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# *It Takes Three to Tango*

## *The EU "Orchestrating" National Human Rights Institutions to Promote Human Rights in Third Countries*


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## Abstract

The European Union has hitherto grown into a reputable actor in the global human rights governance. The ground-breaking adoption of the EU Strategic Framework on Human Rights and Democracy trumpeted the EU's pledge to universally and indivisibly promote and protect human rights worldwide. A powerful EU external human rights policy repertoire now targets multiple actors ranging from states, international and regional organisations to civil society. Other internationally recognised and recently, quickly proliferated actors i.e. National Human Rights Institutions (NHRIs) are, however, targeted in a rather sporadic manner. Their independence, locally based expertise, knowledge, experience endorsed by the periodic peer-to-peer review and recognised status within UN human rights machinery, shall certainly position them under the EU external human rights policy's spotlight. The research, therefore, advances the model of indirect governance- *the orchestration* as a template for the EU and non-EU NHRIs' engagement following the new Action Plan on Human Rights and Democracy 2015-2019 proposal. The thesis presupposes that a consistent and systematic inclusion of NHRIs into the EU external human rights policy could make EU's external actions in third countries more contextualised, locally-sensitive and therefore more effective, and partially silence the ongoing criticism of the EU's external human rights policy actions.

*Prima facie, I am grateful to my family, my always-caring Mum, courageous Dad, inspirational Brother, esoteric Aunt and simply-the-best Cousin for bearing with me, encouraging me and always believing in me.*

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## Table of Acronyms

| | |
|---|---|
| CoE | Council of Europe |
| COHOM | Council of the European Union Working Party on Human Rights |
| CSOs | civil society organisations |
| DG DEVCO | Directorate-General for International Cooperation and Development |
| EC | European Commission |
| EEAS | European External Action Service |
| ENNHRI | European Network of National Human Rights Institutions |
| EU | European Union |
| EUD | Delegation of the European Union |
| ICC | International Coordinating Committee of National Human Rights Institutions |
| IO | international organisation |
| NGOs | non-governmental organisations |
| NHRI | National Human Rights Institution |
| UN OHCHR | United Nations Office of High Commissioner for Human Rights |
| UN | United Nations |

*“Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner.”*

***(Kofi Annan, United Nations General Assembly, 2012)***

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## Introduction

The European Union (EU or the Union) proclaims itself as a robust promotor and protector of human rights upholding their borderless universality and scrupulous indivisibility. Both, internally, within the Union, and externally, in third countries.[1] However, not only has the EU internal human rights record been latterly extensively criticised, its external human rights policy repertoire has also been put into question. The contemporary debate disapproves the latter for a lack of attention given to particular human rights situations, pursuing double-standards mainly towards pro-Western allies and almost non-existent implementation of established policies.[2] The research postulated that enriching the triptych of "external human rights" partners (civil society, international organisations-IOs and states) of the National Institutions for Promotion and Protection of Human Rights (or National Human Rights Institutions- hereinafter NHRIs) occupying so-called "fourth space" along with their well-established global and regional networks, may contribute to more effective actions of the EU on the ground.

Contemporaneous society is indeed permeated by numerous forms of institutions regulating human behaviour. The institutional regulation "is not always the antithesis of freedom: it can be its ally."[3] Moreover, strong and *independen*t NHRIs can be vigorous allies and promoters of freedom and human rights at the spot, thus, closer to the people.

Hitherto, there are more than 100 NHRIs worldwide[4]. Bulk of these institutions are *independent* actors bringing human rights change on the ground. This priceless locally based *expertise* yields to their international recognition especially in the United Nations (UN) human rights habitat. The EU has partially uncovered strengths and weaknesses of these institutions, however its engagement with non-EU NHRIs remained rather sporadic, exercised chiefly by the Delegations of the European Union (EUDs or Delegations) on the

[1] EU Strategic Framework and Action Plan on Human Rights and Democracy (Strategic Plan), p.1, 2012.
[2] De Búrca, 2011, p.682.
[3] Hodgson, 2006, p.2.
[4] Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 2014, p.1

ground. The establishment of Brussels-based European Network of National Human Rights Institutions (ENNHRI or Network) looms large. Since its very instalment in 2013, ENNHRI Brussels-based Secretariat conducted immense pro-NHRIs advocacy at the EU level and became a contact point for numerous EU institutions when requesting information about NHRIs worldwide. Once-in-a-blue-moon moment for NHRIs finally came with the proposal of the new EU Action Plan on Human Rights and Democracy 2015-2019 (New Action Plan) which expresses the EU's explicit commitment to recognise and *support independent* NHRIs in third countries.

**Relevance of the Work, Research Questions and Hypothesis**

*Policy Relevance*

An inspiration to examine the engagement between the EU Institutions and non-EU NHRIs came while working in the Slovak NHRI and volunteering for newly established ENNHRI Secretariat in Brussels. Crucial meetings between ENNHRI Secretary General and Council of the European Union (the Council) Working Party on Human Rights (COHOM) or Directorate-General for Development and International Cooperation (DG DEVCO) provided an essential food for thought, which triggered my interest in observing the nature of the Union's intensified curiosity about non-EU NHRIs. Proof of the ENNHRI intense advocacy will be later on acknowledged. ENNHRI endeavour was rewarded as the New Action Plan accommodates a paragraph, which recognizes and supports NHRIs. The agenda on NHRIs was, furthermore, pushed forward via the Seminar on NHRIs organised during the European Development Days 2015. Non-EU NHRIs are apparently in the EU's spotlight. Even though, academic research have slightly touched upon this embryonic development, the specific policy recommendations on engagement with non-EU NHRIs in the so-called Post-Action Plan on Human Rights and Democracy 2015-2019 era might be of interest to the EU policy-makers, legal and human rights practitioners, non-EU NHRIs' staff members and other significant stakeholders.

*Academic Relevance*

The aforementioned embryonic engagement between the EU and non-EU NHRIs might be explicated by utilising the concept of orchestration. Orchestration, as defined by Abbott et al., is a recent concept of indirect[5], soft governance[6], which has been, additionally, shifted by Pegram to the concept of human rights governance.[7] The concept has been, though, mainly applied to situations when an IO as the *orchestrator* enlists *intermediaries* (e.g. *Member States'* civil society or specialised organisations) to reach out to the *targets - Member States.* The thesis' academic novelty, thus, lies within the shift of the concept of orchestration. This conceptual transformation explicates the engagement between orchestrator-*The EU*, the intermediary–*non-EU NHRI*, reaching out to the target- *Non-EU State*. The desirable outcome of the thesis is to utilise the concept of orchestration as an essential template, while drafting the EU Post-Action Plan on Human Rights and Democracy 2015-2019 Policy Recommendations on systematic and coherent engagement between EU and non-EU NHRIs.

**Research Questions and Hypothesis**

The present thesis intends to respond to the following questions:

- *Could the concept of orchestration serve as a template for the Post-Action Plan Human Rights and Democracy 2015-2019 EU's engagement with non EU-NHRIs and their respective collectives i.e. ENNHRI and ICC?*
- *What are the concrete actions to be conducted by the EU and non-EU NHRIs emanating from the EU Action Plan on Human Rights Democracy 2015-2019 proposal?*

[5] Abbott et al. (b), 2015, p.1.
[6] Abbott et al. (a), 2015, p.4.
[7] Pegram, 2014, p.5.

Following hypothesis was elaborated in order to answer proposed questions:

- *The orchestration as a model of indirect governance provides for an effective strategy on EU systematic engagement with non-EU institutions in aftermath of Action Plan on Human Rights and Democracy 2015-2019 and proposes concrete actions in terms of ideational and material support by the EU to non-EU NHRIs within EU External Human Rights Policy.*

**Structure**

The first chapter of the thesis illuminates the essential theoretical framework and sheds light on the concept of orchestration itself. The chapter delicately explains the concept of orchestration as a notion of indirect governance, including the role of IOs as ideal orchestrators. The chapter concludes by applying the introduced concept within the field of human rights governance.

The second chapter introduces the EU as a potential orchestrator using the definitions and terms presented in the previous chapter. The comprehensive descriptive presentation of the EU External Human Rights Policy Toolbox is provided.

The third chapter ushers numerous NHRI's definitions and briefly touches upon the history of potential intermediaries, i.e. NHRIs including collective intermediaries such as; the International Coordinating Committee of National Human Rights Institutions (ICC) and the recently established ENNHRI.

The final chapter of the thesis, consequently, provides for a presentation of ad-hoc or sporadic engagements between the EU institutions- potential *orchestrator(s)* and non-EU NHRIs and ENNHRI as *intermediaries*. This chapter introduces the role of EUDs and the EU Brussels-based institutions as *micro-orchestrators* enlisting non-EU NHRIs on the ground or ENNHRI in Brussels. The set of concrete policy recommendations addressed to the EU, non-EU NHRIs, ICC and ENNHRI are collated in line with provisions enshrined in the **N**ew Action Plan proposal.

**Methodology**

The desk research served as the basis for presented thesis. In addition, the thesis pursues legal and institutional analysis of the EU external human rights policy papers and instruments, coupled with the evidence-based study of existing engagement between the EU and non-EU NHRIs. Official websites of the EU Institutions including EUDs, the European Commission (EC) Directorates-General and Services and the United Nations Office of High Commissioner for Human Rights (UN OHCHR) were consulted. Moreover, the academic articles and books conceptualising the theory of orchestration served as principal sources. Other sources include internal ENNHRI reports from meetings, which were kindly provided by the ENNHRI Secretariat, FRAME Project articles and other academic sources defining NHRIs and analysing EU external human rights policies. Moreover, ENNHRI and ICC strategic documents, such as strategic plans, statutes and reports were also consulted.

The last chapter is principally based on information received from semi-structured interviews conducted with Debbie Kohner, ENNHRI Secretary General, and Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service (EEAS). Further professionals such as ICC Geneva Representatives, officials from Human Rights section of EUD in Geneva, and other EEAS officials were contacted via email, or through physical appointments made possible during a study trip to Geneva organised for E.MA students by the University of Padova.

The participation in the Seminar of National Human Rights Institutions within the scope of European Development Days 2015 proved to be specifically beneficial for the purpose of the thesis and several outcomes of the event have been included in last chapter. The dossier of data collected for DG DEVCO Seminar of EU Delegations Human Rights and Democracy Focal Points (hereafter DEVCO Seminar) and dossier provided for ICC-EU Meeting on 4 March 2013 provided invaluable impetus for formulating recommendations and intensifying challenges of future engagement between the EU and non-EU NHRIs.

# 1. ORCHESTRATION

## *As Concept of Human Rights Governance*

### Introduction

The concept of orchestration represents a relatively new[8] and unexplored approach towards the analysis of governance in general. It is defined as a concept of new governance[9], indirect governance,[10] or soft governance[11]. I will present a conceptual shift towards human rights governance progressing with presentation of a concrete example of an engagement between the UN OHCHR and NHRIs. Thereupon, I will build on my professional experience as the International Relations and Research Officer in the Slovak NHRI and mention some practical examples of standing engagement among the Slovak NHRI, the UN OHCHR and ICC.[12]

### 1.1 Introducing Orchestration as a Form of Indirect Governance. IOs as Orchestrators

In accordance with Abbott et al., hitherto, a majority of governance is exercised via third parties or intermediaries,[13] hence applying indirect governance. Simply put, the governors do

[8] One might have an impression that I frequently refer to same scholars whilst explicating the concept of orchestration. As mentioned before, orchestration is a very new concept put forward mainly by Abbott, Genshel, Snidal & Zangl. Due to the very fact that I apply the orchestration as a theoretical model throughout the thesis, the mentioned scholars will be often referred to. In addition, their recent book *International Organizations as Orchestrators* is a main source of inspiration for my further analysis.

[9] The concept of new governance is defined by Lee using Stoker's definition of governance as follows: "(i) it refers to a set of institutions and actors that are drawn from but also beyond government; (ii) it identifies the blurring of boundaries and responsibilities for tackling social and economic issues; (iii) it identifies the power dependence involved in the relationships between institutions involved in collective action; (iv) it is about autonomous self-governing networks of actors; and (v) it recognises the capacity to get things done which does not rest on the power of government to command or use its authority. See Lee, 2003, p.10.

[10] Indirect governance is "carried out through intermediaries. Governors do not govern targets directly but bring third parties to increase efficiency, effectiveness or legitimacy." See Abbott et al. (b), 2015, p.1.

[11] As in Abbott et al. (a), the soft model of governance is defined as the situation when the governor "has no hard control over the activities of intermediaries but must mobilize and facilitate their voluntary cooperation in a joint governance effort." See Abbott et al (a), 2015, p.4.

[12] I will use the abbreviation ICC, even though, it might be confused with the abbreviation for International Criminal Court. The governing bodies of ICC have suggested to change the name to the *Global Network of NHRIs*, however these changes have not materialised yet. This problem was reiterated by Lawrence Mushwana, ICC Chairperson, ICC 27th Annual Meeting, 12 March 2014, Geneva.

[13] Abbott et al. (b), 2015, p.1.

not govern in the traditional hierarchical way, but rather utilise third parties in order to reach out to the targets.[14] Abbott et al. presents four modes of governance[15] constructed on the axes of the direct v. indirect and the hard v. soft governance (Table 1). It is, however, not my intention to examine all depicted forms of governance, rather to focus on the two models of indirect governance: delegation and orchestration. The former will be, though briefly, introduced to be juxtaposed against the main object of our interest which is the concept of the orchestration itself.

Table 1

| | Direct Governance | Indirect Governance |
|---|---|---|
| Hard Governance | HIERARCHY | DELEGATION |
| Soft Governance | COLLABORATION | ORCHESTRATION[16] |

In line with Abbott et al., the governors believe that the following governance functions are being performed more effectively by third parties (by the "agents" or by the "intermediaries") (Table 2):

Table 2

| Governance function | Description of the function | Examples of third parties engagement related to the topic of the present thesis |
|---|---|---|
| **Expertise** | The governors enlist third parties when they believe that a third party possesses a | NHRIs are characterised by the ownership of local human rights situation |

[14] Ibidem, p.1.
[15] Abbott et al. (a), 2015, p.9.
[16] The authors emphasized the fact that four clear-cut models of governance are merely existent, this model is presented to understand better their theoretical contrasting features. Even though, in practice, they tend to blend into each other and create hybrid forms of governance. See Abbott et al. (a), 2015, p.10.

| | | |
|---|---|---|
| | crucial expertise, know-how or good practices in the field where they seek to influence the target. [17] | expertise. This expertise may, thus, be of interest to some IOs such as some UN human rights bodies or the EU. |
| **Agenda-Setting** | The governors decide to consult third parties when they believe third parties can assist them with setting the agenda in a particular field of policy.[18] | The EU organises open consultations calling for civil society and other stakeholders to express their opinions about the EU policies. The addressed stakeholders' opinion may be reflected into EU policy.[19] |
| **Credible Commitment** | The governors engage the third parties intermittently in order to propel their own policies' legitimacy.[20] | In case of the EU public consultation, the EU institutions involve wide range of stakeholders in order to increase their credibility towards EU citizens. |

[17] Abbott et al (b), p.2, 2015.
[18] Ibidem, p.2
[19] Concrete examples of the open public consultations organised by the EU, specifically by the European Commission are available here: http://ec.europa.eu/yourvoice/consultations/index_en.htm
[20] Abbott et al. (b), p.2, 2015.

| | | |
|---|---|---|
| **Access to Targets** | The governors tend to enlist third parties when they perceive the impossibility to reach out to the targets directly.[21] | The UN OHCHR engages with NHRIs because it believes that NHRIs are more appropriate to directly engage with the states (targets) on the national level. |
| **Monitoring** | The governors tend to approach third parties when independent monitors are needed.[22] | As the NHRIs mandate precisely stipulates their monitoring function, they can be easily used as local monitors providing data on observance of human rights or human rights violations to numerous IOs such as the UN or the EU. |
| **Adjudication** | Third parties are engaged by the governors in order to settle down disputes or interpret rules. [23] | For instance, the European Court for Human Rights (ECtHR or Court) issues judgement against its High Contracting Party and the very role of NHRI could be advocating for legislative change in line with ECtHR decision. |

[21] Ibidem, p.2.
[22] Ibidem, p.3.
[23] Ibidem, p.3.

| | | |
|---|---|---|
| **Legitimacy** | The governors enlist third parties in order to promote its own policies. [24] | The EU empowers and enlists civil society organisations in third countries in order to give legitimacy to its own policies of promotion and protection of human rights worldwide. |

As mentioned above and emphasized in Table 1, orchestration and delegation are two forms of indirect governance which share some similarities but, conversely, disagree profoundly as for the relationship between the governors and the third parties. The governor (in delegation parlance: the "principal") conditionally grants authority to a third party (the "agent") which enables it to act in line with the principal's goals.[25] The principal and the agent initiate their engagement on the basis of an explicit or an implicit contract based on pre-selected governance goals. If the agent diverges or fails to fulfil these goals, the principal exercises pressure and punishment. The agent is moreover, under the principal's persistent scrutiny and all of their endeavours are being monitored.[26] Orchestration uses the indirectness of delegation, but excludes the hard control exercised by the principal towards their agents.[27]

[24] Ibidem, p.3.
[25] Hawkins et al., p.7, 2006
[26] Abbott et al. (b), 2015, p.3.
[27] Ibidem, p.3.

The following chart (Table 3) highlights the distinct features of the two concepts.

Table 3

| **Mode of Indirect Governance** | **Governor** | **Third Party** | **Target** |
|---|---|---|---|
| *DELEGATION* | Principal | Agent | Target |
| *ORCHESTRATION* | Orchestrator | Intermediary | Target[28] |

### *1.1.1 Orchestration in Nutshell: the Concept and its Prerequisites*

Orchestration is in existing literature defined as:

"The mobilisation, facilitation and coordination of intermediary actors by the orchestrator on a *voluntary basis* [emphasis added] by providing them with material and ideational support in order to achieve *joint* [emphasis added] governance goals with respect to target."[29]

Building on the presumption indicated by the Table 3, the concept of orchestration operates with the "trinity" of subjects, namely the orchestrator, the intermediaries and the target. The orchestrator, naturally, lacks the hard governance instruments and it indeed cannot rule over the intermediary. The principal devoir of the orchestrator is, thus, to seek an affiliated party which will voluntarily associate with its goals and it will serve as the intermediary.[30] The orchestrator, thereupon, "enlists and supports the activities of the intermediary which in turn governs the behaviour of one or more targets."[31] The principal characteristic of the concept is *focality*, which is conceptualized as the orchestrator's superpower to gather and coordinate multiple actors in order to achieve similar goals[32] in a specific field of governance where the orchestrator operates as "uncontested governance leader".[33] This crucial feature of the

[28] Abbott et al. (a), 2015, p.9.
[29] Abbott et al. (b), 2015, p.3.
[30] Ibidem, p.3.
[31] Abbott et al. (a), 2015, p.16.
[32] Abbott et al. (a), 2015, p.29
[33] Ibidem, p.24.

concept is further elaborated on below. The orchestration theory proposes a strategy for orchestrators to act through intermediaries in order to influence the targets' behaviour.[34] As laid down by the hypothesis, I will use the concept of orchestration as a strategy to outline a more systematic and coherent engagement between the EU and non-EU NHRIs.

