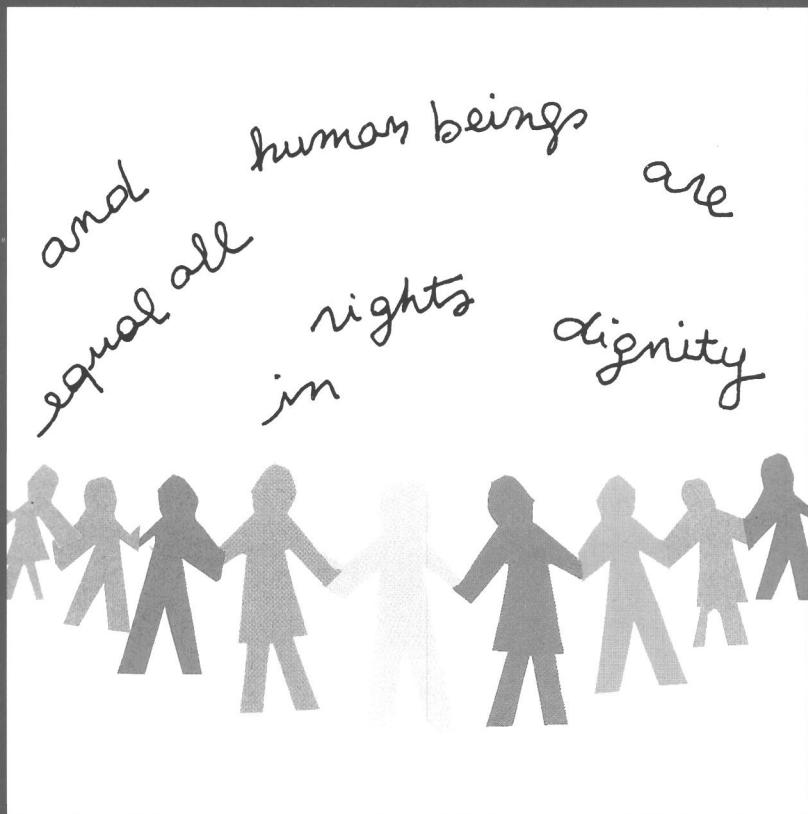




The European Union and human rights in the world



Supplements 1995

- 1/95 Address by Jacques Santer, President of the Commission, to the European Parliament on the occasion of the investiture debate of the new Commission
 - Commission's programme for 1995
 - Presentation to the European Parliament by Jacques Santer
 - Resolution of the European Parliament on the programme for 1995
- 2/95 Strengthening the Mediterranean policy of the European Union: Establishing a Euro-Mediterranean partnership
- 3/95 *The European Union and human rights in the world*
- 4/95 The citizen's network — Fulfilling the potential of public passenger transport in Europe
- 5/95 Green Paper on innovation

**On the inclusion of respect for democratic principles
and human rights in agreements between
the Community and third countries**

Communication from the Commission

**The European Union and the external
dimension of human rights policy:
from Rome to Maastricht and beyond**

Communication from the Commission to the Council and to the
European Parliament

Document drawn up on the basis of COM(95) 216 final
and COM(95) 567 final

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Foreword

The entry into force of the Treaty on European Union on 1 November 1993 was a milestone in the recognition of human rights and democratic principles. It enshrined respect for human rights — a basic condition for membership — among the Union's guiding principles.

The Union Treaty states that one of the overall objectives of the common foreign and security policy is to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms. The same principles are reiterated elsewhere as an overall objective of Community development policy.

There can be no development without peace and that peace can only be guaranteed in the long term by sustainable development based on the democracy, rule of law and respect for human rights that underpin social harmony.

The Union's commitment finds practical expression in the human rights clauses which are now part and parcel of any agreement between the Community and a non-member country. This commitment is also reflected in an open and constructive dialogue with foreign governments which enables the Community to provide active support for the democratic process and, if need be, to express its concern at the human rights situation.

The positions taken over the years by the Heads of State or Government and by the Community institutions have crystallized into an approach founded on legal, political and moral values that now inform on everything the Union does.

The European Parliament has long been a driving force in the matter of human rights, with positions that have helped steer policy in this field.

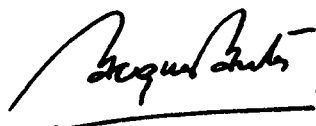
Its resolutions, its written and oral questions and its hearings on current events have made it a platform for the defence and promotion of human rights, so helping to make sure that Community policies take account of basic rights. Indeed, Parliament has been debating human rights throughout the world extensively since 1983, a debate that has led to the adoption of a resolution covering all aspects of the Union's policy.¹

As for the Commission, it has in my first year as President presented to the Council and Parliament two communications on the European Union's policy on human rights, the first ever on this issue.

¹ OJ C 126, 22.5.1995, Bull EU 4-1995, point 1.2.3.

These steps show how the importance of human rights in international relations has grown in recent years and attest to the Community's awareness of its duty to do all it can to ensure that they are respected.

This booklet contains the two Commission communications, confirming that human rights are a vital part of our identity as Europeans.

A handwritten signature in black ink, appearing to read 'Jacques Santer', written over a horizontal line.

JACQUES SANTER
President of the European Commission

General contents

On the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries	7
The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond	23

On the inclusion of respect
for democratic principles
and human rights in agreements
between the Community
and third countries

Contents

<i>Introduction</i>	9
<i>A — Foundations and references</i>	10
<i>B — Evolution</i>	10
<i>C — Assessment</i>	12
<i>D — Conclusions</i>	13
<i>Annexes</i>	15

Introduction

A commitment to respect, promote and protect human rights and democratic principles is a key element of the European Community's relations with third countries.

These issues have been gradually incorporated into the Community's activities over a period of time through a series of commitments culminating in the insertion of explicit references to human rights and democratic principles in the body of the Union Treaty.

To help it meet those commitments the Community has a broad range of instruments at its

disposal, including Union intervention in international forums and specific operations aimed at bolstering the rule of law and respect for human rights in the context of the Community's relations with non-member countries. Taking account of human rights in contractual relations with third countries is one of those instruments.

It is on this latter instrument that the communication focuses.

A — Foundations and references

References to human rights in agreements with third countries are based on the positions the Community has taken by:

- subscribing to universal and regional instruments and assuming responsibility for promoting the principles of democracy, the rule of law and respect for human rights (paragraph 5 of the preamble to the Single European Act);
- making respect for, and promotion of, these principles one of the general objectives of Community development cooperation policy (Union Treaty, Article 130U) and one of the objectives of the common foreign and security policy (Union Treaty, Article J (2));
- defining the main components of a hands-on strategy through its development cooperation policy and by inserting clauses on human rights into economic and cooperation agreements with third countries (Luxembourg European Council's Declaration on Human Rights, June 1991, paragraph 11);
- jointly identifying guidelines appropriate to the different types of agreement:
 - in its relations with developing countries, by adopting guidelines, procedures and

practical measures and including clauses on human rights in its cooperation agreements (paragraph 10 of the resolution on human rights, democracy and development of the Council and the Member States meeting within the Council, 28 November 1991);

in its relations with CSCE countries, by recognizing democratic principles and human rights as an essential element of its contractual relations with those countries by incorporating the appropriate provisions into the agreements concerned; these provisions allow the Community to taken action in case of special urgency, including any failure to meet the obligations deriving from the agreement (Council Declaration of 11 May 1992).¹

These commitments as a whole are consistent with the opinions voiced by Parliament in its various human-rights-related initiatives, including its annual resolutions on the world human rights situation.

B — Evolution

The Community's growing commitment to the promotion of human rights and democratic principles is reflected in the evolving nature of the references to these issues in the relevant agreements.

Initially they were mentioned either not at all or only in passing in the preamble of some agreements. The first reference in the body of a contractual document was in Article 5 of the fourth Lomé Convention, concluded in December 1989. In this way the European Community and its Member States tangibly demonstrated their commitment to human rights in their relations with third countries. In the ensuing three years, this stance was confirmed as such references gradually began to appear in cooper-

ation agreements, defining respect for democratic principles and human rights as one of the foundations of the parties' relations.

However, Article 5 of Lomé IV and similar articles in other agreements do not provide a clear legal basis to suspend or denounce agreements in cases of serious human rights violations or interruptions of democratic process.

It is for this reason that a clause defining democratic principles and human rights as an 'essential element' of the agreements with Brazil, the Andean Pact countries, the Baltic States and Albania was introduced in 1992 (see Annex 1-1).

This is a substantial innovation, in that:

- it makes human rights the subject of common interest, part of the dialogue between the

¹ Bulletin EC, 5-1992, point 1.2.13

parties and an instrument for the implementation of positive measures on a par with the other key provisions;

it enables the parties, where necessary, to take restrictive measures in proportion to the gravity of the offence (see Annex 2). In the spirit of a positive approach, it is important that such measures should not only be based on objective and fair criteria, but they should also be adapted to the variety of situations that can arise, the aim being to keep a dialogue going; in the selection and implementation of these measures it is crucial that the population should not be penalized for the behaviour of its government;

it allows the parties to regard serious and persistent human rights violations and serious interruptions of democratic process as a 'material breach' of the agreement in line with the Vienna Convention,¹ constituting grounds for suspending the application of the agreement in whole or in part in line with the procedural conditions laid down in Article 65.² The main condition involves allowing a period of three months between notification and suspension proper, except in 'cases of special urgency', plus an additional period of grace if an amicable solution is being sought.

In application of a General Affairs Council declaration, since May 1992 all agreements concluded with CSCE countries include an innovative provision in addition to the 'essential element' clause.

