National and Regional Human Rights Mechanisms

Proceedings of the 11th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights

Prague, Czech Republic
23-25 November 2011
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The 11th Informal Asia Europe Meeting (ASEM) Seminar on Human Rights provided a timely platform for the discussion of issues relating to the human rights architecture across the regions of Asia and Europe. It is hoped that the expert knowledge and experience shared by the participants over the course of the 3-day seminar in Prague will reach a wider audience through the publication of this volume, and will contribute to the overall strengthening of human rights mechanisms across the two regions. It has been an honour to be part of this process, and on behalf of the organisers I would like to express my deepest appreciation to those who facilitated the programme from start to finish.

Our thanks go first to the 113 seminar participants, who represented governments and civil society across Asia and Europe. Without their co-operation in sharing frankly and openly their diverse experiences in the field of human rights, this dialogue and the resultant findings laid out in this publication would not have been possible. It is our sincere hope that connections made among the participants in Prague provide the basis for continued strengthening of networks between the two regions.

Our profound appreciation goes to the seminar hosts, the Ministry of Foreign Affairs of the Czech Republic, for their superlative hospitality and for providing the beautiful Czernin Palace as the seminar venue. We would especially like to thank First Deputy Minister for Foreign Affairs Mr Jiří Schneider for his moving welcome address. Also from the Ministry, thanks go to Ms Janina Hřebíčková, Director of the Human Rights and Transition Policy Department, to Ms Hana Mottlová, Director of the Department of Asia and Pacific, and to their hard-working staff, especially Mr Jan Vytopil and Ms Barbora Řepová, for their tireless work in the preparation of the seminar. We are also grateful to Mr Boris Kaliský and his team for their organisational support.

We were extremely fortunate to have two distinguished keynote speakers: Professor Brian Burdekin AO and Mr Rafendi Djamin. Their informative addresses on national human rights institutions and of regional mechanisms respectively set the tone of the whole seminar, and for this we are indebted.
We are deeply grateful to the two main seminar rapporteurs, Mr Kieren Fitzpatrick and Professor Michael O’Flaherty. Not only did they provide a detailed and comprehensive Background Paper, which provided a strong factual foundation for the discussions, but they also compiled the final Seminar Report for this publication. We are also deeply appreciative of the work of Professor Florence Benoît-Rohmer and Mr Ray Paolo Santiago in capturing the exchanges of their respective working groups. Thanks also go to Mr Ben Lee and Ms Agnes Flues for their contributions to these documents.

We are very thankful to have had four working group moderators who are experts in their respective fields. Thanks to the knowledge and skilful facilitation of Professor Dr Máté Szabó, Ms Rosslyn Noonan, Dr Sripripha Petcharamesree and Dr Wei Zhang, the discussions proved to be particularly fruitful. The topic of human rights is sensitive and challenging, and we greatly appreciate their work in balancing the diversity of opinion within the working groups.

We would like to express sincere gratitude to our partners, the French Ministry of Foreign and European Affairs, the Raoul Wallenberg Institute, and the Department of Foreign Affairs of the Philippines. The insight and advice of our partners, coupled with the input of the members of our Steering Committee, ensured a strong and relevant seminar programme.

We gratefully acknowledge the hard work of the volunteers of Charles University, without whom we could not have coordinated this three-day Seminar.

Finally, we also thank the secretariat staff at the Asia-Europe Foundation (ASEF): Ms Sol Iglesias, Ms Anjeli Narandran, Ms Grace Foo, Ms Ratna Mathai-Luke, and Mr Chris Massey. Their hard work and diligence brought this Seminar from the planning stages, through execution, to the ultimate publication of this volume.

Ambassador Michel Filhol
Executive Director
Asia-Europe Foundation
PREFACE:
THE INFORMAL ASEM SEMINAR ON HUMAN RIGHTS SERIES

Ms Sol Iglesias
Director for Intellectual Exchange, Asia-Europe Foundation

The Asia-Europe Meeting (ASEM)\(^1\), an informal process of dialogue and cooperation among partners on all issues of common interest to Asia and Europe, is a forum that promotes various levels of cooperation among its members. It is a process based on dialogue, aimed at strengthening interaction and mutual understanding between the two regions and promoting cooperation leading to sustainable economic and social development.

The biennial ASEM Summit meeting is held alternately in Asia and Europe and is the highest level of decision-making in the process, featuring the Heads of states or Heads of Governments, the President of the European Commission, accompanying ministers and other stakeholders. A total of eight Summit meetings have been held in the cities of Bangkok (1996), London (1998), Seoul (2000), Copenhagen (2002), Hanoi (2004), Helsinki (2006), Beijing (2008) and Brussels (2010). The next Summit meeting will be in Vientiane in November, 2012.

At the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

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\(^{1}\) ASEM partners include Australia, Austria, Belgium, Brunei, Bulgaria, Cambodia, China, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Slovenia, Spain, Sweden, Thailand, United Kingdom, Vietnam, the ASEAN Secretariat and the European Commission.
Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice.  
  *Lund, Sweden (December 1997)*

- Differences in Asian and European values; rights to education; rights of minorities.  
  *Beijing, China (June 1999)*

- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment?  
  *Paris, France (June 2000)*

- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare.  
  *Bali, Indonesia (July 2001)*

- Economic relations; rights of multinational companies and foreign direct investments.  
  *Lund, Sweden (May 2003)*

- International migrations; protection of migrants, migration control and management.  
  *Suzhou, China (September 2004)*

- Human rights and ethnic, linguistic and religious minorities.  
  *Budapest, Hungary (February 2006)*

- Freedom of expression.  
  *Siem Reap, Cambodia (September 2007)*

- Human rights in criminal justice systems.  
  *Strasbourg, France (February 2009)*

- Human rights and gender equality  
  *Manila, Philippines (July 2010)*
The formula employed is as follows:

- The participation of two representatives from civil society (invited by the organisers) and one official representative for each of the 16 Asian ASEM countries and the 3 ASEM countries (Australia, New Zealand and Russia) who joined in 2010; and, in order to have balanced representation between the regions, the participation of one representative from civil society (invited by the organisers) and one official from each of the 27 European ASEM countries as well as representatives of the European Commission and the ASEAN Secretariat;

- An agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;

- Closed-door debates to allow free and direct exchanges of views; and,

- A set of recommendations, elaborated collectively to be sent to the relevant institutions in ASEM countries as an informal contribution to the official Asia-Europe dialogue.

The experience of the first ten seminars has proven the usefulness of the chosen formula: a climate of confidence and mutual understanding, in accordance with the ASEM spirit, has grown stronger throughout this process; the topics selected by the Steering Committee, which focus on issues of common interest to the two regions, have made high quality discussions possible; the high level of participation of the ASEM partners indicates the strong interest of the partners in these meetings.

**ORGANISATION**

The Seminar series is co-organised by the French Ministry of Foreign and European Affairs, the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs), the Department of Foreign Affairs of the Philippines, and the Asia-Europe Foundation (ASEF). ASEF is the only permanent institution of the ASEM process, created in 1997 with a mandate to promote mutual understanding between Asia and Europe through intellectual, people-to-people and cultural exchange.

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2 The Asia-Europe Foundation (ASEF) seeks to promote better mutual understanding and closer co-operation between the peoples of Asia and Europe through greater intellectual, cultural and people-to-people exchanges. These exchanges include conferences, lectures, tours, workshops, seminars and the use of web-based platforms. The major achievement of ASEF is the establishment of permanent bi-regional networks focused on areas and issues that help strengthen Asia-Europe relations. [http://www.asef.org](http://www.asef.org)
The seminar is supervised by a Steering Committee, which comprises the Seminar’s four co-organisers, representatives of the Foreign Affairs Ministries of China and Indonesia, as well as a representative of the European Commission.

The three coordinators – Mr Frédéric Tiberghien, Representative of the Ministry of Foreign Affairs of France, and Professor Gudmundur Alfredsson, Adviser to the Director of Raoul Wallenberg Institute, Ambassador Rosario Manalo, Philippine Commissioner of the ASEAN Inter-Governmental Commission on Human Rights – are responsible for the orientation of the Seminar Series.

After each conference, the outcomes of the discussions are gathered in a publication that may be used by governments and civil society as a reference on the state of play of the debate on human rights in ASEM countries.

The 11th Informal ASEM Human Rights seminar brought together 113 participants drawn from government, non-government organisations, civic associations, the academe and the private sector, and including two national Human Rights Ambassadors, four Commissioners of the ASEAN Human Rights Commission, and nine representatives of national human rights institutions. Representatives of forty-four of forty-eight ASEM partners came together to discuss the legal mechanisms that exist at national and regional levels throughout the two regions, and to share their own knowledge and experiences on the topic.

NATIONAL AND REGIONAL HUMAN RIGHTS MECHANISMS: AN OVERVIEW OF THIS VOLUME

This volume opens with a keynote address on behalf of the organisers, made by Professor Brian Burdekin AO, Visiting Professor at the Raoul Wallenberg Institute, Former Australian Federal Commissioner for Human Rights and Special Adviser on NHRIs to the UN High Commissioner of Human Rights. Professor Burdekin shares his extensive experience of working with national human rights institutions (NHRIs), including his role helping to develop the Paris Principles, the set of international standards governing NHRIs.

The second keynote speech is given by Mr Rafendi Djamin, Chairman and Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR). Mr Djamin’s speech provides a regional perspective, exploring the experiences of the AICHR to date.
The Background Paper is the preliminary annotation to the Seminar. It was prepared by Mr Kieren Fitzpatrick, Director of Asia Pacific Forum of National Human Rights Institutions, and Professor Michael O’Flaherty, Chief Commissioner, Northern Ireland Human Rights Commission, Vice Chair of the UN Human Rights Committee, and Co-director, University of Nottingham Human Rights Law Centre. The Seminar Report, co-written by Mr Fitzpatrick and Professor O’Flaherty, as well as the two other Working Group rapporteurs, constitutes the fundamental part of this publication, together with the Background Paper. Together, these papers provide an introductory overview of the key issues discussed in each of the Working Groups as well as the essence of discussions and debates that took place in them. The working groups addressed the following topics:

1) National Human Rights Mechanisms,
2) Regional Human Rights Mechanisms,
3) Procedural Effectiveness of Regional Human Rights Mechanisms, and

The volume ends with concluding remarks from two of the co-organising partners, Ambassador Rosario Manalo, Philippine Commissioner of the ASEAN Inter-Governmental Commission on Human Rights, and Mr Frédéric Tiberghien, Representative of the Ministry of Foreign and European Affairs of France, who summarise the discussions from the perspectives of Asia and Europe respectively.
OPENING ADDRESS ON BEHALF OF THE HOST

• Mr Jiří Schneider
  First Deputy Minister and State Secretary for EU Affairs of the Ministry of Foreign Affairs of the Czech Republic
OPENING SPEECH ON BEHALF OF THE HOST, THE CZECH REPUBLIC

Mr Jiří Schneider
First Deputy Minister of Foreign Affairs of the Czech Republic

Excellencies, Ladies and Gentlemen, distinguished guests, representatives of governments and also of non-governmental organisations,

It is my pleasure and honour to welcome you to the city of Prague, and especially to this building, the Czech Foreign Ministry, on behalf of my Minister, Karel Schwarzenburg, who cannot be with us tonight. I would like to mention that the Minister is very much connected to the topic of this seminar. Before coming in to the public life in a free Czech Republic after 1989, he was himself a human rights activist and he helped many human rights defenders in the 1980s. He is personally very committed to this topic in his current position, and pays a great deal of attention to the topics which you are about to debate. I would like to pass on his greetings and his wish for a successful and productive seminar.

It is a genuine pleasure for us to be a partner in the 11th Informal ASEM Seminar on Human Rights. I would like here to stress both the “Informal” and the “Human” aspects of your work here. I was struck by the topic of this seminar, which sounds a little bit inhuman as it talks about “mechanisms”, but I hope that during your deliberations you will always have in mind that this is about people, about humans. The aim of any mechanism is to alleviate problems and to help people.

I would like to thank all of the organisers and supporters of this series of meetings, especially the Asia-Europe Foundation, as well as the Foreign Ministries of France, Sweden and the Philippines. I would also like to recognise all of the governments represented in the Steering Committee and who are represented here. Thank you all for your work in organising this series, and I hope that you will enjoy your stay, not only in this building, but also in this beautiful city.

Allow me to say a few words about the Czech experience in this area. This country did not have functional human rights mechanisms at the national level until 22 years ago. Although the country was nominally party to some agreements, such as the Helsinki Process, where human rights were part of
agenda, the national implementation mechanism was missing. This experience is very much sets the background to our activities in this area. I would like to say a few words about how we understand and how we fulfil our aims in the field of human rights through the foreign policy of the Czech Republic.

When talking about human rights, we realise more and more that it starts at home and it starts with our level of implementation of human rights standards here in this country. We have learned many lessons from building these mechanisms and procedures, through all of the mistakes we have made over the past 22 years, and it is a real treasure to share our experiences with the countries which are facing the same challenges in establishing these mechanisms at home. Our approach is a very humble one. We think that we should share experiences of our flaws so that others can learn from them. We have come to cherish our own freedoms over the last two decades and we are happy that we can now assist human rights defenders at many levels and in many countries. Because of limited resources, however, we cannot be everywhere, but we support the individual and collective aspirations of peoples and nations everywhere.

Our so-called transformation policy is based on a practical approach. This is not about theory but about how to take practical steps in developing the specific elements of our foreign policy at bilateral and also multilateral levels. We have been consistently engaged in this field for the past two decades, but especially since 2004 when a special department was established in this Ministry, to be in charge of a transition promotion programme based on our past experiences. We are aware of the needs but we have to focus on priority areas. I would like to mention some priority areas and then speak about priority countries, such as Myanmar / Burma.

The programme, which is run by Janina Hřebíčková and her department, is based upon the support of the development of civil society. We understand that civil society is the only bedrock of a functioning and sustainable democracy. Another element is the cooperation with local authorities, because democracy starts not on a national level but on a local level. The principles of openness and transparency should be applied from the bottom up, as we all know. One more element is the media; we consider a free and professional media as a key precondition for a stable democracy. Public control over political power or an instrument of accountability is also necessary. Another element is the youth, and the recent developments in the Arab countries have proved this. In my country exactly 22 years ago, there were large demonstrations on the streets of Prague which were actually inspired by youth demonstrations on the International
Students’ Day. This is why we believe that a focus on young people is a vitally important investment in the future. Last but not the least is the issue I started with. Our focus is on those people who are at the forefront of defending human rights. We aim to help those human rights defenders who are in need of support.

As I mentioned, human rights are now as important as ever. The recent developments in places such as North Africa and Myanmar / Burma show that there is currently a demand for freedom and human rights which is common to many places around the world. Regimes which have for a long time been oppressing the people of their nations are starting to disappear. It is now just a matter of time. The key question, however, is what comes after? This is why I believe that the mechanisms and the institutions are important. This is why it is important to talk about transitions. Sometimes the end of an oppressive regime does not automatically bring better standards of human rights.

I would like to share a couple of thoughts about the seemingly positive developments in Myanmar / Burma. Last November, there were long-awaited elections, but these elections themselves did not make the country democratic. They were not fully compatible with internationally accepted standards, and were biased against opposition parties and their candidates. Since that time, however, we are witnessing indications of positive trends and I would like to highlight those.

Aung San Suu Kyi was released from house arrest. Incidentally, it was the President of this country in the 1990s, Václav Havel, who nominated Aung San Suu Kyi for the Nobel Peace Prize; a fact which might answer for you the question of why the Czech Republic is interested in Myanmar / Burma. Now Aung San Suu Kyi is free and is engaged in discussions with the new government. She seems rather optimistic about the reform-oriented steps taken by the government. A human rights commission is being established. There is a new law on trade unions and a limited lifting of censorship. Some political prisoners have been released. There has been an amendment to the legislation regarding the registration of political parties. These are some quite positive developments. I think this also contributed to the ASEAN countries deciding to honour Myanmar / Burma with the Presidency of ASEAN in 2014.

As I said, we are consistent in our support of these developments in Myanmar / Burma, and we welcome these all of these steps. But they are not enough. These times of change are critical and we should increase our efforts to make them a success. So I would like to highlight to you our support for the
unconditional release of all political prisoners, the termination of all armed conflicts, and the dialogue with ethnic minorities. We sincerely hope that elections planned for January next year will not follow the model of the last elections, but will be more democratic, free, fair and transparent. In the light of these changes we support the fact that the EU will set up an office in Myanmar / Burma next year. We are ready to propose appropriate steps at the EU-level when there are tangible and long-lasting results on substantial political and economic reforms in Myanmar / Burma.

I did not want to speak here in generalities, and so I decided to speak about one specific case. That does not mean, however, that there are not others. I also wanted to highlight the Czech Republic's attention and willingness to continue our activity in this specific case. During the course of this seminar we would also like to invite you to openly debate our model, and expose the representatives of our national mechanisms to your questions.

Dear guests, the goal which is ahead of us is to champion new steps toward accountability and a commitment to human rights protection and promotion in the wake of many human rights crises, and to make stronger advances in the engagement of human rights mechanisms, with special attention to the rights of women, children and minorities. Since this is an informal seminar, I hope that you will feel comfortable in the city of Prague. Please come again, and stay in touch regarding the issues on table because that is one of the purposes of this seminar: to create networks and connections which will continue in our day-to-day work.

I wish you a pleasant stay and I wish you success!
KEYNOTE SPEECHES

- Professor Brian Burdekin AO
  Former Australian Federal Commissioner for Human Rights
  and Special Adviser on NHRIs to the UN High Commissioner of Human Rights
  Visiting Professor at Raoul Wallenberg Institute

- Mr Rafendi Djamin
  Chairman and Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights
KEYNOTE SPEECH

NATIONAL HUMAN RIGHTS INSTITUTIONS - LESSONS LEARNED
Professor Brian Burdekin AO
Former Australian Federal Commissioner for Human Rights and Special Adviser on
NHRIs to the UN High Commissioner of Human Rights
Visiting Professor at Raoul Wallenberg Institute

On behalf of the organisers, I would like to offer my sincere thanks to all of you
for coming, particularly our Asian friends, from very long distances. Particular
thanks go also to our rapporteurs for the excellent Background Paper.

In the time that has kindly been allocated to me, I will be making comments,
not as a professor of human rights law, but as a practitioner. We will have the
advantage of hearing from the Director of the Asia Pacific Forum (APF) and also
the Chair of the ASEAN Intergovernmental Human Rights Commission. Given our
time constraints and to avoid duplication, I will therefore focus particularly on
national human rights institutions, hereafter “national institutions” or NHRIs.

We live in a rapidly changing world. In the last 40 years, we have moved from a
situation where over 60 countries that were military dictatorships or autocratic
regimes are now democracies or countries in transition. In just the last few
months, several governments that have abused the human rights of their people
have fallen. As we meet, governments are falling – and governments that abuse
the human rights of their own people will continue to fall.

The history of national institutions is very much the history of a rapidly changing
world. National human rights institutions, which many states have now set up
(but many states have not), are part of a process of moving, in many cases, from
institutions which violated the human rights of their own citizens to institutional
structures which are designed to ensure that governments actually honour the
international human rights conventions they have ratified.

We are living in a world where, increasingly, there is accountability for human
rights violations. There is a much greater expectation than there was twenty
years ago that international human rights treaties are not just aspirational norms
created by diplomats, but fundamental obligations that have to be translated into
reality at the national level.
When I first started working on human rights, apart from the Nazi war criminals, virtually no political leaders had been held accountable for violating the human rights of their people. In the last 15 years we have put on trial, in national or international fora, almost 20 presidents, prime ministers and military leaders – not only in Latin America and Africa, but also in Europe and Asia. This rising sense of expectation about accountability involves national human rights institutions. In fact in some countries, national human rights institutions have been involved in referring to international courts or tribunals political leaders who have abused the human rights of their own people.

To understand national human rights institutions, we need to realise that in many countries they were born out of a movement by people against autocratic rulers that abused those they governed.

The Paris Principles: Background

In October 1991 a group of practitioners, including myself, met in Paris for the first International Workshop on National Institutions for the Promotion and Protection of Human Rights. We developed standards on the obligation of each state to set up an independent human rights institution. These standards are now generally referred to as the “Paris Principles”.

Why did we feel we needed to do this? As a former advisor to the political leaders in my own country, I had seen that you could have a democratic system, an executive government responsible to an elected and effective legislature and independent courts – but that all of that did not necessarily ensure the protection of the rights of some of the most vulnerable groups in society.

Some of us had been involved, as diplomats, in negotiating human rights conventions – including the Convention Against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women, and Conventions Prohibiting Racial Discrimination – and a number of states were setting up institutions focused on each of these conventions, particularly for women, children and minorities.

We felt very strongly that since human rights are universal, each country needed an institution with a holistic approach – which did not leave out any sector of society, be it women, children, ethnic, linguistic or religious minorities, people with disabilities or indigenous groups. That was the primary motivation behind the Paris Principles.
These principles, officially the “Principles relating to the Status of National Institutions”, were adopted by the United Nations (UN) in 1993. Member states, including all those represented here, voted for them twice: once at the UN World Conference on Human Rights in Vienna in 1993 and again at the UN General Assembly later that year.

The Paris Principles oblige each state to establish a national human rights institution; but also affirm the prerogative of each state to set it up in accordance with its own structure and needs. They prescribe the basic functions of national human rights institutions: research and advice, education and promoting an understanding of human rights, monitoring compliance with international human rights treaties and norms, investigating violations of human rights and providing remedies, co-operating with international and regional human rights mechanisms and interacting with the judiciary.

One of the key characteristics of national human rights institutions that we agreed on in 1991 is that they must be independent. They must also be established by legislation. Endowing the institution with the legitimacy, the authority and the support of the parliament was important to us. As practitioners we had seen that what can be established by presidential decree can sometimes be abolished by presidential decree. Part of being independent is being able to do your job fearlessly and, when necessary, give frank advice to the government and to the parliament. National human rights institutions usually prefer to operate as advisory bodies, but if there are violations of human rights by the military, by police, or by the government itself, then they may have to move from an advisory to an adversarial mode. That is not an easy balance to strike, but it is a balance which is one of the challenges for all national institutions in all regions – including Europe and Asia.

**Lessons learned**

Our objective over the next few days is to develop recommendations to strengthen both national and regional human rights institutions in Asia and Europe. One of the important ways to do that, I believe, is to carefully examine the lessons learned over the last two decades.

I will therefore focus on some of the major lessons we have learned relating to national institutions, because I believe they are, in many cases, equally relevant to regional mechanisms. The following points are also specifically relevant to questions identified in the Concept Note for this seminar.
**Leadership**

First and foremost we have learned that the effectiveness of any human rights mechanism – regional or national – depends on the integrity, independence, capacity, commitment and courage of those appointed to lead the institution, or as members of the institution.

We have also learned that the procedures for appointing such individuals and the qualifications required (with appropriate weight given to human rights-related experience) need to be clearly specified.

**A clear legislative mandate**

Another important lesson has been the necessity for a clear mandate. One of the problems, particularly in Europe, is that some national institutions have not been given a clear legislative basis for their operations as required by the Paris Principles. That makes it difficult for them to operate as effectively and independently as they should.

NHRIs established by parliament, and which report to the parliament not just the executive, are more likely to command the attention of parliament and also government.

**Appropriate powers**

Also, we have learned that *national human rights institutions need to be given powers commensurate with their responsibilities*. If they are given the responsibility to protect human rights and investigate human rights violations, they must be given the power that requires. That is why the Paris Principles refer to quasi-judicial competence: the authority to compel the production of evidence and attendance of witnesses.

**Adequate resources**

In addition to adequate powers, for any human rights commission to be effective, it is essential that it has adequate resources – both financial resources and personnel resources – and that it has control over those resources. These resources do not need to be generous – (The Mongolian Commission, with three commissioners, a staff of nine people and a budget of $73,000, a few years ago did some of the most amazing work I have ever seen).

The institution must be able to determine how is spends its budget. It must also be able to select and direct its own staff, and determine its own rules of procedure, otherwise it cannot function autonomously and independently.
Working with civil society

One requirement for NHRI s that we emphasised at several points in the Paris Principles was the importance of working in close co-operation with civil society – not only NGOs but also human rights defenders, advocates and leaders of professional organisations. Working in conjunction with civil society a national institution can offer authoritative and accurate advice to governments and parliament, using civil society as its eyes and ears.

Any regional or sub-regional human rights mechanism that wants to be effective and credible must also develop a modus operandi for working in co-operation with national institutions and civil society.

Training

All NHRI s have learned the value of continuous training, for both staff and commissioners, particularly in relation to new strategies (such as national inquiries) and increasingly important emerging areas (such as human rights and business). Many national institutions cooperate closely with the APF and the Raoul Wallenberg Institute. This year we have been training both South Asian and South East Asian NHRI s in regional, sub-regional and bi-lateral programmes.

Determining Priorities

At the practical level, determining priorities is always a difficult issue. When governments confer a mandate on national institutions in legislation, that mandate must recognise the necessity for NHRI s to have some discretion in determining what they do and how they do it - because with a broad mandate, they cannot do everything.

Privatisation

As globalisation progresses, governments are increasingly privatising and outsourcing services that they used to provide – such as education, healthcare and even water supply. More and more, human rights abuses take place in the private sector. This creates new challenges for national human rights bodies that have the responsibility to monitor both the public and private sectors, and to advise the parliament and the government.

Of the 100 largest economic entities in the world today, 49 are countries; 51 are corporations! For example, BHP Billiton, the largest mining company in the world, based in Australia, last year turned over 167 billion dollars – more than 40 of the poorest countries of the world combined. These corporations wield enormous power and have enormous influence over what governments do – and that is a
human rights issue as governments outsource more of what they traditionally used to do. I am not saying that this is a bad thing, but it does bring home to us as practitioners the necessity to go back to the treaties, which require governments not only to respect human rights, but also to ensure that everyone in their jurisdiction, including business enterprises, respects human rights.

When I first went to Mongolia, there were 300 rivers poisoned by mining corporations. Is that a human rights issue? Yes, it is; a large proportion of the population are nomadic herders.

Human rights is no longer just about major violations by government, as it was in the 60s, 70s and 80s. This is apparent in areas like equal opportunities for women. When I had the privilege to be the Federal Human Rights Commissioner of Australia, 70 percent of the cases we handled involving discrimination against women were not by government, but were in the private sector. So we have to ensure that our international treaty obligations, and governments’ responsibility to ensure that rights are respected and protected, apply to the private sector as well.

**Accessibility**

Human rights bodies must also be accessible. From a practitioner’s perspective, it is quite unrealistic to talk about a “regional mechanism” for the Asia Pacific, as diplomats have been doing for three decades. Asia is only a “region” in the minds of geographers and UN officials - being what is ‘left over’ after the Americas, Africa and Europe.

I have just come from India, which has a population of over 1200 million people – more than the population of all 53 African states put together. The week before, I was working in China – a country with over one thousand, three hundred million people.

In reality, the Asia Pacific is half a dozen regions, and Asia is at least five. If we are seriously interested in accessibility, it is essential that we have viable, effective human rights institutions at the national level.

Regional mechanisms can play an important role, but the reality in Europe is that the European Court of Human Rights is almost overwhelmed by a growing backlog of cases. It is currently almost 150,000 cases behind. The court is very important and there is no disrespect in what I am saying, but if you are 150,000 cases behind, that is not “accessibility” – especially not if you are coming with a new case.
There is no comparable Asian mechanism at all, nor is one likely in our lifetime. Moreover, many of the most vulnerable individuals in all our countries cannot afford to litigate in the courts if their rights are violated. That is why national institutions, with the power to investigate human rights violations and, where appropriate, engage in alternative dispute resolution, are so important.

**Resolving cases speedily**

In 1985 when we were drafting the legislation for the Australian Commission, we included the power for the Commission to conciliate cases. This power, which has subsequently been conferred on virtually all the NHRIs established in Asia, has proved an outstanding success.

In the eight years I had the privilege to serve as Human Rights Commissioner we handled almost 10,000 cases; over 85% were quickly resolved by an appropriate conciliated settlement between the parties.

Last year the Indian Human Rights Commission handled over 100,000 cases - in a country where many of the courts are notoriously slow to dispense justice.

**The importance of prevention**

One of the most painful lessons we have learned is the importance of prevention. Once the genie of racial hatred, or ethnic or religious intolerance, is out of the bottle the international community is not very good at putting it back. It is far better to invest in national human rights institutions with a clear mandate to promote non-discrimination, respect for individual difference and individual dignity, than to try and pick up the pieces.

In many countries, national institutions have defused or addressed discrimination against a particular minority that could have led to escalating violence, horrific violations of human rights, and even national insecurity and regional instability. One example occurred several years ago in the state of Gujarat in India. A number of Hindus died in fires on a train. Allegations were made that the fires had been set by Muslims. Hindu mobs set upon Muslims, many of whom were killed, some burned alive. When the case went to court, all of the witnesses turned hostile; that is, they would not give evidence. The prosecutors did not proceed, and the government of the state did not insist that they proceed. At that time, India had a Muslim minority of 167 million people; now it would be over 170 million (more than all of the Gulf states’ populations in the Arab World put together). The Muslim community was outraged - and with news of the massacre travelling across the country in real time, the whole question was not only politically sensitive: it was explosive.
The Indian Human Rights Commission intervened and had the case transferred to another state, where it was reopened and the offenders were prosecuted. What was at stake in this case was not only the administration of justice, but the confidence of the entire Muslim community in the capacity and willingness of government and the Courts to protect all citizens – not just those from the Hindu majority.

**The importance of public education**

The educational role of national human rights organisations is fundamentally important. Changing the law is often a necessary but never a sufficient pre-condition for ensuring the protection of human rights, and for eliminating discrimination against minorities, people with disabilities, or other vulnerable groups. What is critical is changing public attitudes – and to achieve this we have had to develop new strategies, such as conducting national public inquiries.

**Form and substance**

All human rights mechanisms must be judged not simply by their formal structure, but primarily by substance; by the results they produce. In the Paris Principles we started with normative principles which were, and are, minimum standards. However, we quickly moved to establish an International Coordinating Committee, which now examines the actual performance of NHRIs and determines whether they are accredited as being in compliance with the Paris Principles.

>*Any regional or sub-regional human rights organisation also needs to be exposed to that sort of scrutiny and evaluation.*

**National human rights institutions and the courts**

National human rights institutions play an indispensable role in protecting human rights. There is no doubt that the work of the courts is important - but when it comes to protecting human rights they have several serious deficiencies. First, if you examine the whole range of human rights abuses in recent years, many of the most egregious violations were not, and still are not, against the law. (The way we treated millions of mentally ill people, for example, was largely a matter of omission and neglect, and there was very little judges were able to do about it.) For many people, often the most disadvantaged and vulnerable, the law is not a complete answer.

Second, the courts are, in reality, not always accessible. Human rights institutions are free; no-one pays a fee to obtain their assistance.
Third, essentially judges have no choice but to be reactive; they can only deal with issues brought before them. National human rights institutions – established in accordance with the Paris Principles – can initiate their own investigations; they therefore can and do play a very proactive and preventive role.

Finally, national laws are often in conflict with international treaty obligations and need to be changed. For example, the Mongolian Human Rights Commission, with very limited resources, conducted an excellent national inquiry on torture, and convinced their Supreme Court and parliament to abolish or amend 24 aspects of their national law that were in violation of the Convention Against Torture which Mongolia had ratified.

**National Inquiries**

We developed the strategy of holding national public inquiries in my own country, Australia. This strategy enabled us to involve NGOs, other members of civil society and government representatives as witnesses.

