



International Human Rights Protection: Institutions and Instruments

**Monika Mayrhofer, Carmela Chavez, Venkatachala Hegde,
Magnus Killander, Joris Larik, Bright Nkrumah,
Elizabeth Salmón, Kristine Yigen**



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Authors	Monika Mayrhofer, Carmela Chavez, Venkatachala Hegde, Magnus Killander, Joris Larik, Bright Nkrumah, Elizabeth Salmón, Kristine Yigen

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Executive summary

The present **Report on the mapping study on relevant actors in human rights protection** was written as part of Work Package 4 “Protection of Human Rights: Institution and Instruments” of the FP 7 project “Fostering Human Rights Among European (External and Internal) Policies”.¹ The report is aimed at mapping out relevant institutions for the protection of human rights at the national, regional and international levels, including governmental as well as non-governmental organisations. It equally aims to present the instruments used at different levels, especially global and regional treaties as well as political agreements and non-binding instruments. Therefore, **the report contains an overview of key institutions, their objectives and instruments**. Attention is also given to the cooperation between these organisations in order to map the network of human rights institutions with a specific focus on their interactions with the European Union (EU) in this international governance network.

The central organisation in the field of human rights at the **global level** is the United Nations, which has gradually developed a comprehensive and extensive international human rights system. It is a multi-tiered and sophisticated system and fulfils a leadership role in the setting of new human rights standards.

The **regional human rights systems** are diverse with regard to scope, institutional arrangements, obligations and mechanisms. In **Africa**, the African Union (AU) has led the way to establish a range of human rights instruments as well as institutions and mechanisms to monitor their implementation. The *African Charter on Human and Peoples’ Rights* is remarkable as it not only codifies individual rights but also emphasises group rights as well as individual duties. The human rights system of **the Americas** has a long history, with the Organisation of American States (OAS) as the key organisation. The OAS has adopted various instruments and established a monitoring mechanism. It can be said that the OAS has developed Inter-American human rights and democratic standards, which contributed to the enhancement of democracy in the region. Although **Asian** human rights systems have developed later than their African, American or European counterparts, and the two regional organisations which have made such efforts, Association of Southeast Asian Nations (ASEAN) and South Asian Association of Regional Cooperation (SAARC), are mainly relying on soft-law instruments and the setting up of specific institutional arrangements for human rights is still inchoate. The **European system** is the most extensive and differentiated system with far-reaching obligations and monitoring capacities. Although the Council of Europe (CoE) is still the most important European human rights organisation the role of the European Union (EU) has gained in importance over the last decades by gradually accommodating human rights principles in primary law including the adoption of a human rights treaty (Charter of Fundamental Rights of the European Union) as well as by incorporating human rights considerations in its European External Action Service (EEAS). There have also been some attempts to establish human rights standards in the so-called “**Islamic**” regions. Only the Arab Charter on Human Rights, however, has entered into force to date.

¹ See FRAME, www.fp7-frame.eu [14 Jan 2014].

Non-Governmental Organisations play a crucial role at all levels. They provide information to international and national institutions, contribute to agenda setting and policy-making in the field of human rights, observe implementation and play an important role with regard to awareness raising.

The mapping exercise shows that international human rights organisations were successful in creating an international forum for discussion and debate as well as agenda setting and decision making on human rights issues and prominently involving NGOs in this process. Some organisations have also done pioneering work concerning the development of human rights standards and the interpretation and adjudication of international human rights law. With regard to the implementation of human rights law and the prosecution and follow-up of human rights violations the picture is less favourable. Only some regional organisations have made an effort in this regard.

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List of abbreviations

ACHR	American Convention on Human Rights
ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACWC	ASEAN Commission for the Promotion and Protection of the Rights of Women and Children
AEC	African Economic Community
AHRC	Asian Human Rights Commission
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPO	ASEAN Inter-Parliamentary Organisation
AMU	Arab Maghreb Union
APRM	African Peer Review Mechanism
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CECHR	Council of Europe Commissioner for Human Rights
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CED Committee	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEN-SAD	Community of Sahel-Saharan States
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission of Human Rights
CIDO	African Citizen Directorate
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CMW Committee	Committee on Migrant Workers
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
COMESA	Common Market for Eastern and Southern Africa
CP	Complaint Procedure
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSCE	Conference on Security and Co-operation in Europe
CSOs	Civil Society Organisations
CSDP	Common Security and Defence Policy of the European Union
DG Justice	Directorate-General for Justice
EAC	East African Community

EACJ	East African Court of Justice
EEAS	European External Action Service
EC	European Communities
ECCJ	ECOWAS Community Court of Justice
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ECOSOC	Economic and Social Council
ECOSOCC	Economic, Social and Cultural Council
EDF	European Development Fund
EEAS	European External Action Service
EIDHR	European Instrument for Democracy & Human Rights
ENNHRI	European Network for National Human Rights Institutions
EP	European Parliament
ESC	European Social Charter
EU	European Union
FCPNM	Framework Convention for the Protection of National Minorities
FRA	Fundamental Rights Agency
GA	General Assembly
HCNM	High Commissioner on National Minorities
HRC	Human Rights Council
HRCAC	Human Rights Council Advisory Committee
HRComm	Human Rights Committee
IAC	Inter-American Court of Human Rights
IACHR	Inter-American Commission on Human Rights
IAHRS	Inter-American Human Rights System
ICC	International Criminal Court
ICCom	International Coordination Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IGAD	Intergovernmental Authority on Development
INGO	International Non-Governmental Organisation
IO(s)	International Organisation(s)
LAS	League of Arab States
MDGs	Millennium Development Goals
MERCOSUR	Mercado Común del Sur
NEBs	National Equality Bodies
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NHRIs	National Human Rights Institutions
OAS	Organisation of American States
OAU	Organisation of African Unity
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights

OIC	Organisation of Islamic Cooperation
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PAP	Pan-African Parliament
PP	Paris Principles
PRC	Permanent Representative Committee
PSC	Peace and Security Council
R2P	Responsibility to Protect
RECs	Regional Economic Communities
RFM	Representative on Freedom of the Media
SADC	Southern African Development Community
SC	Security Council
SG	Secretary-General
SPT	Subcommittee on Prevention of Torture (SPT)
TEU	Treaty on the European Union
TEEC	Treaty establishing the European Economic Community
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
UNO	United Nations Organisation
UPR	Universal Periodic Review
WP	Work Package

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I. Introduction

A. Mapping relevant actors for the protection of human rights at the national, EU/regional and international levels

Human rights law and instruments have experienced an unprecedented expansion over the last decades, including not only substantial growth by gradually defining more and more areas of human life as a human rights matter but also in terms of a quantitative proliferation of human rights instruments at international, regional and national level. Concomitantly, institutions engaged with protecting, promoting and monitoring the implementation of human rights have also prospered around the globe. On closer inspection, this complex international and national human rights protection system consists of a broad variety and wide range of institutions and instruments with differing scopes, arrangements and obligations. Work Package 4 (WP 4) “**Protection of Human Rights: Institution and Instruments**” of the FP 7 project “Fostering Human Rights Among European (External and Internal) Policies” (FRAME) aims to comprehensively assess institutions and instruments operating to protect human rights at the international, regional and national levels.

Since human rights institutions and instruments operate at various levels, the objective of the present report (Deliverable 4.1) is to undertake a **mapping exercise of the relevant institutions for the protection of human rights at the national, EU/regional and international level**, including the monitoring bodies of the UN, regional institutions in various parts of the world, National Human Rights Institutions (NHRIs) and civil society organisations. The exercise equally aims at **mapping the instruments** used at different levels, especially global and regional treaties as well as political agreements and non-binding instruments. Therefore, the report contains an **overview of key institutions, their objectives and instruments**. Attention is also given to the cooperation between these organisations and the EU in order to map the network of human rights institutions with a specific focus on the place of the EU in this international governance network. However, as this network of interaction is quite complex, multi-layered, and extensive; consequentially, the present report offers only a preliminary and incomplete picture thereof.

International human rights institutions are bodies established by (international) agreements entrusted with the task to interpret, monitor and observe the implementation and enforcement of human rights law. Their mandate, competences and *modus operandi* are defined by international law. Human rights **mechanisms** refer to procedures – also laid down by international agreements – which specify the course of action of international bodies in order for them to exercise their mandate. By contrast, **national human rights institutions** are specific bodies set up by governments at the national level, although their establishment is encouraged by a UN Resolution (see infra, Chapter IV).

The term **human rights instruments** includes all international – binding and non-binding (soft law) – treaties and other agreements, including Declarations, Covenants, Conventions, Charters, Protocols, Work Programmes, Strategies, General Comments or other documents, that codify and define political, civil, social, economic, cultural and other fundamental rights and regulate their implementation.

B. A note on methodology

Considering the limited time frame and the considerable scope of the mapping exercise this report contains a **descriptive presentation** of the most important instruments and institutions for the protection of human rights at international as well as selected instruments, institutions and mechanisms at the regional level. The national level is only touched upon by elaborating on the role of *National Human Rights Institutions* (NHRIs) – with a special focus on NHRIs in Europe. The present report is a compilation of contributions by the different partners of WP 4 who **provided a chapter containing a description and overview of institutional frameworks and instruments of a certain regional or thematic area** (see below). The following steps were carried out by the partners:

- 1) In the case of the regional chapters, the first step was to **select the most important regional organisation(s)** for the protection of human rights, intergovernmental institutions as well as non-governmental institutions with respect to their (international) political influence, reputation and achievements in the field of human rights.

In reference to the chapter on human rights protection at global level, the **key organisations, the instruments and institutions** relevant for human rights protection were defined in the specifications of this report.

- 2) The second step entailed **desktop research** and review **of literature and documents** on the respective instruments, institutions, bodies, or NGOs. The following questions were important:
 - a. What are the key instruments, institutions and bodies in this region or at this level?
 - b. What are the composition, mandate, objectives and content of these respective institutions, bodies or instruments? What are important aspects concerning the human rights discourse or focus in this regard? What are the relevant human rights mechanisms defined by the instruments?
 - c. Is there any cooperation with other institutions, especially with the EU?
 - d. Which NGO(s) is/are important for the protection of human rights in this region or at this level? What is the thematic and political focus? How are the formal and informal ways of cooperation with the EU?
- 3) The **most important results** of the research were summarised by the partners and included in this report.

C. Contents of the report

The report starts with mapping instruments, institutions and mechanisms at the global level (Chapter II), especially focusing on the *United Nations* (UN), but also mentioning the *International Criminal Court* (ICC) and covering the role of international *Non-Governmental Organisations* (NGOs) in the international human rights context.

Chapter III elaborates on different regional human rights protection systems: The sub-Chapter on Africa mainly discusses the role of the *African Union* in the area of human rights, but also briefly mentions other regional organisation on this continent. The sub-Chapter on the Americas deals with the *Inter-*

American Human Rights System (IAHRS) in the context of the *Organisation of American States (OAS)*. The Sub-chapter on Asia elaborates on human rights initiatives of the *Association of Southeast Asian Nations (ASEAN)* as well as the *South Asian Association of Regional Cooperation (SAARC)*. The subsequent sub-Chapter on European organisations covers the human rights system of the *Council of Europe (CoE)*, the *European Union (EU)* and the *Organisation for Security and Cooperation in Europe (OSCE)*. The last section of the Chapter on regional systems briefly examines initiatives with an ‘Islamic’ focus. All subsections elaborate on cooperation mechanisms with the EU and on the role of human rights NGOs in the region.

The Chapter on the national level (section IV) discusses the role of National Human Rights Institutions (NHRIs), especially focusing on European NHRIs.

The report concludes with a short summary of the most important insights yielded by the mapping exercise.

The authors of the chapters are credited at the beginning of each Chapter. Unmarked chapters were written by Monika Mayrhofer of the Ludwig Boltzmann Institute of Human Rights, Vienna.

II. The global human rights system

A. The United Nations (UN)

The United Nations (UN) plays a key role in the development and promotion of an international human rights protection system. Constituted under the *United Nations Charter*, which was adopted at the *United Nations Conference on International Organisation* in San Francisco in 1945, the UN set out to maintain international peace and security, to develop friendly relations among nations and to achieve international cooperation in solving international problems (UN Charter, Art. 1). Furthermore, the organisation aims to “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (*ibid.*). The respect and enhancement of human rights are an inherent part of the UN system. The human rights stipulations laid down in the UN Charter “are the foundations on which the UN human rights regime is built and on which it continues to develop” (Oberleitner, 2007: 28). Despite this fundamental role concerning the development of a human rights system, the human rights’ references of the UN Charter are diagnosed to be “scattered, terse, even cryptic” and having rather a “promotional or programmatic character” (Steiner, Alston and Goodman, 2008: 135). The drafters of the Charter refrained from including a bill of rights; instead, a committee under the chairmanship of Eleanor Roosevelt was entrusted with the task to develop a human rights declaration. On 10 December 1948, the *Universal Declaration of Human Rights* (UDHR) was adopted by the *General Assembly*, with 48 States supporting the adoption and eight nations abstaining from the vote. This marked the beginning of a three-step process: the development of a non-binding declaration, the adoption of binding treaties and the setting up of an implementation and monitoring mechanism.

1. Instruments at UN level

To date, a multitude of human right instruments exists at UN level. Steiner, Alston and Goodman (2008: 137) identify “a four-tiered normative edifice”:

1) The *UN-Charter*, which is generally perceived as being the basis for the UN human rights system, however, as mentioned above does not contain a specific bill of rights.

2) The *UDHR*, which claims in the preamble to be a “common standard of achievement for all peoples and all nations” and stipulates in 30 articles a comprehensive catalogue of rights including civil and political rights as well as social, economic and cultural rights and envisaging limitations only “for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (UDHR, Art. 29). Although the UDHR is – in legal terms – a non-binding document, its significance for the development of the global human rights protection system is generally acknowledged; it is said to have “strong moral force” and to be an “unprecedented step for the world” (Smith, 2012: 28 and 42) and “a remarkable achievement” (Nowak, 2012a: 67) or “to have gained formal legal force by becoming a part of customary international law” (Steiner, Alston and Goodman, 2008: 137, see also UN, 2012: 3).

3) The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR),² both adopted on 16 December 1966. The UDHR together with the ICESCR and the ICCPR are often referred to as the *International Bill of Human Rights*. The ICPR states that “in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights” (ICCPR, preamble). The ICESCR has a similar formulation in its preamble. The latter codifies economic, social and cultural rights and obliges the State Parties “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (ICESCR, Art. 2 (2)), thus specifying in detail Art. 21-27 of the UDHR. A similar stipulation is laid down in the ICCPR, which contains a detailed catalogue of civil and political rights, hence developing extensively Art. 3-21 of the UDHR. Both Covenants entered into force ten years later, in 1976.

4) A multitude of multilateral treaties that codify and focus on specific rights: the following treaties are considered to be the most important³:

- The *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD 1965/1969)⁴
- The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW 1979/1981)
- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT 1984/1987)
- The *Convention on the Rights of the Child* (CRC 1989/1990)
- The *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (CMW 1990/2003)
- The *Convention on the Rights of Persons with Disabilities* (CRPD 2006/2008)
- The *International Convention for the Protection of All Persons from Enforced Disappearance* (CED 2006/2010)

The ICESCR and ICCPR as well as some of the specialised treaties were amended and extended by *Optional Protocols* (OP). Optional Protocols either contain procedural or substantive amendments of Human Rights Treaties. They are international treaties in their own right.⁵

² For status of ratification, see <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [10 Jan 2014].

³ For status of ratification, see <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [10 Jan 2014].

⁴ Years mentioned refer to the dates of adoption/entry into force.

⁵ See <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm> [10 Jan 2014].

2. Institutions and mechanisms

The UN organisational structures responsible for enforcing and monitoring the implementation of the instruments listed above can be divided into Charter-based and Treaty-based bodies. Charter-based bodies are either directly mandated by the UN Charter or established and authorised by a Charter-based body. Treaty-bodies are created by (specialised) human rights treaties adopted in the framework of the UN.

(a) Charter-based bodies

- The *General Assembly* (GA) is entitled to discuss any questions or any matters within the scope of the UN Charter, which therefore includes human rights issues (UN Charter, Art. 10). Furthermore, the GA “shall initiate studies and make recommendations for the purpose of [...] assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (UN Charter, Art. 13). Thus, the GA has far-reaching competences and possibilities concerning human rights. It has adopted numerous Resolutions and Declarations covering human rights questions and although its Declarations are not legally binding, they have often been a precursor for binding international treaties (e.g. CEDAW). Furthermore, the GA receives and discusses reports by the treaty-based bodies and through the *Economic and Social Council* (Smith, 2012: 56-57).

According to the UN-Charter, the GA is entitled to set up subsidiary organs to perform its functions (Art. 22), which are called Committees. Two of the six GA’s main Committees are entrusted to deal with human rights issues: the *Social, Humanitarian and Cultural Committee* (Third Committee), and the *Legal Committee* (Sixth Committee). The two committees “often add comments and changes to proposed human rights documents before they are submitted to the plenary General Assembly for approval” (Mertus, 2009: 40). Oberleitner (2008: 83) distinguishes four fields of the GA’s human rights activities: 1) leadership and oversight of the UN human rights system, 2) budgetary responsibility for UN human rights institutions, 3) participation in standard-setting, and 4) scrutinising individual countries. Despite this broad range of competences the evaluation of the human rights record is quite ambiguous, some even classify the GA’s merits as “scarce as far as human rights are concerned” (Oberleitner, 2008: 87).

- The *Security Council’s* (SC) principal responsibility is to promote the establishment and maintenance of international peace and security (UN Charter, Art. 24). Although the SC was initially reluctant to be involved in human rights matters (see e.g. Smith, 2012: 53 or Steiner, Alston and Goodman, 2008: 737-738) its activities and decisions have increasingly been influenced by and relevant for human rights considerations. Especially the discussions in the context of the development of the *Responsibility to Protect* (R2P) are inherently interwoven with human rights considerations (see e.g. Nowak, 2012a: 83-89).⁶
- According to the UN Charter, the *Economic and Social Council* (ECOSOC) is one of the core UN bodies dealing with human rights. ECOSOC is entitled to “make recommendations for the

⁶ For a detailed discussion of the role of the SC in the promotion of human rights, see Fassbender (2011).

purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all” (Art. 62 (2)). The body may further prepare draft conventions for submission to the GA and it may initiate international conferences, relating to matters falling within its competence (Art. 62). In addition, ECOSOC is entitled to receive regular reports from the specialised agencies and it has the power to set up commissions in economic and social fields and for the promotion of human rights and other commissions required for the performance of its functions (UN Charter, Art. 64 and 68). ECOSOC may also “make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence” (UN Charter, Art. 71). The body has fifty-four members; the GA elects each year eighteen members for a period of three years. Despite this central role ECOSOC was given by the UN Charter, “its substantive contributions to the human rights debate since the 1970s have been extremely limited and its coordination efforts have had little practical impact” (Steiner, Alston and Goodman, 2008: 737). The body is even alleged to have counteracted human rights efforts at the UN level⁷ and since the establishment of the *Human Rights Council* (HRC) its role has further been confined (see e.g. Oberleitner, 2008: 80-82).

- In June 2006, the first session of the *Human Rights Council* (HRC) took place in Geneva, replacing the *Commission on Human Rights* (CHR) which had been in operation for almost 60 years and which was criticised for being too political and selective in its criticism as well as including Member States with a flawed human rights record. The HRC was established by Resolution A/RES/60/251 adopted by the General Assembly on 3 April 2006. The HRC took over the role and responsibilities of the CHR. Its responsibilities involve a wide range of tasks in the field of human rights, inter alia to promote human rights education and learning, to function as an arena for dialogue on human rights, to make recommendations to the GA to further develop international law in this field, to promote and monitor the full implementation of human rights obligations undertaken by the Member States, to work towards the prevention of human rights violations, to closely work together with Governments, regional organisations, national human rights institutions and civil society in the field of human rights and to make recommendations with regard to the promotion and protection of human rights (A/RES/60/251, Art. 5). One of the major innovations of the new mandate of the HRC was the introduction of the *Universal Periodic Review* (UPR), which will be elaborated on briefly below. The HRC consists of forty-seven Member States, which are elected directly and individually by the GA. The membership is based on equitable geographical distribution, however, the Member States are required to take into consideration “the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto” (A/RES/60/251, Art. 8). The HRC meets regularly throughout the year (no fewer than three sessions per year).

The HRC has several mechanisms and procedures at its disposal which will be shortly presented in the following:

⁷ For example, in 1951 it tried to abolish the former Sub-Commission on the Prevention of Discrimination and Protection of Minorities and it blocked the decision of the founders of the CHR to elect independent experts (Oberleitner, 2008: 81).

- As already indicated, the *Universal Periodic Review* (UPR) constitutes a new instrument in the UN human rights framework, which “was conceived as a form of ‘peer review’ of UN Member States’ action to fulfil their human rights obligations as well as a means of identifying areas in which help and advice are required to help states meet these obligations” (Schmidt, 2010: 395). The evaluation of a country is based on a national report on the human rights performance and achievements, best practices, challenges and key priorities submitted by the respective state and a compilation of UN information including information, recommendations and observations on the state under review made by relevant UN bodies (e.g. treaty-based bodies). Furthermore, a summary of data on the human rights situation in the country submitted by stakeholders such as NGOs, national human rights institutions and other relevant organisations is a third facet on which the review is based. Each Member State of the UN is evaluated every four years. The review is carried out by a UPR Working Group and facilitated by a so-called troika, a group of three Council members (see Schmidt, 2010: 395-396). The detailed procedure of the UPR is laid down in HRC Resolution 5/1 (2007).
- The *Human Rights Council Advisory Committee* (HRCAC) consists of 18 independent experts which are nominated by governments and elected by the HRC. The HRCAC supports the work of the HRC. Its main responsibility is “to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice” (HRC Resolution 5.1, Art. 75).
- The origin of *Special Procedures* (SP) goes back to the 1960s when the former CHR started to create specific mandates to investigate either certain human rights issues or the human rights situation in a specific country (Kothari, 2013: 607-616). There are four types of SP: Special Rapporteurs, Independent Experts, Working Groups and Special Representatives of the Secretary-General (SG) (Oberleitner, 2008: 54-55). The introduction of the Special Procedures is seen as “one of the major achievements” of the former CHR and were taken over by the HRC (Schmidt, 2010: 398, see also Mertus 2009: 43, Nowak, 2012a: 76-83). SPs are appointed by the HRC for three years (renewable once) and they “are required to submit to the Council annual reports reporting violations but also addressing thematic issues of global importance” (Kothari, 2013: 609). Furthermore, they conduct country missions, initiate or respond to communications, contribute to the further development of international law, develop collaborative initiatives and carry out research (*ibid.*)
- Based on GA Resolution A/RES/60/251, the HRC established a *complaint procedure* (CP) “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances” (HRC Resolution 5.1, Art. 85). A complaint is admissible provided that it is not obviously politically motivated and that it contains a factual description of the alleged violations and in case it is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any

person or group of persons, including NGOs, acting in good faith in accordance with the principle of human rights (HRC Resolution 5.1, Art. 87). Complaints are initially filtered through a review by two Council working groups with assistance from the Secretariat of the Office of the High Commissioner for Human Rights (OHCHR). If they are considered to be admissible, the working groups will provide a report and recommendations for discussion in the HRC (Schmidt, 2010: 401).