This additional clause (see Annex 1-2) provides for an immediate response, diverging from the procedure laid down in Article 65 of the Vienna Convention. It takes one of two forms:

an explicit suspension clause authorizing the suspension of the application of the agreement

in whole or in part 'with immediate effect' in cases of serious breach of essential provisions; this, so-called 'Baltic clause' was used only in the first agreements with the Baltic States, Albania and Slovenia; or

a general non-execution clause known as the 'Bulgarian clause' which provides for appropriate measures should the parties fail to meet their obligations, following a consultation procedure 'except in cases of special urgency'; this clause was used in the agreements with Romania, Bulgaria, the Russian Federation, Ukraine, Kyrgyzstan, Moldova, the Czech Republic, Slovakia, Kazakhstan and Belarus.

The difference between the two formulas resides in the degree of sensitivity allowed for. The 'Baltic clause' is more severe in that it provides only for extreme cases warranting immediate suspension without consultation of any kind. The 'Bulgarian clause' not only provides for a conciliation procedure and a range of different options but is also designed to keep the agreement operational wherever possible. It asserts that immediate suspension should be envisaged only in cases of special urgency.

In January 1993, in response to the disparate nature of the references in the relevant agreements, the Commission, determined to adopt a non-discriminatory approach, drafted guidelines on these issues (Decision of 26 January 1993), stipulating that 'draft negotiating directives for association agreements and economic cooperation agreements should incorporate the following:

(a) in the body of the agreement:

a clause specifying that relations between the Community and the country concerned and all provisions of the relevant agreement are based on respect for the democratic principles and human rights which inspire the domestic and external policies of the Community and the country concerned and which constitute essential elements of the agreement;

(b) in the preamble:

general references to respect for human rights and democratic values;

references to the universal and/or regional instruments common to both parties.

¹ Vienna Convention, Article 60(3): 'A material breach of a treaty, for the purposes of this Article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) *the violation of a provision essential to the accomplishment of the objective or purpose of the treaty.*'

² Vienna Convention, Article 60(1). 'A material breach of a bilateral treaty by one of the parties entitles the other party to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.'

An explicit suspension clause or a general non-execution clause may be included in specific cases.'

The main points of these guidelines featured in a letter from Mr Van den Broek to the Council, Parliament and the Member States.

C — Assessment¹

Although the Commission guidelines have been respected, the objective of a systematic approach has not yet been achieved.

□ As regards the preamble, the practice of using different references depending on the regional location of the party concerned, when not supplemented by universal references, can appear to contradict the principle of universality; references to the market economy in agreements with OSCE countries create a different perspective having no direct connection with human rights, a fact that could be prejudicial to the aim of consistency.

□ References to human rights and/or democratic principles as an essential element, although systematically included in all recent agreements of a general nature,² have been positioned differently (Article 1, Article 6, etc.) depending on whether or not the agreements in question provide for political dialogue, and also supplemented with other references.

The 'Baltic' clause was last used in October 1992, since when the preferred formula has been the 'Bulgarian' clause, in some cases supplemented by one of two types of interpretative declaration (see Annex 1-3):

□ joint declarations (Annex 1-4.i) in which the parties agree that a 'case of special urgency' means a material breach of the agreement, i.e. the breach of an essential element of the agreement or repudiation of the agreement not sanctioned by the general rules of international law;

□ unilateral declarations by the Community (e.g. the agreement concluded in July 1993 with the Czech Republic, Annex 1-3.i) that

subsequently became bilateral declarations (for the first time in the agreement signed with Russia in June 1994, Annex 1-3.ii); these declarations emphasize the inclusion in the agreement of the 'essential element' clause and reference to 'cases of special urgency' resulting from the Council Declaration of 11 May 1992 on the Community's relations with its CSCE partners;

□ in the case of the partnership and cooperation agreement with Russia, a joint declaration (Annex 1.4.ii) in which the parties agree that the 'appropriate measures' referred to in the non-execution clause mean measures taken in accordance with international law, and that when one party takes measures in cases of special urgency, the other may avail itself of the dispute settlement procedure.

The use of two different formulas (the 'Baltic' and 'Bulgarian' clauses) in the same part of the world could be interpreted as a discriminatory practice, putting the Commission in a difficult position in its negotiations with third countries. There is also a growing tendency to regain the margin of flexibility lost in the clauses themselves through an increasingly varied range of interpretative declarations.

Nevertheless, the innovative use of specific clauses in the main body of the agreements concluded with third countries places the European Community in the vanguard of the international community's endeavours in this field and highlights the parallel importance of adopting a positive approach.

This impact of this initiative has been positive in a number of ways:

(a) the additional clause initially intended for the OSCE countries has, at the Council's behest, gradually been applied to other geographical areas, e.g. the Lomé IV review, Morocco and Tunisia, South Korea and Nepal;

(b) enshrining human rights as an essential element of the Community's relations with

¹ See table in Annex 3 showing different types of references to human rights and democratic principles in the Community's agreements with third countries.

² In case of Turkey, a Decision of the Association Council of 6 March implemented the additional protocol to the association agreement of 1963, which entered into force in January 1973, and which provides for the creation of a customs union between two parties within 22 years

third countries enhances cooperation and improves the visibility of its initiatives, many of which are entrusted to specialist organizations, such as the reinforcement of the rule of law the consolidation of the legal system, support for freedom of expression, the defence of vulnerable groups and support for the grass-roots;

D — Conclusions

The concern expressed by the European Parliament¹ and the Council² with regard to the issue of human rights and the Community's contractual relations with third countries and the experience acquired in this area would suggest that there is a need for a number of initiatives to improve the consistency, transparency and visibility of the Community approach and to make greater allowance for the sensitivity of third countries and the principle of non-discrimination.

The following conclusions set out the basic references to human rights and democratic principles. They provide for the following mechanism:

'In all new draft negotiating directives for Community agreements with third parties, the following should be included:

(a) in the preamble:

- general references to human rights and democratic values;³
- references to universal and regional instruments common to both parties;

(b) in the body of the agreement:

1. Insertion of an Article X, defining the essential elements, to be adapted according to circumstances (e.g. OSCE membership, market economic principles, etc.):

(c) it has introduced a range of restrictive measures (see Annex 2) that is sufficiently broad to enable the parties to respond in a manner appropriate to the gravity of the case in question; to date, none of the agreements with an 'essential element' clause, with or without an additional clause, has had to be suspended in any way.

'Respect for the democratic principles and fundamental human rights established by [the Universal Declaration of Human Rights]/[the Helsinki Final Act and the Charter of Paris for a New Europe] inspires the domestic and external policies of the Community and of [the country or group of countries concerned] and constitutes an essential element of this agreement.'

The same applies to the principles of market economy as they are defined in the CSCE Bonn conference document on economic cooperation.⁴

2. Insertion of an Article Y on non-execution:

'If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.'

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.'

3. Insertion of interpretative declarations on Article Y:

'(a) The Parties agree, for the purpose of the correct interpretation and practical application of this Agreement, that the term "cases of

¹ Most recently in the Resolution of 12 April 1995 on the world human rights situation in 1993/94 and the Union's human rights policy (Rapporteur, Mr Imbeni): paragraphs 47, 62-65.

² This question was discussed in two meetings of the External Relations Group (13 March and 24 April 1995), and was the only item on the agenda of the Coreper meeting of 27 April.

³ The recitals could also mention the rule of law and good governance and the Vienna human rights conference of June 1993.

⁴ This provision applies to all OSCE participants, and to other countries at the discretion of the Council.

special urgency” in Article Y means a case of the material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in:

(i) repudiation of the Agreement not sanctioned by the general rules of international law;

or

(ii) violation of essential elements of the Agreement, namely its Article X.

(b) The parties agree that the “appropriate measures” referred to in Article Y are measures taken in accordance with international law. If a party takes a measure in a case of special urgency as provided for under Article Y, the other party may avail itself of the procedure relating to settlement of disputes.’

In the Commission’s opinion the application of this mechanism comes within the ambit of

respect for the principle of proportionality between the breach cited and the degree of reaction. Use of the concept ‘special urgency’ opens an option without creating an obligation and it is in this context that it is for the parties to gauge what measures they should take.

This may entail building on the standard provisions on human rights and democratic principles to strengthen or clarify the nature of the commitments involved, without altering the legal scope of the text. The wording given for Article X should feature among the first articles of the ‘General principles’ title, and it should not be altered or diluted by inclusion in a more general provision.

This Communication will be addressed to the Council and to Parliament.

Annexes

Annex 1

Standard wording for clauses on human rights and the relevant interpretative declarations

1. Essential element clause

Article X: [General principles or general/political dialogue]

‘Respect for the democratic principles and human rights established by [the Helsinki Final Act and the Charter of Paris for a New Europe] [as well as the principles of market economy] [as defined at the Bonn CSCE conference] inspires the domestic and external policies of the Community and of [third country] and constitute an *essential element* of this agreement.’

2. Complementary clause

Article Y:

(a) explicit suspension or ‘Baltic’ clause

‘The parties reserve the right to suspend this Agreement in whole or in part with immediate effect if a serious breach of its essential provision occurs.’

(b) general non-execution or ‘Bulgarian’ clause

‘If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.’

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.’