Under which conditions does the governor (possibly IO) prefer to embrace the concept of orchestration rather than other forms of governance? Abbott et al. provides for four general hypotheses explicating nuanced situations when the governor possibly selects to orchestrate.[35].

It is perhaps worth noting that Abbott et al. does not specify the necessity to fulfil all four general hypotheses[36] to become a potential orchestrator. Therefore, according to this assumption, I will examine the UN OHCHR role as the orchestrator applying a limited number of hypotheses in section *1.2 Orchestration in Human Rights Governance: UN OHCHR Orchestrating the NHRIs as Intermediaries*. The same logic will be thereupon used when defining EU as orchestrator in section *2.1.1 EU as orchestrator.*

At this stage, I will provide for a brief and solely theoretical explanation of the presented hypotheses. The next parts of the thesis come up with specific examples in human rights governance with the UN OHCHR, the EU as orchestrators and NHRIs and their respective networks as intermediaries.

My principal endeavour is to apply the following general hypotheses while examining the EU as a possible orchestrator within human rights governance in the second chapter of the thesis.

- *Orchestration capabilities hypothesis:* The governors who are deficient of certain types of capabilities and this fact prevents them from achieving the governance goals

[34] Ibidem, p.5.
[35] Abbott et al. (a), 2015, p.20.
[36] The concrete examples of IOs as orchestrators in Abbott et al (a), 2015 are seldom juxtaposed against all orchestration hypothesis hypotheses put forward by the authors in the book. The following IOs are examined as potential orchestrators: the EU (internally), World Trade Organisation, G20, World Health Organisation, UN Security Council, United Nations Environment Programme, International Labour Organisation.

would, in line with Abbott et al., pick up orchestration as form of governance. However, these governors ought to "possess sufficient regulatory competence"[37] or adequate capability to be able to enlist intermediaries. The orchestrator's ability to empower intermediaries generally correlates with its credibility and legitimacy in the given field of governance.[38]

- *Intermediary availability hypothesis*: Pursuant to Abbott et al., the governor will decide to apply orchestration as a form of governance when there is an extensive pool of like-minded intermediaries available. These intermediaries share comparable or identical goals with the orchestrator.[39] Abbott et al. emphasizes that this hypothesis is essential for the orchestration in the field of human rights governance when, ideally, an IO as orchestrator enjoys plentiful actual or *potential* [emphasis added] intermediaries with comparable goals. Moreover, these intermediaries possess direct access to targets. The author, additionally, turns one's attention to the notion of *potential* intermediaries that suffice to satisfy the criteria of the intermediary availability hypothesis.[40]
- *Orchestrator focality hypothesis*: In accordance with Abbott, the governor is focal in its field of governance when it acts as a single or an exclusive governance leader due to a variety of attributes, for instance its authority (the UN Security Council in the field of security) or operational competence (the World Bank in development).[41] This focality, i.e. the governor's indisputable leading position in a given field, enables it to assemble a variety of potential intermediaries. Moreover, as the intermediaries receive ideational and material support from one single powerful orchestrator, focality eventually helps to exercise orchestration in a more consistent way.[42]

[37] Ibidem, p.21.
[38] Ibidem, p.21.
[39] Ibidem, p.22.
[40] Ibidem, p.23
[41] Ibidem, p.24.
[42] Ibdiem, p.24.

- *Orchestration entrepreneurship hypothesis*: As Abbott et al. puts forward, the governors select to engage in orchestration when their internal organisation structure and external governance practises favour cooperation with other actors (which Abbott et al. defines as *policy entrepreneurship*).[43] The authors further state that new, dynamic organisations free from traditional governance techniques are accustomed to engage with a variety of internal and external actors, therefore they are more likely to orchestrate (e.g. the United National Environment Programme).[44]

Theoretically speaking, in case that the intermediary offers essential capabilities and completely aligns with the Orchestrator's goals, the concept of orchestration brings about benefits for both (or all), the orchestrator and the intermediary.[45]However, whilst applying and analysing any concept, one needs to take into account its limitations. As Abbott et al. indicates, a pure orchestration model is seldom reflected into the reality.

The orchestrator often inclines to metamorphose into the intermediary and *vice versa*.[46] Secondly, the intermediaries are frequently restricted in their capabilities and may not share all the governor's goals. Indeed, the intermediary incapacity is the primary limitation of orchestration.[47] The orchestrator may be, therefore, forced to compromise and it enlists intermediaries that share its goals but whose capabilities are harshly limited. Even with the orchestrator's support they are destined to fail.[48] On the other hand, if the intermediaries manage to have their capabilities increased, they may no longer share their governance goals with the orchestrator.[49] To sum it up, the intermediary might be willing to promote

[43] Ibidem, p.25.
[44] Ibidem, p.26.
[45] Abbott et al. (b), 2015, p.5,
[46] Abbott et al. (a), 2015, p.19
[47] Abbott et al. (b), 2015, p.5.
[48] Ibidem, p.5, Abbott et al., provides for the example of two international donors, namely the Soros Foundation and the Swiss Agency for Development and Cooperation which intended to orchestrate local NGOs in order to reach Kosovar citizens. These NGOs were characterised by pluralistic composition and members coming from multiple ethnicities, and shared the Soros Foundation and the Swiss Agency goals to reconcile the ethnically fragmented society. Their composition, however, impeded them from effectively reaching citizens in this post-conflict, ethnically subverted society. See Abbott et al. (b), 2015, p.5.
[49] Ibidem, p.6.

orchestrator's goals, but at the same time incapable to do so. This emerge as essential restraint of the concept.[50] These limitations will be attentively taken into consideration when applying the concept on the EU and non-EU NHRIs engagement.

### *1.1.2 The International Organisations as Orchestrators*

This section is constructed around the premise put forward by Abbott et al. stating that the IOs are more likely to engage in orchestration patterns[51], whereas national governments prefer delegation as a form of indirect governance.[52]

IOs are often characterised by pursuing governance goals with limited governance capacities.[53] Their governance tasks range from development, fighting against violence and crime, to promoting economic liberties or human rights.

In the next parts of the thesis, I will precisely concentrate on international bodies mandated with the promotion and protection of human rights such as the UN OHCHR and of course, the object of our research, the EU institutions and organs.

In case IOs are in conformity with the already introduced four *general* and now introduced the now-introduced two *IO-specific* hypotheses set forth by Abbott et al., they develop into potential orchestrators.

The Four *general* hypotheses are the sort of criteria that IOs need to fulfil in order to become orchestrators. These are theoretically framed in section *1.1.1 Orchestration in Nutshell: the Concept and its Prerequisites* of the thesis.

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[50] Ibidem, p.9. As Abbott et al. further states, this phenomenon might decay into the so-called theory of whitewashing (in the context of UN- bluewashing) when the governance activities are pretended, although, in fact none of them, *de facto*, takes place. See Abbott et al. (b), 2015, p.9.

[51] Even though, as Abbott et al. mentions, some of the IOs still pursue classic ways of governance, whereas others now base their functioning on other concepts of indirect governance such as delegation or cooperation. See Abbott et al. (a), 2015, p.3.

[52] Abbott et al. (b), 2015, p.8.

[53] Due to the reluctance of the members states to cease part of their sovereignty and equip the IO with more powerful governance capabilities. See Abbott et al., 2010, p. 2.

In line with Abbott et al., when particularly defining IOs as orchestrators, two *specific* hypotheses indicating the situations when IO engages in orchestration are worthy of note.

- *Goal divergence hypothesis*: The IOs are more inclined to seek alternative forms of governance such as orchestration when the goals of their member states differ or the membership goals differ from IOs' objectives.[54] When either one or both forms of goals' divergence are present, the states are reluctant to pursue hard governance and IO favours alternative soft governance.[55] The multilateral IOs with heterogeneous membership base (such as the UN OHCHR) are in line with Abbott et al., ideal orchestrators.[56]
- *State oversight hypothesis*: As this hypothesis stipulates, the IO tends toward orchestration when their member states lack institutional control or oversight mechanisms of the IO actions. Consequently, the control mechanisms such as "consensus based and other deadlock-prone intergovernmental decision-making procedures" yield to IO independence and the likelihood of orchestration.[57]

The further analysis of the EU as an orchestrator will be conducted utilising the *general* and *IO-specific* hypotheses as a theoretical model. However, it is noteworthy that not all of the hypotheses will be proven useful when analysing such a specific entity as the EU. Moreover, I intend to slightly shift the concept of orchestration applying it the IO (the EU) when reaching out the targets (non-EU States) via enlisting intermediaries (non-EU NHRIs).

### 1.2 The UN OHCHR Orchestrating NHRIs as Intermediaries

This part delves into the application of the orchestration concept in the field of human rights governance. The UN as IO, and namely the UN OHCHR, represents the orchestrator, NHRIs are the intermediaries, and the targets are the states. Thus as Pegram puts it, "the international

[54] Ibidem, p.27.
[55] Ibidem, p.27.
[56] Ibidem, p.28.
[57] Ibidem, p.29

organisation (the UN OHCHR) enlists and supports the intermediaries (NHRIs)[58] to address the targets (the states) in pursuit of international organisation's goals"[59] which are defined as promotion and protection of enjoyment and full realisation of human rights in the world.[60]

The four general and two specific hypotheses put forward by Abbott et al. will serve as the essential outline when framing the UN OHCHR identity as the orchestrator.

Within the UN system, the UN OHCHR represents the flagship of the human rights machinery. Nevertheless, human rights constitute one of three pillars of the UN structure, only 3 percent of the UN budget is allocated to support the UN OHCHR and its activities.[61]. In line with Abbott et al. (*orchestrator capabilities hypothesis*), the UN OHCHR lacks specific capabilities that are needed to pursue its own governance goals[62] (in this case, to effectively combat human rights violations and promote human rights).[63] Moreover, in line with the second Abbott's et al. general hypothesis (*intermediary availability hypothesis*), the extensive pool of possible intermediaries is actually and potentially available for the UN OHCHR as the Geneva Headquarters or field missions to keep in touch with those institutions. The UN in general still represents the main leader in promoting and protecting human rights worldwide.[64] Regional organisations for promotion and protection of human rights operate within limited geographic areas and they lack the global authority or the operational competence embodied in the UN organs such as the UN OHCHR with its broad expertise. I would therefore assume that the UN OHCHR is focal within the field of global

[58] This part of the thesis will solely focus on the engagement between the UN OHCHR and NHRIs, however, one must bear in mind that the UN OHCHR has had a long tradition in enlisting other kinds of intermediaries such as NGOs or CSOs. For more specific examples on engagement between OHCHR and Amnesty International see Martens, 2004.
[59] Pegram, 2014, p.1.
[60] The mandate of the UN OHCHR is to "promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and international human rights laws and treaties." See http://www.ohchr.org/EN/AboutUs/Pages/Mandate.aspx
[61]Briefing with the UN OHCHR officers, E.MA study trip to Geneva, 19 May 2015 (written record, in file with the author).
[62]Abbott et al. (a), 2015, p.21.
[63] The mandate of the UN OHCHR is to "promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and international human rights laws and treaties." See http://www.ohchr.org/EN/AboutUs/Pages/Mandate.aspx.
[64] Pegram, 2014, p.1.

human rights governance. All abovementioned is in concert with Abbott's et al. *orchestrator focality hypothesis*.

The UN OHCHR has been always vocal about the establishment of NHRIs, moreover it has indeed driven the establishment and supported these institutions.[65] Furthermore, it has an observer status within ICC, whose Secretariat is hosted in the premises of the UN OHCHR in Geneva. What is more, the National Institutions and Regional Mechanisms Section (NIRMS) was indeed established to enhance the cooperation between NHRIs including ICC and the UN OHCHR. As has been often recalled by human rights experts, the UN OHCHR is highly motivated to give support to all NHRIs around the world including the regional networks of NHRIs such as ENNHRI and global ICC network.[66] The UN OHCHR cooperates with NHRIs in four main areas: in the field of establishment and strengthening those institutions in countries (this can be facilitated by the UN OHCHR field missions), in the area of monitoring and information collecting for the UN mechanisms' purposes or needs of the UN OHCHR itself, it assists NHRIs with interaction in the UN system and other networks and it facilitates NHRIs' contacts with UN system and other networks. [67]

The UN OHCHR enlists the NHRIs and its networks (in this case the ICC) in order to promote human rights and address human rights violations.[68] This argument is supported by the UN OHCHR constant endeavour towards the establishment of such institutions worldwide and its activities supporting NHRIs' compliance with Paris Principles.[69].

In line with the concept of orchestration, the UN OHCHR indeed offers ideational and material support to these institutions. For instance, in developing, post-conflict states, or in

[65] National Human Rights Institutions – History, Principles, Roles and Responsibilities, 2010, p.2.
[66] As mentioned by Vladlen Stefanov, Chief of National Institutions and Regional Mechanisms, UN OHCHR, European Development Days 2015 Conference, Brussels, 3 June 2015.
[67] Ibidem.
[68] It is indeed noteworthy that the UN OHCHR also enlists other actors performing tasks of protection and promotion of human rights on national level such as NGOs and their global representatives, for instance, Amnesty International has been extensively used as an intermediary mostly in the field of collecting data on the ground and providing it to the UN OHCHR. See Martens, 2004.
[69] Cardenas, 2003, p.23. Moreover reiterated by Vladlen Stefanov, Chief of National Institutions and Regional Mechanisms, UN OHCHR, European Development Days 2015 Conference, Brussels, 3 June 2015.

countries in transition to democracy (as in the case of Slovakia in the 1990s) the UN provides NHRIs with the particular "start-up funding and, in some instances, core funding."[70] As has been proven in the Slovak example, the UN provided crucial funding to set up Slovak NHRI via its Voluntary Fund for Technical Cooperation in the Field of Human Rights.[71] [72] The establishment of the Slovak National Centre for Human Rights as Slovak NHRI was, thus, based on the Agreement between the United Nations and the Government of the Slovak Republic signed in 1994 in Geneva.[73] Once the institution is established, the UN OHCHR may carry on with ideational support including training of the staff members[74] or its fellowship programme.[75]

The shared goals of the UN OHCHR and NHRIs are to enhance the promotion and protection of human rights on the national level.[76] The UN OHCHR therefore, sets forth the active communication and relationship between established NHRIs and the UN OHCHR is a must.[77] The UN OHCHR NIRMS has been the focal point (fulfilling the Abbott et al. *orchestrator focality hypothesis*) for any assistance sought from NHRIs at the UN level. Since its creation, the section has provided NHRIs with ideational and material support. Moreover, it communicates with the UN OHCHR field missions that are often in touch with NHRIs regarding individual complaints or monitoring human rights violations on the ground.[78] The example of ideational support provided to Slovak NHRI from the UN OHCHR

[70] National Human Rights Institutions – History, Principles, Roles and Responsibilities, 2010, p.150.
[71] This funding was, *de facto*, provided by the Kingdom of Netherlands that allocated financial resources in order to contribute to the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights.
[72] The UN Voluntary Fund for Technical Cooperation in the Field of Human Rights was set up by the UN Secretary General in 1987. The fund is supported by the contributions of the governments of Member states upon the request of other Member States' governments.
[73] Dohoda medzi vládou Slovenskej republiky a Organizáciou Spojených národov o zriadení Slovenského národného strediska pre ľudské práva, 1994, p.1.
[74] Pegram, 2014, p. 9.
[75] See OHCHR Fellowship Programme, available at:
http://www.ohchr.org/EN/AboutUs/Pages/FellowshipNHRIStaff.aspx
[76] As also stipulated in the Paris Principles, See United Nations General Assembly, 1993.
[77] National Human Rights Institutions – History, Principles, Roles and Responsibilities, 2010, p.160.
[78] Memorandum of Understanding or Agreement between the High Commissioner for Human Rights and a respective country government needs to be signed before the UN OHCHR office is established in the country. In case of Nepal, this agreement already included provision that OHCHR-Nepal will assist and advise the National Human Rights Commission (NHRC) regarding protection and promotion of human rights. In this case,

NIMRS is the series of meetings on the new amendment of Slovak National Centre for Human Rights Act on Establishment (Act on Establishment) and professional legal advice on the Act on Establishment's full compliance with Paris Principles. The UN OHCHR NIRMS officials welcomed the Centre's representatives in Geneva and moreover reviewed the Centre's draft of Act on Establishment and provided useful comments.[79]

The UN OHCHR, moreover, sees NHRIs' irreplaceable role as its own advocates when ensuring the compliance with international human rights obligations.[80] As the states are frequently reluctant to pay their complete attention to fulfilling human rights obligations, the NHRIs remained one of the players on the ground for the UN OHCHR when pushing for this agenda. Additionally, when the UN OHCHR seeks reliable information about human rights violations, it can seldom rely only on information provided by the states. This is precisely the moment where NHRIs come to the picture and provide locally based expertise to the orchestrator. In line with Pegram, this very situation forces the UN OHCHR to orchestrate in the manner of bypassing states.[81] On the other hand, NHRIs surely benefit from the engagement with the UN OHCHR as it provides assistance to those NHRIs whose mandate, functioning, or existence is endangered, and furthermore it gives NHRIs more legitimacy on national level, acting as a safeguard of their activities.[82]

The orchestrator can enlist the single intermediary but, in some cases, the networks of intermediaries may be orchestrated. ICC represents the example of collective intermediary

OHCHR-Nepal focused on reinforcement and capacity building of NHRC and, later on, concentrated on strengthening and transferring skills to NHRC. Altogether, the UN OHCHR-Nepal and NHRC identified multiple concerns in new draft Act on NHRC which were not in line with abovementioned Paris Principles. NHRC assisted UN OHRCR- Nepal in monitoring cases in the field, although some concerns of this cooperation were raised. See Agreement between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal concerning the Establishment of an Office in Nepal, 2004, p.4.

[79] Slovenské Národné Stredisko pre Ľudské Práva, 2013, p.23.

[80] National Human Rights Institutions (NHRIs) interaction with the UN Treaty Body System (Information Note), 2011, p.5.

[81] Pegram, 2014, p.15.

