Union could support the draft resolution sponsored by Belgium on regional system at the next Human Rights Council’s meeting.**
- c) **The European Union may enter into a strategic partnership with the Office of the High Commissioner for Human Rights with a view to enhancing regional protection systems – this would also require a greater engagement of the OHCHR in this area; in this framework, a *de facto* ear-marked contribution to the OHCHR voluntary fund may be an appropriate tool for operationalizing this partnership; inter-regional cooperation as the overall vehicle for enhancing the impact of the regional systems of protection should be at the centre of this partnership.**
- d) **The European Parliament may consider engagement with the Parliamentary Union in focusing the attention of parliamentarians of different regions on the work of regional protection systems, their needs, and the challenges they are facing.**
- e) **See also Point of departure (2.1.1.).**

Support for the Capacity Building/Maintenance and development of the Regional System in Africa

The full potential of the AU protection system is far from being exploited. Capacity gaps at the regional and national levels, as well as commitments gaps on the part of political leaders in the region are major obstacles to the improvement of the situation.

The EU is already involved in the regional protection systems debate (EU-OAS *Memorandum of Understanding*, EU-Africa Strategic partnership, dialogues on human rights and democracy, etc.). It continues to help and to develop their capacity building but it should also insist on the necessity of improve their accessibility and effectiveness. The next step will be the one of enhancing public awareness, supporting regional networks for the training of specialists (judges, lawyers and academics), supporting education, research and promotional activities in the field of human rights, such as regional masters’ programmes. The EU should also try to insist to make more and more effective the decisions and recommendations taken in the framework of the regional mechanism.

Africa is not only the continent that is probably is facing the greatest human rights and development challenges; it also constitutes a group of states which is perhaps the key to the improvement of international relations in the area of human rights, including within the Human Rights Council. Both factors speak strongly in favour of paying particular attention to cooperation with the regional protection system with a view to making it as effective as possible. In a way, it should be the desire of the international community to make it a sort of a master piece. On the one hand, this could actually help people in Africa. On the other hand, success of this system may become an encouraging example for those who hesitate or are yet unwilling in other regions.

1. Possible Initiatives

The European Union may wish to consider the following opportunities:

- a) **Continue to provide financial and know-how support to the capacity building of the human rights institutions of the African Union.**

- b) **Help the Africa Union to reinforce the independence of the mechanism, its accessibility, a good level of public awareness and the effectiveness of decisions and recommendations addressed to the member states.**
- c) **Foster cooperation with partners in providing more concerted support to the African protection system (possible modalities of action):**
 - **Reinforcement of the cooperation with OHCHR to develop a medium-term programme**
 - **Reinforcement of the cooperation with the Council of Europe to provide know-how and share practical experience, and the involvement of the European Fundamental Rights Agency to assist in building a similar agency within the AU.**
 - **Reinforcement of the cooperation of the European Parliament with the Inter-Parliamentary Union which is implementing its own human rights technical assistance programme in some countries and at the sub-regional level – it might be important to involve the IPU in the work for African regional system *inter alia* through building parliamentary alliance around this system.**

Cooperation with the League of Arab States based on the Arab Charter

1. Point of Departure

The Arab Charter entered into force on 15 March 2008 and has received 10 ratifications so far. On 30 January 2008, the High Commissioner for Human Rights, Ms. Louise Arbour made the following press statement: 'Throughout the development of the Arab Charter, my office shared concerns with the drafters about the incompatibility of some of its provisions with international norms and standards. These concerns included the approach to death penalty for children and the rights of women and non-citizens. Moreover, to the extent that it equates Zionism with racism, we reiterated that the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination. OHCHR does not endorse these inconsistencies. We continue to work with all stakeholders in the region to ensure the implementation of universal human rights norms'. The High Commissioner Management Plan for 2010-2011 presents a number of projects to be implemented in North Africa and the Middle East. It also notes positive developments which 'include the March 2009 election of the first Arab Human Rights Commission. The Commission will oversee the implementation of the Arab Charter for Human Rights'. The EU is following with interest the situation of human rights protection in the region and, through political dialogues, it should work to reinforce the system.

2. Policy Considerations

There is still considerable uncertainty about the ways the Arab system will evolve. Will all the standards proclaimed by its legislation be in conformity with international human rights standards? How will the Arab Commission on Human Rights fulfil its tasks, including the protective ones? The High Commissioner Management Plan for 2010-2011 falls short of any specific plans concerning the Arab regional system of the human rights protection. However, the OHCHR on a number of occasions has pointed to its availability for cooperative efforts aimed at the further development of this system in line with the internationally established standards. In its previous Management Plan, OHCHR announced its intention to 'give technical advice with regard to the monitoring the implementation of the Arab Charter on Human Rights that was adopted by the League of Arab States (LAS) in 2004 and has been ratified by some States'.

3. Possible Initiatives

Since it is not clear to what extent the LAS is interested in cooperation with external partners on issues relevant to the system based on the Arab Charter, it may be highly advisable for the EU to further explore this sensitive matter before undertaking any initiatives. It should be explored

whether a multiparty (including e.g. OHCHR and/or the Council of Europe) or bilateral approach would be more suitable. In any case, creating a platform for exchange of experiences between the Arab Commission and the Council of Europe may be worth considering.

Contribution to the Efforts Aimed at the Establishment of the Regional System in Asia-Pacific, in particular South-East Asia

1. Point of Departure

While the Asia-Pacific region as a whole still lacks a regional system of the human rights protection, considerable movements have taken place among the members of ASEAN. The Working Group for an ASEAN Human Rights Mechanism, which is a coalition of national working groups from ASEAN states, composed of representatives of government institutions, parliamentary human rights committees, the academy, and NGOs, has followed 'a step-by-step, constructive and consultative approach when it engages governments and other key players in the region'. It is due to the activities of the Working Group that the ASEAN Intergovernmental Commission on Human Rights (AICHR) was set up in 2009. The 5th Roundtable co-organized by the Working Group with the Government and civil society of Thailand (Bangkok, 15-16 December 2009) recommended *inter alia* that 'the drafting of an ASEAN Declaration on Human Rights be given priority as this may be a perfect opportunity to demonstrate the evolution of the AICHR into something more concrete and meaningful to the ASEAN peoples'. The Office of the High Commissioner for Human Rights has been very much involved throughout this process, facilitating some initiatives and offering advice based on the experience of other regions.

The EU also acknowledges the importance of the establishment of the AICHR which may serve as an example in the broader area. In this respect, the EU encourages ASEAN to respect the Terms of Reference adopted for AICHR at the ASEAN Ministerial Meeting on 20 July 2009 and to align the operations of the AICHR in general adherence to the Paris principles, in order to protect the human right of all individuals in ASEAN. The EU stands ready to offer assistance and share experiences in the field, including in the further development of the AICHR.

2. Policy Considerations

Although steps taken within ASEAN are still at a rather initial stage compared with the advanced regional systems of the human rights protection, its progress is visible and important. As was noted at the aforementioned 5th Roundtable, a few years ago the establishment of AICHR and the present stage of the debate on the regional system were unimaginable. This may indicate an opportunity for the international community, and the need for a broader engagement to support these initiatives. In particular, a broader exchange of experiences could encourage further steps. A success of ASEAN in this regard may pave the way for similar initiatives in other sub-regions of Asia-Pacific. The OHCHR sets strengthening the ASEAN human rights body as one of its priorities in the region for the years 2010-2011. In a longer perspective, it will be the priority of the Office to provide support to the establishment and development of an effective human rights system within ASEAN. The Office also endeavours to encourage sub-regional organizations (ASEAN, the Pacific Islands Forum and the South Asian Association for Regional Cooperation (SAARC)) to develop cooperation on common issues.

3. Possible Initiatives

The EU may wish to reflect on a policy decision concerning its involvement on a bilateral or multilateral basis (e.g. in cooperation with the OHCHR and/or Council of Europe, as well as the Inter-Parliamentary Union) in cooperation with the Member States of ASEAN, with a view to channelling comparative experience to the ASEAN Intergovernmental Commission on Human Rights.

ANNEX I - DEVELOPMENT AND CURRENT STATE OF HUMAN RIGHTS SYSTEMS

CHAPTER 1 – THE EUROPEAN HUMAN RIGHTS SYSTEM

1. COUNCIL OF EUROPE

1.1. History and Context

After WWII, European nations were faced with the need to recover from the aftermath of what is today an unimaginable level of destruction. In this situation, politicians such as Winston Churchill and Robert Schumann proposed the idea in 1946 for the development of a political co-operation and a European identity. In May 1948 the Congress of Europe took place, which tried to identify the possibilities for a united Europe. The most important outcome of the Congress was the establishment of the **Council of Europe (CoE) on 5 May 1949 by the Treaty of London** as a regional intergovernmental organisation, its main objective being to defend human rights, democracy, and the rule of law, and to standardise member countries' social and legal practices to guarantee the dignity of the nations and citizens of Europe. From 10 founding member states in 1949,¹ the CoE enlarged continuously and covers now nearly entire Europe with **47 member states**. Additionally five countries enjoy observer status to the Organisation.²

1.2. Legal Basis

General Human Rights Instruments

The Council of Europe has always been a major source of standard-setting texts. Collectively they constitute a European *jus communis* and have helped by harmonising national laws, to spread democratic standards throughout the continent. The Council of Europe's standard setting activity is not as well known as it deserves to be. In fact, there are no fewer than 200 conventions. Such richness is one of the reasons why, still today, the CoE's system remains the one where human rights are more protected and promoted. Among the numerous conventions concluded under the aegis of the organisation only the most important of them will be mentioned.³

1.2.1 The European Convention on Human Rights (ECHR)

The founding states of the CoE drew up the **European Convention on Human Rights and Fundamental Freedoms**, which entered into force in 1953. This convention is the central document of the CoE human rights system and established an **effective enforcement mechanism** for human rights protection by setting up the **European Court of Human Rights (ECtHR)** as a supervisory body. Art. 1 ECHR states that the rights guaranteed to individuals under the treaty are individual rights created by public international law.⁴ Once a state is party to the convention it must respect the rights and guarantees enshrined in the Convention and try to fully implement it in national law and practice. The ECHR contains in Section I basically **civil and political rights**⁵ which only can be derogated by states under certain circumstances. No derogation is possible from articles protecting the most elementary human rights.⁶ The tasks of the ECtHR as well as the possibilities of states and individuals to launch complaints are stated in Section II, i.e. art. 19 – 51 ECHR. The rights enshrined in the ECHR and the functioning of the Commission and the Court have been

¹ Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

² Canada, the Holy See, Japan, Mexico and the United States of America.

³ Committee of Minister's recommendations and the exchange of information between Member States also help unifying the latter's laws and contribute to that European common legal area that the Council wishes to help build.

⁴ Frowein, J.A., 'European Convention on the Protection of Human Rights and Fundamental Freedoms', in: Wolfrum, R. (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2009, online edition (www.mpepil.com).

⁵ See art. 2-17 ECHR.

⁶ See art. 15 (2) ECHR.

complemented and defined over the years by already **14 Protocols**.⁷ Protocols 11 and 14, restructuring the ECtHR have been ratified by all state parties to the ECHR whereas the degree of acceptance of the other Protocols adding additional rights vary significantly.⁸

1.2.2 European Social Charter 1961 (ESC)

As the ECHR only contains civil and political rights, the **European Social Charter** aims to create State obligations to guarantee and respect **social and economic rights**.⁹ The Charter was already amended three times and a revised Social Charter entered into force in 1999, intending to replace the first Charter. Part I of the Charter contains a series of Principles, Part II legally binding articles and Part III enshrines the 'à la carte'¹⁰ principle: State parties are automatically bound by certain articles¹¹ and specify five others to be finally bound at least by 10 articles of the ESC. All 47 member states of the CoE have signed, but only 42 states have ratified the Charter.¹² The European Committee of Social Rights, which is composed of 51 independent impartial experts elected by the Committee of ministers of the COE monitors State compliances with the ESC. The supervisory mechanism is based on a system of collective complaints and national reports guaranteeing their respect by State Parties.

Specialised Human Rights Instruments

1.2.2.1. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987

The Convention based on art. 3 ECHR¹³ established a **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** entrusted with the mandate to visit any place of detention in a member state where persons are deprived of their liberty by public authorities. All 47 member states are party to the Convention.

1.2.2.2. The European Framework Convention for the Protection of National Minorities 1995

The Convention is the first legally binding multilateral instrument only **protecting national minorities** by incorporating States obligations not individual rights.¹⁴ The rights encompass guarantees of equality before the law, religious freedom, the use of the minority language, etc.

⁷ 15, if we count the Protocol 14 bis.

⁸ Protocol No. 4 was not signed or ratified by Greece and Switzerland, Turkey and the United Kingdom signed but not ratified it.

Protocol No. 6 was signed but not ratified till now by Russia

Protocol No. 7 was signed but never ratified by Germany, Belgium, Netherlands and Turkey. The United Kingdom did not sign it.

Protocol No. 12 was signed but not ratified by: Austria, Azerbaijan, Belgium, the Czech Republic, Estonia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Moldova, Norway, Portugal, Russia, Slovakia, Slovenia and Turkey. Following states did not sign or ratify it: Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden, Switzerland and the United Kingdom

Protocol No 13 was signed but not ratified by: Armenia, Latvia and Poland. Azerbaijan and Russia did not sign or ratify it

⁹ Right of housing, health, education, employment, social and legal protection, movement of persons and non-discrimination.

¹⁰ M. Sepulveda, T. v. Banning, G.D. Gudmundsdottir, Ch. Chamoun, N. J. M. v. Genugten, 'Human Rights Reference Handbook', University for Peace 2004, p. 140.

¹¹ Art. 1, 5,6,12,13,16,19 ESC.

¹² Liechtenstein, Monaco, Montenegro, San Marino and Switzerland did not ratify the ESCR.

¹³ 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

¹⁴ M. Sepulveda, T. v. Banning, G.D. Gudmundsdottir, Ch. Chamoun, N. J. M. v. Genugten, 'Human Rights Reference Handbook', University for Peace 2004, p. 142.

Currently, 39 CoE member states are parties to the Convention.¹⁵ The monitoring of the Convention is split between the Committee of Ministers of the CoE and an **Advisory Committee of Independent Experts** (ACFC) created by the Convention.

1.2.2.3. The European Charter for Regional and Minority Languages 1992

The Charter adopts a similar concept as does the ESC. It contains a list of policy aims and follows as well the concept of pick and choose. The rights guaranteed are mostly dealing with education in minority language as well as language used in judicial proceedings, by the media etc. The Charter has been ratified by 24 CoE member states at the time of writing.¹⁶ A Committee of Experts monitors the Charter.

1.2.2.4. Council of Europe Convention on Action against Trafficking in Human Beings

The Convention, in force since 1 February 2008, focuses mainly on the **protection of the victims of trafficking** and the safeguard of their rights¹⁷ and is not restricted only to CoE member states but also the European Union and non-CoE member states may become party to the Convention. At the present the Convention has 26 state parties.¹⁸ The Convention has the aim to prevent trafficking, protect the victims, and prosecute the perpetrators, and sets up an own monitoring mechanism.

¹⁵ Andorra, France, Monaco and Turkey did not sign or ratify the Convention. Belgium, Greece, Iceland and Luxembourg signed but not ratified it.

¹⁶ Albania, Andorra, Belgium, Bulgaria, Estonia, Georgia, Greece, Ireland, Latvia, Monaco, Portugal, San Marino and Turkey did not sign or ratify it. Azerbaijan, France, Iceland, Italy, Malta, Moldova, Russia and the Former Yugoslavia Republic of Macedonia signed but not ratified the Charter.

¹⁷ http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/FSConv_en.asp#TopOfPage

¹⁸ The Czech Republic, Liechtenstein, Monaco and Russia did not sign or ratify the Convention. Andorra, Azerbaijan, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, Lithuania, Netherlands, San Marino, Sweden, Switzerland, Turkey and Ukraine have signed but not ratified yet.

1.3. Institutional Structure

1.3.1. General Organs

1.3.1.1. The European Court of Human Rights

The ECtHR located in Strasbourg was established first in 1959 and restructured by Protocol No. 11 to the ECHR. This Protocol went into force in 1998, replacing the existing part-time Court by a **single, full-time Court**¹ and enforcing the **judicial character** of the system by making it compulsory.² The Court is composed of 47 judges, elected by the Parliamentary Assembly, equal to the number of High Contracting Parties.³ The ECtHR monitors **state compliance with the ECHR** and has an influential role in creating a body of jurisprudence and interpreting the ECHR. Upon the request of the Committee of Ministers (CoM), the Court can issue **advisory opinions on legal questions** arising from the interpretation of the ECHR and its Protocols.⁴ Judgements are **legally binding**⁵ and may provide **compensations** for damages suffered.⁶ Since it was established the Court has already delivered 12,000 judgments finding states in violation of the ECHR and issued 2 advisory opinions. As a result of the enormous numbers of individual applications being lodged, coupled with the ever growing **backlog of pending cases** (more than 124,000 at the end of March 2010)⁷ the CoM decided to amend and revise the ECHR to ensure the long-term effectiveness of the Convention's unique control system.⁸ **Protocol No. 14**, which entered into force on 1 June 2010, was drawn up by taking into account the work of the Steering Committee for Human Rights (CDDH),⁹ the European Commissioner on Human Rights and from various NGOs. It will add *inter alia* new admissibility criteria to art. 35 ECHR,¹⁰ encourage friendly settlements¹¹ and entrust the CoM with the possibility to notify the Court about a state failing to comply with a judgement. Furthermore, art. 59 (2) ECHR provides that '*The European Union may accede to this Convention*'.

