1 The Development of the International Human Rights Law with Specific Regard to the European Human Rights System

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1.1 The Development of the International Human Rights: The Beginnings

The idea that the rights of human beings should be elaborated and protected at international level has been gradually developed. The first international treaties concerning human rights were linked to the acceptance of freedom of religion and the abolition of slavery.[1]

The Treaty of Westphalia of 1648 contained a territorial redistribution, and also an ecclesiastical settlement. The Peace of Westphalia confirmed the Peace of Augsburg (1555), which had granted Lutherans religious tolerance in the empire and which had been rescinded by the Holy Roman emperor Ferdinand II in his Edict of Restitution (1629). Moreover, the peace settlement extended the Peace of Augsburg's provisions for religious toleration to the Reformed Calvinist church, thus securing toleration for the three great religious communities of the empire – Roman Catholic, Lutheran, and Calvinist. Subsequently it became general that the peace treaties contained a special clause on freedom of religion.[2]

The international treaties on the abolition of slavery, namely the Treaty of Washington of 1862 and documents of the conferences in Brussels in 1867 and 1890, and in Berlin in 1885, the Convention of Saint-Germain-en-Laye of 1919 which revised the General Act of Berlin of 1885 and the General Act and Declaration of Brussels of 1890, affirmed their intention of securing the complete suppression of slavery in all its forms and of the slave trade by land and sea. In 1924, a so-called Temporary Slave Commission was established with the responsibility for the worldwide exploration and appraisal of the existence of slavery. The Temporary Slave Commission found that the existence of slavery is interna-

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1 See Abolishing Slavery and its Contemporary Forms David Weissbrodt and Anti-Slavery International, *in Core International Law Against Slavery*, Office of the United Nations High Commissioner for Human Rights, 2002, HR/PUB/02/4, pp. 3-4. www.ohchr.org/Documents/Publications/slaveryen.pdf [21-06-2015].

2 See more e.g. Randall Lesaffer: *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One*, Cambridge University Press, 2004.

tionally prevailing and encouraged the League of Nations to create a separate international convention, focusing on the slavery. The Slave Convention, aiming to prevent and suppress the slave trade, and to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms, was signed in Geneva in September 1926 and entered into force in 9 March 1927.[3] This agreements were followed by a long line of international conventions, but the situation has unfortunately not fundamentally changed. Nowadays, we are speaking about the modern forms of slavery, about the trade, the 'trafficking of human being', but the phenomenon is the same.[4]

The international humanitarian law and the international protection of the minorities – in the sense of groups who by language, religion or race differed from the majority of the population – also significantly contributed to the internationalization of human rights.

The origin of the international humanitarian law (IHL) – which protects persons who are not, or are no longer, directly engaged in hostilities, the wounded, shipwrecked, prisoners of war and civilians – is dating back to battle of Solferino in 1859.[5] Henri Dunant, a Swiss citizen who witnessed the thousands of victims and wounded of the battle, proposed that nations should form relief societies to provide care for the wounded in wartime. A diplomatic conference in Geneva in 1864 adopted the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, the First Geneva Convention. This was followed by three more 'Geneva Conventions' and its additional protocols which established the core body of international humanitarian treaty law.[6] The Geneva Conventions have been ratified by a significant number of states, either one of both of the two 1977 Additional Protocols to the Geneva Conventions, illustrating the importance attached to this body of law.[7] International humanitarian law seeks to uphold the principle of

3 http://portal.unesco.org/culture/en/files/38440/12815475701Slavery_Convention [12-06-2015].

4 Art. 3, Para. (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'

5 After the battle of Solferino in northern Italy in June 1859, Henri Dunant, published 'Un Souvenir de Solférino' [A Memory of Solferino]) in 1862, and decided to set up with his friends the International Committee for Aid to the Wounded. (Later the name changed to 'The International Committee of the Red Cross'.) Henri Dunant (1828-1910) was, together with Frédéric Passy (France), the first Nobel Peace Prize Winner (1901).

6 www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions [20-06-2015]. See more: Odello, Marco: Part A: Concepts and Theories: Chapter I. Fundamental Standards of Humanity: A Common Language of International Humanitarian Law and Human Rights Law, *in International Humanitarian Law and Human Rights Law, Towards a New Merger in International Law*, Edited by Roberta Arnold & Noëlle Quénivet, Martinus Nijhoff Publishers, Leiden, 2008, pp. 34-56.

7 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), State Parties (174) State signatories (2). Protocol additional to

humanity in armed conflicts, and in the *Nicaragua* case (1986) the International Court of Justice invoked general principles of humanitarian law based upon Article 3 common to the four Geneva Conventions.[8] Over the past decade, the relationship between human rights law (HRL) and international humanitarian law (IHL) became closer and closer. Between these two areas of law there is an indubitable complementarity, they mutually co-interfere with each other. This co-interference certainly has a positive impact on their further development.[9]

In the aftermath of the World War I, peace treaties formulated a series of 'minority clauses'.[10] The expression 'minorities' became part of international law terminology during the era of the League of Nations, but there was no intention to define what a 'minority' means or to formulate which minorities constitute a people entitled to self-determination. The minority clauses of the peace treaties in 1900s formulated three categories of obligations. Firstly, these clauses guaranteed to peoples who belong to racial, religious or linguistic minorities to enjoy the same treatment and security in law and in fact as the other nationals, full and complete protection of life and liberty to all inhabitants of the country or region concerned. This type of clause guaranteed these rights without discrimination on the ground of birth, nationality, language, race or religion. The second category guaranteed that all nationals would be equal before the law and would enjoy the same civil and political rights, without distinction as to race, language or religion. This second type of clauses guaranteed the free use by any national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings. Finally, these clauses provided for a series of special guarantees for nationals belonging to minorities, for instance concerning the use of their language and the right to establish their

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the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), State Parties (168) State signatories (3). Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (8 December 2005) (Protocol III), State Parties (72) State signatories (24).

8 Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*). Merits, Judgment. ICJ Rep. 1986, p. 14. www.icj-cij.org/docket/files/70/6503.pdf [20-06-2015].

9 Ibid., 4.

10 Treaty of Versailles was signed between the Allied Powers and Germany on 28 June 1919, Treaty of Saint-Germain-en-Laye was signed between the Allied Powers and the Republic of Austria on 10 September 1919). On 27 November 1919 Treaty of Neuilly-sur-Seine was signed between the Allied Powers and Bulgaria. Treaty of Trianon was signed on 4 June 1920, between the Allied Powers and Hungary. (This Treaty led to considerable damaging territorial losses for Hungary. Hungary lost over two-thirds of its territory, about two-thirds of its inhabitants under the Treaty and 4.3 million ethnic Hungarians.) The Treaty of Sèvres was signed on 10 August 1920 between the Ottoman Empire and Britain, France, and Italy. See more: *International Encyclopedia of the First World War1914-1918*-online, Edited by U. Daniel, P. Gatrell, O. Janz, H. Jones, J. Keene, A. Kramer & Bill Nasson, issued by Freie Universität Berlin, 2014, *in* Alan Sharp: The Paris Peace Conference and its Consequences, pp. 2-13. http://encyclopedia.1914-1918-online.net/pdf/1914-1918-Online-the_paris_peace_conference_and_its_consequences-2014-10-08.pdf [16-06-2015].

own social and religious institutions.[11] However, these peace treaties contained clauses that clearly described and guaranteed fundamental human rights to minorities, as the right to use their language, right to education, right of free expression on its own language, the realization of these rights fell far behind the expectations.[12] Although, the protection of minorities did not disappear from international law, later the UN left the responsibility on the whole of resolving international disputes on the minority issues.[13]

Since the end of the World War I, there has been a growing belief that governments alone cannot safeguard human rights, and that these require international guarantees. This recognition has led to the creation of the International Labour Organization (hereafter 'ILO') 1919 as part of the Treaty of Versailles to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The idea that human rights considerations were important, was also an important motive. The driving forces for ILO's creation arose from security, humanitarian, political and economic considerations. The protection of the working force was aimed at creating conditions for equal competition amongst states.[14] The ILO has made significant efforts to build up minimum labour and social standards that would become international. The first international convention adopted was the ILO 1919 Hours of Work Convention (No. 1), establishing the eight-hour day and the six-day week in industry.[15] The strength of the ILO is its standard-setting function. It draws its uniqueness from the constant search for a consensus between public authorities and the principal interested parties, namely employers and workers. The main topics covered by the ILO activities are employment and unemployment, various aspects of conditions of work, the employment of children and young persons, employment of

11 J.H. Burgers, The Road to San Francisco: 'The Revival of the Human Rights Idea in the Twentieth Century', *Human Rights Quarterly*, Vol. 14. 1992, p. 450. http://humanrightsinitiative.ucdavis.edu/files/2012/10/burgerroadtosf.pdf [16-06-2015].

12 See more: Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration, Signed at Trianon June 4, 1920, Section VI Protection of Minorities, and Arts. 54-60. '[…] The Hungarian Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Art. 13 of the Covenant.' http://wwi.lib.byu.edu/index.php/Treaty_of_Trianon [16-06-2015].

13 See more: about the activity of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities that was established in 1947 with 12 members and renamed in 1999. Later, it was comprised of 26 independent experts in the field of human rights who are elected by the Human Rights Commission. The Sub Commission was often described by the scholars as a 'think tank' for the Commission on Human Rights. Pursuant to General Assembly Res. 60/251 of 15 March 2006 entitled 'Human Rights Council', all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission on the Promotion and Protection of Human Rights, were assumed, as of 19 June 2006, by the Human Rights Council. See: N. S. Rodly, Conceptual Problems in the Protection of Minorities: International Legal Developments, *Human Rights Quarterly*, Vol. 17, No. 1 1995, pp. 48-71. See: J. Pejic, Minority Rights in International Law, *Human Right Quarterly*, Vol. 19, No. 3 1997, pp. 666-685.

14 Under the auspice the ILO e.g. the International Slavery Convention, signed in Geneva on 25 September 1926, the conventions for the protection of refugees were adopted in 1933 and 1938.

15 http://training.itcilo.it/actrav_cdrom2/en/osh/legis/ilotot.htm [16-06-2015].

women, industrial health, safety, and welfare, social security, industrial relations, labour inspection, social policy in non-metropolitan areas and concerning indigenous and tribal populations, protection of migrants, trade unionism and collective bargaining.[16]

At that time the development of international protection of human rights was not noteworthy, however some interesting initiatives were brought up. For the purposes of this paper it is worth considering the 'Declaration of International Rights of Man' ('Déclaration des droits internationaux de l'homme') adopted on 12 October 1929 in New York by the Institute of International Law.[17] Having carefully examined this declaration it should be pointed out immediately that this is not a comprehensive list of human rights. However the basic idea of this declaration that states have to respect the rights of the individuals without any discrimination, even if only moderately, but contributed to the development of international human rights. Human rights already had been recognized as a matter of international concern in some policy statement as well, but they could not be considered as broad manifestation. One of the best known statements is the speech of President Roosevelt on 6 January 1941. He said in his State of the Union (Four Freedoms) Message:

> Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights or keep them. Our strength is our unity of purpose. To that high concept there can be no end save victory.[18]

1.2 The Development of the International Human Rights: After the World War II

After the World War II, as ineluctable reaction to the genocide and mass atrocities committed during the war, international human rights law emerged as a standard subject of international relations and a major legal framework for the protection of individual rights and freedoms. The importance of human rights was reflected by the Charter of the United Nations (hereinafter the 'UN Charter') signed on 26 June, 1945.[19] The Preamble of the

16 www.ilo.org/global/standards/introduction-to-international-labour-standards/ [16-06-2015].

17 Justitia et Pace Institut de Droit International, Rapporteur was Mr André Mandelstam. The declaration contains only six articles, affirming that every human being has right to life, liberty and property without discrimination. Moreover, underlined the duty of states to preserve the individuals' rights from all infringements on the part of state. (Il est du devoir de tout Etat de reconnaître à tout individu le droit égal à la vie, à la liberté, et à la propriété, et d'accorder à tous, sur son territoire, pleine et entière protection de ce droit, sans distinction de nationalité, de sexe, de race, de langue ou de religion.) www.idi-iil.org/idiF/resolutionsF/1929_nyork_03_fr.pdf [16-06-2015]. See *more*: T. Buergenthal: The Evolving International Human Rights System, *The American Journal of International Law* Vol. 100, No. 4. 2006, p. 783.

18 http://millercenter.org/president/speeches/speech-3320 [17-06-2015].

19 The United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other signatories.

Charter expressed the wish to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples. The Preamble of the UN Charter includes a determination 'to reaffirm faith in fundamental human rights' and recognizes that peace and stability among nations is related to the recognition of and respect for human rights, and seeks to establish conditions under which both peace and human rights, including the social and economic advancement of all peoples, can be achieved.[20] However, neither the participants of the San Francisco Conference in 1945, nor the founding members of the United Nations (hereafter 'UN') did not initiate to have rather a general references to human rights, the UN Charter does not specify human rights and does not establish any specific mechanism to ensure their implementation by Member States. The UN Charter formulated only a normative framework and potentials for further joint and separate actions by the UN and their members. Human Rights clauses in the UN Charter exhibit also clear signs of weakness and vagueness both politically and legally.[21]

The first legally binding specific agreement thus initiated by the recognition of the principle of international respect for human rights was the Convention on the Prevention and Punishment of the Crime *of* Genocide adopted by the UN General Assembly on 9 December 1948.[22] One day later, a major step in drafting the International Bill of Human Rights was realized on 10 December 1948, when the UN General Assembly through its Resolution 217(III) adopted the Universal Declaration of Human Rights (hereinafter the

20 Art. 1 of the Charter states that one of the aims of the United Nations is to achieve international cooperation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', thus enshrining the principle of non-discrimination. Art. 55 expresses a similar aim, and by Art. 56 all members of the United Nations 'pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55'. Moreover, all UN Member States must fulfil, in good faith, the obligations they have assumed under the Charter of the United Nations.