One example of the effectiveness of this strategy in dealing with systemic human rights violations was the national public inquiry we held on the human rights of people with mental illness. I mention this example because the incidence of mental illness is the same in every country. (Here in the Czech Republic, for example, one to two percent of the population is affected by a serious mental illness, and we know that during their lives approximately 20% of the entire population will develop some form of mental illness). We found that we had over 500,000 Australians with a serious mental illness of whom 250,000 were getting no treatment at all. This in a wealthy country, a supposedly sophisticated democracy, with an executive government responsible to the legislature and an independent judiciary; but this was a very vulnerable group whose rights we had largely ignored. Not only did our laws not respect their rights; our national programmes did not allocate sufficient money for mental health; our doctors were not sufficiently trained in areas like post-natal depression in women; and elderly people, 10 percent of whom suffer from serious depression, were being ignored by our system. The result of this national inquiry was that the federal government agreed to a National Mental Health Plan; allocated an extra $600M for support to the mentally ill. And federal and state governments changed many of our laws which discriminated unfairly against people with mental illness.
Similarly, the Indian Human Rights Commission held a national inquiry on health generally. They appointed the co-ordinator of 1,000 NGOs in the health sector to help them gather evidence. As a result of their efforts, the national budget for health was significantly increased.

The results of these two national inquiries have substantially improved the lives of millions of people.

These are human rights issues. They are not the human rights issues we talked about in the 70s. They are not torture, freedom of expression, or freedom from arbitrary arrest – but they involve fundamental issues of human rights that national institutions have to grapple with, and are developing strategies to do so. With no disrespect to international and regional arrangements, we are not going to deal with these problems effectively in New York or Geneva, or in a regional centre. In Asia in particular, with the population sizes we have, we must establish effective human rights institutions at the national level.

**Interaction between NHRIIs and the United Nations System**

**Contribution to Developing International Human Rights Standards**

National institutions have played an increasingly important role in negotiating human rights treaties. These include the Convention on the Rights of the Child, the Optional Protocol to the Convention Against Torture and, most recently, the Convention on the Rights of People with Disabilities. The Optional Protocol to the Convention Against Torture and the Convention on the Rights of People with Disabilities specifically envisage that NHRIIs will play a role as national monitoring bodies.

**Interaction between NHRIIs and U.N. Treaty Bodies**

25 years ago, when as Federal Human Rights Commissioner of Australia, I appeared before the U.N. Human Rights Committee, that was the first formal interaction between an NHRI and a U.N. Treaty Body. NHRIIs now interact with Treaty Bodies increasingly frequently - but greater efforts still need to be made.

**The Human Rights Council**

Over the past 25 years NHRIIs have gradually achieved recognition in the U.N. in their own right. Particularly with the assistance of Mary Robinson, from 1995 to 2003, we gradually secured an appropriate place in addressing the Human Rights Commission (now the Human Rights Council). This was translated into formal recognition in 2004/2005.
Conclusion

International human rights treaties have established important international norms.

NHRIs are all about actually implementing those norms. Their work - and an understanding of their role - is still a relatively new but rapidly evolving and increasingly important area. However, considerable progress has been made in accepting the standards we set out in the Paris Principles. The great challenge for those of us who have the privilege of working in national institutions is to ensure that international norms embodied in international treaties, which states have voluntarily and solemnly ratified, are actually translated into reality.

I would like to conclude with a tribute to a great French lady. It was no accident that the NHRI standards are called the Paris Principles. I understand on good authority we were in Paris in 1991 because Madame Danielle Mitterrand, who passed away yesterday, had convinced her husband, François, to allocate several million Francs to host the conference. Sometimes, one person can make an enormous difference. Madame Mitterrand was a great fighter for human rights, but she also believed in something very important: there is no point in just addressing human rights violations; what we should be doing is preventing the causes in the first place.

Thank you very much for your courtesy and attention.
KEYNOTE SPEECH

Mr Rafendi Djamin
Chairman and Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights

Ladies and Gentlemen,

It is a great honour for me to be here today to give a keynote speech. It gives me a unique opportunity to share my thoughts with you on the development of human rights cooperation in ASEAN, how the ASEAN Intergovernmental Commission on Human Rights (AICHR), as a sub-regional human rights institution would face the current challenges in synergising human rights cooperation in the national, regional (including cross-regional) and international human rights systems.

I would like to congratulate the Steering Committee of the 11th Informal ASEM Seminar on Human Rights and the host government of the Czech Republic in organising this seminar on “National and Regional Human Rights Mechanisms”. This seminar is very timely since it is organised in the middle of the on-going effort of governments, both at the national and international level, to establish national and regional human rights institutions. My institution, the ASEAN Intergovernmental Commission on Human Rights, and the Organisation for Islamic Cooperation’s Independent Commission on Human Rights across the regions of Asian and Africa, are two examples of these initiatives.

Since the conclusion of the ASEAN Charter in 2008, ASEAN has changed its perspective on the development of human rights. The ASEAN Charter clearly states that one of ASEAN’s principles is the respect for and protection of human rights and fundamental freedoms. A few years ago no one would have believed that ASEAN could establish a human rights body. Now, ASEAN has addressed this disbelief by establishing the ASEAN Intergovernmental Commission of Human Rights, as mandated in the ASEAN Charter.

ASEAN is the first organisation in the Asian region to establish a human rights institution, and I am proud to say that it is one of the major achievements of ASEAN. Like many other regional intergovernmental groups, the ASEAN faces serious human rights challenges, which need a regional approach and policies at the regional level, as well as necessary policy options complimenting the national policies. I share the sentiments that were shared earlier, that ultimately
the settlement of the human rights cases lies at the national level. Cross-border human rights challenges such as the protection of the fundamental rights of migrant workers, both migrating within ASEAN member states and to areas outside ASEAN, such as the Middle East and East Asian countries, protecting the rights of victims of human trafficking and the rights of stateless persons, particularly women and children, and protecting human rights in combating terrorism are just some of the priority human rights issues in ASEAN. AICHR is an answer to the need for a regional human rights mechanism requested by the people of ASEAN, and is also part of the implementation of the Vienna Human Rights Declaration and Program of Action back in 1993.

Since its establishment two years ago, AICHR has adopted a number of documents to support its work, such as the Five Year Work Plan, the Priority Programs 2010-2011, Rules and Procedure of AICHR’s funds, and the Terms of Reference on the Thematic Studies of AICHR, one on business and human rights and other on migration, particularly migrant workers. AICHR has adopted the Terms of Reference on the Drafting Group of the ASEAN Human Rights Declaration, including the establishment of the Drafting Group. AICHR has already implemented and supported three important regional workshops this year to address human rights challenges in ASEAN, namely workshops on “Substantive Gender Equality” in Jakarta, the “Workshop on Promoting Maternal Health: Responding to the UN Millennium Development Goals of 2005” in Manila, and lastly the “Regional Workshop on Statelessness and the Rights of Women and Children” that was held a few days ago, also in Manila.

I acknowledge the high expectations placed on the AICHR since its establishment. I therefore believe in always trying to encourage all of us within AICHR as an overarching institution of human rights in ASEAN to fulfil its mandate and actively implement the priority programs. I am pleased with the work of the Drafting Group of the ASEAN Human Rights Declaration in formulating a basic draft Declaration, which will be submitted to AICHR by the end of this year and will be negotiated by all representatives within the Commission starting in January 2012. I believe that AICHR can develop a human rights declaration that accommodates the different political, religious, historical and cultural backgrounds of ASEAN member states. The drafting process of this declaration is a reflection that human rights issues have become ASEAN’s agenda. This Declaration will be a major step for ASEAN and shall add value to the existing international and regional instruments on human rights.
The establishment of the AICHR as mandated by the ASEAN Charter was then followed by the establishment of the ASEAN Committee on the Promotion and Protection of the Rights of Women and Children (ACWC). AICHR is now discussing the concept of alignment with the ACWC and this alignment should strengthen human rights mechanisms in ASEAN in order to protect and promote human rights in the region. AICHR needs to be responsive, of course, to all human rights issues in the region, including issues of migrant workers. In that case AICHR will definitely engage with the ASEAN Committee on the Protection and Promotion of the Rights of Migrant Workers (ACMW) to discuss an effective alignment process between these two institutions to respond to issues of the rights of migrant workers in the region.

AICHR has also engaged with external parties such as the UNDP, the Office of the High Commissioner of Human Rights, UNWOMEN, the European Union, the Council of Europe, and with other entities associated with ASEAN, including representatives of civil society. I am convinced that AICHR as a regional mechanism will engage a range of parties both within and outside the region in order to implement its mandate. In line with the spirit of international cooperation at the UN Human Rights Council, the AICHR is willing to have constructive dialogue with external parties, particularly to synchronise human rights mechanisms both nationally and internationally. AICHR has conducted a dialogue with a team of experts from the Office of the UN Special Rapporteur on Business and Human Rights during the development of the currently established UN guidelines on business and human rights. AICHR is also now undertaking thematic studies on CSR and human rights. AICHR has also held dialogues with other Special Procedures, such as the UN Special Rapporteur on Violence Against Children during our visits to New York in 2010. With our European counterparts, AICHR has met the OSCE Special Representative for Combating Trafficking and will in the near future develop a joint program on the Rights of the Victims of Trafficking in Persons that will take place in 2012. In relation to that, I am convinced that human rights cooperation between Asia and Europe critical for both sides. I am confident that this cooperation can result in a valid outcome that will affect the promotion and protection of human rights in both regions.

Ladies and Gentlemen, the transformation of ASEAN has gained the attention of the world. Now the world is watching how ASEAN answers the many challenges related to human rights. As a regional mechanism for human rights AICHR is expected to play an important role in the promotion and protection of human rights. In implementing all of its activities, AICHR should bridge differences between the member countries in dealing with human rights. The work of AICHR is very noble, but it is not easy. I am optimistic, however, that AICHR can meet
these challenges. Hopefully AICHR can provide ASEAN with its next major achievement in the area of human rights. In the future AICHR needs to strengthen its mechanisms and its mandate, especially on the protection aspect. AICHR will become a strong mechanism if there is a balance between the promotion and the protection mentioned in its mandate.

Ladies and Gentlemen, in conclusion, this special occasion is very important one. It allows us to provide our experience and our intellectual contributions on the development of human rights in both regions. Let me once again congratulate all of you here. I hope the seminar will result in a significant contribution to the development of human rights. I also sincerely hope that it will provide valuable contributions to help us meet the challenges facing the world.

Thank you very much.
SEMINARY REPORT

• **Mr Kieren Fitzpatrick**
  Director of Asia Pacific Forum of National Human Rights Institutions

• **Professor Michael O’Flaherty**
  Chief Commissioner, Northern Ireland Human Rights Commission
  Vice Chair of the UN Human Rights Committee
  Co-Chair, University of Nottingham Human Rights Law Centre
I. Executive Summary

The 11th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights was held on 23-25 November 2011 in Prague, the Czech Republic. Hosted by the Czech Ministry of Foreign Affairs and organised by the Asia-Europe Foundation, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the French Ministry of Foreign and European Affairs and the Philippine Department of Foreign Affairs, the Seminar was dedicated to “Regional and National Human Rights Mechanisms”.

Seminar participants included members of the ASEAN Intergovernmental Commission on Human Rights, representatives of national human rights institutions (NHRIs), human rights ambassadors, representatives of justice and foreign affairs ministries, academics, activists and human rights defenders. Bringing together over 120 participants, the ASEM Seminar on Human Rights is the largest multi-sector gathering on human rights between the two regions.

Seminar participants convened in four Working Groups for open and in-depth discussions on regional and national mechanism-building, specifically:

- national human rights mechanisms
- regional human rights mechanisms
- the procedural effectiveness of regional human rights mechanisms; and
- the multi-level architecture of human rights mechanisms.

The Main Rapporteurs of this Seminar Report are Kieren Fitzpatrick and Michael O’Flaherty. Working Group Rapporteurs Professor Dr Florence Benoit-Rohmer and Ray Paolo J. Santiago also contributed to this Report, as did Agnes Flues and Benjamin Lee. The report reflects the views and opinions expressed by Seminar participants; the authors gratefully acknowledge their contributions. The views expressed do not necessarily reflect those of the Asia-Europe Foundation, the Philippine Department of Foreign Affairs, the Raoul Wallenberg Institute or the French Ministry of Foreign and European Affairs.
The following key messages emerged from Working Group discussions.

**Human rights start at home**

Each state has the responsibility to protect and to promote human rights, to prevent human rights violations, and to build mechanisms and procedures to operationalise human rights. Given their unique and important role, NHRIs should have as broad a mandate a possible, as stipulated by the Paris Principles.

**A three-level approach to human rights promotion and protection**

Participants advocated a three-level approach to human rights promotion and protection at the national and regional levels. This included: (a) human rights complaints-handling mechanisms as a driver for social change, particularly when traditional systems are weak or susceptible to corruption; (b) the continuing organic development of human rights in law and jurisprudence, taking into account contemporary human rights challenges; and (c) education, awareness-building and dialogue, including through the development of specific programs for public officers (state officials, members of parliament, lawyers and judges, diplomats, military, police and security forces) on human rights, the system of human rights protection, and the role of human rights defenders who are vulnerable to attack and reprisals.

**Complementarity and competition - coherence of national, regional and international frameworks**

Participants called for coherence between the national, regional and international human rights frameworks to avoid fragmentation of human rights standards. Recognising that human rights implementation relies on all organs of society, participants emphasised the discrete yet complementary roles served by regional human rights systems, states, NHRIs and civil society organisations.

**Accountability, monitoring and capacity-building in order to inspire public confidence**

Participants underlined the importance of accountability, monitoring and capacity-building to inspire public confidence in institutions. While compliance with the Paris Principles is an important determinant of NHRI effectiveness, NHRIs are also reliant on other state and societal institutions and agencies that support human rights, such as the courts and the media. Human rights mechanisms at every level need to be visible, accessible, transparent and accountable. The delivery of effective remedies is critical to public confidence.
Finally, participants called on the Asia-Europe Foundation (ASEF) and ASEM Members to ensure the dissemination and, where relevant, the implementation of Seminar outcomes.

II. Seminar Report

A. Overview

The relation between universal/United Nations (UN) and regional human rights arrangements can be described as complex. Regional mechanisms exist in Europe (Council of Europe since 1950 and the Organisation for Security Cooperation in Europe (OSCE) through, among others, its Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities, and now the European Union (EU)), Latin America (Organisation of American states since 1969) and Africa (Organisation of African Unity now African Union since 2002) including an Arab system under the auspices of the Organisation of Arab states.

Under both universal and regional arrangements, obligations of the states arise through the ratification of treaties or with the emergence of custom, general principles or precedents. There can be differences in the level of protection offered by global and regional standards and mechanisms, but those seeking redress (individuals, groups, non-governmental organisations (NGOs), etc.) will eventually have the final say through their selection of standards and a monitoring avenue that offers them the best and most effective protection or remedy.

The recent creation of a regional human rights mechanism in Asia, namely the ASEAN Inter-governmental Commission on Human Rights (AICHR), is therefore a stimulating development. ASEAN mechanisms for the protection of women, children and migrants also provide an opportunity to analyse new experiences and contribute to the development of regional mechanisms.

While long-standing, the European Court of Human Rights faces the challenge of a high volume of cases and a need for improved remedies at the national level, despite the entry into force of the 14th Additional Protocol to the European Convention on Human Rights (ECHR) intended to simplify and expedite processing of cases. The European human rights architecture needs to address the implications of the Lisbon Treaty, the expected accession of the EU to the ECHR and the legally-binding nature of the Charter of Fundamental Rights.

National human rights institutions (NHRIs) are independent organisations supported and established with a constitutional or legislative mandate to promote and protect human rights. NHRIs generally better understand national circumstances and local challenges. They can be the best-placed organisations
(nationally or internationally) to monitor and evaluate the human rights situation in the country. The standards established by the UN - the Paris Principles⁴ - outline a broad human rights mandate and a wide range of specific responsibilities for the creation and operation of NHRIs. The majority of ASEM countries do not have NHRIs and of those that do, not all entirely meet the Paris Principles.

A recent Office of the High Commissioner on Human Rights (OHCHR) study (2009) has found, however, that NHRIs’ global engagement with international and regional mechanisms remains significantly underdeveloped and reflects limited familiarity with these systems. While NHRI participation in the Universal Periodic Review (UPR) process of the UN Human Rights Council was considered to be “high”, interaction with treaty bodies was described as “moderate”, interaction with Special Procedures mandate holders as “low” and interaction with other international mechanisms as “minimal”. Less is known about the interaction between the region and NHRIs or other national institutions/agencies involved in human rights promotion and protection.

The main objective of the 11th Informal ASEM Seminar on Human Rights, on Regional and National Human Rights Mechanisms was to facilitate a dialogue on regional and national mechanism-building. Specifically, the Seminar aimed to develop recommendations to strengthen regional and national mechanisms in Asia and Europe.

**Cross-cutting questions:**

1. How do regional and national human rights mechanisms promote the principles of universality, inalienability and interdependence of rights?

2. How have economic, political and societal changes in the last 30 years had an impact on human rights protection?

3. What are state obligations with respect to human rights promotion, protection, fulfilment, as well as in the prevention of violations?

4. Should regional human rights systems serve as an additional forum for appeal (the “fourth instance”) in the event of failure of the domestic system to protect contested civil and political rights?

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5. How are regional and national mechanisms relevant to the question of the right to development as a collective reference to economic, social and cultural rights?

B. Working Group 1: National Human Rights Mechanisms

The first Working Group’s discussion of national human rights mechanisms focused on the roles, standards and effectiveness of NHRIs, and their relationship with other state agencies. Developed by NHRIs in 1991 and subsequently endorsed by the then UN Commission on Human Rights and the General Assembly, the Paris Principles are the authoritative international minimum standards for NHRIs. Their adoption has proved to be a watershed moment for NHRIs, with the number of NHRIs around the world increasing exponentially since 1993.

The Group’s discussions were guided by six questions, each of which is set out below. Participants viewed the dialogue as an opportunity to develop relationships, exchange views and to share respective experiences from Asia and Europe. The achievement of formal consensus on discussion points was considered a secondary priority.

Do we have to review the Paris Principles?

There was broad agreement among participants that the Paris Principles should not be formally reviewed due to the consequent difficulty that could arise in reaching consensus on new normative standards for NHRIs. Rather, participants felt that the development of NHRI best practice examples, complemented by the continuing interpretation of the application of the Paris Principles, would ensure their continuing relevance and organic development as a dynamic set of norms. Since the adoption of the Paris Principles there now exists 20 years’ worth of collective experience as applied to the establishment, structure, roles and functions of NHRIs, and to the appointment of officers.

Participants viewed the work of the International Coordinating Committee of National Institutions (ICC), and in particular its designated accreditation body – the Sub-Committee on Accreditation (SCA) - as a valuable and rich source of information. Participants stated that the SCA’s findings and recommendations with respect to NHRIs and the application of the Paris Principles should be promoted and widely disseminated to all key stakeholders.

Finally, given the multiplicity of types of NHRIs that exist, participants stressed that the Paris Principles should be seen as minimum standards for the establishment and strengthening of NHRIs; a floor rather than a ceiling.
I. How do we measure the efficiency and effectiveness of NHRLs? From experience, what are the factors of success?

Participants agreed that Paris Principles compliance is critical to NHRI effectiveness. Emphasis was placed on the important role that the ICC’s SCA performs. The ability of external stakeholders, namely civil society organisations (CSOs) and NGOs, to contribute to the accreditation review of NHRLs was welcomed. It was acknowledged that Asian CSOs and NGOs have made much better use of this opportunity than their European counterparts.

Participants recognised that a number of other factors beyond formal compliance with the Paris Principles enhance the effectiveness of institutions. These include quality of leadership, the transparency of decision-making and operations, the accountability of the NHRI to various stakeholders, and the credibility of the institution in the eyes of the public.

Participants referred to the importance of developing indicators to assess the efficiency and effectiveness of NHRLs. The work of the Asia Pacific Forum of National Human Rights Institutions (APF) in conducting capacity assessments of its member NHRLs in partnership with the United Nations Development Programme (UNDP) and the OHCHR was identified as a regional level model for evaluating NHRI efficiency and effectiveness. Group members also acknowledged the important role that civil society performs, including the Asian NGO Network on National Human Rights Institutions (ANNI), in assessing NHRI efficiency and effectiveness.

Finally, it was stressed that NHRI effectiveness also depends on the strength and functioning of other state institutions and agencies, such as the courts.

II. Do governments and other national authorities (e.g. parliament, judiciary) effectively take into account the advice of the commissions?

Participants stated that given that NHRLs do not generally have binding decision-making powers, it is important for them to establish good working relationships with other national authorities, including the courts. Participants identified use of the judicial system as an effective tool for the implementation of NHRI recommendations and the achievement of systemic change. This is particularly the case for those European NHRLs that are mandated to access and contribute to the work of judicial systems and therefore have access to the decisions and jurisprudence of the European Court of Human Rights. It was noted, however, that some courts might be reluctant to implement the decisions of NHRLs with quasi-judicial functions, given that their decision-making processes are not bound by the strict evidentiary burdens that apply to the courts.
Participants stated that NHRI experiences of engagement with other national authorities, namely the Parliament and the Executive, have been mixed. Examples were given from both Asia and Europe of formal NHRI recommendations being ignored by these bodies.

Participants also stressed that NHRIIs should be proactive in their advocacy with national authorities, and recognised that the implementation of NHRI recommendations is strengthened when supported by other stakeholders such as the media, CSOs, and UN human rights experts.

III. What kinds of rights typically fall within the scope of NHRIIs? What new areas have emerged?

The scope of NHRI mandates typically includes the international human rights treaties to which the state is a party, as well as national laws that address human rights. In the main this would include the core human rights treaties, which cover a range of civil, cultural, economic, political and social rights, as well as additional protections for particular groups of persons (such as children, women, persons with disabilities and migrant workers).

Participants noted that some NHRIIs with limited mandates (for instance, only civil and political rights) had brought creative approaches to the interpretation of their mandates, enabling them to address other categories of rights. It was also acknowledged that NHRIIs could apply non-binding instruments, such as declarations, to their work.

Participants called for NHRIIs to be given as broad a mandate as possible. This should include oversight of the police, military and intelligence services. As to the question of new areas of rights, it was noted that NHRI mandates have expanded through the express recognition of their role as mechanisms for the implementation of human rights protection at the national level under the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Participants also discussed the implications of new human rights challenges on NHRIIs in performing their mandates. These challenges included biomedical and informational technological developments, the global financial crisis, and cross-border and transnational issues, such as migration and trafficking in persons.
IV. What role could civil society play to foster national promotion and protection of human rights? What kind of cooperation is needed between NHRIIs and the business sector?

Participants acknowledged that NHRIIs and civil society have discrete yet complementary roles. Civil society was described as the eyes and ears of the people, giving voice to the human rights issues that affect the most disenfranchised in society. Identified roles performed by CSOs included the provision of paralegal assistance, the documentation of human rights abuses, and constructive engagement with both government and NHRIIs, while also serving as a watchdog.

The UPR process was highlighted as a positive example of NHRI and civil society cooperation. In the Asian region, a regional meeting between CSOs and NHRIIs held in Sri Lanka in 1998 produced a set of best practice guidelines for NHRI and CSO cooperation called the Kandy Declaration.5

As to the type of cooperation needed between NHRIIs and the business sector, participants emphasised that NHRIIs can play a unique and critical role in preventing and responding to human rights violations committed by corporations. Discussion centred on the role of NHRIIs in supporting the Guiding Principles6 developed by the then Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. These issues were addressed in depth at an Asia-Pacific regional conference on Business and Human Rights held in Seoul, Korea, in October 2011.

V. What role do other national institutions and agencies (domestic judiciary, ombudsman institutions and other relevant agencies) play in human rights protection?

At the outset, it was stressed that many Ombudsman’s institutions are NHRIIs. Participants also recognised that a variety of state agencies perform specific roles in human rights protection, and that cooperation between these agencies is essential to avoid duplication and other inefficiencies. This was considered to be particularly true for Europe, where countries have an array of state institutions that address human rights to meet both national and regional human rights


obligations. Discussion followed on the relative merits of a single consolidated NHRI in countries versus the disaggregation of human rights responsibilities to different state agencies, without any clear and definite conclusion.

C. Working Group 2: Regional Human Rights Mechanisms

I. Political or jurisdictional mechanisms?

An idea that repeatedly arose in discussion was the idea of the heterogeneity of regional human rights mechanisms. They differ in nature and in effectiveness. One can distinguish between different situations. A political mechanism such the OSCE seemed to some Asian participants to be more suitable than a jurisdictional one, but this view was not shared by all. With 56 participating states from Europe, the OSCE forms the largest regional security organisation in Europe. What seemed particularly attractive to the participants is the fact that decisions are taken by consensus on a politically binding basis. It offers a forum for political negotiations and decision-making in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation. It also deals with other areas that are related directly and indirectly to human rights, including national minorities, democratisation, policing strategies, counter-terrorism and economic and environmental activities.

The European system of human rights protection, established in the framework of the council of Europe, is a jurisdictional mechanism which, for some participants from ASEAN, seems too advanced to be adapted, in its entirety in Asia at the moment as it is a complex system that has evolved in a very specific context over half a decade. The founding states of the Council of Europe (CoE) drew up the ECHR, which entered into force in 1953. This Convention is the central document of the CoE and established an effective enforcement mechanism for human rights protection by setting up the European Court of Human Rights as a supervisory body. It monitors state compliance with the ECHR and has an influential role by interpreting the ECHR and creating a body of jurisprudence. Judgments are legally binding for states and may provide compensations for damages suffered by claimants.

Participants underlined the fact that the European Court is a victim of its success. Since it was established, the Court has already delivered more than 13000 judgments finding states in violation with the ECHR. As a result of the enormous number of applications being lodged, coupled with the ever-growing backlog of pending cases, the European Court encounters difficulties to deliver judgments within a reasonable time. Protocol 14 which entered into force on 1 June 2010 tries to remedy the situation by introducing a new condition of
admissibility according to which the applicant should not have suffered “a significant disadvantage”. The composition of the judicial formations of the Court has also been modified to improve its capacity of filtering of applications and of accelerating their judgment.

They also suggested that the multiplicity of mechanisms for the protection of human rights in Europe posed a problem. The EU adopted, in 2000, the European Union Charter of Fundamental Rights which sets out in a single text the whole range of civil, economic, political and social rights of European citizens and all persons resident in the EU. The ECHR is the central reference point for the European Court of Human rights and the European Court of Justice in ensuring the jurisprudential complementarity of their decisions.

II. The contributions and functions of regional human rights mechanisms

Participants viewed the establishment of a regional system of human rights protection in ASEAN as a good opportunity to establish a mechanism based on common principles as well as states’ human rights obligations. Participants also viewed regional human rights mechanisms as more in touch with regional sensibilities than international ones. They are in a position to set minimum standards for the region. Regional mechanisms allow for reforms that correspond to the needs of the particular region. They can also find solutions to violations of human rights that are adapted to the region and their member states, while respecting international human rights standards and as such, serve as a bridge between national and international human rights bodies.

Participants agreed that regional human rights mechanisms should, at a minimum, serve as a platform for political dialogue between member states as well as between states and civil society. Through the facilitation of dialogue, regional mechanisms could also be useful tools for building capacity at the national level.

Regional mechanisms should also work to prevent violations of human rights. In this case, the evolution of regional courts that sanction states that violate their human rights obligations is an important step, but they do not constitute the only available tool. Additional tools for human rights protection include the establishment of offices such as the High Commissioner on National Minorities set up in the Framework of OSCE or the Commissioner on Human Rights of the Council of Europe, who exercise a political or moral influence.
The ideal solution is that regional mechanisms for the protection of human rights leads to an evolution of national norms, mechanisms and legislation and the development of policies or practices that better protect human rights as it is often the case in Europe when the Court of Strasbourg finds that a state has violated the ECHR. In the framework of the ECHR, the obligation to abide by a judgment includes the requirement to ensure that measures are taken which achieve, as far as possible, restitutio in integrum for the applicant. However, on a more general level, the obligation also includes the prevention of violations similar to those found by the Court. General measures which may be necessary, include constitutional changes or legislative amendments, changes in the case-law of the national courts, as well as practical measures, such as the recruitment of judges or refurbishing obsolete prison facilities.

Some participants also underlined the important role that regional mechanisms serve as an additional source of recourse where national remedies have been exhausted, providing a sense of security and hope especially if national mechanisms are unable to protect the rights of the citizens of member countries. They also serve as a tool for checks and balances with regard to the protection of human rights by state authorities by monitoring the fulfillment of state obligations and exerting pressure on national governments to comply with and uphold international human rights norms. Regional mechanisms might also be in a position to hold non-state or transnational actors accountable for human rights violations when national governments are unable to.

Also discussed by the Group was the current effort to develop the ASEAN Declaration on Human Rights (ADHR). Participants stressed that the AICHR should refer to the Universal Declaration on Human rights when drafting the ADHR, and should be careful not to undercut it. While the AICHR should also take into account the specificities of the ASEAN region, it must be emphasised that human rights are universal and are not subject to regional particularities. Some participants felt that the latter approach would undermine the development of international human rights law and standards that has taken place over the last the last six decades. If culture and tradition govern state compliance with international standards, then widespread disregard, abuse and violation of human rights could be given false legitimacy. Ultimately, international laws should be used as the basis for determining the responsibilities of both regional mechanisms and the state (even at the local government level) with regard to the protection and promotion of human rights.
III. Obstacles which could affect the functioning of regional human rights mechanisms

The group highlighted the danger of regional mechanisms being used as “window dressing” without any sincere political commitment. They stressed that regional bodies should treat existing standards as a minimum and that they should maintain their independence and commitment to upholding internationally recognised human rights standards.

The Group also discussed some specific obstacles that may affect the functioning of the regional human rights mechanisms. Political and cultural diversity are certainly the main elements that explain why the establishment of such mechanisms encounters difficulties, especially in their early stages. The Asia-Pacific region is arguably the most culturally diverse in the world. Some participants argued that the Asia-Pacific may be too heterogeneous to enable a regional human rights system to function effectively.

The participants acknowledged the historical, social, cultural and linguistic diversity of the ASEAN region in particular but maintained that these differences should not hinder the promotion and protection of human rights. ASEAN will still have to uphold international human rights standards. The ADHR, which will be a political document, is expected to add value to existing international standards. Participants also stressed the need for a clear time-frame for the development of the ADHR and a road map for its further development into a legally binding document.

One prominent obstacle to the effective functioning of any human rights mechanism is the lack of political will. The effectiveness of a regional mechanism is in fact a function of the will of the states to cooperate meaningfully with all stakeholders, civil society in particular.

Some members of the Working Group addressed the question of the sovereignty of states and of the principle of non-interference within the internal affairs of states which is considered to be a constraint to the protection of human rights. In the AICHR’s terms of reference determined by Foreign Ministers, on 20 July 2009, respect for the sovereignty of the member states and of the principle of “non-interference in the internal affairs of states” were mentioned. Participants recognise, however, that the primary responsibility for the promotion and protection of human rights rests with each member state. On this point, some members of the Working Group insisted that flexibility is needed where human rights are concerned as there is a fine balance between the sovereignty of the state and its international obligations.
For many participants, there is a common understanding that the lack of binding requirements for independence and expertise of any human rights mechanism is considered to be a constraint on the efficiency of the mechanism. In the case of the AICHR, some participants felt that members of the Commission should be independent from their governments in order to enhance the AICHR’s efficiency and to reinforce its authority and legitimacy. Some participants felt that any human rights protection system has to be independent in order to be efficient. One cannot expect an accurate verification of the status of protection of human rights if such verification were performed by an organ composed of non-independent experts. Such an evaluation or check must thus be performed by independent experts. Ideally, members of regional human rights mechanisms should be elected, in order to guarantee their independence.

Three issues which are relevant to the effective functioning of the AICHR were observed by some participants, namely a) the ability of individuals to access the AICHR; b) decision-making by consensus, (which could also present important challenges to the functioning of AICHR) and, c) the participation of civil society. In general, a lack of engagement with civil society could be seen as an obstacle to the efficient functioning of regional human rights mechanisms. The participants agreed that the success of any regional body would be unlikely without the participation of civil society groups and encouraged ASEAN and the AICHR to be more active and inclusive in their engagement with civil society. The participants concluded that there was a need to develop a clear framework for civil society engagement in this context.