[82] Ibidem, p.10.

in line with Pegram.[83] ICC speaks for the interests of NHRIs around the globe whilst having the ICC Geneva Representative based in very premises of the UN OHCHR.[84] [85]

The UN OHCHR or NIRMS provides ICC with essential material support via hosting it in its premises in Geneva, where the ICC Geneva Representative manages to engage with the UN OHCHR. This strategic location, moreover, facilitates the access of ICC to UN Mechanisms and structures. Moreover, human rights practitioners point out, that the UN OHCHR enjoys the observer status during the accreditation process in Sub-Committee on Accreditation of ICC.[86] The UN OHCHR basically helped to legitimise ICC on UN level, besides, it facilitated the communication among its members.[87]

However, some limitations of the UN OHCHR orchestration abilities were presented by some NHRIs also during the European Development Days. The Egyptian NHRI pointed out to no ideational nor material support coming from the part of the UN OHCHR during the time of current critical situation. This concern was reiterated by his colleague from Kosovo.[88]

As Pegram states, further complications occurred when part of the funding allocated to ICC ended up in the general budget of the UN OHCHR NIRMS.[89] Moreover, the ever-raising activism and increasing visibility of regional groups of NHRIs such as the well-established Asian Pacific Forum (APF) or the newly established ENNHRI in international fora brought about additional changes. APF became vocal and disagreed loudly when the UN OHCHR crossed the line and warned the ICC Geneva Representative not to actively participate in UN Human Rights Council in 2011. In this particular case, the UN OHCHR infringed upon its

[83] Ibidem, p.11.
[84] As found out also during the meeting with Katharina Rose, the ICC Geneva Representative, in the premises of the UN OHCHR in Geneva, 20 May 2015.
[85] A further definition of ICC will be provided in following parts of the thesis, for the moment, the thesis sheds light on the engagement between ICC and the UN OHCHR.
[86] As mentioned by Katharina Rose, the ICC Geneva Representative, 20 May 2015, Geneva. The role and work of the ICC Sub-Committee on Accreditation will be further elaborated on in following parts of the thesis.
[87] Pegram, 2014, p.18.
[88] Mentioned by participants from Egypt and Kosovo, during the parallel working group 2 on NHRIs and Conflict, Post-Conflict, Transition, Natural Emergencies and Disasters session, European Development Days, Brussels, 3 June 2015, European Development Days.
[89] Pegram, 2014, p.18.

delicate position of orchestrator and came to act as the principal in the delegation whilst imposing coercive powers against the agents. Brussels-based ENNHRI, on the other hand, has started to advocate for more visibility of ICC and NHRIs in the EU environment.

As the fourth chapter reveals, the advocacy of ENNHRI has been now proven successful. NHRIs (especially non-EU) are hitherto getting once-in-the-lifetime attention from the EU institutions. This might generate, as Pegram mentions, the desirable "decoupling of the UN OHCHR from the ICC" [90] which eventually may shift, as thesis proposes, the role of the orchestrator from the UN OHCHR to the EU. This premise does not mean to criticise a role of the UN OHCHR in ICC support, it, on the other hand, intends to shed considerable light on the EU's potential as orchestrator while not underestimating the orchestrating capabilities of the UN OHCHR. It is certain that ICC necessitates to remain independent, regardless being enlisted by the EU or the UN OHCHR.

**Conclusion**

The very aim of this chapter was to introduce the form of the indirect governance- the orchestration. My intention is, therefore, to apply the concept as the essential theoretical framework which is to be mainstreamed through all of the parts of the thesis, emphasizing its relevance for policy proposals and recommendations in the fourth, ultimate chapter.

The chapter, in addition, touched upon the role of IOs as orchestrators within the human rights governance sphere, while orchestrating intermediaries and reach out the targets- i.e. *the IO's member states*. I propose to shift the concept of orchestration slightly to engage the EU and *non-EU* NHRIs.

[90] Ibidem, p.18.

# 2 ORCHESTRATOR

## *The EU as the Focal Actor in Global Human Rights Governance*

### Introduction

As de Búrca remarks, the adoption of the Lisbon Treaty constituted, *inter alia*, the EU's "coming of age as human rights actor".[91] The EU's "Holy Trinity"[92] values as it is frequently used in the EU parlance, are now human rights, democracy and rule of law.[93]

The chapter endorses a descriptive approach and it solely maps the EU *external* human policy repertoire in order to shed light on the EU's potential as an orchestrator when providing third countries and their stakeholders with material and ideational support with respect to ensuring protection and promotion of human rights globally. The hypothesis of this chapter is that the EU is a potential orchestrator whose main characteristic is a wide range of ideational and material support which can be offer to actual and potential intermediaries. The following parts are devoted to descriptive presentation of the EU policy documents and instruments to be used in the field of human rights governance focusing on its external actions. The role of the EU as orchestrator is at the beginning examined utilising Abbott et al. general hypotheses.

### 2.1 Positioning Human Rights within EU External Policy

The EU perceives human rights as a broad concept when it formulates the external human rights policy.[94] Furthermore, an incomparably higher number of human rights related documents have been produced by the EU institutions in the field of the EU external policy than in the field of internal policies.[95] The major break-through in terms of external human rights policy was the inception of the European Instrument for Human Rights and Democracy

[91] De Búrca, 2011, p.649.
[92] FRAME Project, 2014, p.2.
[93] In spite of the fact that the mentioned three values are enshrined in TEU, they have not been conceptualised yet. The EU does not define those values. See Stunstein, 2007, p.2.
[94] Timmer, et al., 2014, p.iii.
[95] Lewis, et al., 2014, p.69.

(EIDHR), which superseded the European Initiative for Democracy and Human Rights.[96] The EIDHR soon became the "crown jewel" of the EU external action for protection and promotion of human rights.[97] Soon after, in 2011, the Joint Communication to the European Parliament and the Council of the European Union: Human Rights and Democracy at the Heart of the EU External Actions- Towards a More Effective Approach (Joint Communication) was adopted in order to trigger discussion among the EU institutions about a "more effective approach towards human rights and democracy".[98] The Joint Communication proposed concrete actions in the following four areas: *overhauling delivery*, where tailor-made approach shall be taken and partnership with civil society established, *a common approach to policy*, where it briefly introduces the repertoire of the EU external human rights policy instruments, *a building of strong partnerships* via multilateral cooperation or engagement with regional partners but also response to violations, and *strengthening the common Europe's voice* [all emphases added].[99] One year later, in 2012, the EU Strategic Framework and Action Plan on Human Rights Democracy (Strategic Framework) was endorsed imbricating ideas embodied in the Joint Declaration. The Strategic Framework explicates a rationale behind EU human rights actions, besides it reiterates the commitment to "promote human rights in all areas of its external action without exception."[100] The Strategic Framework emerged with the Action Plan on Human Rights and Democracy (Action Plan) enshrining the list of specific activities to be brought into practice until the end of the year 2014. Both documents will undergo a more profound scrutiny in the following parts.

[96] The European Initiative for Democracy and Human Rights was launched in 1994 and as a financial instrument aimed to promote human rights, democratisation and conflict prevention. This initiative was based on two Council regulations No. 975/1999 and No.976/1999.
[97] Lewis, et al., 2014, p.69.
[98] Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the Heart of the EU External Actions- Towards a More Effective Approach, 2011.
[99] Ibidem.
[100] Strategic Framework, 2012.

## 2.2 EU as a Potential Orchestrator: *Four General Hypotheses*

In order to proceed with the presentation of the EU external human rights policy toolbox, which I, pursuant to Abbott et al., consider as the EU's *material and ideational support* available for actual and potential intermediaries, I will utilise Abbott et al. four general hypotheses to illustrate the EU potential of being an orchestrator in the field of human rights governance.

In line with Abbott et al. *orchestration capabilities hypothesis*, the thesis proposes the EU as the ideal orchestrator due to its position as a credible player in the field of global human rights governance. However, in line with the hypothesis, the EU has a limited access to make third states (the targets) respect human rights obligation. The EU is, moreover, equipped with human rights policy toolbox (material and ideational support) and it might empower NHRIs (or NGOs- the intermediaries) to advocate the third states governments (the targets) for effective implementation of human rights obligations on national level.

Second of all, following Abbott et al. *intermediary availability hypothesis,* I would put forward that the EU as a promoter of human rights in its external sphere does enjoy actual and potential availability of multiple actors promoting human rights in third countries. These intermediaries range from NGOs, CSOs, human rights defenders, activists, dissidents or NHRIs. The intermediaries share EU goals and enjoy the access to targets. As I have stipulated numerous times before, the thesis focuses on actual and potential availability of NHRIs as intermediaries for the EU as orchestrator and their availability is under detailed scrutiny in third chapter of the thesis.

Thirdly, pursuant to Abbott et al. *orchestration focality hypothesis*, my assumption is that the EU is a focal actor in human rights governance. This premise is constructed around its wide range of external human rights policy tools which is presented in the next paragraphs. The EU indeed owns operational competencies to operate in the field of protection and promotion of human rights worldwide and, furthermore, it has essential resources to do so. I would even conclude, that the EU has proved to have authority in the field of human rights as it intends

to be always vocal about human rights violations in the world either through EU Special Representative for Human Rights or other officials. Conversely, the EU is not, naturally, a "single and uncontested leader" in human rights governance, but in fact, it cooperates with other actors in human rights governance such as the Council of Europe (CoE) or the UN. In line with examining the issue of EU focality, the establishment of Human Rights Focal Points stipulated in the Strategic Framework represents the EU's desire for focality on the ground. The potential intermediaries in the field of human rights governance in third countries now have clear vision that the Delegations are the very places where they "should turn for support, reducing transaction costs."[101]

Fourth of all, I would deduce that the EU eventually fulfils Abbott et al. *orchestration entrepreneurship hypothesis.* The EU has a long-standing experience with internal or external cooperation with other actors in the field of human rights governance. Internally, the EU acknowledged the emerging role of civil society organisations, and the social and welfare NGOs[102] came to picture in the EU decision making in 1990s.[103] Externally, Forth Lomé *bis* was the very first document which requested the civil society involvement in EU development policies.[104] The EU acknowledged the beneficial role of the intermediaries (in this case NGOs) when formulating and implementing its policies in the field of development. In 2001, the Annual Report on Human Rights[105] introduced the concept of "mainstreaming human rights and democratisation objectives into all aspects of EU external and internal

[101] Abbott et al. (a), 2015, p.24.
[102] The launch of this cooperation was based on Declaration 23 annexed to the Maastricht Treaty which provided for the following: "the Conference stressed the importance, in pursuing the objectives of Article 117 of the Treaty establishing the European Community [i.e. the social policy objectives], of co-operation between the latter and charitable associations and foundations as institutions responsible for welfare establishments and services." See Kendal & Anheiner, 1999, p.295.
[103] Smismans, 2002, p. 3.
[104] Agreement Amending the Fourth ACP-EC Convention of Lomé Signed in Mauritius on 4 November 1995 - Second Financial Protocol - Final Act - Joint Declaration on Trade Development, Art. 38.
[105] The report is produced by the common effort of all Member States' human rights experts and the EU institutions. It is adopted by the COHOM. The Report puts emphasis on the Union's external action, however, a short part is dedicated indeed to human rights within the EU. Furthermore, it elaborates on the Union's action in international arena including multilateral fora and use of available instruments such as country strategies or human rights dialogues. Often, it partially builds on the European Parliament Annual Report on Human Rights. The thematic issues which are of specific interest of the EU are included in the Report.

policies."[106] The dialogue and frequent cooperation with civil society and strengthening of its position loomed large. [107] The Article 8(b) of the Lisbon Treaty finally elevated the maintenance of "an open, transparent and regular dialogue"[108] between the EU institutions and representatives of civil society to the level of the Treaty on European Union (TEU). This strong culture of cooperation and engagement with other actors applies also to other IOs in the field of human rights. The EU cooperates with the CoE and the UN. To reiterate Abbott et al. *orchestration entrepreneurship hypothesis,* I assume that EU's internal or external practices indeed favour collaboration with a variety of actors on different levels including NHRIs, which is also in concert with the New Action Plan.

The thesis grasps the EU as the global human rights actor. For the purpose of the analysis and due to the thesis' limited scope, I will not delve into the EU's definition on the scale of IO or transnational entity, therefore, the application of two *IO-specific* hypotheses as set forth by Abbott et al. will be eluded. In addition, I assume that the abovementioned analysis of the application of the four Abbott et al. *general* hypotheses provided essential food for thought and valid arguments proving the EU´s potential role as orchestrator in the field of human rights governance.

### 2.3 The EU External Human Rights Policy Toolbox

Abbott et al. stipulates that IOs mainly orchestrate via providing their intermediaries with material and ideational support. By those means, the orchestrator bolsters intermediaries' capabilities, yet, at the same time creates a channel for fulfilling its own governance objectives.[109] In accordance with the concept of orchestration, the intermediaries can decide freely and *voluntarily* to accept this form of support from the orchestrator. This shall be

[106] European Union, 2001, p. 10.
[107] Ibidem, p.15.
[108] Consolidated Version of the Treaty on European Union, 2009, Art. 8(b).
[109] Abbott et al. (a), 2015, p.14.

conceived as a bottom line of the concept of orchestration, which stipulates a fact that an orchestrator cannot coerce intermediaries nor forcibly influence their actions.

Even though, the material and ideational support, as Abbott et al. points out, merge together in reality, I will indeed try to categorise the EU human rights policy repertoire into, on one hand, material support tools and ideational support tools on the other hand.

A descriptive presentation of the EU external human rights policy toolbox is therefore structured in the following way:

- EU External Policy Papers: Policy Foundations of Material and Ideational Support including analysis of the documents which serve as the basis of EU actions in the field of human rights governance (for instance Strategic Framework, Human Rights Guidelines, Human Rights Country Strategies).
- EU External Policy Instruments: EU Ideational Support in the Field of Human Rights Governance (including presentation of the EU Action Plan, Human Rights Clauses, Human Rights Dialogues, Human Rights and Democracy Focal Points and EU Special Representative for Human Rights).
- EU External Policy Instruments: EU Material Support in the Field of Human Rights Governance (European Instrument for Human Rights and Democracy).
- Other EU External Human Rights Policy Actions (Declarations, Demarches and the EU's Annual Report on Human Rights and Democracy in the world).

This part will provide for a descriptive presentation of the EU policies, policy documents, specific instruments and forms of evaluation, which altogether assemble the EU external human rights policy repertoire. The purpose of this part is to present and consequently understand the complexity of the EU external human rights policy toolbox.

### 2.4 EU External Policy Papers: Policy Foundations of Material and Ideational Support

First and the most significant policy paper is the Strategic Framework, which encompasses all important objectives of the EU external human rights policy in four pages. The Strategic Framework was adopted by the Council on 25 June 2012.[110] The EU intends to "honour its Treaty obligations to advance democracy, the rule of law, as well as the universality and indivisibility of human rights"[111] by adopting this ambitious document which comprises of following six parts[112]: human rights throughout EU policy, promoting the universality of human rights, pursuing coherent objectives, human rights in all EU external policies, implementing EU priorities on human rights, working with bilateral partners, working through multilateral institutions and the EU working together.[113] It is indeed the first time that a single document unifies principles, objectives and priorities of the EU external human rights policy. [114] In spite of the very fact that the Strategic Framework primarily conveys a message to the EU external human rights policy, it indeed refers to the Charter of Fundamental Rights of the European Union (EU Charter) and the possible accession of the EU to the European Convention on Human Rights. Additionally, it stipulates that the EU shall ensure the respect for human rights also internally.[115] The overall objectives of the Strategic Framework commit the Union to promote the universality of human rights even though this universality might be questioned in the light of cultural relativity. Moreover, the Union shall reaffirm its commitment towards the promotion and protection of human rights, to be vocal about the violations of those rights, to mainstream human rights through all of

[110] Council of the European Union, 2012, p. 1.
[111] Joint Communication to the European Parliament and the Council: Action Plan on Human Rights and Democracy (2015-2019) "Keeping human rights at the heart of the EU agenda", 2015, p.2.
[112] These parts build on the structure as presented in the Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the Heart of the EU External Actions- towards a More Effective Approach, therefore a certain overlap can be spotted.
[113] Strategic Framework, 2012.
[114]Council of the European Union, 2012, p. 1.
[115] The Member States within the Union are "equally determined to ensure implementation" of the Universal Periodic Review or Treaty Bodies' recommendations within their own frontiers". See Strategic Framework, 2012, p.2.

the EU external policies on bilateral and multilateral fora and to engage with civil society, which is considered to be a vital element of every rewarding human rights policy.[116]

The Strategic Framework, *inter alia*, gave birth to priorities of the EU external human rights policy which are thereupon reflected in concrete actions embodied in the Action Plan. The key specific priorities are aggregated in the Strategic Framework's fifth part on "Implementing EU priorities on human rights". These priorities are: freedom of expression, opinion, assembly and association offline and online[117], freedom of belief and religion[118], combating discrimination on the grounds of race, ethnicity, age, gender or sexual orientation[119], advocating for the rights of the child[120], persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities, keeping the continuity of campaigning for the rights and empowerment of women in all contexts[121], fighting against gender-based violence and marginalisation, promotion of economic, social and cultural rights, contribution to implementation of the UN Guiding Principles of Business and Human Rights, abolition of death penalty worldwide[122], campaigning against torture and cruel or inhuman treatment[123], promoting observance of humanitarian law[124], fighting against impunity for serious crimes of concern to the international community (including sexual violence in connection with armed conflict), commitment to the International Criminal Court, valuing dialogue with civil society internally and externally and support of human rights defenders[125] under European Instrument for Democracy and Human Rights.[126] It can be

[116] Strategic Framework, 2012.
[117] See also EU Human Rights Guidelines on Freedom of Expression Online and Offline, 2014.
[118] See also EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief, 2013.
[119] See also EU Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons, 2013.
[120] See also Update of the EU Guidelines on Children and Armed Conflict, 2008.
[121] See also EU Guidelines on Violence against Women and Girls and Combating all Forms of Discrimination against Them, 2008.
[122] See also Guidelines on Death Penalty, 2013.
[123] See also The Guidelines to EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2012.
[124] See also EU Guidelines on Promoting Compliance with International Humanitarian Law (IHL) - Technical update, 2009.
[125] See also EU Guidelines on Human Rights Defenders, 2008.
[126] Strategic Framework, 2012, p.2-3.

concluded that these are the long-term priorities of the Union in the sphere of EU external human rights policies and some of them have already been congregated into a portion of EU guidelines which will be further explained in the consecutive part.

Secondly, the EU Human Rights Guidelines[127] are soft-law policy papers, which were firstly introduced in 1998.[128] Eleven updated guidelines have been now adopted by the Council. The guidelines occupy a privileged place within EU external policies and, as noticed above, they frequently relate to priorities set forth in the Strategic Framework. Moreover, every single guideline constitutes, at the same time, the essential document for the Union in its external action in that particular field and shape Member States' policies with third countries in line with the EU.[129] The guidelines are usually 15-30 pages policy documents subdivided into introduction, purpose, definition and operational guidelines with specific objectives and instruments. They, additionally, encompass annexes with non-exhaustive lists of further international human rights documents backing the EU policy such as the UN Conventions or regional mechanisms agreements. All guidelines put a strong emphasis on engagement with civil society, while two of them (EU Guidelines on Human Rights Defenders and EU Human Rights Guidelines on Freedom of Expression Online and Offline) also refer to engagement with NHRIs. The guidelines, *inter alia*, provide the EU personnel and institutions with instructions and *modus vivendi* "for their work in third countries and in multilateral fora as well as in contacts with international organisations, civil society and other stakeholders."[130]

The following guidelines have been adopted so far by the Council and now form essential part of EU external human rights policy documents:

- Guidelines on Freedom of Expression Online and Offline, 2014
- Guidelines on the Promotion and Protection of Freedom of Religion or Belief, 2013

[127] Please consult all of the updated versions of Human Rights Guidelines at: http://eeas.europa.eu/human_rights/guidelines/index_en.htm.
[128] Muguruza et al., 2014, p.17.
[129] As mentioned during the interview with Anne Koistinen & Lousie Auken-Wagner, Human Rights Section of the EU Delegation to the UN, Geneva, 20 May 2015.
[130] Muguruza et al., 2014, p.iii.

- Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons, 2013
- Guidelines on Death Penalty, 2013
- Guidelines to EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment - An up-date of the Guideline, initially 2001, updated 2008
- Update of the EU Guidelines on Children and Armed Conflict, initially 2003, updated in 2008
- EU Guidelines for the Promotion and Protection of the Rights of the Child, 2008
- EU Guidelines on Violence against Women and Girls and Combating all Forms of Discrimination against Them, 2008
- European Union Guidelines on Human Rights Defenders, initially 2004 updated in 2008
- EU Guidelines on Promoting Compliance with International Humanitarian Law (IHL) - Technical update, initially 2005 updated 2009.
- EU Guidelines on Human Rights Dialogues with Third Countries, initially 2001 updated in 2008.

Thirdly, the Union puts human rights in the centre of all dialogues with third countries including its strategic partners.[131] Since 2011, the EU has propelled 160[132] country strategies.[133] These significant policy papers formulate political relationships and type of financial support for third countries.[134] The EU country strategies provide for a comprehensive overview of the main human rights challenges tackled in a country and, in addition, define the priorities of EU actions in the country. They were materialised via

[131] Strategic Framework, 2012, p. 3.
[132] As stipulated in the EU Annual Report on Human Rights and Democracy in the World in 2013, 146 strategies were drafted in 2013 and 123 were given final endorsement by the Political and Security Committee. See European Union, 2014.
[133] Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the Heart of the EU External Actions- Towards a More Effective Approach, 2011, p.8.
[134] Muguruza et al., 2014, p.20.

cooperation between EU Delegations, Members States' embassies and civil society active in human rights[135]. They shall, *inter alia*, "draw lessons, formulate best practices or regularise follow-up mechanisms."[136] In spite of the fact that these strategies have not been made available for public[137], the stakeholders on third countries' national level shall be able to obtain essential information from EU Delegation officers.[138]

## 2.5 EU External Policy Instruments

### *2.5.1 EU Ideational Support in the Field of Human Rights Governance*

Theoretically speaking and referring to Abbott et al. and the concept of orchestration, the ideational support is comprehend as "technical expertise, formal approval or political endorsement" provided by the orchestrator to strengthen intermediaries' "legitimacy and social authority vis-à-vis targets."[139] With respect to the EU human rights policy toolbox, I assume that the intermediaries can practically benefit from the EU tools as means for their further advocacy at the national level. On the other hand, the following instruments give third countries' intermediaries space to participate in the processes of their application, therefore, their expertise is utilised and voice is being heard, which bolsters their legitimacy at the national level.

As far as I am concerned, the Action Plan on Human Rights and Democracy represents the core instrument of the implementation of the EU external human rights policy. It transposes broad concepts of Strategic Framework into tangible actions on the ground. I will skip the analysis of the newest Action Plan, which has been latterly proposed to the beginning of the

[135] As it was mentioned in the EU Annual Report on Human Rights and Democracy in the World in 2013, the elaboration of specific country strategies managed to trigger first-ever closer cooperation on human rights between EU Delegation and Member States, see European Union, 2014.
[136] Fraczek et al., 2015, p.102.
[137] When passing the Resolution on the EU Report on Human Rights and Democracy in the World 2013 and the EU's policy on that matter, the MEPs reiterated their call for "the public disclosure of the key priorities of the EU human rights country strategies, and for Parliament to have access to the strategies, in an appropriate setting, so as to allow a proper degree of scrutiny." See Apap, 2015.
[138] Human Rights and Democracy Network, 2012, p.4.
[139] Abbott et al. (a), 2015, p.14.

fourth and ultimate chapter. That section will, *inter alia*, delve into its ground-breaking provisions addressing NHRIs and take it as the point of departure for further analysis.

Other instruments falling under the Abbott definition of ideational support provided by the orchestrator are human rights clauses, human rights dialogues, human rights and democracy focal points located in the Delegations and the EU Special Representative for human rights himself.

The human rights clauses were now included into more than 120 bilateral EU agreements.[140] As further stipulated in the Communication from the Commission to the Council and the European Parliament - The European Union's role in promoting human rights and democratisation in third countries, human rights clauses advocate for positive engagement and dialogue with third countries.[141] Despite their broad application, in reality the 'appropriate measures'[142] have only been adopted as a reaction to *coups d'etat* or other noteworthy worsening of political situations.[143] It can be concluded that human rights clauses seem to have potential to transform EU´s words into concrete actions on the ground[144], taking into account the original economic foundations of the EU. However, the criticism on double-standards still looms large. As Members of the European Parliament (EP) recently pointed out, the systematic inclusion of "binding, enforceable and non-negotiable" human rights clauses in all EU international documents is a must. Nevertheless, the economic and social development of third countries need to be fostered by the application of these clauses.[145] The

[140] Communication from the Commission to the Council and the European Parliament - The European Union's Role in Promoting Human Rights and Democratisation in Third Countries, 2001, p.11.
[141] Ibidem, 2001, p.11.
[142] These appropriate measures are usually suspension of high level contacts, the so-called smart actions, suspension of aid or projects. See Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the Heart of the EU External Actions- Towards a More Effective Approach, 2011, p.11.
[143] Laakso, Kivimäki & Seppänen, 2007, p.29.
[144] Simmons, 2011, p.130.
[145] European Parliament, Press Release, 2015.

necessity of improving the coherence of human rights clauses has popped up in the New Action Plan as a part of increasing the effectivity of human rights culture.[146]

As far as I am concerned, the very establishment of Human Rights and Democracy Focal Points within the EU delegations came about as an important milestone for promotion and also mainstreaming of human rights not only through the EEAS activities. As I stipulated before, it simplifies engagement between the EU and third countries' intermediaries operating in the field of human rights, which eventually favours orchestration. The creation of focal points stems from the Joint Communication but, more importantly, the establishment of an effective network of focal points was explicitly stipulated by the Action Plan 2012-2014.[147] The focal points were set up in order to promote the culture of human rights, to mainstream human rights in all the EU activities and institutions and foster the ratification of important human rights standards and agreements on the ground.[148] "By the end of 2013 all Delegations and Common Security and Defence Policy missions and operations[149] had nominated human rights focal points" and "contact details have been published on their website."[150] The officers within the focal points cope with the issues regarding democracy and human rights on the ground, which includes inducing calls for civil society and other intermediaries. Alternatively, they are responsible for monitoring local human rights situation and reporting back to headquarters, coping with individual cases, conveying démarches, pushing forward for the EU priorities either in the UN General Assembly or in the UN Human Rights Council.[151] The focal points' personnel is, additionally, obliged to

[146] Joint Communication to the European Parliament and the Council: Action Plan on Human Rights and Democracy (2015-2019) "Keeping human rights at the heart of the EU agenda", 2015, p.21.
[147] Strategic Framework, 2012, p.7.
[148] Ibidem, p.7.
[149] Comprehensive list of all focal points including the email contacts can be found at: http://www.eidhr.eu/focal-points#.
[150] European Union, 2014, p.37.
[151] As mentioned during the interview with Anne Koistinen & Lousie Auken-Wagner, Human Rights Section of the EU Delegation to the UN, Geneva, 20 May 2015.

promote calls for proposals for funding within EIDHR and provide endangered human rights defenders with essential protection and advice.[152]

Another significant instrument of EU external human rights policy, which ensures its proper implementation, are Human Rights Dialogues. This unambiguous instrument bases itself again on the Strategic Framework and the EU commits itself to "seek constructive engagement with third countries; in this light, the EU will continue to deepen its human rights dialogues and consultations with partner countries and will aim to ensure that these dialogues lead to results."[153] The EU now holds dialogue with some of 40 countries in the world.[154] The Guidelines on Human Rights Dialogues with Third Countries define various types of dialogues such as the dialogue with candidate countries, the Cotounou Agreement states, with the states of Latin America, the Mediterranean countries and the Caucasus countries, political dialogues with the ASEAN and ASEM countries, dialogues with Western Balkans and bilateral relations in the framework of association and cooperation agreements.[155] These dialogues are shaped by a case-by-case approach, however, some overlapping priority issues, such as ratification and implementation of international human rights instruments, cooperation with international human rights procedures and mechanisms, combating death penalty, combating torture or protection of human rights defenders, need to be consistently covered.[156] From the procedural point of view, human rights dialogues are held between the representatives of EEAS[157] and relevant government officials on the other side.[158] The civil society and other actors are vividly involved throughout the whole process. Examples of good practices in engaging NHRIs and using their recommendation while addressing governments

[152] Muguruza, et al, 2014, p.37.
[153] Strategic Framework, 2012, p.3.
[154] European External Actions Service, 2014, p.1.
[155] EU Guidelines on Human Rights Dialogues with Third Countries, 2009, p.3.
[156] For full list of priority issues of the EU see EU Guidelines on Human Rights Dialogues with Third Countries, 2009, p.6.
[157] Sometimes they are backed by the visiting experts on specific issues. The EU Special Representative on Human Rights and Democracy can preside the dialogue. See Timmer et al., 2014, p.78.
[158] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).

are endemically present.[159] As one of the FRAME Reports proposes the officials of the EU Fundamental Rights Agency (FRA) shall be allowed to take part in the human rights dialogues as well. Thus, the internal vs. external coherence would be ensured and the EU human rights experts would be able to respond to specific human rights demands from the side of the government of non-EU country.[160]

The silver thread characterising human rights in the EU, consequently, metamorphosed into a specific person. Mr Stavros Lambrinidis is the first-ever thematic EU Special Representative. The EU hence conveyed a definite message of its strong commitment to human rights promotion worldwide.[161] The mandate of Mr Lambrinidis has lately been extended for another 24 months expiring in March 2017.[162] His mandate is respectively founded on "the policy objectives of the Union regarding human rights as set out in the Treaty on European Union, the Charter of Fundamental Rights of the European Union as well as the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan on Human Rights and Democracy."[163] The Special Representative is the very instrument which, according to the respective Council Decision, implements the policy objectives that his mandate is based on. Moreover, he contributes "to the implementation of Union Guidelines, toolkits and action plans on human rights and international humanitarian law."[164] His role as the glue of the Union policies shall, furthermore, contribute to better coherence and consistency via providing advice while formulating EU policies.[165]

[159] Ibidem.
[160] Lewis et al., 2014, p.73.
[161] Muguruza, et al., 2014, p.37.
[162] Council Decision (CFSP) 2015/260 of 17 February 2015 Extending the Mandate of the European Union Special Representative for Human Rights, 2015, p.1.
[163] Ibidem, 2015, p.1.
[164] Ibidem, 2015, p.2.
[165] Ibidem, 2015, p.2.

### *2.5.2 EU Material Support in the Field of Human Rights Governance*

As Abbott et al. stipulates, the material support provided by the orchestrator ranges from financial to administrative assistance by which orchestrator enhances intermediaries' operational capacities to go after joint goals.[166] In this regard, the EU does offer financial instruments which aim to support plentiful third countries' stakeholders in order to promote and protect human rights worldwide.

The key financial instrument allocating the resources and serving the EU mission of promotion and protection of human rights is the European Instrument for Democracy of Human Rights (EIDHR). EIDHR succeeded the European Initiative for Democracy and Human Rights[167] in 2006. Hitherto, EIDHR is supervised by the Regulation (EU) of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide. The new multiannual framework is delineated by two major objectives providing for support, development, consolidation of democracy including the enhancement of democratic cycle and rule of law and supporting respect for human rights and fundamental freedoms as defined by the UN UDHR.[168] The enhanced support to the relevant civil society organisations (actual and potential intermediaries) is blatantly being mainstreamed through both core objectives.[169]

The funds of EIDHR allocated for the years 2007-2013, simultaneously, contributed to the funding of several NHRIs (the intermediaries of our specific interests) such as NHRIs in Rwanda, Mexico, Kenya, Philippines and the National Council for Human Rights in Egypt,

[166] Abbott et al. (a), 2015, p.14.
[167] This Initiative was set up by the Council Regulation (EC) No 975/1999 from 29 April 1999 with the aim to provide technical and financial aid to promote and protect civil and political, economic, social and cultural rights, human rights of discriminated against or support minorities, ethnic groups and indigenous peoples or support democratisation and rule of law. See Council Regulation (EC) No 975/1999 of 29 April 1999 Laying Down the Requirements for the Implementation of Development Cooperation Operations which Contribute to the General Objective of Developing and Consolidating Democracy and the Rule of Law and to that of Respecting Human Rights and Fundamental Freedoms, 1999.
[168] Regulation (EU) of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Democracy and Human Rights Worldwide, 2014.
[169] Muguruza, et al, 2014, p.29.

which received funding from the EU Commission through this instrument.[170] What is more, the new Multiannual Framework for the EIDHR (2014-2020) overtly lists the support of NHRIs as the scope of its core objectives.[171] At the same time, there are other actual and potential intermediaries which are eligible to use the instrument. They range from NGOs, non-profit agencies, local, national or international parliament bodies or simply natural persons and persons without any legal personality. This is a non-exhaustive list as in extraordinary and serious cases any other body is entitled to receive funding if it is in line with objectives of the instrument.[172] The funds allocated for the EIDHR 2014-2020, i.e. 1,332 million EUR, are still the lowest among two thematic[173] and four geographical instruments[174] which in some cases also confer their funds to human rights related issues.

### 2.6 Other EU External Human Rights Policy Actions

The declarations and demarches fall under the clarification of classical foreign policy instruments. The demarches are used mostly by officials based in EU Delegations in confidential way. As stated in the EU's Annual Report 2013, they were used in thematic issues such as the promotion of prohibition of death penalty in Iran, Iraq, Saudi Arabia, Yemen, Japan, India, Taiwan and USA[175], moreover, in individual cases of endangered human rights defenders[176] and LGBTI issues in African countries, Russia and Moldova.[177]

[170] Thematic Evaluation of the European Commission Support to Respect of Human Rights and Fundamental Freedoms (including Solidarity with Victims of Repression): Final Report, 2011, p.57.
[171] Regulation (EU) of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Democracy and Human Rights Worldwide, 2014, art.2.
[172] Ibidem, 2014,
[173] Instrument contributing to Stability and Peace, 2014-2020, financial envelope: 2,338 million EUR; Development Cooperation Instrument (Thematic Programme 'Civil Society organisations and local authorities in development', 2014-2020, financial envelope: 1,907 million EUR. See Muguruza, et al, 2014, p.25.
[174] Instrument for Pre-accession assistance, 2014-2020, financial envelope: 11,698 million EUR; European Neighborhood Instrument, 2014-2020, financial envelope: 15,432 million EUR; European Development Fund, 2014-2019, financial envelope: 21,966 million EUR; Development Cooperation Instrument, 2014-2020, financial envelope: 11,809 million EUR. See Muguruza, et al, 2014, p.26-27.
[175] European Union, 2014, p. 61.
[176] Ibidem, 2014, p.66.
[177] Ibidem, 2014, p.81.

The declarations are, on the other hand, public statements delivered either by the High Representative of the Union for Foreign Affairs and Security Policy or the EU Special Representative for Human Rights and his spokesperson. In 2013, the EU declaration mostly touched upon the issues of human rights defenders[178], child labour[179], LGBTI[180] and it expressed concern about the situation in countries such as Egypt.[181]

### *2.6.1 The EU's Annual Report on Human Rights and Democracy in the World*

The EU conducts the so-called 'self-evaluation' accomplished through the means of the EU's Annual Report on Human Rights and Democracy in the world (the EU's Annual Report). More specifically, since the adoption of the Strategy Plan in 2012, the EU's Annual Report reflects upon the first Action Plan structure. The Report attentively follows objectives and specific actions laid down by the Strategic Framework and the Action Plan, and its first part elaborates on progress that has been achieved in specific issues. The second part of the EU's Annual Report is devoted to concrete regions and countries.[182] Overall, the EU's Annual Report represents approximately 300 pages of detailed mapping of thematic and country specific human rights issues in the world. Furthermore, the EU's Annual Report provides for recommendations and guidelines in order to improve EU's action concerning protection and promotion of human rights. The broad range of intermediaries including NHRIs are being consulted when forming the EU's Annual report.[183] A more comprehensive analysis on the potential engagement with NHRIs as intermediaries also on this matter will be provided in the next parts of the thesis.

[178] Ibidem, 2014, p.29.
[179] Ibidem, 2014, p.20
[180] Ibidem, 2014, p.71.
[181] Ibidem, 2014, p.33.
[182] European Union, 2014.
[183] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, 24 April 2015 (written record, in file with author).

## Conclusion

The chapter illustrated that the EU falls under the four Abbott et al. general hypotheses and it, therefore, constitutes a potential orchestrator in the field of human rights governance. This argument was comprehensively supported by the enumeration of material and ideational support which EU offers for a wide range of actual and potential intermediaries within its external human rights policy. The chapter additionally touched upon the nature of an EU's actual and potential intermediaries, which can range from NGOs, CSOs, human rights defenders, activists, dissidents and finally NHRIs.

# 3 INTERMEDIARIES

## *Outlining Specificities of the Individual NHRIs, ICC and ENNHRI*

### Introduction

The purpose of the present chapter is to briefly introduce the trio the possible intermediaries for the EU as the orchestrator. NHRIs as defined in the relevant academic literature will be in spotlight, followed by a short introduction of the global NHRIs network referred to as ICC and recently established ENNHRI.