21 *An Introduction to International Protection of Human Rights*, A Textbook Ed. by R. Hanski and M. Suksi, Institute for Human Rights Åbo Akademi University, 1997, *in.* K. Drewicki: The United Nations Charter and the Universal Declaration of Human Rights, p. 66.

22 At the first session of the UN General Assembly, in late 1946, Cuba, Panama and India presented a draft resolution that had two objectives: a declaration that genocide was a crime that could be committed in peacetime as well as in time of war, and recognition that genocide was subject to universal jurisdiction (that is, it could be prosecuted by any State, even in the absence of a territorial or personal link). General Assembly Res. 96 (I), adopted on 11 December 1946, affirmed 'that genocide is a crime under international law which the civilized world condemns.' The convention was adopted by the UN General Assembly on 9 December 1948. After obtaining the requisite twenty ratifications required by Art. XIII, the Convention entered into force on 12 January 1951. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 UNTS 277.

'UDHR') which serves 'as a common standard of achievement for all peoples and nations.'[23] The UDHR was the first non-binding instrument of a general nature, a new catalogue of the modern human rights. The UDHR was the source of inspiration and has been the basis for the UN in making advances in standard setting and human rights continued to be discussed at the UN. The majority of the rights proclaimed in the UDHR have been progressively developed and codified in the later decades. International law and standards became central to the UN system for the protection of human rights. The development of the international human rights which started in the immediate post-war years, slowed in due to the bipolar characteristic of the Cold War. The human rights noticeably became a field for superpower battle. Both superpowers regularly intervened militarily to reverse impending or ongoing human rights improvements. The impact of Cold War was evident in the derailing of work of the further elaboration of international human rights standards. The end of the Cold War had ideologies that struggled for human rights and reinforced the international human rights movement. It should be mentioned that the further development of human rights norms has been influenced by many coefficients.[24]

The process of decolonisation in Africa and in Asia in 1960s had a decisive impact to progress the adoption of sectorial UN human rights conventions and international supervisory organs.

A powerful bloc of Asian, African, and Arab states successfully asserted their control over the UN's human rights initiatives.[25] The new UN Member States, mainly the Afro-Asian states which formed the largest voting bloc in the UN, have generated a considerable transformation in the treatment of human rights matters at the international level ever since. These countries, which had suffered under colonial domination, had a special interest in human rights and put on the agenda the matter of the economic modernization and the rights of peoples and nations.[26] The International Convention on the Elimination

23 The preparatory work of the Universal Declaration needed thirteen months between May 1947 and June 1948. The debates and drafting of the Declaration were made by UN Commission on Human Rights and subsequently in the Third Committee of the General Assembly and complemented by the UNESCO. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, UN GAOR, 3d Sess, 1st plen. mtg, UN Doc. A/810 (Dec. 12, 1948).

24 T. Buergenthal: The Normative and Institutional Evolution of International Human Rights, *Human Rights Quarterly*, Vol. 19, No. 4, November 1997, pp. 703-723.

25 On 17 August, 1945 Indonesia proclaimed its independence in Djakarta, but the United Nations, who mediated in the conflict, formally acknowledge the date of independence as 27 December, 1949. India became independent on 15 August, 1947. In the late 1950s and 1960s the African states gained their independence and the number of the UN Member states doubled. In 1960 UN had 99 Members, in 1961 already 104 Members while Cameroun, Central African Republic, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Gabon, Ivory Coast, Malagasy Republic, Mali, Niger, Nigeria, Senegal, Somalia, Togo, Upper Volta joined to the UN. Later Mauritania, Mongolia, Sierra Leone, Tanganyika, Algeria, Burundi, Jamaica, Rwanda, Trinidad and Tobago, Uganda, Kenya, Kuwait, Zanzibar became UN Member States. In 1967 UN had 123 Members. www.un.org/en/members/growth.shtml#text [15-06-2015].

26 R. Burke, From Individual Rights to National Development: The First UN International Conference on Human Rights, Tehran, 1968, *Journal of World History*, Vol. 19, No. 3, September 2008, pp. 275-296.

of Racial Discrimination in 1965 (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESR), the International Covenant on Civil and Political Rights (ICCPR), and an Optional Protocol thereto in 1966, and thereafter, were adopted in this period. On the Second International Conference on Human Rights in Teheran, April to May 1968, two decades after the adoption of the UDHR, the UN Member States advanced and underlined the protection of human rights as it is stated in the UDHR. Representatives of 84 Member States, along with delegates or observers from a number of United Nations bodies and specialized agencies, regional intergovernmental organizations and non-governmental organizations, adopted the Proclamation of Tehran by consensus on 13 May 1968. The Teheran Conference recognized that since the adoption of the UDHR the UN has made substantial progress in defining standards for the enjoyment and protection of human rights and fundamental freedoms. 'During this period many important international instruments were adopted but much remains to be done in regard to the implementation of those rights and freedoms' (in para. 4).[27] The racial equality and self-determination, the children rights had occupied the attention of the Teheran Conference. The developing countries gave a strong support for recognition of not only the right to self-determination but also the right to development. It is important to mention that the Proclamation of Teheran also formulated strong criticism, finding that 'the widening gap between the economically developed and developing countries impedes the realization of human rights in the international community.' Since human rights and fundamental freedoms are indivisible, 'the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.' The achievement of lasting progress in 'the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.' (in paras. 12-13.)[28] The UN was facing the hard challenge of a matter of urgency to elaborate international human rights standards which transformed into binding norms the provisions of the UDHR and reinforced the implementation of these norms.

The World Conference on Human Rights, held in 1993 in Vienna, made important steps toward the universalism of human rights. The Conference declared that 'The universal nature of these rights and freedoms is beyond question' moreover it reaffirmed that 'all human rights are universal, indivisible and interdependent and interrelated' (in para. 5).[29]

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27 Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF. 32/41 at 3 (1968). http://legal.un.org/avl/ha/humanrights.html [14-06-2015]. http://webtv.un.org/watch/proclamation-of-teheran-international-conference-on-human-rights-29-april-1968/2581197228001 [15-06-2015].

28 Ibid.

29 'The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and

After 1993 a progress began in the development of human rights norms and mechanisms at both the national, regional and international levels.[30] As the UN Secretary-General stated 'The Vienna Declaration and Programme of Action undoubtedly constitutes one of the major events in the United Nations history of human rights. If adequately implemented, it will be a milestone in this history.'[31]

Pursuant to a suggestion of the Vienna World Conference on Human Rights, the UN General Assembly, in its Resolution 49/184 of 23 December 1994, proclaimed the 10-year period of the UN Decade for Human Rights Education beginning on 1 January 1995. The Vienna Declaration also made concrete recommendations for strengthening and harmonizing the monitoring capacity and the enforcement mechanisms of the UN human rights system. In this regard, it called for the establishment of a High Commissioner for Human Rights and the Office of the High Commissioner for Human Rights by the General Assembly, which subsequently created the post on 20 December 1993.[32]

For the time being the UN human rights bodies form a complex system. Charter-based bodies, including the Human Rights Council and bodies created under the international human rights treaties and made up of independent experts mandated to monitor State parties' compliance with their treaty obligations. Treaty bodies could be considered as quasi-judicial bodies, given the fact that their decisions in response to individual or inter-state complaints are not legally binding, but do have persuasive value.[33] Treaty bodies have

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fundamental freedoms.' Report of the World Conference on Human Rights, Report of the Secretary-General, World Conference on Human Rights Vienna, 14-25 June 1993, A/CONF.157/24 (Part I) 13 October 1993, www.unhchr.ch/huridocda/huridoca.nsf [14-06-2015].

30 Resolution adopted by the General Assembly 47/122. World Conference on Human Rights, A/RES/47/122. www.un-documents.net/a47r122.htm [14-06-2015].

31 On 25 June 1993, representatives of 171 States adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights. Excerpt from the report of the Secretary-General on the follow-up to the World Conference on Human Rights to the General Assembly at its forty-ninth session (A/49/668). www.ohchr.org/EN/AboutUs/Pages/ViennaWC5.aspx [14-06-2015].

32 'Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights. […]. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant intergovernmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and should take into account the outcome of the World Conference on Human Rights within their fields of competence.' Ibid.

33 Nine UN human rights conventions have monitoring bodies to oversee the implementation of the treaty provisions. The main features of these bodies are: they derive their existence from provisions contained in a specific legal instrument; hold more narrow mandates: the set of issues codified in the legal instrument; address a limited audience: only those countries that have ratified the legal instrument; and base their decision-making on consensus. The treaty bodies are composed of independent experts and meet to consider State parties' reports as well as individual complaints or communications. They may also publish general comments on human rights topics related to the treaties they oversee. Human Rights Committee (CCRP) monitors the implementation of the International Covenant on Civil and Political Rights and its optional protocols; Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the Interna-

contributed significantly to the development of international law over the past decades, they were streamlining and strengthening the UN human rights system. It may be noted that treaty bodies have formulated a series of General Recommendations and General Comments in response to issues concerning interpretation of the relevant treaty. General Recommendations and General Comments are also not legally binding but do provide appropriate guidance on the interpretation of the treaty in question. General Recommendations and General Comments of these bodies have greatly promoted the development of human rights, they are indispensable in analysing a particular convention. These General Recommendations and General Comments have a forward-thinking, progressive nature and promote the formulation of new human rights.[34]

The High Commissioner for Human Rights (hereafter 'UNHCHR') provides support for UN human rights activities, including providing secretariat support for all UN human rights bodies, maintains the specialized human rights document databases, receives individual complaints to the human rights bodies and prepares fact sheets and training materials on human rights topics.[35] The UNHCHR coordinates the tasks of the different human rights organs of the UN and has a consultative function to other organs. The UNHCHR responds directly to the UN Secretary General. The Office of the United Nations High

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tional Covenant on Economic, Social and Cultural Rights and its optional protocol; Committee on the Elimination of Racial Discrimination (CERD) monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; Committee on the Elimination of Discrimination against Women (CEDAW) monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and its optional protocol; Committee against Torture (CAT) monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Subcommittee on Prevention of Torture (SPT) monitors the optional protocol; Committee on the Rights of the Child (CRC) monitors the Convention on the Rights of the Child and its optional protocols; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) monitors the implementation of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Committee on the Rights of Persons with Disabilities (CRPD) monitors the implementation of the Convention on the Rights of Persons with Disabilities and its optional protocol; Committee on Enforced Disappearances (CED) monitors the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance. The CED held its first meeting in 2011. http://research.un.org/en/docs/humanrights/treaties [29-06-2015].

34 The General Comment CESCR No. 15 (2002) became the basis for right to water. It stated 'the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.'

35 The High Commissioner for Human Rights José Ayala-Lasso, Ecuador, (1994-1997), Mary Robinson, Ireland (1997-2002), Sérgio Vieira de Mello, Brazil (2002-2003), Bertrand Ramcharan, Guyana (2003-2004) (Interim), Louise Arbour, Canada (2004-June 2008), Navanethem Pillay, South Africa (2008-2014). Since September 2014 Zeid Ra'ad Al Hussein of Jordan holds the position of High Commissioner for Human Rights. See: The United Nations High Commissioner for Human Rights: Conscience for the World, Edited by F.D. Gaer & C.L. Broecker, Brill Nijhoff, 2013. http://booksandjournals.brillonline.com/content/books/9789004254251 [13-07-2015].

Commissioner for Human Rights (hereafter 'OHCHR')[36] is the principal UN organization mandated to promote and protect human rights for all. The OHCHR provides a forum for identifying, highlighting and developing responses to today's human rights challenges, and act as the principal focal point of human rights research, education, public information, and advocacy activities in the United Nations system. The OHCHR supports the UN Human Rights Council and its Special Rapporteur on the operational level.[37]

The establishment of a Human Rights Council (hereafter 'UNHRC')[38] reflects the increasing importance being placed on human rights on the UN agenda. The upgrading of the Commission on Human Rights into a full-fledged, standing Council occurred in accordance to the priority formulated in the UN Charter, serving two main purposes of the UN, namely, security and development.[39] As the UN General Assembly Resolution 60/251 of 15 March 2006[40] stated, the UNHRC have to ensure universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization. Moreover, the UNHRC shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. The Council has only forty members, however, a smaller membership allows to the UNHRC to have more focused debate and discussions. The members are elected by a two-thirds vote of the UN General Assembly which is similar to the election process for Charter-based bodies and reflect the importance accorded to the Council. Members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the UNHRC and be reviewed under the universal periodic review mechanism during their term of membership.[41] The UNHRC play a pivotal role in overseeing and contributing to the interpretation and development of international human rights law. The UNHRC monitor implementation of the core international human rights treaties. The Council has the authority to recommend policy measures to other organs of the UN that can help in the process of implementation of human rights, e.g., at the 29th Session of the UNHRC

36 The OHCHR was established by General Assembly Res. 48/141 of 20 December 1993.

37 www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx [20-06-2015].

38 Resolution adopted by the General Assembly [without reference to a Main Committee (A/60/L.48)] 60/251. Human Rights Council, A/RES/60/251. http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf [13-07-2015].

39 The Secretary-General proposed the establishment of a Human Rights Council in his March 2005 report entitled 'In larger freedom: towards development, security and human rights for all' (A/59/2005). 'The creation of the Council would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations. Member States should determine the composition of the Council and the term of office of its members. Those elected to the Council should undertake to abide by the highest human rights standards.' (A/59/2005, Para. 182).

40 Resolution adopted by the General Assembly 47/122. World Conference on Human Rights, A/RES/47/122. www.un-documents.net/a47r122.htm [14-06-2015].