In order to facilitate the development of regional mechanisms and to avoid the obstacles mentioned above, participants recommended the establishment of a regular platform for Asia and Europe to learn from each other. Participants were of the opinion that while ASEAN could learn from Europe’s experiences in the establishment of its own regional mechanisms, Europe could gain valuable insights from ASEAN’s current efforts as well.

IV. States’ obligations and non-state actors’ compliance

In principle, states are supposed to be the main actors when implementing human rights standards where international treaties are concerned. They do this through exercising legislative, executive and judicial powers. Laws, decrees and judgments should comply with and domesticate international human rights law and jurisprudence. States also have international responsibilities vis-à-vis international human rights conventions to which that state is party. They have the duty to monitor the performance of regional human rights mechanisms to which they belong.
states should ensure that victims of human rights violations have access to justice, particularly when state officials, such as the police, security and armed forces, are the perpetrators of the violations. Impunity must be removed.

States have the obligation to respect human rights but also the duty to protect people against human rights violations. States must build functional and effective judicial systems and create structures necessary for the promotion and protection of human rights in order to be able to safeguard the rights of their citizens. As stated in article 8 of the Universal Declaration of Human Rights, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Local authorities are responsible for human rights at a sub-national level. They often play a pivotal role as frontline providers of essential services, such as education and housing, health care and other social services, but also in planning, policing and maintaining the social environment necessary for the respect of human rights. They are also at the frontline of combating discrimination and promoting equality, given their often considerable powers in the fields of education, housing, health, transport or employment as well as social welfare and housing. It is necessary to reflect on the role of local authorities in creating a discrimination-free environment and in protecting minorities and vulnerable persons. It is the responsibility of the state to ensure the compliance of these crucial local authorities with international and regional human rights standards.

The issue of holding non-state actors accountable for human rights violations is complex. Participants considered the social responsibility of companies to be an important topic. Companies should behave ethically and contribute to economic development while improving the quality of life of employees and their families as well as the local community and society at large. Companies should create a positive impact on society while doing business. States should ensure that the actions of non-state actors (e.g. private companies) comply with national laws.

Perpetrators of human rights violations can also be private military and security companies which provide services and expertise, similar to those of governmental or police forces, to private firms on a smaller scale. They can also be employed by private companies to provide protection of company premises, especially in hostile territories.
It is important to engage society in order to raise awareness of the necessity to protect human rights. In this context, NGOs and NHRIs play crucial roles. They promote human rights education and awareness, in part by publishing and disseminating manuals and other materials on challenges, threats and obstacles to the full enjoyment of human rights. They also encourage the states to ratify international or regional human rights instruments while ensuring that national laws are in accordance with them. They also strive for the protection and realisation of human rights and fundamental freedoms at the national level. NHRIs and NGOs can also assist people to find remedies to human rights complaints, including by working with the government to achieve individual redress and systemic change.

The state has a fundamental role to play in reinforcing and promoting awareness of human rights through its educational institutions. Human rights education is a powerful tool for building inclusive societies respectful of human dignity. Comprehensive knowledge of human rights by the largest possible number of women and men is essential to make human rights a reality in every community and in society at large. As stated in the Universal Declaration of Human Rights (article 26), (2) “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”. Educational institutions are also key actors in connecting civil society with representatives of regional systems, in order to create mutual exchanges and general knowledge on human rights. They also should contribute to the dissemination of knowledge on major international human rights instruments.

Not only the general public, but also government officials including policemen, soldiers, judges, lawyers and teachers, should be educated on human rights. For this purpose, it is important that universities, especially the law faculties, offer human rights courses.

V. Recommendations

1) ASEF should broaden its scope by expanding the number of issues being discussed and by providing an informal forum for discussion.

2) ASEM could act as a platform for sharing experience regarding the implementation of the National Plans of Action for the promotion and protection of human rights.
3) The key driving factor behind the EU forming a consensus on human rights was to prevent new wars. The integration process is similarly motivated. There is a need on the part of ASEAN to search for and build consensus on certain common issues. The issue of poverty, for example, could be a starting point for the forming of consensus as it is quite widespread across the Asian region.

4) The EU and ASEAN need to share experiences in terms of operationalising a human rights approach, with a clear framework for NGO participation and which operates at national and regional levels. NGO participation is needed to make the regional and international human rights more democratic and a “bottom up” rather than being a “top down” approach.

5) ASEAN focuses more on “promotion” than “protection” of human rights. There is a need to focus on the “protection” aspect as well.

6) The evolution of the AICHR into a more effective mechanism needs to be supported by ASEAN member states.

7) There is a need for more sharing of experience between the EU and ASEAN.

E. Working Group 3: Procedural Effectiveness of Regional Human Rights Mechanisms

Addressing the question of the procedural effectiveness of regional human rights mechanisms, the third Working Group’s discussions, while informed by a list of guiding and cross-cutting questions, were informal and free-flowing. The Group’s guiding questions included: (i) what institutional features make a regional mechanism effective?; (ii) what mechanisms/tools are available for redress in the event of human rights violations and are they effective?; (iii) how can the complexity of some systems be addressed?; (iv) how can the challenge of determining jurisdiction (with respect to international and national levels) be addressed?; (v) what role does the right of individual access to complaint procedures play in the system?; (vi) should there be an equivalent of the Paris Principles to guide the formation and operation of regional mechanisms?

Participants identified the European human rights system as an effective mechanism but viewed it as a victim of its own success. When compared to the UN human rights system, participants considered the European system to be more effective in terms of compliance given that the Council of Europe has both an international tribunal that makes binding decisions as well as a supervisory mechanism that executes these decisions. Concerns were raised, however, at the lack of implementation of and compliance with some decisions of the European
Court of Human Rights and the consequential impact that this has on access to justice. Participants also identified backlog as a major challenge to the European system, fuelled by the exceptionally high proportion of inadmissible (reportedly 95 percent) and repetitive cases. One proposed way of addressing repetitive cases is the pilot judgment procedure which would enable the Council of Ministers (the CoE organ which is mandated to supervise the execution of the judgements) to pressure states to introduce remedies at the national level. Participants also pressed that - as far as possible - only the most serious human rights violations should be referred to regional courts, underscoring the need for strong domestic mechanisms.

The Working Group discussed the differences between Asia and Europe, with participants from Asia arguing that the economic disparities between Asian states has made it difficult for a uniform regional approach to be brought to the address of human rights. While participants viewed recent developments in Asia - namely the establishment of AICHR - as promising, it was noted that the Commission has deficiencies: it reports directly to ASEAN Foreign Ministers; it has neither inquiry nor complaints procedures; and AICHR members represent and remain accountable to their respective governments while in office. AICHR’s scheduled 2014 review was seen as an opportunity to extend the Commission’s functions and to develop clear modalities for the participation and contribution of CSOs and NHRIs to its work. Participants reported that AICHR’s establishment has generated some interest in other Asian sub-regions, namely amongst the members of the South Asian Association for Regional Cooperation (SAARC).

While participants from Asia welcomed the opportunity to learn from European experience, they also emphasised the value of “South to South” exchanges in combating the cultural relativist arguments that some Asian countries have used to challenge the universality of human rights.

The Group agreed on the following observations and recommendations, which it reported back to plenary:

- Access to justice is paramount. This includes ensuring that regional human rights mechanisms are accessible, and that the decisions of judicial bodies are clearly articulated and implemented.

- Adequate resources are critical to the effectiveness of regional human rights mechanisms. Regional mechanisms should be able to deliver to the expectations that they create.
• Periodic exchanges between different regional human rights systems would promote the development of best practice. Meetings of jurists would facilitate the peer-to-peer sharing of experiences on jurisprudence, cases, and case-handling.

• Credibility, transparency and accessibility must be key institutional features of regional human rights mechanisms. There is a need for both claimants and states to have confidence in their processes and capability. This should include information-sharing and constructive dialogue with NHRIs, CSOs and other relevant stakeholders, while observing the importance of regional mechanisms not being over-reliant on these bodies.

• Regional mechanisms should be better equipped to deal with potential trans-border and transnational issues.

• Regional mechanisms should work to develop general measures to address systemic human rights challenges.

• There is a need for strong and effective domestic mechanisms to address human rights violations. Regional human rights mechanisms and bodies should support the work of these national mechanisms.

• Non-judicial mechanisms for the resolution of human rights complaints at the national level are very important given that not all judicial systems function effectively.

• The compartmentalisation or “boxing” of human rights into discrete categories (such as civil and political or economic, social and cultural) should be avoided as this undermines the indivisibility, interrelatedness and interdependence of human rights.

• There is a need to raise awareness of human rights through human rights education. Examples of awareness-raising activities include the holding of human rights film festivals, the production of human rights publications, linkages between universities, CSO networks, and the integration of human rights subjects into school curricula.
F. Working Group 4: Multi-level Architecture of Human Rights Mechanisms

The fourth Working Group decided not to work with the standard questions, but to identify themselves the key issues with regard to the topic of multi-level architecture of human rights.

On this basis the group identified five questions:

I. How to promote coherence of national, regional and international frameworks

II. How to promote implementation of findings at the national level

III. How to promote public confidence in human rights protection mechanisms

IV. What is the relationship between constitutional and treaty rights

V. What is the scope and what are the limits for a multi-stakeholder approach to human rights protection?

The Working Group decided to work in sub-groups that would then report to the plenary meeting of the Working Group.

I. How to promote coherence of national, regional and international frameworks?

The issue of coherence requires attention to substantive law and procedures at the national, regional and international levels. Discussion of this topic has to take account of any existing initiatives such as the recent UN sponsored meetings of regional and international human rights mechanisms (2009, 2010). Another important and very recent initiative is the Dublin process on treaty body strengthening that issued the Dublin II Outcome Document.

Among the factors promoting incoherence are the following: a) where national courts contradict the international standards; b) where the differences in the remit of the regional and the UN mechanisms create protection gaps; c) where different organisations with different mandates with regard to human rights operate in the same region; d) when a region fails to honour international human rights in an indivisible manner- such as when it favours civil and political rights over economic, social and cultural rights.
The various mechanisms will be strengthened and better calibrated to each other if they allow a meaningful space for NGO participation. In this regard, care must be taken to ensure that that space is not occupied by government-organised NGOs (GONGOs) rather than NGOs.

The fact that there are higher levels of protection for some rights at the regional level is not a problem. The regional space can provide the laboratory for new rights that are subsequently taken up internationally (for instance regarding data protection).

Factors to be taken into consideration in promoting coherence include the following: a) regional initiatives must always conform to the human rights principle of universality and, at a minimum, to the Universal Declaration of Human Rights; the international standards must serve as the minimum acceptable level of protection, including at the regional level; b) work of coherence must be a continuing one that recognises the need for human rights protection systems to evolve and to improve; coherence at the regional level requires respect for the principle of subsidiarity; c) it is agreed that the doctrine of margin of appreciation has an important role to play at the regional level. Its application at the international level is less clear (as the international standards establish a minimum) and it is always open to abuse; d) the system of obligatory referral of questions to the European Court of Justice is another useful tool to promote coherence at the European regional level; e) another European initiative that promotes coherence is the EU Charter of Fundamental Rights which serves as a bridge between the EU and the ECHR.

In promoting coherence it is important not to overplay the problem of fragmentation. A diversity of systems of protection and related jurisprudence can serve to provide better coverage and protection of human rights.

II. How to promote implementation of findings at the national level?

The focus of the sub-group is on the national entities involved in the implementation at the national level, although the important role of such international mechanisms as UPR (which, as a multi-stakeholder mechanism, has considerable potential) is recognised.

It is recognised that the primary responsibility for implementation lies with the state. At the national level there are implementation roles to be played by the executive, the legislature, the judiciary, civil society, political parties, the media and others.
With regard to parliament, there is a continuing need for human rights training and awareness-raising as well as for the establishment of human rights commissions and committees.

Concerning government, it is important that where human rights ministries exist they not be used as a way of side-lining the human rights issues.

With regard to the judiciary, it has to be acknowledged that international human rights arguments often fail. Much more effort is needed to provide information and training to the judiciary on human rights. The training should also be extended to lawyers so that human rights arguments are actually made in court.

The role of civil society is critically important. For it to be able to play its proper role it is necessary to recognise, respect and empower the civil society sector. States should be very cautious in seeking to regulate the sector. The safety of human rights defenders must be given the highest priority and all reprisals against them need to be vigorously prosecuted.

NHRIs can play a unique role in promoting implementation since they serve as an “honest broker” between civil society and government.

The general population can also play a valuable role in implementing human rights. In this regard the Japanese system of “human rights volunteers” is very interesting, as is the other Japanese initiative of “human rights museums”.

All stakeholders will be empowered if judgements reports and findings, including those of treaty bodies, UPR, Special Procedures and courts are widely disseminated by the state and translated into national languages.

Finally on this topic the group discussed whether there is any merit in having international expert bodies undertake a ranking of countries according to their levels of human rights compliance. It was accepted that this idea has a lot of merit but its application could be troublesome. It might be less sensitive or difficult instead to have a body that tracks global trends of compliance. Any initiative of these kinds needs to be based on data generated through reliable indicators. Good work is being done on the development of such indicators but it remains incomplete.
III. How to promote public confidence in human rights protection mechanisms

At the outset the group cross-referenced the promotion of public confidence to many of the points made with regard to the implementation of human rights findings.

At the heart of the promotion of public confidence is the principle of transparency. Human rights mechanisms at every level need to be visible, accessible and transparent in their working methods. The principle of transparency demands the right of access to public information. Secrecy laws and other restraints on access to information should be the exception and not the norm and employed very sparingly.

The concomitant principle of transparency is that of accountability. Human rights duty bearers must be held accountable for their actions. In general, confidence in human rights will be raised if perpetrators of abuses, including public officials are prosecuted and punished.

Public confidence in human rights mechanisms is enhanced when they deliver effective remedies that are actually enforced.

One idea to promote public confidence is for governments to publish an annual human rights report and for this to be debated in parliament. Promotion of public confidence will also be strengthened if and when overloaded human rights mechanisms are given the adequate resources. This is for example the case with the European Court of Human Rights.

Public confidence will also be enhanced if politicians and other commentators do not abusively use human rights discourse to achieve political ends or denigrate human rights for the same purpose.

The media play a critical role in promoting public confidence, but to play this role to the full they need extensive training on human rights in general and on their own role as a stakeholder.

IV. What is the relationship between constitutional and conventional rights?

It is recognised that the legal systems of the world are very diverse and there can be no one model of the relationship between constitutional and treaty rights.

What is important is that the highest standard of human rights protection is ensured be it in the constitutional or the treaty order.
While the monist/dualist framework of reception of international law is beyond the remit of our discussions, it is recognised that the monist model does a better job of bringing human rights home.

Regardless of systems in place, it is also very much in the interest of human rights to have a strong role for a constitutional or other such court.

V. Miscellaneous Recommendations

The role of education is fundamental to every aspect of the discussions. Rights holders must know of their rights if the system is to be used effectively and respected by all stakeholders.

For the same reasons, the importance of delivering human rights capacity building for civil society cannot be overstated.

All aspects of the matters under discussion recall the importance for states to consider adopting national human rights plans of action.

The various mechanisms will also be enhanced if more states were to accept the individual complaint procedures under the UN treaties.

G. Concluding Observations

The 11th Informal ASEM Seminar on Human Rights was dedicated to discussion of national and regional human rights mechanisms:

What are the appropriate minimum standards for these entities?

How can they better deliver to their mandates to promote and protect human rights, to ensure accountability and to provide relief?

How can they best collaborate with each other, with civil society, and with the UN’s human rights machinery?

How can they work together to ensure that regional and national laws and institutions do not undercut established international human rights standards?

Despite the diversity of their experiences and the plurality of their legal, cultural and political systems, participants agreed on a number of concrete observations and recommendations that addressed the above questions. These included the following:
Regional mechanisms

- While it is recognised that the legal systems of the world are very diverse and that there can be no single model for regional human rights mechanisms, regional initiatives must always conform to the human rights principle of universality and, at a minimum, to the Universal Declaration of Human Rights.

- The effectiveness of regional mechanisms is dependent on the willingness of states to support their work and to constructively engage with them.

- Coherence at the regional level requires respect for the principle of subsidiarity. The margin of appreciation also has an important role to play.

- The principle of non-interference with the internal affairs of states – by which the work of AICHR is bound, is a real constraint to the promotion and protection of human rights.

- Despite the European Court of Human Rights’ success, case volume and backlog remain challenges that the 14th Additional Protocol to the ECHR is yet to resolve.

- Periodic peer-to-peer exchanges should be arranged between representatives of regional human rights mechanisms. This will promote the development of best practices and support the organic development of human rights jurisprudence.

- Regional mechanisms must create meaningful space for NGO participation in, and contributions to, their work.

- While the Paris Principles may not be an appropriate model, there is value in exploring the development of minimum international standards for regional human rights mechanisms.

National mechanisms

- Human rights must start at home. NHRIs should be given as broad a mandate as possible, covering the full range of human rights and including oversight of the police, military and intelligence services.

- It was noted that the majority of ASEM members do not have NHRIs and of those that do, not all meet the requirements of the Paris Principles in full.
• The effectiveness of NHRIs depends on the strength of other state institutions and agencies, such as the courts.

• The Paris Principles should not be formally reviewed. Rather, the development of NHRI best practice examples, complemented with the continuing interpretation of the application of Paris Principles, will ensure their continuing relevance and organic development.

• NHRIs need to develop a clear framework for their collaboration with NGOs and CSOs.

• Local authorities should work on human rights issues as closely with the community as possible. These bodies are at the frontline of combating discrimination and promoting equality given their powers in the fields of education, health, transport, employment, social welfare and housing.

Participants also agreed that the provision of adequate resources is essential to the effective functioning of both regional and national mechanisms, and that the ability of these institutions to deliver effective remedies that are actually enforced is critical to public confidence.
BACKGROUND PAPER

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Background Paper

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Section 1: International framework

Since the adoption of the Universal Declaration of Human Rights in 1948, a wide array of human rights norms have been developed, and mechanisms for their promotion and protection have been established at international, regional and national levels.

1 United Nations human rights mechanisms

The United Nations (UN) Charter identifies ‘promoting and encouraging respect for human rights and for fundamental freedoms for all’ as one of the UN’s primary purposes. To this end, various bodies have been established, including Charter-based bodies (those created according to provisions of the UN Charter) and treaty-based bodies (those created under international human rights treaties).

1.1 Charter-based bodies

The Commission on Human Rights was created in 1946, as a subsidiary body of the UN Economic and Social Council (ECOSOC). The Commission was heavily engaged in human rights standard-setting and later authorised to examine violations of human rights, with an elaborate system of special procedures, country-oriented or thematic, to monitor states’ compliance with human rights norms, complaint mechanisms, and the Working Group on Situations, which

7 UN Charter art. 1, para 3.
8 UN ESC Res 5(I), UN Doc. E/RES/5(I) (16 February 1946).
10 The Commission on Human Rights established 30 special procedures, and as the Human Rights Council replaced it in 2006, the issue of renewal of these mandates was dealt with in the Appendixes of the Human Rights Council Resolution 5/1.
reviewed confidential reports on particular situations. The Commission's eroding professionalism undermined its capacity to perform the tasks entrusted, and with its credibility increasingly called into question, accusations of politicisation and double standards eventually led to the inclusion of human rights machinery reforms in the broad set of UN reforms. After extensive negotiations in the General Assembly, the Human Rights Council was created in 2006. Among the ten tasks assigned, the Council has prioritised four: Universal Periodic Review, review and supervision of special procedures and mandate holders, direction of the Advisory Committee, and administration of the confidential complaint system.

1.2 Treaty-based bodies

Ten treaties are generally considered to comprise the core of the UN human rights treaty system, and under each of the treaties, a committee of experts is established to monitor implementation by state parties. All but one of the treaty bodies review periodic reports submitted by states, and other functions performed by treaty bodies, although not common to all committees, include adoption of general comments or recommendations regarding the provisions of the various treaties, consideration of individual communications, and initiation of inquiry procedures.

15 GA Res 60/251, para 5, UN Doc. A/RES/60/251 (3 April 2006).
18 The Committee on Economic, Social and Cultural Rights was established by the UN Economic and Social Council.
With the growth in the number of international human rights instruments and the increase of ratifications, the reporting and complaints procedures have placed significant burden upon the UN, treaty bodies, and states parties. In order to more effectively promote and protect human rights, the modernisation of the treaty body system has been identified by the UN Secretary-General as a priority. Formal consultations have taken place during meetings of the committee Chairpersons and Inter-Committee meetings, and informal meetings and consultations involving different stakeholders have been held in Dublin, Marrakesh, Poznan, Seoul, Sion, and Pretoria, with a view to strengthening the treaty body system.

1.3 Other relevant UN bodies

In addition to Charter- and treaty-based bodies, many other UN-related bodies exclusively or partially deal with human rights issues. The High Commissioner for Human Rights is the principal UN official charged with the responsibility for UN human rights activities. The mandate is executed through the Office of the High Commissioner (OHCHR) and its field offices, and the OHCHR conducts technical cooperation with states and regions, produces publications facilitating human rights education, and supports the work of UN human rights bodies.

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20 U.N. Secretary-General, Strengthening of the United Nations: an agenda for further change, para 49, UN Doc. A/57/387 (9 December 2002).
29 http://www.ohchr.org
bodies. Additionally, the work of the UN General Assembly\textsuperscript{30}, Security Council\textsuperscript{31}, and Secretary-General\textsuperscript{32} often involve human rights issues. In addition, the UN High Commissioner for Refugees (UNHCR)\textsuperscript{33}, the United Nations Children’s Fund (UNICEF)\textsuperscript{34}, the United Nations Development Programme (UNDP)\textsuperscript{35}, and the recently established United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)\textsuperscript{36}, among others, also integrate or implicitly pursue human rights into their activities. Several specialised agencies of the UN, particularly the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO), have consistently engaged in the field of human rights. The ILO, for instance, has a successful and long-standing experience of monitoring the implementation of labour conventions, which extensively relate to issues of human rights.

2 Regional human rights mechanisms

Since the adoption of the first regional human rights instrument, the European Convention on Human Rights (ECHR) in 1950, different regions of the world have seen development of mechanisms for the promotion and protection of human rights. The African Charter on Human and People’s Rights is overseen by the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights, while the Inter-American Commission on Human Rights and Inter-American Court of Human Rights enforce and interpret the American Convention on Human Rights.

2.1 Historical developments in Europe

Regional human rights mechanisms in Europe are primarily established under the auspices of two institutions: the Council of Europe (CoE) and the European Union (EU). The Organisation for Security and Co-operation in Europe (OSCE) also undertakes human rights work. Further details are provided in Section 2.

\textsuperscript{30} Article 13 of the UN Charter explicitly stipulates that the General Assembly shall ‘initiate studies and make recommendations for the purpose of ... assisting in the realisation of human rights and fundamental freedoms for all’.

\textsuperscript{31} The Security Council often considers massive violation of human rights as threats to peace, thus falling under its authority under the UN Charter. See, e.g., SC Res. 661, UN Doc. S/RES/661 (6 August 1990).

\textsuperscript{32} Former and current Secretaries-General of the UN have emphasised the central role of human rights in their work. See, e.g., UN Secretary-General, supra note 13.

\textsuperscript{33} http://www.unhcr.org

\textsuperscript{34} http://www.unicef.org

\textsuperscript{35} http://www.undp.org

\textsuperscript{36} http://www.unwomen.org
The ECHR originally created a system of three institutions: The European Court of Human Rights (ECtHR), the European Commission of Human Rights, and the Committee of Ministers. This structure was transformed in 1998\textsuperscript{37}: the Commission was abolished and the Committee of Ministers no longer has the power to settle cases on the merits. The ECtHR now functions as a full-time institution that receives individual applications, delivers legally binding judgements, and issues advisory opinions at the request of the Committee of Ministers. Faced with increasing caseload, the ECtHR has entered into a review of its working methods. The CoE also supports the mandate of the European Commissioner for Human Rights.

In its early days, the EU placed little emphasis on human rights. In recent years, however, the European Court of Justice has developed increasing jurisprudence on fundamental rights, and human rights issues are an important component of EU dialogues with third countries. The EU’s accession to the ECHR is expected in the very near future\textsuperscript{38}. In 2007, the EU Fundamental Rights Agency (FRA) was inaugurated to replace the European Centre on Racism and Xenophobia, as the EU’s body of expertise on issues of fundamental rights and freedoms. With the entry into force of the Lisbon Treaty in 2009, the Charter of Fundamental Rights of the European Union became legally binding on member states.

### 2.2 Historical developments in Asia

In spite of calls advocating the establishment of a regional human rights mechanism\textsuperscript{39}, to date, a mechanism similar to those established in Europe, America, and Africa, has not been created in Asia-Pacific. However, the region has seen developments initiated by different actors. Targeting the Asia-Pacific region as a whole, since the 1990s, the UN, drawing on local expertise, has supported technical cooperation activities in the region, through workshops and assistance in the creation of national human rights institutions (NHRIs)\textsuperscript{40}. In addition, the Informal Asia-Europe Meeting Seminar on Human Rights series promotes dialogue between governments and civil ASEM society.

\textsuperscript{37} Protocol No 11 to the European Convention on Human Rights.

\textsuperscript{38} Protocol 14 to the European Convention on Human Rights.


At the sub-regional level, the Arab Charter on Human Rights was adopted in 1994 (revised in 2004), providing for the establishment of the Arab Human Rights Committee, mandated to monitor compliance. Progress has also been seen in recent years in the context of the Association of Southeast Asian Nations (ASEAN). The Working Group for an ASEAN Human Rights Mechanism was established in 1995. ASEAN subsequently adopted declarations on specific human rights issues, e.g. violence against women. In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated.

Asian and Pacific human rights organisations have also called on the South Asian Association for Regional Cooperation (SAARC) to take steps toward establishing a sub-regional human rights mechanism.

### 2.3 Trends and challenges in international and regional human rights regimes

Common trends and challenges can be observed throughout the development of international and regional human rights regimes since 1945.

Distinctions have often been drawn between different categories, or ‘generations’, of human rights: civil and political rights (1st generation); economic, social and cultural rights (2nd generation); and rights to solidarity, e.g. the right to self-determination (3rd generation). A fourth generation of human rights is arguably emerging along with new phenomena (e.g. rights related to the Internet). Yet, the principles of universality, interdependence, and interrelatedness of all human rights are repeatedly emphasised in both international and regional contexts.

Non-state actors have increasingly played an important role under international and regional human rights law. Civil society and NHRIs contribute to the development of human rights standards and promote the respect, protection and fulfilment of human rights at the international, regional, and national level. Discussions on human rights obligations of non-state actors have also emerged, particularly with regard to transnational corporations.

International and regional human rights systems have developed significantly over the past decades. Particularly, the UN human rights system and the ECtHR have both entered a review process, in order to facilitate effective operation with limited resources. Furthermore, with the fragmented development of mechanisms both within the UN and regional regimes, there arises a need for cooperation and coordination within and between different mechanisms so as to further improve the protection of human rights on the ground.

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Section 2: Regional arrangements

For historical and geographic reasons, there exists a wide disparity between the regional frameworks for the protection and promotion of human rights in Europe and Asia. The European system is vast and sophisticated, while in Asia no overarching regional framework exists. However, protection mechanisms are emerging at the sub-regional level.

3 European Regional Human Rights Mechanisms

The European human rights protection framework is remarkably complex and multi-faceted. Its evolution can at least be in part attributed to such considerations as: a) a recognition that strong human rights protection can serve as a bulwark against totalitarianism and fascism; b) an understanding to the extent of which economic strength is closely related to sturdy systems for the protection of human rights; and c) a widely held belief that Europe can only play a prominent part in world affairs to the extent that it acts as one. While considerations such as these have fuelled the growth of the European human rights institutions, it must also be acknowledged that the protection of human rights in Europe remains uneven across the region and that traditionally more attention has been paid to civil and political rights than economic, social and cultural rights. Considerable challenges also persist for the protection of universal standards across a wide range of diverse political and social contexts.

Three European inter-governmental organisations are concerned with the promotion and protection of human rights: the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE) and the European Union (EU). All three organisations were created after World War II; they form a concentric system of membership and geographical extension. All European sovereign states are members of the OSCE, most of them are members of the CoE and many are members of the EU. All three organisations are based on common European values of rule of law, democracy and human rights.

3.1 The Organisation for Security and Cooperation in Europe

The Organisation for Security and Cooperation in Europe (OSCE) has its origins in the Conference for Security and Cooperation in Europe (CSCE) of 1973 which led to the adoption of the Helsinki Final Act in 1975. The CSCE was an important instrument of detente during the Cold War between the Eastern and Western bloc. After the fall of the Berlin Wall and the collapse of the Soviet Union, participating
states looked upon the CSCE as a forum to address the emerging challenges. Its structures became more and more permanent until in 1994 it was transformed into the Organisation for Security and Cooperation in Europe.

The OSCE is an inter-governmental organisation, political in nature, that is primarily concerned with security and whose work focuses on early warning, conflict prevention, crisis management and post-conflict rehabilitation. While its mandate does not include the promotion and protection of human rights as such, the Organisation actively encourages respect for human rights as a tool for maintaining peace and security in the region. It adopts a comprehensive approach to security and operates in three dimensions: the politico-military; the economic and environmental and the human dimension. The OSCE recognises that lasting security is not possible without respect for human rights and fundamental freedom. It works in the areas of anti-trafficking, democratisation, elections, gender equality, human rights, media freedom, minority rights, rule of law and tolerance and non-discrimination.

One substantial difference from the other two main European regional organisations is that the OSCE was not established through legally binding treaties and therefore was not intended to be founded as a legal body. The OSCE’s human rights principles are political commitments, rather than legal rights and obligations. Nonetheless, the OSCE has been highly successful and part of its success is attributable precisely to its political as opposed to legal nature.

Today the OSCE is the largest regional inter-governmental organisation in the world, comprising 56 participating states that span three continents (North America, Europe and Asia).

### 3.1.1 Principal OSCE mechanisms for the promotion and protection of human rights

\(a\) **The Office for Democratic Institutions and Human Rights (ODIHR)**

Established in 1992 as part of the human dimension of the OSCE’s objectives, ODIHR is mandated 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’ . Its work focuses on five areas: elections; democratisation; human rights; tolerance and non-discrimination; and Roma and Sinti issues. ODIHR activities in these areas include: observing elections; strengthening the rule of law (judicial independence, access to the legal profession and justice, and criminal justice); reviewing legislation for compliance
with the OSCE principles; promoting freedom of movement and respect for the rights of migrants; fostering democratic governance with a focus on the regulation of political parties and the participation of women in national politics; strengthening the capacity of human rights defenders; implementing human rights education and training (e.g. on combating terrorism in compliance with human rights obligations); helping governments to combat hate crimes; promoting freedom of religion; assisting governments in advancing the rights of Roma and Sinti.

ODIHR employs nearly 150 staff from some 30 countries. Ambassador Janez Lenarčič of Slovenia has been the Director of ODIHR since 2008.

(b) The High Commissioner on National Minorities

The High Commissioner on National Minorities was established at the CSCE Helsinki summit in 1992 to address ethnic tensions and to prevent inter-state hostilities over national minority issues. The High Commissioner’s role is to provide early warning and take appropriate early action to prevent ethnic tensions from developing into armed conflict. The mandate focuses on minority issues that have a security dimension, alerting the OSCE when situations escalate over a certain level where his containment efforts are no longer effective. The High Commissioner conducts on-site missions for information gathering and fact finding and engages in preventive diplomacy, seeking to promote dialogue, confidence and co-operation among national minorities and government representatives. The mandate does not function as an ombudsman for national minorities nor receives complaints about human rights violations. The High Commissioner works mainly in confidence, exercising quiet diplomacy.

