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in EU foreign policy“

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Table of Content

List of Abbreviations.....	5
1 Introduction.....	6
2 Scope and structure of the thesis.....	8
3 Methodology.....	9
3.1 Discourse analysis as a tool to examine EU foreign policies on human right.....	12
3.2 Analysed text genres on the European Instrument for Democracy and Human Rights.....	16
4 Freedom of expression on the Internet.....	18
4.1 Outline of the chapter.....	18
4.2 The right to freedom of expression.....	18
4.2.1 The scope of freedom of expression.....	20
4.2.2 Interrelatedness of freedom of expression with other human rights.....	22
4.3 The Internet as a means of expression.....	25
4.3.1 Definition, data and statistics.....	25
4.3.2 Characteristics and features of the Internet.....	27
4.3.3 The new battlefield of freedom of expression.....	28
4.3.4 Excursion: Internet political activism and democratic effects of the Internet.....	32
4.3.5 The Internet as a means to protect human rights.....	36
4.3.6 “The dark side of Internet freedom”.....	38
4.4 The European Union's commitment to protect freedom of expression online.....	41
4.5 Interim conclusion.....	46
5 Freedom of expression online in EU foreign policy.....	49
5.1 Outline of the chapter.....	49
5.2 The development of human rights in the framework of the European Union.....	50
5.3 Human rights protection in EU foreign policy.....	54
5.4 Human rights protection, democracy support and development cooperation.....	60
5.4.1 Freedom of expression in EU development cooperation.....	67
5.4.2 Concluding remarks on human rights in EU development cooperation.....	69
5.5 Freedom of expression: a priority of EU external human rights protection.....	70
5.5.1 Freedom of expression online in EU foreign policy documents.....	72
5.5.2 Freedom of expression online in declarations of EU representatives.....	74
5.5.3 Freedom of expression online in interviews with EU staff.....	76
5.5.4 Freedom of expression and human rights defenders.....	80
5.6 Interim conclusion.....	82
6 The European Instrument for Democracy and Human Rights.....	85
6.1 Outline of the chapter.....	85
6.2 EU foreign policy instruments to protect freedom of expression online.....	88
6.2.1 An overview of available instruments.....	89
6.3 The protection of freedom of expression online under the EIDHR system.....	99
6.3.1 Freedom of expression (online) in EIDHR projects.....	103
6.3.2 Measures to protect freedom of expression online under the EIDHR.....	106
6.3.2.1 EIDHR procedures: calls for proposals, local support schemes and grants.....	107
6.3.2.2 Digital security and cyber-censorship circumvention.....	114
6.3.2.3 Shelter programmes.....	119
6.4 The case of Edward Snowden.....	127
6.5 Interim conclusion.....	132
7 Conclusions and final remarks.....	136
8 Afterword.....	142

8.1 Regulation (EU) No 235/2014 - EIDHR.....	142
8.2 EU Human Rights Guidelines on Freedom of Expression Online and Offline.....	146
9 References.....	152
9.1 Monographies and volumes.....	152
9.2 Articles, studies and reports.....	156
9.3 Strategy papers and guidelines.....	161
9.4 Press, declarations and statements.....	162
9.5 Legal texts.....	163
9.6 Graphics and statistics.....	164
10 Interview transcripts.....	165
10.1 Transcript A.....	165
10.2 Transcript B.....	175
10.3 Transcript C.....	185
10.4 Transcript D.....	196
11 Appendix.....	203
11.1 Abstracts.....	203
11.2 Curriculum vitae.....	205

Table of Illustrations

Illustration 1: Individuals using the Internet (%). Source: International Telecommunication Union 2013.....	27
Illustration 2: Imprisonments by media. Source: Committe to Protect Journalists 2008.....	30
Illustration 3: Number of journalists in prison each year since 1998. Source: Committee to Protect Journalists 2008.....	31
Illustration 4: EU development, external relations and foreign policy financing. Source: Furness 2010: 11.....	65
Illustration 5: EU development policymaking under the Lisbon Treaty.Source: Furness 2010: 14.....	67
Illustration 6: Defend the defenders. Source: European Union 2013b.....	99

List of Abbreviations

CJEU	Court of Justice of the European Union
CPJ	Committee to Protect Journalists
DG DEVCO	European Commission Directorate-General for Development and Cooperation – EuropeAid
ECHR	European Convention on Human Rights
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
HRD	Human rights defenders
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Covenant on Civil and Political Rights
ICORN	International Cities of Refuge Network
ICT	Information and communications technology
ITU	International Telecommunication Union
NGO	Non-governmental organisation
ODA	Official development assistance
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 Introduction

The right to freedom of opinion and expression is the individual's right to hold opinions, to change them, to express oneself, to seek and receive information and ideas of others, and to communicate without interference and by any means or tools. It is an important precondition to claim other human rights and arguably to participate in social life. The right to freedom of expression is enshrined in various international, national and regional human rights treaties and constitutions, including the Charter of Fundamental Rights of the European Union.

Due to socio-technological developments in the last two decades, the use of new tools and in particular of the Internet has become increasingly important. Therefore, also the battlefield of expressions has shifted partly to the online sphere. In this respect, human rights defenders use online tools to document and disseminate information about human rights violations; activists use social media and other online communication tools to organise themselves, to share information and to inform the public, not least in the context of social revolutions. At the same time, freedom of expression online is heavily curtailed and violated in various countries around the world. Today, more bloggers are jailed worldwide than traditional journalists¹.

The European Union has politically committed itself to the promotion and protection of human rights such as freedom of expression online and offline in its foreign policy. The latter includes both EU external relations with third countries² and EU action in regional and multilateral fora. Moreover, the European Union has repeatedly proclaimed its conviction that freedom of expression is an inherent principle of democracy and that its promotion and protection online and offline is thus considered an essential element of democracy support within the framework of EU development cooperation. Consequently, EU foreign policies on human rights, democracy support and development cooperation are conceptually strongly interrelated.

1 Cf. Committee to Protect Journalists (CPJ) 2013a

2 Third countries are all countries which are not EU Member States.

The principal objective of this thesis is to demonstrate that freedom of expression is considered a conceptual priority of EU external human rights policies by individual EU actors³. In this regard, it will be argued that EU foreign policy actors address the issue of freedom of expression on the Internet with increasing frequency. Moreover, existing EU foreign policy instruments which may be used to protect freedom of expression online in third countries in practice will be examined. In doing so, a specific operational EU development cooperation instrument on human rights will be further analysed: the European Instrument for Democracy and Human Rights.

3 The term 'external human rights protection' refers to EU actions on human rights in countries which are not EU Member States.

2 Scope and structure of the thesis

This thesis will discuss what relevance freedom of expression online has in EU foreign policy, focussing in particular on EU external relations with third countries and expressions of individual civil society actors. In doing so, discursive patterns of the EU's political commitment to protect the rights of individuals to express themselves online will be analysed. It will be examined to which EU foreign policy discourses this commitment is related to and on which discursive determinants EU external human rights protection is based on. In a second step, operational instruments to protect freedom of expression online will be addressed. In this respect, it will be discussed whether the European Instrument for Democracy and Human Rights qualifies as an EU foreign policy tool to protect freedom of expression online in third countries on the ground.

Freedom of expression is a complex, far-reaching right including various conceptual dimensions, actors and aspects of communication. The focus of this thesis lies on EU support to actors who use the Internet as a tool to express their political opinions, especially in difficult and politically unstable surroundings, and who face intimidations, repression or attacks because of their expressions. This is because political expressions are particularly sensitive as they are often closely related to critical thinking, the claim or defence of human rights and to the control of power.

Section 3 outlines the methodology this examination is based on. Section 4 addresses legal and socio-political aspects of freedom of expression online as well as the European Union's position on the applicability of human rights online. Section 5 is dedicated to the analysis of human rights protection in EU foreign policy and to the relevance of freedom of expression online within this field. Subsequently, EU foreign policy instruments and methods to protect freedom of expression online in third countries in practice will be addressed in Section 6. In this respect, it will be analysed how the European Instrument for Democracy and Human Rights may be used by EU foreign policy actors to contribute to the protection of freedom of expression online in third countries in practice.

3 Methodology

This thesis is based on the methodological approach of critical discourse analysis according to the scholar Siegfried Jäger. Critical discourse analysis is an interdisciplinary, qualitative and hermeneutic approach in social research. It includes elements of text linguistics, rhetoric, philosophy, social science and socio-psychology. It is a problem-oriented, self-reflective approach dedicated to the analysis of complex social relations including power relations, hierarchic patterns, discrimination and exclusion as manifested in language. The origins of critical discourse analysis can be traced back to the 1990s when a network of scholars engaged in the study of social phenomena, ideologies and power relations. Furthermore, the study of political institutions has gained importance within critical discourse analysis over time. The approach aims at the improvement of the understanding of social structures, the critique on them and the contribution to social changes. To do so, the researcher's own position, his or her specific research interests, the values the analysis is based on and the criteria of the analysis need to be made transparent. Within critical discourse analysis, the data collection process is handled in a flexible manner. New data can be acquired during the data collection process and as a result of analysed material. Moreover, it is important to highlight that there is not a single valid approach to critical discourse analysis, nor a universal definition of the term 'discourse'. Hence it is important that researchers clarify which scholar they rely on.⁴

Jäger relies on the theoretical framework of Foucault's discourse theory and has developed an approach to translating this theory into practical methods of analysis. In doing so, Jäger combines elements of discourse and dispositive analysis. Whereas discourse analysis focuses on patterns and social phenomena manifested in language, dispositive analysis concentrates also on non-linguistic elements and on social actors who perform as interconnectors between discourses and society as they perform discursive practices and contribute in return to the consolidation of discourses.⁵

4 Cf. Wodak/Meyer 2009

5 Cf. Wodak/Meyer 2009: 23-25

As mentioned above, definitions of the term discourse vary greatly. Jäger defines discourses as producers of social realities and at the same time as socio-cultural patterns of interpretation. These patterns shape the collective perception of time and space in a specific social context. Consequently, also time and space in which a specific discourse is located are constructed parameters.⁶

According to Jäger, social realities are constructed by individual actors who act in accordance with discursive patterns they are familiar with and which shape their own socio-cultural setting. These patterns are important elements for the shaping of identities and for the perception of categories such as normality and norms.⁷

Due to the above mentioned characteristics and functionality of discursive patterns, discourses also play a crucial role in the structuring and consolidation of power relations. The constant repetition of the same discursive contents leads to the consolidation of specific knowledge. Therefore, actors who perform discursive patterns contribute also to the creation of knowledge. Jäger speaks in this respect of a 'power-knowledge-conglomeration' in which discourses are holders of knowledge. However, knowledge is not universal and is only valid within a specific historical and geographical context.⁸

Jäger's approach is dedicated to the examination of the knowledge attached to a specific discourse as well as to the analysis of the effects of this knowledge on individual actors⁹. The main objective is to study current socio-political topics and phenomena and to critique their discursive determinants¹⁰. The particular critical element of this approach lies in the critical evaluation of its findings; thus, the approach goes beyond the demystification of discursive parameters; it also critiques them¹¹.

6 Cf. Jäger 2002: 27-29

7 Cf. Jäger 2002: 35, 53, 62

8 Cf. Jäger 2002: 38, 52

9 Cf. Jäger 2002: 51

10 Cf. Jäger 2002: 92f

11 Cf. Jäger 2002: 151

Jäger highlights that it is necessary to limit the analysis to a specific, narrow time frame and to define a space of social interaction¹². Also the material of the analysis should be restricted as much as possible; additional material is only justifiable if it reveals additional findings with regard to the research question¹³. Moreover, the focus on specific threads or phases of discourses helps to restrict the data corpus¹⁴. Additionally, every researcher has to outline the limitations of his or her analysis, which are justified due to practical reasons. This procedure is important to avoid the impression that all aspects of a specific discourse have been analysed exhaustively by the researcher. Jäger further suggests to examine the academic state of the art of studies on the research question; existing studies might be valuable for one's own analysis and for identifying discourses in which the topic is located¹⁵.

Jäger's approach focuses on the analysis of discursive patterns and statements as he considers statements the essence of each discourse. The accumulation of statements of the same content allows to identify specific priorities within a discourse. Moreover, various levels of content can be defined: institutional context, text genre, linguistic and rhetorical elements as well as underlying ideological determinants. With regard to the latter, issues such as concepts of social life, the approach to new technologies, the perception of norms, normality and truth as well as future expectations play an important role.¹⁶

Jäger attaches great importance to the analysis of the discursive context of discourses or specific threads, in particular historical developments and interrelations with other discourses¹⁷. According to Jäger, this embedment of discourses further allows to draw careful prospective conclusions from discourse analytical examinations on future developments. This is because discourses in general change slowly and do never stop abruptly or completely because of their social embedment and their interrelation with other discourses.¹⁸

12 Cf. Jäger 2012: 92f

13 Cf. Jäger 2002: 139

14 Cf. Jäger 2002: 94

15 Cf. Jäger 2002: 146

16 Cf. Jäger 2002: 95, 98, 108

17 Cf. Jäger 2002: 128

18 Cf. Jäger 2002: 142f

Finally, Jäger outlines that his critical discourse analytical approach is a set of tools not universally valid, but one that can and should be developed and modified to fit specific analytical needs¹⁹. The subsequent chapter will explain how Jäger's set of tools has been used in the course of this research.

3.1 Discourse analysis as a tool to examine EU foreign policies on human right

The method of discourse analysis has been used by various scholars to discuss EU foreign policy issues. In this context, critical discourse analytical approaches served as tools to examine underlying parameters of EU foreign policy and to study the discursive determinants it is founded on. Moreover, it was used to analyse which identities and subjects were shaped by these discourses.²⁰

The approach of critical discourse analysis served further as a tool to study the interconnections between EU foreign policy and the creation of an EU identity of its own²¹. In this respect, the discursive construction of Self (not foreign) and Other (foreign) and the role these categories play in relation to specific topics and events was examined²².

Material on EU foreign policy that can be subject to critical discourse analysis can be of different types and sources; it might include foreign policy documents, working reports, official declarations, political speeches, parliamentary debates and interviews. Some of these text genres might be of restricted visibility and accessibility to the public.²³ Nevertheless, they can be important elements of discourses as their content is transmitted to the public through the interaction of EU officials with society:

“[...] politicians are in constant interaction with society via various means such as the media and pressure groups, leading to the constant (re)articulation of their discourses in various settings where exposure to a wider audience is possible.”²⁴

19 Cf. Jäger 2002: 19

20 Cf. Aydin-Düzgit 2013: 2

21 Cf. Diez 2013: 3

22 Cf. Aydin-Düzgit 2013: 3, 5

23 Cf. Aydin-Düzgit 2013: 7

24 Aydin-Düzgit 2013: 7

Articulations of individual EU actors have to be considered elements of broader strategies and of the struggles between individual actors shaping these strategies²⁵. In this respect, discourse analysis has also an explanatory function with regard to policies²⁶. This is because discourses are the framework of political articulations and consist of practices which again consolidate discourses:

“[...] discourse both provides a constitutive context for political articulations (leading to the question of how this context works in constituting meaningful practices) and consists of articulatory practices that re-produce but also re-shape this context (leading to the question of how the struggles in the process of this reproduction have an impact on the overall discourse).”²⁷

The development of discourses presumes the existence of a common public in which these discourses operate. Therefore, the existence of EU discourses presupposes a 'European public'. However, it is questionable if a European public of its own (apart from the public of individual EU Member States) exists at all. It has been argued that the European public is an original one, a *sui generis* one, which is based on the common adherence to specific democratic, individualistic, egalitarian values and normative principles as well as to the self-critical examination of these values and norms²⁸. In the opinion of the author, the existence of the above mentioned common values and norms and in particular the element of self-reflectiveness is highly debatable. Nevertheless, the author follows the view that it is justifiable to assume that a European public exists (even though its specific form and elements are debatable) which in return allows for the development of EU discourses.

As outlined above, the critical discourse analytical approach according to Jäger is the methodological basis for this thesis. However, this thesis faces various limitations and is not considered an exhaustive analysis of the research question by the author, nor a finalised discourse analysis. It is a first step towards the identification of discursive patterns and statements and the determination of involved actors. For the purpose of this thesis, discourse is defined as a complexity of patterns of explanation

25 Cf. Diez 2013: 6

26 Cf. Diez 2013: 2

27 Diez 2013: 3

28 Cf. Peters 2007a: 368f

which are articulated and repeated by individual actors. These actors offer constructed patterns of interpretation and function at the same time as producers of social realities through the manifestation of constructed knowledge. These discursive patterns are mainly expressed through statements and actions which are the essence of the discourse.

The analysis will be restricted to the political level of EU discursive patterns on external human rights protection²⁹. The main topic in this respect will be freedom of expression and more precisely freedom of expression online. It is important to clarify that the discourse community³⁰ of this analysis will be the European Union, including its institutions, individual Member States and citizens. Therefore, also the space of social interaction will be the EU but not necessarily in a geographical sense; linguistic discourses shaped by EU actors are not tied to a specific location but have to be considered on a more abstract level.

The European Union's foreign policy structure and the allocation of specific competences are highly complex and include various individual actors. In this respect, the analysis of EU foreign policy discourses includes the identification of individual actors and their patterns of explanation and action in order to understand how these actors in return influence discourses. It might appear that individual EU institutions and actors considerably influence the development of specific EU foreign policy discourses considerably and that EU foreign policy discourses result from these interactions.³¹

With regard to the topic of this thesis, it is not feasible to analyse the role of each individual EU foreign policy actor in EU external human rights protection and with regard to freedom of expression online. First, the most important EU foreign policy actors with regard to the topic of this thesis were included in the examination. The

29 Jäger differentiates between various levels of discourses: the level of politics, media, academics, everyday life, education, etc. The levels mainly refer to the abstract place where social interactions take place. These levels mutually influence each other and are , thus, strongly interdependent; see Jäger 2002: 83f

30 Jäger defines 'discourse community' as a group of social actors with a specific common political, ideological position within a discourse who again influence the discourse in order to reach specific ideological aims; see Jäger 2002: 85

31 Cf. Aydin-Düzgit 2013: 9

selected actors are mainly in charge of the planning and implementation of EU human rights policies in third countries, which explains their relevance for this thesis. Actors include the EU High Representative, who is entitled to represent the EU externally and to deliver statements on its behalf, the European Commission and more specifically the Commission's Directorate-General for Development and Cooperation – EuropeAid (DG DEVCO), who is in general in charge of human rights issues in the Commission, and the European External Action Service, who plays an important role in the implementation of EU external human rights policies in third countries. In the last section, the focus of the analysis will lie on one specific EU foreign policy instrument, namely the European Instrument for Democracy and Human Rights. This operational instrument is mainly managed by the European Commission which can arguably be considered a “key player” in EU foreign policy³².

This thesis focuses on the time frame from 2009 onwards. This is because the legal framework of EU foreign policy was considerably reshaped when the Lisbon Treaty entered into force on 1 December 2009³³. Respective changes had arguably a considerable influence on the Union's framework of external human rights protection which is why this discursive event³⁴ was chosen as starting point for the examination. In the course of the analysis, various discourse fragments will be examined. These include text genres such as treaty provisions, foreign policy documents, working reports, official declarations and political speeches of EU representatives as well as interviews with EU officials. Also the state-of-the-art of academic literature on the topic was studied and partly included in the examination. The data collection process was handled in a flexible and reciprocal manner. Consequently, additional material has been generated also on the basis of previously analysed material. Furthermore, a content-oriented rather than a linguistic approach was followed in the analysis³⁵.

Due to practical reasons, it is not feasible to analyse EU foreign policy discourses which are closely interrelated to EU external human rights policies in more detail in this thesis. For the same reasons, it is not possible to extend the analysis to other

32 Cf. Aydin-Düzgit 2013: 9

33 Cf. Furness 2010: 1

34 According to Jäger, discursive events are events which gain a high level of media attendance and which change or shape the development of a discourse or at least of a specific thread; see Jäger 2002: 82

35 Cf. Wodak/Meyer 2009: 28

discursive levels than the political one, nor to the analysis of their interconnections. Despite these limitations, it might be a first step towards the examination of discursive patterns of EU external human rights protection on freedom of expression online³⁶.

Finally, the author's own position and research interests should be clarified. The author's academic background is related to her studies of law and international relations. The latter are based on an interdisciplinary approach focussing on the development of critical analytical and synthesising skills. The author was born and raised in Central Europe where liberal democratic norms and values can arguably be considered predominant. This is also why the author's own moral concept is strongly based on parameters such as democracy and human rights. However, the author does neither claim the universality and superiority of these norms nor that they are based on universal definitions. It is the opinion of the author that these values and norms should be criticised in a constructive way. Moreover, the examination and the improvement of local, national, European and international human rights protection mechanisms is of particular interest to the author.

3.2 Analysed text genres on the European Instrument for Democracy and Human Rights

The last section of this thesis focuses on the European Instrument for Democracy and Human Rights and how it can function as a tool to protect freedom of expression online in EU external relations with third countries. The analysis is mainly based on three different sources of information which have been examined according to the discourse analytical approach of Jäger.

First, EU legal regulations and foreign policy documents were evaluated to determine the conceptual relevance of freedom of expression online within the framework of the EIDHR. Secondly, two studies carried out by independent institutions to evaluate specific areas of EU support under the EIDHR scheme were examined to study

³⁶ The exhaustive analysis of discourses and their interrelations within a specific discursive community is arguably impossible. However, this does not diminish the importance of discourse analysis to serve as a tool to deconstruct realities and explain articulations, practices and policies.

specific patterns of action of the instrument, its functioning and its limitations. And thirdly, expert interviews with representatives of EU institutions and NGOs working in the field of freedom of expression and whose projects are partly funded under the EIDHR budget, were conducted to collect additional information and to identify specific patterns of explanation (see also Chapter 6.1.).

The interviews were conducted with employees of the European Commission and the European External Action Service. Moreover, representatives of the two NGOs *Reporters Without Borders* and *Front Line Defenders* were interviewed³⁷. All interviews were conducted in Bruxelles in February 2014. The interviews were semi-structured; the interview guides were adapted during and as a result of the conversation in order to maintain the flow of information and to generate additional information according to the knowledge of the interviewees. The interviews were recorded and transcribed afterwards. As this analysis follows a content-based approach rather than a linguistic approach, the exact wording of the conversations has to some extent been slightly modified to make the transcript more readable in terms of incomplete sentences, grammar and other linguistic errors. Moreover, the transcripts attached to this thesis are modified versions of the original transcripts: the modifications result from the revision of the transcripts after they had been sent to the interviewees for approval. Some phrases of the original transcripts had to be deleted at request of some interviewees.

37 The names of all interviewees have been changed on grounds of personal protection needs. Following, all names of interviewees used in this thesis are imaginary and do not relate to any real person.

4 Freedom of expression on the Internet

4.1 Outline of the chapter

In Chapter 4, the applicability of the right to freedom of expression in the online sphere will be discussed. In doing so, the meaning and scope of freedom of expression will first be analysed. Secondly, it will be debated whether the Internet qualifies as a tool to express opinions and to contribute to the realisation of human rights. In a next step, the international legal foundation of the right to freedom of expression online will be evaluated. Finally, the European Union's position on the application of human rights online and its political commitment to promote and protect freedom of expression online will be examined.

4.2 The right to freedom of expression

Freedom of expression is protected by various international, regional and national legal conventions and constitutions. Most importantly for this thesis, it is protected by Article 11 of the Charter of Fundamental Rights of the European Union (the Charter) but also by Article 19 of the Universal Declaration of Human Rights (UDHR), by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as well as by Article 10 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (also European Convention on Human Rights: ECHR).³⁸

In order to better understand the legal foundations of the right to freedom of expression, it might be valuable to briefly examine the context and the developments which influenced its legal foundation. The oldest of the above mentioned legal texts is the UDHR which was instituted by the United Nations General Assembly in 1948³⁹.

This declaration was created in a specific historic and socio-political context, namely

38 The reason why also legal texts from regional and international bodies which do not form part of the European Union's legal *acquis communautaire* play an important role in the analysis of the Union's engagement in the protection of human rights will be discussed further in Section 5 of this thesis.

39 Cf. Gearon 2006: 115

“[...] the extreme denigration of freedoms by totalitarianism and the violence of two world wars.”⁴⁰ The legal codification of human rights was argued to be a “corrective to political extremism”⁴¹ and an attempt to establish universal moral principles and norms⁴². In this context, the ability to criticise, whomever, was argued to be an inherent principle of democratic society and well-functioning, peaceful governance⁴³.

Today, it is widely recognised that the access to information and its free flow are essential elements in a well-functioning democracy, fostering public debate and serving as a check of democratic power⁴⁴. In order to participate in society and to live up to democratic principles, it is arguably necessary to share views, to debate and to access information: “The full concept of citizenship presupposes an informed and participant body of citizens.”⁴⁵ It is also important to note that the creation of the United Nations and its Charter arguably turned human rights into an international matter which is why human rights are no longer an exclusive competence of sovereign states⁴⁶.

The UDHR which itself is not legally binding (or at least not enforceable) has strongly inspired the legal foundation of freedom of expression in conventions and national constitutions⁴⁷. Furthermore, the specific content and meaning of freedom of expression was influenced by various resolutions, declarations, comments, reports as well as the jurisprudence of international, regional and national bodies, which is also the reason why there are different formulations and levels of protection⁴⁸. Its specific scope is thus closely related “[...] to the manner, context, conditions and time of its articulations [...]”⁴⁹.

However, the fact that freedom of expression is enshrined in numerous legal texts does not necessarily mean that it is observed and protected in practice, or that these

40 Gearon 2006: 115

41 Gearon 2006: 115

42 Cf. Gearon 2006: 115

43 Cf. Gearon 2006: 123, 130

44 Cf. Etling et al. 2010: 3

45 Conley/Patterson 2000: 218f

46 Cf. Gets 2002: 64

47 Cf. Tretter 2013: 26

48 Cf. Tretter 2013: 27

49 Gearon 2006: 142

texts are easily or even at all enforceable. Obstacles can also occur when freedom of expression is balanced with other interests and rights. In this respect, restrictions on grounds of national security and the fight against terrorism or extremism may lead to the fact that human rights are strongly compromised, often unlawfully. This is demonstrated by the case of Edward Snowden which will be discussed later on in this thesis; conflicting interests may result in grave limitations, restrictions or even violations of freedom of expression. Another practical challenge is that not all countries in which freedom of expression is violated in practice have national legal rules or practices in place to protect freedom of expression⁵⁰. Sometimes, laws or practices even penalise individuals for exercising their right to freedom of expression.

4.2.1 The scope of freedom of expression

For the analysis of the EU's commitment to protect freedom of expression online in its external relations, the Charter of Fundamental Rights of the European Union is of particular relevance. The Charter forms part of the EU's legal foundations and protects the right to freedom of expression and information in Article 11:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers⁵¹.

Basically, freedom of expression includes the right to form, hold and express an opinion; to communicate it; to impart and receive information; through any means of expression; and by any form such as written, verbal, pictorial, by sound or by conduct⁵². Therefore, the whole process of getting informed is legally protected⁵³.

Subsequently, Article 11 (2) states: *The freedom and pluralism of the media shall be respected⁵⁴*. This is because the independence and the diversity of the media is an

50 Cf. Gets 2002: 162

51 See Article 11, Charter of Fundamental Rights of the European Union (2000/ C 364/01). Available online at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

52 Cf. Tretter 2013: 28

53 Cf. Bernsdorff 2011: 249

54 See Article 11, Charter of Fundamental Rights of the European Union (2000/ C 364/01). Available online at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

important precondition to exercise the right to freedom of expression. Moreover, the level of press freedom is often a very accurate and visible manifestation of the compliance with the right to freedom of expression in a country⁵⁵. Additionally, free access to information and the media can serve as a watchdog over political power⁵⁶.

Within the Charter, freedom of expression is constituted as an individual right meaning that every human being has the right to express him- or herself freely. This concept is based on an equality-based approach⁵⁷ whereupon freedom of speech is a precondition for intellectual self-development and self-fulfilment⁵⁸.

However, it can also be argued that freedom of expression is a precondition for the participation in a democratic society and thus for democracy itself⁵⁹. From this point of view, the right to freedom of expression is “[...] inherent in the very concept of rule by the people.”⁶⁰ This is because the free flow of information and the participation in public debates is necessary to organise society and to control power⁶¹. Therefore, freedom of expression is arguably closely related to the concept of popular sovereignty and representative democracy in which law and politics are reasonable means to organise social order⁶².

It is important to realise that the concept of democracy itself is a highly normative concept based on liberal values such as freedom, equality and justice⁶³. Furthermore, it is not universally recognised that freedom of expression is a precondition for democracy. To further debate on the concept of democracy and its theoretic foundations would go beyond the scope of this thesis. However, it must be pointed out that the right to freedom of expression is based on specific theoretical, socio-political, cultural assumptions which are more often than not claimed to be universal. For the following parts of this thesis, this important aspect should be kept in mind:

55 Cf. Berger 2013: 137

56 Cf. Rønning 2013: 20

57 Cf. Sullivan 2010: 145, 175

58 Cf. Barendt 2005: 13

59 Cf. Rønning 2013: 17

60 Weinstein 2009: 287

61 Cf. Barendt 2005: 18

62 Cf. Peters 2007: 31

63 Cf. Perlin 2008: 1

“Rights are a form of discourse, a way of thinking about the needs of social order and human liberty in the context of a changing world.”⁶⁴

4.2.2 Interrelatedness of freedom of expression with other human rights

Freedom of expression plays a central role in the protection and the enjoyment of other human rights such as the right to freedom of religion or belief and the right to freedom of assembly and association⁶⁵. This is because the ability to express oneself, to communicate ideas, opinions and claims and to make them understandable for others is a precondition for the enjoyment of other rights. Furthermore, it is not easy to draw a clear line between specific human rights is hard to draw. Some rights are overlapping and boundaries thus often blurred. Consequently, clear distinctions are neither possible nor useful. To give one example, the right to freedom of religion includes the right to express religious beliefs. However, this process is also protected under the right to freedom of expression, which protects not only religious statements but all kinds of ideas. Freedom of religion or belief is thus a special form of the right to freedom of opinion and expression. These two rights are closely interrelated and cannot be separated.

Even though freedom of expression can be related to or can even be a precondition for the realisation of other rights, it can also be in conflict with them⁶⁶. Whenever human rights appear to conflict with each other, interests have to be balanced. This process might justify restrictions on certain conditions and in specific cases. Also expressions which interfere with the interests, rights and freedoms of others have to be balanced as freedom of expression is no absolute right⁶⁷. The ICCPR provides for internationally recognised standards for legitimate restrictions of freedom of expression; these require a legitimate purpose⁶⁸, a legal basis and the proportionality

64 Balkin 2004: 57

65 Cf. Tretter 2013: 32

66 Cf. Mendel et al. 2012: 95

67 Cf. Gets 2002: 47

68 Such as the protection of the rights of others, security, health etc.

of restrictions⁶⁹. Also the Charter reflects these specific conditions for legitimate limitations in Article 52:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others⁷⁰.

The justification of restrictions is a highly subjective issue and often dependent on the socio-political and historical context of the articulation of an expression⁷¹. There might be varying interpretations with regard to legitimate purposes, predominant interests or the necessary degree of interference, leading to differences in the application of human rights and the assessment of the legitimacy of restrictions. It is also important to note that restrictions or violations of freedom of expression might occur in various forms such as censorship, encouragement of self-censorship, institutional or social constraints, lack of access to information, criminal and civil sanctions or even violence⁷².

The United Nations Special Rapporteur of the right to freedom of opinion and expression, Frank La Rue, emphasised in his report to the United Nations Human Rights Council in 2011 “[...] that the full guarantee of the right to freedom of expression must be the norm, and any limitation considered as an exception, and that this principle should never be reversed.”⁷³

The Special Rapporteur further declared that restrictions must pass a three-part, cumulative test to be considered lawful. First, they must be provided by law in order to fulfil the principle of predictability and transparency. Secondly, restrictions have to pursue one of the following purposes: to protect the rights or reputations of others;

69 Cf. Berger 2013: 133

70 See Article 52, Charter of Fundamental Rights of the European Union (2000/ C 364/01). Available online at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

71 Cf. Rønning 2013: 13

72 Cf. Jørgensen 2013: 120

73 La Rue 2011: 19

national security, public order, public health or morals. Thirdly, limitations must be necessary and the least restrictive means to achieve the pursued purpose; principles of necessity and proportionality.⁷⁴

In the academic field of human rights law, this test is an internationally recognised standard to assess the lawfulness of restrictions of freedom of expression. As shown above, also Article 52 of the Charter corresponds to these conditions.

However, this theoretical test leaves considerable scope for interpretation and also misuse. In this respect, national security interests have gained practical importance in the last decade and in particular after the attack of the World Trade Centre in New York on 9 September 2001. Human rights have been increasingly restricted on grounds of national security and the alleged fight against terrorism, not only in the US but also in other countries around the world and in the EU⁷⁵. Moreover, the fight against organised crime and crime prevention is extensively used to restrict human rights. In this context, in particular the rights to privacy and data protection, which is in return closely related to the right to freedom of expression, have been increasingly compromised. With or without legal permission, personal data are stored and analysed on a large scale, expressions are collected and analysed with regard to underlying motives and targeted information, competences of national security actors are being extended; a lot of these developments interfere with human rights and have resulted in limitations or violations of freedom of expression.

Also the EU has received critical feedback with regard to unlawful interferences with human rights guaranteed in the Charter, lately in the context of the negotiations with the US to establish a transatlantic trade and investment partnership (TTIP). It has been criticised that human rights standards are threatened to be lowered at the expense of economic interests if the EU signs the agreement in the present version. Moreover, EU actors themselves do not always comply with their human rights obligations. In April this year, the Court of Justice of the European Union declared the Data Retention Directive (a legal act adopted on the Union level requiring providers of publicly available electronic communications services or public communication networks to retain certain data such as traffic and location data in order to be used by

⁷⁴ Cf. La Rue 2011: 19

⁷⁵ Cf. La Rue 2013:15 and Wright 2000: 200f

the state to combat and prevent crime) to be invalid as fundamental rights contained in the Charter are compromised disproportionately. The Court stated that: “[...] by requiring the retention of those data and by allowing the competent national authorities to access those data, the directive interferes in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data.”⁷⁶ The Court also concluded that: “[...] the EU legislature has exceeded the limits imposed by compliance with the principle of proportionality[...].”⁷⁷. The Court did not argue that the retention of such personal data is unlawful in general. Crime prevention and national security might be a legitimate purpose to restrict human rights such as the right to privacy, data protection or freedom of expression. However, the Data Retention Directive violated human rights contained in the Charter as their restrictions were disproportionate. In this case, the EU legislature failed to balance specific human rights with conflicting interests such as public security.

4.3 The Internet as a means of expression

4.3.1 Definition, data and statistics

In order to debate the Internet's potential to serve as a means of expression, it is necessary to define the term: “The Internet, put simply, can be defined as a global pool of information and services, accessible locally through individual computer stations that are each part of a global system of interconnected computer networks.”⁷⁸

The origins of the Internet can be traced back to the late 1960s when the United States developed a system to exchange military information⁷⁹. Its military purpose is the explanation for the Internet's decentralised structure as it was designed as a communications system to be resistant to involuntary interferences⁸⁰. In the 1980s,

76 Court of Justice of the European Union 2014: 1

77 Court of Justice of the European Union 2014: 2

78 Halpin et al. 2000: 6

79 Cf. Halpin et al. 2000: 6

80 Cf. Gets 2002: 32

the Internet started to be used also for non-military purposes, in particular in the academic and commercial field⁸¹. Due to the rapid technological developments, leading in particular to an increase in processing and storing power as well as data transmission abilities⁸², the Internet could be accessed by the public and for private purposes by the 1990s⁸³. Since the late 1990s, various forms of online information and telecommunication technologies and software providing for an easy access and usage of the Internet have been developed⁸⁴⁸⁵. It is important to further note that the Internet is not equivalent with the so called “World Wide Web”; the latter is composed of numerous single documents in the form of websites which are all subject to the same encoding system (or protocol) and can therefore be accessed directly through online addresses on the Internet⁸⁶.

According to the 2011 report of the United Nations Special Rapporteur of the right to freedom of opinion and expression, the total number of Internet users worldwide has reached over two billions by now⁸⁷. According to the statistics of the *International Telecommunication Union* (ITU), the United Nations specialised agency for information and telecommunication technologies, 38% of all households worldwide were connected to the Internet in 2012 – compared to only 14% about ten years ago⁸⁸. Moreover, the percentage of individuals using the Internet worldwide amounted to 36% in 2012⁸⁹. However, it is important to note that the access to the Internet is unequally distributed, socially, regionally and geographically⁹⁰. To give an example, in 2012, only 14% of individuals were using the Internet in Africa, whereas 71% were using it in Europe⁹¹⁹². Moreover, “[...] it is estimated that four out of five inhabitants from developing countries still remain offline (ITU 2010).”⁹³

81 Cf. Gets 2002: 30f

82 Cf. Gets 2002: 31

83 Cf. Halpin et al. 2000: 6

84 Including open source and open publishing possibilities

85 Cf. Wimmer 2007: 215

86 Cf. Gets 2002: 38

87 Cf. La Rue 2011: 4

88 Cf. ITU 2013

89 Cf. ITU 2013a

90 Cf. Axworthy 2000: 19

91 Arab States: 34%, Asia and Pacific: 29%, The Americas 57%

92 Cf. ITU 2013

93 Dutton et al. 2011: 57

Even though statistics on the use of the Internet have to be read with caution, the above number at least indicates the Internet's unequal distribution around the world.

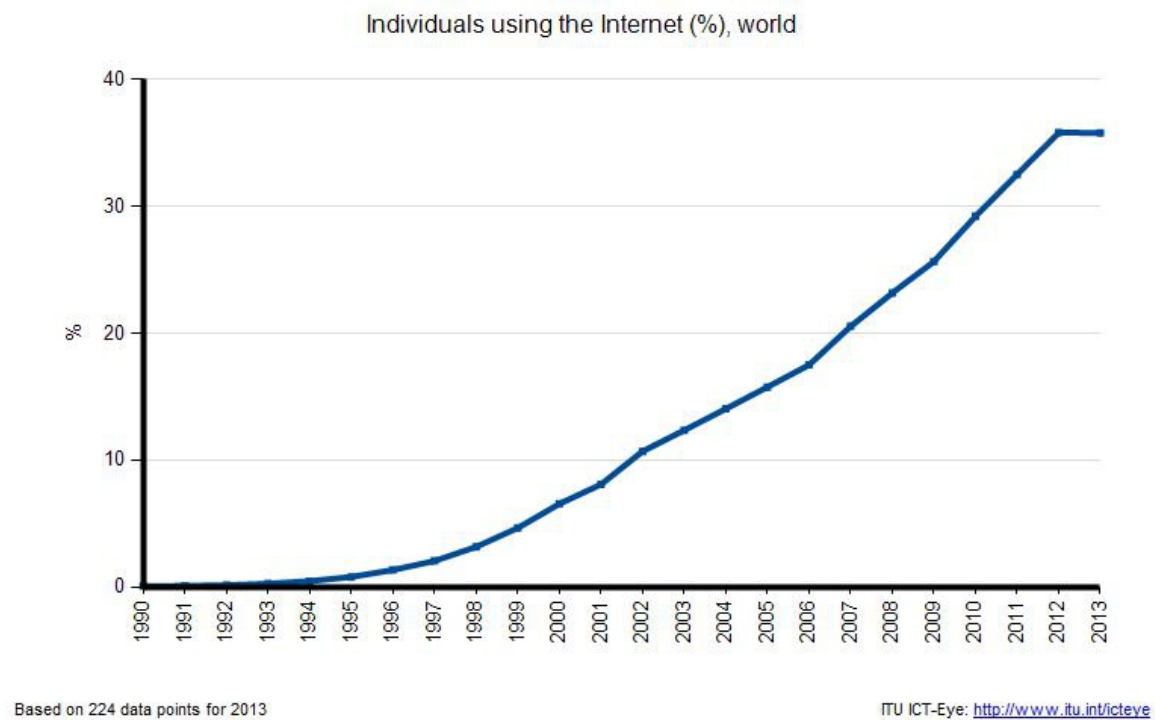


Illustration 1: Individuals using the Internet (%). Source: International Telecommunication Union 2013

4.3.2 Characteristics and features of the Internet

The Internet enables users to receive information, to share and to comment on opinions and to impart information. This relatively new interactive form of communication has arguably changed the media on a qualitative level⁹⁴. There is no longer a clear distinction between writers and readers, meaning between producers and consumers of information⁹⁵. Therefore, the relationship of information dependency has arguably changed through the Internet, allowing also for a “bottom-

⁹⁴ Cf. Leggewie/Bieber 2004: 14

⁹⁵ Cf. Conley/Patterson 2000: 221

up flow of information”⁹⁶. Dissemination of information can be achieved more quickly and in a cheaper and decentralised manner⁹⁷. This is also why the Internet has the potential to serve as a watchdog over the production of information; however, this potential is not necessarily used by the majority of its users⁹⁸.

Moreover, the qualification of information as a good has arguably changed its relevance in everyday life. Today, information is largely considered an important resource, being a factor of production, a consumer good and a tool of control and regulation. In this context, new media such as the Internet play a crucial role in granting access to information and thus to an important resource.⁹⁹

Moreover, the Internet opens up possibilities for non-state actors to receive information from alternative sources apart from conventional mass media¹⁰⁰. Another important aspect is that the Internet is not limited by national boundaries. Therefore, a broader audience can be reached and interests and actions can be coordinated, which is why the Internet can be used to link domestic and international discourses¹⁰¹.

At an early stage of the dissemination of the Internet, some expected the Internet to displace traditional mass media¹⁰². However, until now, this has not been proved true. Even though the Internet allows for a relatively broad participation, it remains so far only an “additional layer of communication”¹⁰³.

4.3.3 The new battlefield of freedom of expression

All means of expression are protected under the right to freedom of expression, including the Internet. However, freedom of expression online is curtailed and violated in numerous countries around the globe.

