



Università  
Ca' Foscari  
Venezia

Master's Degree Programme

in International  
Comparative Relations

Final Thesis

# The promotion of human rights in the external relations of the European Union and Japan

Perspectives for future cooperation

**Supervisor**

Chiar.ma Prof.ssa Sara De Vido

**Assistant supervisors**

Chiar.mo Prof. Katsuhiro Shoji

Chiar.ma Prof.ssa Rosa Caroli

**Graduand**

Martina Chiaraluce

Matriculation number 852293

**Academic Year**

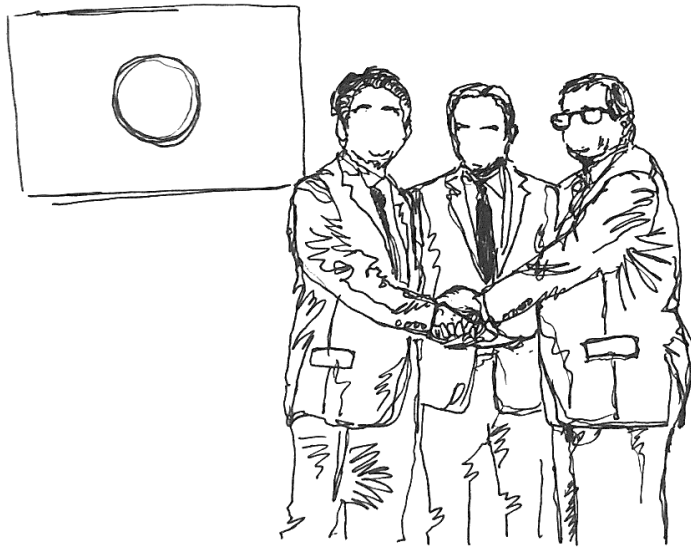
2019 / 2020



## INDEX

ABSTRACT.....	1
要旨 .....	8
INTRODUCTION AND METHODOLOGY.....	10
LIST OF ACRONYMS .....	16
<b>CHAPTER I: THE EUROPEAN UNION AND HUMAN RIGHTS.....</b>	<b>19</b>
1.0 THE EUROPEAN UNION AS A PROJECT DRIVEN BY VALUES.....	19
1.1 EUROPEAN APPROACHES TO HUMAN RIGHTS .....	19
1.1.1 MECHANISMS OF HUMAN RIGHTS PROTECTION IN THE EU .....	20
1.1.2 TASKS DIVISION AMONG EU INSTITUTIONS.....	27
1.1.3 THE EU’S COMMITMENT TO HUMAN RIGHTS IN RELATION TO MULTILATERAL ORGANIZATIONS .....	33
1.2 STATUS OF HUMAN RIGHTS IN THE EXTERNAL RELATIONS OF THE EU .....	39
1.2.1 THE EUROPEAN UNION GLOBAL STRATEGY .....	44
1.2.1.1 THE EU AS A GLOBAL ACTOR: HISTORY AND OBJECTIVES.....	44
1.2.1.2 OVERVIEW OF THE EUROPEAN NEIGHBOURHOOD POLICY AND THE STRATEGY FOR THE MEDITERRANEAN .....	47
1.3 EUROPEAN HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT .....	48
1.4 CONCLUSIONS .....	53
<b>CHAPTER II: JAPAN AND HUMAN RIGHTS.....</b>	<b>55</b>
2.0 THE INVENTION OF THE WORD ‘RIGHT’ AND THE CONCEPT OF ASIAN VALUE	55
2.1 MILESTONES IN JAPANESE DEVELOPMENT OF HUMAN RIGHTS’ POLICIES	58
2.1.1 MECHANISMS OF HUMAN RIGHTS PROTECTION IN JAPAN .....	58
2.1.2 JAPANESE APPROACH TO INTERNATIONAL HUMAN RIGHTS LAW.....	70
2.1.3 JAPAN’S COMMITMENT TO HUMAN RIGHTS IN RELATION TO MULTILATERAL ORGANIZATIONS .....	74
2.2 STATUS OF HUMAN RIGHTS IN JAPAN’S EXTERNAL RELATIONS.....	80

2.3 TOWARDS A JAPANESE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT?.....	82
2.4 CONCLUSIONS .....	87
<b>CHAPTER III: EU – JAPAN RELATION. WHAT IS THEIR EXTERNAL CONTRIBUTION?...</b>	<b>89</b>
3.0 PILLARS OF COOPERATION .....	89
3.1 A CHANGING PARTNERSHIP IN A CHANGING WORLD .....	90
3.1.1 THE EU AND JAPAN’S ROLE IN ASEM .....	97
3.1.2 MAIN OBSTACLES FOR THE FUTURE.....	100
3.2 EU-JAPAN COOPERATION STRATEGY .....	105
3.2.1 THE ECONOMIC PARTHERSHIP AGREEMENT .....	105
3.2.2 THE STRATEGIC PARTNERSHIP AGREEMENT .....	109
3.2.3 PARTNERSHIP IN SUSTAINABLE CONNECTIVITY AND QUALITY INFRASTRUCTURES.....	112
3.2.4 SECURITY DIALOGUE .....	114
3.2.5 COOPERATION TO ERADICATE HUMAN RIGHTS ABUSES IN NORTH KOREA .....	117
3.3 CASE STUDY: TIMOR-LESTE .....	119
3.3.1 TIMOR-LESTE AND THE EU.....	124
3.3.2 TIMOR-LESTE AND JAPAN .....	132
3.4 CONCLUSIONS .....	137
<b>CHAPTER IV. CONCLUSIONS .....</b>	<b>145</b>
4.0 FINAL CONSIDERATIONS AND PROSPECTS FOR THE FUTURE.....	145
<b>BIBLIOGRAPHY .....</b>	<b>156</b>
<b>WEBLIOGRAPHY .....</b>	<b>169</b>
<b>LIST OF TREATIES, AGREEMENTS, JUDGEMENTS AND CONSTITUTIONS.....</b>	<b>185</b>
<b>LIST OF REGULATIONS AND RESOLUTIONS .....</b>	<b>188</b>
<b>RINGRAZIAMENTI.....</b>	<b>190</b>



Japanese Prime Minister Shinzo Abe, Former President of the European Commission Jean-Claude Juncker, Former President of the European Council Donald Tusk.

*Credits for the drawing go to my talented Australian friend Victoria.*

## ABSTRACT

I diritti umani hanno conosciuto delle continue trasformazioni nel tempo. Dalla formulazione del concetto di “diritti naturali”, vale a dire concessi all’essere umano per via della sua stessa natura; numerose dottrine sono state elaborate, e tanti sono stati i passi avanti fatti nella garanzia dei diritti fondamentali dell’individuo. Nel 1789 fu formulato un testo che rappresenta una delle tappe più significative di questo processo, la Dichiarazione dei Diritti dell’Uomo e del Cittadino. Partendo dai diritti naturali, si andava ad arricchire un bagaglio dettato dalle nuove consapevolezze riguardanti i diritti a cui ci si doveva appellare, pur mostrando ancora degli evidenti limiti, per esempio nelle differenziazioni di genere. Il 1948 fu invece l’anno della Dichiarazione universale dei diritti dell’Uomo. Circa nello stesso periodo, il progetto dell’Unione Europea iniziava a vedere la luce, in quanto risposta a secoli di perpetuanti conflitti nel Vecchio Continente. Dall’altra parte del pianeta, il Giappone usciva sconfitto dalla Seconda Guerra Mondiale, sopraffatto da un periodo di occupazione americana che sarebbe perdurato fino al 1952. Sembrava quasi che i Paesi del mondo stessero rinascendo dalle ferite del passato, per prepararsi a fronteggiare le sfide del futuro: più che mai, ci si stava rendendo conto che uniti si è più forti, ed è più facile fronteggiare il nemico. Le sconcertanti violazioni dei diritti umani verificatesi nei corsi degli anni della guerra, le lotte femministe scaturite dal crescente desiderio delle donne di essere coinvolte in politica, la necessità di ricostruire territori devastati dai conflitti, l’affermazione di un nuovo ordine mondiale: le trasformazioni del dopoguerra comportarono inevitabilmente una riflessione sui diritti civili, sociali ed economici a cui donne e uomini di tutto il mondo si appellano tutt’ora. Il rispetto e la promozione dei diritti umani, soprattutto in quei territori dove risultano meno riconosciuti, rientrano nell’elenco di sfide – insieme al cambiamento climatico, la lotta al terrorismo, e molti altri ancora – per cui occorre trovarsi i giusti alleati al fine di ottenere risultati significativi. Il bilateralismo e multilateralismo rappresentano l’essenza delle relazioni internazionali. Allo stesso tempo però, i delicati equilibri di potere che si vanno a formare tra i Paesi potrebbero creare situazioni sbilanciate o tensioni. Interessi economici, politici e geostrategici potrebbero prevalere sopra la necessità di garantire la sicurezza dell’uomo e non da ultimo, i suoi diritti fondamentali.

Dalla seconda metà degli anni Cinquanta, la ripresa economica rimaneva l’obiettivo primario dei Paesi che erano stati coinvolti nella Seconda Guerra Mondiale. Grandissimi risultati furono visti in questo periodo, sia in Asia che nel Vecchio Continente. Allo stesso tempo, si andava piano piano modificando anche la concezione di diritti umani e ci si stava rendendo conto di come fosse necessaria una reinterpretazione di questo stesso concetto, affinché si potesse assicurare la protezione di civili.

Mentre nel dopoguerra, l'idea di pace era prevalentemente legata all'assenza di conflitto, più avanti nel tempo è andata maturando l'idea di come questa fosse una condizione necessaria ma non sufficiente: la garanzia ad accedere ad una vita dignitosa per tutti i cittadini di un territorio, assicurando i loro diritti fondamentali, è altresì una condizione imprescindibile in tempo di pace.

I protagonisti di questa tesi sono due zone situate agli opposti del mondo: Giappone ed Unione Europea. Essi hanno già dimostrato in passato, e lo stanno facendo tuttora, di aver consolidato delle robuste basi per poter lavorare congiuntamente in molti ambiti. Il rapporto tra questi due territori è nato – come spesso capita nelle relazioni bilaterali e multilaterali – dal desiderio di incrementare la loro presenza in quanto attori economici nel mondo. Tale rapporto si è sviluppato dalla seconda metà degli anni Cinquanta del secolo scorso, e ancora oggi rivela di essere stabile, tanto da aver portato alla recente implementazione di un nuovo Accordo di Partenariato Economico che sta già mostrando eccellenti risultati. Interessi in termini di sicurezza hanno complementato la loro alleanza, e così le due parti si sono spesso ritrovate sullo stesso terreno per difendere interessi comuni. Ora, ciò che questa tesi si pone di dimostrare è che Unione Europea e Giappone hanno la potenzialità di instaurare una cooperazione stabile e durevole anche nell'ambito dei diritti umani, al fine di monitorarli e proteggerli sia all'interno che all'esterno dei loro rispettivi territori. Di fatto, al fine di assicurare una cooperazione efficienti in Paesi terzi, è necessario portare prima risultati concreti a casa propria. L'Unione Europea ha fatto dei diritti umani uno dei suoi principi portanti, elencato all'Articolo 2 del Trattato sull'Unione Europea. Il termine “fondamentali” sostituisce “umani” nel linguaggio legale e costituzionale Europeo, con riferimento ai diritti dell'uomo in uno specifico ambito interno delle politiche Europee. Nonostante oggi appaiano come un concetto così integrato nel discorso Europeo da essere quasi scontato, non è stato sempre il caso: i primi trattati dell'Unione Europea, a partire dal Trattato di Roma del 1957, non ne fece un tema centrale. La stessa Comunità Europea nacque in quanto Comunità Economica, con l'iniziale progetto di mettere in comune la produzione di acciaio e carbone in quanto materie primarie per lo scoppio di un nuovo conflitto, così come stipulato nella dichiarazione Schuman del 9 maggio 1950.

Con la trasformazione del progetto Europeo si è andato a rifinire anche il ruolo occupato dai diritti fondamentali, rilanciandoli più o meno timidamente con il susseguirsi dei vari trattati, fino al Trattato di Lisbona, che ha sancito l'organizzazione dell'Unione come la conosciamo oggi. All'Articolo 21 del Trattato sull'Unione Europea viene sottolineato come i valori portanti dell'Unione debbano guidare la sua azione nel mondo. Ormai per l'Unione Europea non può esserci azione politica che non tenga in considerazione i diritti dell'uomo. Che sia tramite clausole di condizionalità negli accordi internazionali, o il Principio Generalizzato di Preferenze nei Paesi in via di sviluppo, è raro non

ritrovare il concetto di diritti fondamentali menzionato nelle relazioni bilaterali o multilaterali dell'UE. Tuttavia, gli evidenti sforzi per garantire il rispetto dei diritti umani nei rapporti con Paesi terzi non sono sufficienti per colmare un'importante lacuna della realtà Europea: vale a dire, le difficoltà che si riscontrano tenendo insieme gli interessi e le diversità culturali di 27 paesi membri. In questi, rientrano anche i diritti umani. Quello dell'Ungheria è probabilmente l'esempio più lampante quando si pensa alla diversa applicazione dei diritti umani tra i Paesi dell'Unione Europea. Gli ambivalenti atteggiamenti del Primo Ministro Viktor Orbán, e i suoi attacchi alla democrazia liberale come intesa dal mondo occidentale, ha comportato numerosi inviti da parte delle istituzioni europee al fine di rivedere il proprio atteggiamento, fino al richiamo ufficiale ponendo in causa l'Articolo 7 del Trattato sull'Unione Europea. L'Articolo attesta che *“il Consiglio [...] può constatare che esiste un evidente rischio di violazione grave da parte di uno Stato membro dei valori di cui all'articolo 2”*. Tuttavia, esso non sembra essere stato sufficiente per frenare l'ascesa di Orbán. Quello che potrebbe apparire come un esempio distante dalla ricerca in esame, in realtà è utilizzato per sottolineare le difficoltà di un'Europa che appare sempre più divisa e frammentata. Tale condizione non la avvantaggia nel suo ruolo di potenza normativa, capace di influenzare le scelte e le politiche di Paesi terzi, in materia di diritti umani. È quindi essenziale per l'Unione Europea recuperare una propria coesione interna, al fine di rilanciare con rinnovata energia la sua politica estera in materia.

La storia del Giappone è, come accennato, molto diversa. La trasformazione del concetto di diritto umano si è articolata nelle due principali Costituzioni che siano state formulate nel Paese: la Costituzione Meiji e la nuova Costituzione – tuttora in vigore – formulata durante l'occupazione delle truppe Statunitensi. La necessità di inserire un nuovo termine in grado di contenere l'ampio significato, sia culturale che legale, di “diritto umano” è indicativa dell'iniziale disorientamento provato da accademici e studiosi Giapponesi quando si sono trovati a riformulare un concetto tanto complesso. Ben inteso, il Giappone non era un Paese in cui i diritti umani fossero negati prima dello scoppio della guerra: tuttavia, una lunga storia di chiusura al resto del mondo aveva comportato un'interpretazione diversa della nozione di diritto dell'uomo, rispetto a quella a cui si sono confrontati alla fine del conflitto, con una presenza occidentale installata nel territorio. L'eccezionale crescita economica di cui il Paese del Sol Levante ha saputo dar prova di fronte alle necessità della ricostruzione, hanno fomentato le sue ambizioni di ergersi al pari di altri attori mondiali. Non a caso, anche oggi il Giappone è la terza potenza economica mondiale, preceduta da Stati Uniti e dalla vicina Cina. Competere per salire nel podio significa non solo dimostrare il proprio valore in quanto potenza economica, ma richiede anche sapersi adattare alle richieste di riconoscimento dei diritti che i



cittadini richiamano a gran voce. Il Giappone ha ratificato un significativo numero di trattati internazionali relativi alla tutela dei diritti umani, ed i miglioramenti ottenuti a livello nazionale risultano difficilmente negabili. Tuttavia, significative lacune sono ancora presenti nel territorio. Minoranze etniche o sessuali incontrano ancora difficoltà ad affermarsi in Giappone, e la differenza nel trattamento tra uomini e donne – soprattutto nel luogo di lavoro – è un problema riconosciuto. A livello internazionale invece, il Giappone deve convivere con un sassolino nella scarpa che ripetutamente si fa sentire: l'Articolo 9 della Costituzione. Tale Articolo, emblema della Costituzione pacifista del Paese, delinea la rinuncia alla guerra come componente fondamentale dell'amministrazione nipponica. Tale imposizione, fortemente voluta dagli Stati Uniti, limita il Giappone nel suo operato su Paesi terzi, ridefinendo anche il ruolo in operazioni umanitarie in cui potrebbe farsi valere in quanto promotore di diritti umani. L'attuale Presidente del Governo Shinzo Abe, a discapito della sua linea politica conservatrice, sostiene fortemente la revisione della Costituzione al fine di garantire un ruolo più incisivo del Giappone nel mondo. Tale revisione potrebbe avere delle importanti ripercussioni anche sulla sostanza degli aiuti umanitari del Paese, includendo la possibilità di cooperare al fine di garantire i diritti umani dove necessario. Nella cornice severa dell'Articolo 9, al Giappone resta la possibilità di fornire aiuto logistico, spesso nel contesto delle operazioni di Peacekeeping portate avanti dall'Organizzazione delle Nazioni Unite. Questo, che potrebbe a primo impatto apparire come un aiuto di poco conto nell'operazione di monitoraggio e protezione dei diritti umani, in realtà ha la potenzialità di rivelarsi – ed è accaduto nel passato, come si tenterà di dimostrare nel terzo capitolo del presente elaborato – un contributo sostanzioso. Collaborare alla logistica fornendo supporto ingegneristico significa cooperare nella costruzione di scuole, ponti, ed infrastrutture. Che comporta l'accesso a scuole, la possibilità di muoversi per ottenere beni essenziali o andare al lavoro, la possibilità di recarsi alle urne per votare. Il che comporta la realizzazione di diritti sociali, economici e politici.

Tali riflessioni mettono in luce le evidenti difficoltà ed i punti di forza di due territori che risultano molto diversi tra loro, e che potrebbero avere le potenzialità per fungere da nuovi alleati per un rilancio dei diritti umani nel mondo. Dove il Giappone manca, ecco che l'UE potrebbe venire a colmare, e vice versa. Efficienti politiche potrebbero essere adottate sia in Paesi in via di sviluppo, dove i primi diritti fondamentali fanno più fatica a radicarsi, e in Paesi che mostrino delle debolezze in specifici targets. Il ruolo di forum di discussione o organizzazioni internazionali quali l'ONU o il Consiglio d'Europa – di cui il Giappone è membro osservatore – potrebbero ancora di più contribuire ad un prossimo successo.

Il Giappone rappresenta un polo liberale e punto di riferimento in Asia per l'Unione Europea. Le ragioni che hanno frenato le due parti dal concentrarsi sul tema dei diritti umani fino al recente periodo sono numerosi, e legati alla differente natura dei due territori (l'Unione in quanto gruppo di Stati spesso aventi interessi diversi, e il Giappone in quanto isola), alle loro storie (Unione come risposta ai conflitti che avevano afflitto l'Europa per secoli, e il Giappone come Paese isolazionista per lungo tempo), alla loro cultura. Nonostante ciò, recentemente, anche il Giappone e l'UE si sono dimostrati più disponibili nel voler cooperare su questo tema, e ne è una prova l'Accordo di Partenariato Strategico – discusso al contempo della sua controparte economica – che potrebbe costituire il trampolino di lancio per una rinnovata sinergia tra le due parti. L'accordo, che al momento della stesura della seguente tesi non risulta ancora entrato in vigore, include numerose aree di cooperazione di cui i diritti umani risultano essere una componente essenziale. In un mondo sempre più globalizzato, le sfide attuali e quelle che ci attendono nell'immediato o lontano futuro intrecciano tematiche che fino a poco tempo fa tendevano ad essere considerate separatamente, mentre ora più che mai sembrano essere connesse tra loro tramite un filo rosso comune. I diritti umani sono diventati una componente centrale di tali sfide. Per esempio, non si può pensare di combattere il cambiamento climatico senza tenere in considerazione gli effetti che tale fenomeno ha sulla vita delle persone, soprattutto nei Paesi in via di sviluppo, e sulle conseguenze che inevitabilmente hanno sui loro diritti. Ancora, sottoscrivere un trattato economico internazionale non è pensabile senza le adeguate clausole che assicurino uno sviluppo sostenibile ove necessario e la tutela dei diritti delle parti coinvolte, dei loro dati, della loro privacy. In questa cornice, la cooperazione tra Unione Europea e Giappone potrebbe assicurare risultati ancora più significativi nell'attuare specializzazioni in determinati ambiti dei diritti umani, quali i diritti delle donne: un tema da sempre nel cuore delle politiche europee e più recentemente al centro delle ambizioni Giapponesi. Quando parliamo di diritti umani nel Ventunesimo secolo, essi non possono essere considerati esclusivamente in quanto un'entità isolata: attuare politiche specificatamente interessate alla tutela dei diritti umani è tanto importante quanto garantire la loro enfaticizzazione in ogni tipo di politica estera. Come precedentemente accennato, risulta difficile pensare ad una decisione da prendere in materia di politica estera senza incorporare in essa l'ambito dei diritti umani. Tale concetto risulta evidente nel contesto degli Obiettivi di Sviluppo Sostenibile (Sustainable Development Goals). Tali targets, 17 in totale, da raggiungere entro il 2030; pongono al centro l'essere umano, includendo in modo più o meno diretto la tutela dei suoi diritti. Si prenda, ad esempio, l'obiettivo numero 6, relativo all'accesso ad acqua pulita e servizi igienico-sanitari, volto a garantire il rispetto del diritto all'acqua per tutti. O ancora, l'obiettivo

numero 10, relativo alla riduzione delle disuguaglianze, uno dei principi fondamentali dell'Unione Europea, e connesso al diritto ad accedere a pari opportunità senza discriminazioni.

Numerosi eventi recenti hanno comportato cambiamenti inevitabili nella già intricata scacchiera delle relazioni internazionali. L'elezione di Donald Trump in quanto 45° Presidente degli Stati Uniti d'America ne è un esempio. La sua figura, a prescindere dal fatto che possa essere politicamente apprezzata o meno, risulta controversa agli occhi di molti accademici e politologi. Trump non esita a rilanciare di fronte ai media – o direttamente su Twitter – il suo scetticismo nei confronti del multilateralismo, o di istituzioni quali l'Unione Europea. A ciò si aggiunge un'altrettanta ferma intenzione di negare fenomeni quali il cambiamento climatico e l'impatto che l'attività umana comporta su di esso, e standardizzate e stereotipate opinioni relative a vari ambiti, per esempio sui migranti provenienti dal confinante Messico. Tali opinioni non facilitano lo stabilimento di una diplomatica cooperazione con l'UE. Allo stesso modo, il sospetto che in Cina vi sia una tendenza a non rispettare le regole del mercato internazionale nonostante la sua adesione all'Organizzazione Mondiale del Commercio, in aggiunta a certi controversi episodi nei confronti di diversità culturali, la rendono agli occhi dell'Unione un partner difficile da gestire sotto molteplici punti di vista. Ma non occorre andare dall'altra parte del mondo per comprendere la complessa natura di un mondo multipolare e differenziato: alla controversa posizione dell'Ungheria su tematiche quali stato di diritto e democrazia precedentemente accennate, si aggiungono le lotte con pezzi che cadono dal dentro dell'Unione, a seguito dell'uscita della Gran Bretagna dal blocco il 31 gennaio 2020.

Sembra quasi paradossale osservare come, al crescere di sfide che palesemente nessuno Stato al mondo, nemmeno una potenza come gli Stati Uniti, la Cina, o l'Unione Europea stessa, possono pensare di affrontare in solitaria – concretamente, quelli accennati con gli Obiettivi di Sviluppo Sostenibile – la volontà di cooperare tra le varie parti del mondo risulti sempre più al limite. Ecco perché è necessario assicurarsi di creare le giuste alleanze, in un periodo in cui meno e meno Stati desiderano spendere le loro energie in ciò, ma piuttosto muoversi da soli nei limiti del possibile.

La ricerca è stata strutturata in modo da coprire le politiche interne e la politica estera di Unione Europea e Giappone nell'ambito dei diritti umani. Dunque, si è prima cercato di definire come questi siano andati definendosi nel contesto territoriale dei due protagonisti dello studio, per poi analizzare la dimensione esterna delle politiche di tutela dei diritti. Un esempio concreto è stato portato nel terzo capitolo, con la presa in esame delle violazioni verificatesi in un'isola del Pacifico, Timor Est, per oltre venticinque anni. Lo studio è mosso da un sincero interesse nei confronti della realtà di due territori che appaiono fundamentalmente diversi, e dalla genuina convinzione che una più profonda

forma di cooperazione tra UE e Giappone porterebbe importanti vantaggi a entrambi, e a territori terzi. Al fine di sviluppare il lavoro, sono stati consultati articoli e manuali relativi al diritto, teorie delle relazioni internazionali e storia. Un primo periodo di studio è stato svolto in Giappone, grazie ad una borsa di studio presso la Keio University di Tokyo, che ha permesso di svolgere ricerca direttamente sul campo, a contatto con la realtà nipponica. La disponibilità di esponenti del Ministero degli Affari Esteri (MOFA) e il Ministero del Commercio, dell'Economia e del Trasporto (METI) Giapponesi e della Delegazione dell'Unione Europea in Giappone, oltre che esperti in materia, a rispondere ad alcune domande; hanno senza dubbio aiutato nel conferire sostanza alla ricerca. I contatti sono stati ottenuti in parte tramite ricerche autonome, in parte grazie ai contatti fornitami dalla professoressa Sara De Vido e il professor Katsuhiko Shoji, che hanno supervisionato il lavoro. Ove necessario, le fonti sono state citate con una nota a piè di pagina, e catalogate nella bibliografia finale.

Se nel corso del 1800 e del 1900 sono stati fatti enormi passi avanti nel riconoscimento dei diritti umani, Il Ventunesimo secolo è stato definito direttamente il 'secolo dei diritti umani'. Questo ci fa capire come quel bagaglio contenente i diritti umani aperto nel 1700 non sia stato ancora del tutto riempito. Le nuove sfide includono nuovi diritti da tutelare, ed un maggiore impegno per assicurarli, in un ambiente sempre più ostile. Per fronteggiare questa condizione, costruire rapporti stabili tra Paesi è oggi più importante che mai.

## 要旨

この論文のテーマは、日本と欧州連合の関係です。この主題を選んだ理由は、欧州連合と日本の社会に興味があるからです。経済連携協定 (EPA) の後で、日本と欧州連合の関係しました。。両方の目的や野心や利害が共通しています。どちらも経済成長を目指しています。同時に、民主主義と人権と法の支配の基本的な価値を共有しています。欧州連合と日本は地理的にも文化的にも遠いですが、共同で行動する可能性が高いです。日本と欧州連合はより良い世界を構築することができます。しかし、人権の概念も違います。特に日本は、国の歴史で最も重要な明治維新の後で、「人権」という言葉を新しく解釈する必要がありました。第二次世界大戦のあとの連合国占領期にも、日本にとっての人権の意味は変化しました。本論文には、四章あります。第一章は、欧州連合について扱います。第二章は、日本について扱います。第三章だけで、両者の関係について報告します。欧州連合と日本の章には、領土内と圏外での人権の状況を詳しく検討します。第三章のなかに、関係の歴史を述べた後で、、人権に限らず、、経済と文化の共通点についても説明します。この関係を深く理解するために、関係を構築した方法をあらゆる面から考えなければなりません。この理由で、経済の影響を軽視してはいけません。諸国は、国際人権侵害を前に、どうしたか」答えを探すために、第三章には事例研究も含まれています。この研究の難しい質問について調べた結果、たくさんの経済的、政治的、法的な様相が影響しています。この理由で、人権は同じ位置に置かれていません。さらに、欧州連合は伝統的に人権の擁護者だと言っても、たくさんの複雑な問題に直面しています。実は、二十七加盟諸国の意見と行動を考慮しなければなりません。時間が経つにつれて、人権という概念が変化していき、今は国際連合平和維持活動

に重視されています。事例研究はインドネシアによる東ティモールの占領です。第四章では、第一、二、三章をまとめて、結論を述べます。イタリアや日本の慶應大学での経験を活かして本論文に励みました。論文を書くために、学術論文、欧州連合の条約、日本の憲法など参照にしました。日本に滞在している間に時に、人権の先生と専門家に連絡して、インタビューをしましたので、たくさんの必要な情報を集めることができました。日本と欧州連合はお互いから多く学べます。本論文はこのことについて説明してみます。欧州連合は人権を保護する長年の経験があつて、日本は回復力を実証しています。この回復力は人権を保護するには大切な要素です。インタビューを受けていただいた全員の方は、「今、日本と欧州連合の関係は繁栄しています」、「将来に大きく期待しています」、「相互信頼があります」と言っていました。近年、大幅な改善があったそうです。今現在の世界は不安定です。中国や米国のドナルド・トランプ政権の行動は予測できないし、不安定化させるようなイベントもたくさんあります。この問題を前にして、多国間や強力な同盟が必要です。しかし、このような同盟は、経済のみ重視するのではなく、人権のことも考慮しなければなりません。私の希望は、将来に、日本と欧州連合の関係の大部分は、経済だけでなく、人権に関することでも繋がりを持つことです。

## INTRODUCTION AND METHODOLOGY

From the initial idea of “natural rights”, attributed to the human being for his nature of being human, and throughout the 18<sup>th</sup> century, several doctrines have been elaborated, allowing to make a significant step forward to guarantee the preservation of human rights. In 1789, the Universal Declaration of the Rights of the Man and the Citizen was elaborated. In 1948 it was the time of the Universal Declaration of Human Rights. Shortly later, the European Union’s project saw the light, as a response to the centuries of wars and conflicts that have characterized the Old Continent. On the other side of the planet, Japan was emerging from the Second World War defeated, and its territory was occupied by the American troops until 1952. It appears as the countries around the world were reborn from the wounds of the past, ready to face the challenges of the future: now more than ever, it was obvious that remaining united was a necessity. The unsettling human rights violations occurring during the years of the wars, the feminist movements deriving from the wish of women to be involved in politics, the necessity to rebuild territories destroyed by the conflicts, the stabilization of a new global order: the transformation of the post-war world led to a new reflection of civil, social and political rights. The respect and promotion of human rights, especially in those territories where they are not deeply rooted, constitute part of those challenges that – together with climate change, the fight against terrorism, and many others – require the stabilization of strong and stable alliances to achieve tangible results. The delicate power equilibriums linked to bilateralism and multilateralism could potentially lead to the creation of tensions among states. Economic, political, or geopolitical interests may prevail over the necessity to guarantee the security and safety of the human being.

From the second half of the years 1950s, the countries that have been involved in the war remained focused on economic progress. Great results have been achieved in this period, both in Asia and in the Old Continent. Meanwhile, the conception of human rights was changing: while in the immediate aftermaths of WWII the idea of ‘peace’ was mainly connected to the notion of the absence of war, as time passed, generations of scholars understood how this was a necessary condition, but not a sufficient one: the assurance of the respect of human rights is as well an indispensable condition in times of peace.

The relationship between the European Union and Japan, two territories that appear so different and so distant from one another, finds its origin in the second half of the last century; and it has built mainly in economic interests. Their joint action finds its ultimate success with the very recent ratification of an Economic Partnership Agreement. But the idea of this research is to go beyond the economic field, in the attempt to understand the potentiality for a partnership based on human rights.

Nevertheless, to reach this goal, it is necessary to identify all the main pillars of cooperation between the two parts, that led to their partnership existing at this moment. Thus, inevitably including the economic aspect as well, that constitutes the basis of such a relationship.

In order to assure the respect of human rights in international relations, it is important to guarantee that such a principle is considered also within the borders of the territories concerned. The EU considers human rights as one of its fundamental values as enshrined in Article 2 of the TEU. However, what we tend to consider today as a very obvious concept – that is, the respect of human rights within European borders – has not always been the case. The EU was born being essentially an economic project, based on the pooling of coal and steel resources, as was stated in the Schuman Declaration of May 9<sup>th</sup>, 1950. With the transformation of the project, more and more space has been attributed to human rights, until the formulation of the Lisbon Treaty, which stipulates a stronger role of the EU in the world in assuring the protection of European values. However, the EU must take into account the different interests and the profound differences in the history of the 27 Member States that compose the bloc, that found themselves in divergent positions over the topic. The most striking case in this sense is given by Hungary, accused of mocking the value of human rights, constraining the EU institutions to recur to Article 7 of the TEU<sup>1</sup>. This is to say how important it is for the EU to acquire an internal harmonization if it wishes to be a credible actor in the outer world.

The history of Japan is very different. The transformation of the concept of human rights have been changing mainly after the formulation of the Meiji Constitution and the Constitution of 1949, that stipulated a new openness of the country towards the world after centuries of isolationism, putting the country in front of the necessity to found a new meaning for the deep concept of “human rights”. The Land of Rising Sun showed an incredible resilience when it came to reconstructing its economy, and even today it is second only to the United States and China as economic power<sup>2</sup>. As will be outlined throughout the research, Japan has also ratified a significant number of international human rights treaties, and deeply improved its policies in these terms. Nonetheless, the strictness imposed by the country’s Constitution – particularly, by Article 9 – limits its concrete action. The current Prime Minister Shinzo Abe is deeply committed to the goal of changing the Constitution. Such an act may allow Japan to be more involved in international Peacekeeping Operation, which nowadays is only limited to engineering units and supporting operations. A major involvement may be translated

---

<sup>1</sup> European Parliament, Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Judith Sargentini (2017). *Report on a Proposal Calling on the Council to determine, pursuant to Article 7(1) of the TFEU, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union is Founded*. 2017/2131.

<sup>2</sup> The Economist, World in Figure. Available at: <https://worldinfigures.com/rankings/topic/8>, last accessed on 18.05.2020.



as a greater commitment also to human rights. These reflections highlight the evident difficulties that both territories have in the protection of human rights. What this dissertation aims to demonstrate is that joint activities of the EU and Japan may allow the achievement of significant improvements in their international action and this condition could benefit the two and third territories. Where the EU has difficulties, Japan may offer its support and vice versa. The role of international organizations has the potential to offer great help in this.

Japan represents a liberal pole and a point of reference in Asia for the EU. The reasons that led the two parts to not focus on human rights issues are various, linked to their histories and past experiences. However, they are slowly but effectively implementing new strategies, and the Strategic Partnership Agreement could represent a new launchpad in these terms. In an increasingly globalized world, it is no longer possible to think about future challenges without taking into account the weight of human rights: this is demonstrated by the 17 Sustainable Development Goals, which all encompass – in a more or less visible way – human rights. For instance, SDG 6 envisages the access to water and hygienic services to every person, therefore guaranteeing the right to water to everyone. SDG 10 concerns the reduction of inequalities, another of the main pillars of the EU.

Many events led to significant changes in the already complex world of international relations. The election of Donald J. Trump as 45<sup>th</sup> President of the United States of America is an example. Regardless of his political position, that may be appreciated or not, Trump has not hesitated to condemn forms of multilateralism or international cooperation, specifically addressing the European Union as a “foe”. Moreover, his negationist attitude in front of phenomena like climate change, or the stereotyped idea of certain groups of people, do not facilitate cooperation with the EU. On the other side of the planet, the Chinese powerhouse ambivalent attitude in the international scene raises suspicions to the Union<sup>3</sup>. But it is not even necessary to go to the other side of the planet to understand the complexity of a globalizing world: the recent exit of Great Britain from the Member Countries of the EU is another example of the problems that the bloc has to face from the inside. It is emblematic to notice how in front of international challenges, that cannot be faced autonomously – such as those

---

<sup>3</sup> Examples are provided by BBC News. “*Donald Trump: The European Union is a Foe on Trade*. July 15<sup>th</sup>, 2018. Available at: <https://www.bbc.com/news/world-us-canada-44837311>”, “*Trump on Climate Change Report: I don't Believe It*. November 26<sup>th</sup>, 2018. Available at: <https://www.bbc.com/news/world-us-canada-46351940>”, “*Drug Dealers, Criminals, Rapists: What Trumps Thinks of Mexicans*. August 31<sup>st</sup>, 2016. Available at: <https://www.bbc.com/news/av/world-us-canada-37230916/drug-dealers-criminals-rapists-what-trump-thinks-of-mexicans>”, “*How Much of Europe Does China Own?*. April 20<sup>th</sup>, 2019. Available at: <https://www.bbc.com/news/world-47886902>”, last accessed on 21.05.2020.

touched by the SDGs – many countries still show suspect towards the idea of international cooperation, and act lonely, whether possible.

The first part of the work will envisage the European Union perspective. Here, the main policies related to human rights will be analyzed, the division of tasks among the institutions of the bloc, its relationship with other international organizations, and the external status of European human rights. The European Union has a long and fascinating history concerning human rights: what today is considered as a bastion of the Union, in reality, has not always been at the center of its policies. During the first years of the implementation of the European project, human rights were barely considered, and such a topic do not appear as central in the first treaties. Through times, the Union has been developing a very significant system of protection of human rights, both internally and externally of its borders – in the name of Article 21 of one of its founding Treaties, as it will be repeatedly mentioned throughout the dissertation – but this does not mean that the bloc is exempt from possible violations and lacks in the safeguard of human rights, or hampered by political and economic interests in its application of human rights.

The second chapter will follow a similar structure, analyzing the condition of Japan, going through a historical reinterpretation of those events that have led to a new understanding of the concept of human rights. This will enlighten certain historical moments, such as the Meiji Restoration, when Japanese philosophers and scholars found themselves in the position of searching for a new word that could translate in its full meaning the expression “human rights”; and the American troops’ Occupation following World War II, when the present constitution was drafted, and new human rights boundaries were introduced. As made in the previous chapter, the relationship between Japan and important organizations such as the United Nations, the Council of Europe, NATO, and ASEAN will be envisaged; and only then the status of human rights in Japan’s external relations will be analyzed.

Once the positions of the two protagonists of this dissertation would have been explained, the third chapter will deal with their integration and mutual histories, the similarities, and differences among their policies. To have a clear understanding of the relationship between the EU and Japan, the already existing and well-defined fields of cooperation will be mentioned and analyzed; and from there, an attempt will be made to demonstrate how it will be possible to implement a functioning mechanism of protection of human rights. The example of a tragic, but not commonly known episode of world history, that is; the Indonesian occupation of East Timor with a subsequent series of violations of human rights, will be considered; taking into account the policies adopted by both the

EU and Japan in front of this event. Although the one of East Timor is only one among many others – sadly – known similar episodes of genocide, therefore it does not constitute a model *per se*, this example is examined to try to answer on how Japan and the EU may react in front of violations of human rights, and what are the elements that have an impact and an influence when deciding how to face such situations.

If throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries, significant steps forward have been made in the recognition of human rights, the current century has been directly defined ‘*the century of human rights*’<sup>4</sup>. Thus, making us aware of the continuous evolution of the subject: new challenges include new rights to guarantee and protect in an environment even more hostile. Therefore, it is fundamental to establish solid, trustable, and fruitful international relations.

---

As far as the methodology is concerned, the work has been organized in the following way: the first period of research has been conducted in Japan, thanks to a scholarship provided to attend Keio University, from September 2019 until January 2020. During this period, the focus of the investigation has been on Chapter II, that is, on the situation in Japan. From February until June, the study has been continued in Italy, where I focused on Chapters I and III, before drafting the conclusions. From what concerns the resources consulted, articles from professors, experts, diplomats, and members of the EU Commission staff constitute the backbone of the study. Governmental sites such as the Japanese Ministry of Foreign Affairs or the official European Union resources have been constantly checked and monitored. A significant portion of the research has been made possible thanks to interviews conducted with experts, academics, and diplomats in Japan. The contacts have been mostly provided by kind concessions of professors Sara de Vido and Katsuhiro Shoji, who were able to make me in touch with experts extremely available to help me. Other names of experts have been encountered throughout the research and include the authors of certain articles or people directly mentioned in the texts. The names of the persons interviewed have not been mentioned – considering the specific request of some of them, due to the fact that they are not member of the press. Such a choice has consequently been adapted to all the others interviewed, to assure coherence throughout the work.

---

<sup>4</sup> 人権教育啓発推進センター。Center of Human Rights Education and Training Website. *Message from the President*. Available at: <http://www.jinken.or.jp/en>, last accessed on 18.05.2020.

The bibliography includes books, volumes, and articles written by experts in English, Italian, French, Spanish, Portuguese or Japanese. It is possible to find in the bibliography a translation in English of the titles of those volumes consulted in their original version in one of the languages mentioned. Footnotes allow monitoring citations and quotations: the Latin expression “*Supra note*” refers to a work mentioned above, “*Op. cit.*” to the one in the previous page, “*Ibid.*” to the one preceding. If the page number is not specified either it remains the same, either it refers to a general thought included in the thesis. A complete bibliography and webliography are presented at the end of the volume: the bibliography is not limited to those works mentioned in the footnotes, since it includes all the sources that have been consulted to formulate the contents of the dissertation. The thesis has been written trying to combine legal and political aspects; two fundamental elements of the discipline of international relations. The legal aspect has not been deeply analyzed, although whether necessary the due explanations have been provided, in order to assure a smooth lecture, that does not require particular preliminary knowledge to be understood.

In the framework of the Case Study conducted, related to the violations of human rights occurred in East Timor, it must be pointed out that at present there is no much existing literature on the intervention of the EU in the area. A great part of the research has been made possible through a chronological reconstruction of the historical events, found in different volumes, and also thanks to documentary resources.

## LIST OF ACRONYMS

<b>ACP</b>	African, Caribbean and Pacific group of States
<b>ADB</b>	Asian Development Bank
<b>AEPF</b>	Asia-Europe People Forum
<b>AFET</b>	Affaires Étrangères (External Affairs)
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>ARDEC</b>	African Rapid Deployment and Engineering Capabilities
<b>ASEAN</b>	Association of South East Asian Nations
<b>ASEF</b>	Asia-Europe Foundation
<b>ASEM</b>	Asia-Europe Meeting
<b>BRI</b>	Belt and Road Initiative
<b>CAEC</b>	Council for Asia-Europe Cooperation
<b>CEG</b>	Capability Expectation Gap
<b>CFR</b>	Charter of Fundamental Rights
<b>CFSP</b>	Common Foreign and Security Policy
<b>CFSP</b>	Common Foreign and Security Policy
<b>CLC</b>	Civil Liberties Commissioner
<b>CoE</b>	Council of Europe
<b>COHOM</b>	Council's Human Rights Working Group
<b>CP</b>	Common Position
<b>CSDP</b>	Common Security and Defense Policy
<b>DG</b>	Directorate-General
<b>DPRK</b>	Democratic People's Republic of Korea
<b>DROI</b>	Sous-commission des Droits de l'homme (EP Subcommittee on Human Rights)
<b>EAS</b>	East Asian Summit
<b>EBA</b>	Everything But Arms
<b>EC</b>	European Community
<b>ECAS</b>	European Citizens Action Service
<b>ECFR</b>	European Charter of Fundamental Rights
<b>ECHR</b>	European Convention on Human Rights
<b>ECJ</b>	European Court of Justice
<b>ECSC</b>	European Coal and Steel Community
<b>ECtHR</b>	European Court of Human Rights
<b>ECU</b>	European Currency Unit
<b>EDF</b>	European Development Fund
<b>EEAS</b>	European External Action Service

<b>EED</b>	European Endowment for Democracy
<b>EIDHR</b>	European Instrument for Democracy and Human Rights
<b>EIDHR</b>	European Instrument for Democracy and Human Rights
<b>ENC</b>	European Neighbourhood Countries
<b>ENI</b>	European Neighbourhood Instrument
<b>ENP</b>	European Neighbourhood Policy
<b>ENPI</b>	European Neighbourhood and Partnership Instrument
<b>EP</b>	European Parliament
<b>EPA</b>	Economic Partnership Agreement
<b>EPC</b>	European Political Cooperation
<b>ESC</b>	European Social Charter
<b>ESS</b>	European Security Strategy
<b>EU</b>	European Union
<b>EUEOM</b>	European Union Election Observation Mission
<b>EUGS</b>	European Union Global Strategy
<b>EURATOM</b>	European Atomic Energy Community
<b>FRA</b>	EU Agency for Fundamental Rights
<b>FRETLIN</b>	Frente Revolucionária do Timor-Leste Independente
<b>FTA</b>	Free Trade Agreement
<b>GDP</b>	Gross Domestic Product
<b>GDPR</b>	General Data Protection Regulation
<b>GSP</b>	Generalized Scheme of Preferences
<b>HRB</b>	Human Rights Bureau
<b>HRBA</b>	Human Rights-Based Approach
<b>HRVP</b>	High Representative and Vice President (of the European Commission)
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICISS</b>	International Commission on Intervention and States Sovereignty
<b>IGO(s)</b>	International Governmental Organization(s)
<b>IMF</b>	International Monetary Fund
<b>INTERFET</b>	International Forces in East Timor
<b>JICA</b>	Japan International Cooperation Agency
<b>KEDO</b>	Korean Peninsula Energy Development Organization
<b>LDP</b>	Liberal Democratic Party
<b>MEP(s)</b>	Member(s) of the European Parliament
<b>MFF</b>	Multiannual Financial Framework
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOJ</b>	Ministry of Justice
<b>NATO</b>	North Atlantic Treaty Organization

<b>NDICI</b>	Neighbourhood, Development, and International Cooperation Instrument
<b>NGO(s)</b>	Non-Governmental Organization(s)
<b>OCTs</b>	Overseas Countries and Territories
<b>ODA</b>	Official Development Assistance
<b>OEEC</b>	Organization for European Economic Cooperation
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PCA</b>	Partnership and Cooperation Agreement
<b>PKO(s)</b>	Peacekeeping Operation(s)
<b>PM</b>	Prime Minister
<b>R2P</b>	Responsibility to Protect
<b>READI</b>	Regional EU-ASEAN Dialogue Instrument
<b>SDG(s)</b>	Sustainable Development Goal(s)
<b>SPA</b>	Strategic Partnership Agreement
<b>TACCs</b>	Tangible Areas of Cooperation in the field of Connectivity
<b>TEU</b>	Treaty on the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TICAD</b>	Tokyo International Conference on African Development
<b>ToL</b>	Treaty of Lisbon
<b>TPP</b>	Trans-Pacific Partnership
<b>TSD</b>	Trade and Sustainable Development
<b>TTIP</b>	Transatlantic Trade and Investment Partnership
<b>UDHR</b>	Universal Declarations of Human Rights
<b>UN</b>	United Nations
<b>UNAMET</b>	United Nations Mission in East Timor
<b>UNCHR</b>	United Nations Commission on Human Rights
<b>UNHRC</b>	United Nations Human Rights Council
<b>UNMISSET</b>	United Nations Mission in East Timor
<b>UNMIT</b>	United Nations Integrated Mission in East Timor
<b>UNTAET</b>	United Nations Transitional Authority in East Timor
<b>US</b>	United States
<b>VdL Team</b>	Von der Leyen Team
<b>WTO</b>	World Trade Organization
<b>WWII</b>	World War II

## CHAPTER I: THE EUROPEAN UNION AND HUMAN RIGHTS

CONTENTS: 1.0 The European Union as a project driven by values – 1.1 European approaches to human rights – 1.1.1 Mechanisms of human rights protection in the EU – 1.1.2 Tasks division among EU institutions – 1.1.3 The EU's commitment to human rights in relation to multilateral organizations – 1.2 Status of human rights in the external relations of the EU – 1.2.1 The European Union Global Strategy – 1.2.1.1 The EU as a global actor: history and objectives – 1.2.1.2 Overview of the European Neighbourhood Policy and the strategy for the Mediterranean – 1.3 European Human Rights-Based Approach to development – 1.4 Conclusions.

### 1.0 THE EUROPEAN UNION AS A PROJECT DRIVEN BY VALUES

#### 1.1 EUROPEAN APPROACHES TO HUMAN RIGHTS

It is not possible to analyse the reality of the European Union without taking into account the concept of *human rights* which represents, regularly in association with *democracy* and the notion of *rule of law*, a core principle at the heart of the construction of Europe.

This chapter reflects on the role that human rights occupied in the history of the Union, and how these are considered and safeguarded into and outside its boundaries. The European Union has been dealing with human rights in different ways since its primordial form, and the approach towards them has been evolving through times, acquiring more importance in the EU agenda as time passed. A significant push for the interest in the topic is linked to the cumbersome past of the European Union, when the horrors and annihilations resulted from two World Wars pushed the block to emerge as a strenuous defender of human rights at the global level.

Oxford professor Stephen Weatherill uses the expression 'project driven by values' to refer to the European Union<sup>5</sup>. With this expression, the image of an organization that has been built on fundamental principles internationally recognized and accepted is emphasized. With its 'people-centred-agenda', the EU sees human rights as an inescapable milestone that cannot be undermined. Article 2 of the Treaty of the European Union (TEU) explains this, affirming that 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities [...]'. The following

---

<sup>5</sup> WEATHERILL, S. (2016). *Law and Values in the European Union*. Oxford University Press. Clarendon Law Series, p. 393.



pages will try to analyse how such principles are ensured, retracing the evolution of the European project that led to Europe as we know it today.

### 1.1.1 MECHANISMS OF HUMAN RIGHTS PROTECTION IN THE EU

Around 446 million inhabitants of Europe benefit from the citizenship conferred on them by the fact of being born on European soil<sup>6</sup>. Such citizenship constitutes a unique case in the world: no other international organization, let alone Free Trade Area, has ever elaborated the idea of attributing additional citizenship to the inhabitants residing in the territory concerned. As it happens at the national level, European citizenship provides duties and privileges. The rights conferred by the fact of being European could be categorized into four main groups<sup>7</sup>: right of free movement (Article 21(1) and 45 of the TFEU), voting rights and political participation (Article 22 of the TFEU), diplomatic and consular protection (Articles 23 and 24 TFEU), right to petition (Article 24 TFEU).

The European approach to human rights is mainly a negative one. Thus, meaning that the EU must carefully avoid any possible violation of human rights whether the Member States are acting according to the treaties. However, in the action of the Union there is also the margin for a positive approach, thus, not only to not obstacle the enjoyment of human rights but also a duty to act to refrain third parties that could prevent the enjoyment of human rights. An additional responsibility is the one of assuring fulfilment, therefore to adopt all possible means to guarantee the realization of the right<sup>8</sup>. Today, almost seventy years after the first step towards its creation was taken, still, the EU is broadly perceived as an economic entity. The evolution of human rights protection mechanisms in the EU has a long history. Many scholars agree in recognizing that the initial mechanisms of protection of human rights implemented by the European Union were quite inefficient and inappropriate: their transformation went together with the metamorphosis of the Union itself<sup>9</sup>. Despite the initial lack of attention for such a topic, through times, many signs of progress have been made for increasingly assuring the consideration of human rights in the framework of EU's policies and instruments.

---

<sup>6</sup> See Europa.eu, About the EU, EU in figures. Available at: [https://europa.eu/european-union/about-eu/figures/living\\_en](https://europa.eu/european-union/about-eu/figures/living_en), last accessed on 22.02.2020.

<sup>7</sup> See Europa.eu, EU Citizenship. Available at: [https://europa.eu/european-union/about-eu/eu-citizenship\\_en](https://europa.eu/european-union/about-eu/eu-citizenship_en), last accessed on 19.02.2020.

<sup>8</sup> AHMED, T. and DE JESÚS BUTLER, I. (2006). *The European Union and Human Rights: An International Law Perspective*. The European Journal of International Law. Vol. 17, No. 4, pp. 771-801.

<sup>9</sup> NAKANISHI, Y. (2018). *Mechanisms to Protect Human Rights in EU's External Relations*. Contemporary Issues in Human Rights Law – Europe and Asia. Springer Open, pp. 3-21.

The European project was born on the ashes of two tremendous wars, to avoid any new conflict in the future, on the wounds caused by unforgivable totalitarianism. The European Community was initially intended to be as a project based on the pooling of coal and steel resources by France and Germany: as Robert Schuman, one of the Founding Fathers of the EU, emphasized, sharing those raw materials – required for the spark of any conflict – would have preserved the world from witnessing new unnecessary struggles. We are in 1952: the same year in which the idea of a European Defence Community started spreading, aiming at the creation of a European army. Meanwhile, the image of a European Political Community was taking shape, and a Treaty embodying the Statute of the European Community was drafted. This moment marked a first consideration for the implementation of a human rights framework in the Community: the topic was enshrined in multiple articles, and the first regulations determining the condition to access the Union, later known as Copenhagen criteria<sup>10</sup>, were fixed in Article 116. The establishment of a European Political Community was driven by the joint work of a study group, the Comité d' Études pour la Constitution Européenne, CECE (the “Study Committee for the European Constitution”), whose leader was Paul Henri Spaak; and an Ad Hoc Assembly<sup>11</sup>. The Committee immediately expressed the urgency of considering human rights, even though several questions emerged in the process: which source of inspiration should have been adopted to draft the values of the Community? Would have this potentially caused discrepancies among countries? Who was supposed to be the final arbiter of these interpretations? Despite the internal disputes, the CECE drafted a series of Resolutions having human rights at their core, with the main goal of preventing the resurrection of authoritarian regimes in the ashes of Fascism, Nazism, and Communism. The work of the Committee also marked the beginning of a long journey that will see European Union human rights and the European Convention on Human Rights go hand in hand: indeed, the members of CECE considered the Convention as the legal reference for the protection of fundamental rights<sup>12</sup>. The final version of the draft of the EPC

---

<sup>10</sup> The principles of human rights, democracy, and rule of law, core notions in the creation of the European Union and battle horse in its action in the world, have led to the formulation of the Copenhagen criteria in 1993. Countries wishing to enter the block should comply with specific standards: only those territories which respect and fulfill those basic principles can become new members of the European family. The official conditions for membership clearly state the necessity of having ‘stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’ for those countries wishing to join the bloc (See European Commission Website, European Neighbourhood Policy and Enlargement Negotiations, *Conditions for membership*). In other words, respect for human rights is a condition that is necessary to comply with before applying to become a European Union Member State.

<sup>11</sup> DE BURCA, G. (2011). *The Road not Taken: The European Union as a Global Human Rights Actor*. The American Journal of International Law, Vol. 105, No. 4, October 2011, pp. 653-664.

<sup>12</sup> *Ibid.*

treaty, redacted by the Ad Hoc Assembly, reported human rights' references in two ways: firstly, reiterating the fundamental contribution of the Community in protecting human rights and freedoms among the member countries, and secondly, stressing the adoption of the ECHR as a fundamental landmark in protecting those same human rights and freedoms<sup>13</sup>.

Having deemed these elements, although we cannot deny the fundamental economic interests that immediately emerged since the first instants of the implementation of the European project, it would be wrong to state that human rights have not been considered in the imaginary of the Founding Fathers. Nevertheless, the inability to implement the EPC has led to a stalemate in the human rights integration process, making the idea of creating a Community of a substantial economic nature prevailing<sup>14</sup>. This explains why one of the main pillars for the construction of the EU, the Treaty of Rome of 1957, that was also known as the Treaty Establishing the European Economic Community (EEC Treaty), did not contain any explicit reference to human rights. The low consideration attributed to human rights in this historical period of the construction of the EU is perceived as the reflection of gradual and sectoral integration, primarily focused on economics<sup>15</sup>. According to some scholars, it is necessary to wait until the Single European Act of 1986 to obtain a first, explicit reference to human rights. The Act alludes to human rights in two moments: while mentioning the Convention for the Protection of Human Rights and Fundamental Freedoms and in inviting EU countries to speak with one voice when displaying fundamental values to the external world<sup>16</sup>.