1.3.1.2. European Committee of Social Rights (ECSR)

The **European Committee of Social Rights**, established to monitor states' compliance with the European Social Charter, is composed of 15 independent and impartial members, elected by the Committee of Ministers of the CoE. The ECSR receives **states reports** and has only recently established the possibility of **country visits**. The Committee examines these reports and submits its conclusions through the Governmental Committee, composed of representatives of the states parties and the international employers' and employees' organizations to the States. Furthermore a **collective complaints procedure** has been

¹ See Rule 19 of the Rules of the Court and art. 19 ECHR

² M. Sepulveda, T. v. Banning, G.D. Gudmundsdottir, Ch. Chamoun, N. J. M. v. Genugten, 'Human Rights Reference Handbook', University for Peace 2004, p. 128

³ See art. 20 and 22 ECHR

⁴ See art. 47 – 49 ECHR and Rule 82 – 90 of the Rules of the Court

⁵ See art. 46 ECHR

⁶ See art. 41 ECHR and Rule 74 of the Rules of the Court

⁷ http://www.echr.coe.int/NR/ronlyres/8699082A-A7B9-47E2-893F-5685A72B78FB/0/Statistics_2010.pdf

⁸ See Explanatory Report to the CETS No. 194

⁹ The CDDH is composed of representatives of 46 member states of the CoE and has the goal to promote and develop human rights as well as to improve procedures of their protection. See also: http://www.coe.int/t/e/human_rights/cddh/

¹⁰ See art. 35 ECHR which requires the applicant to suffer a significant disadvantage

¹¹ See art. 39 ECHR: '*At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto*'

established by an additional Protocol to the Charter.¹² This procedure allows social partners and NGOs to lodge collective complaints of violations of the Charter in States which have ratified it. The ECSR examines these complaints and draws up a report, which is subsequently submitted to the Committee of Ministers of the CoE in order to adopt a resolution based on the report. This resolution may contain measures on how to bring national legislation in accordance with the Charter.

1.3.2. Specialised Organs

Various specialised organs have been set up to develop the Council's work in specific areas. Some of them bring together, or are supported by, all the member States such as, for example, the Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI). Others are based on partial agreements.

1.3.2.1. The European Commissioner on Human Rights

The second Summit of Heads of State and Government agreed in 1997 to set up the post of a **European Commissioner on Human Rights** (the Commissioner) and established it finally in 1999. The Commissioner's work focuses on encouraging measures to achieve improvement in the area of human rights promotion and protection in all member states of the CoE. The mandate of the Commissioner encompasses awareness-raising and the promotion of human rights education, as well as encouraging the establishment of national institutions dealing with human rights through national ombudsmen or similar mechanisms. The Commissioner is a **non-judicial institution** which cannot act upon individual complaints but rather works in close co-operation with NGO's and professional groups such as ombudsmen, judges and journalists when carrying out country visits. Through issuing **reports** as well as **thematic recommendations** and organizing **seminars and roundtables** the Commissioner has the potential to draw a significant amount of public pressure on states lacking when it comes to human rights. A new joint program has been drawn up which provides for close co-operation between the Commissioner and the European Union, with the aim of focusing on and encouraging the establishment of NHRIs.¹³

1.3.2.2. European Commission against Racism and Intolerance (ECRI)

Established by the first Summit of Heads of State and Government in 1993,¹⁴ the **European Commission against Racism and Intolerance** is an independent, non-judicial human rights monitoring body is specialized in combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance. The ECRI is composed of 47 members.¹⁵ In the framework of its **country-by-country monitoring** work, the ECRI examines the situation concerning manifestations of racism and intolerance in each of the CoE member meeting not only states officials but also NGO's, journalist, civil society representatives and people from the most vulnerable groups of the society. The ECRI's findings, along with **recommendations** how each country might deal with the problems identified, are published in **country reports**. Two years after a report has been published the current situation in each member state is examined carefully especially concerning the question if the recommendations and advices mentioned in the latest report have been put into practice. Furthermore the ECRI is working in close

¹² Additional Protocol of 1995 providing for a system of collective complaints (CETS No. 158)

¹³ http://www.coe.int/t/commissioner/Activities/NHRS/nhrspeerpeer_en.asp

¹⁴ For the statute see Resolution (2002)8 (CM, 2002).

¹⁵ Every CoE Member State has to appoint by its government one member for ECRI and notify this appointment to the Secretary General of the CoE who has to inform the CoM, See art. 2 and 3 of ECRI's statute, available at: http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp

cooperation with the secretariat of CERD¹⁶ and has already published **12 general policy recommendations**, providing detailed guidelines for policy-makers to use when drawing up national strategies and policies in a variety of fields.¹⁷

1.3.3. Convention's supervisory mechanisms

The conventions adopted under de CoE sometimes establish specialised organs the duty of which is to control the way in which Member States are applying the given convention. Some examples will be mentioned here.

1.3.3.1. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT, a **preventive, non-judicial, and independent monitoring body**, established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1989, is composed of 47 **independent and impartial** members¹⁸ elected by the CoM. The CPT carries out **periodical as well as ad hoc country visits** and is entrusted by the Convention with unlimited access to places of detention including the right to move inside such places without restriction, as well as with the right to communicate freely with any person whom it believes can supply relevant information.¹⁹ After each visit a **country report** about the facts gathered on the ground is drawn up by can the CPT and submitted to the state in question including **recommendations** as how to improve the situation. Reports as well as comments made by or towards a state are confidential, only if a state fails to co-operate or to comply with the recommendations made can the CPT release a public statement.²⁰ Furthermore, the CPT has drawn up its **standards** which are a composition of the substantive issues of its general reports. These standards are dealing with police custody, imprisonment, training of law enforcement personnel, health care services in prisons, foreign nationals detained under aliens' legislation, involuntary placement in psychiatric establishments, juveniles and women deprived of their liberty.²¹

1.3.3.2. The Advisory Committee under the Framework Convention for the Protection of National Minorities (ACFC)

The **Advisory Committee under the Framework Convention for the Protection of National Minorities**, established to monitor states' implementation of the Framework Convention, is

¹⁶ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of 'concluding observations'. In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints and the examination of individual complaints. For further information see: <http://www2.ohchr.org/english/bodies/cerd/>

¹⁷ http://www.coe.int/t/dghl/monitoring/ecri/activities/Ecri_work_en.pdf, p. 8

¹⁸ See art. 4 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

¹⁹ See art. 8 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment

²⁰ Most of the public statements have been released concerning the situation in the Russian Federation and in Turkey, see <http://www.cpt.coe.int/en/states.htm>

²¹ See <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

composed of 18 independent experts with the mandate to issue **country-specific opinions** to guide the Committee of Ministers when adopting resolutions in the field of minority protection. States have to submit **reports** in a 5 year-cycle which are examined by the ACFC. In addition to these reports the Committee has the possibility of carrying out **country visits** in order to gather relevant information not only through high level talks but also through meetings with government officials, parliamentarians, representatives of minorities, NGO's, human rights specialized bodies and other relevant interlocutors.²² The ACFC examines states reports and issues its **opinion** which is transmitted to the state in question to allow the state to comment on it. Furthermore, the opinion is submitted to the Committee of Ministers of the CoE to adopt a resolution containing conclusions and recommendations as how to implement the Framework Convention.

1.3.3.3. The Group of Experts on Action against Trafficking Human Beings (GRETA)

The monitoring procedure foreseen in the CoE Convention on Action against Trafficking in Human Beings has two aspects: the **Group of Experts on Action against Trafficking in Human Beings** (GRETA) and the **Committee of the Parties** (the Committee). GRETA is composed of independent experts, the Committee, a more political body, consists of representatives of the Committee of Ministers of CoE member states parties to the Convention and representatives of the parties to the Convention, which are not members of the Council of Europe.²³ The monitoring process starts with a **questionnaire** a state party has to complete and return to GRETA, which has the possibility to seek further information by getting in contact with civil society representatives or NGO's of the country in question or by carrying out country visits. After examining the information gathered GRETA is drawing up a draft **country report** including suggestions and proposals as how the country might deal with the problems identified. The draft report is sent to the state in question in order to allow it to evaluate and comment on it. The final report is adopted and published by GRETA by taking into account comments made by the state. The Committee can adopt a resolution based on the published report as how the state in question might implement recommendations made by GRETA.

1.4. The Human Rights Protection Mechanism in the framework of the European Convention on Human Rights

The human rights protection mechanism, foreseen in the ECHR, contains both **inter-state as well as individual complaints procedures**. According to art.33 ECHR, any contracting party can lodge an application against another state. The application can be based on 'any alleged breach of the provisions of the Convention'²⁴ and does not need a direct link between the victim of the alleged violation and the state lodging the application. Since its establishment the Court has delivered only three inter-state judgments,²⁵ most applications are lodged by individuals. Pursuant to art. 34 ECHR, an application can be received 'from any person, non-governmental organization or group of individuals claiming to be the victim of a violation' of the rights enshrined in the ECHR. The **right to apply before the Court** includes the freedom to communicate with the organs of the ECHR. Authorities are not allowed to put any pressure on applicants to withdraw or modify their complaints.²⁶ The **admissibility criteria** laid out in Art 35 ECHR encompass inter alia a violation of the rights set forth in the ECHR and its protocols, the exhaustion of all domestic remedies

²² http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/Monitoring_Intro_en.asp

²³ See art. 36 and 37 of the CoE Convention on Action against Trafficking in Human Beings

²⁴ See art. 33 ECHR

²⁵ *Ireland v United Kingdom* (ECtHR) Series A No 25; *Denmark v Turkey* (ECtHR) Reports 2000-IV 1; and *Cyprus v Turkey* (ECtHR) Reports 2001-IV 1

²⁶ See 1996 European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights, Strasbourg, 5.III.1996.

and that the complaint is not lodged later than six months after the exhaustion of domestic remedies. Furthermore, an application must not be anonymous.

Each application is assigned to a Section within the Court where a rapporteur examines the case and decides whether it should be dealt with by a **three-member Committee** or by a **Chamber**. The single judge, the Committee or Chamber can decide upon inadmissibility or strike out the case.²⁷ The application is communicated to the respondent government and parties are invited to submit further evidence and written observations. At this stage of the procedure, confidential negotiations to achieve a friendly settlement may be conducted.²⁸ If no friendly settlement can be achieved the Chamber decides by a majority of votes. The **judgment** must state the reasoning on which it is based and may afford just satisfaction to the applicant if the Court finds a violation of the Convention or the protocols thereto.²⁹ **Just satisfaction** may include pecuniary and non-pecuniary damage, as well as costs and expenses. A judgment becomes final after three months upon delivery to the parties, during this time any party may request the transfer of the case to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance.³⁰ A chamber can also, at any time before it has rendered its judgement relinquish jurisdiction in favour of the Grand Chamber when a case pending before it raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before it might have a result inconsistent with a judgment previously delivered by the Court (art. 30 of the ECHR).

The Grand Chamber examines such requests and decides on the majority of votes. All judgments are **final and binding** on the respondent States in concern. As already mentioned the **Committee of Ministers** monitoring the **execution and implementation** of judgments and can notify the Court about a State failing to comply with a judgment.³¹

Individual complaints are what have turned the European Council's human rights protection system into a mechanism that offers individual much stronger protection from human rights violations. The ECHR itself has expressed the importance of recognising individuals as subjects of international law and of granting them the possibility to defend their human right in front of an international tribunal.³²

²⁷ Available at:

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Procedure+before+the+Court/>

²⁸ See art. 38 ECHR.

²⁹ See art. 41 ECHR.

³⁰ See art. 43 ECHR.

³¹ See art. 46 ECHR.

³² See *Affaire Mamatkulov*, (Grand Chambre) 4 November 2006.

2. THE EUROPEAN UNION

2.1. History

The European Economic Community, created 1957 by the Treaty of Rome, focused on economic restoration after World War II and did not therefore initially emphasise human rights. This took nearly three decades until the **Treaty on the European Union**, adopted in 1992 in Maastricht, provided that the EU must 'respect fundamental rights as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States as general principles of Community law'.¹ The **European Court of Justice** (ECJ), established in 1952 by the Treaty of Paris, played a major role in developing a human rights jurisprudence defining these common principles of Community law as well as referring to the ECHR. The Treaty of Amsterdam of 1997 went further and enshrined respect for human rights as one of the founding principles of the EU.² At the Nice Summit in 2000, the **Charter of Fundamental Rights was signed as an inter-institutional agreement without binding character**. The Lisbon treaty amending the current EU and EG treaties provides that the Union shall replace and succeed the European Community and includes the Charter of Fundamental Rights into European primary law.³ Furthermore art. 6 (2) Treaty of Lisbon foresees the accession of the Union to the ECHR.

2.2. Legal Basis

2.2.1. General Human Rights Instruments

2.2.1.1. Charter of Fundamental Rights of the EU

The now legally binding Charter is the most modern human rights document in Europe and includes, in addition to traditional **civil and political rights** also **economic, social and cultural rights**. The Preamble confirms that '*the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law*'. In accordance with art. 53 of the Charter, the rights enshrined in the **ECHR** form a minimum standard and nothing in the Charter shall be interpreted as restricting those rights.⁴

The Charter's rights have to be applied by the **institutions of the Union** as well as by **member States** when implementing Union law.⁵ The Charter is most likely to be used by the Court of Justice of the European Union but is also monitored by the European Agency for Fundamental Rights.

2.3. Institutional Structure

2.3.1. European Steering Institutions

All Union institutions are involved in the protection of human rights according to their respective powers and competences. The **European Parliament** plays a fundamental role in the field. In EU internal policies, according to the procedural rules of the EP, 'During the examination of a legislative proposal, Parliament shall pay particular attention to respect for fundamental rights and in particular that the legislative act is in conformity with the European Union Charter of Fundamental Rights, the principles

¹ Art. 6(2), ex art. F.2) Treaty of Maastricht.

² Art. 6 (1) Treaty of Amsterdam: 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'.

³ Art 1 and 7 Treaty of Lisbon.

⁴ See art. 51 (2) Charter of Fundamental Rights.

⁵ Art. 51 Treaty of Lisbon.

of subsidiarity and proportionality and the rule of law...’ (rule 36). In external relations, the EP follows the situation on human rights in third countries closely. Through its power over the conclusion of international agreements, its relations with third countries authorities, its reports, and its resolutions, it has an important influence on the evolution of the protection of human rights.

In particular, the European Parliament established the **Committee of Civil Liberties, Justice and Home Affairs** (LIBE). The Committee is responsible for the **protection of fundamental rights and freedoms** within the Union as well as to **combat all forms of discrimination on the labour market**. Furthermore LIBE is entrusted with the task of monitoring data protection and developing an area of freedom, security and justice by adopting, for example, measures concerning the entry and movement of persons, asylum and migration.⁶

The **Subcommittee on Human Rights** (DROI) – a subcommittee of the **Committee on Foreign Affairs of the European Parliament** (AFET) – was created to assist AFET in issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries.⁷

According to the **Lisbon treaty**, consolidating and supporting human rights and democracy is one of the competences of the Union and **the European Council** who has to define the strategic interest of the Union in the Union’s external action, is also competent in that field. In **Common Foreign and Security Policy**, the **Council** decides and the high representative is in charge of the implementation. Therefore the Council of the European Union (the Council) issued **eight guidelines on human rights and international humanitarian law**. These guidelines are not legally binding but represent a strong political commitment of the Union and are practical tools to help EU representations in the field to implement human rights standards. Furthermore, the European Commission has restructured the **European Instrument for Democracy and Human Rights** (EIDHR). The EIDHR is focusing on the promotion and protection of fundamental rights and freedoms and promoting democracy and democratic reform in third countries, supporting human rights defenders and victims of repression and abuse, and strengthening civil society.⁸

2.3.2. The Court of Justice of the European Union

The Court, situated in Luxembourg, composed of 27 judges⁹ and 8 advocates-general, ensures that **Union law is interpreted and applied equally** throughout the Union. Union member states as well as individuals¹⁰ can bring a case before the Court. The judgements are **binding**, member states have to comply with them. The Commission as well as a member state can notify the ECJ about cases of non-compliance¹¹ of a member state. Furthermore the Court refers to jurisprudence of the ECHR in its rulings and should be in a regular dialogue with the ECtHR.¹²

2.3.3. European Agency for Fundamental Rights (FRA)

The **European Fundamental Rights Agency** was established in 2007, and is based in Vienna. It builds on. It builds on the work of the former European Monitoring Centre on Racism and Xenophobia (EUMC). It is an independent body of the EU that aims to **advise** the Union’s organs and its Member States regarding the respect of fundamental rights within the implementation of Community law. Furthermore, FRA continues the work of EUMC in the field of **racism, xenophobia, anti-Semitism and related**

⁶ See <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=LIBE> .

⁷ See Section I(5) of Annex VII of the Rules of Procedure of the European Parliament.

⁸ See http://ec.europa.eu/europeaid/what/human-rights/index_en.htm

⁹ See art. 19 (2) Treaty of Lisbon.

¹⁰ See art. 263 of the Treaty on the Function of the European Union.

¹¹ See art. 258 and 259 of the Treaty on the Function of the European Union.

