

# FROM HIGH ASPIRATIONS TO HARSH REALITY: EU HUMAN RIGHTS PROMOTION AT THE UN HUMAN RIGHTS COUNCIL

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Since 1990s the EU has been highly aspirational on its role in human rights promotion on a global scale, which has led to the EU's proactive participation in international organizations. The Union identifies itself as 'global human rights force' but less and less acts in accordance with that identity at the UN HRC. At this intergovernmental body the EU acts as a smoothly coordinated block, which is contested by the other regional and political coalitions of states. The emerged multi-polar world system urges for a less normative analysis of EU human rights promotion.

The article proposes and applies 4 measurable indicators to assess the EU actorness in human rights promotion: 1) explicitness of references to the UN or global fora in the EU primary law and secondary legislation related to human rights promotion; 2) degree of support/contestation for the EU objectives by other non-EU actors at the HRC; 3) degree of (in)cohesiveness of EU external representation at the HRC; 4) EU (in)consistency in formulating priorities and using instruments at the HRC.

Multi-polar world system questions the EU high aspirations as 'a global force' in human rights promotion. The EU ability to use its instruments in human rights promotion is moderate even despite its enhanced burden sharing among the EU member states, a hybrid system of representation, a vast diplomatic and NGOs' network. 'Big' states still play the leading role in this process. The internal disagreement among the EU member states weakens the EU human rights promotion. The UN HRC structural context limits the EU opportunity to promote human rights, therefore, the EU tries to be less loud and less visible.

**Key words:** the European Union, Human Rights, the United Nations, the Human Rights Council, multi-polar world system.

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Since 1990s the EU has been highly aspirational on its role in human rights promotion on a global scale, which has led to the EU's proactive participation in relative international organizations. To adapt its high aspirations on human rights to reality the EU has developed a complex institutional setting with the Union, state and non-state actors behind it. Surprisingly, at the UN Human Rights Council (UN HRC, HRC) the EU performance is rather moderate. Despite the fact that the value of fundamental human rights is a subject of numerous international agreements in history and is laid down in almost all national constitutions, the UN HRC reflects diverging views on what human rights are and how this fundamental value should be promoted. Neoliberal institutionalist theory remains quite popular to explain why the EU views on human rights should be promoted. The emerging multi-polar world system urges for a less normative analysis of diverging views at the HRC.

The EU has its own views on how human rights should be promoted. The Union identifies itself as 'global human rights force' but less and less acts in accordance with that identity at the UN HRC. How to assess the EU human rights promotion at the HRC? What international developments determine EU behavior at the HRC? The methodological basis of the article is the institutional approach to the studies of international organizations with employment of some sociological methods, namely interviews. The article analyzes the EU legislation related to human rights, EU internal documents at the Foreign Affairs Council and its preparatory bodies (Council of the EU), the resolutions adopted at the HRC Regular Sessions in the period of 2014-2016. Plus, the author conducted 9 semi-structured interviews with the state diplomats, the EU officials (the European External Action Service (EEAS), the European Commission), the UN civil servants (the Office of the UN High Commissioner for Human Rights (OHCHR), the Office for the High Commissioner on Refugees (ONHCR), and the NGO accredited for the HRC Regular Sessions.

### **Limitations of the existing research**

At first sight, the EU seems to be influential in human rights promotion. A number of scholars tend to regard the EU as '... a strategic human rights actor' [20, c. 157]. However, in intergovernmental arena quite often the EU is unable to act at all. The patchwork ratification of the international binding human rights treaties by the EU member states is not the only reason for this. In 2011 the United Kingdom blocked a substantial number of EU statements in the UN system arguing that the statements should be delivered "on behalf of the EU and its member states" or solely "on behalf of the member states" [19, c. 49]. In the end of 2016 following the U.S. strategic objectives the EU achieved internal agreement among 28 member-states to accuse the China Peoples' Republic of human rights violations [6, c. 79-80]. While the EU put much effort in reaching this internal agreement and building inter-regional coalitions at the HRC in 2017, Greece, the EU member state, blocked it at the 35th Regular Session of the UN HRC in June 2017. It was the first time in history of the EU foreign policy

when the EU did not implement the agreed strategy in human rights promotion. In addition to that, a great scale of the EU initiatives at the HRC are dropped before the HRC sessions take place. Is it a future trend for the EU human rights promotion at the HRC? To answer this question, one should compare the EU aspirations and instruments in human rights promotion with the concrete external environment.

The existing research points out that the EU has been a very visible actor in human rights promotion at the HRC. This visibility is determined by the EU acting as one of the most smoothly coordinated bloc [8, c. 24]. At the same time, the high visibility does not necessarily lead to the desired outcomes. The EU visible 'speaking with one voice' on general objectives does not lead to EU high influence at the HRC [12, c. 224]. On the contrary, the EU acting as a bloc has provoked the other coalitions at the UN HRC to be more cohesive and contra-pose the EU goals with alternative innovative interpretations of human rights [18, c. 310] [3, c. 219]. The fragmentation of the contemporary international order with distinct rules and mechanisms for human rights promotion enhances this contestation [1, c. 90-91].

The EU human rights promotion at the HRC depends on how the EU is capable of overcoming its internal divergence [7, c. 31]. To overcome the internal divisions the EU has always been in need for enhanced coordination due to its complex structure. The Lisbon Treaty reform intended to enhance coordination between the EU institutions and the EU member states at the UN [12, c. 628-644]. However, enhanced coordination has not improved the EU performance at the HRC, especially, on the issues of sexual reproduction rights, gender equality and sexual orientation, human rights violations in Palestine [17; 9].

How to combine the analysis of the EU aims and instruments with the concrete external environment? The complex institutional setting of the EU for external human rights promotion limits the number of applicable analytical approaches. The EU external policy complements the national policies of the EU member states, especially, in the field of human rights in multilateral intergovernmental arena. The overall number of the EU and its member-states' activities at the UN create an image of a 'patchwork' [4]. The EU is not a state, it cannot be a member of the UN according to the UN Charter. At some UN agencies, the EU has a status of a full member organization (like WHO, FAO), in the intergovernmental arena in the field of human rights the EU enjoys a status of an observer (like UN GA, UN HRC).