96 Conley/Patterson 2000: 211

97 Cf. Halpin et al. 2000: 7

98 Cf. Feiler 2013: 176, 179

99 Cf. Marr 2005: 5f

100 Cf. Conley/Patterson 2000: 217

101 Cf. Conley/Patterson 2000: 212

102 Cf. Balkin 2004: 9

103 Balkin 2004: 9

According to a triannual study conducted by the organisation Freedom House, global Internet freedom is declining consistently. In the last year, developments in 60 countries were assessed by 70 mainly local researchers between May 2012 and April 2013. According to the study, three main trends were identified: there is a strong proliferation of regulations restricting online speech; there is a remarkable rise of arrests of individuals who pose critical content online; and online surveillance measures are used increasingly. In 34 out of 60 countries Internet freedom deteriorated during the observation period, mainly because of restrictions of freedom of expression on security grounds. Moreover, the study identified the ten most commonly used types of Internet control: blocking and filtering; cyber attacks against regime critics; new laws on political or religious speech online (and respective arrests); manipulation of online discussions by paid government commentators; physical attacks and murder to punish those who disseminate critical content online; online surveillance measures; takedown requests and forced deletion of content; blanket blocking of social media and other ICT platforms; pressure on intermediaries; throttling or shutting down of Internet and mobile services.¹⁰⁴

In particular the negative trend towards the criminalisation of critical political speech was considered extremely alarming; in 28 out of 60 countries, online activists were arrested or imprisoned on the basis of laws restricting online speech and in 26 out of 60 countries, physical attacks and cases of murder of online activists were reported¹⁰⁵. At the same time, one positive development was identified: there are a growing number of online users who are aware of their right to freedom of expression online: “Although threats to internet freedom have continued to grow, the study's findings also reveal a significant uptick in citizen activism online. [...] [T]here is a rising public consciousness about internet freedom and freedom of expression issues.”¹⁰⁶

It has already been argued that freedom of expression is an important precondition to protect human rights and document respective violations. In this relation, it has been highlighted that some Internet users who express themselves online can be

¹⁰⁴ Cf. Kelly 2013: 1-7

¹⁰⁵ Cf. Kelly 2013: 4f, 10

¹⁰⁶ Kelly 2013: 12

considered journalists who seek and document facts which are of public interest and disseminate their findings to the public. However, as respective findings might be critical on existing structures and power relations, journalists often face particular risk: “And it is this particular journalistic exercise of freedom of expression that so often attracts special attention in the form of attacks on press freedom.”¹⁰⁷

In 2008, the NGO Committee to Protect Journalists (CPJ) concluded in its annual report that for the first time since the Committee's records started, online journalists made up the largest group of journalists¹⁰⁸. It was further stated that: “[...] more Internet journalists are jailed worldwide today than journalists working in any other medium. [...] [T]he Committee to Protect Journalists found that 45 percent of all media workers jailed worldwide are bloggers, Web-based reporters, or online editors.”¹⁰⁹

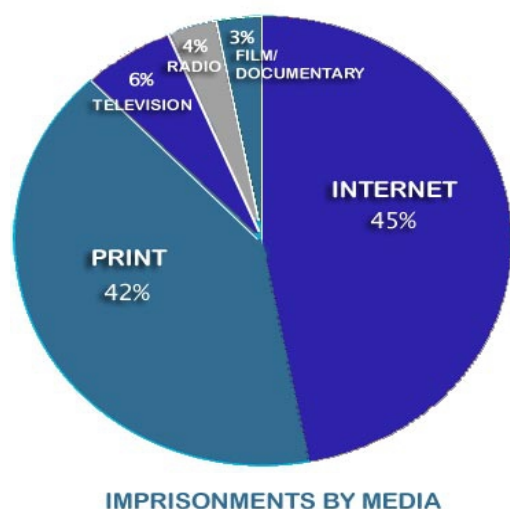


Illustration 2: Imprisonments by media. Source: Committee to Protect Journalists 2008

CPJ clarified that the organisation's definition of online journalism is based on the requisition to disseminate content which is journalistic in nature: “In general, CPJ

¹⁰⁷ Berger 2013: 136

¹⁰⁸ Cf. Committee to Protect Journalists 2008

¹⁰⁹ Committee to Protect Journalists 2008

looks to see whether the content is reportorial or fact-based commentary. In a repressive society where the traditional media is restricted, CPJ takes an inclusive approach to work that is produced online.”¹¹⁰

According to CPJ's records, at least 56 out of 125 jailed journalists worldwide were online journalists in 2008. The first case of imprisonment of an online writer reported to CPJ was in 1997, since then, the number has increased steadily.¹¹¹ In 2013, at least 211 journalists were jailed worldwide according to CPJ records; already more than half of them were online writers¹¹².

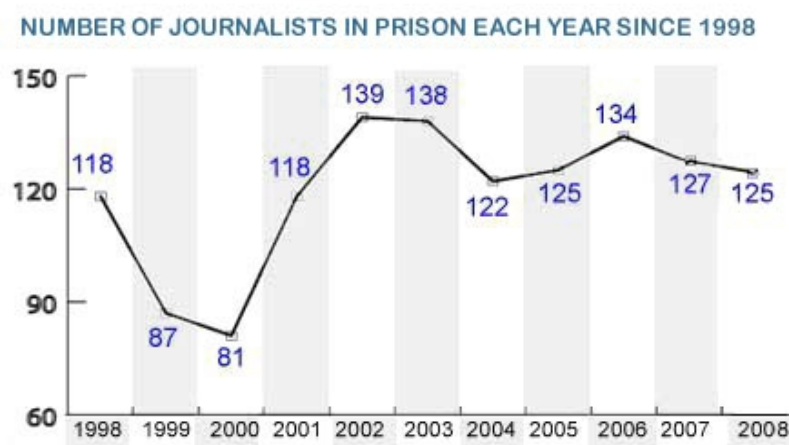


Illustration 3: Number of journalists in prison each year since 1998. Source: Committee to Protect Journalists 2008

Another worrying trend outlined by CPJ in the 2008 annual report was the rapidly growing number of arrests of freelance journalists whereat most of them work online. Due to their freelance activity, they often lack legal resources or political connections to effectively protect their right to freedom of expression.¹¹³

Moreover, CPJ released a special report on the role of journalists in political unrest reporting in 2011, in which it stated that online writers increasingly engage in front-line reporting whereas freelance journalists compose nearly one third of them. It was reported that at least 43 journalists were killed in 2011; nearly 40 percent of them

¹¹⁰ Cf. Committee to Protect Journalists 2008

¹¹¹ Cf. Committee to Protect Journalists 2008

¹¹² Cf. Committee to Protect Journalists 2013a

¹¹³ Cf. Committee to Protect Journalists 2008

died while they were reporting on violent confrontations between authorities and protesters in the Arab world¹¹⁴. CPJ clarified that a death is considered work-related by the organisation when: “[...] its staff is reasonably certain that a journalist was killed in direct reprisal for his or her work; in crossfire; or while carrying out a dangerous assignment.”¹¹⁵

Additionally, CPJ found that the majority of imprisoned journalists faced charges such as subversion, revelation of state secrets and acting against national interests - more than 10 percent did not face any formal charges at all. However, in the majority of these cases, charges could not be proved to be true and were mainly imposed to target online activists' critical work.¹¹⁶

Due to repressions, intimidations, violent attacks and arrests - or respective threats -, a growing number of journalists including online writers is forced to exile. According to CPJ records, between June 2008 and May 2013, more than 450 journalists were forced to leave their country. Only one fifth of them was able to continue his or her work abroad and merely 7 percent were able to return back home. Furthermore, CPJ reported that 5 out of 11 countries to which journalists most commonly flee are European states, namely France, Sweden, United Kingdom, Norway and Germany.¹¹⁷

4.3.4 Excursion: Internet political activism and democratic effects of the Internet

Due to the above described characteristics and features of the Internet, including interactivity, decentralisation, pooling of interests and cross-border participation, it has been argued that the Internet is a tool for a new form of political activism¹¹⁸. It has further been argued that the Internet is a “counter-public”¹¹⁹ to traditional, dominant

114 Cf. Committee to Protect Journalists 2011

115 Committee to Protect Journalists 2011

116 Cf. Committee to Protect Journalists 2008

117 Cf. Committee to Protect Journalists 2013

118 Cf. Fenton 2008: 234

119 Downey/Fenton 2003: 194

ways of communication, which allows expressing thoughts on collectively experienced marginalisation and social exclusion¹²⁰. However, it should be emphasised that counter-public spheres do not necessarily serve democratic targets¹²¹. Moreover, it would be unsophisticated to presume that the Internet is mainly used for political purposes rather than for entertainment or private communications¹²².

However, for the scope of this analysis, the use of the Internet to express political thoughts is of particular relevance. Moreover, this thesis focuses on the Internet as a means of expression and a sphere where expressions are shared and exchanged. It is not within the scope of this thesis to examine whether the Internet has the potential to function as an activator or catalyst of social movements or democratic effects. The existence of an inherent democratic potential was studied by various scholars in the last decade. In particular the so-called “Arab Spring” provoked the question which role the Internet and online communications tools play in the context of political unrest and social movements. Words like “Twitter-”, “Facebook-” and “Social Media-Revolution” indicate the assumption that online tools and social media networks may even cause socio-political changes or at least play an important role in the mobilisation of citizens. It has further been argued that the shut-down of the Internet by government authorities in the “Arab Spring” has even increased the use of these tools¹²³. In this respect it seems interesting to take a closer look at the ITU statistics on the use of the Internet worldwide¹²⁴. In 2012, more than 44% of individuals were using the Internet in Egypt and more than 41% in Tunisia - which is high above the mentioned worldwide average of 36%. Only five years ago, the rates of both countries were far below the average. In Iran, 26% of individuals were using the Internet in 2012. This is below the worldwide average but in comparison to 11% in 2009, it is a remarkable rise¹²⁵. In Syria, not even one half of one percent of Syrians

120 Cf. Downey/Fenton 2003: 194

121 Cf. Downey/Fenton 2003: 198

122 Cf. Groshek 2009: 117

123 Cf. Mourtada 2011

124 Cf. ITU 2013a

125 In 2009, political protests started in Iran after the Iranian presidential elections; protestors demanded the removal of president Mahmoud Ahmadinejad due to the alleged forgery of the election results – cf. CNN 2009.

was using the Internet in 2001. This number rose to about 24% after the “Damascus Spring”^{126, 127}.

It is important to note that the data on the percentage of individuals using the Internet does not correspond to the data on fixed (wired) Internet subscriptions per 100 inhabitants. For example in Egypt, not even 3 out of 100 inhabitants had a fixed (wired) Internet subscription in 2011 – even though the percentage of Internet users was above worldwide average. In Tunisia, the number of subscriptions has increased since 2008; nearly 6 out of 100 inhabitants had a subscription by 2011. In Iran, the number of subscriptions has increased since 1998 and amounted up to 7 out of 100 inhabitants in 2011. In Syria, no data has been available since 2010, when nearly 5 out of 100 inhabitants had Internet access at home.¹²⁸

However, it would be highly presumptuous to argue that these statistics allow drawing any conclusions with regard to the Internet's political potential and possible democratic effects. This is because the above statistics are solely quantitative data and a much more detailed and cautious analysis of the quantitative data and possible correlating determinants would be necessary to study possible democratic effects of the Internet. Moreover, it might even be too early to determine whether the protests in the “Arab Spring” have caused lasting socio-political, democratic changes¹²⁹.

In the last decade, various studies were conducted to analyse potential democratic effects of the Internet. It appears that the studies' conclusions largely depend on their chosen definition of democracy¹³⁰. There are various concepts of democracy, reaching from liberal democratic theories to post-structuralist conceptions of power¹³¹. Moreover, there are different definitions of social change and how it can be measured¹³².

126 In 2000, the Syrian president Bashar al-Assad was elected; at the end of 2001, the so called “Damascus Spring”, which was perceived by the Syrian people as a sign for hope for social change, has been forcefully ended by the governments forces – cf. George 2003: 56-58 and U.S. Department of State (no date).

127 Cf. ITU 2013a

128 Cf. ITU 2013a

129 Cf. Pelinka 2013: 40

130 Cf. Best/Wade 2005: 4

131 Cf. Pickard 2006: 22

132 Cf. Morozov 2011: 316

The researcher Jacob Groshek (2009) quantitatively studied the democratic effects of the Internet in 152 countries between 1994 (the public launch of the Internet) and 2003. Groshek defined democracy according to the Polity IV database, referring to certain political rights, the functioning of institutional checks and balances, and civil freedoms. The variable Internet diffusion was defined as the number of Internet users per 100 inhabitants. Groshek came to the conclusion that the Internet is only one determinant of democratic effects in addition to time, region and the preexisting level of socio-political instability in a country. One of the main findings was however that a higher level of Internet diffusion and stronger democratic effects could be observed in countries which were considered democratic already at the beginning of the study. On the other hand, the Internet was considered unlikely to have remarkable effects on democratic structures in previously rather undemocratic countries.¹³³

Another study was conducted by Shanthi Kalathil and Taylor Boas (2003) to examine the impact of the Internet on authoritarian regimes¹³⁴. Their main conclusion was: "The issue of the Internet's impact on authoritarian regimes is a subset of the larger question of ICT [information and communications technology] use in developing country politics."¹³⁵ According to the study, in particular the use of the Internet by all relevant actors, the national context and the government's impact on the Internet are determinants of potential effects. It has also been found that central governments play a major role in the development and the control of the media in authoritarian regimes in most cases. Furthermore, the researchers warned against the oversimplification that the Internet's use necessarily challenges undemocratic structures.¹³⁶

Yet another quantitative study was conducted by the two researchers Michael Best and Keegan Wade (2005) on the correlation between Internet penetration and the level of democratisation. They came to the conclusion that there is no single explanation on the Internet's effects on democracy. Due to the researchers, in

¹³³ Cf. Groshek 2009

¹³⁴ The following regimes have been studied: China, Cuba, Singapore, Vietnam, Burma, United Arab Emirates, Saudi Arabia, Egypt.

¹³⁵ Kalathil/Boas 2003: 11

¹³⁶ Cf. Kalathil/Boas 2003: 2f, 5, 11f

general, the Internet has a positive effect on democracy; however, democratic effects are also subject to other and in particular regional variables^{137, 138}.

However, there are also far more sceptical views on the suitability of qualitative data on Internet usage to explain democratic effects of the Internet. The positive quantitative connection between the use of the Internet and the political participation of people does not necessarily prove any causal link¹³⁹. This is because people who are politically interested also use other sources of information in addition to the Internet to receive information. According to this theory, the Internet does not have any significant effects on the knowledge and political behavior of these actors.¹⁴⁰

From the above excursion the cautious conclusion can be drawn that it is highly debatable whether the Internet has an inherent democratic potential and can perform as an activator or catalyst of social change. In the opinion of the author, there is no such inherent potential and the Internet can be used to support as well as to hinder democratic interests and effects, depending mainly on individual users and their specific interests.

4.3.5 The Internet as a means to protect human rights

Freedom of expression is an important precondition for the defence of other human rights which includes speaking up for one's own rights or the rights of others and informing about human rights violations: "[...] a fundamental part of the job of all human rights activists is to inform others about human rights violations – and the Internet makes this much easier."¹⁴¹

There are numerous benefits of the Internet which can be used to contribute to the promotion and protection of human rights. It might facilitate the access to information,

¹³⁷ It has been found that the Internet penetration rate did not correlate significantly with democratic parameters in particular in Asia and the Middle East.

¹³⁸ Cf. Best/Wade 2005: 2, 12, 15

¹³⁹ Cf. Marr 2005: 207

¹⁴⁰ Cf. Marr 2005: 207

¹⁴¹ Kath-Lacabe/Lacabe 2000: 67

allow reaching out to a broader audience and allocating resources, save costs (in particular with regard to the distribution of information) and it might speed up the planning and coordination of actions as well as the creation of a supportive network¹⁴². In particular in authoritarian regimes, where the access to information is often heavily restricted, alternative sources of information such as online fora, blogs or websites can play a crucial role in the mobilisation of people¹⁴³.

Nevertheless, the role of the Internet as a means to protect human rights should not be overemphasised. Information on the Internet might be the basis of actions to fight against human rights violations but decisions to act have to be taken by real people: “There is no question that access to information is a precondition for the human rights struggle and that the Net is a great advantage in this regard. It is less apparent that information will in itself give people the wisdom to make appropriate decisions or the political will to carry them out.”¹⁴⁴

It is furthermore important to consider other factors such as offline restrictions on civic organisation in order to determine the Internet's potential to serve as a tool to fight human rights violations in a specific context¹⁴⁵. Moreover, it appears that some of the most successful human rights activist groups tend to mix online and offline tools¹⁴⁶.

As the information on human rights violations is an important precondition to defend and protect human rights, the role and concept of journalism is of great importance to the issue of human rights protection. Because of the rapidly growing number of blogs, online fora, websites and other online information systems, the question arises whether bloggers reporting on human rights violations shall be considered journalists¹⁴⁷. It might be justifiable to say that the development of online communication technologies and in particular the Internet have changed the methods of traditional journalism and the nature of the whole news business, however, not all bloggers are journalists¹⁴⁸. The Internet allows “ordinary” people to provide

142 Cf. Whaley 2000: 31f

143 Cf. Etling et al. 2010: 3

144 Whaley 2000: 33

145 Cf. Etling et al. 2010: 13

146 Cf. Etling et al. 2010: 13

147 Cf. Shepard 2009: 188

148 Cf. Shepard 2009: 191

information of public interest to a broad audience with a minimum of effort and resources: “This civic journalistic practice empowers people to defend and promote their own human rights or to advocate for the human rights of others.”¹⁴⁹

Nevertheless, methods of work have to follow certain criteria in order to be considered “journalistic”: it can be assumed that persons who seek facts, engage in investigations and who disseminate their collected information to the general public should be considered journalists, whether traditional ones, bloggers or other online activists¹⁵⁰.

Finally, it has repeatedly been argued that the Internet serves as a tool for 'grassroot' activists and marginalised actors to defend their rights¹⁵¹. It has also been argued that increasingly these actors include activists from the “South”, meaning “less industrialised” and “less monetary wealthy” regions of the world¹⁵². However, it should be acknowledged that also the Internet, its organisation and its content are shaped by individual interests and powerful actors who might not pursue democratic, non-discriminatory objectives since power relations do not dissolve in the Internet¹⁵³. Therefore, the access to the Internet by marginalised actors does not necessarily qualify the Internet as an efficient means to protect their rights.

4.3.6 “The dark side of Internet freedom”¹⁵⁴

“The dark side of Internet freedom” is the subtitle of a book by Evgeny Morozov who strongly opposes any “cyber-utopianism” concerning the positive effects of the Internet. According to the author, the negative effects the Internet has on society, democratic interests and human rights are generally neglected¹⁵⁵.

Violations of Internet freedom may be caused by state actors or private entities such as media conglomerates or ICT companies. With regard to the latter, the

149 Conley/Patterson 2000: 212

150 Cf. Shepard 2000: 199, 205

151 Cf. Sharpe 2000: 43

152 Cf. Sharpe 2000: 46

153 Cf. Sharpe 2000: 34

154 Morozov 2011

155 Cf. Morozov 2011

enforcement of human rights can be particularly challenging as non-state actors are not legally bound by the same obligations as public authorities with regard to human rights provisions¹⁵⁶. However, “[i]n some parts of the world, the main threat to individual liberty and freedom of expression still comes from the state.”¹⁵⁷ With regard to the current revelations on online surveillance techniques, this citation may be adapted to “most parts of the world”. However, threats can also stem from bloggers and other Internet activists who are pro-antidemocratic-government and support authoritarian regimes¹⁵⁸. The negative effects of the Internet range from online surveillance, filtering, blocking, censoring to manipulation of content, extensive intellectual property right claims, unequal distribution of power concerning in particular the technical organisation of the Internet, and extend to self-censorship. Self-censorship means that people refrain from distributing critical content online to avoid the risk of persecution or physical attacks¹⁵⁹.

The topics of filtering, censorship and surveillance are closely related to the issue of legitimate restrictions on freedom of expression online. As mentioned earlier, restrictions have to pass a sophisticated test to be considered lawful. However, there is a constant risk of malpractice and abuse. The right to freedom of expression might be shaped and interpreted in a way to serve the interests of specific, powerful groups and undemocratic purposes¹⁶⁰. In 2013 the United Nations's Special Rapporteur of the right to freedom of opinion and expression noted in his report to the United Nations Human Rights Council that “[...] national laws regulating what would constitute the necessary, legitimate and proportional State involvement in communications surveillance are often inadequate or non-existent.”¹⁶¹ He further continues that such inadequate standards increase the risk of violations¹⁶².

Due to a report published by the non-governmental organisation *Reports Without Borders* in 2013, the involvement of governments in extensive surveillance mechanisms caused grave violations of freedom of information and other human

156 Cf. Balkin 2008: 102

157 Rønning 2013: 19

158 Cf. Morozov 2011: 93

159 Robert et al. 2011: 2

160 Cf. Balkin 2004: 24

161 La Rue 2013: 3

162 Cf. La Rue 2013: 13

rights. With regard to the latter, the report focused on Bahrain, China, Iran, Syria and Vietnam. Moreover, it was identified that online surveillance poses a growing risk on journalists, bloggers and human rights defenders, in particular in authoritarian regimes.¹⁶³ Also La Rue pointed out this observation in his report in 2013¹⁶⁴.

Another aspect which might challenge the Internet's positive effects is the gap between online activism and political realism: it is easy to act online but it takes much more motivation and personal conviction to get active in the real world of politics¹⁶⁵. Moreover, the possibility to pose content online anonymously may facilitate the distribution of suppressed information but it can also diminish the effectiveness of activism due to a lack of identifiable leadership¹⁶⁶. Additionally, the mass of information which is disseminated online makes it impossible to get an overview of rapidly changing available information and to identify the quality and reliability of this information¹⁶⁷.

In a previous chapter, it has been evaluated that the access to the Internet is not equally distributed, within countries as well as between countries. With regard to the latter, Europe and North America take advantage of a disproportionately developed infrastructure¹⁶⁸. In this context, no access or a strongly restricted access¹⁶⁹ to the Internet poses arguably one of the greatest challenges regarding freedom of expression online and the principle of non-discrimination¹⁷⁰. The keyword “digital divide” refers to the discussion whether technological innovations and the Internet in particular might even accentuate existing social differences and increase social exclusion; the access to the Internet might be a social privilege affordable only by certain societal groups who in return further benefit from their access to information¹⁷¹.

163 Cf. Reporters Without Borders 2013: 3

164 Cf. La Rue 2013: 14

165 Cf. Morozov 2011: 190

166 Cf. Etling et al. 2010: 10

167 Cf. Fenton 2008: 237, 239, 243 and Meier/Zwicky 2013: 205

168 Cf. Hick/Teplitsky 2000: 61

169 Including technical and financial barriers, Internet policies etc.

170 Cf. Gets 2002: 159

171 Cf. Marr 2005: 227, 229

It should also be noted that the technical organisation and the administration of the Internet is maintained by a private entity, namely the Los Angeles based Internet Corporation for Assigned Names and Numbers (ICANN), founded in 1998; its Board of Directors, assisted by a governmental advisory board, decides over the distribution of Internet addresses¹⁷². It is questionable whether such a powerful function should be fulfilled by a private company. Moreover, it is debatable whether the strong politicisation of Internet freedom even increases the risks posed on online political activists: “The more Western policymakers talk up the threat that bloggers pose to authoritarian regimes, the more likely those regimes are to limit the manoeuvre space where those bloggers operate.”¹⁷³

Finally, it is worth recalling that more or less all governments, regardless of their form of governance and their (anti-)democratic foundations, tend to put in place measures to control new media such as the Internet and their content in order to gain information or to avoid the distribution of specific information¹⁷⁴. In this respect, also the EU Member States and EU institutions are no exception, the latter for example by putting pressure on Internet service providers¹⁷⁵.

4.4 The European Union's commitment to protect freedom of expression online

As discussed in Chapter 4.2. freedom of expression is protected by numerous human rights conventions and declarations and all forms and means of expressions are protected. Another argument is that the Internet is an increasingly important means of expression. However, neither the respective conventions and declarations nor EU treaty law explicitly acknowledges the right to freedom of expression to be applicable also in the online sphere. It will now be shown why freedom of expression online is nevertheless protected by existing international human rights treaty law.

Furthermore, it will be examined how the European Union has committed itself to the

172 Cf. Moos 2002: 764f

173 Morozov 2011: 26

174 Cf. Gets 2002: 162

175 Cf. Jørgensen 2013: 123

protection of freedom of expression online in line with international treaty law and whether the Internet is a means of expression covered by the scope of the European Charter of Fundamental Rights.

On 5 July 2012, the United Nations Human Rights Council unanimously adopted a resolution initiated by Sweden¹⁷⁶ on 'The promotion, protection and enjoyment of human rights on the Internet'¹⁷⁷. The resolution states:

"[The Human Rights Council] [a]ffirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice [...]."¹⁷⁸

The Human Rights Council also approved in the resolution that freedom of expression on the Internet is within the scope of Article 19 ICCPR (right to freedom of opinion and expression) which serves as an important source of inspiration for the protection of freedom of expression in other international, regional and national human rights documents.

The Human Rights Council resolution has neither conferred any new rights nor has it extended the scope of Article 19 ICCPR. It clarifies that all means of expression are within the scope of Article 19, online as well as offline tools. Therefore, the modification of the ICCPR or the adoption of an additional protocol is not a precondition for the protection of freedom of expression online. However, in the light of the technological developments which have arguably re-structured the process of information production and consummation, it might be nevertheless useful to discuss the adoption of a document to clarify and explicitly set out the application of this right in the online sphere – maybe in the form of a new general comment of the UN Human Rights Committee on Article 19 ICCPR.

Currently, the United Nations count 193 Member States who are all entitled to representation in the United Nations plenary meeting: the General Assembly¹⁷⁹. The 47 Members of the Human Rights Council are elected by the UN General Assembly

176 Cf. Jørgensen 2013: 120

177 Resolution A/HRC/RES/20/8

178 United Nations Human Rights Council Resolution: The promotion, protection and enjoyment of human rights on the Internet. A/HRC/RES/20/8

179 Cf. United Nations 2013

on a regular basis¹⁸⁰. Therefore, it can be concluded that 193 sovereign states are represented in the Human Rights Council by 47 elected members and that the Council agreed in a legally binding form that all human rights and in particular freedom of expression have the same validity online and offline.

The European Union and its 28 Member States comprise a large voting bloc within the United Nations and their decision taking bodies. Moreover, EU Member States contribute to about 38% of the United Nations general budget and to over 40% of its peacekeeping budget.¹⁸¹ A few years ago, the EU put forward a proposal to strengthen its political position within the United Nations system and received a lot of critique for this approach on grounds of legality and democracy concerns¹⁸². Following long-lasting negotiations, in May 2011 the United Nations General Assembly adopted a resolution¹⁸³ conferring new and extended powers to the European Union¹⁸⁴, in particular the right to speak, to make proposals and to submit amendments¹⁸⁵¹⁸⁶. Through this resolution, “[t]he EU [...] was given almost all the rights in the global chamber that fully-fledged states enjoy [...].”¹⁸⁷

With regard to external human rights protection, the EU's commitment to cooperate closely with the United Nations bodies and institutions in order to reach a strong multilateral human rights system has been further approved in the *EU Strategic Framework and Action Plan on Human Rights and Democracy*, which will be analysed in more detail in Section 5 of this thesis¹⁸⁸.

As the European Union is no ordinary member of the UN, it is not per se legally bound by the above mentioned Human Rights Council resolution on 'The promotion, protection and enjoyment of human rights on the Internet'¹⁸⁹. However, all EU

180 Cf. OHCHR

181 Cf. Smith 2013: 63

182 Cf. Smith 2013: 69

183 United Nations General Assembly Resolution: Participation of the European Union in the work of the United Nations. A/RES/65/276

184 As a compromise, it was agreed that the same rights have to be conferred also to other regional blocs if requested by them.

185 Prior to the resolution, the EU had only been an observer to the United Nations.

186 Cf. Smith 2013: 69f

187 Phillips 2011

188 Cf. Council of the European Union 2012: 3f

189 Resolution A/HRC/RES/20/8

Member States are UN States obliged to observe the General Assembly resolutions. Additionally, rights and principles contained in UN resolutions may under specific circumstances be considered general principles of all EU Member States and hence EU law.

Moreover, individual EU actors have repeatedly acknowledged their position on the applicability of freedom of expression in the online sphere at numerous occasions in the form of political statements and commitments as well as in EU documents and strategies. In 2006, the European Parliament for the first time adopted a resolution on freedom of expression on the Internet in which it called on the Council and the EU Member States to confirm their commitment to promote freedom of expression online worldwide¹⁹⁰. In this resolution the European Parliament recognised the importance of the Internet as a means of expression in particular challenging situations today: “[...] the fight for freedom of expression has today largely shifted on-line as the Internet has become a means of expression of choice for political dissidents, democracy activists, human rights defenders and independent journalists worldwide [...]”¹⁹¹ Moreover, the European Parliament emphasised in its resolution on EU policies in favour of human rights defenders of 17 June 2010 “[...] the importance of freedom of speech and the role of the media, both online and offline, as an enabler for human rights defenders [...]”¹⁹²

In the *EU Strategic Framework and Action Plan on Human Rights and Democracy* adopted by the Council of the European Union in 2012, freedom of expression online is referred to as an EU priority in the field of human rights. It states: “The EU will continue to promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights.”¹⁹³

Additionally, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy put forward a proposal on the EU Cybersecurity

190 See Point 2 European Parliament resolution on freedom of expression on the Internet, 6.7.2006, P6_TA(2006)0324

191 European Parliament resolution on freedom of expression on the Internet, 6.7.2006, P6_TA(2006)0324

192 European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)), P7_TA(2010)0226

193 Council of the European Union 2012: 2

Strategy which was finally adopted in early 2013¹⁹⁴. Within the Cybersecurity Strategy, the EU officially acknowledges that all human rights apply also online¹⁹⁵. The strategy states: “[...] the same norms, principles and values that the EU upholds offline, should also apply online. Fundamental rights, democracy and the rule of law need to be protected in cyberspace.”¹⁹⁶ Furthermore it declares that the Internet “[...] has provided a forum for freedom of expression and exercise of fundamental rights, and empowered people in their quest for democratic and more just societies – most strikingly during the Arab Spring.”¹⁹⁷

Moreover, the strategy clarifies that the main principle of EU cybersecurity measures is to provide for an open, free and secure cyberspace¹⁹⁸, including the protection of fundamental rights such as freedom of expression and the right to privacy online. Additionally, the strategy acknowledges that “[l]imited or no access to the Internet and digital illiteracy constitute a disadvantage to citizens [...]”¹⁹⁹ Therefore, the promotion of safe access to the Internet for all is an objective²⁰⁰.

Finally, on the 20th anniversary of the World Press Freedom Day in May 2013, the High Representative of the EU, Catherine Ashton, affirmed the EU's political commitment to protect freedom of expression online: “Freedom of expression must be defended both in the traditional media and on the Internet. [...] The EU will continue to promote freedom of expression on-line and offline, not least as new information technologies can be key in promoting human rights and democracy.”²⁰¹

With regard to the above examples of EU documents, statements, declarations, strategies and policy papers on freedom of expression online, the reader shall be reminded that these are political commitments of EU actors. At this point, this thesis does not focus on the practical implementation of these political commitments or on specific patterns of action of individual EU actors on freedom of expression online in practice, nor does it contain an analysis of power relations between individual EU

194 Cf. European Commission/High Representative of the Union for Foreign Affairs and Security Policy 2013: 3
195 See European Commission/ High Representative of the Union for Foreign Affairs and Security Policy 2013
196 European Commission/ High Representative of the Union for Foreign Affairs and Security Policy 2013: 2
197 European Commission/ High Representative of the Union for Foreign Affairs and Security Policy 2013: 2
198 Cf. European Commission/High Representative of the Union for Foreign Affairs and Security Policy 2013:14
199 European Commission/ High Representative of the Union for Foreign Affairs and Security Policy 2013: 4
200 Cf. European Commission/ High Representative of the Union for Foreign Affairs and Security Policy 2013: 4
201 Council of the European Union 2013

actors in this field of action. It is limited to the theoretical examination of self-declared political commitments, positions and discursively constructed patterns of explanation. In the following, the relevance of freedom of expression online in EU foreign policy will be examined from a theoretical point of view by examining EU documents and statements. In this context, some of the statements, political strategies, and documents on freedom of expression online mentioned above will be analysed in more detail in the section below²⁰².

Finally, the above examples of statements and documents on freedom of expression online already indicate that various EU actors are involved in EU foreign policy making on human rights. It can be anticipated at this point that individual EU actors' interests might conflict with each other and result in different positions on political questions. This aspect will also be relevant for the examination of the question whether the EU follows a coherent human rights protection discourse of which freedom of expression online forms part.

4.5 Interim conclusion

It is debatable whether the potential positive characteristics and features of the Internet outweigh its potential negatives ones. However, it is indisputable that the Internet as a means of expression has gained in importance over the past two decades, though not to the same extent in all parts and areas of the world.

Moreover, it has been shown that all kinds and means of expressions are protected under the right to freedom of expression under EU law. This is because rights and values such as to form, hold or express an opinion are also applicable in the online sphere: "What has changed, however, is the technological context in which we try to realize these values."²⁰³ Consequently, also expressions on the Internet have to be protected under current EU law. In this respect, EU foreign policy actors have

²⁰² See in particular Chapter 5.5.2.

²⁰³ Balkin 2008: 101

repeatedly expressed the EU's position that all human rights which are protected offline have the same validity online.

Furthermore, it shows that underlying discursive determinants of the right to freedom of expression are related to concepts of popular sovereignty and democracy. In this context, both the human right to freedom of expression and democracy are discursive concepts themselves whose application and validity are claimed to be universal by the EU. However, it is important to realise that there are different definitions and interpretations of freedom of expression and in particular of its legitimate restrictions, within the EU and beyond. This aspect was also highlighted in an interview with a NGO representative working on freedom of expression:

“[Y]ou cannot say that the Internet is the global village and we are sharing info and at the same time saying that 'yes but because of my local values, because of my local situation, because of my local approach, I consider that part of the Internet should not be connected to my country'. [...] And if you consider this, you will have two different Internets in the US and in the EU. Because we are not sharing the same value regarding freedom of expression.”²⁰⁴

On the basis of the above analysis, it can further be concluded that freedom of expression should arguably be restricted only under exceptional, well justified, carefully assessed circumstances²⁰⁵. It has been shown that restrictions and violations of freedom of expression occur more and more frequently in the online sphere and that they are often committed by public authorities.

In this chapter, it has further been argued that it would be unsophisticated to assume that the Internet is mainly used for political purposes by its users:

“[...] [O]nce you open up media to large numbers of people, and create online communities, some of the speech will be about politics and public issues, but a far larger share will be about things that people care about outside of politics, like popular culture, art, music, movies, books and novels, gossip, and even pictures of their friends or their pets.”²⁰⁶

204 See Transcript D: 199

205 Cf. Gearon 2006: 137

206 Balkin 2008: 111

This does not imply that art, music, films or texts are mainly non-political. They might be important tools (and at times even the only ones available) to express political opinions and critique.

Moreover, the conceptual differences between discussions on the Internet as a potential activator of democratic effects on the one hand and as a sphere and tool of expressions on the other hand have been highlighted. As outlined above, the following examination will focus on the Internet as a means of expression. The author is further of the opinion that democratic effects of the Internet depend on its users and that it would be unsophisticated to assume an inherent democratic potential of the Internet:

“The media has historically been a tool used both by angry protestors to shed light on social injustices and by ruling parties to quell these uprisings. That the latter feel threatened by these tools is a testament to their perceived power (and I say perceived because this power is not inherent to the tools themselves but instilled by their users) [...]”.²⁰⁷

From the above analysis it can finally be assumed that the Internet has the potential to serve as an additional tool to protect human rights if applied in the respective manner. Therefore, “[...] the Internet can work to close the gap between international human rights standards and practice on the ground.”²⁰⁸ It seems that a rising number of Internet users and human rights defenders have dedicated their work to this objective.

207 Mourtada 2011

208 Axworthy 2000: 19

5 Freedom of expression online in EU foreign policy

5.1 Outline of the chapter

Section 5 is dedicated to the examination of the discursive patterns of the EU's political commitment to protect freedom of expression online in its foreign policy. In the first chapter, the discursive context of EU external human rights protection will be discussed. In doing so, underlying principles and values will be examined to get a more profound understanding of the gradual integration of human rights objectives into the Union's framework. In this context, several discursive events and their effects on EU human rights policies will be examined. In addition, the relatively new institutional structure of the EU foreign policy section will be discussed.

Subsequently, EU external human rights protection policies will be put in the context of other interrelated fields of EU foreign policy, namely democracy support and development cooperation. It will be shown that EU foreign policy discourses or at least specific threads of them are closely interrelated with each other. It will further be shown that EU foreign policy objectives on human rights protection are at the same time elements of discursive patterns on democracy support and development cooperation. This is because the promotion and protection of human rights is considered a precondition for the establishment of democratic principles and institutions by EU actors. The latter is again a conceptual objective of EU development cooperation policies. This entanglement requires analysing discourses in a flexible manner to identify interrelations with other discourses and reciprocal effects.

Finally, specific statements of EU foreign policy actors on freedom of expression online will be analysed more closely and put in context of interrelated EU foreign policy objectives e.g. on human rights defenders. The respective statements are mainly taken from political speeches and declarations, press releases, foreign policy documents and interviews.

5.2 The development of human rights in the framework of the European Union

Human rights protection was developed progressively in the framework of the European Union²⁰⁹. When the European Communities - the precursor organisations of the European Union - were founded in the 1950s, no explicit human rights provisions were incorporated in the founding treaties²¹⁰. From a legal point of view, human rights protection remained thus a national competence of EU Member States²¹¹. However, the establishment of a common market required also non-economic aspects of harmonisation²¹². In this respect, fundamental rights were justified in “market-creating terms”²¹³. Only specific human rights provisions related to the functioning of the common market were integrated into the Union's legal framework; for example the principles of non-discrimination and free movement.

Furthermore, the Court of Justice of the European Union (CJEU) was of utmost importance for the integration of human rights in the legal framework of the European Union. In its cases, the CJEU stated that fundamental rights are general principles and thus an integral part of Community law²¹⁴. This is of particular importance as general principles are legally binding for all EU Member States and institutions whenever they apply EU law²¹⁵. The Court also clarified that the source of inspiration of general principles stems from traditions common to EU Member States as well as from international treaties to which EU Member States are party to²¹⁶. Consequently, general principles and thus basic human rights were legally required to be observed also in EU foreign relations and policies on international trade and development cooperation by EU actors.²¹⁷

209 Cf. Chalmers et al. 2006: 233

210 Cf. Craig/De Burca 2008: 379

211 Cf. Isiksel 2010: 553

212 Cf. Menéndez 2002: 479, 484

213 Fredmann 2006: 42

214 Cf. Isiksel 2010: 554

215 Craig/De Burca 2008: 395

216 Especially indicated in the *Nold-Case* (1974) - Cf. Denman 2010: 350 and Isiksel 2010: 554

217 Cf. Craig/De Burca 2008: 379, 402ff and Menéndez 2002: 484

Additionally, initiatives of various EU institutions claimed the importance to strengthen human rights in EU policies. In 1977, the European Parliament, the Council and the Commission affirmed their commitment to respect fundamental rights within their fields of competence in a joint declaration. Moreover, an EU network of independent experts on fundamental rights, the EU Fundamental Rights Agency and the EU Monitoring Centre on Racism and Xenophobia, were established.²¹⁸

Finally, the EU's political commitment to protect human rights and specific human rights provisions were incorporated in the legal framework of the European Union by treaty amendments. Today, Article 2 of the Treaty on European Union (TEU) states that the European Union is founded on specific principles and values, namely the "[...] respect for human dignity, freedom, democracy, equality, the rule of law and [the] respect for human rights, including the rights of persons belonging to minorities."²¹⁹ It further determines that "[t]hese values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."²²⁰ Moreover, Article 7 TEU provides for a mechanism to sanction serious and persistent breaches²²¹ by EU Member States of the values referred to in Article 2²²². However, this mechanism has hardly ever been used in practice.

Moreover, Article 6 TEU grants the rights contained in the Charter of Fundamental Rights of the European Union (including the right to freedom of expression) the same legal status as the founding treaties. This means that the Charter is EU primary law and that the compliance with its rights is a condition for the legality of any EU act²²³. The original idea of the Charter was to codify the human rights that had already been given full effect in EU law through the above mentioned concept of general principles; thus, the Charter did not confer any new rights but codified the status-quo of existing EU human rights law²²⁴. The Charter provided for a clear and systematic codification

218 Cf. Craig/ De Burca 2008: 379, 402ff and Greer/Williams 2009: 473

219 See Art. 2 TEU

220 See Art. 2 TEU

221 Art. 7 TEU also provides for preventive sanctions if there is a likely risk of a breach.

222 Cf. Craig/ De Burca 2008: 403, see also Art. 7 TEU

223 Cf. Chalmers et al. 2006: 261, 263, 265, see also Art. 6 TEU

224 Cf. Berghe 2010: 147 and Denman 2010: 350

of human rights provisions which were till then highly fragmented and vague²²⁵. Furthermore, it is important to note that the text of the Charter was predominantly taken from pre-existing human rights provisions and in particular from international human rights treaties such as the European Convention on Human Rights²²⁶. Therefore, some of the rights contained in these two documents are very similar.

Due to treaty amendments, the European Union was further provided with the competence to accede to the European Convention on Human Rights²²⁷. This convention is no EU document but was promulgated by the Council of Europe²²⁸. However, all EU Member States are party to the ECHR which is why its rights arguably constitute traditions common to all EU Member States and therefore serve as a source of interpretation for EU general principles and human rights contained in the EU Charter. This is in particular true for the right to freedom of expression: the Court of Justice of the European Union heavily relies on the text of the ECHR and the interpretations of the European Court of Human Rights with regard to this right²²⁹.

Furthermore, Article 6 paragraph 3 TEU now reflects the CJEU's practice and stipulates that fundamental rights constitute general principles in EU law and that these principles arise from constitutional traditions common to its Member States as well as from "[...] international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories[...]"²³⁰. With regard to the latter, the European Convention on Human Rights is of particular importance on the grounds discussed above.

Moreover, Article 21 TEU stipulates that the consolidation and support of democracy and human rights is a policy objective of the Union's external relations²³¹. This is because EU foreign policy shall be guided by and contributed to the realisation of principles which inspired its own creation including human rights:

225 Cf. Isiksel 2010: 575

226 Cf. Chalmers (et al.) 2006: 254 and Douglas-Scott 2004: 42

227 See Art. 6(2) TEU

228 The names of EU institutions and the Council of Europe are confusingly similar, however, the Council of Europe is a separate European institution.

229 Cf. Callewaert 2009: 770

230 Craig/ De Burca 2008: 383

231 See. Art. 21 (2)b

“The Union’s action on 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.”²³²

The above mentioned provisions constitute a political and legal commitment to adhere to and observe human rights in all fields of EU action including external relations²³³. With regard to foreign policy, the motives of this commitment are debatable. It might be arguable that the primary objective of EU external human rights protection is to consolidate its power and influence with regard to non-EU countries in a long-term perspective. The justification of this objective could be to protect the rights of its own citizens. In an interview a representative from Reporters Without Borders summed this up as follows: “So, when the EU is supporting this, first of all they are supporting the rights of EU citizens.”²³⁴

It is questionable if human rights can be considered an own-standing agenda of EU action today. In practice, EU human rights policies are closely related to and sometimes in conflict with other areas of EU action. Nevertheless it appears that individual EU actors tend to publicly acknowledge the Union's political commitment to promote and protect human rights. Respective statements and patterns of explanation have been repeatedly expressed in particular by the EU High Representative Catherine Ashton who claims the EU's commitment to human rights protection at any occasion: “For the EU, human rights matter. They are at the core of our identity and they are at the heart of what we do around the world.”²³⁵

However, the above mentioned legal amendments and the incorporation of human rights provisions in the legal framework of the European Union do not allow drawing conclusions on the practical relevance of human rights in EU actions today. There

²³² See Art. 21(1) TEU

²³³ Cf. Chalmers et al. 2006: 233

²³⁴ See Transcript D: 199

²³⁵ Ashton 2010a

are still serious limitations to the objective of human rights protection, internally as well as concerning EU foreign policy. Apart from the comprehensive implementation of human rights obligations and commitments these limitations include for example the lack of judicial review of human rights, their enforceability, the protection of economic, social and cultural rights, the lack of a general competence of the EU in the field of human rights and the absence of a functioning coordination of a common, strong EU positions on human rights violations in and outside the EU²³⁶.