It should be noted that within the United Nations and the European human rights system, while the emphasis has been on the individual rights of the members of minority groups, certain group rights have also achieved recognition. In this sense, one of the main contributions of the OSCE High Commissioner has been the conclusion of a set of recommendations to promote the rights of national minorities, which are not legally binding, though bear great political influence. These are the Hague Recommendations regarding the Educational Rights of National Minorities; the Oslo Recommendations on the Linguistic Rights of National Minorities; and the Lund Recommendations on the Effective Participation of National Minorities in Public Life.

Since 2007 the High Commissioner on National Minorities is Knut Vollebaek of Norway. The Office of the High Commissioner is based in The Hague.
(c) The OSCE Representative on Freedom of the Media

The OSCE Representative on Freedom of the Media is the world’s only intergovernmental institution mandated to protect media freedom. It was established in 1997 to strengthen the implementation of the principles and commitments to freedom of expression and free media. Its main task is to act as a media watchdog, observing media developments in OSCE countries and responding rapidly to serious non-compliance with OSCE principles, intervening on behalf of media in trouble. Particular focus is given to: harassment, intimidation, incarceration and physical attacks, including murders of journalists and other members of the media; restriction of media pluralism; denial or neglect of investigative rights for journalists regarding access to government information; coercion of journalists to reveal their sources to the police; attempts to label offending or critical views as punishable ‘extremism’ or ‘hate speech’; criminalisation of journalists’ professional errors, including defamation and charges of assaulting the dignity of public figures; challenges facing new media.

The Representative acts through quiet diplomacy, awareness raising, public statements, etc. His office also conducts legal analyses of proposed and existing media laws. It also conducts assessment visits, during which government officials, journalists and NGOs are consulted. The outcomes of such visits are published in reports. In-depth thematic reports are also published to assist all OSCE states to comply with their media freedom obligations.

Since 2010 the OSCE Representative on Freedom of the Media is Dunja Mijatović of Bosnia and Herzegovina. The Office is based in Vienna.

(d) Other OSCE human rights mechanisms

Alongside the principal organs described above, mention should also be made of the Chairperson-in-Office Personal Representative to promote tolerance and combat racism, xenophobia and discrimination and the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

3.2 The Council of Europe

The Council of Europe (CoE) is the oldest of the three European regional organisations. It was established in 1949 to promote human rights, the rule of law and pluralistic democracy. Only states that recognise and practise these three fundamental values (pillars) can become members of the CoE. Today it has 47 member states.
3.2.1 Principal human rights promotion and protection mechanisms of the Council of Europe

(a) The European Convention on Human Rights

The ECHR was adopted in 1950 and entered into force in 1953. It is the first legally binding human rights treaty with a procedurally developed judicial mechanism of accountability. Its jurisprudence has been inspirational in the consolidation and practical realisation of international human rights standards. The ECHR is certainly inspired by the UN Universal Declaration of Human Rights adopted in 1948, but differs substantially from it in that it predominantly promotes and protects civil and political rights, excluding economic social and cultural rights. In 1950, the priority was to quickly adopt a non-controversial text that governments would accept at once, whilst pro human rights sentiments were high. Predominant values in Western Europe meant that the Convention was limited to civil and political rights essential for a democratic way of life, while economic, social and cultural rights were left for later negotiations. The Convention’s text has been over the years complemented by 14 Additional Protocols, which have both introduced extended substantive guarantees (including rights with a strong economic and social dimension) as well as reforms to the Convention’s enforcement machinery.

The ECHR is the international human rights treaty with arguably the most effective and successful enforcement mechanism. It provides for both state and individual applications. Any state party may bring an application alleging a breach of the Convention by another state party. More importantly, all states parties by ratifying the Convention accept the right of any person, non-governmental organisation or group of individuals, regardless of nationality, claiming to be a victim of a breach of the Convention to bring an application against it. Both state and individual applications are directed to the European Court for Human Rights (ECtHR), which is a permanent court composed by full-time judges. The Court decides in the first instance on the admissibility of the application. If it is admissible, the Court decides on the merits whether there has been a breach of the Convention, issuing a final judgement which is binding in international law. The execution of judgements by states parties is monitored by the Committee of Ministers of the CoE.

(i) Reform of the European Court of Human Rights

After the end of the Cold War, the CoE favoured a policy granting speedy accession to Central and Eastern European countries, with less strict attention to their record in human rights, rule of law or pluralistic democracy. As a
consequence, states with poor human rights and rule of law record accessed the ECHR, inundating the Court with complaints. Protocol 11 of the ECHR (1998) replaced the two-tier system in Strasbourg (European Commission of Human Rights and ECtHR) with a single court. This meant also that the examination of individual applications became the mandatory, rather than the discretionary jurisdiction of the Court.

The Court is at a breaking point. Despite its efforts to streamline internal procedures, the number of new applications exceeds by far its capacity, leading to a continuous increase in the number of pending cases (currently over 120,000). Two main factors have contributed to this situation. First, over 90% of submitted applications are manifestly inadmissible. Second, 50% of the admissible cases are repetitive, as they concern issues that have been adjudicated (repeatedly) in previous cases. The large number of cases also implies that, as perceived by the complainants, violations of human rights are not uncommon in Europe, and that the success of the Court has led Europeans to believe that it is a worthwhile last resort when they fail to acquire satisfactory remedies within the respective domestic contexts.

(ii) **Protocol 14 to the European Convention on Human Rights**

Protocol 14, which entered into force in 2010, was designed to improve the Strasbourg enforcement system in order to allow the Court to focus only on the most important cases. Main innovations include:

- The introduction of a single judge formation, empowered to declare inadmissible or strike out individual applications where such decisions can be taken without further consideration. The single judge replaced a three-judge Committee, therefore freeing up judicial time.

- The three-judge Committees are now able to unanimously declare admissible and at the same time give judgement on the merits in respect of cases where the complaint is already the subject of a well-established case law of the Court. Before Protocol 14 they could not give judgement on the merits.

- A new admissibility criterion is introduced, requiring that the applicant has suffered significant disadvantage unless respect for human rights requires an examination of the merits.

- It encourages friendly settlements at an early stage of the proceedings, in particular for repetitive cases.
Protocol 14 also accorded to the Commissioner for Human Rights the right to intervene as a third party, by submitting written comments and attending hearings. This applies also to pending cases. Furthermore, it introduced the possibility for the EU to accede the ECHR, similarly to what the Treaty of Lisbon did for the European Union (see below).

Protocol 14 has the potential to significantly improve the efficiency of the Court. However, it will not be able to solve its backlog problem. To this end further reform will be necessary.

(iii) The Interlaken Process

A Ministerial Conference on the future of the ECtHR was held in February 2010 in Interlaken, Switzerland.

Three aims were set out for the Conference. At the political level the states parties needed to endorse the ‘sharing of responsibilities between the states and the Court’. They also needed to begin the process of determining the long-term reforms necessary for the Court’s 60th anniversary in 2019 and, in particular, the contemplation of a new mechanism to filter applications under the control of the Court. Furthermore, they needed to agree on interim measures. To be considered for the short term were the expansion of translation into national languages of ECtHR judgements and enhancement of training for relevant national officials on state obligations under the ECHR. For the medium term, the possibility of a Statute of the Court should be discussed.

The Interlaken Conference adopted a Declaration and an Action Plan. This called upon the Committee of Ministers (CoM) to examine new procedural rules or practices regulating access to the Court. It called upon states Parties to fulfil their responsibility to guarantee the application and implementation of the Convention, therefore reiterating the subsidiarity principle that governs the ECHR. The Action Plan also recommended that the Court and Committee create effective filtering mechanisms in the short and medium term respectively. It also encouraged the examination of whether the judges responsible for filtering could, in the future, be empowered to determine repetitive cases. Through the filtering mechanism, the Court can identify at an early stage the most meritorious cases, and the judgments in such cases can offer solutions to be implemented by states. It further stressed the importance of judges of the Court possessing the requisite ‘knowledge of public international law’, ‘proficiency in at least one official language’ and ‘the necessary practical legal experience.’ It stressed the urgent need for the CoM to make the supervision and execution of judgements
more ‘efficient and transparent.’ Finally, it called upon the CoM to examine the possibility of introducing a simplified procedure for any future amendment of the ECHR relating to organisational issues.

Since Interlaken significant political momentum has developed and the Action Plan has been given high priority within the Council of Europe. In April 2011, a follow-up Ministerial Conference was held in Izmir, Turkey, which provided information on steps taken to fulfil the Action Plan. The Committee of Ministers (CoM) adopted a recommendation to states parties on effective remedies for excessive length of proceedings, accompanied by a guide to good practice. The Recommendation underlines that these will contribute to enhancing the protection of human rights in member states and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court. The CoM established in November 2010 an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, to advise states parties on whether candidates meet the criteria stipulated in the Convention. Following the entry into force of Protocol 14, the Court has introduced a single judge system for filtering inadmissible applications. The Court Registry has been reorganised to include the newly created filtering section. The Court’s case processing now takes full account of a priority policy, with cases placed in one of seven categories of priority.

(b) The European Social Charter

The CoE soon recognised that civil and political rights could not be protected without the promotion of economic and social rights. The European Social Charter (ESC) was adopted in 1961. The ESC was soon criticised for not granting adequate substantive rights, but also for its serious shortcomings in the implementation and monitoring mechanisms. A thorough review led to the adoption of an amended and revised Charter in 1996. The revised ESC contains principles, which states parties accept as policy aims but do not establish specific legal obligations, and substantive rights, which are an extension and consolidation of the policy aims and provide legal obligations. The ESC gives states the discretion of not being bound by all legal obligations related to substantive rights, but sets a minimum number that need to be accepted.

States parties to the ESC need to submit regular reports on its implementation. The Charter is divided into four thematic areas and states report each year on one of these thematic areas. Two bodies consider state reports: the European Committee of Social Rights (ECSR) – composed of 15 independent experts - and the Governmental Committee. The ECSR conducts a legal assessment of the state’s compliance with its obligations. The report and the ECSR’s observations
are then transmitted to the Governmental Committee, which formulates recommendations on matters of non-compliance, which are eventually issued by the CoE Committee of Ministers.

A Collective Complaints Mechanism was introduced by an Additional Protocol in 1995, which entered into force in 1998. This allows four categories of organisations (international organisations of employers or trade unions, non-governmental organisations with consultative standing at the CoE, national organisations of employers or trade unions and non-governmental organisations with particular competence in the field) to file complaints against states parties for non-compliance with their obligations under the ESC. The ECSR decides on the admissibility of the complaint – although there is not a comprehensive or explicit list of admissibility criteria – and then compiles a report on the satisfactory application or not of ESC provisions. The report is forwarded to the CoE Committee of Ministers, which makes the final decision.

(c) The European Convention for the Prevention of Torture

The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was adopted in 1987. It institutes a preventive system of visits to places of detention that was first floated in the framework of the UN Convention Against Torture, but did not receive international support until much later with the adoption of an Optional Protocol to this effect in 2002. The ECPT entered into force in 1989 and the European Committee for the Prevention of Torture (CPT) was established to monitor its implementation.

The CPT is composed by one expert for each ECPT state party. Experts are from the fields of law, medicine, psychology, prison administration and others. Missions of the CPT can visit any place where persons are deprived of their liberty by a public authority, i.e. prisons, police stations, mental health institutions etc. They are entitled to access all documentation, cells and speak with detainees in private. After a visit, the CPT publishes a report with recommendations to the concerned government. Reports are confidential, but are usually published alongside with statements by the government. Reports can be published without the consent of the government, if this fails to comply with the CPT’s recommendations. The CPT’s recommendations have helped in developing common European minimum standards for conditions of detention. Given its limited capacities, the CPT has asked states parties to establish similar institutions for preventive visits at the national level.
The CPT is based in Strasbourg, and its bureau consists of three members: Mr. Luṭif Hüseynov from Azerbaijan, as President, Mr Vladimir Ortakov, from the former Yugoslav Republic of Macedonia, as 1st Vice-President, and Ms Haritini Dip, from Greece, as 2nd Vice-President.

(d) The Council of Europe Commissioner for Human Rights

The office of the CoE Commissioner for Human Rights was instituted in 1999. It is an independent institution whose principal aim is to promote awareness and respect for human right in CoE member states. The Commissioner is mandated to promote the effective observance of human rights and assist states in implementing CoE human rights standards; promote human rights education and awareness; identify human rights shortcomings in law and practice; facilitate the activities of NHRI s and other national human rights mechanisms; provide advice and information on human rights protection across the region.

The Commissioner focuses on encouraging reform measures that create tangible improvement at the national level; he is not mandated to respond to individual complaints. He tries to engage in permanent dialogue with states by conducting country missions for a comprehensive evaluation of their human rights situation. During visits he meets with key representative from government and civil society. After a visit, the Commissioner publishes a report providing a detailed analysis of the country's human rights situation and recommendations for improvement. Follow-up visits and follow-up reports form the basis for permanent dialogue. He can also issue recommendations regarding a specific human rights situation in a specific state or group of states, highlighting topical human rights concerns and suggesting ways to tackle such problems (the latest such Issue Paper concerned ‘Adoption and children: a human rights perspective’). He can also issue opinions on draft laws and specific practices. He further promotes human rights awareness through conferences, seminars and events. The Commissioner closely collaborates with NHRI s and other national human rights mechanisms and, where these are not present, strongly encourages their creation or development.

Some of the main areas of concern and action of the Commissioner relate to the human rights of refugees, immigrants and asylum seekers; human rights of Roma and travellers; children’s rights; media freedom, independence and diversity; human rights of LGBTs and of persons with disabilities; non-discrimination and gender equality.

Since 2006 the Council of Europe Commissioner for Human Rights is Thomas Hammarberg of Sweden. The office is based in Strasbourg.
(e) Other Council of Europe human rights mechanisms

Besides the three main CoE human rights mechanisms described below, important protection work is carried out also by the European Commission against Racism and Intolerance (ECRI) and the Group of Experts on Action Against Trafficking in Human Beings (GRETA). Finally, there exists a Framework Convention on Protection of National Minorities (FCNM).

The CoE is also active in the promotion of human rights, most notably through the work of the Council of Europe Commissioner of Human Rights (see above). Other bodies that do significant promotion work are the Steering Committee for Human Rights (CDDH) and the Committee of Experts on the Improvement of Procedures for the Protection of Human Rights. More generally, the CoE is involved in human rights standards and policy development; capacity building, awareness raising and training activities; actions on equality, diversity and rights of the vulnerable.

3.3 The European Union

The European Union is the result of a 50 year long process of regional integration in Europe, which was in the first instance economic in nature and then extended to the political dimension. The 1957 Treaty of Rome only indirectly concerned itself with ‘human’ rights. Moreover, rights were not accorded to human beings as such, but rather to community nationals. The economic nature of the European Communities also meant that fundamental human values, such as life, personal liberty, freedom of expression, etc. were not perceived to be relevant as such and therefore not identified as rights. With the creation of the European Union through the Treaty of Maastricht in 1992 (Treaty on European Union – TEU), there was a shift from a market and economy oriented institution to a broader organisation with a comprehensive agenda, in which human rights became increasingly important.

The legal and institutional structure of the EU is complex, based on a series of founding treaties. The Treaty of Lisbon (2009) is the latest of the series and completed a trend initiated by the Treaty of Amsterdam (1997) and the Treaty of Nice (2001) towards greater democratic legitimacy and efficiency of the EU.

The EU is based on the values common to its member states of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The EU is made up of three pillars: the European Community (EC), cooperation in foreign and security policy (CFSP), cooperation in police and criminal matters (CPCM). Human rights issues arise in all three pillars. The first pillar differs considerably
from the other two, in that it is supranational rather than international in nature. EC law takes supremacy in domestic legal orders. Three main institutions are involved in the EU legislative and policy-making process: the EC, the Council of Ministers and the European Parliament. The European Court of Justice (ECJ) is the judicial institution responsible for adjudication of matters pertaining to EU law, its interpretation and implementation by member states. It has played a fundamental role in the development of human rights competence in the EU, first stating in the Nold case that human rights form integral part of the general principles of law whose observance the Court ensures (as reaffirmed by the Lisbon Treaty).

### 3.3.1 Human Rights within the EU

The EU’s internal priorities in the areas of justice, freedom and security for the period 2010-2014 are outlined in the Stockholm Programme and Plan of Action. Among these is the creation of a ‘Europe of rights’. European citizenship must confer to EU nationals the fundamental rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union (CFREU). Particular emphasis is placed on the right to free movement; the protection of diversity and vulnerable groups, such as children, Roma, victims of crime; the rights of suspected and accused persons; participation in the EU’s democratic life; data protection; and the fight against all forms of discrimination, racism, xenophobia and homophobia. Fundamental rights are of relevance also in other priority areas – e.g. access to justice, internal security, border management and visa policies – and although rights language in these areas is less prominent, legislation will still need to comply with the CFREU.

Promotion and protection of human rights in the above mentioned priority areas are implemented through EU law (regulations, directives and decisions) as well as framework strategies, action plans and programmes in specific areas such as fundamental rights and citizenship; the rights of the child; the fight against violence towards children, adolescents and women; unaccompanied minors.

(a) **The Charter of Fundamental Rights**

In June 1999, the EU Council of Ministers decided that the fundamental rights applicable in the EU should be consolidated into a Charter. The Charter should reflect general principles of the ECHR and constitutional traditions of member states, as well as case law from the ECJ and the ECtHR. The Charter was developed by a commission including representatives from each member state, the European Commission, the European Parliament and national parliaments. It
was adopted in Nice in December 2000. With the entry into force of the Treaty of Lisbon in December 2009, the Charter was given binding legal effect equal to the Treaties (see below).

The Charter brings together into a single document principles and obligations that were before scattered across a variety of legislative instruments, including national and international human rights documents. By making fundamental rights clearer and more visible, it creates legal certainty in relation to human rights within the EU. The Charter is divided into seven chapters: dignity, freedoms, equality, solidarity, citizens’ rights, justice and general provisions. The 54 articles cover a broad spectrum of civil and political rights, as well as economic, social and cultural rights.

The Charter applies to EU institutions and to EU member states when they implement EU law. The meaning and scope of rights which are also included in the ECHR is to be the same as defined by the latter, although EU law might grant more extensive protection. Rights derived from common constitutional traditions need to be interpreted according to those traditions.

(b) Consequences of the entry into force of the Treaty of Lisbon

The Treaty of Lisbon has introduced a threefold regime of human rights protection within the EU. First and foremost, and predating the Treaty, human rights were and are protected as part of the general principles of the EU. As already mentioned, with entry into force of the Lisbon Treaty, the CFREU, guaranteeing a comprehensive set of human rights, has become a legally binding instrument of the EU. As a consequence, the norms of the ECHR are incorporated into the EU legal order. Where the rights protected in the Charter correspond to the rights guaranteed by the Convention, the meaning and scope will be the same as those in the Convention. This is arguably the main innovation introduced by the Treaty of Lisbon.

Human rights were already protected as part of the general principles of EU law and, at least since 2006, the ECJ has been using the CFREU as a source of fundamental rights, even though it was not legally binding. It is unlikely that, in the current climate, the Court will use the Charter more proactively just because it is legally binding. This applies particularly with regard to economic and social rights. On the other hand, as already noticed, the Charter creates legal certainty, providing EU citizens with guidance on which rights are protected by EU law. Simple reliance upon general principles, even if they take into account binding treaties, leaves room for uncertainty. However, the Charter had already provided this guidance function even before it was legally binding.
The Charter has now the same legal status as the Treaties. Therefore, by incorporating the ECHR, it confers core ECHR rights – i.e. those Charter rights that correspond to rights guaranteed by the Convention – the status of EU primary law. Furthermore, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This means that in case of multiple protection of the same rights by e.g. the general principles of EU law, the Charter and the ECHR, the latter shall prevail. The only exception to this is that the Charter/Convention is to be intended as a minimum standard; EU law can provide a higher level of protection. Moreover, when interpreting Charter rights corresponding to Convention rights, the ECtHR jurisprudence will be binding. The meaning and scope of the Convention rights are determined by the normative text of relevant Convention provisions and the respective ECtHR case law. This is particularly relevant since there is still some way to go in the harmonisation of ECHR and EU human rights standards.

(c) Accession of the EU to the European Convention on Human Rights

Formal and informal talks and reflections around EU accession to the ECHR have been conducted since the late 1970s. The issue regained prominence with the adoption of the CFREU. In 2001 the CoE instructed a working group to conduct a study of the legal and technical issues that would have to be addressed for such accession as well as of steps necessary to avoid contradictions between the EU and the ECHR legal systems. With the entry into force of the Lisbon Treaty and Protocol 14, EU accession to the ECHR has become a legal obligation.

The EU accession to the ECHR is a development of fundamental importance for the architecture of European human rights protection. First, not only will the EU be bound by the whole ECHR, but it will also be placed under the jurisdiction of the ECtHR. Second, the accession will close a gap in human rights protection and enhance consistency between the ECtHR and ECJ. Third, EU citizens will be able to resort to the ECtHR for complaints against the EU in the same way as they can do against member states. This will result in improved judicial protection of fundamental rights. Finally, the accession will enhance the credibility of the EU when it promotes ECHR-standards in third countries.

Since June 2010, the European Commission and the Steering Committee for Human Rights of the CoE Committee of Ministers have been elaborating on the elements of the legal instruments for the accession. A Draft Legal Instrument on Accession of the EU the ECHR was submitted in June 2011 to the CoE Committee of Ministers.
The Draft Legal Instrument sets out the scope of the accession and the amendments to be made to the ECHR. With the accession, the EU will be subject to ECHR obligations with regard to acts, measures or omissions of its institutions, bodies, offices or agencies, or of persons acting on their behalf. The decisions of the ECtHR in cases to which the EU is party will be binding on the EU’s institutions, including the ECJ.

Representatives of the European Parliament will be entitled to participate with right to vote in the CoE Parliamentary Assembly sessions for the election of ECtHR judges. The European Parliament will have a number of representatives equal to the state with the highest number of representatives in the Parliamentary Assembly. Similarly The EU will be able to participate in CoE Committee of Ministers meetings when decisions relevant to the ECHR are taken. This right to vote shall not prejudice the effective exercise by the CoM of its supervisory functions over the obligations of High Contracting Parties.

(d) The EU Fundamental Rights Agency

The EU Fundamental Rights Agency (FRA) was established in 2007 as successor of the European Monitoring Centre on Racism and Xenophobia (EUMC). The FRA provides EU institutions and member states with assistance and expertise on fundamental rights issues, helping them to fully respect these rights. In order to do so, the FRA collects data and information on fundamental rights issues in its thematic areas of competence, listed in its Multi-Annual Framework (MAF) programme. The MAF for 2007-2012 indicates that the Agency will work in following areas: a) racism, xenophobia and related intolerance; b) discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination); c) compensation of victims; d) the rights of the child, including the protection of children; e) asylum, immigration and integration of migrants; f) visa and border control; g) participation of the EU citizens in the Union’s democratic functioning; h) information society and, in particular, respect for private life and protection of personal data; and i) access to efficient and independent justice.

Within these thematic areas the FRA collects information and data on the specific effects on fundamental rights of action taken by the EU and related good practices. The collection of information and data is carried out mainly through an expert network of national institutions in each member state (the FRANET). The Agency also develops standards to improve the comparability, objectivity and reliability of data; it conducts scientific research and surveys, preparatory and feasibility studies; and publishes annual and thematic reports based on
its analyses. The FRA works closely with civil society through a Fundamental Rights Platform in order to exchange information, pool knowledge and ensure cooperation. It also collaborates with other regional, national and international institutions, particularly the CoE and OSCE, but also EC and governmental agencies, as well as NHRIs. The aim is to cooperate and avoid duplication of work.

The Agency is based in Vienna. It comprises a Management Board, an Executive Board, a Scientific Committee and a Director, Morten Kjaerum of Denmark.

3.3.2 Human Rights outside the EU

The second pillar of the EU is its common European Foreign and Security Policy. All main EU institutions – the Council, the Commission and the Parliament – contribute to its development. The Treaty of Lisbon establishes that the EU’s action on the international scene shall be guided by the same principles that guided its own development and which it seeks to promote in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles for the United Nations Charter and international law.

The Treaty of Lisbon created the post of the EU High Representative for Foreign Affairs and Security Policy – currently Baroness Catherine Ashton, United Kingdom – who is mandated to conduct the EU’s common foreign and security policy, contribute to its development, ensure the consistency of the EU’s external action, and represent the EU in related matters. She is assisted in her tasks by the European External Action Service (EEAS), which was also created by the Treaty of Lisbon.

The EU Council’s Human Rights Working Group (COHOM) is now part of EEAS. COHOM was established in 1987 with a mandate to develop guidelines for common reactions to human rights violations and common positions in international fora such as the UN General Assembly or Human Rights Council. Composed of government representatives, it has developed human rights guidelines which are not legally binding, but bear strong political influence as they reflect priorities of the EU’s human rights policy in its external relations. They are used as guidance by EU representatives across the globe and concern following areas: promotion of compliance with international humanitarian law; human rights dialogues with non-EU countries; human rights defenders; violence against women and girls; death penalty; children and armed conflict; torture and other cruel treatment; and rights of the child.
Human rights play an important role in the EU’s relations with neighbouring countries. The EU’s enlargement policy has been a very powerful tool in promoting and projecting human rights in Europe. Candidate states for EU accession need to accept EU law and comply with the Copenhagen criteria, which require stable institutions that guarantee democracy, the rule of law, human rights, respect and protection for minorities. The European Neighbourhood Policy, which covers 16 countries, sets the commitment to common values as a prerequisite for the development of relations; action plans promote short and medium-term reforms in relevant areas.

Human rights are prominent also in the EU’s relations with third countries. They can feature in all meetings with non-EU countries; however specialised dialogues on human rights have been established with certain partners. These involve government as well as civil society representatives. A human rights clause figures also in partnership agreements that the EU has signed with over 120 countries, establishing that human rights and democratic principles underpin not only the partnership, but also the international and domestic policies of both parties. Human rights find room also in the EU’s Strategic Partnerships with its principal allies – the US, China and Russia among others. In situations where no dialogue is possible, the EU uses public declarations to influence human rights records. It might also withdraw unilateral trading privileges or impose restrictive measures on countries with poor human rights records.

Focus areas of the EU’s external actions, initiatives and projects are: human rights defenders, trafficking in human beings, support to democratic process (electoral assistance projects, electoral observation missions – EOM), minorities, economic and social rights. Furthermore, through the European Instrument for Democracy and Human Rights (EIDHR) the EU supports projects run by civil society organisations around the globe.

The EU is becoming an increasingly important actor also in the field of crisis management and conflict prevention. The Common Security and Defence Policy takes full account of human rights, gender issues and effects of conflict on children. Most of its current civilian and military operations and missions in three continents include among their staff human rights and/or gender experts. Furthermore, EU Special Representatives in the most troubled countries have human rights and gender focal points.

One last dimension of EU action worth mentioning concerns building acceptence for human rights and fundamental freedoms in parts of the world where they are not strongly supported. To this end the EU constantly tries to reach out to new and different partners. It also gives the opportunity to university students to
study human rights by funding regional master programmes in human rights and democratisation based in Venice, Italy (European Master); Pretoria, South Africa (African Master); Sarajevo, Bosnia and Herzegovina (Southern Europe Master); Sydney, Australia (Asia Pacific Master); and Buenos Aires, Argentina (Latin America Master).

4 Asian Regional Human Rights Mechanisms

Asia has a fragmented human rights protection framework. Human rights mechanisms exist at the sub-regional level, but no umbrella human rights system covers the expanse of the Asia-Pacific. The Asia-Pacific is consequently the only region not to have a comprehensive human rights protection system.

A number of intergovernmental organisations in the Asia-Pacific count human rights amongst their priorities. Some have adopted human rights instruments and established human rights bodies; two have established sub-regional human rights mechanisms. This section examines five of these organisations - the Association of Southeast Asian Nations, the League of Arab states, the Organisation of the Islamic Conference, the Pacific Islands Forum, and the South Asian Association for Regional Cooperation.

4.1 Association of Southeast Asian Nations

The Association of Southeast Asian Nations (ASEAN), established in 1967, is an intergovernmental organisation that comprises ten member states: Brunei Darussalam, Cambodia, Indonesia, the People’s Democratic Republic of Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. ASEAN’s founding principles include non-interference in the internal affairs of one another, effective cooperation, and decision-making by consensus.

Since the adoption of its 1993 Ministerial Meeting Joint Communiqué, ASEAN has become increasingly engaged in human rights. Drawing from the Vienna Declaration and Programme of Action of the same year, the Communiqué confirmed the interrelatedness and indivisibility of all human rights. It also encouraged ASEAN members to adopt a common approach on human rights, to actively participate and contribute to the promotion and protection of human rights, and to consider establishing a regional mechanism on human rights.43

In 2008 the ASEAN Charter entered into force. The Charter, which incorporated ASEAN’s legal status and codified its norms, rules and values, confirmed the promotion and protection of human rights and fundamental freedoms as one ASEAN’s purposes. The Charter also stated ASEAN’s commitment to establishing a human rights body.

ASEAN’s three prominent human rights initiatives are its Intergovernmental Commission on Human Rights, its Commission on the Promotion and Protection of the Rights of Women and Children, and its Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

4.1.1 ASEAN Intergovernmental Commission on Human Rights

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is ASEAN’s dedicated human rights body. Inaugurated in 2009, AICHR’s charges include: developing an ASEAN Human Rights Declaration; supporting ASEAN members and bodies by promoting human rights awareness, treaty ratification and implementation, and providing capacity building and advisory services; and undertaking studies on thematic human rights issues.

AICHR comprises a representative of each ASEAN member state. AICHR members are appointed by their governments for three-year terms (renewable once), during which time they remain accountable to their governments. The AICHR Chairpersonship rotates annually to mirror the ASEAN Chairmanship.

In contrast to European arrangements, the AICHR cannot receive and determine applications or complaints from individuals. Further, while it can ask ASEAN member states for information on their human rights protection and promotion efforts, it cannot investigate human rights situations or alleged human rights abuses in member states. The AICHR’s terms of reference will be reviewed in 2014. This presents ASEAN with an opportunity to extend AICHR’s mandate.

AICHR has met six times since its inauguration, most recently in July 2011. Over this time it has:


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45 Article 14.
• adopted the terms of reference for its Drafting Group for the ASEAN Human Rights Declaration and the rules of procedure for the AICHR Fund
• developed terms of reference for thematic studies on migration and human rights and corporate social responsibility.

The AICHR’s immediate tasks include confirming the modalities of its relationship with other ASEAN human rights bodies, namely the Commission on the Promotion and Protection of the Rights of Women and Children, and the Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

AICHR has identified possible areas of cooperation with the European and Inter-American regional human rights systems, but is yet to formalise the modalities for its interaction with them.

AICHR is also yet to confirm the contribution opportunities available to NHRIs and human rights organisations in its work. It has taken steps toward this end, participating in a ‘regional dialogue on UN engagement with the ASEAN human rights system’ with UN agencies, NHRIs and Asian human rights organisations in 2010.

4.1.2 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

Inaugurated in 2010, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) – as a consultative intergovernmental body – was created to ‘promote and protect the human rights and fundamental freedoms of women and children in ASEAN’. The ACWC’s functions include: promoting awareness of women’s and children’s rights; the ratification and implementation of international and ASEAN instruments that address the rights of women and children; assisting ASEAN members to prepare reports under the Convention on the Elimination of All Forms of Discrimination against Women, and other treaty bodies and the Universal Periodic Review mechanism insofar as they address the rights of women and children; and promoting studies and research, sharing good practices, and providing advisory services on the rights of women and children.
ACWC comprises 20 government-appointed members. Two - one on women’s rights and one of children’s rights - are drawn from each ASEAN member state. ACWC convenes in two regular meetings each year of no more than five days each. It met for the first time in February 2011; a meeting it dedicated to the development of its rules of procedure, its five-year work plan, and the election of officers.