3. General interpretative declarations

i. Unilateral declaration by the European Community (agreement with the Czech Republic, July 1993)

‘The reference to the respect for human rights as an essential element of the Agreement and to the cases of special urgency has been included in the Agreement as a result of the policy followed by the Community in the area of human rights pursuant to the Council Declaration of 11 May 1992 which foresees such reference in the Cooperation or Association Agreements between the Community and its partners in the Conference on Security and Cooperation in Europe.’

ii. *Joint declaration* (agreement with the Russian Federation, June 1994)

‘The Parties declare that the inclusion in the Agreement of the reference to respect for human rights constituting an essential element of the Agreement and to the cases of special urgency flows from

the Community’s policy in the area of human rights, in conformity with the Declaration of the Council of 11 May 1992 which provides for the inclusion of this reference in cooperation or association agreements between the Community and its CSCE partners, as well as:

Russia’s policy in this field; and

the attachment of both Parties to the relevant obligations, arising in particular from the Helsinki Final Act and the Charter of Paris for a New Europe.’

4. Interpretative declarations accompanying a general non-execution clause

i. *Standard joint declaration*

‘The Parties agree, for the purpose of the correct interpretation and practical application of the Agreement, that the term “cases of special urgency” in Article Y means a case of the material breach of the Agreement by one of

the Parties. A material breach of the Agreement consists in:

(a) repudiation of the agreement not sanctioned by the general rules of international law;

or

(b) violation of essential elements of the Agreement, namely its Article X.'

ii. *Joint declaration* (agreement with the Russian Federation, June 1994)

'The parties agree that the "appropriate measures" referred to in Article Y are measures taken in accordance with international law. If a party takes a measure in a case of special urgency as provided for under Article Y, the other party may avail itself of the procedure relating to settlement of disputes.'

Annex 2

Summary of measures that may be taken in response to serious human rights violations or serious interruptions of democratic process:

alteration of the contents of cooperation programmes or the channels used;

reduction of cultural, scientific and technical cooperation programmes;

postponement of a Joint Committee meeting;

suspension of high-level bilateral contacts;

postponement of new projects;

refusal to follow up partner's initiatives;

trade embargoes;

suspension of arms sales, suspension of military cooperation;

suspension of cooperation.

Annex 3

References to human rights and democratic principles in agreements between the Community and third countries

Country/region	Status of negotiations/ OJ ref.	Type of agreement	Preamble	Basis (*)	Essential element (^b)	Bulgarian clause (^c)	Baltic clause (^d)	Declara- tion (^e)
Latin America								
Cartagena Agreements and member countries (¹)	23.4.1993 OJ L 25/1993	Framework cooperation	C ₁		x			
Argentina	2.4.1990 OJ L 295/1990	Framework cooperation	D ₂	x				
Bolivia	3.2.1993 OJ L 313/1992	Cooperation			x			
Brazil	29.6.1992 OJ L 163/1992	Cooperation			x			
Chile	12.12.1990 OJ L 79/1991	Framework cooperation	B ₁	x				
Central America (²)	22.2.1993 OJ L	Cooperation	D ₅ /B ₁	x	x			
Mexico	17.10.1991 OJ L 340/1991	Trade, trade and economic cooperation	D ₅					
Paraguay	3.2.1992 OJ L 313/1992	Framework cooperation	B ₁	x				
Uruguay	4.11.1991 OJ L 94/1992	Framework cooperation	C ₁	x				
Asia								
ASEAN (³)	10.6.1980 OJ L 144/1980	Cooperation	C ₂					
Bangladesh	19.1.1976 OJ L 319/1976	Trade cooperation	C ₁					
India	20.12.1993 OJ L 223/1994	Cooperation	C ₇ /B ₁		x			
Macao	31.12.1992 OJ L 404/1992	Trade and cooperation	D ₄	x				
Mongolia	18.2.1992 OJ L 41/1993	Trade, trade and economic cooperation	D ₅	x				
Pakistan	23.7.1985 OJ L 108/1986	Cooperation	C ₃					
Sri Lanka	signed 16.5.1994 22.7.1975 OJ L 247/1975	Cooperation Trade cooperation	B ₀ C ₁		x			
Africa								
South Africa	20.12.1994 OJ L 341/1994	Cooperation	D ₁		x			

Country/region	Status of negotiations/ OJ ref	Type of agreement	Preamble	Bas/s (^a)	Essential element (^b)	Bulgarian clause (^c)	Baltic clause (^d)	Declara- tion (^e)
Middle East and Maghreb								
Gulf Cooperation Council (^a)	15.6.1988 OJ L 54/1989	Cooperation	B ₀					
Algeria	26.4.1976 OJ L 263/1978	Cooperation	B ₂					
Egypt	18.1.1977 OJ L 266/1978	Cooperation	B ₂					
Jordan	18.1.1977 OJ L 268/1978	Economic and trade cooperation	B ₂					
Lebanon	3.5.1977 OJ L 267/1978	Cooperation	B ₂					
	27.4.1976 OJ L 264/1978	Cooperation	C ₂					
Syria	18.1.1977 OJ L 269/1978	Cooperation	B ₂					
Tunisia	initialled 12.4.1995 25 4.1976 OJ L 265/1978	Association Cooperation	B ₂		x	x		

OSCE States

Albania	26.10.1992 OJ L 403/1992	Trade, trade and economic cooperation	A _{1,2a,3} /D ₂		x		x	
Belarus	signed 6 3.1995	Partnership and cooperation	A _{1,2,3}		x	x		x
Bulgaria	signed 8.3.1993 OJ L 358/1994	Association	A _{1abde} A _{2ab}		x	x		
Estonia	31 12.1994 OJ L 373/1994	Free trade	A _{12a3}		x	x		
	21.12.1992 OJ L 403/1992	Trade, trade and economic cooperation	A _{2a3}		x		x	
Baltic States	initialled 12.4.1995	Association			x	x		
Hungary	signed 16 12.1991 OJ L 347/1993	Association	A _{1,a,D}					
	26.9.1988 OJ L 327/1988	Trade, trade and economic cooperation	A _{1,a,b}					
Kazakhstan	23.1.1994 OJ L 319/1994	Partnership and cooperation	A _{1,2,3}		x	x		x
Kyrgyzstan	1.6.1994 OJ L 319/1994	Partnership and cooperation	A _{1,2,3}		x	x		x
Latvia	31.12.1994 OJ L 374/1994	Free trade	A _{1,2,3,4}		x	x		
	21.12.1992 OJ L 403/1992	Trade, trade and economic cooperation	A _{1,2,3}		x		x	

Country/region	Status of negotiations/ OJ ref	Type of agreement	Preamble	Basis (¹)	Essential element (²)	Bulgarian clause (³)	Baltic clause (⁴)	Decla- ration (⁵)
Lithuania	31.12.1994 OJ L 375/1995	Free trade	A _{1,2,3}		x	x		
	21.12.1992 OJ L 403/1992	Trade, trade and economic cooperation	A _{1,2,3}		x		x	
Moldova	signed 28.11 1994	Partnership and cooperation	A _{1,2,3}		x	x		x
Poland	signed le 16.12.1991 OJ L 348/1993	Trade and cooperation	A _{1,a,D}					
	19 9.1989 OJ L 339/1989	Trade, trade and economic cooperation	A _{1,a,b}					
Czech Republic	19 12 1994 OJ L 360/1994	Association	A _{2,B}		x	x		x
	19.12.1994 OJ L 357/1994	Association	A _{1,2,b}		x	x		
Romania	4.3.1991 OJ L 79/1991	Trade and economic cooperation	A _{1,2,b}		x	x		
	signed 24.6.1994	Partnership and cooperation	A ₁		x	x		x
Slovakia	19 12.1994 OJ L 359/1994	Association	A _{1,2,b}		x	x		x
Slovenia	20.7.1993 OJ L 189/1993	Cooperation	A _{1,3}		x	x		
Ukraine	signed 14.6.1994	Partnership and cooperation			x	x		x

(¹) Bolivia, Colombia, Ecuador, Peru, Venezuela

(²) Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama.

(³) Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei

(⁴) United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar, Kuwait.

(⁴) Cooperation relations and all the provisions of these agreements are based on respect for the democratic principles and human rights which inspire the domestic and external policies of the Community and of . . .

(⁵) Cooperation relations and all provisions are based on respect for the democratic principles and human rights which inspire the domestic and external policies . . . and which constitute an essential element of these agreements.

(⁶) If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before doing so, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

(⁷) The Parties reserve the right to suspend this Agreement in whole or in part with immediate effect if a serious breach of its essential provisions occurs.

(⁸) Declaration annexed to the Agreement: The Parties agree, for the purpose of the correct interpretation and practical application of this Agreement, that the term 'cases of special urgency' in Article . . . means a case of the material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in:

(a) repudiation of the Agreement not sanctioned by the general rules of international law, or

(b) violation of the essential elements of the Agreement, namely its Article . . .

Key

A — *Regional European framework*

1. The provisions and principles of the following should be fully implemented:
 - (a) the Conference on Security and Cooperation in Europe (CSCE);
 - (b) the Helsinki Final Act, the concluding documents of the Madrid and Vienna conferences;
 - (c) the closing document of the Copenhagen meeting;
 - (d) the Charter of Paris for a New Europe, particularly in respect of the rule of law, democracy and human rights (November 1990),
 - (e) the Bonn CSCE conference document on economic cooperation;
2. Recognizing the importance of guaranteeing ethnic and national minority rights:
 - (a) in line with the commitments entered into in the context of the CSCE;
 - (b) and of establishing a system based on pluralism and free and democratic elections.
3. Aware of the importance of strengthening their democratic institutions and supporting the economic reform process.
4. Reference to the European Convention on the Protection of Human Rights and Fundamental Freedoms.