5.3 Human rights protection in EU foreign policy

It is arguable that the institutional reorganisation of the EU foreign policy section might have had an influence on specific fields of EU foreign policy, including EU external human rights policies. Therefore, it appears useful to look briefly into a few relevant institutional changes in the EU foreign policy section from 2009 onwards.

The EU foreign policy section was institutionally reshaped when the Lisbon Treaty entered into force on 1 December 2009²³⁷. The former posts of the EU High Representative for Common Foreign and Security Policy and the Commissioner for External Relations, both playing an important role in the coordination of EU foreign policies, were unified²³⁸. Furthermore, the post of the High Representative was unified with the vice-president of the European Commission which shall allow better engaging in the coordination of individual EU Member States interests²³⁹.

Furthermore, the High Representative is expected to intensify the coordination between the Commission and the Council in order to provide for more coherent EU foreign policymaking and a stronger role of the European Union at the global level²⁴⁰. Currently, Catherine Ashton holds the post of the High Representative.

236 The Court of Justice of the European Union clarified in one of its legal opinions (Opinion 2/94) that the EU has neither the “[...] general power to enact rules of human rights [...]” (Craig/ De Burca 2008: 405), nor the power to conclude international human rights conventions (cf. Berghe 2010: 148).

237 Cf. Furness 2010: 1

238 Cf. Furness 2010: 4

239 Cf. Hartmann 2009: 3

240 Cf. Furness 2010: 30 and Hartmann 2009: 3

Additionally, the Lisbon Treaty led to the creation of a new EU institution: the European External Action Service (EEAS) was established in 2011²⁴¹ to assist the High Representative in her new functions and coordinating role²⁴². Ashton explained the purpose of the EEAS as follows: “[...] to give the EU a stronger voice around the world, and greater impact on the ground.”²⁴³ She further stated in an article that: “[t]he value of the EEAS will lie in its being able to bring together the many levers of influence that the European Union has — economic and political, plus civil and military crisis management tools — in support of a single political strategy.”²⁴⁴ However, it is still debatable whether the EEAS, under the supervision of the High Representative, has its own margin of appreciation and the potential to take independent positions in practice²⁴⁵.

Due to the Lisbon treaty, the former delegations of the European Commission in non-EU-countries were re-named into EU delegations which are expected to represent the EU and its interests externally. Currently, there are 139 EU delegations in more than 160 third countries around the world²⁴⁶. The delegations are expected to play an increasingly important role in the implementation of EU foreign policies including on human rights on the ground²⁴⁷. Also the European Parliament called in one of its resolutions on the delegations to fulfill their obligations with regard to the implementation of EU external human rights protection:

“[...] Commission delegations in third countries are now required to make full use of the new opportunities, but are also given further responsibilities to better address this issue as they become Union delegations, with an increasingly important role in terms of representation of the EU and the implementation of the human rights policy [...]”²⁴⁸

Within this new organisational framework of EU foreign policy, human rights are claimed to be of high importance and conditionality for the realisation of other EU interests by various EU actors. In this respect, the European Parliament in one of its

241 The service has been established by a Council Decision in 2010 and entered into force on 1 January 2011.

242 Cf. EEAS 2013

243 Ashton 2010

244 Ashton 2010 – at that time, the European Union had only 27 Member States.

245 Cf. Furness 2013: 123

246 Cf. EEAS 2013: 3

247 Cf. Furness 2010: 7

248 See Point 5, European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)) , P7_TA(2010)0226

resolutions stated as follows: “[...] the Treaty of Lisbon [...] puts the promotion and protection of human rights at the centre of the Union's external action [...]”.²⁴⁹ The High Representative, too, expressed her optimistic view about the role of human rights in EU external relations in one of her speeches to the European Parliament:

“As this House knows, the promise of the Lisbon Treaty is a more coherent, more consistent and hence more effective EU foreign policy. This is also a chance for our work on human rights, democracy and the rule of law. These will run like a silver thread through everything we do externally.”²⁵⁰

With regard to policy coherence, she further continued: “[...]the new Service [EEAS] should help to ensure that human rights issues are reflected in all areas of our external action, including CSDP [Common Security and Defence Policy], Development and Trade.”²⁵¹ It is interesting to note that the previous wording of “silver thread” (whereas the High Representative does not specify how thin this thread may be) was diminished to the less strong term “reflected” within the same speech of the High Representative.

Not only were post of EU officials unified in the course of the institutional reforms, new ones were also created, e.g. the EU Special Representative for Human Rights. Since 25 June 2012, Stavros Lambrinidis has held this position.²⁵² The purpose of his function is defined by the High Representative as follows: “[...] to promote human rights through dialogue with third countries as well as international and regional organisations.”²⁵³ From the author's point of view the added value of this new post is questionable.

In June 2012, the EU adopted the *Strategic Framework and Action Plan on Human Rights and Democracy*²⁵⁴. This strategy may be a reaction to the previously expressed critique that EU external human rights protection is highly fragmented, incoherent and not following any thematic priorities or an encompassing

249 See Point 4, European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)) , P7_TA(2010)0226

250 Ashton 2010a

251 Ashton 2010a

252 Cf. Toggenburg 2013: 322

253 Council of the European Union 2012a

254 Council of the European Union (2012): EU Strategic Framework and Action Plan on Human Rights and Democracy. Council of the European Union, 25 June 2012, No. 11855/12

framework²⁵⁵. In the new framework, specific discursive parameters and determinants the external human rights policy is based on are apparent: “The European Union is founded on a shared determination to promote peace and stability [...]. Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law.”²⁵⁶

Moreover, the framework outlines the EU's conviction that human rights and democracy are universal norms which shall be protected worldwide by the EU: “Human rights are universally applicable legal norms. Democracy is a universal aspiration. Throughout the world, women and men demand to live lives of liberty, dignity and security in open and democratic societies underpinned by human rights and the rule of law.”²⁵⁷

It further defines overall objectives of EU external human rights protection namely the promotion of the universality of human rights, the observance of human rights in all fields of foreign policy and the adherence to thematic priorities²⁵⁸.

It has been indicated that various EU actors are involved in EU foreign policy making and in the implementation of respective policies including those on human rights. These actors include the European Commission and the EU delegations, the new post of the High Representative and her subsidiary body the European External Action Service, the European Parliament, and the new EU Special Representative for Human Rights and Democracy. After Lisbon, the importance of individual EU institutions and actors and their own interests are arguably still of great importance to EU foreign policy making²⁵⁹.

This fragmentation of competences and the ongoing sharing of power between individual EU actors in the field of foreign policy provoke the questions whether the EU can be considered a single actor and which kind of actor this should be. It is debatable whether the EU itself has yet decided on its *raison d'être* which is less clear today than it might have been at the time of its creation²⁶⁰. However, the political

255 Cf. Toggenburg 2013: 321

256 Council of the European Union 2012: 1

257 Council of the European Union 2012: 1

258 Cf. Council of the European Union 2012

259 Cf. Hartmann 2009: 13

260 Cf. De Burca 2013: 5

legitimacy of the EU and its *raison d'être* are again closely related to the conceptualisation of the EU's actorness.

After the Lisbon Treaty, the debate on the EU's potential role as a global actor intensified and reached its height in the context of the Arab Spring when the discursively construction of the EU as an international actor and the respective kind of actorness were debated²⁶¹. Discussions dealt with the question “[...] whether it should limit itself to economic power, or whether it should pursue a broadly normative agenda and lead by example, whether it should develop its ability to coerce and punish other actors.”²⁶²

In this context, it has been repeatedly been argued that the European Union is constructed as a normative power which “[...] is capable of attaining democratic change in countries through the spread of European democratic norms.”²⁶³ This approach assumes that the EU itself is constructed on a normative basis as well as that it acts in a normative, moral way in its external relations. According to this approach, the EU aims to strengthen its influence at the international level in order to be able to reshape international norms according to its own principles²⁶⁴. As a consequence, the construction of the Union's international identity needs to be built on the norms and values the EU itself is legally founded on and external relations would have to be conditioned on these norms²⁶⁵.

However, this normative approach is not necessarily reflected empirically in practice. Additionally, it is highly debatable whether a normative approach is even desirable. It would be highly judgemental to uphold democratic values which are considered particular to the European Union but are at the same time claimed to be universal. Furthermore, this normative approach includes the assumption that the values and norms the EU upholds externally are fully realised within the EU but not with regard to non-EU countries. This assumption constructs a conceptual superiority of the

261 Cf. Aydin-Düzgit 2013: 7f

262 Furness 2013: 124

263 Manners (2002) in: Aydin-Düzgit 2013: 9

264 The interconnections of the human rights protection discourse with other EU foreign policy discourses will be examined in more detail below.

265 Cf. Manners 2002: 241, 252f

European Union over the rest of the world and results in a specific hegemony of meanings.²⁶⁶

It has already been indicated that EU foreign policy is shaped by various individual EU actors and their interests, which makes it debatable whether the EU can be considered a single actor. Because of its supranational quality, “[...] the EU remains significantly different from a nation state in many important aspects.”²⁶⁷

This observation also indicates that it is rather presumptuous to envisage a normative power discourse as no stable and coherent normative discourse can be established due to diverging interests²⁶⁸.

During the Arab Spring events dissenting opinions of individual EU actors were obvious. In this context, the European Union was criticised for lacking a common position and a coherent strategy to react to the situation. It has been criticised that the High Representative and the EEAS failed to speak out early and clearly enough or even at all on behalf of the EU in support of the protesters' claims for democratic structures and human rights. It appeared that the EU was lacking a common position between all EU Member States and institutions on individual aspects of this conflict.²⁶⁹ This might also be why the EU was denied the role of an international actor by various observers and researchers.

The lack of a common position in foreign policy matters is related to a long-lasting, controversial debate within the EU about competences of individual EU actors. The institutional changes of the EU foreign policy section further reflected the political compromise between individual actors claiming either more or less powers of the EU at the international level. Therefore, EU foreign policy making and the implementation of its objectives arguably still depends to a great extent on the political will and interests of individual EU Member States and institutions.²⁷⁰

266 Cf. Aydin-Düzgit 2013: 9 and Diez 2013: 3

267 De Burca 2013: 9

268 Cf. Diez 2013: 12

269 Cf. Furness 2013: 119

270 Cf. Helwig 2013: 239, 251

With regard to the interim conclusion of this thesis, namely that various individual EU foreign policy actors are involved in the shaping of EU foreign policies on human rights and that these actors might follow partly dissenting interests, it may appear unreasonable to assume that a stable, coherent EU human rights discourse even exists. This critique is well justified; it has become obvious in the course of this thesis' studies. However, for the purpose of this thesis, the EU by itself will be qualified an actor. This presumption is grounded on a legal point of view. The EU is a supranational organisation entitled to legal representation and having legal personality as well as being competent to adopt binding laws and regulations. Its legal personality is in particular relevant with regard to the EU's engagement at the international level. It is also in this context in which the new post of the EU High Representative, who is entitled to speak out globally on behalf of the EU, has to be considered. Nevertheless, at a later point of this thesis, it will be discussed whether the legal construction of the EU as an own-standing, international actor and the neglecting of the role of individual EU actors are useful or rather impedimentary for the analysis of the specific scope of this thesis.

5.4 Human rights protection, democracy support and development cooperation

In the course of the examination of EU documents and statements of EU representatives was observed that EU foreign policies on external human rights protection, democracy support and development cooperation are closely interrelated from a discursive point of view. Because of this close conceptual interrelation between democracy, human rights and development cooperation in EU foreign policy, it appears useful to discuss these concepts together²⁷¹. This aspect is of particular relevance to the last section of this thesis which focuses on a specific EU development cooperation instrument used as an instrument to protect freedom of expression online. In the following part of this chapter, a short introduction into the field of EU development cooperation shall be provided to highlight interrelations and interconnectedness of foreign policy discourses on external human rights protection,

271 Cf. Timmer 2013: 35

democracy support and development cooperation. It will be shown that human rights and democracy are conceptually considered part of each other by the EU, at least from a theoretical point of view²⁷². At the same time, these two concepts are conceptually considered part of EU development cooperation policies. Even though the EU most commonly avoids giving clear definitions of these concepts and terms, democracy and human rights are claimed to stem from the same “family of ideas”²⁷³ based on a specific conception of political and legal morality²⁷⁴. The examination will further show that both concepts are considered to restrain but also to empower EU actors²⁷⁵.

Even though development cooperation was made a formal Community competence in 1993, the beginnings of the EU's donor role can be traced back to the 1950s²⁷⁶. Over time, the number of EU development cooperation instruments has grown significantly²⁷⁷. By now, more than 30 development cooperation instruments have been established²⁷⁸. However, the number of instruments and the amount of their budgets do not allow for any conclusions on their effectiveness or the overall objectives of EU development cooperation policies.

The EU development cooperation section is subject to complicated arrangements and is a shared competence between the Union and its individual Member States, meaning that also the latter can take actions besides EU measures²⁷⁹. It is thus a “multilevel governance setting”²⁸⁰ with different responsibilities and competences. Today, EU Member States, individually and through the EU, contribute to more than half of the global official development assistance (ODA) budget²⁸¹, whereas France, Germany and the United Kingdom provide more or less half of the combined EU ODA budget²⁸². The EU claims to be the biggest provider of development assistance in the world; however, it should be noted that 75% of this budget stems from bilateral

272 Cf. Timmer 2013: 35

273 Timmer 2013: 35

274 Cf. Timmer 2013: 35

275 Cf. Timmer 2013: 35

276 Cf. Orbie 2012: 18f

277 Cf. Furness 2010: 10

278 Cf. Hartmann 2009: 9

279 Cf. Furness 2013: 121f and Hartmann 2009: 6

280 Grimm et al. 2012: 11

281 Cf. Furness 2010: 31

282 Cf. Holland/Doidge 2012: 186

aid relations of individual EU Member States²⁸³. In 2012, the EU budget for external assistance – which is administrated by the European Commission - amounted up to about € 148 000 million; 9% of this sum was dedicated to external aid²⁸⁴.

EU development objectives were adapted over time and were arguably influenced by international development debates²⁸⁵. Therefore, development objectives defined by powerful multilateral fora have been increasingly integrated into the Union's own development agenda²⁸⁶. This is for example true for the Millennium Development Goals²⁸⁷ due to which the regional focus of EU development policy shifted towards Africa from 2005 onwards as the latter was considered at least likely to meet the goals in the given time²⁸⁸. Again influenced by the international development debate, in the 1990s, the EU proclaimed to follow a more comprehensive approach to development cooperation and started to condition aid on political requirements²⁸⁹. This so-called integrated approach to development reinforced the discursive interrelations between EU policies on democracy support, human rights and development. Conditionality was envisaged to fulfil the following objective:

“Political conditionality links rewards (such as a preferential trading agreement, aid or other forms of assistance) with both the expectation and the execution of policies in a third country that promote the goals of democracy, human rights, the rule of law and good governance.”²⁹⁰

Political conditionality and the so-called human-rights-based approach within EU development cooperation was expected by the EU to reach a more systematic and coherent mainstreaming of human rights in all areas of EU development cooperation²⁹¹. However, it appears that the Union's definition of democracy was kept to a rather simple level and focussed mainly on the enjoyment of specific civil and political rights such as freedom of expression²⁹².

283 Cf. Hartmann 2009: 16

284 Cf. European Commission 2013: 180

285 Cf. Holland/Doidge 2012: 23

286 Cf. Grimm et al. 2012: 5

287 See in particular European Consensus on Development, 2005

288 Cf. Holland 2008: 348

289 Cf. Holland/Doidge 2012: 25f

290 Holland/Doidge 2012: 190

291 Cf. European Commission 2010: 7

292 Cf. Holland/Doidge 2012: 194

Furthermore, the European Union was criticised for following double standards regarding the conditioning of development assistance; the EU encouraged third country governments to comply with the conditions; in cases of non-compliance, however, sanctions were hardly ever imposed as they might conflict with other EU interests or the interests of individual EU actors²⁹³. In addition, conditionality of development aid arguably even increased the strong politicisation of EU development cooperation²⁹⁴.

In 2011, the European Commission adopted a strategy expected to increase the impact of EU development policies on the ground and to foster the so-called integrated approach to development: the *Agenda for Change*.

This strategy stipulates that human rights and democratic structures are important preconditions for an inclusive concept of development. It further declares that EU action shall thus focus on democracy support and human rights protection in its external relations.²⁹⁵

The discursive interrelation between human rights protection and development cooperation policies appears to be largely accepted by EU development actors, which is also reflected in the conducted interviews with EU employees. According to an employee of the European Commission, the *Agenda for Change* clearly affirms the link between development cooperation and human rights protection²⁹⁶.

The discursive interrelations between EU foreign policy discourses on human rights, democracy support and development cooperation became further visible with the Lisbon Treaty which partly reshaped the organisation and implementation mechanisms of EU development cooperation²⁹⁷. Article 21 TEU declares that the promotion and the protection of human rights are an indispensable objective of EU development policy²⁹⁸. Furthermore, Article 208 TFEU states that principles and objectives of the Union's external action, including human rights, shall also be

293 Cf. Holland/Doidge 2012: 208, 212

294 Cf. Holland/Doidge 2012: 27

295 European Commission 2011:5

296 See Transcript A: 168

297 Cf. Holland/Doidge 2012: 1

298 Art. 21(1) TEU

observed in EU development cooperation²⁹⁹. With the Lisbon Treaty, the Union intended to increase the coherence and efficiency of EU foreign policy-making³⁰⁰ and to establish a common political framework for all fields of external action, including development cooperation³⁰¹. The need to coordinate external financing instruments becomes obvious when a look is taken on the plentitude of existing instruments of EU development cooperation, external relations and foreign policy (see illustration below). In this respect, also Ashton acknowledged that EU external financing instruments need to be better coordinated³⁰².

299 Article 208 (1) TFEU states: *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*. Also: Cf. Furness 2012: 74

300 Cf. Furness 2012: 74

301 Cf. Holland/Doidge 2012: 6

302 Ashton 2010b: 2

Table 1: EU development, external relations and foreign policy financing				
Instrument	Purpose	Time span	Amount	Total (Approx)
Development				
European Development Fund	Geographical	2008–2013	€ 22.7 billion	More than € 40 bn 2007–2013
Development Cooperation Instrument	Geographical	2007–2013	€ 16.9 billion	
Neighbourhood and Partnership Instrument	Geographical	2007–2013	€ 12 billion	
External Relations				
Instrument for Stability	Thematic	2007–2013	€ 2.1 billion	Around € 10 bn 2007–2013
Instrument for Democracy and Human Rights	Thematic	2007–2013	€ 1.1 billion	
Instrument for Humanitarian Assistance	Emergency	Since 1996	Case-by-case	
Nuclear Safety Cooperation Instrument	Thematic	2007–2013	€ 524 million	
Industrialised Countries Instrument	Geographical	2007–2013	€ 172 million	
Instrument for Pre-Accession	Geographical	2007–2010	€ 5.7 billion	
Foreign Policy				
Common Foreign and Security Policy	Thematic	2007–2013	€ 1.7 billion	Less than € 2 bn 2007–2013
ATHENA ESDP/CSDP Budget	Thematic	Reviewed every 18 months	Varies – approx. € 60 million in 2006	
Source: European Commission				

Illustration 4: EU development, external relations and foreign policy financing. Source: Furness 2010: 11

EU development cooperation competences are divided mainly between the EEAS and the Commission, although also the Council, the EU High Representative and the EU Development Commissioner fulfil specific functions. The original attempt to consolidate all development cooperation competences and responsibilities in the hands of one EU actor could thus not be reached by the Lisbon Treaty.³⁰³ Therefore, the organisation of EU development cooperation is still highly complex and has remained subject to individual EU actors' competences.

³⁰³ Cf. Holland/Doidge 2012: 126, 128

Within this organisational structure, the European Commission evolved into one of the most important actors shaping EU development policy³⁰⁴. In practice, the Commission's Directorate-General for Development and Cooperation – EuropeAid (DG DEVCO) is in charge of the administration of EU development cooperation policies. Also the European External Action Service is granted a major role within EU development cooperation as the service is responsible for the overall strategic planning³⁰⁵. The latter includes the development of third country strategies and the identification of thematic and sectoral priorities³⁰⁶.

It can be concluded that in the course of this research, discursive patterns of explanation on EU development cooperation have been identified. These patterns are used and performed by individual EU development actors and can be summarised as follows. First, EU development cooperation has to be conditioned on the establishment of democratic structures and the protection of human rights. Secondly, the EU is implementing its development cooperation policies in accordance with this condition. However, the actual validity of these assumptions remains to be proved.

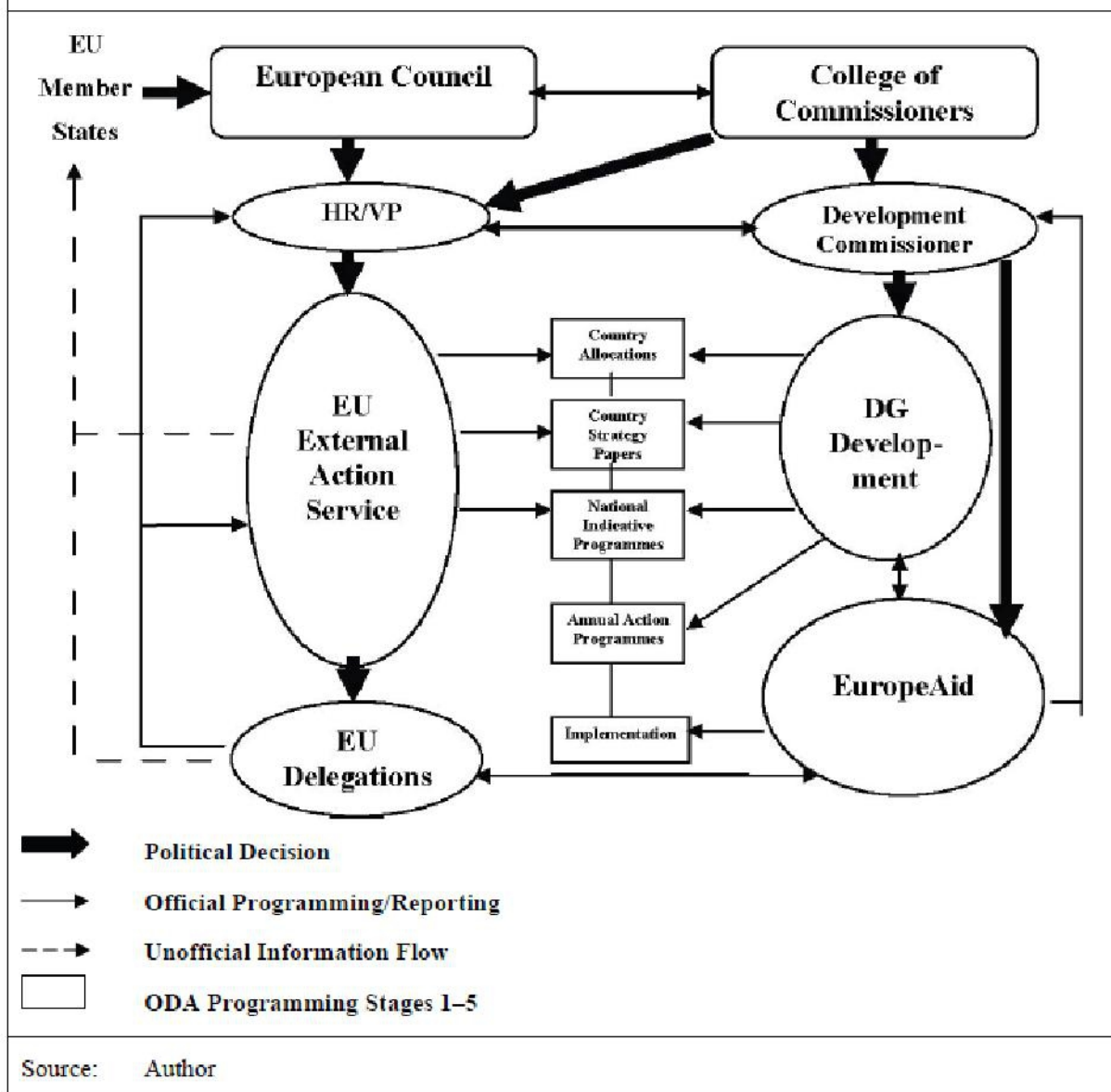
Finally, the illustration below illustrates the complicated and overlapping process of EU development policy-making after Lisbon.

304 Cf. Horký 2012: 72

305 Cf. Furness 2010: 1f

306 Cf. Gavas 2010

Figure 1: EU development policymaking under the Lisbon Treaty



*Illustration 5: EU development policymaking under the Lisbon Treaty.*Source: Furness 2010: 14

5.4.1 Freedom of expression in EU development cooperation

With regard to the objective of human rights protection in EU development cooperation policies, the EU Annual Report on the implementation of development and external assistance policies in 2012³⁰⁷ states: “[...] the EU continued to use its

³⁰⁷ The European Commission's report of 2013 on the implementation of the respective policies in 2012 is the most current one available up to now.

range of external instruments to promote and protect human rights and good governance [...].”³⁰⁸ According to the report, top priority was put on the support of civil society, in particular through the financing instrument European Instrument for Democracy and Human Rights (EIDHR)³⁰⁹. Moreover, the report contains a chapter on the issue of freedom of expression and media support in which the Union's political commitment to protect freedom of expression in EU development cooperation is stated:

“Freedom of expression and opinion as well as a free, independent and plural media are important pillars of the Commission’s democracy support around the world. The EU has a long track record of providing support to independent media as well as capacity building for journalists which to a large extent has been financed by the EIDHR.”³¹⁰

However, no substantive information on the implementation of projects on freedom of expression is provided in the report. As mentioned above, the EIDHR appears to be the main external financing instrument used for the promotion and protection of freedom of expression within EU development cooperation. This aspect is also acknowledged in the EU Guidelines on Human Rights Defenders, which stipulate that the EIDHR shall assist in particular in: “[...] the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries [...]”.³¹¹

In the course of the interviews it could further be identified that EU development cooperation actions in the field of freedom of expression are sometimes based on the systemic confusion between the right to freedom of expression and interrelated aspects of communication. An employee of the European Commission explains in this respect:

“[...] [T]here is very often a confusion between freedom of expression, media support, I mean press freedom related sort of governance, and what we call external relation support seeing media rather as a vehicle for the promotion of European development cooperation, which is not really what freedom of expression is. Or it is mixed with ideas of

308 European Commission 2013: 22

309 Cf. European Commission 2013: 22

310 European Commission 2013: 142

311 European Union 2008: 10

communication for development where again communication is used as a vehicle for other aims.”³¹²

It can further be concluded that the interrelations of freedom of expression with concepts on democracy, governance, press freedom and the media³¹³ make it arguably necessary to treat freedom of expression in a comprehensive manner to allow for the full enjoyment of this right. Within the EU, this appears to be particularly challenging as competences and responsibilities in the field of human rights protection are shared by various actors. Therefore, conceptual differences exist between “foreign policy” and “development cooperation” tasks. However, human rights do not follow the organisational logic of the European Union: “[...] [Y]ou can't really separate out and say that freedom of expression is just a foreign policy area; it is also a development cooperation area because development cooperation is political.”³¹⁴

5.4.2 Concluding remarks on human rights in EU development cooperation

On the basis of the examination of EU documents and statements, it may be concluded that EU discourses on external human rights protection, democracy support and development cooperation are closely interrelated and that these discursive interconnections have been strengthened over time. However, it has also been found that there are individual EU development and foreign policy actors following diverging opinions in particular regarding the question which role the EU should take at the global level in the field of development³¹⁵. Therefore, the EU development discourse does not appear to be very stable but seems subject to actions and interests of individual EU actors.

It remains highly debatable whether the increasing politicisation of EU development cooperation through the conditioning of assistance on certain values and principles is

312 See Transcript A: 165

313 See Transcript A: 168

314 See Transcript A: 173

315 Cf. Orbie 2012: 28

enhancing the effectiveness of EU actions on human rights protection and democracy support in practice³¹⁶. In this respect, the gap between EU discourses and policies on human rights and their practical implementation is arguably one of the greatest challenges³¹⁷.

Finally, it shall be mentioned that integration theories might provide a useful tool to further examine the ideological determinants on which the EU development policy is based on. The theories assume that the European Union's own history and its internal integration dynamics shape its external actions considerably³¹⁸: “[...] EU development policy is categorized as an aspect of Europe’s broader role as an emerging international actor and is addressed within the wider context of Europe’s integration process.”³¹⁹ Therefore, integration theories might be an adequate framework to further analyse the Union's relationship with “developing countries”³²⁰.

5.5 Freedom of expression: a priority of EU external human rights protection

The first section of this thesis has shown that individuals who pose critical content on the Internet increasingly face repressions, imprisonment and violence or respective threats. In this chapter it will be argued that the European Union has responded to this alarming trend and has constructed freedom of expression online and offline a priority of EU external human rights protection policies in several fields of action. This conclusion can mainly be drawn from the identification of patterns of explanation and the accumulation of EU statements and policies of the same content and meaning on freedom of expression online. Moreover, it will be argued that EU action on freedom of expression online is closely related to the support of human rights defenders who speak up for their own rights as well as for the rights of others. In the following part of this chapter, various EU text genres on freedom of expression online will be examined to support this argumentation. However, this is not an exhaustive analysis

316 Cf. Holland/Doidge 2012: 129

317 See Transcript A: 167

318 Cf. Holland/Doidge 2012: 27

319 Holland/Doidge 2012: 1

320 Cf. Holland/Doidge 2012: 36

of relevant material; the author has selected the most relevant statements which represent the main findings adequately.

First, selected EU foreign policy documents which accurately point out the position of EU actors on freedom of expression online will be analysed. Secondly, selected political speeches and statements of EU representatives which are of high relevance with regard to the topic will be studied. Then the interrelation between the support of free speech and of human rights defenders under EU foreign policy will be examined. Finally, the analysis of interviews with employees of the European Commission and the European External Action Service are presented to illustrate that freedom of expression online is perceived as a priority of EU human rights protection by specific EU actors working in this field of action.

At this point it shall be anticipated that during the research various institutional EU actors involved in the shaping of EU human rights policies and their implementation were identified. To some extent these actors follow partly dissenting opinions with regard to specific questions and policy objectives. Nevertheless, it might be justified for the purpose of this analysis to assume for now that the EU is a single, supranational actor with legal personality entitled to legal representation. Therefore, individual EU actors such as the EU High Representative and other actors acting within their fields of competence can issue statements and proclaim commitments which can be legally attributed to the EU. From this point of view, it appears justifiable to qualify patterns of explanation of individual EU foreign policy actors' elements of EU foreign policy discourses. However, the usefulness of this assumption and the construction of the EU as a single actor will be put into perspective at a later point of this thesis.

Finally, it shall be mentioned that the theoretical examination of EU foreign policy documents, policies and statements below is not intended to draw any conclusions on the practical relevance and implementation of the proclaimed commitments. Rather, it is an attempt to identify EU actors' discursive patterns and statements on freedom of expression online.

5.5.1 Freedom of expression online in EU foreign policy documents

Freedom of expression online is explicitly referred to in several EU foreign policy documents. In 2012, the Council of the European Union adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy. Within this document, freedom of expression online is referred to as EU priority on human rights. It states: “The EU will continue to promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights.”³²¹ This citation highlights the conceptual interrelation between democracy and human rights, whereat the EU avoids giving a clear definition of democracy in this document.

According to the Action Plan, EU action shall focus on four major objectives regarding freedom of expression online and offline. The first aim is to “[...] [d]evelop new public Guidelines on freedom of expression online and offline, including the protection of bloggers and journalists [...]”³²² by the end of 2013. The second goal focuses on the improvement of Internet access and openness, on the fight against censorship and mass surveillance and on the empowerment of stakeholders to use ICTs to promote human rights. The third objective obliges EU actors to take a human rights based approach on cyber security and cyber crime policies. Fourthly, the Action Plan provides for the possibility to impose export restrictions in cases of violations of freedom of expression.³²³

Freedom of expression online is briefly referred to in the EU Annual Report on the implementation of EU development and external assistance policies in 2012. Within the Report, freedom of expression is the only human right on which a short implementation report is provided. According to the Report, EU measures to protect freedom of expression online included projects on cyber-censorship, the protection of the confidentiality of activists, the improvement of Internet access, the support of bloggers and journalists in Syria and projects on freedom of expression online in Yemen³²⁴. The Report outlines further that most of the projects on freedom of

321 Council of the European Union 2012: 2

322 Council of the European Union 2012: 19

323 Cf. Council of the European Union 2012: 19

324 Cf. European Commission 2013: 22, 142f

expression online and offline were financed under the budget of the European Instrument for Democracy and Human Rights, which will be analysed in more detail in the last section of this thesis³²⁵.

Freedom of expression online is also paid attention to in the European Union's Cybersecurity Strategy which was adopted in 2013 and states as follows: "In countries outside the EU, governments may also misuse cyberspace for surveillance and control over their own citizens. The EU can counter this situation by promoting freedom online and ensuring respect of fundamental rights online."³²⁶ This citation highlights the constructed separation between EU actors and non-EU actors with regard to possible violations of freedom of expression online; it is assumed that EU Member States comply with EU human rights law and that freedom of expression online is fully realised and not violated within the EU. However, with regard to non-EU countries, it is assumed that government authorities might misuse the Internet to violate freedom of expression online.

With regard to the Union's external relations, the Cybersecurity Strategy further determines that: "[...] the EU will seek to promote openness and freedom of the Internet, encourage efforts to develop norms of behaviour and apply existing international laws in cyberspace."³²⁷ In this context it should be repeated that the EU Charter of Fundamental Rights allows itself for restrictions and limitations of freedom of expression online as already discussed above. Consequently, the EU assumes that certain restrictions of freedom of expression online (which are considered legitimate under EU human rights law) do not violate the freedom of the Internet. Thus it appears that the EU defines freedom of the Internet according to EU standards and laws, whether promoted inside or outside the EU.

As mentioned above, all types and kinds of expressions are protected under the right to freedom of expression. However, when analysing EU foreign policy documents on human rights, it appears that EU foreign policy objectives on freedom of expression online focus on the protection of critical political speech. In this respect, the

325 Cf. European Commission 2013: 142

326 European Commission/ High Representative of the Union for Foreign Affairs and Security Policy: 3

327 European Commission/ High Representative of the Union for Foreign Affairs and Security Policy: 15

promotion of free, critical speech on the Internet in authoritarian regimes appears to be of particular relevance to counteract violations from a conceptual point of view. This assumption is also reflected in the EU Strategic Framework and Action Plan on Human Rights and Democracy which states in this respect: “Modern information and communications technologies, while facilitating the free exchange of information between individuals, have also massively increased the coercive power of authoritarian states.”³²⁸

Again, the EU acknowledges the potential negative effects of the Internet on freedom of expression only with regard to third countries in which a higher risk of violations and misuse is perceived. It might be arguable that the EU qualifies authoritarian states as “developing countries”; as a consequence this qualification provides subsequently the legal basis for EU development cooperation measures such as EU actions financed under the European Instrument for Democracy and Human Rights.

5.5.2 Freedom of expression online in declarations of EU representatives

At the 19th session of the Human Rights Council in March 2012, EU representatives issued an official declaration ('EU intervention') in which the importance of the work of online activists in social protest was highlighted: “Current events in the Middle East and North Africa, but also in other regions have also underlined the importance of the work carried out by the broader family of bloggers and media workers.”³²⁹

Three months later, the EU participated in the interactive dialogue with the United Nations Special Rapporteur on Freedom of Expression at the 20th session of the United Nations Human Rights Council in June 2012. The EU statement issued read as follows:

“The EU continues to be gravely concerned about the increasing risks against individuals who disseminate information via the Internet, as well as the harassment of online journalists and bloggers. We agree with you that those who publish online

³²⁸ Council of the European Union 2012

³²⁹ Check against delivery; European Union – Permanent Delegation to the United Nations Office and other international organisations in Geneva 2012

should be afforded the same protection under international human rights law as those who publish offline.”³³⁰

The statement set out the EU's position on online journalists, namely that they deserve the same protection as conventional writers. This is also an affirmation of the EU's proclaimed position that freedom of expression also applies online.

In the second statement the EU shared the Special Rapporteur's concern that violations of freedom of expression increasingly take place outside armed conflicts: “[...] the majority of attacks against journalists take place outside of armed conflict situations, especially during coverage of street protests and demonstrations.”³³¹

Additionally, the EU declared that the strengthening of mechanisms to protect free speech online and the rights of online journalists requires context-specific approaches³³².

Declarations on freedom of expression online were repeatedly launched by EU representatives on various occasions and in the context of alleged violations of bloggers' rights. In September 2012, Ashton declared her serious concern over the harsh sentencing of three Vietnamese bloggers to numerous years of imprisonment; she called on the Vietnamese authorities to respect the right to freedom of expression according to international human rights standards to which Vietnam had signed up to and to release the three bloggers immediately³³³. Moreover, in November 2013, the High Representative expressed her deep concern over the death of an Iranian blogger who had died in custody. She further stated: “The EU remains deeply concerned by the Human Rights situation in Iran, and urges the Iranian authorities to halt the repression of bloggers and internet activists.”³³⁴

In June 2013, Catherine Ashton expressed her concerns about ongoing violations of freedom of expression online in her speech to the European Parliament on the

330 Check against delivery; European Union – Permanent Delegation to the United Nations Office and other international organisations in Geneva 2012a

331 European Union – Permanent Delegation to the United Nations Office and other international organisations in Geneva 2012a

332 European Union – Permanent Delegation to the United Nations Office and other international organisations in Geneva 2012a

333 Cf. European Union 2012

334 European Union 2012a

occasion of the presentation of the EU annual report on human rights in Strasbourg: “The increased violence against journalists and restrictions on press freedom in many countries - including our neighbours must be challenged. We condemn attacks on journalists and bloggers and are developing our own guidelines to use in our work in delegations and in our teams in Brussels.”³³⁵ The meaning of the word “neighbour” was not clarified in Ashton's speech.

Finally, in another statement issued by EU representatives to UN bodies, the EU highlighted the role of bloggers and other civil society actors to defend human rights and democratic standards, which indicates again the strong interrelation between discursive patterns on freedom of expression and democracy support:

“Civil society has a unique role to play in enforcing human rights standards across the world: the bloggers, the activists, the community organisers - who help to hold states accountable. But the space for civil society is being shrunk - both legislatively and through intimidation, and we need to ensure the creation of an environment conducive for a vibrant civil society that can defend human rights and democracy.”³³⁶

5.5.3 Freedom of expression online in interviews with EU staff

To further examine discursive patterns and statements on freedom of expression online and their reflection through individual EU foreign policy actors, statements of EU employees will now be added to the analysis.

In the interviews it appeared that the above discussed overall EU theoretic position and political commitment on freedom of expression online was largely reflected in the statements of individual EU actors. The interviewee of the EEAS affirmed that freedom of expression is considered a priority of external human rights protection by the EU: “So, there is a strong commitment, publicly advertised and formally approved by the Council of Ministers on the 25th of July³³⁷ that says this, that the EU considers freedom of expression a priority.”³³⁸ With regard to the implementation of this priority,

335 European Union 2013

336 European Union 2013a

337 The latter refers to the EU Strategic Framework and Action Plan on Human Rights and Democracy

338 See Transcript B: 175

the interviewee added: “So, I think it's clear that it is a priority, that there is a political willingness to do something. But I think we still need time.”³³⁹

The latter already indicates a gap between the theoretic positioning and the political commitment on the one side and the actual implementation of these statements on the other side.

Also the interviewee of the Commission's Directorate-General on Development and Cooperation affirmed that freedom of expression together with freedom of association are the two most important aspects of EU human rights support with regard to EU external human rights support: “[...] [W]hen it comes to beneficiaries in the countries that are really difficult, two things are really important: freedom of expression and freedom of association. For human rights defenders and human rights organisations this is the minimum to survive and operate.”³⁴⁰

This citation highlights the systemic focus of EU human rights support on specific civil and political rights, including freedom of expression, and indicates that the realisation of these rights is considered a priority of the EU.

Moreover, the EEAS-employee affirmed the EU's above discussed statements on the applicability of existing human rights law on freedom of expression on the Internet:

“There is no need of creating new legislation. There is a need to increase awareness of the ways of implementing this legislation online. [...] I think that all the rules that apply offline should apply online. And this is the position of the European Union. What you need to do is to maybe develop tools that enable authorities, judiciary, legislators to better understand what are the challenges of the communication online. But the rules are the same.”³⁴¹

In the interview, it further appeared that the overall consensus on freedom of expression online might be compromised by dissenting views of individual EU Member States on conflicting interests and the need to balance freedom of expression online with other interests in specific cases: “If you ask me about a more specific thing, copyright issues, denial of Holocaust, hate speech legislation, I may

339 See Transcript B: 181

340 See Transcript A: 168

341 See Transcript B: 180

say there can be deviating opinions. When you ask me about freedom of expression in general or the need of protecting it online as we do offline, I think there is a common understanding.”³⁴²

On the basis of the interviews, it could be identified that definitions on freedom of expression might vary with regard to different EU actors and that the visibility of EU actions to protect freedom of expression online depends on the “labelling” of these actions: “[...] [F]reedom of expression actually applies, if you look at it, to everything that concerns human rights, because it's a value. But it may not be labelled as such in the actual statistics. [...] So it depends on how you frame it.”³⁴³

Moreover, there are different standards between individual EU Member States on the national level of protection of freedom of expression online and in national regulations of ICT operations. It can arguably be assumed that these differences might influence the implementation of EU objectives on freedom of expression online in third countries in practice:

“I think we have common grounds for the big principles but of course there are problems with particular cases. And as you know there is not a harmonised legislation on the things dealing with online issues in all countries. We are still very divided.”³⁴⁴

Additionally, the conclusion can be drawn that different positions on cases of freedom of expression online do not only exist between individual EU Member States but also between EU institutions and individual EU employees. This aspect was emphasised by an interviewee of the Commission who stated in this respect: “You need to make a distinction between the EU and the Commission because these are two separate things.”³⁴⁵

One reason for diverging opinions of individual EU actors on specific cases of freedom of expression online might arguably be related to the allocation of competences between individual actors. Therefore, individual actors might not follow the same objectives and legal procedures with regard to their fields of policy. For

342 See Transcript B: 184

343 See Transcript A: 167

344 See Transcript B: 184

345 See Transcript A: 172

example the legal rules and procedures of the “human rights protection scheme”³⁴⁶ and of some immigration issues might vary³⁴⁷. At the same time, human rights and other fields of EU (foreign) policy cannot easily be separated from each other in practice.

The interviewee also highlighted that the Commission itself is guided by different principles and partly heterogeneous objectives: “Most of the Commission is actually about internal EU. DG DEVCO³⁴⁸ is just a really small part that deals with the external, so we are much more linked to the External Action Service but we sit in the Commission.”³⁴⁹ Also this aspect might arguably lead to diverging opinions on cases of freedom of expression online in practice. This problematic was illustrated by an employee of the Commission who declared that the funding of specific human rights projects had provoked internal criticism in the past: “The average remark is 'if you fund this, we will have problems in the political dialogue with this country'.”³⁵⁰ Apparently, there are qualitative difference concerning the awareness about human rights and the willingness to implement them in EU foreign policies between employees of EU institutions dealing with human rights by mandate, such as DG DEVCO, and others³⁵¹.