### 3.1 Positioning National Human Rights Institutions in Academic Discourse

#### *3.1.1 History*

Despite the fact, that the concept of national institutional safeguards ensuring the protection and promotion of international human rights obligations was born after the establishment of the UN in the 1940s[184], there were only eight functioning NHRIs established by the beginning of 1990s.[185] These institutions decided to gather in Paris for the very first NHRIs workshop which resulted into the drafting of a document enshrining guidelines on functionality, mandate and competencies of those institutions.[186] The "Principles Relating to the Status of NHRIs" became the "Paris Principles" and now serve as the ideal NHRIs' manifesto. The Paris Principles and NHRIs themselves were, hence, given additional visibility at the UN level when the UN General Assembly (UN GA) endorsed and adopted the UN GA Resolution A/RES/48/134 on National Institutions for the Promotion and Protection of Human Rights.[187] As Roberts points out, this is a unique phenomenon, because the Paris Principles were drafted by NHRIs themselves, they came out of sort of grass-root initiative. Then, they endorsed at

[184] Nowak, 2013, p.14. See for instance ECOSOC Resolution 2/9 of 21 June 1946 section 5.
[185] Renshaw, 2012, p.301. These institutions were established in Australia, New Zeeland, Canada, Denmark, France, Guatemala, Mexico and Philippines.
[186] Ibidem, p.301.
[187] United Nations General Assembly, 1993.

the UN level[188] via UN GA Resolution.[189] Earlier the same year, the paragraph 36 on the importance of NHRIs was inserted in the Vienna Declaration and Programme of Action of the World Conference on Human Rights. The document pinpointed their roles of providing advice to government, remedies to victims of human rights violations and conducting education and awareness raising activities in field of human rights.[190] Furthermore, ICC was established the same year to periodically review NHRIs' compliance with the Paris Principles through accreditation process.[191] ICC was formalised as a legal entity (non-profit organisation) under the Swiss law in 2008.[192]

In line with Cardenas the huge proliferation of NHRIs worldwide could not have come about without the essential support of the UN and its structures.[193]

### *3.1.2 Definition, Functions, State of the Art*

NHRIs are defined as "domestic but globally legitimate agencies in charge with promotion and protection of human rights"[194], "domestic non-judicial institutions for the implementation of international human rights law"[195] or "permanent local infrastructure upon which international human rights norms are built."[196] At the same time, they are located "half-way between the state and non-state actors" which constitute them to act as forum for the state and CSOs or NGOs to discuss their human rights issues.[197] Their unique character

[188] As Sidoti mentions, this constituted an important political recognition of the Paris Principles and of NHRIs in general. The Paris Principles were also incorporated into international human rights treaty law by Article 84 in the Optional Protocol to the Convention against Torture and Article 33(2) of the UN Convention of the Rights of Persons with Disabilities. Both articles set forth that the Paris Principles need to be taken into account when establishing independent monitoring mechanism supervising the implementation of both UN Treaties. See Sidoti, 2012, p.95.
[189] Roberts, 2013, p.231.
[190] World Conference on Human Rights, 1993, Art.36.
[191] Renshaw, 2012, p.301.
[192] Roberts, 2013, p.231.
[193] Cardenas, 2003, p.24.
[194] Cole &Ramirez, 2013, p.702.
[195] Reif, 2014, p.2
[196] Cardenas, 2003, p.24.
[197] De Beco, 2011, p.91.

is addressed by the symbol of the bridge.[198]. First of all, NHRIs are a bridge between the international level and the domestic level while working for effective domestic implementation of international human rights agreements. Secondly, they are a bridge linking national government and civil society.

The UN defines a NHRI as "a body which is established by Government under the constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights."[199] Regardless which definition we take, NHRIs shall work to have a real impact on the promotion and protection of human rights of the individuals. As Adamson points out, we need NHRIs to create and complement institutional framework of protection and promotion of human rights.[200] One of the ways how to achieve this, is to create and support NHRIs' compliance with minimal standards embodied in the Paris Principles.

### 3.2 The Paris Principles as Point of Departure for NHRIs as Intermediaries

This part will illuminate the possible role of NHRIs as the intermediaries especially in the case of IOs (the UN, the UN OHCHR or the EU) as orchestrators. As Pegram notices in academic literature the performance and operational features of the intermediaries are still overshadowed by the analysis of the orchestrators.[201] I will use the Paris Principles as a core document and explicate the unique character of NHRIs in general, and additionally, present their potential benefits for an orchestrator.

The Paris Principles set forth minimal prerequisites for NHRIs in terms of competencies, responsibilities, composition or methods of operation and quasi-judicial capabilities.[202] ICC Sub-Committee on Accreditation (ICC SCA) represents the ICC's engine in the accreditation

[198] The reference to bridge has been recently commonly used in the community of NHRIs' practitioners at a national or an international level in different fora.
[199] United Nations Center for Human Right, 1995, p.6.
[200] Adamson, 2013, p.127.
[201] Pegram, 2014, p.3.
[202] United Nations General Assembly, 1993.

process, in this capacity it has reformulated the Paris Principles into more detailed General Observations.[203] [204] The ICC accreditation process contradistinguishes NHRIs from NGOs and provide a potential orchestrator with essential information about NHRIs' credibility, legitimacy or effectiveness.

The Paris Principles enumerate the following as the principal functions of a NHRI to provide expert advice to governmental bodies; to promote and guarantee the harmonisation of national legislation with international human rights obligations; to stimulate the ratification of international human rights treaties; to contribute to the reports for the UN and other organisations; to cooperate with the UN and other organisations; to assist in education activities on national level; and to raise awareness on human rights and related issues.[205] Pluralism and independence constitute a silver thread of the Paris Principles.[206] NHRIs shall collaborate with NGOs, CSOs, trade unions, scholars, parliamentarians and include them into their own pluralistic composition.[207]

The ICC accreditation process is characterised by a unique peer-to-peer nature.[208] ICC SCA is represented by four A-accredited NHRIs from the regional groups of Africa, Americas, Asia-Pacific, and Europe plus a representative of the UN OHCHR[209] acting as the permanent observer.[210] NHRIs are required to submit the official documents proving their activities, budget and composition.[211] ICC SCA with the UN OHCHR's assistance review documents

[203] The General Observations as adopted by ICC SCA in May 2013, now represent 121 pages document which further clarifies provisions enshrined in the Paris Principles. The General Principles have perhaps similar explanatory character as General Comments elaborated by different UN Treaty Bodies.
[204] ICC SCA General Observations as Adopted in Geneva in May 2013, 2013.
[205] United Nations General Assembly, 1993.
[206] De Beco, 2011, p.88.
[207] Ibidem, p.88.
[208]Nowak, 2013, p.16. Moreover, in further accordance with Nowak, such sensitive issues as independence, pluralism, and mandate and, *de facto*, promotion and protection of human rights on the national level could not have been farmed out to UN governmental representatives, therefore ICC was established as an independent entity within the UN machinery to supersede independent accreditation process.
[209] In 2014, I supervised the Slovak NHRI accreditation process and the official documentation was addressed to the UN OHCHR NIRMS. This officials act as a focal point for NHRIs undergoing accreditation and they facilitate communication throughout the whole process.
[210] ICC SCA General Observations as Adopted in Geneva in May 2013, 2013, p.11.
[211] The documents which are to be submitted by respective deadline to the UN OHCHR NIRMS are following: the statement of compliance with the Paris Principles, a copy of legislation or act of establishment, the

and NHRI might be contacted for clarification during the scheduled session.[212] ICC SCA members primarily pay attention to compliance with the Paris Principles of NHRI's founding legislation. Other activities of the NHRI including its international engagement are reviewed.[213] NHRIs may be provided with further recommendations in order to better comply with the Paris Principles,[214] and finally the accreditation status is granted.[215] The institutions awarded with A-accreditation status enjoy full membership within ICC including voting rights, B-accreditation status allows NHRIs to act as non-voting members, and C-accreditation status actually signifies no-status.[216] A-accreditation status not only opens door for NHRIs to intervene in the UN Human Rights Council or participate in other UN meetings, it gives also NHRI credibility and legitimacy towards its own government and CSOs domestically.[217]

The General Principles further explicate the protection function of NHRIs as set of activities in the field of "monitoring, inquiring, investigating and reporting on human rights violations."[218] In accordance with Abbott et al., an orchestrator gives authority to third parties when seeking *expertise*, which definitely NHRIs offer. The orchestrator also enlists NHRIs when searching for fulfilment of *monitoring* governance function. Assuming that a NHRI possesses the competency to advice government on human rights issues[219], it is beneficial for IO to enlist this kind of intermediary when seeking the *access to the targets* (i.e. the states). Pursuant to the General Observations, NHRIs collate specific and annual reports which are

organisational structure with numbers of staff and annual budget, and the copy of NHRI's most recent annual report. See EU Fundamental Rights Agency, 2012, p. 49.

[212] During the accreditation process of Slovak NHRI, the International Relations and Research Officer was contacted by the members of the ICC SCA in order to provide answers to questions about the composition of NHRI's board.

[213] At this stage, additional information provided by the NHRI's regional group, OHCHR or civil society inputs are consulted. See EU Fundamental Rights Agency, 2012, p.50.

[214] As Sidoti points out, the Paris Principles are definitely not the guarantee of the NHRI's effectiveness and its overall performance. See Sidoti, 2012, p.97. For this very reason, ICC SCA collects additional documentation to evaluate the real performance and impact of the NHRI's activities.

[215] EU Fundamental Rights Agency, 2012, p.52-53.

[216] ICC Statute, 2008 p.12.

[217] Goodman & Pegram, 2012, p.8.

[218] ICC SCA General Observations as Adopted in Geneva in May 2013, 2013, p.13.

[219] United Nations General Assembly, 1993, p.5.

made publically available. An IO as the orchestrator may enlist NHRIs and use these reports for its own *agenda-setting* to formulate policies addressed to the targets. This collection of information and data (from internationally recognised and endorsed organisation) relieves an IO or an orchestrator from the criticism of not being locally oriented and it indeed provides IO with further desirable legitimacy vis-a-vis the targets (as Abbott et al. puts it, the *credible commitment*).

The role of collective intermediaries such as ENNHRI or ICC, which will be further explicated below, is, *inter alia*, to provide individual NHRIs with a platform for consultations and exchange of good practices.[220] In spite of colossal differences in various countries, NHRIs use similar strategies in utterly distinct situations. This phenomenon enables the orchestrator to develop similar strategies to enlist NHRIs regardless of their geographical location. The EU acting as global human rights actors shall benefit from the analogous nature of these institutions when elaborating policy documents targeting all third countries. As reaching individual NHRIs on the ground may prove to be troublesome, an IO as the orchestrator shall also enlist collective intermediaries such as ENNHRI or ICC to channel individual NHRIs more effectively. The circumstance that ENNHRI and ICC have their headquarters respectively in Brussels and Geneva also helps.

Even though, a vast amount of academic literature has pondered upon the definition, role and benefits of NHRIs, the phenomenon of their networks have been partially neglected. However, the academic interest about these networks established as non-profit organisations while gathering hybrid state bodies, has arisen. The next part of the thesis will briefly introduce ICC and focus its attention on newly established ENNHRI which has not yet enjoyed particular academic attention.

[220] Roberts, 2013, p.232, and Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.3.

### 3.3 ICC: Safeguarding NHRIs' Interests in Geneva

Pursuant to the ICC Statute, "the ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with Paris Principles and provides leadership in the promotion and protection of human rights."[221] ICC is established as "self-governing body of NHRIs around the world".[222] It has currently 106 members out of which 71 are A-status institutions, 25 B-status NHRIs and 10 institutions were granted C-status.[223] ICC was established with a vision to act as a doorkeeper over NHRIs' entering into the UN international fora. It launched its accreditation procedure in 2000.[224] Only A-accredited NHRIs are ICC full members and can take part in the ICC Bureau. The Bureau manages ICC and it is indeed formally entitled to act in the name of ICC.[225] It comprises of 16 members from 4 regional groups.[226] Other governance structures of ICC are the Chairperson and the Secretary.[227] ICC members get together annually in Geneva.[228] This meeting usually overlaps with the UN Human Rights Council session, therefore, the A-accredited NHRIs are also enabled to intervene in the UN Human Rights Council.[229]

[221] ICC Statute, 2008, section 3(5).
[222] Goodman & Pegram, 2012, p.7.
[223] Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 2014, p.1.
[224] Sidoti, 2012, p.97.
[225] ICC Statute, 2008, section 10(46).
[226] Ibidem, section 10(43).
[227] Ibidem, section 10(49).
[228] Roberts, 2013, p.234.
[229] Reif, 2012, p.72.

As Roberts stipulated, the exceptional power of ICC lies within its regional outreach.[230] Four regional groups are created in Africa[231], Europe, Asia-Pacific[232] and Americas.[233][234] The strength of regional groups is based on their strategic locations which enable them to interact with regional (human rights) organisations such as the African Union in Nairobi or the EU in Brussels.

### 3.4 ENNHRI: The Newcomer Seeks its Place in the Human Rights Arena

ENNHRI has been recognised as an international non-profit association under the Belgian law in 2013.[235] It comprises of around 40 NHRIs[236] based in the countries of CoE[237]. Similarly to ICC, A-status NHRIs do enjoy voting rights within ENNHRI and they are enabled to deliver speeches in the ENNHRI's General Assembly, be it ENNHRI highest decision making body. The ENNHRI General Assembly is, thus, composed by solely A-

[230] Roberts, 2013, p.232.
[231] The Network of African National Human Rights Institutions was firstly formalised as the Coordinating Committee of African National Institutions for the Promotion and Protection of Human Rights. It established its permanent secretariat in Nairobi, Kenya in 2001, consequently in 2007 the Network of African NHRIs was formally created. See http://www.nanhri.org/index.php?lang=en.
[232] The Asian Pacific Forum was established in 1996 and subsequently hosted by the Australian Human Rights Commission between 1996-2001. Since 2002, it has operated independently as non-profit organisation. See http://www.asiapacificforum.net/about.
[233] The Americas do not profit from permanent secretariat yet, but their Network of National Human Rights Institutions was established in Mexico in 2000. See Adamson, 2013, p.129.
[234] ICC Statute 2008, section 7(31.1).
[235] Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.3.
[236] Some of ENNHRI documents mention 41 NHRIs members, see for instance Contribution to the EU Public Consultation: Debate on the future of Home Affairs policies: An open and safe Europe – what next?, 2014, p.1. On the other hand, the Strategic Plan mentions 40 institutions. The former members of the European Group of NHRIs are obliged to officially ask for membership in ENNHRI. Some of the members have already done so, the others have not. It is still difficult to say how many NHRIs in Europe are openly members of newly established ENNHRI. This information was mentioned in discussions on several occasions with Debbie Kohner, Secretary General, ENNHRI.
[237] Albania (A), Armenia (A), Austria (B), Azerbaijan (A) , Belgium (two institutions: B,B), Bosnia and Herzegovina (A), Bulgaria (two institutions: B, B), Croatia (A), Denmark (A), Finland (A), France (A), Georgia (A), Germany (A), Great Britain (A), Greece (A), Hungary (A), Ireland (A), Kosovo (none), Latvia (A), Lithuania (none), Luxembourg (A), Macedonia (A), Moldova (B), Netherlands (A), Northern Ireland (A), Norway (B) Poland (A), Portugal (A), Romania (C), Russia (A), Scotland (A), Serbia (A), Slovakia (B), Slovenia (B), Spain (A), Sweden (B), Switzerland (two institutions: C,C) and Ukraine (A). See Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.16-17.

status European NHRIs. [238] A-status European NHRIs take active part in other governance structures such as the European Coordinating Committee which is responsible for management and administration of the network.[239] B-status NHRIs enjoy certain limited competencies, yet their strong commitment to achieve A-status accreditation shall be expressed in order to become non-voting members in ENNHRI. C-status or no-status NHRIs have the possibility to become ENNHRI associated members, but again, under the promise of strong commitment to achieve A-status in the future.[240] According to the updated information provided by the ENNHRI Secretariat, there are currently 25 A-status, 11 B-status, 3 C-status and 2 NHRIs without accreditation status out of the 41 members of ENNHRI.[241]

Previously referred to as the European Group of National Human Rights Institutions (the Group), ENNHRI has gained extensive experience in the field of promotion and protection of human rights in Europe during 15 years of its activity.[242] Some of the European NHRIs appeared to be vocal as soon as ICC was formed, however, they managed to get together at the European level for the first time in 1994, under a patronage of CoE.[243] The meeting aimed to establish more systematic cooperation among European NHRIs and to formulate recommendations for effectively combat racism and xenophobia.[244] Their second meeting was sponsored by the UN OHCHR in cooperation with CoE and the Organisation for Security and Co-operation in Europe (OSCE) and it was held in January 1997. The critical decision taken on this occasion was to establish European Coordinating Committee[245] with Danish

[238] Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.14.
[239] Ibidem, p.14-15.
[240] Ibidem, p.14.
[241] Email from Debbie Kohner, Secretary General, ENNHRI, 20 August 2014. The information was updated in line with Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 27-31 October 2014, 2014. and Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 26-20 March 2015, 2015.
[242] Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.3.
[243] Adamson, 2013, p.129.
[244] 1st European Meeting of National Human Rights Institutions Strasbourg 7, 8, 9 November 1994, 1994, p.1.
[245] Kjaerum, 2003, p.23.

Institute for Human Rights acting as its chair,[246] [247] Later on, in 2000, CoE again enabled European NHRIs to discuss protection and promotion of economic and social rights and combat against racism and discrimination via organising a roundtable in Strasbourg.[248] A ground-breaking meetings occurred in 2002, in Belfast and Dublin, where the European NHRIs managed to draft Rules of Procedure which formally established the European Group of National Human Rights Institutions, furthermore they agreed to meet annually in Geneva.[249]

For many years, the European NHRIs sought to establish a permanent secretariat.[250] This desire has been fulfilled with an essential assistance of international organisations. The UN OHCHR provided for a start-up grant and a director with specific task to set up a permanent secretariat in Brussels was recruited.[251] The ENNHRI Constitution was adopted in May 2013 and the Group accordingly changed its denomination to ENNHRI. The Constitution is now formally used as ENNHRI Statute.[252] In November 2013, the OSCE-Office for Democratic Institutions and Human Rights (ODIHR) supported the ENNHRI meeting to formulate its first Strategic Plan including an Operational Plan.

Since its formalisation, the Group has acted as a platform for exchange of information and good practices. It has indeed facilitated numerous capacity buildings and trainings initiatives for European NHRIs. Its role as a facilitator of communication between individual European NHRIs and regional mechanisms for protection and promotion of human rights in Europe shall be additionally highlighted. The ENNHRI Legal Working Group has, furthermore,

[246] Recommendation "For the Future", 1997, p.1
[247] Adamson, 2013, p.130.
[248] First Round Table with the National Human Rights Institutions; 3rd European Meeting of National Institutions, 2002, p.9.
[249] European Regional group of National Institutions for the Promotion and Protection of Human Rights, 2002, p.1
[250] Adamson, 2013, p.132-133.
[251] ICC Bureau Meeting: Report on Regional Activities: Europe, 2013, p.1.
[252] Ibidem, p.1.

developed strong skills and experience in intervening into the European legal and policy developments.[253]

The Strategic Plan for the years 2014-2016 along with one year Operation Plan set forth the following core objectives: to support the development of NHRIs across Europe in line with the Paris Principles, to facilitate network communications, to enhance European NHRIs' engagement with regional and international frameworks, and to build a strong and sustainable ENNHRI Secretariat.[254]

Precisely the financial sustainability of the ENNHRI Secretariat has been always an issue. The start-up grant provided by the UN OHCHR was enough to sustain one staff member, the Secretary General herself. The Secretariat was, and still is, based in the premises of the Interfederal Centre for Equal Opportunities and the Federal Centre for Migration in Brussels. ENNHRI relies on membership fees. Even though the European NHRIs are perceived as rich institutions, their funding has undergone considerable cuts. It is therefore almost impossible for ENNHRI to rely solely on membership fees. Another staff member could be recruited thanks to a grant provided by the Scottish Government.[255] The ENNHRI Administration, Finance and Communications Officer operated on an 11 months contract and left this year. The Secretariat now operates in very thin budget, employing a part-time Secretary General, trainee and one intern.[256] This is, however, going to change from September, as the ENNHRI Secretariat is supposed to receive funding from EC as 2015-2017 Framework Partner. This will finally enable the ENNHRI Secretariat to recruit more staff and operate in similar way as other partners such as the Equinet. [257] [258]

[253] The Strategic Plan 2014-2016 including Operational Plan 2014, 2013, p.3.
[254] Ibidem, p.6.
[255] Email from Debbie Kohner, Secretary General, ENNHRI, 3 April 2014.
[256] As mentioned in Interview with Debbie Kohner, Secretary General, ENNHRI, Brussels, 23 April 2015 (written record, in file with author).
[257] Equinet is a network organisation gathering around 40 National Equality Bodies all around Europe. The National Equality Bodies are mandated to protect individuals against discrimination. See Equinet European Network of Equality Bodies, 2014, p.1.
[258] Email from Debbie Kohner, Secretary General, ENNHRI, 26 June 2015.