41 Ibid. (Para. 9).

at the request of the European Union, on 15th June 2015 the UNHRC held an *enhanced interactive dialogue (EID) on the human rights of migrants*. This is a new work format for the Council, designed to allow the UNHRC to respond in a timely and substantive manner to important global human rights concerns.[42]

The UNHRC monitors compliance of all 193 UN member states with their international human rights obligations through the Universal Periodic Review (hereafter 'UPR'). Under such a system, every Member State could come up for review on a periodic basis (over a four-year cycle) and they result in specific and authoritative recommendations for action. The Council has to ensure that the UPR is a fair, transparent system whereby Member States are checked against the same criteria. According to the UN General Assembly Resolution 60/251 the UPR shall be based on objective and reliable information of the fulfilment by each State of its human rights obligations and commitments. The UPR review is based on three documents; information prepared by the State under review (national report); a compilation of UN information on the State under review prepared by the OHCHR, and a summary of information submitted by other relevant stakeholders, also prepared by OHCHR. The UPR shall be conducted in a manner which ensures universality of coverage and equal treatment with respect to all States, and the UPR shall also be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs. Last but not least, the UPR shall complement and not duplicate the work of treaty bodies. The UPR seeks to assess Member States' human rights records; highlight human rights violations, the Council is able to bring urgent crises to the attention of the world community; provide technical assistance to improve Member States' abilities to effectively respond to human rights challenges; and share best practices in human rights between states and other stakeholders. The UNHRC responds to human rights violations through the so-called '1503 Procedure' under which the Commission considers complaints relating to consistent patterns of gross and reliably attested human rights violations. The procedure is confidential except for the parties involved, the operation and outcome of this procedures are not public. Either individual special rapporteurs or independent experts and working groups examine, monitor and report on human rights situations according to these Special Procedures in particular countries or territories, or in relation to significant phenomena of human rights violations. According to the status on 1 November 2014, there were thirty-nine thematic mandates (e.g. freedom of religions, torture, women, arbitrary detention,

42 'The High Commissioner welcomed the European Union's recent determination to tackle migration in a more comprehensive manner, and the newly intensified search and rescue effort in the Mediterranean, noting that far bolder steps were needed to integrate the notion that the European Union needed and should welcome more migration at all skill-levels. The only effective approach to migration must be grounded in the human rights of the people concerned, focusing on root causes and long-term solutions.' www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16079&LangID=E#sthash.UvHsFIHC.dpuf [18-07-2015].

extreme poverty and human rights, migrants, African descent, cultural rights, human rights defenders, sale of children, enforced or involuntary disappearances, minority issues, foreign debt, independence of judges and lawyers) and fourteen country mandates (e.g. Syrian Arab Republic, Palestinian territories occupied since 1967, Sudan, Belarus, Somalia, Mali, Côte d'Ivoire, Eritrea, Democratic People's Republic of Korea). It should be pointed out immediately that despite the great efforts made by the individual special rapporteurs or independent experts, the gross violation of human rights, the conditions of inequality and inequity continue all over the world. Many UN Member States fail to comply with their international human rights commitments to protect the individual and collective rights. It is evident that existing mechanisms are limited.

To be worth considering the increasing prominence and activism of NGOs, national human rights institutions (NHRIs) and other civil society actors is crucial to providing policy inputs and views from the field to Member States. The Resolution of 5/1 of 18 June 2007 of UNHRC entitled 'Institution-Building of the United Nations Human Rights Council' provided that the UPR should

> *ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions*, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.[43]

In this sense 'stakeholders', which are referred to in Resolution 5/1 of 18 June 2007 of UNHRC, include, *inter alia*, NGOs, national human rights institutions, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives. Other relevant stakeholders may submit additional, credible and reliable information to the universal periodic review. Input received from stakeholders will be summarized by the OHCHR in a Summary of Stakeholders' information which shall not exceed ten pages. Before the adoption of the outcome by the plenary of the UNHRC, the State concerned is offered the opportunity to present replies to questions or issues. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.[44] The involvement of such stakeholders in the human rights debate is indispensable in order to develop the international human rights and it can justly be claimed that UNHRC would reinforce and strengthen the human rights only in close cooperation with these stakeholders.

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43 See Para. 3(m) of the Annex to Res. 5/1. www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/Resolutions.aspx [28-06-2015].

44 HRC Dec. 6/1026 sets out General Guidelines for the preparation of information under the UPR. http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=69&t=3) [28-06-2015].

This short study cannot consider an assessment on the mission of the Office of the United Nations High Commissioner for Refugees (hereafter 'UNHCR'),[45] nor a brief description of the wide range of the activities of the UNHCR, because this topic would deserve at least a book.[46] Nonetheless, having regard to the outstanding importance of the UNHCR a brief appreciation of its activity is justified. The UNHCR was established on 14 December 1950 by the UN General Assembly and started working with a three-year mandate to help resettle European refugees who were still homeless in the aftermath of the World War II. On 28 July 1951 the UN Convention relating to the Status of Refugees was adopted which lies at the heart of UNHCR's work. The UNHCR had to help with displacement crises in Europa, Asia, Africa and Latin America.[47] At the same time, UNHCR has been asked to use its expertise to also help many internally displaced (IDPs) by conflict, because more often than not, these conflicts took place within national boundaries, rather than across them.[48] The UNHCR is helping stateless people, who are the victims of the

45 Respect for the principle of non-refoulement, especially at all border points the UNHCR discussed during the constructive dialogue with States, such as: the right of freedom of movement for refugees, IDPs and stateless persons; the conditions of detention for persons in need of international protection, including at airports; the issue of family reunification; effective access to birth registration; recommending safeguards in nationality legislation to prevent statelessness among children' (Art. 24.3 – concretely states should implement the 'otherwise stateless' safeguard), the protection of unaccompanied children seeking asylum and their access to asylum procedures; combating trafficking in human beings and sexual exploitation of women and children and granting protection to victims of trafficking, including referral mechanisms to the asylum procedure; strengthening opportunities for refugee women and girls' education and employment; the security and protection of Internally Displaced Persons (IDPs) and contribution to the creation of conducive environments to the implementation of durable solutions. www.unhcr.org/4cd7bb6d6.html [28-06-2015].

46 There are a great variety of *books* written either by refugees or on the topic of refugees which give a realistic picture of the operations and the challenges of the UNHCR. See: *The UNHCR and the Supervision of International Refugge Law*, Edited by J.C. Simeon, Cambridge University Press, 2013. http://ebooks.cambridge.org/ebook.jsf?bid=CBO9781139137225 [23-07-2015]. J. Hollifield, P. Martin & P. Orrenius: *Controlling Immigration: A Global Perspective*, Third Edition, Stanford University Press, 2014.

47 The State of the World's Refugees 2000. www.unhcr.org/4a4c754a9.html [28-06-2015].

48 Internally displaced persons (IDPs), are the persons displaced but not crossing an international border do not enjoy a special legal status under international law. The involuntary nature of their departure and the fact that they remain in their own country are the two main elements determining who is an internally displaced person. Nevertheless, apart from domestic law, IDPs, as civilians, are protected by international humanitarian law in situations of armed conflict and ought to be protected by international human rights law. While no international convention on the rights of internally displaced persons exists, they enjoy the same human rights as all other people within their own country of citizenship or residence. The UN Security Council Res. 1296 (2000) notes 'that the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection afforded to civilians under existing international humanitarian law.' (Para. 3). In February 1998, Mr. Francis M. Deng, the UN Representative of the Secretary-General on IDPs submitted the Guiding Principles on Internal Displacement (UN Doc. E/CN.4/1998/53), UN Doc. E/CN.4/1998/53/Add.2.) While the principles *per se* are not legally binding, they draw on binding international humanitarian and human rights law. However, it must be emphasized that the African Charter on Human Rights and peoples (1981) sets out general human rights principles applicable to all individuals, including IDPs and under the auspices of the African Union a Convention for the Protection and Assistance of Internally Displaced Persons in Africa

contemporary migrant crisis.[49] On the basis of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the UNHCR works with governments to prevent statelessness, resolve those cases that do occur, and defend the rights of stateless people around the world.[50]

1.3 A Controversial Issue; The Responsibility to Protect

However, significant progress has been made since the end of the World War II in defining the laws of armed conflicts, the respect of these international norms and obligations still appear to be the exception rather than the rule. The law of humanitarian intervention first suggested that states do not receive unlimited discretion in their behaviour under international law. One of the biggest challenges nowadays is, how to uphold the idea of international protection of human rights when mass violations of human rights take place in any part of the world but national authorities plead that it is a matter of their internal affairs. Following the tragic event of Rwanda and the former Yugoslavia in the 1990s a gripping debate has stated how the international community should react to the serious and systematic violation of the internationally protected human rights. When can the international community intervene in a country for humanitarian reasons? As in the Millennium Report in 2000, UN Secretary-General Kofi Annan formulated

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?[51]

The Millennium Report highlighted the collective responsibility of the governments of the world to uphold human dignity, equality and equity for all people and especially children

(Kampala Convention) was adopted by African governments in 2009. See: http://www1.umn.edu/humanrts/instree/GuidingPrinciplesonInternalDisplacement.htm [28-07-2015]. Celebrating the Kampala Convention on Internal Displacement as Conflict Escalates in the Central African Republic: A Bittersweet Anniversary. www.brookings.edu/blogs/up-front/posts/2013/12/03-central-african-republic-idps-bradley [28-07-2015].

49 A stateless person is set out in Art. 1 of the 1954 Convention relating to the Status of Stateless Persons, which defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law.'

50 The latest report of the UNHCR Global Trends, Forced Displacement 2014 evince the year 2014 saw the highest displacement on record. By end-2014, 59.5 million individuals were forcibly displaced worldwide as a result of persecution, conflict, generalized violence, or human rights violations. This is 8.3 million persons more than the year before (51.2 million) and the highest annual increase in a single year. http://unhcr.org/556725e69.html [23-07-2015].

51 The Millennium Summit was held from Wednesday, 6 September, to Friday, 8 September 2000 at United Nations Headquarters in New York. In attendance were 149 Heads of State and Government and high-ranking officials from over 40 other countries.

and the most vulnerable, as is the duty of world leaders.[52] As a response to the Kofi Annan dilemma, an independent commission, sponsored by the Government of Canada, was charged with the task of clarifying the scope and objectives of *the responsibility to protect*. The International Commission on Intervention and State Sovereignty (hereinafter 'ICISS') tried to find an appropriate answer to this question. In its report issued in December 2001, ICISS elaborated a new element of the international law on the core principles of the responsibility to protect (hereinafter 'R2P').[53] As the ICISS report formulated, this report is about the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state. The idea of the R2P is based on the concept of sovereignty, responsibility of the UN Security Council under the UN Charter, specific legal obligations under human rights and human protection formulating in the international humanitarian law and national law and the developing practice of the states and the other relevant actors, included the UN Security Council as well. The R2P is evoked by four specific categories: genocide, crimes against humanity, ethnic cleansing and war crimes. It means that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.[54] This responsibility, according to the ICISS, embraces three specific duties. Firstly, the responsibility to prevent; to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. Secondly, the responsibility to react: to respond to situations of compelling human need with appropriate measures which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. Thirdly, the responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert. The single most important dimension of the R2P is the prevention. In other words, prevention should always be exhausted before intervention is contemplated. According to the ICISS report, effective prevention should

52 We, The Peoples, The Role of the United Nations in the 21st Century (Millennium Report of the Secretary-General). www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf [23-06-2015].

53 The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty Foundations The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in: A. obligations inherent in the concept of sovereignty; B. the responsibility of the Security Council, under Art. 24 of the UN Charter, for the maintenance of international peace and security; C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; D. the developing practice of states, regional organizations and the Security Council itself. Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect International Development Research Centre, Ottawa 2001. http://responsibilitytoprotect.org/ICISS%20Report.pdf [22-06-2015].

54 Natural or environmental catastrophes are not included in the concept of the R2P. Ibid.

address 'both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.'[55] The R2P is not only a State obligation, but the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with UN Chapters (VI and VIII of the Charter), to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2004, the UN Secretary-General's High Level Panel on Threats, Challenges and Change released a report to the General Assembly entitled 'A More Secure World: Our Shared Responsibility.' In 2005 the UN World Summit stated that the international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.[56] In 2009 in the report 'Implementing the responsibility to protect' of the UN Secretary-General three pillars of the responsibility to protect were formulated. (i) The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement; (ii). The international community has a responsibility to encourage and assist States in fulfilling this responsibility; (iii). The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter'.[57] However the concept of the R2P not yet defined by any binding international instrument, the UN Security Council play an important role in enforcement of the R2P principle, since any action should be taken through the Security Council. The Security Council passed continuously several resolutions confirming a commitment to the principles of the R2P.[58] For the first time UN Security Council made official reference to the R2P in

55 Op. cit. 43.

56 Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, Resolution adopted by the General Assembly on 16 September 2005, 60/1. 2005 World Summit Outcome, A/RES/60/1 p. 30. Paras. 138-140. 'We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.' http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement [22-06-2015].

57 Sixty-third session Agenda items 44 and 107 Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields Follow-up to the outcome of the Millennium Summit Implementing the responsibility to protect Report of the Secretary-General. www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677 [18-07-2015].