Finally, on the basis of the interviews it can be said that dissenting views and positions between individual EU actors on specific cases of freedom of expression online appear to be taken in particular when human rights touch upon the area of national security. This aspect is illustrated by a statement of an employee of the Commission on the current issue of Edward Snowden: “This area touches about so many other areas, which makes it difficult to distinct if he is purely a human rights defenders or what about also national security.”³⁵²

346 Transcript A: 170

347 See Transcript A: 170

348 Referring to the Commission's Directorate-General Development and Cooperation – EuropeAid (DG DEVCO) which is in charge of the designing and implementation of the Union's development cooperation.

349 See Transcript A: 174

350 See Transcript A: 174

351 See Transcript A: 168

352 See Transcript A: 173

5.5.4 Freedom of expression and human rights defenders

In the course of research it appeared that statements and patterns of EU actors on freedom of expression and on human rights defenders are often interrelated or even interfused. It has been argued that freedom of expression online and offline is a conceptual priority of EU external human rights protection. On the basis of selected EU statements, it will now be argued that the support of human rights defenders is closely related to this objective.

The European Union defines human rights defenders in accordance with Article 1 of the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* which reads as follows:

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”³⁵³

In 2008, the EU adopted revised Guidelines on Human Rights Defenders which are envisaged to serve as a practical tool to enhance respective EU foreign policy action³⁵⁴. In the Guidelines, typical activities of human rights defenders are outlined: documenting human rights violations; seeking remedies for victims of such violations; combating impunity of violators; and mainstreaming human rights and information on human rights defenders³⁵⁵. The Guidelines further point out that these activities often include the expression of critical views on public authorities and their practices and that human rights defenders increasingly face attacks and violations of their own rights in many countries of the world³⁵⁶. Consequently, it is assumed that freedom of expression is a precondition for the work of human rights defenders.

According to the document, the overall objective of the Guidelines is to create a safe and enabling environment for human rights defenders whose work is considered

353 Art. 1 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. A/RES/53/144.

354 Cf. European Union 2008: 1

355 Cf. European Union 2008: 3

356 Cf. European Union 2008: 3

indispensable to the functioning of democracy and the implementation of human rights. In this respect, intimidations and attacks of government forces as well as of non-state actors are within the scope of this objective: “The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-State actors.”³⁵⁷

In the EU Strategic Framework and Action Plan on Human Rights and Democracy, the effective support of human rights defenders is defined as a thematic EU priority on human rights. In the document, the EU further commits itself to increasing its political and financial support to human rights defenders and to making it more flexible and accessible. Moreover, the Action Plan foresees the development of shelter programmes for human rights defenders, to improve their access to adequate protection mechanisms and to better promote the EU human rights focal points which shall serve as a first contact point for individuals in need of protection.³⁵⁸

In 2010, the European Parliament adopted a resolution on EU policies in favour of human rights defenders³⁵⁹. In the resolution, the European Parliament acknowledged the crucial role human rights defenders play with regard to the protection of human rights standards. Moreover, the interconnection between the work of human rights defenders and freedom of expression online and offline is highlighted: “[the European Parliament] [e]mphasises the importance of freedom of speech and the role of the media, both online and offline, as an enabler for human rights defenders [...]”³⁶⁰ Moreover, the Parliament acknowledges in the resolution that actors who defend civil and political rights such as freedom of expression are most likely exposed to attacks and violations of their own rights.³⁶¹

³⁵⁷ European Union 2008: 7

³⁵⁸ Cf. Council of the European Union 2012: 3, 15

³⁵⁹ European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)) , P7_TA(2010)0226

³⁶⁰ See (14) of European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)) , P7_TA(2010)0226

³⁶¹ See (C), (K), (L) of European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)) , P7_TA(2010)0226

It has to be repeated that the exercise of freedom of expression is not necessarily related to the defence of human rights. Therefore, not all online activists are automatically human rights defenders, nevertheless are their rights to freedom of expression are entitled to protection. However, according to an employee of the EEAS, EU support to human rights defenders follows its own methods and procedures: “If you are a blogger that is not a human rights defender, meaning that you are a blogger that is doing other things, I mean your right to freedom of expression does not have to be linked all the time to human rights, then there are other methods.”³⁶² The consequences of the qualification of an activist as human rights defender in the context of EU external human rights support measures will be further discussed in the last section of this thesis.

Finally, also from a practical point of view, the interrelations between freedom of expression online, media freedom and human rights defenders appear to justify the conceptual interconnections between respective EU concepts. This aspect was further illustrated in an interview with an employee of the European Commission working in the field of freedom of expression:

“When it comes to freedom of expression, there are certain individuals that need to be protected because they are so visible. That visible person becomes almost like a public platform in her- or himself. And these platforms are online very much, but they are also offline which is why we keep saying online and offline. So, the separation between Internet freedom and freedom of expression in general and media freedom is not very conducive for the issue because it is all connected. So in terms of rolling it out in practice, you can't separate human rights defenders from these platforms; you need both.”³⁶³

5.6 *Interim conclusion*

As argued in this section, human rights protection provisions and policies have been integrated gradually into the European Union's framework. On the basis of the examination of the above EU documents and statements, human rights may be seen as elements of discursive patterns and statements of EU foreign policy actors, at

³⁶² See Transcript B: 176

³⁶³ See Transcript A: 168f

least from a theoretical point of view. Furthermore, the conceptual interrelations between EU policies on human rights, democracy support and development cooperation as well as between EU policies on freedom of expression and on the support of human rights defenders were shown.

It has further been argued that recurrent patterns and statements conceptualise freedom of expression as a priority of EU external human rights policies. In this respect, the Internet is considered a new, additional battlefield of expressions; therefore the protection of human rights in the online sphere is considered to be a new layer of EU policies on human rights protection. The growing importance of the issue of freedom of expression online was further highlighted when the European External Action Service for the first time launched a public consultation for the drafting of EU Guidelines on freedom of expression online and offline: numerous contributions were received from actors all over the world, including civil society, private companies and associations of profession³⁶⁴. However, the global reach of this issue is arguably also a big challenge to the effective implementation of EU policies on freedom of expression online in practice. An EEAS employee noted in this respect: “I mean the greatest challenge is that this is worldwide, freedom of expression is a priority worldwide. So, it's very difficult to manage.”³⁶⁵

It has further been shown that in its statements on freedom of expression online the EU focuses on critical political speech and on countries where human rights are considered to be most at risk. In this regard, definitions of violations of freedom of expression and of the 'most at risk'-principle are not always transparent and appear to be made on a case-by-case approach by EU foreign policy actors.

Moreover it could be identified that various individual EU foreign policy actors are involved in the shaping and implementation of EU foreign policies including policies on human rights. These are mainly the European Commission (and individual departments and actors within the Commission) and its Delegations, the European External Action Service, the European Parliament, the High Representative of the Union for Foreign Affairs and Security and representatives of individual EU Member

³⁶⁴ See Transcript B: 180, 182

³⁶⁵ See Transcript B: 183

States. Because of partly diverging interests of these actors, it is hazardous and arguably not useful to assume a coherent framework of EU human rights protection and in further consequence the existence of a stable EU foreign policy discourse on human rights. It is thus reasonable to focus on individual EU foreign policy actors or on a specific tool to further analyse the relevance of freedom of expression online in EU external relations with third countries. Therefore, the author will focus on a specific EU foreign policy instrument in the last section of this thesis.

Finally, the reader shall be reminded that the above conclusions and observations are based on the examination of EU policy documents, treaty provisions, resolutions, political speeches, declarations and interviews of EU officials. It was not intended to evaluate the practical implementation of the aforementioned EU political commitments, patterns of explanation and statements on freedom of expression online. EU documents and statements have been examined from a theoretical point of view to identify discursive patterns on freedom of expression online which may form part of EU foreign policy discourses.

6 The European Instrument for Democracy and Human Rights

6.1 Outline of the chapter

The last section of this thesis focuses on the examination of the European Instrument for Democracy and Human Rights (EIDHR) and how it can function as a tool to protect freedom of expression online in EU foreign policy in practice. Due to its singularity and flexibility, the EIDHR is claimed to have provided most for the protection of freedom of expression online in third countries on the ground.

First, a short overview over specific EU foreign policy instruments which may serve as tools to implement the EU's political commitments to protect freedom of expression online will be given. In this respect, the focus will be on EU external relations with third countries rather than on EU action at the multilateral level. Thereupon, the European Instrument for Democracy and Human Rights will be analysed in more detail. The EIDHR is an operational EU development cooperation instrument on democracy and human rights, managed predominantly by the European Commission. Its conceptual focus lies on the support of individuals and civil society organisations.

The analysis is mainly based on three different sources of information. First, EU legal regulations and foreign policy documents have been evaluated to determine the conceptual relevance of freedom of expression online within the framework of the EIDHR. Secondly, two studies carried out by independent institutions to evaluate specific areas of EU support under the EIDHR scheme have been examined to study the functioning and the limitations of the instrument. And thirdly, interviews with employees of EU institutions and with NGOs who work in the field of freedom of expression and whose projects are partly funded under the EIDHR budget were conducted to acquire additional information and to further analyse specific patterns of explanation.

The first study on the EIDHR mentioned above was instructed by the European Commission and conducted by the consultancy and technical assistance company SOFRECO: *Evaluation and recommendations on EIDHR support to Human Rights Defenders*. In the study, eleven projects funded under the EIDHR budget have been examined. The study was directed by Abigail Hansen and carried out between January and March 2010.³⁶⁶ The researcher described the purpose of the study as follows:

“The global objective of the evaluation was to provide the EC [European Commission] with an assessment of the quality of the actions financed under the EIDHR in support of HRDs [Human Rights Defenders] from October 2008 to February 2010, with recommendations on how to improve this support in order to better respond to future needs for protection of HRDs .”³⁶⁷

The second study was instructed by the European Commission to provide an overview of existing shelter programmes. These programmes were established to give shelter to human rights defenders in urgent need of protection and temporary relocation.³⁶⁸ The study was carried out between June and October 2011 and was conducted by Nicolaj Sønderbye, an external consultant and human rights expert from the institute GHK Consulting Ltd³⁶⁹.

The strong conceptual interrelations between EU human rights policies on freedom of expression and human rights defenders were already examined above. In this section, it will be explained in more detail why the EU human rights defender support schemes is also relevant for freedom of expression online.

At this point, it shall be reiterated that not all people who express themselves online or offline are human rights defenders nor are their expressions necessarily political. However, EU action³⁷⁰ to promote and protect individuals' rights to freedom of expression online in its external relations focuses, arguably because of its practical

366 Cf. Hansen 2010: 9

367 Hansen 2010: 9

368 Cf. Sønderbye 2012: 1

369 Cf. Sønderbye 2012: 4

370 In this respect, a distinction has to be made between EU actions on an institutional, broader political level - such as in multilateral fora - and direct EU external human rights support to individuals in need of protection. As outlined above, the focus of this examination lies on the latter.

relevance, on political expressions³⁷¹ including allegations on human rights violations committed by public authorities. Therefore, the last part of this section focuses on the measures of direct support to civil society actors who express their political opinions online.

In the course of the research, expert interviews were conducted with employees of the European Commission and the European External Action Service and also with representatives of the NGOs *Reporters Without Borders* and *Front Line Defenders*³⁷². The first interview was conducted with Susan Bauman³⁷³ and Viktor Frieman³⁷⁴ from the European Commission's *Directorate-General for Development and Cooperation (DG DEVCO), Unit B1: Governance, democracy, gender and human rights, European Instrument for Democracy and Human Rights*. Bauman is, besides others, in charge of the topic of freedom of expression within DG DEVCO. Frieman is part of the Commission's management team of the European Instrument for Democracy and Human Rights. Furthermore, the author interviewed Sandra Rice who works as a *Policy Officer for Human Rights Policy Instruments and Bilateral Cooperation* in the European External Action Service and is, besides others, in charge of freedom of expression in the Service.

Subsequently, Alexander Corti³⁷⁵ from *Front Line Defenders* and Paul Underberg³⁷⁶ from *Reporters Without Borders* were interviewed.

Reporters Without Borders works on the monitoring and assessing of attacks on press freedom worldwide, online or offline. Information is forwarded to authorities and to the public to raise awareness and to demand protection and support for individuals in need. Moreover, the organisation assists independent media outlets operating in particular dangerous and instable regions. Because of the growing use of online

371 Freedom of expression is not only valid with regard to political expressions. However, when it comes to the implementation of political commitments to protect freedom of expression, actions are arguably most urgently required with regard to political expressions in countries where human rights are violated by public authorities in a systematic manner.

372 The names of all interviewees have been changed on grounds of personal protection needs. Following, all names of interviewees used in this thesis are imaginary and do not relate to any real person.

373 See 372

374 See 372

375 See 372

376 See 372

media, *Reporters Without Borders* has established its own desk for Internet freedom.³⁷⁷

The work of *Front Line Defenders* is dedicated to the practical protection and support of human rights defenders at risk, whether they engage online or offline. The organisation defines human rights defenders as actors working in a non-violent way to defend any of the rights enshrined in the UN Universal Declaration of Human Rights. Measures of support range from physical security protection to training and awareness raising. Due to the increased use of the Internet by defenders, the organisation also focuses on online protection.³⁷⁸

6.2 EU foreign policy instruments to protect freedom of expression online

EU foreign policy actors have several instruments and tools at their disposal to protect freedom of expression online in third countries. Support measures are diverse in nature which was also highlighted by a statement of the High Representative in one of her speeches on human rights to the European Parliament: “On human rights, as in other areas, we need to pull together. [...] To make sure we make best use of all available instruments – from human rights dialogues to EU Guidelines, from the European Instrument for Democracy and Human Rights to our bilateral assistance and our actions in multilateral fora.”³⁷⁹

As mentioned above, this section focuses on direct support measures to individual civil society actors who express themselves online, mainly in a political way, and who therefore face repressions or attacks. The selection of this focus is based on the observation that rapid support actions are arguably most urgently needed in cases where individuals' rights to freedom of expression online are unduly restricted and violated in practice. Therefore, the focus of the examination below on the EIDHR is on individuals in need of protection due to their political expression online.

³⁷⁷ See en.rsf.org and Transcript D: 196

³⁷⁸ See www.frontlinedefenders.org

³⁷⁹ Ashton 2010a

EU action on the multilateral level will not be considered in this thesis. The latter focuses mainly on institutional capacities rather than on the direct support to individuals or civil society organisations. In this respect, the author wants to underline that the strengthening of institutional capacities and of the broader political framework is of equal importance to the effective protection of freedom of expression online. Susan Bauman from the European Commission explained the connection between institutional capacities and rights holders as follows:

“[I]t is a human right we are talking about, it is an individual human right, anybody's right to express oneself, everybody has the right to freedom of expression. [...] [B]ut if you really want to roll it out within the development cooperation [...] you need to start talking about the institutional capacities and the communications platforms really. If you are actually taking this up as a long term goal and if you want to have an effect on the capacity on the ground, you need to ensure an enabling environment and institutional capacity.”³⁸⁰

6.2.1 An overview of available instruments

Subsequently, an overview will be given over the arguably most important EU foreign policy instruments and methods used by the EU to protect freedom of expression online in practice. In this respect, it shall be noted that also other EU foreign policy instruments might have effects on the human rights situation of a third country on the ground (e.g. trade agreements). However, the examination below focuses on tools which are “labelled” by the EU as human rights protection tools. Specific examples will be given in the course of the examination of the European Instrument for Democracy and Human Rights.

Monitoring

A precondition for human rights protection is certainly the monitoring of the human rights situation in a country in particular when human rights violations have already

380 See Transcript A: 168

occurred in the past or appear likely to occur in the near future. Monitoring was labeled by the EU as human rights protection tool in various policies.

In the EU Strategic Framework and Action Plan on Human Rights and Democracy, the development of Human Rights Country Strategies is mentioned, meaning that the human rights situations in third countries shall be analysed and thematic priorities of EU human rights support shall be defined³⁸¹. With regard to freedom of expression online, Rice from the European External Action Service explains:

“They are restricted documents³⁸² but all of them have a section on freedom of expression that will analyse freedom of expression on the ground. And for many countries in the world, freedom of expression is a priority. And in many of those, part of the priority would be freedom online.”³⁸³

As the Human Rights Country Strategies are restricted documents which are not available to the public, these claims cannot be examined further.

In the “No Disconnect Strategy”, the EU acknowledges the importance to monitor surveillance and censorship online in order to effectively protect freedom of expression on the Internet³⁸⁴. In general, monitoring mechanisms may include actively observing online communication fora and respective restrictions, the observance of trials (e.g. when actors who expressed themselves online face charges or are taken to court) and public events (e.g. to protest for freedom of expression and a free flow of information on the Internet) as well as to conduct meetings with civil society actors to get informed about possible violations of freedom of expression online. Sometimes, EU actors are contacted directly by individuals who want to raise awareness about violations. Rice from the EEAS explains in this respect: “Many times they are just raising awareness, they want us to be aware [...]”³⁸⁵

However, with regard to the personal and institutional capacities of EU delegations and other EU actors in third countries, it seems highly ambitious to claim that

381 Cf. Council of the European Union 2012: 3

382 In this context restricted means that the Human Rights Country Strategies are not publicly available and serve solely as internal EU documents.

383 See Transcript B: 179

384 Cf. European Commission 2011a

385 See Transcript B: 183

freedom of expression is an EU human rights priority in many third countries and the possibility to monitor its situation and to adequately react to respective violations. According to Rice, a feasibility study is currently undertaken to examine the costs and limitations of the establishment of a digital platform on freedom of expression online; the objective of the platform would be to assess if Internet disruptions are politically motivated: “The idea is that we would like to create some kind of mechanism that can help us to have on-time information about infringements to online freedom in the world.”³⁸⁶ Neither any information nor the outcome of the study have been available to the public so far. However, such a platform would presumably demand a sound scientific foundation to examine disruptions empirically, very well trained personnel, a high level of data protection with respect to the information contained and consequently also a lot of resources.

Political support

In the course of the research it became obvious that the specific form of support depends to a great extent on the individual EU foreign policy actor taking action. For the EEAS, political support is the main and arguably only instrument to protect freedom of expression online in third countries in practice. Rice from the EEAS explained in this respect: “There are lots of ways where the EU is trying to protect freedom of expression in a political way. What we do here, its policy.”³⁸⁷

The importance of political support was highlighted by all interviewees. Bauman from the European Commission explained that if the EU speaks out in favour of human rights activists or actions in third countries, this is already considered a tool of protection: “[...] the flag of the European Union is a form of protection.”³⁸⁸ She further added: “[...] [I]t is a political dialogue issue to a large extent. And we also know from a lot of freedom of expression communities who say it is not a lack of money that is the biggest challenge [...]. What they need is political backup.”³⁸⁹ This view was also shared by Frieman who explained that human rights defenders in the field mainly ask

386 See Transcript B: 178

387 See Transcript B: 175

388 See Transcript A: 166

389 See Transcript A: 167

for promoting their actions publicly, speaking out for their rights, and for delivering a supportive, consolidated message³⁹⁰.

Political support of people who face threats or attacks because of their expressions online may include public or confidential EU actions. Public support is mainly provided to prevent violations and to raise the costs of violations of freedom of expression online³⁹¹. Examples of public support measures are observations of trials (e.g. if online journalists face charges to target their online expressions) and public events (e.g. demonstrations in protest against Internet disruption), visits or attempts to visit online activists who are detained as well as other forms of visible contact or recognition to enhance the legitimacy of activists' actions (e.g. organisation of events to compliment people for their work). Very rarely, physical accompaniment is a form of EU support provided on the local level if there are immediate threats to the personal security of activists; this practice is not explicitly mentioned in EU policy documents but has been reported³⁹².

However, the probably most frequently used forms of public EU support are statements to condemn violations or to highlight potential threats to freedom of expression online. Statements can be coordinated by EU Delegations locally or at headquarter level (including statements of the High Representative or her spokesperson and the EU Special Representative for Human Rights). Local statements are generally issued in the context of urgent protection needs whereas EU statements target mainly systematic issues. Additionally, more informal statements can be made through speeches by EU representatives for example at public events.³⁹³

Two examples of public statements of EU officials are provided above in the context of the sentencing of bloggers in Vietnam and the death of an Iranian blogger. With regard to the first, the spokesperson of the EU High Representative stated:

“The EU recalls the fundamental right of all persons to hold and freely express their opinions in a peaceful manner [...]. The sentences in this case appear to be particularly

390 See Transcript A: 168

391 Cf. Collier 2013: 11

392 Cf. Collier 2013: XI, 5-17

393 Cf. Collier 2013: X, 7-9

severe. While expressing goodwill and her appreciation of the increasingly positive EU-Vietnam partnership, the High Representative calls on Vietnam to respect its international obligations and to release the convicted bloggers immediately.”³⁹⁴

Due to Rice, the EEAS is alerted mainly by the EU Delegations on possible violations of freedom of expression online in third countries. “Every time that we consider that there is a violation of freedom of expression, a blogger goes to jail for his or her activity online, human rights activists are prosecuted or persecuted, intimidated, harassed: there is the option of the public statement.”³⁹⁵ It might be important to highlight the term “option” as EU statements are issued comparatively rarely with regard to ongoing violations of freedom of expression online worldwide.

However, in cases where public statements might put at risk individuals in need of protection, representatives of EU Delegations and EU Member States missions might conduct private démarches to raise cases with authorities confidentially. According to Rice, démarches take more time than statements as their coordination process is more complex³⁹⁶. In this context she further explained:

“Many times, we don't have the option of the public statement because that would put in danger the person we are trying to protect, so we use private démarches. [...] We do a demarche when the situation on the ground does not allow for a public statement or maybe sometimes we are trying to protect someone that does not want to get publicity and they ask us to do it on private base.”³⁹⁷

Additionally, EU representatives at a higher political level (e.g. members of the Commission, the High Representative) might raise individual cases but also structural problems in meetings with third countries' authorities. A more formalised form of confidential support are the EU human rights dialogues and consultations which are conducted with selected third countries on a more or less regular basis.³⁹⁸

Bauman from the Commission explained that human rights dialogues are sometimes even more important than the funding of individual projects to safeguard freedom of

394 European Union 2012

395 See Transcript B: 175

396 See Transcript B: 176

397 See Transcript B: 175f

398 Cf. Collier 2013: XII, 18, 21

expression online³⁹⁹. Unfortunately, human rights dialogues are confidential EU-internal proceedings disclosed to the public and thus not very transparent with regard to their content.

Finally, in cases when the EU decides not to take action, the EU can also provide support by connecting individuals in need of protection and EU partner organisations who might be able to support these actors⁴⁰⁰.

However, the question remains how effective public statements, private démarches, human rights dialogues and other forms of political support are to protect freedom of expression online. In this respect, Bauman pointed out that it is a great challenge to translate EU political support into all areas of EU external action in order to ensure a follow-up of political commitments⁴⁰¹. At least in the opinion of individual EU foreign policy actors, it is particularly important to make other EU institutions aware of human rights support provided by individual EU actors to allow for an effective implementation in all areas of EU law⁴⁰². It is further unclear which sanction mechanisms are in place to counteract consistent violations of freedom of expression online by third countries governments and their lack of political willingness to comply with proclaimed EU-standards on freedom of expression online.

There is not just one answer to the above questions. Outcomes and effects of EU political human rights support appear to depend on various factors including the relationship and interests between the EU and the third country concerned, the individual EU actors involved, the consistency the political support is provided and its translation into other areas of EU foreign action, the actual measures taken and the network of civil society actors in a specific country. It seems justifiable to argue that political support is rather weak if used as a single tool and not in combination with other support mechanisms.

Awareness raising and technological tools

399 See Transcript A: 167

400 See Transcript A: 176

401 See Transcript A: 167

402 See Transcript B: 178

In March 2011, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy launched the Joint Communication on *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*⁴⁰³. With regard to electronic communications technologies, the Joint Communication states as follows: “In countries where the circulation of information is partially restricted such tools can greatly contribute to the democratisation of societies and the creation of public opinion through the promotion of freedom of expression.”⁴⁰⁴ It is moreover assumed that electronic communications technologies such as the Internet “greatly facilitated the wave of upheavals in the Mediterranean countries”⁴⁰⁵ - it should be briefly mentioned that these two statements illustrate the conceptual confusion between the Internet as a sphere of expressions and the idea that the Internet may have inherent democratic effects. Following this argumentation, the Commission subsequently announces the development of tools to circumvent arbitrary interferences and disruptions of the Internet. The latter shall be used by the EU to assist civil society actors in third countries where freedom of expression online is unduly restricted.⁴⁰⁶

Following, in December 2011, the Commission and the High Representative launched the “No Disconnect Strategy” to implement the above Joint Communication. This strategy is a political commitment to promote Internet freedom globally but in particular in authoritarian regimes. According to the Strategy, its overall objective is to promote and protect: “[...] Internet freedom and democracy in countries where Europe perceives that a vibrant and open Internet is not the norm or where grave human rights abuses take place.”⁴⁰⁷

In order to do so, specific measures and tools are referred to in the Strategy to protect freedom of expression online. First, the Strategy foresees the implementation

403 According to the document, the Joint Communication has been launched to address the consequences of the events of the Arab Spring: cf. European Commission/High Representative for the Union for Foreign Affairs and Security Policy 2011: 3

404 European Commission/High Representative for the Union for Foreign Affairs and Security Policy 2011: 10

405 European Commission/High Representative for the Union for Foreign Affairs and Security Policy 2011: 10

406 Cf. European Commission/High Representative for the Union for Foreign Affairs and Security Policy 2011:11

407 European Commission 2011a

of awareness raising activities and educational measures to inform civil society actors about the risks of information and communications technologies such as surveillance or censorship. Secondly and in line with the above mentioned Joint Communication, the Strategy includes the objective to develop technological tools to provide for a free flow of information and to assist civil society actors to ensure their privacy and security online.⁴⁰⁸

Such measures may include trainings of civil society actors on digital security and data protection in which the handling of specific tools such as to encrypt messages and to store data securely is discussed and actively trained⁴⁰⁹. Moreover, the EU might provide respective open source software and ongoing consultancy to activists⁴¹⁰. Another example would be the development of safe ways to host critical content and the development of techniques and knowledge to give access to this information⁴¹¹.

Furthermore, the objective to develop measures and tools to provide for a safe access to the Internet and to address indiscriminate censorship and mass surveillance of information and communications technologies is further defined in the EU Action Plan on Human Rights and Democracy⁴¹².

The above discussed technological tools and the training on them are generally not implemented by EU foreign policy actors themselves but through partner organisations whose activities are mainly financed under the budget of the EIDHR (see next chapter).

Operational guidelines on freedom of expression online and offline

According to Action 24 of the EU Action Plan on Human Rights and Democracy, the EU decided to develop new public Guidelines on freedom of expression online and offline (including the protection of bloggers and journalists)⁴¹³. EU human rights Guidelines are foreign policy tool which are supposed to enhance the protection of

408 Cf. European Commission 2011a

409 See Transcript A: 169, Transcript B: 177

410 See Transcript C: 187

411 See Transcript D: 197

412 Cf. Council of the European Union 2012: 19 (Action 24b)

413 Cf. Council of the European Union 2012: 19 (Action 24a)

human rights in third countries whereas their role within the EU is not so clear⁴¹⁴. In the opinion of the EEAS-employee Rice, the new Guidelines will be one of the most effective and important instruments to protect this right on the ground; due to their practical orientation, they shall help EU officials who are not necessarily experienced in human rights protection to address accurate challenges with regard to freedom of expression online in third countries⁴¹⁵:

“So, what the Guidelines do is, first, they try to explain what is freedom of expression according to international standards. Then they try to explain which are the most common violations of this right, so, they try to explain from jamming to lack of privacy, to killing of journalists, they cover everything. And then they provide you with a set of actions that the EU is ready to do and the tools with whom they have to do them.”⁴¹⁶

Furthermore, Rice is of the opinion that the Guidelines will help the EU to reach a consolidate message on freedom of expression online. As formal negotiations on the Guidelines have not yet started, it is impossible to say if such a clear common position already exists⁴¹⁷:

“First, there is a need of a strong common position. Right now we only have the Cyber Security Strategy which mentions human rights but it's not an in depth document on that kind of protection. I think the first step towards having a real policy statement on it is to get agreement on the draft Guidelines.”⁴¹⁸

It is hard to predict which practical relevance the new Guidelines will finally have on the protection of freedom of expression online in practice. Corti from *Front Line Defenders* explains that EU Human Rights Guidelines are useful reference documents but that their practical implementation remains a great challenge. With regard to already existing EU Guidelines on Human Rights Defenders he notes:

“The challenge is, as always, the implementation. [...] I can tell you that we sent last year 150 cases to the EU [...]; we got 70% of responses and out of the 150, [...] the EU for 48% of the cases raised, the EU has taken action in line with the EU Guidelines [...].”⁴¹⁹

414 Cf. Horsley 2013: 147

415 See Transcript B: 175

416 See Transcript B: 179f

417 See Transcript B: 179f

418 See Transcript B: 179

419 Transcript C: 192

Sanctions and export restrictions

Sanctions and export restrictions can be applied to indirectly protect freedom of expression online in third countries. Human rights clauses in EU trade and partnership agreements with third countries, may allow suspending trading relations or financial aid if human rights are violated in a severe and systematic manner in the partner country. Sanctions are arguably the most punitive way to counteract human rights violations. Therefore, they require the consent of all EU Member States which is why sanctions are hardly imposed in practice.⁴²⁰

With regard to export restrictions, an EU employee informed that in particular severe cases, the EU may stop the export of ICT material by European companies to specific third countries where the material is likely to be used to violate freedom of expression or privacy online⁴²¹.

However, it is not reported how often the EU has already stopped respective exports. Moreover, it has been repeatedly criticised that the EU avoids imposing sanctions even in severe cases and sees them only as a last option: “Wherever possible, the EU uses a carrot rather than a stick approach. The emphasis is on recognizing, encouraging and rewarding states to maintain or move towards acceptable standards of governance, preferring to withhold sanctions as very much the last resort.”⁴²²

Financial support

The EU has several financial instruments at its disposal to promote and protect human rights in its external relations. These instruments range from geographic to thematic support schemes and include financial and technical cooperation instruments as well as crisis-related intervention mechanisms⁴²³.

Within this plenitude of instruments, the European Instrument for Democracy and Human Rights is of particular importance with regard to the financing of human rights related activities and projects. In the following chapter, specific measures financed

420 Cf. Holland/ Doidge 2012: 209, 211

421 See Transcript B: 184

422 Holland/ Doidge 2012: 208

423 See Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide. L 386/1, (11) – from now: Regulation (EC) No 1889/2006

under the EIDHR budget to protect freedom of expression online in third countries will be further examined.

6.3 The protection of freedom of expression online under the EIDHR system



*Illustration 6: Defend the defenders.
Source: European Union 2013b*

It has been shown that the EU has various instruments and tools at its disposal to promote and protect freedom of expression online in third countries. Some of these tools do not require any additional resources. However, if they do so, they are likely to be financed under the EIDHR budget.

The European Instrument for Democracy and Human Rights is an EU financing instrument to promote democracy, human rights and the rule of law worldwide⁴²⁴. It is located within the Union's development cooperation section and was established by the European Parliament and the Council in 2006^{425, 426}.

424 Support measures shall be implemented in third countries or shall be directly related to situations of regional/global concern; see Art. 2(3) Regulation (EC) No 1889/2006

425 See Regulation (EC) No 1889/2006. Regarding the new regulation replacing the forementioned regulation: see Afterword

426 Cf. European Commission 2010: 5

According to its Founding Regulation, the main objective of the EIDHR is to support civil society activity to promote human rights and democracy whereas the latter are referred to as “public goods”⁴²⁷. The instrument's functioning is based on the affirmation that civil society has an important influence on socio-political reforms and the building and safeguarding of democratic structures.⁴²⁸ This approach is referred to as “integrated approach to democracy-building”⁴²⁹. In this respect, the EIDHR Strategy Paper 2011-2013 acknowledges: “[...] the continuing importance of support to civil society and human rights defenders to help empower citizens, allow them to claim their rights and build and sustain momentum for change and political reform.”⁴³⁰

EIDHR contracting partners are primarily civil society organisations but also international governmental bodies or trade unions. Frieman explains in this respect: “[...] [W]e basically can fund everyone except political parties, although, we can for example fund trainings for political parties, or capacity building for political parties.”⁴³¹ So far, more than 400 projects in over 70 third countries were financed under the EIDHR budget. According to the EuropeAid Annual Report 2013, approximately three-fourths of these projects support local civil society activities and are managed by the EU Delegations on the ground – the rest are international projects.⁴³²

The EIDHR is considered a self-standing, independent financial instrument by the EU. Independent in this respect means “[...] not requiring the consent of the governments of the countries concerned for its funding activity and not being subject to the long-term programming approach of geographical programmes.”⁴³³ The ability to provide assistance independently of public authorities is considered one of the key strengths of the instrument to address sensitive political issues in countries where traditional human rights assistance is not possible or efficient by the EU⁴³⁴.

427 European Commission 2010: 5

428 Cf. European Commission 2010: 5f

429 European Commission 2010: 11

430 European Commission 2010: 7

431 See Transcript A: 173

432 Cf. European Commission 2010: 10

433 European Commission 2010: 13

434 Cf. European Commission 2010: 10, 13, European Commission 2013a: 5 and Point (13) Regulation (EC) No 1889/2006

Moreover, the EIDHR is considered a complementary tool to other EU instruments and methods of human rights and democracy support and should function as a “catalyst” to achieve sustainable results⁴³⁵. The EIDHR Founding Regulation states in this respect: “[...] [T]here is a need for specific financial resources and a specific financing instrument that can continue to work in an independent manner whilst remaining complementary to and reinforcing related Community instruments for external assistance [...].”⁴³⁶ Consequently, the Regulation requires support measures financed under the EIDHR budget to be consistent with other EU policies in the field of foreign policy and development cooperation, showing again the close discursive interrelation between policies on human rights, democracy support and development cooperation⁴³⁷.

According to the EIDHR Strategy Paper 2011–2013 (from now: Strategy Paper), the instrument is based on five main fields of action⁴³⁸. These are: 1) protecting human rights in countries where they are most at risk; 2) strengthening the role of civil society in promoting human rights and democratic reform; 3) supporting actions in areas covered by EU Human Rights Guidelines (e.g. EU Guidelines on Human Rights Defenders and the future Guidelines on freedom of expression online and offline); 4) strengthening the international and regional framework for the protection and promotion of human rights, justice, the rule of law and democracy and; 5) strengthening democratic electoral processes.⁴³⁹

According to Frieman from DG DEVCO, there will be some conceptional changes with regard to the successor EIDHR Strategy Paper⁴⁴⁰. First, specific categories of human rights will be explicitly mentioned, including freedom of expression online and offline. Moreover, the five objectives will be structured in a more rational and strategic way in order to avoid the current distinction between the two objectives 'countries where human rights are most at risk' (Objective 1) and 'human rights defenders'

435 Cf. European Commission 2010: 12

436 See Point (10) Regulation (EC) No 1889/2006

437 See Art. 3 and Point (8) Regulation (EC) No 1889/2006

438 In February 2014, Frieman from the European Commission informed the author in the interview that the new versions of the EIDHR Regulation, the EIDHR Strategy Paper and the Annual Action Plan would presumably be adopted between March and June; with regard to the new EIDHR Regulation see Afterword.

439 Cf. European Commission 2010: 4

440 See Afterword

(Objective 3). Instead there will be one consolidated objective called 'protecting human rights and their defenders where they are most at risk'.⁴⁴¹

According to the EuropeAid Annual Report 2013, disbursements under the EIDHR budget amounted up to about € 140 million in 2012. This budget has been administrated mainly by the Commission's Development and Cooperation section (DG DEVCO). A share of approximately € 130 million was qualified official development assistance⁴⁴². In 2013, disbursements under the EIDHR budget slightly decreased to about € 136 million. The financial commitments of the EIDHR budget of € 167,63 million were thus not fully exhausted.

The EIDHR 2013 budget forms only a small part of the European Commission's budget on external aid of € 14.862 million, which itself represents only 10% of the Commission's overall budget of € 152.501 million.⁴⁴³ In comparison, in 2013 the EU budget under the category 'EU as a global player', which includes the EU enlargement policy, external financing instruments and the engagement in multilateral organisations, amounted up to € 6,8 billion⁴⁴⁴. This represents 4,74% of the whole EU budget for the year 2013. From these € 6,8 billion, only 2,11% (€ 144 million) were dedicated to expenditures on 'Democracy and Human Rights'⁴⁴⁵. As mentioned above, disbursements under the EIDHR budget comprised about € 136 million in 2013, which composes the vast majority of money spent on 'Democracy and Human Rights'. Consequently, the EIDHR appears to be the main financial instrument to finance measures to promote and protect human rights in EU foreign policy.

With regard to the regional allocation of EIDHR resources in 2013, it is interesting to note that the actual disbursements exceeded the original financial commitments (see chart below). However, to the author it seems that these deviations are of no qualitative nature but rather indicate that the annual planning of the regional

441 See Transcript A: 172

442 Cf. European Commission 2013: 182

443 Cf. European Commission 2014

444 Cf. European Commission 2014a

445 Cf. European Commission 2014b

allocation of EIDHR resources needs to be better adapted to current challenges and needs in different regions of the world.

EIDHR 2013 Budget (in million euros)⁴⁴⁶		
Selected regions and public/private partnerships	Commitments	Disbursements
Europe	0,90	22,47
Africa	15	39,44
- <i>North of Sahara</i>	0,31	5,25
America	2,89	19,28
Asia	4,47	34,28
- <i>Middle East</i>	0,24	5,80
Oceania	0	1,14
UN	0	7,80
Total	167,62	136,32

With regard to the “Arab Spring”, it appears that more resources than expected have been disbursed in the North African region and in the Middle East. This is in particular true for Algeria, followed by Egypt, Libya, Tunisia and Morocco as well as for Syria. However, also the disbursements of all other regions exceeded the financial commitments to a great extent.⁴⁴⁷ On the basis of the available data, it is not feasible to study the causes for the changes of regional allocations.

6.3.1 Freedom of expression (online) in EIDHR projects

The promotion and protection of freedom of expression online and offline is a conceptual objective of EU human rights support under the EIDHR system. According to the EIDHR Founding Regulation, the promotion of freedom of expression forms part of EIDHR support to enhance participatory and representative democracy and the process of democratisation⁴⁴⁸. In this respect, the Regulation further reaffirms the discursive pattern that democracy and human rights are considered intrinsically related to each other whereas democracy is defined a

⁴⁴⁶ Cf. European Commission 2014

⁴⁴⁷ Cf. European Commission 2014

⁴⁴⁸ See Article 2(1)(a)(i) Regulation (EC) No 1889/2006

process involving all societal actors and ensuring for participation, representation, responsiveness and accountability⁴⁴⁹:

“Democracy and human rights are inextricably linked. The fundamental freedoms of expression and association are the preconditions for political pluralism and democratic process, whereas democratic control and separation of powers are essential to sustain an independent judiciary and the rule of law which in turn are required for effective protection of human right.”⁴⁵⁰

Also according to Frieman from DG DEVCO working on the administration of the EIDHR, freedom of expression as one of the fundamental freedoms is considered a priority for EIDHR support⁴⁵¹: “[...] freedom of expression is definitely one of the core elements in most of the projects.”⁴⁵² Frieman further explained that due to its increased relevance in practice freedom of expression online will be explicitly referred to in the revised EIDHR Regulation⁴⁵³.

In the EuropeAid Annual Report 2013 on the implementation of EU development policy and aid, the EIDHR was outlined as the main financial instrument to protect freedom of expression and media support within EU development cooperation. Furthermore, the report showed that projects on freedom of expression online were financed under the EIDHR budget in 2012:

“The EU has a long track record of providing support to independent media as well as capacity building for journalists which to a large extent has been financed by the EIDHR. The EIDHR 2012 global call for proposals focuses on projects fighting cyber-censorship and protecting the confidentiality of activists. The EIDHR had already invested in internet access before the Arab Spring, and is currently financing a project protecting independent bloggers, writers and journalists in Syria, as well as freedom of expression projects focusing on legislation regarding the media and the Internet in Yemen.”⁴⁵⁴

With regard to the different areas of EIDHR support, freedom of expression online falls most likely within the scopes of Objective 1 and Objective 3 of the Strategy

449 Cf. Point (9) Regulation (EC) No 1889/2006

450 See Point (8) Regulation (EC) No 1889/2006

451 See Transcript A: 166

452 See Transcript A: 166

453 See Transcript A: 165

454 Cf. European Commission 2013: 142f

Paper. Objective 1 aims to protect human rights where they are most at risk which is defined as follows: “[...] where there is a serious lack of fundamental freedoms, where human security is most at risk, where human rights defenders are under most pressure, where civil society operates with difficulty and where there is little room for political pluralism.”⁴⁵⁵ The Strategy Paper clarifies that freedom of expression and the right to information and communication (including Internet access) are part of these fundamental freedoms and rights⁴⁵⁶. Approximately 10% of the EIDHR total budget for the period covered by the Strategy Paper was allocated to Objective 1 (€ 47.2 million)⁴⁵⁷.

The budget under Objective 3 is dedicated to areas which are covered by EU Human Rights Guidelines. In this respect, the EU Guidelines on Human Rights Defenders are the basis of EU assistance given to defenders under Objective 3⁴⁵⁸. The defenders' right to freedom of expression is one of the key areas of concern under this protection scheme, for example to support their activities to document and raise awareness about human rights violations⁴⁵⁹. This is why also Objective 3 and the human rights defender support scheme under the EIDHR are of particular relevance to this analysis.

EIDHR support to human rights defenders may include a broad range of instruments, reaching from diplomacy to physical security measures. Moreover, the human rights defender protection scheme under the EIDHR allows for the direct financial support of individuals⁴⁶⁰. Approximately 4,7% of the EIDHR total budget for the period covered by the Strategy Paper was allocated to the support of human rights defenders under Objective 3 (€ 22.16 million)⁴⁶¹.

Finally, on the basis of the information the EU provides on the EIDHR, it is not feasible to determine exactly which part of the EIDHR budget is used for the

455 European Commission 2010: 14

456 Cf. European Commission 2010: 14f

457 Cf. European Commission 2010: 28

458 Cf. European Commission 2010: 20

459 Cf. European Commission 2010: 20

460 Cf. European Commission: 2010: 23

461 Cf. European Commission 2010: 35

promotion and protection of freedom of expression online and offline and which specific projects are currently financed.

6.3.2 Measures to protect freedom of expression online under the EIDHR

EU action on freedom of expression online under the EIDHR system may include direct support to individual actors or the financing of middle- or long-term projects dealing with structural challenges regarding the realisation of this right in third countries.

Long-term projects on structural aspects of human rights support are mainly financed on the basis of global calls for proposals launched by the Commission at headquarter level. Whereas direct support to individuals is mainly provided through the small grants system or the channelling of support through large-scale project financed under the EIDHR budget. With regard to the latter, the EU might contract with an NGO which will in return be obliged to provide financial support to human rights defenders on the basis of the EIDHR finances they receive. Thirdly, Country-Based-Support-Schemes may address large-scale projects or provide direct support to individuals; their local administration by EU Delegations shall allow targeting regional needs specifically⁴⁶².