The Treaty of Maastricht was signed on February 7<sup>th</sup>, 1992. With its entry into force, the policy of the 'three pillars of the European Union' was introduced: The European Community, the Common Foreign and Security Policy (CFSP), and the cooperation in the field of justice and home affairs<sup>17</sup>. Of these three pillars, the second one had, among its objectives, the one of making the European Union a normative power able to export its values, strengthening the protection of human rights as an essential component in its international ties, and consolidate the respect for democracy and rule of law; assuring a significant boost to European identity worldwide.

After its entry into force, the Treaty of Maastricht was amended three times. The first time, in the framework of the Amsterdam Treaty of 1997. The Amsterdam Treaty states that 'the Union is

---

<sup>13</sup> *Op. cit.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p. 665.

<sup>16</sup> Preamble of the Single European Act (1986). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1987:169:FULL&from=EN>, last accessed on 18.02.2020.

<sup>17</sup> Fact Sheets on the European Union (2019). *The Maastricht and Amsterdam Treaties*, Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.1.3.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf), last accessed on 25.02.2020.

founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law'. The treaty was important in giving a new launch to EU rights also in stating that the European Court of Justice was due to apply human rights standards to acts of Community institutions, in giving more power to the Union to fight discrimination, and in introducing the possibility of having Member States' privileges suspended in the circumstance of breaches of human rights. The Amsterdam Treaty gave a further contribution in posing the fundamental principles constituting the pillars of the EU: liberty, democracy, human rights and rule of law<sup>18</sup>. In addition to that, the first decade of the new century represented an important period for the advancement of human rights policies in the EU. In 2001, the Maastricht Treaty was amended for the second time, when the Treaty of Nice was signed. The following year, at the request of the European Parliament, a Network of Experts on Fundamental Rights, in charge of reporting human rights conditions in the European Union, was established, and then replaced five years later with the Fundamental Rights Agency. With primary importance, on the occasion of the Nice European Council, the Charter of Fundamental Rights was signed. However, to complete the procedure of the Charter's enforcement, it turned to be necessary to wait until 2007, when the Charter was slightly modified and then signed again, and only 2009 to enjoy its entry into force with the Treaty of Lisbon (ToL). The ToL amended one more time the Maastricht Treaty, which became known as the 'Treaty on the European Union' (TEU); and the EEC Treaty, which became the 'Treaty on the Functioning of the European Union' (TFEU), and the term Community was substituted by 'Union' throughout the agreements. The TEU, in its current version, enshrines the principle of human rights in several articles:

- Article 2: it outlines the values in which the EU is founded;
- Article 3: Articles 3.3 condemns social exclusion and discrimination, while 3.5 highlights the fact that EU values should be promoted in the outer world;
- Article 6: Article 6.2 deals with the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (that is, the ECHR);
- Article 7: it refers to the risks of violation of human rights by the Member States;
- Article 21: it reports the EU expected behaviour in external relations, 'guided by the principles that had inspired its own creation', already described in Article 2;
- Article 49: it sets the condition to access the Union, which includes, respecting the values referred to in Article 2.

---

<sup>18</sup> ALSTON, P. and WEILER, J.H.H (2000). *An 'Even closer Union' in Need of a Human Rights Policy: The European Union and Human Rights*. Cambridge, MA 02138: Harvard Law School, p 4, note 9.

In addition, the TFEU provides further legal basis on the EU's external action based on its values, according to those described in Chapter I of Title V of the TEU:

-Article 205: "The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter I of Title V of the Treaty on the European Union".

The Charter of Fundamental Rights, entered into force thanks to the ToL, is organized in seven chapters, each one of them dedicated to a specific principle: chapter I is about dignity, chapter II freedoms, chapter III equality, chapter IV solidarity, chapter V citizen's rights, chapter VI justice, chapter VII includes general provisions. As it has been conceived, the Charter does not establish new rights as such, but it is consistent with another fundamental piece of literature for the protection of human rights, elaborated by the Council of Europe: the European Convention on Human Rights<sup>19</sup>.

The CFR contains political, civil, economic and social rights, and by considering all of them, it underlines their indivisibility. However, it presents a limit as it can be applied only according to the scope of EU law<sup>20</sup>.

Having considered all these aspects, it is correct to affirm that the CFR and the Treaty of Lisbon made a fundamental contribution in rendering the EU a real 'human rights actor', in making human rights clearer and in enhancing a system of better protection, therefore creating legal certainty within the EU, and it surely constituted a fundamental step to allow the EU to be awarded the Nobel Peace Prize "having contributed to the advancement of peace and reconciliation, democracy and human rights in Europe"<sup>21</sup>.

Now that the role of human rights as a fundamental pillar of the EU has been asserted, a legitimate question to pose may be: 'why did the process of recognition of human rights take all this time? And why certain fundamental rights officially appeared and became binding to states only with the Treaty of Lisbon?'. Mr. Bernhard Schima, as a legal adviser on the European Commission legal service, offers

---

<sup>19</sup> Charter of Fundamental Rights. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:l33501>, last accessed on 17.02.2020.

<sup>20</sup> DOUGLAS-SCOTT, S. (2017). *Human Rights as a Basis for the Justice in the European Union*. Transnational Legal Theory, Vol. 8 No. 1, pp. 73-74.

<sup>21</sup> The Nobel Prize Website. European Union (EU) Facts, The Nobel Prize 2012. Available at: <https://www.nobelprize.org/prizes/peace/2012/eu/facts/>, last accessed on 25.02.2020.

his vision on this matter<sup>22</sup>. He explains how the idea of including human rights among the principles of the EU had scared certain Member States in the past, for instance when it came to the formulation of the EU Charter of Fundamental Rights. This Charter, which is comparable to a Bill of Rights, appeared as the natural component of a European Constitution, and constitutions are the quintessential definition of States. According to his point of view, the implementation of human rights would have made the EU more similar to a State, and many countries were not – and are not – ready for this interpretation of the Union<sup>23</sup>. Despite the Charter has become legally binding with the ToL, fundamental human rights protection in the EU still fails at the national level, and the EU fundamental rights could be adopted as a fallback in case of the disintegration of the national system of protection. Mr. Schima underlines how this notion might have been in the courts’ minds when the scope of EU fundamental rights was being formulated. Countries are bounded to comply with the Charter’s conditions only when they are applying EU regulations and decisions<sup>24</sup>: this is to say that Member States are and remain the principal guardians of the rights of their citizens<sup>25</sup>. Therefore, it is necessary to balance the protection of fundamental human rights in the European Union according to three different levels of jurisdiction: The Court of Justice of the European Union, the European Court of Human Rights and national courts<sup>26</sup>.

Despite its role as a beacon in the constant protection and promotion of human rights, the EU is not immune to the perils that could threaten citizens’ human rights integrity. For instance, the recent exit of Great Britain from the Member States of the EU, made possible by the controversial Article 50 of the TEU, has put into question the rights of British citizens, and those of European citizens living in Great Britain. Vulnerable groups of people could be those suffering the greatest negative consequences from this situation, and also women, whose rights are guaranteed by a series of regulations of the European Union. This would lead to a loss of those rights acquired being EU

---

<sup>22</sup> Yale University. “The Application of EU Fundamental Rights: Perspectives on the European Court of Justice.” Online Video Clip. *YouTube*. YouTube, October 25, 2015. Web. Available at: <https://www.youtube.com/watch?v=vIpUOGxLNbc>, last accessed on 13.02.2020.

<sup>23</sup> An attempt to establish a real “Constitution of Europe” was made in 2003, but rejected by France and the Netherlands when submitted to a vote of the citizens by referendum. Now, the countries more reluctant to renounce to their sovereignty may rely upon Article 51 of the Charter, asserting the principle of subsidiarity.

<sup>24</sup> Europa.eu, Fundamental Rights. Available at: [https://e-justice.europa.eu/content\\_fundamental\\_rights-176-en.do](https://e-justice.europa.eu/content_fundamental_rights-176-en.do), last accessed on 21.02.2020.

<sup>25</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 5.

<sup>26</sup> ARESTIS G. (2013). *Fundamental Rights in the EU: Three Years After Lisbon, the Luxembourg Perspective*. College of Europe, European Legal Studies, p. 5.

citizens since citizenship itself will fall. This is why Brexit discussions have been, to a great extent, focused on people's rights: being a European citizen is indeed a real privilege, that comes with the advantages and disadvantages of sharing policies and being part of the bloc. Another significant concern for the EU is given by the backsliding of democracy and the rise of nationalism in Eastern European countries like Poland and Hungary. The reasons behind the growth of such movements are numerous and complex, and include, among others, the difficulties that the EU encountered in managing the structural phenomenon of the migration flows starting with the Arab Spring. These countries have been for a long time under the spotlight for their ambivalent attitudes towards democracy, rule of law and the defence of human rights. The warns given by the EU have eventually led to the adoption of drastic measures, such as the temporary exclusion of Hungarian Prime Minister Viktor Orbán's Fidesz Party from the European People Party (EPP) faction of the European Parliament<sup>27</sup>.

Article 47 of the TEU attributes legal personality to the EU. Hence, the Union can conclude international treaties and is a subject of international law, including international human rights law and customary law. As per the reasoning of Tawhida Ahmed and Israel de Jesús Butler, the enforcement of international law by the EU brings two main consequences<sup>28</sup>: firstly, the EU may be constrained to review its legal system, guaranteeing the protection of human rights that were not traditionally envisaged. Secondly, international law may push the EU to take some positive actions to assure the protection of human rights; in other words, the EU is due to question itself about the *effectiveness* of the measures it enforces to protect human rights, to comply with international standards. Because human rights have become an integral part of the discourse of customary international law, they create a bond with European human rights law<sup>29</sup>. The applicability of customary law, to be intended as the body of laws deriving from practices and legal opinion, rather than obligations, is also recognised by the European Court of Justice – whose role is described in the following paragraph – as a principle the Union must respect<sup>30</sup>.

---

<sup>27</sup> European Parliament News, *Rule of Law in Poland and Hungary has worsened*. January 1<sup>st</sup>, 2020. Available at: <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>, last accessed on 21.02.2020.

<sup>28</sup> AHMED, T. and DE JESÚS BUTLER. *Supra note 8*, p. 772.

<sup>29</sup> OHCHR, Europe Regional Office. *The European Union and International Human Rights Law*. Available at: [https://europe.ohchr.org/Documents/Publications/EU\\_and\\_International\\_Law.pdf](https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf), last accessed on 25.02.2020.

<sup>30</sup> The ECJ oftentimes refers to 'customary international law' when delivering its decisions. See Judgement of 16 June 1998, *Racke v. Hauptzollamt Mainz*, Case C-162/96, ECR I-3655. Paragraph 45: "the European Community must respect international law in the exercise of its powers. It is therefore required to comply with the rules of customary international

### 1.1.2 TASKS DIVISION AMONG EU INSTITUTIONS

The institutions in which the European Union is built upon have different voices when it comes to the promotion and defence of human rights. In the following paragraphs, it will be analysed the role of the European Council, the Council of European Union, the European Commission, the European Parliament and the European Court of Justice as active promoters in the safeguard of fundamental rights. The final scope of the institutions' collaboration should be the one of both monitoring and supervising the implementation of human rights within the EU and outside its borders, and to assure the correct form of compensation in case of violations.

The European Council keeps together the representative leaders of the 27 Member States. It is in charge of merging the different policies of the Member States, and to give them meaning from a political standpoint. The European Council also plays a strategic and pivotal role when it comes to addressing the foreign policy of the Union, and its line of action in both trade and conflicts<sup>31</sup>. The human rights element, encompassing these areas, is an integral part of the action plan of the European Council, and it is an often-adopted refrain in international declarations.

Despite the confusion that may arouse due to the similar names, the European Council is a different institution from the Council of the European Union (commonly known as 'the Council'), that gathers all the national ministers from each EU country, divided in ten configurations, to discuss about common problems and decide for the policies to apply. The Council also relies on the work and assistance of over 150 preparatory bodies, among them, the Working Party on Human Rights (COHOM) deals with the external aspects of EU human rights policies, identifying the priorities according to the geographical areas and the issues<sup>32</sup>. Yearly, the Council adopts specific conclusions

---

law when adopting a regulation suspending the trade concessions granted by, or by virtue of, an agreement which it has concluded with a non-member country". In *Supra note 3*, p. 778. Or Judgement of 21 December 2011, Air Transport Association of America and Others, Case C-366/10, Paragraph 101: "[...] the European Union is to contribute to the strict observance and the development of international law. Consequently, when it adopts an act, it is bound to observe international law in its entirety, including customary international law, which is binding upon the institutions of the European Union".

<sup>31</sup> KEUKELEIRE, S. and DELREUX, T. (2014). *The Foreign Policy of the European Union*. Palgrave Mcmillian, The European Union Series, 2<sup>nd</sup> Edition, pp. 63-66.

<sup>32</sup> See The Council of the EU, Working Party on Human Rights (COHOM). Available at: <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/>, last accessed on 13.02.2020.



on EU priorities at the UN Human Rights fora. Hence, the role of the Council is very important also due to its international significance, and the connection it establishes with the United Nations. Last fora, which took place on February 2020, stressed the link between human rights and the environment, and human rights and the latest technologies, and at the same time, it was an opportunity to reiterate the firm commitment of the EU in fighting death penalty and torture at global scale<sup>33</sup>. The Council is also in charge of appointing a Special Representative for Human Rights, a position currently held by Mr. Eamon Gilmore<sup>34</sup>.

The European Commission is defined as the ‘politically independent executive arm’ of the EU<sup>35</sup>, and the responsible organ for the elaboration of new laws. The Commission, whose current President is Ursula Von der Leyen, is led by a team of 27 Commissioners – one appointed by each Member State – and a total of 33 Directorate-Generals. Before a new organization of the Union was implemented with the Treaty of Lisbon, two DGs specifically engaged with the promotion and protection of human rights existed: Unit 2 of Directorate A and Unit 4 of Directorate General VIII. While the first one was responsible for human rights and democratization, the second dealt mainly with institutional support in the implementation of human rights and rule of law<sup>36</sup>. Today, the Commission’s action is defined by a Rights-Based Approach (RBA) encompassing the action of the DGs. The Commission promotes programs and initiatives whose aim is to foster participation in human rights promotion. Among them, the Daphne Programmes I, II and III, aiming to protect women and children from any form of violence<sup>37</sup>, or the EU programme on Rights, Equality and Citizenship from 2014 to 2020 (Regulation No 1381/2013). At the external level, the Commission has adopted the European Instrument for Democracy and Human Rights, whereby the European Union provides grants to those adhering to the initiative and contribute to the consolidation of democracy and human rights (Regulation No 233/2014 of the European Parliament and the Council). Human rights’ related calls for proposals are

---

<sup>33</sup> See Council of the European Union (2020). Council Conclusions on EU Priorities in UN Human Rights Fora in 2020, 17 February 2020, 5982/20. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/st05982-en20.pdf>, last accessed on 14.02.2020.

<sup>34</sup> The Council of the EU, Presse Releases. *Human Rights: EU Appoints a New Special Representative*. February 28<sup>th</sup>, 2019. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/02/28/human-rights-eu-appoints-a-new-special-representative/>, last accessed on 13.02.2020.

<sup>35</sup> See Europa.eu, European Union, European Commission. Available at: [https://europa.eu/european-union/about-eu/institutions-bodies/european-commission\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/european-commission_en), last accessed on 05.02.2020.

<sup>36</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 11.

<sup>37</sup> See European Commission Website, Justice, Daphne III Funding Programme. Available at: [https://ec.europa.eu/justice/grants1/programmes-2007-2013/daphne/index\\_en.htm](https://ec.europa.eu/justice/grants1/programmes-2007-2013/daphne/index_en.htm), last accessed on 25.02.2020.

regularly updated in the Commission Website, and represent an incentive in the consolidation and spread of human rights in Europe. Recently, the current *VdL Team* (Von der Leyen Team) has expressed its wish to play a very important global role in human rights implementation. The so-called ‘Geopolitical Commission’, as it has been dubbed by the President in charge, identifies in human rights an absolute priority to defend worldwide. The Geopolitical Commission of Von der Leyen highlights the importance of adapting the Union to the new challenges of the world, an ambitious goal that can be achieved only through a coordinated action among the different players of the institution<sup>38</sup>.

The European Parliament, made up of 705 Parliamentarians directly elected by European citizens, is often blamed for its lack of power. Nevertheless, when it comes to human rights, the EP has a say, especially in the framework of international issues. MEPs can decide to put conditionality policies to countries with feeble human rights records as it happened in the case of Vietnam, where the Parliament, given the FTA to be agreed<sup>39</sup>, called Vietnam for a Joint Motion for a Resolution in 2018, in front of the imprisonments of civil society activists and the harsh conditions of detention they were constrained to bear<sup>40</sup>. At this regard, the EP is constantly pressed by NGOs and international organizations to not engage in partnership with countries committing violations, for instance, Human Rights Watch has written to the Parliament urging it to postpone the consent to deal precisely with the Vietnamese government, until this last one would have achieved concrete results for the protection of human rights within the country<sup>41</sup>. In other words, MEPs handle power in foreign relations; and they can also have the faculty of drafting resolutions specifically related to human rights, as it happened with the Resolution of 12 May 2016 on the Crimean Tatars<sup>42</sup>. There are seven political factions inside the EP, each one approaching the issue of human rights in its way. Furthermore, the Parliament is structured in subcommittees and among them it figures the one on human rights,

---

<sup>38</sup> BISCOP, S. (2019). *A Geopolitical European Commission: A Powerful Strategy?*. The Clingendael Spectator, September 20<sup>th</sup>, 2019. Available at: <https://spectator.clingendael.org/en/publication/geopolitical-european-commission-powerful-strategy>, last accessed on 23.03.2020.

<sup>39</sup> FRANCAVILLA, C. (2020). *MEPs: Don't Waste Your Chance to Change Vietnam*. Euobserver. January 15<sup>th</sup>, 2020. Available at: [https://euobserver.com/opinion/147134?utm\\_source=euobs&utm\\_medium=email](https://euobserver.com/opinion/147134?utm_source=euobs&utm_medium=email), last accessed on 17.02.2020.

<sup>40</sup> European Parliament, Joint Motion for a Resolution 2018/2925(RSP). Available at: [https://www.europarl.europa.eu/doceo/document/RC-8-2018-0526\\_EN.html](https://www.europarl.europa.eu/doceo/document/RC-8-2018-0526_EN.html), last accessed on 24.02.2020.

<sup>41</sup> Human Rights Watch (2020). *NGOs Urge European Parliament to Postpone Consent to EU-Vietnam Trade Deals*, Available at: <https://www.hrw.org/news/2020/02/04/ngos-urge-european-parliament-postpone-consent-eu-vietnam-trade-deals>, last accessed on 23.02.2020.

<sup>42</sup> European Parliament Resolution of 12 May 2016, 2016/2692 (RSP).

DROI: its role is to develop and scrutinize human rights policies for both internal and external action of the EU, through awareness-raising activities, engaging with interlocutors and monitor respect for human rights and fundamental freedom overseas. The current chair is Maria Arena, MEP of the Socialists and Democrats faction<sup>43</sup>. The Committee on Foreign Affairs also constantly works to assure the safeguard of human rights outside of Europe's borders.

In the past, the Parliament has recognized the battles for human rights conducted by several prominent figures – such as at the time Burma's opposition leader Aung Saan Suu Kyi – causing sometimes the eagerness of third parties, as was the case of China when in 1996 the EP awarded Wei Jingsheng, the country's most celebrated dissident of the time, the Sakharov Prize for Freedom of Thought<sup>44</sup>. The Sakharov Prize is awarded every year to persons and organizations which have demonstrated their commitment and interest for causes related to human rights.

The European Court of Justice has played a very important role in the advancement of human rights protection within the Union. The role of the Court is defined by Article 19 of the TEU, stating that '[The Court] shall ensure that in the interpretation and application of the Treaties the law is observed'. Nevertheless, the Court alone does not constitute an efficient instrument to assure the complete protection of human rights. The supervisory function of the Court, although fundamental, is not sufficient if it is not complemented by an effective mechanism of pro-active monitoring<sup>45</sup>. Considering the implementation of human rights, Opinion 2/94 of the Court – about the accession to the ECHR – confirms (point 27) that 'No Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field'<sup>46</sup>. Three cases brought in front of the Court drastically modified the consideration of human rights inside the EU, attributing to them a new central and fundamental role: *Stauder*<sup>47</sup>, *Internationale Handelsgesellschaft*<sup>48</sup> and *Nold*<sup>49</sup>. These cases were particularly important in stabilizing a formula in which the European Union could assure the safeguard of human rights within the judicial order of

---

<sup>43</sup> See European Parliament Website, Committees, DROI. Available at: <https://www.europarl.europa.eu/committees/en/droi/home/highlights>, last accessed on 04.03.2020.

<sup>44</sup> WONG, R.Y. (2006). *The Europeanization of French Foreign Policy*. Palgrave Mcmillian. 1<sup>st</sup> Edition, p. 50.

<sup>45</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 17.

<sup>46</sup> GATTI, M. (2014). *La tutela dei diritti umani tra azione esterna dell'Unione Europea e politiche interne degli Stati membri: medici, curate vos ipsos*. Associazione Italiana dei Costituzionalisti, Osservatorio Costituzionale, p. 4.

<sup>47</sup> See Judgement of 12 November 1969, *Stauder v. City of Ulm*, Case 29/69, ECR 419.

<sup>48</sup> See Judgement of 17 December 1970, *Internationale Handelsgesellschaft v. Einfuhr-und Vorratstelle für Getreide und Futtermittel*, Case 11/70, ECR 1125.

<sup>49</sup> See Judgement of 14 May 1974, *Nold KG v. Commission*, Case 4/73, ECR 491.

the European community, and they asserted the respect for fundamental rights as an undiscussable principle of the Union<sup>50</sup>. The Court recognized the importance and the validity of the Charter of Fundamental Rights even before it became legally binding when in 2006 it ‘did acknowledge its importance stating that the directive observes the principles recognized not only by Article 8 but also in the Charter’<sup>51</sup>. Nevertheless, a limitation in the action of the ECJ is given by the fact that it does not exercise legislative power over third countries, but only among the EU Member States: we are indeed talking about a *European* Court. Consequently, its ‘being European’ creates some barriers in the action of the Union, when acting at the global scale in the defence of human rights<sup>52</sup>.

The European Court of Justice is often confused with the European Court of Human Rights. However, the ECtHR is a court created by the Council of Europe. Already in 1979, the Commission had proposed the Union to access the European Convention on Human Rights, a battle that eventually was not able to win, not even when it was proposed in the framework of the ToL. The difficulties for the Union to access the Convention are mainly linked to a problem of incompatibility between the ECJ and the ECtHR.

It should not be forgotten that the ECJ is not a specialized court on human rights, since it also deals with many other problems of the Union. Rather, the initial distrust of the Union in getting involved in human rights is testified by the early case law of the Court, which tried to restrain from the attempts of the litigants to invoke fundamental rights<sup>53</sup>. The relationship between the Court and the national courts of the Member States is stated in article 51(1) of the CFR, outlining the principle of subsidiarity<sup>54</sup>. The Article addresses directly to the institutions and bodies of the Union, which have to act in the respect of the principles enlightened by the Charter.

The European External Action Service exercises the diplomatic service of the Union, working closely with foreign representatives and ministers. The figure of the High Representative of the Union for Foreign Affairs and Security Policy, introduced in the Maastricht Treaty, has the role of promoting and defending the interests of the Union in its external relations.

---

<sup>50</sup> ARESTIS, G. *Supra note 26*, p. 3.

<sup>51</sup> *Ibid.*, p. 5.

<sup>52</sup> NAKANISHI, Y. *Supra note 9*, p. 3.

<sup>53</sup> VELLUTI, S. (2016). *The Promotion and Integration of Human Rights in EU External Trade Relations*. *Utrecht Journal of International and European Law*, 32 (83), p. 5.

<sup>54</sup> *See* Article 51(1) EU Charter of Fundamental Rights: ‘The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers’.

In 2007, inspired by the US Council on Foreign Relations, it was created the European Council on Foreign Relations, which also gives its contribution to the foreign policy of the EU<sup>55</sup>. In the same way, the EEAS as we know it today has not always existed, it was introduced with the Lisbon Treaty. It is the heir of what once was DG Relex, Director-General for External Relations. With the foundation of the External Action Service, the Treaty also introduced the figure of the High Representative of the European Union for Foreign Affairs and Security Policy, substituting the High Commissioner for Common Foreign and Security Policy. British Catherine Ashton was the first appointed to this new role, whereas the current representative is Spanish Josep Borrell, who has defined human rights as part of the 'EU DNA'<sup>56</sup>. In its external relations, the work of the EEAS is made valuable thanks to the coordination with the EU delegations, Europe's eyes and ears in the territory outside of its borders, and a direct link of communication between the European central institutions and the rest of the world.

Agencies are another central component for assuring the protection of human rights in the EU. Among them, the EU Agency for Fundamental Rights (FRA) is the body providing support when European legislation is implemented. As established by the Council Regulation (EC) No 168/2007 of 15 February 2007, to comply with its aims, FRA supplies expertise, formulates opinion, collect reliable information, undertakes specific research and surveys, publishes annual report and defines a concrete strategy for human rights implementation in the countries of the Union<sup>57</sup>. The agency is based in Vienna.

In addition to the institutions of the EU, the coordination with Non-Governmental Organizations is another factor to assure the widespread of human rights policies in the EU. The local activities of organizations such as Human Rights Watch and Amnesty International are fundamental and taken into account by the Union. For instance, Amnesty International, one of the most internationally recognized NGOs for the promotion of human rights and rule of law, is provided with a European office, advocating for human rights in the EU and beyond. ECAS, the European Citizens Action

---

<sup>55</sup> DE PRADO, C. (2010). *Regions in the World: The EU and East Asia as Foreign Policy Actors*. Mcmillian Publishers Ltd. 1384-5748. International Politics, Vol. 47, ¾, pp. 355-370.

<sup>56</sup> European External Action Service Website. *Human Rights/Democracy: Speech by HR/VP Josep Borrell at the European Parliament on the Annual Report 2018 on Human Rights and Democracy in the World and the EU's Policy on the Matter*. Brussels, January 15<sup>th</sup>, 2020. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/73064/human-rightsdemocracy-speech-hrvp-josep-borrell-european-parliament-annual-report-2018-human\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/73064/human-rightsdemocracy-speech-hrvp-josep-borrell-european-parliament-annual-report-2018-human_en), last accessed on 23.02.2020.

<sup>57</sup> EUR-Lex, EU Agency for Fundamental Rights (FRA). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:l14169>, last accessed on 22.02.2020.

Service, is a Brussels based NGO aiming at empowering citizens by promoting and defending their fundamental rights<sup>58</sup>.

Finally, to assure the effective implementation of monitoring, supervision and compensation mechanisms, both at an internal and external level, it is of primary importance to assure the existence of synergic and coordinated action among all the above-mentioned institutions. For instance, the Parliament needs to have a specialized Commissioner and Directorate-General as an interlocutor to collaborate for the development of a proper human rights strategy in the CFSP<sup>59</sup>.

### 1.1.3 THE EU'S COMMITMENT TO HUMAN RIGHTS IN RELATION TO MULTILATERAL ORGANIZATIONS

The EU is a global champion in the defence and mainstream of human rights, but without the coordination with other organizations, it would be very much complicated to achieve consistent results internationally. According to Article 34 of the TEU, the EU should synchronize its actions according to international organizations. The role of the EU in the context of an international organization is determined by the rules of the organization itself, for instance, some of them do not allow the EU to be officially recognized as a member, but only to single states. In most of the cases, the EU is accepted as a member or as an observer in those areas in which it has exclusive competence, for instance, trade policies. This section is due to analysing the action that the European Union is implementing jointly with other IGOs, precisely, the United Nations, the Council of Europe, and ASEAN; in the monitoring and promotion of human rights.

Article 21 of the TEU underlines the necessity for the EU to work in strict contact with the United Nations. At the basis of the relationship between the two, there is a common conviction of the importance of multilateralism and the sharing of fundamental principles. The EU has its delegation at the UN in New York, and the UN has its own one in Brussels. Even though, according to the UN Charter regulation<sup>60</sup>, it cannot be recognized as a full member – only *states* can be recognized as members of the UN – the EU enjoys the unique status of ‘enhanced observer status’, meaning that it

---

<sup>58</sup> See EU Rights, ECAS Webmaster. Webpage. Available at: <https://ecas.org/focus-areas/eu-rights/>, last accessed on 24.02.2020.

<sup>59</sup> ALSTON, P. and WEILER, J.H.H., *Supra note 18*, p. 302.

<sup>60</sup> See Charter of the United Nations and Statute of the International Court of Justice, Article 4: 1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. 2. The admission of any such state to membership in the United Nations will be affected by a decision of the General Assembly upon the recommendation of the Security Council.

can participate to the United Nations General Assembly that takes place every year, with a right to speak, make proposals and amendments, circulate documents, but not to vote. It also has a special privilege obtained after UNGA Resolution in May 2011 to speak early among other major groups, and to intervene in the general debate at the opening of the General Assembly<sup>61</sup>. The EU has partly shared, partly exclusive competences when concluding UN Conventions. This is the result of the Council Decision 2010/48/EC, that was made in relation to the conclusions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), stabilizing that the Union has legal ability to represent the bloc in matters falling under the shared competences of the Union and the Member States, and that the position of the Union must be previously determined in accordance with the Member States<sup>62</sup>. This decision was taken on the basis of Articles 19<sup>63</sup> and 114<sup>64</sup> of the TFEU. Among the institutions composing the UN, there are two fundamental interlocutors for the European Union to discuss about human rights: The Human Rights Council and the Third Assembly General Committee, the latter dealing with humanitarian assistance and human rights<sup>65</sup>. The ‘Good Human Rights Stories’ initiative is a project launched by the EU at the UN General Assembly in 2017, whose aim is to demonstrate that the challenges faced by countries could be overcome with engagement and commitment, providing positive ideas to encourage other people in need. In 2018, the initiative focused on the progress made in cultural, social, and economic rights<sup>66</sup>. The EU is also on the first line for the support and protection of the ‘Human Rights Defenders’, a project promoted by the UN<sup>67</sup>. The EU and the UN have different histories, but both organizations were established around the same years, driven by the aspirations of women and men to stop unnecessary and violent conflicts around the world. Their cooperation assumes an important meaning in the action of mainstreaming human rights in the world<sup>68</sup>, as they often act synergistically in the implementation of international human rights law. In their evolution as promoters of human rights, the two organizations have been

---

<sup>61</sup> Consilium.europa.eu, EU at the UN General Assembly. Available at: <https://www.consilium.europa.eu/en/policies/unga/>, last accessed on 25.02.2020.

<sup>62</sup> NAKANISHI, Y. *Supra note 9*, p. 15.

<sup>63</sup> Article 19 of the TFEU refers to discrimination on the basis of racial origin, ethnic origin, religion, belief, disability, age, sexual orientation.

<sup>64</sup> Article 114 of the TFEU refers to the functioning of the internal market.

<sup>65</sup> WOUTERS, J., BRUYNINCKX, H., BASU, S. and SCHUNZ, S. (2012). *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora*. Palgrave Studies in European Union Politics, p. 70.

<sup>66</sup> See Delegation of the European Union to the Dominican Republic (2019). *We Can All Do More! Good Human Rights Stories Coalition Getting Bigger*. Available at: [https://eeas.europa.eu/delegations/dominican-republic/68022/we-all-can-do-more-good-human-rights-stories-coalition-getting-bigger\\_tg](https://eeas.europa.eu/delegations/dominican-republic/68022/we-all-can-do-more-good-human-rights-stories-coalition-getting-bigger_tg), last accessed on 23.02.2020.

<sup>67</sup> OHCHR, *Who is a defender?* Available at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>, last accessed on 29.02.2020.

<sup>68</sup> European Parliament (2009). *Human Rights Mainstreaming in EU's External Relations*. Directorate General for External Policies, Directorate B, Policy Department, EXPO/B/DROI/2008/66, PE407003.

supporting each other reciprocally, for instance, the EU supported the passage from the UN Commission on Human Rights to the UN Human Rights Council in 2004<sup>69</sup>. The most important common denominator for the EU and UN action plan is given by the Universal Declaration of Human Rights, entered into force in 1948. The collaboration between the two organizations is given primarily by the fundamental and shared conviction of the universality, indivisibility, interdependence, and interrelation of human rights<sup>70</sup>. UN and EU are also fundamental players in the achievements of the Sustainable Development Goals. The SDGs, launched in 2015, consist of 17 ambitious targets to be achieved by 2030, ranging from poverty reduction to the consolidation of peace, justice, and strong institutions<sup>71</sup>. The European Commission supports each one of the SDGs putting it at the very heart of its agenda: the SDGs encompass all the ten priorities of the VdL Team for the 2019-2024 mandate. Another major problem in EU-UN relations is the fact that not all Member States have ratified the core international treaties of the UN. As proposed by Alston and Weiler, this leads to a lack of credibility for the European Union in its external relations: by not acting uniformly within it, the Union cannot be estimated outside<sup>72</sup>. The common ratification for all Member States of all UN treaties would constitute a net sign of coherence and adherence to the principle of indivisibility, one of the most important in the European interpretation of human rights.

The Council of Europe serves as one of the main partners for the EU in its engagement to promote and protect human rights, together with democracy and rule of law. The existence itself of the Council of Europe could be interpreted as one of the reasons why the EU has delayed in taking an interest on human rights: the mechanism for the protection of human rights that the CoE was developing in the years 1950s was perceived as already functioning, adequate, and sufficient. Today, both the organizations find in democracy, human rights, and rule of law a common ground of action. Where they promote democracy, they try to do it in a way which is intertwined with human rights, considering the reciprocal influence of the two. Indeed, coherently to the policy and the idea of “deep democracy”, the EU links democracy with human rights, making them strictly interdependent and

---

<sup>69</sup> SMITH K.E. (2010). *The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence*. *Journal of European Public Policy*, 17:2, 224-241.

<sup>70</sup> See Council of the European Union (2019). *EU Annual Report on Human Rights and Democracy in the World 2018*, 13 May 2019, 9024/19.

<sup>71</sup> United Nations Website, Sustainable Development Goals. Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>, last accessed on 22.02.2020.

<sup>72</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 12.



mutually constitutive<sup>73</sup>. This element is taken into account in the external action of the EU as well: where it tries to promote democracy, it also tries to root human rights, and this is visible in the European Union Global Strategy and in particular in its action in the Neighbouring Countries, that will be mentioned in part 1.2.1 of the present elaborate. Indeed, the legal basis for the promotion of democracy and human rights in the treaties of the EU is often the same, as demonstrated by Articles 2 and 21 of the TEU.

Three main pillars are regulating the relationship between the EU and the CoE: high-level political dialogue, legal cooperation and financial support<sup>74</sup>. One of the main elements to take into account in the relation between the EU and the Council in the field of human rights consists of the already mentioned issue of accession of the EU to the European Convention on Human Rights. Negotiations for the accession started in 1978, and are still going on, unresolved. The accession would constitute a highly symbolic gesture. In Opinion 2/13, the ECJ recognized the incompatibility of the Convention with EU law, specifically with Article 6(2) of the TEU. The benefits deriving from the accession of the Union to the Convention could allow a harmonious development of human rights standards and policies throughout the whole Europe<sup>75</sup>. Moreover, accessing the Convention not only would represent a highly symbolic gesture, but it would also be a sign that the EU and the CoE talk with one unique voice for what concerns the evolving jurisprudence of the European Convention system<sup>76</sup>.

Another fundamental piece of common legislation for the CoE and the EU is given by the European Social Charter (ESC). As it is the case for the ECHR, the ESC was drafted by the CoE. The ESC is shared by all the Member States of the European Union, albeit at different levels. Indeed, nine of the Member States are bound by the old version of the Charter, the one of 1961; while nineteen by the revised version, and with the due exception of France and Portugal, all the other Member States have ratified at least one provision<sup>77</sup>. This condition testifies an example of a lack of uniformity in the application of human rights in the EU territory.

---

<sup>73</sup> BABAYAN, N. and VIVIANI, A. (2013). *“Shocking” Adjustments? EU Human Rights and Democracy Promotion*. In “Transworld”. Working Paper 18, p. 6.

<sup>74</sup> *Supra note 70*, p. 12.

<sup>75</sup> Council of Europe Website, Speeches and Presentations of the Director, Legal Challenges and Opportunities Raised by EU Participation in Council of Europe Treaties. April 25<sup>th</sup>, 2018. Available at: <https://www.coe.int/en/web/dlapil/-/legal-challenges-and-opportunities-raised-by-eu-participation-in-council-of-europe-treaties>, last accessed on 21.02.2020.

<sup>76</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, pp. 20-49.

<sup>77</sup> Council of Europe Website, “European Social Charter and European Union Law”. Available at: <https://www.coe.int/en/web/european-social-charter/european-social-charter-and-european-union-law>, last accessed on 26.02.2020.

ASEAN stands for 'Association of South-East Asian Nations'. The organization includes ten member states: Republic of Indonesia, Kingdom of Cambodia, Republic of Singapore, Kingdom of Thailand, Republic of the Philippines, Brunei Darussalam, Socialist Republic of Vietnam, Malaysia, Republic of the Union of Myanmar, Lao People's Democratic Republic<sup>78</sup>. *Interregionalism* between the EU and ASEAN began in 1978 with the first biennial meeting between the foreign ministers of the two organizations. The great interest of Europe for its Asian counterpart was due to the growing economic dynamism that was taking place in the East of the world, and also to the trade deficit that Europe was experiencing in that same region. It is very interesting to study the relationship between the EU and ASEAN since at first sight, they appear as sharing two similar structures: they are both based on the idea of being a conglomeration of collaborating states, both with a strong common cultural basis. However, the significant differences taking place in the process of integration, made certain scholars even doubt that it may be possible to compare them<sup>79</sup>. European unity is born as the sharing of historical events, a sharing that is not perceived so much in Asia; where nationalism is felt like a very important principle in certain states that have been colonized for centuries. Likewise, Asian countries are much more geographically distant if compared to European ones. Moreover, very importantly, the policy of non-interference that represents a fundamental pillar in ASEAN's philosophy makes it difficult to allow further integration. If, as confirmed in the previous pages, the initial integration of European countries was merely an economic one, ASEAN countries never really expressed a concrete desire of developing a form of integration that would have been different from the simple economic one. At this regard, Tamio Nakamura underlines that East Asian agreements are generally the results of the attempt to share broad targets, rather than identify common principles or values and work together to assure their implementation. The only exception to this logic may be given by the ASEAN Charter<sup>80</sup>, formulated in 2007 and framing the legal basis of the organization. Under a legal point of view, neither ASEAN, neither ASEAN plus three (that is, including China, Japan, and South Korea) is a regional actor with embedded institutions<sup>81</sup>. Legislative measures and institutions have been implemented in totally opposed way in the two areas of the world: while they represent a cornerstone

---

<sup>78</sup> Ministry of Foreign Affairs of Japan, Country and Regions, Asia, Japan-ASEAN Relations. Available at: <https://www.mofa.go.jp/region/asia-paci/asean/index.html>, last accessed on 05.02.2020.

<sup>79</sup> NAKAMURA, T. (Editor). (2009). *East Asian Regionalism from a Legal Perspective. Current Features and Vision for the Future*. Routledge Contemporary Asia Studies. Part III: Legal Vision of Future East Asian Regionalism: A Draft Charter, pp. 193-205.

<sup>80</sup> *Ibid.*, p. 200.

<sup>81</sup> BINDI, F. (2010). *The Foreign Policy of the European Union. Assessing Europe's Role in the World*. Brooking Institution Press, Washington D.C., pp. 253-260.

in EU integration, they have not assumed the same significance when it comes to the integration of ASEAN countries, also taking into account the fact that most Asian countries' legislative frame is shaped on the one of the country that has been colonized by<sup>82</sup>. The process of acquisition of an *Acquis Communautaire* – that is, the set of laws and rights – taking place in the European Union is not comparable to the process that led to an Asian integration<sup>83</sup>.

Despite the number of obstacles that compromise a complete engagement in the safeguard of human rights, the Association has accomplished some steps forward in order to assure a minimum standard of protection within the territory. Article XIV of the ASEAN Charter concerns the creation of a Human Rights Body: in 2009, ASEAN Intergovernmental Commission on Human Rights (AICHR) was created, and few years later, the Commission drafted the ASEAN Human Rights Declaration<sup>84</sup>. Also, the engagement of the EU and ASEAN in cooperating has tried to go beyond the economic field. Starting in 2015, the biennial Human Rights Policy Dialogue began. It is the outcome of the EU and ASEAN Ministers' Agreement in the framework of the 20<sup>th</sup> EU-ASEAN Ministerial Meeting held in Brussels in 2014. The initiative aims to promote respect for human rights and rule of law, exchanging ideas, good practices, capacity building initiatives<sup>85</sup>. Last Policy Dialogue took place in Brussels on 27<sup>th</sup> November 2019, and the discussions rotated around a wide range of current issues, from freedom of expression to juvenile justice, and children's rights<sup>86</sup>. The EU also disposes of missions to almost all ASEAN countries, to mark its presence in the territory. The E-READI instrument, follow-up of READI (Regional EU-ASEAN Dialogue Instrument) and READI Human Rights programmes, foster and facilitates the comprehensive dialogue between the two sides of the world, by supporting ASEAN integration through sustainable development and sustainable growth, drawing on the experience of the EU<sup>87</sup>.

---

<sup>82</sup> *Op. cit.*

<sup>83</sup> NAKAMURA, T. *Supra note 79*. 12, Part Two of the Draft Charter: Constructing an Asian *Acquis*, pp. 232-243.

<sup>84</sup> See AICHR Website, available at: <https://aichr.org/>, and ASEAN Charter, available at: <https://aichr.org/key-documents/>, last accessed on 08.03.2020.

<sup>85</sup> EEAS Homepage (2015). EU-ASEAN Policy Dialogue on Human Rights AICHR, ACWC, ACMW, ASEC Visit to Brussels 19/23 October 2015. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/2599/node/2599\\_me](https://eeas.europa.eu/headquarters/headquarters-homepage/2599/node/2599_me), last accessed on 19.02.2020.

<sup>86</sup> Mission of the European Union to ASEAN (2019). The 3<sup>rd</sup> EU-ASEAN Human Rights Policy Dialogue. Available at: [https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/71137/3rd-eu-asean-human-rights-policy-dialogue\\_en](https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/71137/3rd-eu-asean-human-rights-policy-dialogue_en), last accessed on 22.02.2020.

<sup>87</sup> EEAS Homepage (2019). Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI). Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/49815/enhanced-regional-eu-asean-dialogue-instrument-e-readi\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/49815/enhanced-regional-eu-asean-dialogue-instrument-e-readi_en), last accessed on 22.02.2020.

## 1.2 STATUS OF HUMAN RIGHTS IN THE EXTERNAL RELATIONS OF THE EU

In the previous pages, it has been analysed how the different institutions of the Union – Commission, Parliament, ECJ, EEAS and the agencies – need to act in a joint and coordinated way in order to assure a logic and smooth implementation of human rights policies. As it is fundamental to follow a logical thread in the actions of the different institutions, equally important is the coherence between internal and external policies of the Union. It is a principle that has been stated multiple times, for instance, by the former FRA Director Morten Kjaerum in front of the COHOM<sup>88</sup>. Undoubtedly, to find coordination is not easy at all, especially if we consider that the Member States are naturally driven by a desire to follow their national interests, and they find themselves bound to the regulations of the treaties conferring to the EU the power on certain external affairs over the single Member States. Finding an agreement inside, in the area of internal policies, is already a very hard mission to solve: applying this same coordination at the external level, with several other actors such as economic issues, peace and security, and diplomatic interests, is even more difficult. A high level of interaction between internal and external policies implies great coordination among the different institutions of the European Union, starting from the DGs of the European Commission. The role of the Commission is fundamental in developing the external action of the European Union since it reflects externally EU's internal policies<sup>89</sup>. The Treaty of Lisbon played an important role in making the European external relations effective and scratchy, including in its approach to human rights. It was defined, by the then High Representative for Foreign and Security Policy and Vice President of the Commission Baroness Catherine Ashton, as a 'once-in-a-generation opportunity' to boost the coherence of the Union in its external actions, in line with global objectives<sup>90</sup>. The Treaty of Lisbon aimed at conferring unitary nature to the European Union foreign action, combining the CFSP and the bloc's external relations. The already mentioned Article 21 of the TEU confirmed that. The Article, by stating in its first paragraph:

---

<sup>88</sup> European Union Agency for Fundamental Rights, Speech by FRA Director Morten Kjaerum to the Council of the EU Working Group on Human Rights (COHOM), Brussels, 7<sup>th</sup> October 2014. Available at: <https://fra.europa.eu/en/speech/2014/internal-external-coherence>, last accessed on 23.02.2020.

<sup>89</sup> KEUKELEIRE, S. and DELREUX, T., *Supra note 31*, p. 74.

<sup>90</sup> FURNESS, M. (2012). *The Lisbon Treaty, the European External Action Service and the Reshaping of EU Development Policy*. Palgrave Mcmillian, pp. 74-93.

*‘The Union’s action in the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law’*

Plays at the same time a double role, by clearly outlining the fundamental principles at the basis of the EU construction – the same of Article 2 – and pointing out how those same values should guide the EU in its external relations<sup>91</sup>. Professors Stephan Keukeleire and Tom Delreux recognize a set of four toolboxes that drive Europe’s promotion of democracy, human rights and rule of law in the world<sup>92</sup>. The first one is given by the Common Foreign and Security Policy, which strengthens the cooperation of the Member States and defines the foreign action of the Union (Article 25 of the TEU), with a main focus on the Eastern and Southern Neighbourhood, and the Western Balkans. The Policy is an opportunity for the Union to project its fundamental principles in the outside world, since ‘the EU’s identity objectives (distinguishing itself *vis-à-vis* other countries based on its specific values) dominate over the EU’s external objectives (influencing the international environment)’<sup>93</sup>. A second instrument is given by the political framework in the agreements stipulated with third countries. A means to assure the presence of human rights in its international relations comes with the ratification of international agreements, including economic ones. The EU has been developing its own mechanisms of protection of human rights in the world through various means, such as the promotion of sustainable development, and the human rights clause. The origins of this clause could be found in the Lomé Convention, in the aftermath of the Uganda human rights atrocities, and in front of the necessity of providing the EU with an instrument to interrupt a partnership with a country involved in some forms of violations of human rights, detaching its institutions from possible bad connotations that would have put the EU under a bad light. The first agreements containing such clauses had been stipulated with Latin American and Eastern European countries: both areas with a past of struggle against communist regimes and severe violations. Nowadays, the EU entertains international agreements with over 120 different states throughout the world. The international agreements that the EU stipulates with other member countries can be interrupted at any moment, in the circumstance the specific human rights clauses are violated. The Human Rights clause requires

---

<sup>91</sup> KEUKELEIRE, S. and DELREUX, T., *Supra note 31*, p. 135.

<sup>92</sup> *Ibid.*, pp. 135-138.

<sup>93</sup> *Ibid.*, p. 168.

that human rights have to be respected by the partner country both at the national and international level, in internal and external policies. There is no existing committee to monitor the respect of these clauses, and the employment of such a committee could help a lot to foster the monitoring of human rights in international agreements. Such a human rights policy is coherent with the principle of business and human rights. To comply with the human rights clause, it is necessary to adopt consistent funding to achieve political and legal reforms where needed, and the economic difficulties deriving from the implementation of such funding programmes may imply that those countries more in need of a legal or political reform may have significant difficulties to implement it. A third toolbox is given by the support and coordination with NGOs and civil society, which guarantees a more effective enhancement of the EU's action in the interested territories. A yearly budget of 150 million euro is allocated to the 'European Instrument for Democracy and Human Rights', a tool adopted to support international regimes working to guarantee human rights, and it disposes of an 'EU Election Observation Missions' (EU EOM) and an 'Election Expert Missions'. An additional instrument is given by the 'Action Plan on Human Rights and Democracy' 2015-2019, based on the Strategic Framework on Human Rights and Democracy and the 2012-2014 Action Plan<sup>94</sup>. The plan, attributing great importance to the involvement of civil society, incorporated actions to 'promote human rights in all areas of its [the Union] external action without exception'<sup>95</sup>. Despite the Union reserves substantial budget for these projects, and the value deriving with the involvement of civil society; the negative side of these projects is given by the relatively small political impact they have, meaning that their results are more symbolic than concrete. The final toolbox identified by the two experts is represented by the external dimension of certain EU policies, such as the EU Strategy towards the Eradication of Trafficking in Human Beings elaborated by the Commission's DG Home Affairs for the four-year period 2012-2016, specifically based on the coordination with EU external policies activities.

In reflecting externally its internal values, the EU acts as a normative power. The concept of normative power was suggested by Ian Manners, who adopted it in response to the interpretation of the EU in its external action as a *civilian* power or a *military* power. In his interpretation, the EU is normatively

---

<sup>94</sup> Council of the European Union (2015). Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019, 20 July 2015, 10897/15. Available at: [https://www.law.ox.ac.uk/sites/files/oxlaw/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_2015-2019.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/eu_action_plan_on_human_rights_and_democracy_2015-2019.pdf), last accessed on 24.02.2020.

<sup>95</sup> Council of the European Union (2012). EU Strategic Framework and Action Plan on Human Rights and Democracy, 25 June 2012, 11855/12. Available at: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf), last accessed on 24.02.2020.

different from any other political entity in its strong commitment to the defence of human rights in the relationship with third countries, and in trying to normalize those rights in its foreign policy. In its role of normative power, the EU acts as a driving force to alter customs, extending and transplanting its norms in the global arena. According to Manners, the fight to eradicate the death penalty constitutes the most significant example of this process<sup>96</sup>.

Alston and Weiler, already in 1998, used to define the internal and external policies of the EU as *'two sides of the same coin'*<sup>97</sup>. As already stressed, the coordination among the Union's internal institutions is central to assure an effective human rights policy in its international relations. Consequently, concrete results cannot be achieved through the implementation of unilateral policies, but instead through effective collaboration with other countries. Finally, 'universality' and 'indivisibility' are milestones that if not applied in both internal and external policies hamper the credibility of the EU as a powerful human rights protector, questioning its role of a reliable entity if it avoids implementing inside its borders what it professes to be fundamental values outside of it.

The tools that the EU disposes and the serious commitment towards the values of democracy, human rights and rule of law guarantees a concrete action of the Union to achieve results in third countries, an action that goes far beyond the 'declaratory level', as defined by Keukeleire and Delreux. Nevertheless, the EU faces significant challenges when it comes to acting in third countries<sup>98</sup>. First of all, as mentioned above, the discrepancies that may emerge among the Member States in defining how much space should be occupied by human rights and democracy, and therefore necessary taken from economic interests, in the external action of the Union. Whereas it could represent a priority for certain members, it may not be perceived in the same way by others. At the same time, once the objectives have been defined, there is the need to find a correct balance with the pursuit of the other objectives: in front of the crossroad on whether to prioritize economic interests or human rights, these last ones are often sacrificed. The coordination among Member States and a clear programme of action to follow are also essential components for the development of a credible human rights external policy. In addition to that, the cooperation of the third country's government is fundamental to achieve concrete results, and it may happen to deal with countries not so inclined to accept the EU's given conditions. A further challenge is given by the weakening legitimacy of human rights as a universal value, that consequently rendered the EU a less credible defender of it. This situation has

---

<sup>96</sup> MANNERS, I. (2002). *Normative Power Europe: A Contradiction in Terms?*. JCMS 2002 Volume 40. Number 2, pp. 235-258.

<sup>97</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 8.

<sup>98</sup> KEUKELEIRE, S. and DELREUX, T. *Supra note 31*, pp. 142-143.

been amplified by the so-called ‘gun-point democracy’, that is, the adoption of military force to implement democracy, as it happened in Libya. In addition to all these elements, there is another one that is given by the fact that European Union foreign policy is not equally implemented in protecting the different types of human rights in the world: for instance, more attention is generally given to civil and political rights, instead than economic and social ones. Certain scholars also identified an incoherence in comparing Article 3.3 of the TEU, dealing with human rights in internal policies, and Article 3.5 of the TEU, dealing with human rights in the external policies of the EU. Indeed, while the first one explicitly names the fields in which the EU should focus its attention for the promotion of human rights, namely social exclusion, discrimination, social justice, social protection, gender equality, and children’s rights; the other one remains much vaguer and unprecise in upholding the promotion of European values, only emphasising on the rights of the child<sup>99</sup>.

A set of guidelines was announced to be implemented at the end of 2001, as an instrument to use for the external policy of the Union. Already in 1991, in a communication on Human Rights, Democracy and Development Cooperation Policy, the Commission outlined the strong commitment to open channels of dialogue with third countries about human rights concerns and/or violations. Such dialogues take place thanks to the four toolboxes previously described, that define the external action of the Union in the promotion of human rights. The goals are to discuss with third countries about possible issues related to human rights, in the framework of multilateral fora (for instance, the UN) or sharing with them some concerns that the EU may have with human rights<sup>100</sup>. Besides, the EU makes available some specific guidelines related, inter alia, to the death penalty, torture, rights of the child.

Even taking into account the primary role that human rights occupy in its discourse, the EU cannot conclude international human rights agreements only based on its beliefs or principles: in other words, there is no possibility for the EU to conclude such agreements exclusively based on its identification of human rights as a *fundamental value*, rather, it needs a legal basis. Such an issue was clarified by the CJEU in Opinion 2/94 in 1996, stabilizing that the Union can ratify international human rights agreements only according to some specific competences<sup>101</sup>. Hence, in order to overcome such an obstacle, we must say that it does exist a judicial basis that allows the EU to sign international agreements related to human rights. A first example has already been provided: it consists of the two Articles 14 and 119 that have constituted the foundation for the Council Decision

---

<sup>99</sup> DE BURCA, G., *Supra note 11*, pp. 649-693.

<sup>100</sup> KINZELBACH, K. (2009). *The EU’s Human Rights Dialogues – Talking to Persuade or Silencing the Debate?*. Paper Presented at KFG Conference: The Transformative Power of Europe. December 2009, Freie Universität Berlin.

<sup>101</sup> NAKANISHI, Y. *Supra note 9*, p. 15.



2018/48/EC in the framework of the UNCRPD<sup>102</sup>. Another example is given by the Articles from 82 to 86 of the TFEU, concerning judicial cooperation. In particular, Articles 82, 86 and also 19 – since it confers the legislative power to combat discrimination based on sex or sexual orientation – and 168 – about human health protection –<sup>103</sup> provided the EU with the legal basis to access the Council of Europe Istanbul Convention, on the prevention of violence against women and domestic violence. Despite all the hustles that hamper the effective implementation of a human rights policy, the inclusion of this topic on the external agenda of the EU is much stronger now than in the past<sup>104</sup>, and it constitutes a fundamental element to define the role of the European Union in the intricate web of international relations.

