THE ROLE OF REGIONAL HUMAN RIGHTS INSTITUTIONS AND THE QUEST FOR PEACE IN EUROPE

With a comment on the invasion of Ukraine

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THE SWEDISH FOUNDATION
FOR HUMAN RIGHTS

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With a comment on the invasion of Ukraine

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Written by Frida Sellstedt Lockner, Fredrik Svensson and Jesper Hellsten
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www.humanrights.se
info@humanrights.se

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GLOSSARY

ACFC – Advisory Committee on the Framework Convention for the Protection of National Minorities

CiO – Chairperson-in-Office

COE – The Council of Europe

CPC – The Conflict Prevention Centre

CSCE – Security and Co-operation in Europe

CSBM – Confidence and Security Building Measures

ECHR – The Convention on the Protection of Human Rights and Fundamental Freedoms

ECtHR – The European Court of Human Rights

EU – The European Union

FCNM – The Framework Convention for the Protection of National Minorities

GREVIO – The Group of Experts on Action against Violence against Women and Domestic Violence

HDIM – Human Dimension Implementation Meeting

ICC – The International Criminal Court

ICJ – The International Court of Justice

ICRC – The International Committee of the Red Cross

ICTY – The International Tribunal for Former Yugoslavia

IHL – International Humanitarian Law

IHRL – International Human Rights Law

ITLOS – The International Tribunal for the Law of the Sea

LGBTQI – Lesbian, Gay, Bisexual, Transgender, Queer and Intersex people

NGO – Non-governmental organisation

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – The Organisation for Security and Co-operation in Europe

PACE – The Parliamentary Assembly

R2P – The Responsibility to Protect

TJ – Transitional Justice

UN – United Nations

UNSCR 1325 – United Nations Security Council Resolution 1325

WPS – Women, Peace and Security

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“The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States.”

Helsinki Final Act, 1975, Principle VII (§5)

EXECUTIVE SUMMARY

If done successfully, conflict prevention is the sum of many actions that are not necessarily properly noted and praised. It is only when prevention fails that the consequences of failure in terms of tensions, strife and armed conflict show and require the application of other measures. As of today, policy specialists in peace and security agree on the fact that prevention is the key. We ought to spend more on prevention to avoid the higher costs of conflicts escalating into full-scale armed conflicts, causing irreparable human suffering. These costs, in the geographic area covered by this study, at the time of research, are most visible in Ukraine. However, costs also spill over to neighbouring countries and have implications for many people around the globe – the hardest hit the ones with scarce resources. This threatens the fulfilment of basic human rights and in the end also peace and security in places far away from Ukraine.

A central aspect in conflict prevention is to ensure the effective protection and fulfilment of human rights without distinction and discrimination. The full range of human rights – from the economic, social and cultural rights to the civil and political rights as well as collective rights – is essential for building a society resilient to conflicts. It seems reasonable to suppose that human rights institutions – including regional systems – have a role to play in this conflict prevention project. Further, when prevention fails and there is an outbreak of armed conflict, human rights institutions can play an important role in collecting evidence for and make visible the human rights violations and violations of international humanitarian law taking place within the conflict, and advocate for justice to be made.

In the process of peace negotiations, the implementation of peace accords, peace building, transitional justice processes and other processes for non-recurrence, human rights institutions have a role to play. Now, how is that role played by the regional intergovernmental organisations in Europe and in particular the regional institutions for human rights? Could and should the human rights system play a greater role?

The three intergovernmental organisations related to in this study were all founded as peace projects or at least as organs for preserving peace and security in Europe. Their initial outset varied and their pace and development as to the inclusion of a human rights dimension has also varied. The Council of Europe was founded in 1949 on a common heritage and values based on human rights, democracy, and the rule of law and early on adopted the European Convention on Human Rights which entered into force in 1953. The Council also developed a framework for the follow up on States' commitments, including a complaints mechanism which today is the European Court of Human Rights. The Organisation for Security and Cooperation in Europe (OSCE), in contrast, was founded during the Cold War and its framework of principles is based on political commitments instead of legal commitments. The OSCE does however apply a comprehensive approach to security which reinforces intersectionality by means of its three dimensions of security: the politico-military, the economic and environmental, and the human dimension.

The European Union is somewhat a different story, even if the origins stem from a will to end a long period of conflicts after World War II, building political and economic cooperation to bolster recovery and prevent conflicts by the founding of its predecessor, the European Coal and Steel Community in 1951. The European Union, as we know it today, was officially established following the entry into force of the Maastricht Treaty in 1993. The single market with the "four freedoms" was launched, aiming at removing internal barriers to the free movement of people, goods, services, and money within the EU. As the EU faced new challenges such as terrorism, climate change, a global financial crisis, and other security issues in the region, several treaties were adopted in order to reform and enhance its institutions. The latest, the Treaty of Lisbon, is the legal basis of the EU since 2009 and regulates its powers. The EU is also, through the EU Commission and the EU External Actions Service, an external actor which works and has diplomatic representations around the world. Through its diplomatic missions and foreign aid, the EU is therefore also a stakeholder in human rights, humanitarian action, democracy, development, conflict prevention and peace building outside the EU. EU policy and action thus include both the protection of fundamental rights for EU citizens and to promote human rights, democracy and the rule of law globally.

While the EU builds on fundamental rights, democracy, and the rule of law, the Court of Justice of the European Union deals primarily with matters brought by individuals and companies concerning, inter alia, competition law, State aid, trade, trademarks, and agriculture. Its responsibilities include to ensure that EU law is correctly interpreted and applied in all the Member Countries and that all EU institutions abide by EU law.

The different character of the EU compared to the Council of Europe and the OSCE has made it hard to, within the limits of research for this study and the focus on regional human rights institutions in relation to peace and security in Europe, properly include the EU in an analysis on the nexus. However, the EU uses its common norms and principles to spread values such as human rights, democracy, and the rule of law internally in Europe and globally. The methods used to promote and maintain these values are political cooperation, adoption of normative frameworks, and regional legislation applicable to EU institutions and bodies as well as Member States. But also through international diplomatic relations, humanitarian aid, and civil and military missions worldwide. Hence, the EU has a significant potential to contribute to both the protection of and respect for human rights as well as the preservation of peace and security.

While neither of the normative frameworks of the institutions studied provide for an explicit right to peace, they all include provisions that are important for human security, for the prevention of conflict and for the protection of human beings in the event of armed conflict. The European Convention on Human Rights includes a broad range of rights of importance both in peacetime and

in times of war, including the right to life, the prohibition of torture – both non-derogable – and the right to physical liberty and security. The Council of Europe framework also contains additional conventions which are important in this respect, as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, and the Convention on Preventing and Combating Violence against Women and Domestic Violence.

The OSCE works differently as it in contrast to the Council of Europe does not support itself on legally binding conventions or a complaints mechanism in the form of a court but on political agreements among participating States and follow-up mechanisms. However, it should be noted that the distinction is between legal and political, and not between binding and non-binding. Founded after the Council, the OSCE relies upon the framework and institutions of the Council and had no reason to copy its model but rather relate to it and find its own added value. The OSCE approach is process-oriented where commitments are built upon and added upon, creating a normative framework which must be interpreted by taking into account the whole history of documents and which at the same time is ongoing. The OSCE human dimension links human rights with the institutional and political system of a State. In essence, OSCE States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively. This is also why the OSCE human dimension constitutes a pan-European public order and a "community of values", strongly committed to the rule of law and based on human dignity. A positive side of this modus operandi is that it allows the OSCE to react quickly to new needs.

A fundamental aspect of the OSCE's human dimension is that human rights and pluralistic democracy are not considered the internal affairs of a State. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. Therefore, the OSCE participating States are not in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries and they also have a duty to assist each other in solving specific problems.

As for the EU, it would take many years before the EU formalised its work within the context of human rights and peace and security. However, the EU Charter of Fundamental Rights, the Commission's related strategies, and the EU Agency for Fundamental Rights indicate an ambition to institutionalise human rights within the organisation as well as among its Member States. The EU Charter furthermore applies in conjunction with national as well as international fundamental rights systems. Among them is the European Convention on Human Rights, which the provisions of the Charter are consistent with. In this way, the EU complements already established human rights instruments and mechanisms in Europe rather than trying to replace the mandate and function of them. With its full legal personality and possibility to accede regional and international human rights agreements and to engage in other global human rights systems, the EU excels in this respect as compared with the COE and the OCSE. This unique characteristic enable the EU to go further in respecting and promoting human rights regionally and worldwide.

In conclusion, as for the normative frameworks of the three intergovernmental organisations, these clearly are conducive to an environment where human rights and freedoms are protected and where this protection, promotion and fulfilment of human rights also connects to the upholding of peace and security as well as the protection of rights and freedoms in times of armed conflict. The geographically overlapping intergovernmental organisations' normative frameworks in general complement each other and build upon work done by their peers, avoiding duplication and reinforcing strengths. On the negative side is the complexity of dealing with different normative frameworks, but this has its explanation in the mere existence of the three organisations which have different origins, different mandates and different sets of memberships.

Looking at the example of the Russian full-scale invasion of Ukraine, we can see how the different intergovernmental organisations act according to their mandates. First of all, the three organisations were engaged already as a

consequence of the 2014 Russian occupation and annexation of Crimea and the city of Sevastopol and the occupation of the Luhansk and Donetsk areas. Declarations were made condemning the unlawful occupation and annexation, missions to monitor the situation were established, and diplomatic efforts to resolve the situation were made and continued up to the full-scale invasion.

Following the invasion of Ukraine, new declarations have been made by the political structures of the organisations as well as on behalf of their institutions and the organisations have responded according to their different mandates. One fundamental difference between the organisations being the reprisal for the invasion – resulting in the suspension of Russia from taking part in the work of the Council of Europe which resulted in Russia communicating its withdrawal from the organisation and denouncing the European Convention on Human Rights. This while Russia continues being a participating State of the OSCE. This means in effect that the OSCE remains a regional intergovernmental arena where both Russia and Ukraine are present – in contrast to the situation of the Council of Europe. There is thus a leverage for the OSCE and a potential to play a role in resolving the conflict but it depends on the willingness of Russia to accept that role and honour its international obligations. Most certainly, in a post-conflict scenario, that role, together with the EU and the Council of Europe will be of utmost importance for the rebuilding of Ukraine and its institutions and for access to truth, justice and reparations for victims.

Looking more specifically at the European Court of Human Rights, from a wider perspective as to its role in relation to peace and security, we find that the Court has been instrumental in providing jurisprudence regarding rights and freedoms in conflict and post-conflict situations in Europe. It was first used by Ukraine and its citizens regarding the unlawful occupation and annexation of Crimea and later in its attempt to stop the full-scale Russian invasion. Although the Court was not designed to be a forum for enforcing State Parties' obligations in armed conflicts and is restricted to cases related to violations of the European Convention on Human Rights presented before it, the Court has made considerable contributions in the area of peace and security. The Court has for example contributed to the interpretation of the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), and derogations in times of war or other public emergency (Article 15). The Court has delivered numerous decisions dealing with a wide range of issues relating to transitional justice and the rule of law, including amnesties, compensation and restitution, prosecution, lustration, memory and truth. This body of jurisprudence constitutes an important contribution to defining State responsibilities in conflict and post-conflict situations. Even in the event that States ignore the rulings in a specific case, decisions still add to this body of jurisprudence, potentially affecting public policy and State behaviour in the future. This means that although the Court is a mechanism that grinds slowly and therefore is not the solution to an upcoming or ongoing armed conflict, it sets standards which have implications on peace and security.

However, when cases are submitted to the Court, it may specify interim measures to the parties provided that there is a real risk that serious violations of the European Convention could take place while it examines the case. Following the outbreak of a number of armed conflicts in the region, the Court has increasingly resorted to interim measures in inter-state cases relating to armed conflict situations. This was the case in 2008 regarding the outbreak of hostilities between Russia and Georgia, the case of the Russian occupation of Crimea in 2014, and in the case of hostilities between Armenia and Azerbaijan in 2020. The Court noted that these situations constituted a real and continuing risk that could give rise to serious violations of the European Convention. The Court therefore called upon State Parties to comply with their obligations under the ECHR, specifically Articles 2 and 3, and requested State Parties to inform, as soon as possible, of the measures taken to comply with their obligations.

The Court has also made important contributions as to defining the extent of the jurisdiction that the State Parties exercise and within which they have the obligation to secure human rights, also in the case of effective control resulting from unlawful military action and occupation. Regarding Ukraine, Russia has effective control over the Autonomous Republic of Crimea and the city of Sevastopol since 2014. Additionally, certain parts of the Donetsk and Luhansk areas have been under Russian overall control since 2014, exercised through

subordinate local administration. Then, after the full-scale invasion, other areas of the Ukrainian territory have been under effective control of Russia, even though such control in some cases subsequently has been lost. This effective control comes with responsibilities regarding human rights obligations.

In relation to the 24 February 2022 Russian full-scale invasion, already on 28 February Ukraine filed an application against Russia before the ECtHR, and requested the Court to take interim measures. The Court acted already the following day, calling on the Russian government to refrain from military attacks against civilians and civilian objects as well as other violations of international humanitarian law.

Ukraine has lodged nine complaints with the ECtHR in the framework of the conflict, three of which are included in the case regarding Crimea, declared admissible in January 2021. Apart from these complaints, the Court, as of March 2021 had also received more than 7,000 individual complaints and one by the Netherlands concerning the shooting down of Malaysia Airlines flight MH17. As for the case on Crimea, the Court in its decision declared and proved that the Russian argument for its actions in Crimea, namely that it was a helping hand for the will of the Crimean people by implementing the result of the 2014 “referendum” is false as Russian forces gained effective control over those territories before the so called “referendum”. Proving these facts can be important for other processes – legal as well as political.

In spite of the order of the ECtHR to abort hostilities (as well as a similar order of the International Court of Justice), Russia’s invasion of Ukraine continued. This follows a pattern from other cases where studies have shown that the majority of cases in which the State Parties have not complied with

their obligations regarding interim measures are related to conflict situations. The question therefore arises as to what extent orders of interim measures in situations of armed conflict are effective as to influence the conduct by States. At the same time, evidence shows that they can provide protection in specifically critical situations.

As for the European Union, in addition to declarations and diplomatic efforts, it has responded by mobilising to enact sanctions against Russian and Belarussian individuals, companies and trade. The EU also activated its Temporary Protection Directive for the first time, meaning the right to instant protection for Ukrainians fleeing the war. Finally, the EU has also worked on the humanitarian level – both in Ukraine and in countries receiving refugees, and assisted to financially support the Ukrainian State budget. The actions of the EU must be seen against the backdrop of Ukraine being an ally but not a member of the union. On a general level, the response of the EU to the war in Ukraine has been much swifter, potent and one of shared responsibilities, compared to the relative slow, weak and fragmented response to the war in Syria and its resulting refugee flows in 2015. One can hope that this development and the activation of the Temporary Protection Directive is the result of a learning process stemming from the failures in responding to the Syrian refugee flows, rather than resulting from the discrimination of one nationality compared to another.

On balance, the conclusion on the role of the human rights institutions within the three intergovernmental organisations must be that they do play important roles to peace and security in the region. They clearly relate to conflict prevention, early warning and peacebuilding in their work and connect this to the promotion, protection and fulfilment of human rights, the rule of law, access to justice and transitional justice. They liaise between themselves and they have access to and are used as experts by the decision-making bodies of their respective organisations. However more could be done and one concern in particular that has been raised by several stakeholders is the improvement of necessary but difficult coordination between the different entities involved in the investigations of international crimes committed in Ukraine.

Another concern that could be addressed in the light of all is the relationship between the human rights institutions and its Member States. For example, the case of the human rights defender Mr. Kavala, where Turkey has refused to abide the Court's decision to release him and completely neglect the statements addressed by the Commissioner concerning violations of Mr. Kavala's human rights. The fact that a State Party to the ECHR and a Member State of the COE refuses to follow recommendations and legally binding decisions made by the Court and the Commissioner, diminish their power to fulfil their work. Additionally, the fact that Member States decide to withdraw from different treaties as well as the intergovernmental organisations, such as Turkey and the Istanbul Convention, Russia and the COE as well as the ECHR, and United Kingdom and the EU is a worrying trend. Challenges such as States' lack of respect, political will and enforcement threaten the credibility of the human rights system in Europe, and thus the ability to maintain the protection of human rights, peace and security in the region.

INTRODUCTION

The nexus between human rights and peace and security occupies a central position in the work of the Swedish Foundation for Human Rights (hereinafter the SFHR) as its pillars include the redress for grave human rights violations, rule of law, and transitional justice. In line with this mandate, the SFHR in 2018 conducted a study on the nexus between human rights and peace and security in Swedish development cooperation – examining policy documents and strategies. Following many years of interaction with the regional systems for human rights in Africa and the Americas, a publication outlining the central characteristics of the two systems was published in 2017. The present series of studies is a continuation of this work, taking stock of accumulated experience and combining the role of human rights for peace and security, and the role of regional human rights systems. This report is the third in a series of studies, examining the role of the different regional human rights systems for peace and security. The first report "Silencing the Guns in Africa" was launched in 2020, and the second report, on the Americas, was published early 2022.

BACKGROUND

The focus on Europe is relevant for a number of reasons. In fact, the phrase "crimes against humanity" was first employed internationally in a 1915 declaration by the governments of Great Britain, France and Russia which condemned the Turkish government for the alleged massacres of Armenians for which all the members of the Turkish Government, according to the declaration, would be held responsible together with its agents implicated in the massacres. [1]

Later, Europe was the centre stage of World War I, World War II, and the following Nuremberg trials which have been important for the understanding of and typification of international crimes, the establishment of intergovernmental organisations in Europe and elsewhere and the drafting of conventions and mechanisms to protect human rights and to bring justice for gross human rights violations and international crimes. Further, after the fall of the Soviet Union and its client States, Europe experienced a transition towards democracy. Europe was also quite recently the stage for the devastating war in the Balkans and the setting up of the International Criminal Tribunal for the former Yugoslavia. And, during the course of investigations, Europe was also the scene of the Russian full-scale invasion of Ukraine, and as a consequence, the International Criminal Court (ICC) opened an investigation on the allegations of war crimes, crimes against humanity and genocide from 21 November 2013 onwards.

Europe is also interesting – but challenging – to study due to the fact that several intergovernmental organisations partly overlap. This overlap can also be seen in the sub-regional intergovernmental organisations in Africa and the Americas. However, the overlap is of a wider character in Europe since the overlapping organisations are not sub-regional but rather of different character, covering common geographic areas. The study therefore focuses on the Council of Europe, the Organisation for Security and Cooperation in Europe as well as the European Union. Thus, while recognising that the European Council and especially the European Court of Human Rights is the institution which we tend to think of as the backbone of the regional human rights system, the study broadens the concept of the regional human rights system to also include the relevant parts of the OSCE and the EU.

From a global perspective, the Agenda 2030 through its Sustainable Development Goal 16 (Peace, justice and strong institutions) makes for a clear nexus between human rights and peace and security. Hopefully, in the same spirit, this study can bring some important contributions to ways at breaking the silos between human rights and peace and security in Europe – looking at the challenges that can be found in the region as well as solutions and best practice.

As the Russian invasion of Ukraine happened during the course of this investigation, the report does not explicitly focus on these events but a chapter regarding Ukraine was added in the final stages of writing.

METHOD AND DELIMITATIONS

This study was conducted through the analysis of primary and secondary written sources. All sources can be found in the End Notes section.

The mandate of the regional intergovernmental organisations on peace and security as well as human rights, is shared with the UN. While institutions generally collaborate in their responses to conflict situations, the UN bears the primary responsibility for the maintenance of international peace and security. This relationship is relevant for the report matter. However, due to the necessity of delimiting the study to a doable approach, the intersection and complementarity between the UN and the regional intergovernmental organisations is not studied in detail. This is also true for the sub-regional intergovernmental organisations, which also are not part of this study. Finally, the study does not relate to NATO. Even though a great part of the European countries are NATO members, and as such the organisation is a key player in relation to peace and security in Europe and beyond, NATO as a defence alliance is not comparable to the intergovernmental organisations included in this study and those included in the previous studies conducted on other regions.

COMMENT ON IHL AND IHRL

In legal terms, violations of International Humanitarian Law (hereinafter IHL) are committed by States and other parties to armed conflicts. However, in practice violations are committed by human beings and States are obliged to supress such acts. Some particularly serious violations imply international criminal responsibility of their perpetrators having committed them with the necessary knowledge and intent. The Geneva Conventions and the Additional Protocol 1 provide that certain violations of IHL constitute “grave breaches” – and these must be prosecuted by States, including by means of universal jurisdiction. Additionally, customary law and international criminal law treaties establish individual criminal responsibility for other serious violations of IHL. Such serious violations of IHL and grave breaches of IHL constitute war crimes. Some violations of IHL, including war crimes, such as murder, extermination or deportation may also constitute crimes against humanity provided that they are part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.[2]

It is generally accepted that International Human Rights Law (hereinafter IHRL) continues to apply in the framework of armed conflict. However, the existence of an armed conflict may have implications for the extent of the jurisdiction of the State parties to the conflict and hence their obligations to secure human rights. The jurisdiction is primarily territorial but, jurisdiction can also arise from effective control of an area outside the State’s own territorial boundaries.[3]

In the framework of an armed conflict, IHL applies in parallel to IHRL even though they sometimes overlap. Some rights are part of the IHL framework, others of the IHRL framework and yet others are matters of both. Applying the principle of lex specialis (meaning that more specific rules will prevail over more general rules) in an armed conflict setting means that often IHL is given priority. In general though, the more effective the control over persons or territory, the more IHRL would be the appropriate framework.[4]

COMMENT ON SECURITY AND HUMAN SECURITY

Bridging peace and security with IHL and IHRL implies a wider understanding of security which encompasses human security. While this study handles security at the macro level as in peace and security between States, it also explores the human rights side of peace and security, encompassing the individual and group level and thus connecting to human security. The notion of Human security, introduced at the 2005 World Summit, was further defined by the UN General Assembly resolution 66/290 in 2012. Its focus on prevention makes for a compatible link between peace and security at the macro level via IHL and IHRL, connecting the macro level to the individual and group level. Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities; recognises the interlinkages between peace, development and human rights; and equally considers civil, political, economic, social and cultural rights.[5]

OUTLINE

The main chapters of the study are in general initiated by descriptive subchapters which are followed by a concluding analysis. Since, for some readers, the subject matter is new, these descriptive sections serve as introduction and background, aimed at fomenting the understanding of the respective intergovernmental organisations.

COUNCIL OF EUROPE

The Council of Europe (hereinafter the Council or COE) was founded on 5 May 1949 through the adoption of the Statue of the Council of Europe. The founders were the Governments of Italy, France, Belgium, Luxembourg, United Kingdom, Ireland, Netherlands, Norway, Denmark, and Sweden. The creation of the Council arose from the events of World War II, aiming at improving the unity between the like-minded European States and preserving their common heritage and values based on human rights, democracy, and the rule of law. The Governments were strongly convinced that such an event as the World War II should never happen again.[6]

Since 1949, the number of Member States of the Council has expanded to 47. However, following Russia's invasion of Ukraine in February 2022, the Committee of Ministers of the Council of Europe decided to launch the procedure under Article 8 of the Statue in order to suspend Russia from its rights of representation in the COE. At the beginning of March, the Committee of Ministers consulted with the Council's Parliamentary Assembly and on the 15 of March, the Parliamentary Assembly unanimously adopted an opinion condemning Russia's aggression against Ukraine and stressed that this behaviour disrespects the core of the COE and its Statue. Consequently, the Parliamentary Assembly stated in its opinion that Russia could no longer be a Member State of the Council. On the same day, Russia informed the Secretary-

General of the Council of its withdrawal from the Council and its intention to denounce the European Convention on Human Rights. On 16 March 2022 Russia left the Council of Europe after 26 years of membership. As of today, the Council of Europe accordingly consists of 46 Member States.7

THE BODIES OF THE COUNCIL OF EUROPE

The headquarter of the Council is seated in Strasbourg, France. It is composed of a Secretary-General and a set of bodies. The Secretary-General leads the COE and is responsible for the strategic planning as well as the direction of the organisation's budget and program. The Secretary-General serves for a 5 year term.[8]

The Committee of Ministers is the legislative decision-making body. It is a governmental body that discusses common political interests within the European region, focusing on among other things integration, the protection of human rights, democratic institutions, and the rule of law. Although it does not approach defence issues, it discusses matters on the nexus between human rights and peace and security, such as derogations of human rights, prevention of torture, terrorism, violence against women, protection of minorities, etc. As the legislative decision-making body, the Committee of Ministers adopts conventions on specific and current themes, including declarations and resolutions. The Conventions are legal standards agreed upon by the Council of Europe's Member States and are legally binding treaties on the States that ratify them. It also approves the Council of Europe's programme and budget and decides its policy. The Committee consists of the Ministers for Foreign Affairs of the 46 Member States, or the Ministers' Deputies (permanent representatives). It meets annually at ministerial level and more frequently at deputy level. The presidency of the Committee changes every six months between the Member States.[9]

The Parliamentary Assembly (hereinafter the PACE) is the deliberative body of the Council. It consists of 324 representatives of parliament from all the Member States (this number is based on 47 Member States). Each Member State appoints and elects its representatives to the PACE, and the number of votes is equal to the size of the Member State. The PACE meets annually during its ordinary session. The PACE mainly discusses issues within its competence, in accordance with the Statue of the Council of Europe, and subsequently provides the Committee of Ministers with its conclusions through recommendations. It is also responsible for electing the Secretary-General, the Human Rights Commissioner, and the judges to the European Court of Human Rights. The president of the PACE controls the proceedings and does not vote or take part in the discussions. The president is elected by the Parliamentary Assembly itself and serves until the next ordinary session.[10] The Secretariat of the Council serves both the Committee of Ministers and the Parliamentary Assembly.[11]

In the subsequent chapters we will examine the Council of Europe's contributions to human rights and the peace and security architecture in the region, and explore in further detail how the European Court of Human Rights has expounded on the provisions enshrined in the European Convention on Human Rights, the obligations of the State Parties, and the mandate of the Commissioner for Human Rights as well as the Venice Commission.