The overall evaluation of the new HRC is quite positive so far. It is described as “the most complex and politically charged of the specifically human rights organs with universal reach” (Steiner, Alston and Goodman, 2008: 844). The HRC is perceived to represent to a large extent the political, cultural, social and economic heterogeneity of the international community (Gareis, 2008). Although it is criticised that countries which are “grossly violating human rights norms” still make it into the HRC, the introduction of criteria for states’ participation is seen as “an inspiring innovation” (Oberleitner, 2008: 66). Other authors are supporting this positive evaluation. Nowak claims that the “the UPR turned out to be more useful than originally expected: Governments, in principle, submitted their reports in time and were represented at the review meetings by fairly high-level delegations” (2012a: 82). Schmidt supported this positive review of the UPR, however, he pointed out that the “Council’s inability or unwillingness to examine a number of critical country situations is a matter of concern and should be addressed” (2010: 403-404).

- The post of the *United Nations High Commissioner for Human Rights* (UNHCHR) was created by GA Resolution A/RES/48/141 on 7 January 1994. The UNHCHR is appointed by the *Secretary-General* (SG) of the UN and approved by the GA and has a fixed term of four years with the option to be reappointed for another term of four years. The UNHCHR is the UN official with principal responsibility for UN human rights activities under the direction and authority of the SG. In general, his/her primary task is the promotion and protection of the effective enjoyment of all civil, cultural, economic, political and social rights by all (A/Res/48/141, Art. 4 (a)). In detail, the responsibilities of the UNHCHR include an internal and an external dimension: The internal dimension contains duties such as to carry out tasks assigned by the competent bodies of the UN system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of human rights (A/Res/48/141, Art. 4 (b)), to advance the human rights promotion and protection activities throughout the UN system or to rationalise, adapt, strengthen and streamline UN bodies and procedures in the field of human rights (A/Res/48/141, Art. 4 (i and j)). The external dimension refers to tasks including to promote the realisation of the right to development, to provide advisory services and technical and financial assistance to states and regional organisations, to play an active role in preventing human rights violations, to engage in a dialogue with all Governments and to enhance international cooperation for the promotion and protection of all human rights and to coordinate UN education and public information programmes in the field of human rights (A/Res/48/141, Art. 4 (c, d, f, g and e)). The work of the UNHCHR is supported by the *Office of the High Commissioner for Human Rights* (OHCHR), located in Geneva. It also has an office at the UN headquarters in New

York and 13 country offices and 13 regional offices around the work with a total staff of about 1820 officers.⁸

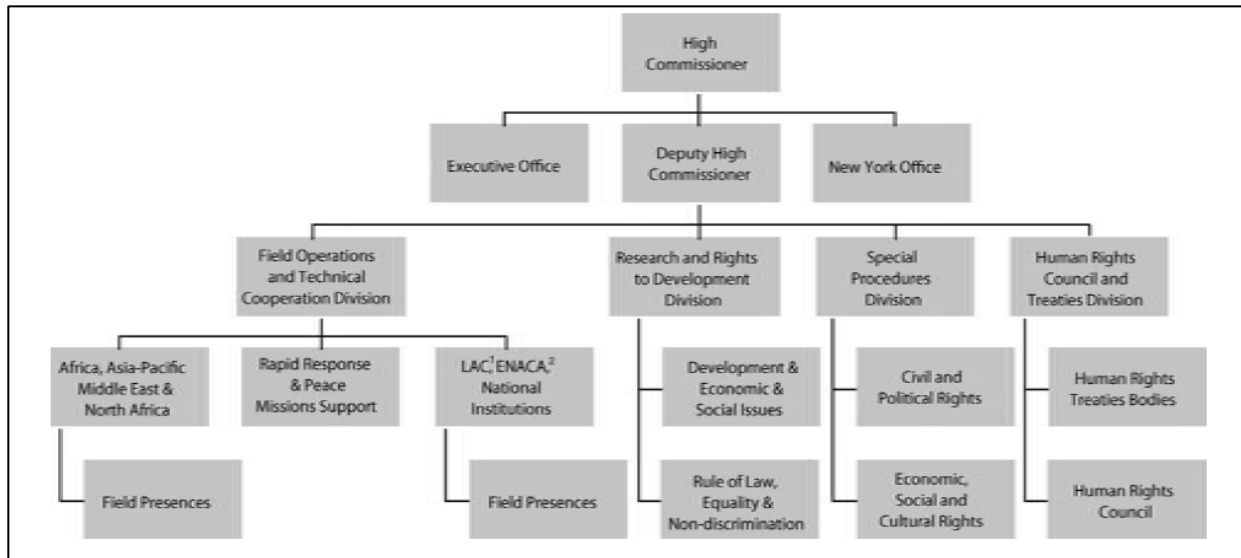


Figure 1 Organisational chart of the OHCHR.⁹

- The *International Court of Justice* (ICJ) is defined as the principal judicial organ of the UN by Art. 92 of the UN Charter and is responsible for settling legal disputes submitted by UN Member States and to give an advisory opinion on any legal question if requested by the GA or the SC. “Other organs of the United Nations and specialised agencies, which may at any time be so authorised by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities” (UN Charter, Art. 96 (2)). Individuals are not entitled to file a complaint with the ICJ. Although the ICJ is not a human rights court, it has been noted on many occasions that the court has decided on human rights in its judicial as well as advisory role (see e.g. Oberleitner, 2008: 152). “Recent judgments and advisory opinions of the Court have drawn extensively on the provisions of the principal UN human rights instruments and the relevant pronouncements of the UN human rights bodies. Judgments or advisory opinions may help clarify the interpretation of provisions of international human rights instruments, or spell out the legal obligations of states under these instruments” (Schmidt, 2010: 430).
- The *International Labour Organisation* (ILO) is one of the UN specialised agencies in accordance with Art. 57 and 63 of the UN Charter and has 185 Member States. Its objectives are the promotion and realisation of standards and fundamental principles and rights at work, the enhancement of equal working and income opportunities for men and women, the advancement of social protection and the strengthening of tripartism and social dialogue.¹⁰ The ILO’s mandate is laid down in the *ILO Constitution* as well as in the so-called *Declaration of Philadelphia*. The

⁸ See <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> [10 January 2014].

⁹ Source: Mertus (2009: 15).

¹⁰ See <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> [20 Jan 2014].

organs of the ILO are the *International Labour Conference*, a *Governing Body* and the *International Labour Office* (ILO Constitution, Art. 2). The ILO has a tripartite structure which includes government, employer and worker representatives. The International Labour Conference has the power to adopt international Conventions and Recommendations. As at 20 Jan 2014, the ILO had adopted 189 Conventions and 202 Recommendations.¹¹ Other specialised UN agencies with a human rights dimension are:

- the *Food and Agriculture Organisation*, aiming at enhancing food security, eliminating hunger and malnutrition and improving nutrition and the standard of living of the rural populations.¹²
 - the *International Fund for Agricultural Development*, which funds agricultural development projects with the objective to reduce rural poverty in developing countries.¹³
 - the *United Nations Educational, Scientific and Cultural Organisation*, with the objective of strengthening “the mutually supporting pillars of peace, sustainable development and human rights, contributing to poverty eradication and promoting the dialogue among civilizations and cultures” (UNESCO, 2008: 7).¹⁴
 - the *World Health Organisation*, which is responsible for global health issues.¹⁵
- The *Commission on the Status of Women* (CSW) was established by ECOSOC Resolution 11(II) of 21 June 1946. Its mandate includes the preparation of recommendations and reports to ECOSOC on promoting women’s rights in political, economic, social and educational fields. Furthermore, it is entitled to make recommendations to ECOSOC on “urgent problems requiring immediate attention in the field of women’s rights” (ECOSOC Resolution 11(II), Art. 11(1)). In 1987, the mandate of the Commission was extended by including also “the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising progress made at the national, subregional, regional, sectoral and global levels” (ECOSOC Resolution 1987/22, Art 1). The CSW consists of 45 representatives of UN Member States who are elected by ECOSOC for a four year term, based on equal geographic distribution. It is considered to be the “principal UN policy-making body for gender equality and the advancement of women” (Kartusch, 2012: 98).

¹¹ For details on ratifications, see <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> [20 Jan 2014].

¹² See <http://www.fao.org/about/en/> [20 Jan 2014].

¹³ See <http://www.ifad.org/> [20 Jan 2014].

¹⁴ See <http://en.unesco.org/> [20 Jan 2014].

¹⁵ See <http://www.who.int/en/> [20 Jan 2014].

(b) Treaty-based bodies

Treaty-based bodies were created by specialised treaties in order to promote and monitor the implementation of the treaty in question. The following treaty-based bodies are currently in operation:

- Human Rights Committee (HRCComm)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD Committee)
- Committee on the Elimination of Discrimination against Women (CEDAW Committee)
- Committee against Torture (CAT Committee)
 - Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC Committee)
- Committee on Migrant Workers (CMW Committee)
- Committee on the Rights of Persons with Disabilities (CRPD Committee)
- Committee on Enforced Disappearances (CED Committee)

The United Nations human rights treaty system

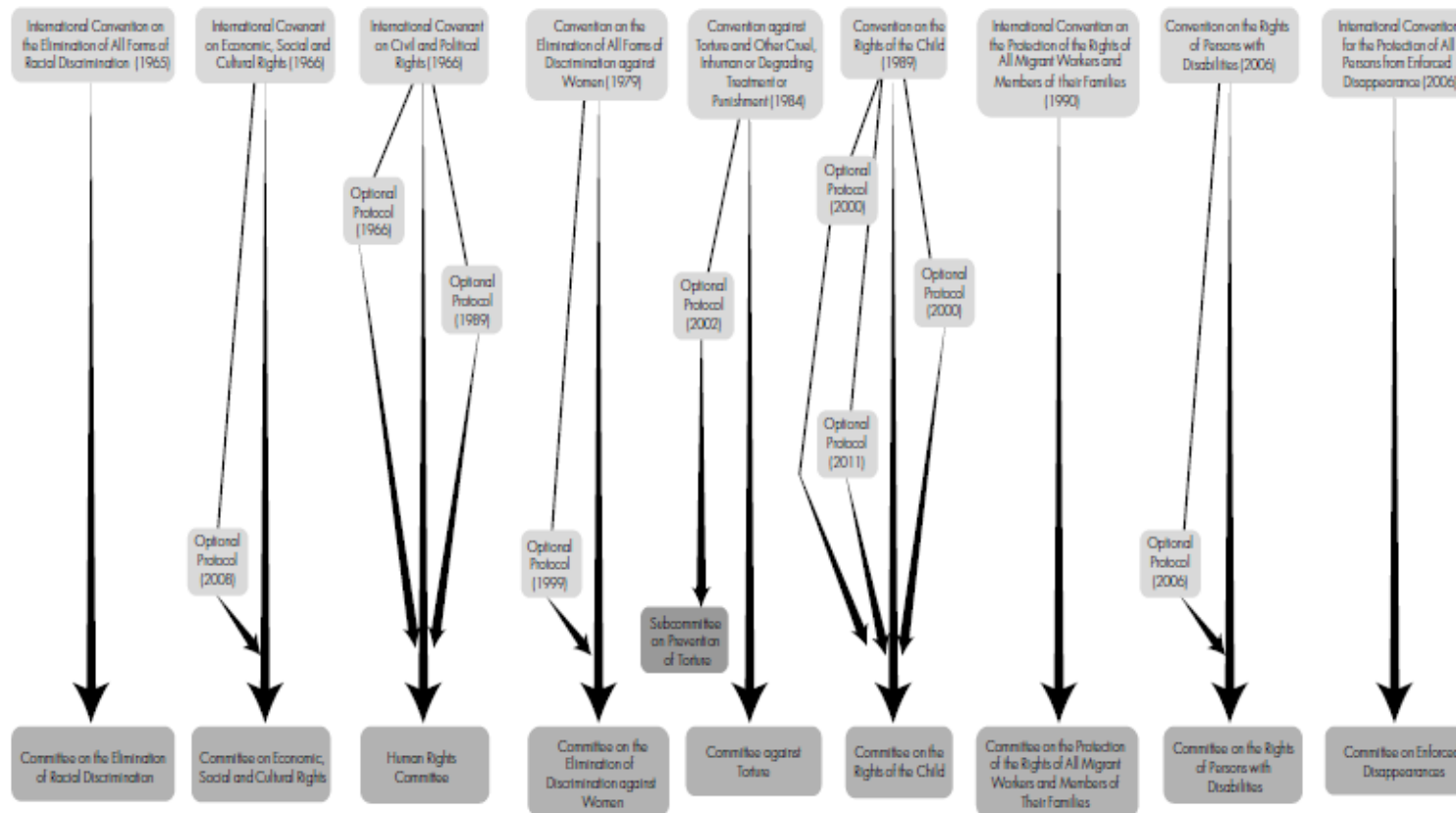


Figure 2: UN Human Rights Treaty System¹⁶

¹⁶ Source: OHCHR (2012: 4).

Each Committee consists of ten to 23 independent experts who are elected for a renewable term of four years by States parties. The committees have the following procedures and/or instruments at hand to accomplish their duties:

- *Reviewing reports by State Parties*

All State parties are obliged to regularly report to the Committees on the state and progress concerning the implementation of the respective treaty obligations. To this end, the Committees provide detailed reporting guidelines. In general, the purpose of reporting is to conduct a comprehensive review of the implemented measures, to monitor progress, to identify problems and shortcomings in implementing the treaty and to assess future needs and objectives to enhance a further implementation of the treaty (OHCHR, 2012: 24). Usually, the process of reporting follows the cycle depicted in figure 2.

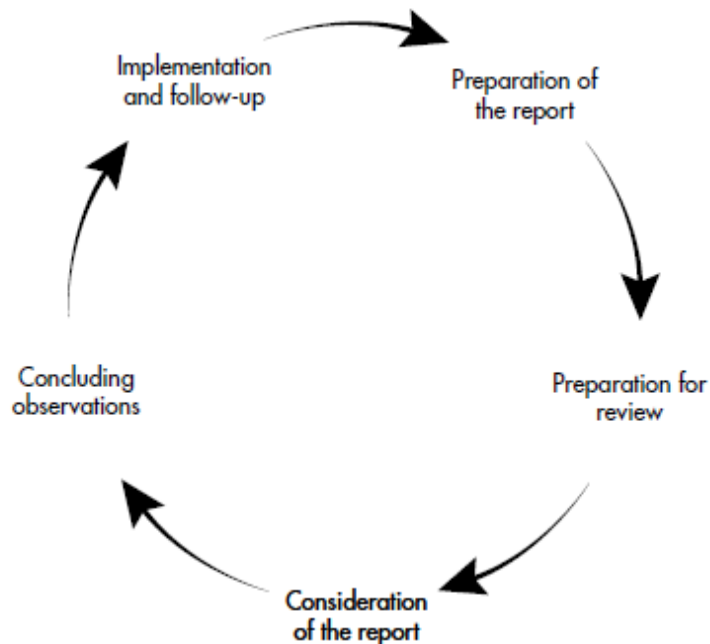


Figure 3 Examination process of State party's reports by the treaty-based bodies¹⁷

- *Individual complaints*

Most specialised treaties¹⁸ allow for the possibility of individual complaints. Complaints can be submitted by any individual “who claims that her or his rights under a treaty have been violated by a State party to that treaty [...] provided that the State has recognized the competence of the committee to receive such complaints” (OHCHR, 2012: 31). Complaints can also be filed by third

¹⁷ Source: OHCHR (2012: 25).

¹⁸ CEDAW, ICCPR, CERD, CAT, CRPD, CESC and CED provide the possibility for submitting individual complaints. Others have not entered into force yet (CRC, CMW) (see <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx> [13 Jan 2013]).

parties in case the wronged individuals have given their written consent or are unable to give such consent (*ibid.*). Individual complaints are said to be the “most court-like function of the treaty bodies” because they result in a specific decision about an alleged human rights violation and may induce in “indications of appropriate redress” (Rodley, 2013: 634). Usually, there are two phases in the handling of a case: admissibility and merits. “The first deals with essentially procedural matters, such as whether domestic remedies have been exhausted; the second concerns the substance of the complained-of violation.” (*ibid.*: 635)

- *Inter-state complaints*

CAT, CED, CMW, CERD and ICCP provide for the option to issue inter-state complaints. In reference to this procedure any state could submit a communication to the Committees about alleged violations of the treaties. However, this procedure has never been used so far.

- *Inquiries*

The treaty bodies of CAT, CEDAW, CRPD, CED and CESCR¹⁹ are entitled to launch inquiries if they have reliable information that a State party commits serious, grave or systematic violations of the treaty obligations. State parties are invited to cooperate by submitting observations. The Committee transmits its findings as well as comments or recommendations to the respective State Party. The introduction of this procedure was controversial from the beginning and has rarely been initiated (Rodley, 2013: 636-637).

- *General comments*

Treaty bodies have used general comments or general recommendations to publish their interpretations of the respective treaty provisions. The general comments and recommendations are considered as “authoritative interpretations of the UN human rights treaties” but also “aim at further developing international law” (Nowak, 2012a: 72).

- There are a number of *further procedures* laid down by specific treaties: the CED allows for urgent action and urgent appeals to the GA, the CEDAW provides the possibility for early warning and urgent action, the Optional Protocol to the CAT envisages practical means to support State parties in complying with their obligations to prevent and combat torture and some treaty bodies organise days of general discussion on specific issues. In general, treaties provide for formal meetings of State parties (see OHCHR, 2012: 21-39).

¹⁹ The CRC also allows for inquiries. However, the relevant provisions have not yet entered into force.

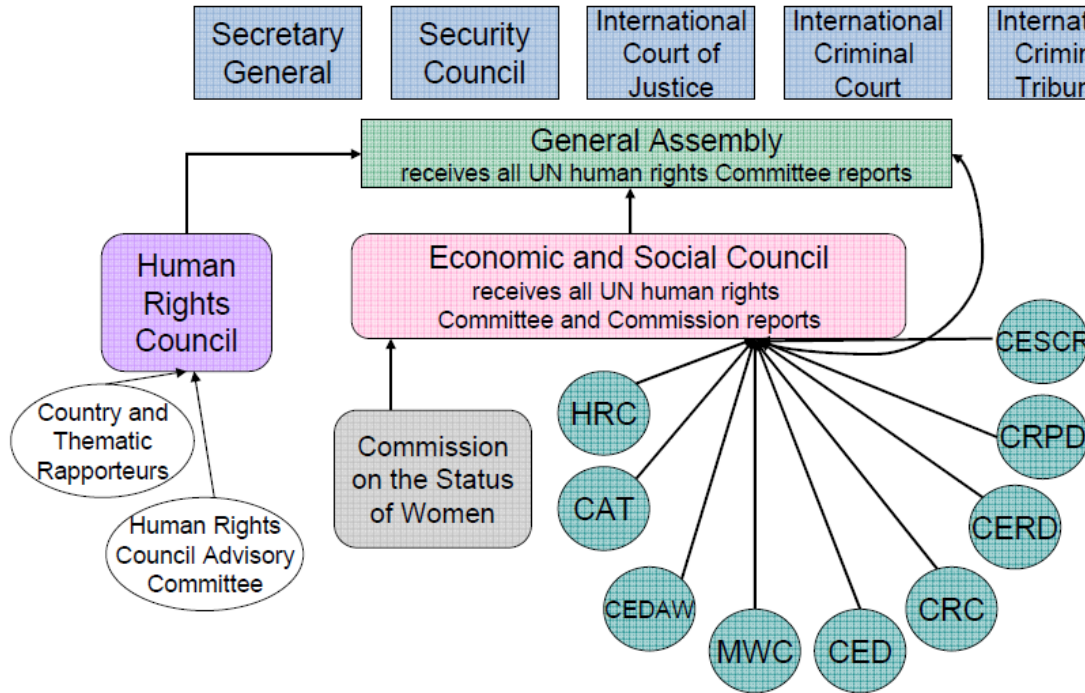


Figure 4 United Nations human rights organisational structure with ICC.²⁰

3. Cooperation with the EU

The UN maintains relationships with many regional organisations. Chapter VIII of the UN Charter encourages regional organisations to actively participate in the work of the UN in matters relating to the maintenance of peace and security and provides the basis for UN activities “undertaken or in contemplation under regional arrangements or by regional agencies” (UN Charter, Art. 54). In many resolutions, the SC has emphasised its resolve to involve regional and sub-regional organisations in its work and “to take effective steps to further enhance the relationship between the United Nations and regional organizations” (Resolution 1809 (2008), Art. 1).

For many years, the EU has played an active role in cooperating within the UN framework including a broad range of fields such as development cooperation, climate change, peace keeping and conflict prevention, humanitarian assistance, combating corruption and crime, global health matters, human rights, labour issues and culture.²¹ The European Security Strategy defines the strengthening of the UN, “equipping it to fulfil its responsibilities and to act effectively” as a European priority (European Security Strategy, 2003: 10).

In addition, cooperation with the UN and regard for the principles of the UN Charter are manifest in the Treaties of the European Union. Art. 3 (5) of the TEU provides that the Union “shall contribute to [...] the development of international law, including respect for the principles of the United Nations Charter.”

²⁰ Source: Smith (2012: 53).

²¹ See http://eeas.europa.eu/organisations/un/index_en.htm [03 Dec 2013].

The said principles shall also guide – amongst others – the EU’s action on the international scene (TEU, Art. 21). The TEU section on the EU’s external relations further stipulates that “[t]he Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations [...]. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.” *[ibid.]*

Concerning the cooperation with the UN and other international organisations, Article 34 TEU reads:

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination. In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.
2. In accordance with Article 24(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest. Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter. When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.

The TFEU contains similar stipulations concerning the respect for the principles of the United Nations Charter. It further lays down in Title III on the *Cooperation with Third Countries and Humanitarian Aid* that “[t]he Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations” (TFEU, Art. 208 (2)). Operations in the field of humanitarian aid shall be coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system (TFEU, Art. 208 (7)). The EU’s relations with international organisations and third countries are defined in Title VI of the TFEU. It says that “[t]he Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development. The Union shall also maintain such relations as are appropriate with other international organisations” (TFEU, Art. 220 (1)).

In 1974, the EC was granted a permanent observer status by the UN GA. In 2003, the Commission of the European Communities released a Communication to emphasise its commitment to multilateralism and voiced its intention to engage actively in multilateral fora. It further stressed the “importance of enhancing co-operation with the UN, and of strengthening the EU’s voice in the UN” (Commission of the

European Communities, 2003: 3). On 21 April 2011, the UN GA adopted a resolution on the participation of the EU in the work of the UN. The EU obtained “enhanced observer status.” Amongst others, this allows for the inclusion of representatives of the EU in the speakers’ list, alongside representatives of major groups, in order to make interventions, and allows the EU to participate in the general debates of the GA (A/RES/65/276, Annex, Art. 1).

The EU and its Member States are the largest financial contributors to the UN. They provide about 35% of the UN regular budget.²² In addition, the EU contributes significantly to UN human rights bodies and activities such as the OHCHR or projects developed and implemented by Treaty-based bodies (UNRIC, 2007: 7, OHCHR, 2009).