## 1.2.1 THE EUROPEAN UNION GLOBAL STRATEGY

### 1.2.1.1 THE EU AS A GLOBAL ACTOR: HISTORY AND OBJECTIVES

“We need a stronger Europe. This is what our citizens deserve, this is what the wider world expects”. This is one of the slogans adopted to launch the European Union Global Strategy. The idea of a *Europe in the world* remains mostly linked to its recognition of being a Civil power, or Normative power, or force for good, or even an ‘ethical power Europe’; an actor having a positive impact in its external relations, in modifying the attitudes and behaviour of the citizens of other territories in the world<sup>105</sup>.

The European Union Global Strategy was launched in 2016, as the continuation of the European Security Strategy (ESS), pushed by the necessity of having ‘A Stronger Europe in a Better World’. The ESS was formulated in 2003, as a response to the 9/11 attacks, and the consequent breaking down of international law in the USA, when the American country felt the right to attack Iraq on March 2003, under the umbrella (and questionable) justification of the country’s possession of weapons of mass destruction. This decision had, among many consequences, the one of dividing

---

<sup>102</sup> Council of the EU, Council Decision of 26 November 2009, 2010/48/EC, Official Journal of the EU, 2010 L23/35. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0048>, last accessed on 22.02.2020.

<sup>103</sup> The inclusion of Article 19 is introduced by Nakanishi (*Supra note 9*), and argued by DE VIDO, Sara (2017), in *The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European Legal System*. European Journal of Legal Studies, European University Institute, Vol. 9, No. 2, p. 85, note 45. In the same page, De Vido also stresses the necessity of considering Article 168 of the TFEU, considering violence against women as cause of physical and psychological injuries.

<sup>104</sup> DE BURCA, G., *Supra note 11*, p. 680.

<sup>105</sup> BINDI, F., *Supra note 81*, p. 290.

European countries in their positions. On one side, Italy, France, and Spain firmly believed in the necessity of being alienated with America. Other countries, among them Germany, did not think the same. Therefore, it was necessary to find a way to reunite the land, under a common approach towards international issues<sup>106</sup>. Even before the beginning of the US ‘war on terror’, the EU was very much interested in ‘keeping an eye’ on what was happening outside of its borders. After the Cold War, it was of primary importance for the EU to always monitor and keep under control what was going on in the rest of the world.

In addition to that, the Strategy was implemented during the *annus horribilis* of the European Union<sup>107</sup>; 2016, when it had to give a significant proof of its resilience. To be intended as the ability to recover from stressful and dramatic situations rapidly, resilience is a very central concept in the external strategy of the European Union, encompassing all kinds of crises, from humanitarian to food and environmental ones. As Nathalie Tocci, Special Advisor to the former High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Federica Mogherini, referred, resilience is a very popular term when it comes to the foreign policy of the Union<sup>108</sup>. Tocci denoted how the fundamental issue of resilience constitutes a complementary goal of the strategy of the Union, which has to go hand in hand with the achievement of democratization, security, and other objectives in third countries. The EU is supposed to assure stability in third countries, and the notion of resilience is what makes the Union pursue this goal without nevertheless running the risk of adopting extreme measures to assure the stability, such as the support of authoritarian regimes that could lead to a violation of human rights.

From ‘a stronger Europe in a *better* world’, as was the motto accompanying the ESS, the EUGS was intended to be ‘a stronger Europe in a *fragile* world’. Such an expression seems to underline the awareness of the role that the EU embodies in a world that is due to face increasing challenges and difficult problems. It should also be pointed out that the Global Strategy has been formulated in the aftermaths of the Lisbon Treaty which, as seen in the precedent pages, constituted a real milestone for the construction of a consistent human rights policy. This means that after 2009 the EU started looking and considering human rights differently and that they became an integral part of the Strategy, both at the domestic and external levels, of the Union. Moreover, with the introduction of

---

<sup>106</sup> TOCCI, N. (2017). *Framing the EU Global Strategy. A Stronger Europe in a Fragile World*. Palgrave Mcmillian, p. 17.

<sup>107</sup> 2016 has been dubbed as the ‘annus horribilis’ for the EU, due to a series of fact that risked to destabilize its integrity: instability of the eurozone, the Brexit vote, the election of President Donald Trump, control of migration flows.

<sup>108</sup> IIEA. “Dr. Nathalie Tocci – Framing the EU’s Global Strategy: A Stronger Europe in a Fragile World.” Online Video Clip. *YouTube*. YouTube, October 17, 2017. Web. Available at: <https://www.youtube.com/watch?v=deHcKj04pyk>, last accessed on 29.02.2020.

the figure of High Representative of the Union for Foreign Affairs and Security Policy/Vice President of the European Commission – which substituted the High Representative for the Common Foreign and Security Policy – the coherence of the actions of the EEAS and the Commission, was guaranteed. Since its inception, the Strategy was trying to forge a narrative that could reach over the divisions in the EU. It has been put forward forty-eight hours after Brexit vote: not an obvious choice, indeed, HRVP Federica Mogherini has not been exempt from criticisms for her choice to carry on the Strategy, that was the product of years of hard work. This choice was meant to be a significant message of the political unity of the EU. What happens inside the boundaries of the Union and is officialised by Brussels, inevitably has an impact also in the outside world. For instance, the failure of the Constitutional Treaty in 2005 significantly damaged the image of the EU<sup>109</sup>. Hence, the Union needs to remain compact, in order to project outside an image of unity and harmony.

The idea of a Europe that acts in the world is primarily linked to the vision of a territory which defends its values. This is why the Global Strategy puts as one of its core principles the international protection of human rights and the defence of democracy worldwide. The Strategy sums up the whole external policy agenda of the Union, with its strong commitment to involve civil society and NGOs, especially in territories that are not stable at all. The Strategy is Global in all sense. It is Global in involving all areas of the world, it is Global in the number of issues tackled, from gender equality to peace and security, and in the number of actors implied, from governments to civil society. It is an occasion for the European Union to propose itself as an answer to the threats coming from globalization, in the respect of the rules given by international law and international organizations<sup>110</sup>.

The EUGS is built upon five fundamental pillars: the security of the Union, state and societal resilience to the East and South of Europe, an integrated approach to conflicts, global governance for the 21<sup>st</sup> century, and cooperative regional orders. As it happens for the whole set of policies of the Union, human rights safeguard must represent a guiding principle in the pursuit of all these objectives, particularly when it comes to the fourth one; in the search for a global order in the respect of international law principles, ensuring peace, security and fundamental rights<sup>111</sup>.

---

<sup>109</sup> TSURUOKA, M. (2008). *'Expectations Deficit' in EU-Japan Relations: Why the Relationship Cannot Flourish*. The European Union and Asia: What is there to Learn?. Nova Science Publisher. pp. 107-126, p. 121.

<sup>110</sup> ZUTIC I., CEHULIC VUKADINOVIC L. (2017). *EU Global Strategy: an Upgrade or New OS?*. January 10<sup>th</sup>, 2017, pp. 91-116.

<sup>111</sup> European Union External Action Service. *The EU Global Strategy: A Compass for our action in difficult times*. June 14<sup>th</sup>, 2019.

### 1.2.1.2 OVERVIEW OF THE EUROPEAN NEIGHBOURHOOD POLICY AND THE STRATEGY FOR THE MEDITERRANEAN

Nathalie Tocci points out how strategies are created in response to a need or a problem<sup>112</sup>. As mentioned, the 2003 Strategy was born as a response to the delicate situation created by the US war on terror. Therefore, it is legitimate to question ourselves about which need or problem has pushed to the formulation of the EUGS. The response has to be found on the other side of the Mediterranean Sea and the Western Balkans, which constitute the *raison d'être* of the Strategy: the expression “European Neighbourhood Countries” refers to the territories surrounding the Union in its East and South. This area includes sixteen countries, stretching from Morocco, up to Belarus. The relationship that the Union is expected to establish with these territories is enshrined in Article 8 of the TEU:

“The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation”.

This is the arena for the EU to flaunt its worth as a normative and stabilizing power. The Strategy is perceived as a way to render the EU a point of reference for the weakest zones of the world, and therefore its image as a human rights defender is under the spotlight. The unstable governments of this area of the world, translated in real dictatorship in certain countries – such as Libya – has provoked a domino of human rights violations that made it necessary for the EU to intervene in name of its fundamental principles (Article 2 TEU). The harsh living conditions – economic, political, environmental – of some territories in Africa have pushed an increasing number of people to leave the continent. The road taken by migrants aspiring for a better life in Europe is full of obstacles that oftentimes come with significant violations of human rights: children abuses, exploitation of women, human trafficking. The Mediterranean Sea has been transformed into the deadliest existing migration route in the world. The commitment to implement effective measures in its neighbourhood is not a novelty in EU external action – the ‘Euro-Mediterranean Partnership’ was implemented already in

---

<sup>112</sup> TOCCI, N. *Supra note 106*, p. 7.

1995<sup>113</sup> – and the main financial instrument to support the ENP is given by the European Neighbourhood Instrument (ENI), substituting the European Neighbourhood and Partnership Instrument (ENPI), and which disposes of a budget of euros 15.4 billion for the 2014-2020 period<sup>114</sup>. To make its action more efficient, the EU further developed an instrument known as European Endowment for Democracy (EED), an independent organization born in 2013<sup>115</sup>. Bringing the protection and promotion of human rights at the core of its action in its neighbourhood, this initiative gives us a further framework of the strict linkage between democracy and human rights. In 2018, the European Commission proposed to merge the majority of the foreign policy instruments adopted for the ENC into one, called the Neighbourhood, Development and International Cooperation Instrument (NDICI)<sup>116</sup>.

### 1.3 EUROPEAN HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT

Human rights encompass also another fundamental component of the European Strategy towards the external world, that is, foreign aid and support to developing countries. Development assistance, to be intended as the financial aid provided to countries in need in order to enhance their economy; is distinguished from humanitarian assistance, provided in the aftermaths of a conflict or a natural disaster to respond to immediate exigencies such as providing food and shelter. Both actions can go together, and they are part of the competences that the EU shares with its Member States<sup>117</sup>.

The expression “human rights-based approach”, outlines “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”. Such approach also constitutes one of the six Guiding Principles of the United Nations Sustainable Development Cooperation

---

<sup>113</sup> The Partnership, also known under the name ‘Barcelona Process’, aimed at stabilizing the interested region and relaunching the economy of certain countries. It also had a relevant impact in fostering the awareness concerning the human rights condition in the ENC.

<sup>114</sup> EU Neighbours, The European Neighbourhood Instrument. Available at: <https://www.euneighbours.eu/en/policy/european-neighbourhood-instrument-eni>, last accessed on 07.03.2020.

<sup>115</sup> European Endowment for Democracy Website. About EED. Available at: <https://www.democracyendowment.eu/en/about/about-us.html>, last accessed on 08.03.2020.

<sup>116</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council Establishing the Neighbourhood, Development and International Cooperation Instrument. Brussels, June 14<sup>th</sup>, 2018. 2018/0243(COD).

<sup>117</sup> See Article 4.4, TFEU: “In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs”.

Framework<sup>118</sup>. In its actions related to development assistance, the European Union has been implementing a human rights-based approach, based in turn on the “European Consensus on Development”. The document was adopted in 2017, and its framework for action is people-centred in the importance attributed to human security, human development, and human rights<sup>119</sup>. In the European Union’s view, human rights constitute a central prerequisite to the achievement of sustainable development. Human rights and development are intrinsically intertwined, since on one side; human rights constitute themselves a primary goal of development. On the other hand, if correctly applied, a human rights-based approach is capable of turning development cooperation into a process that is at the same time centred on the people and sustainable: in other words, human rights constitute both a goal and a means in development assistance<sup>120</sup>. When it comes to international development, the EU has some legal obligations which bind the bloc in considering human rights in its actions. These obligations are represented by international human rights treaties, the EU founding treaties, and the obligations reported in the Cotonou Agreements between ACP countries and the EU<sup>121</sup>. With the entry into force of the Lisbon Treaty, a new focus was attributed to the notion of poverty reduction in the development assistance of the EU. Development cooperation is described in Part Five, Title III, of the TFEU. As reported in Article 208<sup>122</sup>, it has to be conducted coherently to the principles and values of the EU – like those described in Article 2 of the TEU – and it may be conducted with the primary aim of eradicating poverty. Financing for development assistance is guaranteed by the Multiannual Financial Framework, defined by the European Commission every seven years. For the period 2014-2020, the European Commission outlined an “Agenda for

---

<sup>118</sup> See United Nations Sustainable Development Group, Universal Values, *Human Rights-Based Approach*. Available at: <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, last accessed on 04.05.2020.

<sup>119</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting within the Council, the European Parliament and the European Commission. *The New European Consensus on Development: ‘Our World, Our Dignity, Our Future’*. Brussels, June 7<sup>th</sup>, 2017.

<sup>120</sup> TERRE DES HOMMES INTERNATIONAL FEDERATION, ACTION AID INTERNATIONAL, AMNESTY INTERNATIONAL EU OFFICE AND INTERNATIONAL HUMAN RIGHTS NETWORK. (2008). *Human Rights-based Approaches and European Union Development Aid Policies*. IHRN. p 36-70.

<sup>121</sup> *Ibid.*

<sup>122</sup> See Article 208, TFEU: “1. Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union’s external action. The Union’s development cooperation policy and that of the Member States complement and reinforce each other. Union development cooperation policy shall have its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries; 2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations”.

Change”<sup>123</sup>, whose aim is to fight poverty and create growth in the countries in need. To achieve this objective, a Financing Instrument for Development Cooperation was established<sup>124</sup>. Outside of the MFF, the EU is also provided with a European Development Fund. Despite some attempts to combine the two funds, the EDF is an exception to the principle of “budgetary unity” of the EU and depends on the contributions provided by the single Member States<sup>125</sup>. With a total amount overtaking the 30 billion euros for the period 2014-2020, it constitutes the largest instrument – in geographical terms – managed by the Commission for developing countries; and being already inserted in the Treaty of Rome of 1957, it is also one of the oldest instruments ever adopted by the Union<sup>126</sup>. The resources of the EDF are mainly employed for the African, Caribbean, and Pacific Group of States and Overseas Countries and Territories<sup>127</sup>. According to an investigation of 2012, the EDF has been capable of aligning with the development policies of the interested countries and confirmed that ACP countries had received specific benefits, including *inter alia* allocations based on clear needs, consultative strategies, multi-annual budget commitments, adherence on the European Consensus on Development<sup>128</sup>. Following the work of the European Parliament, the Commission has published a proposal for a regulation establishing a new instrument, the Neighbourhood, Development, and International Cooperation Instrument (NDICI), to be applied in the context of the MFF 2021-2027 period. The NDICI could unite a series of different instruments – among them, the EDF – to one unique tool. According to the reasoning of the Parliament, the regulation would bring to a positive reorganization of the external action of the European Union, to implement a

---

<sup>123</sup> See Communication from the European Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. *Increasing the Impact of EU Development Policy: an Agenda for Change* – COM/2011/0637. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A52011DC0637>, last accessed on 04.05.2020.

<sup>124</sup> See Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014, Establishing a Financing Instrument for Development Cooperation for the Period 2014-2020.

<sup>125</sup> D’ALFONSO, A. (2014). *European Development Fund. Joint Development Cooperation and the EU Budget: Out or In?*. European Parliamentary Research Service. PE 542.140.

<sup>126</sup> *Ibid.*

<sup>127</sup> African, Caribbean, and Pacific Group of States refers to the largest organization of developing countries in the world. The most recent agreement between EU and ACP countries is represented by the Cotonou Agreement [*for further information, look at Chapter III of the present elaborate*]. Overseas Countries and Territories include 25 countries outside Europe having a special link with certain EU Member States, namely Denmark, France, and the Netherlands. They are not sovereign states, therefore they cannot be treated as “third states”, but at the same time they are not part of the single market. See RZ, pp. 6-7.

<sup>128</sup> GAVAS, M. (2012). *Reviewing the Evidence: How Well Does the European Development Fund Perform?* Overseas Development Institute, ONE, p. 9.

genuine foreign policy based on the values which keep the bloc together<sup>129</sup>. When the EP proposed to adopt this new instrument, it profited from this opportunity to reiterate the importance of adopting a strong foreign policy based on the promotion of human rights, democracy, and rule of law. For this reason, the Parliament pressed to increase the amount of funding adopted by the Union in these activities of at least 2 billion euros and asked for the suspension of assistance in case of severe human rights violations<sup>130</sup>. The NDICI is also considered a very useful instrument to adopt in the broader framework of the EUGS, which finds in development one of its main reasons to exist<sup>131</sup>.

To understand how wide is the perspective of the areas that development assistance includes, it is sufficient to think about those seven that compose the Commitment to Development Index, that measures countries' involvement in the support of the poorest ones: aid, finance, technology, environment, trade, security and migration<sup>132</sup>. In some of these areas, the EU is performing well in comparison with other countries – such as the environment – while in others it may improve – for instance, as far as transfer of technology is concerned<sup>133</sup>. NGO International Human Rights Network, in a research on EU HRBA, has identified five core actions that development assistance projects should concretely carry on. These include<sup>134</sup>:

1. Expressly applying a human rights *framework*, by pretending the respect of specific human rights standards;
2. Ensuring *Empowerment* – rather than charity, guaranteed through information and education;
3. Guaranteeing *participation* in the whole development process;
4. Fighting *discrimination*, especially regarding vulnerable groups;
5. Be *accountable*, by providing impact-assessment and measuring progress.

The HRBA is not an exclusive connotation of development assistance since it could potentially be applied in many other policies or decisions. However, being the EU the principal aid provider for

---

<sup>129</sup> IMMENKAMP, B. (2020). *A New Neighbourhood, Development, and International Cooperation Instrument*. European Parliament Briefing (EU Legislation in Progress, 2021-2027 MFF), pp. 1-4. PE 628.251.

<sup>130</sup> European Parliament Press Releases (2019). *External Action: More Funds for Human Rights, Development and Peace*. March 27<sup>th</sup>, 2019.

<sup>131</sup> EEAS publication (2019). *The European Union's Global Strategy: Three Years On, Looking Forward*, p. 26.

<sup>132</sup> Center for Global Development Website. The Commitment to Development Index 2018. Available at: <https://www.cgdev.org/commitment-development-index-2018>, last accessed 03.05.2020.

<sup>133</sup> BARDEN, O.; CLARK, J.; LÉPISSEIER, A.; REYNOLDS, L.; ROODMAN, D. (2012). *Europe Beyond Aid: Assessing Europe's Commitment to Development*. Center for Global Development, Working Paper 313, Abstract.

<sup>134</sup> *Supra note 120*, p. 68.



developing countries, and being at the same time in the first line for the defence of human rights, adopting an HRBA in the support for the countries of the so-called “Global South” constitute an imperative in its external action<sup>135</sup>.

As the EU has acquired more expertise in handling its external partners, it has been consolidating a development-trade-human rights nexus, thus, aligning Article 21 of the TEU with Articles 207 and 208 of the TFEU. This is primarily linked to the notion that trade affects development, allowing the poorest countries to boost their economy. In addition to that, the GSP – “Generalized Scheme of Preferences”, according to which the EU privileges imports from developing countries through a series of schemes, such as the “Everything But Arms” one – encourages developing countries to improve their human rights protection systems<sup>136</sup>. As part of its strategy of mainstreaming human rights, the EU is due to incorporate them in all its policies, creating a *methodological framework*<sup>137</sup>.

A decision adopted in February 2020 between the EU and Vietnam led to the approval of the most comprehensive trade agreement between the bloc of 27 and a developing country<sup>138</sup>. The agreement finds its basis in the Cooperation Agreement between the European Union and the Socialist Republic of Vietnam approved by the Union following the Council’s decision of 2016<sup>139</sup>. As mentioned in the pages above, the human rights conditions of the country have greatly influenced the Parliamentarian opinion on Vietnam, raising debates especially on the condition of political prisoners<sup>140</sup>. When the Trade Committee gave the green light to the agreement, inviting the EP Plenary to do the same, important contents on the removal of customs duties and tariffs barriers were

---

<sup>135</sup> *Op. cit.*, p. 65.

<sup>136</sup> See Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, Applying a Scheme of Generalized Tariff Preferences and Repealing Council Regulation (EC) No 732/2008.

<sup>137</sup> European Parliament (2009). *Human Rights Mainstreaming in EU’s External Relations*. Directorate-General for External Policies, Directorate B, Policy Department, EXPO/B/DROI/2008/66, PE407003, p. 4.

<sup>138</sup> European Commission, Presse Release. *Commission Welcomes European Parliament’s Approval of EU-Vietnam Trade and Investment Agreements*. Brussels, February 12<sup>th</sup>, 2020. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_227](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_227), last accessed on 02.05.2020.

<sup>139</sup> Council Decision (EU) of 29 September 2016 on the Conclusion, on behalf of the Union, of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part. Official Journal of the European Union, L 329/6. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32016D2117>, last accessed on 02.05.2020.

<sup>140</sup> *Supra note 37*. Point 15 of the Text adopted: “[The European Parliament] Calls for the Vietnamese Government and the EU, as important partners, to commit to improving respect for human rights and fundamental freedoms in the country, as it is a cornerstone of the bilateral relations between Vietnam and the Union, notably in view of the ratification of the EU-Vietnam Free Trade Agreement (EUVFTA) and in view of the EU-Vietnam Partnership and Cooperation Agreement (PCA)”.

acknowledged, but at the same time the Committee firmly required the respect of labour and human rights as a binding rule, otherwise, the deal could be concluded<sup>141</sup>.

#### 1.4 CONCLUSIONS

As stated by the former Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship, Viviane Reding, the EU has become an ‘area of fundamental rights’<sup>142</sup>. Throughout the research, it has been explored the historical path that has rendered the EU a landmark in the protection of human rights. The history of human rights monitoring and defence in the EU is very long, and one of its turning moments is given by the enactment of the Lisbon Treaty. Already at the time, Professor Ignolf Pernice affirmed that the three pillars enshrined in the treaty – namely, the Charter as a binding instrument, the accession to the ECHR and the principles of law contained in the ECJ – would have had an impact in ‘change the face of the Union fundamentally’<sup>143</sup>. The different institutions of the Union encompass the reality of human rights in multiple ways, according to the tools they have at their disposal and the power conferred to them by the treaties, assuring human rights to permeate the numerous aspects of internal and external policies of the Union. Moreover, if it wishes to be recognized as a credible actor, the EU must also assure to find an internal coherence within its Member States on the policies it adopts. The coordination among the different institutions and the countries is therefore an absolute priority, especially in light of the EU’s desire to boost its role of promoter of human rights at the international level, through the European Union Global Strategy launched in 2016, whose focus is primarily on the Mediterranean Area and Neighbourhood countries. Furthermore, development assistance represents an area in which the European Union has the potentiality to lead for a real and consistent change where needed, and it can do that through the adoption of a Human Rights-Based Approach to encourage the pursuit of human rights’ respect in countries recording, for the moment, lower standards of protection. To have a relevant impact, central is for the EU to dispose of a budget that could cover the broad set of topics included in its foreign action, and at this purpose the Commission proposed, in 2018, to increase the

---

<sup>141</sup> European Parliament News, Press Release. EU-Vietnam Free Trade Deal Gets Green Light in Trade Committee. January 21<sup>st</sup>, 2020. Available at: [https://www.europarl.europa.eu/doceo/document/RC-8-2018-0526\\_EN.html](https://www.europarl.europa.eu/doceo/document/RC-8-2018-0526_EN.html), last accessed on 02.05.2020.

<sup>142</sup> DOUGLAS-SCOTT, S. (2011). *The European Union and Human Rights after the Treaty of Lisbon*. Human Rights Law Review. 11:4. Oxford University Press, p. 646.

<sup>143</sup> DE BURCA, G., *Supra note 11*, p. 649.

2021-2027 EU external budget of 30%, reserving a total amount of €123 billion to it<sup>144</sup>. The Strategy also stresses the intent of fostering the strategic autonomy of the Union, becoming an actor committed to multilateralism, even without the support of *giants* like the United States.

---

<sup>144</sup> European Union External Action, *EU to Boost Investments in Global Role with 30% Budget Increase for External Action*, 14<sup>th</sup> June 2018. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/46545/eu-boost-investment-global-role-30-budget-increase-external-action\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/46545/eu-boost-investment-global-role-30-budget-increase-external-action_en), last accessed on 27.02.2020.

## CHAPTER II: JAPAN AND HUMAN RIGHTS

CONTENTS: 2.0. The invention of the word ‘right’ and the concept of Asian value – 2.1. Milestones in Japanese development of human rights policies – 2.1.1. Mechanisms of human rights protection in Japan – 2.1.2. Japanese approach to international human rights law – 2.1.3 Japan’s commitment to human rights in relation to multilateral organizations – 2.2 Status of human rights in Japan’s external relations – 2.3 Towards a Japanese Human Rights-Based Approach to Development? – 2.4 Conclusions.

### 2.0 THE INVENTION OF THE WORD ‘RIGHT’ AND THE CONCEPT OF ASIAN VALUE

Notwithstanding the necessity of preserving the rights of the human being had been professed since remote times and remote areas, it is Europe – and the Western civilization – to be perceived as the main hub where the modern conception of *human right* first spread. From the Early Modern Age, in between the 16<sup>th</sup> and the 18<sup>th</sup> century, human rights evolved together with the development of societies, and with the need that people felt of being safeguarded in different aspects of their everyday life. Thus, starting from natural law, human rights evolved in a manner that included social, political, and economic aspects. Such a discourse is part of the broader notion of transplantation of international law from the West to the East, in what is often interpreted as a process of ‘westernization’, to underline the centrality attributed to the western societies in the development and spread of internal law worldwide<sup>145</sup>. Such a discourse is also behind the myth of ‘European exceptionalism’ which sees Europe as the hometown of democracy and democratic values, including human rights<sup>146</sup>. Indeed, centuries before the early modern age, the notion of human right was already deeply rooted in Asia: Confucian thought and the Indian Laws of Manu are just two examples of the awareness that Asian people had of the meaning behind the preservation of people’s rights. However, we cannot deny the contribution of prominent figures of the Enlightenment, such as Voltaire, Jean-Jacques Rousseau, and Cesare Beccaria in rendering Europe a protagonist in human rights development on a global scale, and in developing and interpreting the issue in an innovative way.

---

<sup>145</sup> MEGURO, M. (2019). *Backlash against international law by the East? How the concept of ‘transplantation’ helps us to better understand reception processes of international law*. Völkerrechtsblog. Available at: <https://voelkerrechtsblog.org/backlash-against-international-law-by-the-east/>, last accessed on 01.02.2020.

<sup>146</sup> FIDH. (2015). *Demystifying Human Rights Protection in Asia* (Background paper). N° 669a, November 2015, p. 9.

Indeed, the moment it reached the Asian world, it turned to be necessary to integrate the modern interpretation of human rights into its social and political fabric. To do so, the first step to take was to understand the new vocabulary that required to be integrated into the legal systems of the eastern countries. In the case of Japan, the non-existence of the concept of *right* put the Empire in the position of searching for a new term that could embrace and fully communicate the meaning of this notion. Expert at the Amsterdam Center for International Law Maiko Meguro reports the reasoning of Japanese statesman and jurist Nobushige Hozumi<sup>147</sup>, who reflected on how the notion of duty or obligation was fairly present in the Japanese language, but not the one of right. According to him, the closest concept to the one of ‘right’ was 分 (*bun*), which could be translated in English into ‘share’ or ‘portion’. Thus, reflecting the importance attributed to the role that the single person occupies for the advancement of the society: a very fundamental aspect of Japanese culture, where more emphasis is attributed to the community, rather than the individual. It was only in the late 19<sup>th</sup> century, following the openness towards European and American culture, technology and ideas, that the intellectual Yukichi Fukuzawa coined the term 人權 (*jinken*) the Japanese word for human right<sup>148</sup>.

When human rights reached Asian peoples, the semantic one was not the only obstacle to overcome: indeed, the moment in which the clash with the notion of ‘Asian value’ exploded, another problem emerged.

The crystallization of Asian values happened in several steps. The 1955 Bandung Conference of non-aligned states gave a first, significant dash to the notion, strengthening the existence of a ‘third-world identity’ looking with a critical eye at Western States. However, the real recognition of Asian values as a doctrine happened at the end of the Cold War, and particularly it coincides with the economic rise of the so-called four *Asian Tigers* – Singapore, Taiwan, South Korea, and Hong Kong – putting on the table new political and social rights, hand in hand with a committed defence of the cultural identity of these territories. At the time, two of the main supporters of the notion of Asian values were Mahathir Mohamad, who was Prime Minister of Malaysia for more than twenty years, from 1981 to 2003; and Lee Kuan Yew, Singapore’s Prime Minister from 1959 to 1990<sup>149</sup>.

---

<sup>147</sup> Statesman, jurist, and legal expert of the Meiji period.

<sup>148</sup> Asia Pacific Human Rights Information Center. *Overview: Human Rights in Japan*. Available at: <https://www.hurights.or.jp/english/hurights1/human-rights-in-japan.html>, last accessed on 04.02.2020.

<sup>149</sup> *The Asian Value debate and its relevance to international humanitarian law*. In ‘International Review of the Red Cross’. 2011. Available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jqz1.htm>, last accessed on 05.02.2020

Among the main principles of Asian values, there are: (i) respect for authorities and elders, (ii) the quest for harmony inside the society, (iii) the emphasis given on individuals' role and commitment for the good of the community<sup>150</sup>. Thus, the notion has often been adopted as an attack in front of the shreds of evidence of European imperialism in Asia and the imposed 'Westphalian sovereignty'. Such a barricade has also been raised as a means to justify a refrain from conceding individual rights at the expense of the collectivity's ones. Indeed, it posits that there are some inevitable incompatibilities occurring between certain traits of Asian culture and specific rights and freedoms internationally recognized and accepted<sup>151</sup>. The primacy of economic development over civil and political rights is another defensive argument adopted to justify the discourse of Asian values. This argument was adopted primarily by China, has it happened during the World Conference on Human Rights in 1993. In that circumstance, the representative of China, Mr. Liu Huaqiu, affirmed that economic development trumps everything in a context in which basic needs are not available. His view was manifestly supported by the Government of Singapore, affirming that *'our experience is that economic growth is the necessary foundation of any system that claims to advance human dignity, and that order and stability are essential for development'*<sup>152</sup>. To justify this position, and the idea that advancement in human dignity and human rights could be achieved only after the fulfilment of economic necessities, it was adopted nothing less than the example of Western countries, where democracy necessitated two hundred years to evolve.

Although the concept of 'Asian values' keeps together several societies around the continent, each one of them has developed its specificities and peculiarities, according to its own history and tradition. In this way, the notion creates a common denominator among multiple Asian cultures, coinciding with the refuse of the universal essence of human rights, and the attack of fundamental freedoms such as the freedom of expression, and individualism. This constitutes, in fact, a very specific trait of the 'Japanese value' notion. As there is no scientific and irrefutable definition of what it is, we can only speculate on what Japanese value is about<sup>153</sup>. Professor Shigenori Matsui, of the University of British Columbia, in Canada, underlines how the call to restore traditional Japanese values is nonetheless 'a

---

<sup>150</sup> *Op. cit.*

<sup>151</sup> FIDH. *Supra note 146*, p. 7.

<sup>152</sup> KAWAMURA, A. (1997), *Human Rights and the 'Asian' Perspective*, HURIGHTS OSAKA. Volume 10. Available at: <https://www.hurights.or.jp/archives/focus/section2/1997/12/human-rights-and-the-asian-perspective.html>, last accessed on 02.02.2020.

<sup>153</sup> MATSUI, S. (2018). *Fundamental Human Rights and 'Traditional Japanese Values': Constitutional Amendment and Vision of the Japanese Society*. *Asian Journal of Comparative Law* (13), pp. 59-86.

form of anachronistic nostalgia for the Meiji Era'<sup>154</sup>. It is a notion that echoes a past epoch, which can be traced back to the Meiji era, a period of great transformation that was decisive in defining the legal system of the country. In the Meiji era, the concept of 家 (*ie*) was the prevalent one, and it referred to the household, the family, that constituted the basis of the society. Families represented the community, and the protection of individual rights was overshadowed. Scholars agree in recognizing that neither Asian values, neither Japanese values are acceptable discourses to justify the restriction of fundamental rights and liberties of the single person. It should also be underlined that, albeit we put aside the pressure coming from the international community, the discourse on Asian values has been blurring from the inside. The 1997 economic crisis put into question the 'development-first' rhetoric that has characterized the previous years, consequently leading to doubts about the concrete effectiveness of Asian values, which have often been praised as the main reason behind the economic success of East Asian countries<sup>155</sup>. At the same time, the pressure coming from NGOs and also indigenous communities in having their rights recognized – particularly, freedom of expression – contributed to the blurring of such a notion. It follows that, even though we cannot put aside the mistakes made with years of imperialism and colonialism, the paradigm of universalism cannot be distorted as an attempt to impose western values on eastern values. The universality of human rights is a concept that cannot be questioned by the canons developed within the Universal Declaration of Human Rights and in the face of progress made in affirming the indivisibility and interdependence of human rights, thus; including social, economic, political and civil ones.

## 2.1 MILESTONES IN JAPANESE DEVELOPMENT OF HUMAN RIGHTS' POLICIES

### 2.1.1 MECHANISMS OF HUMAN RIGHTS PROTECTION IN JAPAN

According to Takao Suami, Professor of Law at Waseda University, in Tokyo, Japan's approach to human rights is rather specific and characterized by certain features. Echoing the discourse of Maiko Meguro on the linear transplantation of international law from the Western World to the Eastern

---

<sup>154</sup> *Op. cit.*, p. 60.

<sup>155</sup> The discourse about Asian values, does not have only an ethical and moral footprint: it has often been interpreted as the only possible way to assure the economic shining of Asian countries. For more details, please refer to: Hang Sung-Joo, *Asian Values: Asset or Liability?*, in 'Changing Values in Asia: Their Impact in Governance and Development'. Tokyo, Japan Center for International Exchange, 1999.

one<sup>156</sup>, Takao Suami highlights how on one side ‘European scholars compete each other for the originality of their ideas’ whereas on the other ‘Japanese scholars compete with each other for the details of their analysis’<sup>157</sup>. In the human rights history of Japan, it is possible to identify two significant moments that marked a difference in how human rights are conceived and implemented in the country. Both moments correspond to a revision of the legal and judicial system of the country, through the formulation of a new Constitution.

The first one coincides with the singular transformations that the country underwent during the 19<sup>th</sup> century, and which led to the promulgation, in 1889 (and its entry into force the following year), of the 明治憲法 (*Meiji Kenpō*) the Meiji Constitution; or Constitution of the Emperor. It is also the oldest modern written Constitution adopted in Asia. After the arrival of Europeans and Americans, and in a relatively short amount of time, Japan reconsidered the concept of equality, clauses concerning human rights were introduced, and new legislation similar to that of Great Britain and France was implemented. By the time foreigners were entering the country, not only Japan perceived the significant lack of its judicial system, but its militaristic ambitions also emerged. When Taiwan was under the control of Japan, cruel acts to repress the population frequently took place. The new knowledge acquired after the arrival of the Europeans contributed to foster a feeling of political superiority towards the close Asian countries<sup>158</sup>.

The new interpretation of human rights following the openness towards the West happened through the implementation of new pieces of legislation such as the Civil Code and Criminal Code, and including human rights-related articles directly into the Constitution. Chapter II of the text, which includes articles from 18 to 32, relates to the rights and duties of citizens. In particular, articles from 27 to 30 dealt, in order, with the right of property, freedom of religion, freedom of speech, writing, publication, and association, and freedom of petition and complaint to the rules<sup>159</sup>. We realize how a new emphasis was given to human rights, but that was not yet comparable with the one provided by Western countries: there were still significant gaps that needed to be fulfilled. Indeed, the rights

---

<sup>156</sup> MEGURO, M. *Supra note 145*.

<sup>157</sup> SUAMI, T. (2018). *A Japanese Approach to International Law. Territorial disputes and investment dispute settlements*. Völkerrechtsblog. Available at: <https://voelkerrechtsblog.org/a-japanese-approach-to-international-law/>, last accessed on 04.02.2020.

<sup>158</sup> YOKOTA, Y. (2003). *Nihon no jinken sekai no jinken* (Human Rights in Japan and in the World). Shinzanshashuppan, 1<sup>o</sup> version, pp. 84-87.

<sup>159</sup> Meiji Constitution of Japan. Available at: <https://www.ndl.go.jp/constitution/e/etc/c02.html>, last accessed on 07.02.2020



remained in any case guaranteed ‘within the limits of the law’<sup>160</sup>, meaning that restrictions could be justified. To make an example, the rights of indigenous people such as Ainu and Okinawans were still limited, a condition that showed the low level of tolerance that the Japanese population had towards diversity<sup>161</sup>.

As abovementioned, the second moment that led to a human rights’ reconsideration in Japan coincides, once again, with a revision of the Constitution. It is not possible to analyse the development of the Japanese human rights system without taking into account the history of the country after World War II, and particularly in the aftermaths of the American occupation.

The end of the war marked a completely new role of Japan in the world. The isolationism and imperialist attitude that had characterized the country during the conflict, testified by concrete actions such as the alliance with the Axis Powers, the withdrawal from the League of the Nations over the Manchurian issue, and the colonial rule over several parts of Asia – had been abandoned. Instead, the country had been crossed by a new desire of accepting and introducing the liberal values professed by the western, being recognized as a power in East Asia, and as a trustable ally<sup>162</sup>. The United States played a central role in redefining Japan’s new role and the concept of human rights that needed to be understood, in a way that was profoundly different from the one that the country had held before the beginning of the conflict. With these premises, it started the transformation of Japan into a *merchant nation*, that is, a country concentrating its effort mainly in the trade and economic expansion, and eluding military development<sup>163</sup>. But Japan was not the only theatre of changes during this period. While the Land of The Rising Sun was focusing on revitalizing its economy, an intense process of reform of the geopolitical scenario was occurring in the other side of the planet: this included the establishment of the OEEC and the ECSC, then the NATO alliance and EURATOM for military purposes, and – from a political standpoint – the European Political Cooperation (EPC) in the early 1950s.

The American occupation started after the surrender of Japan (1945) until 1952 and was led by General Douglas McArthur. The drafting of a new Constitution, that could reverse the absolute power

---

<sup>160</sup> NISHIKAWA, T. *The Future of the Japanese Constitution: From the ‘McArthur Constitution’ to What?*, 比較法文化第 1 7 号 pp- 51-79.

<sup>161</sup> MORRIS-SUZUKI, T. (2018). *The Constitution, Human Rights and Pluralism in Japan: Alternative Visions of Constitutions Past and Future*. The Asia Pacific Journal, Volume 15, Issue 5, No 1. Available at: <https://apjjf.org/2018/5/Morris-Suzuki.html>, last accessed on 02.01.2020.

<sup>162</sup> Stimson’s Japan Program, *Japan as a Peace Enabler – Views for the next generation*, edited by Yuki Tatsumi, 2016, p. 24.

<sup>163</sup> MYKAL, O. (2011). *The EU-Japan Security Dialogue: Invisible but Comprehensive*, Amsterdam University Press, p. 38.

attributed to the Emperor, represented for the Americans one of the main goals to achieve during this period: only when Japan would have undergone a process of democratization and reformation, it would have been possible for the American troops to leave the territory.

The text of the new Constitution has been drafted in the record time of nine days. Still today, it represents the highest source of legislation in Japan, and it has never been amended. Not only it provides greater emphasis on human rights, in comparison with the pre-war Constitution, but it also accentuates a new interpretation of the concept of human rights. While the previous text was based mainly on the German conception of legal positivism, product of the doctrine of state law, the new one emphasized the notions of individualism, equality, and freedom which reflected the long fights for civil rights that has characterized American history<sup>164</sup>. As mentioned, the American occupation had a significant role in defining the concept of human rights in Japanese society. This was clearly stated in Article 11 of the constitution. Article 11 is also fundamental in respecting the principle of *pro homine*, a very important one in human rights, asserting the primary importance of the defence of the human being<sup>165</sup>. Despite the efforts of the American forces during the occupation period to create a new system to safeguard and assure the protection of human rights in Japan, some of the lacks already present in the Japanese human rights protection system were not contrasted. Going back to the previous example of indigenous populations or minorities, Okinawa citizens were still excluded from voting rights, resorted only with the reversion of Okinawa to Japan, in 1971<sup>166</sup>.

Along with the drafting of the new Constitution, in 1947, two other important initiatives to implement a reform of human rights were taken: the patriarchal system was abolished through an amendment of the Civil Code, and the 労働基準法 (*roudou-kijunhou*) Labour Standards Act – prohibiting child labour – was enacted<sup>167</sup>. This last one assured better working conditions for Japanese people, stating in Article 1 that ‘*working conditions shall be those which should meet the needs of workers who live lives worthy of human beings*’ and also guaranteeing in Article 7 the exercise of civil rights for the workers<sup>168</sup>.

Article 9 is without any doubt the most controversial one contained in the Constitution. Stating the renunciation of Japan to war, it affirms that the country must renounce to its war potential, including

---

<sup>164</sup> NISHIKAWA, T. *Supra note 160*.

<sup>165</sup> DE OLIVEIRA MAZZUOLI V., and RIBEIRO, D. (2015). *The Japanese Legal System and the Pro Homine Principle in the Human Rights Treaties*. In ‘Anuario Mexicano de Derecho Internacional’, Vol. 15, pp. 239-282.

<sup>166</sup> MORRIS-SUZUKI, T. *Supra note 161*.

<sup>167</sup> KOIKE, O. (2014). *Reform of Human Rights Institutions in Japan*, Yokohama Law Review Vol. 22, No. 3, pp. 77-88.

<sup>168</sup> Labour Standards Act of Japan, 1947.

land, sea, and air forces, allowing the exclusive existence of a defensive capability (the Self Defence Forces, SDF). Thus, paving the way for the discussion concerning the deprivation of Japan of being a 'normal State'. Furthermore, the way and means that the country should follow to reach this status are not completely transparent, and according to some, by preventing Japan from having a normal army, this also impedes the country to take part with its complete potential in pacific acts, such as peacekeeping operations<sup>169</sup> – a topic that will be better defined in the next Chapter.

In the aftermath of the American occupation, attempts to amend the Constitution regularly took place in Japan. A great part of the debate focused precisely on the revision of Article 9. The main debate on the constitutional revision is developed in three different schools of thought<sup>170</sup>. The first one, known as 改憲論 (*kaikenron*, 'Constitutional reform') supports a complete reformulation of the text. This belief comes with the conviction that the Constitution has been forcedly imposed on the Japanese people by the Americans, and by General Douglas MacArthur in person. Two years after the American troops left the country in 1952, Ichiro Hatoyama's administration made significant efforts to spread this idea, and new attempts resurfaced when Yasuhiro Nakasone was premier in the eighties, and again with the anniversary of the fifty years of the Constitution in the following decade<sup>171</sup>. The main efforts to revise the text have always been carried on by the Liberal Democratic Party. The LDP is the political party currently in power in Japan, and it has been for many years, except for a brief interruption in 2009 when it was substituted by the Democratic Party of Japan. In both the proposed amendments of the years 2005 and 2012, many provisions have been made in order to modify the existing rights expressed in the Charter and to add new ones<sup>172</sup>. Still today, the strongest voice asking for a revision of the text's content is the one of the Liberal Democratic Party, and according to many commentators, Prime Minister Shinzo Abe will be the one capable of leading the country to a final amendment of the text<sup>173</sup>. The main justification regularly adopted by the LDP to amend the Constitution is due to the conviction that it has been inflicted on people and that it does not respect the 'Japanese traditional values' and Japanese culture. Some of the criticisms even relate to the language adopted, not being considered as elegant enough for Japanese standards. Constitution in hand, the parts of the text which mainly abuse and overcome such concept of traditional values are precisely those related to human rights. For this reason, the ruling party had tried to amend the

---

<sup>169</sup> HUGHES, C.W. (2006). *Why Japan Could Revise its Constitution and What it Would Mean for Japanese Security Policy*, Elsevier Limited (on behalf of Foreign Policy Research Institute), p. 725-744.

<sup>170</sup> NISHIKAWA, T. *Supra note 160*.

<sup>171</sup> *Ibid.*

<sup>172</sup> MATSUI, S. *Supra note 153*, pp. 71-79.

<sup>173</sup> *Ibid.*

Constitution many times in the past, and in particular the bill of rights. The LDP Trojan horse of restoring those old traditional values clashes with the principle of *'Solidarity with the World in Fighting for Common Human Values'*, mentioned by the party<sup>174</sup>. The Constitution is often blamed to put too much attention on the rights and liberty of citizens, instead of their duties and responsibilities<sup>175</sup>. This conception underlines two significant tendencies that deserve to be mentioned for the purpose of the present thesis. The first of them, already discussed, concerns the collectivist attitude of Japan, that drove the reconstruction of the country following World War II, giving more emphasis on group dynamics rather than individual rights<sup>176</sup>. Secondly, the concept of 'excessively emphasize human rights' sounds highly controversial, especially if we think of it in comparison with the European Union countries, where human rights take much space in the political discourse.

The discourse on the constitutional amendment refers mainly to existing human rights articles and the necessity of adding new ones. As abovementioned, an important attempt to modify the text took place in 2012, intending to give a new perspective and a new interpretation of human rights protection within the country. The justification that has been provided by the LDP in the struggle to modify the Constitution was the following:

*'Rights are gradually generated from the history, tradition, and culture of the community. Accordingly, human rights provisions need to be based on the history, culture, and tradition of our country. There are some provisions in the current constitution that could be viewed as being derived from the European idea that human rights are granted by God. We believe that these provisions need to be revised'.*

A first impression could be that the LDP is putting into question the universality of human rights. According to the party's point of view, human rights are linked to the values of the society and the country which adopts them. Here an idea of defending and restoring traditional Japanese values shrines, and it cannot be accepted, being adopted as a justification to reduce personal and individual rights.

---

<sup>174</sup> Liberal Democratic Party of Japan Website. Available at: <https://www.jimin.jp/english/news/131069.html>, last accessed on 08.02.2020.

<sup>175</sup> MATSUI, S. *Supra note 153*, p. 69.

<sup>176</sup> DE PRADO, C. (2017). *Towards a Substantial EU-Japan Partnership*. *European Foreign Affairs Review* 22, No. 4, pp. 435-454.

The second current of thought is the one in support of 主權論 (*shukenron*, literally ‘Constitution sovereignty’). Its exponents are the main enthusiasts of the idea that the Constitution needs only a partial revision, mainly justified by the fact of being obsolete: thus, necessitating the inclusion of new rights, such as privacy, access of information, healthy environment and lowering legal age for adulthood (from 20 to 18 years old), and currently, there is also a debate on the revision of the right to a minimum standard of living, already present in the Constitution, but deemed outdated.

The last current of thought asserts that the Constitution, as written now, does not need any changes to be applied. This doctrine is called 護憲論 (*gokenron*, literally ‘Constitution defence’). Albeit this sounds like the most conservative of the positions analysed, it is the one taken by the representatives of the left-wing, especially the Social Democratic Party (SDPJ), well known for its firm position in defence of the present Constitution, and in particular of Article 9. According to the Party, Japan could contribute to international welfare without the use of any force, for instance, through humanitarian aid and assistance. The position of certain exponents of the leftist area of the Japanese political scenario could be so strict in the lecture of Article 9, to insist that even the SDF have to be considered unconstitutional<sup>177</sup>.

Another sensitive issue is the one concerning human dignity. As it happens for the concept of traditional values, there is a different perception of what could be intended to be ‘human dignity’ in Eastern and Western Societies. Human dignity is a concept that, in simple words, could be adopted as the criterion to define what is considered to be a good life to people<sup>178</sup>. This concept inevitably comes with some relevant cross-cultural differences. It deserves attention in the present context due to its link and association with human rights, and consequently, on how they are interpreted and implemented among diverse countries. According to Howard and Donnelly’s interpretation, international human rights standards are based on a conception of human dignity backed by liberal values<sup>179</sup>. Here could come the temptation to interpret the implementation of human rights in the whole of Asia, something that cannot be done, since every country has a different history and passed through different sort of transformations. Indeed, if we think about human rights, it is very difficult to put together portions of Asia in their approach towards the issue, even countries that could be thought to be similar to one another. This is also what it makes difficult to create a regional

---

<sup>177</sup> TREZISE, T. (1992). *Japan’s Peacekeeping Forces*. In ‘The Brooking Reviews’, Vol. 10, No. 4, p. 5.

<sup>178</sup> LEE, M.Y.K. (2008). *Universal Human Dignity: Some Reflections in the Asian Context*. In ‘Asian Journal of Comparative Law’, Volume 3, Issue 1, Article 10, pp. 1-33.

<sup>179</sup> *Ibid.*

mechanism of implementation and protection of human rights in this area of the world. Yozo Yokota, who was UN Rapporteur for the status of human rights in Myanmar, in his Japanese book 日本の人権、世界の人権 (English title: 'Human rights in Japan and in the world') reflects on how new urgent human rights issues constantly emerge, and he reflects on the issue of human genome<sup>180</sup>. This is a topic strictly related to human dignity, and also the UN has faced the issue implementing a Resolution in 1997, with the final aim of preventing cases of cloning that could compromise human dignity<sup>181</sup>. What we can say although is that there is a tendency to recognize Asian societies as collective. Collectiveness is an important matter not only for Japan but in the whole context of human rights because it is determinant in assessing their implementation inside the societies. While those that are commonly defined as 'European rights' tend to focus more on the individual sphere, in Japan (as in other Asian nations) 'the vision to build a society where collective interests thrive prompted many states to realize those values through public policies'<sup>182</sup>. The concept of collectivity is also fundamental in understanding the reasons behind the exclusion of certain individuals from the protective umbrella of human rights. Criminals, people with disabilities, and other categories of people may be less safeguarded due to their difficulties in contributing to the evolution of society. For instance, Japan has a long and controversial history with eugenics, and particularly with the Eugenic Protection Law, whose main goal was to 'prevent birth of inferior descendants from an eugenic point of view, and to protect life and health of the mother, as well'<sup>183</sup>. The law fomented feminist movements, and the desire of women to be protected by the adequate abortion laws. The regulation was repealed only in 1996, and substituted with the Maternal Protection Law, forbidding any form of eugenic practice in the country<sup>184</sup>.

For what concerns the idea that the Constitution has been enforced to the Japanese, there are relevant proofs that this did not happen and that Japanese people and experts of the country's culture actively contributed to its drafting. Indeed, some constitutional proposals devised by Civil Society Organizations have been discovered, many of them centred on human rights. One of these proposals,

---

<sup>180</sup> According to the definition provided by UNESCO, human genome is 'the complete set of genetic material of the human being. [...] In a symbolic sense, it is the heritage of humanity'. Available at: <https://en.unesco.org/themes/ethics-science-and-technology/human-genome-and-human-rights>, last accessed on 06.02.2020.

<sup>181</sup> YOKOTA, Y. *Supra note 158*, p. 180.

<sup>182</sup> LEE, M.Y.K. *Supra note 178*, p. 14.

<sup>183</sup> Japan's Eugenic Protection Law, Article 1.

<sup>184</sup> TSUCHIYA, T. (1997). *Eugenic Sterilizations in Japan and Recent Demand for Apology: A Report*, Network on Ethics and Intellectual Disability, Vol. 3, No. 1, pp. 1-4. Available at: [https://www.lit.osaka-cu.ac.jp/user/tsuchiya/gyoseki/paper/JPN\\_Eugenics.html](https://www.lit.osaka-cu.ac.jp/user/tsuchiya/gyoseki/paper/JPN_Eugenics.html), last accessed on 07.02.2020.

presented on 26 December 1945, was modelled on the Weimar Constitution and referred to unfettered human rights. There was also a draft proposed by the Anarchist League – at the time more popular than the Communist Party – and which consisted of a ‘Declaration of Human Rights’. Moreover, a poll published by the newspaper *Mainichi Shimbun* in May 1946 showed that 85% of the Japanese population supported the draft. Eventually, there are thirty-two, out of the total 103 articles, dealing with human rights<sup>185</sup>. There is a very curious story to argue against the common belief that the Constitution has been imposed, a story that could also be used as an example of the fact that the final text also contains a significant feminist footprint. The protagonist is Mrs. Beate Sirota Gordon (1923-2012): she was born in Austria, in a Jewish family. Her father was a piano artist, whose popularity pushed him to move to Tokyo, to teach at the Imperial Academy of Music. He brought with him his family, and Beate was only five years old at the time. After having studied for a period in Japan, she moved to the United States to continue her education. Meanwhile, the outbreak of World War II made impossible for her to communicate with her parents, still living in Japan. Thanks to her talent in mastering foreign languages, she was recruited as an interpreter of McArthur’s staff and was eventually capable of flying to Tokyo and reunite with her parents. Beate then became one of the very few women, surrounded by a circle of men, to be assigned to the Constitutional Committee. At this moment of the story, she came into possession of as many copies of countries’ constitutions as she could, and she came out with two of the most relevant articles on human rights inserted in the post-war Constitution: Article 14 and Article 24. The first one affirms that ‘*All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin* [...]’. Article 24 provides provisions for marriage equality and human dignity. The intention of Beate Sirota Gordon, who had lived more than a decade in Japan and was deeply aware of the problems of injustice and inequality that affected the country, was to drastically reduce and criminalize them. Her main focus was on the role of women, that she aspired to provide with equal rights of men. Also thanks to her tireless effort, Japan became one of the first countries where universal suffrage was recognized, in 1947. The feminist imprint provided by Beate Sirota Gordon surely contributed to making Japan doing a step forward in the accomplishment of gender equality, a goal that nevertheless remains far from being achieved. However, those articles formulated with passion and in the hope of allowing Japanese women to live in a more equal society aroused scepticism. The expression ‘all of the people’ adopted in Article 14 has been particularly discussed. As Yozo Yokota points out, could the term ‘people’ be considered as

---

<sup>185</sup> NEARY, I. (2002). *Human Rights in Japan, South Korea and Taiwan*. Routledge, p. 19.

inclusive? Or does it mean rather that those who do not benefit from Japanese citizenship, in other words, the foreigners, are excluded<sup>186</sup>? It is hard to find an answer to this question, even today.

Once the Constitution entered into force, it was time to inform Japanese citizens about their new rights. This led to the creation, in May 1948, of the Civil Liberties Bureau; and in July of a system of Civil Liberties Commissioners (CLCs) whose main aim was to raise awareness concerning the human rights that Japanese citizens could enjoy<sup>187</sup>.

Today, the implementation of a system of human rights protection in Japan is determined by the joint action of two parallel systems: the Human Rights Bureau and the Human Rights Volunteers. The Human Rights Bureau acts under the supervision of the Japanese Ministry of Justice. It is a national, administrative organ, in charge of promotion and protection of human rights, in a joint action with 42 Human Rights Divisions of the District Legal Affairs Bureaus located in Hakodate, Asahikawa, and Kushiro, and in the seats of prefectural governments – exception made for those where the other organs operating in coordination with the HRB work, that is, the Human Rights Departments of the Legal Affairs Bureaus. These last ones are eight in total, situated in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. The main initiatives of these institutions consist of human rights counselling, providing remedy procedures following the report of violations, and initiating awareness-raising activities to promote consciousness among citizens. In order to facilitate the process of complaint, the MoJ provides the Legal Affairs Bureaus and District Legal Affairs Bureaus with a request form for complaints<sup>188</sup>. The work of the HRB is complemented by the participation of the Human Rights Volunteers, which allows an active involvement of the civil society in the promotion and protection of human rights. Whereas the Human Rights Bureau was instituted following the model of the Civil Liberties Bureau of the United States, the system of the Human Rights Volunteers is originally from Japan, and it derives from an initiative of volunteering that already existed, 民生委員 (*Minsei Iin*)<sup>189</sup>. The idea of Human Rights Volunteers started in 1948, it is voluntary-based, not remunerate, and at present, the MoJ counts a total of 14,000 private citizens engaged in the project<sup>190</sup>. Their main tasks consist of counselling, that could be provided through reserved meetings or also by phone; and awareness-raising activities. The Government of Japan gives

---

<sup>186</sup> YOKOTA, Y. *Supra note 158*, p. 166.