Measures to support freedom of expression online financed under the EIDHR budget may include awareness raising and capacity building activities, trainings, advocacy, monitoring mechanisms, the development of technological tools or direct support to individuals in need of protection such as medical and psychological treatment, legal expenses, security measures (physical and digital security) or relocation⁴⁶³.

Moreover, financial support can be provided either to legal persons (e.g. NGO, trade union) or natural persons, depending on the respective call of proposals and the specific EIDHR fund.

⁴⁶² Cf. Collier 2013: 24f

⁴⁶³ Cf. Collier 2013: 24

6.3.2.1 EIDHR procedures: calls for proposals, local support schemes and grants

Basically, there are three approaches EU actors may use to identify projects according to the EIDHR procedures. First, the Commission may launch global calls for proposals to identify respective projects. According to Frieman from DG DEVCO, for the first time, no global call will be launched in 2014 for the following reasons:

“We still have very good project proposals that we were not able to fund yet. And also, the global calls for proposals are processes that take a lot of time and costs; we reduced the time from about one year to approximately nine months. Nevertheless, this poses sometimes problems to projects which might no longer be relevant because of changed conditions.”⁴⁶⁴

This statement indicates that the identification of projects on the basis of global calls is costly and time-consuming which might in return diminish the instrument's effectiveness to adequately response to current needs. The fact that global calls pose high bureaucratic burdens on applicants and are too time-consuming in practice was also highlighted by Corti from *Front Line Defenders*⁴⁶⁵.

The second kind of support measures are Country-Based-Support-Schemes which are administrated by the EU Delegations in third countries and whose regional management shall allow to target specific local needs⁴⁶⁶. Calls under this protection scheme are launched and assessed on the regional level in general reducing the processing time and costs in comparison to global calls.

It has been found that projects funded under the EIDHR budget might deviate from the EU standards and rules on the disclosure of EU financial support. In general, any project which is (partly) funded under any kind of EU budget has to be publicly labelled as such. However, with regard to the EIDHR this practice may be modified to protect the confidentiality of involved actors⁴⁶⁷. EIDHR beneficiaries are entitled to ask the Commission to treat a project confidentially for security reasons which shall

464 See Transcript A: 172

465 See Transcript C: 188f

466 Cf. Collier 2013: 24f

467 Cf. European Commission 2010: 14

allow addressing also politically sensitive issues with regard to third country governments⁴⁶⁸.

With regard to EIDHR calls for proposals, the above mentioned SOFRECO study criticised that the application procedures and eligibility criteria are highly complicated and often not outlined clearly enough⁴⁶⁹. Therefore, the development of specific guidelines to applying organisations was recommended.⁴⁷⁰

Corti explained in the interview that in particular smaller organisations might face difficulties in compiling various documents such as logical frameworks which are required with regard to global calls and thus face factual difficulties⁴⁷¹.

Corti further highlighted the specific problem that civil society organisations have to be registered at the local level to be entitled to receive EIDHR financial support. However, in countries where the registration might be conditioned on a certain political conviction posing insurmountable problems on human rights organisations who are not allowed to officially register because of their human rights related work. Therefore, respective organisations only have the possibility to sub-contract with a registered organisation or an international NGO to receive EIDHR support.⁴⁷²

The Commission acknowledged the problem of access of smaller NGOs to EIDHR funding in the EIDHR Strategy Paper and thus the “[...] need to alleviate the difficulty for smaller civil society organisations in the South to access funding, due to the complex administrative and reporting procedures.”⁴⁷³

The current obstacles to local NGOs are particularly challenging as regional and local civil society organisation might be able to target local protection and support needs better due to their direct network to involved actors. In this respect, the Commission acknowledged in the EIDHR Strategy Paper that projects targeting local needs may be more effective than global ones: “[...] projects targeting specific issues in one

468 See Transcript A: 169

469 Cf. Hansen 2010: 10, 30

470 Cf. Hansen 2010: 10

471 See Transcript C: 188

472 See Transcript C: 188f

473 Cf. European Commission 2010: 11

country or smaller region are more likely to achieve positive impact than projects that are global in scope [...].”⁴⁷⁴

Moreover, a lack of transparent and qualitative project selection criteria was criticised in the SOFRECO study⁴⁷⁵. This critique was shared by Corti who explained that the reasons for the selection of projects which will be supported under the EIDHR scheme are often not comprehensible and thus intransparent⁴⁷⁶.

Furthermore, it has been criticised that the level of capacity of EIDHR project partners varies greatly. There are remarkable differences concerning the management of projects, the ability to address real local needs, to make projects visible on the ground and also to provide the EU with qualitative feedback on the project management.⁴⁷⁷

Additionally, it appears that there is a high risk of duplication of projects due to a lack of coordination and adequate information management between EU officials, the EU and partner organisations and between partner organisations themselves⁴⁷⁸. In this respect, also Corti expressed his view that the communication between individual EU institutions and employees in charge of the administration of EIDHR projects could be improved⁴⁷⁹.

Another point of critique targets the follow-up of EIDHR projects. The SOFRECO study concluded that re-granting mechanisms should be encouraged by the EU in order to allow for an effective follow-up and to achieve sustainable results. However, for this purpose, it would be necessary to improve the evaluation of EIDHR projects and the identification of on-going needs. It was recommended that partner organisations should be supported in this function and that the EU should develop qualitative impact assessment indicators.⁴⁸⁰

474 European Commission 2010: 11

475 Cf. Hansen 2010: 10f

476 See Transcript C: 188

477 Cf. Hansen 2010: 10f, 32

478 Cf. Hansen 2010: 10

479 See Transcript C: 193f

480 Cf. Hansen 2010: 10, 33

In response, the Commission acknowledged “[...] the need for more closer and more systematic external and internal monitoring of the projects [...].”⁴⁸¹ However, the implementation of respective mechanisms could not be identified in the research.

According to the Commission, impact assessment of EIDHR projects is particularly challenging as the EIDHR operates to a large extent in politically instable regions and dangerous situations; in this context, sustainable results are difficult to achieve as projects might fail or have to be closed ahead of schedule⁴⁸².

Corti from *Front Line Defenders* acknowledges that the assessment of the relationship between an action and its impact is a challenging issue not only with regard to the EIDHR but for all human rights activities. With regard to human rights protection in EU foreign policy, Corti points out that actions should preferably be more 'result-oriented' than 'activity-driven': “So we have to move from positive actions to positive impact.”⁴⁸³

The third kind of EIDHR support measure is the small grants system. In this respect, the EIDHR allows for individual applications on grounds of urgent protection needs. Frieman from DG DEVCO explained that applications may be addressed to an EU Delegation or to the European Commission in Brussels directly. Subsequently, an internal consultation between members of the Commission, the European External Action Service and the EU Delegation takes place to evaluate the application.

According to Frieman, the decision on the grant is normally taken within 48 hours and the money is transferred within one week. With regard to small grants he further explained that the Commission receives a lot of requests, that the budget for small grants is about € 300.000.- per year and that it is going to be increased. Additionally, small grants mechanisms are also included in long-term EIDHR projects; most projects funded on the basis of global calls and some of the Country-Based-Support-Schemes include the legal obligation of partner organisations to provide financial support to individuals in need of protection: “[...] in the projects that we are going to

481 European Commission 2010: 11

482 Cf. European Commission 2010: 29

483 Transcript C: 192

fund, in all the projects, there will be financial support for human rights defenders and this tops up our relocation for small grants.”⁴⁸⁴⁴⁸⁵

With regard to the disbursements of small grants, Corti highlighted in the interview that even though the decision on the provision of a grant is taken normally very quickly by EU actors, the financial agreement and the disbursement of the money may take up to several weeks. In cases where urgent protection is required, the Commission often sub-contracts with *Front Line Defenders* to provide the money to the defender more quickly. *Front Line Defenders* again sub-contracts with the defender and gets reimbursed by the Commission once the financial agreement is concluded.⁴⁸⁶

However, the organisation does not get reimbursed if the defender does not report on the measures financed with the grant and provide respective receipts: “At the end of the day, they externalise the emergency fund management and actually take money from us if a reporting problem occurs. [...] I think they have the responsibility of the decision so they should bear the responsibility of the reporting.”⁴⁸⁷

With regard to EIDHR procedures on the identification of projects and protection needs, it can be stated that a lack of visibility of EIDHR support is perceived by various actors including civil society organisations and other concerned actors in third countries. According to the interviews with EU employees, there seems to be a growing awareness of this problem in DG DEVCO. Moreover, also the EIDHR Strategy Paper clarifies that more efforts have to be undertaken to enhance the visibility of EU external human rights policy in order to achieve the full potential of EIDHR support: “The aspects of visibility for the EU’s human rights work will be given increased attention under EIDHR civil society projects as well as targeted projects to international organisations.”⁴⁸⁸

In this respect, Frieman from DG DEVCO explained that it is first of all the role of the EU Delegations in the field to reach out to the civil society and to make people aware

484 Transcript A: 171

485 For the whole passage see Transcript A: 169ff

486 See Transcript C: 187f

487 Transcript C: 188

488 European Commission 2010: 9, 29

of the EIDHR and its support measures. In order to do so, the Delegations could organise info-days and training seminars for civil society actors, launch dialogues with various stakeholders to identify local concerns and needs as well as organise specific events (e.g. on the human rights day) or ceremonies (e.g. for the signing of an EIDHR support contract) to publicly promote the EIDHR.

Furthermore, Frieman explained that the EIDHR website is an important tool to provide information on application procedures and contact details. However, he also pointed out that in some countries the EIDHR website was censored and not accessible. Additionally, he highlighted that the level of visibility of outreaching activities depended on the country concerned; a case-by-case approach is followed to avoid putting at risk individuals who might qualify for EIDHR support.⁴⁸⁹

In addition, the SOFRECO study criticised the conceptual confusion between human rights defenders and human rights victims in practice⁴⁹⁰. The EIDHR Founding Regulation differentiates between human rights defenders and victims of repression; according to the Regulation, support and solidarity shall be provided to both to promote and consolidate democratic processes in third countries⁴⁹¹. Following, the EIDHR is not per se an instrument to compensate victims of human rights violations but to provide them with support. In practice, it might not always be feasible to differentiate between human rights defenders and victims. This is because activists might face repressions and violations because of their work and might thus also qualify as victims of human rights violations. Consequently, it could not be identified by the author how the conceptual confusion between human rights defenders and human rights victims would diminish the EIDHR's effectiveness.

In the SOFRECO study, it was pointed out that the insufficient coordination between individual EU actors might be an obstacle to the successful implementation of EIDHR support. According to Rice, the coordination between the EEAS and the Commission is working quite well in practice⁴⁹². The well-functioning of the coordination is

489 See Transcript A: 166f

490 Cf. Hansen 2010: 30

491 See Art 1 (2) (a) Regulation (EC) No 1889/2006

492 See Transcript B: 176, 178f

particularly important as human rights protection competences are shared by different EU actors. Whereas the EEAS provides mainly political support and acts as a 'service of advice provider'⁴⁹³ with regard to human rights, the Commission and its regional departments are often in charge of the follow up, project management and the allocation of resources: "So, whenever there is a problem or a big violation of freedom of expression in a country, it's the 'geographical' of that country that will mainly follow and we will provide advice when they need it. But we are not supposed to be following the world because it's impossible."⁴⁹⁴ However, according to Rice, individual EU actors do not necessarily share the same views on specific human rights measures: "So, I think there is a coordination, sometimes we not all think the same, but there is a coordination."⁴⁹⁵

However, as mentioned above, not all stakeholders are of the opinion that the coordination between different EU actors is functioning well. Corti from *Front Line Defenders* notes in this respect:

"I think the relationship between the European Commission and the External Action Service could be improved, to say it diplomatically. [...] Sometimes I think the European Commission people, including the Delegations, they too often think about money. [...] So, there is a kind of fight between funding support and political aspects. And then they criticise each other for not taking action properly."⁴⁹⁶

Finally, one of the arguably greatest challenges with regard to the effective protection of freedom of expression online under the EIDHR system appears to lie within the EU system of human rights protection itself. There seems to be a substantial gap between EU staff working on human rights protection and the majority of EU staff working on other policy areas. This observation has been made by EU employees themselves as well as by external actors. In this respect, Frieman explains that the mainstreaming of human rights in all areas of EU external action is a big challenge:

"I mean, even with regard to colleagues working in Delegations for example, the first reaction could be: 'yeah, but why do we have to deal with freedom of expression if we are talking about agriculture, health or energy or whatever'. [...] So, I think the big challenge is

493 Transcript B: 183

494 Transcript B: 184

495 Transcript B: 178

496 See Transcript C: 194

to mainstream the fundamental values, including freedom of expression online and offline, in every development activity of the European Union.”⁴⁹⁷

Frieman further explains that in particular the funding of politically sensitive projects under the EIDHR scheme might provoke the critique of individual EU actors that the funding would have negative effects on the political dialogue with the concerned country⁴⁹⁸. Consequently, the level of protection of freedom of expression online under the EIDHR scheme depends to a great extent on the personal dedication of the specific EU actor concerned in practice (e.g. Heads of EU Delegations, Human Rights Focal Points, EU Liaison Officers on Human Rights Defenders); this leads also to differences with regard to the accessibility and visibility of EIDHR support⁴⁹⁹. Corti from Front Line Defenders approves this critique: “[...] [W]e still depend a lot on personal dedication of the EU staff. [...] In the past I met people who really did not care and they expressed that openly.”⁵⁰⁰

6.3.2.2 Digital security and cyber-censorship circumvention

The protection of online information and the fight against cyber-censorship arguably falls within the scope of freedom of expression, data protection and the right to privacy at the same time. It is important with regard to this thesis as the protection of information against undue interference and the access to different sources of information is arguably a precondition for the right to freedom of expression online and offline.

In the course of the research it appeared that the protection of freedom of expression online includes a highly technical dimension. This observation was also highlighted by Underburg from *Reporters Without Borders*:

“I mean I am sure that in five or ten years Reporters Without Borders will have more technicians than researchers. Because you will have to have the support of people that know how to fight this on the web and this is purely technical.”⁵⁰¹

497 Transcript A: 168

498 See Transcript A: 174

499 Cf. Collier 2013: 3

500 Transcript C: 194

501 Transcript D: 199

According to the EuropeAid Annual Report, in 2012, projects financed under the EIDHR budget to support freedom of expression online were mainly dedicated to the fight against cyber-censorship, the provision of safe Internet access and the protection of the confidentiality of activists online. Moreover, independent bloggers were supported with EIDHR funding in Syria.⁵⁰²

Subsequently, a few examples shall be provided to illustrate which kind of projects might be financed under the EIDHR budget in this field of action.

Frieman from DG DEVCO explains that a global call for proposals with a lot of € 3 million was launched to identify respective projects⁵⁰³. In this respect, he also points out that sensitisation and capacity building on digital security are considered particularly important elements of projects on freedom of expression online as a high number of journalists and human rights defenders who act online do not have any or extended knowledge on this issue: “When it comes to the kind of projects on freedom of expression online and offline, one of the key components is capacity building and training on data protection for activists; this is absolutely essential.”⁵⁰⁴

In 2012, a restricted call for proposals was launched to support human rights and their defenders where they are most at risk (Objective 1 and 3 of the EIDHR Strategy Paper). Within this call, one lot was explicitly dedicated to the improvement of the situation of freedom of expression and of the access to free and independent information online and offline whereas particular attention was paid to the fight against cyber-censorship, the promotion of safe Internet access and digital security.⁵⁰⁵

Expected types of activities ranged from training, awareness building, capacity building, monitoring and reporting, advocacy, technical and material support, medical, psychological and legal assistance, security measures, fact finding missions, the development of preventive capabilities and strategies to temporary

502 Cf. European Commission 2013: 142f

503 See Transcript A: 165

504 See Transcript A: 169

505 Cf. European Commission 2013a: 9f

relocation of activists⁵⁰⁶. With regard to online activities, the call highlighted the relevance of: “training, capacity building and technical support on IT skills, digital security, including circumvention of cyber censorship, and provision of secure hosting”⁵⁰⁷. The call outlined that financial support of projects may range from € 300.000.- to € 1.500.00.-- and that the duration of projects may be between 18 and 36 months⁵⁰⁸.

The call was open for natural as well as legal persons who had to go through long-lasting and complicated application procedures requiring sophisticated knowledge and resources to cope with the requirements: after a pre-registration online, a concept note outlining the objectives and expected results in English, French, Spanish or Portuguese had to be delivered. If the project succeeded in the first round, further application documents had to be submitted including an extended application form, a budget plan and a logical framework. In case the project was awarded, a Standard Grant Contract had to be signed between the applicant and the Commission.⁵⁰⁹

The two NGOs *Reporters Without Borders* and *Front Line Defenders* both succeeded in receiving financial support under this restricted call for proposals. Underberg from *Reporters Without Borders* explained in the interview that the Internet and the issue of digital security had become increasingly important to the work of the organisation:

“[...] [T]hat is why we changed also one word in our logo which was important; we used to be *Reporters Without Borders for Freedom of the Press* and then we said *Reporters Without Borders for Freedom of Information*. Which was just one word which was related to the topics that we were following because we have more bloggers in jail today than journalists.”⁵¹⁰

He explained in more detail that the organisation observed that most of the bloggers and online journalists have very little knowledge about digital security; most of them use simple passwords and store sensitive information in an insecure way. Therefore, *Reporters Without Borders* started to work on training and capacity building in this

506 Cf. European Commission 2013a: 10f

507 European Commission 2013a: 11

508 Cf. European Commission 2013a: 14, 18

509 Cf. European Commission 2013a: 12, 15f, 23f, 27, 40

510 Transcript D: 196

field and applied for EIDHR support under the above mentioned call.⁵¹¹ The main objective of the project was to make technologies of digital security available and usable for individuals who express themselves online in restricted environments:

“That was the key issue of the project; hosting [content that has been censored], giving access, sometimes trainings and providing updates on the technologies. And we don't need to invent this technology, we just need to give it to more people, from a technical point of view and from an, I would say, advocacy point of view.”⁵¹²

Furthermore, financial grants have been provided to individuals and NGOs who work online and who have been in need of material, medical or technical support⁵¹³.

Underberg underlined that sustainable results with regard to digital security can only be achieved if the technical and educational conditions allow for it: “And once more the big question is also with this technology, are those people able to provide for updates. Because it is a nonsense to use this if you don't make the updates as well. [...] Truly speaking, in some countries we don't talk about this.”⁵¹⁴

Another aspect which was pointed out by Underberg is that support on digital security and cyber-censorship-circumvention is mainly provided to private journalists, freelancers and other activists who engage online by the organisation. This is because most of the employees working for media companies are generally equipped with their own protection tools provided by their companies. However, 80% of all journalists are freelancers who do not have such protection tools.⁵¹⁵

Finally, Underberg questioned realistic expectations and outcomes of projects on digital security. In this respect, he noted the necessity to evaluate how many people can be reached by a specific technology and also which language should be used in the course of the project planning.⁵¹⁶

Also *Front Line Defenders* applied successfully for EIDHR funding under the restricted call. Corti explained in the interview that the organisation is very active on

511 See Transcript D: 196f

512 Transcript D: 197

513 See Transcript D: 197

514 Transcript D: 197

515 See Transcript D: 198

516 See Transcript D: 197

the issue of freedom of expression online and the protection of communications on the Internet in order to reduce the risk of violations and interferences⁵¹⁷:

“So you must be able as a human rights defender to be public if you want to, that's freedom on the net, but if you want to share information and data in a secure way non-publicly, then you must be able to do it as well without being tapped or interfered, when you send emails for instance. You know, these are the two sides of the same coin.”⁵¹⁸

Front Line Defenders has been co-funded by the EIDHR since 2009. With regard to the current programme of action, around 55% of the budget is funded by the Commission under the EIDHR budget. Most of the project activities are related to personal and digital security training, the provision of security grants and advocacy. Under the security grants programme, the organisation provides money to human rights defenders to enable them to protect online information, computers or offices, to pay fees which have been unlawfully imposed on them because of their online activities and to finance medical treatment or unarmed bodyguards in relation with their work.⁵¹⁹

Corti clarified that the organisation's definition of 'grant' does not necessarily correlate with the one of the EIDHR system: with the term grant, the Commission defines money which goes directly to individuals or organisations without any further obligations. Whereas *Front Line Defenders*' direct support system is generally based on the provision of money in exchange of receipts and implementation reports. In total, the organisation will presumably disburse about one million Euros for security grants in 2014.⁵²⁰

Moreover, Corti shared the experiences of Underberg that online activists in some countries do not care about security measures: some of them want to be public and take the risk of being interfered⁵²¹. Therefore, the organisation considers it necessary to engage in awareness raising and training in order to change these human behaviours: “It is just about human behaviour. If you don't change human behaviours,

517 See Transcript C: 186

518 Transcript C: 185

519 See Transcript C: 186f

520 See Transcript C: 187

521 See Transcript C: 186

you can do whatever you want; they will still be at risk because of their own behaviours.”⁵²²

According to Corti, another important element of the trainings are stress-management techniques which are provided by the organisation in the course of personal security trainings. As some defenders are completely dedicated to their work, they neglect their own needs and the ones of their families. The respective techniques shall ensure for 'psychological security' of activists.⁵²³

Another project on digital security of *Front Line Defenders* which was financed on the basis of the EIDRH restricted call in 2012 is a joint programme with *Tactical Technology Collective*: the main objective of this project was to provide open source software to enable activists to protect their communications online (e.g. anti-virus, tools to encrypt messages). This software is available online in 13 languages ⁵²⁴. Moreover, in the course of the project consultancy on digital security is provided to human rights defenders in different regions of the world.⁵²⁵

6.3.2.3 Shelter programmes

In the following chapter, programmes to provide physical, temporary shelter to activists in need of protection will be examined. The latter are important to this thesis as they may be used by EU foreign policy actors to protect human rights defenders who express themselves online and who are intimidated or attacked because of their expressions. Under the EIDHR budget, the European Union does not have its own shelter programme but is financing organisations providing temporary relocation to individuals whose personal security is in imminent danger.

The establishment of a European shelter programme under the EIDHR scheme has been discussed repeatedly within and outside the EU. According to the EU Guidelines on Human Rights Defenders, EU Member States are encouraged to

⁵²² Transcript C: 193

⁵²³ See Transcript C: 193f

⁵²⁴ See securityinabox.org

⁵²⁵ See Transcript C: 187

provide emergency visa and other measures for swift assistance and protection to facilitate the temporary relocation of third country citizens at risk⁵²⁶. During the Czech EU Presidency in 2009, the establishment of an EU Shelter Cities Programme was promoted; moreover, the European Parliament called in one of its resolutions on the High Representative to establish a European Protection and Shelter programme by the end of 2010⁵²⁷. As none one of these initiatives has been implemented so far, Action 18 of the 2012 EU Action Plan on Human Rights and Democracy finally foresees the development and implementation of a voluntary (!) initiative to facilitate the provision of temporary shelter to human rights defenders at risk⁵²⁸. According to Frieman from the Commission, this initiative shall lead to the creation of a network of municipalities providing temporary shelter programmes⁵²⁹.

In 2011, the European Commission instructed a study to map and analyse existing shelter programmes in the field of action. The study was carried out between June and October 2011 and was conducted by Nicolaj Sønderbye, a human rights expert and external consultant from the institute GHK Consulting Ltd.⁵³⁰ According to the study, most of the NGOs providing shelter to defenders focus on the right to freedom of expression whereas programmes target mainly writers at risk, journalists and scholars⁵³¹. NGOs providing shelter programmes are for example *Reporters Without Borders*, *Committee to Protect Journalists*, *PEN International*, *The Rory Peck Trust* and *ICORN* (International Cities Of Refuge Network)⁵³².

Within Europe, *ICORN* is the most structured city shelter network according to the study. The overall aim of the organisation is to promote freedom of expression online and offline and to protect individuals who are persecuted as a direct consequence of their expressions or who are unable to express themselves freely because of limitations and threats in their home countries⁵³³. *ICORN* was founded in 2006 and

526 Cf. European Union 2008: 11 (Point 14)

527 See European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)), P7_TA(2010)0226, Point 41

528 Cf. Council of the European Union 2012: Action 18

529 See Transcript A: 170

530 Cf. Sønderbye 2012: 1, 4

531 Cf. Sønderbye 2012: 1, 15

532 Cf. Sønderbye 2012: Annex 4 (pp. 46-78)

533 Cf. *ICORN* 2010

consists of over 40 member cities and regions⁵³⁴. In the context of city shelter initiatives, it is interesting to note that the role of regional and local authorities appears to gain importance in the field of development cooperation⁵³⁵.

In the interview, Frieman explained that the Commission cooperates with ICORN as well as with other human rights organisations to set up the above mentioned EU voluntary initiative for temporary shelter. In this context, he pointed out that the initiative will rely on existing structures in the field in order to avoid the duplication of mechanisms:

“[...] [I]t will be under the flag of the European Union but we want to collaborate with the existing structure, and create a network on the basis of the existing models. We don't want an overlapping system structure. We don't want to build new structures because there is no need.”⁵³⁶

Up to now, the EU has supported shelter initiatives mainly in the form of financial support to NGOs who actively provide shelter to defenders in the field or in the form of small grants to human rights defenders under the EIDHR system. The latter are mainly provided for temporary relocation in cases of urgent protection – according to Frieman, respective grants are not issued very often in practice⁵³⁷. Therefore, the EU is mainly “outsourcing” aid in the sense that shelter is not provided directly but financially supported under the EIDHR system⁵³⁸. In this respect, Rice from the EEAS explained that the EU is not mandated to offer diplomatic protection to defenders in third countries as EU Delegations do not have the same powers and competences as national states' embassies⁵³⁹.

Both *Reporter Without Borders* and *Front Line Defenders* used to provide or still provide shelter programmes partly financed under the EIDHR budget. Underberg from *Reporters Without Borders* explained that the organisation launched a shelter project for the temporary relocation and training of defenders in the organisation's

534 Cf. Sønderbye 2012: 14

535 Cf. Bidaguren 2010: 303, 306

536 Transcript A: 170

537 See Transcript A: 170f

538 See Transcript B: 176, 183

539 See Transcript B: 176f

headquarters in Paris about six or seven years ago⁵⁴⁰. In contrast, *Front Line Defenders* itself does not offer physical places of shelters; the normal procedure would be to discuss several options with the potential beneficiary and to help to find and financially support a suitable solution. In any case, only temporary short-term relocation is supported. Options range from in-country and region relocation (mostly provided through the grants system), rest and respite projects (which may also include family members of a defender and which allows them to move to a secure environment) to urgent medical treatment or fellowship programmes (the latter is provided also outside cases of emergency). Moreover, the organisation invites four to five beneficiaries per year to be hosted in a flat in Dublin in order to respite, improve English language skills and to be trained on digital security and other aspects of freedom of expression online.⁵⁴¹

Corti explained in this respect: “[...] the fact that Ireland is not a Schengen-country can help because we have an agreement with the Irish government so they can provide visa in a fast way [...]”.⁵⁴²

According to the above mentioned mapping study, various types of existing shelter programmes could be identified: emergency grants (primarily for in-country/sub-region relocation), fellowship programmes at universities, and support programmes provided by central, regional or local governments (e.g. accelerated entry admission or city shelter initiatives). Moreover, measures may include temporary shelter, funding for housing, visa or legal assistance, medical or psychological support, cultural orientation assistance and social networking.⁵⁴³

Temporary shelter is most commonly provided between three months and two years, depending on the needs of the applicants, available resources and the possibility to obtain entry and residence permits⁵⁴⁴. Costs for relocation vary greatly between projects and organisations and are generally lower in the case of in-country or sub-region relocation and when provided by NGOs⁵⁴⁵.

540 See Transcript D: 196

541 See Transcript C: 189f

542 Transcript C: 189

543 Cf. Sønderbye 2012: 10-12

544 Cf. Sønderbye 2012: 1

545 Cf. Sønderbye 2012: 2

The overall conclusion of the mapping is that shelter initiatives are highly relevant and valuable to the work of human rights defenders who are in danger because of their work in third countries. However, the study concludes that shelter should remain a last resort for the following reasons: “The most favourable, value for money and durable option is to support human rights defenders in their country or sub-region to continue to act as drivers of change fighting for human rights. Only when this is not possible should shelter in the EU be considered.”⁵⁴⁶

Moreover, the mapping showed that the number of human rights defenders participating in shelter initiatives in EU Member States is relatively low in number: “The estimated number of human rights defenders given shelter per year in the EU today is approximately 200, with the majority being sheltered through fellowships [...]”⁵⁴⁷ However, there seems to be a growing number of unmet demands⁵⁴⁸: existing waiting lists for relocation indicate the lack of available shelter places and funding⁵⁴⁹.

Other factors which might diminish the number of requests are the low awareness about existing shelter programmes among human rights defenders and shortcomings with regard to the identification of protection needs⁵⁵⁰. With regard to the latter, some organisations rely on a networking approach to identify potential beneficiaries: partner organisations in the field identify individuals in need of protection and report on them to the organisation. Additionally, some organisations (like ICORN) also allow for individual applications.⁵⁵¹

However, due to practical reasons, access to shelter programmes is arguably particularly limited with regard to less-known, less-wealthy and less-educated defenders⁵⁵². The latter may not have any possibilities to get informed about protection measures and may lack a networking which might help them to receive support.

⁵⁴⁶ Sønderbye 2012: 28

⁵⁴⁷ Sønderbye 2012: 16

⁵⁴⁸ Cf. Sønderbye 2012: 17

⁵⁴⁹ Cf. Sønderbye 2012: 1

⁵⁵⁰ Cf. Sønderbye 2012: 17

⁵⁵¹ Cf. Sønderbye 2012: 17

⁵⁵² Cf. Sønderbye 2012: 27

In the course of the research it appeared that the issue of immigration is arguably one of the greatest challenges to temporary relocation programmes within the EU. Entry permissions are often difficult or impossible to achieve for human rights defenders in need of protection. Furthermore, there seems to be a lack of follow-up procedures to temporary shelter programmes for beneficiaries who face continued protection needs. In the interview with Frieman and Bauman from the European Commission, it appeared that the issue of fast-track visa procedures and immigration in the context of shelter initiatives is a very delicate one. In this respect, Bauman notes: “I think it becomes a 'hands-on' issue about the sheltering and a question if it falls under the human rights protection scheme or where does it become an immigration issue.”⁵⁵³

This aspect illustrates the practical overlapping of EU foreign policies on human rights, development cooperation and migration. In this respect, Bauman further explained: “So, it's difficult to separate these things from immigration. [...] [I]t's not a lack of attention to freedom of expression or a lack of recognition of the issue; it becomes quite a 'hands-on' capacity on procedures when it refers to immigration.”⁵⁵⁴ Also the mapping study identified that EU Member States fear that shelter initiatives could impede their national competence on immigration and asylum issues: “The political constraints in some Member States relate almost entirely to the issue of immigration and the 'fear' that the HRD shelter initiatives in the EU may lead to permanent stay.”⁵⁵⁵

However, the issue of immigration appears to be only of little importance in practice. According to Corti from *Front Line Defenders* most of the shelter programmes are about in-country or sub-region relocation and defenders who come to Europe return to their home country or region in the vast majority of cases: “I know that Member States may fear that they would face many, many requests for visa etc., people coming to Europe to seek asylum etc. [...] [But] the overwhelming majority of human rights defenders relocated, they stay in their region.”⁵⁵⁶

553 Transcript A: 170

554 Transcript A: 171

555 Sønderbye 2012: 24

556 Transcript C: 190

This observation is also supported by the mapping study which states that only a small number of beneficiaries with continued protection needs applied for asylum after their temporary relocation in practice; with regard to short-term respite programmes, almost all of the beneficiaries returned to their home country or region⁵⁵⁷. Also DG DEVCO experienced that defenders want to stay in their region:

“[...] [W]hat we learned from our experiences and meetings with human rights defenders is that human rights defenders don't want to leave their country, they want to work in their country. So, when they leave, they want to go back as soon as possible. They are no migrants, they are not looking for opportunities in other countries, they want to fight for freedom in their countries.”⁵⁵⁸

Immigration is no EU competence which is why no coherent EU emergency visa system for human rights defenders exists as the EU cannot provide visa or entry permissions; an EU Member State would have to “open the door”⁵⁵⁹. Nevertheless, there are good examples of specified visa procedures in individual EU Member States⁵⁶⁰. This lack of EU competence may negatively impede the effective protection of human rights defenders in urgent need of relocation under the EIDHR system and may lead to rather absurd solutions in practice: “Sometimes we don't put him [the defender] to the EU. I mean, sometimes the easiest way is to put them to a neighbour country where they don't need a visa.”⁵⁶¹

According to the mapping study, beneficiaries who face continued protection needs after their shelter programme expired, may apply to a new relocation or other kind of support programme or move to another country⁵⁶²: “[...] the existing picture indicates a risk that many HRDs end up 'relocation shopping' from programme to programme or being forced to apply for asylum or pursue other means of entry.”⁵⁶³ However, the study outlines that the main reason for asylum applications are legal protection needs

557 Cf. Sønderbye 2012: 2

558 Transcript A: 170

559 See Transcript A: 171 and Transcript B: 177

560 Special or expedited procedures for emergency visa in EU countries can be found e.g. in Ireland, the Netherlands or the Czech Republic; residence titles are often based on visa for students, scholars or research purposes; cf. Collier 2013: 23 and Sønderbye 2012: 18, 25

561 Transcript B: 176

562 Cf. Sønderbye 2012: 4

563 Sønderbye 2012: 19

and that applications are considered the last resort for defenders⁵⁶⁴. In this context, Corti explained that *Front Line Defenders* helps defenders to find solutions if they are still in an insecure situation after their shelter programme⁵⁶⁵. However, the organisation does not support defenders in asylum seeking procedures: “We don't provide support to that because we focus on the protection of human rights defenders that are at risk and not if people want to go in exile.”⁵⁶⁶

Corti concluded that the system of shelter programmes is still highly fragmented within the EU and at an early stage mainly due to political constraints⁵⁶⁷. He further explained that he had already been lobbying for the establishment of an EU emergency visa system for human rights defenders for more than five years, however, so far unsuccessfully:

“[I]n the context of the Schengen area, it was very difficult to have an agreement and to have Member States open even to discuss specific visa for specific groups of people. [...] So that is something I have been lobbying for five years. And I try now to reintroduce the visa issue [...].”⁵⁶⁸

Also Frieman from DG DEVCO gives a rather pessimistic outlook with regard to the problems of entry permissions: “I think that the case-by-case approach will stay in place for a longer term. Visa issue is a very sensitive file, and discussions about possible harmonisation will not advance fast in my opinion.”⁵⁶⁹

On the basis of the above examination, it can be concluded that individual EU actors are against the establishment of an EU shelter network due to political concerns mainly related to the issue of immigration and asylum. Therefore, current support programmes are not designed to bring defenders in need of protection to the EU in a longterm view or to enable them to apply for asylum. Nevertheless, it is a fact that all non-EU citizens are entitled to apply for asylum within any EU country. However, this option appears to be of no practical relevance: from previous experiences it can be concluded that activists participating in shelter programmes overwhelmingly want to

⁵⁶⁴ Cf. Sønderbye 2012: 20

⁵⁶⁵ See Transcript C: 190

⁵⁶⁶ Transcript C: 190

⁵⁶⁷ See Transcript C: 190f

⁵⁶⁸ Transcript C: 191

⁵⁶⁹ Transcript A: 171

return to their home country or region and that asylum applications are considered the last resort. In this respect, Corti from *Front Line Defenders* confirmed that the number of asylum applications of human rights defenders participating in shelter programmes is vanishingly low:

“[...] [W]e invite every two years 150 defenders to Dublin for a big conference and no one has ever applied for asylum. So if you look at the visas provided by Ireland, since 2005, I mean its hundreds and hundreds, only two applied for asylum. And they all had the profile of possible asylum seekers because they are at risk.”⁵⁷⁰

6.4 The case of Edward Snowden

In June 2013, the revelations of Edward Snowden about illegal surveillance measures conducted by the US National Security Agency aroused a lively debate on the legitimacy and legality of online surveillance and restrictions of freedom of expression online on grounds of national security⁵⁷¹. So far, the EU has neither issued a statement on the case of Snowden nor has any EU Member State granted asylum to Snowden for which he had asked. None of the above discussed measures and tools to protect human rights in EU foreign policy have thus been applied by the EU.

All interviewees were confronted with the question whether Edward Snowden is a human rights defender promoting freedom of expression online and whether he is considered in need of protection because of his expressions. Moreover, they were asked whether Snowden qualifies for EU support under the EIDHR system. The answers were inconsistent and partly in contradiction to the previous statements and arguments of the interviewees. Moreover, some of the previously discussed issues (e.g. balancing of human rights with other interests) were reflected in the answers.

In particular with regard to the EU employees, it appeared that rather evasive and superficial answers were given. This might be related to the fact that the EU has not

570 Transcript C: 190

571 Cf. Kelly 2013: 1

yet been forced to take an official position on Snowden. To the knowledge of the interviewees working in the EEAS and the Commission, when the interviews were made, Snowden had not yet applied for EIDHR support. Moreover, the interviewees differed about the necessity to take a common EU position and what kind of position this should be.

Rice from the EEAS explained that in her opinion, the EU was not obliged to take a position as the case of Snowden was just “one case among thousands of cases of freedom of expression”⁵⁷². She clarified further that the political decision whether Snowden should be considered a whistle-blower and supported was not within the scope of her competences.⁵⁷³

With regard to local statements of EU delegations and high level statements of the EU High Representative or her spokesperson, it seems that EU officials are entitled to issue statements without being requested to do so by the individuals concerned. However, as statements have to be coordinated between all EU Member States, a common position is required which seems to be hardly reachable in the case of Snowden.

Bauman from the Commission pointed out that the case of Snowden accurately illustrates some of the aspects previously discussed in the interview: “This area touches about so many other areas, which makes it difficult to distinct if he is purely a human rights defender or what about also national security.”⁵⁷⁴

The fact that most of the cases of freedom of expression online are also related to other areas of EU action does not seem problematic or extraordinary at first sight. However, within the EU, fields of action are related to specific competences and consequently also specific EU actors. This becomes obvious in the case of Snowden; the EU human rights scheme follows different rules and procedures than national security concerns or defence, posing obviously practical obstacles to the development of a coherent position and strategy. Consequently, diverting interests of individual EU institutions and actors might oppose the coordination of a common EU position in particular on political cases.

572 Transcript B: 182

573 See Transcript B: 182f

574 See Transcript A: 173

Furthermore, there seems to be an inconsistency between the European Union's claim to respect human rights and to observe international human rights standards with regard to third countries and the Union's own actions and practices for example on online surveillance. In this respect, Bauman pointed out:

“I don't know what kind of statement we would make. Because then it would become the whole idea of surveillance and information. So it would not be a clear cut as far as the European Union is concerned, because it is not sort of, 'we have Europe here and then we have the US over there', that's not true.”⁵⁷⁵

This inconsistency was also mentioned by Underberg from *Reporters Without Borders*; he claimed that the EU wants the “backdoor” on online surveillance technologies, arguably to use them in the fight against corruption, organised crime and terrorism⁵⁷⁶. He further pointed out that European companies even sell these technologies to countries where freedom of expression online is curtailed: “And sometimes the EU requests to the providers to provide this technology, to sell this material, not to Iran but first of all to EU countries.”⁵⁷⁷

Furthermore, on the basis of the interviews, a remarkable gap between the proclamation of general principles and abstract rights by the EU on the one hand and their effective, comprehensive implementation on the other hand could be identified. The following example will illustrate this aspect. According to Rice there is a common understanding within the EU that freedom of expression should be protected online and offline, however, with regard to “sensitive issues” there might be diverting interests and opinions between individual EU actors: “I think we have common grounds for the big principles but of course there are problems with particular cases. And as you know there is not a harmonised legislation on the things dealing with online issues in all countries. We are still very divided.”⁵⁷⁸

575 See Transcript A: 174

576 See Transcript D: 201f

577 Transcript D: 201

578 See Transcript B: 184

Rice also proclaimed: “[...] [W]e have a very, very strong position that there is a need to ensure journalistic sources and that whistle-blowers need protection.”⁵⁷⁹

However, the question remains who is entitled to speak out for these whistle-blowers if it is not within the scope of competences of EU employees in charge of freedom of expression. On the one hand, Rice ensured that “anyone in the world that is working for promoting more freedom of expression will be of course enabled for the protection of the EU if he is condemned or persecuted because of his human rights advocacy”⁵⁸⁰. However, in sensitive cases no EU actor appears willing and courageous enough to speak out for their rights.

In general, it further appeared that competences are sometimes used as an excuse to disclaim accountability and the responsibility to react to situations. Rice stated that in the case of Snowden, there are “grounds of investigation” but that whistle-blowers should rather be protected by an international framework than by EU law⁵⁸¹. Another example of this controversy was given by Frieman who pointed out that it is not for the EU to decide if the US law applied to Snowden is in accordance with international human rights law but that “[...] the European Union can speak out to defend someone from human rights violations if it would be the case.”⁵⁸². However, it appears impossible to defend the rights of a human rights activist if the EU is not willing to decide whether the law applied to him or to her is in conflict with international human rights law and the right to freedom of expression.

Moreover, violations of freedom of expression online are sometimes not as easily identifiable as violation against the prohibition of torture or the death penalty. Frieman from the Commission stated in this respect: “[...] [I]f Snowden would face the death penalty or if he would be in danger or if he is tortured or badly treated, in this case, I think the European Union would definitely defend him.”⁵⁸³ However, this seems to be a rather simplified view as the evaluation of human rights violations often requires in-depth investigations. It is questionable if the EU is willing to provide for such

579 Transcript B: 183

580 Transcript B: 183

581 See Transcript B: 182

582 See Transcript A: 174

583 See Transcript A: 173

investigations and adequate resources in particular with regard to the numerous reported violations of freedom of expression online worldwide.

The perceived inconsistency between the EU's political commitment to protect freedom of expression online and its practical implementation in political sensitive cases was further examined by Underberg from *Reporters Without Borders*.

Underberg pointed out that Snowden is the “big picture” of this inconsistency and of the lack of political willingness within the EU to touch upon cases which might negatively impede other EU interests: “[...] [A]s powerful as they are pushing for that...none of any 28 Member States wanted to give asylum to Snowden. [...] We are supporting bloggers and people worldwide but not this man who needs asylum in the EU for what he has done for the public interest.”⁵⁸⁴

Corti clarified that *Front Line Defenders* has decided not to work on cases of famous human rights defenders like Snowden - even though they might be in need of protection - for a specific reason:

“[...] I think the duty of an organisation like Front Line Defenders is really to focus on less known, remote defenders who have no access. [...] So, it's not really our mandate [...] But we may reconsider that. I think we are going to discuss the Strategic Plan and probably this will be on the agenda; if we do something for whistle-blowers.”⁵⁸⁵

Finally it can be concluded that both NGO representatives considered Snowden a whistle-blower in need of protection which the EU should provide. With regard to the answers of EU employees, the picture looks slightly different; due to the lack of a common EU position on this case, there seems to be a high level of uncertainty concerning the question which kind and level of protection the EU should provide.