4. Evaluation concerning influence, effectiveness and achievements

The UN is the primary international institution in the field of human rights. The UN has gradually developed a comprehensive and extensive human rights system, which can also be analysed as an international regime defined as a “set [...] of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations” (Krasner, 1982: 186; see also Donnelly, 2003: 127). Generally, the UN contribution to the enhancement of the protection of human rights is evaluated rather positively. As Schmidt has pointed out, the UN human rights machinery has grown from a small division in 1947 with a few staff members to a system with worldwide country presences and thousands of employees: “[f]rom timid beginnings, it has developed into a multi-tiered and sophisticated system with a multitude of international human rights instruments and their respective monitoring mechanisms, supported by a sizeable and increasingly operational OHCHR” (2010: 430). The major achievements of the UN human rights system are its successful role in reference to the establishment of an international space for discussion and dialogue on human rights issues as well as its leadership role concerning the setting of new human rights standards (Oberleitner, 2008: 35-36). Furthermore, “[i]nternational law has moved from mere passive promotion of human rights to the more active protection of the articulated rights” (Smith, 2012: 173). However, major challenges are still to be tackled concerning the implementation and enforcement of human rights law:

[t]he global human rights regime involves widely accepted substantive norms, authoritative multilateral standard-setting procedures, considerable promotional activity, but very limited international implementation that rarely goes beyond mandatory reporting procedures. There is no international enforcement. Such normative strength and procedural weakness is not accidental but the result of conscious political decisions. (Donnelly, 2003: 135)

Thus, the weaknesses of the global human rights regime resonate with state sovereignty in the international system (Freeman, 2002: 53). Human rights treaties depend on the ratification and implementation of States and when ratifying a Treaty, States often only accept the related obligations

²² See http://www.eu-un.europa.eu/articles/en/article_9389_en.htm [14 Jan 2014] (The document does not mention the timeframe to which the data is applicable).

with reservations.²³ Furthermore, the reporting system has shortcomings in regard to the quantity and quality of the State reports. The reports are often submitted late and “have a tendency to be biased towards the State. Reports of States are rarely critical evaluations of performance with honest appraisals of problems encountered” (Smith, 2012: 165). Another point of criticism is the negligence of economic, social and cultural rights by principal UN bodies such as GA or HRC and, hence, the UN is criticised to have “failed to sustain its own commitment to the indivisibility of human rights” (Freeman, 2002: 52). In regard to UN institutions, the following problems are still prevailing: politicisation of UN human rights bodies, especially the HRC, inconsistencies concerning the treaty bodies, lack of resources and lack of enforcement mechanisms (Smith, 2012; Schmidt, 2008: 431). The treaty body system is said to be fragmented, complex and under-resourced, “the level of expertise and independence of members has been questioned, the Concluding Observations on State reports are often excessively general, the approach adopted to reports by different states by a single body is not always consistent, and there is inadequate follow-up to recommendations made to governments” (Steiner, Alston and Goodman, 2008: 919, see also Egan, 2013).

B. The International Criminal Court

The *International Criminal Court* (ICC) was established by the Rome Statute, which was adopted in 1998 and entered into force on 1 July 2002. It currently counts 139 signatories and 122 ratifications.²⁴ The Court is based in The Hague and is an international organisation independent from the UN framework. According to the Rome Statute, the jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole, including genocide, crimes against humanity, war crimes and the crime of aggression. The term genocide comprises acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (Rome Statute, Art. 6). Crimes against humanity are acts such as murder, extermination, enslavement, torture, deportation, rape, sexual slavery, enforced prostitution or any other form of sexual violence of comparable gravity, enforced disappearance of persons and other acts when committed as part of a widespread or systematic attack directed against any civilian population (Rome Statute, Art. 7). War crimes include grave breaches of the Geneva Conventions of 12 August 1949 and other serious violations of the laws and customs applicable in international armed conflicts (Rome Statute, Art. 8). The term “crime of aggression” was defined at the Kampala Review Conference in 2010, amending the Rome Statute by inserting a new article 8bis. Thereby, the “crime of aggression” was defined as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations” (Rome Statute, Art. 8bis).²⁵ The jurisdiction of the ICC covers only a limited range of human rights issues. However, the Rome Statute lays down in Art. 21 that the “application and interpretation of law pursuant to this article

²³ For a detailed discussion of these issues see E/CN.4/1997/74.

²⁴ For details please consult <http://www.iccnw.org/?mod=romeratification> [17 Jan 2014].

²⁵ For a detailed description of these offences see Rome Statute, Art. 6-8 bis, for an in-depth discussion of the crimes defined by the Rome Statute see Cassese (1999) and Schabas (2011). For details on the Kampala Amendments see Liechtenstein Institute of Self-Determination (undated).

must be consistent with internationally recognised human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.”

The ICC consists of several organs:²⁶

- The *Presidency* is in charge of the overall administration of the Court and consists of three judges who are elected out of the 18 full-time judges appointed at the ICC.
- The *Judicial Divisions* are divided into Pre-Trial Division, Trial Division and Appeals Division and carry out the judicial function of the Court. The Appeals Division is composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges (Rome Statute, Art. 39 (1)). The judges of each Division are organised in Chambers.
- The *Office of the Prosecutor* is headed by the Prosecutor and is “responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court” (Rome Statute, Art. 42 (1)).
- The *Registry* is headed by the Registrar and is “responsible for the non-judicial aspects of the administration and servicing of the Court” (Rome Statute, Art. 43 (1)).

According to Kälin and Künzli (2009: 2001) the following seven conditions have to be met in order for the ICC to press charges against a person and try a case:

- 1) The alleged act falls within the core international crimes laid down in the Rome Statute (Rome Statute, Art. 5).
- 2) The incident occurred after the date of entry into force of the Rome Statute (Rome Statute, Art. 11).
- 3) The person charged with the crime has to be over 18 years of age (Rome Statute, Art. 26).
- 4) The case fulfils the preconditions for the exercise of the Court’s jurisdictions. The case must be either referred to the Prosecutor by a State Party, by the UN SC acting under Chapter VII of the UN Charter, or the Prosecutor initiated proceedings on its own motion (Rome Statute, Art. 12-15).
- 5) The UN SC has not adopted a resolution to defer the investigation or prosecution in accordance with Chapter VII of the Charter (Rome Statute, Art. 16).

²⁶ See http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx [13 Jan 2014].

- 6) The State concerned is either unwilling or unable to carry out the prosecution (Rome Statute, Art. 17).
- 7) The case is of sufficient gravity to justify action before the ICC (Rome Statute, Art. 17 (1d)).

The ICC is not accessible for individuals and may exercise its jurisdiction in the following cases: *Ordinary jurisdiction*, when the ICC exercises its jurisdiction based solely on the Rome Statute; *Extraordinary jurisdiction*, i.e. “a state that is not a party to the Rome Statute can, by means of a declaration, lay the basis for *ad hoc* ICC jurisdiction to prosecute crimes specified in the declaration” (Kälin and Künzli, 2009: 201-202) and *Jurisdiction derived from the UN Charter* (*ibid.*).

Although the establishment of the ICC has been evaluated to be “a tremendous achievement, with significant potential to permanently alter the vocabulary and processes of international politics” (Ainley, 2011: 329), it has also provoked harsh criticism such as being a “neo-colonial project” (*Ibid.*) Furthermore, some of the most powerful states such as the USA, China or Russia are not parties to the Court.

C. Non-governmental organisations

International Non-Governmental Organisations (NGOs) are an important force within the international human rights architecture. They “provide an important bridge between the remote world of law, politics and bureaucracy, on the one hand, and the actual experience of human rights violations, on the other” (Freeman, 2002: 146). The involvement of NGOs in human rights issues has a long history: one of the first organisations consistently mentioned in this context is the *Anti-Slavery Society* (1836), but also the *International Committee of the Red Cross* (1863), the *International Worker’s Association* (1864) or the *International Council of Women* which advocated the establishment of women’s rights (Edwards, 2010: 171; Koenig, 2005: 98-99). Human rights NGOs have been included in the UN system: Art 71 of the UN Charter provides for a consultation mechanism for NGOs. Subsequently, they were also involved in the process of adopting and formulating specific rights of the UDHR. During the second half of the 20th century, human rights NGOs have undergone unprecedented proliferation, performing many roles and functions and being active in many thematic areas.²⁷

Although there is a common understanding that NGOs play a major role within the international human rights system, the definition of NGOs in general and of human rights NGOs in particular is far from being clear. Edwards defines an NGO as “a private, independent, non-profit, goal-oriented group not founded or controlled by a government” (2010: 170). The demands for human rights NGOs, however, go further “by requiring that the group’s primary concern must be to promote and protect internationally recognized human rights” (*ibid.*, 2010: 172). The range of human rights NGOs is wide, including many formations and varieties. Spiro differentiates between NGOs that represent identity groups and those which advocate human rights more generally. Examples for the first are organisations promoting the rights of LGBTIQ, women, indigenous people or disabled persons. The latter refers to organisations such as *Amnesty International* or *Human Rights Watch* (Spiro, 2009: 5). The main targets of NGO activities are

²⁷ For a detailed discussion, see Hachez (2008), Keck and Sikkink (1998) or Weissbrodt (2013).

states, international organisations, corporations and other NGOs (Spiro, 2009: 8-21). The influence of human rights NGOs is complex and difficult to measure (see e.g. Freeman, 2002: 145). Oberleitner (2007: 169-173) identifies several functions which might be performed by human rights NGOs:

- Information, definition and mobilisation: one of the main tasks of human rights NGOs is to collect and provide information for (governmental) institutions, International Organisations and other stakeholders. As NGOs very often work on the ground they dispose of information which would not otherwise be available for these actors. Providing information entails the task of defining relevant human rights issues. “Information allows a problem to be defined in terms of human rights. [...] In this ability to define events [...] as human rights violations [...] lies great power for NGOs” (Oberleitner, 2007: 170). Closely interconnected with the provision of information is the objective of mobilising stakeholders such as politicians or representatives in international bodies (see also Weissbrodt, 2013: 722-723).
- Agenda setting, norm making and policy development: NGOs are to a large extent involved in setting the (inter)national human rights agenda, developing new human rights norms and contributing to policy processes in this field.
- Accompanying implementation: implementation is a crucial part of international human rights law. NGOs have increasingly contributed to enhance the implementation process by consulting stakeholders or by pointing out implementation deficits.
- Advocacy, education and operation: these functions include assistance to and representation of victims of human rights violations, enhancing human rights education and training or carrying “out operational activities together with or on behalf of international institutions” (Oberleitner, 2007: 173).

Today, several thousand human rights NGOs are recognised by international and regional organisations (Smith, 2013: 262). In September 2013, 3900 NGOs had consultative status with ECOSOC (E/2013/INF/6, 2013). Within the UN system they perform a wide range of activities: they participate in UN Conferences, present shadow reports to UN Treaty Bodies and participate in international complaints mechanisms (Edwards, 2010: 183-190). Furthermore, NGOs play a significant role within the newly established UPR, giving them “the opportunity to demand a structured dialogue with the government and especially to raise awareness on grave human rights violations in the stakeholder report. Thus, lobbying processes can have a huge effect and influence the Outcome Report significantly” (Preckel and Willi, 2013: 432).

III. Regional human rights systems

Regional systems are fundamental parts of the international human rights protection system, and offer several advantages in regard to global systems. As fewer states are involved, political consensus may be easier to reach in regard to developing instruments and setting up monitoring institutions. Regional systems may also be more accessible because geographical distances are shorter, there may be greater familiarity with the states involved and linguistic diversity might be less burdensome. In addition, there “may be a greater political will to conform to regional texts as they are sometimes seen as being of more immediate concern than the international initiatives” (Smith, 2013: 88). The first initiatives in regard to setting up a regional human rights system took place in Europe with the establishment of the Council of Europe (CoE). Today, Europe has three organisations, with an important human rights dimension. Further important regional systems are to be found in Africa and in the Americas. Asia has only recently started to develop human rights instruments within its regional organisations. Initiatives from regions with an Islamic tradition will also be presented briefly at the end of this chapter.

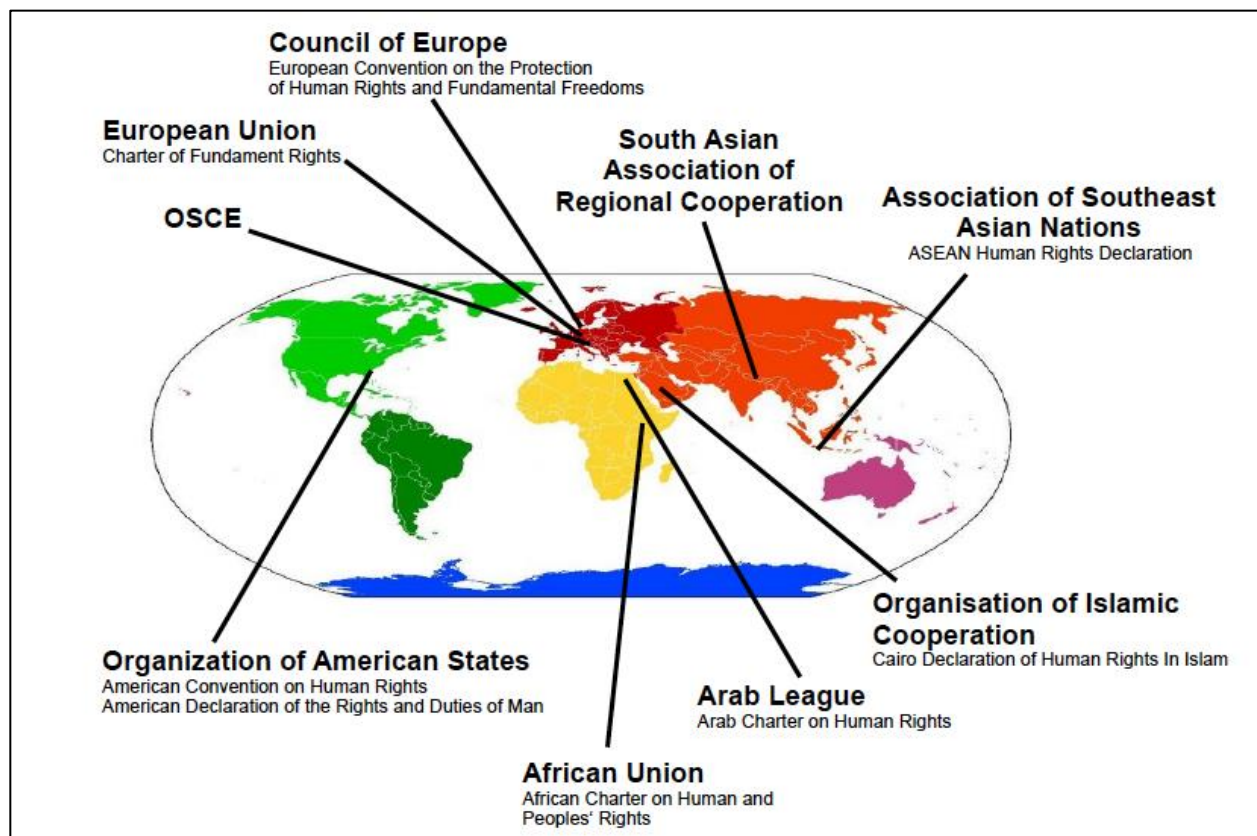


Figure 5 Regional human rights systems

A. Africa²⁸

The African regional human rights system is made up of instruments and institutions established under the pan-African intergovernmental organisation, the *African Union* (AU), which replaced the *Organisation of African Unity* (OAU) in 2002. The AU encompasses all African States except Morocco, which left in 1984 over a dispute regarding Western Sahara. The *AU Constitutive Act* includes respect for democratic principles, human rights and rule of law (Viljoen, 2012: 164-165).

Eight sub-regional economic communities (RECs) have been recognised by the AU as building blocks for the future *African Economic Community* (AEC) (Viljoen, 2012: 474). Some of these RECs, in particular the *East African Community* (EAC), the *Economic Community of West African States* (ECOWAS) and the *Southern African Development Community* (SADC), have included human rights on their agenda (Ebobrah and Tanoh, 2010).

1. The African Union

(a) Instruments

The main human rights instrument of the AU is the *African Charter on Human and Peoples' Rights* (African Charter), adopted in 1981 and which entered into force in 1986. A number of other instruments have been adopted, both at the regional and sub-regional levels to strengthen the existing regional human rights framework on specific issues such as women's, children's or refugee rights.

- **African Charter on Human and Peoples' Rights (1981/1986)**

The Charter includes individual as well as group rights (peoples' rights) and duties. Individual rights are generally provided for in less detail than for example in the two UN Covenants as some rights are omitted (e.g. the right to privacy). In contrast to the UN Covenants, the African Charter however includes the right to property. Group rights are stipulated in detail, including the only legally binding provision on the right to development in an international treaty (Killander, 2010:15). As of January 2014, the Charter had been ratified by all the 54 Member States of the AU except South Sudan.²⁹

- **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003/2005)**

The focus of the protocol is on making the *African Charter* respond better to the concerns of women. The Protocol entered into force in 2005 and as of January 2014 36 States have ratified it. It includes provisions similar to the CEDAW but goes beyond it to deal e.g. with the elimination of violence against women, harmful practices and sexual and reproductive health rights in the context of HIV/AIDS (Manjoo, 2012: 145; Banda, 2006).

²⁸ This Chapter was written by Magnus Killander and Bright Nkrumah (Centre for Human Rights, University of Pretoria).

²⁹ For ratification status of this and other AU treaties, see <http://au/int/en/treaties> [16 Jan 2014].

- **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969/1974)**
 The main difference between the *OAU Refugee Convention* and the 1951 UN Refugee Convention as amended is the expanded definition of who constitutes a refugee. Refugees under the OAU definition include those who have been forced to flee as a result of (i) external aggression; (ii) foreign domination; and (iii) events disturbing public peace (Okoth-Obbo, 2001). Thereby, the OAU Convention reflects in particular the specific decolonisation struggles for independence. Despite the above-mentioned deviation, the AU Refugee Convention rather complements than contradicts the UN Refugee Convention (Mujuzi, 2012: 179). As affirmed by the AU Constitutive Act, the latter remains the "basic and universal instrument relating to the status of refugees". As at January 2014, 45 States had ratified this convention.
- **African Charter on the Rights and Welfare of the Child (1990/1999)**
 The *African Children's Charter* was adopted to address major challenges which African children were facing and which had not been addressed in the UN Convention on the Rights of the Child (CRC) (Sloth-Nielsen, 2012: 164). Consequently, concerns which were overlooked during the drafting of the CRC such as the protection of child soldiers, prohibition of child marriages, protection for internally displaced children and prohibition of harmful traditional practices against children had been provided for in the Charter (Viljoen, 2012: 393). Due to the slow rate of ratification by AU States, the Charter took approximately nine years to enter into force. It has now achieved the support of 47 States having ratified it as of January 2014.
- **Other AU human right treaties**
 In recent years, the AU adopted a number of other instruments related to human rights. In some instances, the AU can be seen to have taken the lead as there are no equivalent treaties at the UN level or in other regional organisations such as the African Youth Charter (2006/2009), the African Charter on Democracy, Elections and Governance (2007/2012) and the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention) (2009/2012).

(b) Institutions and mechanisms

Article 5 of the AU Constitutive Act enumerates the AU organs: the Assembly, the Executive Council, the Pan-African Parliament, the Court of Justice, the Commission, the Permanent Representative Committee (PRC), the Specialised Technical Committees, the Economic, Social and Cultural Council and the Financial Institutions. The Protocol on Amendments to the Constitutive Act adds the Peace and Security Council as an AU organ.

The Assembly is the highest decision-making body and meets twice a year. It consists of the heads of state and government of the Member States. The Executive Council consists of the Foreign Affairs Ministers or other designated ministers, while the PRC is composed of the Member States' ambassadors to the AU. The Specialised Technical Committees and the Financial Institutions have not yet been established. The AU Commission is the secretariat of the organisation, based in Addis Ababa, Ethiopia. The Court of Justice has not been established. Once the 2008 Protocol on the Statute of the African Court of Justice and Human Rights enters into force, the new court will replace the African Court on

Human and Peoples' Rights and have a general affairs section and a human rights section. The main AU human rights body, the African Commission on Human and Peoples' Rights, is not listed as an AU organ in the Constitutive Act, but is viewed as a "functional AU organ" (Viljoen, 2012:447).

- **African Commission on Human and Peoples' Rights**

The *African Commission* is the main body responsible for the protection of human rights in Africa. It is composed of 11 commissioners mandated by the African Charter to conduct fact-finding missions, issue resolutions and declarations; consider state reports and provide recommendations on what measures State Parties need to take to live up to the commitments they have made through ratification of the African Charter and other regional human rights instruments. The Commission considers petitions (communications) on human rights violations, which do not need to be submitted by a victim of a violation (thus allowing *actio popularis*) (Viljoen, 2012: 300-301). The Commission has considered one inter-state communication and around 400 communications submitted by individuals or NGOs since it was established in 1987. State Parties are also obliged to submit reports every second year to the Commission on the measures they have adopted to promote human rights. To enhance their promotional mandate, the Commission has established many special rapporteurs and working groups (composed of Commissioners and experts) on thematic issues (Killander, 2012: 240-241). The Commission has a small Secretariat based in Banjul, The Gambia, where most of the sessions of the Commission are held. The Commission submits activity reports twice a year to the AU Executive Council.

- **Pan-African Parliament (PAP)**

The *Pan-African Parliament* (PAP) has 235 members from national parliaments. It acts as an advisory and oversight organ in relation to AU policies. The PAP has on occasion provided political backing to issues raised by the regional human rights bodies. For example, it passed a resolution calling on AU member States to abolish laws restricting access to information and publication (SANEF, 2013). Other human rights-related resolutions include a call for the release of the Ugandan opposition leader and a recommendation on the situation in Madagascar (Viljoen, 2012: 175). However, the output of the PAP so far is in general marked by poorly drafted and insufficiently substantiated recommendations (Viljoen, 2012: 178).

- **Peace and Security Council (PSC)**

Human rights cannot be realised where there is armed conflict. The *AU Peace and Security Council* (PSC) is the standing decision-making body of the AU responsible for prevention, management and resolution of conflicts in Africa. The Council is composed of 15 members elected by the AU Assembly. Five members are elected for three years, and ten members for two years. Members are eligible for re-election. The objectives of the Council are to develop a common defence policy for the AU, anticipate and prevent conflict and promote peace and stability in Africa (Viljoen, 2012: 193). The activities of the council are supported by other bodies such as a Continental Early Warning System, an African Standby Force, a Panel of the Wise and a Special Fund. The Council dealt with conflict among others in Burundi, Comoros, Côte d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau, Liberia, Mali, Sudan and Togo in

forestalling human rights violations (Viljoen, 2012: 197; Nkrumah & Viljoen, 2014: 260-261). Many of the RECs (see *infra*) also play an important role in conflict resolution.

- **Economic, Social and Cultural Council (ECOSOCC)**

The members of the ECOSOCC are African civil society organisations (CSOs) fulfilling certain criteria as set out in the ECOSOCC statute. It is composed of 150 CSOs with a secretariat based in the African Citizens Directorate (CIDO) located in the AU Commission. ECOSOCC aims to providing access for CSOs in AU policy-making, but has so far played a negligible role. Moreover, due to its lack of institutional structure, poor relations with CIDO and the lack of an independent secretariat, the ECOSOCC has not matured to becoming a 'meaningful' civil society voice in the AU (Viljoen, 2012: 205-208).

- **African Court on Human and Peoples' Rights**

The *African Court* is the "seat of judicial authority" of the AU and complements the protective mandate of the African Commission (Viljoen, 2012: 170). Almost half of the AU Member States have ratified the Protocol establishing the Court. Seven of these States have also made a declaration allowing individuals and NGOs direct access to the Court. Cases with regard to the other 19 state parties to the Protocol must first be taken to the Commission which under its Rules of Procedure can refer cases to the Court after (1) finding that its recommendations have not been implemented (following a merits decision), (2) non-implementation of provisional measures adopted by the Commission, (3) a case dealing with massive human rights violations. The Court started its work in November 2006. As of November 2013 the Court had only adopted one final judgment on the substance of the case (against Tanzania) and three orders for provisional measures (one against Kenya and two against Libya), as well as several admissibility decisions. The major reason for the shortage of cases is the lack of acceptance of its jurisdiction in particular among States that appear often before the Commission.