However, the academic community cannot neglect its role at the UN. In fact, a non-member status at the HRC does not prevent the EU from influencing the international processes at this subsidiary body [4]. The major part of EU human rights promotion in intergovernmental arena is based on systemic coordination among the EU member-states' national policies. This systemic coordination is often overlooked in academic research. At the same time, when the question comes to the comparative assessment of the role of the EU and the EU member-states at the HRC, practitioners tend to answer that "Everything is decided in Brussels" [Respondent 1, Respondent 2].

## Overcoming the limitations of the existing research

The EU is not a principal actor at the UN: “the first ‘enemies’ of the EU at the UN are the EU member-states” [Respondent 4]. How to assess the EU human rights promotion at the HRC? The article applies the concept of ‘actorness’ developed under sociological approach by Bretherton and Vogler [2]. The concept allows to overcome the purely legal definition of an actor in international relations, which makes it applicable to the EU. However, Bretherton and Vogler avoided the analysis of the EU actorness in human rights promotion at international intergovernmental organizations due to me limitations of the concept. Firstly, the possession of a number of characteristics of ‘actorness’ does not mean that the analyzed entity is an actor in international relations. Actorness refers to “... an entity that exhibits a degree of autonomy from its external environment, and indeed from its internal constituents, and which is capable of volition or purpose” [2, c. 16]. Such a definition overlaps with the characteristics of a state as a principal actor in international relations: i. e. ‘derzhavnost’ (Russian: «державность») that is “... the ability of a state to independently and effectively use its foreign policy instruments” [16, c. 186]. Secondly, Bretherton and Vogler proposed three constituting ‘elements’ of actorness but no measurable indicators. This limitation caused widespread criticism due to the alleged lack of systematic empirical focus [10, c. 263-264]. The aim of this article is not to assess the EU as an actor in international relations but to measure the EU aspirations, instruments and the contesting environment at the HRC with the help of the concept of ‘actorness’. Therefore, the article overcomes the limitations of the existing analytical approaches and the limitations of the EU ‘patchwork’ institutional setting in human rights promotion.

The concept of ‘actorness’ comprises three elements: presence, opportunity, capability. This article proposes to measure the elements as ‘weak’, ‘moderate’, ‘strong’ on the basis of indicators. The element of ‘presence’ relates to “...the ability of the EU, by virtue of its existence, to exert influence beyond its borders” [2, c. 27]. It refers to the EU aspirations and self-identity as an actor in human rights promotion. This article proposes the explicitness of references to the UN or global fora in the EU law as a measurable indicator for presence at the UN HRC. Since this indicator measures the EU aspirations in human rights promotion, the procedural provisions for the EU action at the UN, are not taken into account. The more explicit the references to the UN or global fora are— the stronger the legal *acquis* — the stronger the EU presence in human rights at the HRC.

The element of ‘opportunity’ refers to “structural context of EU action including factors in the external environment of ideas and events which constrain or enable actorness” [2, c. 24]. The indicator is the degree of support for the EU objectives by other non-EU actors at the HRC. The indicator is measured by voting on resolutions at regular sessions for the HRC. The indicator depends on the degree of contestation of those EU initiatives that correspond to the EU priorities. This contestation increases if

the EU proposed initiative is not voted by consensus or meets an alternative initiative from the other actor at the HRC.

The element of ‘capability’ relates to the “...internal context of EU external action or inaction; ... ability to capitalize on presence or respond to opportunity” [2, c. 29]. As for the indicators to assess capability, the article analyzes 1) degree of (in)cohesiveness of EU external representation at the HRC; 2) EU (in)consistency in formulating priorities and using instruments at the HRC. The first indicator includes the analysis of the EU external representation and the format of the EU participation at the HRC. The second indicator includes the analysis of the EU decision-making procedures, instruments to formulate and reach objectives. The clearer and more consistent the priorities and procedures are across time and among the EU member states, the stronger the capability.

### Case-selection and scope of the research

The HRC is of a strategic importance of the EU human rights promotion<sup>1</sup>. The EU prioritize the support for the HRC in its both action plan on human rights and democracy in 2012-2014 and 2015-2019<sup>2</sup>. Moreover, the EU aims at promoting a rules-based global order with the UN at its core<sup>3</sup>. Human rights promotion is laid in the essence of the HRC as a subsidiary body of the UN General Assembly (UN GA), sometimes the HRC resolutions precede the resolutions on the respective issues discussed and drafted by the 3<sup>rd</sup> Committee of the UN GA. According to its constituent document, the HRC serves for “... promoting and encouraging respect for human rights and fundamental freedoms for all ...”<sup>4</sup>. Due to the organisational and institutional structure of the HRC: sessions, special procedures, size — the article gives preference to the HRC as a global forum for human rights promotion rather than to the 3<sup>rd</sup> committee of the UN GA.

To narrow down the scope of research the article focuses on the EU human rights promotion at the HRC in 2014-2016. The period of three years is justified by the mandate of a member at the HRC that lasts for three years. The period of 2014-2016 is justified by the struggle between the EU, on the one hand, and such states as Saudi Arabia, the Peoples’ Republic of China, Viet Nam, Algeria, the Russian Federation, Cuba, elected as the members of the HRC until 31 December 2016. At the same time, all

<sup>1</sup> European Commission, “Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action — Towards a More Effective Approach”, Brussels, 02.12.2011, COM(2011) 886 final

<sup>2</sup> Council of the EU, “EU Strategic Framework and Action Plan on Human Rights and Democracy”, Luxembourg, 25.06.2012, 11855/12.

Council of the EU, “Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019”, Brussels, 20.07.2015, 10897/15.

<sup>3</sup> European Union, “EU Global Strategy”, “Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union’s Foreign And Security Policy”, June 2016, p. 42. [Электронный ресурс] [Электронный ресурс] URL: [http://www.eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf). (дата обращения: 29.03.2017).

<sup>4</sup> United Nations, “Resolution 60/251 adopted by the General Assembly on 15 March 2006”, Doc. A/RES/60/251. [Электронный ресурс] [Электронный ресурс] URL: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/60/251&Lang=E>. (дата обращения: 29.03.2017).

members of the UN contribute to the HRC institutional package, the main difference between a member and a non-member of the HRC is the right to vote on the initiative be it a resolution or a decision within the HRC.