4.1.3 ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) has been operational since 2008. ACMW, which comprises a representative of each ASEAN member state and a representative of the ASEAN Secretariat, serves as the focal point within ASEAN for the effective implementation of commitments made under the ASEAN Declaration. It is also charged with facilitating the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers. ACMW’s current work plan consists of four ‘thrusts’: stepping up protection and promotion of the rights of migrant workers; enhancing labour migration governance in ASEAN countries; promoting regional cooperation to fight human trafficking; and developing the ASEAN instrument on the rights of migrant workers.

4.2 League of Arab states

The League of Arab states (Arab League) is a regional organisation of 22 Arab states. In 2008, the Arab Charter on Human Rights entered into force. The Charter includes a range of cultural, civil, economic, political and social rights, some of which are non-derogable. The Charter also provided for the creation of the Arab Human Rights Committee.

4.2.1 Arab Human Rights Committee

Established in 2009, the Arab Human Rights Committee consists of seven members drawn from states parties to the Charter. Members are elected by states parties and serve in their personal capacity for four-year terms. The Committee considers periodic reports that are submitted by states parties on the measures that they have taken to give effect to Charter rights. Based on an examination of these reports, Committee members share concluding

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50 Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.
51 In 2009, members were appointed from the United Arab Emirates (Chair), Algeria (vice-Chair), Bahrain, Palestine, Syria, Jordan and Libya.
observations and make recommendations. The Committee can also ask states parties to supply it with additional information relating to implementation of the Charter. Much of the Committee’s early work has been dedicated to confirming its methods of work and rules of procedure.

4.3 Organisation of the Islamic Conference

The Organisation of the Islamic Conference (OIC) is an intergovernmental organisation that comprises 57 member states representing ‘the collective voice of the Muslim world’.\(^{52}\) The current OIC Charter,\(^{53}\) adopted in 2008, sets out the OIC’s 20 guiding principles and objectives.\(^{54}\) It also provided for the creation of an Independent Permanent Commission on Human Rights charged with promoting the ‘civil, political, social and economic rights enshrined in the organisation’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values’.\(^{55}\) Amongst the OIC’s human rights instruments is the 1990 Cairo Declaration on Human Rights in Islam.\(^{56}\)

4.3.1 Independent Permanent Commission on Human Rights

The OIC Independent Permanent Commission on Human Rights (IPCHR) was inaugurated in 2011. The IPCHR comprises 18 members that serve for three-year terms, renewable once. Six members are drawn from each of the three major geographical regions of the OIC — the African, Asian and Arab regions.

The IPCHR is mandated to conduct studies and research on human rights issues, provide member states with technical cooperation on human rights, assist member states to elaborate human rights instruments, support the OIC’s position on human rights at the international level, submit recommendations on the refinement of OIC human rights declarations and covenants, and make suggestions as to ratification of international human rights instruments.\(^{57}\) The IPCHR will meet bi-annually.


\(^{54}\) At article 1.

\(^{55}\) At article 15.

\(^{56}\) Refer \(<http://www1.umn.edu/humanrts/instree/cairodeclaration.html>\) accessed 10 September 2011.

\(^{57}\) Chapter IV.
4.4 Pacific Islands Forum

The Pacific Islands Forum (PIF), founded in 1971 as the South Pacific Forum, is a political grouping of 16 independent and self-governing Pacific states. Members include Australia, Cook Islands, Federated states of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

PIF has incrementally incorporated human rights into its regional work. In the 2004 Auckland Declaration, PIF leaders set out a shared vision for ‘a Pacific region that is respected for … its defence and promotion of human rights’. 58 PIF’s 2007 Pacific Plan added detail to this vision by setting out concrete human rights goals that included: promoting the ratification and implementation of international and regional human rights conventions, covenants and agreements; providing support for reporting and other requirements; and supporting key institutions such as audit and ombudsman offices, leadership codes, anti-corruption institutions and departments of attorneys general. 59 Forum leaders also referred to human rights in their 2011 Forum Communiqué, recognising the participation of Forum members in the Universal Periodic Review (UPR) process as a ‘major regional achievement’. 60

The Pacific Plan also called for further analysis of the ‘potential establishment of a regional ombudsman and human rights mechanisms to support implementation of Forum Principles of Good Leadership and Accountability’. 61 In both 2010 and 2011 the Forum’s Security Regional Committee reinforced this call, recommending that PIF explore the potential establishment of a regional human rights mechanism. 62 This is not a new conversation. During the 1980s, the Law Association of Asia and the Pacific (LAWASIA) advocated for a Pacific Charter of Human Rights. By 1989, LAWASIA had developed a draft Charter that included a range of civil, cultural, economic, political and social rights, including the right to development and the rights of indigenous peoples. The draft Charter also provided for the establishment of a Pacific Human Rights Commission. While this process ultimately collapsed, efforts continue today. In November 2011, the PIF Secretariat, in partnership with the Pacific Regional Rights Resource Team

59 At Strategic Objective 12.
61 At Strategic Objective 12.
(RRRT) of the Secretariat of the Pacific Community (SPC) is hosting a regional consultation dedicated to advancing the establishment process of a Pacific regional human rights mechanism.

In April 2010, the PIF Secretariat appointed its first Human Rights Advisor. The Advisor’s roles include working with PIF members to promote human rights treaty ratification and to assist in the preparation of reports to and implementation of the recommendations of the UPR and the human rights treaty bodies. The Advisor also works in partnership with the Asia Pacific Forum of National Human Rights Institutions (APF) to support the establishment of national human rights institutions in the Pacific.

4.5 South Asian Association for Regional Cooperation

The South Asian Association for Regional Cooperation (SAARC), founded in 1985, comprises eight South Asian states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The SAARC Charter sets out the Association’s objectives, which include: improving the quality of life of the peoples of South Asia, providing persons with the opportunity to live in dignity and to realise their full potentials, strengthening cooperation between SAARC members in international forums on matters of common interests, and cooperating with international and regional organisations with similar aims and purposes.

SAARC has adopted conventions on child welfare and the prevention and combating of trafficking in women and children for prostitution. The SAARC Social Charter and the SAARC Charter of Democracy also contain references to human rights. In the Social Charter, SAARC members agreed to ‘promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development’. The Charter of Democracy reaffirms the SAARC members’ ‘faith in fundamental human rights and in the dignity of the human person as enunciated in the Universal Declaration of Human Rights and as enshrined in the respective Constitutions of the SAARC member states’.

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66 At 2(xii).
67 At preambular para. 4.
Despite its stated commitment to human rights, SAARC has not established a sub-regional human rights mechanism or body. In their 2010 Kathmandu Declaration, South Asian human rights organisations called on the governments of South Asia ‘to establish an independent, effective and accountable regional human rights mechanism with an explicit mandates of promoting, protecting and fulfilling human rights, through a process of wide consultation.’

Section 3: NHRIs and other national authorities

5 National Human Rights Institutions

A national human rights institution (NHRI) is an official state institution established by law and funded by the state to promote and protect human rights in the country. As state institutions NHRIs are subject to the law but are otherwise independent of the executive and legislative branches of government. The degree of independence that each NHRI enjoys will depend on a range of factors, including its legal framework, its membership, and its financial resources.

NHRIs are unique institutions. They act as an important bridge between government and civil society, and between their country and the UN system. There are currently approximately 110 NHRIs worldwide. Each country can only have one “official” NHRI.

NHRIs are required to comply with the UN minimum standards for NHRIs, the ‘Principles relating to the status of National Institution for the Promotion and Protection of Human Rights’ (Paris Principles). The Paris Principles identify six criteria that NHRIs should meet in order to be effective, including:

- a clearly defined and broad-based mandate based on universal human rights standards
- autonomy from government
- independence guaranteed by legislation or the constitution
- pluralism, including membership that broadly reflects their society
- adequate resources
- adequate powers of investigation.

5.1 NHRI roles and functions

The Paris Principles set out the roles and functions of NHRIs. These include:

- advising government and producing reports on matters concerning the promotion and protection of human rights
- drawing government’s attention to human rights violations
- promoting the ratification and implementation of international human rights instruments

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70 General Assembly resolution 48/134 of 20 December 1993.
• examining laws for their conformity with international human rights standards, and promoting the harmonisation of national laws and regulations with the human rights instruments to which the state is a party
• cooperating with and contributing to regional human rights bodies and to the UN system
• promoting human rights education and public awareness of efforts to combat discrimination.

Some NHRI also have quasi-judicial competence, which enables them to receive and determine complaints from individuals.

5.2 Types of NHRI

It is each state’s prerogative to determine the type of NHRI most appropriate to its particularities. The main types of NHRI are Human Rights Commissions, Ombudsman’s Offices, advisory and consultative bodies, and research bodies. Some NHRI are hybrid bodies that combine these roles. The UN reports that 58 percent of NHRI are Human Rights Commissions, 30 percent are Ombudsman’s Offices, and five percent are hybrid institutions. Advisory, consultative and research bodies comprise the remaining seven percent of NHRI.

5.2.1 Human Rights Commissions

Human Rights Commissions are the most expansive type of NHRI in terms of size and functions. The largest NHRI in Asia – the Afghanistan and Philippines Commissions – have over 600 staff each. The roles and functions of Human Rights Commissions may include the power to:

• receive and investigate complaints
• resolve complaints through conciliation and/or mediation
• recommend or provide the payment of compensation
• conduct investigations or inquiries at their own initiative
• enter and inspect premises, including detention facilities
• intervene or assist in court proceedings
• subpoena information and examine witnesses
• promote human rights education
• make recommendations to government and parliament on laws, regulations, policies and international human rights treaties.

71 Per the Vienna Declaration and Programme of Action at article 36.
A number of Human Rights Commissions also have anti-discrimination mandates.\textsuperscript{74}

Human Rights Commissions usually comprise several members (Commissioners) appointed for fixed terms. The appointment of Commissioners should be a transparent process and should ensure the representation of different segments of society as well as gender balance.

5.2.2 Ombudsman’s Offices

Ombudsman’s Offices primarily have a maladministration mandate, which can be extended to include general or specialised human rights functions, including the investigation of individual complaints. Ombudsman’s Offices are usually headed by a single office-holder (Ombudsman) appointed for a fixed term.

5.2.3 Advisory and consultative bodies

Advisory and consultative bodies primarily focus on providing in-depth advice and making recommendations to government on human rights issues and matters. They also make contributions to the work of regional and international human rights bodies and processes. These bodies generally do not have a complaint handling function.

5.2.4 Research bodies

Research bodies are human rights “think tanks” that make expert contributions to the study of a range of human rights issues. Like advisory and consultative bodies, research bodies generally lack the ability to receive complaints from individuals.

5.2.5 Hybrid institutions

Hybrid institutions are NHRI s with multiple mandates.\textsuperscript{75} This often includes a combination of Ombudsman-like maladministration functions with some or all of the functions that Human Rights Commissions have. As the UN has pointed out, hybrid institutions can pro–vide a “one-stop” service across a range of issues.\textsuperscript{76} They can also be more financially viable than maintaining separate institutions.


5.3 NHRI representative bodies

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is the global NHRI network. The ICC:77

- works to build the capacity of NHRIs, in partnership with OHCHR’s National Institutions and Regional Mechanisms Section (NIRMS)
- encourages cooperation and information-sharing among NHRIs
- assists NHRIs that are under threat
- supports NHRI contributions to the UN human rights system and engagement with states, UN agencies and human rights organisations.

There are four regional coordinating bodies of NHRIs, the: Asia Pacific Forum of National Human Rights Institutions (APF); European Group of National Institutions for the Promotion and Protection of Human Rights; Network of African National Human Rights Institutions; and Network of National Institutions for the Promotion and Protection of Human Rights in the Americas.

5.4 NHRI accreditation

The principal purpose of the ICC is the promotion and strengthening of NHRIs in accordance with the Paris Principles. The ICC’s Sub-Committee on Accreditation periodically assesses NHRIs to determine whether they meet the requirements of the Paris Principles. NHRIs that comply with the Paris Principles are granted ‘A’ status by the ICC. NHRIs assessed as ‘not fully compliant’ with the Paris Principles are granted ‘B’ status. Non-Paris Principles compliant NHRIs are granted ‘C’ status. At July 2011, the ICC comprised 88 NHRIs: 64 ‘A’ status; 15 ‘B’ status; and nine ‘C’ status. ‘A’ status NHRIs enjoy ICC voting rights and participation privileges at UN meetings.

5.5 European NHRIs

Twenty seven European states have NHRIs. Seventeen of these are ASEM Partners: Austria; Belgium; Denmark; France; Germany; Greece; Ireland; Luxembourg; Netherlands; Poland; Portugal; Romania; Russia; Slovakia; Slovenia; Spain and the United Kingdom.78

77 ICC Brochure (undated).
Of these the following eleven NHRIs have ‘A’ status – Denmark; France, Germany, Greece, Ireland, Luxembourg; Poland, Portugal, Russia, Spain and the United Kingdom (inclusive of the NHRIs from Great Britain, Scotland and Northern Ireland). The NHRIs of Austria; Belgium, Netherlands, Slovakia and Slovenia have ‘B’ status and the NHRI from Romania has a ‘C’ status.

The ten European non-ASEM partner states which have NHRIs are: Albania; Armenia; Azerbaijan; Bosnia and Herzegovina; Croatia; Georgia; Norway; Ukraine (all of which have ‘A’ status); Moldova (‘B’ status) and Switzerland (‘C’ status).

Unlike the Asia Pacific region where one specific NHRI model dominates, European NHRIs take the form of Ombudsman’s Offices, advisory, consultative or research bodies, human rights commissions and hybrid institutions. The powers of these institutions vary with some institutions (e.g. France, Greece and Luxembourg) being mainly advisory bodies while others (e.g. Ireland, Poland, United Kingdom) have broader protection functions.

5.5.1 European Group of National Human Rights Institutions

The European Group of NHRIs is one of four regional networks of NHRIs within the ICC. Full membership of the network is restricted to those NHRIs deemed by the ICC to be fully compliant with the Paris Principles and accredited with A’ status. NHRIs without ‘A’ status may attend meetings by invitation, but may not vote or take office.

The European Group co-ordinates joint action by NHRIs across the Council of Europe region, including by way of conferences and thematic working groups. It interacts with the regional human rights mechanisms in Europe including, the Council of Europe, the European Union Fundamental Rights Agency and the Organisation for Security and Cooperation in Europe (OSCE).

The European Group is currently an informal organisation without a distinct legal personality. The network does not have a permanent secretariat and rotates the Chairpersonship and responsibility for coordinating the activities of the Group amongst its member institutions. It is currently chaired by the Scottish Human Rights Commission. European NHRIs have determined that they will work in the future towards establishing a formal organisation with a permanent secretariat.
5.5.2 European NHRI work at the national and regional levels

European NHRIs work on substantive human rights issues at the national and regional levels.

(a) National

Respondents to a 2010 ICC survey\(^7^9\) were ‘asked to describe the top seven human rights issues in their country.’ OHCHR reports that the top answers in the European region were as follows:

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
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<tbody>
<tr>
<td>Detention conditions and torture prevention</td>
<td>52</td>
</tr>
<tr>
<td>Migrants and refugees</td>
<td>43</td>
</tr>
<tr>
<td>Administration of justice</td>
<td>38</td>
</tr>
<tr>
<td>Minority groups</td>
<td>33</td>
</tr>
<tr>
<td>Economic, social and cultural rights</td>
<td>33</td>
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<tr>
<td>Privacy</td>
<td>24</td>
</tr>
<tr>
<td>Children’s rights</td>
<td>24</td>
</tr>
</tbody>
</table>

(b) Regional

The work of European NHRIs at the regional level is conducted through the European Group of NHRIs. Within the limitations of its current informal status the European Group has undertaken a range of joint cooperation activities including the elaboration of a declaration on cooperation of NHRIs with other actors, including the Council of Europe and the EU, the development and adoption of a strategic plan, the promotion of the role of NHRIs as national preventative mechanisms under the Optional Protocol to the Convention Against Torture and the development of a amicus curiae submission to the ECtHR with regards to a case relating to intellectual disability.\(^8^0\)

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\(^8^0\) European Union Agency for Fundamental Rights, ‘National Human Rights Institutions in the EU Member states’ 2010.
5.6 Asian NHRIs

Nineteen Asian states have NHRIs. Nine of these are ASEM Partners: Australia; India; Indonesia; Malaysia; Mongolia; New Zealand; Philippines; Republic of Korea; and Thailand. All of these NHRIs have ‘A’ status. The other ten states are Afghanistan, Bahrain, Bangladesh, Jordan, Maldives, Nepal, Oman, Qatar, Sri Lanka, and Timor-Leste. The NHRIs of Afghanistan, Jordan, Nepal, Qatar, and Timor-Leste have ‘A’ status. Bangladesh, Maldives and Sri Lanka have ‘B’ status. Bahrain and Oman, as newly established NHRIs, are yet to be assessed by the ICC. The Palestinian territories also has an ‘A’ status NHRI.

Of these 20 institutions, 19 are Human Rights Commissions. The exception is the Timor-Leste Office of the Provedor for Human Rights and Justice, which is a hybrid institution, combining the maladministration mandate of an Ombudsman’s Office with some human rights functions. In contrast, European NHRIs are for the large part Ombudsman’s Offices or advisory, consultative or research bodies. A distinguishing feature of Asian NHRIs – attributable in part to the absence of a regional court or complaints mechanism - is their mandate to receive and determine complaints from individuals.

Other Asia Pacific states are taking steps toward NHRI establishment. Iraq has established its High Commission for Human Rights in law and will soon appoint Commissioners. Cambodia, Papua New Guinea, and Pakistan are preparing draft legislation to set up NHRIs. Japan, Palau, Samoa and the Solomon Islands are working in partnership with the APF to explore the potential establishment of NHRIs in their countries.

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5.6.1 Asia Pacific Forum of National Human Rights Institutions

The APF is a membership-based organisation comprising 18 NHRIs in the Asia Pacific region.\(^84\) The APF was established in 1996. It is the most advanced of the regional networks of NHRIs.

The APF has a full time professional secretariat which provides its members with practical support, including a wide range of training and capacity building services to assist them in promoting, monitoring and protecting human rights. It also provides a framework for NHRI cooperation on human rights issues at the regional level. The APF also offers governments and civil society groups specialist advice to support the establishment of NHRIs.

5.6.2 Asian NHRI work at the national and regional levels

Asian NHRI\s work on substantive human rights issues at the national, sub-regional and regional levels.

(a) National

Respondents to a 2010 ICC survey\(^85\) were ‘asked to describe the top seven human rights issues in their country.’ OHCHR reports that the top answers in the Asia Pacific were as follows:

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s rights</td>
<td>66</td>
</tr>
<tr>
<td>Children’s rights</td>
<td>66</td>
</tr>
<tr>
<td>Migrants and refugees</td>
<td>58</td>
</tr>
<tr>
<td>Administration of justice</td>
<td>58</td>
</tr>
<tr>
<td>Civil and political rights (freedoms of expression and association)</td>
<td>58</td>
</tr>
<tr>
<td>Land and housing rights</td>
<td>50</td>
</tr>
<tr>
<td>Economic, social and cultural rights</td>
<td>50</td>
</tr>
</tbody>
</table>


(b) **Sub-regional**

At the sub-regional level, the NHRIs of Indonesia, Malaysia, Philippines, Thailand, and Timor-Leste comprise the South East Asia National Human Rights Institutions Forum (SEANF). SEANF counts amongst its priority areas:\(^86\)

- encouraging other South East Asian governments to establish NHRIs
- developing a counter-human trafficking action plan
- exploring issues with inter-border implications, such as human rights and business, migrant workers, statelessness, and corruption
- strengthening engagement with civil society organisations
- developing human rights indicators on economic development and its impact on human rights
- opening lines of communication with AICHR, monitoring its progress, and contributing to the drafting of the ASEAN Human Rights Declaration.

(c) **Regional**

The work of Asian NHRIs at the regional level is conducted through the APF. In the past year, APF member institutions have participated in regional workshops and training programs on the prevention of torture, the conduct of national human rights inquiries, reproductive rights, administration and management, capacity assessments, business and human rights and the human rights of Indigenous peoples, migrants workers, and women.

The APF also holds biennial conferences on thematic human rights issues. Recent themes have included: human rights and corporate accountability; human rights and corruption; human rights and the environment; human rights and religion; the right to development; the rights of persons with disabilities; and the role of NHRIs in preventing torture.

The APF also has an Advisory Council of Jurists (ACJ), comprised of eminent jurists, that advises APF members on the interpretation and application of international human rights law, and which seeks to develop regional jurisprudence relating to the interpretation and application of international human rights standards. The ACJ has addressed a range of human rights issues, including: the death penalty; terrorism and the rule of law; the prohibitions on torture and trafficking; the right to education; and sexual orientation and gender identity.

\(^{86}\) ‘Identification of new areas of priorities’, SEANF, November 2010.
5.7 **Comparison between Asian and European NHRIs**

A comparison between NHRIs from Asia and Europe reveals the following trends.

- NHRIs in both Asia and Europe are mainly statute-based institutions. Nonetheless a significant minority of institutions in Asia are constitutionally entrenched institutions.
- NHRIs from the Asia Pacific region have adopted the ‘human rights commission’ model whereas those in Europe have adopted a range of institutional models including commissions, ombudsman, advisory/consultative bodies, research institutes and hybrid institutions.
- The breadth of the mandate of the NHRIs in Asia covers the full range of competences and responsibilities specified in the Paris Principles. Fewer NHRIs in Europe are mandated to perform protection related functions such as complaint handling, inspection of detention centres etc.
- On average, NHRIs in Asia are more significant in terms of organisational structure, staffing and resources than those in Europe.

5.8 **Other National Human Rights Mechanisms**

5.8.1 **Human Rights Ministries**

Despite their establishment in North African countries such as Morocco as early as 1990, the idea of ministries of state for human rights is still a relatively novel concept. They are part of a wider trend of growth of domestic human rights protection institutions, but typically have not proved popular in countries, particularly in Europe, with strong NHRI presence in the form of independent Commissions.

Today human rights ministries can be found in such countries in Asia as Qatar (2003), Yemen (2003), Iraq (2005), Pakistan (2008), Indonesia (2000), Bahrain (2011). Elsewhere, human rights engagement of governments is channelled by various line ministries.

In some countries, such as Malaysia and the Republic of Korea, ministries are established to promote gender equality. In countries where such ministries are not found, institutional mechanisms for the advancement of women exist in various forms: advisory councils (Belarus, Slovakia), parliamentary committees (Serbia), high-level commissions (Lao People’s Democratic Republic, the Philippines), gender focal points in government bodies (Ukraine), etc.
The establishment of dedicated human rights ministries may be seen to positively affect the discursive political environments in which they operate. They can also provide legitimacy to claims for human rights protection from civil society actors. Moreover, they may act as focal points for international and national actors who contest human rights violations and these ministries provide a single interlocutor for all human rights relevant engagement with the state.

5.8.2 National Action Plans (NAPs) for human rights

The concept of national human rights action plans was developed as part of the World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration and Programme of Action recommended that each ‘state consider the desirability of drawing up a national action plan identifying steps whereby that state would improve the promotion and protection of human rights’.

‘The fundamental purpose of a national human rights action plan is to improve the promotion and protection of human rights in a particular country.’ The benefits of a NAP as opposed to less comprehensive or systematic planning approaches include: the possibility of a more comprehensive assessment of needs in the country concerned and the generation of a commitment to achievement that might not otherwise exist; the provision of guidance to government officials, non-governmental organisations (NGOs), professional groups, educators, advocates and other members of civil society regarding the tasks that need to be accomplished to ensure that human rights are effectively observed as well as the encouragement of cooperation among these groups; the promotion and maintenance of high levels of awareness of the state of human rights observance in the country. The relationship of NAPs with national development frameworks and frameworks for national human rights education plans raises issues and challenges.

European countries that have adopted NAPs include: Latvia, Lithuania, Moldova, Norway, Spain, Sweden. Asian countries with NAPs include: China, Indonesia, Kazakhstan, Nepal, Thailand.

5.8.3 Human rights ambassadors

Diplomacy has always been an important and often effective way to foster the promotion and protection of human rights. Human rights often figure among the priority policy areas of Foreign Ministries. To increase effectiveness in this regard, in recent years some countries have established the post of human rights ambassador. The role of such a post is to integrate human rights into all areas of foreign and development cooperation policy, and across all issues in which human rights play a role; to conduct missions, discuss human rights questions, explore
the scope for dialogue and, occasionally, form part of the delegation of foreign and development ministers; to maintain and develop contacts with national civil society (in particular universities, human rights organisations, the media, businesses) in order to propagate human rights policy and acquire new ideas. Human rights ambassadors may also be nominated as representatives or heads of delegations of their respective government in multilateral contexts such as the UN Human Rights Council or international governmental conferences.

Countries with human rights ambassadors include: Denmark, France, The Maldives, The Netherlands, Spain, Sweden.

5.8.4 Local government human rights mechanisms

As institutions to which national governments have delegated authority, local governments are bound by the same international human rights obligations entered into by the state. Local governments play an important role particularly with regard to the implementation of economic, social and cultural rights. For instance, delivery of services such as education, healthcare, housing and water supply, all have important human rights dimensions.

Decentralisation can improve protection of human rights in a number of ways. When decentralisation establishes local democracy where none existed before, this will be a definite gain for democratic rights. Where power is devolved and exercised closer to the population, at least in theory those in authority should be more encouraged to act responsibly and accountably than office-holders who operate at a greater distance. Similarly, individuals will perceive to have greater influence on decisions that affect them, and therefore to participate more actively in democratic functioning of the local government.

Local government also provides an opportunity for effective collaboration with civil society actors. In England for example the British Institute of Human Rights has partnered up with local government in ‘The Human Rights and Local Government Project’. The project aims to test out a human rights approach to the work of local government. To this end five local authorities are exploring how human rights principles and standards can help improve specific areas of service provision.

5.8.5 Human Rights Defenders and civil society

The fundamental role that human rights defenders and civil society organisations play must not be overlooked. They monitor the human rights situation at the national level; they conduct fact finding missions at all levels, react to violations quickly and without bureaucracy through public reports and campaigns, and lobby governments as well as inter-governmental organisations. They are also among
the most important of human rights capacity building actors. NGOs and human rights defenders actions often trigger tensions with governments and their members commonly operate at great personal risk.

NGOs with consultative status (or similar) have a formal role to play in many UN fora, including the human rights treaty bodies and the Human Rights Council. They also provide essential input to human rights mechanisms of the CoE and the OSCE.

In 1998 the UN General Assembly adopted a ‘Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms’. It is widely accepted that without the concerted pressure exercised on governments by NGOs, media and global civil society, human rights would have nothing like the attention they are accorded today.
Section 4: Interaction with the UN system

6 Introduction

Since the 1970s, the UN has promoted the establishment of regional arrangements in the field of human rights and NHRIs, through the adoption of resolutions\(^{87}\), organisation of workshops, and provision of technical assistance. The 1993 Vienna Declaration and Programme of Action recognises the fundamental role of regional arrangements in promoting and protecting human rights and stresses the importance of cooperation between regional mechanisms and the UN system, and NHRIs are invited to be involved in the implementation of the Declaration. Discussions on existing and possible means of cooperation have taken place in various forums, such as the annual meeting of the UN Human Rights Council special procedures\(^{88}\), annual meeting of the Chairpersons of Human Rights Treaty Bodies, and Inter-Committee meetings with the participation of representatives from UN human rights treaty bodies, in addition to workshops convened especially for such discussions.

Common methods of cooperation between regional mechanisms and the UN system include references to jurisprudence and other documentation, exchange of information and technical expertise, and cooperation in relation to country visits and to follow-up on decisions and recommendations. In the case of certain regional mechanisms, formal arrangements of cooperation have been put in place. Both the CoE\(^{89}\) and the EU\(^{90}\) have been granted observer status by the UN General Assembly. In relation to the CoE and the UN, an agreement was signed between the Secretariat-General of the CoE and the Secretariat of the UN in 1951, which established arrangements for cooperation between the two organisations: exchange of information, mutual consultation, attendance at meetings, and technical cooperation. General Assembly resolutions on cooperation between the CoE and the UN have especially underscored

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87 E.g, on regional arrangements, GA Res 32/127, para 1 (16 December 1977); Commission on Human Rights Res 1993/51; on NHRIs, GA Res 34/49, para 1 (23 December 1979).
89 GA Res 44/6 (17 October 1989).
joint efforts of the two organisations in the protection of human rights and fundamental freedoms\textsuperscript{91}, and steps have been taken by both organisations in implementing the resolutions\textsuperscript{92}.

While, as demonstrated below, interaction can be observed between regional mechanisms and the UN, NHRI\textsuperscript{s} and the UN, and regional mechanisms and NHRI\textsuperscript{s}, such cooperation is not conducted in a systematic manner. In particular, possibilities for increased interaction between bodies performing similar functions, such as UN treaty bodies and the ECtHR; and the UN High Commissioner for Human Rights and the European counterpart, need to be further explored. It is also important to note that so far, cross-region conversations of inter-governmental organisations on human rights have only taken place under the auspices of the UN. Noting the complementarity of human rights mechanisms at international, regional, and national levels, cooperation between them not only contributes to the efficiency of their operation but also reinforces the principle of universality of human rights. Close cooperation between mechanisms can also raise the visibility of the international and regional human rights regimes and further increase accessibility of various mechanisms. Stakeholders at all levels have consistently called for enhanced cooperation, with the ultimate goal of creating a positive difference in the lives of individuals on the ground.

6.1 Interaction between regional mechanisms and the UN system

6.1.1 Existing interaction

(a) Establishment of OHCHR field offices

To further reach out individuals on the ground, the OHCHR has set up 12 regional offices around the world, after consultations with the respective countries, as well as countries in the region. In Asia and Europe, regional offices were established in Brussels (Europe), Bishkek (Central Asia), Bangkok (Southeast Asia), Suva (Pacific), and Beirut (Middle East), and the Training and Documentation Centre for South West Asia and the Arab Region was established in Qatar. The OHCHR plans to establish more regional offices in Asia and continues to consult countries in the region\textsuperscript{93}. The region offices have acted as direct contacts with

\textsuperscript{91} Eg, GA Res 65/130 (13 December 2010).


regional and sub-regional human rights mechanisms and facilitated various forms of interaction between international and regional/sub-regional mechanisms introduced below.

(b) **OHCHR’s support in establishing regional and sub-regional arrangements in the Asia-Pacific region**

Since the 1990s, workshops facilitating dialogues regarding regional cooperation for the promotion and protection of human rights have been held by the UN in the Asia-Pacific region. In 1998, a framework was adopted to promote the establishment of regional/sub-regional human rights mechanisms and arrangements, with focus on four priority pillars: national human rights action plans, human rights education; NHRIs; the right to development and economic, social and cultural rights. Subsequently, periodic meetings have been held for states in the region to share national experiences on the four priorities or other selected themes, such as human trafficking and human rights and extreme poverty, and to discuss issues involved in the establishment of a human rights mechanism in the region\(^94\). In the latest workshop held within the framework in 2010, states adopted the Bangkok Action Points, which welcomed the emergence of regional human rights mechanisms in the Asia-Pacific and encourages enhanced cooperation among all relevant actors, including the UN, regional mechanisms, governments, NHRIs, and the civil society\(^95\).

A number of measures have been taken by the OHCHR in assisting the establishment of sub-regional human rights system. Workshops have been held in Southeast Asia, bringing together experts from other regions with a view to sharing experiences of setting up and developing regional human rights mechanisms. The OHCHR has also provided technical assistance, through, for instance, a publication on main principles for regional human rights mechanisms, identifying powers, responsibilities and structure of such mechanisms\(^96\). Within the context of the League of Arab states, the OHCHR provided assistance in revising the Arab Charter on Human Rights to improve its compliance with applicable international human rights standards.


\(^95\) Report of the High Commissioner containing the conclusion of the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region (21 to 23 April 2010), Annex, UN Doc A/HRC/15/39 (3 August 2010).