NORMATIVE FRAMEWORK

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Shortly after the founding of the Council of Europe, the Member States adopted the Convention on the Protection of Human Rights and Fundamental Freedoms[12] (hereinafter the European Convention or the ECHR). It opened up for signature in November 1950, and entered into force in September 1953.[13] The European Convention was the first comprehensive and legally binding convention for the protection of human rights to emerge following the end of the Second World War. The provisions enshrined in it primarily focus on civil and political rights, leaving out social, economic and cultural rights.[14] The adoption of the ECHR could be considered the beginning of the development of the Council of Europe's human rights system.[15] As of 2021, all Member States have signed and ratified the European Convention.[16] Since Russia announced its withdrawal from the Council of Europe in March 2022 it will also affects its obligations in accordance with the ECHR. According to the Committee of Ministers' resolution on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, Russia will stop being a State Party to the ECHR on 16 September 2022.[17]

Since 1953, the ECHR has been amended and expanded by a number of Protocols, including the introduction of the right to free elections in Protocol I and the abolition of the death penalty in Protocol VI.[18] The Protocols are legally binding on the State Parties that have signed and ratified them.[19]

The implementation of the European Convention is monitored by the ECtHR.[20] Unlike many other comprehensive regional and international human rights conventions, the ECHR provides for a compulsory individual mechanism, whereby "…any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the [State Parties] of the rights set forth in the [ECHR]" [21] can bring a claim to the ECtHR. In addition, the European Convention provides for the possibility of States to bring a claim against each other of any alleged violation of the obligations enshrined in the ECHR.[22]

The European Convention and peace and security

Besides the Preamble,[23] there are no explicit references to peace and security in the provisions enshrined in the European Convention. In spite of this, the ECHR contains a number of provisions that are essential for the promotion and maintenance of peace and security in the region, and they will be accounted for in the following paragraphs.

Article 2

Article 2 of the ECHR recognises everyone's right to life, which is considered to be one of the most fundamental provisions in the European Convention.[24] State Parties may not derogate from Article 2, except in respect of killings resulting from "lawful acts of war" [25], which means that the provision is applicable both in times of peace and during armed conflict. In spite of this, Article 2 is delimited by a list of exceptions, whereby the deprivation of life shall not be considered to be in contravention of the ECHR "…when it

results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection".[26] The exceptions are primarily concerned with the use of force that is necessary for achieving a specific purpose but that may nevertheless result in the deprivation of life, rather than specifying the grounds for permissible intentional killings.[27]

Article 3

Article 3 of the European Convention spells out the prohibition of torture.[28] Similarly to Article 2, it "…enshrines one of the most fundamental values …"[29]. Article 3 does not provide for any exceptions, nor may the State Parties derogate from this provision.[30] This means that, "…even in the most difficult circumstances […] the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment" [31] . This regardless of the conduct of the individual or the nature of any offence that may have been committed.[32] Unlike other conventions dealing with the subject matter, the ECHR does not provide for any particular consequences to the separation of torture and inhuman or degrading treatment of punishment. In either case there will be a violation of Article 3.[33]

Article 5

Article 5 of the ECHR focuses on the physical liberty of a person and seeks to prevent State Parties from arbitrary or unjustified detentions.[34] It enshrines everyone's right to liberty and security, where no persons shall be deprived of their freedom. In case of an arrest or a detention of a person, it must be consistent with a procedure prescribed by law. Article 5.1 sets out a number of such cases.[35] According to the second paragraph of Article 5, every person who gets arrested "…shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".[36] Article 5 does not include restrictions on liberty of movement in that sense, such provisions are laid down in Article 2 of the Protocol No 4.[37]

Article 14

Article 14 of the ECHR, and Article 1 of Protocol 12 thereto, enshrine the protection against discrimination in the enjoyment of the fundamental rights and freedoms outlined in the European Convention and its Protocols. Article 14 states that "…[t]he enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".[38] Article 1 of the protocol furthermore states protection against discrimination outlined in any right set forth by law.[39]

Article 14 is additional to the other substantive provisions in the Convention and the Protocols, and can only be triggered in connection with the other substantive rights and freedoms in it. In other words, the provision does not forbid the State Parties to discriminate per se, but only in respect of their other obligations in relation to individuals. Article 14 does not require a violation of one of the other provisions.[40] It will however be applicable when the factual circumstances of the case falls within the scope of one or more of the other substantive provisions. Therefore, the State Parties' conduct can be in conformity with their obligations under a given article and at the same time violate the article in question "when read in conjunction with Article 14 because of its discriminatory nature".[41]

Article 15

Article 15 of the European Convention allows the State Parties the possibility of derogating from their obligations "…[i]n time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law".[42] However, according to the second paragraph of Article 15, a State Party could never derogate from its obligations under the following articles: 2. Right to life ("…except in respect of deaths resulting from lawful acts of war"[43]), 3. Prohibition of torture, 4.1. Prohibition of slavery and forced labor, and 7. No punishment without law. These articles are so called non-derogable rights.[44] Article 15 also stipulates that the State Parties must keep the Secretary General of the Council of Europe fully informed of the measures they have taken and the reasons giving rise to such measures. Moreover, the States must notify the Secretary General of the Council of Europe when they have ceased to take the measures concerned.[45]

EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the Convention against torture) was adopted in June 1987 by the Council of Europe's Committee of Ministers. It was opened for signatures in November 1987 and entered into force on 1 February 1989 following its 7th ratification. All Member States of the Council of Europe have signed and ratified the convention.[46]

The prohibition of torture and inhuman or degrading treatment or punishment is stated in national legislation and by several international instruments, for instance in Article 3 of the ECHR. Although, experience has shown a need for a more wide and effective international measure.[47] Therefore, the Convention against torture was adopted in order to establish a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the Committee).[48] The committee's main task is to examine the treatment of persons deprived of their liberty by a public authority. It does this by carrying out visits to the State Parties with the aim of "…strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment".[49] The visits are carried out periodically to the State Parties and the Committee must inform the Government concerned beforehand. In certain circumstances, it may also organise ad hoc visits as appear to be necessary.[50] Following a visit, the Committee submits a report on the fact found in the State Party concerned and provides recommendations. The information gathered must be confidential.[51] Its functions are not judicial and the Committee shall not decide whether a violation has been committed or not.[52] However, it could make a public statement if the State Party concerned fails to cooperate or refuses to make improvements in the light of

the recommendations by the Committee. The Committee furthermore submits an annual general report to the Committee of Ministers, which shall be spread and made public.[53] The Committee consists of independent and impartial members equal in number to the State Parties. The members are elected by the Committee of Ministers of the Council of Europe and are chosen based on their competence in the human rights field or professional experience within the scope of the Convention against torture.[54]

The Convention against torture and exceptional circumstances

Torture or inhuman or degrading treatment or punishment is not defined in the Convention against torture, and it does not contain any substantive provisions. Instead, it refers to Article 3 of the ECHR which spells out an absolute prohibition of torture.[55] This, regardless of the conduct of the individual or the nature of any offence that may have been committed.[56] All the aspects of substantive provisions and individual complaints are left to the European Court of Human Rights since the function of the Committee is not judicial. However, Article 3 provides the Committee a point of reference when examining the treatment of persons deprived of their liberty and for its consideration of situations liable to give rise to torture or inhuman or degrading treatment or punishment.[57]

A State Party could only in exceptional circumstances oppose a visit at the specific time or place proposed by the Committee. These exceptional circumstances are: "…grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress".[58] In this case, the State Party must make representations following the relevant circumstances to the Committee. In addition, the State Party and the Committee must initiate consultation to clarify the circumstances and seek an agreement on ways in which the Committee could exercise its functions expeditiously. For instance, regarding "a specific place", the person who the Committee intended to visit may be transferred to another place then proposed. Or if the State Party postponed the visit with regard to "the specific time" of the visit, the State Party must inform the Committee about the person concerned who are deprived of their liberty. This is crucial since any form of torture is absolutely prohibited, and the Committee must be able to examine the treatment of persons deprived of their liberty, particularly with respect to the protection of such persons from torture and from inhuman or degrading treatment or punishment.[59]

The Convention against torture applies in times of peace as well as in times of war. However, it takes into account other existing international instruments such as the Geneva Conventions 1949 and the 8 June 1977 Protocols. In practical terms, this means that the Committee shall not carry out visits to places where representatives or delegates of Protecting Powers or the International Committee of the Red Cross (ICRC) are visiting effectively and regularly.[60]

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

The Framework Convention for the Protection of National Minorities (hereinafter the Framework Convention or the FCNM) was adopted by the Council of Europe Committee of Ministers on 10 November 1994. It opened up for signature on 1 February 1995, and entered into force on 1 February 1998 following its 12th ratification.[61] By the time the Framework Convention entered into force, it was the first legally binding convention concerning minority protection.[62] To date, 39 out of 46 States have ratified the Convention, including 2 reservations, and 4 States have signed but not ratified it.[63]

The FCNM provides for a number of principles and objectives that the State Parties must fulfil through the adoption of national legislation and policies. The Convention contains programmatic provisions, which means that the State Parties are not under the obligation to ensure that the provisions in the FCNM are directly applicable in their respective jurisdictions. By contrast, the States have to ensure that their legislation and policies are consistent with the principles and objectives stipulated by the Framework Convention. In other words, the FCNM establishes a framework whereby a number of objectives are defined to protect national minorities.[64] Although the FCNM seeks to ensure the protection of persons belonging to national minorities, it does not provide for a definition of the term "national minority". This was a compromise to make the Convention acceptable to the Council of Europe member States, taking into account the different characteristics of national minorities living in Europe, and the sensitive questions concerning their protection.[65] Instead, the State Parties have been given a great deal of flexibility in determining the personal scope of the FCNM. However, the State Parties may not limit the personal scope of the Convention on the basis of arbitrary or unreasonable grounds.[66]

The implementation of the Framework Convention is monitored by the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter the ACFC) and the Committee of Ministers. Every five years, the State Parties are required to submit reports containing information on measures taken to comply with the FCNM, which are then examined by the ACFC. The ACFC may also follow up on the States' reports by conducting country visits to meet with, inter alia, local and national authorities, minority organisations, and other representatives of civil society. Subsequently, the ACFC will adopt an opinion containing specific recommendations for States' action whereupon States have the possibility to respond to the recommendations. Based on the opinions of the ACFC, the Committee of Ministers will adopt a resolution with conclusions and recommendations in respect of the State concerned. Finally, the implementation of the recommendations are followed up by the ACFC, whereby the ACFC have the possibility to further explain their findings, promote examples of good practice and facilitate a dialogue between minorities and the States.[67]

The Framework Convention and peace and security

While the Framework Convention does not explicitly address peace and security, the protection of minorities is important for preventing conflicts, both within and between States. This notion is also reflected in the Preamble where it is noted that "…the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent"[68] , and "…the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society" [69] . Thus, it is evident that a critical objective of the Framework Convention is the promotion of peace and security in Europe.[70]

Section I of Framework Convention outline the general principles of the Convention. Article 1 notes that " [t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights"[71] . Article 2 provides that the FCNM must be "…applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighborliness, friendly relations and [cooperation] between States"[72] . Finally, Article 3 stipulate that persons belonging to a national minority must have "…the right to freely choose to be treated or not to be treated as [a national minority]" , and such persons should not be given any disadvantages resulting from this choice. The national minorities may furthermore exercise their rights both individually and in community with others.[74]

In addition to the general principles, Section II stipulates the substantive provisions for the State Parties to the Framework Convention. Article 4.2 provides for the principles of equality and non-discrimination whereby the States have to undertake measures to, inter alia, promote "full and effective equality between persons belonging to a national minority and those belonging to the majority"[75] , taking into account the particular conditions of the persons belonging to the national minorities.[76] The provisions in Article 4 are essential, since the following principles and objectives in the Framework Convention should be viewed in light of the provisions outlined in Article 4.[77]

The subsequent provisions of Section II of the Framework Convention establish a number of rights to be protected by the State Parties. For instance, Article 6 calls upon the States to "…encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and [cooperation] among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religion identity…"[78] . In addition, the States agree to take measures to protect individuals facing threats, discrimination, hostility or violence because of their identity.[79] Article 16 specifies that States are forbidden to "alter the proportions of the population in areas inhabited by persons belonging to national minorities" with the objective of limiting the rights and freedoms enshrined in the Framework Convention.[80] Moreover, Article 18 encourages the State Parties to make arrangements with other States for the protection of national minorities, and promote transboundary cooperation between national minorities.[81] Finally, Article 21 emphasises that "…[n]othing in the [Framework Convention] shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law, and in particular of sovereign equality, territorial integrity and political independence of States".[82] In other words, the Framework Convention emphasises that all measures taken by the States' must be in conformity with the existing norms governing inter-state relations, whereby the Convention explicitly promotes stability and peaceful relations among the State Parties. Besides the obligations of States, it is noteworthy that Section III of the Framework Convention specify certain obligations of national minorities.[83] Article 20 require national minorities to respect the States' national legislation, and the rights of individuals belonging to the majority or other national minorities. Needless to say, the obligation of national minorities to respect the national legislation does not in any way exempt the State Parties from ensuring that their national legislation and policies are consistent with the principles and objectives enshrined in the Framework Convention.[84]

CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter the Istanbul Convention) was adopted by the Council of Europe Committee of Ministers on 7 April 2011. It was opened for signature on 11 May 2011 and entered into force on the 1 August 2014 following its 10th ratification. To date, 34 out of 46 member states have ratified the convention, including 24 reservations, and 12 states have signed but not ratified it.[85] In 2021, Turkey denounced the Istanbul Convention.[86]

The Istanbul Convention is the first binding European instrument that stipulates clear and binding obligations for States concerning violence against women. Besides the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the Convention of Belém do Pará), it is the only international convention that expressly addresses this subject.[87]

The Istanbul Convention establishes a wide range of measures to be taken by the State Parties in order to "protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence".[88] The Istanbul Convention stipulates that violence against women is a violation of human rights and a form of discrimination against women. It encompasses "…all acts of […] violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts […] whether occurring in public or in private life…" [89] or committed by the state or a non-state actor.[90]

Unlike the Convention of Belém do Pará, the Istanbul Convention does not establish specific rights to be protected by the State Parties.[91] However, as noted by the Explanatory Report to the Istanbul Convention, the drafters clearly understood violence against women as a conduct that seriously violates and undermines their enjoyment of human rights. In particular, their fundamental rights to "…life, security, freedom, dignity and physical and emotional integrity".[92] Furthermore, the Istanbul Convention connects the eradication of violence against women to achieving gender equality. Therefore the Convention calls on the State Parties to address inequality, social and cultural patterns, and gender stereotypes that facilitates violence against women and undermines measures taken to prevent violence and protect women.[93] In addition, the provisions covered by the Convention are applicable both in times of peace, armed conflicts and occupations[94] , and are thus complementary to the rules and principles of international humanitarian law and international criminal law that regulates similar conduct.[95]

The implementation of the Istanbul Convention is monitored by the Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter GREVIO)[96] and the Committee of Parties.[97] Following the State Parties' accession to the Convention, GREVIO will consider information submitted to it by the respective State in response to its questionnaires or any other requests for information received from other monitoring bodies, civil society organisations and national human rights institutions, or gathered from country visits. After several exchanges and consultations with the State Parties, GREVIO will conclude its final reports and conclusions which will then be made public together any comments from the States concerned.[98] Subsequently, the Committee of Parties may follow up with country-specific recommendations on measures to be taken to implement the conclusions of GREVIO.[99] In addition, in cases where GREVIO receives reliable information suggesting that there is a situation requiring immediate attention

in order to prevent or limit the scale or number of serious violations of the Convention, GREVIO may call on the State Party to submit a special report concerning measures taken to prevent such violations.[100] Taking into account information submitted to it, GREVIO may also decide to conduct an inquiry on the situation.[101] Finally, it is noteworthy that, unlike the Convention of Belém do Pará, the Istanbul Convention does not provide for any individual complaint mechanism.[102]

The Istanbul Convention has also been used by other institutions within the COE. The European Court of Human Rights, for instance, referred to the Istanbul Convention in the Case of Kurt v. Austria 2021. The case concerned a woman in Austria who had experienced domestic violence committed by her husband, which lead to him murdering their 8 year old son. The Istanbul Convention entered into force in Austria in 2014. Therefore, the Court highlighted the relevance of the State Party's obligations outlined in the Istanbul Convention in preventing and combatting domestic violence against women in Austria, including children and witnesses of violence in the family.[103]

The Istanbul Convention and the Women, Peace and Security Agenda

While the Istanbul Convention does not contain any explicit references to peace and security, it has a strong connection to the Women, Peace and Security (WPS) agenda since gender equality is of vital importance in building peaceful societies, which means that investments in women and girls' full enjoyment of human rights are important for preventing conflicts. The WPS agenda rests on four pillars, namely, Participation, Protection, Prevention, and Relief and recovery (for further information see annex Pillars of the WPS-agenda). A critical characteristic of the Istanbul Convention that connects to all pillars of the WPS agenda is the provisions relating to data collection and research.[104] Through accurate data on victims and perpetrators of violence, it is possible to raise awareness among policy-makers as well as the public. It can also encourage other victims or witnesses of violence to report crimes of this kind. Moreover, such statistical information could contribute to State Parties' national response to violence.[105] Similarly, research is an essential element of evidence-based policymaking and can therefore contribute to the improvement of real responses to violence against women and domestic violence by the judiciary, organisations, and relevant agencies.[106] Accordingly, the obligations to collect information and promote research may contribute greatly to the States' implementation of the central tenets of the WPS agenda. In the following, a short introduction to some of the principal rights of the WPS agenda in relation to the Istanbul Convention will be provided.

Participation

The purpose of the first pillar, Participation, is to ensure women's equal participation and influence with men and to promote gender equality in peace and security decision-making processes on all levels. Article 4 in the Istanbul Convention stipulates that the State Parties must undertake the necessary legislative or other measures to promote and protect the right for everyone, particularly women, to live free from violence in all domains of society.[107] Moreover, the States are obliged to prevent all forms of discrimination against women. They will do so by embodying the principle of equality in their respective constitutions or other national legislation. Also by ensuring the realisation of this principle, prohibiting discrimination, and eradicating existing legislation and practices that are discriminatory.[108] Notably, this provision recognises that freedom from violence is interconnected with the States' obligation to secure everyone's ability to exercise and enjoy their civil, political, economic, and cultural rights as enshrined in the regional and international conventions.[109] This includes the right to participate in public

affairs, freedom of assembly and association, expression, and movement among others. In addition, any specific measures taken by the States to prevent and protect women from violence shall not be considered discriminatory under the Convention.[110] While this provision does not overrule the general prohibition of discrimination, it recognises that States may take particular measures to prevent and protect women from violence in areas where there are persistent inequalities, including the occurrence of gender-based violence.[111]

Protection

The second pillar, Protection, aims to ensure that the rights of women and girls are protected and promoted in conflict-affected situations or in other humanitarian crisis. It also includes protection from gender-based violence.[112]

According to the Istanbul Convention, State Parties must take action "…to protect all victims from any further violence…"[113] by, for instance, setting up shelters to provide safe accommodation for individuals having experienced violence, and telephone helplines to provide advice to callers regarding all forms of violence.[114] In addition to the provisions on the protection, the Istanbul Convention contains specific legislative requirements, whereby States must have adequate criminal codes against physical violence, psychological violence, sexual violence, sexual harassment, forced marriage, abortion and sterilisation, and stalking.[115] Moreover, States must ensure that the forms of violence covered by the Convention are investigated and prosecuted effectively[116] and take steps to ensure that the responsible agencies are sufficiently equipped to respond to violence promptly and appropriately by providing adequate and immediate protection to victims of violence.[117]

Prevention

The third pillar, Prevention, addresses the prevention of conflict and all forms of violence against women and girls in conflict as well as post-conflict situations. This pillar furthermore includes measures and prevention strategies on gender-based violence, including discriminatory gender norms, attitudes, and behaviour.[118]

The Istanbul Convention outlines several proactive measures, general and specific, to be taken by the State Parties to prevent the occurrence of violence against women. Notably, Article 12 specifies that the States must, inter alia, take the necessary steps to prevent all forms of violence covered by the Convention by any natural or legal person. This including taking into account the needs of persons made vulnerable by particular circumstances[119] , such as persons with disabilities, persons living in rural or remote areas, Lesbian, gay, bisexual, transgender, queer and intersex people, and others.[120] States are furthermore under the obligation to take measures to promote changes in the social and cultural patterns of behaviour that perpetuate the forms of violence falling within the scope of the Convention.[121] Specific provisions on prevention include the obligation of States to promote or conduct awareness-raising measures to increase the knowledge among members of the society about the different manifestations of violence covered by the Convention and their consequences.[122] Also to provide or strengthen the training of persons dealing with perpetrators and individuals having experienced violence on, for instance, prevention and recognition of such violence.[123]

Relief and recovery

The fourth pillar, Relief and recovery, seeks to ensure that women and girls' specific needs are met and promotes the support of women's capacities to act as agents in processes concerning relief and recovery in conflict and post-conflict situations.[124]

An important feature of the Istanbul Convention is the provisions concerning support services and assistance to individuals. For instance, Article 20 stipulates that the State Parties shall take the necessary legislative or other measures to ensure that individuals who have experienced violence, including sexual violence, have access to necessary services facilitating their recovery, including legal and psychological counselling, healthcare and social services, financial assistance, and housing.[125] In addition, the States must take the necessary steps to ensure that the support services and assistance in place are adequately resourced and trained to meet the specific needs of the persons referred to them.[126]

COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM AND ITS ADDITIONAL PROTOCOL

The Council of Europe Convention on the Prevention of Terrorism (hereinafter the Convention) was adopted by the Council of Europe Committee of Ministers. In May 2005, it opened for signature by the Member States of the Council of Europe as well as the European Community and non-member States that had participated in the development of the Convention. It entered into force on 1 June 2007 following its 6th ratification. As of today, the total number of ratifications of the Convention is 42, and an additional 6 signatures yet not followed by ratifications.[127]

Article 2 spells out the purpose of the Convention, namely to "…enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties".[128] The Convention also highlights the respect to people who suffer from terrorism offences, in way that it includes the protection, compensation, and support of victims of terrorism . Accordingly, State Parties must take necessary action to protect and support victims of terrorism. It could for example include financial assistance and compensation for both victims and their families.[129]

The Convention was developed in the aftermath of the terrorist events of 11 September 2001 in the United States of America and adopted with the aim of increasing the effectiveness of already existing international instruments on the fight against terrorism, and thus strengthening the effort of Member States to prevent terrorism.[130] More specifically, through establishing certain acts as criminal offences, such as public provocation, recruitment, and training that could lead to terrorist offences. Also, by reinforcing cooperation on prevention internally and internationally. The latter includes national prevention policies, modification of existing extradition and mutual assistance arrangements and additional means.[131] At the same time, the Convention stresses that the fight against terrorism and the prevention of terrorism offences must be carried out with respect to the rule of law, democratic values, and obligations of other human rights and fundamental freedoms, particularly the right to freedom of expression, association and religion.[132]

Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism

The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (hereinafter the Additional Protocol) was adopted with the purpose to complement the provisions on criminalisation contained in the Convention. It opened for signatures in October 2015 by State Parties to the Convention and entered into force on 1 July 2017 following its 6th ratification.[133]

At that point in time, the Council of Europe stressed concerns about the threat posed by persons travelling abroad with the aim of engaging in terrorist offences. For instance to commit, contribute to, or participate in such acts but also to provide or receive training for terrorism within another State. Therefore, the Additional Protocol adds several provisions of acts regarded as a criminal offence, such as participating in an association for terrorism, receiving terrorism training, and travelling, as well as funding or organising travelling, abroad for the purpose of terrorism. It furthermore provides for a national point of contact in order to enable rapid exchange of information between the State Parties, 24 hours a day, 7 days a week.[134]

HUMAN RIGHTS INSTITUTIONS

THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (hereinafter the Court or ECtHR) is an international court, established in 1959 through article 19 of the ECHR with the purpose of ensuring the observance of the engagements undertaken by the State Parties.[135] The Court is seated in Strasbourg, France. As of today, it consists of 47 judges, who are elected by the Parliamentary Assembly for a six-year term. The number of judges is equal to the number of Member States of the Council of Europe that have ratified the ECHR. They sit in their individual capacity and do not represent the State concerned.[136] However, Russia's withdrawal from the Council of Europe also affects its relation to the ECtHR. Russia will stop being a State Party to the ECHR on 16 September 2022. Hence, the Court will only deal with applications concerning alleged human rights violations in Russia until that date. Consequently, the Court will also consist of 46 judges since it is equal to the number of Member States of the Council.[137]

The Court's main task is to rule on complaints submitted by individuals, or occasionally by States, alleging breaches of human rights. It examines whether or not a State Party has violated one or more of the rights and fundamental freedoms set out in the ECHR. All judgements are binding, and thus enforceable for the State Party concerned to comply with the verdicts.[138] Since the entry into force of Protocol No.16 to the ECHR in 2018, the Court may also deliver advisory opinions. This implies that the highest courts and tribunals of a State Party could request the Court to give advisory opinions, but only on questions of principle concerning the interpretation or application of the rights set out in the ECHR or the protocols thereto, and only in relation to a case pending before the requesting court. The opinions given by the Court are non-binding.[139]

The Court delivered its first judgement in 1960.[140] However, back then individuals could not submit complaints to the Court directly, only to the European Commission of Human Rights. On 1 November 1998 Protocol no 11 to the ECHR entered into force, which dissolved the former Commission and Court, and thus instituted "the new" European Court of Human Rights. Since then, it serves as a full-time court and individuals can apply to it directly.[141]

In the following chapter, we will examine the Court's case-law guides on Articles 2. Right to life, 3. Prohibition of torture, 5. Right to security and liberty, 14. Prohibition of discrimination, 15. Derogations in time of emergency and further decompose the meaning of the articles and the States' obligations in the light of the nexus between human rights and peace and security. We will also explore the Court's mandate to respond to armed conflicts and post-armed conflicts, focusing on interim measures, transitional justice and amnesty.