### **Presence: explicitness of references to the UN or global fora in the EU law**

The EU presence in human rights promotion has a consistent historical background. In 1970 the European Court of Justice (ECJ) introduced human rights as "... integral part of the general principles of [Community] law protected by the Court of Justice" in *IHG case*<sup>5</sup>. This case extended the principle of supremacy of the Community law introduced in *Costa v. ENEL case* in 1964 to the domain of fundamental rights. In 1974 with the reference to its case-law, the ECJ restated human rights as "... fundamental rights ... [forming] ... an integral part of the general principles of [Community] law" in *Nold case*<sup>6</sup>.

The Preamble of the Treaty on European Union (TEU) stresses the respect for human rights and fundamental freedoms as the 'inheritance of Europe'. Human rights are regarded as a foundational value of the EU stipulated by Art. 2, TEU. Once again, the universality of human rights is stressed without any reference to any international agreements under the UN. Art. 3, para 3(2) stipulates the EU presence in the promotion of equality between men and women, solidarity between generations and rights of the child, once again, with no explicit reference to the UN. However, Art. 5 TEU refers to the protection of human rights "... in its [EU] relations with the wider world..." and respect for the principles of the United Nations Charter that, in its turn, has at the core the realization of human rights for all without distinction as to race, sex, language or religion<sup>7</sup>.

Article 6, para 3 of the TEU was introduced by the Treaty of Maastricht stressing human rights as general principles of the EU law evolving from the common constitutional traditions of the member states. It stresses human rights, however, does not relate to the EU as a global multilateral actor since it does not refer to global sources for human rights protection. It does not refer explicitly to the HRC or the UN whereas it has explicit reference to the Charter of Fundamental Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

Although the TEU does not have explicit reference to human rights in its provisions on CFSP, the EU external action in Common Foreign and Security Policy (CFSP) matters is guided by Art. 21 TEU referring to human rights as a guiding principle. Art. 21 TEU enables EU strong presence in human rights promotion at the UN. In the

<sup>5</sup> Case 11-70. *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Judgment of the Court, 17.12.1970. Grounds of judgement, para 4. [Электронный ресурс] [Электронный ресурс] URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61970CJ0011&from=EN>. (дата обращения: 19.04.2017)

<sup>6</sup> Case 4-73. *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*. Judgment of the Court of 14 May 1974, para 13. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61973CJ0004&from=EN> (дата обращения: 19.04.2017).

<sup>7</sup> United Nations, "Charter of the United Nations", Art. 1, para 3, Art. 13, para 1(b). [Электронный ресурс] [Электронный ресурс] URL: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (дата обращения: 19.04.2017).

very first paragraph human rights are explicitly linked with the objective to respect the principles of the Charter of the UN. Moreover, to promote human rights externally the EU aims at cooperation with global organisations that share the same values. The reference to the UN framework is explicit in the second paragraph of Art. 21: it contributes to strong presence since it stipulates that the EU ‘... shall promote multilateral solutions to common problems [also in the domain of human rights], in particular in the framework of the United Nations’. Art. 21 also has explicit reference to the human rights promotion in accordance with the purposes and principles of the Charter of the UN in para 2(c) and explicit accent on EU objective to promote multilateral cooperation and ‘good global governance’ in para 2(h), which finally enables EU strong presence in global fora.

Art. 21 TEU enables human rights promotion as an objective of EU external action to be applied across all policies. In order to reach this objective, Art. 212, para 3, Treaty on the Functioning of the European Union (TFEU) stipulates that the EU and the member states “... shall cooperate with ... competent international organisations”. In addition to that, Art. 220 TFEU stipulates that the EU “...shall establish all appropriate forms of cooperation with the organs of the UN and its specialized agencies...”. Such a reference enables EU identity as a global multilateral actor in human rights.

The Charter of Fundamental Rights (Charter) has significantly increased the EU presence in human rights. Still, the application of the Charter in external area is limited. The Charter stipulates in its Preamble that the EU “... is founded ... on universal values of human dignity, freedom, equality and solidarity ...”. The rights defined in the Charter are practically identical with the rights stipulated by the UN sources for human rights protection, however, there is no explicit reference to them. The Regulation No 168/2007 establishing the European Union Agency for Fundamental Rights (EU FRA, FRA, Agency) includes two explicit references to the UN<sup>8</sup>.

Regulation establishing the European Instrument for Democracy and Human Rights (EIDHR) for the period 2014-2020 has explicit reference to the EU as a global actor in human rights promotion. In para 16 of the Preamble the Regulation stresses that the EU assistance under the established structure has a specific role “...by virtue of its global nature ...”. Accordingly, in para 15 of its Preamble it refers to UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (‘Declaration on Human Rights Defenders’), in Art. 1(b), Art. 2(b) — explicit references to the numerous UN human rights treaties<sup>9</sup>.

To draw a line, the measurement of the explicitness of referring to the UN sources and global fora shows that the EU has very high aspirations on human rights promotion at the HRC. Consequently, the EU strategic documents in human rights promo-

<sup>8</sup> European Union, “Regulation No 168/2007 of 15.02.2007 establishing a European Union Agency for Fundamental Rights”, 22.2.2007, Official Journal of the European Union, L53/1. Art. 6, para 2(c), Art. 8, para 2(b)

<sup>9</sup> European Union, “Regulation No 235/2014 of the European Parliament and of the Council of 11.03.2014 establishing a financing instrument for democracy and human rights worldwide”, 15.03.2014. Official Journal of the European Union, L77/85.

tion — two human rights action plans adopted in 2012 and 2015 — identify the HRC as the key arena for human rights promotion throughout the world. The EU explicitly stressed its support for the HRC in “Global Strategy” as an instrument of international democracy and human rights promotion. The EU has consistent historical background in this area: since 1970s human rights are integral part of the general principles of EU law. The EU remains highly aspirational on its identity in human rights promotion at the HRC, but how is this identity realized in reality?