(c) **References to jurisprudence and other documentation**

In general, reports and findings of regional mechanisms are often consulted when states are examined by the treaty bodies and the Human Rights Council or when relevant communications are assessed by the Council’s special procedure mandate holders. For instance, in the Universal Periodic Review (UPR) process of the Council, judgements of the ECtHR\(^97\) and reports of the CoE Human Rights Commissioner\(^98\) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment\(^99\) have been referred to. In turn, the CoE Human Rights Commissioner considers the opinion of UN treaty bodies and specialised agencies in carrying out his mandate.

In order to enhance synergies between international and regional human rights mechanisms, in July 2010, the chairs of treaty bodies met with representatives of EU institutions, including the European Commission, the European Parliament, the Council of the EU, and the FRA, as well as representatives of CoE institutions, including the ECtHR. In the meeting, the following interaction between international and regional mechanisms has been noted\(^100\): International human rights instruments and treaty body recommendations have been used by EU institutions as points of reference in relation to situation of persons with disabilities and the situation of the Roma. In the practice of the ECtHR, treaty bodies’ views on individual complaints and general comments are often consulted by the Grand Chamber of the Court. However, instances of direct reference by judicial and quasi-judicial mechanisms of jurisprudence of their counterparts\(^101\) remain limited.

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\(^100\) Report of the chairs of the human rights treaty bodies on their twenty-second meeting, paras 11-22, UN Doc A/65/190 (6 August 2010).

\(^101\) *Eg*, Case of Mamatkulov and Askarov v. Turkey, Applications Nos. 46827/99 and 46951/99 (4 February 2005); Case of Kurić and Others v. Slovenia, Application No. 26828/06 (13 July 2010).
(d) Exchange of information, expertise, and cooperation in relation to country visits

As regional mechanisms may have a more direct contact with regional and national situations, certain UN mandate holders have established a record of interaction with relevant regional bodies. For instance, the UN Special Rapporteur on torture has cooperated with regional bodies including the OSCE Office for Democratic Institutions and the CoE’s Committee on Legal Affairs and Human Rights, Commissioner for Human Rights, and Committee for the Prevention of Torture. In 2005, as the Rapporteur visited Georgia, the OSCE provided support, especially during the visit to South Ossetia. Attempts have also been made to conduct joint country missions but so far have not come to fruition in Europe and Asia. With regard to the EU, the existing exchange of information has been between the FRA and certain UN treaty bodies, through the FRA’s submission of country reports to the treaty bodies.

(e) Cooperation in follow-up on decisions and recommendations

Although international and regional mechanisms have established procedures to assist states in implementing decisions and recommendations taken, follow-up proves to be a great challenge for all mechanisms. While joint efforts are desired in this regard, little has been done. However, it is worth noting that the CoE Commissioner for Human Rights has expressed an intention to assist states in the implementation of the recommendations made in the UPR framework.

(f) Establishment of focal points and liaison officers

In order to facilitate cooperation amongst different mechanisms, institutional arrangements are crucial. In 2007, the Human Rights Council requested the OHCHR to convene in 2008 a workshop for an exchange of views on good practices, added value and challenges for regional human rights arrangements, and pursuant to the recommendations made during the workshop, the OHCHR National Institutions Section was expanded and became the National Institutions and Regional Mechanisms Section. On the regional level, the EU FRA, for...

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102 Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Special procedure and regional human rights systems: Areas for strengthening cooperation (4 June 2007).
104 Secretary-General, Reports of the Secretary-General on the workshop on regional arrangements for the promotion and protection of human rights, 24 and 25 November 2008, paras 57-58, UN Doc A/HRC/11/3 (28 April 2009).
instance, has established liaison officers, charged with the function of facilitating working relationships with the UN bodies, the OSCE, agencies of the EU, and EU member states.

**(g) Other means of interaction**

In Europe, through the OHCHR regional office in Brussels, various exchanges have taken place, such as high-level talks between the UN High Commissioner for Human Rights and a number of EU counterparts, as well as human rights NGOs based in Brussels. Workshops and meetings on various topics, such as juvenile justice and the follow-up to the UPR process, have also been held to encourage dialogue between the UN and regional mechanisms in Europe.

Since the entry into force of the Lisbon Treaty, the EU has played an increasingly active role in various UN forums, such as through the tabling resolutions concerning the death penalty and country-specific situations in the General Assembly and the Human Rights Council, and the EU has also provided financial support to the OHCHR\(^{105}\). In 2009, a partnership between the UN and the EU also assisted Morocco, Tanzania, Nigeria, Haiti, Liberia, Seychelles, and Madagascar in developing a national human rights action plans, human rights training, and capacity-building\(^{106}\). Furthermore, in December 2010, for the first time the EU ratified an international human rights treaty: the UN Convention on the Rights of Persons with Disabilities, and the Convention would subsequently form part of the EU legal order.

**6.1.2 Recent efforts to increase cooperation**

**(a) OHCHR regional consultations and international workshop on enhancing cooperation between international and regional mechanisms for the promotion and protection of human rights**

Pursuant to the request posed by the Human Rights Council Resolution 12/15, the OHCHR organised an international workshop on ‘enhancing cooperation between international and regional human rights mechanisms’, and regional consultations in Africa, the Americas, and in Europe were held in preparation of the international workshop. The regional consultations and the international


workshop brought together various stakeholders, including independent experts of the UN human rights system and representatives of regional and sub-regional mechanisms, states, NHRIs and the civil society.

Participants of the regional consultations and the international workshop all agreed on the importance of and the need to enhance and institutionalise cooperation among international, regional and sub-regional mechanisms, building on existing means of cooperation, with an aim to generate an impact at the national level. It was also noted that during the current review of the Human Rights Council, means to increase interactions should be taken into consideration. While the participants acknowledged challenges with respect to resources, confidentiality, and the relevant actors’ lack of knowledge of relevant actors for international and regional mechanisms, the following sets of recommendation resulted from the discussions.

Firstly, in terms of cooperation arrangements, it was recommended that a focal point should be designated within each mechanism and that biennial meetings should be held to facilitate dialogue among relevant actors. It was also suggested that regional and sub-regional mechanisms should be given opportunities to present oral and written interventions in Human Rights Council sessions. The need for further collaboration between human rights mechanisms and field presences of international organisations (such as OHCHR regional offices, UN Country Teams, and the United Nations Development Programme (UNDP) regional offices) was highlighted, as was the need for political and financial support from states and international organisations. Secondly, regarding instruments assisting cooperation, it was recommended that a database gathering information from international and regional mechanisms should be established, and that respective websites should provide links to other mechanisms and publish information on cooperation between mechanisms. Working level cooperation arrangements between secretariats of international and regional mechanisms and the conclusion of memorandums of understanding or intent between mechanisms have also been suggested.

Thirdly, in order to increase the sharing of information, it was recommended that a system should be put in place, and in particular, regular exchange of jurisprudence should be established between judicial and quasi-judicial mechanisms. The UPR process was also emphasised as an opportunity for cooperation, through submissions of the regional mechanisms to the Human Rights Council Working Group, consideration of regional human rights instruments

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\[107\] OHCHR, Report of the OHCHR on the international workshop on enhancing cooperation between international and regional mechanisms for the promotion and protection of human rights, paras 57-78, UN Doc A/HRC/15/56 (9 August 2010).
in the UPR, and collaboration in implementing UPR recommendations on the ground. Lastly, concerning joint activities, it was recommended that joint visits should be conducted on a more regular basis and that practice of joint reports, publications, standards and guidelines be expanded. Other suggested possibilities of cooperation include joint press releases by mechanisms with similar mandates, joint actions to promote awareness of international and regional mechanisms among actors of all levels, and joint follow-up activities.

(b) Regional dialogue on UN Engagement with the ASEAN Human Rights System

In September 2010, the UNDP Asia Pacific Regional Centre and OHCHR Regional Office for South-East Asia jointly organised a 'Regional Dialogue on UN Engagement with the ASEAN Human Rights System'. Topics of discussions included human rights challenges in the region, opportunities of engagement with the AICHR and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), and working with the ASEAN Secretariat at regional and national levels. In order to enhance the UN’s engagement with the ASEAN human rights system, possible areas of cooperation were identified\(^\text{108}\): improving awareness of international human rights standards within the ASEAN bodies, capacity building at regional and national levels, thematic studies to be conducted by the AICHR and the ACWC, development of future regional human rights instruments (such as the ASEAN Human Rights Declaration), and technical assistance and facilitation of cooperation among all stakeholders in implementing human rights on the ground.

6.2 Interaction between NHRIs and the UN

While performing the majority of their work at the national level, NHRIs also make important contributions to the international human rights system. Paris Principle 3(e) requires NHRIs to cooperate with the UN human rights system,\(^\text{109}\) and the ICC’s Sub-Committee on Accreditation has highlighted ‘the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies’.\(^\text{110}\)


\(^{109}\) Paris Principle 3(e) provides that NHRIs shall ‘cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.’

\(^{110}\) General Observation 1.4.
6.2.1 General Assembly

In its 2010 resolution on NHRIs, the General Assembly recognised the importance of NHRIs at the national level and the value of their contributions to the UN human rights system.\textsuperscript{111} NHRIs, however, have limited contribution opportunities at the General Assembly and in the work of its Committees.

6.2.2 Human Rights Council

NHRIs enjoy formal participation rights at the Human Rights Council\textsuperscript{112}.

NHRIs, however, have limited contribution opportunities at the General Assembly and in the work of its Committees.

NHRI contribution opportunities first developed organically at the Commission on Human Rights (the Council’s predecessor) until confirmed in Commission resolution 2005/74,\textsuperscript{113} which granted ‘A’ status NHRIs ‘accredited by the ICC Subcommittee on Accreditation’ and their regional coordinating committees, such as the ICC globally and the European Group and APF regionally, the right to make oral statements and issue documents under NHRI-specific symbol numbers at Commission sessions. It also allocated NHRIs dedicated seating.

The Council preserved these NHRI contribution opportunities, confirming in its rules of procedure that the

\begin{quote}
(p)articipation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 ... while ensuring the most effective contribution of these entities.\textsuperscript{114}
\end{quote}

In a welcome recognition of the unique and increasingly important role of NHRIs in the work of the Council and its mechanisms, the recently completed five year review of the Council’s work and functioning resulted in a further extension of NHRI contribution opportunities at the Council and in the work of its mechanisms.\textsuperscript{115} Further, in June 2011 the Council adopted its first NHRI-specific resolution, which acknowledged the crucial role of NHRIs in promoting and protecting human rights.\textsuperscript{116}

\textsuperscript{111} General Assembly resolution 64/161:‘National institutions for the promotion and protection of human rights’ of 12 March 2010.

\textsuperscript{112} See above Section 1.1.

\textsuperscript{113} Of 20 April 2005, ‘National institutions for the promotion and protection of human rights’.

\textsuperscript{114} Rule 7(b).

\textsuperscript{115} Including: taking the floor immediately after their state during the Council’s plenary discussion and adoption of the Universal Periodic Review (UPR) report on that country; taking the floor immediately after their state, following the presentation of a country mission report on that state by a Special Procedures mandate-holder; and nominating candidates for appointment as Special Procedures mandate-holders.

\textsuperscript{116} A/HRC/17/L.18.
The Council's main mechanisms include the Advisory Committee, Complaint Procedure, Expert mechanism on the rights of Indigenous Peoples, Forum on Minority Issues, Social Forum, Special Procedures, and the Universal Periodic Review (UPR). NHRIs enjoy discrete contribution opportunities in each of these mechanisms. The most substantive contributions that NHRIs make to the Council are national-level contributions: the submission of complaints and communications to the Special Procedures and the Complaint Procedure; the submission of information toward UPR country examinations; and contributions to thematic studies undertaken by Council mechanisms. These contribution opportunities – which are open to all NHRIs – inform the work of the Council and its mechanisms. Additional contribution opportunities are available to 'A' status NHRIs at Council sessions and mechanism meetings.

6.2.3 ECOSOC Functional Commissions

The UN's Economic and Social Council (ECOSOC) has developed modalities for the contribution of NGOs to UN meetings. The same, however, cannot be said for NHRIs. NHRIs do not enjoy independent participation rights at meetings of ECOSOC Functional Commissions. Since 2009 the ICC has conducted advocacy at one ECOSOC Commission – the Commission on the Status of Women (CSW) – with a view to securing independent participation rights for NHRIs. NHRIs may only participate at CSW meetings if they are invited to attend as part of their government's delegation. Supported by the APF secretariat, seven NHRIs attended CSW 55 in March 2011, including the NHRIs of Australia, Jordan, Korea, New Zealand, and the Philippines.

6.2.4 Standard setting

NHRIs also contribute to human rights standard setting processes. Recent examples include NHRI participation in the negotiation of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure. Despite these contributions, the participation of NHRIs in UN standard setting processes remains ad hoc rather than an established right.

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There are nine Functional Commissions: Statistical Commission; Commission on Population and Development; Commission for Social Development; Commission on the Status of Women; Commission on Narcotic Drugs; Commission on Crime Prevention and Criminal Justice; Commission on Science and Technology for Development; Commission on Sustainable Development; United Nations Forum on Forests.
6.2.5 Human Rights Treaty Bodies

NHRIs contribute to the work of the ten core human rights treaty bodies\footnote{119}. The treaty body contribution opportunities available to NHRIs include:

- submitting written information, including: parallel reports; contributions to lists of issues; and reports on state follow-up to the implementation of treaty body observations and recommendations
- attending and in some cases participating at pre-sessional and formal treaty body meetings
- contributing to treaty body inquiry and complaint procedures
- attending Days of General Discussion on thematic issues
- contributing to the development of general comments/recommendations on treaty provisions.

NHRIs can also be appointed as ‘National Preventative Mechanisms’ under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\footnote{120} and serve as independent mechanisms to promote, protect and monitor the implementation of the Convention on the Rights of Persons with Disabilities\footnote{121}.

These contribution opportunities only exist, however, where a NHRI’s country is a party to a given human rights treaty and, in the case of individual complaints mechanisms, their optional protocols. The ratification record of ASEM Partners is annexed to this paper. Contribution opportunities also differ between treaty bodies as each has its own rules, practices and working methods.

\footnote{119}{See above Section 1.2.}
\footnote{120}{Per Part IV of OP-CAT.}
\footnote{121}{Per Article 33.2 of the CRPD.}
The following table indicates the contribution opportunities available to NHRIs in nine treaty bodies:

<table>
<thead>
<tr>
<th>NHRI Contribution Opportunity</th>
<th>CCPR</th>
<th>CESCR</th>
<th>CERD</th>
<th>CEDAW</th>
<th>CAT</th>
<th>CRC</th>
<th>CMW</th>
<th>CRPD</th>
<th>CED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of a parallel report</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Participation at pre-sessional working group</td>
<td></td>
<td></td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution to list of issues</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Presentation to the treaty body before state examination (including private meetings)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Statement during the examination of the state</td>
<td>✔</td>
<td></td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Provision of information toward an ‘inquiry procedure’</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Provision of information toward a ‘complaints procedure’</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Participation at Day of General Discussion</td>
<td>✔</td>
<td></td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution to drafting of a General Comment/recommendation</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Submission of information on follow-up</td>
<td>✔</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
NHRIs have also contributed to continuing consultations aimed at strengthening the treaty body system. At a June 2010 consultation, NHRIs called on the treaty bodies to:\textsuperscript{122}

- periodically meet outside Geneva and New York in regional centres to bring the treaty bodies closer to people
- take account of the contributions that ‘A’ status NHRIs make to their work and to the protection and promotion of human rights in country
- align their reporting and individual communication procedures as far as possible through common rules of procedure and working methods; and
- invite NHRIs to provide them with information on a systematic basis.

Three treaty bodies have general comments on NHRIs: CERD, CESCR, and the CRC. CERD has also formalised NHRI participation in its working methods and rules of procedure.\textsuperscript{123} The other treaty bodies should give thought to doing the same.

\subsection*{6.2.6 Other relevant UN bodies}

NHRIs work in partnership with a range of UN agencies on human rights issues and in implementing projects at the national level. At the international and regional levels, NIRMS, as OHCHR’s dedicated NHRI section, supports the efforts of the ICC and the four regional NHRI coordinating bodies to establish and support NHRIs. NIRMS also serves as the ICC’s secretariat.

In 2010, both the APF and the ICC entered into a joint ‘framework of cooperation’ with OHCHR and the United Nations Development Programme (UNDP). Through this tripartite partnership, the organisations have agreed to work together to strengthen the capacity of NHRIs.

\subsection*{6.3 Interaction between regional mechanisms and NHRIs}

In Europe, the European Group of NHRIs has obtained consultative status with some of the regional bodies. Although civil society organisations are involved in the discussions on the reform of the ECtHR and the development of human rights standards, and that the NHRIs have a role to play in assisting states in implementing the recommendations by the regional bodies, the interaction between NHRIs and regional human rights mechanisms remains limited. In 2009, a workshop was held in Jakarta, where civil society organisations and NHRIs from

\textsuperscript{122} ‘Marrakech Statement on strengthening the relationship between NHRIs and the human rights treaty bodies system’, 10 June 2010.

\textsuperscript{123} Refer ‘Information Note: National Human Rights Institutions (NHRIs) interaction with the UN Treaty Body System’, OHCHR National Institutions and Regional Mechanisms Section, April 2011 at 5.
Africa, the Americas and Europe shared experiences of their contribution to the establishment and development of credible regional human rights mechanisms, and proposals were made to assist civil society organisations and NHRI in Southeast Asia in contributing to the ASEAN human rights mechanisms.\textsuperscript{124}

6.3.1 AICHR

AICHR is mandated to consult, as appropriate, with regional and international institutions and entities concerned with the promotion and protection of human rights. It is yet to identify which institutions fall within this mandate and to confirm the modalities for such consultation.

AICHR members have, however, identified possible areas of UN-AICHR engagement. These include working in partnership with UN agencies to: encourage ASEAN member states to ratify and implement international human rights treaties; build the capacity of ASEAN member states with regard to international and regional human rights mechanisms; contribute to studies on thematic human rights issues, including Special Procedures studies;\textsuperscript{125} and contribute to the drafting of ASEAN human rights instruments.\textsuperscript{126}

6.4 NHRI contributions to the UN system

6.4.1 Human Rights Council

While NHRI contribute to the work of all of the Council’s mechanisms, this section specifically examines their contributions at Council sessions and to the work of three Council mechanisms: the Special Procedures; the UPR; and the Complaint Procedure. These mechanisms are of particular pertinence to the work of Asian NHRI given the absence of a regional complaints mechanism in Asia. They also allow for some comparative analysis of the contributions made by Asian and European NHRI, having regard to Europe’s well-established regional system.

\begin{itemize}
\item \textsuperscript{125} AICHR contributed to the work of the former Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie.
\item \textsuperscript{126} ‘Report on “Regional Dialogue on UN Engagement with the ASEAN Human Rights System”, UNDP Asia Pacific Regional Centre and OHCHR Regional Office for South-East Asia (Bangkok, 6 September 2010) <http://www.bangkok.ohchr.org/files/Regional_Dialogue_ASEAN_Report.pdf> at 3-4.
\end{itemize}
The findings of global OHCHR (2009)\textsuperscript{127} and ICC (2010)\textsuperscript{128} surveys on NHRI contributions to the Council and its mechanisms are applied to this task. Both surveys, however, have weaknesses.

Twelve of the 61 respondent NHRIs to the OHCHR survey were from the Asia Pacific region;\textsuperscript{129} 21 were from Europe.\textsuperscript{130} The disaggregated statistics provided by OHCHR do not, however, identify which institutions made which contributions and do not therefore take account of the fact that only ‘A’ status NHRIs can contribute at Council sessions.\textsuperscript{131}

The ICC survey was only distributed to ‘A’ status institutions, thus its findings do not report on the national level contributions that ‘B’ status NHRIs make to the work of Council mechanisms. Second, only eight of the 15 ‘A’ status Asian NHRI s responded to the survey,\textsuperscript{132} seven of which also responded to the OHCHR survey\textsuperscript{133} and only one of the 19 ‘A’ status European NHRI s responded.\textsuperscript{134} Accordingly, only the ICC survey’s findings on Asian NHRI contributions to the Council are used here.

Weaknesses aside, the OHCHR and ICC surveys provide useful – and otherwise unavailable – statistical information on NHRI contributions to the Council. Both surveys also asked respondent institutions to identify obstacles to their contributions to the Council.

\textsuperscript{127} ‘Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide’, OHCHR, (July 2009), available from the authors.


\textsuperscript{129} Afghanistan, Iran, Jordan, Malaysia, Maldives, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Thailand, and Timor-Leste. All of these NHRIs, save for Iran, are APF member institutions.

\textsuperscript{130} Albania, Armenia, Bosnia & Herzegovina, Croatia, France, Germany, Greece, Ireland, Latvia, Luxembourg, Northern Ireland (UK), Norway, Portugal, Romania, Scotland (UK), Slovakia, Spain, Sweden, Ukraine, Great Britain (UK), Uzbekistan.

\textsuperscript{131} At July 2009, when the survey findings were released, the ICC comprised over 90 member institutions, 65 of which had ‘A’ status.

\textsuperscript{132} Responses were received from the NHRIs of Afghanistan, India, Jordan, Malaysia, New Zealand, Philippines, Republic of Korea, and Timor-Leste.

\textsuperscript{133} Afghanistan, Jordan, Malaysia, New Zealand, Philippines, Republic of Korea, and Timor-Leste.

\textsuperscript{134} Northern Ireland.
(a) **Human Rights Council sessions**

The Council holds three regular sessions each year for a total of ten weeks. ‘A’ status NHRI\(s\) can attend Council sessions, speak under each of the Council’s ten agenda items, issue documents under NHRI-specific symbol numbers, and have allocated seating at the Council. Further, the ICC appointed a Geneva Representative in 2007 charged with facilitating NHRI contributions to the Council. The ICC Representative is authorised to deliver oral statements on behalf of ‘A’ status NHRI\(s\). This has enabled ‘A’ status NHRI\(s\) unable to attend Council sessions to make oral statements by proxy.

(i) **Asian NHRI\(s\)**

100 percent of Asian respondents to the ICC survey had attended at least one regular Council session; 87 percent had delivered an oral statement, and 63 percent had issued documentation at the Council. By contrast, the OHCHR survey reports that 25 percent of Asian respondents to its survey had attended a Council session; 25 percent had delivered an oral statement, and none had issued documentation at the Council.

(ii) **European NHRI\(s\)**

The OHCHR survey reports that 14 percent of European respondents had attended a regular Council session. 10 percent had submitted documentation. Statistics on oral statements are not provided.

(b) **Special Procedures**

Special Procedures is the general name given to a collection of mechanisms inherited from the Commission. Special Procedures office-holders, known as mandate-holders,\(^\text{136}\) examine, monitor, and report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). They also receive and act upon complaints from individuals, conduct studies, provide technical assistance at the national level, and undertake human rights promotional activities.\(^\text{137}\)

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135 It can also hold special sessions at the request of a Council member, where such a request attracts the support of no less than one-third of the Council’s 47 members. Per operative para.10 of General Assembly resolution 60/251.

136 Mandate-holders are either individuals (called a ‘Special Rapporteur’, ‘Special Representative of the Secretary-General’ or ‘Independent Expert’) or members of working groups (which are generally composed of five members, one drawn from each of the UN’s five regional groups). Refer [http://www2.ohchr.org/english/bodies/chr/special/index.htm](http://www2.ohchr.org/english/bodies/chr/special/index.htm) accessed 20 July 2011.

All NHRIs can contribute to the work of the Special Procedures. Contribution opportunities include: submitting complaints (known as urgent appeals) on behalf of individuals; providing information to mandate-holders on the human rights situation in their state; facilitating country visits by mandate-holders; meeting with mandate-holders; contributing information toward thematic studies; monitoring state follow-up to Special Procedures recommendations; and nominating persons for appointment as Special Procedures mandate-holders. All of these contributions - save for the nomination of candidates - can be made from the national level and are thus open to all NHRIs.

(i) Asian NHRI

OHCHR reports that over 50 percent of respondent Asian NHRIs to its survey had contributed in some way to the work of the Special Procedures. One hundred percent of ICC survey respondents had contributed to the Special Procedures. Disaggregated statistics on these contributions are tabled below.

<table>
<thead>
<tr>
<th>CONTRIBUTION TYPE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
<th>ICC SURVEY (% OF RESPONDENTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of urgent appeals/communications</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Provision of information on the country situation</td>
<td>50</td>
<td>86</td>
</tr>
<tr>
<td>Facilitation of country visit by mandate-holder</td>
<td>Not provided</td>
<td>50</td>
</tr>
<tr>
<td>Meeting with mandate-holder</td>
<td>58</td>
<td>63</td>
</tr>
<tr>
<td>Contributing information to thematic studies</td>
<td>Not provided</td>
<td>63</td>
</tr>
<tr>
<td>Monitoring state follow-up to recommendations</td>
<td>33</td>
<td>63</td>
</tr>
<tr>
<td>Nominating persons for appointment as mandate-holders</td>
<td>33</td>
<td>50</td>
</tr>
</tbody>
</table>
(ii) European NHRI

The OHCHR survey provides the following statistics on the contribution of European NHRI to the Special Procedures.

<table>
<thead>
<tr>
<th>CONTRIBUTION TYPE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of urgent appeals/communications</td>
<td>0</td>
</tr>
<tr>
<td>Provision of information on the country situation</td>
<td>19</td>
</tr>
<tr>
<td>Facilitation of country visit by mandate-holder</td>
<td>Not provided</td>
</tr>
<tr>
<td>Meeting with mandate-holder</td>
<td>29</td>
</tr>
<tr>
<td>Contributing information to thematic studies</td>
<td>Not provided</td>
</tr>
<tr>
<td>Monitoring state follow-up to recommendations</td>
<td>10</td>
</tr>
<tr>
<td>Nominating persons for appointment as mandate-holders</td>
<td>10</td>
</tr>
</tbody>
</table>

(c) UPR

The UPR was established by the General Assembly in 2006.\textsuperscript{138} Under the UPR, each UN member state’s human rights performance is reviewed by the Council on a periodic basis.\textsuperscript{139} The UPR process comprises several stages, including: the preparation of reports on the state’s compliance with its international human rights obligations;\textsuperscript{140} a public examination of the state conducted in Geneva by a Working Group of the Council (the Working Group on the UPR); and the preparation of a narrative report on the review, which contains conclusions and recommendations (known as ‘UPR outcomes’) that seek to assist the state under review to improve its human rights performance. These reports are transferred to the Council, where they are discussed and adopted. UPR ‘follow-up’ is the process by which each state implements its UPR outcomes. The state’s progress in implementing its UPR outcomes is examined in subsequent UPR cycles.

‘A’ status NHRI can attend the Working Group on the UPR, but cannot make oral statements. As per Council practice, ‘A’ status NHRI can attend and make oral statements at the Council session at which the country report is discussed and

\textsuperscript{138}\ Per operative para. 5(e) of resolution 60/251, which states that the Council shall ‘[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states ... ’.

\textsuperscript{139} As of 2010, the UPR will operate on a four-and-a-half-year cycle.

\textsuperscript{140} Country reviews are based on three documents: a 20-page national report prepared by the state under review; a ten-page compilation of UN information, prepared by OHCHR; and a ten-page summary of information received from ‘stakeholders’, including NHRI, also prepared by OHCHR.
adopted. All NHRIs can submit information toward the review of their country, and can work on ‘follow-up’ to their state’s implementation of UPR outcomes at the national level.

The UPR boasts the highest NHRI participation rate of all Council mechanisms, with both the OHCHR and ICC surveys reporting that 100 percent of respondents had contributed in some way to the UPR process. Contribution types are disaggregated below.

(i) Asian NHRI

<table>
<thead>
<tr>
<th>CONTRIBUTION TYPE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
<th>ICC SURVEY (% OF RESPONDENTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to the state report</td>
<td>25</td>
<td>88</td>
</tr>
<tr>
<td>Preparation of stakeholder submission</td>
<td>25</td>
<td>63</td>
</tr>
<tr>
<td>Attendance of the Working Group on the UPR</td>
<td>25</td>
<td>100</td>
</tr>
<tr>
<td>Oral statement at the adoption of the country report at the Council</td>
<td>Not provided</td>
<td>57</td>
</tr>
<tr>
<td>Dissemination of UPR outcomes</td>
<td>25</td>
<td>86</td>
</tr>
<tr>
<td>Follow-up to UPR outcomes</td>
<td>25</td>
<td>86</td>
</tr>
</tbody>
</table>

The variation in the statistical results of both surveys, despite their common pool of respondents, is attributable to the fact in the 18-24 months between the OHCHR and ICC surveys, an additional four Asian states underwent UPR examinations.

(ii) European NHRI

<table>
<thead>
<tr>
<th>CONTRIBUTION TYPE</th>
<th>OHCHR SURVEY (% OF RESPONDENTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to the state report</td>
<td>14</td>
</tr>
<tr>
<td>Preparation of stakeholder submission</td>
<td>29</td>
</tr>
<tr>
<td>Attendance of the Working Group on the UPR</td>
<td>33</td>
</tr>
<tr>
<td>Oral statement at the adoption of the country report at the Council</td>
<td>Not provided</td>
</tr>
<tr>
<td>Dissemination of UPR outcomes</td>
<td>14</td>
</tr>
<tr>
<td>Follow-up to UPR outcomes</td>
<td>24</td>
</tr>
</tbody>
</table>
(d) **Complaint Procedure**

The Complaint Procedure addresses ‘consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances’.\(^{141}\) An adaptation of the Commission’s ‘1503 Procedure’, the Complaint Procedure operates on the basis of communications transmitted by individuals, groups or organisations that claim to be victims of violations of human rights and fundamental freedoms or that have direct, reliable knowledge of such violations.\(^{142}\) The Complaint Procedure is a confidential process so as to enhance cooperation with the state concerned. The activation of the Complaint Procedure requires the exhaustion of domestic remedies ‘unless it appears that such remedies would be ineffective or unreasonably prolonged’.\(^{143}\) The Complaint Procedure comprises two working groups. The first, the Working Group on Communications, is composed of five members of the Advisory Committee who assess received communications against objective criteria. The second working group, the Working Group on Situations, is composed of five state representatives who, based on communications referred to it by the Working Group on Communications, bring situations of concern to the Council’s attention. The Council subsequently discusses these situations in a closed meeting and determines appropriate responses.\(^{144}\)

All NHRIs can submit communications to the Complaint Procedure. Given its confidential nature, OHCHR does not include the Complaint Procedure in its survey; none of the respondent institutions to the ICC survey had submitted a communication to the Complaint Procedure.

Respondent institutions to the ICC survey attributed their lack of usage of the Complaint Procedure to the sufficiency of domestic complaint handling mechanisms, a lack of ‘consistent patterns of gross violations’ in country, and a lack of familiarity with the Complaint Procedure’s operation. It is significant, nonetheless, that Asian NHRIs have not used the Complaint Procedure in the absence of a regional mechanism.

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141 Per Council resolution 5/1 at operative para. 85.
143 Resolution 5/1 at operative para. 87(g).
144 Actions include: (a) discontinuing its consideration of a situation when further consideration or action is not warranted; (b) keeping a situation under review and requesting the state concerned to provide further information within a reasonable time; (c) keeping a situation under review and appointing an independent and highly qualified expert to monitor the situation and to report back to the Council; or (d) recommending that OHCHR provide technical cooperation, capacity-building assistance or advisory services to the state concerned. Refer Working with the United Nations Human Rights Programme: A Handbook for Civil Society, at 82.
Obstacles and accountability

Respondent NHRI s to both surveys identified a number of obstacles to their contributions to the Council and its mechanisms: a lack of knowledge of Council mechanisms and their operation (Complaint Procedure); a lack of resources, requiring a prioritised approach to engagement with Council mechanisms; and the reported sufficiency (or preferred usage) of national – and in the European content, regional – mechanisms in place of Council mechanisms.