<sup>187</sup> NEARY, I. *Supra note 185*, p. 27.

<sup>188</sup> Ministry of Justice, Human Rights Bureau. Available at: <http://www.moj.go.jp/ENGLISH/HB/work/index.html>, last accessed on 04.02.2020.

<sup>189</sup> KOIKE, O. *Supra note 167*, p. 77.

<sup>190</sup> Human Rights Bureau, About Human Rights Volunteers. Available at: <http://www.moj.go.jp/ENGLISH/HB/about/volunteers.html>, last accessed on 08.02.2020.



great importance to such initiatives, many of them reserved for young students, such as the Contests on Human Rights for Junior High School Students. The aim is to provide basic knowledge of fundamental human rights to people since the youngest age. Every year since 1966, the bodies of the MoJ define a goal that constitutes the priority and the main focus around which the awareness-raising activities rotate, and that is usually strictly connected with actual problems or conditions related to human rights. For instance, the goal for 2018 was ‘Building a Century of Human Rights: Caring about How Other Feel and Passing down the Concept of Mutually Recognizing Differences to the Future’. Indeed, 2018 marked the 70<sup>th</sup> anniversary of the UDHR, therefore there were high expectations on the outcomes of that year’s human rights awareness initiatives. Furthermore, the Network Associations of Human Rights Awareness-Raising Activities was created at both prefectural and municipal level to facilitate the activities of awareness-raising, and enable the coordination among the Ministry of Justice and local centres<sup>191</sup>.

When a human right’s violation occurs in the country, the adequate bodies of the Ministry of Justice begin a process of investigation, that could be implemented even if there is only the suspect of a possible violation. The investigation is not due to following any specific criteria; therefore, its progress is linked with the cooperation of the people involved. There are different measures that can be taken once the investigation is concluded, according to its outcomes and the gravity of the situation. These measures include “assistance” (providing legal advice), “conciliation” (mediation between the parties involved), “instructions” or “recommendation”. Aftercare could also be provided to the victims, whether necessary<sup>192</sup>.

When speaking about human rights, ‘promotion’ and ‘protection’ are two recurring words. It is very important for these two acts to be implemented in coordination, and to not let the first overlap the second, or vice versa. This is a problem occurring at Japanese and Asian level, more broadly<sup>193</sup>. Episodes of ambivalence and criticisms of the country following the visits of UN Special Rapporteurs also occurred, for instance, when the Special Rapporteur on the right to privacy Joseph Cannataci expressed his concerns over possible restrictions to freedom of expression due to the anti-conspiracy bill after his visit in Japan in May 2017. Japan responded *that ‘The letter was released unilaterally*

---

<sup>191</sup> Network Associations of Human Rights Awareness-Raising Activities. Available at: <http://www.moj.go.jp/jinkennet/>, last accessed on 05.02.2020.

<sup>192</sup> Human Rights Bureau, Ministry of Justice. The Protection of Human Rights – Building a Century of Human Rights. 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights. Available at: <http://www.moj.go.jp/content/001277221.pdf>, last accessed on 08.02.2020.

<sup>193</sup> FIDH. *Supra note 146*, p. 21.

*without the Japanese government or the Ministry of Foreign Affairs having the opportunity to directly explain the legislation (to Cannataci)'*<sup>194</sup>.

Despite some controversial points emerge in analysing the implementation of human rights in Japan, the country is under constant effort to apply adequate measures for spreading the knowledge and protection of human rights throughout the country. In view of the Paralympic Games 2020 – then postponed following the outbreak of the Coronavirus crisis – the Government of Japan is giving great emphasis to the respect of human rights, inclusion, and diversity, trying to act in accordance with the Guiding Principles on Business and Human Rights promoted by the United Nations, raising awareness on diversity and inclusion, and secure the accessibility to the event<sup>195</sup>. Another interesting example is given by the existence in the capital of the country, in the Meguro area, of a 'Tokyo Human Rights Plaza', promoting activities to boost the knowledge on the topic, and providing in-place assistance or consultancy whether required. The exhibition is organized in several areas, including games and interactive tools to raise awareness about problems related to human rights in everyday life, cultural experiences to understand better about minorities such as Ainu, and it explains the main human rights issues that the Government of Tokyo has to deal with, focusing on seventeen priorities. A seminar room allows lectures and workshops to be held. On the second floor, a library consents to borrow material related to human rights, and a counselling room accepts requests for therapy. There is also a special exhibition room which, at the time of the draft of this thesis, showcases the project 'STAND', displaying pictures taken by photojournalist Nobuko Oyabu of women who have been victims of violence, briefly describing their histories and courage in escaping dramatic situations. Also, a relevant space is completely dedicated to the Olympic Games: the intention is to make the whole experience as inclusive as possible, especially in the framework of the Paralympics, and according to the standards dictated by the Olympics Charter. Surely, the event has represented for Japan an occasion to review its system of human rights, for example, the Tokyo Metropolitan Government promoted ordinances with the aim of making the respect of human rights a reality for the whole city, particularly focusing on the promotion of diverse sexuality and elimination of discrimination against foreigners.

The main feeling of the whole experience is that the city of Tokyo has a great desire of demonstrating to be a place adequate to international human rights standards, through the implementation of help

---

<sup>194</sup> OHCHR Archive, Mandate of the Special Rapporteur on the Right to Privacy. Available at: [https://www.ohchr.org/Documents/Issues/Privacy/OL\\_JPN.pdf](https://www.ohchr.org/Documents/Issues/Privacy/OL_JPN.pdf), last accessed on 07.02.2020.

<sup>195</sup> See Tokyo Olympics Website, Human Rights, Labour and Fair Business Practices. Available at: <https://tokyo2020.org/en/games/sustainability/humanrights/>, last accessed on 07.02.2020.

and support systems and coordination with private organizations and third parties, and to show it to the world when thousands of tourists will flock to the capital to watch the games. The Government of Japan says it clearly, affirming, in one of the interactive videos displayed on the screens, that it wishes to render the capital 'the world's best city to promote human rights'. The same video ends with a sentence that invites the tourist to reflect: 'when the Olympic and Paralympic will come to Japan, which kind of city will Tokyo be?'

### 2.1.2 JAPANESE APPROACH TO INTERNATIONAL HUMAN RIGHTS LAW

The absorption of international law within a country's legal system takes place at different stages<sup>196</sup>, starting with the adoption phase, which includes the discussion over the treaty or rule in question, and its possible ratification. Only at this point does the compliance phase begin, i.e., when the state takes the first concrete measures consistent with the treaty obligations. The compliance phase considers three essential elements that are legitimacy, the degree of conflict between international and domestic norms, and how strong and significant the latter are. These factors are interconnected, and determine the end of this phase by obtaining the identification of the norms acknowledged within the analysed treaty. Only when the state identifies as illegitimate any violation of the law in question, an integration and thus institutionalization into the legal system of the country has occurred. However, full compliance with international law remains rare to achieve, and Japan is not exempt from this logic. Beyond the binary logic of norm makers and norm takers, in which Japan is identified neither as a generator of international human rights norms neither as open towards global norms, the country has shown to comply with international human rights legislation in different ways<sup>197</sup>. As mentioned in the previous paragraph, one of the main issues in the implementation of international human rights in Japan is due to the high importance attributed to the Constitution, perceived as the absolute principal source of legislation within the country. Nevertheless, the obligations deriving from international treaties should be respected as well. Such principles are enshrined in Article 98 of the text, stating that '*this Constitution should be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions thereof, shall have legal force or validity*'. The Article continues affirming that '*the treaties concluded by Japan and established laws of nations shall be faithfully observed*'. Japan has a duty to respect and implement in its legal system international law, which trumps domestic law. The body of domestic laws needs to be

---

<sup>196</sup> FLOWERS, P.R. (2016). *International Human Rights Norms in Japan*. Human Rights Quarterly (38), pp. 85-107.

<sup>197</sup> *Ibid.*

analysed before the Parliament of Japan (Diet) ratifies a human rights treaty, this implies a high level of conflict whether it is necessary to make substantial changes to the existing legislation, or it is necessary to create new one<sup>198</sup>. Even in front of this, several scholars are adopting some counter-arguments to support again the idea that there is no form of legislation (national or international) above the Constitution in Japan. International law's scholars Valerio de Oliveira Mazzuoli and Dilton Ribeiro point out the 'Westphalian paradigm' which crystalizes the notion of law as set from State to State. According to their interpretation, Japan is a 'monist' country, meaning that international treaties are incorporated into the domestic legal system without the need for any legislative act or instrument, other than the act itself of acceptance of the treaty. This means that, whether they are self-executing, the treaties become legally binding in the domestic law of Japan<sup>199</sup>.

The duties deriving from the incorporation of international law on one side, and the undiscussed supremacy of the national Constitution on the other, could help in explaining the division among Japanese lawyers in their visions concerning how international law should be implemented. According to Iwasawa, the effects of international human rights law in Japan is *contextual*, depending on the status of the law, the type of treaty, and the decision of the judge<sup>200</sup>. Such a situation makes it difficult to find a common approach in the implementation of these rules. Undeniably, the country has been enriching its legislation during the last 30 years, in different ways and according to different approaches. The commitment of Japan to international human rights law is testified by its ratification of several international agreements. First of all, the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others was ratified in 1958. In 1979, the country ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). 1981 was the year of accession of the Convention Relating to the Status of Refugees. In 1985, the Convention on the Elimination of Discrimination Against Women (CEDAW). In 1994 it was the time of the Convention on the Rights of the Child (CRC), and the following year the International Convention on the Elimination of all forms of Racial Discrimination (CERD). The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was ratified in 1999. The Optional Protocol to the CRC, on the involvement of children in armed conflict, became part of the Japanese legal system in 2004, one year before the Optional Protocol on the sale of children, child prostitution and child pornography. The Rome Statute of the International Criminal Court was ratified in 2007, 2009 was

---

<sup>198</sup> *Op. cit.*

<sup>199</sup> DE OLIVEIRA MAZZUOLI V., and RIBEIRO, D. *Supra note 165*, pp. 247-248.

<sup>200</sup> IWASAWA, Y. (1998). *International Law, Human Rights, and Japanese Law*. Claredon Press, pp. 48-49.

the year of the International Convention for the protection of all Persons from Enforced Disappearance (CED). Finally, in 2014, the Convention on the Rights of Persons with Disabilities (CRPD) was ratified.<sup>201</sup> Japan has been making significant progress also accepting the jurisdiction of the International Court of Justice (ICJ) and adopting the International Tribunal of the Law of the Sea (ITLOS) in the circumstances of the ‘Hoshinmaru’<sup>202</sup> and ‘Tomimaru’<sup>203</sup> cases, both versus the Russian Federation.

The ratification of this significant amount of treaties is often seen as the result of an intrusive external pressure, especially given the actual measures taken from the international community to face violations coming from states such as Israel or Chile<sup>204</sup>. In reality, the use of soft law towards Japan has allowed the country to make significant steps forward in the implementation of international norms. Soft law is a controversial tool since there are some scepticisms in considering it real law. Nevertheless, the use of such an instrument in Japan has made it possible to advance significant progress in certain areas, for instance in the improvement of gender equality policies. The role of foreign pressure in the development of Japanese policies is so important to have a specific term to indicate the practice, namely 外圧 (*gaiatsu*)<sup>205</sup>. According to this logic, that could be applied in any policies, one of the main reasons why the country demonstrates its pledge in the field of human rights is due to the pressure exercised by other actors in the international scene, including the European Union. Soft law is a tool very much adopted by the EU, whose use is legitimized in Article 288 of the TFEU. It is a means to apply recommendations and opinions that are not binding, but that could have legal effect, both inside and outside the borders of the Union<sup>206</sup>. For instance, it was mainly thanks to this last one that Japan accepted to sign the convention on Parental Child Abduction in 2014. Another example is the support showed by the EU in the annexation of Japan at the International Criminal

---

<sup>201</sup> UNHR, UN Treaty Database. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=87&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=87&Lang=EN), last accessed on 04.02.2020

<sup>202</sup> International Treaty for the Law of the Sea, Case No. 14. Accessible at: <https://www.itlos.org/cases/list-of-cases/case-no-14/>, last accessed on 31.01.2020.

<sup>203</sup> International Treaty for the Law of the Sea, Case No. 15. Accessible at: <https://www.itlos.org/cases/list-of-cases/case-no-15/>, last accessed on 31.01.2020.

<sup>204</sup> WEBSTER, T. (2010). *International Human Rights Law in Japan: The View at Thirty*. Case Western Reserve University, School of Law, Faculty Publication (579), p. 247.

<sup>205</sup> NADEAU, P. (2018). *The End of Gaiatsu?*, Center for Strategic and International Studies. Available at: <https://www.csis.org/analysis/end-gaiatsu>, last accessed on 04.02.2020.

<sup>206</sup> Eurofund, Soft Law. 2011. Available at: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/soft-law>, last accessed on 04.02.2020.

Court in 2007<sup>207</sup>. In 2018, 26 Ambassadors from the EU wrote to the Japanese Minister of Justice complaining about the non-adherence of the country to the CRC<sup>208</sup>. But *gaiatsu* is not a sufficient explanation when it comes to justifying the reasons behind the implementation of international law in Japan. There is indeed a very significant pressure exercised by the notion of identity within the country, and how it wished to be perceived. This fact is made visible in the ratification and implementation of the Refugee Convention, revealing four ‘identity-aspects’ of the country: the fact that it is a developed state, its awareness of the duties to the international society, a need to avoid embarrassment, and its worry of being perceived as an isolationist country, especially in light of its geographical position<sup>209</sup>.

The one related to the policies adopted towards migrants and refugees constitutes one of the most controversial points when it comes to the application of international human rights norms in Japan, which is internationally recognized for its strict policies to control the flux of migrants; who enters and who leaves the country. This situation has caused the country to create a system that is undoubtedly efficient, but that faces some problems in its implementation, especially in front of the its commitment to international agreements. As abovementioned, Japan has ratified and accessed the Convention Relating to the Status of Refugees in 1981, thirty years after its approval, and the additional protocol on the following year. One of the initiatives that Japan has implemented to allow the integration of migrants and to prevent the shrinking of the population is the ‘Inter-training program’, recognizing the immigrant as a trainee coming to Japan to learn some skills that otherwise will not be able to acquire in his or her home country. The program is seen as an opportunity for people coming from the poorest areas of the world to go to Japan and then fly back enriched with useful skills<sup>210</sup>. Those authorised to take part in the program are mainly employed in works in the rice fields, or as fishermen. Although officially considered as trainees, these persons are often treated as normal workers, constrained to bare heavy conditions, long working hours and low remuneration, safeguarded by an extremely weak status. There have been many cases of Vietnamese workers committing suicide, to escape such heavy conditions. In 2018, the Japanese Times published an article reporting a communication from the Ministry of Justice of Japan, revealing that a total of 174 workers involved in the program had passed away in between 2010 and 2017, due to the harsh working

---

<sup>207</sup> DE PRADO, C. *Supra note 176*, p. 451.

<sup>208</sup> See UNGA, A/HCR/39/NGO/86, August 2018. Available at: <https://undocs.org/pdf?symbol=en/A/HRC/39/NGO/86>, last accessed on 05.02.2020.

<sup>209</sup> FLOWERS, P.R. *Supra note 196*.

<sup>210</sup> JITCO. Available at: <https://www.jitco.or.jp/en/regulation/index.html>, last accessed on 06.02.2020.

conditions they were obliged to suffer<sup>211</sup>. The issue of the Intern-training program is also connected to another problem that the Japanese society faces concerning migrants, that is, the problem of overstay people. Japan adopts extremely tuff rules for overstaying people, including those leaving the country with a visa expiring only a few days before. This attitude reveals a sentiment of convinced respect for the rules, and distrust of those who do not respect them, especially if foreigner.

In front of external criticism, the Government of Japan often defends its lack of correctly implementing international law assuring the full capacity of the Constitution in providing all sufficient measures and warranties for the implementation of human rights<sup>212</sup>. This happens not only for the rights of refugees, but also of ethnic minorities: a rather hot topic in Japan, as testified by the presence of the Ainu population in the north of the country, in the Hokkaido island, and of the Burakumin minority, and also by the communities of Korean citizens permanently settled in the island, and who are often victims of unjustified discrimination and verbal violence. Japan has received several recommendations from the international community to limit hate speeches: in 1980, a group of residents from Korean adopted the confidential procedure 1503 of the HRC, and Japan was subjected to a process of scrutiny for its supposed violations of human rights. In order to face the issue, the Diet quickly proposed some new legislative amendments<sup>213</sup>. More recently, in 2016, the UN Special Rapporteur on minority issues stressed the importance of enacting in the country a law banning any form of hate speech, asserting that a regulation of this kind would not refrain freedom of speech.

### 2.1.3 JAPAN'S COMMITMENT TO HUMAN RIGHTS IN RELATION TO MULTILATERAL ORGANIZATIONS

In the previous paragraph, it has been analysed how Japan approaches to international law, and how the country manages to apply it within its borders. The following one will be dedicated to the engagement and the role occupied by Japan in four international organizations, namely, the United Nations, ASEAN, NATO, and the Council of Europe. While Japan is an active member of the first one, it is not part of the second, but it is still recognized as part of 'ASEAN+3' – where the '+3' stands

---

<sup>211</sup> KYODO NEWS, *Japan's Justice Ministry reveals 174 foreign technical interns died between 2010 and 2017*. The Japan Times, December 2018. Available at: <https://www.japantimes.co.jp/news/2018/12/13/national/justice-ministry-reveals-174-foreign-technical-interns-japan-died-2010-2017/#.XjEH7mhKjIU>, last accessed on 06.02.2020.

<sup>212</sup> This information has been provided by the kind collaboration of an expert professor of international law at Keio University of Tokyo, who accepted to contribute to the present dissertation answering some questions on December 13<sup>th</sup>, 2019.

<sup>213</sup> WEBSTER, T. *Supra note 204*.

in representation of China, South Korea, and of course, Japan. As far as the CoE is concerned, Japan enjoys the status of observer. Japan is also a member of the OECD, the Organization for Economic Cooperation and Development, whose member states are united under the principle of ‘sharing commitment to democratic government and the market economy’<sup>214</sup>.

The changes brought in the aftermath of World War II determined a new world order in which Japan, from enemy number one, became one of the major allies of the United Nations. Today, after 75 years since the creation of the UN; and after 64 years of being a member of it, Japan remains a fundamental component in the most famous existing international organization, and it also argued to become a permanent member of the UNSC<sup>215</sup>. The increasing involvement of Japan in UN affairs clearly shows the shift that the country had from being a rival, to become a strict ally of the western world. In 2015, PM Abe defined Japan as a ‘Gap Bridger’, a nation with rich and deep involvement in UN affairs and issues. Since the post-WWII period, Japan has become a fundamental contributor for the UN, and its approach to the organization relies on three fundamental principles: nuclear disarmament, economic development and humanitarian assistance<sup>216</sup>. As previously mentioned, Japan has ratified many of the most important UN Conventions related to human rights. It is therefore bound to those decisions, ranging from children’s rights to refugee assistance (even though the country does not always comply with the rules set in the Conventions).

A positive outcome of Japan in its collaboration with the UN consists of the connection the country has established with UN Women, the agency of the United Nations devoted to the promotion and protection of women’s rights. Under the pressure of other countries, Japan has often been the subject of criticisms and disappointment when it comes to gender inequality. The use of soft power has often contributed to pushing Japan to adopt the necessary policies in order to fight issues such as gender pay gap and harassment in the workplace. In 2012 Prime Minister Shinzo Abe launched his set of economic initiatives known under the name of *Abenomics*, and among them figured the policies that constituted *Womenomics*, linking economic development to women’s emancipation. Despite its efforts, at the moment Japan is still ranked quite low in the score of the Sustainable Development Goals in the 5<sup>th</sup> point, that is, ‘achieving gender equality’. In the SDG Dashboard for OECD countries, gender equality is one of the three voices marked with a red circle, meaning that ‘major challenges

---

<sup>214</sup> See OECD Glossary of Statistical Terms. Available at: <https://stats.oecd.org/glossary/detail.asp?ID=4865>, last accessed on 08.02.2020.

<sup>215</sup> Ministry of Foreign Affairs of Japan, An Argument for Japan’s Becoming Permanent Member. Available at: [https://www.mofa.go.jp/policy/q\\_a/faq5.html](https://www.mofa.go.jp/policy/q_a/faq5.html), last accessed on 08.02.2020.

<sup>216</sup> *Supra note 162*.



remain', together with 'responsible consumption and production', 'climate action' and 'partnership for the goals' (that constitute challenging issues for all OECD countries). Despite its loophole in SDG 5, Japan has achieved notable success in others. After the UN Sustainable Development Summit held in 2015, the Government of Japan established Promotion Headquarters to achieve SDGs in May 2016, and a few months later the 'SDGs Implementation Guiding Principles' were approved after the exchange of opinions among several stakeholders<sup>217</sup>. The country is scored 15 out of 162 in the 2019 SDG Index, with a score of 78.9, symbolizing the average effort put to accomplish all the goals. Its main achievements relate to quality education and decent work and economic growth. The country figures, among only other five, having mentioned the SDGs or related terms like the Agenda 2030 in the last national budget document in 2018, thus, including domestic efforts and international ones, like Official Development Assistance (ODA)<sup>218</sup>. In this regard, Japan's significant involvement in the United Nations is also symbolized by the contribution the country makes in peacekeeping operations, disarmament and non-proliferation. Japan enacted the Act on Cooperation with the United Nations Peacekeeping Operations in 1992. The first National Security Strategy of Japan was adopted in December 2013, and it included, among other things, contribution to UN Peacekeeping operations, international disarmament efforts, and promotion of rule of law<sup>219</sup>. Indeed, the international peace cooperation with the UN is based on three fundamental pillars that Japan is expected to respect: UNPKO, International Humanitarian Peacekeeping Operations and International Election Observation Operations<sup>220</sup>. After the end of the Cold War, Japan has been requested to participate in several missions, for instance, the operations of democratization in Cambodia and the participation in the political dialogue to reach a pacific agreement, or rather in the UN Missions in Haiti, Sudan, and Nepal. All of these operations have been faced in the framework of Japan's 1992 International Peace Cooperation Act, by deploying the JSDF, according to Japanese commitment of being a peaceful country, as clearly stated in its Constitution. Article 9 recurs in defining the limits of Japanese intervention abroad. To not bring incoherence with the peaceful Constitution of Japan, it has been allowed to the SDF to take part in the operations only under certain conditions<sup>221</sup>: 1. The existence

---

<sup>217</sup> See Ministry of Foreign Affairs of Japan, Japan SDGs Action Platform. Accessible at: <https://www.mofa.go.jp/policy/oda/sdgs/effort/index.html>, last accessed on 08.02.2020.

<sup>218</sup> Sustainable Development Report 2019. Available at: <https://sdgindex.org/>, last accessed on 08.02.2020.

<sup>219</sup> ATANASSOVA-CORNELIS, E. (2014). *Japan's New Approach to National Security*. European Union Institute for Security Studies.

<sup>220</sup> Ministry of Foreign Affairs of Japan, Japan's Security/Peace Stability of the International Community, Japan and the United Nations, Japan's Contribution to UN Peacekeeping Operations (PKO), Outline of Japan's International Peace Cooperation. Available at: [https://www.mofa.go.jp/fp/ipc/page22e\\_000683.html](https://www.mofa.go.jp/fp/ipc/page22e_000683.html), last accessed on 08.02.2020

<sup>221</sup> *Ibid.*

of a cease-fire agreement among the parties involved in the conflict, 2. Consent for UN and Japan from the involved parties, 3. Impartiality in relevant UN operations, 4. Immediate withdrawal of SDF in case of violation of one of these conditions; finally, 5. Minimum use of weapons, to be deployed in the necessity of protecting the lives of dispatched persons<sup>222</sup>. As of 2019, Japan results ranked third in the top financial contributors to PKO, preceded only by the US and China<sup>223</sup>.

Another example of Japan's commitment to UN initiatives is given by the 'UN Decade for Human Rights Education' when Japan took significant initiatives in order to satisfy the standards set by the United Nations. The decade was established amid pressure coming from the 1993 Bangkok NGO Human Rights Conference, nevertheless, only a few countries had concrete attempts to promote the UN Decade; Japan figures among them, and it formally submitted its national plan of action to the UN Office of the High Commissioner for Human Rights. The Government of Japan also provided to create Headquarters for the promotion of the decade in December 1995, to facilitate the work of the UN. Before its establishment, a parallel NGO initiative was created, and its contribution was fundamental in spreading the ideas contained in the national plan of action issued by the government in July 1997. The coordinated work of several NGOs, in the framework of the UN Decade for Education initiative, contributed to raising awareness on the importance of education, especially for disadvantaged groups.

Japan is not a member of ASEAN, but it is part of the ASEAN+3. In Chapter I it has been underlined how, despite the significant successes reached in recent years, the level of integration achieved by ASEAN countries is very low if compared to the one of the EU Member States. The human rights framework is a clear example of this: ASEAN standards on the protection of human rights are very little, considering the lack of a defence system common to all member states. The significant cultural differences and histories of the countries, and especially the fundamental principle of non-interference, have made impossible to create a mutual structure of human rights defence until now<sup>224</sup>. The two main countries advocating in favour of the promotion of a human rights mechanism are Indonesia and the Philippines. However, there is the crucial point that neither Jakarta nor Manila can claim to be liberal democracies – they are indeed quite far from achieving such a result. In addition to that, it should be pointed out that in many of the member countries of ASEAN, violations of human

---

<sup>222</sup> *Op. cit.*

<sup>223</sup> See United Nations Peacekeeping, *How we are funded*. Available at: <https://peacekeeping.un.org/en/how-we-are-funded>, last accessed on 08.02.2020.

<sup>224</sup> FIDH. *Supra note 146*, p. 28.

rights occur regularly and at different levels. In Thailand, more than thirty among human rights activists and civil society have been killed between 2001 and 2018. The harassment and crackdown on religious groups in Vietnam constitute a sadly well know frame as well. The Philippines – as mentioned, one of the strongest voices advocating for a common mechanism of human rights protection – Human Rights Watch has expressed its concerns in late 2016 over discrimination against sexual minorities<sup>225</sup>. A common mechanism to prevent and fight such fundamental issues could, on one side, potentially bring a significant contribution in facing human rights problems; but on the other, it results even more complicated to be established in the face of these critical situations.

The cooperation between ASEAN and Japan is perceived as quite important, taking into account the role of Japan as a democratic pole in South East Asia. The basis of the relationship could be traced back to the Fukuda Doctrine, in turn, based on the speech made by Prime Minister Takeo Fukuda in 1977. Professor and ASEAN expert Takeshi Yuzawa affirms that Japan could concretely help Indonesia and the Philippines, by providing training programs to improve law skills and law performances of students, judges and other legal practitioners<sup>226</sup>. It is also true that Japan has significant interests in stabilizing friendly cooperation with ASEAN, especially with the aim of keeping under control the increasing power of China.

In the Joint Political Declaration between Japan and the North Atlantic Treaty Organization, it is reported that:

*'Japan and NATO are dedicated to the values of liberty, democracy, human rights, and the rule of law. We are each determined to safeguard these shared values as well as the freedom and the security of our populations. We reaffirm our adherence to the principles of the Charter of the United Nations. We acknowledge our shared strategic interests in promoting global peace, stability and prosperity, through pursuing a rules-based international order that promotes peaceful settlements of disputes'*<sup>227</sup>.

---

<sup>225</sup> The ASEAN Post Team, *The Struggle for Human Rights in Asia*. The ASEAN Post, January 2018. Available at: <https://theaseanpost.com/article/struggle-human-rights-asean>, last accessed on 08.02.2020.

<sup>226</sup> YUZAWA, T. *ASEAN-Japan Cooperation on Democracy and Human Rights Promotion: Challenges and Opportunities*. In 'Beyond 2015', part 14.

<sup>227</sup> See NATO Website, Joint Political Declaration Between Japan and the North Atlantic Treaty Organization. Principles of Cooperation, Point 2. 2013. Available at: [https://www.nato.int/cps/en/natohq/official\\_texts\\_99562.htm](https://www.nato.int/cps/en/natohq/official_texts_99562.htm), last accessed on 09.02.2020.

The main action taken by NATO in international cooperation for the protection of human rights is through the protection of civilians. For Japan, NATO constitutes a political partner in the first place. An analysis of the relationship that the country has with NATO is very important also to learn more deeply about Japan-EU security cooperation. The cooperation dialogue of Europe and Japan is indeed often obscured by the centrality of the Security Treaty between the United States and Japan<sup>228</sup>.

Prime Minister Shinzo Abe played a very important role in fostering the relations between the country he administers and NATO. In 2007, he delivered a speech whose title was 'Japan and NATO: toward further collaboration', at NATO Headquarters in Brussels. Abe stressed the fundamental point of sharing values with the organization, and the necessity to cooperate in order to preserve peace and security around the world. Furthermore, the cumbersome Article 9 of the constitution – impeding Japan of disposing of a normal army – did not prevent the country from taking the appropriate measures in order to dispose of a strong defence army. The country currently figures as the 7<sup>th</sup> for the amount of expenditure for defence<sup>229</sup>.

Japan has been granted the Observer Status in the Council of Europe in 1996<sup>230</sup>. Thanks to the Observer Status, governed by Resolution (93) 26 and adopted by the Council of Europe's Committee of Ministers on the 14<sup>th</sup> of May 1993, Japan has the possibility of cooperating with the Council in the spread of its fundamental values of democracy, rule of law and human rights, and to send observers to committees and conferences. This implies as well an advantage for the Council, which increments its chances of having an impact at global scale<sup>231</sup>. In addition to the Council's Conventions signed, Japan is also a member/observer of Partial Agreements, such as the Convention on European Pharmacopoeia, the Co-operation Group for the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters, and the European Commission for Democracy through Law<sup>232</sup>.

---

<sup>228</sup> TSURUOKA, M. (2010). *Japan-Europe Security Cooperation: How to "use" NATO and the EU*. Boei Kenkyusho Kiyō, Vol. 13, No. 1, pp. 27-43.

<sup>229</sup> Global Firepower – World Military Strength. Defence Spending by Country. Available at: <https://www.globalfirepower.com/defence-spending-budget.asp>, last accessed on 08.02.2020.

<sup>230</sup> See Council of Europe Website, Japan/Observer State. Available at: <https://www.coe.int/en/web/portal/japan>, last accessed on 09.02.2020.

<sup>231</sup> See Council of Europe Website, The Council of Europe's Relation with Observer States. Available at: <https://www.coe.int/en/web/der/observer-states>, last accessed on 08.02.2020.

<sup>232</sup> List of Partial Agreements of Japan. Available at: <https://www.coe.int/en/web/conventions/partial-agreements/-/conventions/ap/country/JAP>, last accessed on 08.02.2020.

There is a curious issue that deserves to be analysed in the relationship between the CoE and Japan. One of the basic criteria to be accepted as a member of the Council is the assurance of the abolition of the death penalty. This is what impeded, for instance, Belarus to become part of the organization. It is interesting to observe how Japan, who still implements this harmful practice, had the permission to become part (although, as an observer) of this institution. The United States is in this same condition. Japan has ratified the ICCPR in 1979; but not its Second Protocol, aiming at the abolition of the death penalty<sup>233</sup>. In front of a fact that could appear as a contradiction, the CoE has been stating in more than one occasion its complete disapproval, urging Japan and all other countries to stop this practice, in a joint effort with the HRC<sup>234</sup>.

## 2.2 STATUS OF HUMAN RIGHTS IN JAPAN'S EXTERNAL RELATIONS

A very important step forward for Japan in the implementation of the country's foreign policy came in 2006 with the speech of the Minister of Foreign Affairs, Taro Aso, entitled "Arc of Freedom and Prosperity: Japan extending its diplomatic horizons". The following year Mr. Aso delivered a second speech with the same title, clarifying what he intended to say. The initiative wanted to be a milestone in the foreign policy of the country in reformulating those that had constituted the pillars of the external action of Japan until that moment, namely, the alliance with the United States, international cooperation, and the relationship with close countries (mainly China and South Korea). Now, the intention was to give more attention to human rights, democracy, rule of law, and to establish new economic ties, and thereby to create a new imagine of Japan, as a value-oriented country<sup>235</sup>. In the intentions of the Minister's and his collaborators, the "Arc of Peace" would have covered a significant portion of territory, crossing the Eurasian Continent from Northern Europe to Southeast Asia. The difficulties in implementing this initiative went together with the request – not satisfied – of admitting Japan in the United Nations Security Council, justified by the idea that the Security Council was unbalanced and favoured the post-Cold-War regional order, which needed to be reviewed<sup>236</sup>.

---

<sup>233</sup> CRUCHTEN, Y. (2018). *Abolition of the Death Penalty in Council of Europe Member and Observer States, Belarus and Countries whose Parliaments have Co-operation Status – Situation Report*. AS/Jure 44.

<sup>234</sup> Council of Europe Website, Death Penalty Factsheet, p. 1. Available at: <https://rm.coe.int/168008b914>, last accessed on 08.02.2020.

<sup>235</sup> GURSEL, I. (2008). *A New Pillar of Japanese Foreign Policy: The Arc of Freedom and Prosperity – Japanese Policy Towards the Guam Organization*. Social and Economic Geography.

<sup>236</sup> HUGHES, C.W. *Supra note 169*.

But before this moment, if we go back in time to the repercussions of World War II, the situation was quite different. Many factors contributed to lower the attention of the country on human rights in its foreign relations<sup>237</sup>. First of all, economic interests prevailing over everything else, also due to the necessity of reconstructing the country from the ashes of the conflicts. Such a hastiness was encouraged by the LDP conservative ruling. Secondly, Japan had to deal with the burden of a past that pushed it to maintain a low-profile, rather than profess human rights in the world<sup>238</sup>. With such a basis it is not surprising that there was no kind of organization within government buildings that guaranteed the protection of fundamental rights, and only in 1984 the Human Rights and Refugee Division was established. But still, human rights were not embedded in any ministries dealing with external affairs, and the divergences emerging from debates over *domestic* human rights made even harder the path towards the consideration of *external* human rights<sup>239</sup>. As seen in the previous pages, the years 1980s determined a greater participation of Japan in international human rights law through the ratification of several conventions and treaties. Further developments came in the years 1990s, with the adoption of the Official Development Assistance (ODA) Charter and Japanese contribution to the rebuilding of Eastern Europe. These two actions were quite symbolic of the new role Japan wanted to have in the world as a human rights promoter, and they constituted the result of a better coordination of the Ministry of Finance and the Ministry of Economic Affairs<sup>240</sup>. In particular, ODA marked a real change in Japanese foreign policy: Before ODA, the idea of human rights conditionality was perceived as very insulting to the principle of non-interference<sup>241</sup>. The association between human rights and development, and the increasing focus of economic ministries to development, especially due to their connections with development banks; has led to the syllogistic consequence of a major consideration of human rights under an economic standpoint. Nonetheless, this improvement never led to a transfer of rights interests over economic ones, as has been demonstrated with the Asian Development Bank (ADB), that Japan led for a long time.

The Japanese approach towards human rights in the rest of the world could be defined as ‘pragmatic and country specific’<sup>242</sup>. This is not due exclusively to the influence of its cumbersome past, but also

---

<sup>237</sup> FORSYTHE, D. P. (2000). *Human Rights and Comparative Foreign Policy: Foundations of Peace*. United Nations University, p. 99.

<sup>238</sup> The reference here is to the systematic violations committed by Japan before and during the Second World War. For instance, the issue of comfort women in South Korea or East Timor, or the Nanjing Massacre.

<sup>239</sup> FORSYTHE, D. P. *Supra note 237*, pp. 99-100.

<sup>240</sup> *Ibid.*, p. 101.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*, p. 104.

to its role of mediator between the East and the West. In human rights diplomacy, Japan found itself in the uncomfortable position of balancing the interests of the two sides of the world whose interpretation of the universality of human rights is quite different. In addition, security concerns did not simplify its role of intermediary. On one side, the wish to guarantee *geographical* security in Asia discourages Japan from sanctioning countries committing evident violations of human rights, but central in assuring the stability of the area, for example China. On the other side, the same logics works for countries assuring *economic* security to Japan, such as Indonesia<sup>243</sup>.

While we have analysed the role of the European Union as a normative power, Japan could be perceived as being a ‘soft’ ideological power<sup>244</sup>. The country has not yet developed a normative and influential power comparable to the one of the European Union, but its approach towards human rights has changed a lot through times. In a certain way, we can affirm that both Japan and the European Union shared a behaviour of cautious approach towards the issue, that has been bypassed by economic interests for a long time, before being carefully considered and becoming a central part in their foreign policy.

### 2.3 TOWARDS A JAPANESE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT?

The role of Japan as a promoter of human rights in its external relations depends largely on the leadership that the country has in the official development assistance area. Japan is a very important contributor to developing countries, and taking into account all the limits that the country encounters in deploying all of its resources in the international field, due to the limitations imposed by the Constitution; ODA programmes represent an alternative way to guarantee the Japanese presence internationally.

As envisaged in the previous chapter, the HRBA aims to reduce inequalities and disparities, that hamper to trap development progress, exacerbating the gap between different strata of society and slowing down the development process, which has the eradication of poverty at its heart<sup>245</sup>. Human rights have not always assumed a central role in the development assistance’s initiatives of Japan, which were started to be implemented in parallel with the reconstruction period after the War. Therefore, Japan’s passage from being a country necessitating international support to be one providing financial aid was rather quick. Japan’s approach to development assistance changed

---

<sup>243</sup> *Op. cit.*

<sup>244</sup> HUGHES, C.W. (2009). *Japan’s Response to China’s Rise: Regional Engagement, Global Containment, Dangers of Collision*. International Affairs, Vol. 85, No. 4, pp. 837-856.

<sup>245</sup> See United Nations Sustainable Development Group, *Supra note 118*.

consistently during the decades, and already in 1991-1992, with the implementation of new guidelines and the establishment of the ODA Charter, Japan's commitment to development aid clearly identified the securing of human rights as a fundamental principle in its action<sup>246</sup>. However, it appears that the Japanese ODA Charter was still perceived as having a dominant emphasis on economic infrastructures' development and a weak record for meeting basic human rights, a condition that revealed the existing tie connecting Japanese corporate interests and development assistance to third countries<sup>247</sup>. The global challenges that came with the new millennium required – among other measures – the necessity to adapt development assistance policies and assuring an even deeper consideration of human rights. Thus, considering the transformation of the international scenario, added to external and internal pressure, the Charter was revised in 2003. Non-Governmental Organizations played a very important role in this sense, stressing the Japanese government to reserve more attention to global issues, democratization, and of course respect for human rights; in order to achieve the Millennium Development Goals – the “predecessors” of the SDGs<sup>248</sup>. Following the revision made, the new Charter also clarified that Japan would have given priority in assisting those countries committed to the protection of human rights<sup>249</sup>. Despite steps forwards were made in this field, still, Japanese efforts were not considered sufficient, and the country has been encouraged by UN officials to reserve more space to human rights in its global efforts to achieve development. In 2013, an Independent Expert urged the country to complement ODA with human rights considerations, exhorting the central government to take into account the work of Non-Governmental Organizations, whose recommendations had not been considered enough<sup>250</sup>. In February 2015, the Governmental Cabinet informed about its decision of implementing a new “Development Cooperation Charter”. As explained in the official decision, the Charter was established in consideration of the transformations of the world, and the necessity of facing new challenges in cooperation with other countries, indeed; the fifteen-pages official document regularly reiterates the

---

<sup>246</sup> See Ministry of Foreign Affairs of Japan, Japan's Official Development Assistance Charter. Cabinet Decisions, June 30<sup>th</sup>, 1992. Available at: <https://www.mofa.go.jp/region/n-america/us/q&a/oda/3.html>, last accessed on 24.03.2020.

<sup>247</sup> SUNAGA, K. (2005). *The Reshaping of Japan's Official Development Assistance (ODA) Charter*. Discussion Paper No. 36. APEC Study Central, Colombia University, pp. 5-6.

<sup>248</sup> *Ibid.*, p. 8.

<sup>249</sup> *Ibid.*, p. 15. The New version of the ODA Charter, revised in 2003, states that: “[...] Japan will give priority to assisting developing countries that make active efforts to pursue peace, democratization, and the protection of human rights, as well as structural reform in the economic and social spheres”. p. 2.

<sup>250</sup> UN News. (2013). *UN Expert Urges Japan to Put Human Rights at the Centre of Global Development Efforts*. Available at: <https://news.un.org/en/story/2013/07/445182-un-expert-urges-japan-put-human-rights-centre-global-development-efforts>, last accessed on 24.03.2020.



importance of acting in coordination with the international community, rather than alone. The Japanese Government provides, in a way so clear that it is difficult to find in previous official documents, its intent to sharing universal values and realizing a peaceful and secure society. To do so, it reiterates its commitment towards universal values and human rights, also attributing to women a central role for the achievement of stable societies<sup>251</sup>.

For Japan, an approach that is strongly rooted in human rights when operating in the name of Official Development Assistance constitutes a possibility to enhance its role as a human rights' promoter in the international scene. Moreover, such an ambitious choice could represent an additional boost to Japan's reputation as a normative power, which – as stated above – is still rather weak as per today. The possibilities for Japan to demonstrate its commitment to the international scene are already present, and to assure its credibility, Japan should opt for a perspective capable of embracing vast geographic zones. However, most of the aid provided by Japan remains addressed to the Southeast Asian region; and even considering the drop in the development assistance that Japan experienced with the turn of the century; it has interested mainly more distant territories, such as the Dark Continent. This choice of reserving much of the financing to those territories geographically closer to Japan fostered the idea that the country has been adopting a regional perspective rather than a global one while deciding how to distribute its resources<sup>252</sup>. Another opinion justifies the attention paid to the near territories to the feeling that the Japanese government felt the responsibility to pay a debt for its actions between the 1930s and 1940s<sup>253</sup>. Even if it is true that Japan has been confirming its support in Africa – as testified by the launch of the Tokyo International Conference on African Development, TICAD – some scholars are reluctant to look at the Japanese presence in Africa as a genuine initiative, rather than interpreting it as an attempt to counter the Chinese advance<sup>254</sup> – an aspect that will also be considered in the following pages, and which, as will be argued, could constitute a common ground for cooperation with the EU as well. Among the neighbouring countries under its ODA's sphere, Vietnam is one of the greatest beneficiaries of Japan's contribution to development. Considering the conditions of human rights in this country, where freedom of speech and assembly are strictly regulated by the central government, and throughout 2018 several activists have been imprisoned, at the first impact, it may appear a contradiction. Nevertheless, the idea of

---

<sup>251</sup> *Cabinet decision of the development cooperation charter*, February 10<sup>th</sup>, 2015. p. 6.

<sup>252</sup> OTOPALIK, C.M. (2010). *Japan's Overseas Development Assistance: Assessing Conformance with Shifting Priorities*. International Journal of Politics and Good Governance. Vol. 1, No. 1.1, p 5-6.

<sup>253</sup> MOHD HUDA, M.I. (2016). *Evolution of Japanese ODA 1945-2015: An Analysis*. International Journal of East-Asian Studies. Vol. 5, No.1, pp. 14-28.

<sup>254</sup> MCCURRY, J. (2006). *Monitoring Japan's Aid Commitments* (World Report). The Lancet.com, Vol. 2368. pp. 1561-1562.

blocking economic assistance to developing countries that are experiencing human rights concerns may be contradicted by the reasoning that such support could help the country in enhancing its mechanisms of human rights protection. But precisely the case of Vietnam is emblematic in demonstrating that in the past Japan has not been prepared to link its economic aid to progress in recipient countries, and is further evidence of the country's mistrust in putting purely economic interests and human rights on the same table. It also bears witness to the long journey Japan is required to make if it wishes to show itself as a promoter of human rights in the world. The strategic importance of Vietnam has fuelled Japan's desire to continue providing financial support to its neighbourhood. In addition to that, the reaction of the international community – which continued to provide financial aid to Vietnam – relieved any potential guilt in financing a country whose human rights progress was barely noticeable, if not invisible. During his first official international visits in 2013, Prime Minister Shinzo Abe did not bother to mention his country's human rights pledge or the five principles of ASEAN Diplomacy<sup>255</sup> when visiting Vietnam, whereas he did during other overseas visits<sup>256</sup>.

While Japan ranged among the top donor of foreign aid in the world throughout the years 1990s, at the turn of the century it did no longer occupied such position<sup>257</sup>. Nevertheless, ODA still constitutes the main tool adopted in Japan's bilateral and multilateral relations with developing nations, particularly in the area of Southeast Asia. Therefore, it is fundamental for Japan to work with the aim of improving this system in order to obtain the best from it, to guarantee concrete results in the countries interested, and characterizing it with an identifiable human rights footprint. The capacity of Japan to build efficient high-speed train, industrial infrastructures, and resilient buildings is not a

---

<sup>255</sup> The “Five Principles of Japan’s ASEAN Diplomacy”, announced by PM Shinzo Abe on 18 January 2013, are: 1. To protect and promote together with ASEAN member states universal values, such as freedom, democracy and basic human rights; 2. To ensure in cooperation with ASEAN member states that the free and open seas, which are the most vital common asset, are governed by laws and rules and not by force, and to welcome the United States’ rebalancing to the Asia-Pacific region; 3. To further promote trade and investment, including flows of goods, money, people and services, through various economic partnership networks, for Japan’s economic revitalization and prosperity of both Japan and ASEAN member states; 4. To protect and nurture Asia’s diverse cultural heritages and traditions; 5. To promote exchanges among the young generations to further foster mutual understanding. Available at: [https://www.mofa.go.jp/region/asia-paci/pmv\\_1301/overview.html](https://www.mofa.go.jp/region/asia-paci/pmv_1301/overview.html), last accessed on 07.05.2020.

<sup>256</sup> ASPLUND, A. (2015). *Values VS Interest: Strategic Use of Japanese Foreign Aid in Southeast Asia*. EIJS, Stockholm School of Economics. Working Paper 241, pp. 11-13.

<sup>257</sup> Japan’s Official Development Assistance Whitepaper (2014). The Track Record of Japan’s ODA. Chapter I, pp. 4-5. Available at: <https://www.mofa.go.jp/files/000119315.pdf>, last accessed on 03.05.2020.

prerogative that excludes a human rights approach, and it might bring positive benefits both to the interested country and to Japan's reputation internationally.

The actions envisaged in the ODA are complemented by those of the JICA, Japan International Cooperation Agency. JICA's interests range from climate change and pollution, to access to water and food; and it is driven in its work by the principles of the Development Cooperation Charter<sup>258</sup>. In 2008, the New JICA was established from the merging of the organization with the activities of the Japan Bank for International Cooperation and the major involvement of the Japanese Minister of Foreign Affairs, 外務省. Such a strategy made JICA's actions in development assistance even more consistent, and shortly later the TICAD III initiative was launched<sup>259</sup>. As the Japanese government was condemned for its low consideration of human rights in deploying development assistance, JICA was the subject of Human Rights Watch's disappointments and criticisms. The NGO sent a letter to the Agency and Japan's Prime Minister and Minister of Foreign Affairs, revealing its concerns over the scarce interest towards human rights demonstrated by JICA in its development programs. It mentioned the example of Arab countries – and the restrictions imposed on women, and countries such as Vietnam and the Philippines, with discussable human rights records. Executive Director Bram Adams also expressed its hope in the Development Cooperation Charter to be an effective means to guarantee a human rights-based approach, considering the centrality it attributes to human beings and women's rights<sup>260</sup>.

Japan's commitment to development is not the reflection of unilateral action of the country, rather it is also matter of international cooperation. This was the case already soon after the end of the American occupation when Japan got involved in the "Colombo Plan", conceived in 1951 as a regional intergovernmental organization to support the social and economic development of Asian and Pacific states<sup>261</sup>. In 1977, Prime Minister Fukuda delivered his speech – later known as the Fukuda Doctrine – in which he reiterated the commitment of the country he was administering to look at ASEAN countries as equal partners, working with them "hand-in-hand"<sup>262</sup>. It was on that occasion that he

---

<sup>258</sup> See JICA's Website, About JICA, JICA's Vision. Available at: <https://www.jica.go.jp/english/about/mission/index.html>, last accessed on 03.05.2020.

<sup>259</sup> MOHD HUDA, *Supra note 253*, pp. 22-23.

<sup>260</sup> Letter of Brad Adams, Executive Director, Asia Division, Human Rights Watch to JICA's President Akihiko Tanaka. (2015). *JICA's Human Rights Policies and Practices*. June 24<sup>th</sup>, 2015. Available at: <https://www.hrw.org/news/2015/06/24/jicas-human-rights-policies-and-practices>, last accessed on 03.05.2020.

<sup>261</sup> See The Colombo Plan Website. *The History of Colombo Plan*. Available at: <https://colombo-plan.org/history/>, last accessed on 04.05.2020.

<sup>262</sup> HADDAD, W.W. (1980). *Japan, the Fukuda Doctrine, and ASEAN*. Contemporary Southeast Asia. Vol. 2, No. 1. pp. 10-20.

assured that Japan would have doubled its contribution to ODA in between the fiscal years 1977 and 1982<sup>263</sup>. Furthermore, through its contribution to ODA Japan fostered its position in the ASEAN framework, considering that many of the policies elaborated in the organization are addressed to developing countries, and this condition makes the nations already developed and that are part of the “+3” to be indispensable in this context. To make an example, in 2015 Japan provided 2 trillion yen (approximately 8 billion euros) to ASEAN to be deployed in development assistance, in a span of time of five years, mainly in the framework of the initiatives “Enhancing Connectivity” and “Narrowing the Development Gap”. Through this engagement, Japan confirmed its commitment to some important activities to boost the economies and the democracies of Asian developing countries, including disaster management and safety through assistance for capacity building, cooperation to improve health services and technologies to be addressed to the aging societies, the promotion of projects to strengthen the legal system, in the respect of the rule of law, and fostering the participation of women and the most vulnerable components of the communities<sup>264</sup>.

## 2.4 CONCLUSIONS

The concept of ‘uniqueness’ is embedded in Japanese culture, and it affects the approach that the country has towards numerous issues, and human rights are not exempt from that. The idea of a unicity of the Japanese rights, linked to the notion of ‘traditional values’ and ‘human dignity’, has led to a redefinition in the consideration of the country’s perception of what human rights are, a perception that in the past has not always been shared in other areas of the world, due to the contrast of such ideas with the conception of the universality of human rights. Throughout the chapter, the relation between human rights and Japanese culture has emerged in more than one occasion, this also in relation to the idea of harmony inside the group, deeply rooted in Japanese tradition. The natural consequence of this situation is the fear of denouncing a person’s violations of his/her human rights, in face of the fear of the collapse of such harmony, therefore individual human rights are sometimes sacrificed for what is perceived to be as the good of the whole group<sup>265</sup>. It has been analysed the point

---

<sup>263</sup> *Op.cit.*, p. 11.

<sup>264</sup> See Ministry of Foreign Affairs of Japan (2015), Japan-ASEAN Commemorative Summit (Japan’s ODA to ASEAN). *Japan to Provide Official Development Assistance of 2 Trillion Yen to ASEAN Countries over 5 Years – Mainly for the Two Pillars of “Enhancing Connectivity” and “Narrowing the Development Gap” toward ASEAN Integration in 2015*. Available at: <https://www.mofa.go.jp/files/000070232.pdf>, last accessed on 03.05.2020.

<sup>265</sup> TAKAHASHI, S. (2019). *Civil and Political Rights in Japan. A tribute to Sir Rodley*, Routledge Research on Human Rights Law, p. 9.

of view of a society strictly collectivist, meaning that the good of the group comes before the rights of the individual: this condition has led, in the past, to discrimination towards those that are considered 'inferior' or 'useless' for the society, as mentioned with the example of the Eugenic Laws.

If we consider the achievement of human dignity in its being a goal, having a different interpretation of what makes a life dignified involves following different paths to realize this objective. Let's take the example of women's emancipation: if, coherently with the so-called 'European values', women's emancipation is the consequence (among other things) of equal employment opportunities and the end of the gender pay gap, for other cultures women's emancipation may be due to the establishment of a household and the caring of children. From this discrepancy, it emerges how there can be different interpretations within societies of which aspects of human life and rights should be protected, safeguarded, in order to guarantee the citizens' dignity.

While analysing the existing relationship between Japan and international organizations, it came out that the Land of The Rising Sun has a remarkable active role in the international community. Such a presence is perceived through the country's engagement in the Sustainable Development Goals, its participation in Peacekeeping Operations, its contact with ASEAN, and its involvement in NATO. The increasing contribution of Japan to the international scene has also determined the country's candidature for the Human Rights Council of the UN in the biennium 2020-2022<sup>266</sup>.

This presence in the world arena not only strengthens Japan's position at a global scale, but it also contributes in fostering its relationship with Europe: for instance, through the joint involvement in humanitarian missions and development aid; and through the existence of the Council of Europe, where Japan, albeit not being an active member, can show its supports as an observer. The growing role of Japan in the international community is emblematic in showing its desire for finding a relevant place in the world scenario and raising its voice in important issues.

---

<sup>266</sup> See Ministry of Foreign Affairs of Japan, *Japan Candidate for Human Rights Council 2020-2022*. Available at: <https://www.mofa.go.jp/files/000175485.pdf>, last accessed on 08.05.2020.

## CHAPTER III: EU – JAPAN RELATION. WHAT IS THEIR EXTERNAL CONTRIBUTION?

CONTENTS: 3.0 Pillars of cooperation – 3.1 A changing partnership in a changing world – 3.1.1 EU and Japan’s role in ASEM – 3.1.2 Main obstacles for the future: controversial issues in the implementation of human rights – 3.2 EU-Japan cooperation strategy – 3.2.1 The Economic Partnership Agreement – 3.2.2 The Strategic Partnership Agreement – 3.2.3 Partnership in Sustainable Connectivity and Quality Infrastructure – 3.2.4 Security Dialogue – 3.2.5 Cooperation to eradicate human rights abuses in North Korea – 3.3 Case Study: Timor-Leste – 3.3.1 The European Union’s response to violations of human rights in Timor-Leste – 3.3.2 Japan’s response to violations of human rights in Timor-Leste – 3.4 Conclusions.

### 3.0 PILLARS OF COOPERATION

The European Union has been accused of having a problem of “Capability Expectation Gap” in its external relations<sup>267</sup>. Such CEG, or ‘untapped potential’, has also impeded to launch the partnership with Japan for a long time<sup>268</sup>. Nevertheless, little by little, it seems that the situation has been taking a different plague: nowadays, not only the EU and Japan are much more interested in each other, but the fields of cooperation between the two parties have also widened, moving away from the purely economic one that had inaugurated and carried on the relationship between the two for years.