The right to life

Everyone's right to life is considered to be one of the most fundamental provisions in the Convention. Therefore, State Parties must strictly interpret and follow Article 2 of the ECHR and cannot derogate from its provisions in times of peace.[142] Following from several judgements by the Court, the provisions entail both negative and positive obligations for the State Parties. Not only must the States refrain from intentionally and arbitrarily taking the life of individuals, but they must also take certain steps to safeguard the lives of individuals falling within their jurisdiction, including the obligation to prevent violence against individuals whose lives are in danger[143] and effectively investigate when individuals have been killed or disappeared in violent or suspicious circumstances, regardless of whether the conduct was committed by the State or private individuals.[144]

Since Article 2 is applicable both in times of peace and during armed conflicts, it leaves room for some exceptions within the context of difficult security conditions. Article 2.2 sets out a list of such exceptions, whereby the deprivation of life resulting from the use of force which is no more than absolutely necessary is not considered to be a violation of the ECHR. More specifically, in "…defense of any person from unlawful violence… in order to effect a lawful arrest or to prevent the escape of a person lawfully detained… [and] in action lawfully taken for the purpose of quelling a riot or insurrection".[145]

The right to life in the context of difficult security conditions

The State Parties' obligations continue to apply in difficult security conditions, including in armed conflicts[146], although some of the obligations may be less extensive in light of the circumstances of the case concerned.[147] While the safeguards under the ECHR continue to apply in armed conflicts, they must be interpreted against the background of international humanitarian law, the Court stated in the case of Hassan v. United Kingdom 2014.[148] In addition, in the case of Varnava and Others v. Turkey 2009, the Court held that "…article 2 must be interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law which play an indispensable and universally accepted role in mitigating the savagery and inhumanity of armed conflict […] [I]n a zone of international conflict Contracting States are under obligation to protect the lives of those not, or no longer, engaged in hostilities. This would also extend to the provision of medical assistance to the wounded; where combatants have died, or succumbed to wounds, the need for accountability would necessitate proper disposal of remains and require the authorities to collect and provide information about the identity and fate of those concerned, or permit bodies such as the ICRC to do so".[149]

Concerning civilians getting killed during security or military operations, the Court has held that the State Parties' responsibility not only includes circumstances where misdirected fire by a State agent has killed a civilian but also when they fail to take feasible safety measures in the choice of means and methods in order to minimising incidental loss of civilian life.[150]

Prohibition of torture

Article 3 of the ECHR prohibits in absolute terms torture and inhuman or degrading treatment and punishment, including in times of public emergencies threatening the life of the nation or in other difficult situations such as organised crime and terrorism. Hence, there can be no question of derogations of its provisions by the State Parties.[151] Besides the negative obligation to refrain from violating Article 3, State Parties have to take action to prevent torture and inhuman or degrading treatment or punishment committed by the State or individuals not representing the State. This includes the obligation to protect against such conduct, investigate when there are allegations of ill-treatment, and prosecute the perpetrators in question.[152] Moreover, States have a positive obligation to ensure that their legislation or other policies being applied by the authorities, especially in relation to sexual assault and domestic violence, do not reflect outdated stereotypes that contribute to impunity.[153] This is particularly important from a WPS perspective.

Prohibition of torture is considered to be "…a value of civilisation closely bound up with respect for human dignity"[154] , according to the Court in the case of Bouyid v. Belgium 2015. In order for an alleged case of torture to fall under the provisions of Article 3, it must attain a minimum level of severity. The Court's examination of this minimum level is, however, relative. It depends on all the circumstances in each case, taking into account, among

other things, the mental or physical effects of the victim or the duration of the ill-treatment or the applicant's sex, age, and health status. It follows from the Court's case-law that the required minimum level of severity not only includes actual bodily harm or intense mental suffering but also such treatment that "…humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance"[155]. With regard to the latter, the Court could consider it as degrading treatment and thus a violation of Article 3. Moreover, the Court takes into consideration whether the treatment in question was aimed at humiliating the victim or not. Notably, the lack of any such purpose does not conclusively dismiss a finding of violation within the meaning of Article 3.[156]

The right to liberty and security

Article 5 of the ECHR establishes everyone's right to physical liberty and security. The provisions outlined in the article seek to prevent State Parties from undertaking arbitrarily or unjustifiably detentions. Article 5 has been highlighted by the Court in several cases as a crucial part of a democratic society. In order for a State Party to undertake lawful detentions in line with Article 5, it must be in accordance with a procedure prescribed by law. However, it follows from the Court's case-law that the domestic law itself also needs to be consistent with the ECHR and with the general principles implied in the Convention such as the rule of law, proportionality, and protection against arbitrariness.[157]

Article 5.1 implies a positive obligation on the State Parties to refrain from actively interfering with the right concerned and to provide protection against illegitimate interference with its provisions. Information such as the date, time, location, and the reason for the detention is important for lawful detentions in line with Article 5. The name of the detainee as well as the person effecting it is equally important. According to the Court's ruling in the cases of Kurt v. Turkey 1998 and Anguelova v. Bulgaria 2002, the absence of such information is incompatible with the purpose of Article 5 and the requirement of "lawfulness" under the convention. The Court looks into the concrete individual situation when determining whether a person has been deprived of its liberty. It takes into account different kinds of criteria such as "…the type, duration, effects and manner of implementation of the measures in question"[158]. The latter helps the Court to consider the specific context and circumstances in the case pending before it.[159]

Examples of situations that have been raised within the meaning of Article 5, except formal arrests and detentions, are, for example the placement of

individuals in psychiatric or social care institutions, confinement in airport transit zones or land border transit zones, questioning in a police station, house search or arrest, keeping irregular migrants in asylum hotspot facilities, national lockdown due to the Covid-19 pandemic, etc. In fact, measures allegedly taken in the interest of, or in order to protect, the person concerned, could be considered as a deprivation of liberty. When it comes to detentions during international armed conflicts, State Parties must take the circumstance, and provisions of international humanitarian law into consideration while interpreting and applying Article 5.[160]

Prohibition of discrimination in conjunction with the right to liberty and security and prohibition of torture

Article 14 of the ECHR protects individuals against discrimination, on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in the enjoyment of the rights and freedoms outlined in the Convention. That being said, Article 14 is only applicable when the factual circumstances of the case fall within the scope of one or more of the other provisions. Thus, the Court considers Article 14 in conjunction with other rights set out in the ECHR when examining complaints by individuals or a group of individuals. Concerning the prohibition of discrimination taken in conjunction with the right to liberty and security, the court seeks to protect everyone's right to "…be free from arbitrary deprivation of liberty based on any of the discriminatory grounds"[161]. In the early 2000s, in the aftermath of the 9/11 attacks in the United States of America, the United Kingdom derogated from Article 5 due to an imminent risk of terrorist attacks within its territory. The United Kingdom, argued that individuals of foreign origin with alleged links with terrorist groups, in principle, posed a threat against the life of the nation and therefore considered it necessary to detain or possibly also deport such individuals. These measures taken were, however, subsequently questioned and brought before the Court. It follows from the case of A and others v. The United Kingdom 2009 that the actions to solely detain individuals of foreign origin were disproportionate in that they discriminated unjustifiably between United Kingdom nationals and non-nationals. Not only had the applicants been deprived of their liberty but it had also been based on their nationality. Therefore, the Court also took Article 14 into account when examined violations of Article 5.1. Although the Court referred to the principle of Margin of Appreciation (the space for manoeuvre that the Court is willing to grant State Parties in their obligations under the ECHR) and left it to the United Kingdom to determine whether its life of the nation was threatened by the recent 9/11 attacks, it held that the derogating measures were not strictly required in the situation and thus not validly executed in line with Article 15.1. The Court moreover stressed that the United Kingdom never derogated from

its obligation under Article 14.[162]

In several cases, the Court has also considered the right to be free from inhuman or degrading treatment or punishment during detention under the provisions in Article 14 in conjunction with Article 3 of the ECHR. In Martzaklis and Others v Greece 2015, the Court found that Greece had violated Article 3 taken in conjunction with Article 14 when the State Party placed HIV-positive prisoners in isolation in order to prevent the spread of the disease. The Court held that the measures taken were unnecessary since the prisoners had not developed AIDS. By placing the prisoners concerned in isolation, they also lacked adequate treatment and were held in poor physical and sanitary conditions. In X v. Turkey 2012, the State Party placed a prisoner in total isolation for over 8 months, arguing that they were protecting his physical well-being from fellow prisoners because of his sexual orientation. The Court, however, questioned that these safety measures taken were primarily in favour of the prisoner's well-being and held that the applicant thus had been discriminated against based on his sexual orientation.[163]

Derogations in times of emergency

A State Party to the ECHR has the right to derogate from its obligations in time of emergency, except from the non-derogable rights outlined in the following articles, 2. Right to life ("except in respect of deaths resulting from lawful acts of war"),[164] 3. Prohibition of torture, 4.1. Prohibition of slavery and forced labor, and 7. No punishment without law. A derogation is, however, only justified in exceptional circumstances and must be carried out in a limited and supervised manner. Derogations in accordance with article 15 of the ECHR are monitored by the Court. If the Court finds the measures taken by the State Party unjustified, it will further examine and determine whether the derogation in question was validly executed or not.[165]

Article 15.1 In time of war or other public emergency

Article 15.1 states that "[i]n time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law"[166] . The article only applies in exceptional circumstances and three conditions must be fulfilled. First, "…it must be in time of war or other public emergency threatening the life of the nation" . The meaning of "war" in this paragraph has not been interpreted by the Court. Concerning "other public emergency threatening the life of the nation"[167] the Court referred to it, in the case of Lawless v. Ireland (no 3) 1961, as "…an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed"[168] . The emergency should be actual or imminent, and the restrictions outlined in the

ECHR for the maintenance of public safety, health and order should clearly be insufficient in relation to the emergency situation. However, according to the case of A and others v. United Kingdom 2009, the interpretation of imminent does not require a State Party to "…wait for the disaster to strike before taking measures to deal with it"[169] . It is primarily left to the State Party to determine whether the life of the nation is threatened by a public emergency or not, the Court stated in the case of Ireland v. the United Kingdom 1978. Examples of emergencies that State Parties have raised throughout the years are terrorism or imminent threat of terrorist attacks and attempted military coup.[170] In 2020, 10 State Parties invoked article 15 and notified their intention to derogate from certain provisions in the ECHR or its protocols thereto due to the health emergency of the COVID-19 pandemic.[171] Although a wide room for interpretations is left to the national authorities, the Court has underscored in several cases that this margin of appreciation follows by European supervision and is not limitless.[172]

Second, "…the measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation"[173] . It is crucial that a State Party only takes proportionate and necessary actions required in the specific situation. In the cases of Mehmet Hasan Altan v. Turkey and Sahin Alpay v. Turkey 2018, the Court clarified that the measures and efforts taken by the State Party should aim at protecting and safeguarding values of a democratic society. It furthermore emphasised that "…the existence of a public emergency must not serve as a pretext for limiting freedom of political debate"[174] . The Court is authorised to judge if a State Party has infringed this second limb of Article 15.1, which has been done on multiple occasions in the past. For instance, in the case of Aksoy v. Turkey 1996, the Court held that the derogation made by Turkey was justified in accordance with Article 15.1 first limb since the emergency threatened the life of its nation and that extraordinary measures were required in that particular situation. At the same time, the Court questioned Turkey's actions in terms of proportionality. Whilst derogating from, among other, Article 5 (the right to liberty and security) of the ECHR, Turkey undertook mass arrests, and the arrest of Zeki Aksoy was brought before the Court. Even though Article 5 was derogated at the time of the arrest, the Court argued that it was unnecessary to detain Aksoy for 14 days with no access to justice or surveillance, and thus claimed that Turkey had infringed Article 5.3 of the ECHR. The Court underscored the importance of every person's right to liberty and security, and specifically raised Article 5 as a fundamental human right aiming at protecting individuals from arbitrary violations of their liberty and security. The Court also concluded that these actions furthermore constituted a breach of Article 3 (Prohibition against torture) – a non-derogable right according to the ECHR. Turkey's action against Aksoy was not proportionate and necessary in relation to the situation, and the Court held that the argument put forward by Turkey was insufficient.[175] When considering whether such measures taken by State

Parties have gone beyond what is "strictly required by the exigencies of the situation" or not, the Court focuses on aspects such as the rights affected by the derogation as well as the circumstances leading to and the length of the emergency situation. More specifically, the proportionality of the measures and possible unjustifiable discrimination (A and Others v. the United Kingdom 2009), the importance of the right at stake (Aksoy v. Turkey 1996), whether the derogation is limited in scope, if the need for it was kept under review, and whether judicial control of the measures was practicable (Brannigan and McBride v the United Kingdom 1993), and if the measures are a genuine response to an emergency situation or not (Alparslan v. Turkey 2019) etc.[176]

Finally, "...the measures must not be inconsistent with the State´s other obligations under international law"[177] . If the Court finds it necessary to deliberate upon this part of article 15.1 in a case, it could do so of its own motion.[178]

State responsibility in the framework of armed conflicts

The European Court of Human Rights has a very limited mandate to effectively respond to armed conflicts and post-armed conflict situations. Unless cases related to violations of the European Convention committed in such situations are lodged to the ECtHR, the Court does not have any means of intervening or stopping the violations in question. After all, it should be borne in mind that the ECtHR was not designed to be a forum for enforcing State Parties' obligations in armed conflict but was established to address human right violations committed during peaceful circumstances.[179]

Within this limited mandate, the Court has made important contributions as to defining the extent of the jurisdiction that the State Parties exercise and within which they have the obligation to secure human rights, also in the case of effective control resulting from unlawful military action and occupation. The ECtHR on a preliminary basis in the case Ukraine. V. Russia (Re Crimea), held that Russia had effective control over the area and thus jurisdiction by means of this fact (and not in the nature of territorial jurisdiction). This effective control comes with responsibilities regarding human rights obligations. The Court in the case Georgia v. Russia II 2021, made a distinction between the active phase of hostilities, where effective control is still not established, and the occupation phase where such control is in place. In line with this distinction, Russia has jurisdiction over areas where hostilities have ended. At the other end, the Court in Ilasku and others v. Moldova and Russia 2004, found that even in the absence of effective control of the territorial State, there is a residual positive obligation to strive to regain control over territories outside the factual control of the State and take measures to secure the rights guaranteed by the ECHR.[180]

Interim measures

When cases are submitted to the Court, the ECtHR may under Rule 39[181] of its Rules of Court, specify interim measures to the parties provided that there is a real risk that serious violations of the European Convention could take place while it examines the case.[182] While the ability to invoke interim measures are provided for in the Rules of Court, and not the ECHR, the Court has noted that such measures are binding for the parties concerned, and the failure to comply with them may therefore result in a breach of the State Parties obligations under Article 34 of the European Convention.[183]

The ECtHR has on many occasions invoked interim measures, most commonly in cases related to expulsions or extraditions.[184] More recently, following the outbreak of a number of armed conflicts in the region, the Court has increasingly resorted to such measures in inter-state cases relating to armed conflict situations, and even active hostilities.[185] In 2008, during the outbreak of hostilities between Russia and Georgia, the ECtHR noted that the situation constituted a real and continuing risk that could give rise to serious violations of the European Convention. The Court therefore called upon both State Parties to comply with their obligations under the ECHR, specifically Articles 2 and 3.[186] In 2014, Ukraine submitted a request under Rule 39 with respect to actions by Russia, specifying, among other, "…that it should refrain from measures which might threaten the life and health of the civilian population on the territory of Ukraine".[187] Considering that the situation could give rise to serious violations of the European Convention, the Court called upon both Ukraine and Russia "…to refrain from taking any measures, in particular military actions, which might entail breaches of the [ECHR] rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 […] and 3…"[188]. In addition, the ECtHR requested State Parties to inform, as soon as possible, of the measures taken to comply with their obligations.[189] In a subsequent case, the Court furthermore adopted similar measures in relation to the armed conflict between Armenia and Azerbaijan in 2020.[190]

As regards the effectiveness of the interim measures, studies have shown that the majority of cases in which the State Parties have not complied with their obligations are related to conflict situations.[191] In the case emerging from the armed conflict between Georgia and Russia, it has been noted that "… those interim measures did not have a slightest effect on heads of these states who were still in middle of active military operations"[192]. Consequently, it is not clear to what extent interim measures may have a deterrent effect on the conduct of the State Parties during active hostilities.[193] On the other hand, evidence from a number of conflict-related interim measures illustrate that on many occasions, such measures can contribute to " …effective provisional protection in critical situations"[194]. In spite of this, interim measures are not necessarily a panacea, since a single legal mechanism per se is not sufficient to change political realities.[195]

Transitional Justice

Considering that the Council of Europe and the ECHR were born out of massive transition from war to peace on the European continent, it is conceivable that transition was one of the motives for the creation of the European Convention. The States that drafted the European Convention were those that had been significantly affected by the Second World War, including the destruction of societies and massive violations of human rights. Thus, these States were not only dealing with a recent history of monstrosities, but also with the challenge of how to prevent the occurrence of similar events in the future.[196] Therefore, "…by putting in place a system designed to prevent violations of human rights, and by creating a means for states to internalize compliance, [the ECHR] was a far-sighted solution to the prevention and recurrence of atrocity crime"[197]. Accordingly, the European Convention embodies the principle of non-recurrence, one of the essential features of transitional justice.[198] Since the adoption of the ECHR, the Court has delivered numerous decisions dealing with a wide range of questions relating to transitional justice, including compensation and restitution, prosecution, lustration, memory and truth.[199]

Amnesty

While the Court has had limited engagement with the amnesties its findings have had significant impact on the understanding of the legality and scope of amnesty practices by State Parties experiencing transition from conflict.[200] For instance, in the case of Marguš v Croatia 2014[201] the ECtHR addressed the question of whether a general amnesty passed by Croatia concerning crimes committed in connection with the armed conflict between 1990-96 constituted a barrier to subsequent legal prosecutions by Croatia of crimes committed during that time. By concluding that the prosecution by Croatia was in conformity with the European Convention, the Court emphasised that there is a growing consensus among regional and international bodies that the granting of amnesties in respect of grave breaches of fundamental human rights are incompatible with States' obligation to investigate and prosecute such conduct.[202] In addition, the ECtHR further noted that even though it may be "…accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to [Marguš] in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances"[203]. The Court has made similar findings in respect of the legality and scope of amnesty practices in a number of other cases, including Abdülsamet Yaman v .Turkey 2004[204] , Yesil and Sevim v. Turkey 2007[205], and Ould Dah v. France 2009[206]. Consequently, while the ECtHR has not definitively ruled out the possibility of State Parties to give amnesties, its jurisprudence illustrates that the grounds for resorting to such measures at the end of armed conflicts to enable or support contentious peace processes and to discourage potential spoilers from taking up arms have been significantly limited.[207]

THE COMMISSIONER FOR HUMAN RIGHTS

The Commissioner for Human Rights (hereinafter the Commissioner) was established in 1999 by the Council of Europe. It is an independent, impartial and non-judicial institution, whose purpose is to promote both awareness of and respect for human rights within the Council of Europe's Member States. The Commissioner serves a non-renewable six-year term. The Committee of ministers provides the Parliamentary Assembly with a list of three candidates. The Parliamentary Assembly then elects one of the three candidates for the post of Commissioner for Human Rights.[208]

The mandate of the Commissioner and its office is outlined in Resolution (99) 50.[209] According to the Resolution, the Commissioner shall "…foster the effective observance of human rights, and assist member states in the implementation of Council of Europe human rights standards; promote education in and awareness of human rights in Council of Europe member states; 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"[210]. Given its non-judicial nature, the Commissioner cannot take on complaints on human rights violations from individuals - only provide conclusions and take initiatives in the wider sense of term. Based on its mandate, the Commissioner is carrying out its work within three main areas, namely: country visits, thematic reporting, and awareness-raising activities. First, it carries out country visits to all Council of Europe's Member States. During these visits, it meets with national authorities representing the government, parliament and the judiciary as well as with civil society, national human rights organisations and persons with human rights concerns. The Commissioner follows up its visits with a report or letter on the human rights situation, including recommendations. Second, the Commissioner submits opinions, advices, and reports on specific thematic subjects relating to the protection of human rights in Europe and human rights violation. Third, the Commissioner undertakes awareness-raising activities in the form of events on different human rights themes, media publications, and permanent dialogues with governments, civil society organisations and educational institutions.[211]

The Commissioner has no specific mandate to directly act on peace and security issues. However, as part of its mission to promote awareness of and respect for human rights, it highlights, in particular, the defence of human rights defenders. It furthermore cooperates closely with other European and international organisations, such as other Council of Europe bodies, the European Union, the Organisations for Security and Cooperation in Europe, the United Nations' specialised offices, universities, non-governmental organisations, etc. Concerning the European Court of Human rights, the Commissioner could intervene as a third party through written information or directly in hearings in ongoing proceedings of the Court.[212]

The work carried out by the Commissioner and its office is formally summarised four times a year in activity reports, which are presented to the COE's Committee of Ministers and the Parliamentary Assembly. In the following chapter, we will examine the year 2021 and focus on the work carried out by the current Commissioner, Dunja Mijatović, and her office in relation to transitional justice and human rights defenders.