¹² See Declaration on art. 6 (2) of the Treaty of Lisbon.

intolerances through cooperation with governments and international organisations and civil society groups, and through emphasizing the importance of raising public awareness.¹³ An important aspect in the work of FRA is the **data- collection, -research and -analysis of official and non-official data on fundamental rights** issues in the EU to improve data quality and comparability. FRA is **not a regular decision-making body** nor can it examine individual complaints, it acts upon its own initiative or upon request and draws up opinions and conclusions. FRA covers all 27 EU member states and works in co-operation with CoE bodies¹⁴ and with institutions of the OSCE¹⁵ as well as with UN bodies and national institutions.

2.3.4. European Ombudsman

The **European Ombudsman** was established in 1995 by the Treaty of Maastricht to be able to **investigate cases of maladministration** by Union institutions; however, it does not investigate complaints about national, regional or local authorities, the activities of national courts or ombudsmen or about businesses and private individuals.¹⁶ Any citizen or resident of a member state can lodge a complaint.¹⁷ In addition, the Ombudsman can start an inquiry on his own initiative. The Ombudsman tries to achieve a suitable solution that satisfies the complainant; in case of failure a special report can be made to the European Parliament.

3. ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE

3.1. History and Context

With 56 States from Europe, Central Asia and North America, the **Organization for Security and Co-operation in Europe** (OSCE) forms the largest regional security organization in the world.¹⁸ Its development began in 1973 with the formal opening of the Conference on Security and Cooperation in Europe (CSCE) in Helsinki, which led on 1 August 1975 to the signing of the **Helsinki Final Act** by Heads of State or Government of 35 nations including the two superpower leaders, US President Gerald Ford and USSR Communist Party General Secretary Leonid Brezhnev. The aim of this Conference was to gather together the Cold War rivals and to open up a new era of mutually beneficial dialogue in order to ensure the security of Europe. In the following years the CSCE remained a diplomatic forum with frequent but irregular meetings focusing on the implementation of the principles enshrined in the Helsinki Final Act in all the member states. The fall of the Berlin Wall in 1989 marked the end of the Cold War and brought new challenges for the CSCE. Therefore the Second Summit of Heads of State or Government took place in Paris in 1990 and ended with a final document, the Charter of Paris for a New Europe, which led the way for the establishment of OSCE. This Paris Charter established not only a Council¹⁹ but some of the first CSCE's institutions.²⁰

On 1 January 1995 the OSCE officially replaced the CSCE, but remained a political body with no legal status in international law.

3.2. Legal Basis

¹³ http://fra.europa.eu/fraWebsite/faq/faq_en.htm

¹⁴ European Commission against Racism and Intolerance (ECRI), the European Commissioner for Human Rights.

¹⁵ Office for Democratic Institutions and Human Rights, High Commissioner on National Minorities.

¹⁶ <http://www.ombudsman.europa.eu/atyourservice/couldhehelpyou.faces#h10>

¹⁷ Art. 21 Treaty of Maastricht, art. 43 EU Charter.

¹⁸ <http://www.osce.org/about/19298.html>

¹⁹ Consisting of the Ministers of Foreign Affairs, meeting should take place annually.

²⁰ A Secretariat in Prague to provide administrative support, An Office for Free Elections in Warsaw (later to become the Office for Democratic Institutions and Human Rights), A Conflict Prevention Centre in Vienna to assist the Council in reducing the risk of conflict.

The legal foundation of the OSCE is as already mentioned the Helsinki Final Act. The Act is not a treaty and therefore is not legally binding; it is rather a **political commitment**. Decisions are to be taken by consensus. The agreement contains three main sets of principles, often known as '**baskets**'. Issues related to the politico-military aspects of security (basket I); co-operation in economics, science and technology and the environment (basket II); and **co-operation in humanitarian and other fields** (basket III).²¹ Thus, basket III emphasises explicitly human rights including the freedom of movement, thought, conscience, religion and belief. Probably the most important mechanism of the OSCE, the '**Human Dimension Mechanism**' was defined in four conferences on Human Rights in Vienna (1989), Paris (1989), Copenhagen (1990) and Moscow (1991). The term 'Human Dimension' describes a great variety of norms and activities²² related to human rights and democracy laid down in the Helsinki Final Act and in other CSCE/OSCE documents and covers a wider area than traditional human rights law.

3.3. Institutional Structure

3.3.1. General Organs

3.3.1.1. The Office for Democratic Institutions and Human Rights (ODIHR)

The **Office for Democratic Institutions and Human Rights**, situated in Warsaw, was established in 1990 to promote the fulfilment of the human dimension commitments. It can be seen as the **main body for promoting human rights** within the OSCE, playing as well a major role in the supervisory mechanism, i.e. the Vienna and Moscow Human Dimension Mechanism,²³ aiming to resolve disputes about violations of the human dimension commitments by states.

The ODIHR is divided into **five departments**: the democratization department, the human rights department, the human dimension mechanism, and the election department. The newest department is the tolerance and non-discrimination department, which monitors violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, as well as manifestations of hate and intolerance.²⁴

Furthermore, the ODIHR is involved in long-term and short-term **fact-finding missions** and their follow-up. These long-term missions allow the OSCE to be present in countries that require assistance; therefore each mission is entrusted with a specially-designed mandate to address the underlying conflict. These missions are a real strength of the OSCE and focus, depending on the situation in the country, on conflict or crisis prevention or resolution.

Additionally, ODIHR established a **Focal Point for Human Rights Defenders and NHRIs** to increase their capacities, improve their knowledge of human rights standards, and to enforce the promotion and protection of human rights. The work of the Focal Point is carried out in co-operation with the CoE Commissioner on Human Rights, the UN Office of the High Commissioner on Human Rights and the OSCE High Commissioner on National Minorities.

3.3.2. Specialised Organs

²¹ <http://www.osce.org/item/15719.html>

²² Anti-trafficking, democratization, education, elections, gender equality, human rights, media freedom, minority rights, rule of law, tolerance and non-discrimination.

²³ The Vienna Mechanism is a four-stage intergovernmental process: exchange of information between states involved concerning the human dimension, bilateral meetings with a view to examine and resolve situations and specific cases relating to the human dimension; notify to all participating States of situations and cases in the human dimension; discuss the issues raised under the Mechanism, at the Review Conference.

The Moscow Mechanism is based on the Vienna Mechanism but includes the possibilities of on-site investigations of independent experts or rapporteurs, Available at:

http://www.osce.org/documents/sg/2004/06/4056_en.pdf

²⁴ Available at: <http://www.osce.org/odihr/13406.html>

3.3.2.1. High Commissioner on National Minorities (HCNM)

The **High Commissioner on National Minorities** was established by the Helsinki Follow-up Meeting in 1992 as an instrument of **conflict prevention** at the earliest possible stage. The HCNM is an independent, impartial organ with an office in The Hague. The main functions of the HCNM are the **promotion of dialogue, confidence and cooperation between the parties by deescalating tensions** and alerting the OSCE whenever such tensions tend to reach a level of a severe conflict. Therefore the HCNM may conduct **on site missions** followed by a **report and recommendations** to the government in question, although this work is confidential most of the recommendations made are published on the Office's website. The HCNM does not have a judicial function, his success lies in **silent diplomacy**. He is cooperating not only with NGOs and expert bodies from the CoE²⁵ but also with the UN Secretariats in Geneva and New York, the UN High Commissioner for Human Rights as well as with the UN High Commissioner for Refugees. The HCNM is furthermore encouraging the work and co-operation with NGOs and civil society as they provide an important source of information within its fieldwork.

3.3.1.2. Representative on Freedom of the Media

Established in 1997 with the task of cooperation with and assisting all OSCE states in facilitating free, independent and pluralistic media and with an Office in Vienna, the **Representative on Freedom of the Media** works in close cooperation with ODHIR. The working methods of the Representative include confidential contacts with governments and parties concerned as well as reporting to the Permanent Council of the OSCE to recommend further action.

4. COORDINATION BETWEEN EUROPEAN ACTORS

The OSCE, the CoE and the EU have gradually come closer. The EU can access certain international conventions of the CoE. The four-fold agreement between these two actors has set an institutional cooperation that, among other things, allows the EU to participate in the expert groups and in the Committee of Ministers of the CoE. *Vis-à-vis* the CoE, it can participate in the work of the FRA. Joint actions for the promotion of human rights and democracy are financed by the EU. Finally, the Lisbon Treaty obliges the EU to become party to the European Human Rights Convention. This accession is a fundamental achievement in the historical development and further enforcement of human rights in Europe. On the one hand, it allows individuals to access the ECHR for the acts of member states or of the EU when the latter are acting in the framework of Union law. On the other hand, this contributes to the elaboration of common human rights standards in Europe, where the standard will guarantee a **minimum common denominator for human rights protection in all European states**. In this view, the European Charter of Fundamental Rights cannot offer a lower level of protection to human rights than the one provided by the European Human Rights Convention. The Lisbon Treaty has established as one of its objectives that the EU will foster human rights, the rule of law and democracy through its external policies. Thanks to the accession of the EU in the European Human Rights Convention, the EU will be able to establish **dialogues** with the **member states of the CoE** from a shared level of understanding over human rights. Moreover, this is also **an opportunity to reinforce the EU's authority to talk at an international level about human rights**.

²⁵ Such as the ACFC or the Venice Commission.

CHAPTER 2 – THE AFRICAN HUMAN RIGHTS SYSTEM

1. HISTORY AND CONTEXT

The **Organization of African Unity** (OAU) was established in 1963 in Addis Ababa to ensure independence for African states through the co-ordination of opposition to colonialism. However, over the years it has come to play a major role in developing an African Human Rights Charter. Its Charter regards the realisation of human rights as one of its objectives and principles and acknowledges both the United Nations Charter and the Universal Declaration of Human Rights.¹ In 2001 the OAU was transformed into the **African Union** (AU), the Constitutive Act of the AU of 2000 refers in its Preamble to the African struggles for independence and human dignity and determines the promotion and protection of human and peoples rights. The AU has currently **53 member states**, only Morocco withdrew in 1984 because of the recognition of Western Sahara by the OAU.

The International Commission of Jurists (ICJ) started already in 1961 in Lagos, Nigeria, an initiative to create an **African Commission on Human and Peoples' Rights** but it needed nearly 3 decades and the encouragement of African jurists, the United Nations and NGO's to sign the central document of the African regional human rights system, the **African Charter on Human and Peoples' Rights** (ACHPR),² which came into force in 1986.

2. LEGAL BASIS

2.1. General Human Rights Instruments

2.1.1. African Charter on Human and Peoples' Rights

African history, tradition and values, and the eradication of colonialism and the unique human rights situation in this continent are each reflected in the **African Charter on Human and Peoples' Rights**. This **legally binding** convention is in some matters exceptional among international and regional documents as it includes human as well as peoples' rights and a **catalogue of duties** of the individual/group to the state as well as for the state. Whereas at the international level as well as in Europe civil-political rights and social-cultural rights are split within two covenants/conventions the ACHPR incorporates **both generations of human rights**. States Parties to the ACHPR have to recognize the rights, duties, and freedoms contained in the Charter and to adopt legislation to give effect to them. The first Chapter of the charter deals in art. 3-14 with civil and political rights,³ in art. 15-17 with socio-economic rights⁴ and includes several peoples' rights in art. 19-24, these are exercisable collectively⁵ and include e.g. the right to an existence, the right to freely dispose of wealth and natural resources etc. Several rights are not guaranteed by the ACHPR.⁶ Chapter II of the ACHPR tries to preserve African values and traditions as it incorporates duties of the individual toward his family, toward society, toward the State and toward the international community (art. 27-29). Unlike other international human rights conventions, the ACHPR **does not contain a special derogation clause** allowing a state in situations of national emergency to suspend the rights in the charter, instead art. 27 (2) ACHPR states that rights can only be limited by the rights of others, collective security,

¹ See Preamble of the ACHPR.

² Also known as 'Banjul Charter' as it was finalised in Banjul, The Gambia.

³ Freedom from discrimination, equality, right to life and personal integrity, dignity, prohibition of slavery, prohibition of torture and inhuman or degrading treatment or punishment, right to a fair trial, freedom of religion, freedom of information and expression, freedom of movement, right to property.

⁴ Right to work, right to health, right to education.

⁵ Smith, R.K.M. (ed.), *Textbook on International Human Rights*, Oxford University Press, Oxford 2007, p. 127.

⁶ The right to privacy, the right to a nationality, the right to vote in periodic and genuine elections, the right to form and join trade unions, the equal protection of all children whether born in or out of wedlock, the right to marry with

morality and common interest. While not providing for derogation clauses, the African Charter contains a number of articles with provisions that limit the reach of these rights, and which have been referred to as '**clawback clauses**'.⁷ Art. 9(2) ACHPR provides an example of such clause: '*... every individual shall have the right to express and disseminate his opinions within the law*'. The only **supervisory body** established directly within the Charter⁸ is the **African Commission on Human and Peoples' Rights** entrusted with the task to interpret the Charter by taking into consideration, '*the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples rights*'.⁹ The second supervisory body, the **African Court on Human and Peoples' Rights**, was originally not foreseen in the Charter but was established by an additional **Protocol** to the ACHPR.

2.1.2. The African Human Rights Court Protocol

The **Protocol**, which came into force 2004, creates a **Court** to complete and reinforce the work of the Commission with the authority to issue **legally binding and enforceable decisions**. The mandate of the Court's jurisdiction is very wide; it covers not only the ACHPR and the ACtHPR Protocol but also any '*other relevant human rights instruments ratified by the States concerned*'.¹⁰

2.2. Specialised Human Rights Instruments

2.2.1. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969

As a response to the refugee problem the **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa** of 1969 entered into force in 1974. This Convention was drawn up by taking into consideration the United Nations Convention relating to the Status of Refugees 1951 but is in some provisions broader as the UN Convention and therefore provides cooperation between the OAU/AU and the office of the United Nations High Commissioner for Refugees.

2.2.2. The African Charter on the Rights and Welfare of the Child 1990 (Children's Charter)

This Charter was adopted in 1990 and has similar provisions to the UN Convention on the Rights of the Child. In Africa the rights extend to all those below the age of 18 without exception.¹¹ Similar to the ACHPR this Charter also contains duties: children have responsibilities towards the family by respecting and caring for the parents, superiors and elders, society, the State and the international community.¹² A Committee on the Rights and Welfare of the Child was established to monitor states compliance with the Charter.

2.2.3. Protocol on Women's Rights

Since the ACHPR only contains in Art 18 (3) a short provision on the elimination of discrimination against women, a **Protocol on women's rights**, which entered into force in 2005, complements it. The rights guaranteed in this Protocol address issues related to abortion, female genital mutilation, and vulnerable groups such as the elderly and the widowed. Some of the provisions in the Protocol deal only with specific issues affecting women, while others deal with rights that should apply equally to men and women and are not included in the ACHPR.¹³

2.2.4. African Youth Charter

the full and free consent of the intending spouses, and the freedom to change one's religion, the right to food, water, social security and housing.

⁷ Sepulveda, M. (eds.) et al., *Human Rights Reference Handbook*, University for Peace, San José, 2004, p. 167.

⁸ See art. 30 ACHPR.

⁹ See art. 60 ACHPR.

¹⁰ See art. 3 (1) and art. 7 ACtHPR Protocol.

¹¹ See art. 2 Children's Charter.

¹² See art. 31 Children's Charter.

¹³ See e.g. art. 6 – 9 of the Protocol on Women's Rights.

The Youth Charter entered into force in 2009 and contains rights and duties for the African youth, defined within the Charter as '*persons between the ages of 15 and 35*'. Art. 28 of the Charter entrusts the African Commission with the task of the monitoring.

3. INSTITUTIONAL STRUCTURE

3.1. General Organs

3.1.1. The African Commission on Human and Peoples' Rights

The **Commission** was established directly by the ACHPR. It is composed of 11 independent part-time personalities, nominated by State parties and elected by the Assembly with expertise in human rights¹⁴ holding its ordinary sessions twice a year in Banjul or in another African capital.¹⁵ Art. 45 of the ACHPR incorporates the mandate of the Commission, and four functions may be distinguished: promotion and protection of human rights, interpretation of the Charter and performance of any other tasks which might be entrusted to the Commission by the OAU/AU Assembly of Heads of State and Government.

3.1.2. The African Court on Human and Peoples' Rights

The **Court**, located in Arusha (Tanzania), consists of eleven independent judges and has jurisdiction¹⁶ over all disputes and cases submitted to it.¹⁷ The Council of Ministers of the AU is responsible for monitoring execution of the judgment on behalf of the Assembly,¹⁸ In its annual report to the AU Assembly, the Court must specify instances of non-compliance. Although the Executive Council (Council of Minister) is monitoring the execution of judgments on behalf of the Assembly,¹⁹ the compliance of states with legally binding decisions will mostly depend on their level of political commitment and the participatory role of civil society.²⁰ The Court has delivered up to the present time only one judgment, which came in December 2009.

3.2. Specialised Organs

3.2.1. Special Rapporteurs and working groups

One very effective promotional as well as protective task of the Commission is the appointment of **Special Rapporteurs**²¹ and the creation of **Working Groups on specific issues**. The decision to set up Special Rapporteurs was basically taken after pressure was exerted by many national as well as international NGOs. The importance of these mechanisms was already proven by, for example, the setting up of the Robben Island Guidelines.²² These guidelines were adopted by the Commission after examining the recommendations made during a workshop organized by the Commission and the Association for the Prevention of Torture (APT) which took place on Robben Island, South Africa. The Special Rapporteur on Prisons and Conditions of Detention uses these guidelines when drawing up his reports and thus setting standards, whereas most of the other Special Rapporteurs have not been that successful until now.

¹⁴ See art. 31 ACHPR.