- **African Peer Review Mechanism (APRM)**

The APRM is a voluntary process to which more than 30 African States have subscribed. The APRM examines a country's record in democracy, political, economic and corporate governance, and socio-economic development for evaluation by an independent African panel of experts and discussion by the Heads of State. The mechanism was established in 2003 and aims to enhance the adoption of policies, standards and best practices for sustainable development in Africa, including respect for human rights (Killander, 2008). There has been some implementation of recommendations given through the APRM process but as usual it is difficult to establish causality (Viljoen, 2012: 204).

- **African Committee on the Rights and Welfare of the Child**

The *African Children's Committee* is a treaty-based body which serves a supervisory role similar to that of the UN Committee on the Rights of the Child (CRC Committee). Like the African Commission, the Committee is not listed in the AU Constitutive Act as an organ of the AU. However, the Committee could be seen as having less independence than the Commission in the sense that its secretariat is located within the social affairs department of the AU Commission in

Addis Ababa (Viljoen, 2012: 398). The Committee consists of a group of experts mandated to monitor and report on the implementation of children's rights in Africa. It is responsible for formulating and laying down principles, receiving periodic reports and providing recommendations on child rights. It can also consider communications submitted with regard to children's rights and has so far decided one case on the merits against Kenya. Despite its initial poor performance, the Committee has in the recent past achieved some success by deciding cases and examining and issuing concluding observations on a number of state reports (Viljoen, 2012: 408).

2. The Regional Economic Communities in Africa

(a) Instruments

None of the RECs have adopted their own general human rights treaties. Nevertheless, since the socio-economic objectives of integration and human rights are inextricably linked, and Member States have committed to respect human rights, RECs are justified to be involved in human rights promotion (Ebobrah, 2012: 285). Against this backdrop, the EAC is considering the adoption of an *East African Bill of Rights*. Other regional treaties with relevance for human rights protection include the *Protocol on Democracy and Good Governance* and the *Protocol Relating to Free Movement of Persons, Residence and Establishment* of ECOWAS, the *Protocol on Health, the Social Charter* and the *Protocol on Gender and development* of the SADC. The *Pact on Security, Stability and Development in the Great Lakes Region* and its Protocols on prevention of international crimes, sexual violence, internally displaced persons, property rights, natural resources, and democracy and good governance are also important as are numerous political declarations adopted by sub-regional organisations and the AU (Ebobrah & Tanoh, 2010).

(b) Institutions and mechanisms

No specific bodies have been established by the RECs to monitor implementation of the human rights instruments they have adopted. However, courts established by the EAC and ECOWAS can be seized by individuals as discussed below.

- **East African Court of Justice (EACJ)**

The Court is composed of 10 judges and comprises two divisions: a First Instance Division and an Appellate Division. The EACJ, which became operational in 2001, has as its primary obligation the adherence to the interpretation and application of the EAC Treaty. The Court does not have explicit jurisdiction to deal with human rights cases but has in a number of cases interpreted the rule of law provision in the EAC Treaty to give it jurisdiction over cases dealing with human rights. Access to the Court is open to individuals and groups resident in any of the Member States (Ruhangisa, 2011). The Court is confronted with three major challenges in relation to human rights: (i) there is no clear human rights instrument over which the Court can claim clear jurisdiction; (ii) there are no clear procedures for bringing human rights cases before the Court; and (iii) it is not clear how judgments of the court should be enforced (Ebobrah, 2012: 295). These factors have contributed to the shortage of human rights cases brought before the Court.

- **ECOWAS Community Court of Justice (ECCJ)**

The ECCJ is a vibrant adjudicator of human rights in the ECOWAS region. The Court, composed of seven judges, is mandated to receive and determine cases dealing with ECOWAS law, including explicit jurisdiction to hear cases dealing with human rights violations in Member States (Alter, 2011: 149-150). The Court applies international human rights instruments, in particular the African Charter, when resolving disputes. After being mandated in 2005 to entertain human rights cases, the Court has issued many substantive judgments condemning ECOWAS States for violations of human rights. Its ground-breaking judgments include a case against Niger on slavery and a case against The Gambia dealing with the torture of a journalist (Alter, Helfer & McAllister, 2012: 1). The Court does not require exhaustion of local remedies and allows *actio popularis*. This means that individuals and NGOs can avoid lengthy national proceedings with restrictive rules on standing by seizing the ECCJ.

3. Cooperation with the EU

The European Union (EU) over the last decade has entered into partnerships with African institutions to work towards the advancement of human rights. The EU through its strategy of enhancing efficient multilateralism, has sought to strengthen African human rights institutions through diplomatic initiatives such as human rights dialogues and the provision of aid for human rights programmes (European Council, 2003: 9).

Under the African Union Support Programme the EU has allocated €55 million through the 9th European Development Fund (EDF) to support the three African human rights institutions, namely the African Commission, the African Court and the PAP, and also provided support to the APRM secretariat (Africa-EU Partnership 2013). The EU has been a key actor in the recruitment and the capacity building of other AU bodies such as the ECOSOCC, the AU Advisory Board on Corruption, and the New Partnership for Africa's Development (NEPAD) Planning and Coordinating Agency (Martinelli, 2011: 18). The EU also made interventions related to among others health, food security, the Millennium Development Goals (MDGs) and development challenges facing Africa as part of the Joint EU-AU Strategy (Joint Africa EU Strategy 2013).

The EU has regular 'political dialogue' and human rights dialogue meetings at ministerial level with the AU as well as with the main African regional economic communities (10th AU-EU Human Rights Dialogue, 20 November 2013, Brussels, Belgium, Final Communiqué; Political Dialogue Meeting at Ministerial Level, Brussels, 16 May 2013, Final Communiqué; Communiqué SADC-EU Ministerial Political Dialogue 20 March 2013, Maputo, Mozambique).

The EU also concluded regional cooperation strategies with five sub-Saharan African regions for the period 2008-2013.³⁰ Negotiations over Economic Partnership Agreements with ACP countries in regional

³⁰ See http://ec.europa.eu/europeaid/where/acp/overview/rsp/rsp_10th_edf_en.htm [17 Jan 2014].

blockings have been slow,³¹ partly because the EU is viewed as focusing too much on economic benefits for itself (Weinhardt, 2011).

4. NGOs in the field of human rights

NGOs dealing with human rights in Africa can be divided into different categories. First, there are national general human rights NGOs focusing on the human rights situation in a specific country. Second, many national human rights NGOs focus on a particular issue, e.g. women's rights or children's rights or the particular problems faced by a particular community. Third, a smaller group of African human rights NGOs have a regional or sub-regional focus depending on whether they deal with human rights in general or with a specific group or theme. Finally, many international NGOs with their headquarters outside Africa are also active on the African continent.

As of November 2013, 456 NGOs had observer status with the African Commission on Human and Peoples' Rights. Forty two of these made statements on the human rights situation in Africa at the 54th ordinary session of the Commission in October 2013 (Final Communiqué of the 54th ordinary session of the African Commission on Human and Peoples' Rights). The session of the Commission and the NGO Forum that precedes each ordinary session provides NGOs with the opportunity to engage the main regional human rights body. The origin of many of the resolutions adopted by the Commission can be traced to resolutions adopted by the NGO Forum. NGOs also regularly submit cases to the African Commission, the African Court, the African Children's Committee and sub-regional courts.

African human rights NGOs collaborate with the EU, notably by taking part in human rights dialogues. The EU is also an important funder who provides significant financial support to African human rights NGOs through the European Instrument for Democracy & Human Rights (EIDHR).³² Challenges in accessing such funding exist in some African countries where human rights NGOs may not raise funds from foreign donors. This is particularly problematic, as human rights NGOs in Africa tend to source their funding externally rather than through membership fees. Consequently, the amount of time spent by NGOs on fundraising versus implementation of projects is also problematic (IRIN, 2011).

5. Evaluation concerning Influence, effectiveness and achievements

Although some progress has been made since the adoption of the African Charter some thirty years ago, the human rights protected under the Charter and other instruments are still far from being realised for the majority of Africans. While the number of electoral democracies has expanded over the last two decades, there are still serious challenges to human rights both in authoritarian and more democratic States on the continent. These challenges relate both to the realisation of civil rights, such as the prohibition of torture and access to justice, and to socio-economic rights challenges such as widespread poverty and lack of quality education and health services.

Concerning the institutional mechanisms, it is clear that there is institutional overlap within the AU bodies, for example consideration of human rights petitions by both the Commission and Court and

³¹ See http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf [17 Jan 2014].

³² See http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm [17 Jan 2014].

overlap of the mandates of the Commission and the Children’s Rights Committee. The procedures of the human rights bodies could be revised to make the system as a whole more effective. The support of the AU political bodies could clearly be improved through provision of more staff and by engaging with the findings of the human rights bodies in a less defensive way than is often the case.

The human rights work of the RECs could be viewed as duplication but could also be seen as positive complementarity (Murungi and Gallinetti, 2010: 119). Regressive steps in recent years include the dismantling of the SADC Tribunal (Nathan, 2011; Pillay, 2012).

B. The Americas³³

Amongst the international organisations present in the Americas, the *Organisation of American States* (OAS) has devoted most efforts to protecting human rights. Thus, the OAS has contributed to the origin and development of the *Inter-American Human Rights System* (IAHRS or Inter-American System). Firstly, the IAHRS developed a set of international instruments such as the *American Convention on Human Rights* (ACHR or American Convention) and the *American Declaration of the Rights and Duties of Man* (the American Declaration). Secondly, this system comprises two international organs responsible for protecting and promoting human rights in the region: the *Inter-American Commission on Human Rights* (IACHR or Inter-American Commission) and the *Inter-American Court of Human Rights* (IAC). Amongst other functions, these organs apply and interpret the international human rights treaties with the aim to bring about an effective protection of the human dignity.

1. The Inter-American human rights system

The OAS was created by the OAS Charter in 1948, as an organisation promoting democracy, justice, and human rights in the region. Nowadays, the OAS is composed of 35 States parties.³⁴ The OAS includes a special human rights system created by the American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in the same year as the OAS Charter. This Declaration was the first international human rights instrument in the region (1948) and was issued to promote the protection of human rights in the Americas. In fact, it was adopted before the UDHR (see chapter II).

In October 1960, the IACHR began its activities. This date also marks the beginning of the IAHRS (Faúndez, 2004: 35). A few years later, in 1969, the Inter- American Specialized Conference on Human Rights, held in San José, Costa Rica, approved the ACHR. The ACHR entered into force on 18 July 1978, in accordance with Art. 74(2) the same instrument. Currently, this treaty counts 23 State parties. The USA and Canada, in particular, did not ratify the ACHR. This instrument lists civil and political rights and also lays down the functioning of the IACHR and the IAC, which both are international organs of the IAHRS (CEJIL, 2012: 25). These dispose of a number of mechanisms to ensure compliance with the ACHR in the Americas. They will be described in the following paragraphs.

³³ This chapter was written by Elizabeth Salmón and Carmela Chavez (Institute for Democracy and Human Rights, Pontificia Universidad Católica del Perú).

³⁴ For details on Member States please consult http://www.oas.org/en/member_states/default.asp [14 Jan 2014].

(a) Instruments³⁵

The OAS Charter “proclaim[s] the fundamental rights of the individual without distinction as to race, nationality, creed, or sex” (Art. 3 (I)). According to Art. 13, the Charter also stipulates States’ obligations with regard to the rights of the human being and universal moral principles. However, the Charter does not establish any body or mechanism responsible for the promotion and protection of human rights, nor any body charged with overseeing the observance of human rights in the region (Faúndez, 2004: 33).

The American Declaration of the Rights and Duties of Man, on May 2, 1948 specifies the rights mentioned in the OAS Charter. The American Declaration is an essential complement to the Charter because the latter does not include a catalogue of human rights (Faúndez, 2004: 48). The American Declaration was not adopted as an international treaty, but as an instrument of soft law. However, the Declaration later became an effective instrument of protection, not least through its application and the interpretation by the IACHR and the IAC (IAC, Advisory Opinion OC-10/89, par. 45-46).

The ACHR, however, is the most important treaty in the IAHRs and was adopted in 1969. The content of the ACHR is inspired by the European Convention on Human Rights (Salvioli, 2007: 12). It regulates political and civil rights. There are two Additional Protocols to the ACHR: the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (‘Protocol of San Salvador’) and the *Protocol to the American Convention on Human Rights to Abolish the Death Penalty*.

The OAS also adopted treaties with specific subjects:

- Inter-American Convention to Prevent and Punish Torture (1948/not entered into force);³⁶
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará” 1994/1995);
- Inter-American Convention on Forced Disappearance of Persons (1994/1996);
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999/2001);
- Inter- American Convention Against All Forms of Discrimination and Intolerance (2013/not yet in force); and
- Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance (2013/not yet in force).

In addition, the OAS has adopted various declarations with a human rights dimension, e.g. the *Inter-American Democratic Charter* (2001).

³⁵ For details on membership and ratification please consult <http://www.oas.org> [14 Jan 2014].

³⁶ Years mentioned refer to the dates of adoption/entry into force.

(b) Institutions and mechanisms

The principal institutions of the IAHR are the IACHR and the IAC, which have different and complementary roles.

- **The Inter-American Commission on Human Rights**

The IACHR is an independent institution of the OAS, created by Art. 106 of the OAS Charter. It possesses its own Statute and Rules of Procedure. In general, the IACHR is entrusted with the task to observe and protect human rights and serve as a consultative organ, even for countries that are not parties of the American Convention (Faúndez, 2004: 39-52). The Commission is composed of seven Commissioners elected by the General Assembly of the OAS for a term of four years. They can be re-elected once. According to Art. 15 of its Rules of Procedure, the IACHR can assign thematic, geographical or special Rapporteurships to its members. The Rapporteurs are responsible for carrying out programmes, research or special projects related to specific situations.

Currently, the IACHR has the following thematic Rapporteurships: Rights of Persons Deprived of Liberty, Rights of indigenous Peoples, Rights of Migrants, Rights of Children, Rights of Women, also in charge of the Unit on the Rights of Lesbian, Gay, Bisexual, Trans- and Intersex (LGBTI) Persons; Rights of Afro- descendants, also in charge of the Unit on Economic, Social and Cultural Rights; and Human Rights Defenders. At the moment there is only one Special Rapporteurship: the Special Rapporteurship for Freedom of Expression. Furthermore, each Commissioner is Rapporteur for a selection of OAS Member States.³⁷

The IACHR may receive and process cases against States. According to Art. 44 of the ACHR, any person, group or NGO claiming a human rights violation can present an individual petition to the IACHR. Under Art. 23 of its Rules of Procedure, the IACHR is competent to assess compliance with all instruments listed above except the *Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*.

After receiving a complaint, the IACHR must assess the petition's admissibility according to the procedure described in Art 30, 31, 32 and 33 of its Rules of Procedure. The process then continues with the procedure on the merits including the consideration of briefs from both parties and the hearing. In some cases, the IACHR may consider it necessary to do an on-site investigation. If the parties cannot reach a friendly settlement, the IACHR publishes a report with recommendations to the State including a timeframe for implementation. If the State fails to comply with the IACHR's recommendations, the IACHR may submit the case to the jurisdiction of the IAC (see OAS Rules of Procedure).

The IACHR may also receive and process cases of violations of the American Declaration involving countries which are not parties to the ACHR or call upon a State to adopt precautionary measures in order to prevent human rights violations.

³⁷ See http://www.oas.org/en/iachr/media_center/PRelease/2012/008.asp [14 Jan 2014].

- **The Inter-American Court of Human Rights**

The IAC is an autonomous judicial institution created by the ACHR and performs a judicial function as well as an advisory function. The court operates on the basis of its Statute and Rules of Procedure. According to Art 61. of the ACHR, only State parties to the Convention and the IACHR have the right to submit a case under the jurisdiction of the Court. The Court is composed of seven judges, elected by the States parties of the ACHR from a list proposed by the OAS' members. The judges are elected for a six year term and can be re-elected once. According to Medina (2007: 52) the IAC carries out the following tasks: issuing decisions and judgements, granting provisional measures, overseeing the compliance with judgments and giving advisory opinions.

After being submitted a case by the IACHR, the Court assesses whether it is competent to resolve the complaint. Then, the Court requests the parties to submit relevant information orally and in writing about the facts that constitute the alleged human rights violations. In its decision, the IAC can order the State to rectify or stop the human rights violations and compensate the victims. It can also decide on provisional measures.

In accordance with Art. 64 ACHR, any OAS member State, including those not parties to the ACHR, the IAC and other organs of the OAS can request advisory opinions from the IAC regarding the interpretation of the ACHR or other treaties concerning the protection of human rights in American States. Additionally, the IAC can render opinions on the compatibility of national law with the abovementioned international instruments.

2. Other American sub-regional organisations

Besides the IAHRs, there are two other regional organisations with supranational competences in the field of human rights. The first is the Andean Community, which is an international organisation with four Member States. Its founding treaty is the Cartagena Agreement adopted in 1969. Its principal organs are the Andean Presidential Council, the Andean Foreign Relations Ministers Council, the Andean Court of Justice, the Andean Parliament and the Commission of the Andean Community. On 26 July 2002, the Andean Community adopted the *Andean Charter for the Promotion and Protection of Human Rights*.

The second regional organisation is Mercado Común del Sur (MERCOSUR),³⁸ a political and economic organisation with six Member States. Its institutional purpose, according to the Treaty of Asunción (1991), is to promote the free trade of goods and people. Initiated by the former Argentinean president Néstor Kirchner, MERCOSUR established an Institute for Public Policies on Human Rights (Velásquez, 2009: 230). The Institute is a “body that operates as a forum for technical cooperation, research and coordination of public policies on human rights in the countries that make up this regional bloc” (Abramovich, 2011: 1). Its areas of action are the following: a) regional coordination of public policies in

³⁸ The Portuguese abbreviation is MERCOSUL, which stands for Mercado Comum do Sul.

human rights, b) technical cooperation in the design of these policies, c) applied research to produce technical information and d) offer space for reflection in the field of public policies on human rights.³⁹

Neither of the two organisations has bodies with similar judicial power as the IAHR. Instead, the organisations are more focused on promoting economic and political integration (Salmón, 2003: 461).

3. Cooperation with the EU

The *Memorandum of Understanding between the European Commission and the General Secretariat of the Organisation of American States*, signed on 17 Dec 2009, highlights the basic points of international cooperation between the OAS and the EU. This instrument stipulates that “particular attention should be paid to the priorities established by both sides, such as the following: a) Protection and Promotion of Human Rights (...) [and] (...) d) Strengthening of Democracy” (Memorandum, 2009: 2). The framework for the inter-institutional collaboration is defined by a set of working principles such as: “a) Develop[ing] formal, regular (...) bilateral consultation meetings (...), b) Engag[ing] in ongoing consultation and reciprocal sharing of information (...) c) Exchang[ing] experiences and best practices” (*ibid.*). Therefore, strengthening human rights is a concern shared by both regional organisations.

Furthermore, since January 2007 the EU developed the European Instrument for Democracy and Human Rights (EIDHR) as a cooperation and support mechanism. In order to promote respect for human rights and fundamental freedoms in third countries and other regions, the EIDHR supports projects or programs from civil society organisations, public and private sector non-profit organisations, intergovernmental organisations or IOs such as the Office of the United Nations High Commissioner for Human Rights. In this context, the IACHR received donations from the EU in 2011 and 2012.

According to the Annual Report of the IAC (2012: 91), the Court seeks to establish and define cooperation with the European Union. Additionally, according to IAC’s public information, the Court has not received any contributions from the European Union in the three preceding years. However, it received contributions from the EU and the European Commission between 1995 and 2007.⁴⁰

4. NGOs in the field of human rights

In order to enforce the protection of individuals, the OAS frequently cooperates with human rights defenders and civil society organisations to develop a regional effort to face human rights violations. As indicated in its *Guidelines for Participation by Civil Society Organisations in OAS Activities*, the OAS has taken a special interest in potential contributions by civil society organisations to the activities of its organs, agencies, and entities (OAS, 1999: 5). Civil society organisations were also invited to contribute to the reform of the IACHR’s Rules of Procedure. Currently, 418 civil society organisations are registered with the OAS.⁴¹

³⁹ See <http://www.ippdh.mercosur.int/Funcion> [21 Nov 2013].

⁴⁰ See <http://corteidh.or.cr/index.php/es/al-dia/aportes-donaciones> [14 Jan 2014].

⁴¹ See http://www.oas.org/en/ser/dia/civil_society/registry.shtml [7 Nov 2013].

Usually, victims of human rights violations who present cases to the IAHRs are represented by NGOs or institutions which then act on their behalf either before the IACHR or the IAC. They are either international NGOs, networks or national coalitions.

Civil society organisations have also approached the IAHRs to ask for protection against the threats they face in their daily activities as human rights defenders (i.e. assassinations, assaults, threats, targeting by paramilitary groups, etc.). In their role as litigants, some NGOs have come to request precautionary measures from the IACHR, according to Art. 25 of the IACHR Rules of Procedure. It should also be noted that some NGOs have asked for provisional measures from the IAC in order to protect human rights defenders.

Finally, the IAHRs has recognised the significant role of civil society organisations on several occasions. For example, it emphasised the importance of people and organisations “dedicated to promoting, monitoring, and providing counsel in the area of human rights” (IACHR, 1999) and called upon Member States to take all necessary measures to protect human rights defenders and to make sure that they can work in appropriate conditions (*ibid.*, see also IACHR, 2006).

5. Evaluation concerning influence, effectiveness and achievements

The IAHRs played a fundamental role in the regional protection of human rights since 1987 when the IAC issued its first judgments. These decisions established new standards regarding the human being as a subject of international law (Cançado Trindade, 2007: 297-307). Furthermore, the IAC's jurisprudence enables the identification of vulnerable groups in the region (Salmón, 2012: 251) which allows for a better concentration of governmental efforts regarding the implementation of international human rights obligations (Salmón, 2007: 52 -54).

Another achievement is the creation of Inter-American standards (i.e. lines of reasoning that are an inevitable paradigm for the effective fulfilment of States' international obligations). They constitute a mechanism by which international courts contribute to the protection of human rights (Salmón and Blanco, 2012: 20). In that regard, the Court gives life to the text of the ACHR through *pro persona* and dynamic interpretation (Medina and Mera, 1996: 79-84).

It should be noted, moreover, that the IAC's standards are taken into account by other human rights courts for the resolution of their own cases. This has happened with the European Court of Human Rights (2012: 3-20) and recently with the African Court of Human and People's Rights (Dulitsky, 2005: 10-12).

Finally, the development of Inter-American standards regarding the democratic system of government has been a fundamental contribution to the establishment of democracy in the region (Arrighi, 2009: 88-90). An example of that is the adoption of the Inter-American Democratic Charter which is a fundamental basis for a full guarantee of the rights of the ACHR.

C. Asia

Unlike other regions such as the Americas, Europe or Africa, Asia does not possess a regional human rights mechanism, which "was widely deemed a disappointment to the universality of human rights" (Tan, 2011: 1). While cooperation in the economic and political domains has been advancing over the past decades in sub-regional arrangements, in particular in Southeast Asia, human rights considerations did not take centre stage. Reasons usually given for this development are the heterogeneity in the region "that spans from the Middle East to Japan [and which] is geographically, politically, and culturally too diverse for human rights to be managed effectively by a single overarching mechanism" (Tan, 2011: 1, and see Grimheden, 2012: 258, Smith, 2012: 92). Another line of argument refers back to the 'Asian values' debate of the 1990s which posited that traditional Asian values such as the preference of the community over the individual or the importance of social and economic development are inconsistent with the Western human rights approach which is said to put more emphasis on individual political and civil rights (Ciorciari, 2012: 700-702).