In reference to the Japan-EU relation, already in 2013, the previous 40 years were defined by Keck, Vanoverbeke, and Waldenberger as a shift ‘from confrontation to global partnership’<sup>269</sup>. The following pages will try to analyse the historical path that has led to this condition, and the efforts coming from the two sides to fulfil this potentiality of action of cooperation remained uncovered for a long time.

---

<sup>267</sup> HELWING, N. (2013). *EU Foreign Policy and the High Representative’s Capability-Expectations Gap – A Question of Political Will*. European Foreign Affairs Review 18, No. 2, pp. 235-254. Also: HILL, C. (1993). *The Capability-Expectation Gap, or Conceptualizing Europe’s International Role*. Journal of Common Market Studies, Vol. 31, No. 3, pp. 305-328. In Martins Ganchas Dos Santos, C. (2018). *A União Europeia como Actor de Desenvolvimento*. ISCTE – Instituto Universitário de Lisboa, Escola de Sociologia e Políticas Públicas.

<sup>268</sup> See European Commission President José Manuel Barroso’s speech, *EU-Japan: A Mature Relationship with Untapped Potential*, 2006. SPEECH/06/43.

<sup>269</sup> KECK, J.; VANOVERBEKE, K. and WALDENBERGER, F. (2013). *EU-Japan Relations, 1970-2012: From Confrontation to Global Partnership*. Routledge.

### 3.1 A CHANGING PARTNERSHIP IN A CHANGING WORLD

According to the opinion of representatives of the EU Delegation in Tokyo, consulted for the scope of this thesis, the relationship between the EU and Japan *'has never been so good'*<sup>270</sup>. This is a very interesting expression to use, if compared to what was said eighteen years ago, by the at-the-time president of the European Commission Romano Prodi, who commented on the same relationship defining it *'blossoming as never before'*<sup>271</sup>.

The reciprocal indifference the EU and Japan exercised towards one another was a common feature of both the period before and even after the Second World War, which saw the defeat of the Land of the Rising Sun. The Japanese population was too focused on the reconstruction of the country after the downfall, culminated with the disastrous bombing of Hiroshima and Nagasaki respectively on August 6<sup>th</sup> and 9<sup>th</sup>, 1945. From its side, during the same period, the EU was much more interested in the US and fascinated by areas of Asia other than Japan, such as China, which was starting an economic breakthrough which is still under discussion today.

The official moment determining the beginning of the relationship between the two territories came in 1959, when, in the circumstance of a visit of Nobusuke Kishi, Japanese Prime Minister from 1957 to 1960, to Brussels; he appointed Japan's ambassador to Belgium as the ambassador of the EU as well<sup>272</sup>. However, it was only at the end of the 1960s, when Japan actualized its post-war economic recovery and became a central player in the international economic arena, that the interest between the two parts began to be consistent. Five years after the creation of the EU Delegation in Tokyo in 1974, the predecessor of the current European Commission (that is, the Commission of the European Community) launched a programme addressed to European business managers, the 'Executive training programme' in Japan. The initiative was followed by another one, with the opening in Tokyo in 1984 of the EC-Japan Centre for Industrial Cooperation, still active as per today<sup>273</sup>.

Despite the heartening words of Romano Prodi and the diplomats of the EU Delegation, the relationship has far from being totally smooth, and inevitably there were moments of tension. The same year of the launch of the training programme, a document leaked from the European Commission, defining Japanese as a nation of *'living in rabbit hutches workaholics'*<sup>274</sup>. Such a

---

<sup>270</sup> This information has been provided by the kind collaboration of two employers of EU Delegation in Tokyo, who accepted to contribute to the present dissertation answering some questions on December 6<sup>th</sup>, 2019.

<sup>271</sup> TSURUOKA, M. *Supra note 109*, p. 108.

<sup>272</sup> DE PRADO, C. *Supra note 176*, p. 435.

<sup>273</sup> WATANABE, H. (2013). *Japan-Europe Relations at the Multilateral Level*. Japan's Diplomacy Series, Japan Digital Library, p. 2.

<sup>274</sup> *Ibid.*

definition has not been happily welcomed in the country. Things started changing, involving multiple cooperation fields beyond the mere economic one, when the Joint Declaration on Relation between the European Community and its Member States and Japan, commonly known as the Hague Declaration, was signed in 1991. In the declaration, the two parts involved officially recognized their deep pledge towards human rights, democracy, and rule of law. In July of that year, when the declaration was signed, European Commission President Jaques Delors and Japanese Prime Minister Toshiki Kaifu confirmed their firm commitment to peace, security, and stability in the world. Several consultative mechanisms were therefore established, to give substance to the initiative. Among them, yearly Japan-EU Summits and Japan-EU Foreigner Ministers meetings twice a year (at the time known as 'Japan-EU Troika Ministerial Meetings'). Dialogues on specific issues were also established, such as the Japan-EU High-Level Meeting on Environment, or the Japan-EU Dialogue in Intellectual Property Rights<sup>275</sup>. In the joint declaration, the expression 'human rights' appears in four instances: when the two parts acknowledge their common attachment to freedom, democracy, the rule of law and human rights (preamble), in their pledge to 'consult together on the international situation and regional matters with a view, in particular, to joining their efforts to bring about an easing of tensions and to ensure respect for human rights' (point 2), in 'supporting social systems based on freedom, democracy, rule of law, human rights and market economy' (point 3), and in 'supporting the efforts of developing countries [...] along with fostering respect for human rights as a major factor in genuine development' (point 3)<sup>276</sup>. Jacques Delors was a very fundamental figure in the construction of the EU-Japan alliance, due to his well-known *Japanophilia*. During his mandate as President of the European Commission (1985-1995), Delors was an important figure in alleviating possible tensions between European countries and Japan, as was the case with the French nuclear testing in the Pacific in 1995<sup>277</sup>.

It was only at the end of the years 1980s that the EU started appearing more frequently in Japanese media, complicit one of the most important events that led to the construction of a new Europe, that is, the fall of the Berlin Wall in 1989<sup>278</sup>. In front of such an event, that changed the course of European history forever, the reaction of Japan was immediate: Prime Minister Kaifu arrived in Europe as early

---

<sup>275</sup> *Op. cit.*, p. 4.

<sup>276</sup> *Joint Declaration on Relations Between the European Community and its Member States and Japan in the Hague*, The Hague, July 18<sup>th</sup>, 1991. Available at: [http://eeas.europa.eu/archives/docs/japan/docs/joint\\_pol\\_decl\\_en.pdf](http://eeas.europa.eu/archives/docs/japan/docs/joint_pol_decl_en.pdf), last accessed on 08.05.2020.

<sup>277</sup> HOOK, D.G.; GILSON, J.; HUGHES, C.W. and DOBSON, H. (2001). *Japan's International Relations. Politics, Economics, and Security*. Sheffield Centre For Japanese Studies, Routledge. Chapter XIII, p. 238.

<sup>278</sup> *Ibid.*, p. 232.



as the beginning of the new decade, and he delivered a message of complete collaboration and prompt aid for the reconstruction of Eastern Europe, confirming that his country would have supported the European Bank for Reconstruction and Development<sup>279</sup>.

The years 1990s constituted a period in which the relationship was further strengthened by the increase in cooperation in the multilateral framework, for instance, through the creation of the 'Asia Europe Meeting' (ASEM), and then the increasing involvement of both parties in G8 and G20, NATO, OSCE, KEDO, UN, the ASEAN Post Ministerial Conference, and the ASEAN Regional Forum. In this regard, the role of the UN as a means to fortify EU-Japan relations is demonstrated by their cooperation in Kosovo and by many Resolutions undertaken, which see both parties sharing the same thoughts, such as the 1992 UN Register of Conventional Arms Transfers<sup>280</sup>.

Then, 1994 was the year of the "Towards a New Asia Strategy" document, as was highlighted in the press conference of the at the time Commissioner for the DG External Relations, and it also was the only year in which the annual meeting between the two powers did not take place, due to an unexpected change in government in Japan and reluctance on the part of what was at the time the German presidency. The document gave a significant boost in the sense that its four overall objectives included new intentions of cooperation, such as strengthening the Economic presence of the EU in Asia, promotion of reciprocal understanding, support for the economic development of the poorest countries in Asia, and joint action to promote respect for human rights and fundamental freedom in Asia<sup>281</sup>. Indeed, it was only during the 1990s that the first serious recognition of the importance of values such as democracy and freedom as the basis in modern societies happened: this was the symptom of Japan and Europe slowly adapting to the transformations of the world surrounding them, and the necessity to reciprocally recognize those values, in order to assure their implementation<sup>282</sup>.

But the real essence of Japan-EU political relations came together with the 10<sup>th</sup> anniversary of the Hague Declaration when it was approved a comprehensive Action Plan to implement what was referred to as the 'Decade of Japan-EU Cooperation'. The Plan was built on four fundamental pillars: the promotion of peace and security, the relaunch of an economic and trade partnership, the cope with global and societal challenges, and the gather of people and cultures<sup>283</sup>. As time passed, more or

---

<sup>279</sup> *Op. cit.*, p. 239.

<sup>280</sup> *Ibid.*, p. 274.

<sup>281</sup> SHOJI, K. (2000). "Asian Way" of Approaching Human Rights Issues in the Asia-Europe Meeting (ASEM). pp. 1285-1295. In MAHONEY, P. ; MATSCHER, F. ; PETZOLD, H. and WILDHABER, L. *Protection des Droite de l'Homme: la perspective Européenne*. Mélanges à la mémoire de Rolv Ryssdal, Carl Heymanns Verlag KG, Koln.

<sup>282</sup> MYKAL, O. *Supra note 163*, p. 58.

<sup>283</sup> See EU Japan Summit, *Joint Press Statement*, Brussels, December 8<sup>th</sup>, 2001.

less encouraging results have been achieved, and the two sides have demonstrated considerable involvement.

As time passes, it is increasingly common for the two sides to meet in the same arena to face mutual challenges. For instance, in their commitment to tackling climate change, especially in light of the Kyoto protocol, or in their involvement in the field of security. Furthermore, the many initiatives that go beyond the political involvement, such as cultural ones, must not be underestimated, since they contribute in making the EU more visible and closer to Japanese citizens, and vice-versa.

The existing CEG between the EU and Japan is seen as the result of a long reciprocal indifference and an excessive focus from the side of the Asian country to establish durable relations with the US, rather than the EU. Certain is that, in the framework of events that led to the current relation between Japan and the EU, the United States of America functioned as the third pole of influence. In his famous speech in 1973, US Secretary of State Henry Kissinger referred to *'the year of Europe'*, also calling Japan to a monumental effort to redefine the international order<sup>284</sup>. Five years later, Japanese Europhile Prime Minister Fukuda Takeo stressed, in front of the opening Diet session, the need for strengthening Japan-EU-US relations, incorporating economic and political dialogue<sup>285</sup>. The EU and the US are often portrayed in Japanese media as central actors in shaping world transformations, and the relationship among western countries is perceived as potentially very influential in determining the future of the East<sup>286</sup>. This is probably the result of a western-centric interpretation of the world, that has characterized the study of geopolitics for a long time. In particular, the EU appears to Japan as a counter-balance force to the American world's influence in security and economic affairs, and also the Asia-Europe Meeting was born after the need to contain the superpower of the United States<sup>287</sup>. Japan and the EU are also key partners in combating the protectionist attitude that characterizes the United States, in an attempt to follow and respect the rules of the WTO. In our days, it is not uncommon to hear talking about 'America First', and maybe not as much about 'America First-ism', that is; the importance attributed to the relationship with the US. It is interesting to notice

---

<sup>284</sup> After having listed the fundamentals of a new Atlantic partnership, Kissinger calls Japan into action, as a necessary component for the achievement of a new international order: *'We ask our friends in Europe, Canada, and ultimately Japan to join us in this effort. This is what we mean by the year of Europe'*. Text of Kissinger's Speech at A.P. Meeting Here on US Relations with Europe. Available at: <https://www.nytimes.com/1973/04/24/archives/text-of-kissingers-speech-at-ap-meeting-here-on-u-s-relations-with.html>, last accessed on 20.03.2020.

<sup>285</sup> HOOK, D.G.; GILSON, J.; HUGHES, C.W. and DOBSON, H. *Supra note 277*, p. 231.

<sup>286</sup> CHABAN, N., SCHNEIDER, C.E., MALTHUS, R. (2009). *Visibility, Framing and Importance: Images of the EU in Japan and South Korea*. The Copenhagen Journal of Asian Studies. No. 27, Vo. 1, p. 108.

<sup>287</sup> BALME, R., BRIDGES, B. (2008). *Europe-Asia Relations. Building Multilateralism*. Palgrave Mcmillian, p. 4.

how, for Japan, such a relationship with the US has been changing through times, passing from an occupation force to become the natural trade partner to ally with. It is in the current decade that Prime Minister Abe agreed on new guidelines to establish a solid partnership with the United States<sup>288</sup>. The existence of such a trilateral form of cooperation, symbolized, *inter alia*, by the establishment of the Trilateral Commission to share the responsibilities and leadership after the Cold War – instead of concentrating it in the hands of the US – or the Japan-US-Europe Diet Members’ League for Comprehensive Security; led to many consequences. First of all, it provides a stable framework in which the three parts can address contemporary issues. Secondly, by placing the US in a central position for both the EU and Japan, the EU-Japan relation is no longer perceived in opposition to theirs with the United States, but parallel to it; at the same time rendering the EU and Japan’s axis stronger in contrasting possible unilateral actions of the United States. In the trilateral relations, the existence of the EU-Japan bilateral framework contributes in strengthening the interaction among the regions, in supporting those that are still considered ‘weakest sides of the triangle’ – Japan and the EU<sup>289</sup> – and the creation of initiatives such as the Japan-EU Millennium Partnership help in keeping the US committed to its multilateral engagements, especially in an era of scepticism towards multilateralism as the one of Donald Trump’s presidency is<sup>290</sup>. Hence, for Japan, the existence of such a trilateral form of cooperation brings a lot of benefits, particularly in the terms of security, as also underlined in the 1998 Diplomatic Bluebook, the report of the country’s foreign policies and activities published annually by the Ministry of Foreign Affairs<sup>291</sup>.

The post-Cold War period has re-determined a completely new assessment of the relations of Japan with the rest of the world, and once the bipolar situation that had characterized world history after WWII crumbled in the 1990s, Japan found in the EU a reliable partner also in the definition of its political and economic relationship with the former URSS, Russia. Since the *perestroika* and the end of the Cold War, Europe, which had been under the protective wing of the US that provided the Western world with the Marshall Plan, concentrated much of its efforts in continuing and implementing an alliance with the US; and Japan turned to be on the same level of thought and

---

<sup>288</sup> DE PRADO, C. *Supra note 176*, p. 446.

<sup>289</sup> HOOK, D.G.; GILSON, J.; HUGHES, C.W. and DOBSON, H. *Supra note 277*, p. 243.

<sup>290</sup> The decision of President Donald J. Trump to pull his country out of UNESCO, the withdrawal from the Paris Climate Agreement and the Iran Nuclear Deal are few examples of a politics that has been manifestly against multilateralism since he was elected on January 20<sup>th</sup>, 2017.

<sup>291</sup> HOOK, D.G.; GILSON, J.; HUGHES, C.W. and DOBSON, H. *Supra note 277*, p. 279.

engagement in thwarting the risk of economic disintegration of the Eastern block and the spread of nuclear weapons coming from that part of the world<sup>292</sup>.

The international community's continued focus on the US has meant that progress in the relation between Japan and the EU would have been overshadowed. For example, the talks on the Economic Partnership Agreement were barely considered in 2016: a rather chaotic year in the global scenario, with Donald J. Trump being nominated 45<sup>th</sup> President of the US and the Brexit referendum held in June. The EPA has been much less politicized if compared to the TTIP or the TPP, that were to be implemented that same year. The relationship of Japan with the US and of Europe with the US has somehow obscured the one between Japan and the EU. Finally, although the US may represent a 'cumbersome presence', its attitude towards human rights remains opposed to the one of Europe in many circumstances. The US has ratified few human rights treaties if compared to the EU, and the two sides have had opposite opinions on a number of issues, such as children's rights. Moreover, with the war on terror and the so-called 'gun-point democracy' carried on by the United States, the country has lost credibility in his engagement to safeguard human rights globally<sup>293</sup>. This state of affairs makes the EU a much more appetible partner for the protection and promotion of human rights than the American giant in the eyes of Japan.

Takashi Inoguchi, of the University of Tokyo, talks about an impediment of Japan to develop its 'normal statehood' between 1945 and 1952; affirming that it was possible for the country to fully implement it – to be intended in a Westphalian way, as sovereignty – only after the Cold War<sup>294</sup>. The lack of such a definition of normal statehood, fostered by the impossibility of disposing of a conventional army, has made it hard for Japan to find its space in the international scene for a long time. Such a condition has not facilitated its relationship with other actors, including the European Union. From the side of Japan, there may be some difficulties in interpreting certain conceptions of the EU, such as the concept of sovereignty itself<sup>295</sup>. The recent upsurge in Japan's international involvement, especially with Europe, has contributed to helping Japan reshaping in its 'normal statehood'. Thus, once Japan would have better defined its nature and its essence, it would have been easier to understand and delineate its external action. This is true for Japan and any other country in the world: for instance, the EU itself is accused of having developed an unclear external policy, and

---

<sup>292</sup> *Op. cit.*, p. 272.

<sup>293</sup> SMITH K.E. *Supra note 69*, p. 228.

<sup>294</sup> INOGUCHI, T. (2013). *Japan's Ambition for Normal Statehood*. Chapter VI, pp. 135-166. In Dominguez, J. and Kim, B. *East Asia, Latin America and the "New" Pax Americana*. Routledge.

<sup>295</sup> TSURUOKA, M. *Supra note 109*, p. 118.

this is partly linked to its internal incoherence. The launch of the Economic Partnership Agreement has surely contributed to helping Japan to find again its normal statehood<sup>296</sup>.

As it happened for what concerns governmental decisions, also the opinion that Japanese people have towards the EU has been transforming through times. After WWII, people tended to have much more confidence in the US instead of the Western European Countries. We can talk about a ‘stereotyped perception of Europe’<sup>297</sup>. It is interesting to observe how there has been a shift, and whereas in the past there was more trust towards the US than EU, now is probably the other way around.

Broadly speaking, the perception that Japanese people have of the EU is a positive one. By most of the people, the European Union is perceived as a positive actor, and it is recognized as a master in the promotion of human rights in the world. Surely, the not-that-easy to understand structure of the EU – starting from the confusion that may emerge from the similar names of the institutions composing it – do not facilitate to clarify its image and role in the world<sup>298</sup>. According to studies performed, it appears that the media tend to shed the light on the Union as a Civilian Power, therefore enlightening its role as a human rights promoter at the international level. The studies demonstrated that the idea of an international human rights guardian was the first one coming to the mind of representatives of the Japanese élite when invited to express their opinion about the EU and that such an image was shaped by the positive descriptions of the EU provided by some of the most popular Japanese newspapers: 読売新聞 (*Yomiuri Shimbun*), 日本経済新聞 (*Nihon Keizai Shimbun*), *The Japan Times*<sup>299</sup>. The image of the European Union as a positive Normative Power was further strengthened in the mind of Japanese citizens in the aftermaths of the triple disaster – earthquake, tsunami, and consequent nuclear accident – which hit Northeast Japan in March 2011. In front of what was immediately perceived as an urgent humanitarian crisis, the European Commission DG for International Cooperation, Humanitarian Aid and Crisis Response was one of the first international actors providing financial and humanitarian aid to those in need<sup>300</sup>. Positive, public opinion about the action of the EU in the world represents a further element not only to strengthen the partnership with

---

<sup>296</sup> INOBUCHI, T. *Supra note 294*, p. 143.

<sup>297</sup> TSURUOKA, M. *Supra note 109*, p. 120.

<sup>298</sup> This conclusion is obtained after interviews with diplomats, workers of the Japanese METI and MOFA, but also young students conducted during a period in Tokyo between September 2019 and February 2020.

<sup>299</sup> BACON, P. and KATO, E. (2013). Potential Still Untapped: *Japanese Perceptions of the European Union as an Economic and Normative Power*. *Baltic Journal of European Studies*, Tallinn University of Technology, Vol. 3, No. 3 (15), pp. 59-84.

<sup>300</sup> D’AMBROGIO, E. (2017). *Japan and Closer EU’s Ties*, Briefing. European Parliamentary Research Service. PE 608.739, p. 2.

Japan at the official and governmental level but also to foster a feeling of closeness between European and Japanese citizens, despite they live in the opposite side of the planet.

### 3.1.1 THE EU AND JAPAN'S ROLE IN ASEM



*Figure 1.* ASEM Logo Symbolises the intertwin of East (red Asian brushstroke) and West (Roman letter “E”).

*Credits: ASEM Website.*

One of the main platforms of dialogue for the EU and Japan is given by ASEM, the Asia-Europe Meeting. It counts fifty-one countries and two organizations, ASEAN Secretariat and the European Union<sup>301</sup>, this last one represented by the European External Action Service. It was established in 1996 in Bangkok with the Declaration of the homonymous city; soon after the drafting of the “Towards a New Asian Strategy” document that, as seen in the previous paragraph, had already given a substantial push to foster the human rights synergic actions of the involved parties. ASEM constitutes a key case of functioning cooperation established between the Western and the Eastern world. Beyond human rights, the topics discussed in ASEM are various, ranging from UN Resolutions to nuclear control, regional stability, security, and drug trafficking<sup>302</sup>.

When ASEAN was established, although there was a clear attempt coming from Asian countries to look at human rights under a new standpoint; some of them continued to consider the topic as an exclusively domestic affair. This was the case especially for China and Indonesia: the latter one at the time was occupying East Timor through a series of massive violations of human rights. Therefore, ASEM was more perceived as a forum of *confrontation*, that was not supposed to be too intrusive

---

<sup>301</sup> See Ministry of Foreign Affairs of Japan, The Asia-Europe Meeting (ASEM). Available at: <https://www.mofa.go.jp/policy/economy/asem/introduction.html>, last accessed on 27.03.2020.

<sup>302</sup> HOOK, D.G., GILSON, J., HUGHES, C.W., DOBSON, H. *Supra note 277*, p. 242.

with the country's internal affairs, and showed some blatant difficulties to overcome the notion of Asian values, and embrace a universal interpretation of human rights<sup>303</sup>.

The Dialogue is also very relevant in its being an initiative that does not include the US. Indeed, it may be looked at as another tool adopted by Europe to approach Asia, which after the Cold War was becoming more and more invasive in the international scene. At the same time, ASEM was the subject of various criticisms: it was considered not institutionalized enough, in other words, too informal<sup>304</sup>. The Bangkok Declaration itself has been considered as little more than a statement containing non-binding principles<sup>305</sup>. Furthermore, since its inception, the Asian side has often complained about the incapacity of the European friends to look at them as equal partners, but rather as assuming an attitude of superiority and to behave as "human rights teachers": this might have risen suspicious attitudes and coldness in certain contexts, and it is a position that has been firmly denied by European leaders, such as Germany's Foreign Minister Klaus Kinkel<sup>306</sup>. Equality and mutual respect are principles that the Asian side wanted to have crystal clear, to assure a fruitful and fair dialogue among peers. Such tensions probably constituted the result of centuries of interpretation of human rights as a *Western* concept, as opposed to the "Asian way" and the "Asian values". Despite their showed commitment to the cause, ASEAN countries demonstrated an ambivalent attitude concerning the concept of human rights in the ASEM framework. During the EU-ASEAN Meeting held in Germany, in which the ASEAN-EU Joint Declaration was adopted, the involved parties clearly stated their commitment to adopt the United Nations Charter, the UDHR and the Vienna Declaration as the solid basis to launch their joint action in protection of human rights<sup>307</sup>. However, ASEAN countries did not always show coherence with such a position initially taken; stressing the importance of cultural relativism in the Bangkok Declaration<sup>308</sup>. The intention to avoid the discourse on human rights did not constitute only the result of a wish coming from the Asian side: many European countries did not want to run the risk of creating situations of tensions, bringing on the table of discussions controversial issues like the East Timor occupation by Indonesia, or the attitude of China<sup>309</sup>. This is the reason why, most of the dialogue on human rights was made through informal meetings, that were

---

<sup>303</sup> SHOJI, K. *Supra note 281*, p. 1290.

<sup>304</sup> REITERER, M. (2006). *Japan and the European Union: Shared Foreign Policy Interests*. Springer-Verlag, pp. 333-349.

<sup>305</sup> EYSINK, S. (2006). *Human Rights Dialogue in ASEM; Do NGOs have a role to play?*. Clingendael Diplomacy Papers No. 7, pp. 1-27.

<sup>306</sup> SHOJI, K. *Supra note 281*, p. 1290.

<sup>307</sup> *Ibid.*, p. 1287.

<sup>308</sup> *Ibid.*, p. 1293.

<sup>309</sup> EYSINK, S. *Supra note 305*, p. 6.

facilitated by the establishment of new platforms of dialogue such as the Asia-Europe Foundation (ASEF) or the Council for Asia-Europe Cooperation (CAEC)<sup>310</sup>. Such alternative forums of discussion allowed to keep alive the topic of human rights at an informal level, and a very important one in these terms was the Asia-Europe People's Forum (AEPF), that gathered civil society interested in connecting Asia and Europe for various reasons; and their sessions turned to be useful to shed the light on certain human rights concerns, for instance, human rights policy in Vietnam<sup>311</sup>.

Small improvements were also made at a more formal level. Human rights have been expressly mentioned during the 3<sup>rd</sup> ASEM Summit, in the discussions concerning, among others, the situations in the Korean peninsula, East Timor, and the Balkans. The reason for this sudden interest in the matter remains unclear, and it may be due to the pressure coming from the European states to clarify the condition on those territories<sup>312</sup>. Among Asian countries, Japan seemed to be less keen to stick with the norms of Asian values in the framework of ASEM, as it also wanted to include Australia and New Zealand into the forum. However, its request was rejected, under the justification – provided by the Malaysian government, very sensible to the topic – that those countries had nothing to do with Asian values<sup>313</sup>. While the Japanese proposal testifies how the country was showing the greatest tolerance on the topic, most of the other countries of the continent remained quite attached to the traditional interpretation of Asian values. ASEM is very significant to Japan since it can not only boost its cooperation with Europe, but it could also be interpreted as a means to increase interregionalism across Asian and ASEAN countries. Japan already hosted the 7<sup>th</sup> Foreign Ministers Meeting in 2005<sup>314</sup>. The potentiality of ASEM to spread good practices relies on the fact that is it a platform of networking, that tries to establish connections among the involved parties, remaining flexible. Compared to the first years since its implementation, when the topic was considered almost a taboo, there seems to be more openness today in discussing human rights issues among politicians and experts. More specific topics like gender equality and women empowerment are now part of the leaders' agenda. Furthermore, ASEM enhanced the connection between the Eastern and Western world through the conclusion of the Tangible Areas of Cooperation in the field of Connectivity (TACCs) in 2018<sup>315</sup>.

---

<sup>310</sup> *Op. cit.*, p. 6.

<sup>311</sup> *Ibid.*, p. 9.

<sup>312</sup> *Ibid.*

<sup>313</sup> TANAKA, A. (2012). *The Development of ASEAN+3 Framework*. Chapter III, p. 8. In Curley, M. and Thomas, N. *Advancing East Asia Regionalism (Politics in Asia)*. Routledge.

<sup>314</sup> See Ministry of Foreign Affairs of Japan, The Asia-Europe Meeting (ASEM), Introduction. Available at: <https://www.mofa.go.jp/policy/economy/asem/introduction.html>, last accessed on 24.03.2020.

<sup>315</sup> The information provided has been obtained thanks to the kind cooperation and availability of a representative of Japan's Contact Point for ASEM, who kindly accepted to answer some specific questions about Japan's role in ASEM.



TACCs identify six different areas of action, each one divided into subgroups: Connectivity Policies, Sustainable Connectivity, Trade and Investment Connectivity, Future Connectivity and Digital Economy, People to People Connectivity, Security Challenges linked to Connectivity. In the framework of people-to-people connectivity, principles such as women's rights and elder people's rights are considered goals to reach together<sup>316</sup>. From an economic standpoint, ASEM represents the world's largest economic group, and it accounts more than 60% of global trade, with an expectation to raise even more at the expenses of America, and trade between the two continents is expected to reach 2.5 trillion dollars in five years<sup>317</sup>. These are just few of the successes that fill with meaning the sentence pronounced by HRVP Josep Borrell in the occasion of the 14<sup>th</sup> Europe-Asia Meeting held in Madrid in December 2019: *'Simply put, Europe and Asia need each other now more than ever'*<sup>318</sup>.

### 3.1.2 MAIN OBSTACLES FOR THE FUTURE

Despite the earnest efforts coming from the two sides in fostering their joint activity, still; several issues risk to trigger future cooperation between Japan and the European Union, especially within the context of human rights. The greatest impediment of the past – that is, the firm attitude of mutual ignorance with the consequent 'expectation deficit' – seems to have been overcome. The negotiations and implementation of the EPA contributed to giving a significant momentum in the global visibility of their engagement. Nonetheless, the steadfastness that Japan shows towards certain practices such as whaling and death penalty, the indisputable role occupied by the Constitution in the Japanese legal system, in addition to the cumbersome role of China, the behaviour towards migrants and the fundamental rights of asylum seekers, the ambivalent interpretation of the concept of *right* and the notion of Asian Value, historic events with diplomatic and economic consequences such as Brexit, are all elements that had a more or less strong influence in shaping the EU-Japan relation.

A first, complicated aspect is represented by the conception of 'right'. In Chapter II we concluded that neither the principle of Asian value, neither the one of traditional Japanese value could be used as an excuse to justify the implementation of *ad hoc* regulations for the protection of human rights.

---

<sup>316</sup> See APGC Plan for Areas of Focus and Related Actions on Connectivity. ASEM 12. Brussels, October 19<sup>th</sup>, 2018. Available at: <https://d333mq0i40sk06.cloudfront.net/documents/APGC-Plan-for-Area-of-Focus-and-Related-Actions-on-Connectivity.pdf>, last accessed on 22.03.2020.

<sup>317</sup> KHANNA, P. (2019). *The Future is Asian. Global Order in the Twenty-First Century*. Weindenfeld&Nicolson, p. 241.

<sup>318</sup> "High Representative Josep Borrell opens ASEM Foreign Minister Meeting (16 December 2019)" Online Video Clip. *YouTube*. YouTube, December 17, 2019. Web. Available at: <https://www.youtube.com/watch?v=i3HfEsfkyD8>, last accessed on 23.03.2020.

Due to such controversial aspects, Japan has been perceived as having some deficits in the field of human rights. As De Prado points out<sup>319</sup>, on the occasion of the 2017 annual meeting between the EU and Japan, this last one seemed somehow reluctant in pointing out any topic that was different from trade or security. In a declaration, Japan stated that: *‘Japanese officials also weren’t best pleased about the fact that Brussels linked the trade deal to assurance on democracy or human rights as if the Japanese government had deficits in these areas’*. Japan seems to interpret the EU’s behaviour as a threat to the principle of non-interference in the internal affairs of the country, linking areas that at the eyes of Japan appear as explicitly differentiated, and acting as a human rights prophet in the world. The Japanese language adopts a specific term, 政経分離 (*Seikei Bunri*), to indicate the division between politics and economics<sup>320</sup>. Again, it is De Prado who points out the fact that maybe there is only rhetoric in the considerations made by Japan in sharing the same values of the EU, and that despite such declarations, still, there is a significant gap between the two<sup>321</sup>.

This net division adds to the non-interference principle, often repeated by Japan. For instance, the Official Development Assistance webpage of the Japanese MOFA’s website, in relation to the Cabinet’s decision on the ODA Charter of 1992, reports that:

“Taking into account comprehensively each recipient country’s request, its socio-economic conditions, and Japan’s bilateral relations with the recipient country, Japan’s ODA will be provided in accordance with the principles of the United Nations Charter, *especially* sovereign equality and non-intervention in domestic matters” (my emphasis)<sup>322</sup>.

A second point that deserves to be mentioned concerns the regional integration of Japan and the EU. As Tamio Nakamura brilliantly explains<sup>323</sup>, the Union was founded as an organization based not only on the *rule* of law but also on the *role* of law. In other words, legislation is the fundamental base of the Union. On the other side, Japan is geographically and culturally closer to the reality of ASEAN, and it is part of ASEAN+3, where a similar legal structure has never been implemented, and where the lack of an adequate system of institutions makes it hard to guarantee the pursuit of human rights

---

<sup>319</sup> DE PRADO, C. *Supra note 176*, pp. 435-454.

<sup>320</sup> BACON, P.; MAYER, H. and NAKAMURA, H. (2015). *The European Union and Japan: A New Chapter in Civilian Power Cooperation?*. The Globalisation, Europe, Multilateralism Series. Ashgate. Chapter VIII, p. 160.

<sup>321</sup> DE PRADO, C. *Supra note 176*, p. 454.

<sup>322</sup> See Ministry of Foreign Affairs of Japan, Japan’s Official Development Assistance Charter. *Supra note 246*.

<sup>323</sup> NAKAMURA, T. *Supra note 79*, pp. 200-204.

smoothly. This situation generates a difference in the importance attached to human rights and the consequent effectiveness of the mechanisms established to monitor and defend them.

Moving on to the practical implementation of human rights, we already had the opportunity to overview the issue of the death penalty in the framework of the activities of the Council of Europe. The feeling of trust and consensus towards the application of the death penalty in the US has gradually increased, reaching 54% in 2018<sup>324</sup>: if this number appears unbelievably high, we should look at the one of Japan, that reaches 85% of popular consensus, in partly explicated by the general feeling of trust enjoyed by the courts<sup>325</sup>. The international community has repeatedly recalled Japan to abolish the death penalty. Article 6 of the ICCPR, that Japan has ratified in 1979, recognizes the right to life to every individual. It also recalls countries where the death penalty is still practiced to reserve this harmful punishment exclusively in extreme cases<sup>326</sup>, and the General Comments to the Covenant further stresses to abolish it everywhere<sup>327</sup>. Nevertheless, the death penalty remains a matter of national discussion, therefore neither the UN, neither any other international organ can impose its decision to eliminate the practice to third countries. And Japan, in applying the death penalty, has always been very clear in recognizing how this practice is connected to the national capacities of deciding the treatment to reserve to its criminals. To make an example, when the UN disseminated Resolution of 18 December 2007 calling for a universal moratorium of the death penalty, Japan's answer did not wait to come, and the Minister of Justice Hatoyama Kunio provocatively signed off the execution of three individuals after a couple of days.<sup>328</sup> In the eyes of the international community, this act looked as a means adopted by Japan to underline its power and its wish of auto-determination despite external pressures. The Human Rights Committee of the UN is continuously reiterating the condemnation of the death penalty in its Concluding Observations – following the submission of the

---

<sup>324</sup> ZAMFIR, I. (2019). *The Death Penalty and the EU's Fight against it*. European Parliamentary Research Service. PE 635.516.

<sup>325</sup> This information has been provided by the kind availability of Keio University's professor of International Law and Human Rights to answer some questions to the scope of the present research.

<sup>326</sup> ICCPR, Article 6.1: 'Every human being has the inherent right to life. This right shall be protected by law. None shall be arbitrarily deprived of his life.' Article 6.2: 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court'.

<sup>327</sup> HRC, *General Comment No. 36 to Article 6: Right to Life (2019)*. IV: Imposition of the Death Penalty, CCPR/C/GC/36, 3 September 2019.

<sup>328</sup> FIDH. (2008). *The Death Penalty in Japan: The Law of Silence. Going against the International Trend*. (International Fact-finding Mission). N° 505a, p. 6. October 2008.

periodic report – to Japan<sup>329</sup>. Outside of the framework of the United Nations, the death penalty is a common rhyme in EU-Japan relations. The European Union has reiterated its strong commitment to fighting the death penalty in various ways: as stated in the Copenhagen criteria, one of the main conditions to access the Union regards the abolition of the death penalty. The death penalty abolition also constituted the first of the human rights guidelines provided by the European Union in 1998, which were subsequently updated in 2001, 2008 and 2013<sup>330</sup>. The abolition of the death penalty is further stressed in the EU's Action Plan for Human Rights and Democracy. Moreover, considering the Generalised System of Preferences, the EU facilitates commercial trade with countries that have ratified certain conventions: among them, those related to the abolition of the death penalty<sup>331</sup>. This clause risks having an impact on the economic partnership with Japan. In the framework of the EU-Japan summit of 2008, the topic was not tackled at all, and the EU mission admitted that the Japanese delegation which received it neglected to mention the issue. The same year, on the day of the submission of the UN Report criticizing the use of the death penalty, the Government of Japan authorized the execution of two men. It seems to emerge a controversial matter: on one side, a sincere desire, coming from the EU, to collaborate with Japan despite in the country this practice is still implemented. On the other, a contradiction, considering the firm European condemnation of the death penalty. In addition to the issue of the death penalty itself, it must be taken into account the fact that when we elaborate on the problem of the death penalty in Japan, there is a further aspect to consider and strictly related to human rights, that is, the conditions in which the prisoners are treated, and which constitutes a further reason of worrying for the international community.

As we have been analysing the part played by the US in EU-Japan relations, equal importance should be given to the one of China, in order to correctly understand the recent developments of Japan's international connections. The rise of China could represent a potential obstacle for EU-Japan relations, as its development as an economic powerhouse intrigued Europe, pushing the Old Continent to dedicate a great part of its attention to this phenomenon, overshadowing the possibility

---

<sup>329</sup> ICCPR, Human Rights Committee. Concluding Observations of the Sixth Periodic Report of Japan. CCPR/C/JPN/CO/6. August 20<sup>th</sup>, 2014.

<sup>330</sup> See Council of the European Union, EU Guidelines on Death Penalty. COHOM 64, PESC 403, OC 213. Brussels, April 12<sup>th</sup>, 2013. Available at: : <http://data.consilium.europa.eu/doc/document/ST-8416-2013-INIT/en/pdf>, last accessed on 24.03.2020.

<sup>331</sup> Directorate-General for External Policies, Policy Department (2014). *The European Parliament's Role in Relation to Human Rights in Trade and Investment Agreements*, p. 19. EXPO/B/DROI/2012-09. Available at: <https://www.europarl.europa.eu/cmsdata/86031/Study.pdf>, last accessed on 25.03.2020.

of developing a meaningful relationship with Japan<sup>332</sup>. Due to their geographical proximity, Japan and China share a very long history. Japan has accepted, for a long time, the influences coming from China without questioning them until the Seventeenth century when the country started developing its nationalistic logic, and at the same time was getting closer to the mechanisms of European societies during the Meiji period<sup>333</sup>. The ‘National Rejuvenation’, or ‘Chinese Dream’ as it has been defined by President Xi Jinping, refers to the idea of bringing the country back to the past glory, which characterized the era before the ‘century of humiliation’ derived by the western supremacy and the war with Japan. The intent of China is, therefore, to prove itself as a central point in Asia, again. This rapid growth of China has inevitably affected both the EU and Japan. One of the inevitable consequences has been a shadowing of EU-Japan relations, since both parties were much more focused on China, especially in light of the economic uncertainty created by the trade war with the United States. However, on the other side, the significant rise of China could also be interpreted as an incentive to develop cooperation. Indeed, one of the main tools used by Japan to face its neighbourhood’s economic and geopolitical growth was the promotion of a new *value-oriented approach*, based on the rule of law, democracy, and human rights: three areas that differentiate the approach of Japan from the one of China, and that makes the country of Rising Sun closer to the West, marking an important difference from its neighbourhood. Indeed, Japan and the EU are finding new, alternative ways to contrast what appeared as the incontestable Chinese rise, such as the Connectivity Partnership recently launched, whose aim is also to oppose the Belt and Road Initiative. From the growth of a potential rival, new cooperation opportunities have emerged thereupon. In the previous pages, it has been briefly overviewed how the recent exit of Great Britain from the family of the European Union could potentially have negative repercussions in the protection of human rights among British citizens, who will defile from the EU mechanisms of safeguard. In the context of EU-Japan relations, Brexit will not have a particular impact on human rights as far as Japan is concerned. However, it may entail the risk to have some significant repercussions in economics, especially in the automobile sector. Japan has expressed its strong concerns on the issue, and it has firmly opposed any sort of hard Brexit, that could damage the Japanese enterprises in the British

---

<sup>332</sup> HUGHES, C.W. *Supra note 244*, pp. 837-856.

<sup>333</sup> SHAHABUDDIN, M. (2018). *The ‘Standards of Civilization’ in International Law. Intellectual Perspectives from pre-war Japan*. Völkerrechtsblog. Available at: <https://voelkerrechtsblog.org/the-standard-of-civilization-in-international-law/>, last accessed on 31.03.2020.

territory<sup>334</sup>. Great Britain has been one of the first European interlocutors to Japan, that could claim to have established with the English-speaking Kingdom a long tradition of good relationship, nowadays more endangered than ever.

Great Britain left the EU at 23 o'clock on Friday, January 31<sup>st</sup>, 2020. This means that at the time this thesis is edited, the effects of this historical event are still blurred, despite the efforts carried on by analysts since the referendum was held almost four years ago, to predict the possible consequences of its outcome. An article of "The Japan Times" reports the worrying of some scholars that, considering Great Britain and its role of 'cheerleader' of Japan inside the block of 28, the exit of the country will soften the relationship between Japan and the whole bloc, leading this last one to focus again on China – a concern that already existed<sup>335</sup>. Despite these premises, it is not yet the time to draw the consequences that Brexit will bring overseas. For the moment, one thing is for sure: Japanese people are very shocked by what happened, and Brexit will hardly bring any benefit in front of the EU-Japan cooperation strategy.

## 3.2 EU-JAPAN COOPERATION STRATEGY

### 3.2.1 THE ECONOMIC PARTNERSHIP AGREEMENT

Japan and the EU account together around a quarter of the global GDP<sup>336</sup>. Such an amount testifies the significant involvement that they have in the import and exports of the world. From 2019, their role in the global economy has become even more evident with the implementation of an Economic Partnership Agreement, starting from February 1<sup>st</sup>. At the time this thesis is drafted, around one year has passed since that moment, and it is already possible to provide positive feedback on the agreement. The EPA is based on the principle of the Mutual Recognition Agreement, aiming at facilitating trade in goods by removing technical barriers. Thus, the agreement has contributed to foster the export of many products from both the EU and Japan, including delicacies such as cheese, wine, and alcoholics: it is now possible to choose among a wide range of French, German, Spanish or

---

<sup>334</sup> Japan Business Federation and Japan Business Council in Europe. Urgent Proposal on the UK's Withdrawal from the EU. Keidanren, August 4<sup>th</sup>, 2017. Available at: <https://www.keidanren.or.jp/en/policy/2017/061.html>, last accessed on 25.03.2020.

<sup>335</sup> HOLLIGWORTH, W. (2016). *Brexit may Carry Costs for Japan, Making EU More Pro-China: Experts*. In "The Japan Times". September 16<sup>th</sup>, 2016.

<sup>336</sup> See European Commission, DG Trade, Japan. Available at: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/>, last accessed on 28.03.2020.

Italian products appearing in the shelves of Japanese supermarkets. In the first year of implementation, the EPA shows some very encouraging results: European exports to Japan went up to 6,6% in comparison with the previous year, and 6,3% the other way around. Among the main sectors that benefitted from the Agreement, there was not only the one of food and beverage; since also electrical machinery exports or Spanish leather profits went up<sup>337</sup>.

Being an economic agreement, EPA does not fall into the two existing categories of human rights treaties: treaties *on* human rights promotion, or treaties that *encompass* human rights. Nevertheless, such a treaty needs to be mentioned for two main reasons: because it represents a real milestone and a gigantic step forward for EU-Japan partnership, and because it is still possible to identify important references to human rights, despite the agreement's economic nature. In 2015, the European Commission published a document entitled "Trade for All". The document specifies how the agreements stipulated demand to the EU to promote its values externally<sup>338</sup>. EPA could be intended as an alternative way for the Union to profess and strengthen its values outside its borders. The preamble of the agreement specifies that Japan and the EU share common values<sup>339</sup>. In general, international agreements concluded by the EU are never exempt from human rights-related paradigms, as demonstrated by the presence of the "human rights clause". Such a clause was inserted to allow the European Union to suspend its obligations towards the partner, in case of human rights violations. This was the case, for instance, in the 1970s when, in view of the atrocities committed by Uganda, ruled by a bloody dictatorship, the EU wanted to suppress its financial aid – realizing that there was no mechanism allowing it to do so<sup>340</sup>. The inclusion of the human rights clause in Article 5 of the IV Lomé Convention<sup>341</sup> was a very important step forward in assuring the respect of certain

---

<sup>337</sup> Data updated as of January 31<sup>st</sup>, 2020. First year of EU-Japan Economic Partnership Agreement shows growth in EU exports. Available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2107>, last accessed on 27.03.2020.

<sup>338</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2015). *Trade for All: Towards a more Responsible Trade and Investment Policy*. COM(2015) 497 Final. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52015DC0497>, last accessed on 27.03.2020.

<sup>339</sup> EPA Preamble: "CONSCIOUS of their longstanding and strong partnership based on common principles and values [...]" "REAFFIRMING their commitment to the Charter of the United Nations and having regard to the principles articulated in the Universal Declaration of Human Rights".

<sup>340</sup> Directorate-General for External Policies, Policy Department. *Supra note 331*, p. 6.

<sup>341</sup> See IV Lomé Convention (1989), Article 5: "1. Cooperation shall be directed towards development centred on man, the main protagonist and beneficiary of development, which thus entrails respect for and promotion of all human rights. Cooperation operations shall thus be conceived in accordance with this positive approach, where respect for human rights is recognized as a basic factor of real development and where cooperation is conceived as a contribution to the promotion of these rights. In this context development policy and cooperation shall be closely linked to respect for and enjoyment of fundamental human rights and to the recognition and application of democratic principles, the consolidation of the rule of

human rights standards in international treaties and in giving to the EU the possibility of disengage from agreements with countries showing inappropriate behaviour. The clause is fundamental for the EU to foster its position in its external relations, without adding any other legal obligation. Until now, the EU has taken ‘appropriate measures’ due to branches of the clause, only under the Cotonou Agreement<sup>342</sup>.

In the case of the EU-Japan EPA, the establishment of the human rights clause in the agreement seemed to have sparked discussions during the negotiations. The wish of the EU to add such conditionality to the agreement has not been welcomed by Japanese negotiators without any resistance: the clause, that is often adopted as a means to control the democratization process of countries, and it is therefore applied most of the time in developing or emerging countries, was partly perceived by Japan – a member of the G7 – as insulting. For its part, it appeared as the EU wanted to use this clause as a means of pressure for the abolishment of the death penalty. Japan’s indignation was further fuelled by the awareness that such a clause did not exist in the US-EU FTA agreement, and therefore, perceived as even more discriminatory<sup>343</sup>.

The human rights clause is not the only human rights related element in EU international economic agreements. As was confirmed by some sources at MOFA, there is another issue related to the protection of human rights contained inside the EPA, and constituted by the issue of protecting people’s data. In 2016, the European Parliament had approved a General Data Protection Regulation (GDPR) stabilizing the criteria for the flows of EU citizens’ data. This aspect was very seriously taken into account while negotiating the Free Trade Agreement, and it represented an indisputable point for the EU. GDPR has indeed become one of the battle horses of the European Union, looked with admiration in the rest of the world. It seems that, during the negotiations, once compared with the

---

law and good governance. [...] Respect for human rights, democratic principles and the rule of law, which underpins relations between ACP States and the Community and all provisions of the Convention, and governs the domestic and international policies of the Contracting Parties, shall constitute an essential element of this Convention. 2. The Contracting Parties therefore reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. The rights in question are all human rights, the various categories thereof being indivisible and inter-related, each having its own legitimacy: non-discriminatory treatment; fundamental human rights; civil and political rights; economic, social, and cultural rights. [...]. 3. At the request of ACP states, financial resources may be allocated, in accordance with the rules governing financial cooperation, to the promotion of human rights in the ACP States and to measures aimed at democratization, a strengthening of the rule of law and good governance. [...]”.

<sup>342</sup> ZAMFIR, I. (2019). *Human Rights in EU Trade Agreements. The Human Rights Clause and its Application*. European Parliament Briefing, PE 637.975, p. 9.

<sup>343</sup> The Japan Times (2014). *EU Demands Human Rights Clause Linked to Economic Partnership Agreement with Japan*. May 6<sup>th</sup>, 2014.



EU, the Japanese standards of data protection were considered too low<sup>344</sup>. Intellectual property rights are another example of the consideration given to the rights of human beings in the agreement<sup>345</sup>. Since it covers not only customs tariffs issues, but also intellectual property rights and further issues such as environment, the EPA is perceived as a ‘new generation FTA’<sup>346</sup>.



*Figure 2.* Prime Minister Shinzo Abe and former President of the European Commission Jean-Claude Juncker enthusiastically smile in front of the cameras. *Credits: Reuters*

The firm commitment of the EU to protect citizens’ data had been confirmed just a few days before the implementation of the agreement, on January 23<sup>rd</sup>, with the discussions over the adequacy decision, in which the EU and Japan decided to create the world’s largest area of cheese, chocolate, and wine trade; but also of data flows. It was not easy for the EU to take the adequacy decision confirming that Japan had an adequate level of data protection for its citizens<sup>347</sup>. The consequence of this decision was that all the data travelling from Europe to Japan will be guaranteed with the same rights and protected by the same laws as they would flow in Europe. Hence, EU citizens will be assured with the same benefits that they have within the EU, namely: information concerning the processing

---

<sup>344</sup> European Digital Rights (2018). EU-Japan Trade Agreement not Compatible with EU Data Protection. Available at: <https://edri.org/eu-japan-trade-agreement-eu-data-protection/>, last accessed on 24.03.2020.

<sup>345</sup> See European Commission, Trade. Key Elements of the EU-Japan Economic Partnership Agreement. Point 12. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1955>, last accessed on 24.03.2020.

<sup>346</sup> NAKANISHI, Y. (2019). *The Economic Partnership Agreement and The Strategic Partnership Agreement between the European Union and Japan from a Legal Perspective*. Hitotsubashi Journal of Law and Politics, No. 47, pp. 1-15.

<sup>347</sup> See Factsheet of the Directorate-General for Justice and Consumers (2019). *EU Japan adequacy decision*. Available at: [https://ec.europa.eu/info/sites/info/files/research\\_and\\_innovation/law\\_and\\_regulations/documents/adequacy-japan-factsheet\\_en\\_2019\\_1.pdf](https://ec.europa.eu/info/sites/info/files/research_and_innovation/law_and_regulations/documents/adequacy-japan-factsheet_en_2019_1.pdf), last accessed on 22.03.2020.

of their data, request access to their personal data, request correction or deletion of their personal data<sup>348</sup>.

In addition to that, in the recent FTAs signed by the EU, a new fundamental Chapter has been inserted: the one on Trade and Sustainable Development. Such a chapter includes levels of protection, labour standards, environmental issues, workers' rights, and many others clauses. In the EPA with Japan, this part corresponds to chapter 16, from page 438 to page 466. The TSD Chapter is built in line with the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, and with the SDGs that the EU itself has vastly contributed to formulating. Inevitably, the Trade and Sustainable Development Chapter overlaps with the human rights clause, but this does not prevent the validity and effectiveness of the two.

One very positive side of the agreement is given by the fact that, even though throughout its negotiations it has been widely overshadowed by other events, it gave a significant boost to the EU-Japan partnership in the international scene, making the two countries much more visible as active cooperating actors.

### 3.2.2 THE STRATEGIC PARTNERSHIP AGREEMENT

The negotiation that led to the implementation of the *Economic Partnership Agreement* went hand in hand with the formulation of a *Strategic Partnership Agreement*. This kind of pact involves the sharing of expertise and resources to achieve pre-established objectives of various kinds. While the EU was already familiar with these treaties<sup>349</sup>, it was the first time for Japan to stipulate one of this kind. A central difference with the EPA is that while the latter is an 'EU only' agreement, meaning that it entered into force following the approval of the European Parliament, the SPA is a mixed agreement: therefore, its contents involve issues that do not fall under the exclusive competences of the Union, and consequently, the individual Member States have a say, and must also sign the agreement. This, of course, renders the whole procedure significantly more complex and time-consuming, having to take into account the individual interests of the different EU states and match those of the overseas partner. The agreement has been carried on more or less the same period of the FTA. Like the EPA, also the SPA has, in its preamble, a reference to the common values for the two

---

<sup>348</sup> JOROUVÁ, V. (Commissioner for Justice, Consumers and Gender Equality). *EU Japan Adequacy Decision*. Factsheet, January 2019.

<sup>349</sup> The EU has already stipulated a SPA with Canada in 2016. (More information available in the EEAS Website, 'EU-Canada Strategic Partnership Agreement').

parts: human rights, democracy, rule of law<sup>350</sup>. However, considering its difficult implementation, due to the necessity of being discussed by all Member States and the number of topics considered, made it less visible than the FTA. Probably, another factor is also due to the economic nature of the EPA; as it has been stated multiple times in this research, economics seems to be always in the spotlight, whereas other kinds of agreements, although they should receive as much attention, they do not. Its content distanced from monetary and commercial policies has probably contributed to making it less appealing compared to its economic counterpart.

The SPA is a very broad agreement, covering around 40 areas of cooperation. For this reason, the SPA provides a pool of appealing information about the fields in which the two interlocutors wish to engage: however, for the moment, the agreement still needs to be approved by all the EU Member States, and it is not even possible to access a complete list of the whole set of cooperation areas.

Nevertheless, it is possible to affirm with certitude that human rights are tackled in multiple ways inside the agreement. An example is the expressed willingness to work together in the area of women's rights<sup>351</sup>. It comes with no surprise that the promotion of gender equality constitutes one of the absolute priorities for the European Union. The EU is very much committed to the fifth Sustainable Development Goal, concerning the achievement of gender equality. In addition to that, the European Commission is strategically engaged to boost women's rights through the increase of female labour market participation, women's economic independence, the reduction of gender pay gap, the involvement of women in decision-making, the fight against gender-based violence and international commitment to protect women's rights across the world. The EUGS already allowed the EU to displace such battles at the international level, guaranteeing a global approach on the matter. Women's rights further constitute a priority in the framework of the ENP, which aims at guaranteeing their and children's safeguard; the policy also aims to enhance women's role as mediators for peace and security. The European Union fully supports the 'Women, Peace and Security Agenda'<sup>352</sup> and

---

<sup>350</sup> SPA Preamble: "(The Parties) REAFFIRMING their commitment to the common values and principles, in particular *democracy, rule of law, human rights and fundamental freedoms*, which constitute the basis for their deep and long-lasting cooperation as strategic partners" (My emphasis).

<sup>351</sup> As mentioned, the SPA is yet to be implemented, due to the complexity of the agreement and the time it requires to be metabolized. The information provided has been obtained thanks to the kind cooperation and availability to ask questions from representatives of the EU Delegation in Tokyo, who dedicated a part of the interview to explain the current beneficial dialogue between the EU and Japan on gender issues.