It is hard to understand why the EU should not consider the revelations of Snowden as acts of defence of freedom of expression online, although EU law states that everybody has the right to freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authorities. The latter is in particular relevant for the case of Snowden as illegal

⁵⁸⁴ See Transcript D: 201

⁵⁸⁵ See Transcript C: 195

online mass surveillance measures are not only restrictions of this right but grave violations. For sure, freedom of expression needs to be balanced with other interests such as national security, which is more often than not misused to achieve other, veiled interests. However, it appears that the revelation of the information that all citizens' rights to freedom of expression are violated in a systematic and severe manner by US public authorities are of great public interest and would most likely prevail US national security interests. From a human rights point of view, the EU has no legitimate excuses not to protect Snowden for his defence of freedom of expression online. That is why the reason for the lack of support appears to stem from the political sphere.

6.5 Interim conclusion

In the course of research, it appeared that political support, the funding of civil society projects and in this respect in particular of technical tools on online security as well as the provision of small grants to individuals are arguably the most frequently used EU tools to protect individuals' rights to freedom of expression online in third countries in practice. With regard to political support, the consequences and the effectiveness of respective EU statements and démarches could not be proved within this thesis. However, it appears that there is a current need to translate political support into other areas of EU foreign policy, and that effective follow-up mechanisms are often missing.

Moreover, it has been found that additional resources are not always required to protect freedom of expression online in third countries and that activists predominantly ask for political backup. However, when financial resources are required, they are likely to be financed under the EIDHR system. With regard to implemented payments of about 140 million Euros per year, though, the EIDHR remains a relatively small financial EU foreign policy instrument. As far as third countries are concerned, it has been shown that the Commission may only take action if they are considered as countries 'in crisis' from an EU development point of

view. This limitation is of practical relevance as countries like the USA are excluded from this definition, even though freedom of expression online may be violated by government authorities⁵⁸⁶. Notwithstanding, the EIDHR is a very specific EU foreign policy tool as it allows the EU to operate in third countries without the permission of their government authorities.

Furthermore, it has been argued that freedom of expression online and offline is a conceptual priority of EIDHR support and that the online sphere has gained importance in this field of action in recent years. Moreover, it has been shown that in particular human rights defenders who act online are being protected under this support scheme. In this thesis, specific support measures financed under the EIDHR budget to protect freedom of expression online have been discussed, the focus of the examination being on direct support to civil society actors, which is arguably the main objective of the EIDHR. With regard to the latter, Bauman from the Commission stated as follows: “This is where the instrument comes in, very importantly; the capacity and the ability of the demand side, for the rights holders, to claim their right to be protected.”⁵⁸⁷

The EIDHR is a relatively new instrument. Therefore, it is difficult to draw final conclusions on its effectiveness on and practical relevance for freedom of expression online. However, its overall importance with regard to EU external human rights support appears to be largely affirmed. This impression was also reflected in the interviews with NGO representatives whose organisations received EIDHR funding in the past. Underberg from *Reporters Without Borders* pointed out that challenges and shortcomings with regard to the practical implementation of the EIDHR are outweighed by its overall positive impact:

“[...] I know that in some cases we can complain about the EU but, truly speaking, we cannot complain about this instrument. The EIDHR wants you to be the most effective you can. And obviously, because it is a development instrument, they want you to help on the local level as much as you can.”⁵⁸⁸

586 According to the Founding Regulation, EIDHR measures shall be implemented in third countries or at least be related to situations arising in third countries – see Art. 2 (3). Therefore, all third countries are by definition included in the scope of EIDHR action, which is however not reflected in practice – see also EuropeAid Annual Report 2014.

587 Transcript A: 173

588 Transcript D: 198

Projects financed under the EIDHR may be very advanced, for example with regard to the development of online tools on cyber security and cyber-censorship circumvention. Nevertheless, various practical obstacles as discussed above compromise the instrument's overall effectiveness and arguably diminish its potential to protect freedom of expression online in third countries in practice. This is true with regard to all three support schemes, namely the small grants system and the global and country-based calls for proposals which all face specific conceptual and implementation problems. In this respect, it appeared that individual EU foreign policy actors implement EIDHR support mainly on a case-by-case approach. This may provide advantages but it also leads to a perceived lack of transparency and coherence. The latter is in particular true with regard to definitions on protection needs and thus needs for action. In sensitive cases which touch upon other EU interests and aspects of EU foreign policy, this may partly rightly provoke the impression that decisions on support may be politically motivated. The 'big picture' of this is Snowden. This case illustrates the conceptual and practical obstacles of EIDHR support and that the latter arguably depends to a great extent on the decision-making power of individual EU foreign policy actors. In this respect, it appeared that EU staff working on the practical implementation of EIDHR support may lack independent decision-making powers. This is problematic as these persons are arguably most competent to evaluate current needs to act.

Furthermore, EIDHR support apparently lacks visibility with regard to both individual actors in need of protection and the broad public. With regard to the latter, it is debatable whether the EU refrains from intense promotions of the EIDHR to avoid critique from concerned third country governments or whether the EU fails to effectively promote this tool publicly.

Despite the discussed shortcomings and the existing room for improvement, it has been found that the EIDHR implementation team, including actors of various individual EU institutions, appears to operate in a flexible, open and responsive manner and to be committed to the improvement of the practical implementation of

EIDHR support⁵⁸⁹. In this respect, two important aspects should be highlighted. First, the EIDHR management team works on the creation of a new facility to support human rights in countries where it is technically and logistically impossible to launch calls for proposals⁵⁹⁰. Such a process may allow targeting specific local urgent protection needs which are currently impossible to respond to due to bureaucratic burdens. And secondly, the Commission works on a new definition of 'countries in crisis' which may allow addressing countries which are currently not within the scope of EU development cooperation. This is because the European Commission can only provide development aid and assistance (including human rights support) to countries which are considered 'in crisis' according to EU development cooperation definitions. However, human rights violations in third countries do not necessarily qualify these countries to be 'in crisis' with regard to definitions currently in place. According to Frieman from DG DEVCO, it is currently being discussed to establish an additional definition of 'countries in human rights crisis' to create a legal basis for the provision of human rights support to countries which are not 'in crisis' from a "development point of view".⁵⁹¹

The latter aspect illustrates once more the close conceptual interrelations between EU policies on external human rights protection, democracy support and development cooperation. Moreover, it shows that the strict division of competences between individual EU actors and current definitions on human rights support may not be suitable to address practical needs and may negatively impede EU human rights support in practice.

Finally, it can be concluded that the EIDHR is a very specific instrument in comparison to other EU foreign policy and human rights tools and that the instrument is despite its current conceptual and practical shortcomings a highly relevant EU foreign policy tool to protect freedom of expression online in third countries in practice.

589 Cf. Hansen 2010: 11

590 This aim shall be reached by direct awarding of project funds to beneficiaries (who do not have to participate in global calls for proposals).

591 See Transcript A: 172

7 Conclusions and final remarks

In this thesis, discursive patterns of the European Union's political commitment to protect freedom of expression online in its external relations with third countries have been examined with the focus of the analysis on EU support to individual civil society actors who use the Internet as a tool to express themselves. In this respect, expressions of political opinions are of greatest relevance. This is because political expressions are arguably particularly sensitive as they are often related to critical thinking on government activities, the claim or defence of human rights and to the democratic control of power. It has been argued that human rights are considered applicable in the online sphere by EU foreign policy actors and that freedom of expression online and offline is a conceptual priority of multiple EU external human rights protection policies. With regard to the latter, the issue of political expressions on the Internet have arguably gained importance in recent years.

Moreover, it has been shown that EU foreign policies on human rights, democracy support and development cooperation are conceptually interrelated with each other and that recurrent discursive patterns of explanation illustrate these interconnections. In this regard, EU foreign policy actors repeatedly proclaimed that freedom of expression is considered an inherent principle of democracy and that its promotion and protection online and offline is thus considered an essential element of democracy support within the framework of EU development cooperation.

Furthermore, operational EU foreign policy instruments to protect freedom of expression online in EU external relations with third countries have been discussed. Because of its practical relevance, the examination focussed on the European Instrument for Democracy and Human Rights. In this respect, it can be concluded that the EIDHR qualifies as a tool to protect freedom of expression online in third countries on the ground. In comparison to other EU foreign policy instruments, the EIDHR appears to be a very specific tool and that it has arguably contributed most to the protection of individuals' rights to freedom of expression online in practice. Moreover, projects financed under the EIDHR budget may be very advanced:

“[S]ome things that the EIDHR is doing now, they were probably impossible five years ago, or ten years ago. The kind of support that we can give to human rights defenders and the kind of projects that we are funding, trust me, are very advanced.”⁵⁹² - Frieman, DG DEVCO

Nevertheless, various conceptual and practical challenges with regard to the selection of projects and their implementation and follow-up as discussed above probably diminish the overall effectiveness of the instrument.

Subsequently, the main conclusions identified on the basis of the above examination are repeated here. At the beginning of this thesis, it was outlined that it is justifiable to legally construct the European Union as a single, supranational actor. This assumption made it possible to qualify statements and patterns of explanation of individual EU foreign policy actors as elements of overall EU foreign policy discourses on human rights, democracy support and development cooperation. However, in the course of research, it appeared that it was not useful for the analysis of the thesis topic to assume that the EU is a single actor. This is because individual EU foreign policy actors are involved in the shaping of EU external human rights policies and their implementation. These actors follow partly dissenting objectives and do not always share the same views in particular with regard to sensitive cases of freedom of expression online. The latter was also highlighted in the interviews with EU employees. Consequently, the EU is no coherent actor but rather composed of individual actors, which makes it necessary to identify them and to base the study of discursive patterns on these individual units. In this respect, also the role of individual EU Member States should not be neglected. This aspect was also pointed out in the interview with an NGO representative who explained that in many third countries the influence of individual EU Member States is still far more important than the one of the EU as a supranational organisation: “That is why we don’t want to focus exclusively on the EU, the EEAS and the EU Delegations, we still want to keep contacts with Ministries, mainly through the Ministries of Foreign Affairs, and their embassies.”⁵⁹³

⁵⁹² See Transcript A: 174

⁵⁹³ See Transcript C: 195

It further appeared that clear and transparent definitions of the concepts democracy and human rights are often lacking in EU external human rights documents.

Therefore, EU foreign policy actors arguably tend to decide on a case-by-case approach within their fields of competences. However, various observers regard this approach as not transparent and demand the conceptualisation of these notions to be clarified⁵⁹⁴.

Furthermore, it has been found that statements and patterns of explanation on freedom of expression online may deviate from actual patterns of action, as illustrated by the case of Edward Snowden. Consequently, it can be concluded that discursive patterns predominantly remain on a theoretic, superficial level and do not translate into overall, coherent patterns of action; it is rather the case that individual EU foreign policy actors develop own patterns of action. Therefore, EU political commitments may be considered artificial and lacking internal support. This in return may question the legitimacy of EU action at the global level and thus also EU human rights support in third countries.

The above observations lead to the question whether the EU has yet internally decided which kind of international actor it wants to be. The EU budget for the year 2013 indicates that the importance of this field of EU action is limited; as outlined above, less than five percent of the budget was dedicated to the 'EU as a global player'⁵⁹⁵. With regard to human rights, the picture looks even worse; only about two percent of the above mentioned budget was dedicated to democracy and human rights support⁵⁹⁶. This is particularly astonishing as human rights are proclaimed to be the 'silver thread' running through EU foreign policies and are claimed to have become increasingly important in particular since the "Arab Spring":

"Somehow, events such as the Arab spring for example can be seen as a wake up call in the sense that it demonstrated that you cannot sacrifice fundamental values for the sake of stability in certain countries. [...] I think that there is, in general, a growing sensibility and here I am talking about the EU and not solely the Commission. There is a growing sensitivity about human rights on the agenda."⁵⁹⁷

594 Cf. Timmer 2013: 38

595 Cf. European Commission 2014a

596 Cf. European Commission 2014b

597 See Transcript A: 173

It has also been found that there is a growing uncertainty among observers whether EU external human rights support may only serve other EU interests and the promotion of less idealistic aims. It is accordingly criticised that EU external human rights support is an ideological, neo-imperialistic tool to ensure economic and security interests.⁵⁹⁸ Moreover, it is criticised that EU actors assume that human rights and democratic standards are fully realised within the EU and that third countries require the EU's assistance to implement them: "Blind to its own faults, the West is often perceived to point its finger at others."⁵⁹⁹

In this respect, it appeared that freedom of expression objectives may be compromised by individual EU foreign policy actors and that other interests may outweigh human rights concerns in practice. The latter is in particular true with regard to sensitive cases which touch upon economic aspects or security concerns.

On the basis of the above analysis, it is arguable that the EU follows double standards with regard to EU external human rights support. This is because actions are taken nearly exclusively in "developing countries" in which freedom of expression online is considered to be violated. In this respect, EU foreign policy tools often focus by definition on "authoritarian regimes" or "undemocratic states" whereat no clear definition of these terms is provided. With regard to online surveillance mechanisms, though, it is no longer justifiable to argue that "democratic states" and EU partner countries do not violate freedom of expression online in a systematic and severe way. However, this aspect seems to be neglected by respective EU actors and human rights policies.

Furthermore, it seems that the practical implementation of the EU's political commitment to protect freedom of expression online in third countries depends above all on individual EU employees in charge. The latter include members of EU Delegations and employees of EU institutions. In this respect, personal knowledge, skills, capabilities and interests as well as their sensitivity with regard to human rights

⁵⁹⁸ Cf. Timmer 2013: 37

⁵⁹⁹ Timmer 2013: 37

issues vary greatly. This aspect was also highlighted in the interviews with EU employees:

“[...] [F]or lots of people and also I would say policy makers, it's still very difficult, and trust me, much more than you could expect, to reconcile human rights and development. [...] I am sorry to say this but for some of the people who are working in development, they think that they are two different things, that they are not linked and that they cannot go together.”⁶⁰⁰

According to this observation, some EU officials may consider human rights a less important, solely political dialogue issue which poses obstacles to the effective implementation of human rights objectives and the mainstreaming of human rights in all areas of EU foreign policy in practice.

With regard to the above conclusions, it has to be admitted that a stable EU foreign policy discourse on human rights could not be identified due to diverging discursive patterns among individual EU foreign policy actors. There are recurrent statements and discursive patterns on freedom of expression online with regard to the analysed material. Also, individual EU foreign policy actors have developed patterns of action according to these determinants. However, respective discursive patterns are not coherent and stable enough to qualify as elements of an overall EU human rights discourse.

To sum up, it can be concluded that EU foreign policy actors have several instruments at their disposal to promote and protect freedom of expression online in EU external relations with third countries. However, these instruments are subject to complex procedures and interests of individual EU actors which may in some cases diminish their effectiveness. A complementary enforcement of the available instruments in a consequent, coordinated way would be an effective approach to contribute to the protection of freedom of expression online in third countries on the ground.

Finally, the reader shall be reminded of the limitations of this examination. This thesis focuses solely on the political dimension of EU discursive patterns on external human

⁶⁰⁰ See Transcript A: 174

rights protection. In this respect, the main topic is freedom of expression and more precisely freedom of expression online. First, discursive patterns and statements on freedom of expression online of EU foreign policy actors were discussed. In a second step, their translation into patterns of action in the context of operational EU foreign policy instruments was examined. However, to continue the critical analysis of this topic, further material and examinations are required. In this respect, the analysis of the specific role of individual EU foreign policy actors, their interests and resulting patterns of action on freedom of expression online would be of great interest. Moreover, the further examination of specific EU foreign policy instruments and methods would add value to the analysis. Last but not least, an analysis of interconnected EU foreign policy discourses would make it possible to better determine discursive determinants EU action is based on in this field. Nevertheless, the above study may be seen as a first step towards the examination of discursive patterns on freedom of expression online in EU foreign policy.

This thesis shall end with a citation of Paul Underberg from *Reporters Without Borders*, illustrating the arguably inevitable challenges with regard to freedom of expression online:

*“And if you want really to protect something, please do not put it on the Internet.”*⁶⁰¹

601 Transcript D: 201

8 Afterword

The collection of material and data for the research of this thesis was conducted until the end of February 2014. Therefore, material which was published after this date was not included in the examination. However, two EU documents of great relevance to the thesis were adopted after February. In March 2014, the European Parliament and the Council adopted Regulation (EU) No 235/2014 establishing a financing instrument for democracy and human rights worldwide⁶⁰². This regulation replaces the previous EIDHR Regulation from 2006. The new regulation was also subject in the above discussed interviews conducted with EU employees from the Commission in Brussels in February this year. Secondly, the Council of the European Union finally adopted the EU Human Rights Guidelines on Freedom of Expression Online and Offline on 12 May 2014. This policy documents was also discussed in the above mentioned interviews. For this reason, these two documents will be briefly examined below with regard to their relevance to freedom of expression online in EU foreign policy.

8.1 Regulation (EU) No 235/2014 - EIDHR

Regulation (EU) No 235/2014 establishing a financing instrument for democracy and human rights worldwide replaces the original regulation establishing the EIDHR in 2006. The new regulation is structured slightly differently and has to be read in combination with Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action⁶⁰³. Within the latter, common rules and procedures are set out for the implementation of multiple EU foreign policy instruments such as the EIDHR, the Development Cooperation Instrument (DCI), the European Neighbourhood Instrument (ENI), the Instrument

602 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. L77/85.

<http://www.eidhr.eu/files/dmfile/EIDHR.2014-2020.pdf>

603 Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action. L 77/95. http://ec.europa.eu/enlargement/pdf/financial_assistance/ipa/2014/236-2014_cir.pdf

contributing to Stability and Peace (IcSP), the Instrument for Pre-accession Assistance (IPA II) and the Partnership Instrument for cooperation with third countries. Besides these common rules and procedures, some specific provisions for single instruments are provided. With regard to the EIDHR, these include for example specific financing provisions, namely direct awarding of grants (Art 6 Regulation (EU) No 236/2014).

Regulation (EU) No 235/2014 (EIDHR Regulation) still provides the possibility to operate without the consent of the host country which shall allow addressing sensitive issues. Also the conceptual focus of the instrument on civil society actors is maintained (point (15)): “In this regard, civil society is to be understood as spanning all types of social actions by individuals or groups that are independent from the state and whose activities help to promote human rights and democracy, including human rights defenders [...]”⁶⁰⁴

It is interesting to note that the regulation sets out that the objectives of the regulation “cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level”⁶⁰⁵. This probably indicates that the European Parliament and the Council claim general competences in the field of human rights in particular with regard to EU external relations.

Moreover, there is a new passage in the regulation according to which the EIDHR shall complement more crisis-related actions⁶⁰⁶. In the interview, Frieman from DG DEVCO mentioned that the Commission is working on a solution to allow the EIDHR to operate also in countries which are not “in crisis” from a “development point of view” but with regard to their human rights situation; for this purpose, a mechanism of direct awarding should be established to provide grants in countries where EIDHR calls for proposals are technically, logistically and materially impossible⁶⁰⁷. Regulation (EU) No 236/2014 now provides for the direct awarding of low-value grants to human rights defenders as well as of normal grants “to finance actions in the most difficult

⁶⁰⁴ Regulation (EU) No 235/2014

⁶⁰⁵ See Point (31) Regulation (EU) No 235/2014

⁶⁰⁶ Point 14, Regulation (EU) No 235/2014

⁶⁰⁷ See Transcript A: 172

conditions or in situations referred to in Article 2(4) of Regulation (EU) No 235/2014 where the publication of a call for proposals would be inappropriate”⁶⁰⁸. Respective grants are limited with one million Euros.

Most importantly with regard to this thesis, the new EIDHR regulation for the first time explicitly refers to freedom of expression online in Article 2 in which the scope and the focus of the instrument are defined:

*“[...] promoting freedom of opinion and expression, including political, artistic and cultural expression, unimpeded access to information, a free press and independent pluralistic media, **both traditional and ICT-based, internet freedom and measures to combat administrative obstacles to the exercise of these freedoms, including the fight against censorship** [...]”*⁶⁰⁹.

In the Annex of the new regulation, five specific objectives and priorities of the EIDHR are set out. Freedom of expression online might be relevant to all of these objectives. However, in terms of its promotion and the protection on the ground, Objective 1, 2 and 3 might be the most relevant ones.

In the interview, Frieman from the Commission stated with regard to the previous EIDHR Regulation that Objective 1 was the “core of the instrument” and that a global call for proposals was normally launched every year under this objective⁶¹⁰. There used to be two separate calls for proposals under Objective 1 (human rights in countries most at risk) and Objective 3 (human rights defenders), a separation which did not appear very useful to target practical protection needs. Therefore, the objectives of the new regulation should be structured in a more rational and strategic way. Frieman further stated that this new system would make it possible to establish a comprehensive mechanism for human rights activists including calls for proposals for organisations, direct support to human rights defenders, an EU shelter⁶¹¹ initiative to relocate human rights defenders in urgent danger and a specific facility to finance projects in countries where calls for proposals are currently not feasible.⁶¹²

608 Article 6 (1) c (ii) Regulation (EU) No 236/2014

609 Article 2 (1) (a) (i) Regulation (EU) No 235/2014

610 As discussed above, this could not be proved true for the year 2014.

611 Regarding human rights defender support, the new regulation now explicitly mentions the provision of long-term assistance and access to shelter in Article 2 (1) (b) (iii) Regulation (EU) No 235/2014

612 See Transcript A: 165f, 172

He further pointed out that freedom of expression is of particular relevance to this system: “I think that in all this framework, freedom of expression is a priority for the EIDHR as part of the fundamental freedoms.”⁶¹³

The new regulation now combines the two formerly separated Objectives 1 and 3 and respective calls for proposal. Objective 1 is defined as follows: 'Support to human rights and human rights defenders in situations where they are most at risk'⁶¹⁴. Time will show if this new structure allows for a more coherent and complementary project management targeted to practical needs.

Moreover, freedom of expression online may also be relevant to Objective 3 on 'Support to democracy'. Frieman explained that in the new regulation democracy support under the EIDHR will follow a more comprehensive approach: “[...] it's more comprehensive, a continuous support to civil society before the elections and after the elections, let's say, the democratic life of a country.”⁶¹⁵

In this respect, Objective 3 now sets out that participatory and representative democracy, transparency and accountability shall be enhanced and that “all aspects of democratisation will be addressed, including the rule of law and the promotion and protection of civil and political rights such as freedom of expression online and offline [...]”⁶¹⁶

Moreover, also Objective 2 may be of great relevance to freedom of expression online. This is because EU actions under Objective 2 shall focus on the implementation of existing EU Human Rights Guidelines. Since March 2014, the new EU Guidelines on Freedom of Expression Online and Offline have been within this scope⁶¹⁷.

Furthermore the new regulation pays more attention to the coordination of EIDHR actions between the European Commission and other EU actors and in particular the EEAS and the European Parliament. However, such coordinating mechanisms are

613 Transcript A: 166

614 Annex, Regulation (EU) No 235/2014

615 Transcript A: 172

616 Annex, Regulation (EU) No 235/2014

617 Annex, Regulation (EU) No 235/2014

limited to consultations and the regular exchange of information⁶¹⁸. Article 9 of the regulation further provides the European Parliament and the Council with the right to access EIDHR documents, however, limited to information which might be relevant to the fulfilment of their duties: “In order to ensure that they are able to exercise their powers of scrutiny in an informed manner, the European Parliament and the Council shall have access to all EIDHR documents relevant for that exercise, in accordance with the applicable rules.”⁶¹⁹

However, it is not clarified who will have the power to decide which information is necessary to exercise their power of scrutiny. Moreover, in the opinion of the author, it is problematic that the access to information on the EIDHR is still heavily restricted, not only with regard to the public but even for EU institutions and actors themselves.

Finally, the budget of the EIDHR has been slightly increased to an overall budget of € 1 332 752 000 for the period 2014-2020⁶²⁰. By now, the EIDHR annual action programme and strategy paper for 2014 have not yet been published which is why no information about the allocation of the annual resources is available.

8.2 EU Human Rights Guidelines on Freedom of Expression Online and Offline

On 12 May 2014, the Council of the European Union adopted EU Human Rights Guidelines on Freedom of Expression Online and Offline⁶²¹. As mentioned earlier, the purpose of EU Human Rights Guidelines is to serve as political and operational guidance in particular for the work in third countries and in multilateral fora. They shall help to analyse cases and to prevent or effectively react to human rights violations. Following, the Guidelines shall provide EU and Member States officials and staff with practical guidance for the protection of freedom of expression in practice.⁶²²

618 See Article 3 Regulation (EU) No 235/2014

619 Article 3 Regulation (EU) No 235/2014

620 Article 10, Regulation (EU) No 235/2014

621 Available under http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf

622 See Point (9) and (10) EU Human Rights Guidelines on Freedom of Expression Online and Offline

Subsequently, the Guidelines will be briefly examined with regard to their most relevant aspects for this thesis. In this respect, it will be discussed whether they qualify as an operational tool to promote and protect individuals' rights to freedom of expression online in third countries on the ground. Because of their recent adoption, observations and conclusions can only be made from a theoretical point of view.

As has already been examined the EU considers freedom of expression a universal, individual right which is in return an important precondition for democracy. This discursive pattern is also reflected in the Guidelines which state as follows:

“Freedom of opinion and expression are fundamental rights of every human being. Indispensable for individual dignity and fulfilment, they also constitute essential foundations for democracy [...]. Democracy cannot exist without them.”⁶²³

In this respect, freedom of expression is further referred to as “key component of democratic governance as the promotion of participatory decision-making processes is unattainable without adequate access to information.”⁶²⁴

With regard to freedom of expression online, the Guidelines reaffirm the EU's previously proclaimed position that “[a]ll human rights that exist offline must also be protected online, in particular the right to freedom of opinion and expression and the right to privacy, which also includes the protection of personal data.”⁶²⁵ Furthermore, the Guidelines acknowledge the importance to the work of journalists and other media actors, including “citizen journalists”, bloggers, social media activists and human rights defenders, as the latter are put at specific risks of intimidation and violence⁶²⁶. In this respect, the Guidelines further state: “The Internet and digital technologies have expanded the possibilities of individuals and media to exercise the right to freedom of expression and freely access online information.”⁶²⁷

The Guidelines contain an operational part in which general considerations and priority areas of action are set out and a section in which specific tools are listed

623 Point (1) and (2) EU Human Rights Guidelines on Freedom of Expression Online and Offline

624 Point (14) EU Human Rights Guidelines on Freedom of Expression Online and Offline

625 Point (6) EU Human Rights Guidelines on Freedom of Expression Online and Offline

626 See Point (5) EU Human Rights Guidelines on Freedom of Expression Online and Offline

627 Point (16) EU Human Rights Guidelines on Freedom of Expression Online and Offline

which shall be used by EU foreign policy actors to implement the Guidelines' objectives. For each priority area, overall objectives and respective instruments are defined. The first priority focuses on media actors and the promotion of a safe environment for their work. The second one deals with the fight against laws and practices which curtail the right to freedom of expression online and offline (e.g. censorship, legal penalties for activities, and encouragement of self-censorship).

With regard to the latter, it is interesting to note that the Guidelines foresee adequate protection measures for whistle-blowers and the strengthening of the principle of non-disclosure of sources⁶²⁸. It will be interesting to observe in the near future whether this provision will be brought up in the discussion on Snowden. Furthermore, the Guidelines include a provision on the development of technological tools to support journalists, human right defenders and other online actors to exercise their right to freedom of expression online⁶²⁹.

The third priority is dedicated to the promotion and the establishment of an independent and pluralistic media environment offline and online. Priority four addresses the online sphere and other information and communications techniques. With regard to the latter, non-discriminatory access to information, the safe and unhindered use of the Internet and the promotion of the application of all human rights online are set out as objectives. Moreover, it is foreseen to provide individuals with technical support to counter violations online⁶³⁰. The cooperation with ICT companies is part of the fifth priority. In this respect, the EU shall compile and promote examples of (non-binding) “[...] best practices and respect for human rights with regard to the export of technologies that could be used for surveillance or censorship by authoritarian regimes.”⁶³¹ In this context, the objective's focus on authoritarian regimes has to be highlighted. States which are considered democratic by the EU (such as the USA or other partner countries) are not covered by this provision.

628 Point (31) (f) EU Human Rights Guidelines on Freedom of Expression Online and Offline

629 Point (31) (h) EU Human Rights Guidelines on Freedom of Expression Online and Offline

630 Point (33) (e) EU Human Rights Guidelines on Freedom of Expression Online and Offline

631 Point (34) (a) EU Human Rights Guidelines on Freedom of Expression Online and Offline

Finally, priority number six focuses on data protection and privacy online and offline. According to the Guidelines, the overall aim is to promote legal amendments and practices to prevent or react to violations of freedom of expression. In this respect, the Guidelines state:

“The right to freedom of expression, the right to privacy and the protection of personal data may suffer violations as a result of unlawful or arbitrary surveillance, interception of communications or collection of personal data, in particular when carried out on a mass scale.”⁶³²

Even though some of the EU Member States do not even themselves fulfill the listed criteria, the Guidelines foresee that the EU will call on and support third countries “to bring their relevant national legislation regarding transparency and proportionality of government access to personal data in conformity with international human rights law, **where applicable**.”⁶³³ It will be interesting to observe which good practices the EU is able to provide to third countries and when it considers this objective “to be applicable”. With regard to surveillance and interception techniques, it is further interesting to take a look on the listed examples of potential violations of freedom of expression in Annex I of the Guidelines. With regard to national security, the Annex states that:

“[...] the protection of national security can be misused to the detriment of freedom of expression. States must take care to ensure that anti-terrorism laws, treason laws or similar provisions relating to national security [...] are crafted and applied in a manner that is in conformity with their obligations under international human rights law.”⁶³⁴

It appears that the formulation “must take care to ensure” was selected with great caution. States are not “obliged” or “must ensure” to provide for the above human rights compliance. This aspect may indicate that individual EU actors and Member States heavily debated on this provision and are still much divided on this topic.

In Section C, various political and external financing instruments are listed as tools to implement the priorities and their objectives. With regard to the promotion and protection of freedom of expression online in third countries, tools and methods have

632 Point (36) EU Human Rights Guidelines on Freedom of Expression Online and Offline

633 Point (36) (a) EU Human Rights Guidelines on Freedom of Expression Online and Offline

634 Annex I, EU Human Rights Guidelines on Freedom of Expression Online and Offline

already been discussed in the previous section of this thesis. Therefore, only specific, additional tools provided in the Guidelines will now be shortly examined. According to the Guidelines, EU monitoring activities on freedom of expression in third countries⁶³⁵ may result in reports on situations of concern to the relevant Council Working Parties and the Political and Security Committee (PSC). Following, the latter may coordinate a common EU position on specific cases and implement response mechanisms. This is important as decision-making at the level of the Council and the PSC allows implementing measures which may not be considered “soft-power”. However, the provision does not explicitly foresee that respective reports are also forwarded to the European Parliament.

Moreover, the Guidelines include a provision on a new form of public political support: “The EU and Member States Heads of Missions or other appropriate EU officials will consider the publication of articles and the granting of interviews to local media outlets [...]”⁶³⁶ It would be desirable if this provision granted local EU officials more independency with regard to the reaction to violations on the ground in the future. Additionally, the suspension of cooperation and of financial assistance is listed as a further tool to fight illegitimate restrictions of freedom of expression⁶³⁷. With regard to trading agreements, the Guidelines set out that the EU shall pay attention to the export of sensitive information and ICT items and shall prevent the sale of surveillance or censorship technology to authoritarian regimes⁶³⁸. Above all, the Guidelines outline that among all EU foreign policy financing instruments, the EIDHR and its small grants mechanism will be of greatest relevance to the implementation of the objectives⁶³⁹.

Concerning the EU enlargement policy, the Guidelines further state: “The EU considers freedom of expression to be a priority for candidate countries and potential candidates.”⁶⁴⁰ In this respect, the Guidelines set out that EU shall monitor the situation of freedom of expression in candidate countries and offer guidance on its

635 This task shall mainly be fulfilled by EU Delegations, CSDP missions, Member States embassies and the headquarters; Point (41) EU Human Rights Guidelines on Freedom of Expression Online and Offline.

636 Point (44) EU Human Rights Guidelines on Freedom of Expression Online and Offline

637 See Point (50) EU Human Rights Guidelines on Freedom of Expression Online and Offline

638 See Point (64) EU Human Rights Guidelines on Freedom of Expression Online and Offline

639 See Point (47) EU Human Rights Guidelines on Freedom of Expression Online and Offline

640 Point (59) EU Human Rights Guidelines on Freedom of Expression Online and Offline

implementation. Moreover, the EU shall conduct political dialogues and request annual progress reports to fight impunity for violations, to assist in the establishment of transparent market basis for the media sector and in the development of a functioning judiciary⁶⁴¹.

All in all, the new Guidelines provide an ambitious programme for the protection of freedom of expression online and offline in EU foreign policy and in particular with regard to third country relations. However, the effectiveness of the listed tools and actions will depend on the EU officials and staff in charge of their implementation and on the manner they are implemented.

In this respect, it has been found that the formulation of a lot of actions and tools is highly unspecific and vacant such as “consider measures”, “work against”, “provide support they need”, “support action” or “work towards”. It further appeared that various actions are accompanied with the phrase “as appropriate”. Therefore, the scope of action remains often vague and is subject to individual interpretations. Moreover, with regard to the available financial resources of EU Delegations in third countries and of EU institutions dealing with human rights, it will not be feasible to monitor each violation of freedom of expression online, report on it and develop an appropriate response. The selection of current needs of action will lie again in the hands of individual EU officials. Another practical obstacle may be that a common EU position may not be achievable in sensitive cases of freedom of expression, due to dissenting interests of individual EU actors.

To sum up, it can be concluded that the implementation of the Guidelines and their effects on the ground will depend to a large extent on the training of EU officials in all fields of EU external action, the political willingness on the decision-taking level to develop appropriate responses to violations of freedom of expression online and offline and on the availability of supportive mechanisms helping individual EU officials to fulfill their far-reaching tasks.

641 See Point (60) EU Human Rights Guidelines on Freedom of Expression Online and Offline

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10 Interview transcripts

10.1 Transcript A

Interview with Susan Bauman and Viktor Frieman from the Directorate General for Development and Cooperation (DG DEVCO), Unit B1: Governance, democracy, gender and human rights, European Instrument for Democracy and Human Rights – Monday 3 February 2014

O: Olivia Schöfl
S: Susan Bauman
V: Viktor Frieman

O: In your opinion, what practical relevance does freedom of expression (from now: FOE) have in EU human rights protection policy? With regard to other human rights, is it a priority or is it as important as other human rights in practice?

S: I think there are statements made to lift it up on the agenda. But in practice, I don't think it's visible as much as other human rights. But it depends on what you mean with practice. Because we are really looking from a development cooperation point of view which is very often measured in terms of what kind of projects you support. And the media study that we undertook last year, which did a very brief scientific mapping of the kind of support of the Commission, so we have to be clear we are talking about the Commission and not the EU. You have to make a distinction first of all. So my answer refers to the Commission. I think if the mapping would have to be redone in a few years, because what is coming out post-Arab spring, will probably give another picture. So the instrument that has provided most for FOE is the EIDHR. Because when you look across the Commission overall other support there is very often a confusion between FOE, media support, I mean press freedom related sort of governance, and what we call external relation support seeing media rather as a vehicle for the promotion of European development cooperation, which is not really what FOE is. Or it is mixed with ideas of communication for development where again communication is used as a vehicle for other aims.

O: And FOE online, did it get more relevant? As you mentioned the Arab Spring, is it like an own field of action or would you say it's not that important with regard to FOE support?

V: Well, it's becoming more and more important. To give you an example, in the new EIDHR Regulation 2014-2020, there will be a specific reference to FOE online and offline. It was not there before. And in 2012, we had a Call for Proposals (from now: CfP) which included a specific lot of 3 million Euros in order to finance projects against cyber-censorship and so to promote digital security for human rights defenders (from now: HRD), safe Internet and this kind of activities. I think that, of course Susan is more an expert on this because she is an expert on media freedom, I manage the portfolio of what we call the Objective 1 of the EIDHR which is human rights in countries where they are most at risk. And I can tell you that it's not by chance that it was called Objective 1, in the sense that this is the core of the

instrument, of our activities. It is the only Objective which has had a CfP every year, we are talking about global CfP. And before there used to be two separate CfP; one for Objective 1, so human rights in countries most at risk, and one for HRD. And now they are together. And this is not by chance, in the sense that - but this is my personal opinion – at the time when the EIDHR Regulation was approved, there was this distinction between HRD and human rights organisations which somehow is a bit artificial. Of course they are two different things in the sense that HRD have, as individuals, their own specificities and they need a certain kind of protection. But for example with the new strategy and within the new Regulation, the EIDHR is going to set up a comprehensive mechanism for HRD which will include CfP for organisations, direct support for HRD, a system for a city shelter to relocate HRD in danger - we are now in the preparatory phase - and a specific facility in order to fund projects in countries most at risk, a facility for countries where you cannot launch CfP. I think that in all this framework, FOE is a priority for the EIDHR as part of the fundamental freedoms. If I consider also the projects for example that I manage or the projects that we funded last year, and some of them are managed by the headquarter but most of them are also managed by the EU Delegations, I cannot give you a statistic, but FOE is definitely one of the core elements in most of the projects. And in terms of the promotion of the EU; in our case, it's really the opposite, because most of these projects are confidential to protect the integrity, the physical integrity of the beneficiary and so they don't apply to the normal European Union visibility rules in terms of putting the flag. When it comes to the positive role of the EU visibility to protect HRD, an example that I always give is the example of Colombia: in Colombia, under the EIDHR, we fund lots of projects and we used to fund them in the past and lots of them are, more than FOE the case of Colombia, they are more about freedom of association. So, for HRD, trade unions etc. And what is interesting is that in Colombia we used to have lots of confidential projects until I think 2010, probably 2011, and then we started to receive requests directly from the HRD and the organisations in Colombia to give visibility, because for them, the flag of the European Union is a form of protection.

O: How do you manage to ensure that HRD in the field know about EU support but at the same time to be careful that they are not in danger?

V: Absolutely. There are many ways. First of all, it's a crucial role of the Delegations of the European Union. As you know, we have Delegations in 130 countries, something like this, and we have a series of good practices in place. Of course it depends on many things. But what the Delegations do is, when they launch CfP, they organise for example info-days, so, meetings with civil society in which they inform what is the EIDHR, how to apply, what is the kind of support the European Union can give to HRD in the field. And for this they can use part of the EIDHR budget, about 10% - so-called support measures - in order to organise these kinds of activities, including also training seminars. We invite Delegations also to mainstream dialogue with civil society on human rights. There are Delegations for example which consult the civil society before launching the call to see their priorities and to check that the priorities target HRD's and organisation's needs in this particular context. So we try to spread the information. And we have a website with all the information about how to get small grants, CfP and so on, www.eidhr.eu. It will, basically for visibility reasons, now be incorporated into the EuropeAid website. This is an important tool because most of the defenders don't know for example what is the procedure to get a small

grant, which is very simple; it's an email to a Delegation or to us. And then Delegations try to organise specific events for example for the human rights world day. There are some Delegations that organise sort of ceremonies to sign the contracts of the projects they support on the human rights day or any particular day. In order to have more visibility they also organise press conferences.

O: And due to your experience, it's not posing risks on HRD?

V: It depends on the countries. Of course, this is more visible in countries where there is no direct threat to HRD. In some countries, you are right of course, you cannot organise anything public.

O: Would you say that local NGOs or HRD have enough access to and knowledge about EU support?

V: It could always be more. Information is never enough in my opinion. And I can tell you that there are certain countries where the EIDHR website is forbidden, so it's not accessible.

S: I think we need to make a distinction here between the EU and the Commission. What we are talking about now is one instrument and it's not about the Commission.

V: Yeah.

S: Member States, they also put a high flag on this particular issue and also have similar initiatives on this. And there is also a distinction, as Viktor was saying, between this particular instrument which actually has the possibility to disclose information about the project in terms of protection needs of HRD. The EIDHR instrument is very specific.

V: Yeah

O: What would you say are the main effective EU foreign policy instruments to protect human rights and FOE?

S: First of all, this is about FOE and the way we label it, because, as Viktor was saying, FOE actually applies, if you look at it, to everything that concerns human rights, because it's a value. But it may not be labelled as such in the actual statistics. So it's a little bit of a fluid thing; in development cooperation and strategy it's all about statistics and indicators; then the picture may look a bit different. So it depends on how you frame it.

O: And if you take it from a broad perspective, what would you say are the methods or instruments the EU uses mainly in foreign policy?

S: Well I think the policy statements because it is a political dialogue issue to a large extent. And we also know from a lot of FOE communities who say it is not a lack of money that is the biggest challenge because there are so many institutions like the Commission, but also individual Member States as well as other countries that put a lot of emphasis on this, as democracies do. It is not a work that demands a lot of funding. What they need is political backup. We had an EIDHR forum last year and we had a special session on FOE. The people we had were coming also from very restrictive countries. And what they kept saying was that what is needed actually is one consolidated message. But it should not only translate into saying 'oh yes, FOE is important, we condemn the killing of journalists'. They stressed the fact that human rights dialogue is sometimes even more important than the actual funding.

V: Yeah.

O: Would you say that this aim was reached or at least attempted to reach by the Strategic Framework and Action Plan on Human Rights and Democracy, or did it in practice not really bring any changes to your work?

S: You have now the development of the guidelines on FOE that are still not launched. First interconsultations were issued when this came up; what takes priority?

O: I have experienced that with the Freedom of Religion Guidelines when I was working in the Austrian Foreign Ministry, it's a very difficult work.

S: Yeah, this is very closely related.

V: In terms of policy, for us, now the reference document after the EU Consensus for Development is the Agenda for Change. The Agenda for Change has clearly affirmed the link between development and the fundamental values, human rights, democracy, rule of law. This has to be translated into practice. And it's a legal obligation. As well as the Strategic Framework and Action Plan. In reality I think that – but this is a very practical comment - when it comes to beneficiaries in the countries that are really difficult, two things are really important: FOE and freedom of association. For HRD and human rights organisations this is the minimum to survive and operate. Then of course there might be specific organisation, they can have a better focus on women human rights defender or environmental human rights defender for example, but the core thing is to have a room to gather, a computer to communicate in a safe way. This is really what we need; the possibility to survive basically. But now the question is, how do you mainstream human rights? For example in the bilateral cooperation. I mean, even with regard to colleagues working in Delegations for example, the first reaction could be: 'yeah, but why do we have to deal with FOE if we are talking about agriculture, health or energy or whatever'. And this is the role of unit DEVCO B1. Because, as you know, we don't only deal with human rights, we cover democracy, governance, and gender. So, I think the big challenge is to mainstream the fundamental values, including FOE online and offline, in every development activity of the European Union. We have to keep in mind what are our fundamental values and also, as Susan was saying, to give political support to the civil society in the field. And this is something that is important not only on FOE; before, I was working on anti-death penalty projects and the request that they always had when I met civil society in the field was 'please, give us also political support, make statements about the moratorium, about the abolition etc.'.