Already in the 1980s, the UN GA and the UNHRC called on Asian States to establish a human rights protection system (Narine, 2012: 366). The first regional initiative at inter-state level was the *Bangkok Declaration*, which was adopted by the Ministers of Asian States at the World Conference on Human Rights, which took place in March and April 1993. Although the Bangkok Declaration reaffirmed the commitment to the principles enshrined in the UDHR, it pointed out that human rights "must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds" (Bangkok Declaration, Art. 8). Apart from this first step at inter-state level, Asian human rights NGOs did some pioneering work with regard to the promotion human rights in the region. In collaboration with other NGOs, the *Asian Human Rights Commission*⁴² (AHRC) developed the Asian Charter on Human Rights. The primary objective of the Charter was to call attention to a wide range of human rights violations in the region and to invite states to uphold international human rights standards.

As the most notable recent development, the *Association of Southeast Asian Nations* (ASEAN) started to advance regional human rights protection by establishing the *ASEAN Intergovernmental Commission on Human Rights* (AICHR), which is also entrusted with developing a human rights charter. Another regional organisation, which has human rights concerns on its agenda, is the South Asian Association of Regional Cooperation (SAARC). Both organisations and their instruments will be discussed in the following sub-sections.

⁴² The Asian Human Rights Commission is an NGO, based in Hong Kong, China.

1. Association of Southeast Asian Nations⁴³

The human rights system of ASEAN is the most recent development concerning regional human rights protection. ASEAN is an international organisation with currently ten Member States⁴⁴ which primarily aims at enhancing political and economic cooperation and development in South-East Asia. ASEAN was founded by the adoption of the ASEAN Declaration on 8 August 1967 in Bangkok, Thailand. The Declaration did not mention “human rights” and the term itself was viewed with reservation by various governments in the region (Muntarbhorn, 2012: 6-7). The impetus for the development of a human rights body and instrument came from the World Conference on Human Rights in Vienna in 1993. The *Vienna Declaration and Programme of Action* requested the establishment of (sub-)regional mechanisms for the promotion and protection of human rights in those regions where they did not already exist. ASEAN Foreign Ministers reacted to this appeal by declaring their support for the Vienna Declaration and by “issuing a statement committing themselves to the possibility of a regional human rights mechanism” (ibid; see also Narine, 2012: 368). In addition, the ASEAN Inter-Parliamentary Organisation (AIPO) released the *AIPO Declaration on Human Rights*, which supported the introduction of a human rights body.

The key step towards the actual establishment of such a body, however, was the adoption by the Heads of States or Government of the Member States of ASEAN in November 2007 and subsequent entry into force of the ASEAN Charter, in which human rights feature rather prominently. One of the stated purposes of ASEAN is to “[t]o strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN” (Art. 1(7)). Moreover, among the principles to which both ASEAN and its Member States must adhere is “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice” (Art. 2(2)(i)). From an institutional point of view, Art. 14 of the Charter is of particular importance:

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
2. The ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers’ Meeting.

On the basis of these legal provisions, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in October 2007 and entrusted with the task, among others, of developing a human rights instrument, the ASEAN Human Rights Declaration (AHRD). Apart from this document,

⁴³ This chapter is written by Joris Larik (Leuven Centre for Global Governance Studies) and Monika Mayrhofer (Ludwig Boltzmann Institute of Human Rights, Vienna) with the support of Tingting Dai (China University of Political Science and Law).

⁴⁴ Member States of ASEAN are Brunei, Burma/Myanmar, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

ASEAN has adopted other regional instruments and set up human rights bodies, which are briefly presented in the following paragraphs.

(a) Instruments

Generally, in terms of the role of law for human rights in ASEAN, it is to be noted that “while the ASEAN Charter gives legal force to ASEAN’s express desire to establish a human rights body in Article 14, the rest of the regional mandate for human rights is, for the time being, without impact of the law” (Tan, 2011: 157). This becomes also evident in the following instances.

- **ASEAN Human Rights Declaration**

The AHRD was drafted by the AICHR and was adopted by all ASEAN members at the ASEAN summit in Phnom Penh, Cambodia, on 18 November 2012. The Declaration contains General Principles as well as Principles on Civil and Political Rights, on Economic, Social and Cultural Rights, on the Right to Development and on the Right to Peace, and a section on Cooperation in the Promotion and Protection of Human Rights. The AHRD reaffirms in its initial paragraphs ASEAN’s commitment to the UDHR. However, the provisions enshrined in the Declaration go beyond the UDHR (e.g. right to peace, and right to development). The declaration can best be understood as “soft law” (Tan, 2011: 177). The AHRD has been criticised from various sides. The UN High Commissioner for Human Rights, Navi Pillay, has voiced concern that the language of the AHRD is not consistent with international human rights standards (OHCHR, 2012). In the run-up to the adoption of the Declaration, numerous grassroots, national, regional, and international civil society groups have urged Member States of ASEAN to postpone the adoption of the document. Art. 7 of the AHRD is considered to be particularly problematic. It states that “the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.” This is seen to relativise human rights which could serve as a justification for human rights violations by state authorities. Furthermore, the wording of Art. 6 stating that the “enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties” is seen as contradicting international human rights standards (Amnesty International, 2012; HRW, 2012).⁴⁵

- **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers**

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was adopted in Cebu, the Philippines, on 13 January 2007. Being of a hortatory character, the Declaration lays down general principles, obligations of sending states, obligations of receiving states and commitments by ASEAN in regard to respecting the rights of migrant workers. The Declaration contains provisions on promoting and protecting fundamental rights of migrant workers, such as enhancement of fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions.

⁴⁵ For a detailed discussion on the most controversial provisions of the ADHR see Renshaw (2013).

- ASEAN Declaration against Trafficking in Persons Particularly Women and Children**

The Declaration was adopted in Vientiane, Laos, on 29 November 2004 with the objective to prevent and combat trafficking of persons, particularly women and children. Measures envisaged in the Declaration, also recommendatory in nature, include the establishment of a regional network to prevent and combat trafficking of persons, measures to protect the integrity of their documents, regular exchange of views and information in this area, intensified cooperation among immigration and other law enforcement authorities, and differentiation among victims of trafficking and provision of appropriate assistance.
- ASEAN Declaration on the Elimination of Violence against Women in the ASEAN Region**

The ASEAN Declaration on the Elimination of Violence against Women in the ASEAN Region, issued in Jakarta, Indonesia, on 13 June 2004, recognises “that violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities, and impedes the full development of their potential.” In order to prevent violence against women, the Declaration, in a non-binding fashion, aims at enhancing regional and bilateral cooperation, and promoting an integrated and holistic approach to eliminating such violence, reinforcing or amending domestic legislation to prevent violence against women and to enhancing the protection, healing, recovery and reintegration of victims and/or survivors.

(b) Institutions and mechanisms

Amongst the institutions of ASEAN charged with human rights issues, one has to distinguish the AICHR as the general body from the more specialised organs. According to the Terms of Reference (ToR) of the AICHR, the AICHR “is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN” (Art. 6.8). Furthermore, the AICHR “shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities for their ultimate alignment with the AICHR” (Art. 6.9). It thus presents itself as a *primus inter pares* in the ASEAN human rights architecture. All are, however, of a strictly intergovernmental nature.

- ASEAN Intergovernmental Commission on Human Rights (AICHR)**

The AICHR is a consultative, inter-governmental body of ASEAN. It was established on the basis of the ASEAN Charter and its scope of operation is regulated by its Terms of Reference. According to Art. 1 of the ToR, the purposes of the AICHR are

 - 1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
 - 1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
 - 1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

- 1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- 1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and 1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

The mandate and functions of the AICHR are also defined in the ToR. They include the development of the ASEAN Human Rights Declaration, the enhancement of public awareness of human rights, the promotion of capacity building for the effective implementation of international human rights treaties, the promotion of the full implementation of ASEAN human rights instruments, the provision of advisory services and technical assistance on human rights matters to ASEAN bodies when required, the preparation of studies on human rights in ASEAN, and the submission of an annual report on its activities (Art. 4). Up to now, the AICHR's activities are evaluated to be "a testament to the promotional angle of human rights activities rather than active protection of human rights" (Muntarhorn, 2012: 11).

The Commission consists of ten representatives, appointed by and accountable to the respective ASEAN Member States (Art. 5.2 ToR). In contrast to a human rights court, it is a body "composed of government representatives with a purely consultative function, no binding powers, and no capacity to receive complaints from individual victims" (Portela, 2013: 8). It is supported by the ASEAN Secretary-General and the ASEAN Secretariat (Art. 7 ToR).

- **ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)**

The ACMW was established by the Statement on the Establishment of the ACMW adopted in Manila on 30 July 2007. In the same year, the Terms of Reference (ToR) of the ACMW were concluded defining the functions of the Committee. Its mandate aims at supporting the implementation of the Declaration including the sharing of best practices and the promotion of cooperation (see further Muntarhorn, 2012: 13).

- **ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)**

The Commission was established with the objective to promote and protect the human rights and fundamental freedoms of women and children in ASEAN. The ACWC is an intergovernmental, consultative body within ASEAN. The mandate and function of the Commission are laid down by the ToR of the ACWC and include *inter alia* the promotion of the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children, the development of policies, programs and innovative strategies to promote and protect these rights, the enhancement of public awareness and education in this field, the building of capacities of relevant stakeholders at all levels towards the realisation of the rights of

women and children and the promotion of studies and research in this area. Its relationship with the AICHR has been described as problematic seeing that both “have continued to struggle in finding the optimum synergy to coordinate their respective competences” (Tan, 2011: 162).

(c) Cooperation with the EU

In the past decade, ASEAN has emerged as an active international player entertaining relations with other international regional and international organisations as well as key partner countries. These relations, by and large, exhibit the external face of the “ASEAN Way”, i.e. relying mostly on soft legal instruments (Cremona *et al.*, forthcoming). In the wider region, ASEAN presents itself as the “primary driving force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building” (Art. 41(3) ASEAN Charter). The external relations of ASEAN are to “adhere to the purposes and principles set forth in this Charter” (Art. 41(2)), which notably include the promotion of human rights.

Regarding the ASEAN-EU relationship in particular, it has a long history dating back to the 10th Meeting of the ASEAN Foreign Ministers in July 1977. At that meeting, ASEAN decided on taking up formal relationships with the European Economic Community. A Cooperation Agreement was signed on 7 March 1980. The dialogue was extended over the years and today includes a broad range of fields such as political-security cooperation, economic cooperation, and functional and development cooperation.⁴⁶

According to the EEAS, the EU is ASEAN’s third largest trading partner and the biggest provider of foreign direct investment in ASEAN. Besides these economic ties, on a political level, there are a growing number of visits by high-level EU representatives to ASEAN; the EU is an active member of the ASEAN Regional Forum (but not the East Asia Summit) and has established a dialogue on human rights. The EU Special Representative for Human Rights visited the AICHR, and the AICHR sent a delegation to the EU institutions (Key facts and figures EU-ASEAN, 2013).

Concerning the place of human rights in the EU-ASEAN relationship, Portela observed that “[o]n the political side, relations between the EU and ASEAN have long been strained by human rights issues”, referring to the crisis in Timor Leste and the political situation in Burma/Myanmar (2013: 14). More recently, however, these tensions eased due to tentative reforms in the latter (*id.*). In the formalised EU-ASEAN relations, human rights appear as common guiding principles, albeit with limited vision in terms of implementation. While the 2007 Nuremberg Declaration on an EU ASEAN Enhanced Partnership stresses the promotion of human rights as “universal values” in the preamble, the Plan of Action to Implement the Nuremberg Declaration only goes so far as to encourage the hosting of seminars on human rights and “other initiatives aimed at jointly exploring ways of strengthening exchanges, dialogue and capacity building related to the protection of human rights from a regional perspective” (2007: 1.2.6.). More recently, the Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017), adopted in April 2012 includes a section on cooperation in the field of human rights, which makes the pledge to

⁴⁶ See <http://www.asean.org/news/item/overview-of-asean-eu-dialogue-relations> [11 Dec 2013].

[s]upport the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR), as the overarching body for the promotion and protection of human rights in ASEAN through regional dialogues, seminars, awareness raising activities, exchange of best practices and other capacity building initiatives aimed at enhancing the promotion and protection of human rights through technical cooperation programmes as well as giving support to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (1.3.1).

2. South Asian Association of Regional Cooperation⁴⁷

The South Asian Regional Cooperation (SAARC) is a South Asian international organisation with currently eight Member States.⁴⁸ SAARC was founded by the SAARC Charter, adopted on 8 December 1985. While, according to Haas, “[h]uman rights issues emerged quite early, with a focus on women” within SAARC (2008: 308), there is no specific reference to human rights and related issues in the SAARC Charter. Nonetheless, several soft law and policy initiatives taken by the SAARC since its inception take into account and refer to various human rights causes and issues. Some of the salient features of the Charter potentially touch on human rights and include the following:

- promotion of peace, stability, amity and progress in the region;
- adherence to principles of the United Nations Charter;
- recognition of the fact that South Asian nations are bound by ties of history and culture;
- enhanced cooperation within their respective political and economic systems and cultural traditions;
- regional cooperation to improve the quality of life of its peoples;
- regional cooperation among Member States not to be inconsistent with bilateral and multilateral obligations (SAARC Charter, Art. I).

Since its foundation, SAARC has created various instruments relating to a multitude of human rights aspects and their implementation that are specific to South Asia. SAARC documents are mainly designed as ‘soft law’ instruments, similar to those of ASEAN. There are already several soft law instruments in place that attempt to guide policies of South Asian countries which may be seen as signs that SAARC as a regional institution might move in the future towards the adoption of a human rights instrument, although probably at first in “soft” form. However, regional political complexities and domestic issues are likely to delay the process of adoption of such an instrument in South Asia.

⁴⁷ This chapter was written by Venkatachala Hegde (Indian Society for International Law), Joris Larik (Leuven Centre for Global Governance Studies) and Monika Mayrhofer (Ludwig Boltzmann Institute of Human Rights, Vienna).

⁴⁸ Member States of SAARC are Afghanistan, Bhutan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka.

(a) Instruments

SAARC has adopted a number of instruments that broach human rights issues, the following of which – soft law but also legally binding treaties – fall into this category:

- **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was adopted in 2002. It is a binding regional international agreement and it incorporates several basic human rights provisions. It calls for the prevention of use of women and children in international prostitution networks, particularly where countries of the region are the countries of origin, transit and destination (Art. 2). It further emphasises that “the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights” (Preamble). The Convention envisages the establishment of a Regional Task Force to monitor and assess the implementation of the Convention (Art. VIII), which is composed of officials from the SAARC Member States (Art. VIII(3)). The Task Force has met regularly since 2007 to exchange information on best practices and draft reports, decide on the repatriation and rehabilitation of victims, develop communication networks, provide mutual legal assistance and extradite or prosecute offenders.

In addition, initiatives in the area of gender are the SAARC Gender Info Base, the SAARC Charter on Widows (2008) and the SAARC Gender Equality and Empowerment Programme (2011).

- **SAARC Social Charter**

The SAARC Social Charter was signed at the tenth Summit of the Heads of States in Colombo, Sri Lanka, in 1996. The principles, goals and objectives are laid down in Art. II of the Charter and can be summarised as follows: promotion of welfare in South Asia, improvement of the quality of life of the population, acceleration of economic growth, social and cultural development, and provision of the opportunity to all individuals to live in dignity and to realise their full potential. The implementation of the Charter should be guaranteed by the establishment of a *National Coordination Committee* and the formulation of a *National Plan of Action* in all Member States.

- **SAARC Charter of Democracy**

The SAARC Charter of Democracy was adopted as a non-binding instrument at the 33rd Meeting of the Council of Ministers in Thimphu, Bhutan, in February 2011. The objectives of the Charter are, *inter alia*, to reinforce the linkage of development and democracy, to promote sustainable development and alleviation of poverty through good governance, equitable and participatory processes, to strengthen democratic institutions and processes, to promote equality, to ensure gender mainstreaming in government and society, and to encourage all democratic forces in South Asia.

- **Poverty Alleviation, Health and Social Development**

Under the poverty alleviation programme, SAARC has repeatedly drafted regional poverty profiles in order to monitor poverty in the region and to share best practices on poverty

alleviation. Along with this, SAARC has taken several initiatives with regard to cooperating in the field of health since 1992.

(b) Institutions and mechanisms

The most important institutions of SAARC are the *Council of Ministers*, which decides on the general development and areas of cooperation of the organisation, the *Standing Committee*, responsible for the specification and implementation of decisions of the Council of Ministers, and the *Technical Committees*, which are entrusted with the implementation, coordination and monitoring of the programmes in their respective areas of cooperation.⁴⁹ The Technical Committee on Women, Youth and Children, entrusted with developing and monitoring the programmes in these fields, is the body responsible for human rights issues.

(c) Cooperation with other international organisations – ASEAN, EU and SAARC

In the global context all SAARC countries are part of the United Nations system. They have ratified all the major human rights instruments. Several SAARC countries are negotiating (or have already in place) free trade agreements (FTAs) or comprehensive economic cooperation agreements (CECAs) with their counterparts in ASEAN countries or the EU. These relationships are essentially bilateral.

In the area of human rights and other related fields these countries seem to prefer to work more on the basis of “soft law”, human rights instruments have mainly been taking the form of declarations for almost two decades. As could be seen from the above mapping, SAARC has adopted several soft-law instruments relating to democracy, social development, poverty alleviation and health. SAARC has also adopted legally binding international instruments in relation to women and children.

SAARC maintains relations with ASEAN in several respects. Some of the SAARC countries are dialogue partners with ASEAN and they regularly attend the ASEAN Summit in various capacities. The EU is an important partner for SAARC. The EU has been actively engaged with countries in South Asia, also regarding human rights initiatives. For instance, in the EU-Pakistan 5 year Engagement Plan, adopted in March 2012, both sides pledge to “use their institutional contacts to strengthen cooperation and exchange expertise on the functioning of civilian democratic bodies and safeguarding fundamental human rights and opposing extremist intolerance” (pt. 11). With regard to India, negotiations for a comprehensive FTA with the EU have been on-going since 2007. The agreement is prone to include human rights clauses, according to the EU’s general approach to trade agreements. Furthermore, the EU has been attending SAARC meetings, specifically SAARC Summits as an observer for almost a decade. Besides the EU, SAARC admitted nine other observers, namely China, the United States, Iran, Australia, Japan, South Korea, Mauritius, and Burma/Myanmar.

⁴⁹ See <http://saarc-sec.org/Technical-Committees/72/> [10 Dec 2013].

3. NGOs in the field of human rights

NGOs play a prominent role in the development of (sub-)regional human rights protection mechanisms in Asia. As indicated, the NGO *Asian Human Rights Commission* (AHRC) developed the Asian Charter on Human Rights in order to stimulate the debate on introducing a regional human rights system. AHRC was set up by a group of jurists and human rights activists in Asia in 1986. It pursues a broad range of human rights objectives such as the promotion and protection of human rights, awareness raising in this field or lobbying for the development of a regional human rights protection mechanism by involving civil society organisations in this process.⁵⁰

The number of NGOs working in the field of human rights in Asia has grown considerably over the last decades. According to Muntarbhorn, they exhibit quite a degree of heterogeneity:

While some take a low-key approach, others adopt a more assertive role. While some are linked with academic institutions, others are more grassroots-oriented. While some are more local in inputs and networking, others are more from the international field (2012: 15).

Other important networks of human rights NGOs or NGOs in the region are the *Asian Forum for Human Rights and Development*, based in Bangkok and with 47 member organisations from the region, and the *Asian Centre for Human Rights*, located in New Delhi. Both have consultative status with UN ECOSOC. Furthermore, there is a network called *Solidarity for Asian Peoples' Advocates*, a network of regional and national civil society organisations involved in ASEAN. This network was also engaged in the drafting process of the AHRD.

ASEAN provides for formal inclusion of civil society organisations. Based on Chapter V of the ASEAN Charter, the ToR of the AICHR mandates the AICHR to “engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders” (Art. 4.8). Such a forum of participation is the *ASEAN Civil Society Conference*, which mainly is organised alongside ASEAN summits. A similar institutionalised interaction with NGOs cannot, as of yet, be observed in the framework of SAARC.

4. Evaluation concerning influence, significance and achievements

Given the fact that there have been no noteworthy developments with regard to the establishment of a (sub-)regional human rights mechanism for a long time, the recent progress in the framework of ASEAN, and to a lesser extent in SAARC, can be regarded as positive initiatives. For example, although the adoption of the AHRD was criticised from many sides, it is seen as an important innovation. On the one hand, it clarified the mandate of the AICHR; on the other hand, it may serve as a precursor to a formal treaty for the region (Renshaw, 2013: 557-558). Both ASEAN and SAARC have adopted various human rights (-related) instruments, albeit mainly legally non-binding ones. Lastly, the growing number of human rights NGOs can be seen as a positive sign concerning the participation of the populations in the development and promotion of human rights issues and of a growing awareness of the populations in this field.

⁵⁰ See <http://www.humanrights.asia/about/objectives-of-the-ahrc> [11 Dec 2013].

Regarding cooperation with the EU in the field of human rights, the latter is active across the region. Next to important bilateral relationships, the inter-regional cooperation between the EU and ASEAN is particularly noteworthy. Building on a long-standing partnership, the EU takes an active part in ASEAN-led regional initiatives, while fundamental disagreements on the meaning and universality of human rights seem to have abated. Through their enhanced partnership, the EU is now actively supporting the AICHR and the other ASEAN human rights bodies. A similarly intense relationship between the EU and SAARC, by contrast, appears to be lacking, which is also due to the latter organisation's low profile compared to ASEAN.

D. Europe

Europe has a well-developed human rights system with several organisations responsible for the protection and promotion of human rights. The most important organisation in this regard is the Council of Europe (CoE) which set out to develop a human rights protection system in the 1950s. Today, the CoE has the most elaborated and far-reaching regional system in the field of human rights. Although initially reluctant to include human rights in its legal framework, the European Union (EU) has recently also taken crucial steps to ensure human rights protection within its competences and authorities and amended its legal framework and adopted new instruments. The third institution, which is worth mentioning in the European context is the Organisation for Security and Cooperation in Europe (OSCE). Although the significance of the OSCE in regard to establishing a human rights protection system is not comparable with those of the CoE or the EU, it has contributed to enhance the respect for human rights and raise awareness in the areas of its competences particular in those countries not covered by the other regional systems.