¹⁵ See Rule 2 of the Rules of Procedure of the African Commission.

¹⁶ Advisory (issuing advisory opinions on any related legal matter) as well as declaratory (deciding cases) jurisdiction.

¹⁷ See art. 3 ACtHPR Protocol.

¹⁸ See art. 29 (2) ACtHPR Protocol.

¹⁹ See art. 29 (2) ACtHPR Protocol.

²⁰ Viljoen, F., 'African Court on Human and Peoples' Rights (ACtHPR)', in Wolfrum R. (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2009, online edition www.mpepil.com

²¹ So far 6 Special Rapporteurs have been adopted: The Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, the Special Rapporteur on Prisons and Conditions of Detention, the Special Rapporteur on the Rights of Women in Africa, the Special Rapporteur on refugees, asylum seekers and internally displaced persons, the Special Rapporteur on Human Rights Defenders in Africa and the Special Rapporteur on freedom of expression in Africa.

²² Robben Island Guidelines for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

3.2.2. African Peer Review Mechanism

The AU Assembly of Heads of State and Government adopted in July 2002 in Durban the Declaration on Democracy, Political, Economic and Corporate Governance (Governance Declaration), which foresees the establishment of an **African Peer Review Mechanism** (APRM)²³ to monitor democracy and political governance, economic and corporate governance and socioeconomic development in participating countries. This monitoring process consists of a **national self-assessment** based on a questionnaire, the drafting of a Program of Action to remedy identified shortcomings, an international review, a country visit and the final country review report. A document entitled **Objectives, Standards, Criteria and Indicators** (OSCI) was drawn up for each governance area in order to give states detailed guidelines on what to submit. The OSCI provides for the area of democracy and political governance following objectives: constitutional democracy including periodic political competition and opportunity for choice, the rule of law, citizen rights and supremacy of the constitution, promotion and protection of economic, social and cultural rights or civil and political rights as enshrined in African and international human rights instruments.²⁴ The reports are usually published by **NEPAD**²⁵ and on national web sites.

3.2.3. The African Committee on the Rights and Welfare of the Child

The **Committee**, composed of 11 members, established in 2001 with a mandate to promote and protect children's rights in Africa,²⁶ monitors the implementation and ensures the **protection of the rights** enshrined in the Charter. Art. 42 Children's Charter requires states parties to submit every three years a **periodic report** to the Committee, these reports are examined and state parties are requested to send a representative to these examinations to be able to answer questions that might arise.²⁷ If a State does not co-operate at all the Committee can inform the AU Assembly.

4. HUMAN RIGHTS PROTECTION MECHANISMS

The African system for the protection of human rights consists of the report and complaints procedure of the Commission and the legally-binding system within the ACtHPR. In order to fulfil its supervisory task, the Commission is entrusted by the ACHPR with the following mechanisms.²⁸

4.1. Reports

States are required to submit **reports every two years** on the measures they have taken to implement the ACHPR. These reports are dealt with by the Commission in public sessions states can send a representative to these sessions to present the report, respond to questions and discuss any issue raised.²⁹ NGOs are allowed to submit their comments to state reports, but as States hardly grant them access to the reports this possibility has less importance.³⁰

4.2. Complaint procedures

Although states as well as individuals can lodge **complaints to the Commission** alleging violations of the ACHPR, the state complaints procedure was till now only used once by the Democratic Republic of Congo v.

²³ Heyns, Ch., Killander, M., 'The African Regional Human Rights System', in: Gomes, I.F., De Feyter, K. (eds.), *International Protection of Human Rights: Achievements and Challenges*, University of Deusto, Bilbao, 2006, p. 28.

²⁴ See <http://www.uneca.org/aprm/Documents/Objectives%20Standards%20and%20Codes.pdf>

²⁵ New Partnership for Africa's Development, See <http://www.nepad.org/home/lang/en>

²⁶ See art. 32 and 33 Children's Charter.

²⁷ Rule 67 of the Rules of Procedure of the African Committee on the Rights and Welfare of the Child.

²⁸ See art. 45 (3) ACHPR: Interpretation of the Charter, art. 47 ACHPR: Communication about violation of the Charter, art. 62 ACHPR Examining State reports.

²⁹ See Rule 81-85 of the Rules of Procedure of the African Commission.

³⁰ Heyns, Ch., Killander, M., 'The African Regional Human Rights System', in: Gomes, I.F., De Feyter, K. (eds.), *International Protection of Human Rights: Achievements and Challenges*, University of Deusto, Bilbao, 2006, p. 21.

Rwanda, Burundi and Uganda.³¹ The intention of the **inter-state** complaints procedure is to reach a peaceful resolution, should this fail the Commission has to prepare a report of its facts and findings and transmit it to the States concerned and to the Assembly of Heads of State and Government. As art. 55 of ACHPR states, the Commission can receive '*communications other than those of States parties*' not only individuals but also **peoples, groups and NGOs have the possibility to submit complaints**. These **individual complaints** have to be submitted within a reasonable amount of time after the domestic remedies are exhausted. The objective of the individual complaint procedure is, in the words of the Commission, '*to initiate a positive dialogue, resulting in an amicable resolution between the complainant and the State concerned, which remedies the prejudice complained of*'.³² Most of the complaints are lodged by NGOs since they can acquire observer status³³ to the Commission through a relatively simple process. According to the Rules of Procedure each complaint received is submitted to a Commissioner who may seek additional information from the complainant or the respondent State before making a recommendation to the Commission on the issue of admissibility. If admissibility was granted the respondent States has three months time to submit any explanation or statement otherwise the facts alleged are considered as proven.³⁴ The Commission may request a State prior to its final views to take interim measures in order to avoid irreparable damage to the victim of alleged violations.³⁵ Finally, all observations, findings and recommendations made by the Commission are submitted to the Assembly of Heads of State and Government, the State concerned and the complainant. Basically all proceedings are confidential only the annual reports to the AU contain the status of cases submitted and include the Commission's decisions on admissibility and the merits of cases.

The relatively newly established **Court** acts in close co-operation with the Commission as it may request the opinion of the Commission when deciding on the admissibility of cases falling under the optional jurisdiction of the court. According to art. 6 (3) ACHPR the Court has the possibility to consider the case itself or transfer it to the Commission when a friendly settlement needs to be achieved. Art 5 ACtHPR states that the **Commission, States Parties and African intergovernmental organizations** are entitled to submit cases about an alleged violation of human rights. Furthermore **individuals** and groups as well as NGOs with observer status before the Commission can submit a case if the state in question **accepted the court's competence** in this respect.³⁶ Applications have to be submitted to the Court in written form in one of the official languages of the Court and have to contain the name and address of the claimed victim and of the party or parties against whom such an application is placed. Furthermore the applicant has to specify the alleged violation and prove the exhaustion of domestic remedies. Upon receipt of the complaint copies are transmitted to the respondent State, the complainant, to the President and Members of the Court and to the Commission. The State party against which the application has been placed shall respond within sixty days and submit further information. The Court can furthermore conduct an enquiry, hear witnesses or carry out visits to the scene.³⁷ If the Court finds that there has been a human rights violation, it shall make appropriate orders to **remedy the violation**, including the **payment of fair compensation or reparation**.³⁸ Decisions of the Court are **binding** and States have to comply with them and guarantee their execution.³⁹ Judgments, decided by the majority, are final and not subject to appeal. The parties to the case

³¹ Smith, R.K.M. (ed.), *Textbook on International Human Rights*, Oxford University Press, Oxford, 2007, p. 133.

³² Organisation Mondiale Contre La Torture and Others v. Rwanda, African Commission on Human and Peoples' Rights, Comm. Nos. 27/89, 46/91, 49/91 and 99/93 (1996).

³³ Nearly 300 NGOs already have been granted observer status to the Commission.

³⁴ See Rule 119 (4) of the Rules of Procedure of the African Commission on Human and Peoples Rights.

³⁵ See Rule 111 of the Rules of Procedure of the African Commission on Human and Peoples Rights.

³⁶ See art. 5 ACtHPR Protocol.

³⁷ See Rule 45 of the Interims Rules of the Court.

³⁸ See art. 27 ACtHPR Protocol.

³⁹ See art. 30 ACtHPR Protocol.

as well as all AU member States and the Commission shall be notified of the judgment; furthermore the **Executive Council monitors states' compliance** with it.

5. EU FINANCIAL SUPPORT. THE VALUE OF EU FUNDING TO THE AFRICAN SYSTEM

The main problem the African system on Human and People's Rights is confronting is the lack of adequate funding from the side of the African Union. The establishment of an African Court of Human Rights has increased that problem. The African Commission has a large mandate in the field of human rights education, since the African Charter on Human and People's Rights gives special attention to human rights education in art. 25 stipulating that 'state parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present charter and see to it that its freedoms and rights as well as corresponding obligations and duties are understood'. Accordingly, the African Commission has designed a number of activities to meet its obligations under this provision, which, however, have never been properly implemented due to a lack of funds. A support strategy of the European Union to the African system could consequently assist the African Commission to meet its obligations deriving from the Charter.

In 2007 the Joint Africa-EU Strategy was adopted at the EU-Africa summit in Lisbon outlining the visions for the future of Africa-EU relations. The political dialogue between the two continents should be strengthened through eight partnerships, *inter alia*, one on democratic governance and one on human rights. These partnerships define the framework for the Africa-EU cooperation in line with the principles of African ownership, co-management and co-responsibility. The Africa-EU Partnership on Democratic Governance and Human Rights is aimed to enable a comprehensive continent-to-continent dialogue and cooperation on aspects and concepts such as local capacity strengthening, the protection of human rights and fundamental freedoms for all, democratic principles, the rule of law and equitable access to legal systems, management of natural resources, the fight against corruption and fraud, accountable management of public funds, institutional development and reform, global governance, and security sector reform. The Action Plan foresees as the first priority action to enhance the dialogue at the global level, for instance by establishing a platform for dialogue on all governance issues of mutual interest, including political issues, human rights, children's rights, gender equality, local governance and on 'situations of fragility,' as well as on the death penalty. The second priority action encompasses the Promotion of the African Peer Review Mechanism (APRM) and the support of the African Charter on Democracy, Elections and Governance aiming to establish a more efficient African governance structure. And thirdly, the cooperation with regard to the protection of cultural goods should be strengthened. The relevant actors for the implementation of the Action Plan are on the African side African States, the AU Commission/NEPAD, the Pan African Parliament, the African Court of Justice, the African Commission on Human and Peoples' Rights, other Pan-African Institutions, and African think tanks. On the EU side the Member States, the Council, the European Commission, the European Parliament, and other EU Institutions and Agencies and the European Court of Human Rights are all involved. To accomplish the priority actions set out funding is provided through the European Development Fund (10th EDF), the European Neighbourhood Policy Instrument (ENPI), the Financing Instrument for Development Cooperation (DCI), the Instrument for Stability (IfS) and the European Instrument for Democracy and Human Rights (EIDHR).

CHAPTER 3 – THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. HISTORY AND CONTEXT

With the signing of the **Charter of the Organization of American States**, which was adopted on 30 April 1948,¹ the American States established the **Organization of American States** (OAS) as a regional agency within the meaning of art. 52 of the United Nations Charter. The organization constitutes the main political, juridical, and social governmental forum in this region,² with, *inter alia*, the aim of promoting peace, security and democracy on the continent, and the eradication of poverty.³

The Charter of the Organization refers to fundamental rights in its Preamble⁴ and in several articles; however it does not list or define them. Through its diverse organs, the Member States of the Organization have given specificity to the human rights mentioned in the Charter.⁵

The OAS accomplishes its purposes through its organs specified in art. 53 of the Charter. By the adoption of a range of international instruments such as conventions and declarations, the American States have created the Inter-American system for the promotion and protection of human rights.

2. LEGAL BASIS

2.1. General Human Rights Instruments

2.1.1. The American Declaration of the Rights and Duties of Man

The **American Declaration of the Rights and Duties of Man**, adopted by the American States on 30 April 1948,⁶ i.e. several months prior to the United Nations Universal Declaration of Human Rights, was the instrument constituting the beginning of the regional system of human rights. The 38 articles of the Declaration contain **civil, political, economic, social, and cultural rights**. According to art. 28, 'the rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'. Arts. 29 to 38 define the individual's duties such as the duty of every person to acquire at least an elementary education (art. 31), the duty to vote (art. 32), or the mitigated duty to work (art. 37).

Although the Declaration was **not** adopted as a **legally binding treaty**, it is considered as a source of international obligations for the Member States of the OAS, it was also confirmed by the Inter-American

¹ The Charter was adopted at the Ninth International Conference of American States on 30 April 1948 and entered into force on 13 December 1951. The OAS comprises all 35 independent American States. For Signatories and Ratifications see Organization of American States, Department of International Law, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States_sign.htm

² See Inter-American Commission on Human Rights, The Organization of American States, <http://www.cidh.oas.org/Basicos/English/Basic1.%20Intro.htm>

³ See Art 2, Charter of the OAS.

⁴ See para. 4 of the Charter's preamble: '*In the name of their peoples, the States represented at the ninth international conference of American States, (...) confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man; (...)*'.

⁵ See Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of art. 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, at para. 39.

⁶ The Declaration was adopted by the Ninth International Conference of American States on 30 April 1948.

Court of Human Rights⁷ and the General Assembly of the Organization, which has repeatedly recognized the binding character of the Declaration.⁸

2.1.2. The American Convention on Human Rights

The adoption of the **American Convention on Human Rights** on 22 November 1969⁹ strengthened the Inter-American system of human rights by **extending the powers of the Inter-American Commission on Human Rights** and creating an **Inter-American Court of Human Rights**. The Convention has been ratified by 25 American States.¹⁰

The rights and freedoms protected by the Convention are mainly **civil and political rights** (art. 3 to 25). With regard to economic, social and cultural rights, art. 26 adopts an **evolutionary approach** to the development of **economic, social, educational, scientific, and cultural standards**. The Convention also contains an article on personal responsibilities and the relationship between **duties and rights** (art. 32). Part II of the Convention establishes the means of protection and sets forth the organization, functions, competence, and procedure of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights which shall have competence with respect to matters relating to the fulfilment of the commitments made by the States Parties to the Convention.¹¹

The American Convention of Human Rights has been complemented by **two additional Protocols**. The **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights**,¹² signed on 17 November 1988 and ratified by 14 American States,¹³ obliges the state parties to adopt necessary measures to fulfil step by step the economic and social rights enshrined in it, *inter alia* the right to and conditions of work, trade union rights, the right to health, food, and education, the rights of children, and the protection of the elderly and disabled persons. The Convention's second Protocol, the **Protocol to the American Convention on Human Rights to Abolish the Death Penalty**,¹⁴ was signed on 8 June 1990, and has been ratified by 11 American States so far.¹⁵

2.2. Specialised Human Rights Instruments

Additionally, the Inter-American system of human rights consists of a range of human rights conventions on specialized matters, for example the **Inter-American Convention to Prevent and Punish Torture** adopted

⁷ See Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of art. 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, at paras. 46-47.

⁸ *Ibid.*, at paras. 42-43: '(...) Hence it may be said that by means of an authoritative interpretation, the Member States of the Organization have signalled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. (...)'

⁹ Pact of San Jose, adopted at the Inter-American Specialized Conference on Human Rights on 22 November 1969. The Convention entered into force on 18 July 1978.

¹⁰ For signatories and ratifications see Organization of American States, Department of International Law, <http://www.oas.org/juridico/English/sigs/b-32.html>

¹¹ See below, 2.5 and 2.6.

¹² Protocol of San Salvador, adopted at the Eighteenth Regular Session of the General Assembly to the Organization of American States on 17 November 1988. The Protocol entered into force on 16 November 1999.

¹³ For signatories and ratifications see Organization of American States, Department of International Law, <http://www.oas.org/juridico/english/sigs/a-52.html>

¹⁴ The Protocol to the American Convention on Human Rights to Abolish the Death Penalty was adopted at the Twentieth Regular Session of the General Assembly to the Organization of American States on 8 June 1990.

¹⁵ For signatories and ratifications see Organization of American States, Department of International Law, <http://www.oas.org/Juridico/english/sigs/a-53.html>

on 12 September 1985,¹⁶ the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women** adopted on 9 June 1994,¹⁷ the **Inter-American Convention on Forced Disappearance of Persons** adopted on 6 September 1994,¹⁸ and the **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities** adopted on 7 June 1999.¹⁹

3. INSTITUTIONAL STRUCTURE

2.1. General Organs

3.1.1. The Inter-American Commission on Human Rights

The **Inter-American Commission on Human Rights** and the Inter-American Court of Human Rights are the two institutions in the Inter-American system in charge of the promotion and protection of human rights.