B — *Attachment to the principles of the United Nations Charter*

1. to democratic values and respect for human rights.
2. and wishing to express their mutual desire to maintain and strengthen their friendly relations on the basis of those principles.

C — *Attachment to the principles of equality, freedom and justice*

1. and asserting their shared wish to help initiate a new phase of economic cooperation and to facilitate the development of their respective human and material resources on the basis of those principles.
2. and asserting their shared wish to promote the development of their human and physical resources in a context of freedom, equality and justice.
3. and emphasizing their shared attachment to the promotion of international economic relations based on freedom, equality, justice and progress.

D — *Other references*

1. welcoming the transformation of the country into a democratic and multiracial society and the importance attached to human rights.
2. recognizing that in the wake of recent political developments the country wishes to stabilize and consolidate democracy and promote economic and social progress.
3. the importance attached by the parties to respect for the human rights, democratic principles and economic freedom that underpin this agreement.
4. attachment to democratic values and respect for human rights.
5. whereas the main beneficiary of cooperation is man, and these rights should therefore be promoted.

The European Union and
the external dimension
of human rights policy:
from Rome to Maastricht and beyond

Contents

<i>Introduction: Background</i>	25
<i>Chapter I. Developments to date</i>	27
Section A: The European Union on the international stage	27
1. <i>United Nations</i>	27
2. <i>Organization for Security and Cooperation in Europe</i>	27
3. <i>Council of Europe</i>	28
Section B: Principles, activities and instruments	28
1. <i>Principles</i>	28
2. <i>Activities</i>	29
3. <i>Instruments</i>	33
<i>Chapter II. Outlook</i>	36
Section A: Development of new themes	36
1. <i>the 'human rights' component of conflict prevention</i>	36
2. <i>Electoral assistance</i>	37
Section B: Consistency and impact	37
1. <i>Building a strategy for action</i>	38
2. <i>Upgrading and extending EU instruments</i>	38
3. <i>Strengthening of cooperation with our partners</i>	40

Introduction: Background

The Treaty on European Union entered into force on 1 November 1993. It marks a new phase in EU policy on human rights and democratic principles.

For the first time, Community action in this area is based not on the preamble but on the body of the text. This is one of Maastricht's greatest innovations.

Respect for human rights is one of the main prerequisites for membership of the European Union, a basic principle informing all its activities. Article F(2) states that:

'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'

With regard to external action, the Treaty states that it is one of the main objectives of the common foreign and security policy to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.¹ In the same way, European Community development cooperation policy shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.²

These provisions constitute a decisive advance in the development of an essentially economic Community into a political body. The founding Treaties make no explicit reference to human rights or the relevant international instruments; such reference was not to make an appearance until 30 years later, in the preamble to the Single European Act, in which political cooperation is formally enshrined.

Prior to the Single European Act, in the absence of formal references to these issues, the criteria of human rights and democratic principles were gradually introduced in the

Community's external relations through the position adopted by the Community institutions and the Heads of State or Government. This process emphasized the legal, political and moral values that make up the European identity, particularly the principles of representative democracy, the rule of law and respect for human rights.³

Within the Community itself, the Court of Justice played an innovative role in compensating for the lack of Community legislation protecting basic rights, by developing a body of original case-law in which basic human rights are considered an integral part of the general principles common to the legal systems of all the Member States, which in turn provide the basis for Community law, of which the Court is the guardian. The Court adopted a series of rulings in which these general principles are defined as being based on the traditions common to all the national constitutions concerned and on the relevant international and regional instruments, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950, which entered into force in 1953.

Starting with the Single European Act, the positions adopted by the Community in this sphere became increasingly operational in application, identifying priorities for action and paving the way for the incorporation of respect for human rights in the Treaty on European Union. By way of example, the Luxembourg European Council of 28-29 June 1991 illustrated this commitment by adopting a declaration on human rights that established the principles and the main features of a political platform actively promoting human rights and democratic principles. A few months later, on 28 November, the Council and the representatives of the Member States meeting within the Council adopted a resolution on human rights, democracy and development laying down the guidelines, procedures and priorities for improving the consistency and cohesion of the whole range of development initiatives.

¹ Article J.1(2), fifth indent of the Treaty on European Union.

² Article 130u(2) of the Treaty establishing the European Community.

³ For example, the Declaration on Democracy of the Copenhagen European Council of 8 April 1978

The European Parliament has played an important role in this process, having contributed, through a number of initiatives, including an annual resolution on the world human rights situation, to the incorporation of a 'human dimension' in the Community's external relations.

At the same time the Commission has developed considerable expertise in this area by increasingly including respect for human rights as a criterion in the preparation and implementation of Community action. The references to human rights and democratic principles in the Treaty on European Union have prompted the Commission to conduct a thorough assessment of the instruments and objectives of its activities in this sphere, in the light of recent developments in international relations, the emergence of new issues and the importance of target groups in democratic development.

In the first exercise of its kind, this paper sets out a strategy for achieving those objectives, in line with Mr Santer's undertaking before Parliament and the Commission's work programme for 1995.

The document is divided into two parts. The first part assesses the current situation, giving an overview of the activities undertaken on the international stage by the Community and its Member States in the context of the European Union, its principles and priorities, and the instruments to which it has access. The second part identifies the challenges of the short-to-medium term, expounding new themes and setting out the main points of a strategy designed to improve the consistency and impact of the European Union's activities in this field. The paper also lays down guidelines for action to be taken by the Commission during the course of its mandate.

Chapter I - Developments to date

In an international environment in which the universal nature of human rights is increasingly emphasized, the European Union has gradually come to define itself in terms of the promotion of those rights and democratic freedoms. This has involved helping to formulate and develop international commitments (Section A), and also identifying the priorities to carry them out (Section B).

Section A - The European Union on the international stage

The European Union makes a significant contribution to the activities of the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe. This contribution includes working on the regulatory output of these international bodies and extending the relevant instruments, tightening up prevention and safeguard mechanisms, defining priorities and implementing specific projects.

1. United Nations

Human rights and fundamental freedoms are a vital part of mankind's shared heritage, and there can be no peace where they are not respected. These rights and freedoms, as set out in the Universal Declaration of 1948 and developed in the International Covenants of 1966, touch on key aspects of a country's political, economic, social and cultural life.

After the initial period focused on setting out the basic principles involved, there followed a period in which the countries concerned built their initial commitment, identifying priorities and improving implementation procedures. These developments have been punctuated by high-level international conferences, particularly in the last few years, which have seen gatherings in Vienna (June 1993, on human rights), Cairo (September 1994, population), Copenhagen (March 1995, social development) and Beijing (September 1995, women).

These conferences have revealed that principles as basic as the universality and indivisibility of human rights continue to meet resistance. However, the consensus that has emerged from such conferences provides the basis of increased dialogue and cooperation between the countries concerned.

The Union's contribution to the work of the permanent UN bodies concerned with human rights has progressively gained in substance and impact. The presentation made by the EU Presidency to the Commission on Human Rights giving a country-by-country assessment of the human rights situation (item 12 on the agenda) has acquired seminal status among the international community.

The Union also makes an active contribution to the work of international conferences, including the drafting of their concluding documents. The Vienna conference on human rights is a good example of this commitment; reaffirming the fundamental principles of universality, indivisibility and interdependence, the final declaration and plan of action adopted by the conference create a framework for international cooperation in this field. The position paper presented by the European Union,¹ which set out the principles underpinning EU policy, provided much of the basis for the final document of the conference, particularly with regard to the appointment of a High Commissioner for Human Rights to act as interlocutor and be responsible for coordinating initiatives in this field.

The Union has also been closely involved in setting up control mechanisms such as the International Tribunals for the former Yugoslavia and Rwanda and the future international criminal court.

2. Organization for Security and Cooperation in Europe (OSCE)

This regional organization, which covers economic issues, security and individual rights,

¹ Position paper (ref A/157/PC/87) of the European Community and its Member States, April 1993.

has done much to help the democratic development of the countries of Central and Eastern Europe and the former Soviet Union.

The concept of a 'human dimension' was fully recognized in 1990 through the adoption of the Charter of Paris for a New Europe, which sets out the main principles involved. The Charter was countersigned by the Heads of State or Government and by the President of the Commission, heralding increasing EU commitment to an OSCE process that has now achieved a high profile with the implementation of the pact on stability.

At regional level there has been a similar trend towards the creation of bodies for monitoring or promoting human rights. Examples are the 'human dimension' mechanism including expert missions, the High Commissioner for National Minorities and the Bureau of Human Rights and Democratic Institutions. The European Union is an energetic participant in the OSCE institutions, and has been much to the fore in supporting the development of the 'human dimension' and the creation of the above mechanisms and bodies.

3. Council of Europe

The European Communities and the Council of Europe share the same basic values. Membership of the Council of Europe and the European Convention for the Protection of Human Rights and Fundamental Freedoms has become an implicit condition for accession to the European Union.

This is one of the reasons that led the Commission, in 1990, to reopen the debate on the need to improve the legal protection of fundamental rights at Community level and to present a formal request to the Council for authorization to negotiate the Community's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. With Parliament endorsing the request, the Council asked the Court of Justice for its opinion on this matter.

The two organizations have special operational links, carrying out joint projects on a number of programmes, notably for cooperation with the Central and Eastern European countries

aimed at entrenching the rule of law and the European model of democratic values.

Synergies

The European Union has developed increasingly close synergetic links with these organizations.

One of the more recent examples of this synergy is the pact on stability launched by the Brussels European Council in December 1993 and adopted by all OSCE member States in Paris on 20 March 1995; the implementation of the pact will be the responsibility of the OSCE. This initiative illustrates the importance of mobilizing the resources and energy of all Europe's players, harnessing them to shared objectives such as the consolidation of frontiers and the defusing of ethnic tensions.