Some accountability, however, must be apportioned to individual institutions, particularly ‘A’ status NHRI s, for the relatively low proportion of NHRI contributions to the Council’s work. Reported obstacles, for instance, do not explain the under-usage of the ICC Geneva Representative as a means of exercising speaking rights at Council sessions and meetings of its mechanisms, nor the small amount of NHRI documentation issued at the Council. Accordingly, ‘A’ status NHRI s need to make better use of the contribution opportunities that they enjoy at the Council.

Two steps that can be taken by NHRI s are:

- identifying concrete contributions that they can make to Council mechanisms and incorporating these contributions into their strategic plans and annual programs of work; and
- allocating funds to support these contributions, or seeking earmarked funding from government to this end.

6.4.2 Human rights treaty bodies

The OHCHR survey also examines NHRI contribution to the treaty bodies. It provides the following statistics on Asian and European NHRI contributions:

<table>
<thead>
<tr>
<th>CONTRIBUTION TYPE</th>
<th>ASIA PACIFIC</th>
<th>EUROPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to a state report</td>
<td>50%</td>
<td>43%</td>
</tr>
<tr>
<td>Public comment on a state report</td>
<td>41%</td>
<td>33%</td>
</tr>
<tr>
<td>Submission of a parallel report</td>
<td>33%</td>
<td>29%</td>
</tr>
<tr>
<td>Contribution to the drafting of lists of issues</td>
<td>33%</td>
<td>29%</td>
</tr>
<tr>
<td>Participation in a treaty body session</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>Made statement through the ICC representative</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td>Dissemination of concluding observations</td>
<td>33%</td>
<td>39%</td>
</tr>
<tr>
<td>Conducted follow-up activities</td>
<td>50%</td>
<td>43%</td>
</tr>
<tr>
<td>Participation in days of ‘General Discussion’</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td>Contribution to the drafting of ‘General Comments’</td>
<td>25%</td>
<td>14%</td>
</tr>
</tbody>
</table>
The OHCHR survey does not, however, report on NHRI contributions to treaty body early warning and individual complaints mechanisms, two of the treaty bodies’ most important roles.

6.4.3 NHRI coordinating bodies

The ICC, supported by the APF and the European Group of NHRI s, also contributes to the UN human rights system.

In March 2010, the APF assumed the Chairpersonship of the ICC, a three-year post that rotates between the four regional groups of NHRI s. The ICC has in this time actively participated in: the five-year review of the Council; the treaty body reform process; UN standard setting processes; and has pursued NHRI participation rights at CSW. The ICC also holds biennial international conferences on thematic human rights issues.145

As the global NHRI network, the ICC has a responsibility to build the capacity of its member institutions to contribute to the UN human rights system. The ICC Strategic Plan expresses its commitment to ‘[s]upport NHRI s in their efforts to improve follow up to recommendations from UN mechanisms, including the UPR, treaty bodies, and special procedures’.146 To this end, the ICC should consider taking the following steps.

First, the ICC should increase the number of workshops and training sessions that it holds for its members on the Council and its mechanisms. As OHCHR notes in its survey report, while

[c]ooperation with the international and regional human rights mechanisms is a key requirement of the Paris Principles... participation rates show a limited familiarity with the international and regional systems. In fact, just over 50% of respondents had participated in training on the international human rights system’.147

Without a strong ICC investment in increasing the capacity of NHRI s to contribute at the Council, a widening gap will open between the Council’s expectations of NHRI contributions and the actual capacity of NHRI s to deliver to these expectations. This is underlined by the new contribution opportunities that NHRI s enjoy as a result of the Council review process.

145 Recent examples include business and human rights (2010), NHRI s and the administration of justice (2008), and the role of NHRI s with regard to migration (2006).

146 At Strategic Objective 5.2.

147 ‘Report on the findings and recommendations of a questionnaire addressed to NHRI s worldwide’ at 42-43.
Second, the ICC should formally request OHCHR to produce a resource which sets out the various contribution opportunities open to NHRIIs at the Council and its mechanisms, as it has done for civil society actors. There is currently no such resource for NHRIIs, despite their recognition as key entities at the Council. The ICC could provide ‘best practice’ examples of NHRI contributions to Council mechanisms for inclusion in the publication.

Third, the lack of NHRI financial resources is an issue. Accordingly, the ICC should lobby the Council to establish a fund to support NHRI participation at the Council. It should also seek external sources of funding to support its own capacity-building activities.

Fourth, the ICC should conduct an annual survey of NHRI contributions to the Council which ICC members would be required to submit along with their annual ICC membership fees. This would allow for the collection of comprehensive and authoritative statistics on NHRI contributions to the Council.

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Section 5: Conclusion

Regional Arrangements

The European human rights protection framework is notably complex and multifaceted. Three European inter-governmental organisations are concerned with the promotion and protection of human rights: the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE) and the European Union (EU). The development of the European system and its sophistication are remarkable, though it needs to be stressed that, traditionally, more attention has been paid to civil and political rights than economic, social and cultural rights. Considerable challenges also persist for the protection of universal standards across a wide range of diverse political and social contexts.

Although the mandate of the OSCE does not include the protection of human rights as such, the Organisation considers the respect of human rights to be essential for lasting security. By promoting such respect through political commitments, instead of binding legal obligations, the OSCE has been highly successful in the field of human rights.

The CoE’s European Convention on Human Rights is the international human rights treaty with arguably the most effective and successful enforcement mechanism: the European Court for Human Rights, which can adjudicate both state and individual applications. European citizens place very high expectations on the Court, which has become a victim of its own success and of the success of the CoE’s regional inclusion policy. Confronted with an ever increasing number of pending cases, CoE member states have undertaken to reform the Court in order to render it more effective and efficient. A first step towards reform came with the adoption and entry into force of Protocol 14, though its scope is clearly limited and more long term solutions need to be identified. The Interlaken process is the main ministerial framework in which options of reform are currently being discussed. In addition, other instruments (such as European Social Charter) have been adopted and mechanisms (such as the Commissioner for Human Rights) established to further promote human rights and bring about changes in the lives of rights-holders.

The European Union is the result of a unique 50 year long process of regional integration. In the last decade, the EU has enacted a sensible shift from a market and economy oriented institution to a broader organisation with a comprehensive agenda, in which human rights play an increasingly important role, both in the EU’s internal relations as well as in its external relations. With regard to the internal aspect, the adoption of the Charter of Fundamental Rights, the entry
into force of the Treaty of Lisbon, the EU's accession to the European Convention on Human Rights, and the establishment of the Fundamental Rights Agency are particularly worth noting.

The Asia Pacific region has a fragmented human rights protection framework. Human rights mechanisms have recently been established at the sub-regional level but no pan-regional human rights system exists. The Asia Pacific region is consequently the only region not to have a comprehensive regional human rights protection system.

Of the Asia Pacific’s intergovernmental organisations, the Association of Southeast Asian Nations, the League of Arab states and the Organisation of the Islamic Conference have recently established formal sub-regional human rights mechanisms. The Pacific Islands Forum and the South Asian Association for Regional Cooperation have not yet established a sub-regional human rights mechanism or body.

The various Asia Pacific mechanisms largely seek to advance human rights through the promotion of human rights awareness and providing capacity building and advisory services to ASEAN member states. In contrast to European arrangements, the Asia Pacific mechanisms cannot receive and determine applications or complaints from individuals or investigate human rights situations or alleged human rights abuses in member states.

NHRIs and Other National Human Rights Mechanisms

A national human rights institution (NHRI) is an official state institution established by law and funded by the state to promote and protect human rights in the country. As state institutions NHRIs are subject to the law but are otherwise independent of the executive and legislative branches of government. It is each state’s prerogative to determine the type of NHRI most appropriate to its particularities. The main types of NHRIs are Human Rights Commissions, Ombudsman’s Offices and advisory, consultative bodies or research bodies. Some NHRIs are hybrid bodies that combine these roles.

NHRIs are required to comply with the UN minimum standards for NHRIs, the ‘Principles relating to the status of National Institution for the Promotion and Protection of Human Rights’ (Paris Principles). The Paris Principles set out the roles and functions of NHRIs. These include:

- advising government and producing reports on matters concerning the promotion and protection of human rights
• drawing government’s attention to human rights violations
• promoting the ratification and implementation of international human rights instruments
• examining laws for their conformity with international human rights standards, and promoting the harmonisation of national laws and regulations with the human rights instruments to which the state is a party
• cooperating with and contributing to regional human rights bodies and to the UN system
• promoting human rights education and public awareness of efforts to combat discrimination.

All of the NHRIs in the Asia Pacific region and some in Europe also have quasi-judicial competence, which enables them to receive and determine complaints from individuals.

A determination of the compliance of NHRIs with regards to the Paris Principles is undertaken by the International Coordinating Committee of National Institutions (ICC). NHRIs that comply with the Paris Principles are granted ‘A’ status by the ICC. NHRIs assessed as ‘not fully compliant’ with the Paris Principles are granted ‘B’ status. Non-Paris Principles compliant NHRIs are granted ‘C’ status. At July 2011, the ICC comprised 88 NHRIs: 64 ‘A’ status; 15 ‘B’ status; and nine ‘C’ status. ‘A’ status NHRIs enjoy ICC voting rights and participation privileges at United Nations meetings.

Twenty seven European states have NHRIs. Of these, nineteen have ‘A’ status institutions, six have ‘B’ status and two have ‘C’ status. Unlike the Asia Pacific region where one specific NHRI model dominates, European NHRIs take the form of Ombudsman’s Offices, advisory, consultative or research bodies, human rights commissions and hybrid institutions. The powers of these institutions vary with some institutions (e.g. France, Greece and Luxembourg) being mainly advisory bodies while others (e.g. Ireland, Poland, United Kingdom) have broader protection functions.

Nineteen Asian states have NHRIs. The Palestinian territories also has an NHRI. Of these twenty NHRIs, fifteen have ‘A’ status, three have ‘B’ status and two institutions have not yet been accredited by the ICC. Of these 20 institutions, 19 are Human Rights Commissions. The exception is the Timor-Leste Office of the Provedor for Human Rights and Justice, which is a hybrid institution, combining the maladministration mandate of an Ombudsman’s Office with some human rights functions. A distinguishing feature of Asian NHRIs – attributable in part to the absence of a regional court or complaints mechanism – is their mandate
to receive and determine complaints from individuals. On average, NHRIs in the Asia Pacific are also more significant in terms of organisational structure, staffing and resources than those in Europe.

In addition to ‘traditional’ National Human Rights Institutions, a number of interesting new mechanisms for the protection and promotion of human rights have emerged both in Asia and Europe. Human Rights Ministries have been established in numerous Asian countries. In addition, institutional mechanisms for the advancement of women, can be seen in the countries of both regions. National Action Plans for human rights have been adopted by many states in Asia as well as in Europe. These are all welcome developments that can effectively complement the role played by NHRIs. Moreover, local governments and civil society organisations are invaluable human rights actors both in Europe and Asia.

**Regional Interaction with the UN System**

The UN, mainly through OHCHR, is the main promoter of interaction for example through OHCHR field offices. Principal existing forms of interaction include support to the establishment of regional and sub-regional mechanisms in Asia; cross referencing of jurisprudence and other documentation; exchange of information and expertise; cooperation in follow-up on decisions and recommendations; establishment of focal points and liaison officers.

OHCHR has recently also promoted consultations, workshops and dialogues with various stakeholders on ways of increasing interaction between the international and the regional mechanisms. Various recommendations were concluded in these events: cooperation arrangements (such as focal points) should be put in place and regular dialogues should be facilitated among different mechanisms; instruments assisting cooperation, such as a database gathering both international and regional materials, should be created; a system of regular exchanges of jurisprudence between judicial and quasi-judicial mechanisms should be established; and joint activities by mechanisms with similar mandates should be conducted on a more regular basis.

While performing the majority of their work at the national level, NHRIs also make important contributions to the international human rights system. Paris Principle 3(e) requires NHRIs to cooperate with the UN human rights system, and the ICC’s Sub-Committee on Accreditation has highlighted ‘the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies’.
At the regional level, the interaction between NHRIs and regional human rights mechanisms remains limited. In Europe, the European Group of National Institutions has obtained consultative status with some of the European regional bodies and it interacts with the Council of Europe, the European Union Agency for Fundamental Rights and the Organisation for Security and Cooperation in Europe. In the Asia Pacific region, given that the majority of sub-regional intergovernmental mechanisms have only recently been established, the interaction between NHRIs and these sub-regional mechanisms is undeveloped.
## Annex 1: Ratifications

Ratification of International Human Rights Treaties as at September 2011

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**BackgRouNd PaPeR**
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CONCLUDING REMARKS

- **Ambassador Rosario Manalo**
  Philippine Commissioner of the ASEAN Inter-Governmental Commission on Human Rights and Technical Co-ordinator, Informal ASEM Seminar on Human Rights

- **Mr Frédéric Tiberghien**
  State Counsellor, France and Technical Co-ordinator, Informal ASEM Seminar on Human Rights
CONCLUDING REMARKS

Ambassador Rosario Manalo
Philippine Commissioner of the
ASEAN Inter-Governmental Commission on Human Rights and Technical
Co-ordinator, Informal ASEM Seminar on Human Rights

Ambassador Michel Filhol, ASEF Executive Director

Distinguished representatives of the co-organisers of the Informal ASEM Seminar on Human Rights, namely the French Ministry of Foreign and European Affairs, the Raoul Wallenberg Institute, and ASEF,

Excellencies,

Ladies and gentlemen,

We come to the conclusion of an enriching, frank, and constructive dialogue on “National and Regional Human Rights Mechanisms”.

On behalf of the co-organisers, I would like to extend my sincerest gratitude to our high calibre participants, working group chairs, and rapporteurs for all their active and insightful participation in this Year’s seminar. Our appreciation also goes to the volunteer students from Charles University who assisted us in ensuring that this seminar proceeds as smoothly and orderly as possible.

We express great appreciation to the panel that performed and reported on the Czech Republic’s experience in transiting towards democracy and the efforts pursued to promote and protect the human rights of the Czech people.

In these concluding remarks, allow me to highlight a few recurring themes which were brought to the fore in the course of our Working Groups’ discussions yesterday and during this morning’s plenary.

Step-by-step Development of Regional Human Rights Mechanisms

First is the observation that in Asia, as it is in Europe, the evolution of regional human rights mechanisms proceeds in a step-by-step and incremental fashion.

It is said that Europe has the most advanced and complex web of human rights mechanisms under the ambit of the Council of Europe, the European Union, and the Organisation for Security and Cooperation in Europe (OSCE). It is widely
acknowledged that this continent’s regional human rights regime with its corollary institutions, such as the European Court of Human Rights, was not built overnight, that is, not in the wink of an eye. And whatever best practices these institutions may now rightfully be proud of were all arrived at by years or even decades of institutional learning and adjustments.

This same evolutionary approach is adhered to in the ASEAN region as we start building and operating the ASEAN Intergovernmental Commission on Human Rights (AICHR). The challenge is therefore how fast and how far will AICHR progress to effectively address and redress human rights violations in the region.

In this connection, I wish to emphasise that AICHR does not exist in a vacuum. Its establishment and future development has been and will be influenced by region-specific political, historical, and even cultural conditions that serve as either enabling or limiting factors – the very same conditions that will determine the trajectory of ASEAN regionalism itself. AICHR’s future development will be, to a large extent, contingent on advances in the ASEAN regional community building processes and efforts, and not to say the least, the political will of the region’s leaders and the ASEAN people themselves.

To be able to project the future of ASEAN regionalism and, by extension, of AICHR, we must look back to the past.

Allow me then to share with you very briefly my own insights on ASEAN regionalism. I do this as a person who has seen ASEAN emerge, stagnate and flourish through the past 44 years. As a junior diplomat in the Philippine Foreign Service handling the Asian desk, I had the singular opportunity to take active part in shaping Southeast Asian regionalism from the very start, that is, from the early failed attempt with the Association of Southeast Asia (ASA) to MAPHILINDO then back to ASA and, finally, the establishment of ASEAN in 1967. Little did I anticipate that as a retired diplomat I would again be called back into service in 2006 to draft the ASEAN Charter and help in our region’s collective effort to refashion ASEAN into a community with three mutually reinforcing pillars (i.e. ASPC, AEC, and ASCC), in order to make it more responsive and relevant to the realities of the 21st century.

And in hindsight, this is what I learned – essentially, Southeast Asian regionalism was initially driven by the exigencies of nation-state building at a time of intra-Southeast Asian tensions and intense great power rivalry. The 1960s was a time for state consolidation in Southeast Asia. And ASEAN was established as a means to facilitate this process by serving as a mechanism for confidence-building where states could develop the habit of cooperation. Southeast Asian
regionalism was therefore motivated by the desire of individual member states to reinforce state sovereignty, after decades of being under colonial rule, while confronting the challenges of the Cold War. This is why ASEAN’s founding document was a political declaration. And it took us around 40 years after the establishment of ASEAN to tackle sensitive issues that were perceived then to impinge on state sovereignty such as human rights.

This is in stark contrast to the European integration experience where the strategy was to dampen nationalist tendencies through the gradual transfer of national competencies to a supranational authority, starting with the European Coal and Steel Community in 1951. The overarching goal was to rebuild Europe from the devastation of World War II, and prevent the recurrence of bloody wars that intermittently besieged the continent in the past. In short, European integration was underpinned by the commitment to pool sovereignty and, to a certain extent, diminish the role of the nation-state where a community approach was deemed to be more effective. But Europe did not forget human rights with the establishment of the Council of Europe in 1949.

The supreme irony in ASEAN regionalism, however, is that while ASEAN started as a tool to reinforce state sovereignty, it created at the same time an inescapable dynamic whereby member states are becoming more and more enmeshed with each other and, therefore, compelled to share sovereignty. AICHR is a product of that dynamic.

Viewed from this perspective, the prospects of AICHR cannot but be positive. As you know, AICHR is at its nascent stage. It is only 2 years old. It is an intergovernmental commission which, as some critics would say, has a limited mandate. Indeed for the moment given the realities in the region. But AICHR’s Terms of Reference will not be static. It will be subject to a review by 2014. It will develop according to the evolving needs and realities of the region.

The fact is that, today, the geopolitics of the region and governance issues such as corruption, among others, tend to marginalise the efforts of the people at the grassroots level as well as those of the regional mechanism itself to promote and protect human rights in the region. This is the difficult political reality under which AICHR operates. This is our present that you in Europe have already successfully overcome through your long and arduous journey to progress and democracy. And this is what Southeast Asia is inspired about from this old continent of Europe.

This brings me to my second point which is that given these differences between Asia and Europe, we can learn from each other, with the view to improving our respective human rights mechanisms.
Mutual learning from different approaches of human rights promotion and protection

It has been emphasised in our discussions that human rights are universal and indivisible because we share a common humanity regardless of skin colour, cultural background and other markers of identity. Where Asia and Europe differ would be, perhaps, in the approaches by which states implement their human rights obligations at the national and regional levels, as reflected in the respective human rights regimes and institutions of both regions. In view of this, there is a big potential for mutual learning, appreciation, and understanding of inter-regional differences.

But notwithstanding these differences, we know that there are international standards that we must adhere to and that could serve as a common ground for Asia and Europe dialogue on human rights. And this brings me to my third and final point. However, before going to this point I wish to announce that AICHR will soon embark on negotiations to draft the ASEAN Declaration on Human Rights. The ADHR will embody the Universal Declaration on Human Rights but with value-added from the region.

Asia-Europe Partnership in Human Rights Promotion and Protection

The issue of human rights is a rich domain for Asia-Europe partnership. There are so many opportunities for cooperation between the two regions given the increasingly complex and multifaceted nature of human rights promotion and protection, in view of the following developments:

First, the evolving discourses on new generation of human rights and the need to reach domestic and international consensus on them;

Second, the proliferation of new actors in the field of human rights, particularly non-state actors, which presents the challenge of forging new modalities for constructive engagement between governments and inter-governmental entities, on one hand, and non-state actors such as civil society and business partners, on the other hand;

And third, the existence of various national and regional human rights mechanisms and the need to create synergy amongst them. To operationalise this, I am proud to announce that AICHR will soon connect with the OSCE, particularly with the Coordinator of this organisation in charge of trafficking of
persons, to explore ways on how we can cooperate in addressing the different facets and challenges concerning this transnational issue, which has significant impact on the rights of the victims, particularly women and children.

Lastly, our task appears daunting. But with partnership between our two regions, I think we can achieve much in making human rights a concrete reality for the peoples of Europe and ASEAN.

Thank you.
CONCLUDING REMARKS

Mr Frédéric Tiberghien
State Counsellor, France
Technical Co-ordinator, Informal ASEM Seminar on Human Rights

First of all I would like to say that we have performed our duty well during the past two days. The aim of the seminar was to encourage frank and real dialogue between Europe and Asia, and we have indeed had a rich and fruitful exchange of views. Secondly, we have developed a lot of recommendations, which will be conveyed to the ASEM Ministers who gather next week. We will deliver to them a synthesis of our recommendations.

We have achieved these two goals despite the apparently technical nature of the topics discussed in this seminar. Generally speaking, in this series we prefer to deal with substantial rights, such as gender equality in the previous seminar, and information and communication technology in the next. However, this time we dedicated our efforts to tools and mechanisms which are somewhat more abstract. Nevertheless, we succeeded in raising a lot of aspects, some of which I will now comment on. I have highlighted seven main remarks which I will cover over course of this speech.

The first remark covers three conclusions which usually arise from our seminars.

The Pre-eminent Role of states

States are the duty-bearers and their primary role is to protect human rights and to prevent violations against them. They also have a role in promoting human rights, and we frequently mentioned the theme of capacity building within civil society as another of the state's responsibilities.

The state also has a responsibility regarding two types of public authority: the police and the judiciary. The implementation of human rights supposes a police force acting according to the law, and a properly functioning judicial system.

Awareness raising

A frequent conclusion arising from our meetings is that we need to raise awareness on human rights matters. This time we have added to that the need for specific programmes for public officers, including state officials, members of parliament, lawyers and judges, diplomats, the military and social services. Here, we have moved beyond the usual call to educate young students in schools
and universities, and have recognised the general lack of awareness within state authorities. We have to design adaptive programmes of education for this specific population, who play a very important role in the implementation of human rights.

*Integrated implementation*

Our third conclusion is that states are not alone in the implementation of human rights. We referred to Article 14 of the Preamble of the Universal Declaration of Human Rights which clearly states that human rights implementation relies on all organs of society. It is a striking recent development that we insist more and more on the role of other organs of society, like corporations and NGOs.

But perhaps here, we are issuing a warning, by stating that we must avoid a new religion of reliance upon civil society. Yes, civil society is often an ally, but not always. There are also civil society groups which oppose the implementation of human rights. We have mentioned some, such as paramilitary or religious groups, and some international corporations. We must be aware of these realities. Nevertheless, there is a strong demand for states to engage with civil society, and this is definitely a positive conclusion of our meeting.

*My second remark is developed from the beautiful formula used by the First Minister of Foreign Affairs of the Czech Republic, Mr Jiří Schneider, that “human rights start at home”. Under this formula eight main elements should be mentioned regarding the role of the state:*

*Responsibility to protect*

This point was already mentioned above so I will not expand upon it, but, essentially, states have the responsibility to fulfil their duties to protect the human rights of their citizens.

*Construction of national mechanisms*

The second important point here is that states have to build their own mechanisms and procedures to implement human rights. They have to operationalise human rights through procedures and mechanisms. This is one of the main answers to the problem of a lack of political will. We have often stressed the need for political will, but have also acknowledged that it does not exist in some countries. The only way to overcome this is by building mechanisms and procedures which would oblige states to be accountable.
Promotion and protection

We have already touched upon the dual role of national human rights institutions to both promote and protect human rights. This balance is not easy. In the context of protection, the roles of control and monitoring are key. In the role of promotion we also underlined the educational role of national institutions, mainly towards state authorities.

Civil society

The fourth responsibility of the state is to encourage the national human rights institutions to develop partnerships with civil society. They must structure their relations and co-operation with other actors in civil society.

Allocation of resources

The fifth point is rather controversial. We have noted that states have to allocate the necessary resources to the national institutions, but we know that these resources are limited and require prioritisation. We also mentioned the national plans of action regarding human rights, saying that they were acceptable if they were discussed with civil society and if they were based on a human rights approach. However, national action plans are still controversial and is still a topic for further discussion.

Co-operation between national institutions

We also cited the necessity to reinforce co-operation between national institutions. The Czech example was very interesting in that respect because it showed how this country tried to structure relationships in order to make progress.

Accountability of national institutions

The seventh point is the necessity to organise accountability of the national institutions. If we want to increase awareness on human rights, we must have a mechanism in place for accountability to inform parliament and the public in an annual report on human rights. This is a very strong recommendation.

International treaties

The final point here is our recognition that the mandate of national institutions should also include monitoring of the implementation of international treaties. There is a necessary link between national institutions and international treaties as the former are in charge of monitoring the implementation of international treaties, so there is a link between national and international human rights tools.
My third remark is about tools to address human rights violations, which were seen to be highly important in our discussions.

We stressed the need to reinforce strong domestic mechanisms to address human rights violations. We also mentioned the subsidiary principle: national institutions are better placed and better equipped to follow through on human rights violations. This is particularly necessary when the traditional systems are weak, not well equipped or subject to corruption. Justice systems are still not entirely reliable so we need to be able to open complaints to national institutions. The other way is to give the examination of the complaints to courts. This is an option that each country must decide whether or not to use, taking into consideration the global picture. However, if this responsibility is given to courts, they must be competent both to interpret the treaty as well as to implement it.

Regarding complaints handling, we have reached a controversial conclusion. This is because we did not decide whether it is a primary requirement of national institutions to implement human rights and handle cases, or whether their main role lies in the systemic approach, driving social change in human rights matters. While we did not answer that question, I would mention one of the main decisions made recently by the European Court of Human Rights in the case Mamatkulov vs. Turkey of February 4th 2005. The court said that the individual right of complaint is the cornerstone of the mechanism of human rights protection warranted by the European Convention on Human Rights.

We must remember that we need mechanisms to address human rights violations, but this can be a national institution or judiciary. Each system has its advantages and its drawbacks, and we cannot say that one is better than the other. Perhaps they can be complementary.

As another tool to address human rights violations, we focussed on fact-finding. One interesting feature in Europe was that, until 1998, we had both a Commission and a judiciary. In 1998, however, we transferred all roles to the court, leaving the Commission with no role in that. One of the consequences is that the court does not have enough time for fact-finding, and no longer makes country visits to enquire by itself. So we should be reminded that fact-finding is better handled by a Commissioner than by a court.
My next remark focuses on the functions and added values of regional frameworks, which were central to our discussion here.

We noted that the OSCE functions well without any international treaty or framework. On the other hand we saw that the ASEAN Intergovernmental Commission on Human Rights had more powers, probably because there was no judicial system. We also noted that regional agreements cover a number of functions, some of which I will go over here.

First, they are useful to harmonise around minimum standards. They have positive effects: improving of domestic law through the imposition of higher standards; serving as leverage to better protect human rights in all the member states and to prevent human rights violations; contributing to peace building and preventing war between states; introducing a form of emulation between states in the region; solving trans-border issues which are always very difficult to solve.

However, I do not deny that sometimes there is a backlash against regional mechanisms. Two were mentioned over the past two days. The example of UK is very interesting. The UK joined the European Convention on Human Rights very late, only in 2000. It is now facing the first phase of the regional agreement, where the politicians signed the treaty without knowing the consequences it will have in the long run. During the first few years many politicians opposed the consequences of the new treaty, and now the UK finds itself refusing the consequences of the treaty it signed.

Another example comes from the Czech Republic, where, after 20 years of having human rights as part of day-to-day life and discourse, it does not seem to have the same value as it did when they first signed. So, I think that a backlash is also part of the human rights story.

The second function of regional treaties is to bring extra scrutiny to domestic affairs. It is an added value in enquiries to have a foreigner looking at your records and making enquiries when you are in violation of human rights.

The third role is to act as a bridge between national and international instruments.

Fourth, they are a backup for the individuals whose rights have been violated. They can go first to the national institution, and if they fail to be successful then there is the opportunity to approach the regional organisation.
Finally, regional frameworks also provide a platform for dialogue between states and civil society.

The conditions of acceptance of regional mechanisms were also mentioned, so I will briefly touch upon them. They must at least fulfil the international treaties on human rights. They can go beyond these treaties, but must never fall below these minimum conditions. Nevertheless, problems arise when there is a regional institution, as it brings its own legal order which prevails upon the domestic order. That is typically the case with the European Union. A 1964 judgment stated that the European Union’s legal order was superior to the constitutions of its member states. We have the same problem with the European Court of Human Rights, which has developed specific notions, saying that these notions are superior to those of nation states, regarding issues like property rights, which does not have the same meaning in the European Convention as in our member states.

Having said that, I should also add that the acceptance of regional mechanisms supposes the development of co-ordination mechanisms. We mentioned some tools such as the referral mechanism between member state jurisdictions and the European Court of Justice, or the subsidiary principle, which is the basis of the European Court of Human Rights. This principle requires the citizen to exhaust the domestic remedies before going to the regional court, and, reciprocally, the court allows states a very large role in implementing human rights. There are also coordination mechanisms between the European Union and the European Court of Human Rights. These are legal in nature, so I will not dwell on them, but I should highlight the fact that the European Court of Justice in Luxembourg refers to the Convention of Human Rights as a convention of particular importance in Europe. The Court is inspired by this convention in its jurisprudence in a similar way to how the European Court of Human Rights takes into account the Charter of Human Rights.

One further question on regional agreements relates to the sovereignty of states and whether interference in internal affairs should be accepted. I would say that if you sign a regional agreement, you accept that an international affair becomes a domestic affair. One of the roles of regional mechanisms, in my view, is to transform international matters into domestic ones. It is very interesting to note that all of our European Ministers were initially attached to the Ministries of Foreign Affairs, but now, in many countries, it has become the role of the Department of the Prime Minister to handle European affairs. That is to say that
European affairs have become domestic affairs. This is one of the consequences of regional treaties, which made us accept a transfer of competencies as well as establishing minimum standards across the region.

One question which goes unanswered, however, is whether regional agreements improve the general level of human rights protection. Here I would like to quote the Chairman of Constitutional Court of Karlsruhe in Germany: “The sharing of responsibilities between the different courts does not lead to a reduction of fundamental rights but to their tripling, thanks to the cooperation between the Constitutional Court of Karlsruhe, the Strasbourg Court and the Luxembourg Court”. He further stresses that the international courts fortify the national domestic courts, and increase control over administration and public authority as a whole. So we must not forget that, even if some courts lose some of their sovereignty, the ultimate control of public authorities globally is increased by the convergence of these three types of court.

I will now move to address one of the difficult problems we dealt with, which is the problem of the multiplicity of bodies, of treaties and of organisations.

We mentioned the many risks linked to this multiplicity: the risks of duplication, of overlapping, of in-efficiency, of the compartmentalisation of human rights, of the complexity of access for citizens, and of disillusionment in human rights. We noted that there is a tendency to consolidate the different bodies within one framework. But is it so simple as to say that competition is dangerous human rights? I would like to question this and say that the first pillar of the EU is based on competition of the market. Companies claim that more competition increases effectiveness of the markets. Is it not the same in the case of human rights? There is an added value in the fragmentation of human rights, because human rights are constantly evolving. New rights can be created, as can be seen in the case of the European Charter of Fundamental Rights, which has added nearly 30 new rights which did not exist before.

The second point is that human rights are a living matter. That is one of the main assertions of the European Court of Human Rights, which states that it exists not only for keeping human rights but also to develop human rights. All the jurisprudence of the European Court is oriented towards the development of human rights. It has to take into account the new developments, doctrines and domestic laws which are inspiring for the development of rights.
We noticed, also, that we probably need dedicated bodies for vulnerable groups, because if we did not create these bodies, nothing would advance in the rights of groups such as women, children or disabled persons. Fragmentation is probably also a condition of progress for vulnerable groups because nobody cares about their situations if there is no body dedicated to their protection.