The Inter-American Commission on Human Rights, which has its seat in Washington D.C., and which was created in 1959, is one of the **principal organs** of the OAS. It represents all the Member States of the Organization. The Commission's main function is **to promote the observance and protection of human rights** and to serve as a consultative organ of the Organization in these matters.²⁰

The seven members of the Commission are elected by the General Assembly of the OAS to a four-year term²¹. Its main tasks and powers of making **recommendations** to Member States, **publishing reports and carrying out on-site observations** were broadened by the 1966 amendment of the Commission's Statute establishing the possibility of **examining individual petitions**.²²

The Commission's competence with regard to States which are not party to the American Convention on Human Rights derives from the OAS Charter. With respect to all Member States of the OAS, the Commission has the power to, *inter alia*, make recommendations to the governments of the States on the adoption of

¹⁶ The Convention, adopted on 12 September 1985 at the Fifteenth Regular Session of the General Assembly to the Organization of American States, entered into force on 28 February 1987. For signatories and ratifications see Organization of American States, Department of International Law, available at:

<http://www.oas.org/JURIDICO/ENGLISH/sigs/a-51.html>

¹⁷ The 'Convention of Belem Do Para', adopted on 9 June 1994 at the Twenty-Fourth Regular Session of the General Assembly to the Organization of American States, entered into force on 5 March 1995. For signatories and ratifications see Organization of American States, Department of International Law, available at:

<http://www.cidh.org/Basicos/English/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm>

¹⁸ The Convention, adopted on 6 September 1994 at the Twenty-Fourth Regular Session of the General Assembly to the Organization of American States, entered into force on 28 March 1996. For signatories and ratifications see Organization of American States, Department of International Law, available at:

<http://www.oas.org/juridico/english/sigs/a-60.html>

¹⁹ The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, adopted on 7 June 1999 at the Twenty-Ninth Regular Session of the General Assembly to the Organization of American States, entered into force on 14 September 2001. For signatories and ratifications see Organization of American States, Department of International Law, available at:

<http://www.cidh.org/Basicos/English/Basic16.Disability%20Ratif.htm>

²⁰ According to art. 1 para. 2 of the Commission's Statute, for the purposes of this statute, '*human rights are understood to be a) the rights set forth in the American Convention on Human Rights, in relation to the States Parties thereto; and b) the rights set forth in the American Declaration on the Rights and Duties of Man, in relation to the other Member States*', which is another indication that the Declaration is considered as a source of human rights obligations of the Member States of the OAS. See above, 2.1.

²¹ See art. 3 and 6 of the Commission's Statute.

²² See also Title II of the Rules of Procedure of the Commission. The petition mechanism will be analyzed in detail below, Chapter 3.

progressive measures in favour of human rights, as well as appropriate measures to the further observance of those rights; request that the governments provide it with reports on measures they adopt in matters of human rights; provide the States with advisory services; and to conduct, with the consent or at the invitation of the government in question, on-site observations in a State.²³ In addition to these powers, the Commission has the competence to examine communications submitted to it and any other available information, to address the government of any Member State not party to the Convention for information deemed pertinent by the Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights.²⁴

With respect to **states parties to the Convention**, the Commission discharges its duties in conformity with the powers granted under the Convention and the Commission's Statute. In addition to the powers designated in art. 18 of its Statute, the Commission has the power to act on petitions and other communications; to **appear before the Inter-American Court of Human Rights** in cases provided for in the Convention; to request the Court to take **such** provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons; to consult the Court on the interpretation of the Convention or of other treaties concerning the protection of human rights in the American States; and to submit draft protocols and proposed amendments to the Convention to the General Assembly of the OAS, in order to progressively include other rights and freedoms under the system of protection of the Convention.²⁵

3.1.2. The Inter-American Court of Human Rights

The **Inter-American Court of Human Rights** with its seat in San José, Costa Rica, was established by the American Convention on Human Rights and installed in September 1979. The Court's first Rules of Procedure, approved in July 1980, were shaped after the European Court of Human Rights' Rules of Procedure.²⁶ Art. 1 of the Court's Statute defines it as an **autonomous judicial institution** whose purpose is the application and interpretation of the American Convention on Human Rights.

The seven judges of the Court are elected for a term of six years by the States Parties to the Convention (art. 4 to 11 of the Court's Statute). The Court is **not a permanent** one, i.e. the Court holds regular and special sessions that can be invoked by the President of the Court or the majority of the judges.²⁷

The Court exercises **adjudicatory and advisory jurisdiction on different conventional basis**.²⁸ With regard to the Court's advisory jurisdiction, art. 64 of the Convention provides that the Member States of the OAS may consult the Court regarding the interpretation of the Convention or of other treaties concerning the protection of human rights in the American States. At the request of a Member State of the OAS, the Court may provide States with opinions regarding the compatibility of any of its domestic laws with the mentioned international instruments. The jurisdiction of the Court shall comprise all cases concerning the

²³ See art. 18 of the Commission's Statute.

²⁴ See art. 20 of the Commission's Statute.

²⁵ See art. 19 of the Commission's Statute. For further information on the Commission's functions and powers see Organization of American States, Inter-American Commission on Human Rights, <http://www.cidh.oas.org/what.htm>

²⁶ The Rules of Procedure of the European Court of Human Rights were themselves patterned after the Rules of Procedure of the International Court of Justice. See Organization of American States, Inter-American Commission on Human Rights, Basis Documents pertaining to Human Rights in the Inter-American System, <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm>

²⁷ See art. 22 of the Court's Statute.

²⁸ See art. 2 of the Court's Statute.

interpretation and application of the provisions of the Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized the Court's binding jurisdiction.²⁹

Only **states parties to the Convention and the Commission**, performing a '**filter-function**', have the right to submit a case to the Court.³⁰ Up to the time of writing the Court's case law comprises 192 judgments in 105 solved cases, 75 provisional measures and 21 advisory opinions. The Court performs an evolutionary or dynamic interpretation of the Convention³¹ following the credo that human rights treaties are living instruments, whose interpretation must consider the changes over time and present-day conditions.³²

2.2. Specialised Organs

In addition to the Inter-American Commission and the Court a specialised **Commission** is established through the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women**.³³ State Parties to the Convention shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence. According to art. 12 of the Convention, any person or group of persons, or any non-governmental entity legally recognized in one or more Member States of the OAS, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of art. 7 of the Convention on the Prevention, Punishment and Eradication of Violence against Women by a State Party.³⁴

Another specialised **Committee** was established in 2007 under the **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities**. The Committee is composed of one representative per signatory state and is in charge of evaluating state reports, sent every four years, on the progress of fulfilling the Convention's measures for eliminating discrimination against the disabled.

²⁹ Upon depositing its instrument of ratification or adherence to the Convention, or at any subsequent time, a State Party may declare that it recognizes as binding the jurisdiction of the Court. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. See art. 62 of the Convention.

³⁰ See art. 61 of the Convention.

³¹ See Cancado Trindade, Antonio Augusto (2006), *The Inter-American System of Protection of Human Rights: The Developing Case-Law of the Inter-American Court of Human Rights (1982-2005)*, in: Gómez Isa, Felipe / Feyter, Koen de (eds.), *International Protection of Human Rights: Achievements and Challenges*, University of Deusto, Bilbao, 475-506, at 504. See also Inter-American Court of Human Rights, *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of art. 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989, at para. 37: '(...) to determine the legal status of the American Declaration it is appropriate to look to the inter-American system of today in the light of the evolution it has undergone since the adoption of the Declaration, rather than to examine the normative value and significance which that instrument was believed to have had in 1948.'

³² See Inter-American Court of Human Rights, *Advisory Opinion OC16/99 on the Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, of 1 October 1999, at para. 114.

³³ The Convention was adopted on 9 June 1994 at the Twenty-Fourth Regular Session of the General Assembly to the Organization of American States, and entered into force on 5 March 1995. For signatories and ratifications see Organization of American States, Department of International Law, available at:

<http://www.cidh.org/Basicos/English/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm>

³⁴ The Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions. See also art. 23 of the Rules of Procedure of the Inter-American Commission on Human Rights.

4. HUMAN RIGHTS PROTECTION MECHANISM

The Inter-American system for the protection of human rights is made up of **two mechanisms**. **Individual complaints** are dealt with by the Commission under both systems. The first one, based on the OAS Charter and on the 1948 American Declaration of the Rights and Duties of Man, is binding on all Member States of the OAS irrespective of the ratification of the Convention. According to art. 51 of its Rules of Procedure, the Commission receives and examines any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights. However, the individual complaints procedure based on the Charter results in conclusions and recommendations by the Commission that do not have the character of legally binding judicial decisions.¹

States that have ratified the American Convention on Human Rights are bound by further obligations. According to art. 44 of the Convention, any person or group of persons, or any nongovernmental entity legally recognized in one or more Member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of the Convention by a State Party.² Petitions or communications lodged in accordance with art. 44 or 45 require that all domestic remedies have been exhausted; that they are lodged within six months after the final decision in the domestic proceedings;³ and that the subject of the petition or communication is not pending in another international proceeding.⁴

If the petition or communication is considered admissible, the Commission requests information from the government of the State indicated as being responsible for the alleged violations. The Commission may declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received. If the record has not been closed, the Commission examines the matter in order to verify the facts, and, if necessary, carries out an investigation. It requests the State concerned to furnish any pertinent information, and, if so requested, hears oral statements or receives written statements from the parties concerned.⁵ If a friendly settlement is not reached, the Commission draws up a report which is transmitted to the State concerned and may make proposals and recommendations to the State.⁶

If, within a period of three months, the matter has not either been settled or submitted by the Commission or by the State concerned to the Inter-American Court, the Commission may prepare a second report and recommendations to the State concerned, which will usually be published. Instead of preparing a second report, the **Commission may take the case to the Court**.⁷ Only the **Commission or the State** concerned may submit the case to the Court, **individuals do not** have this right.⁸

¹ See art. 18 and 20 of the Commission's Statute; Chapter I of Title II and art. 28 to 44 and 47 to 49 of the Commission's Rules of Procedure.

² Neither the Court nor the Commission can receive complaints against individuals. Communications presented by virtue of art. 45 of the Convention may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in the Convention.

³ According to art. 46 para. 2 of the Convention, requirements a) and b) of para. 1 shall not be applicable, when a) the domestic legislation of the State concerned does not afford due process of law for the protection of the allegedly violated rights; b) the party has been denied access to the domestic remedies; or c) there has been unwarranted delay in rendering a final judgment.

⁴ Additionally, the petition must meet other formal requirements, see art. 46 of the Convention. Further inadmissibility grounds can be found in art. 47 of the Convention.

⁵ See art. 48 of the Convention.

⁶ See art. 50 of the Convention.

⁷ See art. 51 of the Convention.

⁸ See art. 61 of the Convention.

The Commission shall appear as a party before the Court in all cases within the adjudicatory jurisdiction of the Court.⁹ Direct participation in the Court's proceedings has been granted to alleged victims or representatives by the amended Rules of Procedure of the Court, which entered into force in 2001, enabling victims and their representatives to present their pleadings, motions and evidence before the Court.¹⁰

The Court, finding a violation of a right or freedom protected by the Convention, shall rule that the injured party be ensured the enjoyment of the right that was violated. It may also rule that the consequences of the violation be remedied and that **fair compensation** be paid to the injured party. In cases of extreme gravity and urgency the Court may adopt **provisional measures**.¹¹

Decisions of the Court are taken by a majority vote of the judges present.¹² The hearings shall be public, unless the Court, in exceptional circumstances, decides otherwise. The decisions, judgments and opinions of the Court shall be published, along with the judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate.¹³

The **judgment** of the Court shall be **final and not subject to appeal**. Reasons shall be given to the judgment.¹⁴ The States Parties to the Convention are obliged to comply with the judgment of the Court in any case to which they are parties. The Court supervises the compliance of its judgments through a written procedure, where the parties submit reports to the Court. When it deems it appropriate, the Court may convene the State and the victims' representatives to a hearing in order to monitor compliance with its decisions. The Court shall hear the opinion of the Commission at that hearing. Once the Court has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders.¹⁵

That part of a judgment stipulating compensatory damages may be executed in the country concerned in accordance with the domestic procedures governing the execution of judgments against the State.¹⁶

⁹ See art. 28 of the Court's Statute.

¹⁰ See art. 25 of the Court's Rules of Procedure. Individuals still may not bring cases before the Court, see art. 61 of the Convention.

¹¹ See art. 63 of the Convention.

¹² See art. 23 of the Court's Statute.

¹³ See art. 24 of the Court's Statute.

¹⁴ See art. 66 and 67 of the Convention.

¹⁵ See art. 69 of the Court's Rules of Procedure.

¹⁶ See art. 68 of the Convention.

CHAPTER 4 – THE ASIA PACIFIC HUMAN RIGHTS SYSTEM

Whereas Europe, Africa and the Americas established their respective human rights instruments with the corresponding enforcement mechanism, the **Asia-Pacific** region remains the only UN defined region **without a specific human right treaty** and **without a region-wide mechanism** directed at the promotion and protection of human rights. Although the final aim, the setting up of regional human rights machinery, has not been reached so far, progress has been made in the protection and promotion of human rights through the engagement of the UN in creating a regional human rights mechanism, and through the creation of sub-regional human rights protection mechanism as the ASEAN Intergovernmental Commission on Human Rights.

1 Regional level: the OHCHR Framework for the ASIA PACIFIC Region

Since the 1960s there have been **various initiatives**, mainly initiated and driven by the UN human rights bodies, to foster the development of specific human rights mechanism in all regions of the world and, by extension, the Asia-Pacific region also. The UN General Assembly and the Commission on Human Rights began to pass resolutions generally on 'regional arrangements for the promotion and protection of human rights'¹ and from the mid 1980s onwards annually more specifically on the Asia-Pacific region.² After the first seminar on the '**National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region**' was held in Colombo, Sri Lanka, in 1982, the UN, from the beginning of the 1990s began to intensify its efforts to create a regional human rights mechanism for the Asia-Pacific region by launching annual workshops starting with the one in Manila 1990. When at the forefront of the Vienna World Conference on Human Rights 1993 the Ministers of Asian states confirmed in the Bangkok Declaration³ that all possibilities have to be explored to establish a regional human rights mechanism it seemed that the approach chosen by the UN had found approval among the Asian states. However, a few months later at the workshop in Jakarta (1993) it became obvious that the creation of one regional human rights mechanism was too ambitious and discussions on the possibility of taking a step-by-step approach towards sub-regional mechanism arose. At the Tehran workshop in 1998 with the adoption of a framework for technical cooperation at the regional level the paradigm shifted even further from the original aim of the UN to set up regional arrangements for a human rights mechanism to **regional co-operation**.⁴ The adopted Tehran Framework is based upon a step-by-step approach developing four pillars or building blocks, namely national human rights institutions, national human rights action plans, human rights education and the realization of the right to development and economic, social and cultural rights. The following workshops⁵ confirmed the approach the promotion and protection of human rights in the Asia-Pacific region rather through the **development of sub-regional mechanism** than by establishing one regional mechanism. Thus, even after 20 years of efforts and 14 workshops organised by the OHCHR a special human rights mechanism could not be set up for the Asia-Pacific region.

¹ See e.g. UN General Assembly, Resolutions on Regional Arrangements for the Promotion and Protection of Human Rights, UN-Doc. A/RES/32/127, 16 December 1977; UN-Doc. A/RES/33/167, 20 December 1978, UN-Doc. A/RES/34/172, 17 December 1979, UN-Doc. A/RES/35/197, 15 December 1980, UN-Doc. A/RES/36/154, 16 December 1981.

² See e.g. UN Commission on Human Rights, Resolutions on Regional Arrangements for the Promotion and Protection of Human Rights in the Asian and Pacific Region, UN-Doc. E/CN.4/1994/40, 28 January 1994, UN-Doc. E/CN.4/RES/1993/57, 9 March 1993, UN-Doc. E/CN.4/RES/1994/48, 4 March 1994.

³ For the English version of the Bangkok Charter see: <http://law.hku.hk/lawgovtsociety>.

⁴ Chiam S., *Asia's Experience in the Quest for a Human Regional Human Rights Mechanism*, Victoria University Wellington Law Review, Vol. 40, No. 1, 2009, pp. 132-133.

⁵ New Delhi (1999), Beijing (2000), Bangkok (2001), Beirut (2002), Islamabad (2003), Doha (2004), Beijing (2005), Bali (2007).

2 Sub-regional level: the ASEAN Human Rights Mechanisms

2.1. History and Context

Despite the apparent lack of an Asia-Pacific wide human rights instrument several entities were set up by states to strengthen the cooperation mainly in economic spheres but also in the fields of human rights. Examples for such sub-regional organisation also dealing with human rights are the **South Asian Association for Regional Cooperation (SAARC)**,¹ which adopted in 1996 a Social Charter that inter alia includes the protection of children and other vulnerable groups,² and the **Pacific Island Forum (PIF)**³ whose vision includes the defence and promotion of human rights.⁴

However, the most prominent and advanced sub-regional organisation of the Asia-Pacific region in terms of recent human rights developments is the **Association of Southeast Asian Nations (ASEAN)** which was already founded in 1967 by its five original members Indonesia, Malaysia, the Philippines, Singapore and Thailand, and has now expanded to 10 members comprising also Brunei Darussalam, Viet Nam, Lao PDR, Myanmar, and Cambodia,⁵ In the last decade, various **non-legally binding declarations** were adopted with regard to human rights, such as the **Declaration on the Elimination of Violence against Women in the ASEAN Region**,⁶ the **Declaration Against Trafficking in Persons Particularly Women and Children**⁷, and the **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers**.⁸ Furthermore, ASEAN, being first and foremost aimed at economic development, also includes in its Charter, which finally entered into force the 15 December 2008, commitments to social and cultural development, peace and stability, justice, the rule of law, the principles of the UN Charter, good governance, and respect and protection of human rights and fundamental freedoms.⁹

2.2. Legal Basis and Institutional Structure

Already in the aftermath of the adoption of the Vienna Programme and Plan of Action emphasising the need to establish regional or sub-regional arrangements for the protection and promotion of human rights where they were not yet in existence,¹⁰ the ASEAN Ministerial Conference in July 1993 declared that ASEAN should, in support of the VDPA, consider to establish an appropriate regional mechanism on human rights.¹¹ In July 1995, a Regional **Working Group for an ASEAN Human Rights mechanism** emerged, an informal coalition of individuals and groups within the ASEAN region from the governmental, parliamentarian, academic, and civil society sphere. The Working Group's efforts were directed at the

¹ The SAARC was founded 1985 and comprises 8 states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. For more information see <http://www.saarc-sec.org/main.php?t=1>

² SAARC, Social Charter, available at <http://www.saarc-sec.org/main.php?id=13>.