### **Opportunity: support and contestation for the EU objectives at the HRC**

What is the general structural context at the HRC? The HRC is responsible for human rights promotion at the global level: it is a subsidiary organ of the UN GA created by the UN GA Resolution on 15 March 2006<sup>10</sup>. The EU human rights promotion at the HRC has longstanding historical background towards the HRC predecessor — the UN Commission on Human Rights (CHR): at this body, the European Communities (EC) were pushing for country and thematic initiatives corresponding to those the EC had adopted at its own level, or the EC systemically included the discussions at the CHR in agenda of meetings with third states<sup>11</sup>.

What is the structural context of the HRC that enables or constrains the EU human rights promotion?

Firstly, the characteristics of the HRC constraining the EU opportunity are the following: 1) the intergovernmental nature of the HRC as a body within the UN system — EU is not a full UN member, therefore, as an example, the EU cannot draft resolutions; 2) the allocation of seats along regional groups — usually the EU has from 7 to 9 member states as the members of the HRC out of 47 members, therefore, cannot rely on voting and needs to find allies; 3) consensus based decision-making at the HRC — the majority of HRC resolutions are adopted by consensus of the members of the HRC — the distinct contribution of the EU is ‘behind’ contributions of the states; 4) the existence of the other politically united groups of states, e.g. the OIC or the Like Minded Group (LMG) — such groupings contest the EU as a ‘bloc’; 5) proactive behaviour by the other members of the HRC in 2014-2016 — alternative innovative interpretations of human rights were introduced under the framework of ‘multi-polar world’; 6) non-preventive nature of the HRC — the majority of the documents by the HRC are not legally binding, mostly, the HRC outcomes are recommendatory.

Secondly, the characteristics of the HRC that enable the EU opportunity are: 1) universal respect for the protection of all human rights as the core founding principle of the HRC — one of the most effective practices to reach priorities at the HRC is

<sup>10</sup> United Nations, “Resolution 60/251” adopted by the General Assembly on 15.03.2006, Doc. A/RES/60/251. [Электронный ресурс] [Электронный ресурс] URL: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/60/251&Lang=E> (дата обращения: 29.03.2017).

<sup>11</sup> European Commission, “Communication from the Commission to the Council and the European Parliament, The European Union and the United Nations: the Choice of Multilateralism”, COM (2003) 526 final p. 8, 20, 29. (дата обращения: 10.09.2003).

to refer to already adopted documents, the universal respect for human rights as the core principle of the HRC relates to universality of human rights, and the EU tries to present its approach to human rights as a ‘universal one’; 2) legal status for observers — the EU is not a full member of the UN, however, its formal participation as an observer is legally provisioned, the EU has a right to speak, deliver statements and interventions, attend formal meetings; 3) vast coverage of human rights issues — only actors with vast representation and diplomatic networks can cover all activities of the HRC, the EU together with its member-states diplomatic networks cover the whole institutional package of the HRC; 4) diversified institutional package of the HRC create a lot of room for manoeuvre: Universal Periodic Review (UPR), Special Procedures, Complaint Procedure, plus, resolutions as standard-setting mechanism — the majority of the HRC documents are non-binding, however, the states report to the UPR every 4.5 years or allow special procedures to inspect human rights positive obligations; 5) collaboration of the HRC with the other bodies, notably, the Office of the UN High Commissioner for Human Rights (OHCHR) and the Office of the UN High Commissioner for Refugees (UNHCR), opens broad path for the EU to introduce its approach to human rights through the other bodies — the OHCHR serves as the Secretariat of the HRC and support special procedures, experts and working groups at the HRC, the UNHCR functions as an advocacy and covers the whole HRC institutional package. The budgets of these bodies are opened for voluntary contributions and the EU contributes to these budgets to ensure as their ‘effectiveness and independence’ as those of the HRC. The EU insists that money should be allocated to concrete HRC special procedures, the money comes as from the EU institutions, notably the European Commission, as from the EU member-states.

As observed by Smith, the EU member states being the members of the HRC incline not to vote together if there might occur a request for a voting procedure [12, c. 70-72]. Such a request is a sign that a decision or resolution is not supported by the other states therefore would not be adopted by consensus. The requests for a vote on the HRC resolutions related to the EU priorities can be measured to assess the degree of contestation of the EU at the HRC. Table 1 presents the resolutions submitted explicitly on behalf of the EU in 2014-2016. The data in table gathered from the HRC regular sessions provides an important finding related to the EU opportunity at the HRC. The strength of the EU opportunity does not depend on the number of the EU member states being the members of the HRC. In 2016 the traditional EU resolution on the “Situation of human rights in the Democratic People’s Republic of Korea” did not meet a request for a vote whereas this resolution had been voted in 2014-2015. Non-EU states contest the EU initiatives on country resolutions as bearing political interests with little effort to promote human rights. This contestation is likely to stay with Item 4 at the HRC: non-EU states, especially, LMG, argue that if the human rights violations occur in the EU member states, in the United States — no country-specific resolution is submitted then. This contestation is broadly known as the EU applying ‘double standards’ in human rights promotion. The EU could overcome the issue through its

contribution to Universal Periodic Review (UPR), which is intergovernmental, and through building cross-regional coalitions.

**Table 1. Resolutions at the HRC Regular Sessions submitted on behalf of the EU in 2014-2016**

Indicator/Year	2014	2015	2016
<b>Resolutions submitted on behalf of the EU (in italics resolutions adopted by a vote)</b>	Rights of the child: access to justice for children. Freedom of religion or belief. Situation of human rights in Myanmar. <i>Situation of human rights in the Democratic People's Republic of Korea.</i> <i>Situation of human rights in Belarus</i>	Rights of the child: Toward better investment in the rights of the child. Freedom of religion or belief. Situation of human rights in Myanmar. <i>Situation of human rights in the Democratic People's Republic of Korea.</i> <i>Situation of human rights in Belarus</i>	Rights of the child: information and communications technologies and child sexual exploitation. Freedom of religion or belief. Situation of human rights in Myanmar. Situation of human rights in the Democratic People's Republic of Korea. <i>Situation of human rights in Belarus.</i> <i>Human rights situation in Burundi</i>
<b>Number of resolutions submitted on behalf of the EU (number of resolutions adopted without a vote + ... by a vote)</b>	5 (3+2)	5 (3+2)	6 (4+2)
<b>Overall number of resolutions adopted HRC regular sessions</b>	102	88	100
<b>Numbers of EU MSs as HRC members</b>	9 (AT, CZ, DE, EE, FR, IE, IT, RO, UK)	8 (DE, FR, IE, LV, NL, EE, PT, UK)	8 (BE, DE, FR, LT, NL, PT, SI, UK)

*Source:* Resolutions and interventions at the Regular Sessions of the HRC in 2014, 2015, 2016. Human Rights Council Extranet Database, retrieved 11/04/2017, <https://extranet.ohchr.org/sites/hrc/Pages/default.aspx>. Compiled by the author.