Transitional justice in relation to human rights protection

Transitional justice in relation to human rights protection in Europe is one of the thematic subjects that the Commissioner specifically focuses on. Within the context of transitional justice, the Commissioner highlights challenges that remain in Europe and provides advice to the Member States on ways to guarantee the respect for human rights. Notably, compliance with the European human rights standards must be ensured in the transitional justice processes across Europe.[213]

In 2021, the Commissioner for example shed a light on the Srebrenica genocide and highlighted the final verdict of Ratko Mladić for committing war crimes, genocide, and crimes against humanity during his command in the 1990s war in Bosnia and Herzegovina. A conviction that did not change the past but honoured the victims' fight for justice, which the Commissioner stressed the importance of in order to achieve reconciliation in the former Yugoslavia. Since the establishment of the International Criminal Tribunal for the former Yugoslavia, it has convicted 90 war criminals and collected evidence and testimonies and thus recognised historical facts as well as responsibilities for the crimes committed. This legacy could be used to combat remaining challenges such as the denial of genocide and war crimes, dehumanisation of genocide victims, and the glorification of war criminals in the region, according to the Commissioner. She also organised several consultations with NGOs and the academia from countries of the former Yugoslavia who are working on transitional justice issues, with the aim of gathering information and preparing for her future work in 2022 within the context of transitional justice and human rights in the former Yugoslavia.[214]

Human rights defenders

Human rights defenders play a crucial role in the improvement of human rights, democracy, and the rule of law in Europe, for instance, when it comes to defending victims of human rights violations and holding State actors and authorities accountable. Hence, they are key partners to the Commissioner and its office. In various countries across Europe, human rights defenders and activists are facing serious obstacles and threats in their work. It occurs in different ways such as judicial harassment, insulting campaigns, destruction of working equipment, difficulties in the registrations of Non-governmental organisations (NGO) and accessing funding, abusive control and surveillance, unlawful arrests, detentions and ill-treatment, or worse still, kidnappings or killings of human rights defenders. It is of great importance to ensure a safe working environment free from such obstacles and threats, including effectively investigating violations committed by States as well as non-state actors. The latter remains a major issue, causing the risk of impunity and recurrence of violations. Therefore, protection of and support for human rights defenders, work within the Member States of the COE are central for the Commissioner.[215]

The working environment of human rights defenders and civil society organisations in Europe

During the year 2021, the current Commissioner, Dunja Mijatović, and her office have carried out advocacy activities by raising issues concerning the working environment of human rights defenders and civil society organisations in specific Member States and providing them with advice and recommendations. The Commissioner focused on the human rights abuses committed in Chechnya over the last year and the need for an immediate, impartial, and independent investigation by the Russian federal investigative authorities. This, regardless of whether the individuals proven to be involved in the abuses have an official status or not. Her statement stemmed from a publication of testimonies in the Russian newspaper Novaya Gazeta about extrajudicial executions and grave human rights abuses. In the statement the Commissioner held that the Russian authorities are responsible for ensuring the protection of independent journalists and human rights defenders within the Russian state. Including eyewitnesses reporting on human rights violations, threats, and reprisals aimed at silencing them. She also called on the State to close the gap between its obligations to international human rights standards and the situation in Chechnya. Another issue raised by the Commissioner concerned the situation of human rights defenders from the Russian Federation and Ukraine in Crimea. In 2021, the Commissioner used her mandate and organised several online meetings with the aim of obtaining information about restrictions on human rights activities, the right of minorities, and the respect for other fundamental freedoms and rights such as education, language, freedom of expression and media. She also issued a statement on the detention of a large group of Crimean Tatars, highlighting the problem of censorship in the media and arbitrary arrests and searches.[216]

In September 2021, the Turkish activist Mr. Osman Kavala had been held in detention for more than 46 months although the European Court of Human Rights had required his release in a judgement two years earlier, and despite one interim resolution and six decisions made by the Committee of Ministers. In the light of the extended arbitrary detention of Mr. Kavala, the Commissioner published two statements claiming that the decisions made by the Turkish national courts "…flies in the face of human rights and the rule of law in Turkey"[217], and that Mr. Kavala "…is a victim of a justice system that has been used to silence human rights defenders, lawyers and journalists and displayed unprecedented levels of disregard for the most basic principles of law, such as the presumption of innocence, no punishment without crime and non-retroactivity of offences, or not being judged for the same facts again"[218]. The Commissioner furthermore held that Turkey's actions remain a violation of both the human rights of Mr. Kavala and the State's obligation to comply with the Court's judgement.[219] In spite of this, Mr. Kavala was sentenced to life in prison on 25 April 2022 by Istanbul's 13th High Criminal Court. The Court found him guilty of attempting to overthrow the government. Alongside him, seven other defendants were sentenced to 18 years in prison. In a statement, the Council of Europe regretted this verdict and held that Turkey as a COE Member State must implement the decisions of the ECtHR. Hence, it also called on Turkey to abide its international commitments and to release Mr. Kavala.[220]

The Commissioner also paid attention to the situation of human rights defenders in Belarus although the state is not a Member State of the COE. She criticised the State for taking unacceptable actions against human rights defenders, journalists, and partners of the COE and the UN. By issuing statements via social media, the Commissioner highlighted the liquidation of hundreds of NGOs, judicial harassment, searches, arrests, and criminal

prosecutions. She urged the State to release individuals arrested due to their human rights work and to stop carrying out reprisals against human rights defenders, journalists, and civil society organisations in Belarus. The Commissioner furthermore stressed Belarus' obligations within the scope of international human rights standards and held that "…the situation in Belarus had reached alarming levels as the authorities were deliberately and systematically dismantling civil society, further contributing to impunity for human rights violations"[221].[222] According to a report made by the UN human rights office in the beginning of March 2022, the Belarusian Government continues to repress journalists, civil society, and political opponents. It further reports that lawyers have noticed human rights violations with no sign of accountability, stressing a situation of impunity in Belarus.[223]

THE VENICE COMMISSION OF THE COUNCIL OF EUROPE

The Venice Commission of the Council of Europe (hereinafter the Venice Commission) was established on 10 May 1990 by 18 Member States of the COE. It is the advisory body on constitutional matters of the COE, working for democracy through law. It consists of all the Member States of the Council and 15 other countries worldwide, which meets in plenary sessions four times a year. Individual members are for example university professors, judges in supreme and constitutional courts, members of national parliaments, and civil servants. These members sit in their individual capacity and are designated for four years by the Member States. The permanent secretariat of the Venice Commission is seated at the headquarter of the COE in Strasbourg, France.[224]

The Venice Commission provides legal advice to the Member States and training in the fields of human rights, the rule of law, electoral administration and justice and good governance. Its main working areas are democratic institutions and fundamental rights, constitutional justice and ordinary justice, and elections, referendums and political parties. The Venice Commission supports states who request to "…bring their legal and institutional structure into line with European standards and international experience in the fields of democracy, human rights and the rule of law"[225]. It has close cooperation with other regional organisations such as the European Union, the Organisation for Security and Cooperation in Europe/the Office for Democratic Institutions and Human Rights of the OSCE, and the Organisation of American States.[226]

CONCLUSIONS – human rights and peace and security

The Council of Europe was born out of the massive transition from war to peace in Europe. The shaping of the organisation's objectives and functions reflects the founders' commitment to prevent recurrence of such an event as World War II. It is primarily an actor within the field of human rights, seeking to maintain respect for human rights, democracy, and the rule of law in Europe. However, the COE also contributes to the peace and security architecture in the region. Throughout the years, it has developed a comprehensive normative framework covering issues in the nexus between human rights and peace and security such as protection of minorities, violence against women, prevention of torture, and terrorism. This includes operational mechanisms to promote compliance with the treaties. The COE shows its capacity to follow the development of the situation in Europe and meet the challenges of modern society issues. Although the system provides for this normative framework, it depends on the Member States' political will to ratify and implement it. For instance, the Convention on Preventing and Combatting Violence against Women and Domestic Violence has a lower number of ratifications in comparison to the other treaties presented in this report. Simultaneously, it has a high number of reservations. Besides this, Turkey's withdrawal from the Istanbul Convention in 2021 also clearly demonstrates the lack of political will and respect for human rights set out within the COE's normative framework. It is crucial that the COE also takes these challenges into account in order to maintain its credibility. At the end of the day, it is the independent States that constitute the human rights system.

At the time of writing, we have witnessed significant changes in the security situation in Europe, and the COE tackling the situation of a Member State invading another European country. The Committee of Ministers and the Parliamentary Assembly have strongly condemned Russia's aggression against Ukraine, claiming that such behaviour disrespects the core of the COE and its statute, and that Russia therefore no longer could be a member of the organisation. Statements that lead to Russia's withdrawal from the COE. The question is, how will Russia's cessation of membership impact the human rights, peace, and security context the long run? Presumably, the split between the COE and Russia will cause disruption in the diplomatic relations within Europe. The human rights situation will also face consequences. Russia's departure from the ECHR takes effect on 16 September 2022. As a non-State

Party to the Convention, individuals in Russia will not be able to submit complaints alleging breaches of human rights to the European Court of Human Rights. Consequently, Russia falls outside the human rights system's scope to monitor, examine, and adjudge violations of human rights committed by the Russian State.

THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human rights was established to address and examine human rights violations committed by State Parties to the ECHR during peaceful circumstances. Its mandate is not designed to enforce State Parties' obligations in armed conflicts. However, the Court rules on provisions that are essential for the promotion and maintenance of peace and security in Europe, such as Article 2, the right to life, Article 3, prohibition of torture, Article 5, the right to liberty and security, etc. The cases presented in this report show that the Court operates in the nexus between human rights and peace and security. For example, the ECHR continues to apply in armed conflict, and while undertaking its obligations under Articles 2, 3, and 5, State Parties must also take International Humanitarian Law into consideration. The case of A and others v. The United Kingdom 2009 also demonstrates an intersectoral approach. The United Kingdom's decision to solely detain individuals of foreign origin as a part of its fight against terrorism and the imminent risk of a terrorist attack within its territory in the early 2000s was strongly questioned by the Court. Even though the UK had derogated from Article 5 at the time, these actions showed nothing but a disproportionate behaviour in that they discriminated unjustifiably between United Kingdom nationals and non-nationals. Not only had the applicants been deprived of their liberty but this was also based on their nationality. Hence, individuals' right to non-discrimination must be maintained even in difficult security situations.

Moreover, by exploring the Court's mandate to respond to armed conflict, it has no means to effectively intervene or stop ongoing violations. However, the ECtHR has developed instruments such as its interim measures in order to act on situations that give rise to serious risks of violations of the ECHR – like in 2008 during the outbreak of hostilities between Russia and Georgia, the case of the Russian occupation of Crimea in 2014, and in the case of hostilities between Armenia and Azerbaijan in 2020. From a post-conflict perspective, the ECHR embodies the principle of non-recurrence and the Court has delivered numerous decisions dealing with a wide range of questions relating to transitional justice, including compensation and restitution, prosecution, lustration, and memory and truth.

Derogations in time of emergency

Article 15 in the ECHR constitutes a strong link between human rights, peace, and security within the COE's normative framework. From a peace and security viewpoint, Article 15 is an important tool for the State Parties to act rapidly and firmly in an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community. And more importantly, an opportunity to act to prevent the risk of such situations to occur within its nation. The latter regarding the case of A and others v. United Kingdom 2009, where the European Court of Human Rights clarified that the interpretation of imminent does not require a State Party to wait for the disaster to strike before taking measures to deal with it. At the same time, by adding a human rights perspective it could be put into question. Within the scope of Article 15, State Parties have the right to suspend individuals' human rights for the benefit of the protection of the nation's survival. Consequently, the same legal system that aims at protecting individuals' human rights also enables State Parties to restrict and temporarily remove their rights by derogations. Theoretically, does it mean that human rights are negotiable?

In order to ensure that States do not misapply or violate the provisions outlined in Article 15, the normative framework provides for monitoring mechanisms. If the measures taken by a State Party are considered to be unjustified, it could be brought before the ECtHR. However, the interpretation of a validly executed derogation is not always clear based on the Court's case law presented in this report. On the one hand, a derogation is only justified in exceptional circumstances. On the other hand, it is primarily left to the State Party to determine whether the life of the nation is threatened by a public emergency or not. Evidently, State Parties cannot undertake derogations in any case. For instance, they must ensure that the actions taken are strictly necessary and in proportion to the specific situation, which was clarified in the case of Aksoy v. Turkey 1996. The Court not only held that Turkey had infringed its obligation under Article 15 in relation to Aksoy's right to liberty and security but also that the State had violated the non-derogable Article 3, prohibition against torture. Taking this into account, the case also shows that an individual's human rights cannot be negotiated away without consequences – even though a State legitimately has declared emergency. Thus, the ECtHR as a monitoring mechanism plays an important role in striking a balance between the security aspect of the State Parties' right to protect the life of its nation and the fulfilment of individuals' human rights, especially in case of conflicts of interest.

THE COMMISSIONER FOR HUMAN RIGHTS

Unlike the ECtHR, the Commissioner has no mandate to declare human rights violations legally binding on the State Party concerned. However, given its non-judicial nature and mandate to promote awareness of and respect for human rights, the Commissioner could quickly act on matters occurring in Europe, which emerged in the activity report of 2021. This including non-Member States of the COE, for instance, when the current Commissioner brought attention to the situation of human rights defenders in Belarus in 2021. By using different channels of communications and methods of advocacy, it could also reach out to a wide range of stakeholders in the State concerned as well as other relevant actors such as its partner organisations, civil society, universities, and other regional and global human rights systems.

Although the Commissioner has no mandate to directly act on peace and security issues, its area of work touches on these matters by addressing human rights challenges in both conflict and post-conflict situations, and in specific thematic subjects such as transitional justice. The Commissioner furthermore highlights the importance of human rights defenders, civil society organisations, and journalists in the improvement of human rights, democracy, and the rule of law in Europe. The Commissioner describes an alarming working environment for these actors in various countries across Europe today. The fact that many of these actors are unable to carry out their work without facing serious obstacles and threats is not only a challenge related to those specific individuals but also to our democratic society and the maintaining of peace and security in Europe. It clearly indicates a negative trend towards a shrinking civic space and breaches of fundamental freedoms and rights in certain parts of the European region. Notably, arbitrary arrests, judicial harassment, liquidation of organisations, reprisals, abusive control, surveillance, ill-treatment, grave human rights abuses, killings, and the risk of impunity – do not apply to values such as human rights, democracy, and the rule of law. Besides, all this happening in countries that are Member States of the COE means that it could pose a threat to the values that the organisation is built upon. Especially with regard to the case of Mr. Kavala, where Turkey has refused to abide the Court's decision and completely neglect the statements addressed by the Commissioner. Lack of political will and respect for the COE institutions' mandates also diminish the power of the COE to fulfil their work. Thus, the need to ensure the protection of these particular actors as well as the agreed values within the COE also make a clear link between human rights and peace and security issues.

ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE

- **The role of regional human rights institutions and the quest for peace in Europe** – with a comment on the invasion of Ukraine

The origins of the Organisation for the Security and Co-operation in Europe (hereinafter the OSCE) dates back to the Helsinki Final Act from 1975 and the creation of the Conference on Security and Co-operation in Europe (hereinafter the CSCE). The Helsinki Final Act, contains a number of key commitments on politico-military, economic and environmental and human rights issues. It also establishes ten fundamental principles that govern the behaviour of States towards each other, as well as towards their citizens. The document guides the OSCE's work to this day.[227]

From 1975 until the 1980s, the CSCE, through a series of meetings and conferences, built on and extended its participating States' commitments, while periodically reviewing their implementation. It created a clear link between human rights and security, and was one of the few channels of dialogue between the Eastern bloc and the West, as well as the neutral and non-aligned countries.[228]

With the end of the Cold War, the Paris Summit of November 1990 set the CSCE on a new course. In the Charter of Paris for a New Europe, the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period. This led to the establishment of permanent structures, including a secretariat and institutions, and the deployment of the first field operations.[229]

After the break-up of the former Yugoslavia and the ensuing conflicts, the CSCE helped to manage crises, and re-establish peace. It also worked with participating States to support the process of democratic transition. In 1994, the CSCE was renamed the Organisation for Security and Co-operation in Europe to reflect more accurately these changes. The 57 State members[230] include states in Europe, Asia and the Americas.[231]

Recognised as a regional arrangement under the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area.

DECISION-MAKING BODIES

Each week, the participating States' permanent representatives meet in the Permanent Council, the OSCE's regular decision-making body, and in the Forum for Security Co-operation, where decisions are taken regarding military aspects of security. A Ministerial Council is held annually to review OSCE activities and provide overall political direction – this is the central decision-making and governing body of the OSCE. Summits of heads of state or government of OSCE participating States can take place periodically to set priorities at the highest political level. Decisions in these decision-making bodies are taken by consensus.[232]

A different participating State chairs the OSCE each year, with that country's foreign minister serving as Chairperson-in-Office (hereinafter the CiO) and working alongside the previous and succeeding Chairs – together the three Chairs form the OSCE Troika. The CiO may appoint personal representatives. Currently there are personal representatives covering a wide range of issues from preventing and managing conflicts in the OSCE region, and ensuring co-ordination in specific areas like gender and youth issues to promoting tolerance and non-discrimination.[233]

The Parliamentary Assembly (hereinafter the PA), established by the 1990 Charter of Paris to promote greater involvement in the OSCE by national parliaments, is the oldest continuing OSCE institution. Bringing together

323 parliamentarians from across the OSCE region, the Assembly provides a forum for parliamentary dialogue, leads election observation missions, and strengthens international co-operation to uphold commitments on political, security, economic, environmental and human rights issues. The primary task of the Assembly is to facilitate inter-parliamentary dialogue. The parliamentarians debate, vote and pass declarations and resolutions addressing issues concerning the promotion of human rights and fundamental freedoms, economic and environmental co-operation and political-military policies. Past declarations include recommendations that led to the creation of the OSCE Representative on Freedom of the Media. Resolutions are passed by majority vote.[234]

Appointed by the President, special representatives serve as focal points on topical and regional issues, co-ordinating the Assembly's efforts and activities to strengthen the PA's response to specific challenges. Issues and regions covered by special representatives include human trafficking, South East Europe, and gender issues. OSCE parliamentarians also play a key role in the organisation's election observation activities, conduct field visits, and engage in parliamentary diplomacy.[235]

EXECUTIVE STRUCTURES

SECRETARIAT

Elected for a three-year term by the Ministerial Council, the Secretary General heads the Secretariat located in Vienna and directly supports the OSCE Chair. In addition to its administrative functions, the Secretariat is comprised of the Conflict Prevention Centre as well as departments and units focusing on economic and environmental activities, co-operation with partner countries and organisations, gender equality, anti-trafficking, as well as transnational threats. They monitor trends, provide expert analysis and implement projects in the field.[236]

INSTITUTIONS

The OSCE includes three institutions dedicated to specialised areas of work. The Warsaw-based Office for Democratic Institutions and Human Rights (hereinafter the ODIHR) promotes democratic development and human rights. Its work includes election observation, supporting the rule of law, promoting tolerance and non-discrimination and improving the situation of Roma and Sinti. ODIHR hosts the annual Human Dimension Implementation Meeting, the largest annual human rights conference in the OSCE region.[237]

The Vienna-based Representative on Freedom of the Media monitors media developments and provides early warning on violations of freedom of expression and media freedom, promoting full compliance with OSCE media freedom commitments.[238]

As an instrument of conflict prevention, the High Commissioner on National Minorities, based in The Hague, uses quiet diplomacy and early action to seek resolution of ethnic tensions that might endanger peace, security and stability.[239]

FIELD OPERATIONS

Field operations are established at the invitation of the host countries and their mandates are agreed by consensus of the participating States. They support the host countries in implementing their OSCE commitments through projects that respond to their needs. Some field operations, like the Special Monitoring Mission to Ukraine, which included over 1,300 civilian staff members of which 740 were deployed as monitors, work to reduce tensions. Others play a critical post-conflict role, helping to restore trust among affected communities.[240]

One of the OSCE's core activities is to address protracted conflicts in its region through agreed negotiation formats. These include the Transdniestrian Settlement Process, aimed at achieving a comprehensive political settlement of the conflict over Transdniestria; the OSCE Minsk Group, which seeks a peaceful negotiated solution to the Nagorno-Karabakh conflict; and the Geneva International Discussions on the aftermath of the August 2008 conflict in Georgia, which the Organisation co-chairs with the United Nations and the European Union.[241]

The OSCE is heavily field focused considering that as of October 2021, close to 3 000 staff members, or 83 % of its total staff, were deployed to its 15 field operations in South-Eastern Europe, Eastern Europe, the South Caucasus and Central Asia.[242]

OSCE field operations 2021/2022[243]	Year established	Staff*
Presence in Albania	1997	84
Mission to Bosnia and Hercegovina	1994	314
Mission to Kosovo	1999	490
Mission to Montenegro	2006	32
Mission to Serbia	2001	118
Mission to Macedonia	1992	154
Mission to Moldova	1993	53
Project coordinator to Ukraine	1999	52
Special Monitoring Mission to Ukraine**	2014 - 2022	1550
Observer Mission at the Russian checkpoints Gukovo and Donetsk***	2014 - 2021	22
Centre in Turkmenistan	1998	29
Programme office in Kazakhstan	1998	28
Programme office in Kyrgyzstan	1998	123
Programme office in Tajikistan	1993	132
Project coordinator in Uzbekistan	2000	40
Personal Representative of the OSCE Chairperson-in-Office on the conflict dealt with by the OSCE Minsk Conference – the Nagorno-Karabakh conflict (based in Georgia)	1995	17

*Number of international and local staff as of 2021. **Mandate discontinued in March 2022. *** Mandate discontinued in September 2021.

OSCE-RELATED BODIES

There is an additional three treaty-based bodies which are related to the OSCE. The Joint Consultative Group, based in Vienna, deals with issues related to the compliance with the provisions of the Treaty on Conventional Armed Forces in Europe[244] with the objective of limiting the numbers of conventional armaments and equipment deployed between the Atlantic Ocean and the Ural Mountains. The Open Skies Consultative Commission, meets in Vienna and consists of representatives from the States signatories to the Open Skies Treaty which regulates the conduct of observation flights by States Parties over the territories of other States Parties. Finally, the Court of Conciliation and Arbitration is a Geneva-based court which serves a mechanism for the peaceful settlement of disputes in accordance with international law and OSCE commitments. The Court was instituted by means of the Convention on Conciliation and Arbitration within the OSCE adopted in Stockholm in 1992. The convention entered into force in 1994 and had been ratified by 34 States Parties as of January 2021. The Court having been established within the OSCE, its mechanisms are available to all OSCE participating States on the basis of a special agreement between them. The Court is mandated to settle, by means of conciliation or arbitration, the disputes between States submitted to it. This may include conflicts in respect of territorial integrity, maritime delimitation, or environmental and economic issues. The Court is a non-permanent body and creates conciliation commissions and arbitral tribunals on an ad hoc basis. In practice though, the court during its long history has never handled a single case. The Swedish 2021 chairmanship made a campaign to encourage States to accede the convention but the ratification rate is low and important States such as Canada, USA and Russia are missing.[245]

THE THREE DIMENSIONS

The OSCE was created as a security organisation, but with a broad concept of security, beyond traditional military security, disarmament and border issues. The OSCE applies a comprehensive approach to security encompassing three dimensions: the politico-military, the economic and environmental and the human dimension.