The first Council of Europe summit of Heads of State or Government held in Vienna in October 1993 is another example of synergy at European level. This conference highlighted the participants' shared preoccupations and enabled them to develop synergies between the objectives and activities of the various European organizations involved in the protection of national minorities and the campaign against racism and xenophobia.

The EU also cooperates closely with the UN High Commissioner for Human Rights, for example, through Community support for tackling critical situations, as in the deployment of human rights monitors in Rwanda, a groundbreaking initiative launched by the EU at the request of the High Commissioner, on the basis of a common position adopted on 24 October 1994, the monitors' mission is to use their presence to secure and accelerate the return of refugees. Another such mission is currently being prepared for Burundi, on basis of the common position adopted on 24 March 1995.

The Commission also has close operational ties with the UN Human Rights Centre, the OSCE Bureau of Democratic Institutions and Human Rights (particularly with regard to electoral assistance), the OSCE High Commissioner for National Minorities, the Council of Europe and the Commission for Democracy by Law.

Section B - Principles, activities and instruments

1. Principles

The European Union's activities fall within the general framework constituted by the United Nations Charter and the Universal Declaration of Human Rights, complemented by the international pacts on civil and political rights and on economic, social and cultural rights. These activities are also based on the commitments engendered by the main international and regional instruments for the protection of human rights. The priorities espoused by the international community in the final declaration and programme of action adopted by the world human rights conference (Vienna, June 1993) created an action framework that is a particular source of inspiration for the European Union. Other world conferences on specific issues or population groups, of which there has been a considerable increase in recent years, have provided a forum for in-depth analysis enabling the Union to define its operational objectives.

Three principles, arising from the Universal Declaration of Human Rights and solemnly reaffirmed by the international community at the Vienna conference of 1993, form the keystone of the international system for the protection of human rights.

(a) universality, which implies that no provision of a national, cultural or religious nature can override the principles enshrined in the Universal Declaration of Human Rights;

(b) indivisibility, which precludes discrimination between civil and political rights, and economic, social and cultural rights;

(c) interdependence between human rights, democracy and development, which is linked to a new definition of development focused on man as a holder of human rights and the beneficiary of the development process.

These principles, which indirectly feature in the Luxembourg European Council's declaration on human rights of June 1991 and the resolution on human rights, democracy and development adopted by the Council in November 1994, have the following corollaries:

the strict, complementary link between human rights and democracy: if human rights are a necessary condition for the full develop-

ment of the individual, democratic society is a necessary condition for the exercise of those rights, providing the framework for individual development; again, human rights are a prerequisite for a democratic society, in that such a society is based on individuals' voluntary support for the life of the community;

the relativity of the principle of non-interference, in that 'the different ways of expressing concern about violations of rights, as well as requests designed to secure those rights, cannot be considered as interference in the internal affairs of a State, and constitute an important and legitimate part of their dialogue with third countries.'¹

2. Activities

(a) General context

On basis of these principles, the Commission has gradually identified the areas of activity that correspond to a positive, practical and constructive approach based on the concepts of exchange, sharing and encouragement. These priorities are:

supporting the transition to democracy, including the holding of free and fair elections;

promoting and consolidating the rule of law by supporting and strengthening the independence of the judiciary (exercise of justice, treatment of offenders, crime prevention), supporting the activities of parliaments and other democratically elected bodies, and supporting institutional and legislative reforms;

supporting local, national and regional institutions involved in the protection or promotion of human rights, including ombudsmen and others in similar positions;

promoting a pluralist civil society by strengthening the appropriate bodies, including NGOs;

promoting independent, pluralist and responsible media through support for freedom of expression and press freedom;

supporting education, training and awareness campaigns in the field of human rights;

¹ Declaration on human rights, Luxembourg European Council, June 1991.

- promoting equal opportunities and non-discrimination;
- promoting transparency and good governance, supporting campaigns against corruption;
- supporting confidence-building measures aimed at restoring peace;
- supporting national efforts to make the armed forces accountable to civil authority and to establish a clear division of the roles of the army and the police, human rights training and information for members of the army and the police;
- protecting vulnerable groups, in particular children, women, victims of torture, violence or fighting, migrants, refugees and displaced people;
- protecting ethnic, religious and linguistic minorities, their rights and cultures;
- protecting indigenous peoples, their rights and cultures.

The way these priorities translate into action depends on the situations and needs that arise. This implies maintaining a constant and thorough dialogue with the recipients, and maximum flexibility in the choice and use of the available instruments.

(b) Specific initiatives

A number of the themes of the action programme adopted by the Vienna conference warrant special attention:

Education on human rights issues

As set forth in Article 26 of the Universal Declaration, education is a prerequisite for individual development and a catalyst for the democratization process. The ripple effects of education make it an ideal tool for the promotion of human rights, especially with regard to the most vulnerable population groups, enabling them to fight against the ignorance which surrounds them and which lies at the root of discrimination. The Vienna conference identified education as a major priority in its action programme, and the UN has designated the 10-year period starting on 1 January 1995 as a decade of education. Many projects

financed by the Community budget have an education component.

Freedom of opinion and of expression

Freedom of opinion and of expression, including the right to information, covered by Article 19 of the Universal Declaration and taken up in several regional conventions, is also considered a priority under the Vienna action programme. Because of its symbolic value and its 'democratic potential', magnified by the use of new communications technology, this right is the first target for oppressive regimes. In the last few years journalists and writers have more than ever before been paying for their commitment with their freedom or even their lives.

The European Community has increased its support for the media with projects aimed at promoting their independence and raising awareness of their role in a democratic society.

Racism and xenophobia

Stamping out racism and xenophobia is a major objective of the international community and the regional organizations. It is primarily the responsibility of governments to take effective measures to prevent and root out racist and intolerant behaviour. At regional level, in October 1993 the Council of Europe adopted an action plan that included setting up a commission on racism and intolerance, work in which the European Commission is an active participant. The OSCE is currently assessing the situation with a view to adopting a concerted action programme in this field.

The European Parliament has played a major part in campaigning against racism and xenophobia, helping to raise awareness of the need for concerted action at European level. The Corfu European Council decided to establish a Consultative Commission of eminent figures to make recommendations on cooperation between governments and social bodies to promote tolerance and understanding of foreigners. The Commission's report and the report of the Council meeting on justice and home affairs together provide the raw material for an overall strategy to combat acts of racist and xenophobic violence. A number of measures have also been taken at Community level to comple-

ment those of the individual Member States, particularly in the area of education, training and media information.

Human rights, democracy and development

Community development cooperation policy is centered on human beings and their needs; it is closely linked to the enjoyment of fundamental rights and freedoms and the recognition and application of democratic principles, the consolidation of the rule of law and good governance. This approach, defined in the resolution on human rights, democracy and development adopted by the Council and the Member States meeting within the Council on 28 November 1991, is based on an open and constructive dialogue with the governments of the countries concerned, and on the implementation of positive measures to raise awareness of and promote human rights and democracy. The aim is to strengthen the links between development cooperation, human rights and democratic principles, the rule of law and good governance with a view to improving the impact and sustainability of development projects.

The Community projects implemented on the basis of this resolution are the subject of an annual Commission report to the Council and Parliament. The objectives of such projects include:

- consolidating the rule of law;
- supporting the transition to democracy;
- promoting the role of bodies ensuring a pluralist society, including NGOs.

Target groups

Equality is one of the key principles of any system for the protection of fundamental rights. Initially, this created a tendency to view the individual in isolation, focusing on the bonds between that individual and the national community. Subsequently this approach was developed to focus more on the more vulnerable groups and their necessary social protection, and also on different ways of fostering the development of the individual and respect for that individual's rights. This went hand in hand with initiatives targeting professional groups liable to have an influence on the democratic development process, such as journalists, judi-

cial and police officers and military personnel.

In view of these developments, the international community has given particular attention to the more vulnerable groups, those who are discriminated against or deprived of all or part of their fundamental rights. These include women, children, national minorities, indigenous peoples and victims of torture. Discussions on the issues at high-level conferences have focused on stepping up the international community's commitments in this field and/or giving them formal expression in international and regional conventions.

Community-financed projects focus on the following target groups:

1. Groups requiring special protection

Women

The European Union contributes to all international forums for the promotion of women's rights. Its concerns in this area stem from its general responsibility to protect and promote universal rights, of which women's fundamental rights form an integral, inalienable and indivisible part.

Community action in this field includes:

- systematic inclusion of the role of women in its development cooperation policy;
- promoting the full participation of women in civic, political, social and economic life;
- assisting tortured and ill-treated women;

Taking into account the conclusions of the World Conference on Women, it is necessary to consider women as active participants in the society and to promote their full participation in political, economic and social life.

The European Union played an extremely active role in the preparations for the fourth World Conference on Women, held in Beijing in September 1995. The Union was a major actor in the negotiation process, speaking with one strong and effective voice throughout the Conference. The Commission adopted a communication on the preparations for the conference on 29 May 1995 and at Community level, three initiatives will contribute to the implementation of the platform:

the fourth action programme on equal opportunities adopted on 19 July 1995;

the Commission communication on mainstreaming of equal opportunities, in preparation;

concerning relations with third countries, the communication on gender in development adopted on 19 September.

Children

The Convention on children's rights adopted by the UN General Assembly in November 1989 covers all the civil, economic, social and cultural rights of children, together with their right to special protection against all forms of violence. The European Community has a wide range of incentive measures at its disposal, complementing those of the Member States. The Commission has organized a number of seminars on children, focusing on issues as mobility, children's rights and handicapped children.