Table 1 provides the information on the resolutions submitted by the EU rotating presidency explicitly on behalf of the EU. Less than a half of the resolutions were requested for a vote and still all resolutions were adopted. It is a sign of weak EU opportunity at the HRC. As stated by the majority of the interviewees, it is difficult to differentiate between the EU and the EU member states acting before the HRC. The first reason is that the EU does not want to act as a 'bloc' in order not to 'provoke' the other political groupings. The second reason is that the EU acts through burden-sharing at the HRC: different EU member states are responsible for specific resolutions at the HRC while adopting the EU priorities in Brussels and coordinating in Geneva.

The overall EU opportunity remains weak due to the LMG group, African and Arab states, the People's Republic of China and the Russian Federation acting proactively at the HRC. The states contesting the EU neoliberal initiatives can amend the resolutions with or without membership, plus, can always request a vote through a

coalition. The EU tries to compromise its priorities with the priorities of the other groupings, an example of the success was the EU coalition with Latin American and Caribbean Group (GRULAC) on the issue of rights of the child. To soften contestation, the EU has to compromise the texts of resolutions and concentrate on implementation stage. On particular issues, like the arbitrary deprivation of nationality, foreign debt, family values, protection of Roma, the EU is likely not to compromise.

The other significant contestation refers to the EU ‘acting as a bloc’: e.g. the resolution “Promotion of a democratic and equitable international order” submitted by Cuba at 33rd Regular Session in 2016. It was adopted with 30 votes in favour and 12 votes against (5 abstentions). All 8 EU member states as the members of the HRC voted against this resolution ‘... hence were acting as a bloc’ [Respondent 5]. That is why the EU does not submit all resolutions explicitly on behalf of the EU, but on behalf of its member states.

Even if compared to the overall number of the resolutions adopted without a vote, related to the EU priorities, initiated by the EU member-states, which is high, the number of resolutions that are very important for the EU human rights promotion and are still followed by a request for a vote, — their number is significant for assessing the EU opportunity at the HRC as weak. Such resolutions are not likely to be implemented in future. Moreover, some resolutions proposed by non-EU states are regarded as opposing the EU perspective on human rights and their universality: resolutions concerning effects of foreign debt on human rights, illicit financial flows and human rights, family protection, traditional values, responsibility of transnational companies for human rights violations, integrity of a judicial system, right to development, etc. At the same time, the EU resolutions gain support from a variety of actors at the HRC in specific issues: GRULAC, Canada, Mexico, Japan, the United States, etc.

Therefore, the overall assessment of the EU opportunity at the HRC in 2014-2016 shows that the EU opportunity was weak. How does the EU respond to that structural context?

### **Capability: cohesiveness of EU external representation and inconsistency in formulating priorities and using instruments at the HRC**

Absence of equal rules for participation limits the EU capability at the HRC. The EU has a status an observer status before the HRC based on the UN GA resolution 65/276, which allows the EU to speak, deliver statements and interventions, attend formal meetings. This status allows less than the full membership: the EU speaks after the states and seats aside, plus, observers enjoy 1-2 minutes less time speak than the states [18, c. 307]. As observed by the scholars, the improvement of the status of the EU at the HRC could have been realized through extension of the application of the UN GA Resolution 65/276 to the HRC giving the EU status of an enhanced observer [19, c. 55]. This initiative was proposed in 2012 in the “Strategy for the progressive improvement of the EU status in international organisations and other fora in

line with the objectives of the Treaty of Lisbon” (‘Barroso-Ashton Strategy’)<sup>12</sup>, however, the mention of the improvement of the EU status at the HRC disappeared in 2013 note on the implementation of the Strategy [19, с. 59].

The EU external representation to the HRC strengthens capability. The EU Delegation consists of 40 employees with (including administrative staff)<sup>13</sup>. In 2016 5 experts were working with human rights in the Delegation, while in 2017 there were already 8 experts.<sup>14</sup> The EU external representation comprises the EU Delegation and the delegations of the EU member states acting in close cooperation with the EU Delegation in accordance with Art. 221, para 2 TFEU. A vast network allows the EU to cover the whole institutional package of the HRC. As stated by interviewees, only a few actors before the HRC can cover all the activities at the HRC [Respondents 1, 2, 5, 8]. Before and during HRC sessions the EU Delegation in New York assists the EU Delegation in Geneva. As observed by the scholars, the EU achieves its priorities through multiple interventions by the EU member states [12, с. 229].

The EU external representation to the HRC can be regarded as a complex system with the EU Delegation, the EU member states, and rotating presidency acting together [21, с. 61]. The permanent mission of one EU member state in Geneva has from four to more than ten human rights experts [17, с. 127]. The Delegation in Geneva merged the Commission delegation and the Council Secretariat acting before the HRC and replaced the rotating presidency in coordination and contacts with third states [20, с. 144].

On the one hand, the complexity of the representation strengthens the EU capability, on the other hand, it weakens the EU capability at the HRC. The coordination process in Geneva strengthen EU capability as it enables the EU and the EU member states burden-sharing practices at the HRC. However, the EU capability with this complex system is moderate: the EU internal negotiation takes a lot of time. Due to varying EU member state policies related on human rights, the EU coordinated position often presents the ‘lowest common denominator’ between the member states.

The EU priorities for the HRC have been adopted since 2012. Guidelines and priorities are developed by the Council (Working Party on Human Rights — COHOM including member states, Commission, EEAS) with the chairmanship by the EEAS officials. The coordination may involve the meetings of the CONUN working group and geographical working groups.