<sup>352</sup> Council of the European Union (2018). *Women, Peace and Security – Council Conclusions*. 15086/18. Brussels, December 10<sup>th</sup>, 2018. Available at: <https://www.consilium.europa.eu/media/37412/st15086-en18.pdf>, last accessed on 24.03.2020.

also the ‘Spotlight Initiative’<sup>353</sup> to eliminate every form of gendered violence, both promoted by the United Nations. For what concerns Japan, at the national level, the Womenomics strategy – mentioned in Chapter II – is entirely dedicated to the creation of a society in which ‘*all women can shine*’<sup>354</sup>. To comply with international standards, Japan ratified the CEDAW Convention and it actively contributes to UN Women. A liaison office has recently been opened in Tokyo, also in support of the *He for She* project, an initiative that can count on the backing of the European Commission as well<sup>355</sup>. Japan too is contributing in fighting the sufferings that women have to bear in conflicts and wars, indeed, it is a great supporter of the ‘Women’s Leadership, Empowerment, Access & Protection in Crisis Response’ seeking to ensure a prompt response for women and girls in a situation of crisis. Thus, the United Nations have already laid a solid foundation to support a common initiative that can be further improved from now on thanks to the SPA. Nevertheless, the existing discourse between the European Union and Japan in the area of women’s rights, rather than a real dialogue *per se* – such as the one that exists, for example, in the area of climate change, where the DGs of the European Commission and representatives of the corresponding ministry in Japan periodically meet and discuss at the table – can be defined as an ‘exchange of know-how’ or ‘exchange of good practices’ initiative. Indeed, the two sides have a different approach to the issue, which is taken as a human rights concern by Europe, while in the context of the Strategic Agreement with Japan, it is primarily tackled as an economic issue. For instance, rather than seeing it as a women’s right, reaching gender equality in a company is seen as an opportunity to have broader perspectives and different points of view in the workplace, thus bringing more fruitful results. Thanks to this type of approach it seems to be easier to achieve tangible results in cooperation on this issue. Within this framework, the issue of women’s rights *in* Japan is partly avoided, in order to leave room to the idea of a challenge common to many countries in the world, which must be tackled jointly in a collaborative spirit. In particular, a comparative report on the economic empowerment of women has been conducted, demonstrating that there are multiple ways in which the EU and Japan can learn from one another on how to encourage women’s empowerment. The study was made to demonstrate the benefits deriving from a

---

<sup>353</sup> See European Commission Website, Press Corner, *Q&A: What is the EU doing for and Women’s Rights and Gender Equality?* Available at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_1602](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_1602), last accessed on 28.03.2020.

<sup>354</sup> Prime Minister Shinzo Abe has repeatedly used this expression in the framework of his Womenomics programme and the policies he aims to implement to assure women’s rights and gender equality in Japanese society. For instance, he adopted the expression “To realize a society where women shine in every corner of the world” during the World Assembly for Women, in 2017 (Full text of the speech available at: [https://japan.kantei.go.jp/98\\_abe/statement/201711/01WAW.html](https://japan.kantei.go.jp/98_abe/statement/201711/01WAW.html))

<sup>355</sup> See *He for She* Website. Shinzo Abe, Prime Minister of Japan. Available at: <https://www.heforshe.org/en/node/81>, last accessed on 21.03.2020.

major inclusion of women in the workforce, especially in the decision making and managerial positions, and considering aspects that inevitably influence the economic empowerment of women, such as part-time job and maternity leave<sup>356</sup>.

It is necessary to wait until the official implementation of the agreement in order to enjoy its tangible outcomes, therefore for the moment we can only make suppositions. From its structure, and considering the broad variety of fields in which Japan and the EU have confirmed their dedication, the treaty appears very promising. If the two parts will be able to organize and implement effective and well-structured work as done for the economic agreement, there is little doubt that the SPA will also achieve concrete and positive results.

### 3.2.3 PARTNERSHIP IN SUSTAINABLE CONNECTIVITY AND QUALITY INFRASTRUCTURES

In September 2019, in the framework of the Europe Connectivity Forum in Brussels, where Prime Minister Shinzo Abe participated, the *Connectivity Agenda* promoted by the European Political Strategy Centre found its space in the talks between the European Commission and Japan. The word ‘*Connectivity*’ seems to have become one among the favourites adopted by the European Commission. In Chapter I, introducing the European Union Global Strategy, it has been outlined how the word *Global* could be interpreted in multiple senses. In the same way, if we think about the word *Connectivity*, it is possible to interpret it in various ways. Connectivity indicates, first of all, the wish to create a connection between Europe and Asia: the Partnership on Sustainable Connectivity and Quality Infrastructure between the EU and Japan is the first of this kind and encompasses the main challenges that come with it, and the necessity of creating a series of common norms and standards on multiple fields, ranging from transport, energy, to digital and human connectivity. The Connectivity one is thought of as a real dialogue, in the sense that it will not create any legally binding rights or obligations under international law, neither for Japan or the EU. The thematic of connectivity had already found wide space in the East-West discourse with the TACCs of 2018 in the ASEM platform, in which Japan had already shown to be one of the most interested interlocutors of the EEAS. Therefore, the 2019 forum was an occasion to reaffirm the commitment of the two sides in acting together under multiple fronts. In the speech he delivered for the circumstance, Prime

---

<sup>356</sup> EDMAN, J. (2017). *EU-Japan Comparative Report on the Economic Empowerment of Women*. This research has been kindly shared by the representatives of the EU Delegation in Tokyo.

Minister Abe appealed to Japan and the EU as ‘*strong and steady pillars supporting many bridges*’. In the same speech, Abe also recognized the value and primary importance of human rights<sup>357</sup>. A first means of *Connectivity* is given by the intention of building infrastructures and transportation systems, coherently with UNSDG number 9 (“Industry, innovation and infrastructure”). This operation will be made in joint action with third countries, such as the Western Balkans, Eastern Europe, Central Asia, and Africa<sup>358</sup>. Already before the formulation of the Connectivity Dialogue, both Japan and the EU were actively involved in the Dark Continent. As a matter of fact, to assure the achievement of the maximum results, the dialogue was complemented to the already existing European and Japanese activities in the continent, such as the Japanese initiative TICAD, Tokyo International Conference on African Development<sup>359</sup>, organized for the first time over twenty years ago; and the Africa-Europe Alliance for Sustainable Investment and Jobs. Outside of these initiatives, the EU had delineated a Roadmap for the period 2014-2017 as part of the Joint Africa-EU Strategy which had, among others, the aim of boosting sustainable development, inclusive growth, integration of the continent<sup>360</sup>. Japan already had the chance to demonstrate its ability in reconstruction in several occasions, for instance, in the support it provided to Timor-Leste after the country’s independence<sup>361</sup>, and also in the contribution that made to the project African Rapid Deployment and Engineering Capabilities (ARDEC) promoted by the UN<sup>362</sup>. In the framework of the Connectivity Agenda, such a capability could turn to be very useful. If Japan and the European Union would join their forces to create something concrete in the area, they could really support the African continent to shine. A coordinated action might give an economic boost to the continent to reach remarkable achievements in the Sustainable Development Goals, and it might also trigger the advancement of China’s Belt and Road initiative. Like a domino, this operation could turn to be a new chance to guarantee certain fundamental rights to the African population: new, sustainable infrastructures could facilitate the access to water or other essential goods, and also to schools, allowing young pupils to enjoy their right to education.

---

<sup>357</sup> Speech by Prime Minister of Japan Shinzo Abe, at “EU-Asia Connectivity: Building Bridges for a Sustainable Future”. Brussels, September 27<sup>th</sup>, 2019. A copy of the speech has been kindly provided by representatives of Japanese METI.

<sup>358</sup> European Union External Action, *The Partnership on Sustainable Connectivity and Quality Infrastructure Between the European Union and Japan*, signed in Brussels on September 27<sup>th</sup>, 2019. Available at: [https://eeas.europa.eu/delegations/kyrgyz-republic/68544/node/68544\\_hy](https://eeas.europa.eu/delegations/kyrgyz-republic/68544/node/68544_hy), last accessed on 01.04.2020.

<sup>359</sup> HUGHES, C.W. *Supra note 332*, pp. 837-856.

<sup>360</sup> See Fourth EU-Africa Summit, *Roadmap 2014-2017*. Brussels, April 2-3, 2014.

<sup>361</sup> ASAHI, H. *Peace-Building in Practice: Lessons from the Ground – Forging Japan’s New Strategy for Peace Building*. Tokyo, Japan Institute of International Affairs, pp. 1-19.

<sup>362</sup> TATSUMI, Y. (2016). *Japan as a Peace Enabler. Views from the Next Generation*. Stimson Center, p. 50.

Connectivity may also be interpreted in its digital meaning: already in the negotiations related to the FTA, the discussion over the management of data constituted a very important stumbling block for the two sides involved. In the attempt to assure a real connection, the idea was to implement inclusive and sustainable development not only through physical infrastructures but also through digital and data infrastructures, policy and regulatory frameworks, especially in developing countries. Such an ambitious project could only be achieved through stable and reliable cyberspace, and on data free flow with trust<sup>363</sup>. In the attempt to achieve this ambitious result, the two sides intend to search for the support of international organizations and regional bodies; from the G7 and G20 to the World Bank, the IMF, the European Bank for Reconstruction and Development and the Asian Development Bank, creating an environment able to inspire new investments<sup>364</sup>. Finally, connectivity is intended as a means to bring the EU and Japan closer together through cultural and educational exchanges, favouring people-to-people interactions<sup>365</sup>.

The Connectivity Dialogue is the frontier of cooperation for Japan and the European Union. The implementation of this project may be seen as a very important incentive to help other areas of the world, especially the most in need, to guarantee respect for human rights. We have outlined how a new connection based on building, infrastructures and transportation systems may guarantee major freedom of movement, and therefore access to important resources – water and food – and buildings – schools. At the same time, digital connectivity could help in assuring respect for privacy and personal rights.

### 3.2.4 SECURITY DIALOGUE

Security has constituted an important component of the EU-Japan cooperation strategy since the inception of their political dialogue in 1991. Issues related to security include the fight against terrorism, non-proliferation of weapons of mass destruction, and strengthening the role of the United Nations. In the last years, the dialogue has shown some very positive results. The attitude of Japan, a country internationally recognized and admired for being pacific and relatively exempt from significant security concerns, began to change, and the country started acquiring major awareness on the topic – thus, inserting it at the top of its internal policies and external cooperation strategy – after

---

<sup>363</sup> This information has been provided by the kind collaboration of two employers of the Ministry of Economy, Trade and Industry of Japan, who accepted to contribute to the present dissertation answering some questions on November 26<sup>th</sup>, 2019.

<sup>364</sup> *Supra note 358*, point 4.

<sup>365</sup> *Ibid.*, point 9.

the 1995 Tokyo metropolitan attack, and even more following 9/11, considered in its nature of “world-changing event”, which caused a domino of anti-terrorism measures at a global scale.

Prime Minister Yasuhiro Nakasone (1982-1987) tried to crumble the typical isolationist attitude of his country, pointing out the fact that security is a matter connecting the whole world, as he reiterated in the G7 held in the US in 1983<sup>366</sup>. The operations in Somalia and the European participation in KEDO, the Korean Peninsula Energy Development Organization, are two significant examples of the collaboration that the two parts have in the field of security. Moreover, both European forces and SDF conducted parallel activities in war territories, such as Iraq and Afghanistan<sup>367</sup>. The fact that both the EU and Japan have been given more importance to security concerns – the EU through the ESDP and the CSDP, and Japan with the redefinition of the SDF’s role – had led to the inevitable consequence that some of the interests between the two sides have been overlapping; hence, Japanese and European forces had often met in the same field in international security missions<sup>368</sup>. The openness of Japan to upgrade its security partnership with Europe took place as well when the “Arc of Freedom and Prosperity” initiative was launched, as already mentioned in Chapter II.

A good portion of their dialogue put at the centre the notion of *human security*. Although it is a different concept from human rights, nevertheless, it is possible to find some important connections between the two. As stated by former UN diplomat Bertrand Ramcharan, ‘*human rights define human security*’ and ‘*respect for human rights is the measure of human security*’<sup>369</sup>. Both human security and human rights focus, as it may be easily intuited, in the human being, positioning it at the centre of their action. Therefore, human security differentiates from the traditional notion of security while recognizing the importance of assuring and maintaining the dignity and existence of human beings at the core of the policies taken to guarantee the protection in a territory. Through time, countries around the world could interpret and work on their own approach towards the doctrine of human security. It has found a large space also in the foreign policy of the European Union, and in its implementation of a concrete action to safeguard the protection of human rights in its external relations. In 2004, the “Human Security Doctrine for Europe”, also known as the Barcelona Report, confirmed the commitment of the EU, and its awareness concerning the importance of attributing a new meaning to the concept of security. The report was structured in seven principles, and the first one of these explicitly referred to the importance of human rights. The report stressed how the

---

<sup>366</sup> *Op. cit.*, p.27.

<sup>367</sup> TSURUOKA, M. *Supra note 228*, p. 28.

<sup>368</sup> *Ibid.*, p. 28.

<sup>369</sup> See Dr. RAMCHARAN, Bertrand’s (UNHCHR) remarks on *Security and Human Rights*. Available at: <https://www.un.org/ruleoflaw/files/Ramcharan.pdf>, last accessed on 04.04.2020.



protection of the civil society was not to be intended as the protection of European frontiers, but rather as the right of every individual to live in a peaceful society, without the risk of seeing severe breaches of human rights<sup>370</sup>. Today, the topic of human security continues to be at the top of the EU's foreign policy agenda: during spring 2016, the European Parliament advanced a proposition to the Council to broaden the concept of human security, including principles such as human rights, responsibility to protect and gender equality<sup>371</sup>. Responsibility to protect is a normative notion which has been consistently evolving through times, and based on three fundamental pillars: the responsibility that each State has to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, 2. The responsibility to prevent those crimes by adopting all the necessary measures, 3. The responsibility of the international community to use the appropriate means to protect the populations in need from the crimes abovementioned<sup>372</sup>. The EU and Japan have been confirming their commitment towards international security in several ways through times, putting the human security doctrine at the centre of their collaboration<sup>373</sup>.

The pacifist constitution of Japan pushed the country to adopt a broad interpretation of the concept of human security; not strictly linked to the military sense. According to the Japanese concept of human security, elaborated in the 1999 Diplomatic Bluebook, human security "comprehensively covers all the menaces that threaten human survival, daily life and dignity". This includes, among others, organized crime, infectious diseases, climate or environment-related concerns, and violations of human rights<sup>374</sup>. Hence, Japan has been largely developing security policies related to human development<sup>375</sup>. As it happens for human rights, whether R2P may be considered as a universal principle or rather a Western imposition has generated debates among scholars. Thakur and Maley answer to such accusation affirming that the historical and political basis of the R2P concept is given by the Western experience, but this does not mean that it has to be embraced exclusively by the western world<sup>376</sup>. Hence, Japan had an alternative approach also to R2P, mainly due to the difficulties

---

<sup>370</sup> Study Group on Europe's Security Capabilities. (2004). *A Human Security Doctrine for Europe*. The Barcelona Report presented to the EU High Representative for Commission Foreign and Security Policy. Barcelona, September 15<sup>th</sup>, 2004, p. 5.

<sup>371</sup> HARNISCH, S. (2017). *Theory and Practice of Human Security Concerns in EU-Japan Relations: the EU Perspective*. EU-Japan Security Cooperation: Challenges and Opportunities. Online paper series. University of Essex, p. 5.

<sup>372</sup> THAKUR, R. and MALEY, W. (2015). *Theorising the Responsibility to Protect*. Cambridge University Press, p. 25.

<sup>373</sup> HARNISCH, S. *Supra note 371*, pp. 1-11.

<sup>374</sup> See Ministry of Foreign Affairs of Japan, Diplomatic Bluebook 1999. Chapter II, Section III, Point A: Overview-Human Security. Available at: <https://www.mofa.go.jp/policy/other/bluebook/1999/index.html>, last accessed on 04.04.2020.

<sup>375</sup> CHRISTOU, G. (2014). *The European Union's Human Security Discourse: Where are we now?*. European Security, No. 23, Vol. 3.

<sup>376</sup> THAKUR, R. and MALEY, W. (2015). *Supra note 372*, pp. 285-304.

it encounters in dispatching its troops in external territories. The dilemma Japan has to face concerns on one side, the legal limits imposed by its Constitution, that thwart the dispatch of Japanese troops in external territories; on the other, the risk of undermining its role inside the UN and in the international community, in not taking concrete action<sup>377</sup>.

The common engagement towards security in Japan-EU's current relation is testified by the SPA, in which terrorism, cybersecurity, and energy security find a great space. The two parts have explicitly confirmed their commitment to continue cooperating as they have done in the past, further supported by the expertise of the United Nations<sup>378</sup>.

### 3.2.5 COOPERATION TO ERADICATE HUMAN RIGHTS ABUSES IN NORTH KOREA

One of the main security concerns shared by the European Union and Japan is given by the stability of the Democratic People's Republic of North Korea. Japan is interested in monitoring the situation there due to the geographical proximity, and the common history between the two Asian territories. In particular, the long discourse on the abduction of Japanese citizens in North Korea has been at the centre of the dialogues between the two countries for years, and still today it has not been completely solved<sup>379</sup>. The interest of the EU to keep an eye on that area of the world is mainly due to the constant threat of the use of nuclear weapons. On more than one occasion, Pyongyang has brought up the subject, putting the international community on notice. Moreover, the discussed violations of human rights are constantly monitored by the EU: in other words, North Korea represents a good ground for the EU to develop its policy of Civilian Power, in particular in the formulation of the European Security Strategy of 2003. Most of the human rights violations taking place in North Korea are implemented by the government itself. The list of abuses occurring in the country is, unfortunately, quite long. It includes, among others, treatment of political prisoners, of refugees, and economic repression with significant consequences on access to food and basic goods<sup>380</sup>. To these, it must be

---

<sup>377</sup> MOHD IKBAL, M.H. (2018). *The Development of Japan's International Human Security Diplomacy: Towards a "Normal" Country?*. Malaysian Journal of History, Politics & Strategic Studies. Vol. 45, No. 1, pp. 79-102.

<sup>378</sup> D'AMBROGIO, E. (2019). *The EU-Japan Strategic Partnership Agreement (SPA). A Framework to Promote Shared Values*, Briefing. European Parliamentary Research Service. PE 630.323, pp. 2-3.

<sup>379</sup> During the years 1970s, seventeen young Japanese were forcefully taken and abducted to North Korea. There are different reasons behind these kidnappings, but all were linked to illicit espionage activities. Some of the victims were forcefully taken to teach Japanese languages and customs to North Koreans, in order to allow them to better integrate into the Japanese societies, others to take their identities, young women were sometimes taken to get married to the spies.

<sup>380</sup> RYU, E. (2018). *Human Rights Situation in North Korea: Lack of Significant Progress from the United Nations Human Rights Mechanisms and What Can Be Done*. Minnesota Journal of International Law. Vol 27, No. 2, pp. 555-580.

added perpetuating violations of women's rights<sup>381</sup>. This kind of abuses highlights the logic of a political regime which remains authoritarian, restricted to few elected – it is sufficient to think that the current President, Kim Jong-un, is the son of the former one, Kim Jong-il, who in turn was the oldest son of the previous leader, Kim Il-sung – that hardly accepts those who think differently – politically speaking – and have a strong belief in the principle of non-interference. Given their common interest in monitoring the situation in North Korea, Japan and the European Union have been able to develop a dialogue that has since turned into a genuine form of cooperation.

North Korea's repeated violations of human rights have led to severe condemnation coming from the EU on several occasions; in the attempt to push the country to ratify the most important international human rights treaties. The European Parliament was the institution which, among the European ones, took a firm position in condemning the violations of human rights in North Korea through the organizations of debates inside the International Affairs Committee (AFET) and the Human Rights Subcommittee (DROI)<sup>382</sup>. In addition to this, the EU actively engaged to assist North Korean citizens in need of humanitarian assistance<sup>383</sup>. Both Japan and the EU have constituted two of the main providers to tackle the food crisis in North Korea.

The abduction issue has occupied a large part of the dialogue between Japan and North Korea and influenced the attitude of the first one towards the other. The matter was only partially resolved in 2002, with the liberation of five out of the seventeen kidnapped people. Japan has repeatedly, manifestly expressed its disappointment towards the attitude of the DRPK on fundamental rights, and most of the time it has done it synchronically with the European Union. The cooperation between the European Union and Japan in North Korea to monitor the situation of human rights violations is facilitated by the presence and intervention of the UN, as an international platform of dialogue. They jointly initiated a UNHRC Resolution of 2016 stressing the deficiencies of the DPRK<sup>384</sup>, and since 2008, the two have submitted every year a motion to the UN to address the deficiencies of the DPRK. In 2013, not satisfied by the unnoticeable signs of progress of North Korea, they co-tabled a

---

<sup>381</sup> YANG, J. (2018). *Women's Rights in the DPRK: Discrepancies between International and Domestic Legal Instruments in Promoting Women's Rights and the Reality Reflected by North Korean Defectors*. Cornell International Law Journal, Vol. 51, pp. 220-243.

<sup>382</sup> YU, A.J.; LINCAN, C.A. and VOICILA, E. (2018). *EU – A Stronger Global Actor: New Contexts for EU-Korean Relations*. CES Working Papers, Volume X, Issue 3, pp. 306-325.

<sup>383</sup> See European Civil Protection and Humanitarian Aid Operations. North Korea (DPRK). Available at: [https://ec.europa.eu/echo/where/asia-and-pacific/north-korea\\_en](https://ec.europa.eu/echo/where/asia-and-pacific/north-korea_en), last accessed on 29.03.2020.

<sup>384</sup> UNGA, United Nations Human Rights Council, *Resolution on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/31/L.25, 21 March 2016.

Resolution sponsoring the creation of a Commission of Inquiry<sup>385</sup>, which the following year clearly defined the violations occurring in the country as “crimes against humanity”<sup>386</sup>. The cooperation was interrupted by Japan only in 2019, due to the decision of Prime Minister Shinzo Abe to meet with his North Korean counterpart “without preconditions”: a decision that has triggered quite a few disagreements on the part of various humanitarian organizations, including Human Rights Watch<sup>387</sup>. However, according to the press, Japan partly retraced its steps the following year, backing as co-sponsor the EU proposal to be submitted to the UNHRC<sup>388</sup>.

The EU actively collaborated with Japan also in an attempt to help the country to solve directly the abduction issue. In 2017, a delegation coming from Japan and led by the Minister in Charge of the Abduction Issue in Japan visited the European Parliament in Brussels. The fact that a delegation decided to appeal to the European Union, therefore overriding the principle of non-interference, testifies the trust placed in the European organization. The meeting was also very useful to shed light on what happened and to denounce to Europe the suffering of Japanese citizens. The collaboration between Japan and the EU to solve the abduction issue is still going on today<sup>389</sup>.

### 3.3 CASE STUDY: TIMOR-LESTE

On the 7<sup>th</sup> of December 1975, Indonesia took control of the eastern part of a small island in the Indian Ocean, East Timor (Timor-Leste in Portuguese). For over twenty years, human rights violations, enforced imprisonments, torture and violence occurred in this small territory, under the eyes of the world. The impact of the brutalities is comparable to those happening in Afghanistan or Iraq, although, this long and obscure chapter of Asian history is barely known in the West. Such a lacuna is due to a combination of factors, including the Indonesian control over the media that made it difficult to leak the news of what was happening, and a generalized desire of maintaining geopolitical

---

<sup>385</sup> See Ministry of Foreign Affairs of Japan (2014), *Japan and the United Nations*. Report.

<sup>386</sup> UNGA, United Nations Human Rights Council, *Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, A/HCR/25/63, 7 February 2014. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/108/66/PDF/G1410866.pdf?OpenElement>, last accessed on 01.04.2020.

<sup>387</sup> Human Rights Watch (2020). *Japan: Stand Firm on Rights in North Korea. Abe Should Led Efforts to Hold Pyongyang Accountable*. Available at: <https://www.hrw.org/news/2020/02/18/japan-stand-firm-rights-north-korea>, last accessed on 01.04.2020. Tokyo, February 18<sup>th</sup>, 2020.

<sup>388</sup> The Japan Times News. *Japan to Back EU-led UN Resolution on Human Rights in North Korea*. March 12<sup>th</sup>, 2020.

<sup>389</sup> The Mission of Japan to the European Union. *Minister Kato’s (Minister in charge of Abduction Issue) Visit to Brussel*. May 4<sup>th</sup>, 2017. Available at: [https://www.eu.emb-japan.go.jp/itpr\\_en/00\\_000136.html](https://www.eu.emb-japan.go.jp/itpr_en/00_000136.html), last accessed on 01.04.2020.

stability internationally. Hard to doubt that the size of the island and its remote location have not contributed to hide the facts as well<sup>390</sup>.

Timor-Leste, which before the Second World War was for a long time under the control of Portugal and then of the Japanese for a brief period during the conflict, and then back under Portuguese administration; was invaded by Indonesia under the pretext of anticolonialism. The efforts on the part of those forces such as FRETILIN (*Frente Revolucionária do Timor-Leste Independente*, “Revolutionary Front for an Independent East Timor”), which had formed following Portugal’s renouncement to the colony – mainly due to the need to manage internal problems after the outbreak of the Carnation Revolution – were not sufficient to stop the Indonesian advance. Neither, the expressed desire of a significant portion of the population to become an independent state was welcomed by the international community. The occupation officially lasted until 1999, even if the violence lasted throughout the following months, and in this span of time, the East Timorese Genocide was consumed. The kind of massacre that was conducted for almost thirty years was not only a political one, but also a cultural one, considering that East Timor was the only Catholic territory in an area where the great majority of the population was composed of Muslims. The most symbolic and sadly well-remembered event is the Santa Cruz massacre, happening in 1991 when almost three hundred innocents were killed in Dili while mourning young activist Sebastião Gomes, shot by the Indonesian troops, and symbol of the resistance for the independence. These terrible events contributed to shed the light on the situation, and the international community could not continue to ignore what was happening in there. Such an episode put Indonesia in a difficult situation, and the country found itself constrained to use the pretext of revolutionary groups that could no longer control. Nevertheless, last East Timor Governor Abilio Jose Osorio Soares (1992-1999), a convinced supporter of the Indonesian regime and one of the most controversial historical figures of this period, in the attempt to mitigate the attention of the international community, affirmed that the responsible persons had been caught and that there was no other risk of human rights violations. The central Indonesian government tried to justify its actions, affirming that the precondition to assure the protection of civil rights in a developing country was *stability* and that its actions were dictated by the necessity of providing such a condition, and to meet the needs that were denied to East Timorese citizens under centuries of colonialism. History will then shed the light on the contradiction of this

---

<sup>390</sup> TAYLOR, J.G. (1990). *The Indonesian Occupation of East Timor 1974-1989. A Chronology*. Catholic Institute for International Relations, London.

argumentation, and also on the risks deriving from the separation of civil and political rights from economic rights<sup>391</sup>.

The response of the United Nations was the establishment of the Assistance Mission for Timor-Leste (UNAMET), which was fundamental to monitor the referendum held in 1999 for an independent Timor-Leste. In front of the option of whether to remain under the central government of Indonesia or gain complete independence, an overwhelming majority expressed its vote in favour of the second option. Nevertheless, this choice was not sufficient to appease the harassments, instead; it incited the Indonesian troops to continue with their violent and repressive regime. Following the UNSC Resolution 1264<sup>392</sup>, the INTERFET mission, mainly composed by the Australian Defence Force, was sent to assist UNAMET to offer its contribution to bringing peace. A few weeks later, the United Nations decided to complement the work of INTERFET with another mission, the United Nations Transitional Administration in East Timor (UNTAET)<sup>393</sup>. It was only in 2001 that Timor-Leste experienced its first free democratic elections, and a new Constitution was drafted the following year. With the elections and the new Constitution, the population of East Timor was finally able to experience a period of relaxation after almost thirty years of atrocities and murders. A work of reconstruction and external support in the formation of the first new-born democratic State of the new millennium proved to be necessary. Once again, the United Nations made a first significant step forward, by establishing a further mission, UNMISET (United Nations Mission of Support for East Timor) substituting the UNTAET<sup>394</sup>. UNMISET was thought to remain in the territory until 2002, but its contribution was eventually extended until 2005.

Where were the eyes of the world pointed during these almost three decades of abuse? How did the international community react in front of such an illegitimate massacre? What have been the counter-measures taken by the island of Japan, which had been a colonizer of Timor-Leste for a short period, and the ones of a human rights champion like the European Union?

During the period of the Indonesian occupation, the international scene was divided. The Cold War had polarized the world into two contenders, and this geopolitical situation influenced the strategic positions occupied in the framework of the East Timor dispute. The Western world reacted in different ways: the US saw this as an opportunity to counter the dangerous advancement of Communism in South East Asia. The position taken by the US influenced the United Nations, partly

---

<sup>391</sup> BROWN, A.M. (2002). *Human Rights and the Borders of Suffering. The Promotion of Human Rights in International Politics*. Manchester University Press, p. 149.

<sup>392</sup> UNSC, *Resolution 1264 (1999)*, S/RES/1264, 15 September 1999.

<sup>393</sup> UNSC, *Resolution 1272 (1999)*, S/RES/1272, 25 October 1999.

<sup>394</sup> UNSC, *Resolution 1410 (2002)*, S/RES/1410, 17 May 2002.

justifying its slow and weak intervention to try to solve the dispute. It is true that the international community firmly criticized the country for torture, limitation of the freedom of thought and expression, but its actions were mainly limited to criticisms, without really intervening. In addition to that, the Indonesian market, the fourth most populous in the world, and the territory rich in oil reserves, tempted for the United States to relax his condemnation towards Indonesia<sup>395</sup>. One of the few outcomes was that, in front of the increasing international pressures, Indonesia had no choice if not establishing a Human Rights Committee, that nonetheless was judged to make ‘two steps forward, and one step back’<sup>396</sup> for its inadequacy in containing the situation. Once the situation became more stable, following the establishment of a Truth Commission for Timor-Leste, people in charge testified the investigations on the violations in a report entitled ‘*Chega!*’ (“*Enough!*”). In the over 3.000 pages long document, the European Union is mentioned only 17 times, whereas Japan 182. This suggests that Japan has been perceived, for better or worse, as more present than the EU during the years of the tensions with Indonesia<sup>397</sup>. Once East Timor has been officially recognized as an independent nation, with Xanana Gusmão as its first, democratically elected president, the worst seemed to have passed. Nevertheless, the first new sovereign country of the XXI century had to face a complete reconstruction, that still today is going on with serious difficulties to be implemented, despite the important international rescue. One of the ways to assure a significant launch of the Timorese economy may be exploiting the oil reserves in the seas surrounding the island. Nevertheless, a dispute with Australia for the control over the so-called ‘Timor Gap’ complicate such procedure.

The years of the Timor-Leste crisis were also a period of transformation of the concept of human rights itself. As Nowak points out, these were years in which the language on human rights was inserted in the discourse on development and security, therefore there was a new idea of putting the human being at the centre, especially in situations of conflict, to develop a new ‘human security’ policy<sup>398</sup>. Furthermore, David Johnson argues about the importance that the discourse on human rights had in shaping the Timorese society as we know it today. The language that Timorese people

---

<sup>395</sup> PENA RODRÍGUEZ, A. (1998). *Propaganda Política, Derechos Humanos e Independencia Nacional: El Caso de Timor Oriental*. Historia y Comunicación Social, Número 3, pp. 365-372.

<sup>396</sup> See Amnesty International Press Release. *INDONESIA: Struggle against Impunity. One Step Forward, Two Steps Back*. 25<sup>th</sup> April, 2001. Available at: <https://www.amnesty.org.uk/press-releases/indonesia-struggle-against-impunity-one-step-forward-two-steps-back>, last accessed on 08.04.2020.

<sup>397</sup> See Timor-Leste Commission for Reception, Truth and Reconciliation (2010). *CHEGA! (Volume I)*. Other CAVR Publication.

<sup>398</sup> NOWAK, M. (2007). *The Three Pillars of the United Nations: Security, Development and Human Right*. In ‘Casting the Net Wider: Human Rights, Development and New Duty-Bearers’ (Chapter II, pp. 25-41). Intersentia, Antwerp-Oxford, pp. 28-29.

adopted during the Indonesian occupation was one embracing the idea of universal human rights, and this tool helped East Timor to obtain the consensus of great supporters like the United States or Australia, until the achievement of independence. The adoption of such a discourse delegitimized Indonesia from the right of occupying that portion of the island<sup>399</sup>. Not only was the concept of *human right* finding a new interpretation during this period, but also, it went in parallel with certain disciplines of international law that defined the responsibility that states have towards one another in refraining from massive violations of human rights. While the ICISS, the International Commission on Intervention and State Sovereignty, was instituted in 2001 to spread the concept, it was only with the 2005 World Summit Outcome document that the Responsibility to Protect principle was better defined in paragraphs 138 and 139<sup>400</sup>, and then officialised in the UNSC Resolution of the following year<sup>401</sup>. Therefore, during the last years of the East Timor conflict, the concept was still under consideration, and many questions rotated around the issue.

The question of the R2P principle, and how it has affected the intervention of the international community deserved to be mentioned, since scholars dedicated their attention to this matter in the framework of the Timor-Leste conflict, coherently with the responsibility that states have – or should have – felt in front of the massive killings and massacres. It is possible to identify three significant moments in which the international community may have approached the problem: pressing Indonesia before the referendum, the security agreements arranged for the elections, and during the reconstruction process<sup>402</sup>. Concerning the first point, the argumentation is that greater pressure from the international community in the months before the referendum would have spared the lives of all those who perished after the referendum, as the result of the revenge of Indonesian militias. Secondly, the 5 May Agreements, when Indonesia and Portugal decided on the terms of the autonomy package and how the referendum should have been held, constituted for the international community a further opportunity to assure their presence in the territory, to monitor the situation and protect civilians: an opportunity that has not been grasped. Scholars agree that Indonesia should have been pressured more to assure the presence of other troops jointly with UNAMET, even though the chances that Indonesia would have accepted such a condition remained quite low. Finally, in relation to the reconstruction process, there is no general agreement among scholars concerning whether it may be

---

<sup>399</sup> JOHNSON, R.D. (2015). *Asia Pacific in the Age of Globalization*. Palgrave Mcmillan Transnational History Series, p. 119.

<sup>400</sup> THAKUR, R. and MALEY, W. (2015). *Supra note 372*, pp. 27-28.

<sup>401</sup> UNSC, *Resolution 1674 (2006)*, S/RES/1274, 28 April 2006.

<sup>402</sup> BAMBERGER, S.H.; BOSTROM, M.; HURLBURT, H.; O'CONNEL, J.; Owen, J., SHEIKHOLEISLAMI, H.; SHIGEKANE, R.; SHULMAN, J. (2007). *The Responsibility to Protect (R2P). Moving the Campaign Forward*. Human Rights Center, Religion, Politics and Globalization Program. International Human Rights Law Clinic. University of California, Berkeley, pp. 66-99.



said that the international community fulfilled its duty to help during the reconstruction process following the crimes of 1999<sup>403</sup>. Still today, Timor-Leste pays the price of twenty-five years of abuse and unjustified violence. The Asian Human Rights Commission has recently expressed its concern as per ‘impunity lacks’ in Indonesia<sup>404</sup>. From its part, Timor-Leste is working hard to enhance its human rights protection system. Soon after its independence, between 2003 and 2004, it ratified and accessed many UN Conventions<sup>405</sup>, and in October 2019, it passed a historic resolution to support people with disabilities<sup>406</sup>.

Now that a general framework of what happened in Timor-Leste has been made, the following pages will focus on the EU and Japan. Although they mainly acted separately in front of the genocide, they indeed assumed the same attitude in more than one circumstance. Small discussions have been made in the framework on the first ASEM Meeting, in the attempt to find a common approach<sup>407</sup>. Thus, the following pages will deal with the actions and reactions of respectively the European Union and Japan in front of one of the most terrible and at the same time, less known massacres that took place in Asia the past century.

### 3.3.1 TIMOR-LESTE AND THE EU

The 1970s were years of great transformations in the interactions between the so-called ‘Global North’ and ‘Global-South’. 1975, the same year Indonesia invaded Timor-Leste, the Lomé I Convention entered into force. Throughout the research, this Convention has already been mentioned, as the basis for the formulation of the human rights clause in international accords. The Convention was important also because it defined a new partnership between the European Union and African, Caribbean and Pacific (ACP) countries, including Timor-Leste. The initial Lomé

---

<sup>403</sup> *Op. cit.*, pp. 79-80.

<sup>404</sup> See Asian Human Rights Commission (2018). *INDONESIA: The Government Cannot Avoid the Ad Hoc Human Rights Court to Address Past Human Rights Abuses*. (Written Submission to the 39<sup>th</sup> Regular Session of the United Nations Human Rights Council by the Asian Legal Resource Centre). August 29<sup>th</sup>, 2018. Available at: <http://www.humanrights.asia/news/alrc-news/ALRC-CWS-39-003-2018/>, last accessed on 27.03.2020.

<sup>405</sup> United Nations OHCHR, UN Treaty Body Database, Ratification status. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN), last accessed on 29.03.2020.

<sup>406</sup> See Oxfam Website (2019). *Agriculture, Disability Inclusion and Land Rights are Key Concerns in Oxfam Submission to Parliament*. November 13<sup>th</sup>, 2019. Available at: <https://asia.oxfam.org/latest/press-release/agriculture-disability-inclusion-and-land-rights-are-key-concerns-oxfam>, last accessed on 31.03.2020.

<sup>407</sup> BBC News, *Special Report: Building New Relationships in the Global Village*. March 1998. Available at: [http://news.bbc.co.uk/2/hi/special\\_report/1998/03/98/asem\\_2/71670.stm](http://news.bbc.co.uk/2/hi/special_report/1998/03/98/asem_2/71670.stm), last accessed on 25.03.2020.

Convention was substituted by subsequent versions, respectively, the Lomé Convention II, III, and IV. The latter, in Article 5, expressly covers civil, political, economic, social and cultural rights; recognizing them in being ‘indivisible and inter-related’<sup>408</sup>. With the new millennium, the Lomé Convention was substituted by the Cotonou Convention. Changes of little or significant importance were introduced every time the agreements replaced each other. After the introduction of Article 5 in the IV Lomé Convention, the Cotonou Convention attributed a new, great emphasis on human rights<sup>409</sup>. The Convention outlines the respect of human rights as a driving force in a ‘cooperation directed towards sustainable development centred on the human person’<sup>410</sup>, and it sets a procedure to follow in case the Member Parties do not comply with such principle, in Article 96<sup>411</sup>. The Cotonou Convention marks a five years generation agreement and the world’s largest political and economic agreement between the North and the South of the world. Therefore, it guaranteed a very significant push for the international protection of human rights. The Convention also proves how the reduction of poverty is a fundamental component in the fight to assure human rights, and indeed it is a principle enshrined in Article 3.5 of the TEU<sup>412</sup>.

There have been many factors that have influenced European positions towards East Timor and Indonesia. From an economic standpoint, Indonesia was gaining a relevant role in the international scenario, and the EU did not want to damage a potentially good relationship with a precious trading partner. Such a condition, of course, had a great impact on the framework of what was happening in Timor-Leste. In addition to that, the EU – and also Japan, as it will be described in the following paragraph – was firm in its decision to avoid any possible communist rebel group in East Timor to take control over the island. The different positions towards the issue taken inside the European

---

<sup>408</sup> IV Lomé Convention (1989), Article 5, *Supra note 341*.

<sup>409</sup> See European Commission, Development & Cooperation – Europe Aid. From Lomé I to Lomé IV. Last update December 17<sup>th</sup>, 2012. Also: FRISCH, D. (2008). *La Politique de Développement de l’Union Européenne. Un Regard Personnel sur 50 Ans de Coopération Internationale*. ECDPM, pp. 32-33.

<sup>410</sup> Cotonou Convention (2000), Part I, Article 9.1: “Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of human rights”.

<sup>411</sup> See European Council – Council of the European Union Website. Policies, the Cotonou Agreement, Article 96 – Essential elements: Consultation Procedures and Appropriate Measures as Regards Human Rights, Democratic Principles and the Rule of Law. Available at: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/text-article-96/>, last accessed on 24.03.2020.

<sup>412</sup> Treaty on the European Union, Article 3.5: “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, *eradication of poverty*, and the protection of human rights [...]”. (My emphasis).

Community did not contribute to facilitating the decisions the Union had to take on how to manage the issue. Things started taking a different turn only in the late 1980s when the EU's interest became much more evident at the international level. One of the reasons that pushed the EU to take a more active role in the issue was the entry of Portugal into the bloc in 1986. Portugal was one of the main European protagonists of the Timor-Leste vicissitude, due to its historical link with the island; and its action is a proof of the tensions that may occur among EU countries having different opinions and interests. Portugal's sense of responsibility towards what was going on in the island, considering that the Indonesian occupation happened the moment the Portuguese troops left the territory, pushed the country to take the cause much more to heart than the other Member States of the Union<sup>413</sup>. Indeed, Portugal was one among many other supporters in the international community sustaining the Indonesian subordination in East Timor once it left the colony. Being frightened by the moral pretensions it might have felt by making independent a country with an unprepared population and scarce economic resources, Portugal had strongly supported Indonesia's takeover of East Timor<sup>414</sup>. Feeling very responsible of the consequences which were also partly derived from this choice, Portugal set up a strategy based on pressurizing the other European states to intervene in order to face the issue: the first year of its membership in the EU, Portugal boycotted all EU-ASEAN meetings; in the attempt to deliver a powerful message concerning the importance of putting the Timor-Leste issue at the top of the other EU leaders' political agenda<sup>415</sup>.

---

<sup>413</sup> At the time, the BBC has dedicated a relevant number of articles to the issue of the "White Guilt" felt by Portuguese people for what was going on in Timor-Leste, defining it a real obsession. You can find some example at ROBERTS, A. (May 5, 1999). *World: Europe. East Timor: The View from Portugal*. BBC. Available at: <http://news.bbc.co.uk/2/hi/europe/301656.stm>, last accessed on 23.03.2020; or ROBERTS, A. (August 25, 1999). *Portugal's obsession with Timor*. BBC. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/430020.stm>, last accessed on 23.03.2020.

<sup>414</sup> BROWN, A.M. *Supra note 391*, p. 136.

<sup>415</sup> WARD, E. and CAREY, P. (2001). *The East Timor Issue in the Context of EU-Indonesian Relations, 1975-1998*. Indonesia and the Malay World. Vol. 29, No. 83, pp. 51-74.



Figure 3. Former East Timor President Xanana Gusmão at the European Parliament. *Source: European Parliament Website.*

The EU never questioned the brutality of the actions undertaken by the Indonesian government: however, it took time to officially recognize and condemn them. The main push was coming from the European Parliament, considering the number of Resolutions adopted in the attempt to keep the discussions about East Timor alive, however, the small voice that the Parliament has in policy-making made it hard to allow these declarations to mark a substantial difference<sup>416</sup>. The Parliament also awarded Xanana Gusmão with the Sakharov Prize for Freedom of Expression, the same year the referendum for independence was held<sup>417</sup>.

In front of the tremendous and unjustifiable attack on the crowd of worshippers in the Santa Cruz massacre, the EU could no longer continue to ignore what was *de facto* a genocide. Moreover, it was the same year in which the Union was implementing its CFSP, which also includes some inter-parliamentary delegations. One of them is the ACP-EU Joint Parliamentary Assembly, created to bring together MEPs and representatives elected in the countries that are signatories of the Cotonou Convention<sup>418</sup>. It was only in 1993 that a Danish sponsored Resolution against the human rights

---

<sup>416</sup> *Op. cit.*, p. 59.

<sup>417</sup> See Sakharov Prize Network, European Parliament. José Alexandre « Xanana » Gusmão, Sakharov Prize Laureate, 1999.

<sup>418</sup> See Fact Sheets on the European Union (European Parliament). *Foreign Policy: Aims, Instruments and Achievements*. Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/158/foreign-policy-aims-instruments-and-achievements>, last accessed on 02.04.2020.

violations taking place in Timor-Leste passed. At a time when the danger of the Cold War seemed to have escaped, and the Indonesian economic advance was beginning to raise some weaknesses, also the United States showed the first signs of loosening in support of the Indonesian regime. At the same time, the whole international community seemed to give more attention to the issue, a fact further demonstrated by the Nobel Peace Prize attributed to the Roman Catholic Bishop José Ramon-Horta for his work to achieve a peaceful resolution of the conflict<sup>419</sup>.

A harmonized European action was eventually perceived in June 1996, when in the EU Common Position (CP), the Member States expressed their concerns and aberration with respect to the acts committed by Indonesian troops. The main aspect that differentiated the CP from the other proposals around the issue was its emphasis on the protection of human rights, favouring the action of NGOs and civilian society in the territory. The document envisaged four main actions to take<sup>420</sup>: provide aid for 6 million ECU, strengthening human rights protection, support for the UN talks, and assuring coherence between the actions of the Member States and the contents of the CP. However, the fact that the EU took a long time to take concrete action for the cause did not work in its favour when it decided to act faster and more consistently. When the plan to deliver 6 million ECU – the basket of currencies of the EU Member States existing before the Euro – was finally implemented, it turned to be impossible to deliver the aid, due to the failure to bypass the Indonesian Government, and that amount of money never reached its final destination. Meanwhile, Suharto's New Regime<sup>421</sup> was awakening due to the Asian crisis of 1997<sup>422</sup>, and the Indonesian President showed no intention to respect the directives coming from the IMF to receive economic aid, consequently losing international support and credibility<sup>423</sup>. With the new scenario of the post-Cold War period the United States no longer needed to rely on its regime to face the threat of Communism. At the end of the nineties, president Habibie, who had taken the place of Suharto after his almost thirty years of undiscussed regime, seemed to be much more open to dialogue than his predecessor. In the same period, it became evident that despite the good proposals of the CP, the document itself had not implemented any significant change in the democratization process of East Timor, especially for what concerns the

---

<sup>419</sup> The Nobel Prize Website. José Ramon Horta Facts, The Nobel Prize 1996. Available at: <https://www.nobelprize.org/prizes/peace/1996/ramos-horta/facts/>, last accessed on 25.03.2020.

<sup>420</sup> WARD, E. and CAREY, P. (2001). *Supra note 147*, p. 63.

<sup>421</sup> "New Order" was the term adopted by Indonesian President Suharto when referring to his regime once he came to power in 1966.

<sup>422</sup> In 1997, a financial crisis due to the creation of an economic bubble started from Thailand, and then spread through economic contagion in many other countries in Southeast Asia.

<sup>423</sup> GORJÃO, P. (2002). *Japan's Foreign Policy and East Timor, 1975-2002*. Asian Survey, Vol. 42, No. 5, pp. 754-771.

enactment of a mechanism to safeguard human rights. The European Union was more and more inclined to accept the decisions and resolutions of the United Nations, stepping down its leadership on the matter.

The Common Position approved in 1999<sup>424</sup> included an embargo in Indonesian arms, in view of the blatant violations of human rights that the country was committing. Great Britain was the country that suffered the most for this decision since it was the main supplier of arms to Indonesia. That same year, the referendum for independence did not contribute to stopping the violence, but instead, the harassment actuated by the pro-integration militia against the great majority of Timorese population which had expressed itself in favour of an independent nation continued, letting fear for the risk of a new genocide spread. Even in this circumstance, the response of the EU was patchy and hesitant, coherent to the policies of the single Member States, rather than projecting the compactness of the bloc.

In the period of the Indonesian occupation, the European celebration of human rights has been accompanied by uncertain action. During the final stages of the occupation, although the Union had acted more decisively, it still behaved in a discussable way in certain circumstances. In the declaration made by the EU in Cardiff in 1998, in a 16 pages – 97 paragraph – document related to the issue, human rights were barely considered and mentioned only twice. Once, referring to Nelson Mandela as ‘an example to champions of civil rights’ and a second one when referring to the ‘single market rights and opportunities’. This is only one among many examples of the declarations made concerning East Timor: nevertheless, it is symbolic of how human rights can be overshadowed by other interests<sup>425</sup>. Although the EU encountered some impediments in helping during the conflict, it consistently supported the reconstruction of East Timor, providing a contribution of sixty million euros over a three years period (2000-2001-2002)<sup>426</sup>. The Union wanted to guarantee its commitment to help Timor-Leste during the transition period: this testifies the great commitment of the Union when it comes to democratization in an external country.

The European Union is internationally recognized as a human rights champion. It is based on certain values that cannot be denied, otherwise, it will lose its credibility at the international level, since

---

<sup>424</sup> Council Common Position of 16 September 1999 concerning Restrictive Measures against the Republic of Indonesia. 1999/624/CFSP. Official Journal L 245, September 17<sup>th</sup>, 1999. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31999E0624>, last accessed on 15.05.2020.

<sup>425</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 5.

<sup>426</sup> BIVAR, C. (2005). *Emerging from the Shadows: the EU's Role in Conflict Resolution in Indonesia*. European Policy Center, Issue Paper No. 44, p. 15.

human rights are at the core of the EU's soul. A contradiction to this principle is hardly forgiven by the international community. At least at the initial stage of the conflict, the EU remained silently neutral: this makes us understand how the chessboard of international relations is complex and involves a great number of factors and interests. In the specific case, the framework of the Cold War imposed the EU to follow the intentions of the United States: to not do so would have put the bloc in a very uncomfortable position. At the same time, this would imply to stay on the side of Jakarta, and silently accept without reaction rape, violence, imprisonment, torture of all kind. This condition leads the EU to be often blamed for speaking a lot but acting little. It is not only an issue of prioritizing mere economic interests, as it is frequently believed: in the Timor-Leste case, amid a Cold War that was unknown what it would have led to, and whether or not it would have exploded, with huge geopolitical interests at stake to determine the future of the world and the Union, going against the United States was certainly not an attractive prospect for the Western World. Besides, Jakarta was gaining a place of international relevance through the policies of the New Order set up by President Suharto, so it was not very convenient for the Union to go against it, as it was representing an important means of communication between the West and the East. This is probably one of the motivations why the European Union, although it was aware of the actions concluded by Jakarta, did not mention the possibility of self-determination in the CP document<sup>427</sup>. To this intricate situation are added further elements and the risk not only to raise issues and divisions on the role of the Union at the international level but also inside the European Union itself. In fact, the area of freedom, democracy and justice – which includes fundamental rights – and the one of development cooperation and humanitarian aid are shared competences between the EU and the Member States<sup>428</sup>, that can exercise their own competence where the EU does not so, even though this must be made in a coordinated action and assuring the consultation among the parties involved<sup>429</sup>. A proof is given by the greatest interest of Portugal in comparison with the other Member States, or as was the case of Ireland (Member of the Union since 1973) which in 1982 pulled itself out of the indifference of the EU to stand up clearly to the side of the East Timorese citizens and activists who were clamouring for a ceasefire from the massacres, and the opportunity to express their views on the independence. The

---

<sup>427</sup> WARD, E. and CAREY, P. *Supra note 144*, pp. 60-61.

<sup>428</sup> See EUR-Lex Website, (Access to European Union Law). Division of Competences within the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0020>, last accessed on 30.05.2020.

<sup>429</sup> Now, this principle is enshrined in the TFEU, Article 210.1: "In order to promote the complementarity and efficiency of their action the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organizations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes".

actions of the Union did leave to the single Member States a leeway to act according to their will, as demonstrated the CP document; which did not add much more to the Resolutions provided by the United Nations, and thus leaving the space for bilateral agreements that the single Member States might have decided to take. This “margin for independent action” left by the Union was important also in the relationship with the UN, since Portugal was perceived as the main interlocutor for the UN, rather than the whole bloc of EU states, as demonstrated by the tripartite talks that were held in New York in 1998 among UN, Portugal, and Indonesia<sup>430</sup>. The slowness and indecision that the Union shows in certain circumstances do not play in its favour, and it undermines its credibility as an international actor, also leading to heavy consequences when it decides the position to play on. In this case, the fact of having waited before deciding on whether to release the money to East Timor or not ended up with no conclusion. The speed with which decisions are taken in such delicate contexts should not be underestimated. Needless to say: being a defender of human rights in the EU is not an easy job at all.

The Timor-Leste genocide may help us in understanding a very important connection between human rights and economic aid. The actions of European countries towards Indonesia, which needed development assistance, were strictly linked to the country’s human rights pledge. Economic aid would have been guaranteed only in front of specific conditions. This attitude was perceived as very much ‘Western’: Suharto himself condemned the decision of the Netherlands to link economic aid with human rights, accusing it to be the biggest connection between human rights and economics of all the times<sup>431</sup>. Ali Alatas served as the Foreign Minister of Indonesia from 1988 to 1999. He considered the western powers hypocrite in sermon other nations about how they should approach on human rights, and in their attitude of accusation in interfering with the humanitarian issues of other countries. In a series of documents inherent to the facts, a speech in which the minister is addressing to students denying the fact that Indonesia has ever wanted to invade East Timor is reported. He justifies his words affirming that Indonesia at the time already had 17,000 islands: why should it want to have another one? Instead, the ministers blamed Portugal, affirming that they never left East Timor truly free<sup>432</sup>.

The action of support of the European Union towards East Timor is not concluded. Since the formal declaration of independence, the European Parliament has observed all elections held in the land, by

---

<sup>430</sup> WARD, E. and CAREY, P. *Supra note 144*, p. 51.

<sup>431</sup> GORJÃO, P. *Supra note 423*, pp. 754-771.

<sup>432</sup> East Timor Action Network (1993). *Documents on East Timor from PeaceNet and Connected Computer Networks*. Volume 23: June 8-July 31, 1993, p. 31.



sending ad-hoc delegations and drafting reports. The 2017 elections were the first ones in which the United Nations did not participate<sup>433</sup>. The EU disposes of its delegation in East Timor, and it constitutes one of the largest donors of development aid, second only to Australia. The Union firmly supports the Timor-Leste 2011-2030 Strategic Development Plan, through the European Development Fund and the EU Regional Programme for the Pacific: the main aim is to foster rural development and help the country achieve tangible results in the framework of the Sustainable Development Goals<sup>434</sup>.

### 3.3.2 TIMOR-LESTE AND JAPAN

East Timor is an important example to understand the strategy of Japanese foreign policy in a period of great transformations in the chessboard of international relations. Before the Indonesian invasion, Japan had occupied East Timor during World War Two, between 1942 and 1945. Massive loss of lives occurred in those years. As opposed to the other occupied territories, Japan never formally apologized for the wartime actions committed in East Timor, including sexual exploitation and comfort women<sup>435</sup>.

When tensions were starting to grow in oriental Timor, Japan was determined to obtain its share of the glory in the international scene, and it was ready to show its contribution to the security and the stabilization of the East. Hence, its interests were much more concentrated on Jakarta, rather than Dili, the latter appearing as the capital of a small territory, compared to the economic relevance of Indonesia. Furthermore, not only was Japan very interested in Indonesia, but the same was also true the other way around, and Japan played a very important role in the strategic calculations of Suharto: it was the first country where Indonesia exported its goods, and also after the movements that continued in 1998-1999, Tokyo's possible reaction was always considered when Jakarta had to decide for its next moves<sup>436</sup>.

For almost the entire conflict, Japan never *explicitly* supported Jakarta, since it could not legitimately recognize Indonesian violations of human rights. However, it did its best to avoid any possible

---

<sup>433</sup> European Parliament Global Democracy Support. Election Observation. Available at: <https://www.europarl.europa.eu/globaldemocracysupport/en/elections/election-observation.html>, last accessed on 01.04.2020.

<sup>434</sup> European Commission, International Cooperation and Development, Timor Leste. Available at: [https://ec.europa.eu/international-partnerships/where-we-work/east-timor\\_en](https://ec.europa.eu/international-partnerships/where-we-work/east-timor_en), last accessed on 01.04.2020.