The Community gives its support to countries in which there is a particular problem with regard to the economic exploitation, abandonment and prostitution of children, through special projects aimed at fostering social assistance, protection, wellbeing, reintegration and education.

National minorities

This controversial issue is one of the international community's main concerns, highlighting the contradictions of our times and posing the major initial difficulty of defining the problem. While there is a consensus that minority-related tensions are a direct threat to peace, security and stability, the solutions put forward vary according to whether their proponents favour the traditional view of individual rights, irrespective of the origin or particularities of the individual concerned, or ascribe the enjoyment of specific rights to minority groups as such. There is also a division between the champions of integration and those who favour assimilation. The framework convention on the protection of national minorities adopted by the Council of Europe and open to signing since 31 January 1995 suggests compromise solutions to these basic questions, creating a minimum platform of commitments shared by all the organization's members.

For its part, the European Union was the originator of the declaration included in the pact on stability which affirms that respect for human rights, including those of national minorities, is the guarantee of a stable and democratic Europe. The Union also contributes to a number of programmes for the protection of national minority rights. These include:

measures accompanying the implementation of the pact on stability, addressing the key problems of national minorities;

projects carried out in cooperation with regional and non-governmental organizations on racism and xenophobia, freedom of expression and the consolidation of civil society;

Indigenous peoples

The European Community plays its part in international action to promote respect for the human rights and fundamental freedoms of indigenous peoples, lending its support to innovative practical projects carried out in partnership with the local authorities with the aim of improving the organizational abilities of indigenous communities and, if necessary, consolidating the demarcation of their territories. These kinds of project emphasize the link between the promotion of human rights and respect for the environment, in line with the conclusions of the Rio conference of 1992, in which the concept of environmental rights, was developed.

Victims of torture

This issue is one of the priorities highlighted in the Vienna action programme. It was taken up by the European Parliament, which created a special budget heading to provide assistance to victims of torture and support for their physical, psychological and social rehabilitation. The Community approach is to work with specialized organizations which help local bodies during the preparatory and initial stages of implementation, and which generate awareness, research and documentation initiatives.

Journalists, judicial officers, military and police personnel

Freedom of the press and of information, the independence of the judiciary and the subordination of the armed forces to civil authority are essential components of the rule of law and democracy.

Fully aware of the role played by journalists in disseminating the virtues of tolerance and peaceful coexistence among the different groups that make up society, the Community supports numerous projects, particularly in Africa, former Yugoslavia and Latin America, aimed at training media professionals in their role as catalysts of the democratic process.

In the same spirit, Community-backed projects targeting magistrates, judges and the judiciary in general focus on education, training and awareness. Keen to respect the identities of different regional systems, the Community supports original legal defence institutions such as the ombudsmen of Latin America. Also of significance in this connection is the Essen European Council's decision to make it possible to fund PHARE projects in areas relating to justice and home affairs. These would include judicial cooperation.

The armed and police forces also play a vital role in society, particularly with regard to respect for individual freedoms. It is therefore essential to develop projects aimed at increasing their awareness of basic rights that take due account of the specific nature of their tasks. For example, in Central America the Community is carrying out a multinational programme for the promotion of human rights, with the emphasis on education and awareness projects targeting members of the police, the armed forces, the judiciary and the prison service. Such activities have been extended to the countries of South America.

3. Instruments

To carry out these activities, the European Community has a wide range of instruments at its disposal, including contractual relations with non-member countries and involving its own financial resources.

(a) relations with non-member countries

The European Community's contractual external relations have gradually been deepened in line with the dictates of experience, with the result that each agreement acts as the instrument of a general approach to political, social and economic development. They are recognized among the international community for their originality, particularly in respect of their approach to human rights.

In response to the European Parliament's request and in the light of discussion in the Council, on 23 May 1995 the Commission adopted a communication 'on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries'.¹ This text refers to the basic references to human rights underpinning the Community approach, and highlights the development that has taken place since 1992, with a clause defining human rights as an 'essential element' of the Community's contractual relations being included as a matter of course in agreements; it then assesses the practices of the last two years.

The conclusions of this communication provide for an extension of the legal scope of the wording intended to be included in all future draft negotiating directives for the Community agreements with non-member countries. This would see the 'essential element' clause supplemented by an article regarding non-execution, accompanied by two interpretative declarations. The conclusions furthermore concur with the document approved by the Council on 29 May 1995.² They are designed to improve the consistency, transparency and impact of Community policy, while at the same time allowing for the sensitivity of the countries concerned and respecting the principle of non-discrimination. The proposed system will promote positive action, with human rights and democratic principles included as an 'essential element' of the agreements, a subject of shared interest and an integral part of the dialogue between the parties. This approach should be seen not as imposing conditions, but in the spirit of a joint undertaking to respect and promote universal values.

¹ COM(95) 216 final.

² Doc 7255/95 Council (General affairs).

The corollary to this positive approach is the option of taking appropriate measures in response to serious and persistent violations of human rights or interruptions of the democratic process. The range of measures available is sufficiently broad to allow for a graduated response in line with the gravity of the situation, from confidential or public approaches to interventions in international forums and participation in international and regional enquiries. Where contractual relations are concerned, the Community can also postpone the conclusion of an agreement, change the content of cooperation programmes and even, where international law allows, suspend the agreement. When adopting such measures, the Community is careful not to penalize the population for the behaviour of its government, channelling its contributions through civil organizations.

The same innovative approach is reflected in the more recent Regulations defining the framework for technical assistance and financial cooperation. Although they are unilateral measures, they contain explicit references to respect for human rights and democratic principles as an essential element of cooperation. They provide for the possibility of taking appropriate action, including suspension of cooperation, particularly in Regulation 443/92 of 25 February 1992 (Asia and Latin America), the TACIS Regulation (former Soviet Union and Mongolia) and the proposed MEDA Regulation (non-member Mediterranean countries).

The system agreed between the ACP countries and the European Union in the recently completed negotiations for the mid-term review of Lomé IV is particularly elaborate. It provides not only for the inclusion of respect for human rights and democratic principles as an 'essential element' of relations between the parties, but also for a 'suspension' clause and a very detailed consultation mechanism based on parity between the parties. In line with the conclusions of the communication of 23 May 1995, this mechanism puts emphasis on dialogue as the means of finding a solution before any negative steps are taken, except in cases of special urgency; the suspension of cooperation is seen only as a last resort.

Nor does the reassessment process stop there; the Community institutions and the international forums are also debating the inclusion of respect for, and promotion of, fundamental social rights in contractual relations with third

countries. The aim here is to help stamp out the exploitation of children and various kinds of forced labour, and to promote the freedom to form unions and the right to collective bargaining, in line with the relevant ILO conventions. The debate is still open, as the developing countries have expressed reservations, fearing a form of disguised protectionism designed to deprive them of the competitive advantage they gain from low wages.

This debate is also reflected in multilateral dealings. Over and above existing provisions, it is also the case that under the reformed Community GSP scheme countries undertaking to respect ILO conventions on freedom to form unions, the right to collective bargaining and child labour will benefit from certain additional trade concessions. The application of these provisions has been deferred to January 1998 to enable the countries concerned to adapt their policies accordingly. Both the Declaration issued by the World Conference on Social Development held in Copenhagen in March 1995 and the Platform of Action of the Beijing Conference include an undertaking to promote compliance with the ILO conventions on forced and child labour, union freedom, the right to collective bargaining and the principle of non-discrimination, which contains aspects relative to the implementation of Convention No 100.

The Commission intends to pursue this debate. To that end, it will report on the results of the surveys carried out by international bodies like the ILO, the WTO and the OECD.

(b) financial resources

The resources of the Community budget also constitute an instrument of 'positive action'. On the initiative of the European Parliament, a constantly increasing part of those resources will be allocated to the chapter entitled 'European initiative for human rights and democratization', earmarked for the promotion of human rights and democracy and covering a number of themes and geographical areas. The various Commission departments involved will consult each other to set joint guidelines, identify common project selection criteria and references, and harmonize procedures for the use of these resources.

Other resources taken from financial and technical assistance and cooperation appropriations

are used to serve the same objectives. These resources — notably appropriations linked to financial regulations in which human rights are specifically mentioned — were initially used to promote economic, social and cultural rights, but are now increasingly frequently allocated to projects promoting the rule of law and the protection of vulnerable groups.

A number of reports are published annually on the use of these financial resources. The broad themes are covered horizontally by reports on the implementation of projects promoting

human rights and democratization (1992-93, 1994) and by reports on the follow-up to the resolution on human rights, democracy and development adopted by the Council and the Member States meeting within the Council on 28 November 1991 (1992, 1993, 1994). With non-governmental organizations (NGOs) in mind, the Commission is making efforts to improve the information on the various sources of Community financing available. One move in this direction is the *Digest of Community resources available for financing NGO activities*.¹

¹ April 1995 edition: VIII/222/95 EN.

Chapter II — The outlook¹

Section A — The development of new themes

The international community is increasingly aware of the impact of human rights on international and regional peace and security and on the political stability, social and economic development and general situation of individual countries.

This awareness goes hand in hand with a greater interest in the preventive aspects of measures taken to promote respect for human rights and democratic principles. At the same time, as a result of the commitment to intervening at the earliest possible stage, measures supporting and accompanying the transition to democracy have been stepped up.

The idea of prevention is of course not new, and any policy for the promotion of human rights necessarily has something of a preventive character. However, as a result of closer analysis of this issue, a multi-dimensional overall strategy has been developed, embracing human rights, security, development and the environment, and new possibilities opened up for the original initiatives described below.