Table 2 presents the EU priorities at the HRC in the period 2014-2016<sup>15</sup>. According to the data, the EU priorities mainly remain consistent across time. The EU capa-

<sup>10</sup> European Commission, “Communication to the Commission from the President in Agreement with Vice-President Ashton, Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon”, Brussels, 20.12.2012, C(2012) 9420 final

<sup>13</sup> Delegation of the European Union to the UN and other international organisations in Geneva, “About EU Delegation in Geneva”. [Электронный ресурс] [Электронный ресурс] URL: [https://eeas.europa.eu/delegations/un-geneva/659/about-eu-delegation-geneva\\_en](https://eeas.europa.eu/delegations/un-geneva/659/about-eu-delegation-geneva_en) (дата обращения: 24.04.2017).

<sup>14</sup> Ibid.

<sup>15</sup> Council of the EU, “Council conclusions on EU priorities at the UN Human Rights Fora”, Press Office, FAC Meeting, Brussels, 10.02.2014.

Council of the EU, “Council Conclusions on EU priorities at UN Human Rights Fora in 2015”, Brussels, 09.02.2015, 5927/15.

Council of the EU, “EU Priorities at UN Human Rights Fora in 2016”, Brussels, 15.02.2016, 6012/16.

bility is limited by the internal disagreement among the EU member states, notably, on the issues of LGBTI or reproductive health rights [19, c. 74]. The EU member states consistently disagree on Item 7 on the human rights situation in Palestine, especially, on the issue of a Syrian Golan, and often on county-specific resolutions in the Eastern Neighbourhood. The internal divergence among the EU member states has resulted in incoherence of the EU priorities: as provided by the Table 2, priorities on LGBTI and reproductive health rights was reformulated, protection of migrants as well as climate and human rights was agreed only in 2016. The limitation here is the divergence between the EU proclaimed protection of migrants and the hesitance of the EU member states to join the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The EU avoids setting the rights of migrants onto the HRC agenda. The other limitation is that ‘big’ EU member states (France, Germany, the United Kingdom) act proactively while the others are invited to co-sponsor resolutions through ‘silent procedure’.

The EU has much room for improvement. The instruments of the EU strengthen the EU capability at the HRC. The EU has proclaimed its strive for a rule-based international order with the UN at the core under the principle of “effective multilateralism”<sup>16</sup>. The EU’s Strategic Framework and Action Plan 2012 gave start to the publication of the EU priorities in human rights fora, underlined the leading role of the HRC in terms of human rights promotion<sup>17</sup>. This Action Plan noted the HRC as the leading mechanism for promotion of economic, social and cultural rights and stressed the EU member states, EEAS and the Commission as responsible bodies to implement the action plan. The EU Action Plan on Human Rights and Democracy in 2015-2019 reiterated the existing priorities for the HRC, plus, added the strategic priority for promotion of women’s rights, LGBTI rights, rights of people with disabilities. The latter action plan also stressed the problem of shrinking society space and set the inclusion of the ‘civil society space’ and ‘support to human rights defenders’ as priorities at the HRC. Eleven EU guidelines on the thematic issues were adopted. The guidelines lack coherent implementation and are not ‘updated’ regularly enough.

The EU continues to cooperate with the HRC special procedures intensively. Notably, the OHCHR and the HRC special procedures have been briefing the Political and Security Committee on Brussels [11, c. 38]. The EU contributions to the OHCHR meets contestation because the EU allocates the funds for concrete special procedures and the HRC does not monitor the budget of the OHCHR. Finally, the EU could have built more cross-regional coalitions: a greater cooperation between the EU and GRULAC states on the rights of the child was success — the HRC resolutions on the issue were adopted in 2014, 2015, 2016 without a request for a vote. The resolutions on the freedom of religion or belief were also adopted in 2014, 2015 and 2016 without a request for a vote.

<sup>16</sup> European Council, “European Security Strategy: a Secure Europe in a Better World”, Brussels, 12.12.2003. European Council, “Report on the Implementation of the European Security Strategy — Providing Security in a Changing World”, S407/08, Brussels, 11.12.2008.

<sup>17</sup> European Union, “EU Strategic Framework...”, *op. cit.*

**Table 2. The EU priorities at the UN human rights fora in 2014-2016**

Priority/ Year	2014	2015	2016
Independence of the Office of the High Commissioner for Human Rights	Yes	Yes	Yes
Proactive preventive nature of the HRC	No	No	Yes
Safe space for civil society and human rights defenders	Yes	Yes	Yes
Abolition of the death penalty	Yes	Yes	Yes
Freedom of religion or belief	Yes	Yes	Yes
Rights of the child	Yes	Yes	Yes
Women's rights	Yes	Yes (+reproductive health rights)	Yes
Freedom of expression	Yes	Yes	Yes
Freedom of association	Yes	Yes	Yes
Tackling degrading or inhuman treatment	Yes	Yes	Yes
Protection of LGBTI	Yes	No (but fight against discrimination on sexual orientation and gender identity)	No (but fight against discrimination on sexual orientation and gender identity)
Fight against racism	Yes	Yes	Yes
Protection of migrants	No	No	Yes
Economic, social and cultural rights	Yes	Yes	Yes
Business and human rights	Yes	Yes	Yes
Climate and human rights	No	No	Yes
Country specific	Syria, DPRK, Iran, Sri Lanka, Myanmar, Belarus, Central African Republic, South Sudan, DRC, Eritrea, Mali, Sudan	Iraq, Syria, Ukraine, Crimea, DPRK, Myanmar, Sri Lanka, Central African Republic, South Sudan, Sudan, DRC, Eritrea, Mali, Belarus	Syria, DPRK, Ukraine, Crimea, Burundi, South Sudan, Iran, Libya, the Palestinian territory, Saudi Arabia, Myanmar, Sri Lanka

*Source:* Register of the European Council and the Council of the EU, retrieved 11/04/2017, <http://www.consilium.europa.eu/register/en/content/int/?lang=en&typ=ADV>. Council of the EU, Council conclusions on EU priorities at the UN Human Rights Fora, Press Office, FAC Meeting, Brussels, 10 February 2014. Council of the EU, Council Conclusions on EU priorities at UN Human Rights Fora in 2015, Brussels, 9 February 2015, 5927/15. Council of the EU, EU Priorities at UN Human Rights Fora in 2016, Brussels, 15 February 2016, 6012/16. Compiled by author.