In military matters, it seeks to foster greater openness, transparency and co-operation including arms control and confidence-building measures. Areas of work include security sector reform and the safe storage and destruction of small arms, light weapons and conventional ammunition.[246]

Under the economic and environmental dimension, the OSCE helps with promoting good governance, tackling corruption, raising environmental awareness, sharing natural resources, and the sound management of environmental waste.[247]

Finally, within the human dimension, the OSCE helps its participating States to build democratic institutions, hold genuine and transparent elections, ensure respect for human rights, media freedom, the rights of persons belonging to national minorities and the rule of law, and promote tolerance and non-discrimination.[248]

The OSCE also addresses transnational security challenges, such as violent extremism and radicalisation that lead to terrorism, cyber-attacks, trafficking in drugs, arms and human beings, migration, and the environmental and human impact of climate change.[249]

NORMATIVE FRAMEWORK

DEVELOPMENT OF THE NORMATIVE FRAMEWORK

The Helsinki Final Act provides for regular follow-up conferences and meetings making the OSCE to follow a process-oriented approach. This methodology is essential for the analysis of the OSCE human rights framework. First, it means that there is a forum for discussing the implementation of the standards agreed in previous meetings. Second, it has led to a set of successive OSCE documents specifying and elaborating the human dimension commitments adopted in past documents. As a result, the OSCE has developed a very flexible and dynamic norm-creating process in the human rights field, a process that is ongoing.[250]

The OSCE commitments generally take the form of documents adopted by consensus at OSCE summits or ministerial meetings. This process approach has led to a large number of OSCE documents. The documents build on each other and constitute what could be called the OSCE acquis (total body of law). They have been adopted by consensus and are, therefore, politically binding on all OSCE participating States. This also applies to participating States admitted later, which were required to accept the acquis upon accession.[251]

Often, an early document stipulates only a general principle that is then further elaborated in subsequent documents. However, since the commitments and documents build on each other, a commitment in an early document does not lose its force if a subsequent document has only a general reference to this right. At the same time, each document, as a whole, reflects a specific historical context and its structure follows a certain logic that puts the different parts of the document in a wider context. Reading the document in its entirety can, equally, thus provide important information as to the understanding and interpretation of the norms concerned. This explains the dual approach in this compilation, which consists of thematic and chronological components.[252]

In a number of cases, OSCE human dimension commitments go far beyond the level provided for in "traditional", legally binding human rights instruments. In traditional human rights treaties, individual and group rights are formulated, and the State party has the obligation to respect and guarantee those rights. How to implement these obligations, however, is most often left to the discretion of the States. The OSCE human dimension goes much further in linking human rights with the institutional and political system of a State. In essence, OSCE States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively.[253]

This explains why the OSCE human dimension has been described as a common pan-European public order. In other words, the OSCE is not simply an organisation of 57 participating States but a "community of values" jointly developing practice and normative custom. This linkage is also reflected in the strong commitment to the rule of law and in the way it is formulated, as a concept based on the dignity of the human person and a system of rights through laws and legal structures.[254]

BINDING CHARACTER

The OSCE process is essentially a political process that does not create legally enforceable norms or principles. Unlike many other human rights documents, OSCE human dimension commitments are politically, rather than legally, binding. This is an important distinction, since it limits the legal enforceability as OSCE commitments cannot be enforced in a court of law. However, this should not be mistaken as indicating that the commitments lack binding force. The distinction is between legal and political, and not between binding and non-binding. This means that the OSCE commitments are more than a simple declaration of will or good intentions; rather, they are a political promise to comply with these standards.[255]

While deliberations on international legal documents usually take considerable time before agreement on a final text is reached, and the final documents are subject to ratification and reservations, this does not apply to OSCE documents. Their political nature leads to the unique situation that, once consensus among the States has been achieved, decisions enter into force immediately and, in principle, are binding upon all participating States.[256]

A positive side of this modus operandi is that it allows the OSCE to react quickly to new needs. For example, when human rights violations in regard to minorities increased in the beginning of the 1990s, the OSCE acted swiftly by drafting a comprehensive set of standards in the field of minority protection. Later, these political standards served as the basis for the legally binding Council of Europe Framework Convention on the Protection of National Minorities.[257]

NON-INTERVENTION

A fundamental aspect of the OSCE's human dimension is that human rights and pluralistic democracy are not considered the internal affairs of a State. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. In fact, the participating States "….categorically and irrevocably" declared that the "commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned"[258]. Therefore, OSCE participating States are no longer in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries. This explains why the OSCE is not only a community of values but also a community of responsibility. And it has to be stressed that this responsibility focuses not only on the right to criticise other States in relation to violations of human dimension commitments but also on the duty to assist each other in solving specific problems.[259]

RESPONSIBILITY TO PROTECT

Looking at the consequences of the situation when a State either is unable or unwilling to protect its population from gross human rights violations and severe infractions of international humanitarian law, the principle of Responsibility to Protect (R2P), comes into play and places a responsibility of other States to act.

The R2P was developed in the international context from a custom where States enjoyed absolute sovereignty under the principle of non-intervention. Within the international arena, the genocides in Rwanda and Srebrenica led to a process within the UN that ended up in the adoption of the concept of Responsibility to protect by the UN General Assembly by means of paragraphs 138 and 139 of the 2005 World Summit Outcome Document (A/RES/60/1).

The Responsibility to protect as described in the resolution is based on an underlying body of international legal obligations for States which are contained in international instruments or are developing through state practice and the case-law of international courts and tribunals. These existing international obligations require States to refrain from and take a number of

actions to prevent and punish genocide, war crimes, ethnic cleansing and crimes against humanity. There is also a specific commitment of States through the UN to take "collective action" in a "timely and decisive" manner through "appropriate diplomatic, humanitarian, and other peaceful means," to protect populations from these crimes.[261]

This vision is similar to the UN view on R2P which states that "[u]ltimately, the Responsibility to Protect principle reinforces sovereignty by helping states to meet their existing responsibilities. It offers fresh programmatic opportunities for the United Nations system to assist states in preventing the listed crimes and violations and in protecting affected populations through capacity building, early warning, and other preventive and protective measures, rather than simply waiting to respond if they fail"[262] .

In recent years, the UN has advanced on the R2P and the General Assembly adopted a new resolution in May 2021 – the first since 2009 (Resolution A/75/277). With an overwhelming majority of States voting for the resolution – UN member States decided to include R2P on the annual agenda of the General Assembly and to formally request that the Secretary-General reports annually on the topic.[263]

As for the OSCE, a speech in 2012 by the High Commissioner on Minorities, elaborated on the R2P and the role of the OSCE in relation to Kyrgyzstan and the violence that broke out in April 2010 following the ousting of President Bakyev. As a result, hundreds of civilians died, thousands were injured and hundreds of thousands were displaced. The majority of victims were ethnic Uzbeks, although Kyrgyz and people belonging to other ethnic groups also suffered. Reports of arson, rape and other atrocities were widespread and were characterised as crimes against humanity by the Independent International Commission of Inquiry. The Commissioner already in November 2009 in his report to the Greek chairpersonship warned that inter-ethnic tension was rising at an alarming pace. As the Commissioner found factors comparable to the ones that were at play in the early 1990s when ethnic warfare spread in the Balkans and parts of the former Soviet Union, he asked for a special hearing of the Permanent Council. On 12 June 2010, concluding that there was a prima facie risk of potential conflict, the Commissioner issued a formal early warning. Once the early warning has been issued, the responsibility for addressing the problem is shared by the OSCE participating States and the Chairperson, who, in theory, should ensure that the early warning is followed by early action. Unfortunately, according to the Commissioner "… the international response to the events in Kyrgyzstan was muted to say the least."[264] And, as a matter of fact, it never even made it to the agenda of the UN Security Council.[265]

The Commissioner noted that it was not clear who exactly should bear this international responsibility, nor what should happen if the international community also fails to respond. Furthermore, the Commissioner saw a need for enhanced cooperation between the UN and regional organisations when it comes to situations that could fall under the R2P, including the sharing of information and analysis, and coordinating responses. He also pointed to the fact that the acceptance and use of an R2P discourse varied among regional and sub-regional organisations where, within the OSCE, the R2P discourse was not used. However, this does not mean that the OSCE does not share the foundations of the R2P – in fact the concept of comprehensive security and the human rights framework are proof of this and on the emphasis on conflict prevention which is a fundamental cornerstone in R2P. Further, there is a strong interconnection between the normative and political instruments and the evolution of the UN approach to R2P. However, in the very case of Kyrgyzstan, the Commissioner points to the failure of addressing the underlying factors of which the collapse of the State was one of the main causes of the violence. One of the reasons for this, he concludes, is the resistance to finance long-term prevention both within the international community and among domestic actors.[266]

The contributions of the OSCE – on a more general level – to the protection and promotion of human rights, building conflict prevention and thus also contributing to the Responsibility to protect is further examined in the analysis below.

LIMITATIONS AND DEROGATIONS

The OSCE commitments reflect traditional human rights and freedoms, as well as some areas beyond the scope of traditional human rights law. As in other human rights treaties, an important question is the extent to which rights can be limited. Some of the freedoms stipulated by the OSCE contain specific limitation clauses. However, the 1990 Copenhagen Document in its paragraph 24, stipulates an important general rule. Rights and freedoms will not be subject to any restrictions except those provided for by the law and consistent with other obligations under international law, such as the International Covenant on Civil and Political Rights. Restrictions must not be applied in an arbitrary manner, and they always have to be understood as exceptions to the general rule that individual freedom must be respected. Any limitation must be strictly proportionate to the aim of the law. This proportionality test requires a narrow interpretation, particularly since any interference must be evaluated against the great value of such fundamental freedoms to a free and open democratic society.[267]

Paragraph 25 of the Copenhagen Document confirms that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. Further that measures must be taken in strict conformity with the procedural requirements laid down in those instruments; that the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law; that measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation; and finally that such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.[268]

ENFORCEABILITY

The OSCE human dimension commitments are addressed – in line with other international human rights treaties – to the participating States and the first responsibility for guaranteeing the rights lies with States. Consequently, the OSCE has created a set of procedures, conferences, and institutions that help to monitor and assist with the implementation of the human dimension commitments. Unlike other human rights treaties, the OSCE has not created a court or other individual petition body to ensure the implementation of commitments. This reflects the political character of the OSCE process and the intention not to duplicate existing mechanisms. To the contrary, the idea is to reinforce these mechanisms and call on participating States to subscribe to these mechanisms and to abide by standards set by other international organisations. However, the absence of an individual complaints mechanism does not preclude that individual cases might be brought to the attention of the political bodies of the OSCE.[269]

Considering the consensus-based nature of OSCE, the Permanent Council decision in Prague in 1992 surprisingly opened up possibilities for actions to be taken in the absence of consent of the State concerned: "…[t]he Council decided, in order to develop further the capability to safeguard human rights, democracy and the rule of law through peaceful means, appropriate action may be taken by the Council […] if necessary in the absence of the consent of the State concerned, in cases of clear, gross and uncorrected violations of relevant CSCE commitments. Such actions would consist of political declarations or other political steps to apply outside the territory of the State concerned. This decision is without prejudice to existing CSCE mechanisms"[270].

HUMAN RIGHTS AND PEACE AND SECURITY NEXUS

The OSCE concept of security includes on an equal basis human rights and democracy issues. Participating States have agreed that peace and security cannot be achieved without respect for human rights and functioning democratic institutions. They have committed themselves to a comprehensive catalogue of human rights and democracy norms. These form the basis of what the OSCE calls the human dimension of security.

THE HUMAN DIMENSION MECHANISM

The OSCE has established a number of tools to monitor the implementation of commitments that participating States have undertaken in the field of human rights and democracy. One of these tools, the so-called Human Dimension Mechanism, can be invoked on an ad hoc basis by any individual participating State or group of States. It is composed of two instruments: the Vienna Mechanism (established in the Vienna Concluding Document of 1989) and the Moscow Mechanism (established at the meeting of the Conference on the Human Dimension in Moscow in 1991), the latter partly constituting a further elaboration of the Vienna Mechanism.[271]

The Vienna Mechanism allows participating States, through an established set of procedures, to raise questions relating to the human dimension situation in other OSCE States. The Moscow Mechanism builds on this and provides for the additional possibility for participating States to establish ad hoc missions of independent experts to assist in the resolution of a specific human dimension problem – either on their own territory or in other OSCE participating States. The OSCE Office for Democratic Institutions and Human Rights is designated to provide support for the implementation of the Moscow Mechanism.[272]

As of May 2022 the Moscow Mechanism has been invoked ten times. The latest being in March 2022 over the Russian invasion of Ukraine to "…address the human rights and humanitarian impacts of the Russian Federation's invasion and acts of war, supported by Belarus, on the people of Ukraine, within Ukraine's internationally recognized borders and territorial waters"[273] .

The Moscow Mechanism was also invoked in 1992 in the framework of the war in former Yugoslavia on the issue of reports of atrocities and attacks on unarmed civilians in Croatia and Bosnia-Herzegovina. In February 1993, the fact-finding mission recommended that an international criminal tribunal for the former Yugoslavia should be established. Sweden, which chaired the (then) CSCE, submitted a proposal to the UN. Four months later, the International Criminal Tribunal for the former Yugoslavia was established.[274]

THE HUMAN DIMENSION IMPLEMENTATION MEETING

The Human Dimension Implementation Meeting of OSCE is organised by ODIHR annually in Warsaw as a platform for the 57 OSCE participating States, the OSCE Partners for Co-operation, OSCE structures, civil society, international organisations and other relevant actors to take stock of the implementation of human dimension commitments, discuss associated challenges, share good practices and make recommendations for further improvement. This is an opportunity for civil society to engage with States and to spotlight challenges related to human rights, democracy and peace and security. The 2021 meeting was however cancelled due to a veto from Russia. Instead, a conference celebrating the 30 year anniversary of ODIHR was held.

HIGH COMMISSIONER ON NATIONAL MINORITIES

The High Commissioner on National Minorities (hereinafter the Commissioner) was established in 1992 to strengthen OSCE early warning and conflict prevention capabilities. The Commissioner is involved at the earliest possible stage in participating States where inter-ethnic tensions could lead to conflict. The Commissioner also works on long-term conflict prevention activities, including addressing the protection and promotion of minority rights,

and providing advice and recommendations on how to maintain a stable multi-ethnic State. As an instrument to address ethnic tensions and to prevent conflict between and within States over national minority issues, the mandate of the Commissioner, based in The Hague, is to contain and de-escalate tensions and to alert the participating States and OSCE structures when a situation threatens to escalate beyond the scope of the institution's reach. The decision on where to engage is left to the Commissioner and does not require the approval of the State concerned or the OSCE decision-making bodies. The Commissioner was created as a conflict prevention resource within the politico-military dimension and does not function as an ombudsperson for minorities or an investigator of individual human rights violations. If the High Commissioner decides to issue an early warning, it is added to the agenda of the next meeting of the Permanent Council. Two formal early warnings, as defined in the mandate, have been issued: on the Former Yugoslav Republic of Macedonia in 1999 and on Kyrgyzstan in 2010.[275]

The Commissioner is empowered to conduct on-site missions and to engage in preventive diplomacy. The approach is quiet diplomacy combining a short-term approach and a long-time perspective. While working independently and confidentially to broker agreements and advice governments, the Commissioner is accountable to the participating States and the Commissioner regularly briefs the Permanent Council and the Chairperson-in-Office and works closely with other OSCE and international institutions. The Commissioner has issued nine thematic recommendations and guidelines containing best practice and lessons learnt regarding the integration of diverse societies, national minorities in inter-State relations, access to justice, linguistic and education rights and others. The Commissioner also conducts small-scale projects in order to help States implement the recommendations.[276]

REPRESENTATIVE ON FREEDOM OF THE MEDIA

To protect freedom of expression and freedom of the media, the Office of the OSCE Representative on Freedom of the Media was established in 1997 by a Permanent Council Decision. The Representative is mandated to observe media developments in all participating States and to advocate for and promote their full compliance in line with OSCE principles and commitments on freedom of expression and free media. The Representative has an early warning function and provides rapid response to violations of freedom of expression and free media in the OSCE region.[277]

It is the Representative's responsibility to address cases of obstruction of media activities and unfavourable working conditions for and protection of journalists. The Representative also works with participating States and other OSCE entities, including the Permanent Council, the Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities, as well as international media associations, in defence of media freedom.[278]

The Representative's involvement can take various forms, ranging from quiet diplomacy and through contacts with the participating States' Foreign Ministers, to raising public awareness through press statements. The office of the Representative provides thorough legal analyses of proposed and existing media laws in participating States and in-depth reports on substantive issues facing media. The office also provides guides and resources for journalists and government officials on contemporary issues. Finally, the Representative and her staff conduct visits and publish reports on the media-freedom situation in participating States. These visits include consultations with high-ranking public officials, journalists and NGOs.[279]

RULE OF LAW AND TRANSITIONAL JUSTICE

The OSCE security and conflict prevention mandate includes rule of law standards as part of its human dimension of security. In order to deal with threats to security and prevent conflicts that may arise from practices that fall short of rule of law standards, participating States have made a number of commitments in this area. These include the Copenhagen Document from 1990, related to an independent judiciary and fair trial rights. The ODIHR seeks to assist the participating States in living up to these commitments. The ODIHR contributes to making the rule of law a reality in the OSCE region through

work in relation to judicial independence, criminal justice, war crimes and trials observation. This is done through the promotion of institutional reform, expert assistance and exchanges between participating States. The OSCE field presence in many cases include rule of law initiatives.[280]

The ODIHR has supported Transitional Justice (hereinafter TJ) initiatives in Central and South-East Europe as a part of its rule of law and human rights programmes. This has for example included the engagement in the former Yugoslavia and the International Tribunal for Former Yugoslavia and a number of rule of law and institutional building initiatives in the Western Balkans. Apart from this focus on post-conflict transitions, efforts have also been made to support TJ initiatives in the former totalitarian socialist States' transition to democracy, as for example in the case of Albania. Albania, experienced a short period of TJ measures after the fall of the dictatorship in 1991 which were then paused for a long time. Only in 2018, the University of Tirana, supported by the OSCE Mission, together with political foundations founded a Centre for Justice and Transformation, supporting young researchers to conduct research in their own country. One of the ideas behind the project is that without proper language skills, allowing for digging deep in national archives, TJ research is, if not impossible, at least seriously hampered. Another important aspect is that the approach strives for a bottom-up approach. Similar initiatives could become important for other post-totalitarian and authoritarian societies and researchers in the OSCE region, such as in Central Asia, the Caucasus and Eastern Europe, including Russia. Many of the post-communist countries are by far not yet democracies and methods and ideas how to govern continue. This includes human rights violations, censorship, nepotism, corruption and arbitrary justice.[281]

It should be said though, that many of the post-Soviet and post-totalitarian countries have not seen strong movements for dealing with the past, let alone to connect present democratic and rule of law deficits, corruption, economic shortcomings and uneven distribution of resources to the fact that the communist past and the transition to democracy has never been dealt with properly. However, in the current context, questioning of the old and new political and economic elites, the legacy of the communist regimes and the transition to democracy and market economy might be in the making.[282]

CONFLICT PREVENTION CENTRE

The OSCE's approach to security is closely tied to the concept of early warning, conflict prevention, crisis management, and post-conflict rehabilitation, encompassing the conflict cycle. The main methods to address this cycle include its network of field operations and the Conflict Prevention Centre (hereinafter the CPC). Created in 1990 by means of the Charter of Paris for a new Europe, to help reduce the risk of conflict, the Centre now provides policy advice, support, and analysis to the Secretary General, Chairpersonship, participating States, and field operations. Based at the OSCE Secretariat in Vienna, the Centre acts as an OSCE-wide early warning focal point, facilitates negotiation, mediation, and other conflict prevention and resolution efforts, and supports regional cooperation initiatives. This comprehensive mandate was strengthened by the Ministerial Decision 3/11 on "Elements of the Conflict Cycle".[283]

The CPC continuously monitors developments in the region, helps to keep OSCE decision-making bodies and participating States informed and develops response options to address emerging crises that could have an impact on regional security and stability. The structure includes a 24/7 Situation Room which monitors developments in the OSCE area affecting security and stability. It identifies and prioritises issues for attention in line with the three dimensions of the OSCE's work, with a particular focus on emerging crisis situations. During times of crisis, the Situation Room is a central link in the security chain between the Secretariat and the field operations.[284]

The CPC assists the Forum for Security Co-operation, an autonomous OSCE decision-making body dealing with the politico-military dimension of security, and advices the participating States on the implementation of their commitments regarding the Comprehensive set of Security Building Measures (hereinafter the CSBMs), including information exchange and compliance and military cooperation.[285]

Finally, the CPC is the primary link between field operations and other OSCE structures, including the decision-making bodies and as such distributes reports from the field and keeps field operations informed while at the same time having the primary responsibility for facilitating regional initiatives and ensuring dialogue and coordination with other international organisations at the regional level.[286]

WOMEN, PEACE AND SECURITY

The adoption of United Nations Security Council Resolution 1325 (hereinafter UNSCR 1325) and related resolutions on Women, Peace and Security have had a tangible influence on the gender-responsiveness and architecture of regional security organisations. Within the OSCE it spurred the creation of support mechanisms such as the Gender Section in the Secretariat, the Gender Unit within the ODIHR, and the establishment of a Gender Focal Point System throughout the OSCE. A notable development was the inclusion of a gender advisor at the very outset of the establishment of the OSCE Special Monitoring Mission to Ukraine in 2014.[287]

The Secretariat's Programme for Gender Issues provides government and civil society actors with analyses, practical tools, training and expert advice to help participating States to fulfil their commitments on WPS. It assists them with the development of results-oriented national action plans and assesses problems, trends and challenges in their implementation. The Programme works together with the OSCE Conflict Prevention Centre to develop measures for the inclusion of women in conflict prevention and in dialogue, negotiation and peace processes in the OSCE region. It collects and analyses data on the prevalence and different forms of violence against women in conflict. The Programme further helps to empower young women professionals in the fields of arms control, disarmament and non-proliferation through a scholarship programme run by the Conflict Prevention Centre. It also collaborates with the Transnational Threats Department to raise awareness of the role of gender in preventing and countering violent extremism and radicalisation that lead to terrorism.[288]

On the normative side, for example in the Ministerial Council Decision in Bucharest in 2001, even if not mentioning Women, Peace and Security, the Council expresses firm action in line with the WPS agenda: "[c]onvinced of women's potential to contribute to conflict prevention, reconciliation and peace-building processes […] Confirming the commitment to protect and promote the rights of women and being aware of the vulnerability of women especially in conflict and post-conflict situations […]Determined to combat all forms of violence against women, including domestic violence […] Calls for the implementation of the Action Plan on Gender Issues"[289] . And further in the Ministerial Council Decision in Sofia in 2004 on access to justice "[s]upport national and international efforts to bring to justice those who have perpetrated crimes against women which under applicable rules of international law are recognized as war crimes or crimes against humanity, and ensure that existing national legislation on violence against women is enforced, and that new legislation is drafted where necessary"[290] .

Every year, participating States voluntarily report on measures by their security services to implement the WPS commitments as part of an exchange of information in compliance with the OSCE Code of Conduct on Politico-Military Aspects of Security.[291]

The OSCE in 2019 launched a toolkit focusing the need for practical measures to increase women's inclusion in peace processes in the OSCE area. The aim is to support the work of OSCE mediators and their teams, the OSCE Chair, and participating States as well as OSCE field operations, institutions, and the Secretariat. The OSCE has further concluded studies and provided advice for Results-Oriented National Action Plans on Women, Peace and Security. In 2020, in light of the 20th anniversary of the adoption of the UNSCR 1325, the OSCE published a study examining how far the region had progressed in implementing the UNSCR 1325 and the nine related resolutions.[292]

During the Swedish Chairpersonship in 2021, The Chairperson-in-Office launched a new Advisory Group of Experts on Women, Peace and Security. The advisory group's objective was to provide advice and proposals on how

the Chairperson-in-Office, in cooperation with the Special Representative on Gender, can work to strengthen the OSCE's implementation of the WPS agenda.[293]

CONCLUSIONS – the interplay between human rights and peace and security

The OSCE was created as a security organisation, but with a broad concept of security, beyond traditional military security, disarmament and border issues. Participating States have agreed that lasting peace and security cannot be achieved without respect for human rights and functioning democratic institutions. They have committed themselves to a comprehensive catalogue of human rights, democracy and rule-of-law norms which form the basis of the Human Dimension of security. The term also indicates that the OSCE norms in this field cover a wider area than traditional human rights law.

Thus, there are several enabling factors that, at least from a theoretical perspective, enhance an intersectional approach to peace and security, including human rights, the rule of law and democratic governance. Firstly, the Helsinki Final Act in one document provides a number of commitments englobing politico-military, economic and environmental and human rights frameworks. These include, inter alia, measures of early warning, conflict prevention and crisis management – encompassing fact-finding and rapporteur missions and OSCE peacekeeping – while also setting up structures for the follow-up of the Human Dimension.