1. The 'human rights' component of conflict prevention and reacting to crises

Many conflicts are rooted in a background of widespread violations of fundamental human rights. These violations lead to conflict, which leads to further violations, thus creating an often irreversible spiral of violence. Most of the conflicts that have erupted over the last few decades have done so because of predictable tensions that could have been controlled. Prevention is not a luxury. On the contrary, it is much less expensive — in terms of human lives and material damage — than dealing with conflict and its aftermath.

The key to handling crises and imminent crises is rapid reaction and 'active prevention' through the rapid implementation of targeted measures. By way of example, the Community took part in sending a team of monitors to Rwanda in order to create an element of impartiality and trust against a backdrop of serious and persistent violations, the aim being to calm tensions and speed up the return of the refugees. Counter-measures are also a component of prevention, particularly in instances in which leaving the perpetrators of violence unpunished creates a climate of danger which acts as a breeding-ground for more violence. The seriousness of these phenomena led to the establishment, through UN Security Council resolutions, of ad hoc international tribunals for former Yugoslavia and Rwanda to try cases of serious human rights violations and breaches of humanitarian law. The European Union actively supported these significant new departures in international law, and the Commission took specific steps to help the tribunals begin operating. The recent advances in the United Nations' efforts to establish international criminal court machinery have been welcomed by the European Community. The European Parliament in particular has expressed its opinion on this issue on several occasions² and a budget heading specifically intended to support international NGOs working towards the establishment of such court machinery has been added to the 1995 budget.

These new departures are often difficult to translate into action and can have an effect which is more symbolic than tangible, but they are paralleled by long- and medium-term measures with a different focus: that of seeking to create a climate of trust and 'democratic security', with the emphasis on action rather than reaction, continuity rather than scattered, one-off initiatives that are never followed up. These concerns lie at the root of initiatives such as the multiannual programme for the promotion of human rights in Central America and the rehabilitation programme for South Africa.

¹ From this point on, text in italics denotes a proposal that will be taken by the Commission as guide throughout the rest of its term.

² Most recently in a resolution of 13 July 1995, PE 192 560.

Defending and promoting human rights is also a means of tackling the huge movements of population which are caused by crisis and conflict. Action in this area looks at the underlying causes of such forced migration, as is evident from the recent Commission communication on immigration and asylum policies,¹ which stresses the particular importance of close coordination of asylum and immigration policy with policy regarding the promotion and protection of human rights.

As part of its general strategy of supporting the rule of law and democratic freedoms, the Commission proposes to conduct an in-depth analysis of crisis prevention, particularly with regard to the nature, quality, financing methods and implementation procedures of its activities in this field. Generally speaking, there is a need for more consultation among the European Union bodies concerned, including Parliament and the Council, on analysis and active prevention skills at Union level.

2. Electoral assistance

Electoral assistance is remarkably effective, with a strong political impact that boosts the electorate's confidence and has a much higher profile than traditional initiatives.

This type of operation, the political character of which has become more pronounced over the years, illustrates the 'hands-on' approach adopted by an international community committing itself to actively supporting the transition to democracy.

Electoral assistance is part of a general strategy aimed at promoting the rule of law and democratic freedoms. The concept has gradually been broadened to cover the evolution from the coming of age of a civil society, the implementation of institutional reforms to the consolidation of the transition. Between 1992 and 1994 the European Community provided what was basically technical assistance to 41 countries through specialized bodies, thus instigating a whole series of projects linked to the pre-electoral and post-electoral phases and helping to create a climate favorable to the transition to democracy and its consolidation after the elections. Such projects include support for the independence of the judiciary, the development of a civil society, the electoral participation of

women (as candidates and as informed electors), media-awareness, civic education and the establishment of parliamentary institutions.

The political dimension of this type of project was enshrined in the first joint actions approved by the European Union under its common foreign and security policy, three of which concerned electoral assistance: to Russia (December 1993), South Africa (May 1994) and the Middle East peace process (currently under preparation). These activities give the Union's electoral assistance its own distinctive identity.

The Commission will identify intervention 'modules' that can be inserted into programmes that are tailored to the specific requirements of the pre-electoral and post-electoral phases in different regions. The objective of these programmes will be to create a climate favourable to the transition to democracy and its consolidation after the elections. Particular attention will be given to ensure the active participation of all actors in a civil society and notably women, whose access to influential positions is an important indicator of the degree of democracy.

As regard human rights and electoral monitoring missions, Community action should aim to:

- speed up deployment on the spot by setting up reserve lists of qualified monitors selected on the basis of objective criteria;
- carry out structured training programmes following a common pattern for all kinds of missions, followed by specialized training in the fields concerned;
- professionalize the legal and logistical input by creating 'modules' for the different situations that may arise;
- standardize procedures to ensure overall consistency;
- complement the activities of international and regional institutions.

Section B — Consistency and impact

The role played by the European Union in protecting and promoting fundamental rights reflects not only the political will expressed in

¹ COM(94) 23 final.

the Union Treaty, but also the positions taken by the institutions and the expectations of public opinion. This role has taken shape in the first joint actions launched under the common foreign and security policy, and in the general strategy that has been built up for the Community's development cooperation policy.

The challenge facing the Union is of considerable magnitude. Girded with a political commitment built on universal and regional texts, and with a wide range of instruments and substantial resources at its disposal, the Union is under the obligation to focus its efforts on defining and implementing a strategy guaranteeing the consistency, impact and efficiency of its activities in this field, and the openness and transparency of its dealings.

The short-term future will reveal the extent to which the Union is capable of honouring its commitments, achieving its objectives and using its instruments in a transparent, non-discriminatory manner. We will soon know if the resources available to the Union will enable it to intervene effectively in the medium-to-long term and to react to emergencies with the desired results.

1. Building a strategy for action

Defining a strategy involves *improving consistency, quality, impact and visibility* while *strengthening the instruments* concerned to equip the Union with the wherewithal to launch medium to long-term programmes and to react to short-term situations.

This will require:

- in-depth analysis of human rights issues in order to develop a range of instruments tailored to the specific needs and features of the countries and regions concerned;*
- an efficient interface between thematic and geographical aspects to help develop the Union's ability to intervene in situations requiring a rapid response;*
- transparency on the information front and allowing for institutional objectives when determining the priorities for action, notably by means of constructive dialogue with the European Parliament, perhaps based on the systematic inclusion of human rights issues in the Parliament's action programme;*

greater consistency between the positions taken by the Union in international and regional forums and the measures taken at Community level.

In particular, to improve the quality and impact of the Union's actions in this field, it is essential to:

- take advantage of the experience built up in developing evaluations skills specific to human rights projects;*
- provide the analytical capacity and expertise in preventing crises and identifying needs and priorities in the light of the specific features of the countries and regions concerned;*
- set up effective specialist human rights and democratization teams;*
- promote exchanges of information with the Member States to ensure the action taken by the Union as whole is consistent.*

Consistency and visibility go hand in hand. Community action will be seen all the more clearly from the outside if it is consistent, properly targeted and coordinated.

2. Upgrading and extending EU instruments

The definition of a strategy involves making the best possible use of the available instruments and, if necessary, looking for new methods.

(a) contractual relations with non-member countries

The inclusion of human rights in the Community's contractual external relations is one of the most visible ways in which it demonstrates its commitment to the issue. This requires special analysis with a view to:

- defining the criteria that must be met before establishing contractual relations thereby enabling a non-discriminatory approach;*
- evaluating the measures taken by our partners.*

On the first point, the question is should we determine in advance the appraisal criteria, or is the very act of initiating negotiations with a country liable to have a beneficial impact on the way the situation develops? One condition

does seem to be essential: the country concerned must take a clear commitment to the democratization process and undertake to respect the international principles and commitments to which it has subscribed. For example, accession to certain international conventions on the protection of human rights might be taken as evidence of such a commitment.

In the light of relevant international and regional guidelines, continuous dialogue with the country concerned should, if necessary, help identify jointly the priorities for a partnership programme and/or for specific projects on human rights and democracy.

The implementation of those projects, and the extent to which the country concerned achieves its own objectives in this area, provides the basis for an assessment of the progress that has been made: positive results should lead to increased support, but where the country concerned has failed to respect its commitments the application of appropriate measures should be considered.

Consultation is therefore essential when conceiving and implementing a programme. This is the only way of promoting a flexible approach that makes due allowance for the cultural sensitivities and specific needs of the countries concerned, while ensuring that the Union's priorities are also respected.

(b) financial resources

The increasing financial resources available for human rights projects have considerably broadened the scope of such projects in both geographical and thematic terms. We now need to assess whether those resources, used in accordance with the provisions of financial regulations and the principle of budgetary transparency, allow us to act effectively in the medium-to-long term, respond to emergencies, ensure our instruments complement each other and at the same time encourage the recipient countries.

Initiatives promoting the rule of law, democracy and human rights often require a degree of flexibility that is hard to reconcile with the constraints accompanying the use of financial instruments. Flexibility is essential for short-term and long-term measures alike; the former require immediate access to funds and the latter entail a degree of continuity for periods of

more than one financial year. It is vital to consider any options that will produce the kind of financial instruments that are best suited to the task in hand.

The needs of medium-to-long-term measures are met by the existing technical assistance regulations and the available of development cooperation funds, which provide continuity in the Union's geographically determined activities through the implementation of multiannual programming. On the other hand, there is no 'rapid reaction' system, and we need to find a quick-release mechanism for mobilizing the funds needed, for example, when sending out monitoring teams in response to situations such as 'political' trials, serious human rights violations and conflict prevention.