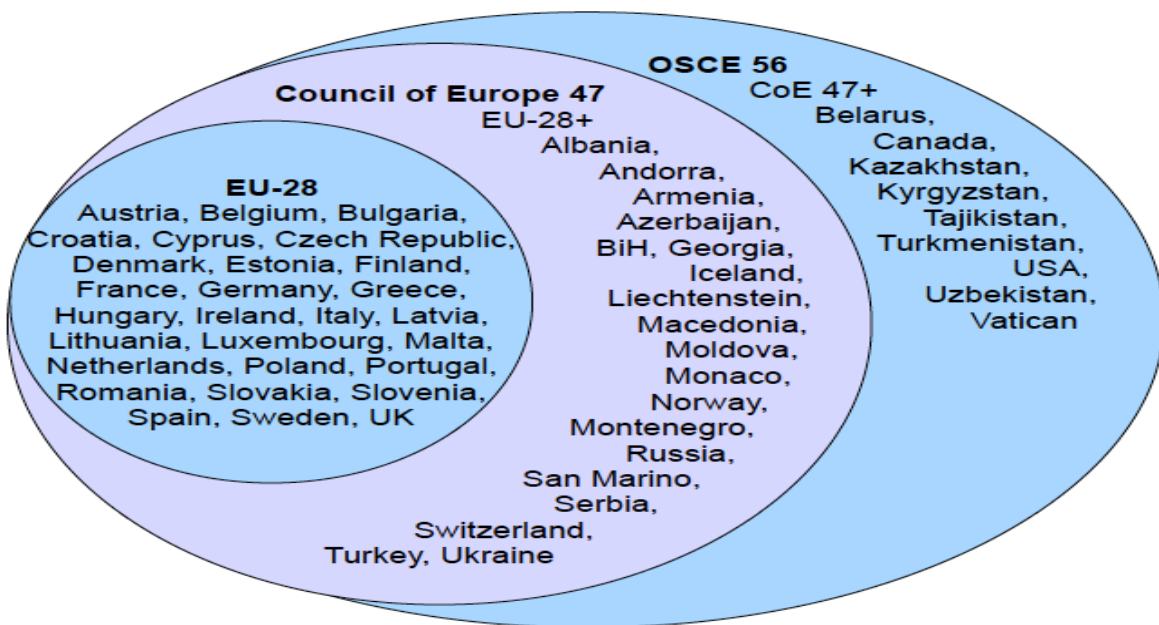


Figure 6 Member States of the European Union, Council of Europe and OSCE

1. The Council of Europe

The Council of Europe (CoE) is the core institution when it comes to enhancing human rights protection in Europe. The CoE was founded by ten states in 1949 and “has developed one of the most advanced systems for the protection of human rights anywhere in the world” (Smith, 2012: 97). The CoE is an international organisation with currently 47 Member States⁵¹ and is based in Strasbourg, France. The CoE aims at fostering co-operation in Europe and enhancing the protection and promotion of human rights. “Its efforts to promote social cohesion, cultural diversity and democratic citizenship, to combat racism and intolerance, to promote intercultural dialogue and to find common solutions to major problems play a crucial part in helping to form a stable, functional and cohesive Europe” (CoE, undated: 4).

(a) Instruments

Since its inauguration, the CoE has adopted more than 200 treaties, of which the majority has a focus on human rights. The most important human rights instrument is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Other key CoE human rights treaties are the European Social Charter (ESC), the European Charter for Regional and Minority Languages, the Framework Convention for the Protection of National Minorities, the European Convention on the Exercise of Children’s Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Convention on Action against Trafficking in Human Beings.⁵²

- **European Convention for the Protection of Human Rights and Fundamental Freedoms**

The ECHR is the most important European human rights instrument, which is underlined by the various titles used to emphasise its significance. So, it was termed the “flagship” (Nowak, 2012c: 121), the “prime instrument” (Smith, 2012: 97), the “principal achievement” (Greer, 2010: 458), the “heart” of European human rights protection (Tretter, 2008: 40) or even as a “European constitutional instrument of human rights” (Grabenwarter, 2012: 130). Steiner, Alston and Goodman point out that the ECHR is important within the context of international human rights law for several reasons: “it was the first comprehensive treaty in the world in this field; it established the first international complaints procedure and the first international court for the determination of human rights matters; it remains the most judicially developed of all the human rights systems, it has generated a more extensive jurisprudence than other parts of the international system; and it now applies to some 30% of the nations in the world” (2008: 933).

The ECHR was adopted in 1950 and came into force in 1953. It was developed in the wake of the experiences of the atrocities of the Third Reich and the Second World War. According to Art. 59 of the ECHR, the treaty is open for adoption for CoE members only. Since the adoption of Additional Protocol 11, it is indispensable to sign and ratify the ECHR in order to become a member of the CoE. The rights codified therein focus on civil and political rights: the right to life,

⁵¹ For details on Member States, see www.coe.int/en/web/portal/country-profiles [14 Jan 2014].

⁵² For a complete list of the Council of Europe’s treaties including information on membership and ratification see <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG> [15 Jan 2014].

the prohibition of torture, slavery and forced labour, the right to liberty and security, the right to a fair trial, the prohibition of punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, of assembly and association, right to marry, right to effective remedy and prohibition of discrimination in regard to the enjoyment of the rights and freedoms stipulated by the Convention. The ECHR further regulates the establishment and functioning of the European Court of Human Rights (ECtHR), “[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto” (CoE, Art. 19).

The ECHR has so far been amended and extended by 14 Additional Protocols, either pertaining to modifications in procedure or creating new rights.

- **European Social Charter**

The European Social Charter (ESC) was adopted in 1961 and entered into force in 1965. The ESC codifies social and economic rights and was amended several times so far. In 1996, a revised version of the Charter was developed which came into force in 1999. Both versions are simultaneously in effect, as some states have hitherto only ratified the first version. The ESC differs from the ECHR in several respects: First of all, states are not obliged to adopt the ESC as a whole – occasionally with a few reservations – but may accept provisions “à la carte”. Secondly, the ESC has no judicial complaints process, the compliance with the Charter is examined by an independent body of experts, the European Committee of Social Rights (ECSR). Thirdly, monitoring of the Charter mainly relies on a reporting system; the ESC does not envisage a right to individual complaint. However, a specific collective complaint procedure has been introduced in 1998 (Lukas, 2012: 135-136; Nowak, 2012c: 126; Greer, 2010: 459).

- **European Charter for Regional and Minority Languages**

The European Charter for Regional and Minority Languages was adopted in 1992 and aims at protecting and promoting regional or minority languages in the different countries and regions of Europe and prohibiting any discrimination relating to the use of a regional or minority language. The Charter is monitored by a Committee of Experts (see Smith, 2012: 100).

- **Framework Convention for the Protection of National Minorities**

The Framework Convention for the Protection of National Minorities (FCPNM) intends to ensure the protection of national minorities and of the rights and freedoms of persons belonging to those minorities. It was adopted in 1995 and requires states to “respect the rights of national minorities and develop their culture and identity” (Greer, 2010: 460). States are also obliged to ensure equality before the law and equal protection by the law of persons belonging to national minorities and to prohibit any kind of discrimination. Furthermore, States are called upon to adopt positive measures in all areas of life to ensure full and effective equality of persons belonging to national minorities. The implementation of the FCPNM is monitored by the Committee of Ministers of the CoE (see *infra*, next section).

- European Convention on the Exercise of Children’s Rights**

The European Convention on the Exercise of Children’s Rights is a legal instrument aiming at supplementing the United Nations Convention on the Rights of the Child. It introduces procedural measures to allow children to exercise their rights such as the right to be informed and to express his or her views in proceedings, the right to apply for the appointment of a special representative or the right to be assisted by an appropriate person (Art. 3-5). A Standing Committee is entrusted with reviewing the implementation of the Convention (Smith, 2012: 101).
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment intends to ensure the compliance with Art. 3 of the ECHR which stipulates that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. To this end, the Convention establishes a body, the European Committee for the Prevention of Torture, responsible for examining the treatment of persons detained by public authorities in order to strengthen the rights of those persons and prevent torture and other forms of inhuman and degrading treatment or punishment (see Greer, 2010: 459).
- Council of Europe Convention on Action against Trafficking in Human Beings**

The Council of Europe Convention on Action against Trafficking in Human Beings aims at preventing and combating trafficking in human beings, protecting the human rights of the victims of trafficking, ensuring effective investigation and prosecution and promoting international cooperation on action against trafficking in human beings (Art. 1).

(b) Institutions and mechanisms

The CoE consists of a highly developed institutional framework. The key institutions of the CoE are the Committee of Ministers, the Parliamentary Assembly (PACE), the European Court of Human Rights (ECtHR), the European Commissioner for Human Rights, the Congress of Regional and Local Authorities and the Conference of International Non-governmental Organisations. Furthermore, besides the ECtHR a number of specialised bodies are established to monitor the compliance with and the implementation of the human rights treaties such as the ECHR or the ECS.

- Committee of Ministers**

The Committee of Ministers is the key decision making body of the CoE. It is “the organ which acts on behalf of the Council of Europe” (Statute of the CoE, Art. 13) and is composed of the Foreign Ministers of Member States or their Permanent Representatives. The Committee of Ministers is entrusted with a broad range of responsibilities such as the consideration of “action required to further the aims of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters” (Statute of the CoE, Art. 15a) or to decide on all matters concerning the internal organisation and arrangements of the CoE, with binding effect (Statute of the CoE, Art. 16). Thus, the Committee of Ministers is entitled to decide on the further direction and objectives of the CoE, which are laid down in the programme of activities (Brummer, 2008: 59). In addition to the

programme of activities, it also adopts the budget of the CoE. Furthermore, the Committee of Ministers is engaged in political dialogue, it interacts with the Parliamentary Assembly (PA) as well as with the Congress of Local and Regional Authorities. It is entitled to admit new Member States, suspend or terminate membership, adopt recommendations to Member States (e.g. in accordance with its role concerning the implementation of the ESC) and implement cooperation and assistance programmes. Other key activities of the Committee of Ministers is the carrying out of monitoring activities in order to observe whether the Member States meet their obligations in regard to democracy, rule of law and human rights and to supervise the execution of the judgements of the ECtHR (ECHR, Art. 54).

- **Parliamentary Assembly**

The Parliamentary Assembly of the Council of Europe (PACE) is mainly a forum of deliberation, investigation and consultation. Its 318 members who are elected by national parliaments on a proportional basis meet four times a year in Strasbourg and are entitled to give recommendations to the Committee of Ministers, pass resolutions in order to present its perspectives and give opinions on the application of new members, treaty drafts and other issues. Further responsibilities include the monitoring of state compliance with CoE's obligations, the election of the European Commissioner for Human Rights (EComHR), the Secretary General as well as judges to the ECtHR from the list of three candidates presented by Member States. The PACE has no legislative power (Greer, 2010: 457-458).

- **European Court of Human Rights**

The ECtHR was established by Art. 19 of the ECHR in 1959. It is based in Strasbourg, France, and monitors the implementation of the ECHR. The number of ECtHR judges is equal to the number of Member States; currently there are 47 judges at the court. The ECtHR was completely reformed by the Additional Protocol Nr. 11 which entered into force in November 1998. The Court became a "professional full-time institution with responsibility for registering applications, ascertaining the facts, deciding if the admissibility criteria are satisfied, seeking friendly resolution, delivering legally binding judgements, and issuing advisory opinions at the request of the Committee of Ministers" (Greer, 2010: 463).

The ECtHR accepts inter-state cases and individual applications. Any Member State "may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto" by any other Member State (ECHR, Art. 33). Individual applications are accepted from any person, non-governmental organisation or group of individuals claiming that their rights according to the ECHR and its protocols are violated by a Member State (ECHR, Art. 34).

The organisational structure of the court consists of several bodies: the Plenary Court comprises all members of the court and is *inter alia* responsible for setting up Chambers, electing the Presidents of the Chambers of the Court or adopting the rules of the Court. When considering cases, the Court may sit in the following formations:

- Single judges mainly decide on the admissibility of cases.
- Committees of three judges may either decide on the admissibility of cases when passed on by single judges or pass a judgment based on well-established case law.
- Chambers of seven judges may decide on the admissibility of cases when no such decision was rendered by single judges or the Committees. They may further decide on a judgement if passed on by a committee. The Chamber also deals with the admissibility and merits of inter-State applications.
- Grand Chamber of seventeen judges decides on cases if it affects the interpretation of the ECHR or issues of general importance.

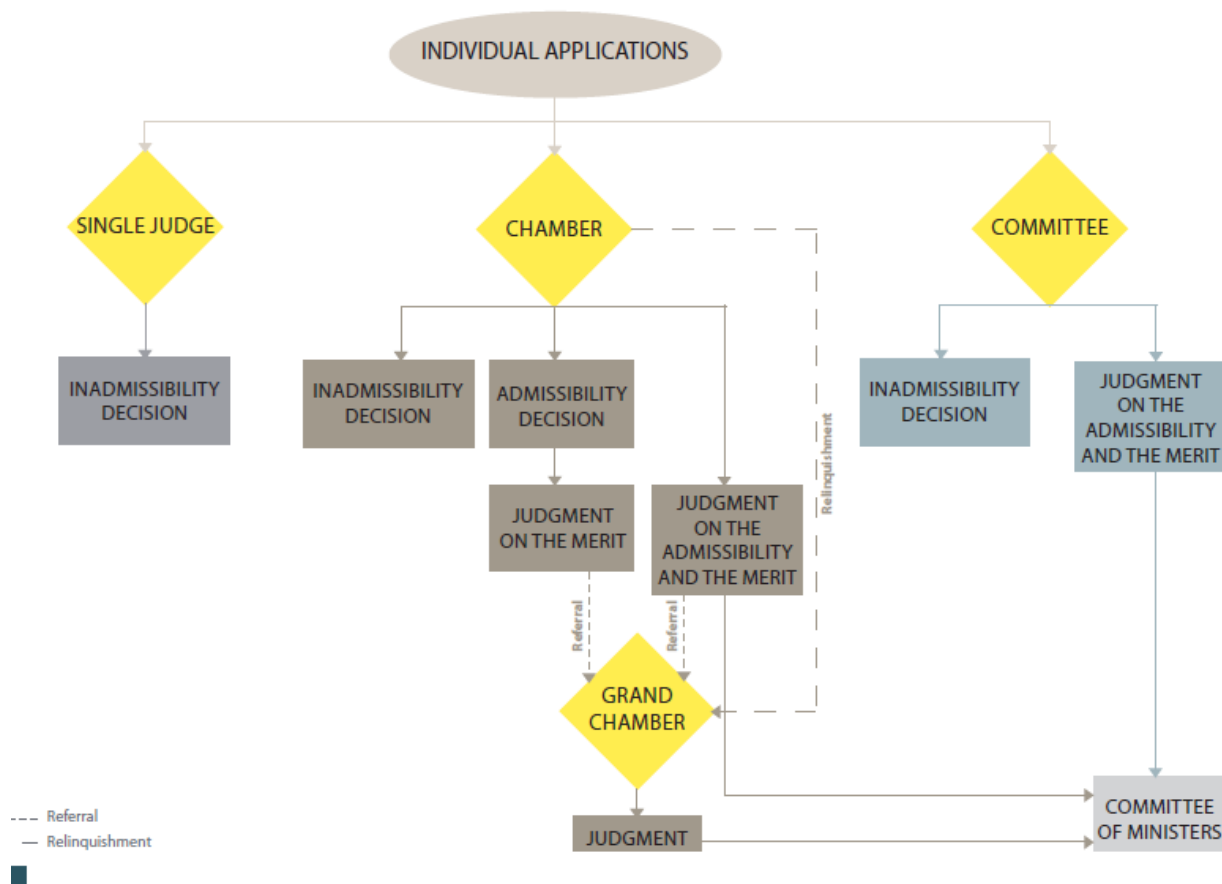


Figure 7 Simplified case-processing flow chart of the Court⁵³

- **CoE Commissioner for Human Rights**

The CoE Commissioner for Human Rights (CECHR) was established in 1999. The decision to introduce this post, however, was taken two years before at the Summit of Heads of State and Government of the CoE and included in the Summit’s action plan. The mandate of the CECHR is

⁵³ Source: ECtHR (2013: 11).

defined by CoE Resolution (99) 50, adopted on 7 May 1999. It commissions the CECHR to promote education in and awareness of human rights in the Member States, contribute to the promotion of the effective observance and full enjoyment of human rights in the Member States and provide advice and information on the protection of human rights and prevention of human rights violations. Furthermore, it entrusts the Commissioner with identifying possible shortcomings in the law and practice of Member States concerning the compliance with human rights and collaborating and cooperating with other CoE and other international institutions for the promotion and protection of human rights (Resolution (99) 50, Art. 3). The most important working tools of the CECHR are country visits (Kriebaum, 2012: 159).

- **European Committee of Social Rights**

The European committee of Social Rights is entrusted with monitoring whether State parties are complying with their obligations under the ESC. The Committee consists of 15 experts elected by the Committee of Ministers. The Committee reviews written reports submitted by State parties on a regular basis whether they are in conformity with the provisions of the ESC adopted by the respective State party. Its conclusions are published annually. The second monitoring instrument is the collective complaint system. The number of complaints submitted in particular by trade unions and NGOs has tremendously grown in the recent years. Since 1998, the Committee has received over 100 complaints (see also Lukas, 2012).

- **European Commission against Racism and Intolerance**

The European Commission against Racism and Intolerance (ECRI) was set up in order to combat racism, racial discrimination, xenophobia, antisemitism and intolerance in Europe from the perspective of the protection of human rights (CoE Resolution Res(2002)8). ECRI is an independent body and consists of 47 experts. Three procedures/tools are important for the work of ECRI: periodic country reports in order to monitor gaps and processes concerning the combat against racism, xenophobia and intolerance in the Member States, policy recommendations addressed to governments of Member States and cooperation with Civil Society Organisations (Liegl, 2012: 139-141).

- **European Committee for the Prevention of Torture**

The European Committee for the Prevention of Torture was established in 1989 and is responsible for examining the treatment of persons deprived of their liberty by public authority with the objective of strengthening their rights and preventing inhuman or degrading treatment or punishment. To this end the Committee conducts unannounced visits to detention places as well as formulates recommendation of legal, structural, institutional or systemic nature aiming at preventing future torture and other related incidents (Kozma, 2012: 146).

- **Group of Experts on Action against Trafficking in Human Beings**

The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established under Art. 36 of the CoE Convention on Action against Trafficking in Human Beings and consists of 15 independent experts. GRETA is responsible for monitoring the implementation of the

Convention. Its mode of operation is laid down in its Internal rules of procedure (GRETA, 2009, see also Sax, 2012: 151-157).

2. The European Union

Human rights played only a minor role in the history of the European Communities (EC), the predecessor of the EU. Since several preceding attempts to initiate a political union failed the establishment of the EC primarily aimed at economic integration. In doing so, it followed a neo-functional logic: integration in the economic sector should gradually have a spill-over effect on other sectors and eventually result in a closer cooperation and integration in the political sector as well. The founding Treaties therefore did not take into consideration human rights provisions, as they were not considered as being of high priority within this economy-orientated context. In addition, it was assumed that they were already addressed of by the CoE (Greer, 2010: 474). It was not until the Treaty of Maastricht in 1992, which established the EU, that human rights were considered in Art. F(2) of the Treaty on European Union (TEU): “[t]he Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.” On 22 June 1993 the European Council in Copenhagen agreed on the adoption of the so-called Copenhagen Criteria which included political principles such as stability of institution, democracy, the rule of law, human rights and the respect for and protection of minorities in the catalogue of criteria prospective Member States had to fulfil before becoming a member of the EU (see Fraczek, 2012: 204-206).

In the Treaty of Amsterdam, Art. F(2) of the TEU became Art. 6(2) and was supplemented by Art. 6(1) which incorporated the Copenhagen Criteria into the TEU: “[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” Two further amendments of the Amsterdam Treaty are important: Art. 7 introduced proceedings in case of a “clear risk of a serious breach by a Member State of principles mentioned in Art. 6(1)” and allowed for addressing “appropriate recommendations to that State.” Eventually, the said provision paved the way for the possibility “to suspend certain of the rights deriving from the application of this Treaty to the Member State in question” (TEU, Art. 6 (3)). The second innovation worth mentioning is Art. 13 (today Art. 19 of the Treaty on the Functioning of the European Union (TFEU)), that conferred on the EU the power to take appropriate action to combat discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

A considerable step forward in terms of anchoring human rights principles in the EU framework was the Treaty of Lisbon which states in the new Art. 2 of the then amended TEU that the “union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” In addition, Art. 6 TEU contains a reference to the Charter of Fundamental Rights of the EU (CFREU) which means that it obtains the same legal status as the TEU

and the TFEU after the entry into force of the Treaty of Lisbon (Tretter, 2012: 166-167) and stipulates that the “Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.” Concerning the EU’s external relations the TEU stipulates in Art. 21 that it should be guided by principles such as “democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

(a) Instruments

Next to the Treaties, the EU adopted several crucial instruments for the protection of human rights under its jurisdiction. The most important are the CFREU as well as instruments adopted on basis of primary law such as the Non-Discrimination Directives and instruments linked to the EU’s external relations policies.

- **The Charter of Fundamental Rights of the European Union**

In June 1999, the Council of the European Union launched the initiative to develop a Charter of Fundamental Rights of the European Union (CFREU). A Convention consisting of representatives of the EU, the Member States and civil society was set up to prepare a draft which was initially adopted as a legally non-binding instrument, however, as mentioned above, the Charter became legally binding with the adoption of the Treaty of Lisbon. The CFREU is divided into six chapters: dignity, freedoms, equality, solidarity, citizens’ rights, justice and general provisions. That already indicates a fundamental difference compared to the ECHR: the CFREU not only codifies civil and political rights but also social, economic and cultural rights such as Art. 15 “Freedom to choose an occupation and right to engage in work” or Art. 16 “Freedom to conduct a business.” Another right which is not included in the ECHR is Art. 18, the Right to Asylum. Although the CFREU partly overlaps with the ECHR, content wise, the wordings are not exactly the same. However, Art. 52(3) of the CFREU “requires the meaning and scope of rights found in both the Charter and ECHR to be interpreted in the same way as those found in the latter” (Greer, 2010: 476). That means that the respective CFREU provisions are to be interpreted in accordance with the corresponding rights of the ECHR (Tretter, 2012: 169). The rights listed in the CFREU are to be applied by EU institutions and Member States when implementing EU law (CFREU, Art. 51 (1)). In contrast, rights enshrined in the ECHR bind Member States in all their activities (Greer, 2010: 476, Smith, 2012: 113).

- **Non-discrimination Directives**

The accommodation of the principle of non-discrimination in EU law goes back to the founding Treaties containing provisions prohibiting the discrimination on grounds of nationality and introducing the principle of equal remuneration for equal work between men and women in order to ensure the objective of the free movement of persons, goods, services and capital. The principle of equal pay for men and women was made legally binding through Council Directive (75/117/EEC) of 10 February 1975 and the Equal treatment Directive (78/207/EEC) laid down the prohibition of direct and indirect discrimination on grounds of gender in the field of employment. The amendment of Art. 13 of the Treaty establishing the European Economic Community (TEEC) by the Treaty of Amsterdam in 1997 conferred on the EU the power to take appropriate action to

combat discrimination on grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Two directives were adopted on basis of this article, which later became Art. 19 of the TFEU: the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). The Directives prohibit direct and indirect discrimination in the field of employment on all grounds. The Racial Equality Directive goes beyond this scope and provides for the most comprehensive protection applying also to the field of social protection, social advantages, education as well as access to and supply of goods and services which are available to the public, including houses. Concerning gender discrimination the scope of protection not only covers the field of employment but also the access to goods and services.

- **Human Rights in EU External Relations**

As already mentioned above, the TEU determines that human rights are given a central role in EU external relations. Before the adoption of the Lisbon Treaty, the competence for introducing human rights considerations in EU external relations lied mainly with the Presidency of the Council. However, this responsibility has been transferred to the High Representative of the Union for Foreign Affairs and Security Policy (HR), who is also Vice-President of the European Commission and is supported by the European External Action Service (EEAS) (see Theuermann, 2012: 186). The EEAS can resort to a broad spectrum of different instruments when it comes to integrating human rights dimensions within its work. In 2011, the European Commission together with the HR released a *Joint Communication to the European Parliament and the Council*, outlining principles of a more effective approach to include human rights and democracy “at the heart of EU External Action” (COM (2011) 886 final). In 2012, the Council of the European Union (CoEU) adopted three “key documents regarding the EU human rights policy in its external action” (Theuermann, 2013: 31):

- The *EU Strategic Framework on Human Rights and Democracy* defines key areas and priorities of EU’s human rights action. The document states that the EU “is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union” (Council of the European Union, 2012: 1). The Framework stresses the EU’s commitment to the universality of human rights and reaffirms its determination to pursue coherent objectives in this regard. It emphasises its will to promote human rights in all EU external policies and to place human rights at the centre of the EU’s relations with all third countries. In addition, the EU “remains committed to a strong multilateral human rights system which can monitor impartially implementation of human rights norms and call all States to account” (Ibid.: 3). As a last point the framework contains a provision that the EU institutions “commit themselves to working together ever more closely to realise their common goal of improving respect for human rights” (Ibid.: 4).
- The objective of the *EU Action Plan on Human Rights and Democracy* is to implement the EU Strategic Framework mentioned above. “It builds upon the existing body of EU policy on human rights and democracy in external action, notably guidelines, toolkits

and other agreed positions and the various financial instruments, in particular the European Instrument for Democracy and Human Rights.” (Ibid.: 5) The Action Plan lists thirty six intended outcomes and the respective actions to be undertaken with a view to these outcomes.