In June 2013 ENNHRI held its first-ever public event focused on "Austerity and Human Rights in Europe" where the UN Special Representative on human rights and Foreign Debt spoke.[259] The ENNHRI Secretary General participated in the high-level conference organised by FRA which gave a birth to closer and more systematic cooperation in thematic areas[260] among CoE, Equinet, FRA and ENNHRI.[261] ENNHRI gradually attracted the attention of more regional players in the field of human rights. The ENNHRI Asylum and Migration Working group benefited from the CoE's support which facilitated a meeting on the migration crises after Lampedusa in December 2013. Moreover, OSCE-ODIHR not only supported the first ENNHRI Strategic Planning meeting, but with the significant contribution of ENNHRI and Central European University in Budapest, organised and funded the first NHRI Academy which took place in Budapest in June 2014.[262]

The intense internal communication and engagement among the members constitutes another strong asset of ENNHRI. Members are active in numerous working groups or non-formalised thematic clusters. One of most active is the Legal Working Group (Legal WG) comprised of legal experts from several NHRIs. The Legal WG is frequently involved in drafting *amicus curiae* submissions to ECtHR proceedings.[263] It enjoys observer status at the Steering Committee for Human Rights (CDDH) of the Committee of Ministers of CoE and in 2014 submitted the ENNHRI statement about ECtHR's reform.[264] The other active working groups are the Asylum and Migration Working Group (Asylum and Migration WG) and the

[259] ICC Bureau Meeting: Report on Regional Activities: Europe, 2013, p.1.
[260] The first meeting of this kind took place in Strasbourg in January 2015 and the stakeholders got together in order to discuss Roma integration issues. The meeting was organised within CoE-FRA-ENNHRI-EQUINET Platform on Roma Integration. As mentioned in email from Debbie Kohner, Secretary General, ENNHRI, 22 January 2015. See COE-FRA-ENNHRI-EQUINET Collaborative Platform on Human Rights and Equality for Roma: Preliminary Contribution Submitted by Partners for Priority Areas, 2015.
[261] EU Fundamental Rights Agency, 2013.
[262] European Network of National Human Rights Institutions, OSCE-ODIHR, School of Public Policy, 2014, p.2.
[263] Situational Review for Strategic Planning, 2013, p.12.
[264] Submission to Council of Europe's Committee of experts on the reform of the European Court of Human Rights (DH-GDR) on the longer term future of the system of the European Convention on Human Rights, and the European Court of Human Rights, 2014, p.1.

Convention on the Rights of Persons with Disabilities Woking Group (CRPD WG).[265] The strength of the working groups resides in their pluralistic membership base and long-term experience within the European sphere of promotion and protection of human rights. Other issues addressed by thematic clusters are business and human rights, human rights in economic crises, a peer-support in an accreditation process or an internal communications between members.[266]

The ENNHRI working groups have been often used as platforms through which numerous statements and recommendations on behalf of ENNHRI were formulated. For instance, Asylum and Migration WG has recently drafted the ENNHRI statement on crisis in Mediterranean Sea[267] and ENNHRI sent an open letter to the former EC president to criticise austerity policies in Greece and other EU countries and their immense impact on human rights of individuals.[268]

All the above mentioned examples of engagement between ENNHRI and international or regional organisations can be, to certain extent, perceived as an orchestration in practice. Organisations such as the UN (or the UN OHCHR), CoE or OSCE-ODIHR have enlisted ENNHRI and provided it with ideational or material support. Targets in this case can be the NHRIs themselves or the states. Numerous IOs have expressed their interest to support ENNHRI, and also sub(national) governments such as Scotland. This development was certainly not overlooked from the side of the EU; this is hitherto catching up and stimulated to enhance its support to the Network, as will be showed in the next section of the theses.

**Conclusion**

NHRIs along with their associations, represent excellent intermediaries for potential orchestrators. This reasoning is backed by their ever-growing international recognition and

[265]Situational Review for Strategic Planning, 2013, p.12-13.
[266] Ibidem, p.13.
[267] Statement on the Continuing Tragedies in the Mediterranean Sea: a Human Rights Approach, 2015.
[268] Open Letter on the Upcoming Troika Visit to Greece, 2014.

worldwide proliferation of NHRIs. A-status NHRIs are provided with label which indicates their effectiveness, pluralism and independence. If an orchestrator does not want to rely solely on information stemming from ICC SCA accreditation, it can address network organisations. ICC and ENNHRI can constitute priceless source of information, expertise and monitoring for an orchestrator trying to reach out independent NHRIs on the ground.

# 4 EU "ORCHESTRATING" NHRIs

## *From Sporadic Engagement to Systematic Cooperation*?

### Introduction

The scope of this chapter exclusively addresses the sphere of the EU external human rights policy actions. The multiple forms of engagement between *non-EU NHRIs* and plentiful of the EU institutions will be the objects of my analysis and these are the very actors which I am targeting with the policy recommendations stemming from the in-depth analysis provided in the whole thesis.

It is noteworthy that almost whole section was collated from information provided by the EEAS officials, ENNHRI representatives and non-EU NHRI officers. Furthermore, reports and outcomes of recent meetings between ENNHRI and EU bodies, such as DG DEVCO, COHOM or EEAS served as a solid source of data. Lastly, the information collected from non-EU NHRIs' representatives and other participants of the Seminar on NHRIs within the European Development Days 2015 will be integrated into my overall analysis.

### 4.1 Ad-hoc Engagement between the EU and non-EU NHRIs before the New Action Plan

The rationale of this section is to demonstrate an inconsistency in addressing NHRIs (including ENNHRI and ICC) in the EU external human rights policy toolbox. As Wouters, Meuwissen & Barros indicated, NHRIs were not (in the period preceding the New Action Plan) expressly addressed in the majority of the EU policy documents, with the EU Guidelines on Human Rights Defenders[269] and on Freedom of Expression Online and

[269] Wouters, Meuwissen & Barros, 2013, p.204. See EU Guidelines on Human Rights Defenders, 2008, p.8.

Offline[270] looming large as eminent exceptions.[271] Even before the New Action Plan emerged, the EU adopted Multiannual Indicative Programme within the scope of the EIDHR 2014-2020, and NHRIs are, since then, explicitly mentioned within its *Objective 5- Support to targeted key actors and processes, including international and regional human rights instruments and mechanisms.* They constitute beneficiaries of the EU provided material support under *the implementation of universal and regional human rights instruments and mechanisms,* and they are indeed explicit beneficiaries of this support.[272]

I would argue that the major omission of NHRIs in the EU human rights policy documents was mostly brought about by the fact, that the EU has defined its "human rights" partners as a triplex consisting of states - international or regional organisations - civil society. This perception has metamorphosed into the Strategic Framework setting forth that "it [the EU] will deepen its cooperation with partner countries, international organisations and civil society, and build new partnerships to adapt to changing circumstances."[273] In line with Roberts, their hybrid structure and sometimes not well-understood bridging role between CSOs and states, along with their character of non-international or regional organisations, place NHRIs in a "fourth space."[274] Fourth space position grants them with specific competencies, but, conversely, require specific ideational and material support from the side of the orchestrator – i.e. the EU.

[270] As mentioned during the Interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author). See EU Human Rights Guidelines on Freedom of Expression Online and Offline, 2014, p.10.
[271] The Guidelines to EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment may constitute another exception as they mention importance of protection of National Preventive Mechanism (NPM), which is an independent body established under the Optional Protocol to Convention against Torture, and in many cases NPM is at the same time NHRI. The Guidelines to EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2012, p.13.
[272] NHRIs are listed along with the UN OHCHR, appropriate UN agencies, bodies and mechanisms, other international regional frameworks to protect and promote human rights, justice, the rule of law and democracy. See Instrument for Democracy and Human Rights Worldwide Multiannual Indicative Programme (2014-2017), p.20.
[273] Strategic Framework, 2012, p.2.
[274] Roberts, 2013, p.227.

The other side of the coin is, that the EU often recognises the work of these institutions on the ground, and the Delegations do engage with NHRIs in third countries.[275] Moreover, when the EEAS officials conduct a visit to a third country, they usually request meeting with the representatives of the respective NHRI.[276] In addition, ENNHRI meets with a number of Brussels-based institutions such as COHOM, DG DEVCO or EEAS.[277] All of these developments will be addressed more in detail by following sections which utilise the orchestration parlance provided already in second chapter when addressing the EU external human right policy toolbox.

### *4.1.1 Strong Backing for NHRIs by the EIDHR 2014-2020*

It appears, that the material support that the EU as orchestrator would provide to NHRIs as intermediaries is a step ahead compared to merely ideational support. Even though the EIDHR 2007-2010 did not explicitly mentioned the notion of NHRIs, the "creation of ombudsman" was one of the desirable outcomes of *Objective 2* which allocated financial resources for the Country Based Support Schemes (CBSS).[278] NHRIs' eligibility for the EIDHR CBSS was further reiterated in next EIDHR 2011-2013 where they were mentioned among "national public-sector institutions"; moreover the "creation of ombudsman" again remained as one of the desirable outcomes.[279] NHRIs were eligible entities under CBSS and on-the-ground support was provided by EUDs[280]. NHRIs could further benefit, *inter alia*, from the global proposal taking into account that an application would be submitted on behalf

[275] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (in file with author).
[276] As mentioned during the session on EU Human Rights Policy within E.MA programme by Friedericke Tschampa, Human Rights and Democracy Directorate, European External Action Service, Venice-Lido, 7 November 2014.
[277] As mentioned during the interview with Debbie Kohner, Secretary General, European Network of National Human Rights Institutions, Brussels, 23 April 2015 (written record, in file with author).
[278] European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010, 2007, p.16
[279] European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2010-2013, 2010, p.18.
[280] In 2008, the Armenian NHRIs profited from this kind of support. See European Instrument for Democracy and Human Rights Compendium 2007-2010, p.32.

of a NHRI by ICC (that has the legal status of non-profit organisation under Swiss law) or another NGOs.[281]

Along with the EIDHR, the NHRIs were also eligible for other geographical or thematic programmes such as the European Neighbourhood Policy Instruments.[282] However this support was far from consistent. [283] The EIDHR CBSS for example, managed to provide newly established NHRI in Chile with partial support.[284] Other two projects within the scope of the EIDHR provided financial support for capacity building of NHRIs in order to fight effectively torture in Asia and Africa.[285]

The EIDHR was however deficient of concrete projects that would target NHRIs in a consistent and systematic manner providing them with specific allocations of funds. This scenario completely changed with the adoption of new EIDHR set up by the Regulation (EU) No. 235/2014 of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Democracy and Human Rights Worldwide (the EIDHR Regulation) which in the Article 2.1(a) ii) sets forth that the Union assistance shall focus on, *inter alia*, "supporting national human rights institutions."[286]

The EIDHR 2014-2020 no longer refers to "ombudsman" or "national public-sector institutions"[287] but rightly addresses "national human rights institutions". Furthermore, in accordance with Article 2 of the EIDHR Regulation, Special Measure concerning the Work Programme 2014 for the EIDHR encompasses "one targeted project to support the International Coordination Committee of National Human Rights Institutes (NHRI) for an indicative amount of 5 million €."[288] The overall objective of the project is to enhance the

[281] Faracik, 2012, p.40.
[282] Ibidem, p.39.
[283] Action Document for Supporting Key Actors- National Human Rights Institutions (NHRIs), 2014, p.3.
[284] Ibidem, p.3.
[285] Ibidem, p.3.
[286] Regulation (EU) No. 235/2014 of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Democracy and Human Rights Worldwide, 2014, p.4.
[287] As it was addressed previously within EIDHR 2007-2010 and EIDHR 2011-2013.
[288] Special Measure concerning the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR) to Be Financed under Budget Line 21 04 01 of the General Budget of the European Union, 2014, p.4.

work of NHRIs especially with regard to their international and regional networks and their particular activities in the sphere of economic, social and cultural rights.[289] The EU rationale behind this support lies within the premise that NHRIs do act as essential actor promoting "universality of human rights and accountability of States and other actors in upholding their obligations."[290] The project specifically aims to heighten NHRIs' compliance with the Paris Principles, to raise their effectivity within the sphere of their capabilities, namely in terms of "accessibility to victims, cooperation with civil society, and emerging human rights challenges and opportunities."[291] The networks of NHRIs operating at the regional or international level shall be supported for better promotion and protection in regions and worldwide.[292]

This development may at the same time reinforce voices gradually emerging from the ICC community and proposing its "formal decoupling and institutional independence from OHCHR".[293] What I find crucial is, that the EU offers a material support to ICC and its networks separately from and complementarily to funding provided to the UN OHCHR on annual basis.[294] This gives ICC a once-in-a-blue-moon opportunity to operate outside the UN OHCHR budget. ICC may, thus, enjoy more independence in its actions and prevent the UN OHCHR from intervening into its activities as it has been demonstrated via examples in the first chapter.

The existence of a specific project concerning NHRIs within the EIDHR may prove the EU's aspiration to enlist ICC, the regional networks and NHRIs as intermediaries in a design where it features as the orchestrator. It seems that the EU as orchestrator hitherto provides ICC, regional networks and NHRIs (the intermediaries) with essential material support in order to more effectively perform human rights governance functions such as expertise, agenda setting, access to targets (third countries), monitoring or bolstering the EU external human

[289] Action Document for Supporting Key Actors- National Human Rights Institutions (NHRIs), 2014, p.1.
[290] Ibidem, p.2.
[291] Ibidem, p.4.
[292] Ibidem, p.4.
[293] Pegram, 2013, p.18.
[294]Action Document for Supporting Key Actors- National Human Rights Institutions (NHRIs), 2014, p.3.

rights policies' legitimacy. In line with the EIDHR project on NHRIs, the EU is now committed to hold annual meetings with ICC, regional networks and NHRIs representatives either on the margins of the UN Human Rights Council sessions or during the ICC Annual Meeting in Geneva.[295] From my point of view, by planning such annual meetings, the EU aspires to formalise its relations with potential intermediaries and, additionally, provides them with ideational support represented by political endorsement such as international visibility, which can eventually lead to their further appreciation at international or regional level.

The inclusion of project on NHRIs into the EIDHR 2014-2020 looms large in my mind and I would conclude that this development constitutes giant leap on the way towards more systematic engagement between the EU and NHRIs.

### *4.1.2 EU Delegations: Pioneer Orchestrators on Small Scale*

The EU has been already enlisting non-EU NHRIs on the ground, namely via *micro orchestrators* such as EUDs. However, the Delegations have engaged with non-EU NHRIs in a rather inconsistent manner.

EUDs, *de facto*, frequently engage with NHRIs in case these institutions are established in respective country.[296] This premise mentioned by Wouters, Meuwissen and Barross, and reiterated by the EEAS officials, represents my point of departure. EUDs are in an exceptional position to engage with NHRIs. I would, in fact, expand this hypothesis and claim, that it is indeed normal for EUDs to enlist non-EU NHRIs, under condition that they are independent, well-established and functioning.[297] In practice, EUD evaluates the potential of its engagement with a non-EU NHRI assessing its functionality, capacity, independence, ICC accreditation status and broad political context. The ICC accreditation status does not

[295] Ibidem, p.5.
[296] Wouters, Meuwissen & Barros, 2013, p. 204.
[297] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with the author).

seem to be the only element taken into account while scrutinizing NHRIs' reliability. EUDs simply do not take for granted, that A-status NHRIs are completely independent, and their political dependence is perceived as a challenge.[298] It is acknowledged that governments occasionally set up a NHRI with broad mandate, but no genuine independence nor functionality. It is a form of window-dressing to satisfy international partners.[299] Nonetheless, NHRIs remain fundamental actors of the National Human Rights Protection System which is, or shall be, of an eminent interest of all *corps diplomatique* operating in third countries, namely the EU Member States' embassies'[300] and EUDs.

The Delegations based in third countries are naturally lacking hard governance tools, therefore, in order to fulfil their human rights governance objectives (or, at a broader level, the EU's human rights governance goals), they search for like-minded intermediaries in the field of protection and promotion of human rights.[301] Consequently, NHRIs, set up with a precise mandate to protect and promote human rights at a national level, come to light. Their nationally oriented expertise and increasing regional and international reputation make them ideal partners in pursuing common tasks of human rights governance.

It is also up to NHRIs' voluntariness to engage with EUDs.[302] They are generally voluntary engaging with the Delegations as it has been illustrated by their desire for further material and ideational support provided by EUDs.[303] The Delegations, on the other hand, frequently enlist NHRIs in order to gather information on human rights situation, to use NHRIs'

[298] As mentioned by the EUDs' officials as one of the challenges of work with non-EU NHRIs in third countries, DG DEVCO Seminar, 9 February 2015, Brussels.
[299] Ibidem.
[300] Ministry of Foreign Affairs of the Netherlands, 2009, p.41.
[301] Abbott et al. (b), 2015, p.3.
[302] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).
[303] This is one of the outcomes of data collected from multiple non-EU NHRIs for the purposes of the DEVCO Seminar.

recommendations during the Human Rights Dialogues[304], or to make them participate in joint projects pursued by EUDs.[305]

The ideational support, which in accordance with Abbott et al., encompasses forms of "technical expertise, formal approval, political endorsement" to enhance NHRIs' legitimacy in a national setting[306] is provided by EUDs in forms of NHRIs' staff trainings,[307] conducting regular meetings with EUDs officials[308] or participating in the Human Rights Dialogues[309], the Structural Political Dialogues[310] and the Visa Liberalisation Dialogues[311] as equal partners besides the representatives of the government.[312] Other forms of ideational support are a formal approval or a political endorsement. EUDs occasionally support events organised by NHRIs[313], assist with the dissemination of awareness raising materials[314] or distribute UPR recommendations. [315] The specific forms of engagement between EUDs and NHRIs are the twinning projects which are supported by EUDs, yet based on the cooperation between the EU and non-EU NHRIs.[316]

The Human Rights Dialogues and the Human Rights and Democracy Focal Points are two specific tools operated by EUDs and forming part of the EU human rights policy toolbox. In addition, they constitute forms of ideational support as defined in the second chapter. Non-

[304] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).
[305] Ibidem.
[306] Abbott et al. (a), 2015, p.14.
[307] Information submitted by the NHRIs from South Sudan, Uganda and Serbia for the DEVCO Seminar.
[308] Information submitted by the NHRIs from Kosovo, Namibia, Serbia, Ukraine, Kazakhstan and Armenia for the DEVCO Seminar.
[309] Information submitted by the NHRIs from Tanzania, Malaysia, Kazakhstan, Georgia and Ukraine for the DEVCO Seminar.
[310] Information submitted by the NHRI from Cameroon for the DEVCO Seminar.
[311] Information submitted by the NHRIs from Ukraine and Georgia for the DEVCO Seminar.
[312] Information submitted by the NHRIs from Cameroon, Tanzania, Malaysia and Kazakhstan for the DEVCO Seminar.
[313] Information submitted by the NHRIs from South Sudan, Armenia or Malaysia for the DEVCO Seminar.
[314] Information submitted by the NHRIs from Uganda and Zimbabwe for the DEVCO Seminar.
[315] Information submitted by NHRIs from New Zealand and Ethiopia for the DEVCO Seminar.
[316] The twinning projects usually include trainings which are provided from one NHRI coming from the EU country for the NHRI from non-EU country. The EUDs usually participate in preparations of these projects, as mentioned in email from José Manuel Vilaplana Lopez, Second Secretary, EU Delegation to Ukraine, 2 April 2015.