³ The PIF was founded 1971 and comprises 16 states: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu. For more information see <http://www.forumsec.org.fj/index.cfm>.

⁴ For the objectives of the PIF see <http://www.forumsec.org.fj/pages.cfm/about-us/leaders-vision/>.

⁵ See for the members of ASEAN http://www.aseansec.org/about_ASEAN.html.

⁶ ASEAN Declaration on the Elimination of Violence Against Women in the ASEAN Region, 13 June 2004, available at <http://www.aseansec.org/16189.htm>.

⁷ ASEAN Declaration Against Trafficking in Persons Particularly Women and Children 29 November 2004, available at <http://www.aseansec.org/16793.htm>.

⁸ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 13 January 2007, available at <http://www.aseansec.org/19264.htm>.

⁹ ASEAN Charter adopted at the 13th ASEAN Summit from 18 to 20 November 2007, available at: <http://www.aseansec.org/21069.pdf>.

¹⁰ See Vienna Declaration and Programme of Action para. 37, available at: <http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/A.CONF.157.23.En?OpenDocument>.

¹¹ See Joint Communique of the 26th ASEAN Ministerial Meeting para. 18, Singapore 23-24 July 1993, available at http://www.aseanhrmech.org/downloads/1993_Joint_Communique.pdf

establishment of a Commission of Human Rights with monitoring, promotional, and recommendatory functions as well as at the creation of a Human Rights Court with decisive legal powers.¹² Over the years the Working Group, which was formally recognised by the ASEAN in 1998, has produced a number of proposals concerning how to move the inter-governmental process forward toward the establishment of a regional human rights mechanism. However, all proposals made were rejected by the ASEAN Ministerial Conferences and it took until 2006 that a new window of opportunity for the establishment of a regional human rights mechanism opened when at the 12th ASEAN Summit in Manila a high-level task-force was set up to draft a Charter for ASEAN. Human rights advocates of the region focused their attention on the lobbying and working with the high-level task force aimed at inserting a provision on the establishment of an ASEAN human rights mechanism.¹³ Their efforts finally paid off when the **ASEAN Charter** was adopted in November 2007, including art. 14 a provision foreseeing the establishment of an ASEAN human rights body. Finally, 40 years after its foundation, ASEAN leaders launched the **ASEAN Intergovernmental Commission on Human Rights (AICHR)** on 23 October 2009.¹⁴

2.3. Human Rights Protection Mechanism

As foreseen in Art 14 of the ASEAN Charter, the AICHR shall act in accordance with the terms of reference determined by the Foreign Ministers Meeting on 20 July 2009. The terms of reference provide that the **AICHR** consists of **one representative of each member state**, i.e. 10 members, who are accountable to the appointing government and who are in place for three years.¹⁵ Its **mandate** encompasses *inter alia*, the development of strategies for the promotion and protection of human rights, the drafting of papers and studies, the creation of a human rights declaration, capacity building, and the promotion of the full implementation of international human rights standards as well as the submission of annual reports on its activities to the ASEAN Foreign Ministers Meeting.¹⁶ In the guiding principles of the terms of reference emphasis is clearly put on the **sovereignty of the member states** and on 'non-interference in the internal affairs' of states recognising that the primary responsibility of the promotion and protection of human rights rests with each member state.¹⁷ The AICHR is thus aimed at being a **consultative body**, a clear protection mandate is missing and, consequently, the AICHR has **no authority to issue binding decisions**, consider cases or conduct investigative visits. Furthermore, besides these missing human rights protection functions and the lack of binding requirements for independence and expertise of the AICHR members, the decision making process may give rise to criticism, because the terms of reference allow for decision by consensus only, implying that each state might reject any criticism of its human rights records by veto.¹⁸

¹² For more information on the ASEAN Working Group see <http://www.aseanhrmech.org/aboutus.html>.

¹³ Hao Duy P., *The Evolution Towards a Human Rights Body*, Asia-Pacific Journal on Human Rights and the Law, Vol. 9, No. 1, 2009, p. 9.

¹⁴ ASEAN, Cha-Am-Hua Hin Declaration on the Intergovernmental Commission on Human Rights, 24 October 2009, available at <http://www.aseansec.org/documents/Declaration-AICHR.pdf>.

¹⁵ See AICHR Terms of Reference para. 5, available at <http://www.aseansec.org/publications/TOR-of-AICHR.pdf>.

¹⁶ *Ibid*, para. 4.

¹⁷ *Ibid*, para. 2.

¹⁸ *Ibid*, para. 6.

CHAPTER 5 – THE ARAB HUMAN RIGHTS SYSTEM

1 HISTORY AND CONTEXT

Even though the Arab states do not constitute a separate geographical region in the strict sense as they are located both in Africa and Asia, the fact that the historical, cultural, religious and political links between them are stronger than the links of each of them with the part of the world they belong to makes it necessary to regard them as one separate region.¹ In this respect this paper will focus on the human rights system of the League of Arab States, not including an examination of the Cairo Declaration on Human Rights in Islam² adopted in 1990 by the Organisation of the Islamic Conference.³

In 1945, even before the UN was created, a regional organization for the Arab states, the **League of Arab States (LAS)**, was established following the adoption of the Pact of the League of Arab States.⁴ Today the League includes **22 Members**.⁵ At the time of its founding the aims of the LAS did not encompass the promotion and protection of human rights, as is mirrored by its founding Charter which focuses on close cooperation in economic, financial and cultural matters without mentioning human rights.⁶

However, in 1968, after an invitation of the UN Secretary General at the International Human Rights Conference in Tehran organised by the UN on the occasion of the 20th anniversary of the Universal Declaration of Human Rights, the Council of the LAS established with the passing of Resolution 2443/48 a **Standing Committee on Human Rights (SCHR)** composed of representatives of the members governments. Despite the fact that the mandate of the SCHR included receiving reports by Arab states on their human rights situation it was never considered to be a monitoring mechanism for the human rights records of the LAS member states. Instead, it was principally concerned with the question of human right violations in the Arab territories occupied by Israel and limited its activities further on the human rights situation in Palestine. Thus, it never received a single report by a member state, but rather has issued already 20 recommendations on the rights of the Palestinian People in the first two years of its mandate.⁷

Even though attempts were made from the 1970s onwards,⁸ it took until 1994 for the idea of the creation of a protective human rights instrument for the Arab region to take concrete form with the adoption of the Arab Charter on Human Rights. This **1994 Arab Charter of Human Rights**⁹ was widely criticised by human rights organisations both at the regional and international level as **failing to meet international human rights**

¹ Bahey El Din H., Regional protection of Human Rights in Arab states In Statu Nascendi, in: Janusz Symonides (ed.), *Human Rights: International protection, Monitoring, Enforcement*, Ashgate and UNESCO Publishing, Paris 2003, p. 239.

² For an English version of the Charter see <http://www.religlaw.org/interdocs/docs/caihrislam1990.htm>.

³ For more information on the Organisation of the Islamic Conference see <http://www.oic-oci.org/>.

⁴ For an English version of the founding Charter see <http://www.mideastweb.org/arableague.htm>.

⁵ Algeria, Bahrain, the Comoro Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Yemen and United Arab Emirates.

⁶ International Commission of Jurists (ICJ), *The Process of 'Modernizing' the Arab Charter of Human Rights: A Disquieting Regression*, Position Paper, 20 December 2003, p. 4, available at:

http://www.icj.org/IMG/pdf/Position_paper_ACHR_ENG.pdf.

⁷ See Bahey El Din H., 2003, p. 240-44.

⁸ Ibid, p. 242.

⁹ For an English version of the Arab Charter on Human Rights 1994 see :

<http://www1.umn.edu/humanrts/instree/arabhrcharter.html>

standards.¹⁰ Since it was only signed by one state, Iraq, and was not ratified by one single member of the LAS it never entered into force.

In January 2003 the SCHR finally recommended that the 1994 Charter should be revised and in March 2003 the Council of the LAS instructed the SCHR to ‘modernize the Arab Charter on Human Rights in light of comments and suggestions received from Arab States, with the participation of legal and human rights experts.’¹¹ When the new version produced by the SCHR was issued in 2004 it turned out to be still inconsistent with international human rights standards and OHCHR and civil society called for further revision and modernization carried out by human rights experts rather than by the representatives of governments of the SCHR. As a consequence of wide criticism and pressure the Council of the LAS agreed to allow **independent experts** to prepare a **new draft**. Under a bilateral agreement between the **OHCHR** and the LAS seven experts from Arab countries, all of them members of the UN human rights treaty bodies, were appointed to revise the draft Charter. The Committee of experts, having received input from various Arab but also international human rights groups including the Cairo Centre for Human Rights, Amnesty International and the International Commission of Jurists,¹² produced a draft in January 2004 for consideration by the Council of the LAS. In May **2004** the **new Arab Charter of Human Rights**¹³ was adopted at a summit of the League and entered into force on 15 March **2008**, two months after receiving seven ratifications.¹⁴

2 LEGAL BASIS

The **Arab Charter on Human Rights 2004** comprises a Preamble and the 53 Articles. Unlike most of the international and regional human rights instruments the Charter is not divided into parts or chapters, consequently substantive rights are not separated from procedural provisions dealing with the monitoring mechanism, ratification and entry into force. The individual rights of the Charter encompass **civil and political** as well as **economic, social and cultural rights**, together with specific provisions related to the rights of women, children, migrants and persons with disabilities. By affirming the current international human rights standards,¹⁵ it seeks to place human rights at the ‘centre of the key national concerns’ of Arab states and reaffirms that all human rights are universal, indivisible, interdependent and interrelated.¹⁶ Nonetheless, the commitments made to the universality of human rights away from cultural or religious relativism have to be taken with a hint of caution since the Preamble of the Charter refers not only to the UDHR, the ICCPR and the ICESCR but also to the **Cairo Declaration on Human Rights in Islam** from 1991, a document clearly grounded on Islam and widely criticized as a challenge and danger to many aspects of human rights.¹⁷

¹⁰ For example the International Commission of Jurists stated that the 1994 Charter ‘is marred by fundamental deficiencies: it contains important omissions, guarantees rights only superficially, offers expanded possibilities of restrictions to the rights guaranteed, and above all contains no real mechanism to monitor respect of these rights.’ See ICJ, 2003, p. 29.

¹¹ Council of the League of Arab States, Decision 6302/119 adopted on 24 March 2003.

¹² Mann, S., ‘Modernizing’ the Arab Rights Charter, in: OHCHR, *Respect – The Human Rights Newsletter*, 15 March 2004, p. 5, available at <http://www2.ohchr.org/english/bodies/docs/Issue%20Nr%201+.pdf>.

¹³ For an English version of the Arab Charter of Human Rights 2004 see <http://www1.umn.edu/humanrts/instreet/loas2005.html>.

¹⁴ Today the Charter is ratified so far by: Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen.

¹⁵ See Preamble ACHR.

¹⁶ See art. 1 ACHR.

¹⁷ Rishmawi, M., *The Revised Arab Charter on Human Rights: A Step Forward?*, *Human Rights Law Review*, Vol. 5, No. 2, 2005, p. 367.

Whereas most of the provisions of the Charter are consistent with international human rights standards, a number of provisions remained **in contradiction to with international human rights law**. Inconsistencies arise for example with regard to Art 7 permitting the imposition of the death penalty against children under 18 if national law provides so or Art 8 prohibiting torture or cruel, degrading, humiliating or inhuman treatment, but not punishment. Several economic rights, such as the right to work (Art 34), the right to free health care (Art 39 (1)) or the right to free education at the primary and basic level (Art 41 (2)) are only granted to citizens and not to all persons under the jurisdiction of the state, which presents a clear violation of the principle of non-discrimination. Furthermore, the Charter refers to Zionism as an 'impediment to human dignity and a major barrier to the exercise of the fundamental rights of all people'¹⁸ which has been highly criticized by several NGOs calling for reference to be made to universal values and to international human rights standards rather than focusing on special ideologies.¹⁹ Problematic remains as well that some rights contained in the Charter are contingent upon the interpretations of Islamic Shari'a. For example, Art 3(3) states that '[m]en and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shari'a, other divine laws and by applicable laws and legal instruments'.²⁰

3 INSTITUTIONAL STRUCTURE

In art. 45 the revised Charter provides for the creation of an **Arab Human Rights Committee** consisting of seven members elected by secret ballot by the state parties to the Charter, all having equalled rights and votes.²¹ The members, who must be nationals of states parties, serve for a four-year period and may be re-elected only once.²² In their capacity as Committee members they must fulfil certain criteria: they must be highly qualified and experienced in the field of human rights, fully independent and impartial.²³ The Committee is supposed to meet twice a year and is mandated to have exceptional sessions at the request of the LAS Secretary-General, any Member State, the Council or upon a prior decision of the Committee.

Two month after the Charter entered into force, in May 2008 the process of electing the members to the new Committee started. However, due to a delay in states parties nominating candidates it took until March 2009 before it was finally formed. Most of the current members hold government positions, yet they nonetheless repeatedly affirm their **independence** as Committee members, and have varying degrees of legal and human rights expertise. Up to now the Committee has held four sessions but no public statements recording the outcomes of the sessions have been issued.²⁴

4 HUMAN RIGHTS PROTECTION MECHANISM

The main task of the newly established **Committee** is the **monitoring of the implementation** of the Charter. Art. 48 provides that **states** are to **report** 'on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof'.²⁵ The

¹⁸ See the Preamble and art. 3 ACHR.

¹⁹ See for example Amnesty International, *Middle East and North Africa Region Re-drafting the Arab Charter on Human Rights: Building for a Better Future*, AI Index MDE 01/002/2004, p.3, available at: <http://www.amnesty.org/en/library/info/MDE01/002/2004> ; or ICJ, 2003, p. 15.

²⁰ Art 3 (3) ACHR.

²¹ See art. 45 (1) ACHR.

²² See art. 45 (2), (3), and (4).

²³ See art. 45 (2) ACHR.

²⁴ Rishmawi, M., 2010, pp. 171-172.

²⁵ See art. 48 (1) ACHR.

Committee has to consider these reports, discuss them in the presence of a states representative of the country concerned and make the necessary recommendations in accordance with the aim of the Charter. States have to present the first report one year after the Charter entered into force and then to submit periodic reports every three years thereafter.²⁶ The Charter provides merely that the Committee must issue a public annual report with its recommendations and comments, whereas it does not oblige it to make recommendations and comments after each session.²⁷

Since it is the main task of the Committee to monitor the implementation of the Charter by states parties through the consideration of state reports, **no** provisions can be found in the Charter for **individual or state communications or complaint mechanism**. This presents a major constraint to the effective access to justice particularly as most Arab states have not signed up yet to the UN complaint procedures.

In 2006 a **Sub-Commission on Human Rights** was created as a sub-committee of the Arab Human Rights Committee. The responsibilities of the Sub-Commission mainly encompass the preparation of studies and drafting treaties. With regard to the latter the Sub-Commission is now tasked with considering possibilities for an Arab Convention on the Rights of the Child.²⁸

²⁶ See art. 48 (3) and (4) ACHR.

²⁷ See art. 48 (5) und (6) ACHR.

²⁸ Rishmawi, M., 2010, p. 177.

ANNEX II - NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE UNITED NATIONS

1 INTRODUCTION

National Human Rights Institutions (NHRIs) remain recent phenomena with the large majority being less than 20-years old. In 1993 the UN approved the 'Principles Relating to the Status [and Functioning] of the Network of National Institutions for the Promotion and Protection of Human Rights' (**Paris Principles**) governing the key criteria for the creation, the competences, the composition and the powers of NHRIs.¹ Today 65 NHRIs comply with the criteria foreseen in the Paris Principles (A-status).² Governments adopting these standards granted NHRIs the status as institutions independent from and functional within the structure of the state. Established in all the UN defined regions of the world they show commonalities but vary as well in their typology, their composition, their tasks and their degree of independence. For example, regionally trends in NHRIs' typology showed that in Europe and the Asia-Pacific NHRIs are mainly statute-based commissions, whereas in Africa the preferred type are constitutionally-based commissions and in the Americas mainly constitutionally-based ombuds-institutions.³ It is the task of NHRIs to provide individuals with the means to draft complaints about threats or violations of human rights, engage in activities with regard to the promotion and education of human rights, and encourage the states to ratify international or regional human rights instruments while ensuring that national laws are in accordance with them. To comply with these tasks, according to the Paris Principles, NHRIs should cooperate with the UN as well as with the regional mechanism established to protect and promote human rights. With regard to the former, NHRIs cooperate through the interaction with the UN Special Procedures and through their contributions to the Universal Periodic Review. Furthermore the UN and especially the OHCHR organises biannual conferences of NHRIs for the promotion and protection of human rights, the last taking place from 21-24 October 2008 resulting in the Nairobi Declaration.⁴

As was shown in the first part of this report, the state of the art and the effectiveness of the regional human rights mechanisms vary significantly which has further implications on the role NHRIs play in the promotion and protection of human rights. In the subsequent part the eventual cooperation between NHRIs and the regional mechanism as a starting point for the comprehensive protection and promotion of human rights will be examined, with the aim of discerning whether these relationships should be further strengthened and supported or whether other strategies should be developed to implement human rights standards most effectively.