The EU includes the outcomes the HRC sessions in bilateral human rights policies<sup>18</sup>. As an example, in human rights dialogue with China the EU refers to the decisions and resolutions of the HRC to implement the outcomes [11, c. 38]. The EU delivers demarches and declarations, includes human rights as essential elements of agreements, promotes human rights through the other instruments and bodies, *e.g.* the Development Cooperation Instrument (DCI), etc. [11, c. 174-175]. The EU uses informal negotiations or so called ‘quiet diplomacy’ to achieve its priorities, *e.g.* the EU and the U. S. negotiations with Israel aiming at no abandoning of the UPR [5, c. 20]. The Commission, the European Council, the European Parliament (EP) and the EU FRA, — monitor human rights violations worldwide. The EU FRA does it in accordance with the methodology of the OHCHR. The EU also uses its Human Rights Focal Points (HRFP) to gather information and cooperates with the National Human Rights Institutions (NHRIs) on UPR contribution. The European Parliament (EP) delivers resolutions on the EU priorities for the HRC sessions, the EP contributes to the work conducted by the COHOM<sup>19</sup>.

Finally, the EU representation and system of instruments is complex. Due to incoherence in human rights promotion among the EU member states, the complexity of the institutions involved, the indicators enable moderate EU capability. Therefore, with strong presence, weak opportunity and moderate capability the EU actorness in human rights promotion at the HRC remains moderate.

### Conclusions: from high aspirations to harsh reality

What international developments shape the harsh reality for EU high aspirations on human rights promotion at the UN HRC?

The EU has been highly aspirational on its role in human rights promotion because the Union was successful in changing the socio-legal systems of newly independent states in the 1990s under the human rights formula. Since that time the EU has been articulating human rights as ‘foundational value’, ‘guiding principle’ and objective of external action. The EU successfully managed the 2004 enlargement and the European Neighbourhood Policy. The aspirations were that high that it seemed possible for the societal groups in the EU to promote their views on human rights on a global level — at the UN. The EU presents its internal approaches, standards, legislation as ‘universal’.

The following factors weaken the EU human rights promotion at the UN HRC:

- augmenting global inequality between ‘the West and the Rest’, transformation of global value chains, financial crises;

<sup>18</sup> Council of the EU, “EU Annual Report on Human Rights and Democracy in the World in 2015”, Country and Regional Issues, General Affairs Council, 20.09.2016, 12299/16.

<sup>19</sup> European Parliament, “Resolution on EU priorities for the UN Human Rights Council sessions in 2017”, 16.03.2017, 2017/2598(RSP). [Электронный ресурс] [Электронный ресурс] URL: [\(http://www.europarl.europa.eu/oel/porups/ficheprocedure.do?lang=en&reference=2017/2598\(RSP\)\)](http://www.europarl.europa.eu/oel/porups/ficheprocedure.do?lang=en&reference=2017/2598(RSP)) (дата обращения: 25.04.2017).

- emergence of the other regional economic integration organisations who are capable of developing own approaches, standards, legislation in the field of human rights and form coalitions at the HRC;

- increasing inequality between the economic core of the EU ('big three') and the other EU states, human rights violations in the EU member states, the EU institutions being not accountable for human rights violations, the EU member states hesitating to ratify the international human rights agreements and respective provisions on individual complaint;

- the intergovernmental nature of the HRC as a subsidiary body of the UN GA;

- the allocation of seats along regional groups at the UN, where the EU is a smoothly coordinated powerful bloc, but not the only one;

- the EU inconsistency in human rights promotion, which in turn, enables the divergence in views of the EU member states, the homogeneity of the other political groupings like the OIC or the LMG, argumentative contestation from non-EU states like the Russian Federation, Cuba, South Africa, the Peoples' Republic of China, etc.;

- non-binding nature of the HRC resolutions, non-preventive nature of the HRC. The U. S. and the EU continue the reforms of the HRC to make it a sanctioning body, to keep the Western interpretations of human rights as the 'right ones'. It is commonly discussed under the idea of introducing the criteria for membership at the HRC, an old idea that was rejected in 2006.

The following factors strengthen the EU human rights promotion:

- universality of human rights as the core of the HRC, respect for consensus principle;

- legal status for the EU as an observer;

- EU enhanced coordination procedures and burden sharing with the EU member states;

- the EU and the EU member states' vast diplomatic network, which allows the EU to cover all activities at the HRC;

- diversified institutional package of the HRC, which opens the way to the Western NGOs. The EU has a wide network of human rights organisations all over the world, they play a role at the HRC agenda-setting: contribute to the UPR, the Special Procedures, the general debates. The institutional package of the HRC, for example, the HRC Special Procedures (OHCHR budget) are opened to voluntary contributions, where the EU and the EU member states determine how their contributions should be spent;

- collaboration of the EU and the HRC with the OHCHR as the HRC secretariat, and the other UN agencies like the UNHCR — it helps the EU not only to use the route of NGOs in reaching the Union's goals, but also to use the other bodies: approx. 90% of the UNHCR budget — voluntary contributions.

When it comes to human rights promotion at the UN, the EU high degree of inconsistency becomes evident. The EU human rights promotion depends on its political and economic interests rather than on significance of fundamental values. One may

compare the EU human rights approach to the U. S., Saudi Arabia, China, Belarus or note that the EU limits economic, social and cultural rights to right to water, right to sanitation, right to food in order to reach the EU trade-development goals in developing states. The EU has made the rights of migrants as a priority in 2016, however, no significant action followed this priority. Finally, the Union presents its standards as allegedly universal, however, still regards its legal order in human rights protection as distinct from the international legal order (see Kadi case).

The UN HRC has always united diverging views on human rights. The augmenting global economic inequality, change in global value chains, next waves of financial crises will only sharp political and economic interests of international actors, which, in turn, will increase the level of divergence on human rights. The EU tries to keep balance: the Union and its member-states stick to less strong in words, compromised resolutions. It does not mean that the EU refuses its goals: the goals are still pursued at the stage of implementation of a resolution. The EU masters the inclusion of the HRC agenda outside the UN into its bilateral relations, once again, if it serves the EU economic and political interests.