The Helsinki Final Act clearly makes the link between peace and security and human rights, stating that "[t]he participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States"[294] .

Even though the Helsinki Final Act does not provide for an explicit right to peace on an individual level, the document in its Declaration on Principles Guiding Relations between Participating States (known as "the Decalogue"), indirectly through its focus on inter-State peace, provides a solid ground for peace and security between participating States. These principles include: (II) Refraining from the threat or use of force; (III) Inviolability of frontiers; (IV) Territorial integrity of States; (V) Peaceful settlement of disputes, (VII) Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, and; (VIII) Equal rights and self-determination of peoples. The State adherence to the principle of peaceful resolution of disputes is repeated throughout the document as is the State responsibility to refrain from the use of force. Further, in the second chapter of the Helsinki Final Act, the importance of confidence-building measures and disarmament are handled. Finally, there is no hierarchy among these principles, in other words, no government can claim that they have to establish political or economic security before addressing human rights and democracy.

In terms of the tools available for ensuring the respect for human rights and preserving peace and security in the participating States, there are several relevant tools, both in terms of institutions and mechanisms.

The Office for Democratic Institutions and Human Rights, based in Warsaw, is the main institution of the OSCE for the Human Dimension. The 1992 Helsinki Document 1992 set out the ODIHR's mandate to help participating States to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society. The ODIHR promotes democratic election processes through the in-depth observation of elections, conducts election assistance projects that enhance meaningful participatory democracy, and assists participating States in the implementation of their Human Dimension

commitments. All these elements are important cornerstones for lasting peace and security. Further, the ODIHR, as a part of its mandate, organises the yearly Human Dimension Implementation Meeting. The meeting brings together the participating States, the OSCE Partners for Co-operation, OSCE structures, civil society, international organisations and other relevant actors to take stock of the implementation of OSCE Human Dimension commitments, discuss associated challenges, share good practices and make recommendations for further improvement. The OSCE cross-cutting approach to security makes these meetings connect between human rights, the rule of law, democratic governance, and peace and security.

The Moscow and Vienna Mechanisms, even though sparsely used, are important tools both regarding conflict prevention and in conflict situations as well as for enhancing the redress for gross human rights violations and grave breaches of international humanitarian law. The Moscow mechanism is further discussed in the chapter on Ukraine.

While the Helsinki Final Act includes provisions on minority rights, in 1992 a decisive step was taken in this respect with establishment of the High Commissioner on National Minorities. An interesting aspect of the Commissioner is that the mandate stems from the comprehensive security perspective and its politico-military dimension, instituted as an instrument to address ethnic tensions and to prevent conflict between and within States, including early warning and action.

Looking at the Representative on Freedom of the Media, the mandate to observe media developments and to advocate for and promote their full compliance in line with the OSCE principles and commitments on freedom of expression and free media is important both as a conflict-prevention measure and in times of conflict. The mandate includes an early warning function and rapid response to violations of freedom of expression and free media. This also includes the protection of journalists in armed conflicts as well as monitoring the use of war propaganda which is further elaborated on in the chapter on Ukraine.

A piece of the OSCE comprehensive security architecture which potentially could be important as a legal institution for the peaceful settlement of disputes is the still not used Court of Conciliation and Arbitration. Unlike other OSCE mechanisms, the Court was instituted by means of a convention, which means that it is strictly not part of the OSCE acquis. Ratified by 34 participating States, there is quite a long way of reaching full 57 State accession and important States are missing – including Russia. Only future can tell if the Court will play a role in the peaceful resolution of conflicts in the OSCE region or if it will pass to history as a parenthesis.

On balance, even though the OSCE and its predecessor, the CSCE, were created as organisations primarily dealing with inter-state security issues, the comprehensive approach to security makes for a nexus-friendly framework where the three dimensions – the politico-military, the economic and environmental, and the human dimension – interact in an ambition to create societies in peace and security, respectful of human rights and built on rule-of-law and democratic institutions. The OSCE also played an important role in the transition of post-communist States in the context of the break-down of the Soviet Union and in transitional justice processes on the Balkans. However, the question of evaluating as to what extent this framework in practice and on a day to day basis actually works in an integrated way and can be said to be effective and efficient in securing the contents of the three dimensions is beyond the scope of this study.

THE EUROPEAN UNION

The idea of creating a community within Europe began shortly after the Second World War. Politicians in European countries were ready to end a long history of conflicts and to start the processes of building political cooperation. In 1951 the European Coal and Steel Community was founded by Germany, France, Italy, Belgium, Luxembourg, and the Netherlands. They deepened their cooperation in 1957 by adopting the two Treaties of Rome, which created the European Economic Community and the European Atomic Energy Community.[295] These three separate communities were subsequently merged into one institutional organisation through the adoption of the so called Merger Treaty in 1965. It entered into force in 1967 and thus constituted the European Community.[296]

The European Union (hereinafter the EU or the Union), as we know it today, was officially established on the 1 November 1993 following the entry into force of the Maastricht Treaty. The single market with the "four freedoms" was launched, aiming at removing internal barriers to the free movement of people, goods, services, and money within the Union. In 2002 the EU took a further step forward by launching a new common legal currency for the Union – the Euro.[297] Between 1997 and 2008, the EU faced new challenges such as terrorism, climate change, a global financial crisis, and other security issues in the region. Therefore, the EU adopted several treaties during this period in order to reform and enhance the institutions of the Union – the latest, the Treaty of Lisbon.[298]

THE EU OF TODAY

The Treaty of Lisbon (hereinafter the Treaty) is the legal basis of the European Union since 2009. The Treaty amends the former treaties of the EU. It was signed by the EU Member States in December 2007 and entered into force in December 2009.[299] As of 2022, the EU consists of 27 Member States following the United Kingdom's withdrawal in 2020. 19 out of these 27 Member States use Euro as their official currency.[300]

The EU builds upon principles such as fundamental rights, democracy, and the rule of law. The Treaty of Lisbon provides for a new institutional set-up and spells out the powers of the EU for the first time, which could be divided into three different kinds of competencies, namely: "… exclusive competence, where the Union alone can legislate, and Member States only implement; shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so; and supporting competence, where the EU adopts measures to support or complement Member States' policies"[301]. In this way, the EU reaches a higher level of parliamentary scrutiny and democratic accountability.[302] Through the Treaty, the EU also enjoys full legal personality. This means that the Union could join international organisations and sign international agreements. In view of this, Member States of the EU may solely sign international treaties that are compatible with EU law.[303]

INSTITUTIONS OF THE EU

The EU is composed of several institutions, bodies and offices placed in Europe and globally. However, many of the EU institutions are seated in Brussels, Belgium, which is considered to be the capital of the EU. All EU actors act in various capacities in order to fulfil the work of the EU. The following are examples of institutions central to the human rights, peace and security context. The European Council was founded as early as 1974. At the time, it was an informal forum for governments (or heads of states) of the EU's Member States to hold discussions. In 1992, following the adoption of the Treaty of Maastricht, it developed a formal status with the aim to provide general political guidelines for the EU. Not until 2009 it became an institution of the EU as a result of the Treaty of Lisbon. Since then, it focuses on defining the general political direction and priorities of the EU. It has no legislative powers with regard to EU laws. The governments or the heads of states of the EU's Member States are still the main members of the European Council. Other members are the President of the European Council and the President of the European Commission.[304]

The European Parliament (hereinafter the Parliament) is the co-legislators of the EU, meaning that the Parliament adopts and adjusts legislative proposals and decides upon the budget of the EU. It shares its power with the Council of the European Union. The focal areas are democracy and human rights. More specifically, the Parliament promotes democratic decision-making in Europe and other democratic values, such as fair elections and the freedom of speech, globally. In addition, it collaborates with EU countries' national parliaments and supervises the work of other EU bodies and institutions in order to ensure that they are carrying out their work democratically. The Parliament consists of 705 members who represent the interest of the people in EU countries. Thus, the members are elected directly by voters in the Member States of the EU.[305] The members of the Parliament sit in different political groups, organised by political affiliation. As of today, the Parliament comprises seven political groups. Besides these groups, the Parliament consists of committees, delegations, political bodies, and intergroup. Hence, the members are taking on different roles in their work and meet in varied formal as well as informal constellations.[306]

The Council of the European Union (not to be confused with the European Council) is the decision-maker of the EU and negotiates and adopts laws and the budget of the EU. In terms of other responsibilities, the Council of EU also coordinates Member States' policies in specific fields, develops and implements the EU's common foreign and security policy, and concludes international agreements based on proposals from the Commission.[307]

The European Commission (hereinafter the Commission) develops policies within specific areas and proposes new EU laws. It also manages EU funding programmes, supports international development, and delivers aid. It is divided into different policy departments, so called Directorates-General. Each department is led by Commissioners, whose main task is to develop, implement and manage EU law, policy, and funding programmes. The Commissioners are a group of 27 persons in total and are appointed every five years. Together they decide upon the Commission's political and strategic direction. The leadership of the Commissioners lies with the President of the Commission. The Commission has, furthermore, offices around the world. Offices outside EU Countries are called delegations and are managed by the European External Action Service.[308]

The European External Action Service (hereinafter the EEAS) facilitates EU's diplomatic relations. It promotes the interests and values of the EU and comprises of 140 delegations and offices globally. In its work, the EEAS strives at, inter alia, preventing and resolving conflicts, supporting resilient democracies, fighting climate change, and promoting human rights and sustainable development. The High Representative of the Union for Foreign Affairs and Security Policy and the Vice-President of the European Commission provide the EEAS with political guidance. It cooperates with the foreign and defence ministers of EU Countries, the European Council, the European Commission, and the European Parliament as well as other international organisations such as the UN.[309]

The Court of Justice of the European Union (hereinafter the Court or the CJEU) is responsible for ensuring that EU law is correctly interpreted and applied in all the EU Countries. It also makes sure that all institutions of the EU abide by EU law. The CJEU is divided into two courts – the Court of Justice and the General Court. The Court of Justice is comprised of 27 judges, one from each EU Member State, and 11 advocates general. It focuses mainly on requests for preliminary rulings from national courts. The General Court deals primarily with matters brought by individuals and companies concerning, inter alia, competition law, State aid, trade, trademarks, and agriculture. It consists of two judges from each EU Member State. The judges and advocate generals are elected for a renewable six-year term. The CJEU is seated in Luxembourg.[310]

THE HUMAN RIGHTS AND PEACE AND SECURITY CONTEXT WITHIN THE EU

Within the EU, there are mainly two established human rights policy and action – to protect fundamental human rights for EU citizens, and to promote human rights, democracy, and the rule of law globally. EU policy varies from defending civil, political, economic, social and cultural rights, including promoting rights of vulnerable groups, to defending human rights through partnerships with partner countries and other organisations at all levels.[311] The Union furthermore focuses on internal security and undertakes work to cooperate on issues such as law enforcement, border management, immigration policy, civil protection, organised crimes and disaster management. It also provides for a common foreign and security policy in order to strengthen international security, promote international cooperation, and improve values such as democracy, the rule of law, and human rights regionally and globally.[312] In 2012, the EU received the Nobel Peace Prize for "…over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe"[313] . In the following chapters, we will further examine this human rights and peace and security context within the EU.

THE EU CHARTER OF FUNDAMENTAL RIGHTS

The EU Charter of Fundamental Rights (hereinafter the Charter) comprises six areas of rights and freedoms, namely, dignity, freedoms, equality, solidarity, citizens' rights, and justice. It applies in conjunction with national as well as international fundamental rights systems. Among them is the European Convention on Human Rights, which the provisions of the Charter are consistent with. The Charter furthermore covers provisions on modern society issues such as data protection, guarantees on bioethics, and transparent administration.[314] The Charter was declared in 2000. Following the entry into force of the Treaty of Lisbon in December 2009, it became legally binding on EU institutions and bodies. It is also applicable to EU countries when national governments are implementing EU law or when authorities apply an EU regulation directly. The Commission has no general power to intervene within the scope of the Charter, only when it comes to EU law in relation to fundamental rights.[315] Article 51 of the Charter states that the provisions "… are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties"[316] .

In order to incorporate the rights set out in the Charter into EU legislative processes and to monitor the implementation of the Charter, the Commission adopted a strategy in 2010. The strategy focuses particularly on three main areas: "…to guarantee that the rights and principles enshrined in the Charter are correctly taken into account at every step of the EU legislative process, to improve people's understanding of fundamental rights protection within the EU, [and] to monitor the Charter's application through annual reports"[317] . The annual reports provided by the Commission enable an exchange of views with other EU institutions and bodies such as the European Parliament and the Council of EU regularly. In 2020 a new strategy was adopted to further improve the implementation of the charter.[318]

Moreover, in 2007 the EU Agency for Fundamental Rights was established to support different EU institutions, bodies, and offices, including the EU Member States. The Agency provides assistance and expertise in the context of fundamental rights and gathers and publishes information on the situation of fundamental rights in all EU Member States in relation to EU law. It also aims for increasing public awareness by promoting dialogue with civil society.[319]

TEMPORARY PROTECTION DIRECTIVE

The Temporary Protection Directive (hereinafter the Directive) was adopted in 2001 in the aftermath of the conflicts in former Yugoslavia. Article 1 of the Directive sets out the purpose, namely to "…establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons"[320]. It seeks to guarantee an adequate level of protection for displaced people from non-EU countries by providing minimum standards and measures. It is an exceptional tool for the EU to activate in order to tackle the event of, or imminent, mass arrival of displaced persons from third countries.[321] The Directive could only be triggered by a Council decision, which is adopted by a qualified majority, following a proposal submitted by the Commission. The duration of the temporary protection is one year. It may be extended by six-monthly periods up to a maximum of one year. According to Article 6, the temporary protection could also end "…at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council"[322]. The Council must inform the European Parliament of its decision to activate the Directive as well as to end the temporary protection.[323]

The Directive was activated for the very first time on March 2022, in connection with Russia's invasion of Ukraine a few weeks earlier. The Council of EU decided to trigger the Directive following a proposal from the

European Commission. The Commission stressed the need to effectively and rapidly assist people fleeing the war in Ukraine. The Commission furthermore submitted operational guidelines in order to support the EU Member States in their external border management.[324]

COMMON FOREIGN AND SECURITY POLICY

A common foreign and security policy within the EU was first established in 1993. The policy has been improved by the development of EU treaties throughout the years, most recently by the Treaty of Lisbon in 2009. Since then, the EU holds a legal personality and an institutional structure for external actions. Consequently, the EU has created new actors in relation to its foreign and security policy and has furthermore advanced its common security and defence policy.[325]

EU's joint foreign and security policy is built upon the basis of diplomacy and the respect for international rules. It strives not only to preserve peace and strengthen international security but also to promote cooperation internationally and develop democracy, the rule of law, and respect for human rights and other fundamental freedoms. The European Council is the ultimate decision-making body of the EU on foreign policy issues. Most of the decisions taken concerning the EU's security policy require the agreement of all Member States.[326] The common foreign and security policy is scrutinised by the European Parliament, and the scale and scope of the policy are outlined by the Parliament's budgetary powers and by the EU financial instrument for the EU's foreign activities. The Parliament supports relevant actors such as EU Special Representatives, EU delegations, and the European External Action Service. Thus, the Parliament also contributes to the development of the policy.[327]

Common security and defence policy - EU missions and operations

The Treaty of Lisbon establishes the overall framework of the EU's common security and defence policy. The policy takes account of issues of defence and crisis management as well as defence cooperation and coordination between the Member States. It enables the EU to undertake military and civilian missions and operations in foreign countries, thanks to its internal political and military structures.[328] Military and civilian missions and operations include peacekeeping efforts, humanitarian aid, and actions to monitor and preserve law and order. EU builds upon ad hoc forces from EU countries, it has no permanent armed forces.[329]

Routinely, the EU decides to participate in missions or operations following a request of the partner country where assistance is provided or based upon a resolution derived from the UN Security Council. Over time, the EU has started 36 missions and operations worldwide. The first mission took place in 2003 in the Western Balkans. As of 2021, the EU has 20 ongoing missions and operations within the context of its common security and defence policy. This encompasses both civilian and military missions and operations.[330]

Ongoing missions and operations [331]	Country/Area	Year established
EU Force in Bosnia and Herzegovina – Operation ALTHEA	Bosnia and Herzegovina	2004
EU Border Assistance Mission to Moldova and Ukraine	Moldova and Ukraine	2005
EU Border Assistance Mission for the Rafah Crossing Point	The Rafah Crossing Point, between the Gaza Strip and Egypt.	2005
EU Policy and Rule of Law Mission for the Palestinian Territory /EU Coordinating Office for Palestinian Police Support	Palestine	2006
EU Rule of Law Mission in Kosovo	Kosovo	2008
EU Monitoring Mission in Georgia	Georgia	2008
EU Naval Force Somalia – Operation ATLANTA	Somalia	2008
EU Training Mission in Somalia	Somalia	2010
EUCAP Sahel Niger (civilian capacity-building mission)	Niger	2012
EUCAP Somalia (civilian mission)	Somalia*	2012
EU Training Mission in Mali	Mali	2013
EU Border Assistance Mission in Libya	Libya	2013
EU Advisory Mission Ukraine	Ukraine	2014
EUCAP Sahel Mali (civilian crisis management mission)	Mali	2015
EU Military Training Mission in the Central African Republic	The Central African Republic	2016
EU Advisory Mission in Iraq	Iraq	2017

Ongoing missions and operations	Country/Area	Year established
EU Regional Advisory and Coordination Cell for the Sahel	The G5 Sahel countries: Chad, Mali, Niger, Burkina Faso, and Mauritania	2019
EU Advisory Mission in the Central African Republic	The Central African Republic	2019
EU Navel Force Mediterranean – Operation IRINI	Libya/Mediterranean.	2020
EU Training Mission in Mozambique	Mozambique	2021

* At its establishment, the EUCAP Nestor Mission was mandated to work across the Horn of Africa and Western Indian Ocean. Since 2016, it only operates in Somalia.

Multilateralism is central to the EU's external action. The Union has, among other, undertaken commitments to frameworks for deeper coordination and cooperation with other regional and international organisations. Examples are the UN, the North Atlantic Treaty Organisation, the OSCE, the African Union, the Association of Southeast Asian Nations, and the G5 Sahel.[332]

HUMANITARIAN AID AND CIVIL PROTECTION

The European Union's measures taken within the context of humanitarian aid and civil protection are a part of its external actions in accordance with Article 21 of the Treaty on European Union. Article 21 states that "…the EU aims to assist populations, countries and regions confronting natural or man-made disasters".[333] EU provides such assistance both in Europe and globally. In fact, the EU countries are together the leading donor of humanitarian aid worldwide. 1 percent of the EU's total annual budget is aimed at aid, which is currently equivalent to €4 per EU citizen. Moreover, the EU has established a Civil Protection Mechanism that supports the EU, alongside several European countries, to play a vital role in coordinating responses to different disasters occurring in Europe or globally. All EU actions are based on principles such as humanity, neutrality, impartiality, and independence.[334]

CONCLUSIONS – the interplay between human rights and peace and security

The creation and development of the European Union arose from the idea of building cooperation within Europe, focusing on political areas such as trade, economic cooperation, agriculture, and free movement. The organisation was established in the aftermath of a long period of wars in Europe, including the destruction of societies, grave breaches of international humanitarian law, and crimes against humanity. However, it would take many years before the EU formalised its work within the context of human rights and peace and security. Following the adoption of the Maastricht Treaty in 1993, the EU took its first step to becoming a global peace and security actor, which was further improved by the significant Treaty of Lisbon in 2009. Today, the EU has developed into one of the leading peace and security actors worldwide, providing assistance in civil as well as military matters. Its 20 ongoing missions (see chart in chapter *Common security and defence policy - EU missions and operations*) show the

EU's endeavour to contribute to peace and security not only in Europe but also globally. Although the EU officially established its common foreign and security policy in 2009, one could argue that the Union has maintained peace and security between the Member States through its political cooperation. Something that the organisation, in fact, was awarded in 2012 when the EU received the Nobel Peace Prize for its contribution to the advancement of peace and reconciliation, democracy, and human rights in Europe since the beginning of the 1950s.

The EU is an enormous entity with a complex institutional framework, operating within numerous of thematic priority fields. Human rights, democracy, and the rule of law constitute a vital part of the Treaty of Lisbon and thus the EU's constitutional nature. These agreed values are integrated throughout the organisation and apply to all EU institutions and bodies as well as the Member States. The EU Charter of Fundamental Rights, the Commission's related strategies, and the EU Agency for Fundamental Rights also show the Union's ambition to institutionalise human rights into the core of the organisation and its Member States. The Commission does not examine human rights violations against individuals, like the European Court of Human Rights. However, since the rights and freedoms outlined in the Charter apply in conjunction with other national and international fundamental rights systems such as the European Convention on Human Rights, the EU rather complements the role of the Council of Europe. The Court of Justice of the EU intervenes on EU institutions and Member States when they do not apply to EU law, which in turn are permeated by values like human rights, democracy, and the rule of law specifically. Hence, the CJEU indirectly acts on such matters. Moreover, as the EU enjoys full legal personality, it could go further to respect and promote human rights by acceding to regional and international human rights agreements and engaging in other global human rights systems. This truly makes the EU an independent and unique organisation. The EU furthermore reaches a higher level of parliamentary scrutiny and democratic accountability through its three different competencies. Thus, its developed political system strengthens its democratic value and accountability within the organisation.

In the light of the above, the EU uses its common norms and principles to spread values such as human rights, democracy, and the rule of law internally as well as in Europe and globally. The methods used to promote and maintain these values are political cooperation, adoption of normative frameworks, and regional legislation applicable to EU institutions and bodies as well as Member States. But also through international diplomatic relations, humanitarian aid, and civil and military missions worldwide, which fall within the framework of its common foreign and security policy and External Action Service. Hence, the EU has a significant potential to contribute to both the protection of and respect for human rights as well as the preservation of peace and security. However, over the past few years, the system has been put to the test by a diverse range of challenges in Europe. Human rights, peace and security issues are being challenged by increasing tension between European countries, regression of women's rights, democracy and the rule of law in some EU countries, refugee flows, and disorder within the organisation such as Great Britain's withdrawal from the EU. And most recently, an ongoing war on the continent. The EU's response to Russia's invasion of Ukraine, by triggering the Temporary Protection Directive for the first time, shows that the EU aims to fulfil its role in maintaining human rights, peace and security also under difficult circumstances and in relation to two non-EU Member States. The Commission and the Council of EU have undertaken concrete and rapid action in order to provide protection for people fleeing the war in Ukraine, and EU countries have shown solidarity in receiving refugees and displaced people. The Temporary Protection Directive is an exceptional measure, but on the other hand, why did the EU delay in activating the Directive for the first time until this particular crisis? One may ask why the EU did not trigger it in 2015 when Europe and EU countries faced large-scale movements of refugees and displaced people fleeing the war in Syria. We witnessed EU mechanisms tackle the mass influx insufficiently and lacking political will within the EU member States to activate the Temporary Directive as well as lacking solidarity among European countries to receive refugees. For whom and when is the EU and its Member States willing to take on the role as the guardian of human rights, peace and security?

COMMENT REGARDING RUSSIA'S INVASION OF UKRAINE

During the course of this investigation, the Russian military build-up at the borders of Ukraine escalated, and in the final stages of research, Russia invaded Ukraine on 24 February 2022. Even though the report mainly focuses on institutions, normative frameworks and to some extent jurisprudence; ignoring the dramatic contemporary development which challenges the European security order and events that probably amount to war crimes and crimes against humanity, would not be possible. At the same time, a full investigation is not the purpose of the study nor possible in the short time available before its publication. For that reason – as a compromise – the present chapter provides a short update and analysis on the involvement of the regional intergovernmental organisations as well as some other relevant actors related to the Russian war of aggression against Ukraine. With the objective to give a more complete picture of Ukraine's lawfare efforts we also include national and global accountability mechanisms.