¹ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991 and lay down the fundamental criteria for a NHRI: establishment by law, independence, as broad a human rights mandate as possible, composed of a collegiate body reflecting the composition of society, adequate resources, accessibility, and working cooperatively with civil society. The Paris Principles were subsequently adopted by the UN Human Rights Commission by Resolution 1992/54 of 3 March 1992 and the UN General Assembly by Resolution 48/134 of 20 December 1993.

² See UN, Process Currently Utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to Accredite National Institutions in Compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010.

³ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, p. 4, available at <http://www.nhri.net/2009/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>.

⁴ Nairobi Declaration available at <http://www.ohchr.org/Documents/Countries/NairobiDeclarationEn.pdf>.

2 NHRIS IN EUROPE

Within the framework of the CoE, the **Commissioner for Human Rights** (the Commissioner) is mandated to work in close co-operation with ombudsmen and other NHRIs. In particular, the Commissioner focuses on the establishment and independence of such institutions as well as on the continuous exchange of relevant information in order to improve reciprocal and common actions to promote and protect human rights at the very local level.¹ Furthermore the Commissioner plays an important role in the implementation of the **Joint European Union – Council of Europe Program** aimed at the foundation of an active network of independent NHRIs. This program is mainly focusing on the effectiveness of NHRIs and therefore provides workshops for staff members to improve their knowledge and performance. In 2008 the Commissioner held a pilot meeting with a number of NHRIs on the possibility to strengthen the role of NHRIs in the execution of judgments of the European Court of Human Rights and to interact therefore with the Committee of Ministers (CoM) by using its Rules of Procedure.

NHRIs play a crucial role in the working methods of the **expert bodies**² of the CoE as they provide these bodies not only with information but are monitoring the implementation of standards set by the expert bodies as well as advise legislative and executive authorities. Thus e.g. ECRI requires in its General Policy Recommendation No. 2 for the establishment of its own specialized body to combat racism, xenophobia, anti-Semitism and intolerance at the national level.

The **European Group of National Institutions** (the European Group), a representative group of NHRIs within the CoE, fully complying with the Paris Principles,³ chaired by the Irish Human Rights Commission (IHRC) in accordance with art. 36.2 ECHR and rule 44.2 of the Rules of the Court obtained **amicus curiae status** with the ECtHR. The European Group is working in close co-operation with the European Union Agency for Fundamental Rights (FRA) in migration policy, privacy and data protection as well as human rights education/training/awareness rising.

Furthermore, contacts were made between the European Group and the OSCE Office of Democratic Institutions and Human Rights (ODIHR) in the field of democratization and the rule of law. The latter established a Focal Point for Human Rights Defenders and NHRIs, with the aim of increasing the independence as well as the capacity of NHRIs to deal with and resolve individual complaints of violations of human rights.⁴

The European Network of Ombudsmen was established in 1996 and consists of nearly 90 offices in EU member states as well as in applicant countries for EU membership. The Network is an important tool for the work of the European Ombudsman as it enables him or her to deal promptly and effectively with complaints that fall outside his or her mandate.⁵ By organizing round tables, seminars and meetings as well as visits from the

¹ See http://www.coe.int/t/commissioner/Activities/NHRS/default_en.asp

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), European Commission against Racism and Intolerance (ECRI), European Committee of Social Rights (ECSR), The Advisory Committee under the Framework Convention for the Protection of National Minorities (ACFC), The Group of Experts on Action against Trafficking Human Beings (GRETA)

³ 1. the national institution should be duly established by law, constitution or by decree, 2. it shall be a national institution of a state party to the African Charter, 3. the national institution should conform to the Principles relating to the Status of National Institutions, also known as the Paris Principles, adopted by the General Assembly of the United Nations under Resolution 48/144 of 20th December 1993

⁴ See Factsheet about the ODIHR Focal Point for Human Rights Defenders and National Human Rights Institutions, available at:

<http://www.osce.org/odihr/27867.html>

⁵ See <http://www.ombudsman.europa.eu/atyourservice/en/introduction.faces>

European Ombudsman to national ombudsmen or similar institutions, the network facilitates the of exchange of experiences and examples of good practice between their members.

NHRIs in Europe⁶:

Institution	Status	Year reviewed
Albania: Republic of Albania People's Advocate	A	November 2008
Armenia : Human Rights Defender of Armenia	A	October 2006
Azerbaijan: Human Rights Commissioner (Ombudsman)	A	October 2006
Bosnia and Herzegovina: Human Rights Ombudsman of Bosnia and Herzegovina	A	November 2009
Croatia: Ombudsman of the Republic of Croatia	A	April 2008
Denmark: Danish Institute for Human Rights	A	October 2007
France: Commission Nationale Consultative des Droits de L'homme	A	October 2007
Georgia: Public Defender's Office	A	October 2007
Germany: Deutsches Institut für Menschenrechte	A	November 2008
Great Britain: Equality and Human Rights Commission	A	November 2008
Greece: National Commission for Human Rights	A	November 2009
Ireland: Irish Human Rights Commission	A	November 2008
Luxembourg: Commission Consultative des Droits de L'homme du Grand-Duché de Luxembourg	A	November 2009
Norway: Centre for Human Rights	A	April 2006
Northern Ireland (United Kingdom of Great Britain and Northern Ireland): Northern Ireland Human Rights Commission	A	October 2006

⁶ UN, Process currently utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national institutions in compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010

Poland: Commissioner for Civil Rights Protection	A	October 2007
Portugal: Provedor de Justiça	A	October 2007
Russian Federation: Commissioner for Human Rights in the Russian Federation	A	November 2008
Spain: El Defensor del Pueblo	A	October 2007
Ukraine: Ukrainian Parliament Commissioner for Human Rights	A	March 2009
Austria: The Austrian Ombudsman Board	B	2000
Belgium: The Centre for equal opportunities and opposition to racism	B	1999
Republic of Moldova: Human Rights Centre of Moldova	B	November 2009
Netherlands: Equal Treatment Commission of The Netherlands	B	2004
Slovakia: National Centre for Human Rights	B	October 2007
Slovenia: Republic of Slovenia Human Rights Ombudsman	B	2000
Switzerland: Federal Commission against Racism (FCR)	B	1998
Romania: Romanian Institute for Human Rights	C	March 2007
Switzerland: Commission fédérale pour les questions féminines (CFQF)	C	March 2009

5 NHRIs in Africa

Whereas the African Charter and the Rules of Procedure of the African Commission contain various rules regarding the work and status of NGOs not much can be found when it comes to National Human Rights Institutions (NHRIs) and their position within the African human rights system. Art. 26 ACHPR encourages the

establishment of NHRIs and art. 45.1.c rules the co-operation of the African Commission with other African institutions concerned with the promotion and protection of human rights.⁷

By adopting a **Resolution on Affiliate Status** in 1998 the African Commission defined the rights and responsibilities of NHRIs as well as the requirements⁸ a NHRI has to fulfil to attain affiliate or observer status before the African Commission. The resolution clearly points out that NHRIs shall assist the African Commission in the promotion and protection of human rights at the national level.⁹ At the present, twenty-one NHRIs have registered themselves.¹⁰ NHRIs with affiliation status can participate in public sessions and have to submit a report to the African Commission every second year, furthermore, they are required to assist the Commission in protection and promotion of human rights and should facilitate promotional visits at country level.

Whereas the role and relationship between NGOs and the African Commission is clear, those of NHRIs still needs to be defined. For this purpose NHRIs have established in close co-operation with the UN Office of the High Commissioner for Human Rights (OHCHR) a **Network of African National Human Rights Institutions** (NANHRI) in 2007 to support the establishment, strengthening and development of national human rights institutions. NANHRIs, formerly known as the Coordinating Committee of African National Human Rights Institutions,¹¹ is a regional representative body, currently registered under Kenyan law that brings together about 30 NHRIs. The Secretariat of this network, an independent, permanent body located in Nairobi, has the task of co-ordinating all activities of NHRIs and is financially supported by the OCHR. In 2008 the Chairperson of the network was elected as a new member of the African Commission in order to be able to develop synergies between the Commission and NHRIs.

NANHRI is currently working in close co-operation with the OHCHR and organizing bi-annual Conferences of African National Human Rights Institutions on the role of NHRIs and how to strengthen their position within the regional framework. The Seventh Conference of African NHRIs, which took place in Rabat, 3-5 November 2009, under the theme of 'Peace and Justice: the Role of National Human Rights Institutions,' resulted in the adoption of the Rabat Declaration. This Declaration promotes not only the establishment of NHRIs but also the clearer definition and strengthening of the role of NHRIs in, for example, facilitating national consultation for the establishment of transitional justice, gathering information and documenting human rights abuses, providing assistance to victims and witnesses, monitoring and reporting on the implementation of the recommendations of transitional justice mechanisms or engaging and interacting with international and regional human rights mechanisms.¹² Furthermore NANHRI is arranging training courses for NHRIs in order to provide the participants with theoretical and practical knowledge about human rights and on how to fulfil their mandates in the most efficient manner.¹³

⁷ Murray R. and Evans, M., 'The African Charter on Human and Peoples' Rights: The System in Practice 1986-2006', Second Edition, Cambridge University Press 2008, p. 311 f

⁸ 1. the national institution should be duly established by law, constitution or by decree, 2. it shall be a national institution of a state party to the African Charter, 3. the national institution should conform to the Principles relating to the Status of National Institutions, also known as the Paris Principles, adopted by the General Assembly of the United Nations under Resolution 48/144 of 20th December 1993

⁹ See ACHPR/Res.31(XXIV)98.

¹⁰ See 24th Activity Report, EX.CL/446(XIII)

¹¹ Established by the Yaoundé Declaration in 1996,

¹² See Rabat Declaration UN Doc A/HRC/13/44

¹³ See http://www.nanhri.org/index.php?option=com_content&task=view&id=109&Itemid=1

NHRIs in Africa¹⁴:

Institutions	Status	Year reviewed
Egypt: National Council for Human Rights	A	October 2006
Ghana: Commission on Human Rights and Administrative Justice	A	November 2008
Kenya: Kenya National Commission on Human Rights	A	November 2008
Malawi: Malawi Human Rights Commission	A	March 2007
Mauritius: Commission Nationale des Droits de L'homme	A	April 2008
Morocco: Conseil Consultatif des Droits de L'homme du Maroc	A	Will be reviewed in October 2010
Namibia: Office of the Ombudsman	A	April 2006
Niger: Niger Commission Nationale des Droits de L'homme et des Libertés Fondamentales	A	April 2008
Rwanda: National Commission for Human Rights	A	October 2007
Senegal: Comité Sénégalais des Droits de L'homme	A	Will be reviewed in October 2010
South Africa: South African Human Rights Commission	A	October 2007
Togo: National Commission for Human Rights	A	October 2007
Uganda: Uganda Human Rights Commission	A	April 2008
United Republic of Tanzania: National Human Rights Commission	A	October 2006
Zambia: Zambian Human Rights Commission	A	Oct 2006
Algeria: Commission Nationale des Droits de l'homme	B	2009
Cameroon:	B	Oct 2006

¹⁴ UN, Process currently utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national institutions in compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010

National Commission on Human Rights and Freedoms		
Burkina Faso: Commission Nationale des Droits de L'homme	B	March 2007
Chad: Commission Nationale des Droits de L'homme	B	Nov. 2009
Mauritania: Commission Nationale des Droits de l'Homme	B	Nov. 2009
Nigeria: Nigerian Human Rights Commission	B	October 2007
Tunisia: Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales	B	2009
Benin: Commission Béninoise des Droits de L'homme	C	2002
Madagascar: Commission Nationale des Droits de l'Homme de Madagascar	C	Oct 2006

6 NHRIs in the Americas

Today 15 NHRIs are established in accordance with the Paris Principle in the Americas. They are represented by the **Network of the National Institutions for the Promotion and Protection of Human Rights in the American Continent** (Network of the Americas) established in 2000 at a conference in Mexico City.¹⁵ Whereas the cooperation among the NHRIs under the auspices of the Network of the Americas is advanced and workshops are organised regularly on various human rights issues,¹⁶ NHRIs have historically not been actively engaged in OAS activities and have not participated in key human rights events. It is interesting to note that the OAS adopted in 1999 indeed a document entitled 'Guidelines for the Participation of Civil Society Organisations in OAS Activities'¹⁷ granting NGOs a special status in the OAS but that a corresponding document applicable on NHRIs was missing until 2008. In June 2008 the General Assembly of the OAS adopted Resolution AG/RES.2421, titled 'Strengthening the Role of National Institutions for the Promotion and Protection of Human Rights in the Organization of American States' recognizing the contribution made by national institutions for the promotion and protection of human rights and formalizing the role and participation of NHRIs in the Americas established in accordance with the Paris Principles.¹⁸ At its session in 2009 the Permanent Council of the OAS adopted in a draft resolution administrative and procedural modalities aimed at allowing the participation of NHRIs in OAS

¹⁵ For more information on the Network of the Americas (La Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano) see <http://www.redindhca.org/presenta.htm>.

¹⁶ For more information on the activities of the Network of NHRI see <http://www.redindhca.org/activprincp.htm>.

¹⁷ OAS, Permanent Council Resolution on Guidelines for the Participation of Civil Society Organizations in OAS Activities, OAS-Doc. CP/RES. 759 (1217/99), 15 December 1999, available at: <http://www.civil-society.oas.org/Permanent%20Council/CP-RES-759.htm>.

¹⁸ OAS, General Assembly, Resolution on Strengthening the Role of National Institutions for the Promotion and Protection of Human Rights in the Organization of American States, OAS-Doc. AG/RES. 2421 (XXXVIII-O/08), 1-3 June 2008, available at <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>.

political bodies dealing with human rights related issues.¹⁹ It is foreseen that the Network of the Americas provides the OAS Secretariat with a list of all the NHRIs in the Americas meeting the Paris Principles. If one of those accredited NHRIs wants to participate in an OAS event, its representative has to inform the Secretariat in advance and after proving all the relevant documents the NHRIs will be registered and allowed to attend relevant meetings and speak on their behalf.²⁰ What might be problematic is that NHRIs will be required to finance their own participation or generate alternative sources of funding, since no support mechanism is foreseen by the Permanent Council.²¹ In December 2009, at the Regional Consultation on Strengthening Cooperation and Dialogue between the International and Regional Human Rights Systems organised by the OHCHR and the OAS, NHRIs could already participate and their role in strengthening the national human rights protection systems and in contributing to the strengthening of Government's capacity to ensure the implementation of human rights norms was reaffirmed by the participants.²²

Besides the formal cooperation and interaction with the political bodies, NHRIs institutions are also engaged with the Inter-American Commission and the Inter-American Court on Human Rights. The 2009 OHCHR survey on NHRIs showed that 8 out of 16 institutions were actively engaged with the Commission and 6 out of 16 with the Court. However, the interaction was limited to the submission of documents and legal briefs, as well as to the dissemination and monitoring of the implementation of court judgements.²³

With regard to the protection of human rights the **Inter-American Institute of Human Rights** plays a major role. The Inter-American Court of Human Rights and the Inter-American Commission of Human Rights maintain close relations with the Inter-American Institute of Human Rights, which was established in 1980 by agreement between the Government of Costa Rica and the Court as an autonomous, international academic institution, with a global, interdisciplinary approach to the teaching, research and promotion of human rights.²⁴ Its mission is to support the inter-American system of human rights by promoting and strengthening respect for the human rights set out in the American Convention on Human Rights and by executing more than 50 local and regional projects for the dissemination of these rights among the principal non-governmental organizations, and among the public institutions of the Americas. Serving as a facilitator of dialogue among the different actors in the human rights movement, the Institute works with all sectors of civil society, and with the state authorities of the countries of the Americas, as well as with international organizations, especially those belonging to the OAS.²⁵

Besides the increasing role NHRIs play in the framework of the OAS, they also engage actively with the UN system. As was shown in the recent OHCHR survey, 67% of the NHRIs in the region contributed to a state report and commented publicly on it. Additionally, 44% of the NHRIs surveyed submitted a parallel report and conducted follow-up activities. With regard to the cooperation with the UN Treaty Bodies, the NHRIs in the

¹⁹ OAS, Permanent Council, Draft Resolution on Strengthening the Role of National Institutions for the Promotion and Protection of Human Rights in the Organization of American States, OAS-Doc. CP/CG-1770/09 rev. 2 add. 1 rev. 1, 6, May 2009, available at <http://www.oas.org/consejo/COMGRAL/Temas%202009.asp>.

²⁰ Ibid, para. 2.

²¹ See OAS, Report of the Permanent Council on the Strengthening of National Human Rights Institutions for the Promotion and Protection of Human Rights, OAS-Doc CP/CG-1770/09 rev. 2, 29 April 2009, available at <http://www.oas.org/consejo/COMGRAL/Temas%202009.asp>.

²² National Human Rights Institutions, Information Note November-December 2009, available at <http://www.nhri.net/2009/NHRIs%20Info%20Note20.pdf>.

²³ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, p. 46.

²⁴ See the Inter-American Court of Human Rights, Annual Report 2008, 7, according to which the Court also maintains institutional relations with the European Court of Human Rights, <http://www.corteidh.or.cr/informes.cfm>.