58 Res. 1653 (Great Lakes Region) S/RES/1653, Res. 1674 (POC) S/RES/1674, Res. 1894 (POC) S/RES/1894, Res. 1970 (Libya) S/RES/1970, Res. 1973 (Libya) S/RES/1973, Res. 1975 (Cote d'Ivoire) S/RES/1975, Res. 1996 (South Sudan) S/RES/1996, Res. 2014 (Yemen) S/RES/2014, Res. 2016 (Libya) S/RES/2016, Res. 2040 (Libya) S/RES/2040, Res. 2085 (Mali) S/RES/2085, Res. 2093 (Somalia), /RES/2093, Res. 2095 (Libya),

April 2006 in its Resolution 1674, concerning the protection of civilian populations in armed conflict, and then in August 2006 in its Resolution 1706, concerning the situation in Sudan and the establishment of an international peacekeeping mission.[59] The Security Council in its Resolution 1674 (2006) emphasized the importance of preventing armed conflict and its recurrence, and stressed the need for a comprehensive approach through the promotion of economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law, as well as respect for, and protection of, human rights. The Council reaffirmed its strongest condemnation of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect, in particular, to (i) torture and other prohibited treatment, (ii) gender-based and sexual violence, (iii) violence against children, (iv) the recruitment and use of child soldiers, (v) trafficking in humans, (vi) forced displacement, and (vii) the intentional denial of humanitarian assistance.[60] The Security Council strongly condemned the sexual exploitation, abuse and trafficking of women and children by military, police and civilian personnel involved in UN operations and undertook to ensure that all peace support operations employed all feasible measures to prevent such violence and to address its impact where it took place. The Security Council requested the Secretary-General and personnel-contributing countries to continue to take all appropriate action necessary to combat abuses, including through the full and immediate implementation of measures adopted in the relevant General Assembly resolutions based upon the recommendations of the report of the Special Committee on Peacekeeping.[61] In Resolution

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S/RES/2095, Res. 2100 (Mali) S/RES/2100, Res. 2109 (South Sudan) S/RES/2109, Res. 2117 (Small Arms and Light Weapons) S/RES/2117, Res. 2121 (Central African Republic) S/RES/2121, Res. 2127 (Central African Republic) S/RES/2127, Res. 2134 (Central African Republic) S/RES/2134, Res. 2139 (Syria) S/RES/2139, Res. 2149 (Central African Republic) S/RES/2149, Res. 2150 (Prevention of Genocide) S/RES/2150, Res. 2155 (South Sudan) S/RES/2155, Res. 2165 (Syria) S/RES/2165, Res. 2171 (Maintenance of international peace and security – Conflict prevention) S/RES/2171, Res. 2185 (Role of Policing in UN Peacekeeping) S/RES/2185, Res. 2187 (South Sudan) S/RES/2187, Res. 2211 (Democratic Republic of the Congo) S/RES/2211, Res. 2220 (Small Arms) S/RES/2220, Res. 2223 (South Sudan) S/RES/2223. www.un.org/en/sc/documents/resolutions/ [13-07-2015].

59 It also welcomed the General Assembly's adoption, on 8 December 2005, of the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

60 The Security Council, '*Reaffirming* its resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict, its various resolutions on children and armed conflict and on women, peace and security, as well as its Res. 1631 (2005) on cooperation between the United Nations and regional organizations in maintaining international peace and security, and *further reaffirming* its determination to ensure respect for, and follow-up to, these resolutions […] *Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being and *recognizing* in this regard that development, peace and security and human rights are interlinked and mutually reinforcing.' www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1674(2006) [13-07-2015].

61 Report of the Special Committee on Peacekeeping Operations and its Working Group 2005 substantive session (New York, 31 January-25 February 2005) 2005 resumed session (New York, 4-8 April 2005) General Assembly Official Records Fifty-ninth Session Supplement No. 19 (A/59/19/Rev.1). http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/337/80/PDF/N0533780.pdf?OpenElement [13-07-2015].

1970 and 1973, adopted on March 2011, the Security Council demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians, which it said might constitute 'crimes against humanity.' The Security Council demanded an end to the violence, 'recalling the Libyan authorities' responsibility to protect its population', and imposed a series of international sanctions. The Council authorized Member States to take 'all necessary measures' to protect civilians under threat of attack in the country.[62] In late 2010 and early 2011 the UN Security Council, unanimously adopted Resolution 1975 condemning the gross human rights violations committed in Côte d'Ivoire, underlined 'the primary responsibility of each State to protect civilians.'[63] On 21 October 2011, Resolution 2014 condemned human rights violations by the Yemeni authorities and expressly called the Yemeni Government's for 'primary responsibility to protect its population.'[64] On 26 July 2012, the Council adopted Resolution 2062 renewing the mandate of UNOCI until 31 July 2013.[65] In its Resolutions 2132 (2013) and 2155 (2014) the Security Council was reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Republic of South Sudan and was condemning the fighting and targeted violence against civilians and specific ethnic and other communities occurring across the country that have resulted in hundreds of deaths and casualties and tens of thousands of internally displaced persons.[66] Further condemning reported human rights violations and abuses by all parties, including armed groups and national security forces, and emphasizing that those 'responsible for violations of international humanitarian law and international human

62 The Council also decided to refer the situation to the International Criminal Court. Res. 1970 (2011) Adopted by the Security Council at its 6491st meeting, on 26 February 2011. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011) [13-07-2015]. Res. 1973 (2011) Adopted by the Security Council at its 6498th meeting, on 17 March 2011. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011) [13-07-2015].

63 In November 2011, President Gbagbo was transferred to the International Criminal Court to face 3 charges of crimes against humanity as an 'indirect co-perpetrator' of murder, rape, persecution and other inhumane acts. Res. 1975 (2011) Adopted by the Security Council at its 6508th meeting, on 30 March 2011. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1975(2011) [18-07-2015].

64 Res. 2014 (2011) Adopted by the Security Council at its 6634th meeting, on 21 October 2011. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2014(2011) [18-07-2015].

65 Res. 2062 (2012) Adopted by the Security Council at its 6817th meeting, on 26 July 2012. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2062(2012) [18-07-2015].

66 The Security Council was *recalling* its previous resolutions1996 (2011), 2046 (2012), 2057 (2012), 2109 (2013) and 2132 (2013), and '*Strongly condemning* reported and ongoing human rights violations and abuses and violations of international humanitarian law, including those involving extrajudicial killings, ethnically targeted violence, sexual and gender-based violence, rape, recruitment and use of children, enforced disappearances, arbitrary arrests and detention, violence aimed at spreading terror among the civilian population and attacks on schools and hospitals, as well as United Nations peacekeeping personnel, by all parties, including armed groups and national security forces, as well as the incitement to commit such abuses and violations, and *emphasizing* that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable and that the Government of South Sudan bears the primary responsibility to protect civilians within its territory and subject to its jurisdiction, including from potential crimes against humanity and war crimes, […].'

rights law must be held accountable.'[67] The humanitarian crisis in Syria is one of the serious conflicts of the current world. The international community, in particular the UN Security Council, the UN General Assembly, the UNHRC and Nations and the League of Arab States, have condemned the continued 'widespread and systematic' human rights violations in Syria. The UN Secretary General's 5th Report (2013) on 'State Responsibility and Prevention' focused generally on governance mechanisms and early warning. The report was stated that 'recent events, including in the Syrian Arab Republic, underline the vital importance of early action to prevent atrocity crimes and the terrible consequences when prevention fails.' On 1 June 2012 on 19th special session of the UNHRC 'deteriorating human rights situation in the Syrian Arab Republic and the recent killings in El-Houleh' the Council condemned in the strongest possible terms the outrageous use of force against the civilian population, and condemned in the harshest terms the outrageous killing of forty-nine children, all under the age of 10 years. The UNHRC deplored that the killings in El-Houleh occurred in a context of continued human rights violations in Syria, including ongoing arbitrary detentions, hindered access for the media, and restrictions of the right to peaceful assembly. Having regard to the reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (established on 22 August 2011) all parties became increasingly reckless with human life as the Syrian conflict drags on. On 12 February 2013 the High Commissioner for Human Rights Navi Pillay recommended referring the situation in Syria to the International Criminal Court and urged the Security Council to assume its responsibility to protect the population of Syria. Navi Pillay addresses the Security Council open debate on protection of civilians in armed conflict,

> There will always be some disagreement within the international community on how to respond to a given situation; but when tens of thousands of civilian lives are threatened, as currently in Syria, the world expects the Security Council to unite and act.

Secretary-General Ban Ki-moon stated 'We all have a responsibility to protect […] Failure to protect civilians in armed conflict can contribute directly to the commission of atrocity

67 On 8 July 2011, the Security Council, in Res. 1996, established a UN peacekeeping mission in South Sudan (UNMISS), to advise and assist the government in fulfilling its responsibility to protect civilians. South Sudan officially became an independent country on 9 July 2011. The Security Council welcomed the strengthening of the human rights investigation capacity of the United Nations Mission in the Republic of South Sudan (UNMISS) with the support of the Office of the High Commissioner for Human Rights, Commending the Intergovernmental Authority on Development (IGAD) Ministerial Group's initiative, as supported by the United Nations and African Union, in seeking to open the dialogue and mediate between key leaders, and urging all parties to cooperate with this initiative. Security Council, Adopting Res. 2155 (2014), Extends Mandate of Mission in South Sudan, Bolstering its Strength to Quell Surging Violence. Res. 2132 (2013) Adopted by the Security Council at its 7091st meeting, on 24 December 2013. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2132(2013) [18-07-2015].

crimes."[68] On 10 October 2013, in Resolution 2121, in the case of Central African Republic (CAR) conflict stressed 'the primary responsibility of the Central African authorities to protect the population, as well as to ensure the security and unity in its territory […] their obligation to ensure respect for international humanitarian law, human rights law and refugee law.'[69] It should be pointed out immediately that the long list of the decisions of the Security Council is not accompanied by the infringement, so their impact is more than doubtful.

The UN Secretary-General also contributed to the development of the notion of R2R. He issued six report on the different aspect and experiences of the R2P. The first report was issued in 2010 on 'Early warning, assessment and the responsibility to protect'.[70] The second report released on 'The role of regional and sub-regional arrangements' in 2011.[71] The following report was presented in 2012 on 'The responsibility to protect: timely and decisive response'.[72] In 2013 came out the report on 'State Responsibility and Prevention'[73] and the sixth Secretary-General report in 2014 dealt with 'Fulfilling our collective responsibility: International assistance and the responsibility to protect'.[74] These reports tried to give some explanation of the R2P and testified his dedication to promote the practical application of this principle.

Not only the Secretary-General but his Special Advisors to the Secretary-General on the R2P has continuously contributed to the further development of the principle and refinement of the concept of the R2P. The first Special Advisors, Edward Luck was appointed On 21 February 2008, the second Jennifer Welsh in July 2013. The Special Advisor is responsible for negotiate with Member States and other stakeholders on further steps toward implementation of the R2P. Without question, further steps are needed because the implementation of the R2P in recent conflicts has arguably led to more harm than it has prevented. It seems that the geopolitical interests of the intervening parties are outweighed. The principle of R2P did not create any new legal obligations under the international law, however, the notion of the R2P could lead to a new rule of customary international law on the basis of an ensuing state practice.

68 Security Council must unite to protect civilians in conflict zones. www.un.org/apps/news/story.asp?NewsID=44127#.Vcj2EPntlHw [18-07-2015].

69 Res. 2121 (2013) Adopted by the Security Council at its 7042nd meeting, on 10 October 2013. www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2121(2013) [18-07-2015].

70 (A/64/864) www.un.org/en/ga/search/view_doc.asp?symbol=A/64/864, [18-07-2015].

71 (A/65/877-S2011/393) www.un.org/en/ga/search/view_doc.asp?symbol=A/65/877 [18-07-2015].

72 (A/66/874-S/2012/578) www.un.org/en/ga/search/view_doc.asp?symbol=A/65/877 [18-07-2015].

73 (A/67/929-S/2013/399) www.un.org/en/ga/search/view_doc.asp?symbol=A/67/929 [18-07-2015].

74 (A/68/947-S/2014/449) www.un.org/en/ga/search/view_doc.asp?symbol=A/68/947&referer=/english/&Lang=E [18-07-2015].

1.4 The Development of the International Human Rights at Regional Level; Council of Europe

The progressive development of human rights at the international level was accompanied by the establishment of regional human rights systems. It may be noted that one of the most developed and elaborated regional human rights system and regime is the European one. The Council of Europe (CoE), the European Union (EU) and the Organization for Security and Cooperation (OSCE) could be considered as the three main pillars of the European human rights regime. As its name indicates the OSCE is a security organization.[75] The promotion of human rights, democracy and the rule of law are the core objectives of the Human Dimension pillar of the OSCE. These Human Dimensions particularly emphasises respect for and protection of human rights as a precondition for security and stability.[76]

The Council of Europe and the European Union seek to achieve greater unity between the states of Europe through respect for the shared values of pluralist democracy, the rule of law, human rights and fundamental freedoms as well as through pan-European cooperation, thus are promoting democratic stability and security. The Council of Europe (CoE) develops conventions and recommendations agreed to by its member states.[77] The first

75 The OSCE is the biggest European intergovernmental organization. It covers with 57 States from Europe, Central Asia and North America. It was created to replace the former CSCE (Conference for Security and Cooperation in Europe), which was an important political institution in Eastern and Western Europe during the Cold War till 1990. Since 1992, the OSCE has mainly served as a political and not legal binding monitoring body. The OSCE has been monitoring elections, promoting minority rights and gender issues, fostering the engagement of civil society and reconciliation process. See: P. Terrence Hopmann, An Evaluation of the OSCE's Role in Conflict Management, *in* Europe's New Security Challenges, Edited by H. Gärtner, A. G. V. Hyde-Price & E. Reiter, Lynne Rienner Publishers, 2001, pp. 219-255.

76 These Human Dimensions were established initially in the Helsinki Final Act of 1 August 1975, the founding document of the OSCE. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) is monitoring governments' compliance with their human dimension commitments, provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. ODIHR observes elections, reviews legislation and advises governments on how to develop and sustain democratic institutions. The ODIHR conducts training programmes for government and law-enforcement officials and non-governmental organizations on how to uphold, promote and monitor human rights. Apart from the ODIHR, the High Commissioner for National Minorities, the Representative on Freedom of the Media and the Special Representative on Combating Trafficking in Human Beings also promote human rights. See: W. Zellner, The High Commissionaire on National Minorities: His Work, Effectiveness and Recommendation to Strengthen the HCNM as an Institution, *in* Europe's New Security Challenges, Edited by H. Gärtner, A. G. V. Hyde-Price & E. Reiter, Lynne Rienner Publishers, 2001, pp. 265-288.