We also mention that the more you have dedicated bodies, the more you increase awareness in society. We were complaining that there was insufficient awareness, so I would just like to highlight that the more different bodies created, the more awareness increases.

I will not draw a conclusion as to whether multiplicity is a drawback or an advantage; I will only summarise what we said. If there is a multiplicity, we need to accompany this with a dialogue and exchange between all of the human rights mechanisms which are in place. The more you have, the more dialogue and cooperation you need between them.

I would now like to make a few remarks on economic, social and cultural rights.

We raised the traditional question of whether these rights are minimised and less implemented than civil and political rights. Perhaps we must refer to the context of the adoption of the European Convention, at a time when the conflict between East and West started. During this long conflict, the belief on the Western side was that economic and cultural rights were desirable, but civil and political rights were the most important, because of the situation of that period. Now, however, Europe has overcome this artificial division and clearly considers that these two families of rights are interrelated and indivisible.

On that point, however, I want also to express some disagreement with something which has been said here: the idea that regional agreements must not promise things that cannot be fulfilled. Politicians do not reason like that. The role of politics, on the contrary, is to make promises, to set goals which are not immediately accessible, but will be fulfilled in the long run. This is particularly the case with economic and social rights, which are what we call programmatic rights. These are implemented in the long term when the necessary resources are allocated to promote them. They are much more difficult to implement because they require a large amount of financial and social resources, which states cannot always dedicate to these particular rights. So we must admit that at times implementation is difficult because of this lack of resources.
This refers also to the methodology of establishing human rights. Sometimes, it is possible to manage these rights before they are recognised. Other times, the recognition of the rights might come before attempts to implement them in the long term. Regarding economic and social rights, we have proclaimed these rights and now we are in the difficult phase of implementing them, by dedicating adequate resources. Implementation of economic and social rights is an effort to reduce the gap between the principles and reality.

We see, then, that in Europe a mistake was made in the construction of the continent. The seminar Background Paper mentioned that, according to the Social Charter, we have a European Committee of Social Rights which monitors the implementation of social and economic rights. The problem is that this committee can only make recommendations, but states do not take recommendations seriously if there is no obligation to implement them. The advantage of a judicial system and of the European Court of Human Rights is that it delivers sentences which are binding for states. We can say that in Europe we have two distinct mechanisms: one has teeth, because it is judicial; the other has no teeth and makes recommendations which rely on the good will of states.

I will end with the question of constitutional rights versus conventional rights.

I think one conclusion we can draw from the European experience is that there is no contradiction. Human rights implementation supposes both a very strong constitutional control on laws, and also a very strong control on the conventionality of laws. The European Convention on Human Rights provides us with a very strong testimony on this, which I will recount now. Three states are very rarely condemned by the European Court of Justice: Germany, Spain and Italy. These states, which were totalitarian states, designed immediately after World War II a very strong constitutional control over laws, after the affirmation of fundamental rights. So the main responsibility for human rights implementation control lies with the Constitutional Court. Because of this, the citizens of these countries are not obliged to go to Strasbourg to seek redress. The reason why these three countries have a very low number of cases in Strasbourg is because their constitutional system and control is very efficient. They are a lesson for everybody. If we want to better implement human rights, we need both a very strong constitutional court and also a control by courts over the conformity of laws with the international conventions.

We are in a very interesting period, because we are on the way to the establishment of a human rights system. The question was raised in the Background Paper of whether or not we have such a human rights system now. I am not sure but we are in the youth of that system. We begin to have common
definitions, common terminology, and common language on human rights. We also have actors in charge of monitoring implementation. We have transnational, nongovernmental organisations, and a whole network of actors. Networks of co-operation between national institutions, lawyers and judges are developing. There are regular exchanges between the European Court of Justice and the European Court of Human Rights. We start sharing our jurisprudence between the supreme courts. We work to overcome complications and to prevent clashes and inconsistencies between the different legal orders. These discussions, dialogues and fora within these networks are part of an emerging international human rights system.

To build this system requires time and energy. We now all have to go back to our own countries to work on a better fulfilment and implementation of human rights.

Thank you very much.
LIST OF ACRONYMS AND ABBREVIATIONS

e.g. exempli gratia, for example
No. numero, number
(opt) optional protocol
para. paragraph
vs. versus, as opposed to

ACJ Advisory Council of Jurists
ACMW ASEAN Committee on the Protection and Promotion of the Rights of Migrant Workers
ACWC ASEAN Committee on the Promotion and Protection of the Rights of Women and Children
ADHR ASEAN Declaration on Human Rights
AICHR ASEAN Intergovernmental Commission on Human Rights
ANNI Asian NGO Network on National Human Rights Institutions
APF Asia Pacific Forum of National Human Rights Institutions
ASA Association of Southeast Asia
ASEAN Association of Southeast Asian Nations
ASEAN Association of Southeast Asian Nations
ASEF Asia-Europe Foundation
ASEM Asia-Europe Meeting
CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR International Covenant on Civil and Political Rights
CDDH Steering Committee for Human Rights
CED International Convention for the Protection of All Parties from Enforced Disappearance
CEDAW Convention on the Elimination of All Forms of Discrimination against Women
CERD International Convention on the Elimination of All Forms of Racial Discrimination
CESCR International Covenant on Economic, Social and Cultural Rights
CFREU Charter of Fundamental Rights of the European Union
CFSP Cooperation in foreign and security policy
CMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoE Council of Europe
COHOM EU Council’s Human Rights Working Group
CoM Committee of Ministers
CPCM Cooperation in police and criminal matters
CPT European Committee for the Prevention of Torture
CRC Convention on the Rights of the Child
CRPD Convention on the Rights of Persons with Disabilities
CSCE Conference for Security and Cooperation in Europe
CSO Civil society organisation
CSR Corporate Social Responsibility
CSW Commission on the Status of Women
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>EC</td>
<td>European Community</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>ECOSOC</td>
<td>UN Economic and Social Council</td>
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<tr>
<td>ECPT</td>
<td>European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>ECRI</td>
<td>European Commission against Racism and Intolerance</td>
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<tr>
<td>ECSR</td>
<td>European Committee of Social Rights</td>
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<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EEAS</td>
<td>European External Action Service</td>
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<td>EIDHR</td>
<td>European Instrument for Democracy and Human Rights</td>
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<td>EOM</td>
<td>Electoral observation mission</td>
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<td>ESC</td>
<td>European Social Charter</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUMC</td>
<td>European Monitoring Centre on Racism and Xenophobia</td>
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<tr>
<td>FCNM</td>
<td>Framework Convention on Protection of National Minorities</td>
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<tr>
<td>FRA</td>
<td>EU Fundamental Rights Agency</td>
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<tr>
<td>GONGO</td>
<td>Government-organised NGO</td>
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<tr>
<td>GRETA</td>
<td>Group of Experts on Action Against Trafficking in Human Beings</td>
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<tr>
<td>ICC</td>
<td>International Coordinating Committee of National Institutions</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IPCHR</td>
<td>OIC Independent Permanent Commission on Human Rights</td>
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<tr>
<td>LAWASIA</td>
<td>Law Association of Asia and the Pacific</td>
</tr>
<tr>
<td>LGBT</td>
<td>Lesbian, gay, bisexual, transsexual</td>
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<tr>
<td>MAF</td>
<td>Multi-Annual Framework</td>
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<tr>
<td>NAP</td>
<td>National Action Plan</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NHRI</td>
<td>National human rights institution</td>
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<td>NIRMS</td>
<td>National Institutions and Regional Mechanisms Section</td>
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<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
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<td>OHCHR</td>
<td>High Commissioner on Human Rights</td>
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<td>OIC</td>
<td>Organisation of the Islamic Conference</td>
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<td>OSCE</td>
<td>Organisation for Security Cooperation in Europe</td>
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<td>PIF</td>
<td>Pacific Islands Forum</td>
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<tr>
<td>RRRT</td>
<td>Pacific Regional Rights Resource Team</td>
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<tr>
<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
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<td>SCA</td>
<td>Sub-Committee on Accreditation (of the ICC)</td>
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<tr>
<td>SEANF</td>
<td>South East Asia National Human Rights Institutions Forum</td>
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<tr>
<td>SPC</td>
<td>Secretariat of the Pacific Community</td>
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<td>TEU</td>
<td>Treaty on European Union</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UN Women</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNHCR</td>
<td>UN High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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Day 1 – Wednesday, 23 November 2011

**Arrival of Participants, Registration and Welcome Reception**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>09:00 – 18:00</td>
<td>Arrival of Participants</td>
</tr>
<tr>
<td>14:00 – 16:00</td>
<td>Rapporteurs’ meeting (Invitation only)</td>
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<tr>
<td>16:00 – 17:00</td>
<td>Registration of Participants</td>
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**Opening Plenary**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>17:30 – 19:45</td>
<td><strong>Opening Speech on Behalf of the Organisers</strong></td>
</tr>
<tr>
<td></td>
<td>Ambassador Michel Filhol</td>
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<td></td>
<td>Executive Director, Asia-Europe Foundation</td>
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<tr>
<td></td>
<td><strong>Opening Speech on Behalf of the Host,</strong></td>
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<tr>
<td></td>
<td><strong>The Czech Republic</strong></td>
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<tr>
<td></td>
<td>Mr Jiří Schneider</td>
</tr>
<tr>
<td></td>
<td>First Deputy Minister and State Secretary for EU Affairs of</td>
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<tr>
<td></td>
<td>the Ministry of Foreign Affairs of the Czech Republic</td>
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<tr>
<td></td>
<td><strong>Introduction to the 11th Informal ASEM Seminar on Human</strong></td>
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<td><strong>Rights on Behalf of the Organisers and Keynote Address</strong></td>
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<tr>
<td></td>
<td>Brian Burdekin AO</td>
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<td></td>
<td>Former Australian Federal Commissioner for Human Rights</td>
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<td>Special Adviser on NHRIs to the UN High</td>
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<td></td>
<td>Commissioner of Human Rights</td>
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<td></td>
<td>Visiting professor at Raoul Wallenberg Institute</td>
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<tr>
<td></td>
<td><strong>Keynote Speech</strong></td>
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<td></td>
<td>Mr Rafendi Djamin</td>
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<td></td>
<td>Chairman and Representative of Indonesia to the ASEAN</td>
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<td>Intergovernmental Commission on Human Rights</td>
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<tr>
<td>08:00 – 09:00</td>
<td>Registration of Participants (continued)</td>
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<tr>
<td>09:00 – 11:00</td>
<td><strong>Working Group 1: National Human Rights Mechanisms</strong></td>
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<tr>
<td></td>
<td><strong>Moderator:</strong> Mate Szabo</td>
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<td>Parliamentary Commissioner for Civil Rights, Hungary</td>
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<td></td>
<td><strong>Rapporteur:</strong> Kieren Fitzpatrick</td>
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<td></td>
<td>Director of Asia Pacific Forum of National Human Rights Institutions</td>
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<tr>
<td>09:00 – 11:00</td>
<td><strong>Working Group 2: Regional Human Rights Mechanisms</strong></td>
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<td><strong>Moderator:</strong> Sriprapha Petcharamesree</td>
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<td></td>
<td>Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights</td>
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<td><strong>Rapporteur:</strong> Florence Benoît-Rohmer</td>
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<td></td>
<td>Secretary General European Inter-University Centre for Human Rights and Democratisation</td>
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</tbody>
</table>
**Working Group 3: Procedural Effectiveness of Regional Human Rights Mechanisms**

**Moderator:** Rosslyn Noonan  
Chairperson  
International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

**Rapporteur:** Ray Paolo J. Santiago  
Program Manager  
Civil Society Working Group for an ASEAN Human Rights Mechanism

**Working Group 4: Multi-level Architecture of Human Rights Mechanisms**

**Moderator:** Zhang Wei  
Deputy Director, Institute of Human Rights and Humanitarian Law

**Rapporteur:** Chief Commissioner of the Northern Ireland Human Rights Commission  
Co-Chair of the University of Nottingham Human Rights Law Centre  
Vice-Chairperson of the UN Human Rights Committee

11:00 – 11:15  
Coffee Break

11:15 – 13:00  
Workshops continued

13:00 – 14:00  
Lunch

14:00 – 15:30  
Workshops continued- Specific Questions

15:30 – 16:00  
Coffee Break

16:00 – 18:00  
Workshops continued and Wrap-up

18:00 – 19:30  
Report Preparation & Free Time for Participants

19:30 – 21:00  
Dinner
Day 3 – Friday, 25 November 2011

**Closing Plenary**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</table>
| 09:30 – 11:00 | **Main Rapporteurs’ Summary on Each Workshop**  
Moderator: Ms Sol Iglesias  
Director for Intellectual Exchange, Asia-Europe Foundation |
|            | **Working Group 1: National Human Rights Mechanisms**  
Presentation & Discussion |
|            | **Working Group 2: Regional Human Rights Mechanisms**  
Presentation & Discussion |
|            | **Working Group 3: Procedural Effectiveness of Regional Human Rights Mechanisms**  
Presentation & Discussion |
|            | **Working Group 4: Multi-level Architecture of Human Rights Mechanisms**  
Presentation & Discussion |
| 11.00 – 11.15 | Coffee Break                                                                                   |
| 11:15 – 12:30 | **Plenary Discussion**                                                                          |
| 12:30 – 14:00 | Lunch and Group Photo                                                                           |
| 14:00 – 16:00 | **Special panel: Transition to the New Legal Order in the Czech Republic with a special focus on the creation of the national system of protection of human rights** |
| 16:00 – 16:30 | Coffee Break                                                                                   |
| 16:30 – 17:00 | **Concluding Remarks from the Organisers**  
Ambassador Rosario Manalo  
Technical Coordinator & Philippine Commissioner of the ASEAN Inter-Governmental Commission on Human Rights (AICHR)  
Mr Frederic Tiberghien  
Technical Coordinator & Representative of the Ministry of Foreign and European Affairs, France, & State Counselor (Conseil d’Etat) |
ANNEX

CONCEPT NOTE & WORKING GROUP QUESTIONS

Background

The relation between universal/UN and regional human rights arrangements can be described as complex. Regional mechanisms exist in Europe (Council of Europe since 1950 and the Organisation for Security Cooperation in Europe through its Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities), Latin America (Organisation of American states since 1969) and Africa (Organisation of African Unity now African Union since 2002) including a largely dormant Arab system under the auspices of Organisation of Arab states.

Under both universal and regional arrangements, obligations of the states arise through the ratification of treaties or with the emergence of custom, general principles or precedents. There can be differences in the level of protection offered by global and regional standards and mechanisms, but those seeking redress (individuals, groups, NGOs, etc.) will eventually have the final say through their selection of standards and a monitoring avenue that offers them the best and most effective protection or remedy.

The recent creation of a regional human rights mechanism in Asia, namely the ASEAN Inter-governmental Commission on Human Rights, is therefore a stimulating development. ASEAN mechanisms for the protection of women, children and migrants also provide an opportunity to analyse new experiences and contribute to the development of regional mechanisms.

While long-standing, the European Court of Human Rights faces the challenge of a high volume of cases and a need for improved remedies at the national level, despite the entry into force of the 14th Additional Protocol to the European Convention on Human Rights intended to simplify and expedite processing of cases. The European human rights architecture needs to address the implications of the Lisbon Treaty, the expected accession of the European Union to the European Convention on Human Rights and the legally-binding nature of the Charter of Fundamental Rights.
National human rights institutions (NHRIs) are independent organisations supported and established with a constitutional or legislative mandate to promote and protect human rights. NHRIs generally better understand national circumstances and local challenges. They are often the best-placed organisations (nationally or internationally) to monitor and evaluate the human rights situation in the country. The standards established by the United Nations (the Paris Principles) outline a broad human rights mandate and a wide range of specific responsibilities for the creation and operation of NHRIs. In ASEM countries, majority do not have NHRIs and of those that do, not all entirely meet the Paris Principles.

A recent Office of the High Commissioner on Human Rights study (2009) has found, however, that NHRIs’ global engagement with international and regional mechanisms remains significantly underdeveloped and reflects limited familiarity with these systems. While NHRI participation in the Universal Periodic Review (UPR) process of the UN Human Rights Council was considered to be “high”, interaction with treaty bodies was described as “moderate”, interaction with Special Procedures mandate holders as “low” and interaction with other international mechanisms as “minimal”.

Less is known about the interaction between the region and NHRI s or other national institutions/agencies involved in human rights promotion and protection.

The main objective of the 11th Informal ASEM Seminar on Human Rights on Regional and National Human Rights Mechanisms is to facilitate a dialogue on regional and national mechanism-building. Specifically, the Seminar aims to develop recommendations to strengthen regional and national mechanisms in Asia and Europe.
WORKING GROUP QUESTIONS

Cross-cutting questions

1. How do regional and national human rights mechanisms promote the principles of universality, inalienability and interdependence of rights?

2. How have economic, political and societal changes in the last 30 years had an impact on human rights protection?

3. What are state obligations with respect to human rights promotion, protection, fulfilment, as well as in the prevention of violations?

4. Should regional human rights systems serve as an additional forum for appeal (the “fourth instance”) in the event of failure of the domestic system to protect contested civil and political rights?

5. How are regional and national mechanisms relevant to the question of the right to development as a collective reference to economic, social and cultural rights?

Working group 1: National Human Rights Mechanisms

1.1. Do we have to review the Paris Principles?

1.2. How do we measure the efficiency and effectiveness of NHRI s? From experience, what are the factors of success?

1.3. Do governments and other national authorities (e.g. parliament, judiciary) effectively take into account the advice of the commissions?

1.4. Which kinds of rights typically fall within the scope of NHRI s? What new areas have emerged?

1.5. What role could civil society play to foster national promotion and protection of human rights? What kind of cooperation is needed between NHRI s and the business sector?
1.6. What role do other national institutions and agencies (domestic judiciary, ombudsman institution and other relevant agencies) play in human rights protection?

Working Group 2: Regional Human Rights Mechanisms

2.1. Are regional human rights systems necessary? What is their added value to international and national mechanisms?

2.2. Is there a need to refer to define and harmonise human rights standards within a region?

2.3. What are the different roles played by international and national mechanisms vis-a-vis regional ones for human rights promotion, protection, fulfilment, as well as in the prevention of violations?

2.4. How do mechanisms at a regional level enhance protection of the rights of vulnerable groups such as, among others, ethno-linguistic and religious minorities, migrant workers, women and children?

2.5. How could regional mechanisms respond to the emergence of new types or generations of rights (e.g. better protection of social rights, or right to healthy environment)?

2.6. Does the existence of a regional mechanism help to promote a shared human rights culture?

Working group 3: Procedural Effectiveness of Regional Human Rights Mechanisms

3.1. What institutional features make a regional mechanism effective, in terms of:
   a. Procedures?
   b. Recognition and scope of rights?
   c. Complaints procedure?
   d. Provision of remedy?

3.2. What mechanisms/tools are available for redress in the event of human rights violations? Are available mechanisms effective?

3.3. How can the complexity of some systems be addressed?
3.4. How could the challenge of determining jurisdiction, with respect to international and national levels, be addressed?

3.5. What role does the right of individual access to complaint procedures play in the system? What are the results from existing experiences?

3.6. Should there be the equivalent of the “Paris Principles”\(^1\) to guide the formation and operation of regional mechanisms?

*Working group 4: Multi-level Architecture of Human Rights Mechanisms*

4.1. What are the outcomes of different needs and approaches to human rights?

4.2. Can the current situation be described as convergence or divergence between and among the different levels (national, regional, international)?

4.3. How can the engagement of NHRI\(s\) with UN Bodies (eg. Human Rights Council and its universal periodic review mechanism) and Special Procedures improve the human rights situation at the national level? Would this divert resources and attention from primary national responsibilities?

4.4. What areas of cooperation could be found between NHRI\(s\) and regional bodies, eg. EU, ASEAN, Council of Europe?

4.5. How can the mutual influences between and among the different regional courts (e.g. precedents cited from one court in another) be organised?

4.6. How can constitutional rights, defined nationally, be combined with regional and universal/UN standards?

\(^1\) [http://www2.ohchr.org/english/law/parisprinciples.htm](http://www2.ohchr.org/english/law/parisprinciples.htm)
## PARTICIPANTS

| **Australia** | **Benjamin Lee**  
Project Manager, Asia Pacific Forum of National Human Rights Institutions |
|---------------|--------------------------------------------------|
|               | **Brian Burdekin AO**  
Former Australian Federal Commissioner for Human Rights and Special Adviser on NHRIs to the UN High Commissioner of Human Rights, Visiting Professor at Raoul Wallenberg Institute |
|               | **Edmund Mortimer**  
Second Secretary, Australian Embassy, Warsaw |
|               | **Kieren Fitzpatrick**  
Director, Asia Pacific Forum of National Human Rights Institutions |
| **Austria**   | **Gerlinde Paschinger**  
Deputy Head of Human Rights Department, Federal Ministry for European and International Affairs |
| **Belgium**   | **Alexander Hoefmans**  
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|               | **Luc Walleyn**  
Lawyer, Blanmailland & Partners |
|               | **Philippe de Muelenaere**  
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Lawyer, Chair of Executive Board of Bulgarian Lawyers for Human Rights Foundation, Bulgarian Lawyers for Human Rights Foundation |
|               | **Goryana Lenkova**  
Embassy of the Republic of Bulgaria in Prague |
| **Cambodia**  | **Ou Virak**  
President, The Cambodian Center for Human Rights (CCHR) |
<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
<th>Position and Affiliation</th>
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<tbody>
<tr>
<td>China</td>
<td>Chen Shiqiu</td>
<td>Head of Delegation, Ministry of Foreign Affairs, China</td>
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<tr>
<td></td>
<td>Wong Kai Shing</td>
<td>Executive Director, Asian Human Rights Commission</td>
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<tr>
<td></td>
<td>Xu Hui</td>
<td>Professor of Law, Chinese Academy of Social Sciences</td>
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<tr>
<td></td>
<td>Zhang Wei</td>
<td>Deputy Director, Institute of Human Rights and Humanitarian Law, China University of Political Science and Law</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Costakis Paraskeva</td>
<td>Assistant Professor in European Human Rights Law, University of Nicosia (Cyprus)</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Barbora Bukovska</td>
<td>Senior Director for Law and Policy, Article 19: Global Campaign for Free Expression</td>
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<tr>
<td></td>
<td>Filip Glotzmann</td>
<td>Head of the Office, Office of the Public Defender of Rights</td>
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<tr>
<td></td>
<td>Vera Honuskova</td>
<td>Researcher, Senior Lecturer, Law Faculty, Charles University</td>
</tr>
<tr>
<td>Denmark</td>
<td>Lone Lindholt</td>
<td>Senior Legal Adviser, The Danish Institute for Human Rights</td>
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<tr>
<td>Estonia</td>
<td>Aleksei Semjonov</td>
<td>Director, Legal Information Centre for Human Rights</td>
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<tr>
<td>Finland</td>
<td>Marja Lahtinen</td>
<td>Embassy of Finland in Prague</td>
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<tr>
<td>France</td>
<td>Florence Benoît-Rohmer</td>
<td>Professor, European Inter-University Centre for Human Rights and Democratisation</td>
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<tr>
<td>Germany</td>
<td>Agnes Flues</td>
<td>Acting Coordinator, University of Nottingham Human Rights Law Centre</td>
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<td></td>
<td>Katrin Bock</td>
<td>Embassy of the Federal Republic of Germany</td>
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<td>Greece</td>
<td><strong>Georgios Stilianopoulos</strong></td>
<td>Counsellor of Embassy, Embassy of Greece in Prague</td>
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<td><strong>Paraskevi Naskou-Perraki</strong></td>
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<tr>
<td>Hungary</td>
<td><strong>Gergely Schuchtar</strong></td>
<td>Policy Officer, Ministry of Foreign Affairs of the Republic of Hungary</td>
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<td></td>
<td><strong>Mate Szabo</strong></td>
<td>Parliamentary Commissioner for Civil Rights, Parliamentary Commissioner for Civil Rights of Hungary</td>
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<tr>
<td>India</td>
<td><strong>Henri Patrick Tiphagne</strong></td>
<td>Executive Director, People’s Watch</td>
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<td></td>
<td><strong>Jennifer Kishan</strong></td>
<td>Research Officer, Commonwealth Human Rights Initiative</td>
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<td><strong>Mahinder Kumar Khurana</strong></td>
<td>First Secretary, Embassy of India</td>
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<td>Indonesia</td>
<td><strong>Emeria Wilujeng Amir Siregar</strong></td>
<td>Ambassador, Embassy of Indonesia</td>
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<td><strong>Indriaswati Dyah Saptaningrum</strong></td>
<td>Executive Director, ELSAM - Institute for Policy Research and Advocacy</td>
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<td>Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights, AICHR</td>
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<td><strong>Yuyun Wahyuningrum</strong></td>
<td>Senior Advisor on ASEAN and Human Rights Working Group (HRWG) Indonesia</td>
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<td>Ireland</td>
<td><strong>Brian McElduff</strong></td>
<td>Chargé d’Affaires, Embassy of Ireland</td>
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<td><strong>Mark Kelly</strong></td>
<td>Director, Irish Council for Civil Liberties</td>
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<td>Italy</td>
<td><strong>Roberto Taraddei</strong></td>
<td>Diplomat, Italian Embassy</td>
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<tr>
<td>Japan</td>
<td>Koshi Yamazaki</td>
<td>Professor, Faculty of Law, Kanagawa University</td>
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<td></td>
<td>Naoki Sugano</td>
<td>First Secretary, Permanent Mission of Japan to the International Organisations in Vienna</td>
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<tr>
<td>Korea</td>
<td>Kim Jong Chul</td>
<td>Director and Attorney at Law, Advocates for Public Interest Law</td>
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<td></td>
<td>Seokmo An</td>
<td>Director General of Policy and Education Bureau, National Human Rights Commission of Korea</td>
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<td></td>
<td>Soh Changrok</td>
<td>Professor / President, Korea University / Asia Center for Human Rights (Human Asia)</td>
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<td></td>
<td>Taesik Han</td>
<td>Commissioner, National Human Rights Commission of Korea</td>
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<td>Yunkul Jung</td>
<td>Chief, International Human Rights Team, National Human Rights Commission of Korea</td>
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<tr>
<td>Laos</td>
<td>Viengsavanh Phanthaly</td>
<td>Vice President, Lao Bar Association</td>
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<td>Vongvilay Thiphalangsy</td>
<td>Deputy Director of Division, Ministry of Foreign Affairs, Laos</td>
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<tr>
<td>Latvia</td>
<td>Anhelita Kamenska</td>
<td>Acting Director, Latvian Centre for Human Rights</td>
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<td>Lithuania</td>
<td>Laima Birstunaite</td>
<td>Ministry of Foreign Affairs of the Republic of Lithuania</td>
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<td>Luxembourg</td>
<td>Jean-Paul Lehners</td>
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<td>Malaysia</td>
<td>Andrew Khoo Chin Hock</td>
<td>Chairperson, Human Rights Committee, Bar Council Malaysia</td>
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<td>Moon Hui Tah</td>
<td>Treasurer cum Secretariat Member, Sura Rakyat Malaysia (SUARAM)</td>
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<td>Mongolia</td>
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<td>Governance Program Manager, Open Society Forum</td>
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<td>Byambadorj Jamsran</td>
<td>Chief Commissioner, National Human Rights Commission of Mongolia</td>
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<td>Narantuya Ganbat</td>
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<td>Zanaa Jurmed</td>
<td>Director, Reparative Justice Program, Centre for Citizens’ Alliance</td>
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<td>Netherlands</td>
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<td>Lionel Veer</td>
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<tr>
<td>New Zealand</td>
<td>Daniela Rigoli</td>
<td>Second Secretary, New Zealand Embassy</td>
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<td>Rosslyn Noonan</td>
<td>Chairperson, International Coordinating Committee for the promotion &amp; Protection of Human Rights</td>
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<tr>
<td>Pakistan</td>
<td>Aitzaz Ahmed</td>
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<td>Kamran Arif</td>
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<td>Philippines</td>
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<td></td>
<td>Ruben Carranza</td>
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<td>Poland</td>
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<td>Romania</td>
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<tr>
<td>Russia</td>
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<td></td>
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<td>Thailand</td>
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<td>Observers</td>
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<td>Ambassador, Embassy of Philippines</td>
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<td><strong>Nur Syahidah Sahrom</strong></td>
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<td>Vice-Director, The Standing Office on Human Rights of Vietnam</td>
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<td><strong>Participants</strong></td>
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<td><strong>Organisers</strong></td>
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<td><strong>Michel Filhol</strong>&lt;br&gt;Executive Director, Asia-Europe Foundation</td>
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### Hosts

<table>
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<tr>
<th>Name</th>
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<tbody>
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<td>Director of the Human Rights and Transition Policy Department, Ministry of Foreign Affairs of the Czech Republic</td>
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<tr>
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<td>Director, Department of Asia and Pacific, Ministry of Foreign Affairs of the Czech Republic</td>
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</table>
ABOUT THE ORGANISERS

The Asia-Europe Foundation

The Asia-Europe Foundation (ASEF) promotes greater mutual understanding between Asia and Europe through intellectual, cultural and people-to-people exchanges. Through ASEF, civil society concerns are included as a vital component of deliberations of the Asia-Europe Meeting (ASEM). ASEF was established in February 1997 by the participating governments of ASEM and has since implemented over 500 projects, engaging over 15,000 direct participants as well as reaching out to a much wider audience in Asia and Europe. www.asef.org

Raoul Wallenberg Institute

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide. For more information, please visit our website: www.rwi.lu.se
French Ministry of Foreign and European Affairs

For more information, please visit our website: www.diplomatie.fr

Philippine Department of Foreign Affairs

The Department of Foreign Affairs is responsible for the coordination and execution of the foreign policies of the Republic of the Philippines and the conduct of its foreign relations and performs such other functions as may be assigned to it by law or by the President relating to the conduct of foreign relations.

dfa.gov.ph
ABOUT THE HOST

Ministry of Foreign Affairs of the Czech Republic

For more information about the Ministry and the Czech foreign policy, please refer to our website: www.mzv.cz
On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice. (Sweden | 1997)
- Differences in Asian and European values; rights to education; rights of minorities. (China | 1999)
- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment? (France | 2000)
- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare. (Indonesia | 2001)
- Economic relations; rights of multinational companies and foreign direct investments (Sweden | 2003)
- International migrations; protection of migrants, migration control and management (China | 2004)
- Human rights and ethnic, linguistic and religious minorities (Hungary | 2006)
- Freedom of expression (Cambodia | 2007)
- Human Rights in Criminal Justice (France | 2009)
- Human Rights and Gender Equality (Philippines | 2010)

The formula employed is as follows:

- Each ASEM partner nominates an official representative and the organisers invite two civil society participants from each of the sixteen Asian ASEM countries and the three ASEM countries (Australia, New Zealand and Russia) which joined in 2010; and one from each of the twenty-seven European ASEM countries;
- An agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;
- Closed-door debates to allow free and direct exchanges of view; and,
- A set of recommendations elaborated collectively to be sent to the relevant institutions in ASEM countries as an informal contribution to the official Asia-Europe dialogue.

The Seminar series is co-organised by the French Ministry of Foreign and European Affairs, the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs), the Department of Foreign Affairs of the Philippines and the Asia-Europe Foundation (ASEF), which has acted as the secretariat of the seminar since 2000.

Supervision of the seminar is entrusted to a steering committee, composed of the seminar’s four co-organisers as well as representatives of the Ministries of Foreign Affairs of China and Indonesia, and the European Union.

The Informal ASEM Seminar on Human Rights Series is a partnership between:

The 11th Informal ASEM Seminar on Human Rights was hosted by: Ministry of Foreign Affairs of the Czech Republic

ASEF’s contribution is with the financial support of the European Union