SHORT BACKGROUND

Following the Euromaidan revolution early in 2014, Russia occupied and annexed the Autonomous Republic of Crimea and the city of Sevastopol in February-March 2014. Then, in April 2014 Russia instigated the separatist war in Donetsk and Luhansk (which together constitute Donbas), which opened up a second front of military aggression against Ukraine. In November 2018, a third front – the Black Sea – was opened up as Russia shot at and captured three Ukrainian navy vessels, detaining 24 servicemen and confiscating the vessels. The following Minsk Accords on the war in Donbas in September 2014, overseen by the OSCE, for a long time prevented the conflict from escalating but did not work as a roadmap for peace. Beginning in February 2021, the OSCE Special Monitoring Mission to Ukraine reported increased violations of the July 2020 ceasefire which was followed by massive military build-up at the borders to Ukraine and the resulting full invasion 24 February 2022. Even before the full invasion, the war meant severe implications regarding human suffering as by March 2021, more than 13,200 people had lost their lives in the war and over 1.5 million people had been displaced.[335]

Russia has not made any derogation with respect to the conflict in Ukraine – all human rights instruments ratified by Russia therefore remain in force. Ukraine on its part has derogated from obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights on several occasions since 2014. [336]

LAWFARE AS A RESPONSE TO WARFARE

Besides armed resistance and economic sanctions against Russia, there is an unprecedented judicial offensive including international, regional and national jurisdictions. Ukraine has acted swiftly and skilfully in resorting to the different judicial tools available in order to combat its aggressor through the use of lawfare and a considerable amount of states have been willing to aid in these endeavours. In fact, Ukraine has been challenging Russia's actions on occupied territories since 2016.[337]

The use of these legal tools aims at identifying Ukraine as a victimised country and Russia as the perpetrator of serious international crimes – including aggression. The combination of these tools – each having different mandates – will determine the success of the applied strategy. The approach includes the entire array of international crimes: war crimes, crimes against humanity, genocide and the crime of aggression. This whilst it has put to work a considerable part of the system of international justice.[338]

On the international side, the International Court of Justice (hereinafter the ICJ) and the International Criminal Court (hereinafter the ICC) were activated and reactivated while the UN Human Rights Council launched a commission of inquiry to gather evidence "for future legal proceedings". As for the regional

flank, the European Court of Human Rights was approached. Then, as for the national wing, the justice systems including Germany, Poland, Estonia, Latvia, Lithuania, Spain, Sweden, Slovakia, and Switzerland have also launched preliminary investigations, while the Ukrainian justice system is investigating and prosecuting war crimes.[339]

NATIONAL PROSECUTION

The preliminary investigations opened up by a whole range of national justice systems, in general have a twofold objective; first the possibility to prosecute international crimes at the national level under the principle of universal jurisdiction and; second, to be used to assist the ICC in the future. Several of these countries include the crime of aggression in their definition of universal jurisdiction. In addition, a third objective come into play – at least for some justice systems – in assisting the Ukrainian justice system to investigate and prosecute international crimes.[340]

Ukraine's Prosecutor General has been investigating international crimes committed by Russia since the invasion of Crimea in 2014. After the full invasion attempt started, the Prosecutor extended investigations to the whole Ukrainian national territory. The Prosecutor has said there is a reasonable basis to believe that both war crimes and crimes against humanity have been committed, and has also launched a new government portal and smartphone application where the public can report war crimes they witness in Ukraine. The Prosecutor is determined to prosecute cases in national courts but also evaluate that there is strong grounds for the ICC to prosecute Russians for war crimes, crimes against humanity and genocide. In addition, the Prosecutor has called for a special tribunal on war crimes in Ukraine.[341]

Prosecutions are moving fast as the first verdict of a Russian sergeant, found guilty of killing a civilian, was delivered less than three months after the full invasion – and there are more to come. According to the Prosecutor General, as of 16 May 2022, her office had identified 45 persons to be charged with war crimes and there were 11 600 facts on which crimes were investigated.[342]

EUROPEAN COURT OF HUMAN RIGHTS

On 28 February 2022, Ukraine filed an application against Russia before the European Court of Human Rights, on grounds of "…massive human rights violations being committed by the Russian troops in the course of the military aggression",[343] and requested the court to take interim measures. The Court acted already the following day, calling on the Russian government to "… refrain from military attacks against civilians and civilian objects"[344] as well as other violations of international humanitarian law. [345]

However, already in January 2021, the Court declared admissible a claim brought by Ukraine against Russia regarding systematic human rights violations allegedly committed by Russia in Crimea. Ukraine has lodged nine complaints with the ECtHR in the framework of the conflict, three of which are included in the case regarding Crimea. Apart from these complaints, the Court, as of March 2021 had also received more than 7 000 individual complaints and one by the Netherlands concerning the shooting down of Malaysia Airlines flight MH17. Regarding MH17, Ukraine has also filed cases with the International Court of Justice and the Permanent Court of Arbitration. [346]

INTERNATIONAL COURT OF JUSTICE

On 27 February 2022, Ukraine brought a case against Russia before the International Court of Justice under the 1948 Genocide Convention. Ukraine argued that Russia had misused and violated the Convention by falsely claiming that Ukraine committed genocide in the eastern Donbass region and using this as a pretext to the full-scale invasion. Cases before the ICJ usually take years, but Ukraine asked the court to take provisional measures, which it did on 16 March, ordering Russia to immediately suspend its military operations. [347]

Additionally, Ukraine had already in January 2017 filed in the Registry of the Court an application instituting proceedings against Russia with regard to alleged violations by the latter of its obligations under the International

Convention for the Suppression of the Financing of Terrorism of and the International Convention on the Elimination of All Forms of Racial Discrimination. Ukraine in its lawsuit accused Russia of running a campaign of cultural erasure against Crimean Tartars and ethnic Ukrainians in Crimea. In a similar case filed in 2008 by Georgia against Russia, the ICJ upheld Russia's objection to the Court's jurisdiction and closed the case. Russia made the same objection this time around but Ukraine had learnt from the weaknesses of the Georgian application and as a result, the ICJ overruled Russia's objection, finding that it has jurisdiction over both conventions. The case, as of May 2022, is still pending.[348]

INTERNATIONAL CRIMINAL COURT

The International Criminal Court opened a preliminary examination into the situation in Ukraine in 2014. On 28 February 2022, following the Russian invasion, the ICC Prosecutor announced the opening of a full investigation. The case was referred to the Prosecutor by an unprecedented number of 41 member countries. The ICC can prosecute individuals of war crimes, crimes against humanity and genocide, however, it cannot prosecute the crime of aggression in the Ukraine case, as neither Russia nor Ukraine are States Parties to the Court. Ukraine however recognised the ICC's jurisdiction of crimes committed in Ukraine following the Russian annexation of Crimea in 2014.[349] The ICC Prosecutor 17 May 2022 announced the deployment of a record breaking team of 42 investigators, aimed at enhancing forensic and investigative actions on the ground. The Prosecutor underlined the need for effective coordination and communication between the different actors seeking to support accountability actions in Ukraine.[350]

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND PERMANENT COURT OF ARBITRATION

Following the November 2018 Russian aggression against three Ukrainian navy vessels in the Kerch Strait (between the Black Sea and the Sea of Azov) Ukraine filed a complaint against Russia with the International Tribunal for the Law of the Sea (hereinafter the ITLOS). The Tribunal delivered its decision in May 2019, ordering the return of the vessels and the release of the crews. Russia did however not attend the Court hearings nor adhered to the time limits of the order. Finally, the crews were returned in the framework of a prisoner exchange in September 2019 and the vessels were returned more than a month after that.[351]

Regarding access to and movement on the Black Sea, in 2016, Russia began to construct a 20-kilometre bridge across the Kerch Strait to link Crimea and Russia. For Ukraine's eastern ports on the Azov Sea, the strait is the only means of access to the Black Sea and ultimately the world's oceans. Only one section of the bridge allowed passage of ships, and its height prevented transit by larger vessels, shutting out over 100 ships that had previously called at Mariupol.[352] Ukraine instituted arbitral proceedings against Russia in 2016 under the United Nations Convention on the Law of the Sea regarding coastal State rights in the Black Sea, Sea of Azov, and Kerch Strait and the disruption of maritime order with the Russian occupation of Crimea. Russia objected to the jurisdiction of the Permanent Court of Arbitration regarding Ukraine's claims, arguing that for the Court to decide the case it would have to decide on the sovereignty of either party over Crimea. This objection regarding its jurisdiction was upheld by the Court in its decision in February 2020.[353]

OSCE RESPONSE TO RUSSIA'S INVASION OF UKRAINE

SPECIAL MONITORING MISSION TO UKRAINE

The OSCE Special Monitoring Mission to Ukraine was established in March 2014, as a response to the political crisis in the country and with the expectation that it would be a short-term mission, the initial mandate was six months. The mission was, despite the growing political tensions, established by means of a Permanent Council Decision No. 1117 by consensus 21 March 2014. The first monitors arrived in Kyiv within 24 hours and within weeks, monitoring teams had been established in ten locations across the country. Five years later, the mission had grown to include around 800 civilian monitoring officers from over 40 countries and an overall size of 1 400 mission members. As an unarmed, civilian mission, its main tasks were to observe and report in an impartial and objective way on the situation in Ukraine and to facilitate dialogue among all parties to the crisis. The core mandate, thanks to its flexibility, remained unchanged even though the mission had to respond to a substantially different context due to the escalation of crisis including the Russian occupation of Crimea, the downing of Malaysia Airlines flight MH17and the Russian-supported separatist insurgency in Donetsk and Luhansk.[354] Regrettably, the Mission was discontinued as the OSCE Permanent Council failed to reach consensus on the extension of its mandate 31 March 2022 as the result of a Russian veto and the Chairperson-in-Office decided to take immediate steps to close the Mission in late April.[355]

MOSCOW MECHANISM

The Moscow mechanism was invoked by Ukraine 3 March 2022, supported by 45 participating States. As a consequence a Mission of three experts was appointed and tasked with completing its work within three weeks' time. The mandate included establishing the facts and circumstances surrounding possible contraventions of OSCE commitments, possible war crimes and crimes against humanity, as well as violations of International Human Rights Law and International Humanitarian Law. Furthermore, to present its findings to relevant accountability mechanisms and national, regional and international courts and tribunals. The Permanent Representation of Russia informed the Mission that it considered the Moscow mechanism to be "largely outdated and redundant" [356] and declined to nominate a liaison person. The Mission delivered its report 5 April 2022.[357]

Given the wide mandate and the short time, detailed assessments of allegations of IHL violations and the identification of war crimes connected to specific incidents was not possible – therefore conclusions are at a more general level. The Mission found a clear pattern of IHL violations by the Russian armed forces including, as a result of disrespect in terms of distinction, a disproportionate scale of civilians killed or injured, and destruction of hospitals, cultural properties, schools, residential buildings, water stations and electricity systems. The Mission also stated that much of the conduct of Russian armed forces in areas occupied before and after 24 February 2022, violated IHL of military occupation. Regarding violations attributable to Ukraine, the Mission expressed particular concern about the treatment of prisoners of war. However, the allegations on part of Russia that Ukrainian armed forces would have caused some of the deaths, injuries and destruction that had been attributed to Russia could not be confirmed. Regarding impact on human rights, the Mission found credible evidence suggesting that violations of fundamental human rights had been committed – mostly in the areas under Russian control. Further, the report also points to the impact on human rights beyond the direct violations of human rights. The unlawful attack by Russia, causing severe loss of critical infrastructure makes it difficult for the Ukrainian State to fully respect, protect and fulfil the human rights of its inhabitants. The Mission holds that some violations of human rights, such as targeted killing and enforced disappearance, are likely to qualify as a widespread and systematic attack directed against civilians. Finally, the Mission declares that while violations occurred on the Ukrainian as well as the Russian side, the violations committed by Russia are by far larger in nature and scale. [358]

Connecting to the prosecution of members of the Russian armed forces discussed above, the Mission in its report also comments on the right to a fair trial. It declares that it has not received information that would indicate that the right to a fair trial would not be respected in the territories under Ukrainian control although it takes note of the decision on 1 April 2020 to restore the office of the military prosecutor, abolished in 2019. The Mission also notes that the charges for war crimes (3 175 by 30 March) have all been made against members of the Russian armed forces – raising the concern that Ukraine is obliged to investigate and prosecute all persons alleged to have committed war crimes, regardless of their nationality. The same concern applies to Russia as law enforcement in the territories under its control seem to focus exclusively on alleged war crimes committed by the enemy. The Mission also expresses concern over the removal of judicial officials and the replacement with pro-Russian individuals as well as the introduction of Russian legal order, in violation with IHL and IHRL. Finally, it also notes that there are reports of persons arrested in the territories under effective control of Russia that are being brought before courts in Russia, without sufficient guarantees of fair trial.[359]

REPRESENTATIVE ON FREEDOM OF THE MEDIA

The OSCE Representative on freedom of the media issued a Communiqué regarding the safety of journalists, disinformation, censorship and propaganda for war 3 March 2022.[360] Additionally, together with her counterparts of the United Nations, the African Commission on Human and Peoples' Rights and The Inter-American Commission on Human Rights, on 2 May 2022 she issued a joint statement condemning the Russian invasion of Ukraine. The statement contained six main points of concern regarding freedom of media. Concerns take account of the safety of journalists including torture, kidnappings, attacks and killings, reports of intentional targeting of Ukraine's media and internet infrastructure, disinformation concerning the conflict in Russian state-owned media and the risks of the proliferation of disinformation, misinformation and incitement to violence and hatred and restrictions of lawful speech on digital and social media platforms "…as a result of their business models, policies and practices"[361] . The Representatives proclaim that "…the erosion of the right to freedom of expression and other human rights over a prolonged period of time and the silencing of critical voices in the Russian Federation have contributed to creating an environment that facilitates Russia's war against Ukraine"[362] .

The Representatives also call on Russia to refrain from its propaganda for war and national hatred which constitutes incitement to discrimination, hostility or violence. Propaganda for war and advocacy for national hatred is prohibited under article 20 of the International Covenant on Civil and Political Rights.[363]

PERMANENT COUNCIL & PARLIAMENTARY ASSEMBLY

The Permanent Council had been seized of the matter long before the full-scale invasion, and in the events leading up to the invasion the Council held meetings on a daily basis, including joint meetings with the Forum for Security Cooperation. Meetings included the invoking of the mechanism provided for in Chapter III of the Vienna Document – seeking transparency around the February 2022 Russian-Belarussian military exercise "Union Resolve 2022", and the unusual military activity around Ukraine looking for Confidence and Security Building Measures (CSBMs).[364]

The invasion has also been central in the agenda of the Parliamentary Assembly and 28 parliamentarians denounced the incursion already the first morning as the invasion coincided with the opening of the Assembly's winter meeting. Since the events of early 2014, Ukraine has featured prominently in OSCE PA field activities, debates, public statements, and resolutions adopted at Annual Sessions. At the 2014 Baku Annual Session, the Assembly condemned the violation of the Helsinki principles by Russia with respect to Ukraine, including the violation of sovereignty and territorial integrity. The Assembly has also urged full implementation of the Minsk Agreements to end the conflict in the Donbas region. As the situation deteriorated in early 2022, attention increasingly focused on how to support high-level discussions to resolve

differences at the diplomatic table rather than through military action.[365]

POSSIBLE SUSPENSION OF RUSSIA FROM THE OSCE

Russia has violated many of the most fundamental principles and commitments that participating States should uphold. The question of whether Russia should and could be suspended from the OSCE is therefore relevant. However, there are pros and cons regarding a possible suspension as well as obstacles for its realisation. Allowing Russia to keep its seat at the OSCE could raise questions as to whether the organisation takes its own principles and States' commitments seriously. At the same time, expelling Russia from the OSCE could also be counterproductive as it would close an important arena for dialogue – especially as Russia is no longer in the G8 or the Council of Europe. Further, as the OSCE takes decisions on the basis of consensus, the question is how likely it would be that Russia would agree to its own suspension. Now, there is a possibility to use the consensus-minus-one rule which states that in cases of massive and gross violations of human rights, the OSCE can adopt political measures against that State even without its consent. Suspension on these grounds has been done only once – in the case of the former Yugoslavia as a response to its atrocities in the war in Bosnia-Herzegovina. However, in the case of Russia, such a procedure could also meet resistance as it is dependent on the consensus of all other participating States.[366]

THE RESPONSE BY THE COUNCIL OF EUROPE

The use of the European Court of Human Rights in relation to Crimea, Donbass and the full-scale invasion of Ukraine, has been discussed above. As for the other Council of Europe institutions, the Commissioner for Human Rights made an in-country visit to Ukraine early May and her resulting report was subsequently presented in a meeting with the Ministers' Deputies. The Commissioner stated that "[i]t is now even more important that human rights do not end during war. They do not take a back seat. Even in war, human life and human rights must be protected. And, crucially, international humanitarian law must be respected by all and in all circumstances"[367] Several statements were also published on specific human rights issues and the situation of particularly vulnerable persons and the Commissioner and her office also made visits to countries receiving refugees from Ukraine.[368]

As for the suspension of Russia from the Council of Europe, the Council has acted differently to the OSCE, by already on 25 February, in the Committee of Ministers, deciding on the suspension, with immediate effect of Russia from participating in the Council in accordance with article 8 of the Statute of the Council. [369] Then on 15 March, concluding a special two-day session on the invasion of Ukraine, the Parliamentary Assembly voted unanimously for an Opinion that considered that Russia could no longer be a member State. In an extraordinary meeting on the following day, 16 March, the Committee of Ministers decided that Russia would cease to be a member of the Council of Europe with immediate effect, ending the country's 26 years of membership.[370] Russia had however already the day before communicated to the Secretary General, its withdrawal from the Council, and its intention to denounce the European Convention on Human Rights.[371]

The Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities deplored that "…the Russian authorities used issues of minority rights as a pretext for the invasion"[372] . The Committee also expressed its deep concern about the exacerbation by the war of the situation for inter-ethnic relations in Ukraine. The Committee concluded that since the Framework Convention is open to non-member states, Russia remains a Contracting Party to this convention and is consequently bound by its obligations and subject to its monitoring procedure.[373]

As for the European Court of Human Rights, Russia's denunciation of the European Convention on Human Rights means that Russia ceases to be a party to the Convention on 16 September 2022. The Court remains competent to deal with applications directed against Russia in relation to acts or omissions

capable of constituting a violation of the Convention provided that they occurred before 16 September 2022. This includes the possibility for intrastate applications like those Ukraine already made against Russia in the past.[374]

EU RESPONSE TO THE INVASION OF UKRAINE

Besides the different declarations against the Russian illegal occupation and annexation of Crimea, the occupation and recognition of the separatist regions of Luhansk and Donetsk and the full-scale invasion of Ukraine, the European Union has reacted with different packages of sanctions directed at individuals, companies and the trade with Russia and Belarus. Sanctions are designed to cripple the Kremlin's ability to finance the war, impose clear economic and political costs on Russia's political elite responsible for the invasion, and diminish its economic base.[375] Sanctions have also been directed at Russian State-owned media outlets, accused of spreading misinformation, suspending their broadcasts in the European Union. Europe's dependency on Russian oil and gas has been a hard nut to crack, however in a special meeting of the European Council on 30 May 2022, the EU leaders agreed on a sixth package of sanctions which included a ban on almost 90% of all Russian oil imports by the end of the year.[376]

The EU has also provided support to Ukraine in the form of emergency assistance and humanitarian aid, budget support to the Ukrainian Government and humanitarian assistance to recipient countries, including Moldova.[377] Apart from this, the EU also activated its Temporary Protection Directive, designed to provide immediate protection to people in need in exceptional circumstances of mass arrivals to avoid overwhelming Member States' asylum systems.[378]

UN RESPONSE TO RUSSIA'S INVASION OF UKRAINE

HUMAN RIGHTS COUNCIL

The Human Rights Council, on 4 March approved Resolution 49/1 condemning the Russian aggression against Ukraine and the human rights violations and abuses and violations of international humanitarian law, calling for the withdrawal of Russian troops and Russian-backed armed groups from the entire territory of Ukraine, within its internationally recognized borders and its territorial waters. The resolution also decided on the setting up of a three-member commission of inquiry into violations of human rights and international humanitarian law in Ukraine. The Commission of inquiry has a one-year mandate to collect and preserve evidence for future legal proceedings. While the Commission is not a strictly judicial instance, its mandate includes to "…identify, where possible, those individuals and entities responsible for violations or abuses of human rights or violations of international humanitarian law, or other related crimes, in Ukraine, with a view to ensuring that those responsible are held accountable"[379] .

Referring to the large number of actors involved in the investigations related to the events in Ukraine, the Commission when addressing the Human Rights Council 12 May 2022, underscored the need for coordination between the different entities.[380]

On 7 April 2022, the UN General Assembly adopted Resolution ES-11/L.4 calling for Russia to be suspended from the Human Rights Council. 93 States voted in favour of the resolution, reaching the two-thirds majority needed for such a move.[381]

UN GENERAL ASSEMBLY

The UN General Assembly on 2 April passed a resolution which demands that Russia "…immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders"[382]. The Resolution was sponsored by more than 90 countries, and counting 141 votes in favour, it reached the two-thirds majority threshold needed to pass.[383]

Also spurred by the Russian invasion of Ukraine, responding to the frequent use of veto in the UN Security Council and criticism of its inaction on the war in Ukraine, a landmark Resolution 76/262 aimed at holding the five permanent Security Council members accountable for the use of veto, was adopted by the General Assembly without a vote. The Resolution provides that the General Assembly President shall convene a formal meeting of the organ within ten working days of the casting of a veto by one or more permanent members of the Council and hold a debate on the situation as to which the veto was cast. Further, the Assembly invited the Council, in accordance with Article 24.3 of the Charter of the United Nations, to submit a special report on the use of the veto in question, to the Assembly at least 72 hours before the relevant discussion is to take place. The Resolution was tabled by Lichtenstein, and co-sponsored by 83 Member States, including three permanent Council members – France, United Kingdom and the United States.[384]

UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the UN High Commissioner for Human Rights has been present through its Monitoring Mission to Ukraine since 2014 and during that time has issued over 50 reports on the situation.[385] The Mission operates at the invitation of the Government of Ukraine to monitor, report and advocate on the human rights situation in the country, with a particular focus on the conflict area in eastern Ukraine, the Autonomous Republic of Crimea and the city of Sevastopol, occupied by Russia. Since the Russian invasion of Ukraine, the Mission has been monitoring its impact on human rights across the country. In its report covering 24 February to 26 March it concludes that "[t]here are strong indications that serious violations of international humanitarian law and gross violations of international law have occurred in the course of the conflict, in particular with regard to the principles of distinction and the prohibition of indiscriminate attacks"[386] .

Regarding the Russian occupation of Crimea, the report, among other, notes that Russia, contrary to international humanitarian law, continues to apply the entirety of its legislation, which restricts fundamental freedoms in Crimea, especially freedom of expression, not least considering the adoption of amendments to the criminal code introducing heavy prison terms for disseminating "knowingly false information", "discrediting" or "calling for obstruction" related to the use of the Russian armed forces.[387]

Addressing the UN Security Council 5 May 2022, the UN High Commissioner for Human Rights asserted that "…if the perpetrators of violations against civilians and persons hors de combat are brought to justice, potential perpetrators will think twice before unleashing similar unlawful attacks or acts of violence and creating new victims"[388] . She further stated that in this endeavour, the national justice systems are the most crucial and saluted Ukraine's efforts in this regard.[389]

The High Commissioner also briefed the Human Rights Council on 30 March and 12 May 2022, among others highlighting verified cases of sexual violence, enforced disappearances, killings of civilians and persons hors de combat, and regarding the city of Mariupol stated that "I am shocked at the scale of the destruction, and the numerous violations of international human rights law and international humanitarian law"[390] .

CONCLUSIONS – the interplay between human rights and peace and security

One can debate to what extent lawfare will change Russia's behaviour in Ukraine. In terms of Crimea, Russia holds on to its strategy of arguing that the international courts and tribunals lack the authority and competence to consider issues related to the occupation. This strategy worked as for the case filed by Ukraine before the Permanent Court of Arbitration but in the case filed before the International Court of Justice regarding the Convention on the Elimination of the Financing of Terrorism and the Convention on the Elimination of all forms of Racial Discrimination, the Court found that it had jurisdiction in the case regarding both conventions.