77 The Council of Europe (CoE) was created in 1949 with 10 founding members (Statute of the Council of Europe), 87 UNTS 103, E.T.S. 1; there are now 47 member states. The organization purpose is to achieve European unity and facilitate economic and social progress. It is concerned with issues such as human rights, education and cultural projects, sports, public health, protection of the environment, etc. The CoE has provided the framework for the negotiation and conclusion of more than 100 multilateral agreements among its member states ('European treaties').

major treaty of the CoE was the Convention for the Protection of Human Rights and Fundamental Freedoms which was signed in 1950 and came into effect in 1953.[78] The Convention was supplemented by several protocols which secure fundamental civil and political rights, not only to their own citizens of the CoE states parties but also to everyone within their jurisdiction.[79] The primary focus of the ECHR is territorial: States Parties are bound to respect the Convention rights of those within their borders. The ECHR gave effect to certain of the rights stated in the UDHR and established a permanent international judicial body with jurisdiction to find against States that do not fulfil their undertakings. The European Commission of Human Rights was established in 1954 and the European Court of Human Rights in 1959. The Commission, which screened human rights complaints for the Court, was abolished in November 1998. The European Court of Human Rights (Strasbourg Court, ECtHR)[80] rules on individual or state applications alleging violations of the civil and political rights set out in the ECHR and in its protocols. Since 1998 ECtHR has sat as a full-time court and individuals can apply to it directly. In accordance with the ECHR a judgment of the ECtHR delivered by the Grand Chamber is final. The States are obliged to take, so far as it concerns the applicant, all individual measures applicable under domestic law in order to eliminate the consequences of the violation established in the judgment of the ECtHR.

The Court's remarkable case law makes the ECHR a powerful living instrument.[81] For the above reasons, no national court should 'without strong reason dilute or weaken the

78 213 UNTS 221, E.T.S. 5; The rights and freedoms secured by the Convention include the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and the protection of property. The Convention prohibits, in the torture and inhuman or degrading treatment or punishment, forced labour, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms secured by the Convention. See: T. Buergenthal, D. Shelton, & D. Steward: *Human Rights in a Nutshell*, 3rd edition, West Group, 2002.

79 For the time being the ECHR is supplemented by a series of 14 protocols. The texts of two new protocols to the ECHR, the Convention have been prepared. Protocol No. 15 amending the Convention opened for signature on 24 June 2013. Protocol No. 16 to the Convention opened for signature on 02 October 2013. Both protocols are part of the ECHR system reform efforts, in view of realising an effective implementation of the ECHR and ensuring viability of the ECHR mechanism. At the time of the writing they not yet entered into force.

80 The European Court of Human Rights is an international court based in Strasbourg. It consists of a number of judges equal to the number of member States of the Council of Europe that have ratified the ECHR. See: D. Anagnostou: The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy, Edinburgh University Press, 2013, pp. 1-27.

81 HUDOC is the database of the European Court of Human Rights. The use of Council of Europe treaties in the case-law of the European Court of Human Rights Council of Europe / European Court of Human Rights, June 2011. www.echr.coe.int/Documents/Research_report_treaties_CoE_ENG.pdf [11-06-2015]. The official reporter of the Court is European Court of Human Rights Reports of Judgments and Decisions (previous title Publications of the European Court of Human Rights) (Eur. Ct. H.R.). See: The European Convention on Human Rights: Collected Essays, Edited by L. C. Lucaides, Martinus Nijhoff Publishers, 2007, pp. 1-17, pp. 127-133.

effect of the Strasbourg case law.'[82] The Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights[83] states that the draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States.' According to this document, it seemed that the preparatory committee might consider the term *'residing'* too restrictive.

> It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction' which are also contained in Article 2 of the Draft Covenant of the United Nations Commission.

However, the territorial scope of the ECHR needed further clarification. The ECtHR in regards to Article 2 of the ECHR, has also established two branches – substantive and procedural – for this provision. Accordingly in the jurisprudence *Loizidou v. Turkey*[84] at paragraph 62, the Court pointed out:

> In this respect the Court recalls that, although Article 1 sets limits on the reach of the Convention, the concept of 'jurisdiction' under this provision is not restricted to the national territory of the High Contracting Parties. According to its established case law, for example, the Court has held that the extradition or expulsion of a person by a Contracting State may give rise to an issue under

82 Lord Bingham in Cornhill in *R (Ullah) v. Special Adjudicator* [2004] UKHL.26 Opinions of the Lords of Appeal for Judgment in the case *Regina v. Special Adjudicator* (Respondent) ex parte Ullah (FC) (Appellant) Do (FC) (Appellant) v. Secretary of State for the Home Department (Respondent).

83 Collected Edition of the '*Travaux Préparatoires*' of the European Convention on Human Rights (Vol. III, p. 260) See: Preparatory Commission of the Council of Europe, Committee of Ministers, Consultative Assembly, 11 May-8 September 1949, Council of Europe, Brill, 1975.

84 *Loizidou v. Turkey* [1995] ECHR 10, (1995) 20 EHRR 99, 20 EHRR 99 the case was referred to the Court by the Government of the Republic of Cyprus ('the applicant Government') on 9 November 1993. It originated in an application (No. 15318/89) against the Republic of Turkey lodged with the European Commission of Human Rights under Art. 25 (Art. 25) on 22 July 1989 by a Cypriot national, Mrs Titina Loizidou. She grew up in Kyrenia in northern Cyprus, where she owned certain plots of land. In 1972 she married and moved with her husband to Nicosia. Since 1974, she had been prevented from gaining access to the above-mentioned properties as a result of the presence of Turkish forces in Cyprus The Turkish Government had submitted, by way of preliminary objections, *inter alia*, that the case fell outside the Court's jurisdiction on the grounds that it related to facts and events which occurred before 22 January 1990, when Turkey declared that she accepted the compulsory jurisdiction of the Court (objection *ratione temporis*) and that it did not concern matters arising within the territory covered by this declaration (objection *ratione loci*). The Court considered that the applicant had suffered an unjustified interference with her property rights which was imputable to Turkey, and that it should make an award under Art. 50. www.bailii.org/eu/cases/ECHR/1995/10.html [11-06-2015].

> Article 3, and hence engage the responsibility of that State under the Convention. In addition, the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory.

This ruling was explained in case *Bankovic v. Belgium*[85] where the ECtHR recorded the following consideration at paragraph 67-68:

> In keeping with the essentially territorial notion of jurisdiction, the court has accepted only in exceptional cases that acts of the contracting states performed, or producing effects, outside their territories can constitute an exercise of jurisdiction by them within the meaning of art 1 of the Convention.

In this judgment reference has been made in the court's case law, as an example of jurisdiction 'not restricted to the national territory' of the respondent state (see the previous case: *Loizidou v. Turkey*) to situations where the extradition or expulsion of a person by a contracting state may give rise to an issue under arts 2 and/or 3 (or, exceptionally, under Arts 5 and/or 6) and hence engage the responsibility of that state under the convention *Soering v. UK* (at para. 91). The right protected under Article 3 of the ECHR relates directly to an individual's personal integrity and human dignity and prohibits governments from returning an individual to a country where he or she would be subjected to torture or to inhuman or degrading treatment or punishment.[86] The ECtHR has derived a number of important consequences from the obligation enshrined in Article 3 of the ECHR. In the *Soering v. UK*[87] case in which the applicant resisted extradition to the United States to

85 *Bankovic & Others v. Belgium & Others* – 52207/99, [2001] ECHR 890 (12 December 2001) (2001) 11 BHRC 435 (Appl. No. 52207/99). The background was the conflict in Kosovo between Serbian and Kosovar Albanian forces during 1998 and 1999. The applicants complain about the bombing of the RTS building on 23 April 1999 by NATO forces and they invoke the following provisions of the Convention: Art. 2 (the right to life), Art. 10 (freedom of expression) and Art. 13 (the right to an effective remedy). As conclusion the ECtHR states that 'The Court is not therefore persuaded that there was any jurisdictional link between the persons who were victims of the act complained of and the respondent States. Accordingly, it is not satisfied that the applicants and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question.' www.bailii.org/eu/cases/ECHR/2001/890.html [11-06-2015].

86 The 1951 Convention relating to the Status of Refugees (1951 Convention) similarly prohibits expulsion or return ('refoulement') of a refugee whose life or freedom would be threatened on a Convention ground.

87 *Soering v. United Kingdom* [1989] ECHR 14 (7 July 1989) [1989] ECHR (Appl. No. 14038/88). The applicant, Mr Jens Soering, was born on 1 August 1966 and was a German national. He was detained in prison in England pending extradition to the United States of America to face charges of murder in the Commonwealth of Virginia.'In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The

stand trial in Virginia, contending that trial there would infringe his right to a fair trial under Article 6 of the ECHR and that his detention on death row, if convicted and sentenced to death, would infringe his rights under Article 3, the ECtHR ruled that the State's responsibility could be engaged if it decided to extradite a person who risked being subjected to ill-treatment in the requesting country. In the case *Cruz Varas v. Sweden* the applicants alleged that the expulsion of Mr Cruz Varas to Chile constituted inhuman treatment in breach of Article 3 of the ECHR because of the risk that he would be tortured by the Chilean authorities and because of the trauma involved in being sent back to a country where he had previously been tortured. They also claimed that the return of the third applicant would be in breach of Article 3. in paras. 69 and 70 and the ECtHR reiterated that

> the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country.[88]

This principle was subsequently extended by the ECtHR's own case law to any process of removal of an alien from the national territory of Contracting party to a state where there is a real risk of treatment inconsistent with the obligation formulated in Article 3 of the ECHR. In *Vilvarajah v. UK*[89] case five applicants alleged that their removal to Sri Lanka

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establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (art. 3) of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.' www.echr.coe.int/Documents/FS_Expulsions_Extraditions_ENG.pdf [11-06-2015].

88 *Cruz Varas and Others v. Sweden*, A/201, [1991] ECHR 26, (1991) 14 EHRR 1, IHRL 2594 (ECHR 1991), 20th March 1991 (Appl. No. 15576/89). The first applicant, Hector Cruz Varas, was a national of Chile, who fled his country of origin and sought asylum in Sweden in January 1987. His wife and son (the second and third applicants) joined him later in June 1987. In his asylum application he explained that he was a member *inter alia* of the Socialist Party and the Revolutionary Worker's Front, both of which were opposed to the regime of Pinochet in Chile. www.refworld.org/docid/3ae6b6fe14.html [11-06-2015].

89 *Vilvarajah and Others v. United Kingdom*, Judgement of 30 October 1991, [1991] ECHR 13163/87 (Appl. Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87). The case concerned five Tamils who fled Sri Lanka because of abuses by governmental forces and sought asylum in the United Kingdom in 1987. Their claims were rejected in first instance and subsequent judicial review proceedings were unsuccessful, the UK authorities finding them to be victims of generalised violence and not of individualised, targeted persecution in the sense of the 1951 Convention relating to the Status of Refugees. They were sent back to Sri Lanka in February 1988, but when their appeals against the rejection of their asylum applications were finally successful, all five applicants were all allowed to come back to the United Kingdom. www.refworld.org/docid/3ae6b7008.html [11-06-2015].

amounted to inhuman and degrading treatment in breach of Article 3 of the ECHR because they all faced various forms of ill-treatment upon return there. The Court confirmed the applicability of Article 3 to such situations and reiterated that

> the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting party or the well-foundedness or otherwise of an applicant's fears. (Para. 107)

The ECtHR noted in its judgement in paragraph 103, the that there were no such grounds regarding the removal of the applicants – including a member of the Tamil community – to Sri Lanka in 1988, and accordingly that there had been no violation of Article 3. The liability is incurred in such cases by an action of the respondent state concerning a person while he or she is on its territory, clearly within its jurisdiction, and such cases do not concern the actual exercise of a state's competence or jurisdiction abroad. Also, in the case *Al-Adsani v. UK*[90] a majority of the ECtHR (Grand Chamber) found that there was no general acceptance in international law of the principle that States were not entitled to immunity in respect of civil claims for damages for torture committed in a foreign State. It found that the Court of Appeal's grant of immunity pursued the legitimate aim of complying with international law, to promote comity and good relations between States through the respect of another State's sovereignty (in Para. 39).

This question was also a matter requiring clarification before the European Court of Justice (EJC). In Joined Cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home* and *M. E. et al. v. Refugee Applications Commissioner et al*., the ECJ found that asylum seekers could not be transferred to a member state where substantial grounds existed that they would face a real risk of being subjected to inhuman or degrading treatment.[91] In most cases, a finding of violation of Article 3 of the ECHR was related to viola-

90 *Al-Adsani v. United Kingdom* [2001] ECHR 35763 (Appl. No. 35763/97). Sulaiman Al-Adsani, a dual British and Kuwaiti national, was a pilot who had served in the Kuwaiti Air Force during the Gulf War and, after the Iraqi invasion, remained behind as a member of the resistance movement. He claimed to have been subjected to false imprisonment, repeated beatings and torture while in Kuwait. In August 1992, Al-Adsani instituted civil proceedings in England for compensation against the Kuwaiti Government and the Sheikh responsible for his maltreatment. In the 2001 decision of the Court (the Grand Chamber) had previously found by a narrow majority that there was no breach of Art. 6(1) of the ECHR where the English Court of Appeal had struck out claims against Kuwait for civil damages for torture on the grounds of State immunity. www.ivr.uzh.ch/institutsmitglieder/kaufmann/archives/HS09/vorlesungen/Text_No_6.pdf [11-06-2015].