<sup>435</sup> GUNN, G. (2006). *Crimes against Humanity: Japanese Diplomacy, East Timor and the "Truth Commission"*. The Asia Pacific Journal, Japan Focus. Vol. 4, Issue 1, pp. 1-8.

<sup>436</sup> ISHIZUKA, K. and LLYOD, S. *Japan's Development Assistance in East Timor*, 共栄え大学研究論集 pp. 119-132.

situation that might have caused conflict with Indonesia. This condition is once again emblematic in demonstrating how economic interests may prevail over the necessity of stopping human crimes. In the beginning, none was questioning about the violations committed in East Timor. Japan was one among the ten countries which did not vote in favour of Resolution 3485 on the question of East Timor, against 72 approving it and 43 abstentions. Japan neither expressed itself in favour of all the subsequent UN Resolutions, until 1982<sup>437</sup>. The economic interests that Japan had to maintain a peaceful situation in the area went to add up to the growing anxieties of the risk of having a “new Cuba” in the Pacific and Indian Oceans, considering that the groups supporting an independent Timor-Leste were at least partly composed by communist guerrillas.

Japanese limited contribution to improve the condition in East Timor was not only linked to economic ambitions or strategic implications; since it was also connected to a practical problem that impeded the country to address the issue with all the resources it disposed of: the significant obstacle represented by Article 9 of its Constitution - the core of the text, stating the country’s renunciation to war. The existence of Article 9 made it very hard to define a clear line about what Japan was and was not allowed to do in peace operations, thus, including in the support of civilians and the defence of human rights in battered territories. This issue was partly solved with Japan’s 1992 International Peace Cooperation Act: in accordance with five principles – already outlined in Chapter II: the existence of a cease-fire agreement, consent for UN and Japan from the involved parties, impartiality in relevant UN operations, withdrawal of the forces in case of violation of one of these conditions, minimum use of weapons – Japan had a new opportunity to provide military and civilian personnel where necessary, and consequently foster its human rights policy in its external relations, in territories of war or conflict. Through the deployment of UNPKOs, the Country of Rising Sun could contribute to logistic missions. Moreover, outside of the parameter of UN Peacekeeping Operations, the country was eventually allowed to participate in the monitoring of human rights, assist in safeguarding the fundamental rights of refugees and civil society unwittingly involved in the conflict, and also give a democratic boost by monitoring elections where necessary<sup>438</sup>. The first opportunity to implement the contents of the Act was in the framework of the peace operations in Cambodia<sup>439</sup>, a country involved in the Vietnam War, despite its neutrality. This issue marked a momentum in the interpretation of

---

<sup>437</sup> See Record of General Assembly Votes on East Timor (1975-1982). Available at: <https://etan.org/etun/genasRes.htm>, last accessed on 01.04.2020.

<sup>438</sup> TSUKAMOTO, T. (2010). *A Survey of Japan’s Contribution to Peacebuilding: Timor-Leste as a Case*. Cabinet Office, International Peace Cooperation Headquarters. International Peace Cooperation Research, pp. 147-165.

<sup>439</sup> AKIMOTO, D. (2013). *A Sequence Analysis of International Peace Operations: Japan’s Contribution to Human Security of East Timor*. Peace and Conflict Studies. Vol 20, No. 2, Article 2, pp. 152-172.

Article 9 and in the external policies of the country, which was eventually allowed to deploy Self Defence Forces. However, the first experience in Cambodia turned out to be very negative, since many Japanese soldiers remained killed. As a consequence, when it came to organizing the forces to deploy in Timor-Leste, Japan assumed a quite reluctant attitude, and only three police officers were sent to the UNAMET Mission<sup>440</sup>. Although Japan was allowed to take part in the operations organized by the United Nations, its contribution remained still limited to logistic missions, such as the Engineer Units, or the Transportation Units. Therefore, Japanese forces cannot give their contribution to those that are broadly considered the *main* tasks, such as patrolling in UN peacekeeping. Japanese staff deployed in the UN Peacekeeping Operations all over the world currently amount to only four officers<sup>441</sup>. However, thanks to the 1992 Act, the strictness of Article 9 was partly overcome, and Japan could deploy its contribution to operations that would lead to a rejuvenation of human rights in a given territory, even though such contribution remains circumscribed to certain specific, logistic, but still fundamental tasks. This includes disaster relief and engineering operations such as the construction of buildings, bridges, and roads<sup>442</sup>. In this framework, Japan operated as a leader in the UNTAET and UNMISSET with the Engineer Units that it provided to the UN. This condition implies that Japan's involvement is visible especially for what concerns *peacebuilding* operations, and it may help to improve the mechanism of human rights safeguard by offering technical assistance.

In 1997 the repercussions of the economic crisis that hit Asia loosened Japan's interests in Indonesia, which from a stabilizing force, became a destabilizing one, and the Japanese government strongly insisted to have Suharto respecting the IMF's directives<sup>443</sup>. At the dawn of a newly independent East Timor, Japan's economic contribution to the oriental part of the island increased. Grant aid of 530,000 dollars was allocated to UNTAET. Japan also assured its firm support for the Truth Commission established to ensure that justice would run its course, and further million-dollar scale

---

<sup>440</sup> *Op. cit.*, p. 156.

<sup>441</sup> See Contributors to UN Peacekeeping Operations by Country and Post: Police, UN Military Experts on Missions, Staff Officers and Troops. As per January 31<sup>st</sup>, 2020. Available [https://peacekeeping.un.org/sites/default/files/1\\_summary\\_of\\_contributions\\_20.pdf](https://peacekeeping.un.org/sites/default/files/1_summary_of_contributions_20.pdf), last accessed on 02.04.2020.

<sup>442</sup> This information has been provided thanks to the collaboration of Mr. Katsumi Ishizuka, professor at Kyohei University, Saitama (Japan) and expert in international Peacekeeping Operations, who kindly accepted to answer some specific questions for the purposes of the present research.

<sup>443</sup> GORJÃO, P. *Supra note 423*, p. 759.

support was confirmed by Japanese Prime Minister Junichiro Koizumi in the formal occasion of President Xanana Gusmão's visit to the Land of Rising Sun<sup>444</sup>.

While the European leaders saw a connection between the concession of economic assistance or the establishment of trade relations and human rights violations, for Japan such a connection was very much harder to digest. Indeed, in Chapter II we have seen how, in the history of the development of human rights in the external relations of Japan, the country was very reluctant to link economics with human rights issues, and it took some time to accept the connection between these two.

As seen for the case of the EU, the Japanese approach to human rights can be better understood in the framework of the interconnection between human security and human rights professed by Nowak, and also in the interpretation of Johnson, embracing the concept of human security as the assurance of a safe life in which human rights are guaranteed to all, in opposition to the traditional discourse of national security to be intended exclusively as the protection from external threats. Thus, the military and the armed forces do not represent the only element to consider in the actions of protection and assurance of civil society's human rights during a conflict, a genocide or a war. Peacekeeping and peace-making operations, from which Japan is largely excluded due to Article 9 of the Constitution, although extremely important – as demonstrated also in other circumstances, i.e. in the Operations in the Middle East – are not sufficient to assure the enjoyment of human rights in critical conditions, and must be complemented by activities of peacebuilding<sup>445</sup>. Japan has the potential to give a substantial contribution in these terms, through the building of streets and facilities, and peace maintaining operations, taking into account the resilience that the country has been able to demonstrate in emergencies, also within its territory<sup>446</sup>. This kind of contribution must not be underestimated when it comes to implement and foster human rights: the construction of infrastructures allows access to basic goods such as water, or contributes to the right to education through the creation of schools and institutes. Not to mention that poverty reduction and the development of human resources are fundamental components of a society in which human rights can assert themselves, take root, consolidate and be respected.

---

<sup>444</sup> See Ministry of Foreign Affairs of Japan, Emergency Assistance to the Commission for Reception, Truth and Reconciliation in East Timor. Available at: <https://www.mofa.go.jp/announce/announce/2002/2/0205.html>, last accessed on 02.04.2020.

<sup>445</sup> NOWAK, M. (2007). *Supra note 398*, p. 32.

<sup>446</sup> Japan's particular geographical position has forced the country to face emergency situations in which it has demonstrated a remarkable resilient attitude, following natural catastrophes such as tsunamis or earthquakes.

The legal limitations due to Article 9, and the tensions that dominated the international scene even after the end of the Cold War - especially the 9/11 attacks - constituted a push for the Government of Japan to question its legal framework for international support. Despite the International Peace Cooperation Act entered into force in 1992, it was only under the administration of Prime Minister Koizumi in 2001, that Japan deployed its SDF in East Timor starting from the following year. There was a generally positive consensus to the idea that SDF troops should take a position in the East Timor cause, coming from many different sides: the United States was delighted to have allies such as Australia and Japan to monitor the situation, and East Timor felt safer having western allies in its territory. Xanana Gusmão in person admitted its appreciation in front of this new Japanese commitment. In these conditions, Japan proved itself to be immediately ready to participate in the “coalition of the willing” that would have supported a new, pacific East Timor<sup>447</sup>. Beyond the Peacekeeping Operations, whose action has been extended to include human rights monitoring mechanisms in addition to patrolling and military operations, the Official Development Assistance programme of Japan constitute a second tool that actively supported East Timor in its transition from occupied territory to independent nation, stressing the connection between development and human rights. Japanese ODA Charter, regulating the development assistance of Japan, has been revised several times throughout the years, giving further emphasis to human rights in the country’s external relations. Development cooperation, the aim of which is the eradication of poverty, makes it possible to create a society in which human rights can flourish. The interconnection between the eradication of poverty, development and human rights is at the centre of the challenge to achieve the SDGs by 2030.

---

<sup>447</sup> GORJÃO, P. *Supra note 423*, pp. 766-767.



*Figure 4. Former East Timor President Xanana Gusmão' s courtesy visit to Japanese Prime Minister Shinzo Abe in 2016. Source: Japanese Cabinet Information Office.*

Today, around twenty years from the end of the Timorese conflict, Japan still relies on this kind of international contribution as an essential tool for the development of societies in need. Prime Minister Shinzo Abe did not avoid to mention '*Japan's proactive contribution to peace*' on several occasions, and in official circumstances<sup>448</sup>.

### 3.4 CONCLUSIONS

In 1991 a big step forward was accomplished in EU-Japan relations with the Hague Declaration. In 2001, a new political initiative was implemented. Around 2010, there seemed to be great enthusiasm in the dialogue between the two continents. Now we are in 2020, and reliable sources confirm that the relationship 'has never been so good'. It seems that, as time passes and decades substitute one another, the partnership between the European Union and Japan could only improve for the better. Nowadays, the basis of their relationship, and what makes it stronger, is the sharing of common values. As their cooperation progresses, the challenges on the international scene continue to increase: it is a necessity to find common grounds to act jointly. With the Economic Partnership Agreement, Japan and the European Union are demonstrating how cooperation assures better profits than turf wars and protectionist attitudes. The manifest intentions that the two territories have to

---

<sup>448</sup> TATSUKI, Y. (2015). *Japan's 'Proactive Contribution to Peace' Beyond Development Aid*. The Diplomat. Available at: <https://thediplomat.com/2015/09/japans-proactive-contribution-to-peace-beyond-development-aid/>, last accessed on 24.03.2020.

continue cooperating even in alternative contexts to the economic one, as demonstrated by the SPA and the Connectivity Dialogue, would hopefully assure new and positive results.

Due to the impossibility of disposing of a normal army, and also taking into account its geographical position and centuries of isolationism, Japan suffers for a lack of recognition of being a “normal state”. The launch of international agreements such as the EU-Japan EPA boosted the role of Japan in the international scene: taking a firm position in international challenges, for instance by fighting violations of human rights, could further contribute to enhancing its credibility, even more, if it would do it on the side of a human rights champion like the EU. Under the leadership of Shinzo Abe, Japan has been firmly pursuing the recognition of being a “normal State”: the Prime Minister has been stressing how fundamental it is for Japan to be internationally recognized as such, in order to give its full contribution to the international community, thus, involving as well its action for the defence of human rights outside of its borders.

The dissertation has dedicated a part to discuss those characteristics of the European-Japanese cooperation strategy, including those that at first sight may not appear connected at all with human rights. Such an operation was made not only to answer the necessity to investigate all the areas of cooperation, to be sure to correctly and deeply understand which kind of relationship they have built, but also to underline the fact that even in those fields, connections exist with the safeguard and promotion of human rights. This has been made for what concerns security, economy, trade, and connectivity. This operation was also useful to highlight the vision that Japan has of the EU as a foreign policy partner. In an attempt to valorise all the different fields of cooperation, stress was given to the existence of international organizations to further strengthen the partnership. Like NATO is an important platform of dialogue when it comes to security, the United Nations may help in facilitating human rights cooperation among different actors. Both Japan and the EU have important relations with the UN and the organization plays a very important role as an intermediary between the two, creating a joint axis for the protection of human rights in the external relations. This has been demonstrated both in East Timor, where the UN deployed a significant number of missions; and it is still going on today in North Korea, to fight the violations of human rights conducted by the authoritarian regime of Pyongyang. North Korea has already proved to be an interesting common ground to build a platform of dialogue and discussion between the EU and Japan. In this context, the protection of specific groups – such as women – may assure an effective and fruitful collaboration to achieve concrete and significant results.

To achieve a fruitful relationship is important for the partners to know each other well, therefore also all the cultural activities and cultural exchanges organized between Japan and the EU are a contribution to foster the alliance and friendship between them. Despite they may appear so different,

the EU and Japan have more in common than what is usually believed. In the past, Japan has tried to maintain its geopolitical interests in Asia without running the risk of antagonizing Europe. On the other side, in situations in which human rights violations intertwined with significant economic interests, the European Union had to decide a way to act that could assure the maintenance of peaceful relations with its Asian partners. Both Japan and the EU are also united by a bond of liability towards colonized territories – the so-called “White Guilt” in the case of European colonizers, but a feeling that is familiar also in Japan, considering its past of colonization in East Timor.

Throughout the Chapter, it has been attributed particular attention to two countries that contributed a lot in shaping the relation between Japan and the EU, representing both sides of the world, the West and the East. On one side we found the US, on the other China. While the role of the first one has been interpreted as central in creating ties and connections between the two parts, also in light of the role it occupied in the construction of modern Japanese society; the second one has been analysed more in its role of an obstacle, as an economic powerhouse in Asia and a destabilizer for human rights. Nonetheless, the EU and Japan can take advantage of China’s controversial position on certain topics – first and foremost human rights issues – to strive to further deepen their cooperation. In all these conditions, it emerged how the EU and Japan can be natural allies in the world. The existence of a strong partnership between the EU and Japan, represented for instance by ASEM, further contributes to keeping the US in a position of coping with its responsibilities. Consequently, we can observe how the relationship between the Japanese and European governments has a significant impact also in other countries and in the stability of the whole world. At the same time, the EU and Japan could find in Africa an important land where to put in place a joint action to contrast the advancement of China, through the implementation of joint initiatives as proven by the Partnership on Sustainable Connectivity and Quality Infrastructures. The existence of an international platform like ASEM sheds light on the importance of the involvement of civil society, that sometimes is more engaged than the governments. This is why, beyond the official involvement of governments and institutions, it is very important to keep alive platforms such as AEPF.

Both EU and Japan suffer a significant international pressure, albeit at different levels and for different reasons: the EU because it is considered a human rights champion, therefore it is expected to intervene in the circumstances of human rights violations. On the other side, Japan has often suffered in the past for the judgment of the international community which reputes it as not adequate to what should be normal standards of human rights respect, for instance for what concerns women’s rights and children’s rights. Throughout the dissertation, it has been highlighted the principle of responsibility to protect as opposed to the one of non-interference. To not contaminate alliances, the



correct balance between international pressure and the principle of non-interference, which still plays an important role in Asian societies, needs to be found.

History already offered them multiple scenarios to test the European and Japanese capabilities to respond to international human rights violations and humanitarian crises. The uniqueness of the conflict of East Timor makes it hard to compare it with other episodes of violation of human rights that required the help of the international community. It constitutes only one among many other examples of how Japan and the EU may react, but a very powerful one. Throughout the research, it emerged the uniqueness of the East Timor conflict, that turned out to be very relevant for the present thesis for three specific reasons:

1. East Timor was a colony of Portugal. Therefore, this country found itself in the position of being inevitably involved in the violations of human rights perpetrated by the Indonesian forces. Not only Portugal is now a member of the EU, but it should be noted that it was becoming part of the bloc in the middle of the East Timor crisis, in 1986. The country's involvement in the resolution of the conflict and its commitment to dragging the other Member States as well is very singular, and it highlighted the difficulties that may emerge to keep the whole European bloc united.
2. East Timor was of strategic importance for Japan as well. When the Indonesian occupation began, under the pretext of anti-colonialism, Japan was acquiring and wishing to increase a more relevant role in the economy of South-East Asia. The island of Timor is located in a very strategic position in the Pacific Ocean, and Indonesia was a fundamental economic partner for Japan during the period. These elements inevitably influenced the strategy adopted by Japan, when it came to deciding which side to take.
3. The crisis happened in a very particular historical moment. It covered the whole period in which the world was polarized into two sides: the capitalist bloc led by the United States, and the Communist threat coming from the URSS and its allies. The fear that the conflict may have passed from *Cold* to *Real* – and, more specifically, *Nuclear* – inevitably affected the position taken by the international community in facing any kind of humanitarian crisis that threatened to be a *casus belli* for the outbreak of a devastating war. Moreover, these were also years of important transformation of the concept of human rights, perceived as a fundamental component of a dignified life. It was no longer only an issue of avoiding war, as it was after WWII and with the establishment of the UN Charter in 1945: to have perpetual peace, it is necessary to respect fundamental rights as well.

The long twenty-five years of the Indonesian occupation of East Timor has provided an example of the European and Japan's strategies concerning situations involving massive violations of human rights, revealing those external factors that can exercise influence in a conflict's resolution: namely, economic interests and the fear of a new Communist wave, and how Japanese and European leaders, by concentrating their efforts in those matters, may have had neglected to promptly respond to human rights violations. The East Timor case is a proof of what Nowak defines as the attitude of states across the world to politicize the debate on human rights and deny their responsibilities, despite the attempt to establish a common system of protection of human rights in a post-Cold War world<sup>449</sup>. It also reveals the inescapable link between poverty and human rights violations, two facts that can be defeated through the cooperation for development. Furthermore, it constitutes an interesting case to analyse under a historical point of view, considering that it covers a period of a transformation of the concept of both *world order* and *human rights*. From the end of World War II to the last days of the Cold War – that is, during the first fifteen years of the Indonesian occupation – the priority was to maintain peace globally. After this benchmark moment, the fear that international intervention for the protection of human rights would have constituted a threat to world peace diminished<sup>450</sup>, giving a new launch to international human rights protection, and nurturing doctrines such as R2P.

Japan disposed of two main tools to give its contribution to the protection of human rights of the East Timor citizens: the International Peace Cooperation Act and the Official Assistance Development Charter. The first one was implemented when Article 9 of the Japanese Constitution proved to be an obstacle for the definition of the country's role in the global stage, its role in international conflicts and consequently its perception of "normal state". This condition made it difficult to adhere to the responsibility to protect principle and reconcile human rights support on the field, without running the risk to raise debates on the illegality of its actions. Despite that, the conditionality agreed with the international community allowed Japan to contribute to PKO and to implement its Development Assistance Programme, becoming the largest donor for the reconstruction of Timor-Leste in the aftermaths of the country's independence, together with the European Union. Considering the significant work that still needs to be done to assure the democratization of Timor-Leste, this country may constitute an opportunity for the European Union and Japan to begin cooperation to reach concrete results on human rights. This could be made conferring particular attention to women's

---

<sup>449</sup> NOWAK, M. *Supra note 398*, p. 38.

<sup>450</sup> THAKUR, R. and MALEY, W. *Supra note 372*, p. 56.

rights, in the framework of UN Women which is currently active in the island<sup>451</sup>, and taking into account the violations that are still taking place nowadays in the territory, and those committed in the past by Japan, which never took upon its shoulders the responsibility for the rapes committed during its occupation of the land. Beyond East Timor, the Strategic Partnership Agreement could be thought of as a tool to act in countries that necessitate a particular development, and in which both the EU and Japan have shared experiences. The East Timor case is also a confirmation that to achieve satisfactory results, the EU needs to cooperate with other experts, starting from the United Nations, that played a fundamental role in the democratization process of East Timor. It deployed a lot of missions – last one, UNMIT, accomplished its mandate in 2012 – and the EU did not hesitate to rely on them when necessary, especially in front of its initial ambiguous attitude and uncertainty on how to properly act. The episode further shed the light on the importance of multilateralism for the promotion, defence and safeguard of fundamental rights in the world: where a country cannot reach results for any reason – as is the case of the impediments deriving from Article 9 of Japan’s Constitution – another one can intervene with its knowledge and expertise. Japan, considering its limits, needs such cooperation: and a well-recognized human rights protector like the EU could be the perfect partner to face human rights-related challenges. At the same time, we cannot mature the idea of a completely independent EU, although it appears to us as formidable in the defence of human rights. The EU cannot think of changing alone a world increasingly interconnected by globalization and with Asian countries protagonists in the international scene – with Japan becoming stronger and stronger. The different fields of expertise in human rights protection of the EU and Japan, namely the importance of know-how notions, education, support for children, food security, combined with the practical expertise of Japan and the resilience it demonstrated in critical situations – after WWII, or after Fukushima’s incident – in building infrastructures, combined could make the world a better place. The EU could furnish support to Japan, a country that has for long adopted a unilateral or bilateral approach in external ties, to develop a multilateral approach in the future. At the same time, the EU cannot act alone and requires the support and coordination of affordable and credible partners, strategically distributed worldwide, and that can help the organization to achieve its last objective of defence of human rights, democracy, fair elections and rule of law. In conclusion, Japan could constitute a good partner in this work, considering that it shares the same values of the EU, the fact that it is a stable country, and its desire of finding a place in the international scene, as it always had since the dramatic end of WWII. Some incompatibilities need to be solved, such as the scepticism

---

<sup>451</sup> See UN Women, Asia and the Pacific. UN Women Timor Leste. Available <https://asiapacific.unwomen.org/en/countries/timor-leste>, last accessed 29.03.2020.

that Japan has demonstrated towards the universality of human rights on certain occasions in the past, but that has been overcome by a sincere desire – and necessity – to open to the world. Japan is trying to demonstrate such an openness not only in the context of international challenges, but also in the context of formal occasions such as the Olympic and Paralympic games, which could be an opportunity for the country to demonstrate its commitment to human rights. Hence, human rights cooperation is a great chance for Japan to demonstrate what the country is capable of and satisfying its determination to occupy that place in the world that it is urgently craving.



*Figure 5. Young people carrying the flag of East Timor. Source: Foreign Policy.*

To recall what happened in East Timor, even though there continue to be a significant margin of improvement, the country has given proofs of increasing signs of progress in implementing a new, democratic stand. While some commentators argue about the inefficacy of the international community to promptly and effectively intervene to restore a pacific situation in the island, without fulfilling their R2P; according to others the actions of external states not only were sufficient but also positive enough to guarantee the restoration of a country that nowadays embraces democratic values, constituting a positive example of the “interference” of external countries; especially following the first parliamentary elections held without the assistance of the United Nations in 2017, is a smooth and democratic way<sup>452</sup>. In a letter of June 2015, the Chair of the Secretary General’s Advisory Group of Experts on the review of the UN Peacekeeping Architecture stated that:

---

<sup>452</sup> WATTS, J. (2018). *Timor Leste is an International Intervention Success Story*. The National Interest. March 1<sup>st</sup>, 2018.

*“Timor-Leste, for example, is a peacebuilding success story not only because of UN interventions and the international community’s continued support, but all the more because of the wisdom of its national leaders and the ease with which they engaged with the country’s people”<sup>453</sup>.*

---

<sup>453</sup> ROSENTHAL, G. (2015). *Letter dated 29 June 2015 from the Chair of the Secretary-General’s Advisory Group of Experts on the 2015 Review of the United Nations Peacebuilding Architecture addressed to the Presidents of the Security Council and of the General Assembly*. United Nations Peacebuilding Architecture.

## CHAPTER IV. CONCLUSIONS

CONTENTS: 4.0 Final considerations and prospects for the future

### 4.0 FINAL CONSIDERATIONS AND PROSPECTS FOR THE FUTURE

Yozo Yokota, who was a Japanese United Nations Special Rapporteur, widely mentioned in this dissertation, affirmed that: *“We face issues of human rights every day, even the individuals who do not believe they deal with human rights, they do”*<sup>454</sup>. Human rights are indeed an integral component of our lives, and even though we do not always realize it, we have to deal with them even when we do not think it is the case.

Human rights constitute a central component of the European added value. They are present at the soul of the European project, and the high level of protection reserved to them is an incentive for the EU to work in order to maintain such a standard even abroad. The language adopted in the discourse about human rights is very important as well. The discourse on human rights in the process of European integration intersects with the notion of ‘European values’. Even though it is impossible to deny the strong western footprint that concepts such as rule of law, democracy and especially human rights had – and still have – in the European integration process, consideration should be made concerning the idea of looking at those values as common ones, for both Europe and, in this case, Japan. The European Union has incorporated human rights throughout its history in different ways, and one of the most important steps was the implementation of the Lisbon Treaty, which has attributed to the institutions of the Union a much greater responsibility for the protection of human rights at the external level. It is also fundamental for Member States to find a linear agreement with the European institutions to identify the fields in which the European bodies could concretely act. Throughout the research, it has been highlighted that one of the main issues that the European Union faces when it comes to human rights is the lack of uniformity among all Member States: as far as they will not all agree in all aspects of the implementation of systems of monitoring and control, two actions that should go hand in hand, it will be hard for the EU to manage to be a credible example for the rest of the world. A first, fundamental step in this term, may be represented by the ratification of all human rights treaties promoted by the UN, by all the Member States of the Union. The ‘post-Lisbon

---

<sup>454</sup> YOKOTA, Y. *Supra note 158*, p. 166.

responsibility' requires the Union since 2009 to be more influential than it has been in the past as a global leader, and one of the responses elaborated is given by the EUGS, indicative of the fact that not only the EU is seen as a global champion in the promotion and support of human rights, but also of the fact that the Union feels a strong responsibility for what happens beyond its borders. This responsibility has been increasing as times passed, requiring the Union to take some substantial actions like the increase of the annual budget reserved for external affairs. Indeed, the Multi-Annual Financial Framework augmented of 30 billion in foreign policy from 2016, when the Global Strategy was launched, to 2019<sup>455</sup>. In its essence, the Strategy is an opportunity to acknowledge that the world is full of dangers but also of opportunities at the same time.

The EU is a complex apparatus, as demonstrated by the division in exclusive, shared or concurrent competences among the institutions and the Member States, that affect the whole action of the bloc, including its role of promoter of human rights. The restrictions imposed by the notion of "within the scope of EU law" in order to limit the Union's action remain subject to the ECJ's interpretative capacity<sup>456</sup>. Such an internal organization may appear difficult to understand to third parties: an external country watching the EU berating Member States in case of human rights violations would be much more inclined to see the EU as a real actor for change in the world for the protection and preservation of human rights, rather than giving the idea that it is berating the rest of the world without worrying about what happens within its territory. Also taking into account the fact that, despite its international reputation of human rights defender, the EU is not exempt from human rights violations within its territory, as demonstrated in the circumstance of the refugee crisis and the crisis of democracy occurring in certain areas within Europe, like Hungary, whose attitude had constrained the Union to trigger Article 7 of the TEU. Hence, the division of competences must occur smoothly and transparently also for third countries. To make an example of the consequences of a shaky internal human rights protection policy, when asked to comment about the East Timor situation after an ASEM meeting, Indonesian Foreign Minister Ali Alatas pointed out that he could think of "*at least ten issues that can seriously embarrass the Europeans, but we are not raising them*", while Malaysia's Permanent Secretary for Foreign Affairs Tan Sri Ahmad Kamil did not hesitate to mention Bosnia (a long time potential candidate to become Member State) and Northern Ireland as examples of European incoherence<sup>457</sup>. The Union's complexity is further emphasized by the existence of alternative systems of protection of human rights, as it is the case for the ECtHR: major coordination

---

<sup>455</sup> TOCCI, N. (2019). *Resilience and the Role of the European Union in the World*. Contemporary Security Policy, p. 12.

<sup>456</sup> MUIR, E. (2014). *Fundamental Rights: An Unsettling EU Competence*. Human Rights Review No. 15, pp. 25-37.

<sup>457</sup> SHOJI, K. *Supra note 281*.

of the Union's works with those of the Court may help in developing a workable and credible mechanism of protection of human rights within the borders of the Union, and in the whole continent. Consequently, a major safeguard and coherence in the protection of human rights within the territory of the Union should work as an incentive to protect even more human rights outside of its borders. Considering that an application to the ECtHR cannot be declared admissible if the domestic remedies of the country are not exhausted, there must be implemented a system of coordination of human rights protection mechanisms first of all between EU institutions and national courts; and then between EU institutions and the ECtHR, to assure continuance in the monitoring. The importance of coherence and uniformity in the EU's action has been further highlighted by FRAME project, which has identified three challenges that the EU has to face when it comes to promoting human rights in its external relations: delivery, coherence, and effectiveness. The challenge of "delivery" outlines the practical problems that the EU encounters when it puts into practice its commitment to human values. The second challenge refers to the coherence that needs to be established both horizontally – among European institutions and bodies – and vertically – among EU and its Member States. Finally, effectiveness refers to the outcomes of European implementation of human rights: can it be considered a success, or not?<sup>458</sup>

The importance of the influence of the Union in the international scene was very clear in the minds of the EU policymakers time before the Union that we know today. As was stated in the Declaration on European Identity in 1993, "European unification is not directed against anyone, nor is it inspired by a desire for power. On the contrary, the Nine are convinced that their union will benefit the whole international community since it will constitute an element of equilibrium and a basis for co-operation with all countries, whatever their size, culture, or social system"<sup>459</sup>. The struggles that the Union faces on certain occasions when it comes to taking concrete action for the international protection of human rights might suggest that it is absent. This condition gives the idea of a slow Union, built up with a lot of intense speeches, but lacking action. This condition does not contribute to improving the image it reflects abroad and overshadows the successes it achieves. For instance, the Resolutions adopted by the Parliament are an important tool adopted by the Union for the protection of human rights. However, they always need to be accompanied by fast and concrete action, otherwise, the Union runs the risk of lacking credibility in its international role. This is what happened when was adopted a

---

<sup>458</sup> FRAME Project (2017). *How to Better Foster Human Rights among EU Policies*. Final Recommendations. Brussels, 26<sup>th</sup> April, 2017, pp. 8-11.

<sup>459</sup> SALMON, T. and Sir NICOLL, W. (1997). *Building European Union. A Documentary History and Analysis*. Manchester University Press, p. 127.



Resolution concerning East Timor in 1996. The intricate structure of the Union and the existence of bureaucratic barriers slow down the transition from words – declarations and resolutions – to deeds. Such an obstacle is visible not only in the context of human rights, but also in others, and it is not the exclusive consequence of the actions of the Commission, Parliament, and Council, but it is also the result of the reluctance of the Member States to grant more decision-making power to the European institutions. Once the internal incoherence of the Union will be resolved, the bloc could finally realize the principle that sees ‘leading by example’ as the *leitmotif* of a new European Union human rights policy<sup>460</sup>.

The implementation of a system of human rights protection in a territory is linked to its historical experiences. The EU has been created as a consequence of centuries of conflicts, culminated with two World Wars and massive violations of human rights. Hence, the Union has been concentrating much of its efforts in delivering a message of peace and fraternity first inside, and then outside of its borders. Japan, a country that has been closed to the rest of the world for a long time, once it came in contact with Europe, found itself in the position of dealing with this new and complex concept. Therefore, it comes with no surprise that the two territories have developed a different approach to the issue. From the investigations conducted, it appears that Japan, from a condition of closeness maintained until the Meiji Restoration, tried to adapt its human rights policies to the ones of a world in continuous transformation. This happened both under “imposed” conditions, as it was the case during the American Occupation – even though, as we have seen, the American push was accompanied by autonomous Japanese actions – and through spontaneous initiatives, for instance with the ‘Arc of Peace and Prosperity’ in 2006, under the push given by the desire of having a more relevant role in the international scene. Japan is also trying to adopt significant mechanisms of protection of human rights and demonstrate it in the eyes of the world by exploiting important events such as the Olympics and Paralympics. The event’s slogan ‘unity in diversity’<sup>461</sup> echoes the motto of the European Union, ‘united in diversity’<sup>462</sup>. For Japan, such an openness towards the world could evolve more, to become a means to differentiate itself from China, and at the same time contrasting its empowerment through principles that remain quite controversial in their application in China, such as human rights. Japan already clearly stated its position in these terms, hence distancing itself from the Chinese position, in

---

<sup>460</sup> ALSTON, P. and WEILER, J.H.H. *Supra note 18*, p. 663.

<sup>461</sup> Tokyo 2020 Website, Games Vision. Available at: <https://tokyo2020.org/en/games/games-vision/>, last accessed on 12.05.2020.

<sup>462</sup> European Union Website, The EU Motto. Available at: [https://europa.eu/european-union/about-eu/symbols/motto\\_en](https://europa.eu/european-union/about-eu/symbols/motto_en), last accessed on 12.05.2020.

the occasion of the East Asian Summit of 2005, stressing its engagement as an 'open region' conform to the values of human rights and democracy<sup>463</sup>.

In the III Chapter, it has been envisaged the Japanese approach to human rights in the world, underlying the fact that in the past it happened for the country to act as a needle in the balance between the Western and Eastern worlds. This peculiarity of Japan, its attachment to its proper values, and its role in the international scene has often fuelled the debate on whether it must be considered a western country or not. However, it may be that we are at a time in which Japan may think of disengaging completely from its role as a mediator to become a major, independent player on the international scene. It can do so because it is the third economic power in the world and a country that has demonstrated to work properly and independently, as it happened in extreme conditions such as earthquakes or tsunamis. Not only can Japan break free from the grip of countries that have kept it in their clutches until now – the post-war United States and China in its role of the economic powerhouse of Asia – but if it would coordinate its action with the one of the EU, the results could be even better and more satisfactory. Surely, the road is still very long and there are issues to be solved or at least clarified to implement a system that would work. But considering the latest developments, the great willingness to cooperate they demonstrated, it looks like now on the situation can only improve for the better. Even though Japan needed some time to escape from its bubble of Asian values, it was not the only Asian country living in such a condition, rather; it has demonstrated to be one of the most flexible. For instance, when it proposed – without being listened – to incorporate Australia and New Zealand in ASEM, proving its capacity to overcome certain principles, in the framework of an international dialogue like ASEM.

Considering the premises, when we look at the achievements they have obtained in the protection of human rights, it is hard and even unfair to put the EU and Japan on the equal level, and claiming the same from the two of them, considering their histories and also their structures: let's not forget that we are talking about an island on one side, and a co-federation of states on the other. However, this does not mean that Japan and the EU do not share common beliefs for what concerns the protection of human rights. Their different approaches towards human rights are given also by the distinguished organization of an entity like the EU and a country like Japan. The European Union and ASEAN+3 provide different examples of regional integration. Considering that they follow two different examples and have two different structures, they have both to learn from each other: as we consider

---

<sup>463</sup> HUGHES, C.W. *Supra note 244*, pp. 847.

the EU as a group of states, in the same way, the action of Japan may be considered in the larger framework of the ASEAN+3 group. In this framework, an improvement in the action of ASEAN through the establishment of a human rights body – as asserted in Chapter 14 of the ASEAN Charter – could foster cooperation between the EU and ASEAN. The Union may represent a model for deeper Asian integration in the context of ASEAN, thanks to its know-how: sharing its experience of being born as an economic entity and then proceeding towards another kind of integration, mainly a political one, and spread its knowledge with Japan, Asian countries, in the ASEM meetings. Hence, the Union could become an important source of inspiration to transplant a legal basis to ASEAN.

The EU needs to constantly keep up in the safeguard of human rights in its external relations, coping with new challenges. Considering the technical expertise and technological advancement of Japan, and the primary interest of the EU to safeguard citizens' rights, the two realities could collaborate to advance their capabilities and expertise to face such significant problematics that are becoming more and more challenging, and that we cannot continue to ignore for a long time yet. Some elements are making Japan a better ally for the EU than other, generally considered 'more natural' partners, due to the common sharing of culture and history, such as the United States: the relative "passivity" of Japan, compared to the often aggressive policies of the US that have led the country to violations of human rights, for instance during the 'war on terror', or the non-adherence of the US to certain treaties that for EU countries are fundamental, such as those related to the rights of the child<sup>464</sup>. In front of this 'fragile world' at the core of the EUGS, the EU has to count on affordable partners that it can trust and rely upon to face challenges that are not of exclusive interest of the EU, since they are also common to Japan, and the two together could find a solution to contrast, and here comes not only cybersecurity or climate change, but also economic interests such as the BRI initiative promoted by China. Thanks to the connectivity dialogue that the two realities aim to establish, it will be possible to preserve at the same time economic interests, but also less intuitive advantages such as the improvement of living conditions of thousands of African and the Middle East citizens. The connectivity dialogue constitutes an important glue for the Japan-EU relation since the agreement deals with a lot of different issues. The connection that will be established also with other international organizations may further contribute to foster a meaningful partnership. International organizations' contribution is very important in boosting human rights internationally, and in fostering Japan-EU partnership. Both sides are actively engaged in the activities of the United

---

<sup>464</sup> SMITH K.E. *Supra note 69*, p. 288.

Nations. The EU, being born on the same principles and values of the UN, share a great portion of the objectives and goals of this last organization.

As the notion of Asian values cannot constitute a justification for the deprivation of certain rights under cultural excuses, at the same time, the myth of ‘European exceptionalism’ and ‘Westphalian sovereignty’, which support the idea that human rights are born in Athens, should not foster a feeling of superiority in the European institutions that monitor human rights<sup>465</sup>. Difficulties come from the interpretation of concepts as “western”, not only human rights but also the R2P principle. This made it hard for the Union to approach the concept properly. In addition to that, the universality of human rights is a principle which must guide the action of the EU, at the same time, the Union itself has been recognizing through time the importance of adopting a tailor-made country approach, rather than a “one-fits-all” approach. This concept had been stated already in 2011 by the HRVP Catherine Ashton. This does not mean that the EU should not tackle certain human rights-related issues in its external relations, but it should also envisage working on other areas that could bring important changes. For instance, in the case of the death penalty, justice administration should be envisaged as well, being an area that could bring important changes<sup>466</sup>. It is a principle which represents the basis for a fruitful international collaboration to boost human rights. The EU and Japan could act as normative powers in the world to advocate for human rights. While the EU is already internationally recognized as a normative power, the role of Japan as international normative power is less defined. Nevertheless, considering the changes that the world is living at the present historical moment and that has been mentioned throughout the work, Japan has the potentiality to be entitled to be internationally recognized as a normative power.

The last part of Chapter III has been dedicated to an episode of mass violations of human rights, to give a concrete example of how the European Union and Japan have reacted in front of such a situation. The positions of the two factions have been analysed after having given a historical background of the events. The choice fell on the East Timor episode because of the desire to shed the light on an event which, although it has lasted for almost thirty years on a territory whose inhabitants still have to heal their wounds, remain sadly little known, and which tends to disappear in the shadow of other genocides or more well-known humanitarian crisis. In the framework of the SPA agreement, we have mentioned the involvement that both Japan and the EU have at the international level for the promotion and protection of a particular category of human rights: that is, women’s rights. Timor-Leste may be seen as a place where to enhance cooperation in the future: a sign of cooperation may

---

<sup>465</sup> FIDH, *Supra note 328*.

<sup>466</sup> BACON, P.; MAYER, H. and NAKAMURA, H. *Supra note 320*, pp. 187-188.

be seen with Japan's involvement in the Spotlight initiative<sup>467</sup>, the programme already sponsored by the EU in support of the economic empowerment of women in East Timor. Besides women's rights, the Connectivity Dialogue could represent a common ground to achieve significant results, especially to slow down China's unstoppable advance, the same joint action is believed to be applied in the countries of the Indo-Pacific, therefore including East Timor. Such a joint action could constitute a real boost for the economy of the small island.

At the end of the Cold War, the new global context and intertwining of states have made it necessary to formulate new mechanisms to assure the protection of human rights. Human security is a concept interpreted as the certitude of giving human beings basic securities, and this includes the safeguard from possible violations of human rights. In the attempt to guarantee such measures, the internal and external competences of a state tend to blur. The idea in the last part of the research was to propose, through the example of East Timor, the scenario of the new international framework on human rights that was developed by the UN in the aftermaths of the Cold War. The human rights protection system developed by the EU has had to adapt to changes in the interpretation of human rights over time. The UN has played a key role in this regard, and the concept of peacekeeping has been developing by incorporating not only the idea of the 'absence of war', which immediately followed the Second World War but has gradually included new concepts such as the need to safeguard human rights. Just as the organs of the United Nations have been changing and reforming – such as the Security Council – the European Union has also modified its internal organization to guarantee a safeguard of human rights which is effectively in step with the times. Even in Japan, we are assisting attempts to modify the constitution to adapt it to the evolution of an efficient human rights protection mechanism, as demonstrated by the work of the *kaikenron*, the 'Constitutional reform' movement. Thus, development constitutes another area that could represent a field of cooperation between the EU and Japan, both parties invest a lot on that and a joint effort could be significant to make an impact globally. The fact that despite its fame of being the first supporter of aid for countries in need the EU still has to improve a lot is clearly demonstrated by the Commitment to Development Index, as it has been explored in Chapter I. The areas in which the EU may give better results, such as technology transfer, may constitute an area of common action with Japan to foster the development of the territories in need since, for the good or the bad, this will inevitably have an impact also on human rights: they should work to assure the best performance they can.

---

<sup>467</sup> See Spotlight Initiative Website, Available at: <https://www.spotlightinitiative.org/press/prime-minister-approves-largest-eu-un-initiative-end-violence-against-women-and-girls-timor>, last accessed on 07.04.2020.

With the evolution of the concept of human rights, the topic started to be at the centre of a number of global issues. This is demonstrated by the 17 SDGs: human rights, more or less explicitly, encompass all of the 17 targets to reach before 2030. Thus, international cooperation in the protection of human rights does not require only joint action directly related to human rights: it also means to tackle common challenges which, once fixed, will also improve the human rights condition of people around the world. For Japan and the European Union, it is important to stabilize an approach to work together on significant mechanisms to protect human rights also in other policies. What I wished to demonstrate in my work is that a renewed partnership between the EU and Japan in the field of human rights not only could assure benefits to both sides, whether they would put together their knowledge, not only is nowadays natural, since Japan is an independent power no longer bound by the requests or decisions of other countries, but also that such a relationship is necessary since it has the potential to answer part of the needs and challenges that countries at the global level have to face in every issue they tackle: by now, human rights constitute an intrinsic part of these challenges, so it is not possible to think only about cooperation in the promotion of human rights *per se*, but rather look at these rights as an integral part of many other challenges: the protection of the environment and agriculture (SDG 15), which is fought jointly with the assurance of a decent life to farmers, the quality of education (SDG 4), inevitably linked to children's rights, industry and innovation (SDG 7) connected to the rights of the workers and with the rights of access resources, for instance in remote areas is fundamental to give adequate infrastructures to guarantee access to water – this is why the African cooperation implemented through the Connectivity dialogue is so important. This concept is made clear with the Sustainable Development Goals since each one of those targets is linked to human rights, some of them more evidently – for instance number 5, gender equality – other less – as it may be the case for SGD number 13, related to climate change – and in turn, they may be well connected among them. This testifies how it is not possible to talk about international cooperation in any sector, without taking into account human rights. In the present dissertation, a proof of this condition has been given, once again, when explaining the Timorese case, when analysing the reaction of Japan: while being bound to Article 9 of its pacifist Constitution, it brought a significant contribution to the territory, since there are many different ways to work in the name of human rights. Human rights and development, two central components of the SDGs, are central elements to achieve peace in East Timor. Therefore, the logistic contribution offered by Japan is strictly connected to the implementation of the SDGs goals – for example, infrastructures – and they give an important boost to the democratization of third countries, as it may happen for the control of election processes. The EU and Japan could contribute significantly to the achievement of the Sustainable Development

Goals, and the ones analysed throughout the research have particularly focused on women's rights and quality infrastructure.

In one of his first speeches, in the occasion of the Opening Statement at hearing before the Committee of Foreign Affairs, on October 7<sup>th</sup>, 2019, elected High Commissioner for External Affairs Josep Borrell underlined how '*We often say partnerships and multilateralism are married in our collective DNA. Yes, but you cannot be multilateralist alone. So we need partners. But many of our partners are disengaging from the rules-based system, and others are applying the rules in a selective and self-serving way*'<sup>468</sup>. The EUGS has been very much focused on dismantling the myth of disconnection between the domestic and the foreign action of the EU, stressing on the 'internal-external nexus' between the two, especially in the field of security<sup>469</sup>. Now, it is also time to implement this joint action in other fields, such as the one of human rights. The challenges that our governments will have to face in the future can be promptly won only through a strong and solid system of alliances. In the framework of human rights, protection, and promotion are two principles that should never be set apart: it is fundamental to make these two actions go together<sup>470</sup>.

There are evident advantages for both the European Union and Japan in front of the eventuality of an increased partnership between them. Such a partnership could support the two parts in their potential strategic ambitions. This is the reason why the Connectivity Dialogue is so important now, in its attempt to block the invasive action of China in Africa and in showing the importance and the value attributed to multilateralism in face of reluctant US<sup>471</sup>. Even the SPA, covering a wide range of differentiated issues, is relevant in these terms. We have also seen how the improvements in the relationship between the EU and Japan can be better understood in the wider framework of East-West relations. Indian political scientist Parag Khanna can help us with that, thanks to his book "The Future is Asian" in which he attributes at least part of the success of the EU-Asia axis to the American decline. He affirms that in historical tradition and particularly throughout the years 1990s and 2000, Europe and the United States saw each other as the natural partners for the implementation of the majority of policies, including those assuring the protection of human rights; looking suspiciously at the East. Such a choice is probably the result of the suspicious reserved to the so-called Asian values,

---

<sup>468</sup> TEEVAN, C. and SHERRIFF, A. (2019). *Mission Possible? The Geopolitical Commission and the Partnership with Africa*. European Centre for Policy Development Management. Briefing Note No. 113, p. 1.

<sup>469</sup> TOCCI, N. *Supra note 455*, p. 8.

<sup>470</sup> FIDH, *Supra note 146*, p. 22.

<sup>471</sup> The US has been applying a policy of firm hostility against multilateralism in recent months. This has been demonstrated, among others, with the withdrawal from UNESCO, the Iran nuclear deal, the Paris Agreement on climate.

that have been analysed in the previous pages. However, today, it looks like the situation is turned upside down, and the natural ally for Europe became Asia. Bush presidency and the disastrous war in Iraq had already spread some suspicious among Europeans years ago; and for the first time, the US is currently governed by a President that does not hide a feeling of scepticism towards the European project and, more broadly, any example of multilateralism in the world – it is sufficient to think of the decision to withdrawal from UNESCO or the Paris Climate Agreement. All those elements fostered a feeling of alienation from what has always been considered as a trustable ally: given such a condition, it may be considered natural for the European Union to look around, hoping to build a new trustable partnership. On the other side, from the Asian perspective, the European approach seems to become more appealing than the *American Dream* and to be able to bring more significant successes in the Eastern continent than its Atlantic counterpart.<sup>472</sup> Such a relationship built on a new trust has brand excellent economic results, as testified by ASEM; but there seem to be all the cards on the table to work on human rights. South and East Asian countries' people confirm a very positive view of Europe, according to the European Commission's Eurobarometer; and it appears that the human rights protection standards implied in the continent are one of the main reasons behind such appreciation<sup>473</sup>. The fact that the title of Khanna's book recalls – by lucky chance or convinced awareness – the immense mural that stands between the various institutions of the European Quarter in Brussels, reciting “The Future is Europe”, contributes in nourishing that feeling of closeness between the two continents. There are still very significant differences in the way the EU and Japan approach human rights, testified by the lower level of attention given to them in Asia if compared to the EU. While they do not find space in the ASEAN Charter, they are a fundamental component of the TEU. Despite the recent development and manifested intentions proved by tangible results such and the EPA and the SPA, considering the long period in which they have been barely considering each other, the relationship has not evolved at the maximum of its capacity. However, a general feeling of sincere interest to continue in such a path, has been assured with the heartening words pronounced by experts of the sector, words that may push to believe that the best as yet to come.

---

<sup>472</sup> KHANNA, P. *Supra note 317*, pp. 240-241.

<sup>473</sup> *Ibid.*, p. 255.



## BIBLIOGRAPHY

AHMED, T. and DE JESÚS BUTLER, I. (2006). *The European Union and Human Rights: An International Law Perspective*. The European Journal of International Law. Vol. 17, No. 4.

AKIMOTO, D. (2013). *A Sequence Analysis of International Peace Operations: Japan's Contribution to Human Security of East Timor*. Peace and Conflict Studies. Vol 20, No. 2, Article 2.

ALSTON, P. and WEILER, J.H.H (2000). *An 'Even closer Union' in Need of a Human Rights Policy: The European Union and Human Rights*. Cambridge, MA 02138: Harvard Law School.

ARESTIS G. (2013). *Fundamental Rights in the EU: Three Years After Lisbon, the Luxembourg Perspective*. College of Europe, European Legal Studies.

ASAHI, H. *Peace-Building in Practice: Lessons from the Ground – Forging Japan's New Strategy for Peace Building*. Tokyo, Japan Institute of International Affairs.

ASPLUND, A. (2015). *Values VS Interest: Strategic Use of Japanese Foreign Aid in Southeast Asia*. EIJIS, Stockholm School of Economics. Working Paper 241.

ATANASSOVA-CORNELIS, E. (2014). *Japan's New Approach to National Security*. European Union Institute for Security Studies.

BABAYAN, N. and VIVIANI, A. (2013). *"Shocking" Adjustments? EU Human Rights and Democracy Promotion*. In "Transworld". Working Paper 18.

BACON, P. and KATO, E. (2013). *Potential Still Untapped: Japanese Perceptions of the European Union as an Economic and Normative Power*. Baltic Journal of European Studies, Tallinn University of Technology, Vol. 3, No. 3 (15).

BACON, P.; MAYER, H. and NAKAMURA, H. (2015). *The European Union and Japan: A New Chapter in Civilian Power Cooperation?*. The Globalisation, Europe, Multilateralism Series. Ashgate.

BALME, R., BRIDGES, B. (2008). *Europe-Asia Relations. Building Multilateralism*. Palgrave Mcmillian.

BAMBERGER, S.H.; BOSTROM, M.; HURLBURT, H.; O'CONNEL, J.; Owen, J., SHEIKHOLEISLAMI, H.; SHIGEKANE, R.; SHULMAN, J. (2007). *The Responsibility to Protect (R2P)*.

*Moving the Campaign Forward*. Human Rights Center, Religion, Politics and Globalization Program. International Human Rights Law Clinic. University of California, Berkeley.

BARDEN, O.; CLARK, J.; LÉPISSEIER, A.; REYNOLDS, L.; ROODMAN, D. (2012). *Europe Beyond Aid: Assessing Europe's Commitment to Development*. Center for Global Development, Working Paper 313 (Abstract).

BARICELLA, A. (2017). *The European Pivot Towards Asia: A New Equilibrium to Find?* European Issues Fondation Robert Schuman.

BINDI, F. (2010). *The Foreign Policy of the European Union. Assessing Europe's Role in the World*. Brooking Institution Press, Washington D.C.

BISCOP, S. (2019). *A Geopolitical European Commission: A Powerful Strategy?*. The Clingendael Spectator, September 20<sup>th</sup>, 2019.

BIVAR, C. (2005). *Emerging from the Shadows: the EU's Role in Conflict Resolution in Indonesia*. European Policy Center, Issue Paper No. 44.

BRAD ADAMS (Executive Director, Asia Division, Human Rights Watch). Letter to JICA's President Akihiko Tanaka. (2015). *JICA's Human Rights Policies and Practices*. June 24<sup>th</sup>, 2015.

BROWN, A.M. (2002). *Human Rights and the Borders of Suffering. The Promotion of Human Rights in International Politics*. Manchester University Press.

CHABAN, N., SCHNEIDER, C.E., MALTHUS, R. (2009). *Visibility, Framing and Importance: Images of the EU in Japan and South Korea*. The Copenhagen Journal of Asian Studies. No. 27, Vo. 1.

CHRISTOU, G. (2014). *The European Union's Human Security Discourse: Where are we now?*. European Security, No. 23, Vol. 3.

CRUCHTEN, Y. (2018). *Abolition of the Death Penalty in Council of Europe Member and Observer States, Belarus and Countries whose Parliaments have Co-operation Status – Situation Report*. AS/Jure 44.

D'ALFONSO, A. (2014). *European Development Fund. Joint Development Cooperation and the EU Budget: Out or In?*. European Parliamentary Research Service. PE 542.140.

D'AMBROGIO, E. (2017). *Japan and Closer EU's Ties*, Briefing. European Parliamentary Research Service. PE 608.739.

D'AMBROGIO, E. (2019). *The EU-Japan Strategic Partnership Agreement (SPA). A Framework to Promote Shared Values*, Briefing. European Parliamentary Research Service. PE 630.323.

DE BURCA, G. (2011). *The Road not Taken: The European Union as a Global Human Rights Actor*. *The American Journal of International Law*, Vol. 105, No. 4, October 2011.

DE OLIVEIRA MAZZUOLI V., and RIBEIRO, D. (2015). *The Japanese Legal System and the Pro Homine Principle in the Human Rights Treaties*. In 'Anuario Mexicano de Derecho Internacional', Vol. 15.

DE PRADO, C. (2010). *Regions in the World: The EU and East Asia as Foreign Policy Actors*. Mcmillian Publishers Ltd. 1384-5748. *International Politics*, Vol. 47, ¾.

DE PRADO, C. (2017). *Towards a Substantial EU-Japan Partnership*. *European Foreign Affairs Review* 22, No. 4.

DE VIDO, S. (2017). *The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European Legal System*. *European Journal of Legal Studies*, European University Institute, Vol. 9, No. 2.

DOUGLAS-SCOTT, S. (2011). *The European Union and Human Rights after the Treaty of Lisbon*. *Human Rights Law Review*. 11:4. Oxford University Press.

DOUGLAS-SCOTT, S. (2017). *Human Rights as a Basis for the Justice in the European Union*. *Transnational Legal Theory*, Vol. 8 No. 1.

East Timor Action Network (1993). *Documents on East Timor from PeaceNet and Connected Computer Networks*. Volume 23: June 8-July 31.

EDMAN, J. (2017). *EU-Japan Comparative Report on the Economic Empowerment of Women*.

EYSINK, S. (2006). *Human Rights Dialogue in ASEM; Do NGOs have a role to play?*. Clingendael Diplomacy Papers No. 7.

FIDH. (2008). *The Death Penalty in Japan: The Law of Silence. Going against the International Trend*. (International Fact-finding Mission). N° 505a.

FIDH. (2015). *Demystifying Human Rights Protection in Asia* (Background paper). N° 669a, November 2015.