What is clear is that the many fronts opened in terms of lawfare means that Russia has to defend itself in a number of courts, tribunals and international mechanisms and at the same time it helps Ukraine to maintain the issue on the agenda of world leaders and institutions. The resulting decisions and rulings can also help to clarify the legal status and uncover truths regarding the Russian narratives on the occupation and annexation of Crimea and other areas of Ukraine territory which Russia seeks to occupy and perhaps eventually annex. These pieces work together as international courts, tribunals and international organisations function as an eco-system where a decision of one part has implications for decisions of other parts. One such central clarification was made in a decision taken by the ECtHR in December 2020 and has bearing on the narrative used by Russia claiming that its illegal occupation and annexation of Crimea in fact only was a helping hand in the realisation of the wish of the Crimean people expressed by means of the 16 March 2014 "referendum". The ECtHR in its decision put an end to this discussion as it established that Russia exercised control over Crimea no later than 27 February – more than two weeks before the "referendum".[391] Moreover, the ECtHR also noted that the Supreme Council of the Autonomous Republic of Crimea on 11 March 2014 adopted a "declaration of independence of Crimea and Sevastopol". The declaration, issued before the "referendum", was immediately recognised as lawful by the Russian Ministry of Foreign Affairs. That act was, in itself, concludes the Court "…a violation of international law and a grave infringement of Ukraine's sovereignty"[392] . This means that Russia's main argument for its actions and finally its illegal annexation of Crimea – "the peaceful will of the Crimean people" – was shot sank by the ECtHR.

When it comes to the measures taken by intergovernmental organisations, several investigations that look into the situation in Ukraine have been initiated, including a UN Commission of Inquiry, an Expert Mission under the Moscow Mechanism of the OSCE, and the launch of a full investigation by the Prosecutor's Office of the ICC. All these actors, as well as other stakeholders, have emphasised the need for coordination between the different initiatives.

Looking at the interaction with Russia after the full invasion of Ukraine, the intergovernmental organisations have reacted in different manners regarding the suspension of Russia from participating in their work. Russia was kicked out of the UN Human Rights Council, and effectively also the Council of Europe (even tough Russia communicated its withdrawal in the process leading to the expulsion). This in contrast to the OSCE, where Russia remains a participating State and channels remain open. As a matter of fact though, these channels did not manage to prevent the full invasion even though they have been active both before and after the Russian occupation of Crimea and the Donbass region. Naturally, being a consensus-driven organisation, the OSCE works well in times when it is possible to reach consensus but is challenged in times when consensus is hard or even impossible to reach.

A serious drawback in terms of access to justice is the Russian denunciation of the European Convention on Human Rights which means that the European Court of Human Rights will only have jurisdiction regarding Russia for events until 16 September 2022.

CONCLUDING OBSERVATIONS

THE NORMATIVE FRAMEWORKS OF THE THREE INTERGOVERNMENTAL ORGANISATIONS

While neither of the normative frameworks of the institutions studied provide for an explicit right to peace, they all include provisions that are important for human security, for the prevention of conflict and for the protection of human beings in the event of armed conflict. The European Convention on Human Rights includes a broad range of rights of importance both in peacetime and in times of war, including the right to life (Article 2), the prohibition of torture (Article 3) – both non-derogable – and the right to physical liberty and security (Article 5). The provision on derogations in time of emergency (Article 15) constitutes a strong link between human rights, peace, and security within the COE's normative framework. From a peace and security viewpoint, Article 15 is an important tool for the State Parties to act rapidly and firmly in an exceptional situation of crisis or emergency. And more importantly, an opportunity to act to prevent the risk of such situations to occur within its nation. Consequently, the same legal system that aims at protecting individuals' human rights also enables State Parties to restrict and temporarily remove their rights by derogations. Thus, the ECtHR as a monitoring mechanism plays an important role in striking a balance between the security aspect of the State Parties' right to protect the life of its nation and the fulfilment of individuals' human rights, especially in case of conflicts of interest. The Council of Europe framework also contains additional conventions which are important in this respect, as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, and the Convention on Preventing and Combating Violence against Women and Domestic Violence. The COE shows its capacity to follow the development of the situation in Europe and meet the challenges of modern society issues. Although the system provides for this normative framework, it depends on the Member States' political will to ratify and implement it. For instance, the Convention on Preventing and Combatting Violence against Women and Domestic Violence has a lower number of ratifications in comparison to the other treaties presented in this report. Simultaneously, it has a high number of reservations. Besides this, Turkey's withdrawal from the Istanbul Convention in 2021 also clearly demonstrates both the lack of political will and the negative trend of regression of women's rights currently faced in some European countries. It is crucial that the COE also takes these challenges into account in order to maintain its credibility. At the end of the day, it is the independent States that constitute the human rights system.

The Organisation for Security and Cooperation in Europe works differently as it – in contrast to the Council of Europe – does not support itself on legally binding conventions or a complaints mechanism in the form of a court – but on the political agreements among participating States and follow-up mechanisms.

However, it should be noted that the distinction is between legal and political, and not between binding and non-binding. Founded after the Council, the OSCE relies upon the framework and institutions of the Council and had no reason to copy its model but rather relate to it and find its own added value. The OSCE approach is process-oriented where commitments are built upon and added upon, creating a normative framework which must be interpreted by taking into account the whole history of documents and which at the same time is ongoing. The OSCE human dimension links human rights with the institutional and political system of a State. In essence, OSCE States have agreed through their human dimension commitments that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively. This is also why the OSCE human dimension constitutes a pan-European public order and a "community of values", strongly committed to the rule of law and based on human dignity. A positive side of this modus operandi is that it allows the OSCE to react quickly to new needs.

A fundamental aspect of the OSCE's human dimension is that human rights and pluralistic democracy are not considered the internal affairs of a State. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy, and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. Therefore, OSCE participating States are not in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries while they also have a duty to assist each other in solving specific problems.

As for the EU, it took many years before the EU formalised its work within the context of human rights and peace and security. Human rights, democracy, and the rule of law constitute a vital part of the Treaty of Lisbon and thus the EU's constitutional nature. And, the EU Charter of Fundamental Rights, the Commission's related strategies, and the EU Agency for Fundamental Rights indicate an ambition to institutionalise human rights – within the organisation as well as among its Member States. The EU Charter furthermore applies in conjunction with national as well as international fundamental rights systems. Among them is the European Convention on Human Rights, which the provisions of the Charter are consistent with. In this way, the EU complements already established human rights instruments and mechanisms in Europe rather than trying to replace the mandate and function of them. With its full legal personality and possibility to accede regional and international human rights agreements and to engage in other global human rights systems, the EU excels in this respect as compared with the COE and the OCSE. This unique characteristic enable the EU to go further in respecting and promoting human rights regionally and worldwide. Moreover, as one of today's leading peace and security actors worldwide, including its 20 ongoing missions, the EU also shows its endeavour to contribute to peace and security not only in Europe but also globally.

In conclusion, as for the normative frameworks of the three intergovernmental organisations, these clearly are conducive of an environment where human rights and freedoms are protected and where this protection, promotion, and fulfilment of human rights also connects to the upholding of peace and security as well as the protection of rights and freedoms in times of armed conflict. The geographically overlapping intergovernmental organisations' normative frameworks in general complement each other and build upon work done by their peers, avoiding duplication and reinforcing strengths. On the negative side is the complexity of dealing with different normative frameworks, but this has its explanation in the mere existence of the three organisations which have different origins, different mandates and different sets of memberships.

THE CONTRIBUTIONS OF THE INTERGOVERNMENTAL ORGANISATIONS

The three intergovernmental organisations differ as to their membership, origins, mandates, and the role played in relationship to human rights and peace and security. However they were all founded with the aim of promoting

cooperation as well as human rights, peace and security within their respective geographic regions. Furthermore, they all make the connection between the promotion, protection and fulfilment of human rights and peace and security, and have declared democracy and rule of law as fundamental cornerstones.

Looking at the example of the Russian full-scale invasion of Ukraine, we can see how the different intergovernmental organisations act according to their mandates. First of all, the three organisations were engaged already as a consequence of the 2014 Russian occupation and annexation of Crimea and Sevastopol and the occupation of the Luhansk and Donetsk areas. Declarations were made condemning the unlawful occupation and annexation, missions to monitor the situation were established and diplomatic efforts to resolve the situation were made and continued up to the full-scale invasion.

Following the invasion of Ukraine, new declarations have been made by the political structures of the organisations as well as on part of their institutions and the organisations have responded according to their different mandates. One fundamental difference being the reprisal for the invasion – resulting in a process which began with the suspension of Russia from taking part in the work of the Council of Europe and ended by Russia communicating its withdrawal from the organisation and denouncing the European Convention on Human Rights. This while Russia continues to be a participating State of the OSCE – at least probably partly as a result of the fact that decisions within the OSCE are taken by consensus and even though the invasion would make for using the consensus-minus-one clause – even that avenue might show difficult as it could be hard to reach consensus among the remaining States. This means in effect that the OSCE remains a regional intergovernmental arena where both Russia and Ukraine are present – in contrast to the situation of the Council of Europe. There is thus a leverage for the OSCE and a potential to play a role in resolving the conflict but it depends on the willingness of Russia to accept that role and honour its international obligations. Most certainly, in a post-conflict scenario, that role, together with the EU and the Council of Europe will be of utmost importance for the rebuilding of Ukraine and its institutions and for access to truth, justice and reparations for victims.

As for the human rights institutions of the intergovernmental organisations, these too have been working ever since, and even before, the 2014 events. Looking more specifically at the European Court of Human Rights, taking a wider perspective as to its role in relation to peace and security, we find that the Court has been instrumental in providing jurisprudence regarding rights and freedoms in conflict and post-conflict situations and has first been used by Ukraine and its citizens regarding the unlawful occupation and annexation of Crimea and later in its attempt to stop the full-scale Russian invasion.

The Court was not designed to be a forum for enforcing State Parties' obligations in armed conflict but was established to address human rights violations committed during peaceful circumstances and has as such a very limited mandate to effectively respond to armed conflicts and post-armed conflict situations. Unless cases related to violations of the European Convention committed in such situations are lodged with the ECtHR, the Court does not have any means of intervening or stopping the violations in question. On a general level though, the Court has for example made important contributions as to the interpretation of the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), and derogations in times of war or other public emergency (Article 15). The Court has delivered numerous decisions dealing with a wide range of issues relating to transitional justice and the rule of law, including amnesties, compensation and restitution, prosecution, lustration, memory and truth. This body of jurisprudence constitutes an important contribution to defining State responsibilities in conflict and post-conflict situations. Even in the event that States ignore the rulings in a specific case decisions still add to this body of jurisprudence, potentially affecting public policy and State behaviour in the future. This means that although the Court is a mechanism that grinds slowly and therefore is not the solution to an upcoming or ongoing armed conflict, it sets standards which have implications on peace and security.

However, when cases are submitted to the Court, it may specify interim measures to the parties provided that there is a real risk that serious violations of the European Convention could take place while it examines the case. In

practice, the Court has invoked interim measures in many individual cases – mostly related to expulsions or extraditions. Following the outbreak of a number of armed conflicts in the region, the Court has increasingly resorted to interim measures in inter-state cases relating to armed conflict situations. This was the case in 2008 regarding the outbreak of hostilities between Russia and Georgia, the case of the Russian occupation of Crimea in 2014, and in the case of hostilities between Armenia and Azerbaijan in 2020. The Court noted that these situations constituted a real and continuing risk that could give rise to serious violations of the European Convention. The Court therefore called upon State Parties to comply with their obligations under the ECHR, specifically Articles 2 and 3, and requested State Parties to inform, as soon as possible, of the measures taken to comply with their obligations.

The Court has also made important contributions as to defining the extent of the jurisdiction that the State Parties exercise and within which they have the obligation to secure human rights, also in the case of effective control resulting from unlawful military action and occupation. Regarding Ukraine, Russia has effective control over the Autonomous Republic of Crimea and the city of Sevastopol since 2014. Additionally, certain parts of the Donetsk and Luhansk areas have been at least under Russian overall control since 2014, exercised through subordinate local administration. Then, after the full-scale invasion, other areas of the Ukrainian territory have been under effective control of Russia, even though such control in some cases has subsequently been lost. The ECtHR on a preliminary basis in the case Ukraine v. Russia (Re Crimea), held that Russia had effective control over the area and thus jurisdiction by means of this fact (and not in the nature of territorial jurisdiction). This effective control comes with responsibilities regarding human rights obligations. The Court in the case Georgia v. Russia II 2021, made a distinction between the active phase of hostilities, where effective control is still not established, and the occupation phase where such control is in place. In line with this distinction, Russia has jurisdiction over areas where hostilities have ended. At the other end, the Court in Ilasku and others v. Moldova and Russia 2004, found that even in the absence of effective control of the territorial State, there is a residual positive obligation to strive to regain control over territories outside the factual control of the State and take measures to secure the rights guaranteed by the ECHR.

In relation to the 24 February 2023 Russian full-scale invasion, Ukraine already on 28 February filed an application against Russia before the ECtHR, and requested the Court to take interim measures. The Court acted already the following day, calling on the Russian government to refrain from military attacks against civilians and civilian objects as well as other violations of international humanitarian law. Ukraine has lodged nine complaints with the ECtHR in the framework of the conflict, three of which are included in the case regarding Crimea, declared admissible in January 2021. Apart from these complaints, the Court, as of March 2021 had also received more than 7 000 individual complaints and one by the Netherlands concerning the shooting down of Malaysia Airlines flight MH17. Returning to the case on Crimea, the Court in its decision declared and proved that the Russian argument for its actions in Crimea, being a helping hand for the will of the Crimean people by implementing the result of the 2014 “referendum” is false as Russian forces gained effective control over those territories before the so called “referendum”. Proving these facts can be important for other processes – legal as well as political.

In spite of the order of the ECtHR (as well as the order of the International Court of Justice to end hostilities), Russia’s invasion of Ukraine continued. This is unfortunately in line with the experience from other cases where studies have shown that the majority of cases in which the State Parties have not complied with their obligations regarding interim measures are related to conflict situations. The question therefore arises as to what extent orders of interim measures in situations of armed conflict are effective as to influence the conduct by States, but at the same time, evidence show that they can provide protection in a specific critical situation.

As for the European Union, in addition to declarations and diplomatic efforts, the EU has responded by mobilising to enact sanctions against Russian and Belarussian individuals, companies and trade. The EU also activated its Temporary Protection Directive for the first time, meaning the right to instant

protection for Ukrainians fleeing the war. Finally, the EU has also worked on the humanitarian level – both in Ukraine and in countries receiving refugees – and assisted to financially support the Ukrainian State budget. The actions of the EU must be seen against the backdrop of Ukraine being an ally but not a member of the union. On a general level, the response of the EU to the war in Ukraine has been much swifter, potent and one of shared responsibilities, as compared to the relative slow, weak and fragmented response to the war in Syria and its resulting refugee flows. One may ask why the EU did not trigger the Temporary Directive back in 2015. We witnessed EU mechanisms tackle the mass influx insufficiently and lacking political will within the EU member States to activate the Temporary Directive as well as lacking solidarity among European countries to receive refugees. For whom and when is the EU and its Member States willing to take on the role as the guardian of human rights, peace and security? One can hope that this development and the activation of the Temporary Protection Directive is the result of a learning process stemming from the failures in responding to the Syrian refugee flows, rather than resulting from the discrimination of one nationality compared to another.

THE INTERPLAY BETWEEN HUMAN RIGHTS AND PEACE AND SECURITY

If done successfully, conflict prevention is the sum of many actions that are not necessarily properly noted and praised. It is only when prevention fails that the consequences of failure in terms of tensions, strife and armed conflict show and require the application of other measures. As of today, policy specialists on peace and security agree on the fact that prevention is the key. We ought to spend more on prevention to avoid the higher costs of conflicts escalating into full-scale armed conflicts, causing irreparable human suffering. These costs, in the geographic area covered by this study, at the time of research, are most visible in Ukraine. However, costs also spill over to neighbouring countries and have implications for many people around the globe – the hardest hit being the ones with scarce resources – threatening the fulfilment of basic human rights and in the end also peace and security in places far away from Ukraine.

A central aspect in conflict prevention is to ensure the effective protection and fulfilment of human rights without distinction and discrimination. The full range of human rights – from the economic, social and cultural rights to the civil and political rights and collective rights – is essential for building a society resilient to conflicts. It seems reasonable to conclude that human rights institutions, including regional systems, have a role to play in this conflict prevention project. Further, when prevention fails and there is an outbreak of armed conflict, human rights institutions can play an important role in collecting evidence for and make visible the human rights violations and violations of international humanitarian law taking place within the conflict, and advocate for justice to be made.

In the process of peace negotiations, the implementation of peace accords, peace building, transitional justice processes and other processes for non-recurrence, human rights institutions have a role to play. Now, how is that role played by the regional intergovernmental organisations in Europe and, in particular the regional institutions for human rights in Europe? Could and should the human rights system play a greater role? These are the two questions that will be elaborated upon in the following analysis.

THE ROLE OF THE HUMAN RIGHTS INSTITUTIONS WITHIN THE THREE INTERGOVERNMENTAL ORGANISATIONS

The present study on Europe differs a great deal from the previous studies on Africa and the Americas, considering the fact that it covers three intergovernmental organisations in comparison to one in the case of the regions previously studied. This means that in practical terms it has not been possible to study the systems in the same detail and consequently the possibilities to provide substantial recommendations are reduced. Having said that, this section is dedicated to make some final conclusions regarding the interplay

between human rights and peace and security in Europe, departing from the three organisations studied.

The three intergovernmental organisations were all founded as peace projects or at least as organs for preserving peace and security in Europe. Their initial outset varied and their pace and development as to the inclusion of a human rights dimension has also varied. The Council of Europe was founded in 1949 on a common heritage and values based on human rights, democracy, and the rule of law and early on adopted the European Convention on Human Rights which entered into force in 1953. The Council also developed a framework for the follow up on States' commitments, including a complaints mechanism which today is the European Court of Human Rights. The OSCE, in contrast, was founded during the Cold War and its framework of principles is based on political commitments instead of legal commitments. The OSCE does however apply a comprehensive approach to security which reinforces intersectionality by means of its three dimensions of security: the politico-military, the economic and environmental, and the human dimension.

While the Council as well as the OSCE count with their different human rights institutions, as for example the COE Commissioner for Human Rights and the OSCE Office for Democratic Institutions and Human Rights, one interesting aspect of the OSCE, resulting from the origins of the organisation, is the mandate of the OSCE High Commissioner on National Minorities. The Commissioner is tasked with getting involved in a situation if, in its judgement, there are tensions involving national minorities which could develop into a conflict. In this work the Commissioner is to address both the short-term triggers of inter-ethnic tension or conflict and long-term structural concerns. The Commissioner provides early warning and early action in regard to tensions involving national minority issues that have the potential to develop into a crisis or conflict. Taking a rights-based approach to national minorities, the mandate thus has a clear nexus approach between human rights and peace and security. Having said that, the Commissioner, positioned as a conflict prevention instrument within the politico-military dimension, does not function as an ombudsperson for minorities or an investigator of individual human rights violations. Whether the non-inclusion of these functions is a challenge for national minorities or if they consider them being partly covered for by the actions of the Commissioner and complemented by the mandates of the COE institutions is a relevant question, but has not been within the scope of the present study.

The European Union is somewhat a different story, even if the origins stem from a will to end a long period of conflicts after World War II, building political and economic cooperation to bolster recovery and prevent conflicts by the founding of its predecessor, the European Coal and Steel Community in 1951. The European Union, as we know it today, was officially established following the entry into force of the Maastricht Treaty in 1993. The single market with the "four freedoms" was launched, aiming at removing internal barriers to the free movement of people, goods, services, and money within the EU. As the EU faced new challenges such as terrorism, climate change, a global financial crisis, and other security issues in the region, several treaties were adopted in order to reform and enhance its institutions. The latest, the Treaty of Lisbon, is the legal basis of the EU since 2009 and regulates its powers. Through the Treaty, the EU also enjoys full legal personality which means that the EU could join international organisations and sign international agreements. Consequently, EU Member States may only sign international treaties that are compatible with EU law.

The EU is also, through the EU Commission and the EU External Actions Service, an external actor which works and has diplomatic representations around the world. Through its diplomatic missions and foreign aid, the EU is therefore also a stakeholder in human rights, humanitarian action, democracy, development, conflict prevention and peace building outside the EU. EU policy and action thus include both the protection of fundamental rights for EU citizens and to promote human rights, democracy and the rule of law globally.

The different character of the EU compared to the Council of Europe and the OSCE has made it hard to, within the limits of research for this study and the focus on regional human rights institutions in relation to peace and security

in Europe, properly include the EU in an analysis on the nexus. However, the EU uses its common norms and principles to spread values such as human rights, democracy, and the rule of law internally in Europe and globally. The methods used to promote and maintain these values are political cooperation, adoption of normative frameworks, and regional legislation applicable to EU institutions and bodies as well as Member States. But also through international diplomatic relations, humanitarian aid, and civil and military missions worldwide. Hence, the EU has a significant potential to contribute to both the protection of and respect for human rights as well as the preservation of peace and security. Therefore, we choose to include the EU with the ambition to be as comprehensive as possible as it would have been difficult to ignore the importance of the EU when it comes to peace and security in Europe and beyond. Without doubt, in the work of the EU, both within Europe and elsewhere, the protection and promotion of human rights are important as well as conflict prevention, peace building and security issues.

On balance, the conclusion on the role of the human rights institutions within the three intergovernmental organisations must be that they do play important roles as for their contributions to peace and security in the region. They clearly relate to conflict prevention, early warning and peacebuilding in their work and connect this work to the promotion, protection and fulfilment of human rights, the rule of law, access to justice and transitional justice. They liaise between themselves and they have access to and are used as experts by the decision-making bodies of their respective organisations.

Probably more could be done by the intergovernmental organisations and their human rights institutions. One concern is the heavy weight put on the ECtHR as the central accountability mechanism and also the amount of cases before the Court. An additional concern that has been raised by several stakeholders, which is worth to mention, is the necessary but difficult coordination between the different entities involved in the investigations of international crimes committed in Ukraine. Lastly, another concern that could be addressed in the light of all this, which has also been raised earlier in this analysis from different aspects, is the relationship, between the human rights institutions and its Member States. For example, the case of the human rights defender Mr. Kavala, where Turkey has refused to abide the Court's decision to release him and completely neglect the statements addressed by the Commissioner concerning violations of Mr. Kavala's human rights. The fact that a State Party to the ECHR and a Member State of the COE refuses to follow recommendations and legally binding decisions made by the Court and the Commissioner, diminish their power to fulfil their work. Additionally, the fact that Member States decide to withdraw from different treaties as well as the intergovernmental organisations, such as Turkey and the Istanbul Convention, Russia and the COE as well as the ECHR, and United Kingdom and the EU. Challenges such as States' lack of respect, political will and enforcement threaten the credibility of the human rights system in Europe, and thus the ability to maintain the protection of human rights, peace and security in the region.

ANNEX: Pillars of the WPS-agenda

The four pillars of the Women Peace and Security Agenda as defined by the Swedish International Development Cooperation Agency (Sida)*:

Participation: Aims to ensure women's equal participation and influence with men and the promotion of gender equality in peace and security decision-making processes at national, local and international levels. It includes the appointment of more women, including negotiators, mediators, peacekeepers, police and humanitarian personnel, as well as support for local women's peace initiatives.

Protection: A political concept that is used and interpreted differently by different actors. Protection ensures that women and girls' rights are protected and promoted in conflict-affected situations or other humanitarian crisis including protection from gender-based violence (GBV) in general and sexual violence in particular. The specific protection needs of refugees or internally displaced women and girls that can occur during the various stages of displacement is particularly emphasized. 'Protection' is not the same as 'security', although often associated with it. Women and men experience security differently and focus should be on determining what women and girls need in order to safely participate in society.

Prevention: This pillar focuses on 'prevention of conflict and all forms of violence against women and girls in conflict and post-conflict situations' and is the one that has received least attention. It includes integrating gender considerations into conflict early warning systems and involving women and their specific needs in conflict prevention and disarmament activities. It also includes measures to prevent GBV by fighting impunity and increasing prosecutions for perpetrators of conflict-related sexual violence. Other GBV prevention strategies focus on challenging discriminatory gender norms, attitudes and behaviour and working with men and boys, not only as perpetrators, but also victims of violence and agents of change.

Relief and recovery: Aims to ensure that women and girls' specific relief needs are met, for example in repatriation and resettlement, disarmament, demobilisation and reintegration programmes, the design of refugee camps, support to internally displaced persons and in the delivery of humanitarian assistance. This pillar also promotes the reinforcement of women's capacities to act as agents in relief and recovery processes in conflict and post-conflict.

Women, Peace and Security, Gender Tool Box Brief, Sida, March 2015

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