91 Preliminary rulings was concerned the interpretation, first, of Art. 3(2) of Council Reg. (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible

tions of Articles 2 and 5 of the Convention. In some cases the alleged violation of the 'right to a fair trial' under Article 6 of the ECHR were examined. The ECHR guarantees a fair trial to anybody charged with a criminal offence. As a subset of this general right, accused persons are entitled to benefit from a number of 'minimum rights' one of which under Article 6(3)(d) is the right to cross-examine prosecution witnesses. In this context, in the *R v. Horncastle* case, the UK Supreme Court raised the question whether there could be a fair trial when a defendant was prosecuted based on evidence given by witnesses who subsequently did not attend the trial in person and therefore were not available to be cross-examined by the defendant.[92] The case concerned four applicants' complaints that in admitting victims' written statements as evidence against them at their criminal trials the domestic courts had violated their right to have examined witnesses who gave sole or decisive evidence against them. It confirmed that under section 2 of the UK Human Rights Act 1998 it was required to 'take into account' Strasbourg cases and this meant that on rare occasions, they did not need to be followed.[93] The ECtHR held, that there had been: no violation of Articles 6 § 1 and 3(d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the ECHR. The Court noted that it had consistently underlined that the admissibility of evidence was primarily a matter for national law and courts to regulate. The Court's task was to ascertain whether the proceedings as a whole had been fair. It reiterated that Article 6 § 3(d) enshrined the principle that all evidence against the accused had to be produced in their presence at a public hearing so that it could be challenged. The Court reiterated the principles established in its Grand Chamber judgment in *Al-Khawaja and Tahery v. the United Kingdom*[94] in which it had agreed with the domestic courts that a conviction based solely or decisively on the statement of an absent witness would not automatically result in a breach of Article 6 § 1.[95] In the case of

for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1) and, second, the fundamental rights of the European Union, including the rights set out in Arts. 1, 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union (EU Charter) and, third, Protocol (No. 30) on the application of the Charter to Poland and to the United Kingdom (OJ 2010 C 83, p. 313; 'Protocol (No. 30)').

92 [2009] UKSC 14 On appeal from: [2009] EWCA Crim 964 Judgement on 9th December 2009. https://www.supremecourt.uk/decided-cases/docs/uksc_2009_0073_judgment.pdf [18-06-2015].

93 [2009] UKSC 14 [10]-[11]

94 [2009] 49 EHRR 1 (Appl. Nos. 26766/05 and 22228/06).

95 ECHR 376 [2014] (Appl. No. 4184/10). The appellants in *Horncastle* had been convicted of serious criminal offences, the prosecution evidence including evidence of statements of the victims of the alleged offences that was admitted under section 116 of the UK Criminal Justice Act 2003 Act. In one case the witness had died before the trial, and in the other the witness had run away the day before the trial because she was too frightened to give evidence. The appeals against conviction were dismissed by the Court of Appeal. This judgment concludes the judicial dialogue on the admissibility of hearsay evidence in criminal trials which commenced with the delivery of this Court's Chamber judgment in *Al-Khawaja and Tahery*. The Supreme Court, when hearing the present applicants' appeal, examined that judgment and invited the Grand Chamber to accept a request to rehear the case. The subsequent Grand Chamber judgment in *Al-Khawaja and Tahery* agreed with the Supreme Court that the sole or decisive rule should not be applied in an inflexible way.

Jones and others v. United Kingdom[96] the applicants were four British nationals who alleged that they were unlawfully detained and tortured in Saudi Arabia by Saudi Arabian police and prison officials. Medical examinations carried out on returning to the United Kingdom all concluded that the applicants' injuries were consistent with their allegations. They launched proceedings in England, claiming damages against the Saudi Arabian State and the individual state officials who had carried out or sanctioned the alleged torture. The House of Lords also found that there was no breach of Article 6(1) of the ECHR regarding the applicants' right of access to a court. The applicants then brought proceedings before the ECtHR alleging breach of their rights of access to court under Article 6(1) of the ECHR. The ECHR found that the United Kingdom had not breached Article 6 of the ECHR granting immunity from jurisdiction to Saudi Arabia and its officials in respect of civil claims brought against them for alleged acts of torture. The ECtHR departure point was that the right of access to court was not absolute. States could impose restrictions on it, and the restriction must be proportionate. However, a restriction had to pursue a legitimate aim, and there had to be a reasonable relationship between the aim and the means employed to pursue it. Such as said in the *Al-Adsani v. the United Kingdom* case, the sovereign immunity was a concept of international law under which one State should not be subjected to the jurisdiction of another State and that granting immunity in civil proceedings pursued the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty. Finally, the Court noted that, in light of the developments underway in favour of supporting an exception to immunity in the case of State officials, ECHR Contracting Parties should keep this area of law under review.

1.5 One Step Forward; The Pilot-Judgment Procedure

Particular attention needed to be given to the pilot-judgment procedure of the ECtHR which is one possible way to reduce the Court's excessive workload. The necessity of 'pilot' or pilot similar procedures has already highlighted in Interlaken Declaration, adopted at the High Level Conference on the Future of the European Court of Human Rights, Interlaken (hereafter 'Declaration'), Switzerland, on 18-19 February 2010.[97] The Declaration

Conclusion of judicial dialogue between ECHR and UK courts on use of hearsay evidence. www.echr.coe.int. [18-06-2015].

96 (Appl. Nos. 34356/06 and 40528/06), ECHR upholds House of Lords' decision that State immunity applies in civil cases involving torture of UK nationals by Saudi Arabian officials abroad but says the matter must be kept under review. Judge Kalaydjieva expressed a joint partly dissenting opinion and Judge Bianku expressed a concurring opinion. http://hudoc.echr.coe.int/eng?i=001-140005#{'itemid':['001-140005']} [18-06-2015].

97 'Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow; Considering that this situation

noted that the number of applications brought before the ECtHR and the deficit between applications introduced and applications disposed of continues to grow. The Declaration stressed that this situation causes damage to the effectiveness and credibility of the ECHR and its supervisory mechanism and represents a threat to the quality and the consistency of the case law and the authority of the Court. The Declaration called upon States Parties to cooperate with the Committee of Ministers of the CoE, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases. According to what has been said above, the first underlying cause of the pilot judgment procedure was the hopelessly growing number of applications. Several reform attempts have been made to reduce the Court's heavy case-load, but this time without tangible results. The outlines of the pilot-judgment procedure were first set out during preparation of Protocol No. 14 of the ECHR and the 2004 reform package.[98] This procedure was welcomed, accepted by all the States Parties to the Convention. The first pilot-judgment procedure was taken in 2004[99] and issued by the Grand Chamber.[100] This procedure could be considered as a reaction to the large groups of identical cases that derive from the same underlying problem. The ECtHR has for some time had a great many of these cases pending, referred to as repetitive cases. If the ECHR receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment. When it settles a case, the Court seeks a solution that applies to all similar cases raising the same issue. In dealing with the selected case or cases, it will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue. The decision which is then given by the Court is a pilot decision. It is important to stress, however, the legal basis for pilot procedure has been a subject of controversy. The number of the actual or potential applications to start the pilot judgment procedure is not determined. In the pilot judgement the ECtHR is intended to determine whether there has been a violation of the Convention in the particular case; to identify the dysfunction under national law that is at the root of the violation; to give clear indications to the Government as to how it can eliminate this dysfunction; to bring about the creation of a domestic remedy capable

causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;' […]. Interlaken Declaration 19 February 2010 High Level Conference on the Future of the European Court of Human Rights, D. Repetitive applications, p. 4. https://wcd.coe.int/ViewDoc.jsp?id=1591969 [19-06-2015].

98 Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, Agreement of Madrid (12.V.2009) (CETS No. 194), Explanatory Report, The problem of the Court's excessive caseload, (at Para. 7). http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm [18-07-2015].

99 *Broniowski v. Poland* [GC], No. 31443/96, ECHR 2004-V (link). See also *Broniowski v. Poland* (friendly settlement) [GC], No. 31443/96, ECHR 2005-IX.

100 Three judge committee can deal only with repetitive cases where there is well-establish Court's case law, and the Grande Chamber deals with the cases that concern serious interpretation questions of the ECHR.

of dealing with similar cases, or at least to bring about the settlement of all such cases pending before the Court.[101] The pilot-judgment procedure aims to help the national authorities to eliminate the systemic or structural problem highlighted by the Court as giving rise to repetitive cases. The Court has frequently found violations of 'reasonable time' requirement of Article 6 § 1 of the ECHR. In the decision of *Gazsó v. Hungary* the applicant alleged that litigation in his labour dispute had lasted an unreasonably long time (more than six years) and there was no effective remedy available to him in this regard; relying on Articles 6 and 13 of the Convention. On 13 November 2014 the application was communicated to the Hungarian Government. At the same time, the Court proposed the pilot judgment procedure (Rule 61 of the Rules of Court) to the parties. The parties submitted comments in that respect.[102] The Court cited in this case a similar Hungarian application and found that the issues of excessive length of civil proceedings and lack of effective domestic remedies in the Hungarian legal system are unresolved, despite the fact that there has been for quite some time clear case law giving the Government reason to take appropriate measures to resolve those issues.[103] The Court's Assessment noted that since Hungary's accession to the Convention system and up to 1 May 2015, more than two hundred judgments have involved the finding of a violation by Hungary concerning the excessive length of civil proceedings. In 2014 alone, violations of the right to a hearing within a reasonable time in civil cases were found in 24 occasions. Moreover, the Government has concluded friendly settlements and submitted unilateral declarations in numerous cases concerning the length of civil proceedings; these applications were subsequently struck out of the list of cases (in Para. 34). The Court notes that so far Hungary has failed to put into effect any measures actually improving the situation, despite the Court's substantial and consistent case law on the matter. The systemic character of the problems identified in the present case is further evidenced by the fact that on 1 May 2015, approximately four hundred cases submitted against Hungary and concerning the same issue are pending before the Court's various judicial formations, and the number of such applications is constantly increasing. (in Paras. 35-36.). In *Gazsó v. Hungary* case the ECtHR considered that Hungary must introduce without delay, and at the latest within one year from the

101 'All cases' are including those already pending before the Court awaiting the pilot judgment. The Pilot-Judgment Procedure Information note issued by the Registrar www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf [18-07-2015] p. 1.

102 Case of *Gazsó v. Hungary*, Judgment Strasbourg 16 July 2015 (Appl. No. 48322/12)/ Relying on Art. 6 § 1 (right to a fair hearing within a reasonable time) and Art. 13 (right to an effective remedy), Mr Gazsó alleged that the length of the proceedings concerning his reemployment had been excessive and that he had had no effective remedy available to him to accelerate the proceedings. The application was lodged with the European Court of Human Rights on 24 July 2012. http://hudoc.echr.coe.int/eng#{'respondent':['HUN'],'documentcollectionid2':['GRANDCHAMBER','CHAMBER']} [19-07-2015]. See, among many other authorities: *Frydlender v. France* [GC], No. 30979/96, § 43, ECHR 2000-VII, *Ruotolo v. Italy*, 27 February 1992, § 17, Series A No. 230-D; *Mangualde Pinto v. France*, No.43491/98, § 27, 9 April 2002).

103 See: among many other authorities, *Kútfalvi v. Hungary*, No. 4853/02, §§ 17-19, 5 October 2004).

date on which this judgment becomes final, a remedy or a combination of remedies in the national legal system in order to bring it into line with the Court's conclusions in the present judgment and to comply with the requirements of Article 46 of the Convention (in Para. 39).[104] As well as, the above mentioned case illustrated, the pilot-judgment oblige the respondent State to eliminate the root causes of the violation of the ECHR and its protocols for the future and to redress the prejudice sustained by other victims. Furthermore, these procedures help States Parties to fulfil their role in the ECHR human rights system and take part in the effective enforcement of Court judgments. The pilot procedure provides an opportunity for adjourning the examination of all other related cases for a certain period of time that could hold out the relevant national authorities to take the necessary steps.[105] Notwithstanding, 'not every pilot judgment will lead to adjournment of cases….' as of the Registry noted[106] The pilot-judgment procedure has become an important part of the Convention system, however is not customary international law; it has not been the subject of 'extensive State practice, precedent and doctrine' and any exercise of codification would not aim to result in agreed rules that are binding as a matter of law.[107]

The human rights mechanism of the CoE was completed in 1999 with the Commissioner for Human Rights of the Council of Europe as an independent body responsible for promoting education, awareness and respect for human rights in member states was set up.[108] The Commissioner should identify possible shortcomings in the law and practice concerning human rights, facilitate the activities of national ombudsperson institutions and other human rights structures and provide advice and information regarding the protection of human rights across the region. It is important to consider that not only the protection

104 The Court observed that, although the dispute concerning Mr Gazsó's re-employment had not been complex and the parties had not caused any particular delay in the proceedings, the authorities had not exercised the requisite diligence in bringing the case to an end. The Court had already frequently found violations of Art. 6 § 1 in cases concerning length of civil proceedings in Hungary and nothing in the Government's submissions could lead the Court to adopt a different conclusion in Mr Gazsó's case. There had consequently been a violation of Art. 6 § 1. See: among many other authorities, *Sürmeli v. Germany* [GC], No. 75529/01, §§ 97-101, ECHR 2006-VII), *McFarlane v. Ireland* [GC], No. 31333/06, § 108, 10 September 2010.

105 The Court may at any time resume its examination of any case that has been adjourned if this is what the interests of justice require, for example where the particular circumstances of the applicant make it unfair or unreasonable for them to have to wait much longer for a remedy. The Pilot-Judgment Procedure Information note issued by the Registrar www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf [18-07-2015].

106 The Pilot-Judgment Procedure Information note issued by the Registrar www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf [18-07-2015] p. 1.

107 Responding to Systemic Human Rights Violations: Pilot judgments of the European Court of Human Rights and their impact at national level Strasbourg, 14 June 2010 'Codification of the Pilot Judgment Procedure' Presentation by David Milner, Council of Europe 1.