The EU success or failure to promote human rights does not depend on the number of the EU member states being the members of the HRC. It rather depends on the level of the EU politicization of fundamental values: the higher the EU interlaces its economic and political interests with human rights as an instrument, the greater the contestation will be. That is why the EU is criticized for prioritizing civil and political rights over social and economic rights, for ‘double standards’, for ‘patchwork’ representation, for acting ‘as a bloc’. Interestingly enough, the EU politicized human rights promotion causes contestation, which in turn, causes the EU accusing the HRC as a politicized body. It is the next inconsistency with the EU proclaimed commitment to ‘effective multilateralism’.

Even if powerful states like the Russian Federation or the Peoples’ Republic of China are not members of the HRC, it does not prevent them from contesting the EU initiatives, especially, through LMG coalition. As an example, the resolution “Promotion of a democratic and equitable international order” was submitted by Cuba, and all EU member states as members of the Council voted against this resolution. On the contrary, the EU resolutions gain support from a variety of other powerful actors and coalitions at the HRC: GRULAC, Canada, Mexico, Japan, the United States, etc.

Most of the EU priorities remain consistent over time at the HRC, however, the internal disagreement among the EU member states on specific issues — notably, Item 7 and Syrian Golan issue, gender identity, sexual reproductive rights — weaken the EU human rights promotion. ‘Big’ states still play the leading role in EU human rights promotion.

The EU ability to use its instruments is moderate even despite its enhanced burden sharing among the EU member states, the EU observer status, a hybrid system of representation, a vast diplomatic and NGOs network. The EU internal negotiation takes a lot of time and due to varying EU member state policies related to human rights

promotion, the international negotiation takes even more time. The EU coordinated position often presents the lowest common denominator between the member states.

Some practitioners continue to admit that the EU is 'a global force for human rights'. There is no such policy like 'human rights' in the EU law, it is a 'guiding principle'. Moreover, fundamental values are constitutional principles in vast number of states. Therefore, harsh reality is that multi-polar world system questions the EU high aspirations as 'a global force' in human rights promotion.

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### Interviews:

- Respondent 1. State Diplomat. MFA of the Russian Federation. March 2017.  
 Respondent 2. State Diplomat. MFA of the Russian Federation. March 2017.  
 Respondent 3. Former State Diplomat. MFA of the Peoples' Republic of China. April 2017.  
 Respondent 4. Former counsellor. European Commission Delegation to the UN in New York. March 2017.  
 Respondent 5. Former counsellor. EU Delegation to the UN in New York. March 2017.  
 Respondent 6. Representative of the NGO accredited for the HRC Regular Session. March 2017.  
 Respondent 7. Head of Unit, the UNHCR. March 2017.  
 Respondent 8. Head of Section. EU Delegation to the UN and other international organisations in Geneva. April 2017.  
 Respondent 9. Eric Tistounet. Chief of the Human Rights Council and Treaty Mechanisms Division, OHCHR. May 2017.

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# ОТ ЗАВЫШЕННЫХ ПРИТЯЗАНИЙ К СУРОВОЙ ДЕЙСТВИТЕЛЬНОСТИ: ПРОДВИЖЕНИЕ ПРАВ ЧЕЛОВЕКА ЕВРОПЕЙСКИМ СОЮЗОМ В СОВЕТЕ ПО ПРАВАМ ЧЕЛОВЕКА ООН

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С 1990-х гг. притязания Европейского союза на роль «глобальной силы» в продвижении прав человека не знают границ. Это привело к повышенной активности ЕС в международных организациях. Тем не менее, эти притязания ЕС не находят практического отражения в Совете по правам человека ООН (СПЧ). В этом межгосударственном органе ЕС действует как скоординированный блок, что встречает противодействие иных региональных и политических коалиций. Оформившаяся система многополярного мира требует отказаться от нормативного подхода в исследованиях ЕС и прав человека.

Статья предлагает и использует четыре индикатора для оценки продвижения ЕС прав человека: 1) конкретность упоминаний ООН или глобальной площадки (global fora) в учредительных документах и нормативных актах ЕС; 2) степень внешней поддержки/противодействия приоритетам ЕС в СПЧ; 3) степень целостности внешнего представительства ЕС в СПЧ; 4) (не)противоречивость ЕС в определении приоритетов и методов их достижения в СПЧ.

Многополярная система мира ставит под сомнение притязания ЕС на роль «глобальной силы» в продвижении прав человека. Способности ЕС продвигать свои приоритеты в СПЧ не безграничны, даже несмотря на широкую сеть дипломатических представительств государств-членов и НКО, комплексную систему представительства и координации действий, усиленное разделение полномочий среди государств-членов. «Большие государства» ЕС играют ведущую роль в этих процессах. Внутреннее несогласие ослабляет продвижение прав человека Союзом. Структурный контекст СПЧ ограничивает возможности ЕС в продвижении прав человека. Таким образом, ЕС становится менее заметным и громким в продвижении прав человека и вынужден искать пути выхода из этого положения.

**Ключевые слова:** Европейский союз, права человека, ООН, Совет по правам человека, система многополярного мира.

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### Interviews:

- Respondent 1. State Diplomat. MFA of the Russian Federation. March 2017.  
 Respondent 2. State Diplomat. MFA of the Russian Federation. March 2017.  
 Respondent 3. Former State Diplomat. MFA of the Peoples' Republic of China. April 2017.  
 Respondent 4. Former counsellor. European Commission Delegation to the UN in New York. March 2017.  
 Respondent 5. Former counsellor. EU Delegation to the UN in New York. March 2017.  
 Respondent 6. Representative of the NGO accredited for the HRC Regular Session. March

2017.

Respondent 7. Head of Unit, the UNHCR. March 2017.

Respondent 8. Head of Section. EU Delegation to the UN and other international organisations in Geneva. April 2017.

Respondent 9. Eric Tistounet. Chief of the Human Rights Council and Treaty Mechanisms Division, OHCHR. May 2017.

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