- A decision to appoint an *EU Special Representative for Human Rights* in order to enhance “the Union’s effectiveness, presence and visibility in protecting and promoting human rights, notably by deepening Union cooperation and political dialogue with third countries, relevant partners, business, civil society and international and regional organisations and through action in relevant international fora” (Council Decision 2012/440/CFSP, Art. 2 (a)). The EU Special Representative for Human Rights is further supposed to support the EU policy objective of “improving the coherence of Union action on human rights and the integration of human rights in all areas of the Union’s external action” (Council Decision 2012/440/CFSP, Art. 2 (c)).

(b) Institutions and mechanisms

The EU consists of a highly developed institutional framework. The Institutions of the EU are the European Council, the European Parliament, the European Commission, the Council of the European Union, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors (TEU, Art. 13). The following Institutions and bodies are of particular importance in the context of human rights within their respective competences.

- **The Council of the European Union and its Human Rights-related Working Parties**

As an ordinary legislator of the EU, the Council is responsible for implementing human rights policies, notably through the adoption of secondary EU law. For instance, the abovementioned *Strategic Framework and Action Plan on Human Rights and Democracy* defines specific human rights responsibilities and action of the Council of the EU in various areas, e.g. in the fields of trade, enjoyment of human rights by LGBT persons or freedom of religion and belief. In discharging its legislative responsibility, the Council is assisted by a number of expert groups called “Working Parties”, “Working Groups” or “Preparatory Committees” entrusted with preparatory work on specific issues, including human rights.

In 1987, the Council of the European Union set up a Working Party on Human Rights (COHOM). Members of COHOM are human rights experts from Member States and the European Commission. Its initial mandate was extended twice and, in the beginning, focused “very much on the coordination of positions among the then 12 member States on human rights issues at the UN” (Theuermann, 2012: 186). In December 2003, the Council of the European Union decided “to extend the mandate of the Human Rights Working Group to include first pillar issues so as to have under purview all human rights aspects of the external relations of the EU” (Council of the European Union, undated, Annex 3).

Mirroring the outward-looking COHOM, the Council is also assisted, for what concerns so-called *fundamental rights* (i.e. human rights in the internal EU order), by a “Working Party on

Fundamental Rights, Citizens' Rights and Free Movement of Persons" (FREMP), which was established in 2005 by the Committee of Permanent Representative (COREPER) and made permanent in 2009 with a mandate covering "all matters relating to fundamental rights and citizens rights including free movement of persons, negotiations on accession of the Union to the ECHR, the follow-up of reports from the EU Agency for Fundamental Rights. The Working Party [meets] in different formations whenever necessary depending on the subject of the agenda" (Council of the European Union, 2014: 9).

- **The European Commission**

The main unit responsible for human rights in the European Commission is the *Directorate-General for Justice* (DG Justice). Human rights issues such as fundamental rights, EU citizenship and free movement, gender equality, non-discrimination, data protection or access to justice are part of DG Justice's portfolio. DG Justice publishes reports and studies such as studies on the rights of the child or, since 2010, annual reports on the application of CFREU. From 2002 to 2006 the European Commission established the *EU Network of Independent Experts on Fundamental rights*, which prepared a *Commentary of the Charter of Fundamental Rights* as well as several reports on the situation of fundamental rights in the EU.

The *EU Action Plan on Human Rights and Democracy* of 2012 contains also a broad range of responsibilities and tasks for the European Commission such as to incorporate human rights in all impact assessment or to work towards a rights-based approach in development cooperation.

- **The European Parliament**

Compared to national parliaments the competences of the European Parliament (EP) – the only directly elected EU-institution – were limited for a very long time. Only since the entry into force of the Lisbon Treaty on 1 December 2009 the competences and influence of the EP was considerably upgraded by extending the 'ordinary legislative procedure' (the former co-decision procedure) – which gives the EP an important role in the political decision-making process – to a vast majority of EU legislation. The EP states that "[h]uman rights are among the main priorities of the European Parliament. The Parliament is a key actor in the fight for democracy, freedom of speech, fair elections and the rights of the oppressed" (EP, 2013). Two sub-bodies of the EP are entrusted with dealing with human rights issues (Lunacek, 2012: 180).

- The Committee on Civil Liberties, Justice and Home Affairs on human rights topics in relation to EU Member States and
- the Sub-Committee on Human Rights, the task of which is to assist the Foreign Affairs Committee on human rights issues, the protection of minorities and the enhancement of democratic values in third countries.

The 2012 *EU Strategic Framework on Human Rights and Democracy* states, that the "European Parliament's democratic mandate gives it particular authority and expertise in the field of human rights. The Parliament already plays a leading role in the promotion of human rights, in particular through its resolutions. While respecting their distinct institutional roles, it is important that the European Parliament, the Council, the Member States, the European Commission and the EEAS

commit themselves to working together ever more closely to realise their common goal of improving respect for human rights” (Council of the European Union, 2012: 4).

- **The European Court of Justice**

The contribution of the European Court of Justice (ECJ) with regard to incorporating human rights principles into the EU legal framework is considerable. Already in 1974 the ECJ stated that “fundamental rights form an integral part of the general principles of law, the observance of which it ensures” (Nold v. Commission, 1974, Case 4/73; see also Greer, 2010: 475). The ECJ is responsible for interpreting and monitoring the application of EU law in all EU Member States (including the Non-Discrimination Directives and the CFREU). It decides on disputes between EU institutions and the Member States. Moreover, individuals, organisations and companies are entitled to call on the ECJ “if they believe their rights have been infringed directly by EU law, without any involvement of national authorities or based on national law” (Tretter, 2012: 171). There are two ways individuals can complain to the ECJ because they think their fundamental rights are violated: either directly – under very limited circumstances – or in case a national court asks the ECJ for a preliminary ruling “on whether Community law, including that relating to fundamental rights, has been violated. But this is not available to litigants ‘as a matter of right’” (Greer, 2010: 475).

- **The European External Action Service and the Special Representative on Human Rights**

The European External Action Service (EEAS) was established as a functionally autonomous body of the EU by Art. 27 (3) TEU and Council Decision 2010/427/EU. The EEAS is headed by the High Representative for Foreign Affairs and Security Policy (HR). The EEAS supports the HR in fulfilling his/her mandates and assists “the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective function in the area of external relations” (Council Decision 2010/427/EU, Art. 2). As mentioned above, Art. 21 of the TEU obliges the EU to be guided by human rights principles in its external relations. In the *EU Strategic Framework and Action Plan on Human Rights and Democracy* this commitment was reiterated, including a catalogue of proposed human rights action in the context of external relations. Thus, the EEAS carries out a broad range of tasks concerning human rights issues, e.g. provide training on human rights and democracy for all staff, create a network of focal points on human rights and democracy in EU Delegations and Common Security and Defence Policy (CSDP) missions and operations or organise periodic exchanges of views among Member States on best practices in implementing human rights treaties in order to achieve greater policy coherence (Council of the European Union, 2012). The Special Representative of Human Rights, who was appointed in 2012 and who acts under the authority of the HR, further “increased the high-level representation of the EU in human rights issues at international meetings, conferences or dialogues” (Benedek, 2013: 70-71).

- **Fundamental Rights Agency**

The EU Fundamental Rights Agency (FRA) was established by Council Regulation (EC) No 168/2007 with the objective “to provide the relevant institutions and authorities of the Community and its Member States when implementing Community law with information,

assistance and expertise on fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights” (Art. 7). The FRA succeeded and built upon the European Monitoring Centre on Racism and Xenophobia and has its office in Vienna. The main task of the FRA is to provide the EU institutions and Member States with independent, evidence-based advice on fundamental rights by collecting and analysing information and data, providing assistance and expertise and communicating and raising rights awareness (FRA, 2012:7). For this purpose it publishes reports on numerous issues elaborated partly with the assistance of FRANET, a network of focal points in all member states. The thematic scope of the FRA’s work is assigned by a multi-annual framework adopted by the Justice and Home Affairs Council of the European Union.

- **The European Instrument for Democratisation and Human Rights (EIDHR)**

The EIDHR was launched in 2006 as a continuation of the European Initiative for Democratisation and Human Rights. The EIDHR “has a broad scope of action. Its aim is to provide support for the promotion of democracy and human rights in non-EU countries,” notably where there is no established development cooperation with the EU.⁵⁴ The EIDHR’s budget is significant (more than 1 bn EUR 2007-2013) and serves to finance development projects aiming to promote democracy and human rights. “The key objectives of the EIDHR are:

- Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk;
- Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation;
- Supporting actions in areas covered by EU Guidelines: dialogue on Human rights, human rights defenders, the death penalty, torture, children and armed conflicts and violence against women;
- Supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law and the promotion of democracy;
- Building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through monitoring electoral processes.”⁵⁵

⁵⁴ See <http://www.eidhr.eu/whatis-eidhr> [30 Jan 2014].

⁵⁵ *Ibid.*

3. The Organisation for Security and Cooperation in Europe

The OSCE is the successor of the *Conference on Security and Co-operation in Europe* (CSCE), which started its process in 1973. In the Final Act of the Helsinki Conference (signed in 1975) the participating 35 States declared their “commitment to peace, security and justice and the continuing development of friendly relations and co-operation.” The Final Act lays down ten principles guiding the relationship between participating states. Principle VII proclaims the respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief. The CSCE, which became the OSCE in 1994, aimed at assisting to manage the post-Cold War transition in Europe. Its primary functions today are still focusing on security issues such as crisis management, conflict prevention and post-conflict rehabilitation (Greer, 2012: 455).

Although the OSCE has not codified a legally binding human rights treaty of its own it “aims to utilise human rights in an attempt to secure and maintain peace in the region. [...] The protection of human rights per se is not an enforceable goal – rather, the development of a culture of respect for human rights and, ergo, the evolution of democratic and peaceful societies is” (Smith, 2012: 109). The OSCE is the biggest regional security organisation in the world and has put a considerable emphasis on the human dimension of security issues. Human rights “principles were included as an explicit and integral element of a regional security framework, on the same level as politico-military and economic issues” (Ganterer, 2012: 215). The following organs are important as concerns human rights.

- The *Office for Democratic Institutions and Human Rights* (ODIHR) describes itself as the human rights institution of the OSCE (ODIHR Factsheet, undated). It supports democratic elections, respect for human rights, tolerance and non-discrimination and the rule of law. To this end, the ODIHR observes elections, promotes and monitors respect for human rights by disseminating information, providing training and assistance to national human rights institutions or strengthening NGOs. Furthermore the ODIHR runs democracy assistance projects throughout the OSCE region (ODIHR Factsheet; Smith, 2012: 110).
- The position of the *High Commissioner on National Minorities* (HCNM) was established at the CSCE Helsinki Summit in 1992. The HCNM’s “role is to provide early warning and take appropriate early action to prevent ethnic tensions from developing into conflict” (HCNMS Factsheet, undated). The mandate of the HCNM entrusts him or her with the task to provide “early warning” and “early action [...] in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the OSCE area” (HCNM Factsheet, undated; see also Nowak, 2012b).
- The *Representative on Freedom of the Media* (RFM) was established in 1997 in order to facilitate and promote the implementation of media freedom principles and commitments of the OSCE. The main duty of the RFM is to respond “rapidly to serious non-conformity by participating States with relevant commitments” (Mijatovic, 2012: 229-230).

4. Cooperation of the EU with the CoE and the OSCE

(a) EU cooperation and relationship with the CoE

The EU and the CoE have been actively cooperating through Joint Programmes, which were initially launched in 1993. Joint programmes focused on the cooperation with countries, which have joined the CoE since 1989 or have applied for EU membership (Council of Europe and European Commission, 2001). Joint Programmes are aiming at enhancing and supporting legal and institutional reform. They are either country specific or focusing on specific regional or multilateral topics, for example on national minorities, awareness-raising in regard to the abolition of the death penalty, combating organised crime and corruption, the promotion of the ESC and a programme to strengthen democracy and constitutional development.⁵⁶

In April 2001, the *Joint Declaration on Cooperation and Partnership* was signed by the CoE and the European Commission. It declared that the CoE and the EC share common values and pursue the same objectives in reference to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law and laid down the commitment to further enhance the cooperation in these fields by systematically engaging in regular dialogues and planning the management and implementation of joint programmes (*ibid.*). In order to further develop their relationship, the CoE and the EU signed a *Memorandum of Understanding between the Council of Europe and the European Union* in May 2007. The document defines purposes and principles of co-operation in the fields of human rights and fundamental freedoms, rule of law, legal co-operation and new challenges, democracy and good governance, democratic stability, intercultural dialogue and cultural diversity, education, youth and the promotion of human contacts and social cohesion. The arrangements for cooperation identified by the Memorandum are reinforced dialogue on policy issues, regular exchanges of information and development of common views and initiatives, coordination of operational activities in priority areas, consultation between networks and bodies with activities in the same priority or focal areas, partnership with states benefiting from activities and programmes and joint activities and events (Council of Europe and European Union, 2007: 4-7).

On 1 December 2009, the Treaty of Lisbon entered into force amending Art. 6 of the TEU which contains a paragraph that the EU will accede the ECHR. TEU Art 6 (2) and 6 (3) reads as follows:

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. (TEU, Art. 6 (2) and Art. 6 (3))

⁵⁶ See <http://www.jp.coe.int/default.asp> [4 Dec 2013].

On 1 June 2010, the CoE *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms* entered into force. Art. 17 of the Protocol inserted a second paragraph to Art. 59 of the ECHR which paved the way for the EU to accede the Convention.

Official talks regarding the process of the EU accession to the ECHR were launched on 7 July 2010. The latter was provisionally concluded with the finalisation of the draft accession agreement of the EU to the ECHR on 5 April 2013. It is now up to the ECJ to give an opinion on the document.⁵⁷ The accession of the EU to the ECHR “will further strengthen the protection of human rights in Europe by submitting the Union’s legal system to independent external control” (CoE, 2009: 1).

(b) EU cooperation with the OSCE

Apart from the fact that all EU Member States are also members of the OSCE, both organisations are cooperating in several ways such as joint programmes or assistance in elections observation and enhancing national human rights institutions in new democracies. Since the entry in force of the Treaty of Lisbon, the TEU stipulates in Art. 21 that the “the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders.”

Furthermore, the EU is participating in the OSCE’s activities in several ways. The Delegation of the EU is considered to be part of the Delegation of the OSCE Member State holding the Presidency of the Council of the EU and, thus, is also included in all OSCE decision-making bodies. In addition, the EU supports the OSCE financially and EEAS represents the EU within the OSCE.⁵⁸

5. NGOs in the field of human rights

Human rights NGOs are actively involved at national as well as at European levels in Europe. There are well-established participatory mechanisms within the CoE and the EU.

Currently, 198 NGOs with human rights competences are registered with the CoE. They can participate through the *Conference of International Non-Governmental Organisations of the Council of Europe*. The CoE cooperation with NGOs goes back to the initial years of the CoE. Resolution (51) 30 F, adopted on 3 May 1951, entitles the CoE Committee of Ministers to “make suitable arrangements for consultation with international non-governmental organisations which deal with matters that are within the competence of the Council of Europe.” In 1952, the CoE granted consultative status to NGOs. The status was changed to participatory status by the Committee of Ministers’ Resolution Res(2003)8, which allows for addressing memoranda to the Commissioner for Human Rights, providing expert advice on CoE policies, programmes and actions or being invited to activities such as seminars, conferences and colloquia. In order to be granted participatory status NGOs have to pass a certain procedure defined by

⁵⁷ For details on the process please consult <http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention> [19 Jan 2013].

⁵⁸ See http://eeas.europa.eu/delegations/vienna/eu_osce/index:en.htm [20 Jan 2014].

the said resolution. NGOs holding participatory status constitute the Conference of NGOS of the CoE. In 2005, the Conference of NGOs was acknowledged as one of the four political pillars of the CoE. The Conference is assisted by a Bureau and a Standing Committee, which “ensures consistency in the work of the committees and compliance with the major policy lines defined by the Conference” (Totsi, undated). The Committees of the Conference are responsible for developing the thematic activities in fields such as human rights, democracy, social cohesion and global challenges, culture and education and gender equality (*ibid.*).

EU cooperation with NGOs in the field of human rights takes place through several bodies and instruments. Firstly, the EEAS consults with several NGO networks including CONCORD, the European Network of Foundations for Democracy Support, the European Network of Independent Political Foundations in Democracy Promotion and Development Cooperation, the European Peacebuilding Liaison Office and the Human Rights and Democracy Network.⁵⁹ Furthermore, the EEAS is committed to supporting Human Rights Defenders. To this end, in 2004 the European Council has adopted the *European Union Guidelines on Human Rights Defenders* in order to provide practical suggestions for enhancing EU action in relation to this issue (European Council, 2004: 1). Secondly, the annual *EU-NGO Forum on human rights* brings together EU bodies, Member States and NGOs in order to discuss current human rights issues and how the EU can promote and protect human rights. Thirdly, the *European Instrument for Democracy and Human Rights* (EIDHR) is a financing instrument for the promotion of democracy and human rights worldwide, which was adopted by Regulation (EC) No 1889/2006 on 20 December 2006. The EIDHR aims at supporting and strengthening the role of civil society organisation in the promotion and protection of human rights. Fourthly, the EU Fundamental Rights Agency includes NGOs through its *Fundamental Rights Platform*.

6. Evaluation concerning influence, effectiveness and achievements

European regional human rights protection mechanisms play a pioneering role in comparison to other regional systems. Especially the CoE has done unprecedented groundwork in regard to building up a regional human rights protection system and even equipping it with a judicial mechanism at supranational level. The ECHR is assessed to be “the most sophisticated and effective human rights treaty in the world” (Smith, 2012: 115), having established the most advanced supranational human rights judicial body, the ECtHR, which “through its consistent case law has developed the most comprehensive jurisprudence on human rights” (*ibid.*). Its rulings are considered to be authoritative and the court is contributing to further interpreting and developing the ECHR. On the downside, the CoE fails to adequately address economic, social and cultural rights. The ECHR’s success also poses serious problems to the ECtHR, which became apparent by an increasing individual application rate. Protocol No. 14 aims at tackling this problem, the official review, to be conducted between 2012 and 2015, will show if it managed to do so (see Greer, 2010: 477).

The EU recently also made significant efforts to strengthen its human rights dimension. Not least because of its non-discrimination law the EU “has a strong enforceable system of securing social rights and regulating the rights of workers in the labour market” (Smith, 2012: 116). The adoption of the

⁵⁹ Please consult http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm [5 Dec 2013].

CFREU and the envisaged accession of the EU to the ECHR are further favourable developments in regard to enhancing a comprehensive European human rights protection system. The EU is said to have moved away from a mere economic organisation concentrating on the completion of an internal market towards a multilevel system, which goes beyond the narrow economic focus. Human rights play an important role in this context and “have been allocated a central place in the constitutional framework and legal discourse of EU following the Lisbon Treaty” (de Búrca, 2011: 495). However, Douglas-Scott points out that the “EU’s very *design* reveals its limited capability as a human rights organisation. The Charter of Fundamental Rights does not declare a freestanding fundamental rights competence for the EU but only applies to EU institutions and to the Member States in certain circumstances” (Douglas-Scott, 2011: 680). Likewise, de Búrca argued that this formal constitutional framework is often inconsistent with the evolving human rights practices of European governance such as the EU anti-discrimination regime, the activities of the European Commission or the Fundamental Rights Agency (de Búrca, 2011: 496).

The particular strength of the OSCE lies in the development of soft law and, thus, enhancing discussions on human rights matters in countries which are not Member States of either the EU or the CoE.

E. Islamic human rights systems

There have been several initiatives to launch specific instruments in order to ensure human rights protection in regions with an Islamic (legal) tradition. According to Marboe (2012: 261), those initiatives “reflect different perceptions and developments of the Islamic perspective on human rights. While at a certain period of time, in particular after the Islamic revolution in Iran in 1979, the concept of human rights was rejected by several Islamic States as a ‘Western’ product and a ‘new form of colonialism’, the more recent initiatives show a genuine interest in the idea of human rights and the search for ways and means of defining and implementing Islamic conceptions of human rights.” The most contested issue in this context was the question whether the principles enshrined in the UDHR are compatible with the Shari’a, the Islamic law (Hayatli, 2012: 2). A potential source for dispute is the conception of Islamic rights which recognises two types of rights: “rights that humans are obliged – by virtue of being the creations of God – to fulfil and obey; and rights that they are entitled to expect from their fellow human beings” (*ibid.*). This concept potentially contravenes the idea of “universality”, the ‘Western’ concept of human rights is based on. Nevertheless, there are several attempts to develop a human rights instrument in the Islamic region. The following instruments will be elaborated briefly in this context: the *Universal Islamic Declaration of Human Rights*, the *Cairo Declaration of Human Rights in Islam* and the *Arab Charter on Human Rights*.

1. The Universal Islamic Declaration of Human Rights

The *Universal Islamic Declaration of Human Rights* was adopted by the *Islamic Council* in 1981 and is “inspired” by the UDHR (Marboe, 2012: 262). The Islamic Council is a private organisation based in London. The Declaration’s objective is to demonstrate “that human rights are firmly rooted in Islam and that they are an integral part of the overall Islamic order” (*ibid.*). The Declaration has no legally binding force.

2. The Cairo Declaration of Human Rights in Islam

In 1990, the *Ministers of Foreign Affairs* of the *Organisation of Islamic Cooperation* (OIC) adopted the *Cairo Declaration on Human Rights in Islam*. Currently, the OIC consists of 57 self-declared Muslim states from the Middle East, Asia, Africa and Latin America.⁶⁰ The basic document of the OIC is the *Charter of the Organisation of the Islamic Conference*, which states in its preamble that the Member States are determined “to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems” (Charter of the Organisation of the Islamic Conference, 1).

The Cairo Declaration has attracted much criticism as it is at odds with some basic provisions of the UDHR. The Declaration only acknowledges rights that are in line with the Shari’a. Thus, it does not accept freedom of religion and equality between women and men. The Declaration is not legally binding.

In 2005, the OIC announced the Ten Year Programme of Action, which focuses on human rights as a main priority. In 2011, the OIC established the Independent Permanent Human Rights Commission. According to the Charter of the OIC the “Independent Permanent Commission on Human Rights shall promote the civil, political, social and economic rights enshrined in the organisation’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values” (Charter of the Organisation of the Islamic Conference, Art. 15). Although the new Commission is problematic in some ways, including “its limited independence in relation to member states, its location in Saudi Arabia, the lack of human rights expertise of some experts, and its potential to be used as a tool in the struggle to further the anti-defamation agenda” (Juul Pedersen, 2012: 6), there are also several encouraging signs. Accordingly, Juul Pederson points out that the Commission was set up with strong political support from all Member States, the Commission provides an important arena forum for internal criticism and introspection, the majority of the Commission members have expertise at national, regional or international level, the Commission may involve the OIC in new fields of human rights and it may become a driving force for increased cooperation between the OIC and civil society (*ibid.*: 7).