108 Nils Muižnieks was elected Commissioner for Human Rights on 24 January 2012 by the Parliamentary Assembly and took up his position on 1 April 2012. He is the third Commissioner, succeeding Thomas Hammarberg (2006-2012) and Alvaro Gil-Robles (1999-2006). www.coe.int/en/web/commissioner/ [22-06-2015].

and promotion of political and civil rights play an important role in the CoE, but the social and economic rights as well. Economic and social rights are specified in a separate European Social Charter, which was adopted in 1961 (Turin) and revised in 1996 (Strasbourg).[109] This Charter guarantees social and economic human rights and the European Committee of Social Rights rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter.[110]

1.6 The Development of the International Human Rights at Regional Level – European Union

The European Union (formerly: European Communities (EEC), European Community (EC) was originally created as an international organisation with an essentially economic scope of action, in accordance with Article 3 of the Rome Treaty.[111] The founding treaties constructed an economic union while simultaneously preserving national sovereignty over social and political matters, therefore, there was no perceived need for rules concerning respect for fundamental rights. Basically the European Union's human rights actions could fall into three main groups; external relation, internal arena (procedure Article 7 and EU Charter of Fundamental Rights) and the case law of the European Court of Justice. In particular, the requirement of the respect for human rights was kept in mind in foreign relations, rather of a general nature based on regional or bilateral treaties, agreements or conventions or strategic partnerships dealing systematically with the issue of human rights.[112] For the time being, the EU also pursues human rights dialogues with over forty

109 European Social Charter of 1961 (CETS No. 35), Additional Protocol of 1988 extending the social and economic rights of the 1961 Charter (CETS No. 128), Amending Protocol of 1991 reforming the supervisory mechanism (CETS No. 142), Additional Protocol of 1995 providing for a system of collective complaints (CETS No. 158) and Revised European Social Charter of 1996 (CETS No. 163). States Parties regularly submit a report indicating how they implement the provisions of the Charter. Each report concerns some of the accepted provisions of the Charter. These provisions are divided into the following four thematic groups: I: Employment, training and equal opportunities, II: Health, social security and social protection, III: Labour rights and IV: Children, families, migrants.

110 Under an Additional Protocol to the Charter, which came into force in 1998, national trade unions and employers' organisations as well as certain European trade unions and employers' organisations, and certain international NGOs are entitled to lodge complaints of violations of the Charter with the Committee. In addition, national NGOs may lodge complaints if the State concerned makes a declaration to this effect.

111 Throughout its history, the European Union (EU) has been gradually expanding. The EU is currently made up of 28 countries. The EU was created by intergovernmental treaties between the Member States. These treaties defined a number of institutions, and defined their competence. See: R H. Folsom: European Union law in a nutshell, St. Paul, MN: West Academic Publishing, 2014.

112 These include in particular: relations with candidate countries, the Cotonou Agreement with the ACP States, relations between the EU and Latin America, the Barcelona process (Mediterranean countries) and the neighbourhood policy (countries of the Caucasus in particular), political dialogue with Asian countries in the context of ASEAN and ASEM, relations with the Western Balkans countries and bilateral relations in the framework of association and cooperation agreements.

countries and organisations, including Russia, China and the African Union. In the area of development cooperation, a human rights based approach is used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations. The European Security Strategy, adopted in 2003 stated clearly that

> spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.

Article 21 of the Treaty on European Union has reaffirmed the EU's determination to promote human rights and democracy through all its external actions.[113] In 2012, to underline the EU's determination to promote human rights and democracy throughout the world, the Council of the EU adopted a new strategy: 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan' in which EU explained its vision of the protection of human rights worldwide.[114] This strategy stressed the EU's active participation and contribution in the UN General Assembly, in the UN Human Rights Council and in the ILO against human rights violations. The independence and effectiveness of the UN Office of the High Commissioner for Human Rights, as well as the independence of the treaty monitoring bodies and UN Special Procedures are essential for the EU. The EU underlines the leading role of the UNHRC in addressing urgent cases of human rights

113 1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.
2. 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:(a) safeguard its values, fundamental interests, security, independence and integrity;(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;(c) 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; (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade; (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; (g) assist populations, countries and regions confronting natural or man-made disasters; and (h) promote an international system based on stronger multilateral cooperation and good global governance. www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/ [22-06-2015].

114 No. prev. doc.: 11417/12. http://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf [22-06-2015].

violations and contribute vigorously to the effective functioning of the Council, in cooperation with countries from all regions to this end. The EU calls on all members of the Human Rights Council to uphold the highest standards of human rights and to live up to their pledges made before election. The EU attaches great importance to UPR, both EU and its Member States are committed to raise UPR recommendations which have been accepted. The EU continues its engagement with the Council of Europe and the OSCE and establishes partnership with other regional organisations such as the African Union, ASEAN, SAARC, the Organisation of American States, the Arab League, the Organisation of Islamic Cooperation and the Pacific Islands Forum with a view to encouraging the consolidation of regional human rights mechanisms. Notwithstanding, the EU owing to the variety of structures, formats, frequency and methods employed, and the confidential nature of these exchanges, there is no real mechanism for monitoring and reviewing such dialogues.[115]

1.7 The EU Member States and the 'Systemic Threats to the Rule of Law'

The EU's credibility in its external relations depends on its own internal arena, this is why the EU try to establish increasing consistency between its internal and external policies in relation to human rights. The Amsterdam Treaty amended the Nice Treaty by bringing the protection of fundamental rights within the jurisdiction of the ECJ. The Lisbon Treaty reinforced the procedure (so-called 'nuclear option') in case a serious and persistent breach may occur by a Member State of the values referred to in Article 2 (dignity, freedom, liberty, democracy, and equality, rule of law, human rights and rights of minorities). If the determination under Article 2 has been made, the Council of the EU may decide to suspend certain rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.[116] It is worth considering for the time being that this procedure has never been used. Mention should also be made of the initiative of the EU Commissioner for justice, fundamental rights and citizenship. In 2013, *Viviane Reding* has described as

115 See: European Parliament resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter (2014/2216(INI)). www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0076+0+DOC+XML+V0//EN [29-06-2015].

116 Consolidated of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007). www.eudemocrats.org/fileadmin/user_upload/Documents/D-Reader_friendly_latest%20version.pdf [13-06-2015].

a new 'pre-Article 7 procedure' to strengthen the rule of law suggesting an early warning tool whose primary aim is to enable the EU Commission to enter into a structured dialogue with the Member State concerned to prevent the escalation of systemic threats to the rule of law.[117] The potential modification of the Article 7 procedure has been a running theme in the EU, but this would mean the amendment of the Lisbon Treaty, and it would be possible only with the unanimous will of the EU Member States.

1.8 EU Charter of the Fundamental Rights

The absence of an explicit, written catalogue of fundamental rights, binding for the European Communities has been the subject of political debate for a long time. An important initiative was that the European Community could accede to the ECHR of the CoE, thereby an already existing regional instrument could be aimed at protecting human rights, whose correct application by Member States would be supervised by the ECtHR. This initiative has failed due to rule of the Court of Justice (Opinion 2/94), according to which the Community lacked the competence to accede to the Convention.[118] In light of the afore-

117 In a well-noted speech on 4 September 2013, Viviane Reding, former EU Justice Commissioner, drew an interesting parallel between Europe's economic and financial crisis and what she viewed as an increasing number of 'rule of law crises' revealing problems of a systemic nature. Three concrete examples were mentioned in her speech: (i) The French government's attempt in summer 2010 to secretly implement a collective deportation policy aimed at EU citizens of Romani ethnicity despite contrary assurances given to the Commission that Roma people were not being singled out; (ii) The Hungarian government's attempt in 2011 to undermine the independence of the judiciary by implementing an early mandatory retirement policy; and (iii) The Romanian government's failure to comply with key judgments of the national constitutional court in 2012. Speech/12/596; V. Reding, 'The EU and the Rule of Law – What Next?', 4 September 2013, Speech/13/677. Only systemic threats or violations of the rule of law may trigger the activation of this new mechanism, not minor or individual breaches; (ii) Unlike the current monitoring tool specifically developed for Romania and Bulgaria, this new procedure would apply equally to all Member States, regardless of the date of entry into the EU, size, etc. (iii) While the Commission will continue to remain the guardian of EU values, third party and/or external expertise may be sought when necessary. The EU Fundamental Rights Agency, the Council of Europe (in particular, the Venice Commission) and judicial networks such as the Network of the Presidents of the Supreme Judicial Courts of the EU could therefore be asked to provide expert knowledge, notably during the assessment phase. See: V. Reding, 'A new Rule of Law initiative', Press Conference, European Parliament, Strasbourg, 11 March 2014.

118 On 26 April 1995, the Council of the European Union requested the opinion of the EJC on the question of whether the accession of the European Community (as owner of the legal personality) to the ECHR would be compatible with the Treaty Establishing the European Community? On 7 November 1995, the ECJ heard the oral arguments of the governments of the Member States. On 28 March 1996, the ECJ held, that the Council's request for an opinion was admissible. However the ECJ assumed that 'Respect for human rights is therefore a condition of the lawfulness of Community acts. Accession to the Convention would, however, entail a substantial change in the present Community system for the protection of human rights in that it would entail the entry of the Community into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order. 35 Such a modification of the system for the protection of human rights in the Community, with equally fundamental institutional implications for the Community and for the Member States, would be of constitutional significance and would therefore

mentioned opinion the Community turned towards another option and over the last decades, attempts have been made to elaborate an independent European Union document of human rights. In June 1999 the *Cologne* European Council passed a resolution about the preparation of an EU Charter of the Fundamental Rights (hereafter 'EU Charter'), then the extraordinary meeting of the European Council in Tampere in October 1999 decided on setting up the preparatory body of the EU Charter.[119] The EU Charter was drafted by the European Convention and solemnly proclaimed on 7 December 2000 in Nice by the European Parliament, the Council of Ministers and the European Commission. The main purpose of the EU Charter was to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a charter. The EU Charter responds to recent calls, such as information technology or genetic engineering by enshrining rights e.g. the protection of personal data or rights in connection with bioethics and transparent administration. The main sources of inspiration for the EU Charter were; the ECHR and the constitutional traditions common to the EU member states, as general principles of Community law, the European Social Charter (CoE) and the Community Charter of the Fundamental Social Rights of Workers. The Charter makes a clear distinction between rights and principles, and combines in a single text the civil, political, economic, social and societal rights which had previously been laid down in a variety on international, European and national sources. Originally, the EU Charter was not legally binding, but in 12 December 2007 it was amended and the Treaty provides that the EU shall 'recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union […], which shall have the same legal value as the Treaties.' The EU Charter therefore constitutes primary EU law, integral part of the EU law, setting out the fundamental rights which every Union citizen can benefit from. However, the EU Charter only applies within the scope of EU

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be such as to go beyond the scope of Art. 235. It could be brought about only by way of Treaty amendment. 36 It must therefore be held that, as Community law now stands, the Community has no competence to accede to the Convention.' Opinion Pursuant to Art. 228 of the EC Treaty Opinion of the Court. ECR I-17590; [1996] 2 CMLR 235 (EJC). http://eur-lex.europa.eu/resource.html?uri=cellar:3645916a-61ba-4ad5-84e1-57767433f326.0002.02/DOC_1&format=PDF [13-07-2015].

119 Cologne European Council 3-4 June 1999. Presidency conclusions and annexes, IV. Further Development of the European Union, EU Charter of Fundamental Rights, Paras. 44-45. http://aei.pitt.edu/43336/1/Cologne_1999.pdf [16-07-2015]. Presidency Conclusions, Tampere European Council, 15 and 16 October 1999. Annex: Composition Method of Work and Practical Arrangements for the Body to Elaborate a Draft EU Charter of Fundamental Rights, as set out in the Cologne Conclusions. www.europarl.europa.eu/summits/tam_en.htm [16-07-2015]. The Charter was drafted by the European 'Convention' – composed of representatives of the governments of the EU Member States, members of national parliaments, the European Parliament, and the European Commission, and with observers from the ECJ and from the CoE. The Charter was solemnly proclaimed on 7 December 2000 in Nice by the European Parliament, the Council of Ministers and the European Commission. A modified Charter formed part of the defunct European Constitution (2004). After that treaty's failure, its replacement, the Lisbon Treaty (2007), also gave force to the Charter albeit by referencing it as an independent document rather than by incorporating it into the Treaty itself. Published in Official Journal of the European Union, 2007/C 303/01.

law. The material scope of application of the EU Charter is defined expressly in Article 51, which states that its provisions are addressed only to the EU institutions and bodies and, when they act to implement EU law, to the Member States. The EU Charter does not bind states unless they are acting to implement EU law and it does not extend the powers or competences of the Union, it does not increase the powers of the Union to the detriment of those by the Member States. Articles 52 and 53 of the EU Charter stipulate that fundamental rights must be interpreted in harmony with the constitutional traditions common to the Member States, as well as with the ECHR, and with full account taken of national laws and practices. Article 53 clearly states that the EU Charter cannot restrict or adversely affect the level of protection of fundamental rights already provided by Union law, international law including the ECHR and the Member States' constitutions. The EU Charter is equally applicable to all the Member States of the European Union.

It is important to consider that the EU Charter is supplemented by a protocol with a number of derogations for the United Kingdom and Poland. Although a Protocol (No. 30) has been adopted to clarify its application to the United Kingdom and Poland, it does not limit or rule out its impact on the legal orders of these two Member States, as expressly recognised by the Court of Justice in *N.S.*, Case C-411/10.[120] The ECJ assumed that EU law does not permit a conclusive presumption that Member States observe the fundamental rights conferred on asylum seekers. The Court also stated that its answers did not require to be qualified in any respect so as to take account of Protocol (No. 30) on the application of the EU Charter to Poland and the United Kingdom.