S: Yeah, and if I may continue to what Viktor was saying, to go back to what you originally asked, what is the focus on Internet freedom and FOE, for me, it is a human right we are talking about, it is an individual human right, anybody's right to express oneself, everybody has the right to FOE. So, what makes this area quite complicated is also its link to democracy and governance and actually to press freedom and media, which, from a normative perspective, you can't really distinguish - and this is actually relevant when you are rolling it out in practice. Yes, you can do things and make political statements on HRD, but if you really want to roll it out within the development cooperation - in terms of the overall Agenda for Change -, you need to start talking about the institutional capacities and the communications platforms really. If you are actually taking this up as a long term goal and if you want to have an effect on the capacity on the ground, you need to ensure an enabling environment and institutional capacity. When it comes to FOE, there are certain individuals that

need to be protected because they are so visible. That visible person becomes almost like a public platform in her- or himself. And these platforms are online very much, but they are also offline which is why we keep saying online and offline. So, the separation between Internet freedom and FOE in general and media freedom is not very conducive for the issue because it is all connected. So in terms of rolling it out in practice, you can't separate HRD from these platforms; you need both. And it should actually be complementary. And this is what I think the EIDHR instrument is really trying to do: it's focussing on those champions. But you need the "Geographics" and the others to support the platforms.

O: Before, you mentioned the CfP for HRD and it was, as I can remember, on cyber-censorship and the confidentiality of activists. What is exactly meant with this, what would you support under this group?

V: Well, we managed to fund, under this specific lot, five projects. But to be precise, we have supported even before some projects on either cyber-censorship or protection of online activists and journalists.

O: Sorry, but the thing I did not really understand is what is to protect the confidentiality of activists?

V: Okay. Confidentiality. Basically, our beneficiaries always have the possibility to ask us to put confidentiality on a project. It means that, for security reasons, they will not be obliged to comply with the visibility procedures, which are in principle mandatory for all the European Union funded grants, so in every publication you have to put the flag and write 'this project has been implemented thanks to the contribution of the European Union etc.'. Some projects have parts of activities that are confidential and parts of activities that are public. So, these are the confidentiality measures. When it comes to the kind of projects on FOE online and offline, one of the key components is capacity building and training on data protection for activists; this is absolutely essential. To give an example, some years ago, I met some HRD from a very repressive country that were telling me something like 'I don't care so much about digital security, because I know that one day they will come and find me'. It was pretty shocking to me. I mean, the fact that you are an online HRD or an online journalist does not mean that you know about digital security. Normally, most of them use simple passwords or they don't encrypt anything. And often they don't use any precaution because cybersecurity is complex and takes time and needs to be constantly updated. So, first of all, sensitisation, capacity building, training; this is absolutely crucial in the projects which we fund.

O: Did I understand it correctly that there are mainly four different ways to apply for support under the EIDHR, the global CfP, the Country Based Support Schemes...

V: Yeah, the local calls, launched and managed by the EU delegations all over the world. Then, there is the small grant system, which means that we can give up to 10 000.-- Euros in individual cases to HRD that are in danger. So, for example, if you Olivia or a friend of yours is a HRD in danger, or he needs legal support, or health care because he was beaten or he was tortured, or he was in prison, or he needs to leave the country; you send an email to the Delegation, or to our functional mailbox. Then there is a consultation; it's normally a threepartite consultation between the Delegation, the EEAS - the Human Rights Division of the EEAS where there is a HRD reference person -, and our colleagues here. Normally the decision about the case is made within 48 hours and the money is transferred normally within one week.

We of course verify if the case is true. There are cases which are not true or people that of course try to get money somehow...

O: Does this happen often? That you can't verify a case, that you have cases that are not true?

V: No, I actually don't think that it happens too often. But we receive a lot of requests, the mechanism is growing; we will allocate more money for the HRD small grant system. And, as I told you, we started to work on a new EU comprehensive mechanism for HRD, which will include a city shelter, meaning a network of municipalities, not necessarily only in Europe, to temporarily relocate HRD in danger. We hope in the future this will be possible also outside the EU, because what we learned from our experiences and meetings with HRD is that HRD don't want to leave their country, they want to work in their country. So, when they leave, they want to go back as soon as possible. They are not migrants, they are not looking for opportunities in other countries, they want to fight for freedom in their countries.

O: But, I think the idea was originally to build an own European shelter programme, so, is this now modified to having different cities or states who engage, but there is no one EU project?

V: Well, it will be under the flag of the European Union but we want to collaborate with the existing structure, and create a network on the basis of the existing models. We don't want an overlapping system structure. We don't want to build new structures because there is no need.

O: Do you work with ICORN as well?

V: Yeah, of course. Of course, we are in touch with ICORN and many other HR organizations working with HRD, including on temporary relocation.

O: And this is supported by the Member States, politically supported?

V: Yeah, of course. It was in our Action Plan of 2012, which is approved by the Member States. So, absolutely. Concerning the whole mechanism and the work on HRD, there is a lot of interest from Member States, especially from some of them. There is a lot of attention on this.

O: And, due to your personal experience, would you say that the issue of immigration in this respect does pose political problems? Like people who fear that a lot of HRD who might still be in need of protection after their shelter programme stay in the EU, is this considered a problem?

S: I don't think it's stated as a political problem, but I think it becomes a 'hands-on' issue about the sheltering and a question if it falls under the human rights protection scheme or where does it become an immigration issue.

O: Only to get an impression, how many people are given shelter in the EU approximately?

V: Oh, this I don't know. Well, for understanding, we are not sheltering anyone. I think that ICORN has had about 50 people in 2013, but I may be wrong. The colleague who is working on the city shelter, she is not here unfortunately, she can give you more detailed information.

O: But if an individual applies to a Delegation and says 'I need shelter, I need to leave the country', do you refer the person to an NGO for example who provides shelter?

V: Yeah, yeah. We of course have our network of NGOs, like Freedom House, Front Line, etc.

O: But it's also possible that they get small grants and they do it on their own for example?

S: Are you asking if somebody says I need to leave? And what country opens up the door and says you can stay here? Is that what you are asking? If somebody physically has to be removed somewhere?

O: Yes, like, how the EU or the Commission proceeds with such a request.

S: Well, the Commission does not have a country. The Commission only has Member States, so there has to be a particular Member State that would open the door.

V: I don't think that we have had so many cases of relocation through the small grant mechanism so far. Most cases are about legal support, medical expenses etc.

O: But there are NGOs that are supported under the EIDHR to provide shelter?

S: whatever happens, a country would have to open up its borders. Because an NGO does not own a country.

O: Is the Commission advocating for a fast-track visa procedure for HRD?

V: This is a big issue, not only about this, but in general. As you know, this is a competence of the Member States. Let's say, from my experience, it's really case by case. I mean, when Member States recognise the status of one or two or three HRD, they can be very fast. Some MS have a sort of fast-track.

S: So, it's difficult to separate these things from immigration, like you said. It's not an easy answer, it's not a lack of attention to FOE or a lack of recognition of the issue; it becomes quite a 'hands-on' capacity on procedures when it refers to immigration.

V: I think that the case-by-case approach will stay in place for a longer term. Visa issue is a very sensitive file, and discussions about possible harmonisation will not advance fast, in my opinion.

O: Before, you mentioned also the budget for the small grants, I think it's about 5% of the overall budget what is dedicated to HRD, at least in the old strategy paper.

V: So far, it was 300 000.- Euros per year.

O: Are there any changes planned?

V: It's going to be increased. But keep in mind that the small grants mechanism is also mainstreamed into our global CfP, and in many local calls too. In the last 2013 call, financial and material support for HRD was almost a mandatory activity, it was explicitly mentioned in the guidelines that not including this activity without a proper justification would lead to a strong penalization in the evaluation. Small grants are already included in many of our global and regional projects for HRD. And according to the new PRAG 2013, you could also have projects that are only composed of the redistribution of grants, meaning the technical redistribution of grants. If you want to make a project of 500 000.-- Euros where you create a mechanism to distribute small grants to HRD in danger, this is now technically possible. Then we decided to not include this option this year in the CfP because the thing was new and we want to see first if there is the capacity of civil society, the real capacity of civil society, to cope with projects like this. But again, in the projects that we are going to fund, in all the projects, there will be financial support for HRD and this tops up our relocation for small grants.

O: The new Strategy Paper for 2014 to 2016, do you know when it will be available?

V: Yes, I can tell you that with the new Regulation - the negotiation of the new Regulation is done - everything is fine, so I think that it should be adopted by mid March. And I think that the new Strategy and the new Annual Action Plan should be finally adopted by end of June.

O: Are there major or important changes to the last one would you say?

V: We addressed somehow in a more explicit way certain categories of HRD; there is more emphasis on economic and social rights, online and offline FOE, we also try to update the language of the Regulation. There will be this new facility which technically would be direct awarding of not only small grants but big grants - I mean normal grants - in countries where it is technically and logistically and materially impossible to launch a CfP. We are still discussing with the legal service and with the financial services on how we will proceed. But it will be more or less the same logic as of the Instrument for Stability. We would like to have this kind of procedures. Because the thing is that we in the European Commission, we have the definition of 'countries in crisis'. But we would like somehow - and in this respect the Member States are very positive I have to say - to have also the definition of 'human rights crisis'. Sometimes we have countries which are not in crisis from a development point of view, where you can do a lot of work on infrastructure of health etc. but they have big problems in terms of HR and fundamental freedoms. The number of objectives are always five but structured in a more rational and strategic way, so there is no distinction any more, as I said, from the Objective 1 and the Objective 3: countries in crisis and HRD are all part of one big objective that is 'protecting human rights and their defenders where they are most at risk'. And in terms of democracy support, now there is a definition of the democratic cycle that, I would say, allows for a more comprehensive approach: it's not just support to the preparation of the elections and the election observation missions, but it's more comprehensive, a continuous support to civil society before the elections and after the elections, let's say, the democratic life of a country. And then there will be another objective that we used to call 'the big campaigns', so, torture, death penalty etc., plus a fifth one to fund key actors, such as the UN High Commissioner for Human Rights and so on. In 2014 is that we are not going to launch a global CfP for the first time in many years, for technical reasons. We still have very good project proposals that we were not able to fund yet. And also, the global CfP are processes that take a lot of time and costs; we reduced the time from about one year to approximately nine months. Nevertheless, this poses sometimes problems to projects which might no longer be relevant because of changed conditions.

O: I had the impression that the EU recently tries to establish human rights as an own agenda. So, but why is for example the EIDHR located in the development section; is human rights an own agenda, or is it only part of the Commission's or the Union's development system?

S: You need to make a distinction between the EU and the Commission because these are two separate things. And your question is concerning the Commission or the EU?

O: The Commission.

V: The instrument has always been part of the European Union foreign policy and human rights have always been part of the European external aid policy, with the Commission and EuropeAid as implementor of the external aid. So it's not something new. I think that now with the Agenda for Change in terms of policy and political

endorsement this is now stronger, and not by chance. Somehow, events such as the Arab spring, for example, can be seen as a wake up call in the sense that it demonstrated that you cannot sacrifice fundamental values for the sake of stability in certain countries; it can work in the short term but it cannot in the longterm, because sooner or later, people will claim for these rights, no matter the level of development that they have reached. So, I think that human rights must be totally integrated the development aid and they have to stay part of the development aid but of course in complementarity with, for example, political dialogue, with the Strategic Framework and Action Plan, we have a special representative for human rights. In think that there is, in general, a growing sensibility and here I am talking about the EU and not solely the Commission. There is a growing sensitivity about human rights on the agenda. It remains complicated because we are a complex institution and some fields such as the security policy are still an intergovernmental process, so, it has to be approved by 28 Member States.

S: I think, as Viktor said, the reason for its placement is the history of the institution of EuropeAid, but it's part of our external actions and that brings it into the EU foreign policy. This is where the Instrument comes in, very importantly; the capacity and the ability of the demand side, for the rights holders, to claim their right to be protected. So, this is a twofold thing and that does not only apply when you are supporting specific human rights but it should be applied across all development cooperation areas. So, again, you cant really separate out and say that FOE is just a foreign policy area; it is also a development cooperation area, because development cooperation is political.

V: And, you know, the EIDHR is probably the only instrument of the European Union which explicitly can work without the consent of the host governments. This is important to ensure the independence. We support mainly civil society also in a wide sense that is not only NGOs but sometimes we can support trade union confederations, we basically can fund everyone except political parties, although, we can for example fund trainings for political parties, or capacity building for political parties. So, I think in this sense it is absolutely important that it remains part of the development policy.

S: It's wider.

O: And the last question, it's maybe a bit personal question, would you consider Edward Snowden a person with realistic chances of getting support under the EIDHR?

S: Interesting question. I think, as a case, he as a personal illustrates some of the things we talked about. This area touches about so many other areas, which makes it difficult to distinct if he is purely a HRD or what about also national security.

V: Let's put it like this; if Edward Snowden would face the death penalty or if he would be in danger or if he is tortured or badly treated, in this case, I think that the European Union would definitely defend him.

O: Yeah but it's a very thin line...

V: It's a very thin line.

O: Because if he goes back to the US, maybe he IS facing charges like the death penalty.

S: But then he should be protected under the human rights law.

V: I think it is not for the European Union to say if the US law applied to the Snowden case is right or not, but the European Union can speak out to defend someone from human rights violations if it would be the case.

S: I don't know what kind of statement we would make. Because then it would become the whole idea of surveillance and information. So it would not be a clear cut as far as the European Union is concerned, because it is not sort of, 'we have Europe here and then we have the US over there', that's not true.

Most of the Commission is actually about internal EU. DEVCO is just a really small part that deals with the external, so we are much more linked to the External Action Service but we sit in the Commission.

V: Concerning this subject but like many others, this is let's say the good and the bad part of working in the European institutions and the European institutions themselves. Sometimes it can be frustrating because there are long processes and you win some battles and you lose a lot of them. But it is true that, to be honest, the level of internal discussion that you can have within the European institutions, the system of checks and balances with the Parliament, the Member States, the Commission and the different services of the Commission, it's pretty unique I would say. And this is what allows the European Union to move on and also to update their policies. Even with an instrument like this; some things that the EIDHR is doing now, they were probably impossible five years ago, or ten years ago. The kind of support that we can give to HRD and the kind of projects that we are funding, trust me, are very advanced.

O: Do you receive internal criticism for this?

S: In our relationship with third countries.

V: The average remark is 'if you fund this, we will have problems in the political dialogue with this country'. And - but this is a general observation, I have been working on human rights before, I have been working in development, with NGOs etc. - for lots of people and also I would say policy makers, it's still very difficult, and trust me, much more than you could expect, to reconcile human rights and development. When I talk to people working in development for many years, sometimes the general remark is 'development first and then we will think about human rights'. I am sorry to say this but for some of the people who are working in development, they think that they are two different things, that they are not linked and that they cannot go together.

O: Still a lot of work to be done.

S: Yeah.

V: We are here for this.

10.2 Transcript B

Interview with Sandra Rice: Policy Officer Human Rights Policy Instruments and Bilateral Cooperation, European External Action Service - Monday 3 February 2014

O: Olivia Schöfl
S: Sandra Rice

O: The thesis focuses on individuals who express themselves online and who are therefore considered being at risk. So it's very closely also connected to the issue of human rights defenders (from now: HRD) the EU is also supporting. So, it's mainly about HRD who engage online and who express themselves online.

S: Okay, so there are lots of things related to that and what we are doing. First, the European Union is condemning everytime somebody tries to curtail freedom of expression (from now: FOE), online or offline. The first time we publicly have stated, and it's a public document, you can check, that we believe that the same freedoms apply online and offline, is the Cyber Security Strategy of the European Union that was published on the 5th of February. That was the first time that we officially in a document we said that. Not that we have not been saying it repeatedly everywhere in the UN, in the multilateral fora, in dialogues with third countries. There are lots of ways where the EU is trying to protect FOE in a political way. What we do here, it's policy. We do lots of things.

O: What would you say, in practice, are the most effective and most important methods and instruments you are using in your section?

S: We do a lot. For me, one of the main instrument would be the Guidelines. Having specific Guidelines, I mean, even in the title they will say that the European Union wants to work on freedom of opinion and expression online and offline. This comes from the Action Plan on Human Rights, in Action 24 they say we are going to develop Guidelines, but not only that: in Action 24 of the Action Plan there are five things related to FOE online where the European Union and its Member States have committed to be developing something in the next few years. So, there is a strong commitment, publicly advertised and formally approved by the Council of Ministers on the 25th of July that says this, that the EU considers FOE a priority. And as part of FOE, they consider the same norms and human rights that apply offline should apply online. So it's clear that we have a policy commitment. There is a policy statement that is saying that.

How are we using it in practical terms? First, public statements. Everytime that we consider that there is a violation of FOE, a blogger goes to jail for his or her activity online, human rights activists are prosecuted or persecuted, intimidated, harassed: there is the option of the public statement. Many times, we don't have the option of the public statement because that would put in danger the person we trying to protect, so we use private demarches. These two instruments are used in daily ways.

O: it's mainly exercised by the European Delegations?

S: We are alerted by the Delegations, but the statements normally come from the spokesperson or the High Representative herself. We are always alerted or warned by the Delegations in term like that happen.

O: And the demarche?

S: The demarche takes a little bit more of time than the statement, because it needs the agreement of the Council working group, the geographical Council working group, we need terms of reference and once its approved then we send it to the delegation. The delegation has to find a date and then they go. The principle is like that; a public statement would be a quicker reaction than a demarche. We do a demarche when the situation on the ground does not allow for a public statement or maybe sometimes we are trying to protect someone that does not want to get publicity and they ask us to do it on private base. That would be the political reaction. Lets say, for a person, we are talking about an individual case: image the person is also in danger, because of the things he says; he is promoting women rights in Pakistan and we know that this person is in danger. We have a system that is the HRD system for which we have a scheme under the EIDHR. And we have a rapid reaction mechanism. That can work through several different options. Imagine that the person feels threatened and wants shelter. We are working with two or three NGOs worldwide; we are financing Reporter Without Borders, Front Line Defenders; we try to talk the maximum coverage as possible. So, if this person tells the European Union 'I am afraid, I am under threat', we remit her immediately to one of these organisations that will provide for physical protection or a plane ticket or whatever.

O: But they need an entry permission for the EU.

S: They don't need an entry permission. They could have come directly through the NGOs without us. I mean, the NGOs don't have to report in every case who they take on board. But, it's a good entry point, because, as you know, in all the Delegations in the world we have what we call the Liaison Officer for HRD. So, this is a person that is nominated, sometimes it is the EU Delegation political head of section, sometimes it is the Human Rights Focal Point of the embassy of Austria, I mean it depends. But this person has his telephone number published online. So, whenever a HRD knows about us, I mean knows about the European Union, they can call and he would immediately put him in contact with the organisations we are financing in that part of the world that maybe will be able to help him.

O: But, I mean, in order to come to the EU, they have to have an entry permission?

S: Sometimes we don't put him to the EU. I mean, sometimes the easiest way is to put them to a neighbour country where they don't need a visa. I mean, we try to provide protection. They EU is not going to offer diplomatic protection because we cant, we are not an embassy. I mean, if you are an online activist that fears that the army is going to put him in jail or kills him tomorrow and you enter in the EU, we are not an embassy, we cannot offer you that. So, the things that we can offer, which are limited we know, but I think they are working pretty well, are either this kind of link to an NGO that we are already financing, or even access to the small grants of the EIDHR. In the sense that for example a person who does not want to leave the country, he is feeling very well, but he has been threatened, people are knocking on his door all night long and he is afraid, we can mobilise very quickly money to provide these persons, through an NGO, shelter in the sense that we can put on an alarm or move them temporarily to another location where they will be protected. But this works mainly for HRD. If you are a blogger that is not a HRD, meaning that you are a blogger that is doing other things, I mean your right to FOE does not have to be linked all the time to human rights, then there are other methods. For example we have different contracts; we from the political part, what we do is the link if someone

reports that there is a violation of human rights online and we will try to help and we will mobilise the people. I mean, not mobilise, we will ask the people in DEVCO, 'do you have something that we can offer'? And then of course the political backup would be a statement, a demarche, maybe just a clarification; a call to the Minister saying 'we are very worried about that person', it depends. it's a tailor-made approach to decide what really is useful for the circumstances.

O: One question with regard to what you said on the contacting of NGOs who provide shelter; are you also trying to make the link for example to individual EU Member States who might also provide visa?

S: Yes, yes, of course. That is the role of the Liaison Officer, this is why we have a Liaison Officer that is nominated among Member States or the EU Delegation who has direct access immediately to all the Member States. So in case one of the organisations is telling us 'look, this has come to us, can you please provide help, this person needs to be secured, is a refugee, needs a visa to go out', then we will make the appeal to all the EU Member States to see who can it offer. As I said, the EU cannot offer that. We are not promising visa because it's impossible, something we cannot provide. What we can provide is the link to talk to the specific person of the embassy who will be able to decide on that. But we will never be able to provide visa, in the situation right now.

Then there are other things that we can do, that are more on the long term, that we are working on. I think the most developing instrument that we have right now for the fight or promotion of protection online is the No Disconnect Strategy. This No Disconnect Strategy was created through a commitment. The first time it was published was in December 2011 through a joint communication by Kroes and Ashton where they announced this strategy. This strategy has different pillars. First, they want to develop and provide a technological tool that will enable people in countries where privacy is not guaranteed a safe way of communication. Let's say we help them providing tools to be able to encrypt their messages when they are saving data about torture for example. This is not like a free thing that we give to everyone. No, no, it's very controlled in the form of training, we train civil society organisations. Then, you know, like raising awareness about the risks of ICT. I mean for example, I still remember a country – I am not gonna mention -, I went to a meeting and they had incredible data about accountability for crimes like torture with psychological reports, confessions, declarations, accusations, all the data. And they were keeping it in a computer. And I was asking 'do you have a cloud, do you have some kind of safe storage, have you ever thought about any encrypted system'? And their reply was 'we have a password'. So, if ever someone attacks the office of this organisation all this information that is trying to protect human rights will be lost. So, we discovered there was a gap there and then we decided to, through the No Disconnect Strategy, try to provide something that can help on that. The idea of the No Disconnect Strategy was coming from the new communication on the Meditterannia. So, it's kind of a result of the Arab Spring. We realised how powerful the ICT could be to promote human rights and we decided to support it. So, how did we do it? It has lots of parts, many of them are very technical for me. To explain you, for example, they are organising hackathons. Where they ask them to play with the new tools to see if it's safe or they can break into it very easily. They are consulting, training, they are doing many things. It is very inclusive.

Then, it's done through the EIDHR. The first time in 2012, I think in spring, it was the first Call for Proposals that included a component on online protection. Right now the No Disconnect Strategy is funding a feasibility study on creating a platform of awareness when there is an incident on the Internet that may have a political motivation. They study if that would be possible. The idea is that we would like to create some kind of mechanism that can help us to have on-time information about infringements to online freedom in the world.

O: But it would be administrated by the External Action Service?

S: No. At this stage, the only thing we are doing is asking a consultancy to tell us if this is feasible or not, how much does it cost, how can it be managed. The idea is to have some kind of system that will in a very limited period of time, I mean very fast, connect a disruption in the net with has it been an accident or is the intention a political one in order to prevent FOE. So that's the idea. Right now we are only financing this feasibility study; would that work; how expensive would it be; is this feasible; how should it be managed; how should it be controlled; what kind of network link do you need internationally to connect the information on what is happening on the traffic with the information that all the NGOs have. You know, there was a very big jump two years ago because they said 'Saudi Arabia is closing the Internet, there is going to be something awful happening there'. And then we discovered that it was mainly an accident. And then, when Egypt was bringing it down, I mean nobody had a doubt, suddenly the traffic goes down. We are in the black and there is a revolution ongoing. You know that something is going on. But sometimes it's not that clear. Improving that kind of things would help us to have a political action and reaction of this relations. We are not going to actively engage in nothing that would mean interfere with third countries policies; it's more that we are trying to produce a source of rapid reaction information.

O: Would you say, at the moment, that the coordination and the communication between the Commission and the External Action Service, the Delegations, the Member States is functioning well or there is room for improvement?

S: There is always room for improvement, always, always, always. But I think it is working pretty well. We all know each other, we all know what each other is doing. So, for example now that I am drafting the Guidelines on FOE we have created an informal interservice with the EEAS, DG HOME, DG CONNECT, DG DEVCO, DG ENLARGEMENT and we are all looking at the text, providing comments, making sure that there is a coordination between the internal and the external policies and making sure that the actions we decided to have a political statement done have the awareness of DG Development in order to be able to implement it. Because a policy without a follow-up, of a backup of any kind of feedback would be a little bit shortcoming. We have also an internal EEAS cyber-security group, created by the policy security unit after the publishing of the Cyber Security Strategy. And there we will focus more on multilateral actions. We will focus more on the initiative in the UN, on right of privacy. Or the resolution of the HRC on Internet freedom, from US and Sweden. Right now, DG CONNECT is preparing a paper on Internet governance. Where there is of course a part looking on violations of human rights in the Internet and trying to protect. And there is an interservice governance. So, I think there is a coordination, sometimes we not all think the same, but there is a coordination. Room for improvement? Incredible room for improvement! The EEAS is a new actor. We

have been in place only for 2,5 years. There is a need of creating more links, I mean people don't know how to contact in the internal commission or things like that, but the same problems are in the Commission. I would never describe it as a thing like there is no willingness; there is willingness, there is improvement, but there is room for much more.

O: And with regard to the newly created Human Rights Focal Points in the Delegations, have you received rather positive or negative feedback from the NGOs and from the civil society scene?

S: Problem: they are very new. I mean, it is not that they have been here for ten years and that everybody knows. All the feedback that we have received is positive in the sense of the idea is wonderful. But we need to implement it. You need to make this instrument known. And for that you need time. Especially in countries where the majority of the people are illiterate. So, you publish a telephone number online where people do not have access to the Internet and they can't read?! So, we need to find other ways. We are trying to approach all the time civil society, make the civil society use their networks when they communicate to people to say 'look, this instrument exists'. We are approaching NGOs and we hope that the NGOs will use their networks. Will that solve all the problems of the world? No. Is this going to solve the problems of the bloggers? No. But it's a first step I think.

Then we have also the Human Rights Country Strategies. They are restricted documents but all of them have a section on FOE that will analyse FOE on the ground. And for many countries in the world, FOE is a priority. And in many of those, part of the priority would be freedom online.

O: What would you say are, in practice, the greatest challenges with regard to protecting FOE online? What are the main obstacles?

S: There are many. First, there is a need of a strong common position. Right now we only have the Cyber Security Strategy which mentions human rights but it's not an in depth document on that kind of protection. I think the first step towards having a real policy statement on it is to get agreement on the draft Guidelines. Because the Guidelines will mainly focus on describing the right, describing what is the new situation and trying to provide protection. I think this is the next big challenge we have in front of us.

O: Do you think it will add value to the work on the ground?

S: Yes. The main goal of a Guideline is to serve as an instrument for Delegations, for Member States on the ground to know better. First because, imagine that you are an Austrian policy officer that gets his first post and he is sent to Jordan. And he is super happy. And of course he has not a knowledge of everything and maybe not of human rights. But maybe he arrives there and then he starts listening about jamming, gatekeepers, Internet wall etc. But he has no idea of jamming and he says 'what the hell are they talking about'? So, the first thing that the Guidelines do is that it describes the international framework of legislation you could use. And also it describes the main problems that you have with the right in order to be able to understand what the problems are. Because many times you may think that a dominant position held by a private company that is completely dominating the market and is following some kind of political agenda is not a problem of FOE but it's a problem of market competitiveness. And it might be a market competitiveness

problem but also may illustrate a manipulation campaign restricting FOE and censoring anything that is not in line with the regime. So, what the Guidelines do is, first, they try to explain what is FOE according to international standards. Then they try to explain which are the most common violations of this right, so, they try to explain from jamming to lack of privacy, to killing of journalists, they cover everything. And then they provide you with a set of actions that the EU is ready to do and the tools with whom they have to do them. Because, if the EU is saying we are trying to support FOE around the world, it does not mean that we will change the world. I mean, they have tools and we have to be very honest about the tools we have. They are not that many but at least we can use them. So, the Guidelines have some kind of explanations that I think are very, very useful on the ground.

O: They should have been finished last year I think, are there different positions of the individual EU Member States?

S: The deadline that we had was December 2013, so we are not that far. And it adds more that this year is complicated. We have parliamentary elections and the two previous Guidelines already came a little bit later, so, there is a big job of drafting that need time. Then, the EEAS launch with the Guidelines of FOE for the first time a public consultation. So, for the first time we were using our webpage to ask anyone in the world their opinion about how these Guidelines should look like, how should we be protecting. I mean, we consulted the maximum that you can do that is online. So, that was a new step, it has never been done through the EEAS. The Commission has its own procedure, but it was the first time. That consultation was done in July. We received contributions from all over the world. Then you have to work with this information. On the basis of this information you start drafting. Then you consult inter-service, then you receive comments from all the DGs, then you reach out to Member States and you receive comments from Member States...So, I don't think it's a problem of not getting a compromise but the process itself is complicated.

O: Okay, but there is kind of a common position of the Member States?

S: I mean not yet. We will not know until we start formal negotiations and the formal have not yet started. All we have done is drafting, informal brainstorming. So, right now the procedure would be to get our High Representative green light for the text that we can use as basis for negotiations.

O: it's already in her office?

S: No. Next week. Most likely next week.

O: Do you think that the existing international human rights standards and legislation is protecting FOE online enough or do you think there should be some amendments or there should be some additional measures?

S: I think that everything that we have should apply online. I don't believe in the need of new legislation. I believe in the need of raising awareness, training and promoting how to do it. Because I really think that there is no need of creating new legislation, the legislation that already exists on human rights applies immediately. I mean, there is no reason not to apply any kind of human rights online. If you have freedom of association, you should have freedom of association online. If you have FOE, you should have it online. What is needed is to make people aware of violations that they may not discover. There is no need of creating new legislation. There is a need to increase awareness of the ways of implementing this legislation online. And I don't

think it's a different sphere that need different rules. I think that all the rules that apply offline should apply online. And this is the position of the European Union. What you need to do is to maybe develop tools that enable authorities, judiciary, legislators to better understand what are the challenges of the communication online. But the rules are the same. So, we don't need to invent new rules, there is no need at all. We need to understand that there are the new media and the new technologies in order to be able to wisely implement what we have. But no need for creating nothing else.

O: May I come back to one thing you said, you said the EU has to explore new ways to raise awareness especially with regard to local NGOs, HRD; is the EU engaging in such attempts?

S: Yeah. The fact that FOE is one of the priorities in our Strategic Framework is a clear signal that this is something the EU believes. The creation and the drafting of the Guidelines is another symbol that we are thinking about that. The Cyber Security Strategy was a clear sign that we care. And then, DG CONNECT is working on the Internet Governance Strategy for the Commission, that is also a sign that we are looking at it. So, I think it's clear that it is a priority, that there is a political willingness to do something. But I think we still need time. I mean new technologies have erupted 15 years ago. I mean, the means of mass communication, they are not that old. We should be doing more, yes of course, we could do more, yes of course, you can always do more. I really think there is room for improvement but the EU is demonstrating that they are very active on online protection. And some of our Member States are super active; Sweden, UK, Netherlands and Hungary last year with the cyber conference that this year was in Seoul.

O: The European External Action Service, has it a role in the administration of the EIDHR?

S: Yes of course. We have our role in programming, we have our role in creating the new legislation and then, we have counterparts. Like, if I deal with FOE here, I know I have to contact Viktor and Sofi that will be implementing the projects. If I want to see what is their thinking, I will contact Susan Bauman that deals with media freedom in DEVCO. So, of course we have a role. If there is a decision about one of the small grants, they will check with the desk of the country here to get the agreement to unlock the money.

O: So it's DEVCO who is taking the final decision?

S: No. it's parallel. They normally receive the request or if we receive the request we pass it to them. And then they say 'do you agree with that', then we say 'yes/ no' and that's it. Many times this is not a political decision it's more about practical terms; is this person reliable? Is this going to be useful? Do they have any kind of credibility? There needs to be a project management that the EEAS is completely incapable of doing; without DEVCO we cannot do anything. We don't manage money. When it comes to more big projects, let's think about creating capabilities, if we are helping a very small country in Africa – not going to mention names – to develop their ICT infrastructure and they are receiving support from the European Union, then maybe it's done through the EFS and then it would be not the Commission but DEVCO but the EEAS will be more involved. When we established the Cyber Security Strategy we said that this cooperation should always be enlightened by human rights. So, there are ways of creating infrastructure that will be more human rights friendly, for

example ways that will prevent a completely dominant sphere for an Internet service provider and there are ways that will make it not.

O: Is the EU in this respect also consulting with private sector?

S: Yes. For example we created last year the Guidelines for Human Rights in ICT. This was the enterprise on the lead and I think it's very useful because it really tries to help private companies to act in accordance with human rights on the ICTs. They are published online, you can get them. They have even recommendations, they are following the Ruggie principles. The EU is trying to provide this awareness that I am telling you. They are trying to tell private entities how to work. We are not telling them what do they have to do but we are giving them recommendations of how their work could be more in line with human rights.

O: But at the same time, for example if there is a problem for example in China or somewhere else where you have a very strong control of the online sphere and you see that also private companies such as Google or somebody who has an important role and also cooperates with a third country's government, would you also consult with private companies or are your political measures only aiming at the contact with officials of the third country?

S: No, no. We talk to everybody. I mean, the main policy of the European Union is a multi-stakeholder-model. So we will talk to private companies, civil society, government; we really believe in the multi-stakeholder-model. There is no way we will be only talking to the government. We are not trying to influence anyone we are just trying to open dialogue, to flag violations of FOE, so I don't think there is any problem with that. I can tell you, in the public consultations of the Guidelines on FOE, we received contributions from six or seven very big private companies. We were not limiting this consultation to civil society, it was open. It was mainly targeting civil society because normally they will be the first ones willing to advise us on human rights approaches but this did not prevent private companies or even associations of profession to get back to us with their own ideas.

O: And were some of the ideas integrated in the draft?

S: Yes. All of them were read. Many were too overreaching, many were not exactly for Guidelines on FOE, many did not understand the concept of what a Guideline would be, I mean, they were proposing more project ideas that we cannot take in a document like that. But all of them have been read through and all of them have been considered. Then of course you cannot accept everything. What you are doing is a public consultation to guide your brainstorming before engaging with the Commission or Member States.

O: Would you consider Mister Edward Snowden a person of being in need of protection the EU could provide?

S: I mean this would be personal because the EU has not made a position. What I can tell you is...

O: But have there been attempts to reach a position?

S: It's one case among thousands of cases of FOE we have in the world. I don't think the EU has to make a position. Of course there would be grounds of investigation but what we consider, and it will be reflected most likely in the Guidelines, is that whistle-blowers need protection. And there should be international frameworks to protect them. I am not going to decide if Snowden is or is not a whistle-blower because it is

not for me to decide. But anyone in the world that is working for promoting more FOE will be of course enabled for the protection of the EU if he is condemned or persecuted because of his human rights advocacy. Then each case needs an independent evaluation. I don't know if he has asked for protection from us. Not that I am certain. I mean maybe he has asked, I don't know.

O: Then the Commission would have to evaluate the case?

S: To take a position, yes. It's like anyone. It's like you ask for protection. In general, what I can tell you is that we have a very, very strong position that there is a need to ensure journalistic sources and that whistle-blowers need protection. But one case in particular, I cannot tell you because actually I did not explore his case that deeply myself. I followed it in the news.

O: But, is there time to explore each case so in depth?

S: We don't receive that many requests. So, that's a pity. But we don't receive that many requests.

O: You mean for shelter or in general?

S: In general. Because normally shelter is something that is strange, I mean that we will receive a request. First, because people when they are persecuted they run and then because we are outsourcing aid, I mean we are financing organisations that do that. We mainly receive petitions for political support. Like, if you are in jail and your trial is going to pass soon and you know that your trial will not be free and fair, then you call us and we will try to mobilise, to be able to observe the trial, to call on the government to make sure that your trial is respecting all the guarantees that it deserves. This is mainly what we receive.

O: And can you give me an impression, a kind of number, how many?

S: It's impossible. You know, we are very limited in resources and we don't have time to create statistics. But I would say that...it's impossible...we have about 140 Delegations...I would tell you that there is one case almost every day. But I don't know how many.

O: But you said you don't receive so many...

S: requests for shelter! Because many times they are not for shelter. Many times they are just raising awareness, they want us to be aware; many times they don't do it and we proactively react to something that we consider a violation. If you look on the website of the High Representative you see that there is almost one statement on FOE every week. The volume is big. But, shelter may be not the thing that you are asking to an international organisation. You may be asking friends...The fact that we are about to providing this is because there was a need. And as I said, this instrument needs time to be known.

O: Thank you very much. Is there anything you want to add, from your practical experience, like, what are the things you are most occupied with when you deal with the topic, or the greatest challenges for you personally?

S: I mean the greatest challenge is that this is worldwide, FOE is a priority worldwide. So, it's very difficult to manage. I mean, we are not so many, the EEAS compared to a Foreign Ministry, of a big country, I mean, we are 27, 28, we are not that big. I don't deal only with FOE, I deal with FOE, freedom of association, Human Rights Country Strategies, the countries of the North of Africa. So I would say if we would have one person dealing exclusively with FOE, 100% of their time, much more can be done, much more can be pushed forward, much more money but what we are doing with human rights is that we remain like a service of advice provider. Meanwhile, the

responsibility relies on the Geographicals. So, whenever there is a problem or a big violation of FOE in a country, it's the 'geographical' of that country that will mainly follow and we will provide advice when they need it. But we are not supposed to be following the world because it's impossible. But I think that's something they are very aware of. It is not the first time that the EU has, you know, like, cancelled a supply of European companies because we have a suspicion that they will use ICT material to restrict FOE or to harass HRD. It is not the first case when the EU has stopped a trade agreement, like it happened in Sri Lanka, because there were massive violations against journalists. So there are very good examples of the EU doing this action. Should we do it more often? Yes. But it is very difficult to manage a machinery that needs the agreement of 28 in a very speedy time for every case in the world.

O: So, also individual EU Member States interests could pose a risk sometimes to protect FOE?

S: Not really. I don't think so. I think for FOE in particular, it's clear that they all have an interest on it to be a priority. And you see it, I mean they all sign...

O: But maybe some interests might be stronger sometimes?

S: Not for freedom in general, not for protection. If you ask me about a more specific thing, copyright issues, denial of the Holocaust, hate speech legislation; I may say there can be deviating opinions. When you ask me about FOE in general or the need of protecting it online as we do offline, I think there is a common understanding. There may be sensitive issues about data protection legislation. But not about the fact that, in general, privacy should be respected. I think we have common grounds for the big principles but of course there are problems with particular cases. And as you know, there is not a harmonised legislation on the things dealing with online issues in all countries. We are still very divided. Any many countries are a little bit more into and many countries are a little bit out. But even with regard to infrastructure. We still have countries in the European Union that cannot provide access to the Internet to everyone. And there is no any kind of statement or indication to provide for example access to vulnerable people like handicapped people that may need it more than a normal person. This is providing an incredible challenge, or to remote areas where freedoms are not that respected and we should be encouraging more access to knowledge. There are no strategies like this right now at the European level in all the countries. I think this is an early age of online protection.

O: Thank you very much.

10.3 Transcript C

Interview with Alexander Corti, Front Line Defenders – 4th February 2014

O: Olivia Schöfl

A: Alexander Corti

O: What importance do writers at risk play in the work of your organisation, as a category of human rights defenders (from now: HRD)?

A: Well, we don't really work on categories of HRD. Actually our objective is to work globally and to protect and support HRD at risk, irrespective of the work they do. I mean they could work in trade unions or work on social rights, political rights, we don't make any difference between the human rights defenders. So we have a global reach, we don't focus on any particular region nor on a particular theme. So it's about any human right defender at risk.

O: But in practice, are they relevant, like journalists...

A: They could be journalists, they could be leaders of human rights organisations or community leaders. If you look at the appeals we produce, the whole range of human rights is almost covered. So we don't particularly focus on one specific category but we are very much interested in the issue of protecting communications. Not just about freedom on the net with people targeted for publishing blogs etc., but also as regards protecting communications and data, i.e. digital security and confidentiality. So you must be able as a HRD to be public if you want to, that's freedom on the net, but if you want to share information and data in a secure way non-publicly, then you must be able to do it as well without being tapped or interfered, when you send emails for instance. You know, these are the two sides of the same coin. You cannot just support human rights defenders who want to be public but also support those who want to share information confidentially.

O: Since when about would you say that the online sphere or HRD who engage online has an importance for your work?

A: I would say the contrary. What we want to do is to meet the needs expressed by the human rights defenders. And most of them said 'well we work, we do our human rights work but sometimes we understand that what we exchange on the Internet can be interfered, can be tapped' and that puts not just the HRD at risk but also their families, their colleagues etc. So it's more the impact on their work that matters, and that's why we want to protect them.

O: I meant since when about did it appear that HRD engage online? So, is it a new phenomenon?

A: You want a date? Well, I have been working almost eight years for Front Line Defenders and it has always been an issue. It's not something new. It's all about communication actually. I understand the Internet not just as websites, it's also Internet communications including mobile phones because now mobile phones, smartphones are not just to send text messages, just phonecalls but they are used to access Facebook, to access Twitter etc. We have integrated that in the approach. It's even more difficult to protect communications on mobile phones than on computers for instance. So, it's not something really new. Front Line Defenders has been existing since 2001, so I guess before, when people did not use any computer

because there was no Internet...but I am afraid as soon as the Internet became available for many people, securing communications did become an issue. And there is a kind of game between HRD and the authorities... The HRD want to protect their communication and the authorities want to tap into it. Then you find different ways to by-pass, but the authorities are quite good as well.

O: Would you say that the Arab Spring had any effects on the work you are doing or on how to select HRD you are protecting?

A: Well we try not to 'select' HRD we protect. Because we don't have any members, so we don't have to select through the channel of membership. We can support any human rights defender, irrespective of the country of origin, whether or not they are connected with existing national networks, platforms or international organisations. As you know, the Arab Spring showed that the use of Facebook can make a difference. It was not so much about how to protect communication since many HRD wanted to go public and they didn't seem to really care about that. For them, if the authorities can read their text messages, fine. Sometimes it is also cultural to say 'okay let's do it openly'. But that is why in our programmes we try to meet their needs and also to express or explain that you put your life at risk but not just your life, also the lives of others as well. So when you want to communicate confidentially then you have to protect your communication as far as possible because the risk is always there, you need to reduce the risks. As you know, with NSA now, it's impossible to believe that you are fully confidential but at least you reduce the risk and you create barriers to limit the risk to be tapped. It depends on the country, some HRD are very aware of that and they want to protect their communications, to encrypt their messages. They have to be careful when they use social networking sites, when they post blogs, post articles, they know the risk they may face. But others don't care. They just communicate on Facebook and they know that they might be arrested but it's just part of, you know, the way they communicate. But we give them the tools to protect themselves if they want to; we don't dictate them what they should do. We say 'if you want to achieve that level of protection then you should encrypt your messages, you should do that, you should stop using Hotmail, you should stop using Skype etc.'

O: You already mentioned that some of your activities are funded under the European Instrument?

A: Yes. So far. Our programme of protection has been co-funded by the EIDHR since 2009. With that support, we train HRD on personal and digital security, we do advocacy, we do appeals, we provide security grants, we campaign etc. So digital security is one of the aspects of our work. We have a security grants programme so we provide money for securing an office, for paying for fees, for medical treatment, we can pay for unarmed bodyguards, it's really about security and protection.

O: This is what is funded under the budget of the EIDHR?

A: Actually under the current contract all this is co-funded by EIDHR.