²⁵ See Inter-American Institute of Human Rights, http://www.iidh.ed.cr/default_eng.htm

Americas appear to be the most active ones compared with NHRIs in Europe or Africa. When it comes to the engagement in connection with the UN Universal Periodic Review, NHRIs in the Americas show once again consistent engagement. Even though contributions to state reports were rare, the NHRIs engaged in various other related activities, such as follow-ups or the dissemination of the reports. NHRIs are allowed as well to participate in the sessions of the Human Rights Council; however, the level of interaction for activities such as submitting written statements or attending the session remains modest. For example, only 22% of the surveyed NHRIs in the Americas submitted a document and none of them ever joined a session.²⁶

NHRIs in the Americas:²⁷

Institution	Status	Year Reviewed
Argentina: Defensoría del Pueblo de la Nación Argentina	A	October 2006
Bolivia: (Plurinational State of): Defensor del Pueblo	A	March 2007
Canada: Canadian Human Rights Commission	A	April 2008
Colombia: Defensoría del Pueblo	A	October 2007
Costa Rica: Defensoría de los Habitantes	A	October 2006
Ecuador: Defensor del Pueblo	A	April 2008
El Salvador: Procuraduría para la Defensa de los Derechos Humanos	A	April 2006
Guatemala: Procuraduría de los Derechos Humanos de Guatemala	A	April 2008
Honduras: Comisionado Nacional de los Derechos Humanos de Honduras	A	October 2007
Mexico: Comisión Nacional de los Derechos Humanos	A	October 2006
Nicaragua: Procuraduría para la Defensa de los Derechos Humanos	A	April 2006
Panama: Defensoría del Pueblo de la República de Panamá	A	October 2006

²⁶ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, pp. 42-45.

²⁷ UN, Process Currently Utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national institutions in compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010

Paraguay: Defensoría del Pueblo de la República del Paraguay	A	November 2008
Peru: Defensoría del Pueblo	A	March 2007
Venezuela: Defensoría del Pueblo	A	April 2008
Antigua and Barbuda: Office of the Ombudsman	C	2001
Barbados: Office of the Ombudsman	C	2001
Puerto Rico (United States of America): Oficina del Procurador del Ciudadano del Estado Libre Asociado de Puerto Rico	C	March 2007

7 NHRIs in the Asia-Pacific Region

Due to the lack of a regional mechanism, NHRIs play the **most significant role** in the Asia-Pacific when it comes to the promotion and protection of human rights at the national level. Under the **Tehran Framework** already described above foreseeing *inter alia* the setting up of NHRIs and related activities, NHRIs have proliferated at a rather successful rate and with a comparatively high level of independence,²⁸ representing the best way to monitor, investigate and seek redress for human rights abuses in the Asia-Pacific region.²⁹ The cooperation and networking between these national institutions has constantly grown backed by the **Asia Pacific Forum of National Human Rights Institutions** (APF). The network comprises 17 members, whereas the APF has granted full member status to 15 of them, as they are in full compliance with the Paris Principles, and associated membership to 2 of them which currently do not comply with the Paris Principles and are unlikely to do so within a reasonable period of time.³⁰ The Jordan National Centre for Human Rights currently chairs the Forum Council. The APF organises annual meetings, the 14th and last annual meeting took place in Amman, Jordan, in August 2009, to strengthen the cooperation between the NHRIs, the respective governmental representatives and NGOs, as well as training courses and other promotional activities. Besides the regional coordination of human rights activities in the Asia-Pacific region the APF promotes the establishment of new human rights organisations.³¹ Additionally, in 1998 the **Advisory Council of Jurists** (ACJ) was established as part of the APF. It is a body of eminent jurists advising the APF on the interpretation and application of international human rights law. In various reports the ACJ thoroughly examines various human rights issues and gives practical recommendations to assist the APF members to promote and protect human rights.³² Because of its functions and its extensive membership, the APF was already considered as 'the closest that the Asia-Pacific region has

²⁸ Grimheden, J., Human Rights in the Asia-Pacific, in: Gómez Isa, F. and Koen de Feyter (eds.) *International Human Rights Law in a Global Context*, University of Deusto Press, Bilbao, 2009, p. 9.

²⁹ Asia Pacific Network, *Establishing a Regional Human Rights Mechanism for the Asia-Pacific Region*, Asia-Pacific Journal on Human Rights and the Law, Vol. 2, 2003, p. 83.

³⁰ See <http://www.asiapacificforum.net/members/apf-member-categories>.

³¹ For the objectives of the APF see <http://www.asiapacificforum.net/about/governance>.

³² For more information on the ACJ see <http://www.asiapacificforum.net/acj/>.

come to a regional arrangement or machinery for the protection and promotion of human rights.³³ In particular the work of the APF as the umbrella organisation has a 'flow-on effect' and 'traction' in encouraging countries without national human rights institutions to establish them.³⁴

Since a regional human rights mechanism is missing in the Asia-Pacific region, and since the effectiveness of the sub-regional ASEAN human rights mechanism is still unclear if not even doubtful, the cooperation between NHRIs and the UN at the national level remains highly relevant. In this regard the UNDP is of major importance for the relationship between the UN and NHRIs. In a recent survey of the OHCHR, 12 out of 16 NHRIs had common interaction with the UNDP.³⁵ The significance of the country or regional offices established by OHCHR and the UN country teams in the region since 2001 is also increasing, and they are often regarded as performing an umbrella function in terms of the protection and promotion of human rights.³⁶

Despite the increasing degree of cooperation between the UN and the OHCHR at the field level the engagement of the NHRIs in the Asia-Pacific with the UN Treaty Bodies, the UPR and the Special Procedures remain modest. 50% of the NHRIs surveyed in 2009 by the OHCHR contributed for example to a state report and conducted follow-up activities. When it comes to the interaction with the Human Rights Council numbers are even lower. None of the NHRIs surveyed submitted a written statement to the Council; however, 25% attended a session and even made oral statements.³⁷

In the strategic plan for 2010-2011 for the Asia-Pacific region, the OHCHR had as a priority the strengthening of human rights mechanisms, particularly the ASEAN human rights body, and close cooperation with the Asia Pacific Forum.³⁸ Annual conferences and meetings of the Asia Pacific Forum are highly supported by the OHCHR, recognising this forum as well as the currently most effective human rights protection mechanism in the Asia-Pacific region.³⁹ However, in this regard it is interesting that the 2009 OHCHR survey on NHRIs showed that the interaction of the NHRIs with conferences, workshops etc in the Asia-Pacific region, has been minimal in the period 2006-2008.⁴⁰

NHRIs in the Asia-Pacific⁴¹:

Institution	Status	Year reviewed
Afghanistan: Independent Human	A	November 2008

³³ Muntarbhorn, V., In Search of the Rights Track: Evolving a Regional Framework for the Promotion and Protection of Human Rights in the Asia-Pacific Region, Discussion Paper presented at the 13th UN Workshop in Beijing 2005., p. 14.

³⁴ Ibid, p. 14.

³⁵ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, p. 41.

³⁶ Muntarbhorn, Vitit, 2005.

³⁷ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, pp. 42-45.

³⁸ OHCHR, High Commissioner's Strategic Management Plan 2010-2011, Geneva, p. 67, available at <http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>.

³⁹ OHCHR, Message by the United Nations High Commissioner for Human Rights Louise Arbour, 12th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, available at:

<http://www.asiapacificforum.net/about/annual-meetings/12th-australia-2007/downloads/un-statements/Statement%20-%20HC%20for%20HR.pdf>.

⁴⁰ OHCHR, Survey on National Human Rights Institutions, Geneva, July 2009, p. 45.

⁴¹ UN, Process currently utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national institutions in compliance with the Paris Principles, UN-Doc. A/HRC/13/45, 18 January 2010.

Rights Commission		
Australia: Australian Human Rights and Equal Opportunity Commission	A	October 2006
India: National Human Rights Commission of India	A	Oct 2006
Indonesia: National Human Rights Commission of Indonesia	A	March 2007
Jordan: National Centre for Human Rights	A	October 2007
Malaysia: Human Rights Commission of Malaysia	A	To be reviewed 2010
Mongolia: National Human Rights Commission of Mongolia	A	November 2008
Nepal: National Human Rights Commission of Nepal	A	To be reviewed 2010
New Zealand: New Zealand Human Rights Commission	A	October 2006
Occupied Palestinian Territory: The Palestinian Independent Commission for Citizen's Rights	A	March 2009
Qatar: National Committee for Human Rights	A	Will be reviewed in 2010
Philippines: Philippines Commission on Human Rights	A	October 2007
Timor-Leste: Provedoria for Human Rights and Justice	A	April 2008
Republic of Korea: National Human Rights	A	November 2008

Commission of the Republic of Korea		
Thailand: National Human Rights Commission	A	Nov 2008
Sri Lanka: Human Rights Commission of Sri Lanka	B	March 2009
Maldives: Human Rights Commission	B	April 2008
Hong Kong Special Administrative Region of China: Hong Kong Equal Opportunities Commission	C	2000
Iran (Islamic Republic of): Commission Islamique des Droits de L'homme	C	C 2000

8 NHRIs in the Arab States⁴²

National Human Rights Institutions are regarded as being key elements in the protection and promotion of human rights at the national level. As described in the first part of this study a regional human rights mechanism for the Arab states is still in *statu nascendi* and time will tell how effective the new Committee of human rights of the LAS will be and how cooperation with NHRIs will develop. Having all these circumstances in mind one might assume that NHRIs as such play a superior role concerning the protection and promotion of human rights.

Still, even though the numbers are increasing, **National Human Rights Institutions**⁴³ play an **inferior role** in the promotion and protection of human rights in the Arab countries. Mostly established by the ruling elites, the Arab NHRIs **lack autonomy and independence** and fail to comply with their duties to promote and protect human rights. Besides the problematic procedures for appointing members, the actual possibilities of NHRIs to promote and protect human rights are very limited by national laws which are generally very vague, and do not specify the mandates of the NHRIs or oblige the governments to cooperate with them.⁴⁴

However, despite the unsolved dependency issues several initiatives have been taken at the regional but also at the international level to improve the work of NHRIs in the Arab countries. Besides five regional conferences organised with the support of the LAS and the OHCHR on National Human Rights Institutions in the Arab

⁴² As the Arab system is not defined as a separate UN region there is no separate data on the status of Arab NHRI. However, they are included in the list of NHRI of the Asia-Pacific and African region.

⁴³ For an overview of NHRI in the Arab countries see <http://www.arabhumanrights.org/en/resources/nhr.aspx>.

⁴⁴ Moataz El F., *Arab World: The Effectiveness of Human Rights Commissions*, Cairo Institute for Human Rights, 11 June 2008, available at <http://www.cihrs.org/English/NewsSystem/art.s/247.aspx>.

World, the last one taking place in March 2009 in Amman, Jordan, the Arab-European Dialogue on Human Rights in particular has to be mentioned. In 2007 the first Arab-European Human Rights Dialogue for National Human Rights Institutions took place facilitated by the Danish Institute of Human Rights and the National Centre for Human Rights of Jordan. So far four of these meetings have been held to discuss various human rights issues, ranging from discrimination to terrorism, with the aim of establishing a 'forum for discussions on human rights challenges faced by NIs in their efforts to promote and protect human rights in their respective national context'.⁴⁵

⁴⁵ Danish Institute for Human Rights, Second Arab-European Human Rights Dialogue Meeting, 2007, available at <http://www.humanrights.dk/international/geographical+regions/middle+east+and+north+africa/regional/second+arab-european+human+rights+dialogue+meeting+for+nhris>.

ANNEX III - THE WORLD COURT OF HUMAN RIGHTS

The World Court of Human Rights (the Court) is at this stage a theoretical project. Nonetheless, said project, if turned into a reality, will represent foremost a challenge to the UN human rights system and to human rights mechanisms of those States that would recognise the Court's jurisdiction. From this it follows that neither regional human rights systems nor organisations such as the EU are called to play a major role in the building of this new Court, and thus the Court does not *a priori* represent a major challenge to today's regional human rights systems. The arguments that have been made in favour of this potential new actor in the human rights arena are set out below. This is followed by an outline of the Court's nature and an evaluation of the possible impact of the Court vis-à-vis regional human rights systems and organisations such as the EU.

1 The Need for a World Court

It has been argued that the UN human rights mechanisms are unable to redress human rights violations on a case-by-case manner. Comparing the CoE's ECHR performance and the UN treaty Bodies, while the ECHR has decided over 1000 individual complaints a year, the treaty Bodies have handed down around 500 non-binding decisions in 30 years.¹ Beyond the quantity of the cases handled, at stake is, first, the **lack of binding force of the UN treaty Bodies' decisions** and, second, the **possibilities to enforce the latter**. In order to redress these two problems some academics have proposed the creation of a **World Court of Human Rights – inspired by the CoE's system**, for the latter ensures, on the one hand, a court that issues binding decisions and, on the other hand, a separation of tasks between adjudicating and enforcing bodies.

The Court has been designed to turn the notion of the redress and reparation of human rights violations at UN level into an effective reality. This being said, the project has substantially expanded and has also tried to offer a solution for other international problems. An example of the latter would be, first, the difficulties **of making private organisations respect human rights**; second, the **heterogeneous degree of human rights protection at a global level**, since these rights are protected by different systems in some world regions and barely protected in others.

We analyse the proposed statute of the Court in order to outline how the latter is designed to offer an answer to all these problems.

2 The Characteristics of the Court

The Court is an 18 people (art. 17.1) permanent (art. 1) judicial body that sits in Geneva (art. 3.1). It has international legal personality (art. 4.1). The Court is created by an international treaty and, thus, the States Party to the treaty are subjected to the Court's jurisdiction (art. 7). In addition to states, **entities** [which art. 6 describes as: **international organisations; transnational corporations; international non-governmental organisations; organized opposition movements and autonomous communities**] **may also recognise the jurisdiction of the Court**. Any ruling of the Court vis-à-vis any of these international actors will be legally binding (art. 7.1 and 8.1). The channels through which such rulings will be given are three: an **individual complaint**; a **state complaint** and a **request by the OHCHR** (art. 12). In addition to these, the Court is able to issue opinions (art 10).

The World Court's impact will depend on how many states and entities agree to be subjected to its jurisdiction, as well as to the terms under which these states and entities wish to be subjected to the Court's jurisdiction. From this it follows that **the Court is not a priori an organ called upon to destabilize the**

¹ Nowak, M. 'The Need for a World Court of Human Rights,' Human Rights Law Rev. 7:1 2007.

existing frameworks of human rights protection (at the national and regional levels). Such a conclusion can be drawn from the following characteristics.

Firstly, **the court is institutional and procedural in nature**. The Charter of the Court does not provide new substantive rights but only mentions international treaties that will be applicable (art. 7.2 and 8.2). As well as these treaties, any state or entity will be able to add other treaties to be considered by the Court (art. 7.3 and 8.3), as well as *jus cogens* and customary norms of international law, which will be the only unifying set of norms within the asymmetric corps of norms that will be applicable in each case. Secondly, **entities are able to determine which procedures have to be pursued at the national level for the Court to be competent to review the matter in question** (art. 8.4). An added requirement regarding the so-called 'autonomous communities' is that the state in which such a community is located has to agree to the subjection of that community to the Court's jurisdiction (art. 8.5).

3 The Relationship between the World Court and Existing Human Rights Mechanisms

The Court has been presented as an institution that does not have to substitute but to perfect the existing mechanisms of human rights protection. This can be read also in the opposite direction, i.e. **if the regional mechanisms improve and the UN system does too, there would be no need for such a Court**. Those proposing the establishment of the Court affirm that to create the latter has a much lower political cost than to amend the UN system or the regional systems.

The Court would relate to the UN system in the following manner. Firstly, it would offer a 'complaint procedure' to those international treaties that lack one. Secondly, it would gradually take over the treaty Bodies' task regarding complaints and would leave to the latter the examination of State reports. Finally, it has also been suggested that the Court could operate as an appellate body to the treaty Bodies decisions.

Regarding regional courts, no one has presented the Court as one more judicial instance within a regional system of human rights protection but rather as operating in the regions where other regional courts lack. The Court thus would not demand any reform of human rights treaties. In fact, the statute precludes the jurisdiction of the Court over a matter that has already been scrutinised by a regional court (art. 13, 1.d and art. 13. 3. d).

4 Conclusions

The World Court seems to an **interesting idea but it is still unrealistic**. Particularly, **if regional systems were strengthened there would not be such need for a World Court**.² Nonetheless, the Court is a good mechanism for dealing with the criticisms that have been made towards the UN treaty bodies, particularly towards their lack of capacity to provide protection and remedies regarding human rights violations. Apart from providing **a way of restoring confidence in the UN system's ability to promote human rights**, the **World Court seems to provide a good forum for ending the impunity of private actors regarding human rights violations**.

² Ulfstein argues that the World Court is a good idea in those areas where no regional mechanisms exist. Ulfstein, G. 'Do We Need a World Court of Human Rights?' in Greenwood, Ch. And McCormack, L.H. (ed) From: Law at War: The Law as it Was and the Law as it Should Be: *Liber Amicorum Ove Bring*, Martinus Nijhoff Publishers, 2008.

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Council of Europe Human Rights and Legal Affairs Department

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http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp

The Advisory Committee under the Framework Convention for the Protection of National Minorities

http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/ACFC_Intro_en.asp

The Council of Europe Convention on Action against Trafficking in Human Beings

http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp

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http://fra.europa.eu/fraWebsite/home/home_en.htm

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<http://www.ombudsman.europa.eu/home/en/default.htm>

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http://europa.eu/index_en.htm

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African Union

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UN Office of the High Commissioner for Human Rights

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African Commission on Human and Peoples' Rights

http://www.achpr.org/english/info/news_en.html

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