1.9 Dilemmas of the EU Accession to the ECHR

For a long time, the European treaties did not incorporate the human rights, while, the Court of Justice of the European Communities (later the Court of Justice of the European Union, EJC)[121] which primary function was to interpret Communities level legislation and ensure that treaties were applied across all branches of the Communities, has contributed to the protection of human rights on a case by case basis. The ECJ which is not a specialised

120 Judgment in Joined Cases C-411/10, *N.S. v. Secretary of State for the Home Department* and C-493/10 *M.E. and Others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, 2011. www.refworld.org/docid/4ef1ed702.html [24-07-2015].

121 The function of the ECJ is stated in Art. 220 Treaty of Rome; the court must 'ensure that in the interpretation and application of the Treaty the law is observed.' Provides the judicial safeguards necessary to ensure that the law is observed in the interpretation and application of the Treaties and all of the activities of the Union. The ECJ Interprets the common regulatory framework and settles disputes on the application of Community law. It can settle disputes between Member States, between EU institutions and Member States, between different EU institutions and between EU institutions and companies or individuals. One of the very important tasks of the Court is to submit advance notification of interpretation of Community law which it does pursuant to Art. 234.

body for human rights, has developed its own case law on the role of fundamental rights within the European legal order.

The autonomy of EU law, and its specific, *sui generis* nature, has been a running theme throughout its legal history. EU Accession to the ECHR must therefore not disturb EU competences nor the interpretive monopoly of the CJEU in the interpretation of EU law, and Protocol 8 of the Lisbon Treaty was drafted with this in mind, specifically stating that the accession agreement must 'make provision for preserving the specific characteristics of the Union and Union law.' Even though, the ECJ is not a human rights court, the ECJ has greatly contributed to the development of and respect for fundamental rights at European level. Through the decisions of the ECJ, human rights have gradually been placed at the forefront of the agenda of the European Community. According to well-established case law of the ECJ, no fundamental rights form an integral part of the general principles of EU law.[122] The ECJ has drawn inspiration from the constitutional traditions common to the EU Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. As early as 1969, it recognised that fundamental human rights were 'enshrined in the general principles of Community law' and, as such, protected by the Court itself. The ECJ stated that fundamental rights were to be part of the Community legal framework;

> Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.[123]

Its subsequent reaffirmation of the same principle the EJC ensured a level of protection of fundamental rights substantially similar to that required by the national constitution of the Member States.[124] Without question, in recent decades the EJC elaborated a catalogue

122 See: judgments in *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, Para. 4, and *Nold v. Commission*, 4/73, EU:C:1974:51, Para. 13 and Case 26/62 van Gend en Loos (NV Algemene Transporten,[1963] 1 97 *Expeditie Onderneming) v. Nederlandse Administratie der Belastingen*, Case 29/69 *Stauder v. City of Ulm* [1969] ECR 419, Case 44/79 *Hauer v. Land Rheinland-Pfalz* [1979] ECR 3727, Case 294/83 *Les Verts v. Parliament* [1986] ECR 1339, Case C-338/95 Wiener [1997] ECR I-6495, Case C-173/99 *BECTU v. Secretary of State for Trade and Industry* [2001] ECR I-4881.

123 Judgment of 12 November 1969 in Case 29/69 *Erich Stauder v. City of Ulm*, [1969] ECR 419 at p. 419. By an order of 18 June 1969 received by the Court Registry, on 26 June 1969 the Verwaltungsgericht Stuttgart has referred to the Court for a preliminary ruling under Art. 177 of the EEC Treaty the question whether the requirement in Art. 4 of Dec. No. 69/71 EEC of the Commission of the European Communities that the sale of butter at reduced prices to beneficiaries under certain social welfare schemes shall be subject to the condition that the name of beneficiaries shall be divulged to retailers can be considered compatible with the general principles of Community law in force.

124 Judgement of 22 October 1986 in Case *Solange II Re Wuensche Handelsgesellschaft*, BVerfG [1987] 3 CMLR 225, 265. 'Solange II' is the common name for the German Federal Constitutional Court's decision in

of human rights drawn from the general principles of Community law and from the common constitutional traditions of the Member States. In 2004 in *Omega v. Spielhallen* case the specific question referred to the ECJ was whether a common legal conception in all Member States was a precondition for one of those States being enabled to restrict the basic freedom. The ECJ considered that 'there can be no doubt that the objective of protecting human dignity is compatible with Community law.' The ECJ established that human dignity was one of the general principles of law recognised by the Community as in need of protection, and that the measure taken in this context fulfilled the conditions for justifying the service restriction.[125] The Court of Justice examines not only the compatibility of EU legislation with fundamental rights, but also the compatibility of measures taken at national level by the Member States to apply or comply with EU law.

It is important to consider that although the EJC applies the principles of the ECHR and cites decisions of the ECtHR, the EJC technically is not bound by such decisions.[126] For a long time, it had been hypothesized that the EU as an international organization should have acceded to the ECHR, in order to optimize its human rights protection and to avoid double standards at European level (It may be noted that to date only states have been members of the ECHR). Accordingly, the main reason for EU accession to the ECHR would be to potentially alleviate the situation in which individuals find themselves when faced by possible breaches of the ECHR by EU institutions. Article 6(2) TEU provides that the Union will accede to the ECHR, although it states that 'such accession shall not affect the Union's competences as defined in the Treaties'. The accession will not extend the Union's power and tasks; application of the ECHR will be limited to those areas which come within the competence of the EU. However, the ECJ has consistently held that an international agreement cannot affect the allocation of powers fixed by the Treaties and, consequently, the autonomy of the EU legal system.[127] The ECJ observed that while after

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Wünsche Handelsgesellschaf (BvR 2, 197/83; 1987 3 CMLR 225) decided on 22 October 1986). The decision contended that West German courts did not need to review the legislation of the European Community, as long as ('solange') the EC treaties guaranteed the same fundamental rights as the German Constitution. This was a partial reversal on the stance taken in the 'Solange I' case, which gave Germany the authority to question all Community law against the framework of the constitution. *'Solange II'* entrusted the ECJ to strike down any laws consistent with the fundamental rights of the EC, but retained the German courts' authority to interpret new primary law of the Community. See: J. Kokott, Report on Germany, *The European Court and National Courts: Doctrine & Jurisprudence: Legal Change in its Social Context*, Edited by A.M. Slaughter, A. Stone Sweet & J. Weile, Bloomsbury Publishing, 1998. pp. 122-131.

125 Judgment of 14 October 2004 in Case 36/02, *Omega Spielhallen- und Automatenaufstellungs GmbH v. Oberbürgermeisterin der Bundesstadt Bonn*, [2004] at Para. 34. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002CJ0036:EN:PDF [13-07-2015]. See: T. Ackermann, 'Case C-36/02, Omega Spielhallen- und Automatenaufstellungs-GmbHv. Oberbürgermeisterin der Bundesstadt Bonn' Vol. 42 (2005) *Common Market Law Review*, Issue 4, pp. 1107-1120.

126 See: *Kadi and Al Barakaat International Foundation v. Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, Para. 283.

127 See: Paras. 34 and 35 of EJC Opinion 2/94 (EU:C:1996:140), the Court of Justice considered that, as Community law stood at the time, the European Community had no competence to accede to the ECHR.

accession, due to the interpretation of the ECtHR the ECHR would bind the EU including the ECJ, it would be unacceptable for the ECtHR to call into question the ECJ's findings in relation to the scope of EU law. As it has already been noted above at the Council of Europe the most recent Additional Protocol No. 16 to the ECHR (2013) allows ECHR States Parties' highest courts to seek advisory opinions from the ECtHR regarding the interpretation and/or application of rights in the ECHR. Although the EU will not accede to this Protocol No. 16, the ECJ nonetheless perceived it as a threat to the autonomy of EU law, because ECHR states' highest courts might prefer to make a preliminary reference to ECtHR on the compatibility of EU law with ECHR rights, rather than to ECJ. As in March 1996 the ECJ considered 'It must therefore be held that, as Community law now stands, the Community has no competence to accede to the Convention.' After the opinion of 1996, it is not surprising that on 18 December 2014, the ECJ delivered its Opinion 2/13 on the compatibility with EU law in the draft agreement for EU accession to the ECHR[128] stated as follows:

> The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.[129]

However, the legal situation has changed and the Lisbon Treaty gave the authorisation to the accession, moreover the Protocol No. 14 to the ECHR created appropriate conditions for a possible accession, the ECJ picked the draft agreement and the related documents to pieces. The ECJ's reasoning is very thorough, detailed and thought provoking, however, it can justly be claimed that the Opinion 2/13 will be talked about for a long time. As several commentators have pointed out, a human-rights-based legal assessment of the unfavourable ECJ Opinion 2/13 which has blocked the path for the accession to the ECHR is quite negative.[130] The scope of this paper unfortunately prevents an in-depth exploration of this

128 Opinion 2/13 of the Court (Full Court) 18 December 2014.

129 The request for an Opinion submitted to the Court of Justice of the European Union by the European Commission is worded as follows: 'Is the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950 ('the ECHR'),] compatible with the Treaties?' http://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=EN [12-07-2015].

130 Among other: Martin Scheinin, Sionaidh Douglas-Scott, Leonard Besselnik, Steve Peers, Stian Øby Johansen and Walter Milchl. opinion 2/13, [2014] ECJ 2475 Opinion of AG Kokott. See *more*: P. Gragl, A Giant Leap for European Human Rights? The Final Agreement on the European Union's Accession to the European Convention on Human Rights, *Common Market Law Review*, 2011, p. 32. S. Lambrecht: The Sting is in the tail: CJEU Opinion 2/13 to draft agreement on the accession of the EU to the European Convention on

very interesting topic. Since even if the ECJ rejected the draft accession agreement, under the Treaties, it will remain a legal obligation for the EU to sooner or later accede to the ECHR.

1.10 Conclusions

During the twentieth century, significant efforts were made to address issues of protection and promotion of the human rights through international law. The United Nations gradually built up a range of mechanisms that theoretically are capable of developing and protecting human rights. The UN made efforts to codify human rights in a universally recognized regime of treaties, institutions, and norms. Especially a spectacular development started after 1993, which was crowned by the creation of the UN Human Rights Council. The UN human rights mechanisms is well-built in theory, but in practice it is very slow and not effective. Reasons for this are mainly political. The first concern should be formulating about the choice of the members of the UNHRC, as numerous countries are member of the Council, although their human rights records are rather blameworthy. The UPR procedure's ultimate aim is to improve the human rights situation in all countries and address human rights violations wherever they occur are capable of monitoring on the human rights situation in all UN Member States, The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations, but we know they are not co-operating countries. The mechanism provides the appropriate framework for continuous improvement of the human rights situation, but to be effective a strong political will would be needed. Since 2007, the Human Rights Council adopted a number of decision on the different conflicts (the Israeli-Palestinian conflict) and on the human rights situations in countries such as Syria, Libya, Iran, Burma, Guinea, North Korea, Côte d'Ivoire, Kyrgyzstan and Sri Lanka, however, these decision have very rarely been endorsed by the UN Security Council. In recent years, the Security Council has adopted several Chapter VII resolutions ('Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression') on issues concerning humanitarian assistance, thus considering humanitarian crises and mass violations of human rights as a threat to international peace and security, but the enforcement of these decisions have been more than problematic.

Human Rights, *in European Human Rights Law Review*, 2015, p. 187. A. Duff, *EU Accession to the ECHR: What to do next, in Verfblog* 2015, p. 1. www.verfassungsblog.de/eu-accession-to-the-echr-what-to-do-next/#.VbqK9fntlHw [12-07-2015]. L. Vanbellingen: *The EU Accession to the European Convention on Human Rights What's at Stake for the EU Institutions?* http://lib.ugent.be/fulltxt/RUG01/002/163/362/RUG01-002163362_2014_0001_AC.pdf [12-07-2015].

In the end of August 2014 UN High Commissioner for Human Rights Navy Pillay expressed her deep concern about the Syrian situation, stating that 'I firmly believe that greater responsiveness by this council would have saved hundreds of thousands of lives.' She accused the members of the Security Council of putting their national interests ahead of international concerns, saying that 'Short-term geopolitical considerations and national interest, narrowly defined, have repeatedly taken precedence over intolerable human suffering and gave breaches of – and long-term threats to – international peace and security.' The former Secretary-General Kofi Annan also said that the diplomatic and political attempts to end the violence in Syria had repeatedly been thwarted by bickering, power play and competing interests. The recent UN Secretary-General, Ban Ki-moon, also called for greater unanimity within the Security Council:

> There is no more important challenge before us than improving our ability to reach a stronger and earlier consensus, […] *It is time for a new era of collaboration, cooperation and action from the Security Council.*[131]

This statements show the need of the reform of the UN Security Council and the necessity to do much more to prevent conflicts. As for preventive action, the international community should create unequivocal norms for intervention against ongoing atrocities. The principle of the R2P provoke a useful debate over humanitarian intervention in terms of state sovereignty, which could lead to the formulation of internationally binding legal norms.

At European level the human rights situation seems much better than at the universal level, nonetheless there are indications that human rights cannot entirely be enforced in Europe either. The jurisprudence of the ECtHR and the ECJ is encouraging in terms of the development of the infringement of the human rights protected in the ECHR and in the EU Charter. However the opt-out from the EU Charter, the impossible application of Article 7 process, the problems around of the EU accession to the ECHR also illustrates that there are still difficulties in terms of improving human rights mechanisms. It should be pointed out that no system works perfectly therefore efforts should be made to improve the efficiency of existing mechanisms, and if it is necessary, develop the new ones. To this end, first of all we need a clear political will. The civil society, the NGOs and other stakeholders could play a significant role in influencing the decision-makers. The legal scholars also have the responsibility, they have to constantly monitor the evolution of human rights and raise their voice in case of violations of human rights.

131 With more than 191,000 dead in Syria, U.N. rights chief slams global 'paralysis'. http://edition.cnn.com/2014/08/22/world/meast/syria-conflict/ [27-07-2015].