3. The Arab Charter on Human Rights

In 1994, the *League of Arab States*⁶¹ (LAS) developed the *Arab Charter on Human Rights*. The history of the development of this Charter started already in 1960, when the Union of Arab Lawyers called upon the League to adopt an Arab Convention on Human Rights (Al-Midani, 2006: 147). However, this first draft was not ratified by any State. In 2003, the LAS Council assigned the Arab Commission on Human Rights, an Arab human rights NGO, to revise the first document. As the subsequent draft raised criticism about not being consistent with international human rights law, the LAS assigned “seven experts from Arab countries who were members of UN treaty bodies or special procedures to revise the draft

⁶⁰ For details on Member States see http://www.oic-un.org/about_oic.asp#Members [16 Jan 2014].

⁶¹ The League of Arab States currently consists of 22 Member States in Africa and Asia. The organisation is based on the Charter of Arab League. For details on Member States please consult www.lasportal.org [16 Jan 2014].

Charter” (Rishmawi, 2010: 170). The revised draft was praised to be in line with international human rights law, yet, prior to its adoption by the Summit of the LAS, problematic modifications were made by the Council of the LAS (Ibid.). The resulting document entered into force in 2008 and was ratified by all 22 LAS Members.

The *Arab Charter on Human Rights* comprises 53 Articles, stipulating collective as well as individual rights, laying down obligations by the State Parties and defining a supervisory mechanism. According to Art. 1, one of the objectives of the Charter is “to place human rights at the centre of the key national concerns of Arab States, making them lofty and fundamental ideals that shape the will of the individual in Arab States and enable him to improve his life in accordance with noble human values” (Arab Charter on Human Rights, Art. 1 (1)). Art. 2 defines collective rights such as the right of all peoples to “self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development” (Arab Charter on Human Rights, Art. 2 (1)). According to Al-Midani (2006: 148-149) the remainder of the Charter can be divided into four main categories:

- individual rights such as the right to life or the right not be subjected to torture,
- rules of justice including e.g. the right of all persons to be equal before the law and to due process and fair trial,
- civil and political rights such as the right to freedom of movement or the right of respect for private and family life, and
- economic, social and cultural rights including e.g. the right to work or the right to social protection.

Art. 45 of the Arab Charter envisages the establishment of an Arab Human Rights Committee, which is entitled to receive and review State reports. Art. 48 gives the Committee the right to receive reports by State Parties “on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof” (Arab Charter on Human Rights, Art. 48 (1)). The Committee was introduced in 2011 and has received a few reports so far (Marboe, 2012: 264). In 2013, the Arab League decided to establish an Arab Court of Human Rights, the seat of which is planned to be in Bahrain.

Although the Arab Charter of Human Rights contains an “affirmation of current international human rights standards” (Rishmawi, 2010: 171), it was criticised for containing some problematic stipulations. Rishmawi (2010: 171-172) raises amongst others the following contentious points: The Charter contains a problematic reference to Zionism, some economic and social rights are not granted to all persons under the jurisdiction of the State, some rights are dependent on interpretations of Islamic Shari’a, death penalty against children is permitted if provided by national law and the criteria for limiting freedom of thought, conscience and religion are not in line with those of the ICCPR.⁶²

⁶² For a detailed discussion, see Rishmawi (2010: 169-178).

4. NGOs in the field of human rights

Human rights NGOs in the “Islamic” region or with an Islamic background are involved in many ways in pushing forward human rights issues in the region. They are trying to acquire influence or be involved in the following ways:

- Human rights NGOs are involved in drafting human rights documents. Thus, they developed the Universal Islamic Declaration of Human Rights or the Arab Charter on Human Rights.
- Human rights NGOs are integrated in a formal way through the OIC Independent Permanent Human Rights Commission. The Statute of the OIC Independent Permanent Commission on Human Rights says that the “[c]ommission shall promote and support the role of Member State-accredited national institutions and civil society organisations active in the area of human rights in accordance with the OIC Charter and work procedures” (Art. 15).
- Human rights NGOs are further consulted in informal ways. In October 2009, the Arab Human Rights Committee invited four international and regional human rights organisations⁶³ to a meeting in order to engage in a dialogue. The Committee “promised to ensure regular access for the NGOs to its sessions, although it did not make any commitment for NGOs to attend the meetings with State officials at which State party reports are considered” (Rishmawi, 2010: 174).

5. Cooperation with the EU

The EU cooperates with the Arab League. On 13 November 2012, the Ministers of Foreign Affairs of the European Union and the Arab League met for the second ministerial conference between the European Union and the League of Arab States. At this occasion, the Cairo declaration was adopted which includes confirmations to increase cooperation in human rights matter. In June 2013, the OIC opened a permanent office in Brussels.

6. Evaluation concerning influence, effectiveness and achievements

There were several initiatives to introduce human rights instruments by especially taking into consideration the Islamic context. For a long time these instruments remained without legal binding force and were rather a controversial contribution to the discussion on the universality of human rights. The only instrument, which is legally binding, is the *Arab Charter on Human Rights*. As the treaty has only entered into force recently it remains to be seen how the newly established Committee and the planned Court will substantiate and enhance the significance of the Charter.

⁶³ Amnesty International, the International Federation for Human Rights, the Cairo Institute for Human Rights Studies and the Arab Organisation for Human Rights.

IV. National human rights systems

1. National Human Rights Institutions: an introduction⁶⁴

National human rights institutions (NHRIs) are bodies with a mandate in domestic law to monitor, promote and protect human rights in a given country. NHRIs have been developing since shortly after the second world war, in Europe and in the world (Cardenas, 2003), but international standards regarding their responsibilities, composition and working methods were only established in 1993 by a UN General Assembly resolution on NHRIs (A/RES/48/134, 1993) adopting the so-called “Paris Principles” (PPs). By so doing, the UN GA inaugurated a new harmonised global framework defining the form, mandate and function of such institutions. There are now over 100 NHRIs on all continents, and their number keeps growing (Wouters and Meeuwissen, 2013). For example, in the mid-2000s NHRIs were created in Qatar, Morocco, Egypt, Jordan and Tunisia, and very recent steps have been taken to set up a NHRI in Libya.

The main idea behind the formalisation of NHRIs was to establish a network of reliable national focal points linking the international human rights system with national implementation. The PPs first identify NHRIs’ responsibilities, which include monitoring the national human rights situation and promoting compliance with international human rights obligations, advising governments and public authorities on any matter relating to human rights, reviewing legislation and providing legal advice in this respect, investigating and reporting on human rights violations, conducting human rights education, combating discrimination, and cooperating with international and regional bodies and other NHRIs (A/RES/48/134, Annex, Art. 3).

With regard to criteria pertaining to NHRIs’ form, composition and functions, the intention underlying the PPs is the promotion of genuinely independent NHRIs overseeing human rights at the national level. The PPs therefore establish six types of standards aiming to guarantee the effectiveness and independence of NHRIs with respect to the following: (i) mandate and competence (a broad mandate, based on universal human rights norms and standards); (ii) autonomy from government; (iii) independence as guaranteed by statute or the Constitution; (iv) pluralism; (v) adequate resources; and (vi) sufficient powers of investigation (A/RES/48/134, Annex).⁶⁵

The criteria contained in the PPs are now universally recognised as the minimal standards for effectively functioning NHRIs. In order to promote the PPs and assist NHRIs in complying with them, but also to lead, coordinate and represent the global network of NHRIs, the International Coordinating Committee for NHRIs (ICCom) was created in 1993 as an international association under Swiss law. The ICCom attributes different statuses to NHRIs reflecting their degree of compliance with the PPs. Status is granted by a Sub-Committee on Accreditation (SCA) consisting of one representative from an A-status NHRIs (see *infra*) from each of these four regions: Africa, Americas, Asia, and Europe. The OHCHR is also

⁶⁴ This chapter was drafted by Kristine Yigen (Senior Adviser, Danish Institute for Human Rights), with the assistance of Nicolas Hachez and Katrien Meuwissen (Leuven Centre for Global Governance Studies).

⁶⁵ See more particularly <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx> [30 January 2014].

a permanent observer to the SCA (and serves as the seat of the ICCom). SCA members are appointed by their regional group for a three-year period (renewable).

The SCA reviews the mandate, composition and functions of NHRIs in order to evaluate their compliance with the PPs. Those NHRIs which are in full compliance with the PP are accredited as “A-Status” institutions, and are as a result granted voting rights in the ICCom. They may also be elected to the bureau of the ICCom (i.e. its board). A-Status also allows access to international fora, most prominently the UN Human Rights Council (notably during all phases of the UPR), but also to the Special Procedures, and the Treaty Body System (see *supra*). B-Status NHRIs only partially comply with the PPs and receive observer rights in the ICCom, which allows them to participate in proceedings, but not to speak on agenda items in the general meeting, to vote or be elected to the bureau or in the sub-committees. They may also not participate in UN Human Rights Council sessions.⁶⁶ C-Status institutions, which do not comply with the PPs, have no rights in the UN forums or in the global NHRI network, but may attend the meetings of the network if allowed by the chair of the bureau. Accredited NHRIs are reviewed every five years.⁶⁷ Over the years, the accreditation process has been strengthened, and now includes an appeals process, greater transparency, more rigorous preparation before accreditation sessions and more focused recommendations to NHRIs to foster compliance with the PPs (FRA, 2010: 12). It however still arguably suffers from a variety of flaws, such as for example a tendency to evaluate NHRIs “on paper” rather than “in practice” (De Béco 2013: 261). The accreditation process is also useful in that NHRIs regularly use the recommendations of the SCA in their discussions and negotiations with their national governments on renewing their mandates.

European A-Status NHRIs are generally characterised by a broad human rights mandate, enshrined in an Act of the National Parliament. As of August 2013, there were 41 NHRIs in the geographic region of Europe, 29 of which in EU Member States and 37 in CoE Member States. 21 of those NHRIs have A-Status, while 11 have B-Status and 3 have C-Status (Kohner, O’Brien and Yigen, 2013). In the EU, 12 NHRIs currently have A-Status, 8 have B-Status, one has C-Status (Nowak, 2013: 18-19).

2. Varieties of NHRIs (in Europe)

NHRIs may take a number of forms: human rights commissions, human rights ombudsperson institutions, hybrid institutions, consultative and advisory bodies, research institutes and centres, though many have multiple mandates. As indicated above, NHRIs may, under national legislation or international law, be given additional roles and responsibilities. NHRIs also vary widely with regard to their size, budgets, sub-regional context and operating modalities. However, three trends are observable.⁶⁸

⁶⁶ Participation in Treaty-Bodies or Special Procedures is however not necessarily limited to A-Status NHRIs (Meeuwissen 2013: 271 ff.).

⁶⁷ See <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx> and <http://www.asiapacificforum.net/working-with-others/icc/sub-committee-on-accreditation> [19 Jan 2014].

⁶⁸ The section below is based on information from Kohner, D., O’Brien, C. and Yigen, K. (2013) as well as the register of the European Network for National Human Rights Institutions (ENNHRI) secretariat (2013).

Firstly, the ombudsperson-type NHRI is typically formed as an institution centred around one person primarily dealing with individual complaints on human rights violations, as well as instances of maladministration. This type of NHRI follows the traditional Scandinavian model, where the ombudsperson is typically appointed by the Parliament. Human rights ombudsperson have been established in all sub-regions of Europe (e.g. Eastern Europe: Hungary, Ukraine, Bulgaria and Poland; Northern Europe: Sweden, Finland, Latvia, Lithuania; Southern Europe: Albania, Croatia, Bosnia-Herzegovina, Kosovo, Spain, Portugal; Western Europe: Austria) as well as in a number of countries in the greater European region (Armenia, Azerbaijan, Georgia).

Secondly, the commission-type NHRIs can be structured in one of the following two ways. It may first be appointed by Parliament. This type of NHRI generally has a mandate covering all areas described by the PPs and is strongly anchored in the political system as commissioners are appointed from political parties or nominated by them. It also has a strong focus on legislative review and complaints handling. Examples are found in Ireland, Northern Ireland, Scotland and the UK. Alternatively, as is the case in France and Greece, “advisory” commissions can be established, in which commissioners do not hold full-time positions, but only sit in the commission for certain periods of the year.

Thirdly, in some parts of Europe such as Denmark, Germany, Moldova, Slovakia and Norway, the research centre or institute-type NHRI have strong research components and close ties to the academic world and the universities (e.g. universities are represented in the board, the institution is affiliated in some way to universities, PhD programs are developed in cooperation with the universities and scientific rules are observed in the work of the researchers). These institutions’ mandate does not include the handling of individual complaints, but rather focuses on thematic human rights issues and structural human rights violations as identified by their research and analytical work. They provide legislative reviews, reports on human rights violations, set up cross-border projects on human rights issues and engage internationally in educational activities and as a result have a human rights promotion role extending beyond national borders.⁶⁹

3. NHRIs as part of the global and regional human rights systems

As a result of the evolutions described above, over the last twenty years, the number of NHRIs worldwide has risen dramatically, from a handful in 1993 to 125 today. During the same period, NHRIs have become increasingly instrumental in fostering respect for human rights in their respective jurisdictions, by governments and other actors, and in ensuring redress for victims of human rights violations. NHRIs have also become progressively integrated into wider systems and processes of human rights protection, globally and regionally, as demonstrated, for instance, by the increasing numbers of NHRIs with additional mandates under specialised human rights instruments. Most importantly in this regard, NHRIs play an ever greater role in the UN human rights protection system, as A-Status NHRIs participate in various UN fora and procedures. Since 1993, numerous resolutions and statements affirming the role, legitimacy and importance of NHRIs were adopted by the UN and international organisations such as the CoE and the OSCE. In 2013, the role of NHRIs as human rights defenders was

⁶⁹ See <http://www.jus.uio.no/smr/english/about/> and <http://www.humanrights.dk/focus+areas/research> [19 Jan 2014].

for example underlined by the Special Rapporteur on Human Rights Defenders as well as in a resolution on NHRIs adopted by the Third Committee of the UN GA (EHAHRDP, 2013; A/RES/48/134 and GIHR, 2013). Even if these are not legally binding documents, such statements carry authority in particular among key human rights actors. But the role of NHRIs may also be more formally recognised by binding instruments of international law. For example, Art. 33 (2) of the UN Convention on the Rights of Persons with Disabilities requires that independent national institutions be entrusted with the specific role of monitoring the Convention. In many countries, NHRIs are formally assigned this task (OHCHR, 2011). Many NHRIs have also been appointed as the National Preventive Mechanisms under the *UN Optional Protocol to the Convention Against Torture*.

Recent research also demonstrates the close ties of NHRIs with EU bodies such as the FRA or the Commission, but also with the CoE (Wouters, Meuwissen and Barros, 2013 and Adamson, 2013). For example, during the 1990s under the auspices of the CoE, regional coordination of European NHRIs took place and resulted in the creation of the European Group of NHRIs, which has now been formalised with the establishment of a regional secretariat for the European Group of NHRIs in Brussels in 2013 (Adamson, 2013). This group has been active in the process of reforming the ECtHR (Laeken process) and has coordinated the submission of regional *amicus curiae* briefs before the ECtHR on a number of occasions. It also created working groups on selected European human rights issues. In the EU, NHRIs were appointed as National Equality Bodies (NEBs) established under EU Non-Discrimination Directives (Equinet, 2011), and NHRIs outside of the EU are also recognised and supported under the European Union Guidelines on Human Rights Defenders and the EIDHR (see *supra*). Increasingly, European NHRIs are therefore becoming integral part of the European regional human rights systems. However, while the FRA provides a structured platform for consultations, there is still no strong role for European NHRIs in terms of e.g. assessing the human rights record of the EU itself. While NHRIs are mandated to monitor human rights in their national context, they do not cover regional human rights violations. Moreover, no human rights institution is properly mandated to systematically monitor the human rights record of the EU even if the FRA may apply methods also used by NHRIs and relies on them to some extent for data and information gathering, for instance (Wouters, Meuwissen and Barros 2013). In a multi-layered system with multiple institutions and actors, notably regional actors with considerable powers and competences, the question is therefore whether a gap does not exist in the coverage of institutions tasked with promoting and monitoring human rights.

4. Evaluation concerning influence, effectiveness and achievements

NHRIs' role gained in importance with regard to fostering respect for, and monitoring the implementation of, human rights. Their number has grown considerably over the last decades and they are increasingly integrated into global and regional human rights systems. Their institutional and organisational structure varies as well as their influence on national and international human rights policies and records. Their practices also vary significantly worldwide and within Europe. While there has been significant achievements at the international level in terms of ensuring access to the UN system and formalising the engagement of NHRIs with the international human rights system, there is still room for further reflection on how engagement at the European level should be structured and formalised in order to ensure a more systematic regional human rights protection system. Additional challenges for

ensuring the effectiveness of NHRIs also remain, in Europe, but also worldwide (Meuwissen and Wouters, 2013), such as:

- Defining clear criteria for the identification of NHRIs based on the PPs amidst increasing diversification;
- Achieving a more comprehensive and harmonised NHRI landscape (in Europe, for example, NHRIs are very fragmented and there are more B-Status than A-Status NHRIs);
- Establishing priorities among NHRI roles and securing funding (e.g. the enhanced role and activities of NHRIs on the multiple levels of the UN and regional human rights systems is a welcome development, but also entails the risk that NHRIs will not be able to deliver in the absence of proper prioritisation and resources);
- Agreeing on a coherent approach to NHRIs by notably EU Institutions and other human rights bodies and mechanisms (currently many EU NHRIs take the form of NEBs as they emerged from EU legislation, but NHRIs are still expected to adopt broader roles and functions).

V. Conclusions

The attempt to map relevant instruments, institutions and mechanisms for the protection of human rights at the national, EU/regional and international levels produces the picture of a diverse, multifaceted and multilayered human rights protection landscape whose complexity is hard to grasp. To date, there is a multitude of different instruments, institutions and mechanisms at global, regional or national levels that are inter-linked by an extended and complex cooperation network. Civil society organisations have a key role at all levels. They provide information to international and national institutions, contribute to agenda setting and policymaking in the field of human rights, observe implementation and play an important role with regard to awareness raising.

At the global level, the UN is the central organisation, which gradually developed a comprehensive and extensive human rights system. It is a multitiered and sophisticated system and has a leadership role concerning the setting of new human rights standards.

Regional systems are diverse with regard to scope, institutional arrangements, obligations and mechanisms. The European system is the most extensive and differentiated system with far-reaching obligations, monitoring and adjudication capacities. Although the CoE is still the most important European human rights organisation, the role of the EU has gained in importance over the last decades not only by gradually accommodating human rights principles in primary law including the adoption of a human rights treaty (CFREU) but also externally by systematically incorporating human rights considerations in its external relations. As the CoE's central focus is civil and political rights, a further asset of the EU system is its emphasis on social and economic rights (e.g. non-discrimination directives). Therefore, the EU can be regarded as complementing the CoE human rights system. In Africa, the AU led the way to establishing a range of human rights instruments as well as institutions and mechanisms to monitor their implementation. The *African Charter on Human and Peoples' Rights* is remarkable as it not only codifies individual rights but also emphasises group rights as well as individual duties. The human rights system of the Americas has also a long history, with the OAS as the key organisation. The OAS has adopted various instruments and established a monitoring mechanism. Today, it can be said that the OAS has developed Inter-American human rights and democratic standards, which contributed to the enhancement of democracy in the region. Although regional human rights mechanisms developed comparatively late in Asia, some Asian sub-regions have recently started to take initiatives in this area. However, the two regional organisations which have made such efforts, ASEAN and the SAARC, are mainly relying on soft-law instruments and the setting up of institutional arrangements is still in its infancy. There have also been some attempts to establish human rights standards in regions with an Islamic tradition. Only the Arab Charter on Human Rights, however, has entered into force so far.

Apart from the central role of NGOs in the regional and international systems, it should be mentioned that all the levels are interconnected with an extensive network of international relations. There exists a broad range of cooperation and partnership agreements with a human rights focus, in particular between the EU and other human rights protection systems or actors. Financial support by EU bodies also plays an important role in this regard.

On a national level the establishment of NHRIs has grown dramatically worldwide. They have increasingly become an instrument to enhance the respect of and compliance with human rights law in their respective jurisdictions. The national arrangements of NHRIs are diverse and reflect a broad variety of institutional set-ups, functions and A-, B- or C-statuses, leading to a quite uneven picture worldwide or even within regions.

Oberleitner has pointed out that human rights institutions are entrusted with specific functions. Some of them will be mentioned in the following in order to draw some very limited conclusions with regard to the influence, effectiveness or achievements of international and regional human rights institutions and NGOs.

Firstly, they can serve as *agoras* as they “provide a space for discussion and dialogue on human rights issues and allow for the finding of a consensus and for establishing differences on the scope, content and implementation of human rights” (2008: 35). In this respect, the international as well as the regional system have been very effective. The various fora at national, regional and international levels were instrumental to discussions and exchanges on human rights matters, and have generally been inclusive of civil society organisations, though to a varying degree.

Secondly, human rights organisations have created a space for *agenda setting and decision making* on human rights issues. Again, the role of NGOs in this process is significant. This means that those arenas “allow states, NGOs and inter-governmental organizations to put issues of concern on the agenda in a formalized way” (*ibid.*) and also provide for structures and processes of decision making. However, in the way those fora allow for the inclusion of certain topics they also influence the exclusion of others. It can be stated, that each regional organisation has its own mechanism of inclusion and exclusion of certain matters, such as the relative disregard for social, economic and cultural rights in comparison to civil and political rights by the CoE, or the exclusion of specific rights (e.g. LGBT-rights) in many international and regional systems.

Thirdly, the function of *standard-setting, interpretation and adjudication* is another important task. Not only is the standard-setting of human rights norms crucial, but so is the translation into legal obligations through interpretation and adjudication of those standards by Courts, Commissions and other bodies (*ibid.* 36-37). In this regard, different national and international bodies have a mixed record depending on the historical development and scope of their competences. Some regional organisations such as the OAS or the CoE have had a long history of standard setting, interpretation and adjudication and therefore have already developed very encompassing regional standards supported by an extensive body of case law. Others, such as the organisations in Asia or in regions with an Islamic tradition, are only at the beginning of this process or have not yet established bodies responsible for carrying out these functions.

Fourthly, *implementation* of human rights law and *scrutinising and assisting* states is another important task of international human rights organisations. Human rights law is dependent on an adequate implementation and has to be accompanied by monitoring processes. Although human rights institutions increasingly offer assistance to guarantee implementation, they are “particularly weak in

ensuring the domestic implementation of norms and policies they have devised and the decisions and recommendations they have made” (ibid: 172). As indicated above, NGOs play a crucial role in implementing human rights by providing assistance, raising awareness, and reporting human rights violations to regional and international bodies.

Fifthly, “where human rights violations occur, human rights institutions can step in (...) to remedy violations, mitigate the consequences, compensate victims, and hold perpetrators accountable” (ibid: 38). The performance of the UN in this regard is not really satisfactory. Other regional arrangements have a better record in this regard, notably the ECtHR and the IAC.

Sixthly and finally, international and regional human rights institutions and NGOs have had an influence on social change, not only by influencing the discourse and therefore contributing to the acknowledgement of human rights violations and inequalities, but also by initiating processes and mechanisms to systematically monitor and report on these violations and provide alternative ideas and concepts. Important examples in this regard are democratisation processes in all continents.

The present report aimed at mapping the complex picture of institutions, instruments and mechanisms at global, regional and national level, tried to locate the EU within this interwoven network and offered preliminary insights concerning the contradictions, gaps and tensions in the global human rights protection governance system. Deliverable 2 of WP 4 will deepen this initial assessment by thoroughly elaborating on the network of interactions and by focusing on the functioning of the legal and institutional human rights protection system and, thus, further investigating the gaps, contradictions and tensions thereof.

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