O: So it's like a framework where you get funding and from this framework you finance different projects.

A: It is a programme of action and it's co-funded, around 55% is funded by the European Commission and so it covers everything we do almost. Mainly the grants programme and training, advocacy, and reaching out to defenders. So we have field presence in all regions. We try to reach out, to increase our open network of HRD

contacts we have because we don't have any members. And we have a hotline for instance, 24 hours seven days a week, and people can call us any time.

O: And with grants you mean the system of small grants which are awarded to HRD?

A: There are different types of grants. What EIDHR has in mind, when they speak about grants, is an amount of money sent to defenders; maximum 10,000 Euro. We use that system but it's quite limited in number, very limited. But we have also what we call direct support. For direct support, we need to get the receipts etc. from HRD. Now, around 20% of Front Line Defenders' annual budget is dedicated to the grants programme and we may reach this year, in 2014, 1 million Euro, disbursing grants. If you call money sent to HRD as grants, then the EIDHR believes that it is a lumpsum of max. 10,000 Euro. So, you have to be careful with the wording. But we give a lot of money to the HRD, partly funded by the EIDHR but not all. We could use that for digital security as well. We could pay for instance, I remember, we paid for secure communication devices in DRC in Africa so that people can connect very quickly and when they face a problem they can connect, they can call, they can send a message very quickly to other mobile devices in the country or in the region using satellite phones. So we can provide also systems to communicate, not exclusively through the net.

O: And does your organisation have access to the emergency fund of the EIDHR?

A: Before talking about the emergency fund, we have now another contract, a small contract, and it's a joint programme between us and Tactical Technology Collective, which is a collective of experts and specialists – together we have produced a list of open source softwares you can use to protect communications, encrypt messages, you can start with anti-virus etc, with explanations. On the website <https://securityinabox.org/> all these softwares are available for free, and the explanations in 13 languages. So people can use those tools to protect themselves and protect their communications. So it's a joint project, now we have under that contract, we provide consultancy in the different regions to support HRD, protect their communications. And, as I said, the original call for proposals was a joint initiative by EIDHR and DG CONNECT in the context of the No Disconnect Strategy, launched in December 2011.

O: Was it this restricted Call for Proposals for HRD, cyber-censorship and confidentiality of activists?

A: Yes and we were successful in getting that support. Our global programme of action already includes digital security and training, but then we have a specific targeted action jointly with the Tactical Technology Collective to work specifically on digital security, comprising trainings, security consultancy in the field, with contact persons for HRD. That are the two contracts we have.

O: The other one is from a prior Call for Proposals?

A: Yes, the big one, it's a three-year programme and it ends at the end of this year, it was launched in 2010. EIDHR co-funding corresponds to around 15% of the whole budget. But we have been funded since early 2009, almost five years.

And so for the EIDHR emergency fund, actually, we don't have access; it's really emergency grants for HRD. So most of the requests, as you probably know now, go through the EU Delegations or HRD may alternatively apply directly to the European Commission in Brussels. The decision on the grant is very quick, it's a matter of days, but the time needed for financial agreements and to disburse the fund may take

several weeks. So what they sometimes do, they contact us to see if we could disburse the fund quickly, as soon as the decision has been taken, and then we get reimbursed. They sub-contract with us, then we contract with the defender, we send the money, then we get reimbursed. But what has happened recently is that for instance the defender said 'oh, can I rediscuss the contract because I cannot spend the money right now, I have to wait' which means that we don't get the receipts and we don't get the reports from the HRD, then we take the risk of not getting reimbursed. Or we get reimbursed but not the full amount. At the end of the day, they externalise the emergency fund management and actually take money from us if a reporting problem occurs. We will be more cautious in the future and only accept to channel funds to HRD in accordance with the criteria of our own grants programme. In a few cases, we have doubts about the profile of people supported by the EIDHR emergency fund.

O: So they don't consult you to evaluate if it's a defender?

A: They should. The decision is taken by them. I guess they consult the desk officer here and people at the External Action Service, people in the Commission internally and of the EU Delegation and they have agreed 'okay let's go on, let's do it'. And then we realise that we may face situations where the person is actually not reliable and we don't know him or her and we even doubt they are human rights defenders. And then we may face the situation where we have to get reimbursed but we don't get the reports from the defender.

O: That is interesting because by DEVCO I was told that it takes about one week to get the money...

A: It depends. Sometimes it takes more time. Yes, they can do it themselves. I don't know the exact proportion of grants channelled by NGOs. We have requested a meeting with the EIDHR to speak about that. Because I think it is not fair to face such a problem. I mean it's a real challenge. Of course, we are not forced, we could say no, but I think they have the responsibility of the decision so they should bear the responsibility of the reporting and if the defender does not report, or the so-called defender, it is not our fault. I think channelling the funds is fine, we can channel the funds because we can do it quite easily. But then reporting, they should report to the Commission directly not to us. I think that is not fair but that we will discuss with them.

O: With regard to the Call for Proposals and the whole administration, so you think that local or smaller NGOs have a realistic chance of being able to bear this administrative burden?

A: Maybe not for global calls. It is quite difficult, with logical frameworks etc. And also the way they score the proposals, it's really... sometimes a bit weird. But for what they call the Country Based Support Schemes I suspect it's easier and also they may go to the local level to train HRD and the organisations on how to apply for EU funding. And even in some countries they are quite flexible. They can support smaller projects, they don't need to go through all the system there. But the problem, the limitation, is of course that the organisations must be registered. So, when they are not registered, they have to go through a registered organisation or an international organisation to get money through the system of sub-granting.

O: You mean the UN system of being a registered organisation?

A: No. Registered at local level. If you are in Uzbekistan and you cannot be registered because you have tried to be registered but the authorities say, you know,

'forget it', you cannot get any EU funding. You have to be registered in the country. But the EIDHR can support unregistered organisations but not directly. They can do it through organisations like Front Line Defenders. Because we can send sub-grants to unregistered people.

O: But then they would need to apply for it? Or would they contact you and ask you if you could channel this funding?

A: It depends. If we speak about sub-grants, I think it's fine, there is some flexibility. But if we talk about the Country Based Support Schemes and the Calls for Proposals, that is not possible as far as I know. But that is something you should check with them but I think they cannot support officially, directly unregistered organisations. But through grants yes, they can.

O: And in practice, who mainly identifies the HRD? Are they coming to you, or friends or family?

A: It is both ways actually. Of course for a membership organisation it's easy because you have members. So it means they identify them as HRD or organisations, you develop contacts. We don't have such a membership scheme. We have a database of contacts, thousands of contacts, so we can identify, we can track everything. We have the contact details and we can track all activities we undertake on their behalf, it can be training, it can be an appeal etc. So we have everything there. So if the person is not in the database, then we have to check among the existing contacts and the database in the region or in the country and we check 'do you know that person, is he/she an active defender or organisation' and we may contact other international organisations like Amnesty International to cross-check information. So we need to get more information on the profile of the defender when we don't know them. Most of the time we know them or we know people who know them. So it's a networking approach. But an open network. We don't have a closed network.

O: And does your organisation also provide temporary shelter?

A: Yes. There are two different aspects. We have in-country-relocation or in the region and we may use the grants programme for that. So, let's say, someone needs to go, to leave DRC, he/she goes to Uganda and then we can pay for the flight, for relocation, for family support if the family stays in the country. So we can use the grants to relocate. But we don't have any shelters in the field. We discuss with them what the best option is, whether to stay in the country or to leave for a while, but it's a temporary relocation, we don't support long-term relocation like one year, two years, we don't do that. It's limited in time. Sometimes we can even pay for what we call rest and respite relocation; that could be even with the family at a nice place where people can relax. And then we have a flat in Dublin with several rooms where we can host HRD if needed. And so they can come to Dublin for a while – the fact that Ireland is not a Schengen-country can help because we have an agreement with the Irish government so they can provide visa in a fast way – and then they can stay for a while in Dublin and they can use that time to learn English, to learn about digital security, to follow some trainings etc. But it really depends. They can come to Dublin or to Europe for medical treatment, urgent medical treatment, and they may stay just two weeks in the hospital. We have also a fellowship programme where HRD can come outside an emergency situation.

O: And the rest and respite programme is it mainly within the EU or in third countries?

A: The rest and respite programme, it's more in Dublin. it's in Dublin. For the rest we call that relocation, urgent relocation. But I think we host maybe 4, 4 or 5 defenders a year, so it's not a crowd of HRD going to Dublin. It is quite limited in number. I know that the Member States may fear that they would face many, many requests for visa etc., people coming to Europe to seek asylum etc. According to our latest activity report, you can see that maybe ten defenders are coming to Europe under relocation but there were 100 in the field or in the regions. So the overwhelming majority of HRD relocated, they stay in their region.

O: But from your experience, if the people are still in need of protection, what shall they do after their shelter programme?

A: Most of the time they go back. If they come just for medical treatment, that's fine. But if they come because they are in an insecure situation, either they go back after a while, it could be two or three months, or we can help them find another solution because it is not secure enough to go back. But under the rest and respite programme, we established the programme in 2005 and I think only two applied for asylum in Ireland of maybe five or six per year. Plus we invite every two years 150 defenders to Dublin for a big conference and no one has ever applied for asylum. So if you look at the visas provided by Ireland, since 2005, I mean it's hundreds and hundreds, only two applied for asylum. And they all had the profile of possible asylum seekers because they are at risk.

O: And also the rest and respite is also a short-term programme?

A: Yeah. It's maximum three months I think. Some people only stay a few weeks and some stay longer but it is quite limited. It is called temporary relocation programme. And in principle, we don't support asylum seeking procedures for instance. We don't provide support to that because we focus on the protection of HRD that are at risk and not if people want to go in exile. And once they are in exile we don't support them anymore as HRD but we can get information from them on the situation in their country of origin but we don't provide any more grants if they are already in exile.

O: And do you also have, besides Ireland, other European countries you are working with to provide shelter or...

A: Not really because it is still an early stage of... you know that there was a mapping of shelter initiatives so you can see that there are different programmes. There was one programme in Spain but for Latin America and Latin American defenders but it's a longer-term programme, they may stay one or two years. And I know that a Czech city opened up a shelter initiative, The Hague also with Justitia et Pax Netherlands. Otherwise you have the University of York, they have a programme, and a few others.

But as you know, there is now a project to set up a digital platform based on the mapping, so first make a database and then create a digital platform. And then this digital platform will be taken over by a consortium of NGOs next year to deal with that, to promote the shelter initiatives, to contact other initiatives and to involve them in the network. So that when we face a situation, when we face a case of a defender we cannot host in Dublin, we could use that coordination body or digital platform to find the best match as quickly as possible.

O: It is already set up this platform?

A: No. They have just appointed in late December the guy and the team who is going to implement that. It's a two-year project, until the end of 2015, and that consortium should take over next year. And we have been contacted by the guy in charge, his name is Chris Collier, he is an independent consultant and we know him very well. There is this handbook for HRD which was written by Chris Collier, I have known him for ages, since the establishment of the EU Office.

O: And he is the person in charge?

A: He is the person in charge to implement the digital platform. And he contacted us yesterday to interview my colleague in charge in Dublin.

O: The European Union has in 2012 launched the Strategic Framework and Action Plan on Human Rights and Democracy and there they adopted the idea of establishing an own European voluntary initiative for temporary shelter...

A: That's exactly that.

O: That's the implementation of this voluntary initiative?

A: Yeah. That's from the European Commission side, to support the digital platform and then that the consortium of NGOs will manage it as a separate programme.

O: Because the mapping, you already mentioned, of the shelter programmes it was originally suggesting an own European programme for temporary shelter...

A: Not only, because the mapping is beyond Europe. They also mapped the scholars-at-risk in the US. So they wanted to have, well start with Europe but also see in other parts of the world where HRD could be relocated. So it's not just Europe. Actually that is something I promoted in 2008 and then tried to sell this idea to the Czech Presidency and they bought it. So actually I was a bit behind all these things. Despite the fact that shelter, shelter cities, it's not something new in the end. It has taken four years before we had something concrete. And in my mind it is not just shelter; I decided to lobby for that because I have tried to promote the idea of visa schemes for HRD, but in the context of the Schengen area, it was very difficult to have an agreement and to have Member States open even to discuss specific visa for specific groups of people. So, I thought maybe the best way was not to continue pushing for visa schemes but to improve the conditions of relocation in Europe, which means having initiatives, cities ready to host defenders, providing letters of invitation so that would speed up the visa process. So that is something I have been lobbying for five years. And I try now to reintroduce the visa issue; we are going to have a questionnaire in different languages asking HRD to fill in a questionnaire about Schengen visa in order to collect experiences, good and bad experiences, in getting visas. We may at the end of the year draft a policy paper and organise a closed seminar.

O: Do you also contact in this respect DG HOME?

A: Not really. DG HOME or JUSTICE was responsible for drafting a handbook for the consulates and embassies, a few years back. You know that there is a Community Code on visas and the Commission drafted a handbook. And we tried, I tried, through the Parliament and through the European Commission - the Human Rights Unit - to have at least a few examples on human rights defenders included. And they refused. Even though the letter came from another department, from the Human Rights Department, an official letter asking for that; they refused. Even the Parliament has no real power in that but they tried. And the Committee responsible at the Parliament drafted a letter to the European Commission in which they complained that it was not included. So the handbook has not been amended. It's difficult to change the rules at

that level. But if we organise that closed seminar, we are going to invite definitely DG HOME, DG JUSTICE, the Member States. Because at the end of the day it is the Member States who provide visas, it is not the Commission or the EEAS.

O: From your experience, would you say that the EU Guidelines on HRD are useful on the ground or improves the action in this respect?

A: Well I think before the Guidelines the EU was taking action. I think it is a useful reference document but I would not make it a paper exercise. If you spend your time revising the text you lose time, although it might be useful at some point, I think the text of the Guidelines is quite okay. The challenge is, as always, the implementation. If you spend your time revising a text, you cannot use that time to really implement the text. So, we have to find a balance. I prefer to lobby for the implementation and to refer to it as a key document. But I think that there are always steps...also the fact that now they have appointed Liaison Officers for s and it is clear that the EU Human Rights Focal Points in the EU Delegations have a role to play in reaching out to the defenders, observing trials, meeting defenders etc. I can tell you that we sent last year 150 cases to the EU - not just the EU Delegations but also the Member States; we got 70% of responses and out of the 150, 48 – a bit less than 50 – percent of positive responses which means the EU for 48% of the cases raised, the EU has taken action in line with the EU Guidelines; it could be meeting a defender, raising the case officially or unofficially, observing the trials etc. So we can track that but the problem is the impact, how to assess the impact of such actions. So, that is a tricky issue, for them, for us. Because I have the impression that sometimes, if not most of the time, they are driven by the activities, they are happy to say 'look what we do'...But what is the impact, what is the outcome for the defender? Is it positive, negative? Hopefully positive. So we have to move from positive actions to positive impact. Not just for them but for any NGO as well, human rights NGOs. They need to be result-oriented rather than activity-driven. We cannot assess the impact by listing all the press releases. It is useless if there is no impact.

O: But do you have the impression that the EU is engaging in approaches to measure its actions?

A: Yeah. It's quite new. We talked last week to the guy in charge of HRD. And that is something I raised because I have been invited as a panelist; in two weeks there is a big gathering of all Human Rights Focal Points of the EU Delegations in Bruxelles and I have been invited on the panel to speak about good practices. And I will underline the need to look at the impact rather than the activities. The activity is just a tool to achieve something, not the goal in itself. But it is really difficult, the relationship between the action and the impact, is it positive? It is difficult to assess. If you publish a public statement and the guy is released the following day, 'thanks to us'; you contribute to that but you have to at least try to link the action with the impact even if you cannot say with certainty that it is thanks to you that the situation has improved. But at least you should not stop after an activity and be happy with the activity undertaken and then forget about the rest. So that is something I would like to see the EU improving.

O: Isn't it also maybe a problem with regard to the shelter programmes sometime, that the EU is not really paying attention to what is happening afterwards? Like a follow-up system?

A: But the EU has no shelter initiatives itself. For shelter initiatives, not just the cities but also the NGOs, it is important of course to look at what happens after the relocation. And not all initiatives do that. But the EU is not really involved in that, they are involved in trying to connect all the initiatives, improve their coordination and improve the flow of information. But the EU as such has no such initiative. Except that, I was invited to a conference in November of the Sakharov Prize winners network in Strasbourg and in their final declaration they said that they would like to open a shelter in Strasbourg or Brussels to host defenders at risk under the umbrella of the Sakharov Prize Network. Which is good, so I am going to follow up on that. It won't be an EU shelter but it would be one of the Sakharov Prize Network supported by the European Parliament etc. And that is something I have lobbied for as well at the Council of Europe level; they could open a shelter in Strasbourg in partnership with the University which has flats, they have students and so maybe there are some rooms available that could be used for hosting HRD.

O: Would you say that you can meet all the demands of defenders who approach you or is there a lack of resources to respond to them?

A: Well we are a very small organisation. There are less than 30 people working with Front Line Defenders. I mean there are many many defenders we don't know and who don't know us. So it's a growing network...

O: But the ones that are approaching you?

A: Well, we do our best of course. What we don't do, we don't do accompaniment because we have no one in the field like PBI for instance. We try to meet all their needs but we don't support people looking for asylum or we don't pay for advocacy visits for instance. There can be advocacy visits to Brussels but not if they want to go to Geneva for the UPR process or for advocacy, we are not going to pay for that because our action is exclusively devoted to security and protection. But you can say of course 'yes, but advocating in Geneva might be a way to get some protection'. Yeah, but the link is too vague, too loose. It is really about protection and security. I mean, this is always a challenge. When we take action and the security level is not good enough or if they are trained but sometimes they forget very easily; I met a guy from Syria two years ago I think and he had followed the course on digital security and he told me that his e-mail account had been hacked and I said 'oh, have you changed your password', 'no, I am still using the same password for ages', and I said 'yes but you have to change your password'. So when people are trained, that does not mean they will act on that basis. So that's an issue. I think, when it comes back to digital security, how to use mobile phones, I think most of the time it is not the devices or the techniques or the software involved in the security breach, it's human behaviours. It is just about human behaviours. If you don't change human behaviours, you can do whatever you want, they will still be at risk because of their own behaviours. It's a human thing, you have to deal with that. We also do some stress-management techniques courses in the context of our personal security training; we also try to teach them a few techniques to relax or at least to be conscious of the fact that they are stressed. So we ask them to fill in a questionnaire about 'how many hours do you sleep', 'how much time do you devote to your family' etc. And often they really can't reply. Because many are completely into the human rights work and they forget the rest including themselves and their relatives. It is not just about security, physical security, I mean it's good but your health, your psychological security... and people are sometimes so stressed that they may do

stupid things. Because they have completely forgotten the basics in terms of security. So we have to take that into account as well.

O: If you would have the chance, which aspects of EU support, human rights support, would you improve?

A: Well, political will. First of all the lack of political will. And also, there is a gap between human rights people and people dealing with trade, public relations etc. - including in the EU Delegations. And also the gap between the different aspects of the EU policy. And also training; despite the fact that it has been a long time that we try to push for that, we still depend a lot on personal dedication of the EU staff. They may have a really good Delegation or people in the field or people here in the institutions, you know, very convinced that they need to take action, to take care of human rights, not just for the sake of the beauty of showing yourself, a nice European Union...And the Arab Spring was a good example that showed the previous lack of political will to speak about human rights in Tunisia. And once Ben Ali left, other people came, like the US etc. because the EU was just voiceless before. I think even for their own interests, including economic interests, they should listen to HRD and protect HRD that may become later the key figures in any new regimes. So I think, sometimes you can rely on some really dedicated people but then when they leave you may face someone else who does not care, even if they are Human Rights Focal Point Officials. In the past I met people who really did not care and they expressed that openly; 'but I am just here to do that and I am not going to do that'. The worst e-mail I have ever received is that 'please delete me from your e-mail list because I am going to be retired. I am not going to take action on that. And in six months I am going to be retired so don't bother me with your e-mails'.

O: And do you have the impression that within the EU human rights section - even if there are different departments where people deal with human rights - is the communication between Bruxelles, the Delegations, is it working?

A: You mean in the External Action Service?

O: The Commission, the External Action Service...

A: Let's say it like that. I think the relationship between the European Commission and the External Action Service could be improved, to say it diplomatically. I think they work together, they organise events together, they have to work together also because in the field you have the cooperation section and the political section, they should work together. Sometimes I think the European Commission people, including in the Delegations, they too often think about money. So when we ask them, let's say we have a Human Rights Focal Point in the Delegation who is actually in the cooperation section, when we contact them they may talk just about money, providing money. And it's not wrong because that is the cooperation section. But most of the time what the HRD need is not money, it's just political support, it's a statement, it's something public. You know, it's just a question of mindsets; if you work for the Commission you speak about money. You know that there is a political aspect but your problem is to spend money. And on the EEAS side, they don't have access to the money, so they don't have much influence because it is a separate institution, they don't have a say in the funding of projects. So, there is a kind of fight between funding support and political aspects. And then they criticise each other for not taking action properly.

O: And with regard to the political support, do you think that Ashton or the post of the High Representative has had leverage to the EU action?

A: That's a big question because it depends on the country. With Russia definitely not but with other countries maybe because they are more dependent on the EU funding, the EU support and that of Member States. Because in many countries the influence of one Member State is far more important... In Bahrain the UK is stronger than the EU as the EU is not there, it's a question of relations etc. So it is really difficult, it is kind of a machinery a bit and the External Action Service is still a relatively weak institution. And still, some embassies have strong interests. They go to meetings but at the end of the day they do what they want to do. That is why we don't want to focus exclusively on the EU, the EEAS and the EU Delegations, we still want to keep contacts with Ministries, mainly through the Ministries of Foreign Affairs, and their embassies. We still raise cases with France, Belgium, UK etc. Because the EU is made up of Member States. it's not a federal state.

O: The last question, would you consider Edward Snowden a HRD in need of protection?

A: That's a difficult question. Not so far. Like Julian Assange, not so far. But the issue of whistleblowers was raised recently in a meeting in the OSCE because they are drafting Guidelines on the protection of HRD and whistleblowers is in the text. But it's a bit tricky. We have not raised the case so far. And also, I think the duty of an organisation like Front Line Defenders is really to focus on less known, remote defenders who have no access. I mean, if we start working exclusively or campaigning for Snowden, Assange etc., we could do but many others are doing. So what's the point except adding our voice but our credibility is based on our practical work for local HRD at risk because they face attacks, death threats etc. I mean Snowden is now in Russia, I mean, okay, Assange is in the UK in an embassy... So it's not really our mandate, our aim to support... But we may reconsider that, I think, we are going to discuss the Strategic Plan and probably this will be on the agenda; if we do something for whistle-blowers. We do that for people fighting corruption for instance. But when it comes to so famous people like that, no, we have not taken a decision on that. Or the decision we have taken is not to work on these cases.

O: But do you think that he would have realistic chances if he would apply directly to the EU for support?

A: I don't think so. It is too tricky. I know that the Greens have proposed Snowden for the Sakharov Prize and now for the Nobel Peace Prize. It is more a campaign... they know they won't be successful I guess. Maybe with the Nobel Prize, you never know, I mean they gave the Nobel Peace Prize to Obama... and the US army is still in Afghanistan, Guantanamo is still open...

O: Thank you very much.

10.4 Transcript D

Interview with Paul Underberg, Reporters Without Borders – 4th February 2014

O: Olivia Schöfl

P: Paul Underberg

O: Since when would you say, in practice, is your organisation also dealing more with the online sphere?

P: This is complicated to say. I cannot give a precise answer but we have opened an Internet desk. And we were really the first organisation, among those dealing especially with press issues like CPJ etc., we were the first one to open a desk dedicated to the Internet and this was more than 15 years ago. So at that time we were already, I mean we were not aware that this would reach this level, but we were already advocating for online journalists, bloggers and so on. So, let's say for more than 15 years. Regarding the issue of protection not just of your private life but protection of your communication – and it's more than the Internet, it's also your mobile phones, it's also everything that touches the ways that you are using the electronics today –, I would say since six, seven years when we started to have a project over shelter, physical shelter, that we opened in our office. We opened in the office a real shelter, a place with computers, with different kind of networks, of providers. People were coming to our office, trying to explain or trying to get connected, so we were trying to use the first VPN and so on. And also this technology of PGP, I remember we lobbied for PGP a long ago because you know that the creator of PGP has been accused of arms traffic when he has published the first PGP-software on the web. So, it was already in the history but six or seven years ago we started with the physical shelter based in our headquarter in Paris.

And after that we pushed for a what we call the new media desk which was running the worldwide issues. Because we are working with researchers dedicated to countries, Asia and America and so on, and then we said for Internet this is a nonsense. So there was the creation of the desk dedicated to Internet issues taking care about the bloggers while the researchers were taking care about the journalists. But this was crossing every day so we decided to...and that is why we changed also one word in our logo which was important; we used to be Reporters Without Borders for Freedom of the Press and then we said Reporters Without Borders for Freedom of Information. Which was just one world which was related to the topics that we were following because we have more bloggers in jail today than journalists. So we started to be connected to that. And we started to, especially in 2008 for the Olympic Games, we were making this big campaign we had...And then we realised that mainly journalists coming from the EU but also from those countries where they were not used to the technology that they could use...they were using the computer just as for their everyday work and that's it. So we realised that we had to do something more dedicated to professional journalists. I don't speak about general human rights activists and so on, because they sometimes know the situation better than we do. But most of the time the only protection they had was a password which was easy like that and as every journalist you have all your life on your computer...So, there was a necessity for trainings, there was a necessity to raising

these points in the school of journalism, mainly speaking to the journalists in the local areas. And then we pushed for projects for liberty on the net and we had some support coming from Paris.

And then we had the opportunity to win a tender from the EU and we had a project about cyber-censorship. It has a website which is not related to the website of Reporters Without Borders because the website dedicated to the project had to be far more protected and so on, you have the question of data protection, of VPN, of public VPN, encryption. And the big question, as usual, how can you translate that. Because having the technology is something good for the people who understanding it, as long as you understand it very well but if you don't, okay....

O: This project was funded under the EIDHR?

P: Yeah.

O: Under the restricted Call for Proposals for HRD?

P: Yeah. It was an open call and we proposed that. I don't know if other organisations proposed that but at that time there were not many organisations taking care about this. And so we were so clever to propose that, so we were lucky to win. Truly speaking, the project at that time was really positive and meeting the issues especially for the question of hosting content that had been censored. And the fact is that, because it is a nonsense to host this content if you don't give access to the people. It is a nonsense to host content that has been censored in Vietnam if the Vietnamese don't have access to this. Okay, something positive but I mean the only positive things that you need to do, if you do a project like that, is that you need to provide the Vietnamese access to the information. Otherwise, okay, you are fighting censorship but – excuse my language – no one is giving a shit in the EU but plenty of people give a shit in Vietnam. So, you need to use this technology to provide access to the people which are in the country. That was the key issue of the project; hosting, giving access, sometimes trainings and providing updates on the technologies. And we don't need to invent this technology, we just need to give it to more people, from a technical point of view and from an, I would say, advocacy point of view.

O: Do you also provide grants to journalists and bloggers?

P: Yes. We provide financial grants to those people or NGOs. Sometimes they need financial material support, medical support, technical support, in this particular area. You need to reorganise trainings in some countries; that helps the people to go back to those countries and make their own trainings after. In principle you teach someone that will teach someone and you reach more and more people. And once more the big key issue each time is what kind of language are you using. And once more the big question is also with this technology, are those people able to provide for updates. Because it is a nonsense to use this if you don't make the updates as well. Truly speaking it's a nonsense. So this is a big topic. Okay we provide people this technology but are they able to...Truly speaking in some countries we don't talk about this...Iran, yes, Syria, yes, Egypt, obviously...but in some countries I mean, in Cuba for a long time it was a nonsense because the speed of the Internet was...And once more, you need to consider how many people you are touching through this technology. The Arab spring was a revolution 2.0, true, but at the same time so many people are still using...I disagree regularly with that the revolution of the Arab Spring...People were just angry. They had no job and so on. So it was people who went on the street and then, okay, the young generation was using Facebook and

true, it has changes many things, but the main issue was not Facebook creating a revolution, no, really not.

O: And do you also provide still shelter programmes for journalists who need to be relocated?

P: Yes but before it was also funded by the European Commission through the EIDHR but it was not just for those activists. We were providing a large programme of shelter, we were trying to find a solution for the visa issues. We are trying also to provide small grants, the amount depending on the situation.

O: Was it within the framework of a global Call for Proposals?

P: Yes it was. We had it before the EIDHR. We proposed and the EIDHR gave us the opportunity to extend this to another level. And after, when we lost the project, we had the opportunity to continue with other fundings. So we kept the assistance. For example, I remember when we created Reporters Without Borders in 1990, we had already a SOS-line which was a hotline, a telephone line obviously – at that time Internet was not created – and this line is still open today, 24 hours a day and seven days. But obviously today with the Internet we receive more appeals by Facebook or whatever than we receive by telephone, which is a pity in some cases. We provide people with a practical guide for journalists that gives plenty of skills; you go to Iraq, you go to Syria, please read this before. We are providing them with instruments, for all the private journalists I would say; not the ones that are working for big media, because they get their instruments from their media but I would say more than 80% of those people are freelancers. And so we are providing them with instruments which give them a very high level of protection. Even in war areas.

O: And with regard to financial support of the EIDHR, are there any problems or practical challenges?

P: Truly speaking, I know that in some cases we can complain about the EU but, truly speaking, we cannot complain about this instrument. The EIDHR wants you to be the most effective you can. And obviously, because it is a development instrument, they want you to help on the local level as much as you can. Which I as an EU citizen fully support. Truly speaking, from the instrument and from the way that all those people who followed the EIDHR from the very beginning - because we were one of the first NGOs that were funded by the EIDHR; still today, I cannot remember that the Commission was saying you should do this, this, this, this. No. They are asking, which is quite normal, to clearly report on financing, clearly narrative on what you can do, they accept the level of confidentiality you should provide because in some cases and this is part of the rules, of the game of the EIDHR and they know it perfectly well, they accept it. So, true that the fact that you have an office in Bruxelles helps sometimes as well; you can go to see those people that are working on this area, you need them, and it is easy to explain directly instead of...if you look at the EIDHR, if someone makes an appeal, okay, very fine, but it is not that easy to go through Delegations, trying to explain - sometimes the Delegation is not aware of the programme and so on and so on. So, it is not easy. You realise that 50% of the budget goes to the big five. And for the rest, you will see.

O: With regard to freedom of expression, freedom of expression online, who are the big five?

P: There are not that many NGOs that could do it. First of all because of the programme and the way they want to do it. For example providing a public VPN; you

need access to everybody including...well I don't want to say terrorists but maybe why not. If you provide a public VPN you also take this risk as well. So, Reporters Without Borders is doing this, Front Line is doing this. And after, everybody started with their own project. CPJ for example is providing some stuff like that but they don't receive public money so they cannot appeal through these programmes. So you need to find private sectors helping you on this matter. Which is not bad or not good but you need to convince private sector to be involved in that. But at the same time if you lobby for the private sector not to export this technology then it is quite complicated to find a support coming from them. Which makes sense, I mean, you cannot fight people and then after ask them to support you financially. It is part of the game as well. You have got also plenty of other NGOs that have been created on this special topic. And truly speaking, because it is technical, it is a technical war. I mean I am sure that in five or ten years Reporters Without Borders will have more technicians than researchers. Because you will have to have the support of people that know how to fight this on the web and this is purely technical. We can lobby, we can do research and argue but as long as you are not able to use this technology...and I am sure that in ten years we will have more hackers in our office than we will have researchers. We should.

O: And from your personal perspective, do you think it is legitimate to criticise that the EU is mainly or only supporting people who follow a, let's say 'Western' ideology?

P: I know it is a big debate within the NGOs but truly speaking I don't give a shit about that. I just consider one thing which is very important...I think, still today, I consider it a right of everybody – whatever is the country, whatever is the technology – to send a letter without being spied for that, controlled for that and stuff like that. So, when the EU is supporting this, first of all they are supporting the rights of EU citizens. I think it is the first thing, supporting 500 millions of EU citizens, we have 28 Member States, we are fighting for those ones and this is represented through some topics,;we have plenty of programmes in Bulgaria and so on, so people inside the EU - which is not the case for the EIDHR. And after, obviously, once more, it is not a question that we have borders. We want to do something on the Internet, we don't have borders. So, I don't know if the values are coming from the US, or the EU or from whoever, but the thing that I know is that fighting this on the Internet is by definition without borders and something that you need to fight on the global network. Let's not forget that the Internet has been created by the army which makes us very powerful with that. So sometimes we can applaud the army for what they are doing – at least I applaud the army for what they are doing for the Internet. And at the same time, fighting this is a nonsense when you want to get back ten or twenty years ago. And if you want to do this, not you but if someone wants to do this, please try. But you cannot say that the Internet is the global village and we are sharing info and at the same time saying that 'yes but because of my local values, because of my local situation, because of my local approach, I consider that part of the Internet should not be connected to my country'. So then what? And if you consider this, you will have two different Internets in the US and in the EU. Because we are not sharing the same value regarding freedom of expression. And we will get back to the ancient value of the past time and you will have Intranet EU, Intranet US, Intranet Asia, Intranet Middle East. And then sometimes they will be connected, depending on the topic. Okay, we can get back to this but as long as you are saying it; if the EU wants this, please, say it, we will discuss it. I am not opposed nor for it. I have my opinion but it is

my opinion. If they want to get back to this... We are not talking about Internet, we are talking of some Intranet connected sometimes depending on the local station. And it is not a question of... Human rights should not be considered as an EU occidental value. And it is not the responsibility just for the journalist, freedom of information, providing information, sharing information; it is the right that you have, that all those people have, and it is not that as I am with Reporters Without Borders that I am more legitimised to use this right than you. It is just a question unmanaged to be paid for that. And I manage to live from that. Which was a hard work but I mean, it is open to everybody, you can create a competition with us, it is open. But at the same time, the question of 'oh yes but in my country this part of information should not be accessible'... Okay, maybe, in some cases to protect children, I have children, I know that I don't want him to have access to pedophilia websites but at the same time I am not ready to have this legislation restricting it. No, I will have to teach him that some websites are not... Like the way your father and mother used to teach you 'don't touch this'. It is the same stuff you obviously need to take care of sometimes. And people don't want to so they expect the government to take care and after they complain that the government has not taken care about this and after, 'ah, they are spying us'; guys, choose your way, okay? If you want that you don't have access to this, okay, meaning that we need to organise a censorship. With all these technical issues, don't complain afterwards. I know it is not that easy. But once more, it is a question of being logical. Truly speaking, I hate the Internet. Truly speaking, I started my work without Internet and I had to get back to the Internet and what it has created in my own life is a volume of e-mails and spending my time answering e-mails; I don't work anymore, I am not producing anymore, I receive plenty of information and requests that I don't give a shit. Oh yes, I have access to information but I don't have the time to read it. So, truly speaking, the added value in some cases is a bit... Yeah, maybe. And in some countries, truly speaking, yes. But at the same time... Yes you can say it is a revolution, yes I have access, but I don't have the time to read my books I would like to read and it's for my professional skills not for my pleasure and I don't have the time to do so. So yes, maybe I have access to everything, maybe I need to encrypt my e-mails because I am sending some information dedicated to my private life. But at the same time no one forces you to have Facebook and to show your house on it. Now you put pictures of drunk people on Facebook and afterwards you request Facebook to be responsible, 'you should delete it because I now search for a new work'. Okay, you chose to put your life on a public platform... So that raises plenty of questions. In some countries I understand the point that this is quite important because it is really a way of fighting, it is really a way of changing the society to have the right to choose your way. To have your own rights to choose the way you want. As long as this technology gives you the opportunity to do so, why not. But at the same time it has opened plenty of questions regarding for example the question of anonymity. Not Anonymous as organisation but being anonymous on the Internet. In plenty of country, I fully agree because you risk plenty of stuff. In my country, in Bruxelles, being anonymous to give comments on the website: no, why? I used to live in a society where when you wanted to publish something in the newspaper you had to provide your name and the city in which you were and then you were able to publish a comment in the newspaper. And everybody agreed with that. And now with the Internet; 'no, I need to be 456. What kind of society are we going to be? And afterwards you say 'look at the level of

extrem right on the net'. Yes, everybody is anonymous so you can say everything you want. Freedom of expression. And I will fight for that.

O: To me it seems a bit like if there is a bit of an inconsistency between EU action with regard to external relations and EU action within the EU. For example when it comes also to the support of HRD who engage online and they try to provide some help or shelter, it is sometimes very difficult to find a solution within the EU. Sometimes it seems as if you have to switch to third countries because there is no political will in the EU...

P: You see, the very big picture of that is Snowden. It is not because of Snowden but the EU was ...as powerful as they are pushing for that... none of any 28 Member States wanted to give asylum to Snowden. What happened, Russia decided to do so. But the image of the EU, saying 'yes we are supporting blablabla' and at the same time the one that has shown to the EU that they are spying you – which was not a discovery truly speaking and I suppose we are spying them; it's a war, it's an economic war...but at the same time we were not supporting a guy which was a US citizen...We are supporting bloggers and people worldwide but not this man who needs asylum in the EU for what he has done for the public interest. Please provide him with a visa. None of any 28 Members has done so. And now he is in Russia. Yes you can complain about Russia which is deadly true but at the same time they provide access for Snowden. And we have the responsible of WikiLeaks which has to live in an embassy in the UK. So what you say is true. We can push for it but at the same time we need to be consistent. We are selling the technology to some countries and they are using our technology to do so. And sometimes the EU requested to the providers to provide this technology, to sell this material, not to Iran but first of all to EU countries. The EU wants the backdoor on the services. Which makes sense. You cannot at the same time ask the EU to fight corruption, fight organised crime, fight terrorism if they don't have the opportunity to make a war also. It has become a war and when it is a war, you have to have weapons. We have weapons, they have weapons. It is definitely a war. And everybody wants to consider Internet an area which is worldwide and pacific. I would like to, yes, but it is not any more that. And it has never been that anyway but it is not anymore that. And obviously in this big area we definitely as an NGO are focussing on those topics. Because we are the only one who could do it. For the benefit of EU citizens, for the benefit of each citizen, not EU, not US, but the benefit of each citizen. But, truly speaking, how many citizens are really, really, really involved in that? Really aware about that and really wanting to encrypt your emails? I send a mail to my mother and I need to encrypt it for my private life? Shall I? Yes you should. But you need to change so many things. I travelled nine months from Paris to Bruxelles and you see so many people that are complaining about the fact that we are spied and people are explaining you their entire life on the mobile phone for one hour and say 'I told you that but it is fully confidential'. Thank you very much. And at the same time they complain about 'oh, the state is spying us'. Start with being a bit logical. If you need to protect something, please protect it. And if you want really to protect something, please do not put it on the Internet. And it is not an obligation. Still today you can do plenty of stuff without mobile phones and without the Internet. But it is true that it should be a right. Sure, at the moment, it should be a right. We should not have any weapons. For the moment, there are weapons. In a country like the US, one person out of two gets a weapon. So, yes, maybe one day. So, see it as a fact and let's take

care about this. Yes, true, we need to continue to push for that, we need to continue to help HRD with this issue of protecting. And maybe they will still be one step behind the police. Which according to me is not true for the Internet for the moment; I mean, some of them yes, but truly speaking, some are far more clever than any services; but I mean we are speaking about ten people up to how many people?

11 Appendix

11.1 Abstracts

Das Internet hat in den vergangenen Jahren als Medium der Meinungsäußerung und als Raum sozialer Interaktion in vielen Regionen der Welt an Bedeutung gewonnen. Im Vergleich zu herkömmlichen Medien, weist das Internet eine Vielzahl an Besonderheiten auf. Es ermöglicht die einfache und grenzüberschreitende Verbreitung von Information sowie Meinungen anderer NutzerInnen rasch und öffentlich zu kommentieren. Mediale und gesellschaftliche Aufmerksamkeit erlangte das Internet zudem im Zusammenhang mit zivilgesellschaftlichen Bewegungen in Tunesien, im Iran und in Ägypten, wo AktivistInnen online agierten, um Information auszutauschen, die Öffentlichkeit zu informieren und sich zu vernetzen. Aber auch in vielen anderen Ländern wird das Internet genutzt, um erfahrenes Unrecht zu teilen oder Regierungspraktiken in Frage zu stellen. Meinungsfreiheit im Internet wird jedoch vielerorts eingeschränkt oder verletzt.

So wie alle Menschenrechte ist auch das Recht auf Meinungsfreiheit ein flexibles Konzept, welches den gesellschaftlichen Entwicklungen anzupassen ist. Dies macht es notwendig, den Geltungsbereich den technologischen Entwicklungen anzupassen. In der Masterarbeit wird argumentiert, dass Menschenrechten online die gleiche Gültigkeit zukommt, wie im Offline-Bereich und dass das Recht auf Meinungsfreiheit auch im Internet zu schützen ist. Weiter wird argumentiert, dass die Europäische Union diese Rechtsauffassung teilt und Meinungsfreiheit online in Konzepte ihrer auswärtigen Menschenrechtspolitik integriert hat. Die Arbeit beschäftigt sich insbesondere mit der Frage, welche Bedeutung dem Schutz der Meinungsfreiheit im Internet in den EU Außenbeziehungen zu Drittstaaten zukommt. In diesem Zusammenhang werden Grundlagen und Instrumente diskutiert, die AkteurInnen der EU-Außenpolitik zum Schutz der Meinungsfreiheit online zur Verfügung stehen. Bei dieser Analyse steht ein spezielles EU Finanzierungsinstrument aus dem Bereich der Entwicklungszusammenarbeit im Fokus: Das Europäische Instrument für Demokratie und Menschenrechte.

Freedom of opinion and expression is the right to hold opinions, to change them, to express oneself, to seek and receive information and ideas of others, and to communicate without interference and by any means or tools. It is further an important precondition to claim other human rights and arguably to participate in social life. The right to freedom of expression is enshrined in various international, regional and national human rights treaties and constitutions, including the Charter of Fundamental Rights of the European Union. Due to socio-technological developments in the last two decades, the use of new tools and in particular of the Internet has become increasingly important. Therefore, also the battlefield of expressions has shifted partly to the online sphere. At the same time, freedom of expression online is heavily curtailed and violated in various countries around the world.

This thesis discusses the relevance of freedom of expression online in EU foreign policy. It argues that the European Union has politically committed itself to the promotion and protection of human rights such as freedom of expression online and offline in its foreign relations. Moreover, it examines and demonstrates that freedom of expression is a conceptual priority of multiple EU external human rights policies. Furthermore, it will be argued that EU foreign policies on human rights, democracy support and development cooperation are conceptually interrelated with each other. For this reason, operational EU foreign policy instruments which may be used to protect freedom of expression online in third countries in practice are examined. In doing so, a specific EU development cooperation instrument will be further analysed: the European Instrument for Democracy and Human Rights (EIDHR). In this respect, the examination focuses on the form of support the EU gives individual actors who use the Internet as a tool to express their political opinions and who face intimidations, repression or attacks because of their expressions.

The critical discourse analytical approach according to Jäger is the methodological basis for this thesis. In the course of the analysis, various discourse fragments are examined. These include text genres such as treaty provisions, foreign policy documents, working reports, official declarations and political speeches of EU representatives as well as interviews with EU officials.

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