EU NHRIs are being selectively invited to participate in Human Rights Dialogues with third countries.[317] EUDs and EEAS sometimes have little interest to require a non-independent or a political NHRI to participate in Human Rights Dialogues, because it simply does not bring any added value.[318] Conversely, there are of course cases when NHRI's participation proved to be beneficial. In latter case, the EEAS officials use NHRIs' recommendations enshrined in their annual reports or other publications, and question government on their implementation.[319] However, extreme cases when NHRI merely seconds government officials' also exists.[320] For the abovementioned reasons, EEAS collates a document encompassing good practices from Human Rights Dialogues conducted in the third countries, including the role that NHRIs play.[321] It is noteworthy, that if an independent NHRI operates in a country, the government usually does not endorse its participation in Human Rights Dialogue.[322] The other side of the coin is, that some NHRIs are prevented from participating by EEAS. The NHRI in Mauritania was not included in the Human Rights Dialogues as it was blacklisted by NGOs as a government proxy.[323] On the other hand, the same NHRI was invited to participate in the European Development Days 2015 in Brussels. This points to the multiplicity of inconsistences in the EU engagement with non-EU NHRIs. With respect to the Delegations' engagement with NHRIs on the ground, the potential enlisting of NHRIs is based on case-by-case evaluation done by the Delegations, therefore is far for being systematic.

The newly established Delegations' Human Rights Focal Points engage with NHRIs with respect to their daily activities.[324] Nevertheless, the focal points are not (and shall not be) the

[317] Preparatory Materials for ICC-EU Meeting on 4 March 2015, 2015.
[318] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (in file with author).
[319] Ibidem.
[320] Ibidem.
[321] Ibidem.
[322] Ibidem.
[323] As mentioned by the NHRI's representative from Mauritania during the NHRI Seminar, European Development Days, Brussels, 3 June 2015.
[324] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).

exclusive parts of the Delegations to engage with non- EU NHRIs. Some NHRIs conduct regular meetings with the EU ambassadors.[325] I assume, that this institutional form of engagement falls under an ideational support related to a formal approval or an endorsement for NHRIs' work. Whilst analysing materials presented by non-EU NHRIs during the DG DEVCO Seminar, I have not come across any concrete example of engagement with Delegation's Human Rights Focal Point, nor was this EUD's section referred to by any non-EU NHRI representative. The focal points are in fact very newly established in EUDs, and their mission might have not been properly communicated to the stakeholders on the ground. However, their mere existence represents one of the main characteristic of orchestrator put forward by Abbott et al., the *focality*.

Non-EU NHRIs usually prefer to be provided by ideational support rather than material support.[326] Their need for material support mainly depends on their act on establishment and whether it enables them to receive external non-state funding. Generally speaking, it is more adequate for non-EU NHRIs to receive material support in forms of technical equipment[327] such as computers, cars[328], human rights textbooks or other materials.[329] Nevertheless, a good portion of non-EU NHRIs would recommend EUDs to continue providing them with direct financial support.[330] Few NHRIs, though, are not aware of the possibility to get funded by the Delegations.[331] Nonetheless, it is not obligatory for EUDs to inform NHRIs about potential funding. In practice, the Delegation firstly assesses NHRI's internal capacities to manage potential funding.[332] In this case, it still remains challenging to assess the independence of NHRI and a more systematic cooperation with regional networks and ICC

[325] Information submitted by the NHRIs from Kazakhstan and Serbia for the DEVCO Seminar.
[326] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).
[327] Information submitted by the NHRI from Bosnia and Hercegovina for the DEVCO Seminar.
[328] Information submitted by the NHRI from Cameroon for the DEVCO Seminar.
[329] Information submitted by the NHRIs from South Sudan and Georgia for the DEVCO Seminar.
[330] Information submitted by the NHRIs from Cameroon, South Sudan, Tanzania, Uganda, Serbia, Bosnia and Hercegovina and Turkey for the DEVCO Seminar
[331] Information submitted by the NHRIs' representatives from Serbia and Turkey for DEVCO Seminar.
[332] Information submitted by Danish Institute for Human Rights which has been assisting NHRI in Mali on management of EU finding during the DEVCO Seminar.

would be, therefore, desirable. Non-EU NHRIs are mostly financially supported through the joint projects conducted by the Delegations.[333] In particular cases, Armenian NHRI was financially supported by the EUD's project to establish its regional offices.[334]

I consider Delegations as long arms of the EU external human rights policies. I would, therefore, conclude that an embryotic development of an engagement between EUDs and non-EU NHRIs which, as illustrated above, follows the patterns of orchestration, can be used as the EU's essential point of departure for orchestrating non-EU NHRIs on large scale. The EU institutions in Brussels can now indirectly reach out non-EU NHRIs from the countries of CoE through new Brussels-based collective intermediary, i.e. ENNHRI.

### *4.1.3 The NHRIs' Brussels-based Advocate: Pivotal Role of ENNHRI*

The ENNHRI Secretariat (Secretariat) in Brussels has been spreading a message about the role of NHRIs since its very establishment.

The EU external human rights policies have been lately confronted with great deal of criticism for not paying equal attention to multiplicity of actors operating on the ground.[335] ENNHRI, thus, appeared as a good advocate to advice EU how to effectively engage other local actors- i.e. NHRIs. I would propose that the ENNHRI headquarters' location inevitable fulfils the *intermediaries' availability hypothesis*. ENNHRI, therefore, constitutes a potential (now, *de facto*, actual) collective intermediary for the EU.

Its unique composition from a plurality of CoE countries, makes ENNHRI a pivotal subject in both EU external and internal policies. I will solely focus on its role as a collective intermediary in the EU external human rights actions.

[333] As mentioned during the interview with Andrea Rossi, Human Rights Policy Instruments Division, European External Action Service, Brussels, 24 April 2015 (written record, in file with author).
[334] Information submitted by the NHRI from Armenia for the DEVCO Seminar.
[335] Wouters, Meuwissen & Barros, 2013, p.203.

The EU as an orchestrator breaks down into the following four partial *micro orchestrators:* European Commission (for the external action: DG DEVCO, the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR)), EEAS, COHOM, EP Subcommittee on Human Rights (EP DROI).[336]

The most vivid engagement has been established with DG DEVCO and culminated into ICC and ENNHRI co-organising the Seminar on NHRIs during the European Development Days 2015 event celebrating European Year of Development (EYD).[337] The EYD is the first-ever EU year dedicated to external part of the EU actions, therefore the EU aspirates to shed light on multiple actors operating on the ground in third countries.[338] DG DEVCO is also behind the previously mentioned NHRI project which are funded through the EIDHR. The ENNHRI Secretary General, moreover, conducts regular meetings with numerous DG DEVCO officials, and ENNHRI receives ideational support such as the invitation and the possibility to present its activities in DG DEVCO Seminar of EU Delegations Human Rights and Democracy Focal Points in February 2015.[339] DG DEVCO plans to extent support of ENNHRI by granting it with additional material support for triggering the project of the Role of NHRIs in Situations of Conflict or Post Conflict.[340] DG DEVCO representatives took part in the ICC Annual Meeting in Geneva, and this gave ICC an ideational support mainly via political endorsement and formal approval. Additionally, DG DEVCO is highly interested in the role of NHRIs within the framework of the Sustainable Development Goals ensuring that the human rights-based approach towards the application of those goals is implemented on the ground. DG DEVCO predominantly perceives NHRIs as a link between development and human rights and highlights their crucial expertise in both these fields.

[336] Preparatory Materials for ICC-EU Meeting on 4 March 2015, 2015.
[337]As mentioned by Lotte Knudsen, Director Human Development and Migration, DG DEVCO, European Development Days 2015, 3 June, Brussels.
[338] As mentioned by Lotte Knudsen, Director Human Development and Migration, DG DEVCO, during European Development Days 2015, 3 June, Brussels.
[339] Preparatory Materials for ICC-EU Meeting on 4 March 2015, 2015.
[340] As mentioned in Interview with Debbie Kohner, Secretary General, ENNHRI, Brussels, 23 April 2015 (written record, in file with author).

Utilising the concept of orchestration, DG DEVCO has been the most active orchestrator enlisting ENNHRI and supporting it ideationally and materially. DG DEVCO oversees, and formulates the Union's development policies, therefore it aims, *inter alia*, to ensure the respect for human rights in third countries. Thus states are the very targets of these policies. DG DEVCO however needs locally based expertise in human rights in order to tackle and address human rights and development issues in third countries. This expertise is in many cases enshrined within non-EU NHRIs. In comparison with EEAS, DG DEVCO does not dispose of "long-arms" on the ground, it is therefore valuable to engage with ENNHRI which is DG DEVCO's channel to reach out to non-EU NHRIs. The way DG DEVCO enlists another collective intermediary, ICC, cannot be overlooked. DG DEVCO provides for material support of ICC and its regional networks through the EIDHR. However, ICC is based in Geneva, therefore ENNHRI based in Brussel appears more convenient in terms of orchestration and mainly ideational support.

Other body of EC which has expressed its interest in ENNHRI and non-EU NHRIs is DG NEAR. DG NEAR is in particular devoted to the issue of non-EU NHRIs in associated and candidates' countries and their involvement in Progress Reports.[341] Furthermore, as considerable higher number of neighbouring countries tackle the problem of emigration, the cooperation with non-EU NHRIs in the field of migration policies popped up as reasonable. The role of ENNHRI this time again, is to help to channel non-EU NHRIs on the ground and augment their voices in Brussels by bringing their expertise, monitoring qualities and opinions about critical issues.

EEAS is rather new body within EU structures and it also represents a newcomer when it comes to broader knowledge about NHRIs. It appears that this fact could create possible avenues for advanced cooperation. ENNHRI Secretary General held meetings with EEAS representatives and, additionally, EEAS is positively responsive to new developments and recognises ENNHRI as an important stakeholder in Brussels.[342] Conversely, ENNHRI may

[341] Ibidem.
[342] Ibidem.

enlist EEAS in Brussels to influence targets- EUDs to pay more attention to NHRIs in non-EU countries. This constitute the example of ambiguity and flexibility of concept of orchestration in reality as put forwards by Abbott et al.

The Council represented by COHOM constitutes another EU body which has recently expressed the interest in NHRIs. ENNHRI was invited to discuss the issues of non-EU NHRIs in COHOM.[343] COHOM is keen to put non-EU NHRIs on its working programme.[344] Moreover, the EU Member States' representatives present at the meeting supported the EU engagement with NHRIs, however the crucial issue of internal and external policy coherence loomed large.[345] The devoir of engagement with non-EU NHRIs shall be facilitated by ENNHRI. In this case, ENNHRI represents the intermediary and the targets are the non-EU NHRIs themselves.

EP DROI is the EU body which has actually engaged with both, ENNHRI[346] and individual non-EU NHRIs.[347] The non-EU NHRIs are from time to time asked to speak during the DROI sessions[348] therefore they are supported ideationally and they receive political approval from Members of EP. On the other hand, ENNHRI and DROI secretariats have conducted several meetings between each other.

It seems to be proven that the EU institutions are providing some form of ideational or material support to ENNHRI and non-EU NHRIs, as an exchange for their contribution to policy-making at the EU level. With respect to the EU human rights policy repertoire, as carefully divided in second chapter, the EU Action Plan on Human Rights and Democracy was briefly mentioned. This form of ideational support did not recognise NHRIs nor ENNHRI as important stakeholders in its first addition for years 2012-2014. ENNHRI liaised

[343] Email from Debbie Kohner, Secretary General, ENNHRI, 28 October 2014.
[344] As mentioned during the interview with Debbie Kohner, Secretary General, European Network of National Human Rights Institutions, Brussels, 23 April 2015 (written record, in file with author).
[345] Preparatory Materials for ICC-EU Meeting on 4 March 2015.
[346] European Parliament, 2014, p.104.
[347] Ibidem, p.9.
[348] As mentioned during the interview with Debbie Kohner, Secretary General, European Network of National Human Rights Institutions, Brussels, 23 April 2015 (written record, in file with author).

with all abovementioned *micro orchestrators* and persistently advocated for NHRIs' inclusion to its newer version. ENNHRI's devoir has been now proven beneficial and NHRIs now enjoy pedestal position within the New Action Plan. The New Action Plan is now being discussed in the Council, but its draft has been made public in May 2015. The New Action Plan, therefore, constitutes a point of departure for concrete recommendations on systematic future interplay among non-EU NHRIs, ENNHRI and the EU. The following section, however, briefly outlines New Action Plan's essential features regarding NHRIs.

## 4.2 NHRIs as Key Stakeholders in the EU Action Plan on Human Rights and Democracy 2015-2019

Whilst the Strategic Framework constitutes the permanent basis of all EU actions with regard to human rights, its first Action Plan on Human Rights and Democracy lapsed at the end of 2014.[349] The previous Action Plan defined the following 8 areas of action: promoting the universality of human rights; human rights and democracy throughout the EU policy; pursuing coherent policy objectives; human rights in all EU external policies; implementing the EU priorities on human rights; working with bilateral partners and working through multilateral institutions.[350] The EEAS representatives claimed that 90 percent of its objectives were fulfilled by the end of the year 2014.[351] Some of the outstanding results have been achieved with respect to increase of mainstreaming of human rights within EU policies, establishment of COHOM, endorsement of guidelines on freedom of expression online offline, guidelines on freedom of religion and belief and guidelines on LGBTI. Unexplored areas of human rights policies have now become daily-routine for actors such as EC Services, the EU High Representative on Foreign Affairs and Security Policy, EEAS, the Council and

[349] Chané et al., 2014, p.3.
[350] Strategic Framework, 2012.
[351] Chané et al., 2014, p.3.

Member States themselves.[352] Conversely, many areas that have not been sufficiently addressed, are now being reflected into second instalment of New Action Plan.

In contrast with the first Action Plan edition, the New Action Plan will be an object of mid-term assessment in order to address ever-changing human rights situations worldwide. All of the listed actions within now five strategic areas are geographically neutral, and, are to be converted into specific human rights country strategies.[353] The EU shall, moreover, concentrate on pressing human rights challenges internally and externally and, it shall serve as a good example for its partners.[354]

Five strategic areas of action were spelled out: boosting ownership of local actors; addressing key human rights challenges; ensuring comprehensive human rights approach to conflict and crises; fostering better coherence and consistency; deepening the effectiveness and results culture in human rights and democracy.[355]

### *4.2.1 Boosting Ownership of Local Actors: Supporting the Capacity of National Human Right Institutions*

The New Action Plan enshrines NHRIs' support in its first paragraph of first objective: Boosting ownership of local actors (Annex). The EU clearly commits itself to primarily recognise the importance of such independent local actors, furthermore, to provide them with support, under the condition they are "in line with Paris Principles".[356] The latter appears to be the outcome of a long discussion within the EU institutions, and between the EU and ENNHRI, about the criteria of the reliability and the genuine independence of non-EU NHRIs. The wording "in line with Paris Principles" would suggest that the EU is willing to give a chance to B- status institutions. The second part of the provision under a) on

[352] Joint Communication to the European Parliament and the Council: Action Plan on Human Rights and Democracy (2015-2019) "Keeping human rights at the heart of the EU agenda", 2015, p.3.
[353] Ibidem, 2015, p.4.
[354] Ibidem, 2015, p.5.
[355] Ibidem, p.7-21.
[356] Ibidem, p.7.

strengthening of involvement of non-EU NHRIs in the Human Rights Dialogues[357] and other consultations is clearly inserted after the sets of good practises that were reported by NHRIs and EUDs. Analysing the wording "strengthen the involvement of NHRIs" leaves certain leverage for EU not to involve NHRIs when the Delegations simply decide not to do so. Provision b), on the other side, partially targets collective intermediaries ICC and regional networks (ENNHRI) with which the EU shall hitherto cooperate. The individual NHRIs' accreditation status shall be further enhanced via ICC, by the means of strengthening their capacities and transforming B-status institutions into A-status ones. Finally, the New Action Plan embodied the EU commitment to encompass these objectives within the framework of EU External Financing Instruments which has already happened in case of EIDHR 2014-2020.

The provision enshrined in the New Action Plan, broke the silence on NHRIs of the previous plan. It is the first time, that NHRIs are listed, prioritised and given the whole paragraph in the EU human rights policy document. It seems, that the EU is hitherto genuinely committed to cooperate, engage or enlist these institutions in more systematic way. The EU now, eventually, necessitates a clear strategy how to engage with those institutions. The concept of orchestration might indicate this strategy and metamorphosed an ad-hoc engagement to systematic engagement (enlistment) of non-EU NHRIs, ENNHRI in order to bring human rights improvements closer to people, therefore on the ground.

### 4.3. Orchestrating non- EU NHRIs in the Post-Action Plan 2015-2019 Reality: Policy Recommendations and Challenges

The engagement based on the concept of orchestration brings about benefits for both (or all) the orchestrator, the intermediaries (and the targets). Similarly, the recommendations formulated for a future systematic engagement between the EU and non-EU NHRIs (including collective intermediaries) anticipate desirable positive change and the notion of

[357] Ibidem, p.7.

numerous benefits for all actors is their baseline. I, moreover, presume that the systematic engagement will yield to more locally oriented EU human rights policy, therefore it might eventually produce a change of human rights on the ground.

This sections breaks down the provisions on NHRIs enshrined in the New Action Plan into five parts. These partial statements serve as points of departure for further explicit recommendations based on the concept of orchestration and which include a list of concrete actions to be carried out by the EU (and its institutions and bodies), ENNHRI and non-EU NHRIs in order to ensure more systematic engagement in future. These suggested actions are my assumptions based on interviews I conducted, conferences I participated in, academic literature I delved in, NHRI survey I collated and overall research I carried out. Every set of recommendation will be, furthermore, accompanied by collection of challenges that may arise from the suggested actions. These challenges were loosely mainstreamed throughout the whole thesis and they will be assorted in comprehensive manner in this place.

### *4.3.1. Recognise the crucial role of NHRIs as Independent Institutions.*

The EU still does not refer to NHRIs and their collectives in majority if its policy documents.[358] Their insertion into the New Action Plan, however, constitute a major breakthrough. It seems, that NHRIs are now entitled to be carefully considered as independent hybrid "fourth space actors".[359] The EU, thus, abandoned its triptych stakeholder vision within its human rights policy and recognised the existence of this fourth space.