Another aspect of flexibility is the capacity to adapt to the specific requirements that can arise — in terms of both recipients and allocation and evaluation procedures — in the human rights context, while continuing to respect the principle of budgetary transparency. Due allowance must be made for the individual characteristics of recipients who, with Community support, are carrying out projects for the protection and promotion of human rights, in particular their non-profit-making nature. In the same way, human rights projects are quite different from infrastructure construction programmes, and the evaluation and selection criteria should therefore be based on a different approach.

It is also important to ensure that the different types of instruments deployed complement each other. Problems arise when the budget remarks concerned contain general references to human rights, the only differentiating factor being the geographical area involved. A solution might be to introduce a hierarchical system for the use of these instruments. Thus, innovative projects might, as matter of course, be initially financed on a limited scale from special budget headings, before being developed on a larger scale if they prove successful, using technical assistance or development cooperation funds.

Another aspect of funding that needs careful consideration is the idea of making certain amounts available as an incentive. This idea was suggested in the Council resolution on human rights, democracy and development of 28 November 1991, which stressed the importance of encouraging or 'rewarding' progress. This formula has now been incorporated for the

first time into the draft for the revised Lomé IV, which provides for funding to be made available as an incentive to institutional and administrative reforms carried out as part of a democratization process or measures to consolidate or establish the rule of law. This funding will be released only if the ACP country concerned has earmarked some of its Lomé development funds to such reforms, and is therefore designed to supplement that country's national indicative programme resources. This system is entirely in line with the Community's positive approach and further strengthens the link between democracy, human rights and development. It might fruitfully be extended to countries or groups of countries other than those covered by the Lomé Convention.

In short, for the various financial instruments promoting respect for human rights to be used to best advantage:

- *they must be flexible to ensure their compatibility with the specific objectives pursued and guarantee in particular the availability of financial resources at a minimum of notice in case of urgent operations, and be adjustable to the specific requirements of human rights issues;*
- *they must complement each other (technical assistance, development cooperation funds, specific 'human rights' headings, etc.) so as to avoid duplication and ensure continuity of the desired impact;*
- *amounts must be made available as an incentive and granted in respect of progress achieved by way of reward, particularly in such areas as institutional reform, establishing the rule of law and democratization;*
- *there must be transparency of information relating to the various sources of funding and their use.*

3. Cooperation with various partners

If the Union's actions are to be effective, our partners — regional and international bodies, national authorities and grassroots organizations — must be involved in an open and constructive dialogue that generates synergies and ensures that the different measures taken by these bodies complement each other.

Human rights are the province of a number of international organizations, and it is important that we benefit from the expertise and experience of each of them in order to avoid duplication or even conflicting positions. We must develop our contact with the United Nations, OSCE, Council of Europe and other regional bodies such as the OAS and the OAU coordinating our activities to improve their impact and supporting regional initiatives, which are the best placed to respond to local needs.

The Community's most important partners are therefore the recipient countries themselves, which are responsible for their own democratic development and their own human rights situation. It is they that work the levers that allow them to react to problems on the ground. The dialogue between the European Union and partner countries is a key factor in the promotion of human rights and democratic values, which is why it is of capital importance that we maintain and step up this dialogue with international authorities and institutions; in this way, in line with our international commitments and with due respect for our partners' cultural identities, we can identify common priorities and thus draw up programmes for practical action.

The European Community also maintains close links with the grassroots in all its forms, particularly non-governmental organizations, which have become steadily more involved in the promotion and protection of fundamental rights, both on the ground and in the context of the regional and international institutions concerned. Their contribution to the establishment, consolidation and defence of the rule of law is of the utmost importance, as is their role as spokesmen for the underprivileged. Their ability to identify real needs, adapt to different situations and assess the progress made by their projects on a day-to-day basis makes them key players in the promotion and defence of fundamental rights.

Initially confined to development cooperation and humanitarian aid, the Community's partnership with grassroots organizations has gradually been extended to new areas such as the protection of the rights of vulnerable groups, the promotion of democratic freedoms and support for the electoral process. As part of its activities promoting the rule of law, the European Community also helps establish and con-

solidate non-governmental organizations as a key component of a democratic civil society.

In the light of the above, *the Commission will seek to improve its synergetic links with international and regional organizations by developing its dialogue with them in order to identify the relevant needs and priorities. These include:*

- supporting bodies that monitor and promote human rights;*
- promoting medium and long-term programming of priority activities to be implemented jointly with regional and international organizations;*
- developing the ability to respond with one-off operations;*
- stepping up exchanges of information on activities under way and on relevant research projects;*

The dialogue with non-governmental organizations should be stepped up with a view to identifying their priorities and needs.

This communication has been drafted at a time of conflicting trends; in Europe, 50 years of peace is the backdrop to violent conflicts at the heart of the continent; elsewhere in the world, democracy and individual freedoms are blossoming, yet fundamental freedoms continue to be violated on a large scale and fanaticism and intolerance are resurgent.

This paper is put forward to the Community institutions as a pledge for the future, designed to promote a human dimension that reflects the traditions and aspirations of the people of Europe.

Irrespective of the European Union's ambitions, it will achieve results only with the active participation of all its institutions and the support of a committed and responsible public.

* * *

This communication is addressed to the Council and to the European Parliament.

European Commission

The European Union and human rights in the world

Bulletin of the European Union — Supplement 3/95

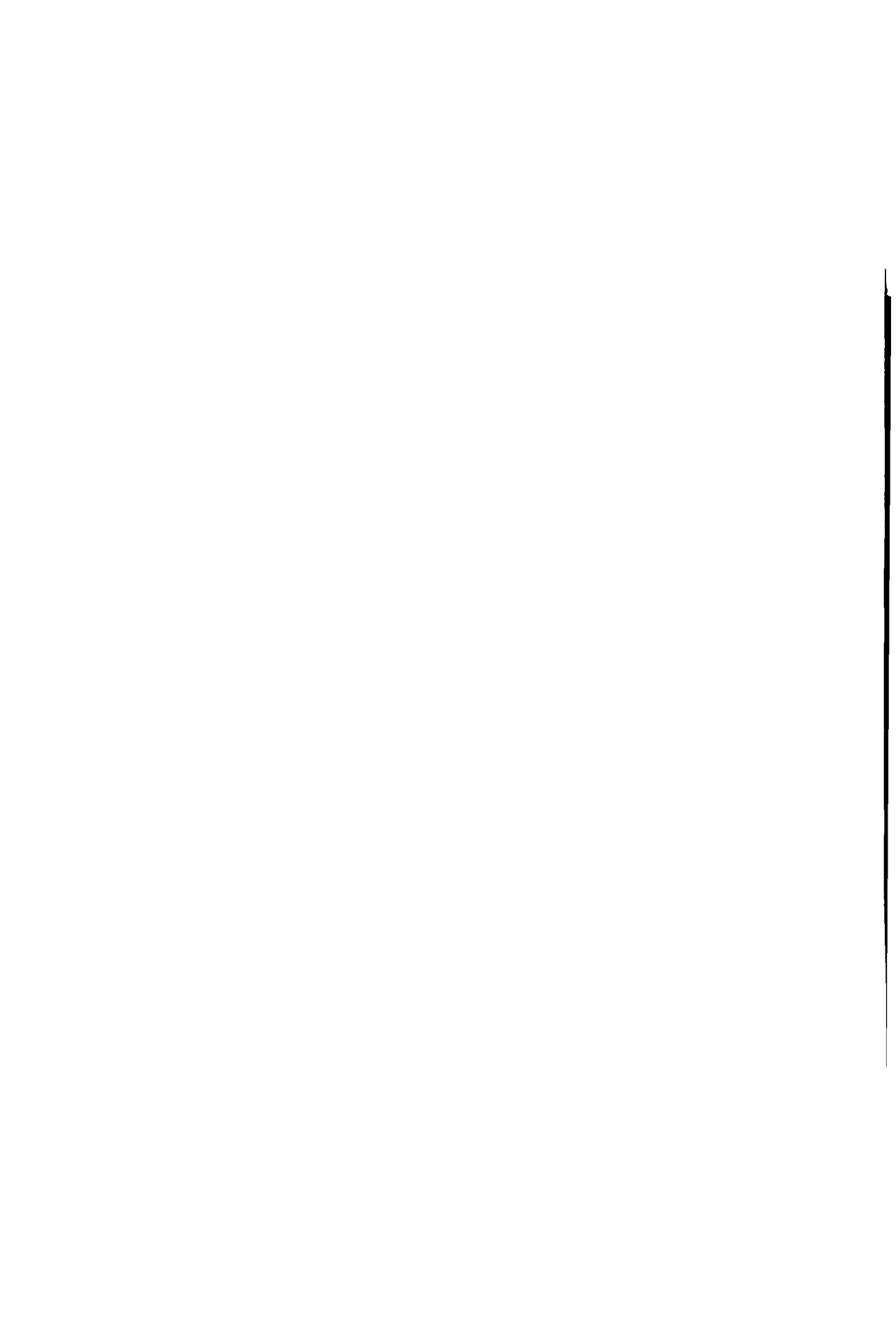
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The two Commission communications contained in this Supplement demonstrate the European Union's commitment to promoting the rule of law and respect for human rights. The first contains guidelines to be put into effect in the near the future, lays down priorities for EU action and maps out a new approach to devising measures and programmes; the second discusses one of the instruments whereby the Community can include respect for democratic principles and human rights in agreements with non-member countries.



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