FLOWERS, P.R. (2016). *International Human Rights Norms in Japan*. Human Rights Quarterly (38).

FORSYTHE, D. P. (2000). *Human Rights and Comparative Foreign Policy: Foundations of Peace*. United Nations University.

FRAME Project (2017). *How to Better Foster Human Rights among EU Policies*. Final Recommendations. Brussels, 26<sup>th</sup> April, 2017.

FRANCAVILLA, C. (2020). *MEPs: Don't Waste Your Chance to Change Vietnam*. Euobserver. January 15<sup>th</sup>, 2020.

FRISCH, D. (2008). *La Politique de Développement de l'Union Européenne. Un Regard Personnel sur 50 Ans de Coopération Internationale*. ECDPM.

[FRISCH, D. (2008). *The European Union Development Policy. A Personal Look at 50 Years of International Cooperation*. ECDPM].

FURNESS, M. (2012). *The Lisbon Treaty, the European External Action Service and the Reshaping of EU Development Policy*. Palgrave Mcmillian.

GATTI, M. (2014). *La tutela dei diritti umani tra azione esterna dell'Unione Europea e politiche interne degli Stati membri: medici, curate vos ipsos*. Associazione Italiana dei Costituzionalisti, Osservatorio Costituzionale.

GAVAS, M. (2012). *Reviewing the Evidence: How Well Does the European Development Fund Perform?* Overseas Development Institute, ONE.

GORJÃO, P. (2002). *Japan's Foreign Policy and East Timor, 1975-2002*. Asian Survey, Vol. 42, No. 5.

GUNN, G. (2006). *Crimes against Humanity: Japanese Diplomacy, East Timor and the "Truth Commission"*. The Asia Pacific Journal, Japan Focus. Vol. 4, Issue 1.

GURSEL, I. (2008). *A New Pillar of Japanese Foreign Policy: The Arc of Freedom and Prosperity – Japanese Policy Towards the Guam Organization*. Social and Economic Geography.

HADDAD, W.W. (1980). *Japan, the Fukuda Doctrine, and ASEAN*. Contemporary Southeast Asia. Vol. 2, No. 1.

HANG, S.J. (1999). *Asian Values: Asset or Liability?*. Changing Values in Asia: Their Impact in Governance and Development. Tokyo, Japan Center for International Exchange.

HARNISCH, S. (2017). *Theory and Practice of Human Security Concerns in EU-Japan Relations: the EU Perspective*. EU-Japan Security Cooperation: Challenges and Opportunities. Online paper series. University of Essex.

HELWING, N. (2013). *EU Foreign Policy and the High Representative's Capability-Expectations Gap – A Question of Political Will*. European Foreign Affairs Review 18, No. 2.

HILL, C. (1993). *The Capability-Expectation Gap, or Conceptualizing Europe's International Role*. Journal of Common Market Studies, Vol. 31, No. 3.

HOLLIGWORTH, W. (2016). *Brexit may Carry Costs for Japan, Making EU More Pro-China: Experts*. In "The Japan Times".

HOOK, D.G.; GILSON, J.; HUGHES, C.W. and DOBSON, H. (2001). *Japan's International Relations. Politics, Economics, and Security*. Sheffield Centre For Japanese Studies, Routledge. Chapter XIII.

HUGHES, C.W. (2006). *Why Japan Could Revise its Constitution and What it Would Mean for Japanese Security Policy*, Elsevier Limited (on behalf of Foreign Policy Research Institute).

HUGHES, C.W. (2009). *Japan's Response to China's Rise: Regional Engagement, Global Containment, Dangers of Collision*. *International Affairs*, Vol. 85, No. 4.

IMMENKAMP, B. (2020). *A New Neighbourhood, Development, and International Cooperation Instrument*. European Parliament Briefing (EU Legislation in Progress, 2021-2027 MFF), PE 628.251.

INOUCHI, T. (2013). *Japan's Ambition for Normal Statehood*. Chapter VI. In Dominguez, J. and Kim, B. *East Asia, Latin America and the "New" Pax Americana*. Routledge.

ISHIZUKA, K. and LLOYD, S. *Japan's Development Assistance in East Timor*, 共栄え大学研究論集.

IWASAWA, Y. (1998). *International Law, Human Rights, and Japanese Law*. Clarendon Press.

JOHNSON, R.D. (2015). *Asia Pacific in the Age of Globalization*. Palgrave Mcmillan Transnational History Series.

JOROUVÁ, V. (Commissioner for Justice, Consumers and Gender Equality). *EU Japan Adequacy Decision*. Factsheet, January 2019.

KAWAMURA, A. (1997), *Human Rights and the 'Asian' Perspective*, HURIGHTS OSAKA. Volume 10.

KECK, J.; VANOVERBEKE, K. AND WALDENBERGER, F. (2013). *EU-Japan Relations, 1970-2012: From Confrontation to Global Partnership*. Routledge.

KEUKELEIRE, S. and DELREUX, T. (2014). *The Foreign Policy of the European Union*. Palgrave Mcmillian, The European Union Series, 2<sup>nd</sup> Edition.

KHANNA, P. (2019). *The Future is Asian. Global Order in the Twenty-First Century*. Weindenfeld&Nicolson.

KINZELBACH, K. (2009). *The EU's Human Rights Dialogues – Talking to Persuade or Silencing the Debate?*. Paper Presented at KFG Conference: The Transformative Power of Europe. December 2009, Freie Universität Berlin.

KOIKE, O. (2014). *Reform of Human Rights Institutions in Japan*, *Yokohama Law Review* Vol. 22, No. 3.

KYODO NEWS, *Japan's Justice Ministry reveals 174 foreign technical interns died between 2010 and 2017*. The Japan Times, December 2018.

LEE, M.Y.K. (2008). *Universal Human Dignity: Some Reflections in the Asian Context*. In 'Asian Journal of Comparative Law', Volume 3, Issue 1, Article 10.

MANNERS, I. (2002). *Normative Power Europe: A Contradiction in Terms?*. *JCMS* 2002 Volume 40. Number 2.

MARTINS GANCHAS DOS SANTOS, C. (2018). *A União Europeia como Actor de Desenvolvimento*. ISCTE – Instituto Universitário de Lisboa, Escola de Sociologia e Políticas Públicas.

[MARTINS GANCHAS DOS SANTOS, C. (2018). *The European Union as an Actor of Development*. University Institute of Lisbon, Sociology and Public Policies School].

MATSUI, S. (2018). *Fundamental Human Rights and 'Traditional Japanese Values': Constitutional Amendment and Vision of the Japanese Society*. *Asian Journal of Comparative Law* (13).

MCCURRY, J. (2006). *Monitoring Japan's Aid Commitments* (World Report). The Lancet.com, Vol. 2368.

MEGURO, M. (2019). *Backlash against international law by the East? How the concept of 'transplantation' helps us to better understand reception processes of international law*. *Völkerrechtsblog*.

MOHD HUDA, M.I. (2016). *Evolution of Japanese ODA 1945-2015: An Analysis*. *International Journal of East-Asian Studies*. Vol. 5, No.1.

MOHD IKBAL, M.H. (2018). *The Development of Japan's International Human Security Diplomacy: Towards a "Normal" Country?*. Malaysian Journal of History, Politics & Strategic Studies. Vol. 45, No. 1.

MORRIS-SUZUKI, T. (2018). *The Constitution, Human Rights and Pluralism in Japan: Alternative Visions of Constitutions Past and Future*. The Asia Pacific Journal, Volume 15, Issue 5, No 1.

MUIR, E. (2014). *Fundamental Rights: An Unsettling EU Competence*. Human Rights Review No. 15.

MYKAL, O. (2011). *The EU-Japan Security Dialogue: Invisible but Comprehensive*, Amsterdam University Press.

NADEAU, P. (2018). *The End of Gaiatsu?*, Center for Strategic and International Studies.

NAKAMURA, T. (Editor). (2009). *East Asian Regionalism from a Legal Perspective. Current Features and Vision for the Future*. Routledge Contemporary Asia Studies.

NAKANISHI, Y. (2018). *Mechanisms to Protect Human Rights in EU's External Relations*. Contemporary Issues in Human Rights Law – Europe and Asia. Springer Open.

NAKANISHI, Y. (2019). *The Economic Partnership Agreement and The Strategic Partnership Agreement between the European Union and Japan from a Legal Perspective*. Hitotsubashi Journal of Law and Politics, No. 47.

NISHIKAWA, T. *The Future of the Japanese Constitution: From the 'McArthur Constitution' to What?*, 比較法文化第 17 号 pp- 51-79.

NOWAK, M. (2007). *The Three Pillars of the United Nations: Security, Development and Human Right*. In 'Casting the Net Wider: Human Rights, Development and New Duty-Bearers' (Chapter II). Intersentia, Antwerp-Oxford.

OTOPALIK, C.M. (2010). *Japan's Overseas Development Assistance: Assessing Conformance with Shifting Priorities*. International Journal of Politics and Good Governance. Vol. 1, No. 1.1.



PENA RODRÍGUEZ, A. (1998). *Propaganda Política, Derechos Humanos e Independencia Nacional: El Caso de Timor Oriental*. Historia y Comunicación Social, Número 3.

[PENA RODRÍGUEZ, A. (1998). *Political Propaganda, Human Rights and National Independence: the East-Timor Case*. History and Social Communication, No. 3].

REITERER, M. (2006). *Japan and the European Union: Shared Foreign Policy Interests*. Springer-Verlag.

ROSENTHAL, G. (2015). *Letter dated 29 June 2015 from the Chair of the Secretary-General's Advisory Group of Experts on the 2015 Review of the United Nations Peacebuilding Architecture addressed to the Presidents of the Security Council and of the General Assembly*. United Nations Peacebuilding Architecture.

RYU, E. (2018). *Human Rights Situation in North Korea: Lack of Significant Progress from the United Nations Human Rights Mechanisms and What Can Be Done*. Minnesota Journal of International Law. Vol 27, No. 2.

SALMON, T. and Sir NICOLL, W. (1997). *Building European Union. A Documentary History and Analysis*. Manchester University Press.

SHAHABUDDIN, M. (2018). *The 'Standards of Civilization' in International Law. Intellectual Perspectives from pre-war Japan*. Völkerrchtsblog.

SHOJI, K. (2000). "Asian Way" of Approaching Human Rights Issues in the Asia-Europe Meeting (ASEM). In MAHONEY, P. ; MATSCHER, F. ; PETZOLD, H. and WILDHABER, L. *Protection des Droite de l'Homme: la perspective Européenne*. Mélanges à la mémoire de Rolv Ryssdal, Carl Heymanns Verlag KG, Koln.

SMITH K.E. (2010). *The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence*. Journal of European Public Policy, 17:2.

STIMSON'S JAPAN PROGRAM, *Japan as a Peace Enabler – Views for the next generation*, edited by Yuki Tatsumi, 2016.

SUAMI, T. (2018). *A Japanese Approach to International Law. Territorial disputes and investment dispute settlements*. Völkerrechtsblog.

SUNAGA, K. (2005). *The Reshaping of Japan's Official Development Assistance (ODA) Charter*. Discussion Paper No. 36. APEC Study Central, Colombia University.

TAKAHASHI, S. (2019). *Civil and Political Rights in Japan. A tribute to Sir Rodley*, Routledge Research on Human Rights Law.

TANAKA, A. (2012). *The Development of ASEAN+3 Framework*. Chapter III. In Curley, M. and Thomas, N. *Advancing East Asia Regionalism (Politics in Asia)*. Routledge.

TATSUKI, Y. (2015). *Japan's 'Proactive Contribution to Peace' Beyond Development Aid*.

TATSUMI, Y. (2016). *Japan as a Peace Enabler. Views from the Next Generation*. Stimson Center.

TAYLOR, J.G. (1990). *The Indonesian Occupation of East Timor 1974-1989. A Chronology*. Catholic Institute for International Relations, London.

TEEVAN, C. AND SHERRIFF, A. (2019). *Mission Possible? The Geopolitical Commission and the Partnership with Africa*. European Centre for Policy Development Management. Briefing Note No. 113.

TERAO, T. (2012). *The Idea of the Maternal Protection Act and Its Application: From the Standpoint of Japan Association of Obstetricians & Gynecologists*. JMAJ, May/June 2012, Vol. 22, No. 3.

TERRE DES HOMMES INTERNATIONAL FEDERATION, ACTION AID INTERNATIONAL, AMNESTY INTERNATIONAL EU OFFICE AND INTERNATIONAL HUMAN RIGHTS NETWORK. (2008). *Human Rights-based Approaches and European Union Development Aid Policies*. IHRN.

THAKUR, R. and MALEY, W. (2015). *Theorising the Responsibility to Protect*. Cambridge University Press.

TIMOR-LESTE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION (2010). *CHEGA! (Volume I)*. Other CAVR Publication.

TOCCI, N. (2017). *Framing the EU Global Strategy. A Stronger Europe in a Fragile World*. Palgrave Mcmillian.

- TOCCI, N. (2019). *Resilience and the Role of the European Union in the World*. Contemporary Security Policy.
- TREZISE, T. (1992). *Japan's Peacekeeping Forces*. In 'The Brooking Reviews', Vol. 10, No. 4.
- TSUCHIYA, T. (1997). *Eugenic Sterilizations in Japan and Recent Demand for Apology: A Report*, Network on Ethics and Intellectual Disability, Vol. 3, No. 1.
- TSUKAMOTO, T. (2010). *A Survey of Japan's Contribution to Peacebuilding: Timor-Leste as a Case*. Cabinet Office, International Peace Cooperation Headquarters. International Peace Cooperation Research.
- TSURUOKA, M. (2008). *'Expectations Deficit' in EU-Japan Relations: Why the Relationship Cannot Flourish*. The European Union and Asia: What is there to Learn?. Nova Science Publisher.
- TSURUOKA, M. (2010). *Japan-Europe Security Cooperation: How to "use" NATO and the EU*. Boei Kenkyusho Kiyō, Vol. 13, No. 1.
- VELLUTI, S. (2016). *The Promotion and Integration of Human Rights in EU External Trade Relations*. Utrecht Journal of International and European Law, 32 (83).
- WARD, E. and CAREY, P. (2001). *The East Timor Issue in the Context of EU-Indonesian Relations, 1975-1998*. Indonesia and the Malay World. Vol. 29, No. 83.
- WATANABE, H. (2013). *Japan-Europe Relations at the Multilateral Level*. Japan's Diplomacy Series, Japan Digital Library.
- WATTS, J. (2018). *Timor Leste is an International Intervention Success Story*. The National Interest. March 1<sup>st</sup>, 2018.
- WEATHERILL, S. (2016). *Law and Values in the European Union*. Oxford University Press. Clarendon Law Series.

WEBSTER, T. (2010). *International Human Rights Law in Japan: The View at Thirty*. Case Western Reserve University, School of Law, Faculty Publication (579).

WONG, R.Y. (2006). *The Europeanization of French Foreign Policy*. Palgrave Mcmillian. 1<sup>st</sup> Edition.

WOUTERS, J., BRUYNINCKX, H., BASU, S. and SCHUNZ, S. (2012). *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental Fora*. Palgrave Studies in European Union Politics.

YANG, J. (2018). *Women's Rights in the DPRK: Discrepancies between International and Domestic Legal Instruments in Promoting Women's Rights and the Reality Reflected by North Korean Defectors*. Cornell International Law Journal, Vol. 51.

YU, A.J.; LINCAN, C.A. and VOICILA, E. (2018). *EU – A Stronger Global Actor: New Contexts for EU-Korean Relations*. CES Working Papers, Volume X, Issue 3.

YUZAWA, T. *ASEAN-Japan Cooperation on Democracy and Human Rights Promotion: Challenges and Opportunities*. In 'Beyond 2015', part 14.

ZAMFIR, I. (2019). *Human Rights in EU Trade Agreements. The Human Rights Clause and its Application*. European Parliament Briefing. PE 637.975.

ZAMFIR, I. (2019). *The Death Penalty and the EU's Fight against it*. European Parliamentary Research Service. PE 635.516.

ZUTIC I., CEHULIC VUKADINOVIC L. (2017). *EU Global Strategy: an Upgrade or New OS?*. January 10<sup>th</sup>, 2017.

原真和、「人権と文化。とくに日本における女性の人権と文化」。聖和短期大学紀要。第1号、ページ33-38。2015年。

[HARA, M. (2015). *Jinken to bunka. Toku ni nihon ni okeru jōsei no jinken to bunka*. (Human Rights and Culture: with a Particular Focus on the Human Rights of Women in Japan). Departmental Bulletin Paper of Seiwa Junior College, No. 1, pp. 33-38].

庄司克宏、「欧州連合統治の論理とゆくえ」。岩波新書、2007年、号1009。

[SHOJI, K. (2007). *Ōshūrengō tōchi no ronri to yukue*. (European Union: The Logic of Governance and its Future). Iwanami-shoten, No. 1009].

田中俊郎、「EU とアジア。相互にとって意味」。日本 EU 学会年報。第 36 号、ページ 1-28。平成 28 年。

[TANAKA, T. (2016). *EU to Ajia. Sōgo ni totte imi*. (EU and Asia: Mutual Meaning). EU Annual Report of Japan. No. 36, pp. 1-28].

横田洋三、「世界の人権日本の人権」。不磨書房、2004 年。

[YOKOTA, Y. (2003). *Nihon no jinken sekai no jinken* (Human Rights in Japan and in the World). Shinzanshashuppan, 1<sup>o</sup> version].

## WEBLIOGRAPHY

AICHR Website, available at: <https://aichr.org/>.

Amnesty International Press Release. *INDONESIA: Struggle against Impunity. One Step Forward, Two Steps Back*. 25<sup>th</sup> April, 2001. Available at: <https://www.amnesty.org.uk/press-releases/indonesia-struggle-against-impunity-one-step-forward-two-steps-back>.

APGC Plan for Areas of Focus and Related Actions on Connectivity. ASEM 12. Brussels, October 19<sup>th</sup>, 2018. Available at: <https://d333mq0i40sk06.cloudfront.net/documents/APGC-Plan-for-Area-of-Focus-and-Related-Actions-on-Connectivity.pdf>.

Archive of European Integration. *Human Rights, Democracy and Development Cooperation Policy. Commission Communication to the Council and Parliament*. SEC (91) 61 Final. March 25<sup>th</sup>, 1991. Available at: <http://aei.pitt.edu/2937/>.

Asia Pacific Human Rights Information Center. *Overview: Human Rights in Japan*. Available at: <https://www.hurights.or.jp/english/hurights1/human-rights-in-japan.html>.

Asian Human Rights Commission. *INDONESIA: The Government Cannot Avoid the Ad Hoc Human Rights Court to Address Past Human Rights Abuses*. (Written Submission to the 39<sup>th</sup> Regular Session of the United Nations Human Rights Council by the Asian Legal Resource Centre). August 29<sup>th</sup>, 2018. Available at: <http://www.humanrights.asia/news/alrc-news/ALRC-CWS-39-003-2018/>.

BBC NEWS. *Special Report: Building New Relationships in the Global Village*. March 1998. Available at: [http://news.bbc.co.uk/2/hi/special\\_report/1998/03/98/asem\\_2/71670.stm](http://news.bbc.co.uk/2/hi/special_report/1998/03/98/asem_2/71670.stm).

BBC NEWS. *Donald Trump: The European Union is a Foe on Trade*. July 15<sup>th</sup>, 2018. Available at: <https://www.bbc.com/news/world-us-canada-44837311>.

BBC NEWS. *How Much of Europe Does China Own?*. April 20<sup>th</sup>, 2019. Available at: <https://www.bbc.com/news/world-47886902>.

BBC NEWS. *Trump on Climate Change Report: I don't Believe It*. November 26<sup>th</sup>, 2018. Available at: <https://www.bbc.com/news/world-us-canada-46351940>.

BBC NEWS. *Drug Dealers, Criminals, Rapists: What Trumps Thinks of Mexicans*. August 31<sup>st</sup>, 2016. Available at: <https://www.bbc.com/news/av/world-us-canada-37230916/drug-dealers-criminals-rapists-what-trump-thinks-of-mexicans>.

BBC NEWS. *World: Europe. East Timor: The View from Portugal*. May 5<sup>th</sup>, 1999. Available at: <http://news.bbc.co.uk/2/hi/europe/301656.stm>. (By Lisbon correspondent Alison Roberts).

BBC NEWS. *Portugal's Obsession with Timor*. August 25<sup>th</sup>, 1999. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/430020.stm>. (By Lisbon correspondent Alison Roberts).

Center for Global Development Website. *The Commitment to Development Index 2018*. Available at: <https://www.cgdev.org/commitment-development-index-2018>.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Trade for All: Towards a more Responsible Trade and Investment Policy* – COM(2015) 497 Final. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A52015DC0497>.

Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Increasing the Impact of EU Development Policy: an Agenda for Change* – COM/2011/0637. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A52011DC0637>.

Consilium.europa.eu, EU at the UN General Assembly. Available at: <https://www.consilium.europa.eu/en/policies/unga/>.

Contributors to UN Peacekeeping Operations by Country and Post: Police, UN Military Experts on Missions, Staff Officers and Troops. As per January 31<sup>st</sup>, 2020. Available [https://peacekeeping.un.org/sites/default/files/1\\_summary\\_of\\_contributions\\_20.pdf](https://peacekeeping.un.org/sites/default/files/1_summary_of_contributions_20.pdf).

Council Common Position of 16 September 1999 concerning Restrictive Measures against the Republic of Indonesia. 1999/624/CFSP. Official Journal L 245, September 17<sup>th</sup>, 1999. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31999E0624>.

Council Decision (EU) of 29 September 2016 on the Conclusion, on behalf of the Union, of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other

part. Official Journal of the European Union, L 329/6. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32016D2117>.

Council of Europe Website, Japan/Observer State. Available at: <https://www.coe.int/en/web/portal/japan>

Council of Europe Website, *The Council of Europe's Relation with Observer States*. Available at: <https://www.coe.int/en/web/der/observer-states>.

Council of Europe Website, *European Social Charter and European Union Law*. Available at: <https://www.coe.int/en/web/european-social-charter/european-social-charter-and-european-union-law>.

Council of Europe Website, *Death Penalty Factsheet*. Available at: <https://rm.coe.int/168008b914>.

Council of Europe Website, Speeches and Presentations of the Director, *Legal Challenges and Opportunities Raised by EU Participation in Council of Europe Treaties*. April 25<sup>th</sup>, 2018. Available at: <https://www.coe.int/en/web/dlapil/-/legal-challenges-and-opportunities-raised-by-eu-participation-in-council-of-europe-treaties>.

Council of the European Union, *Council Decision of 26 November 2009, 2010/48/EC, Official Journal of the EU, 2010 L23/35*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0048>.

Council of the European Union. *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 25 June 2012, 11855/12. Available at: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf).

Council of the European Union. *Council Conclusions on EU Priorities in UN Human Rights Fora in 2020*, 17 February 2020, 5982/20. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/st05982-en20.pdf>.

Council of the European Union. *Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019*, 20 July 2015, 10897/15. Available at:



[https://www.law.ox.ac.uk/sites/files/oxlaw/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_2015-2019.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/eu_action_plan_on_human_rights_and_democracy_2015-2019.pdf).

Council of the European Union. *EU Annual Report on Human Rights and Democracy in the World 2018*, 13 May 2019, 9024/19. Available at: [https://www.consilium.europa.eu/media/39343/human-rights-2018-eu-annual-report-adopted.pdf?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=Human+rights+and+democracy+in+the+world%3A+2018+EU+annual+report+adopted](https://www.consilium.europa.eu/media/39343/human-rights-2018-eu-annual-report-adopted.pdf?utm_source=dsms-auto&utm_medium=email&utm_campaign=Human+rights+and+democracy+in+the+world%3A+2018+EU+annual+report+adopted).

Council of the European Union. *EU Guidelines on Death Penalty*. COHOM 64, PESC 403, OC 213. Brussels, April 12<sup>th</sup>, 2013. Available at: <http://data.consilium.europa.eu/doc/document/ST-8416-2013-INIT/en/pdf>.

Council of the European Union, Presse Releases. *Human Rights: EU Appoints a New Special Representative*. February 28<sup>th</sup>, 2019. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/02/28/human-rights-eu-appoints-a-new-special-representative/>.

Council of the European Union. *Women, Peace and Security – Council Conclusions*. 15086/18. Brussels, 10 December 2018. Available at: <https://www.consilium.europa.eu/media/37412/st15086-en18.pdf>.

Council of the European Union. *Working Party on Human Rights (COHOM)*. Available at: <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/>.

*Data updated as of January 31<sup>st</sup>, 2020*. First year of EU-Japan Economic Partnership Agreement shows growth in EU exports. Available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2107>.

Delegation of the European Union to the Dominican Republic (2019). *We Can All Do More! Good Human Rights Stories Coalition Getting Bigger*. Available at: [https://eeas.europa.eu/delegations/dominican-republic/68022/we-all-can-do-more-good-human-rights-stories-coalition-getting-bigger\\_tg](https://eeas.europa.eu/delegations/dominican-republic/68022/we-all-can-do-more-good-human-rights-stories-coalition-getting-bigger_tg).

Directorate-General for External Policies, Policy Department. *The European Parliament's Role in Relation to Human Rights in Trade and Investment Agreements*. EXPO/B/DROI/2012-09. Available at: <https://www.europarl.europa.eu/cmsdata/86031/Study.pdf>.

Dr. Ramcharan Bertrand's (UNHCHR) remarks on *Security and Human Rights*. Available at: <https://www.un.org/ruleoflaw/files/Ramcharan.pdf>.

EEAS Homepage. *EU-ASEAN Policy Dialogue on Human Rights AICHR, ACWC, ACMW, ASEC Visit to Brussels 19/23 October 2015*. 2015. Available at: [https://eeas.europa.eu/headquarters/headquarters-Homepage/2599/node/2599\\_me](https://eeas.europa.eu/headquarters/headquarters-Homepage/2599/node/2599_me).

EEAS Homepage. *Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI)*. 2019. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/49815/enhanced-regional-eu-asean-dialogue-instrument-e-readi\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/49815/enhanced-regional-eu-asean-dialogue-instrument-e-readi_en).

EEAS publication. *The European Union's Global Strategy: Three Years On, Looking Forward*. 2019. Available at: [https://eeas.europa.eu/topics/eu-global-strategy/64034/vision-action-eu-global-strategy-practice-three-years-looking-forward\\_en](https://eeas.europa.eu/topics/eu-global-strategy/64034/vision-action-eu-global-strategy-practice-three-years-looking-forward_en).

EU-Japan Summit, *Joint Press Statement*, Brussels, December 8<sup>th</sup>, 2001. Available at: [http://eeas.europa.eu/archives/docs/japan/docs/2001\\_jpr\\_en.pdf](http://eeas.europa.eu/archives/docs/japan/docs/2001_jpr_en.pdf).

European Union Global Strategy (2016). Available at: [http://eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf).

EU Neighbours, *The European Neighbourhood Instrument*. Available at: <https://www.euneighbours.eu/en/policy/european-neighbourhood-instrument-eni>.

EU Rights, ECAS Webmaster. Webpage. Available at: <https://ecas.org/focus-areas/eu-rights/>.

EUR-Lex Website, (Access to European Union Law). Available at: <https://eur-lex.europa.eu/homepage.html?locale=it>.

EUR-Lex Website, (Access to European Union Law). Division of Competences within the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0020>.

EUR-Lex, EU Agency for Fundamental Rights (FRA). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:l14169>.

Eurofund, Soft Law. 2011. Available at: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/soft-law>.

Europa.eu, About the EU, EU in figures. Available at: [https://europa.eu/european-union/about-eu/figures/living\\_en](https://europa.eu/european-union/about-eu/figures/living_en).

Europa.eu, EU Citizenship. Available at: [https://europa.eu/european-union/about-eu/eu-citizenship\\_en](https://europa.eu/european-union/about-eu/eu-citizenship_en).

Europa.eu, European Union, *European Commission*. Available at: [https://europa.eu/european-union/about-eu/institutions-bodies/european-commission\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/european-commission_en).

Europa.eu, *Fundamental Rights*. Available at: [https://e-justice.europa.eu/content\\_fundamental\\_rights-176-en.do](https://e-justice.europa.eu/content_fundamental_rights-176-en.do).

European Civil Protection and Humanitarian Aid Operations. *North Korea (DPRK)*. Available at: [https://ec.europa.eu/echo/where/asia-and-pacific/north-korea\\_en](https://ec.europa.eu/echo/where/asia-and-pacific/north-korea_en).

European Commission President José Manuel Barroso's speech, *EU-Japan: A Mature Relationship with Untapped Potential*, 2006. SPEECH/06/43. Tokyo, April 2006. Available at: [https://www1.europarl.europa.eu/meetdocs/2004\\_2009/documents/fd/speech-06-243\\_/speech-06-243\\_en.pdf](https://www1.europarl.europa.eu/meetdocs/2004_2009/documents/fd/speech-06-243_/speech-06-243_en.pdf).

European Commission, DG Trade, Japan. Available at: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/>.

European Commission, International Cooperation and Development, *Timor Leste*. Available at: [https://ec.europa.eu/international-partnerships/where-we-work/east-timor\\_en](https://ec.europa.eu/international-partnerships/where-we-work/east-timor_en).

European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing the Neighbourhood, Development and International Cooperation Instrument*. Brussels, June 14<sup>th</sup>, 2018. 2018/0243(COD). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A460%3AFIN>.

European Commission, Justice, *Daphne III Funding Programme*. Available at: [https://ec.europa.eu/justice/grants1/programmes-2007-2013/daphne/index\\_en.htm](https://ec.europa.eu/justice/grants1/programmes-2007-2013/daphne/index_en.htm).

European Commission, Press Corner, *Q&A: What is the EU doing for and Women's Rights and Gender Equality?* Available at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_1602](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_1602).

European Commission, Press Release. *EU Charts New Ground in Global Connectivity – Looks to Boost Strategic Ties with Asia*. Brussels, September 26<sup>th</sup>, 2019. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_5851](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5851).

European Commission, Presse Release. *Commission Welcomes European Parliament's Approval of EU-Vietnam Trade and Investment Agreements*. Brussels, February 12<sup>th</sup>, 2020. Available at: [https://ec.europa.eu/commission/commissioners/2019-2024/president/announcements/commission-welcomes-european-parliaments-approval-eu-vietnam-trade-and-investment-agreements\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/president/announcements/commission-welcomes-european-parliaments-approval-eu-vietnam-trade-and-investment-agreements_en).

European Commission, Trade. Key Elements of the EU-Japan Economic Partnership Agreement. Point 12. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1955>.

European Council – Council of the European Union website. Policies, the Cotonou Agreement, *Article 96 – Essential elements: Consultation Procedures and Appropriate Measures as Regards Human Rights, Democratic Principles and the Rule of Law*. Available at: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/text-article-96/>.

European Digital Rights. EU-Japan Trade Agreement not Compatible with EU Data Protection. 2018. Available at: <https://edri.org/eu-japan-trade-agreement-eu-data-protection/>.

European Endowment for Democracy. About EED. Available at: <https://www.democracyendowment.eu/en/about/about-us.html>.

European External Action Service Website. *Human Rights/Democracy: Speech by HR/VP Josep Borrell at the European Parliament on the Annual Report 2018 on Human Rights and Democracy in the World and the EU's Policy on the Matter*. Brussels, January 15<sup>th</sup>, 2020. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/73064/human-rightsdemocracy-speech-hrvp-josep-borrell-european-parliament-annual-report-2018-human\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/73064/human-rightsdemocracy-speech-hrvp-josep-borrell-european-parliament-annual-report-2018-human_en).

European Parliament Global Democracy Support. *Election Observation*. Available at: <https://www.europarl.europa.eu/globaldemocracysupport/en/elections/election-observation.html>.

European Parliament. *Human Rights Mainstreaming in EU's External Relations*. Directorate-General for External Policies, Directorate B, Policy Department, EXPO/B/DROI/2008/66, PE407003. 2009. Available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/407003/EXPO-DROI\\_ET\(2009\)407003\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2009/407003/EXPO-DROI_ET(2009)407003_EN.pdf).

European Parliament News, Press Releases. *EU-Vietnam Free Trade Deal Gets Green Light in Trade Committee*, January 21<sup>st</sup>, 2020. Available at: <https://www.europarl.europa.eu/news/en/press-room/20200121IPR70703/eu-vietnam-free-trade-deal-gets-green-light-in-trade-committee>.

European Parliament News, Press Releases. *External Action: More Funds for Human Rights, Development and Peace*. March 27<sup>th</sup>, 2019. Available at: <https://www.europarl.europa.eu/news/it/press-room/20190321IPR32120/external-action-more-funds-for-human-rights-development-and-peace>.

European Parliament News, Press Releases. *Rule of Law in Poland and Hungary has worsened*, January 1<sup>st</sup>, 2020. Available at: <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>.

European Parliament Website, Committees, *DROI*. Available at: <https://www.europarl.europa.eu/committees/en/droi/home/highlights>.

European Parliament, Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Judith Sargentini. *Report on a Proposal Calling on the Council to determine, pursuant to Article 7(1) of the TFEU, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union is Founded*. 2017/2131. Available at: [https://www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html).

European Union Agency for Fundamental Rights. Speech by FRA Director Morten Kjaerum to the Council of the EU Working Group on Human Rights (COHOM), Brussels, 7<sup>th</sup> October 2014. Available at: <https://fra.europa.eu/en/speech/2014/internal-external-coherence>.

European Union External Action Service. *The EU Global Strategy: A Compass for our action in difficult times*. June 14<sup>th</sup>, 2019. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage\\_sl/64160/The%20EU%20Global%20Strategy:%20A%20compass%20for%20our%20action%20in%20difficult%20times](https://eeas.europa.eu/headquarters/headquarters-homepage_sl/64160/The%20EU%20Global%20Strategy:%20A%20compass%20for%20our%20action%20in%20difficult%20times).

European Union External Action Service. *EU to Boost Investments in Global Role with 30% Budget Increase for External Action*, 14<sup>th</sup> June 2018. Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/46545/eu-boost-investment-global-role-30-budget-increase-external-action\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/46545/eu-boost-investment-global-role-30-budget-increase-external-action_en).

European Union External Action Service. *The Partnership on Sustainable Connectivity and Quality Infrastructure Between the European Union and Japan*, signed in Brussels on September 27<sup>th</sup>, 2019. Available at: [https://eeas.europa.eu/delegations/kyrgyz-republic/68544/node/68544\\_hy](https://eeas.europa.eu/delegations/kyrgyz-republic/68544/node/68544_hy).

European Union Website, *The EU Motto*. Available at: [https://europa.eu/european-union/about-eu/symbols/motto\\_en](https://europa.eu/european-union/about-eu/symbols/motto_en).

Fact Sheets on the European Union (European Parliament). *The Maastricht and Amsterdam Treaties*. 2019. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.1.3.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf).

Factsheet of the Directorate-General for Justice and Consumers. *EU Japan adequacy decision*. 2019. Available at: [https://ec.europa.eu/info/sites/info/files/research\\_and\\_innovation/law\\_and\\_regulations/documents/adequacy-japan-factsheet\\_en\\_2019\\_1.pdf](https://ec.europa.eu/info/sites/info/files/research_and_innovation/law_and_regulations/documents/adequacy-japan-factsheet_en_2019_1.pdf).

Fact Sheets on the European Union (European Parliament). *Foreign Policy: Aims, Instruments and Achievements*. 2020. Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/158/foreign-policy-aims-instruments-and-achievements>.

Fourth EU-Africa Summit, *Roadmap 2014-2017*. Brussels, April 2-3, 2014. Available at: <https://www.consilium.europa.eu/media/21520/142094.pdf>.

Global Firepower – World Military Strength. Defence Spending by Country. Available at: <https://www.globalfirepower.com/defence-spending-budget.asp>.

He for She Website. *Shinzo Abe, Prime Minister of Japan*. Available at: <https://www.heforshe.org/en/node/81>.

Henry Kissinger's Speech at A.P. Meeting Here on US Relations with Europe. Available at: <https://www.nytimes.com/1973/04/24/archives/text-of-kissingers-speech-at-ap-meeting-here-on-u-s-relations-with.html>.

High Representative Josep Borrell opens ASEM Foreign Minister Meeting (16 December 2019)" Online Video Clip. *YouTube*. YouTube, December 17, 2019. Web. Available at: <https://www.youtube.com/watch?v=i3HfEsfkyD8>.

Human Rights Bureau, About Human Rights Volunteers. Available at: <http://www.moj.go.jp/ENGLISH/HB/about/volunteers.html>.

Human Rights Bureau, Ministry of Justice. *The Protection of Human Rights – Building a Century of Human Rights. 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights*. Available at: <http://www.moj.go.jp/content/001277221.pdf>.

Human Rights Watch. *Japan: Stand Firm on Rights in North Korea. Abe Should Led Efforts to Hold Pyongyang Accountable*. Tokyo, February 18<sup>th</sup>, 2020. Available at: <https://www.hrw.org/news/2020/02/18/japan-stand-firm-rights-north-korea>.

Human Rights Watch. *NGOs Urge European Parliament to Postpone Consent to EU-Vietnam Trade Deals*. 2020. Available at: <https://www.hrw.org/news/2020/02/04/ngos-urge-european-parliament-postpone-consent-eu-vietnam-trade-deals>.

HRC, *General Comment No. 36 to Article 6: Right to Life (2019)*. IV: Imposition of the Death Penalty, CCPR/C/GC/36, 3 September 2019. Available at: <https://undocs.org/CCPR/C/GC/36>.

ICCPR, Human Rights Committee. Concluding Observations of the Sixth Periodic Report of Japan. CCPR/C/JPN/CO/6. August 20<sup>th</sup>, 2014. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsuBJT%2Fi29ui%2Fb4lh9%2FUijO9nQa93Boy0croOoLTDvEPGY0kpztyF26TNPPD6smh3p9YJ5KgXGu0vYZb1NM8mpET5PRv%2FLCx0HP6sZ3QjgcWI>.

IIEA. "Dr. Nathalie Tocci – Framing the EU's Global Strategy: A Stronger Europe in a Fragile World." Online Video Clip. *YouTube*. YouTube, October 17, 2017. Web. Available at: <https://www.youtube.com/watch?v=deHcKj04pyk>.

International Olympic Committee. *Olympic Charter*. (In force as from 26 June 2019).  
September 2019. Available at:  
[https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#\\_ga=2.67825745.1571430208.1591522400-1342528504.1591522400](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=2.67825745.1571430208.1591522400-1342528504.1591522400).

Japan Business Federation and Japan Business Council in Europe. Urgent Proposal on the UK's Withdrawal from the EU. Keidanren, August 4<sup>th</sup>, 2017. Available at:  
<https://www.keidanren.or.jp/en/policy/2017/061.html>.

Japan's Official Development Assistance Whitepaper. The Track Record of Japan's ODA. 2014. Available at: <https://www.mofa.go.jp/files/000119315.pdf>.

JICA's Website, About JICA, *JICA's Vision*. Available at:  
<https://www.jica.go.jp/english/about/mission/index.html>.

JITCO Website. Available at: <https://www.jitco.or.jp/en/regulation/index.html>.

*Joint Declaration on Relations Between the European Community and its Member States and Japan in the Hague*, The Hague, July 18<sup>th</sup>, 1991. Available at:  
[http://eeas.europa.eu/archives/docs/japan/docs/joint\\_pol\\_decl\\_en.pdf](http://eeas.europa.eu/archives/docs/japan/docs/joint_pol_decl_en.pdf).

Liberal Democratic Party of Japan Website. Available at:  
<https://www.jimin.jp/english/news/131069.html>.

List of Partial Agreements of Japan. Available at:  
<https://www.coe.int/en/web/conventions/partial-agreements/-/conventions/ap/country/JAP>.

Ministry of Foreign Affairs of Japan. *An Argument for Japan's Becoming Permanent Member*. Available at: [https://www.mofa.go.jp/policy/q\\_a/faq5.html](https://www.mofa.go.jp/policy/q_a/faq5.html).

Ministry of Foreign Affairs of Japan. *Diplomatic Bluebook 1999*. Available at:  
<https://www.mofa.go.jp/policy/other/bluebook/1999/index.html>.

Ministry of Foreign Affairs of Japan. Country and Regions, Asia, *Japan-ASEAN Relations*. Available at: <https://www.mofa.go.jp/region/asia-paci/asean/index.html>.



Ministry of Foreign Affairs of Japan. *Emergency Assistance to the Commission for Reception, Truth and Reconciliation in East Timor*. Available at: <https://www.mofa.go.jp/announce/announce/2002/2/0205.html>.

Ministry of Foreign Affairs of Japan. *Japan Candidate for Human Rights Council 2020-2022*. Available at: <https://www.mofa.go.jp/files/000175485.pdf>.

Ministry of Foreign Affairs of Japan. *Japan SDGs Action Platform*. Accessible at: <https://www.mofa.go.jp/policy/oda/sdgs/effort/index.html>.

Ministry of Foreign Affairs of Japan. *Japan's Official Development Assistance Charter*. Cabinet Decisions. 1992. Available at: <https://www.mofa.go.jp/region/n-america/us/q&a/oda/3.html>.

Ministry of Foreign Affairs of Japan. *Japan's Security/Peace Stability of the International Community, Japan and the United Nations, Japan's Contribution to UN Peacekeeping Operations (PKO), Outline of Japan's International Peace Cooperation*. 2015. Available at: [https://www.mofa.go.jp/fp/ipc/page22e\\_000683.html](https://www.mofa.go.jp/fp/ipc/page22e_000683.html).

Ministry of Foreign Affairs of Japan. *Japan and the United Nations*. Report. 2014. Available at: <https://www.mofa.go.jp/files/000075164.pdf>.

Ministry of Foreign Affairs of Japan. *Japan-ASEAN Commemorative Summit (Japan's ODA to ASEAN). Japan to Provide Official Development Assistance of 2 Trillion Yen to ASEAN Countries over 5 Years – Mainly for the Two Pillars of “Enhancing Connectivity” and “Narrowing the Development Gap” toward ASEAN Integration in 2015*. 2015. Available at: <https://www.mofa.go.jp/files/000070232.pdf>.

Ministry of Foreign Affairs of Japan. *The Asia-Europe Meeting (ASEM), Introduction*. 2017. Available at: <https://www.mofa.go.jp/policy/economy/asem/introduction.html>.

Ministry of Foreign Affairs of Japan. *The Five Principles of Japan's ASEAN Diplomacy*. 2013. Available at: [https://www.mofa.go.jp/region/asia-paci/pmv\\_1301/overview.html](https://www.mofa.go.jp/region/asia-paci/pmv_1301/overview.html).

Ministry of Justice of Japan. Human Rights Bureau. Available at: <http://www.moj.go.jp/ENGLISH/HB/work/index.html>.

Mission of the European Union to ASEAN. *The 3<sup>rd</sup> EU-ASEAN Human Rights Policy Dialogue*. 2019. Available at: [https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/71137/3rd-eu-asean-human-rights-policy-dialogue\\_en](https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/71137/3rd-eu-asean-human-rights-policy-dialogue_en).

NATO Website, Joint Political Declaration Between Japan and the North Atlantic Treaty Organization. *Principles of Cooperation*, Point 2. 2013. Available at: [https://www.nato.int/cps/en/natohq/official\\_texts\\_99562.htm](https://www.nato.int/cps/en/natohq/official_texts_99562.htm).

OECD Glossary of Statistical Terms. Available at: <https://stats.oecd.org/glossary/detail.asp?ID=4865>.

OHCHR Archive, Mandate of the Special Rapporteur on the Right to Privacy. Available at: [https://www.ohchr.org/Documents/Issues/Privacy/OL\\_JPN.pdf](https://www.ohchr.org/Documents/Issues/Privacy/OL_JPN.pdf).

OHCHR, Europe Regional Office. *The European Union and International Human Rights Law*. Available at: [https://europe.ohchr.org/Documents/Publications/EU\\_and\\_International\\_Law.pdf](https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf).

OHCHR, *Who is a defender?* Available at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

Opinion 2/94 of the European Court of Justice. Opinion Pursuant to Article 228 of the EC Treaty. March 28<sup>th</sup>, 1996. Available at: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=99549&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2928020>.

Oxfam Website. *Agriculture, Disability Inclusion and Land Rights are Key Concerns in Oxfam Submission to Parliament*. November 13<sup>th</sup>, 2019. Available at: <https://asia.oxfam.org/latest/press-release/agriculture-disability-inclusion-and-land-rights-are-key-concerns-oxfam>.

Prime Minister of Japan and his Cabinet, Speeches and Statements by the Prime Minister, *Speech by Prime Minister Shinzo Abe at the World Assembly for Women (WAW! 2017)*. November 3<sup>rd</sup>, 2017. Available at: [https://japan.kantei.go.jp/98\\_abe/statement/201711/01WAW.html](https://japan.kantei.go.jp/98_abe/statement/201711/01WAW.html).

Record of General Assembly Votes on East Timor (1975-1982). Available at: <https://etan.org/etun/genasRes.htm>.

Sakharov Prize Network, European Parliament. José Alexandre « Xanana » Gusmão, Sakharov Prize Laureate, 1999. Available at: [https://www.europarl.europa.eu/intcoop/sakharov/laureates/xanana\\_en.html](https://www.europarl.europa.eu/intcoop/sakharov/laureates/xanana_en.html).

Spotlight Initiative Website. *Prime Minister Approves the Largest EU-UN Initiative to End Violence Against Women and Girls in Timor-Leste*. Available at: <https://www.spotlightinitiative.org/press/prime-minister-approves-largest-eu-un-initiative-end-violence-against-women-and-girls-timor>.

Study Group on Europe's Security Capabilities. *A Human Security Doctrine for Europe*. The Barcelona Report presented to the EU High Representative for Commission Foreign and Security Policy. Barcelona, September 15<sup>th</sup>, 2004. Available at: [https://www2.europarl.europa.eu/meetdocs/2004\\_2009/documents/dv/human\\_security\\_report/\\_human\\_security\\_report\\_en.pdf](https://www2.europarl.europa.eu/meetdocs/2004_2009/documents/dv/human_security_report/_human_security_report_en.pdf).

Sustainable Development Report 2019. Available at: <https://sdgindex.org/>.

The ASEAN Post Team, *The Struggle for Human Rights in Asia*. The ASEAN Post, January 2018. Available at: <https://theaseanpost.com/article/struggle-human-rights-asean>.

*The Asian Value debate and its relevance to international humanitarian law*. In 'International Review of the Red Cross'. 2011. Available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jqzl.htm>.

The Colombo Plan Website. *The History of Colombo Plan*. Available at: <https://colombo-plan.org/history/>.

The Economist, World in Figure. Available at: <https://worldinfigures.com/rankings/topic/8>.

The Japan Times. *EU Demands Human Rights Clause Linked to Economic Partnership Agreement with Japan*. 2014.

The Japan Times News. *Japan to Back EU-led UN Resolution on Human Rights in North Korea*. March 12<sup>th</sup>, 2020. Available at: <https://www.japantimes.co.jp/news/2020/03/12/national/japan-un-resolution-human-rights-north-korea/>.

The Mission of Japan to the European Union. *Minister Kato's (Minister in charge of Abduction Issue) Visit to Brussel*. May 4<sup>th</sup>, 2017. Available at: [https://www.eu.emb-japan.go.jp/itpr\\_en/00\\_000136.html](https://www.eu.emb-japan.go.jp/itpr_en/00_000136.html).

The Nobel Prize Website. European Union (EU) Facts, The Nobel Prize 2012. Available at: <https://www.nobelprize.org/prizes/peace/2012/eu/facts/>.

The Nobel Prize Website. José Ramon Horta Facts, The Nobel Prize 1996. Available at: <https://www.nobelprize.org/prizes/peace/1996/ramos-horta/facts/>.

Tokyo 2020 Website, Games Vision. Available at: <https://tokyo2020.org/en/games/games-vision/>.

Tokyo 2020 Website, *Human Rights, Labour and Fair Business Practices*. Available at: <https://tokyo2020.org/en/games/sustainability/humanrights/>.

UN News. *UN Expert Urges Japan to Put Human Rights at the Centre of Global Development Efforts*. July 22<sup>nd</sup>, 2013. Available at: <https://news.un.org/en/story/2013/07/445182-un-expert-urges-japan-put-human-rights-centre-global-development-efforts>.

UN Women, Asia and the Pacific. *UN Women Timor Leste*. Available <https://asiapacific.unwomen.org/en/countries/timor-leste>.

UNESCO Website. Definition of Human Genome. Available at: <https://en.unesco.org/themes/ethics-science-and-technology/human-genome-and-human-rights>.

UNGA, United Nations Human Rights Council, *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, A/HCR/25/63. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/108/66/PDF/G1410866.pdf?OpenElement>.

UNGA, United Nations Human Rights Council, *Written Statement Submitted by the International Carrier Support Association, a Non-Governmental Special Organization in Special Consultative Status*. A/HCR/39/NGO/86, August 2018. Available at: <https://undocs.org/pdf?symbol=en/A/HRC/39/NGO/86>.

United Nations OHCHR, UN Treaty Body Database, Ratification status. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN).

United Nations Peacekeeping, *How we are funded*. Available at: <https://peacekeeping.un.org/en/how-we-are-funded>.

United Nations Sustainable Development Group, Universal Values, *Human Rights-Based Approach*. Available at: <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

United Nations Website, Sustainable Development Goals. Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

人権教育啓発推進センター。Center of Human Rights Education and Training Website. *Message from the President*. Available at: <http://www.jinken.or.jp/en>.

## LIST OF TREATIES, AGREEMENTS, JUDGEMENTS AND CONSTITUTIONS

Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor. A/53/951. S/1999/513. Available at:

[https://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20TL\\_990505\\_AgreementOnEastTimor.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20TL_990505_AgreementOnEastTimor.pdf).

Charter of the United Nations and Statute of the International Court of Justice (1945). Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

Consolidated Version of Treaty on European Union (2012). Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF).

Consolidated Version of Treaty on the Functioning of the European Union (2012). Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF).

Cotonou Agreement (2000). Available at: <http://www.acp.int/sites/acpsec.waw.be/files/story-pdf/en/cotonou-agreement-en.pdf>.

Declaration of the Rights of the Men and Citizens (1789). Available at: [https://www1.curriculum.edu.au/ddunits/downloads/pdf/dec\\_of\\_rights.pdf](https://www1.curriculum.edu.au/ddunits/downloads/pdf/dec_of_rights.pdf).

EU-Japan Economic Partnership Agreement (2019). Available at: [https://trade.ec.europa.eu/doclib/docs/2018/august/tradoc\\_157228.pdf](https://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf).

European Charter of Fundamental Rights of the European Union (2000). Available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

European Convention on Human Rights (1953). Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

European Parliament, Common Position 1999/624/CFSP. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31999E0624>.

European Social Charter (1961). Available at: <https://rm.coe.int/168006b642>.

International Treaty for the Law of the Sea, Case No. 14. Accessible at: <https://www.itlos.org/cases/list-of-cases/case-no-14/>.

International Treaty for the Law of the Sea, Case No. 15. Accessible at: <https://www.itlos.org/cases/list-of-cases/case-no-15/>.

Japanese Constitution (1946). *English Edition by Government Printing Bureau*. Available at: <https://www.ndl.go.jp/constitution/e/etc/c01.html>.

Judgement of 12 November 1969, *Stauder v. City of Ulm*, Case 29/69, ECR 419. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029>.

Judgement of 17 December 1970, *Internationale Handelsgesellschaft v. Einfuhr-und Vorratstelle für Getride und Futtermittel*, Case 11/70, ECR 1125. ECJ. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011>.

Judgement of 14 May 1974, *Nold KG v. Commission*, Case 4/73, ECR 491. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0004>.

Judgement of 16 June 1998, *Racke v. Hauptzollant Mainz*, Case C-162/96, ECR I-3655. Available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61996CJ0162>.

Judgement of 21 December 2011, *Air Transport Association of America and Others*, Case C-366/10. ECJ. Available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=117193&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2924414>.

Labour Standards Act of Japan (1947). Available at: <http://www.ilo.org/dyn/travail/docs/2021/Labor%20Standards%20Act%20-%20www.cas.go.jp%20Overversion.pdf>.

List of Partial Agreements of Japan. Available at: <https://www.coe.int/en/web/conventions/partial-agreements/-/conventions/ap/country/JAP>.

Meiji Constitution of Japan (1889). Available at:  
<https://www.ndl.go.jp/constitution/e/etc/c02.html>.

Single European Act (1986). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1987:169:FULL&from=EN>.

Treaty of Lisbon (2007). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>.

United Nations Treaty Collection [to access all UN Treaties and monitor their ratification status]. Available at: [https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=\\_en](https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en).

Universal Declaration of Human Rights (1948). Available at:  
[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf).

[Conventions mentioned and substituted by the Cotonou Convention: Lomé I (1975), Lomé II (1980), Lomé III (1985), Lomé IV (1990)]

[Treaties mentioned and not yet into force at the time of drafting of the present dissertation: EU-Japan Strategic Partnership Agreement, EU-Vietnam Free Trade Agreement]



## LIST OF REGULATIONS AND RESOLUTIONS

Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013, *Establishing a Rights, Equality and Citizenship Program for the Period 2014 to 2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1381>.

Regulation (EY) 2016/679 of the European Parliament and the Council of 27 April 2016, *On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)*. Available at: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014, *Establishing a Financing Instrument for Development Cooperation for the Period 2014-2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0233>.

Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014, *Establishing a Financing Instrument for Democracy and Human Rights Worldwide*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0235>.

Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, *Applying a Scheme of Generalized Tariff Preferences and Repealing Council Regulation (EC) No 732/2008*. Available at: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.L\\_.2012.303.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.L_.2012.303.01.0001.01.ENG).

Resolution of 12 May 2016 of the European Parliament, *On the Crimean Tatars*. 2016/2692 (RSP). Available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0218\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0218_EN.html).

UNGA, Resolution adopted by the General Assembly on 18 December 2007, A/RES/62/149, 26 February 2008. Available at: <https://undocs.org/en/A/RES/62/149>.

UNGA, United Nations Human Rights Council, *Resolution on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/31/L.25. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/056/48/PDF/G1605648.pdf?OpenElement>.

UNSC, *Resolution 1264 (1999)*, S/RES/1264, 15 September 1999. Available at: [https://undocs.org/S/RES/1264\(1999\)](https://undocs.org/S/RES/1264(1999)).

UNSC, *Resolution 1272 (1999)*, S/RES/1272, 25 October 1999. Available at: <http://unscr.com/en/resolutions/doc/1272>.

UNSC, *Resolution 1410 (2002)*, S/RES/1410, 17 May 2002. Available at: <http://unscr.com/en/resolutions/doc/1410>.

UNSC, *Resolution 1674 (2006)*, S/RES/1274, 28 April 2006. Available at : [https://www.un.org/ruleoflaw/files/S-Res-1674%20on%20protection%20civilians%20in%20armed%20conflict%20\(28Apr06\).pdf](https://www.un.org/ruleoflaw/files/S-Res-1674%20on%20protection%20civilians%20in%20armed%20conflict%20(28Apr06).pdf)

## RINGRAZIAMENTI

Alla preziosa disponibilità della Professoressa De Vido e del Professor Shoji,

All'infinita pazienza dei miei genitori e di mia sorella,

All'incondizionato amore dei miei nonni,

Alla costante presenza dei miei Diamanti,

Ai colorati sorrisi dei miei amici in Italia ed in giro per il mondo,

Grazie.