*Recommendations*

- The EU Institutions[360] should insert NHRIs next to civil society, IOs and states as the fourth partner within its external human rights policy as soon as any of the external human rights policy documents is revised or updated.

[358] Wouters, Meuwissen & Barross, 2013, p.204.
[359] Roberts, 2013, p.227.
[360] This term includes also EU Delegations which operate on the ground.

- The EU Delegations should acknowledge and liaise with NHRIs on the ground taking into consideration their accreditation status, broader political context and voices of civil society as prerequisites to their independence. Moreover EUDs should give strong signal to other national stakeholders that independent NHRIs are considered as equal partners, right next to NGOs or governments.
- The EU Institutions should develop a set of criteria according to which they considered NHRIs to be reliable partners, therefore EUDs would be given a green light to liaise and engage with them.
- The EU Institutions responsible for implementation of the EU external human rights policies, should pay necessary attention to the ICC accreditation process and map which institutions are independent in order to recognise their independence and provide them with ideational or material support.
- The EU Institutions should maintain systematic and regular contacts with independent NHRIs using the assistance of regional networks or ICC acting as crucial facilitators of these contacts.
- The EU Institutions based in Brussels should use EUDs and ENNHRI or ICC to consult a concrete situation of NHRI if it is not responsive to their inquiries.
- The EU Institutions should explain a crucial role of independent NHRIs in promotion and protection of human rights at the international level as well as at the national level for instance to NGOs or governmental bodies.
- ENNHRI or ICC should encourage NHRIs to voluntarily cooperate and provide their expertise to the EU Institutions.
- NHRIs in third countries should, at the same time, recognise the role of the EU as an actor in human rights governance and learn about its human rights policy toolbox in order to make themselves capable to utilise EU's material and ideational support and more effectively push for common goals agenda, i.e. the protection and promotion of human rights.

- Recognition of crucial role of non-NHRIs shall give a clear signal to responsible EU Institutions to engage EU NHRIs in similar manner in order to maintain essential internal-external EU human rights policy coherence stipulated by the New Action Plan.

*Challenges*

- Some NHRIs with A-accreditation status are not really independent and are solely established to pursue some governments' fake endeavour to comply with international human rights standards.
- Some NHRIs even declare their desire to upgrade their respective accreditation status, however their activities are suggesting the opposite.
- NHRIs are often given better recognition at the international level being endorsed by the UN or other regional organisation, however the national actors still do not understand their essential role.
- The EU Institutions are still not consistent nor coherent when engaging with NHRIs because of a low level of awareness about these actors.

### *4.3.2. Affirm the EU commitment to support and engage with those institutions which are in line with Paris Principles*

As I demonstrated above the EU is already enlisting NHRIs and their associations via some so-called *micro orchestrators* operating on the ground i.e. EUDs and Brussels-based institutions enlisting ENNHRI in order to reach out towards non-EU NHRIs. These *micro orchestrators* have discovered the benefits of NHRIs (or of ENNHRI) and have provided them with *ad-hoc and sporadic* ideational and material support. The material support provided by DG DEVCO via the EIDHR has hitherto metamorphosed into factual project with exact amount of allocated resources. However, ideational support, given by political endorsement in policy documents or forms of trainings, capacity buildings on the ground, still lags behind. The orchestrator shall, in its capacity, unify sporadic ideational support

efforts, coming from various *micro orchestrators* and ideally develop a common coherent strategy based on good practices presented during DG DEVCO Seminar or European Development Days 2015.

*Recommendations*

- The EU Institutions should mainstream the crucial role of independent NHRIs in the EU human rights policy toolbox, including Human Rights Guidelines, Human Rights Dialogues and into a work of Human Rights and Democracy Focal Points. The Special Representative on Human Rights and Democracy should politically endorse independent NHRIs and formally approved their recognition as significant actors within global human rights governance arena.
- A mandate of NHRIs overlaps with majority of priorities of the Strategic Framework, therefore, the EU Institutions should materially and ideationally support independent NHRI's work and work together with those institutions in order to make Strategic Framework priorities a reality on the ground.
- The EU Delegations should continue to materially support individual NHRIs, providing them with financial and technical support, however this should be done in systematic manner, directly, and avoiding methods that may infringe upon their independence (for instance the funding of NHRIs trough means of ministries should be avoided). The support should be provided line in with the concept of orchestration on voluntary basis.
- The EU Delegations should carry on providing individual NHRIs with ideational support in terms of political endorsement (granting them participation in Human Rights Dialogues and other consultations), formal approval (supporting their campaigns and events) or technical assistance (providing them with additional expertise in form of trainings, capacity buildings or expert advices), however this should be done in a systematic manner, and avoiding further interventions into overall activities of NHRIs. The support should be provided in line with the concept of orchestration on voluntary basis.

- The EU Institutions should continue materially supporting the activities of ICC also via following edition of the EIDHR enabling ICC and its regional networks to act more independently while ensuring cooperation and compliance with Paris Principles of its members.
- The EU Institutions should continue providing ENNHRI with ideational support in terms of its formal approval and giving it significant space in consultations of the EU external human rights policy papers, including its internal fundamental rights issues. The EU should appreciate non-EU and EU membership embodied within ENNHRI in order to ensure desirable coherence between its external and internal sphere of human rights policies.
- If NHRIs wish to receive a financial support from the EU, they should firstly ask for ideational support in forms of trainings or capacity building in order to be able to adequately and fairly manage those funds.

*Challenges*

- The concept of orchestration lays its fundamentals on indirectness, non-coercion, voluntariness. There might be some situations that the orchestrator oversteps the delicate line between the concept of orchestration and delegation and finds itself on slippery slope utilising coercive methods towards intermediaries and overlooking the essential feature of the concept, i.e. the voluntariness.
- EUDs provide for material and ideational support for NHRIs sporadically utilising the avenues of governmental organs which infringe upon NHRIs' independence.
- NHRIs frequently lack internal capacity in terms of managing financial support provided by the EU Institutions and these essential resources may end up in the pockets of individuals rather than the institution itself.

### *4.3.3 Strengthen the involvement of NHRIs in consultation processes at country level, in particular Human Rights Dialogues and country reforms*

The consultations held at country level are exactly the places where EUDs enlist NHRIs. EUDs' seek to foster their locally based *expertise*, moreover, NHRIs might provide for valuable information to be used in processes of EU human rights *agenda-setting* i.e. the formulation of country strategies. The outcomes of NHRIs' *monitoring* may assist while collating Annual Reports on Human Rights in Democracy in the World. Already existing good practices pointed out that NHRIs' participation in Human Rights Dialogues (or other consultations) and consequent use of their recommendations may bolster EU's *legitimacy* as it demonstrates locally based expertise and may avoid third country government's impression of the EU's dis-attachment from situation in third country.

*Recommendations*

- The EU Delegations should ensure a participation of independent NHRIs in nationally conducted consultation on human rights issues, including: the Human Rights Dialogues, the Visa-Liberalisation Dialogues, the Structural Political Dialogues, consultations on Country Strategies and the EU Annual Report on Human Rights and Democracy in the World.
- The EU Delegations should also consider a participation of not completely independent NHRIs in national consultation as these NHRIs may offer strong expertise in field which is not politically sensitive for government.
- The EU Delegations should consider participation of non-independent NHRIs in Human Rights Dialogues as this might strongly prove NHRIs *status-quo* and further specific recommendations to the third country might be addressed.
- The EU Delegations should liaise with independent NHRIs and establish cooperation which is based on regular meetings or briefings between either the EUDs Human Rights Focal Point representatives or other EUDs officials and respective members of NHRIs.

- The EU Delegations and independent NHRIs should work together in order to established relationship which is based on mutual trust and regular information sharing.
- The EU Delegations should provide independent NHRIs with information on potential funding which is available for concrete projects in the field of human rights.

*Challenges*

- The NHRIs are sometimes not well-equipped to conduct non-biased *monitoring* activities.
- Some NHRIs were never invited to EU consultations as EUDs may preferentially address civil and political rights, therefore the expertise of NHRIs in social, economic and cultural rights might be overlooked.
- Some NHRIs claimed to be completely excluded from the Human Rights Dialogues and other consultations due to the fact of their claimed non-independence, on the other hand they received invitations to EU events in Brussels. The miscommunication between EUDs and Brussels-based institutions which creates inconsistency of EU relations towards it partners must be certainly overcome.
- EUDs and EU institutions many times refuse to engage with NHRIs due to their lack of independence, however the EU Member States' embassies carry on to do so, which again, creates an inconsistency in overall EU external human rights policies actions.
- The third countries are in majority of the cases not satisfied with independent NHRIs' participation in Human Rights Dialogues and other consultations, they may, even in some cases, try to prevent them from participating through the threats and other coercive methods.

### *4.3.4 Strengthen in the context of ICC the capacities of those with 'A' status and support the upgrade of those with 'B' status to the 'A' status.*

The ICC as collective intermediary has already benefited from a bulk of material and ideational support from the orchestrator- the EU. ICC in this case acts as intermediary but, in line with concept of orchestration, the targets are individual NHRIs. ICC can moreover constitute a reliable partner for the EU in UN Geneva human rights machinery arena, and can provide the EU with, on the other hand, ideational support when pushing for its thematic priorities for example in the UN Human Right Council. The event of the European Development Days 2015 already boosted ICC visibility in Brussels, moreover, as reiterated by the EU representative, this event gave birth to new strategic partnership between the EU and ICC.

*Recommendations*

- The EU Institutions should liaise with ICC within UN human rights fora such as the UN Human Rights Council given the proximity of both organisations' priorities in the field of human rights ranging from human rights and business, human rights of persons with disabilities and the rights of the child.[361]
- The EU Institutions should liaison with ICC when seeking the support of the UN Human Rights Council statements.
- The EU Delegation in Geneva should establish regular meetings between its human rights officers and the ICC Geneva Representative in order to share information, positions and expertise on overlapping thematic areas in the field of human rights.
- The EU Delegation in Geneva should, at the same time, include ICC into the meetings organised among CSOs and NGOs based in Geneva and EU Delegation's human rights officers, where the main priorities of all stakeholders would be transparently discussed.

[361] Wouters, Meuwissen & Barross, 2013, p.214.

- The EU Institutions should consider ICC as the main channel through which non-EU NHRIs might be reached out and their expertise comprehensively collected.
- The EU Institutions should follow the developments and outcomes of ICC Working Group on Business and Human Rights and ICC Working Group of Disability.
- The EU Institutions and the UN OHCHR should not compete for ICC attention and should both be interested in preserving ICC's independence by providing it with ideational and material support.
- The EU Institutions should ideationally and materially support ICC and ICC SCA in order to keep up with high professional standards of conducted accreditation process without infringing upon this process' independence.
- ICC should avoid unnecessary technicalities and keeps the accreditation process on current high level preserving its essential transparency.
- ICC should consider the option of establishing an ICC Brussel-based office which would considerably relieve ENNHRI which now covers the engagement between the EU Institutions and NHRIs worldwide. The alternative option would be to transfer part of the money to ENNHRI and create an ICC Brussel-based office within its premises including allocating to it a new staff member(s).

*Challenges*

- ICC still remains unware of the resources that are available from the EU as the orchestrator.
- The ICC's location in Geneva, hitherto, obstructs the intensification of the relations between the EU Institutions and ICC. This overburdens ENNHRI which does not offer a comprehensive expertise on NHRIs globally.

### *4.3.5 Cooperate with their (NHRIs) regional and international networks*

The regional network of my interest, ENNHRI, has already established its position as reliable partner in Brussels, thanks to the intensive efforts of its Secretariat. The EU Institutions in

Brussels already provide ENNHRI with ideational support and the opportunity to liaise with the institutions in order to advocate for the NHRIs'insertion in the New Action Plan. ENNHRI has already proven to be effective intermediary for the EU as orchestrator in terms of facilitating contacts with targets- in this case- individual NHRIs. Taking into account ENNHRI-focused character of the thesis and fact that the recommendation on engagement with ICC are mentioned above, following set of recommendations will target solely ENNHRI.

*Recommendations*

- The EU Institutions should carry on providing ENNHRI with ideational and material support by project-based initiatives and grants.
- The EU Institutions should recognise ENNHRI as an organisation similar to Equinet and involve it in consultation at the Brussels level, taking into the consideration its valuable expertise in the EU internal and external sphere of human rights governance which may prove to be of importance asset especially dealing with migration issues.
- ENNHRI as international non-profit organisation established under Belgian law, should be along with other NGOs, encourage to participate in EU public consultations and other participatory fora.
- The EU Institutions should co-organise events with ENNHRI in Brussels to help raise awareness on NHRIs which is still ad-hoc in Brussels fora.
- The European Parliament (the Secretariat of DROI) should cooperate with the ENNHRI Secretariat in order to systematically include also NHRIs' representatives when holding country specific session.
- ENNHRI should continue encouraging its members to upgrade their accreditation status in order to be reliable partners for the EU Institutions.
- ENNHRI should continue to be one of the principal advocates for internal and external consistency of the EU human rights policies with respect to its members.

*Challenges*

- ENNHRI was experiencing financial difficulties and future uncertainties since its establishment. Eventually, this year the funding of ENNHRI was secured with EU grant which will sustain the Secretariat until 2017. The budgets of ENNHRI members are now being gradually cut down, therefore, once ENNHRI relies solely on membership fees, the existence of the Secretariat will be again in jeopardy.
- ENNHRI has now been main focal point for the EU Institutions regarding the issues of NHRIs worldwide, this may overburden the Secretariat and lead to distraction from work within its thematic and geographic scope.
- ENNHRI is still now elaborating both its external and internal communication strategy, which has not been finalised, yet.

## Conclusion

The aim of the thesis' ultimate chapter was to apply the concept of orchestration on the EU's external human rights governance domain. Moreover, I endeavoured to systematise a set of explicit policy recommendations addressing the EU, ENNHRI and non-EU NHRIs' engagement in the so-called Post-Action Plan on Human Rights and Democracy 2015-2019 era. EUDs and EU Brussels-based institutions are starring as so-called *micro orchestrators* revealing their embryonic devoir in enlisting intermediaries such as non-EU NHRIs and ENNHRI.

I consequently shifted my attention to concrete avenues where the engagement can take place utilising five partial statements taken from the New Action Plan. This resulted into 40 explicit recommendations outlining the prospects of a future systematic engagement between non-EU NHRIs and the EU. Consequently, 17 specific challenges emanated from these potential developments. These recommendations are addressed to the EU Institutions, the Delegations, non-EU NHRIs, ENNHRI and ICC. I believe that some of these recommendations if implemented would make the EU human rights policy more contextualised and eventually it

will bring about change of human rights situations for the people and on the ground in third countries.

## Conclusions

*"Human Rights are the universal language of the powerless against the relativism of the powerful."*

*(Stavros. Lambrinidis, EU Special Representative for Human Rights, The European Development Days 2015)*

The aforesaid statement crowned the final session of the Seminar on NHRIs organised on margins of European Development Days 2015. Undoubtedly, independent NHRIs do protect the powerless and generate a habitat where the powerless become equal in rights with the powerful. The EU has put its foot in the door and clearly committed itself to engage with NHRIs and their respective collectives to deliver effective change on the ground, in third countries. The accommodation of an explicit paragraph on NHRIs into the New Action Plan proposal constitutes its inalienable testament.

The research emanated from long-standing debate about the effectiveness of the EU external human rights policies. It, indeed, utilised the concept of orchestration to show that effective and systematic policies may be developed beyond the embryonic ad-hoc engagement that has, hitherto, occurred between the EU and non-EU NHRIs.

The EU is in fact already applying forms of "orchestration" when enlisting non-EU NHRIs, namely when EUDs, operating as *micro orchestrators*, provide ideational and material support to NHRIs in third countries. The problem is, however, that this engagement is far from systematic. The thesis, therefore, proposes the EU to centralise its devoirs and to include NHRIs as equal partners, next to states, international organisations and civil society, in all of its external human rights policy actions.

On the other hand, patterns of *micro orchestration* are hitherto arising between the EU Brussels-based institutions and ENNHRI. The thesis points to increasing interests in this collective intermediary in reaching out to NHRIs in third countries or even inside the Union. Once again, though, ENNHRI is liaising with the EU institutions in unofficial and sporadic manner, hence, the crucial element of consistency is allegedly missing. The status of

ENNHRI as a non-profit organisation in accordance with the Belgian law, may qualify it to systematically engage with the EU even within civil society fora. However, the independence and peculiarities of the institutions it represents should be always safeguarded.

The 40 SMART[362] recommendations formulated in line with the model of orchestration has demonstrated the validity of my hypothesis. Moreover, data collected from several sources crucially assisted in the comprehension of the *micro orchestration* phenomena already taking place between *some* EU Institutions and *some* NHRIs and *some* of its collectives. The current engagement was explained through the lens of orchestration; hence, the future intensified engagement between the EU and non-EU NHRIs shall continue in line with the same concept. It is maintained, however, that the EU should provide ideational and material support to non-EU NHRIs, to ENNHRI and potentially to ICC in a more systematic manner.

Some aspects of the research may undergo in-depth analysis in the future. The thesis omitted on purpose the prospects of engagement between the EU and non-EU NHRIs with respect to EU Development Policies. Even though, this cooperation was largely underpinned in the Seminar on NHRIs during the European Development Days; the scope of the thesis did not provide for sufficient space for elaborating on this comprehensive issue.

All in all, the EU does turn its head to non-EU NHRIs. It has included them in the New Action Plan proposal and has provided them with considerable material support in the framework of the EIDHR. However, more needs to be done. It is also up to the independent NHRIs to prove their reliability and proficiency and show they deserve attention from the orchestrator. Their independence needs to be sustained and supported either by the EU as, in our hypothesis, the primary orchestrator, or by the UN OHCHR as a possible complementary orchestrator.

All these actors shall work together towards the implementation of human rights on the ground, bringing human rights back to the powerless. They have the potential to operate

[362] SMART recommendations abbreviation refers to specific, measurable, assignable, realistic and timebound recommendations.

universally, outside the EU, and inside the Union. However, the question of the EU internal/external coherence when human rights issues are at stake, in general and with respect to NHRIs in particular, remains another story.

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## ANNEX

| I. BOOSTING OWNERSHIP OF LOCAL ACTORS | | | |
|---|---|---|---|
| a) Delivering a comprehensive support to public institutions | | | |
| 1. Supporting the capacity of National Human Rights Institutions (NHRIs) | a. Recognise the crucial role of NHRIs as independent institutions and affirm the EU commitment to support and engage with those institutions which are in line with the Paris Principles.<br>Strengthen the involvement of NHRIs in consultation processes at country level, in particular regarding HR Dialogues and third countries reforms. | Ongoing | European Commission Services, EEAS, Member States |
| | b. Strengthen, in the context of the NHRIs' International Coordinating Committee, the capacities of those with an 'A' status, support the upgrade of those with a 'B' status to the' A' status and cooperate with their regional and international networks. Work on these issues should feed into the next mid-term programming period of the EU External Financing Instruments. | | |

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